Parliamentary Time

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The 1958 Constitution marked a radical shift away from Parliament's authority over legislative business; control over most legislative initiatives as well as over the various stages of the consideration and adoption of bills was transferred to the government. One consequence of this transfer was to turn the assemblies' time management on its head. Prior to 1958, parliamentary time was set by Parliament itself, from the calendar of sessions and sittings to the length of everyday debates and speeches. This rhythm put the executive constantly on the defensive against the parliamentary body that controlled time management: the Conference of Presidents, dominated by the chairpersons of the political groups and of the committees. Under a framework that itself favored Parliament – a continuous session throughout the term, with both the calendar of sittings and the agenda set by the assemblies – the Conference of Presidents could impose this parliamentary rhythm on the executive, at the risk of forcing the latter to resort to expedients such as the infamous *décrets-lois* (decree laws).

The Early Days of the Fifth Republic

In 1958, the situation was radically reversed. Overall, the constituent assembly gave the power to set the rules of parliamentary politics and consequently its time management to the Constitution, on the one hand, and the government on the other.

The Constitution drastically modified the calendar of sessions; it abolished the single continuous session and instead had Parliament sit only six months a year, gave the government total control of the agenda, and reduced the role of the Conference of Presidents to that of registrar. In addition, the procedures that allowed the executive to supplant lawmakers (decree laws) were integrated into the Constitution and strengthened

by the introduction of the *procédure d'urgence* (emergency procedure), which reduced legislative procedure to its most expeditious form upon the government's request. Lastly, the government gained a constitutional weapon with which it could cut short debate on a bill. This includes the blocked vote (art. 44-3 C), allowing the government a single vote on all or part of a bill under discussion and any amendments it accepts, and the pledge of responsibility on a bill (art. 49-3 C), which, at any stage of debate in the National Assembly, can force the opposition to pass a motion of censure or see the bill adopted without a vote. In both cases, discussion of articles and amendments is brought to a halt and the government avoids seeing its majority disperse and the opposition impede the adoption of the bill.

This upheaval put the assemblies in a dependant position, exacerbated by the consistent occurrence of clear majorities. Indeed, the governing majority, which controls the Conference of Presidents (at least in the National Assembly), has never contested the government-proposed agenda. Scheduling problems have been settled by the prime minister (or president), but never by the National Assembly or Senate. This explains why these drastic rules were relaxed by some limited reforms.

The first concerns the allocation of speaking time. The practice known as planned legislative time, which imposed a time limit on the consideration of a bill under the Fourth Republic, had been kept under the Fifth. In 1969 however, it was rescinded by the National Assembly's rules of procedure, showing that the majority of the day felt sufficiently secure and protected by its constitutional arsenal and rules of procedure.

The second concerns the parliamentary agenda. In 1995, the constitutional amendment of August 4 resulting from the election of Jacques Chirac made two changes to the Constitution with regard to parliamentary time. First, one annual session (from October 1 to June 30) was established to replace the two ordinary fall and spring sessions. This single session might have given Parliament more time to legislate and monitor; in reality, however, it did no such thing, because the number of sittings was not increased (one hundred twenty sittings, excepting requests for further sittings by the prime minister or the majorities of the assemblies). Besides weekends, which, with members of parliament busy working their constituency and managing their local offices from Friday to Monday, often have no sittings – apart from the period devoted to the budget or to major, time-consuming bills – this figure includes breaks for vacation (two weeks at the end of the year and two more weeks in spring) and for national or local election campaign periods, which are

then caught up by extraordinary sessions. The other change concerns the agenda: in order to break the government monopoly, one day per month was assigned to private members' bills. This marginal reform had little effect, since the total number of these days (eight per year) is so ridiculously small that it equates to just over one day a year for each group. In practice, the examination of a bill in a day-long sitting (in fact, a half-day) means that only small-scale bills of just a few articles can be considered. Even if members of parliament introducing a bill managed the feat of overcoming all the political (getting the green light from their group) and legal obstacles (admissibility under articles 40 and 41 C) to get it on the agenda and have it adopted by their assembly, the bill will not get any further; it has no chance of being put on the agenda of the second house, which reserves "its" day for its own bills.

These limited modifications did not change the nature of parliamentary business. Nor did they help calm the atmosphere of the assemblies, especially the National Assembly, where successive changes of governing party (1981, 1986, 1988, 1993, 1997, 2002) have radicalized the climate and driven the opposition of the moment to adopt the parliamentary equivalent of guerrilla tactics. These have not included the motion of censure (which can only block proceedings for forty-eight hours and, in any case, has not put a dent in the succession of majorities since 1962); it has now fallen into disuse. Instead, the preferred tactic is obstruction by submitting inordinate numbers of amendments. This maneuver appeared with the 1981 change of government, when the Right submitted huge numbers of amendments to the nationalization bills; the Left followed suit in 1986.

The 2008 amendment must be seen against this historical backdrop. So must the strengthening of Parliament's prerogatives that came with it, related in particular to a new way of managing the legislative agenda and theoretical recalibration that results from it. Five years after the amendment, an initial assessment of its effects can be made.

The 2008 Constitutional Amendment and the New Parliamentary Calendar

Among the many reforms concerning the powers of Parliament introduced by the constitutional amendment of July 23, 2008, several involve the management of the parliamentary calendar.

The most significant reform affects the agenda. Article 48 C of the amendment provides for the agenda for ordinary sessions to be set by each assembly. The assemblies freely determine two out of four weeks

each month, while the government is assigned the other two. In addition, governmental priority is given to the consideration of finance bills, social security financing bills, bills concerning a state of emergency or military operations abroad, as well as texts transmitted by the other assembly at least six weeks previously. The two weeks set aside for the assemblies are divided between the monitoring of government action and the assessment of public policies (which have priority for a week but rouse little interest from parliamentarians), as well as the examination of private members' bills (the opposition and minority groups of the assembly concerned are entitled to one day per month). This new arrangement therefore tips the balance slightly in Parliament's favor, with the majority of each assembly getting most of the benefit. Since, by definition, the majority of the National Assembly is favorable to the government, the new constitutional balance results in permanent negotiation between the government and its majority to define the legislative agenda. However, the different procedures for electing the Senate and the National Assembly and their differing electoral calendars may result (as was the case in 2011-2012) in a Senate majority in opposition to the government. If this occurs, the two weeks of senatorial initiative are therefore mainly in the hands of the opposition, and the government supporters in the second house get only the scraps of time left over.

IV

The second reform concerns the time allocated for the consideration of bills. The 2008 amendment (which modified Article 42 C) set a minimum period of six weeks between the introduction of a bill and its discussion at a sitting of the first assembly to which it was referred. This is intended to leave reasonable time for the standing committee to study it and decide on a position – especially now that it is the text of the committee that is considered at the sitting. Similarly, once the bill has gone to the second house, that house will examine it only after four weeks have passed – this shorter period is explained by the fact that the committee of the second house begins studying the bill well before it has officially been transmitted.

However, this reform provided for several exceptions: it does not apply to constitutional, financial, or social security financing acts. More importantly, these deadlines are not applicable if the government decides to use the "accelerated procedure" (*procédure accélérée* – the new name for the emergency procedure in the revised wording of Article 45 C), which allows it to convene the Joint Committee after a single reading by each assembly. The government has considerable latitude to use this procedure because it can be invoked the day before the Conference of Presidents preceding the opening of debate in the National Assembly

(Article 102 of its rules of procedure) and, "in principle," at the bill's introduction to the Senate (Article 24 *bis* of its rules of procedure). The Conference of Presidents of the two houses may jointly oppose the use of the procedure in a given instance, but it is hard to imagine that of the National Assembly being open to such a maneuver under the Fifth Republic.

The third reform is dedicated to restoring "planned legislative time." Repealed in 1969, this procedure – restored by Article 44 C and Article 17 of the Organic Law of April 15, 2009 – allows the Conference of Presidents to set a time limit for the consideration of a bill. While the National Assembly has adopted this measure in its rules of procedure (Article 49-5), the Senate has declined to do so, since the various groups of this assembly agreed that the risk of obstruction was more limited and more easily controllable in the Senate, given senatorial tradition. When implemented, if the speaking time of one group has run out, this procedure results in amendments going to vote without debate and prevents the chairperson of the group from requesting an open vote except on the full content of the bill.

This set of reforms undeniably tipped the balance of parliamentary procedure in favor of the assemblies, especially their respective majorities. Their practical implementation has nonetheless proven fairly disappointing.

Implementation of the Reforms

The constitutional reform of 2008 was implemented by the Organic Law of April 15, 2009, which was carried over into the assemblies' rules of procedure in fall 2009. The spirit in which these rules were adopted differed greatly from one house to the other.

At the National Assembly, the aim of the presidential majority was to acquire an effective defense mechanism against the opposition, which explains why the most virulent battle was fought over the reintroduction of planned legislative time. This measure is seen as a means to combat obstruction, since the sole purpose of submitting amendments en masse (which is the visible form of obstruction) is to multiply the number of representatives' speeches presenting the text and especially explaining their vote. This may take considerable time indeed if each member of a group that supports an amendment decides to explain his or her vote for the whole five minutes to which each MP is entitled, and if thousands of amendments are submitted and declared admissible.

Conversely, the senators were reluctant to use heavy artillery against a ploy that has never reached pathological dimensions in the Senate, and they were also well aware of the risks of a change of majority in this assembly (which in fact happened after the senatorial elections of September 2011). They therefore preferred not to introduce this reform and remained faithful to the conventional tactics provided for in the rules of the Senate – particularly Article 48, which allows the president, the chairperson of a group, or the chairperson of the committee responsible to move to close the debate on an article, amendment, or bill after one speaker per group has spoken for five minutes each.

Thus, in the new Article 49-5 of its rules of procedure, the National Assembly has implemented a time sharing measure that allows the Conference of Presidents to set a time limit for the consideration of a bill as a whole. This excludes the presentation of procedural motions, which can delay consideration of a bill by requiring an initial debate on its admissibility – and can lead to its rejection as inadmissible or its referral back to the lead committee – but which have now been limited to two in the Assembly (by merging the preliminary rejection motion and the exception of inadmissibility). Shared time may be allocated by the Conference of Presidents. The rules of procedure divide the available time into two segments (minimum time and extra time), and sixty percent of extra time is allocated to opposition groups. This reform has been respected since it came into force, with the time actually used consistently less than the allotted time, including the most controversial texts (see table below). As a consequence, the number of amendments submitted has decreased significantly. It is remarkable that the new parliamentary majority resulting from the June 2012 elections has not seen fit to challenge this procedure, which it had so vehemently opposed when it was first adopted.

Planned Legislative Time

Bill	*Time Allotted*	*Time Used*	*Length of Discussion*	*Date of Discussion*
Sunday Rest Private Member's Bill *Proposition de loi relative au repos dominical*	50 h.	30 h. 53 min.	42 h. 55 min.	July 2009
Continuing Education Bill *Projet de loi d'orientation et de formation professionnelle tout au long de la vie*	30 h.	14 h. 2 min.	21 h. 11 min.	November 2009

Online Gambling Bill *Projet de loi relatif aux jeux d'argent et de hasard en ligne*	30 h.	11 h. 29 min.	22 h. 41 min.	October 2009
Delimitation of Constituencies for Election of Deputies Bill *Projet de loi relatif à la délimitation des circonscriptions pour l'élection des députés*	30 h.	10 h. 20 min.	14 h. 32 min.	October 2009
Risk of Criminal Recidivism Bill *Projet de loi relatif au risque de récidive criminelle*	25 h.	7 h. 18 min.	11 h. 46 min.	November 2009
Grand Paris Bill *Projet de loi relatif au Grand Paris*	25 h.	14 h. 41 min.	23 h. 8 min.	November 2009
Postal Services Bill *Projet de loi relatif à La Poste et aux activités postales*	30 h.	18 h. 06 min.	25 h. 16 min.	December 2009
Delimitation of Constituencies for Election of Deputies Bill (second reading) *Projet de loi relatif à la délimitation des circonscriptions pour l'élection des députés (deuxième lecture)*	30 h.	7 h. 53 min.	14 h. 32 min.	January 2010
Concomitant Renewal of General and Regional Councils Bill *Projet de loi relatif à la concomitance des renouvellements des conseils généraux et territoriaux*	30 h.	12 h. 55 min.	19 h. 07min.	January 2010
Domestic Security Bill *Projet de loi pour la performance de la sécurité intérieure*	30 h.	16 h. 45 min.	24 h. 30 min.	February 2010
Consumer Credit Reform Bill *Projet de loi portant réforme du crédit à la consommation*	20 h.	12 h. 35 min.	21 h. 27 min.	April 2010
Consular Networks Bill *Projet de loi relatif aux réseaux consulaires*	20 h.	7 h. 13 min.	12 h. 20 min.	April 2010
Social Dialog in the Public Service Bill *Projet de loi relatif au dialogue social dans la fonction publique*	15 h.	6 h. 55 min.	11 h. 31 min.	April 2010
National Commitment to the Environment Bill *Projet de loi portant engagement national pour l'environnement*	30 h.	25 h. 8 min.	42 h. 42 min.	May 2010

Local Authorities Reform Bill *Projet de loi portant réforme des collectivités territoriales*	50 h.	35 h. 24 min.	50 h. 20 min.	May 2010
New Organization of the Electricity Market Bill *Projet de loi relatif à la nouvelle organisation du marché de l'électricité*	20 h.	10 h. 1 min.	14 h. 54 min.	June 2010
Agriculture and Fisheries Bill *Projet de loi relatif à l'agriculture et la pêche*	24 h.	22 h. 15 min.	36 h. 32 min.	June 2010
Retirement Reform Bill *Projet de loi relatif à la réforme des retraites*	50 h.	39 h. 42 min.	65 h. 4 min.	September 2010
Local Authorities Reform Bill (second reading) *Projet de loi portant réforme des collectivités territoriales (2e lecture)*	15 h.	5 h. 50 min.	9 h. 31 min.	September 2010
Immigration, Integration, and Nationality Bill *Projet de loi relatif à l'immigration, l'intégration et la nationalité*	30 h.	26 h. 12 min.	42 h. 28 min.	September 2010
Organic Bill for Management of Social Security Debt *Projet de loi organique relatif à la gestion de la dette sociale*	10 h.	3 h. 30 min.	6 h. 49 min.	October 2010
Domestic Security Bill (second reading) *Projet de loi pour la performance de la sécurité intérieure (deuxième lecture)*	20 h.	10 h. 46 min.	16 h. 34 min.	December 2010
Police Custody Bill Projet de loi relatif à la garde à vue	30 h.	15 h. 01 min.	21 h. 46 min.	January 2011
Bioethics Bill *Projet de loi relatif à la bioéthique*	30 h.	19 h. 42 min.	28 h. 16 min.	February 2011
Immigration, Integration, and Nationality Bill (second reading) *Projet de loi relatif à l'immigration, l'intégration et la nationalité (deuxième lecture)*	15 h.	13 h. 25 min.	20 h. 17 min.	March 2011
Persons Receiving Psychiatric Treatment Bill *Projet de loi relatif aux personnes faisant l'objet de soins psychiatriques*	20 h.	5 h. 29 min.	9 h. 25 min.	March 2011

Police Custody Bill (second reading) *Projet de loi relatif à la garde à vue (deuxième lecture)*	15 h.	4 h. 22 min.	7 h. 2 min.	April 2011
Persons Receiving Psychiatric Treatment Bill (second reading) *Projet de loi relatif aux personnes faisant l'objet de soins psychiatriques (deuxième lecture)*	10 h.	1 h. 47 min.	3 h. 16 min.	May 2011
Bioethics Bill (second reading) *Projet de loi relatif à la bioéthique (deuxième lecture)*	15 h.	9 h. 34 min.	14 h. 14 min.	May 2011
Citizen Participation in Criminal Justice Bill *Projet de loi relatif à la participation des citoyens au fonctionnement de la justice pénale*	30 h.	13 h. 13 min.	19 h. 19 min.	June 2011
Consumer Rights and Protection Bill *Projet de loi renforçant les droits, la protection et l'information des consommateurs*	25 h.	17 h. 35 min.	33 h. 40 min.	September 2011
Enforcement of Sentences Bill *Projet de loi relatif à l'exécution des peines*	30 h.	4 h. 40 min.	8 h. 09 min.	January 2012

SOURCE: Service de la séance de l'Assemblée.

Meanwhile, the Senate's decision not to introduce this procedure to its rules has not resulted in increased parliamentary obstruction, since the use of demonstrative amendments has remained negligible.

For its part, the government has made up for the reduction of its constitutional artillery by using its remaining weapons more effectively, in particular to cope with the reduced time available for the consideration of bills. Whereas during the first five-year term (2002-2007) governments opted for the intensive use of ordinances (two hundred forty-five ordinances were adopted between 1960 and 2000 and two hundred eight from 2001 to 2006), during the second and third terms they preferred to make systematic use of the accelerated procedure, which limits debate to a single reading by each assembly before the meeting of the Joint Committee (see the table below). This drastic limitation means more texts can be examined in half the allotted time, but parliamentary proceedings are reduced to a minimum, to the point that the first assembly may not be aware of government amendments submitted in the second.

Emergency Declarations and Accelerated Procedures

Year	*Number of emergency declarations/accelerated procedures*[1]	*Total number of acts adopted (excluding conventions)*
1959	0	51
1960	3	69
1961	1	86
1962	2	50
1963	10	68
1964	7	95
1965	3	60
1966	19	116
1967	5	62
1968	14	49
1969	7	71
1970	18	73
1971	20	92
1972	15	102
1973	8	55
1974	12	49
1975	20	112
1976	20	83
1977	44	102
1978	22	59
1979	8	47
1980	14	49
1981	7	33
1982	36	71
1983	21	87
1984	27	73
1985	55	81
1986	25	44
1987	35	79
1988	7	23
1989	30	63
1990	28	69
1991	28	58
1992	34	71
1993	14	54
1994	16	71
1995[2]	4	16

1995-1996	15	57
1996-1997	11	34
1997-1998	10	46
1998-1999	8	48
1999-2000	10	54
2000-2001	22	42
2001-2002	11	40
2002-2003	10	55
2003-2004	14	40
2004-2005	8	48
2005-2006	9	45
2006-2007	20	46
2007-2008	23	55
2008-2009[3]	34	43
2009-2010	22	57
2010-2011	21	66
2011-2012	43	40
2012-2013[4]	17	22

[1] This is the number of emergency declarations/accelerated procedures used for bills submitted in the corresponding year (and not for acts adopted).
[2] From January to September.
[3] As of March 1, 2009, the emergency declaration became the accelerated procedure.
[4] From October 1, 2012, to March 25, 2013.

Source: Service de la séance du Sénat.

Ultimately, the basic features of the Fifth Republic have not been disrupted by these constitutional changes. The instruments available to the assemblies have been altered, but the successive occurrence of clear majorities in the National Assembly has allowed the axis of the president, government, and parliamentary majority to benefit from the redistribution of powers. The government itself has not been affected significantly by the reduction of its powers, since what it retains is enough to maintain control of parliamentary business. Parliamentary time is perhaps no longer the government's time; it is the majority's.

ABSTRACT

The 1958 Constitution placed Parliament under the supervision of the government, not just concerning jurisdiction and decision-making procedures, but also the management of its work schedule, including the length of sessions, the daily agenda, or the speaking arrangements. An equilibrium was not restored until the 2008 constitutional amendment, although its principle beneficiary was the parliamentary majority. The parliamentary majority now stands on an equal footing with the government – with the exception of financial affairs, which remain the prerogative of the latter – regarding the setting of its agenda or the sharing of speaking time.

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