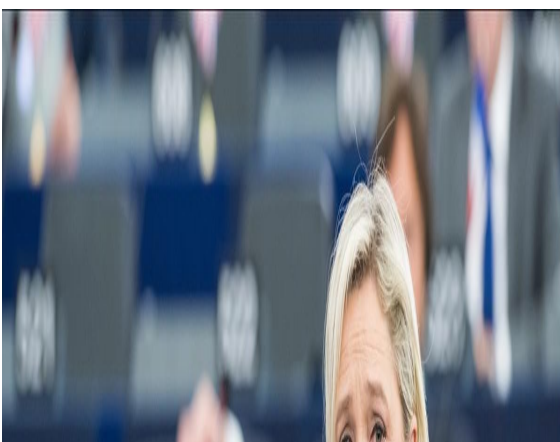


Le Pen Was Doomed From the Start

Nathan Pinkoski

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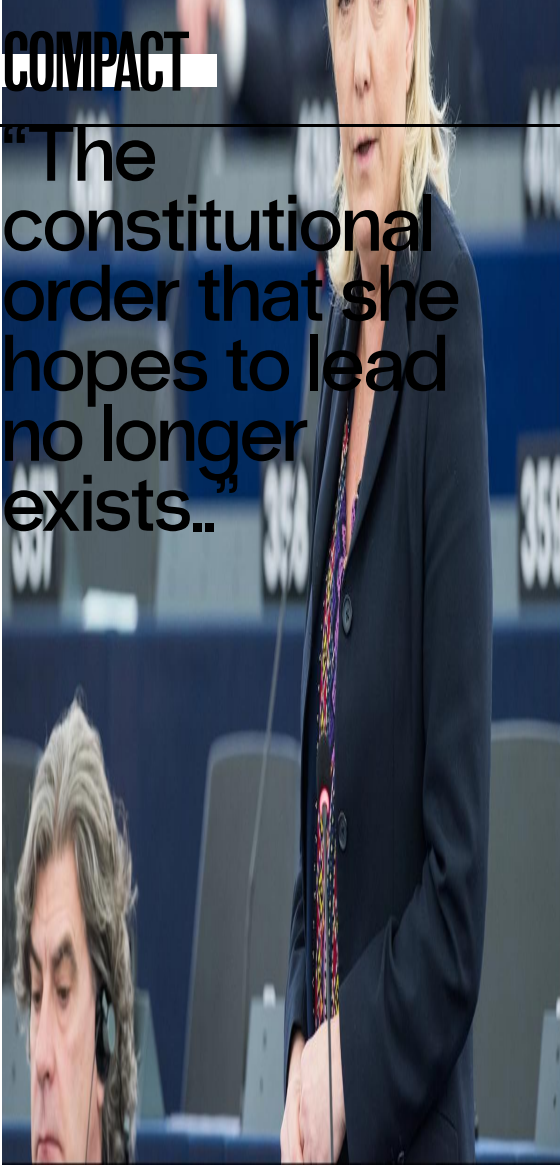
In the end, it wasn't close. The results of the French presidential election reflect the regional, ethnic, and class divides that define 21st-century France. The large urban centers, where the professional classes and ethnic minorities live, went massively for the incumbent, Emmanuel Macron; he received over 85 percent of the Parisian vote. The countryside, especially the deindustrialized northeast, areas populated by the native working classes, went for Marine Le Pen. Macron won because he is better at uniting the older, metropolitan bourgeois (who show up to vote) than Le Pen is at rallying the rural and working classes (who don't).

The results demonstrate the weakness of Le Pen's strategy of trying to sound less conservative to win support beyond the right. In the second round, Le Pen distanced herself from Éric Zemmour and his supporters, to woo the left-wing supporters of Jean-Luc Mélenchon. But Mélenchon's party represents Muslims and urban professionals. That electorate would rather accept

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“The constitutional order that she hopes to lead no longer exists..”



Macron's ultra-liberalism in
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perpetuity than permit any pause

on mass immigration. They are more anti-Le Pen and anti-Zemmour than they are anti-Macron.

Le Pen bought into the idea that buried in those Mélenchon votes is a working class ready to be mobilized by an anti-capitalist campaign, provided it tones down the nationalism. But this idea is a fiction, borrowed from the left's own mythology. The urban working class that prioritized its own solidarity has vanished. They have been driven out of the cities, consigned to small-town life and an early retirement.

But focusing on the electoral demographics and Le Pen's strategic mistakes distracts from the fundamental problem facing Le Pen and other populist challengers in Western countries. It isn't just that a President Le Pen would have faced open resistance from within the French bureaucracy when she tried to implement her agenda. It's that the constitutional order she hopes to lead no longer exists.

made it clear that they have changed the rules of the game to make a Le Pen presidency dead on arrival. Before the eyes of the French, the elites have announced that the formal constitutional order, created by Charles de Gaulle, is inoperative. They would rather get rid of the old constitutional system than let populists govern.

Le Pen's signature issue has been to call for a constitutional referendum that would enact tighter immigration laws. Why is such a referendum necessary? Because in the past, activist judges on the constitutional court have struck down such laws. Appealing to the precedent set by de Gaulle, Le Pen believes that only a referendum to amend the constitution can overcome judicial resistance.

In 1962, President de Gaulle aimed to change the republic's 1958 constitution, so that the people, rather than the legislators and other notables, elected the president. This would strengthen the legitimacy and, therefore, the power of the country's future executives. To do this, he called a

ambiguous whether de Gaulle had the constitutional authority to call this referendum. Second, direct election of the president broke with French republican practice; historically, the legislators and notables preferred a weak executive subservient to the legislative branch.

De Gaulle argued that his actions were legitimate. The people, he insisted, are the constituent power. They hold sovereignty. In the words of the French constitution, they act “either through their representatives or through the referendum.” The referendum is the most democratic voice the people can deliver. It is always a higher form of decision. The French agreed. De Gaulle won his referendum. The French constitutional court, the Constitutional Council, not wishing to contradict the will of the people, declared that it didn’t have the competence to review de Gaulle’s actions. This set a precedent that ratified the nature of the new Fifth Republic and how it was different from the older republics. Based on a strong executive, the Fifth Republic

supremacy. Using article 11 of the French constitution, the president can call referendums on constitutional questions. These referendums provide a strategy for the president to bypass legislative and judicial veto and confirm popular, national sovereignty.

Across the French political spectrum, those dissatisfied with the status quo have argued for years that this strategy should be used more often. Anti-establishment critics know that because their proposals are often unpopular with the elites in the legislature and judiciary, this is their best chance to get them passed.

But now, that wouldn't be enough.

Lately, French constitutional lawyers have argued that the referendum must be subject to judicial review or even a judicial veto. The president of the Constitutional Council, the former Socialist Prime Minister Laurent Fabius, has stated twice in the past two years that constitutional change via article 11 is impossible. In his Wednesday debate with Le

“does not respect the constitution,” because her referendum proposal would change it “without going through the National Assembly.”

Imagine if during the 2020 presidential debates, Donald Trump declared that the Supreme Court, now dominated by conservative appointees, had the power to veto a proposed Equal Rights Amendment to the US Constitution. Imagine how he would have been attacked by progressives and conservatives alike for misunderstanding the American Constitution's amendment process, for despising democracy, and for attempting a constitutional coup d'état. But because the issues in the French case hinge on politically correct positions—stopping Le Pen and her tough immigration policies—Macron's words are received complacently.

If Fabius and Macron are correct, what de Gaulle did in 1962 was unconstitutional, and the cornerstone of the Fifth Republic, the direct election of the president, was illegally enacted. To avoid admitting that, judicial elites

Fabius glibly states that those who aren't de Gaulle can't act as he did. De Gaulle lent a personal legitimacy to an unconstitutional act. Though it was illegal, the thinking goes, it was legitimate. But such an action can't be repeated. In the new regime, there is no place for de Gaulle's strong presidency and the referendum. In place of the personalized, focalized, and accountable power of the head of state that de Gaulle's Fifth Republic set up, French elites have erected a new constitutional order with a depersonalized, diffuse, and often anonymized power structure.

This isn't just a problem for the right. Mélenchon wanted to end the Fifth Republic and start the Sixth—he would need a referendum via article 11 to do so. He received 21 percent of the vote in the first round. Zemmour, Le Pen, and Nicolas Dupont-Aignan also proposed to enact their agendas via article 11. They collectively received 32 percent of first-round ballots. Altogether, then, more than half of the French voted in the first round for candidates who, at least by the

Perhaps for now, the center can effectively define these demands as illegal and illegitimate. Yet those who don't submit have now received, from the highest echelons of official, legal France, the invitation to decouple legitimacy from legality. Eventually, they might accept that invitation and rediscover the higher form of decision. The center's determination to render populism impossible renders other kinds of politics possible.

Nathan Pinkoski is a research fellow and director of academic programs at the Zephyr Institute in Palo Alto, Calif.

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