THE REPRESENTATION OF WOMEN IN POLITICS: FROM QUOTAS TO PARITY IN ELECTIONS*

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"*Even if you give us the right to vote, your socks will still be mended*". Slogan of the suffragists demonstrating in front of the Bourbon Palace, where the French National Assembly sits, on 1 June 1936, with Louise Weiss, the famous feminist journalist, at their head.[1]

INTRODUCTION

ALTHOUGH the Republic in France is traditionally represented by the image of Marianne, this symbol is far from illustrating the role played by women in public life. The fact is that in terms of women's representation in politics, France still shares with Greece the bottom place in the European Union. And this is one of the great paradoxes that foreign observers like to highlight in France.

How are we to explain, first of all, that France, while claiming to be one of the promoters of the universality of rights and citizenship in the modern sense of the term, could deprive women of it so long? The French Revolution of 1789 indeed abolished the male birthright; but apart from that, it did little or nothing for women's rights. More shocking still: "universal" suffrage, established in France in 1848 by the Second Republic, never even thought about including the female vote. This had to wait nearly a century until 1944.

How are we to explain, next, that the Third Republic (1870–1940), which enshrined the fight for a secular society, maintained the same basically misogynistic attitude? Let us take the example of Georges Clémenceau. Well on the left of the political landscape, Clémenceau was nevertheless one of the culprits in delaying the grant to French women of the right to vote and stand for election. When he became President of the Council (Prime Minister) for the second time in 1917, he took a very different line from Lloyd George, his British counterpart as Prime Minister. Lloyd George, considering the major role played by women throughout the First World War, supported female suffrage (established in the United Kingdom in 1919), but Clémenceau, both as a Member of Parliament and then as Minister, opposed the various proposals entered on the agenda of the French Parliament. Why? Giving voting rights to

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1. William Guéraiche, *Les Femmes et la République*. Paris: Editions de l'Atelier/ Editions Ouvrières, 1999 (p.39).

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women, regarded at the time as being, in their majority, too close to the Roman Catholic Church, would have threatened to weaken the pillars of a Republic spearheading the fight for a secular society. That, at any rate, is the official justification. In fact, though, Clémenceau's attitude merely reflects the general feeling in French political circles: women are out of place both in the parties and in Parliament. The circumstances of the war of 1939–45, coupled with the development of mentalities and the arrival of General de Gaulle in power, finally enabled women to attain full citizenship in France in 1944. Yet even then they were given the vote, not by legislation by Parliament, but by a "mere" Executive Ordinance.

How, again, are we to explain the weakness of French feminism compared with the dynamism of the suffragist movements that existed in the 19th and early 20th centuries in democracies like the United States[2] or Great Britain,[3] for example? Is not this in contradiction with the traditional image of the highly assertive French woman?[4] It is as if French women were satisfied with their role of influence in the home and happy enough to renounce their share of responsibility for running the country. The entry of three women in Leon Blum's Popular Front government in 1936 thus appears all the more strange.[5] Let us not forget, after all, that, with the considerable exception of the famous pro-European and feminist journalist Louise Weiss and of a few (only a few) others, this innovation did not strengthen appreciably, for several years, the mobilisation of French women in support of the legal recognition of their political rights.

Consequently, the "parity" reform introduced in France by the constitutional revision on 8 July 1999 is something of a paradox. France is still lagging somewhat behind, both because of the late acquisition of the vote and because of the persistent under-representation of women in political life. Yet now, by insisting on absolute equality in the number of candidates of the two genders at most elections, the aim of this parity is to place France at the cutting edge of the promotion of access of women to political responsibility. Consequently the reform is receiving very close attention outside France. There is evidence of this in a most enlightening

2. See in particular, with regard to the United States, Sarah M. Evans's work, *A History of Women in America*, Free Press Paperbacks, 1997.

3. See in particular, with regard to the United Kingdom, the publications of the Fabian Society, and in particular "The Long March to Equality", available on the Society's web site at <www.fabiansociety.org.uk/publication/intro.html.>

4. Theodore Zeldin, *Histoire des passions françaises de 1848 à 1945*. Paris: Le Seuil, Coll Point Histoire, 1980 (Volume I, p.399).

5. These three women, appointed Under-Secretaries of State, were Suzanne Brunschwig (Education), Irene Joliot-Curie (Scientific Research) and Suzanne Lacore (Protection of Children).

article in a recent issue of *The New Yorker*,[6] where the accent is placed on the way in which this demand for parity changed the way French women—at least the most committed among them—judge society and its major institutions.

Reform for some, revolution for others—parity is bound to influence manners and mentalities. Will it also affect the vision that French men have of their Republic? That is the question.

This contribution does not set out to discuss the merits of parity. The point is rather to assess the progress that will flow from it as regards the involvement of women in political life and, even more, to measure the changes that this progress is likely to bring to French society. The Republic is therefore considered here in the generic sense of *Res Publica*. In other words, we are not looking simply at the form of government opted for by France, but rather, and above all, at the Republic as the place where the management of public affairs by the citizens and their representatives is democratically institutionalised.

This is the background to our consideration of the deeper significance of the parity established in French legislation. What is its scope? Does it merely meet the democratic need for political representation seeking to reach out to the various components of society? Or does it seek to confer on women a specific role as participants in public life? In the latter case, does parity in France somehow correspond to the trend currently observed throughout Europe, in the East and the West, of conferring specific rights on members of communities on the basis of certain cultural links, most commonly perceived in ethnic or even racial terms? Like the Basques in Spain, the Welsh in the United Kingdom or the Bretons in France, do women constitute a community in their own right within the national community?

The facts are there, and we must face them. In this the beginning of the 21st century, citizenship is on the agenda. For one thing, since the February 1992 Maastricht Treaty, every European has had dual citizenship. He or she is at the same time a national of their own country and a European; the latter status transcends the diversity of national identities.[7] But at the same time, the concept of citizen, which expresses the link between governors and governed, often comes up against the worrying resurgence of nationalism and tribalism, even within States. The effect in certain countries is a movement towards "plural" citizenship, also

6. See Jane Kramer, "Letter from Europe, Liberty, Equality, Sorority, French women get a revolution of their own", in *The New Yorker*, 29 May 2000.

7. Article 17 of the Treaty establishing the European Community, as amended by the Treaty on European Union, stipulates that "... Citizenship of the Union shall complement and not replace national citizenship".

involving religious, ethnic or linguistic elements. And we cannot forget that some of them are increasingly expressed through violence and exclusion.

What about parity in France? Is its only aim to bring reality into line with the right theoretically enjoyed by each and every one of us—man or woman—to take part in public life? Or is the aim to proceed from the assumption that women are by nature "different" and give them a better opportunity to express the specific character of their aspirations, which they alone can validly express? Opting for one design rather than the other is not without impact on the operation of democracy.

Here it is worth pointing to the rich variety of recent publications by academics and associations, both national and international, on the question of the relations between women and politics. The merit that these studies have in common is that they stress the genuine sea-change brought about by woman's emancipation in all the democracies of today's world. But they also show that lowering the status of women, or reducing them to subservience, is the first sign of an absence of genuine democracy in a country.[8]

Regarding the French system, let us be bold enough to assume that it defers rightly to the idea that women are full citizens and can even be elected representatives like anyone else. Parity thus enables them to prove it.

By drawing on sources from history and comparative law, we can improve our perception of the changes happening in France. We can also be aware of the fact that the situation is France is not as exceptional as the French tend to think. The use of quotas to guarantee that women can sit in political assemblies is by no means an exclusively French practice. There is a growing tendency for political parties and even election laws to operate quota systems. What distinguishes the French parity scheme from the measures implemented in certain countries to encourage women's access to political responsibility is rather its voluntarism and its scope.

— An historical outline of the French situation compared with other Western countries helps, at least in part, to reveal the causes (I);
— The conditions in which parity was introduced in France also illustrate the reasons for the ambition of a system that is still unequalled in the world (II);
— Last, while it may not be the prelude to a society on the American or Canadian model, parity for women in France has nevertheless provided the opportunity to formalise two contrasting concepts of social organisation in France, in the current context of globalisation (III).

8. It would be wrong to believe that women have the right to vote everywhere in the world. Thus, a British newspaper reports that the High Court of Justice of Kuwait rejected the call by an association of women pleading that the refusal to grant this right to women was unconstitutional (*The Economist*, 8 July 2000).

I. Citizenship without women

The 18th century philosophy of the Enlightenment was, with regard to women, purely obscurantist. Based on natural law, this philosophy proceeded from the biological difference between man and woman to found a theory of woman's inferiority and her consubstantial inability to assume civic responsibility. Jean-Jacques Rousseau, in particular, still felt able to make a number of arguments that underlie the abundance of stereotypes which refuse to go away. In *L'Emile ou l'Education sentimentale*, published in 1762, this French writer and philosopher formally rejected gender equality. He argued that ignorance was entirely beneficial for women and advocated their exclusion from politics:[9] recognising women's rights would bring the entire social edifice down: that, in a nutshell, was the dominant thinking at the time. Women were not full adults, either civilly, or politically, or intellectually. Society could, of course, afford them a degree of protection, as it did to children, but they could not claim any rights. Twenty or so years later, Rousseau's ideas were to reappear through the political confusions of the French Revolution.

For instance, the Declaration of *the Rights of Man and of the Citizen* of 1789 was addressed solely to the masculine component of the population. Only male human beings—and non-slaves—"are born and remain free and equal in rights", as Article 1 puts it. They alone are citizens capable, under certain financial conditions, to "have the right to take part, personally or through their representatives" to creating the law as the "expression of the general will", as Article 6 continues. The fact that the French Constitutional Council established in 1958 now applies this founding document of the Republic to the whole of society and no longer to just half of it illustrates how constitutional law is a living body of law.[10] But originally the 1789 Declaration symbolised the exclusion of women, from the very birth of the French Republic.

Admittedly there was some semblance of discussion of the legal and political status of women, quite early on. The abbé Sieyès, member of the Constituent Assembly, of the Convention and of the Council of the Five Hundred, and one of the best theorists of the universalism of voting rights, seemed for a while to consider it regrettable that "women are

9. Catherine Larrère, "Le sexe ou le rang? La condition des femmes selon la philosophie des Lumières", in *Encyclopédie politique and et historique des femmes*, Ch. Fauré ed., 1st ed. Paris: PUF, Mar. 1997. Book V of the "Recueil de réflexions et d'observations" entitled "L'Emile ou de l'Education", published in 1762, is an edifying example of the prejudices of the time. For Rousseau, for example, "… woman is made especially to please man; if man must please her in his turn, this is less directly necessary, his merit lies in his power; he pleases simply by being strong …" Paris: Editions Coll Gallimard, La Pléiade, 1969, p.693).

10. See Gustavo Zagrebelski, "Le Droit en douceur", Aix-Marseilles: PUF, *Economica*, 2000.

required to bear the crown" while "by a bizarre contradiction, they are never allowed to be included among active citizens…".[11] But apparently he quickly overcame his scruples. In his book *Qu'est-ce que le Tiers Etat?* (1789), for example, he notes that "all [citizens] are entitled to protection for their person, their property, their freedom …. But not all are entitled to play an active part in constituting the public authorities; all are not citizens. Women, at least in their current position, children, foreigners, and those who make no contribution to supporting the public establishment, should have no active influence over public affairs". So the artifice lies in distinguishing "active" citizenship, with the right to vote and possibly to stand for election, and "passive" citizenship, with no opportunity for contributing to the formation of the general will.

But these subtleties were quickly out of date. In the draft Gironde constitution of 1791, women were purely and simply excluded from citizenship. You are a citizen or you are not. "This new concept of citizen makes it possible therefore to proclaim popular sovereignty and universal suffrage while depriving certain categories—women, minors—of the vote", the French law professor Michel Troper wrote in a recent article.[12] He stresses that at that time citizenship was denied those who were judged "naturally" incapable of exercising it. The Montagnarde Constitution of 1793 was no more innovative. It continued to exclude the vote for all those who were in a state of "natural" inferiority, such as women and children. In 1795, the Constitution of the Year III maintains the same principle. But it adds to the exclusions from citizenship a criterion which has little to do with the natural constitution of the individual but with ability to contribute, expressed in the form of taxability. The concept of the people, presumed to consist of all citizens, was substantially narrowed by criteria of age, gender, residence and income. Women were thus excluded on several counts from both citizenship and the people: because they were women; and because they could not dispose of their assets. Some rare delegates were, however, concerned about the question of women's political rights. But at the end of the day they resigned themselves to silence. An example is the mathematician and philosopher Condorcet, who entered politics and was Deputy for the Aisne at the time of the Revolution. He was among the most outspoken critics of the exclusion of women from political life. In his pamphlet *L'admission des Femmes au Droit de la Cité*, published in 1790,[13] he wondered, for

11. Comments on the report of the Constitutional Committee, 2 Oct. 1789, quoted by Michel Troper "La notion de citoyen sous la Révolution française", in *La Constitution de l'an III ou l'ordre républicain*, Burgundy University publications, Editions Universitaires de Dijon, Oct. 1998.

12. *Op. cit.*

13. Text 19, "pour l'egalité politique des hommes et des femmes", 1790, in Complete Works, volume X (published at the time in the "Journal de la Société de 1789").

example, why "beings exposed to the risk of pregnancy and to periodic indispositions should not exercise rights that nobody ever imagined taking away from people who have the gout all winter long and who catch cold easily . . .?". He concluded that "accepting such principles inevitably entails giving up any hope of a free Constitution". But no-one listened. And, a year later, for the sake of realism probably, he preferred not to mention the question when drafting the Constitution of 1791 that he had been asked to prepare.[14]

Women at the time of the Revolution were especially keen to be given the right to bear arms, just like men, but the cause of political equality did not interest them apparently. Olympe de Gouges, author of the "Declaration of the Rights of Women and the Citizen", published at the time of the promulgation of the Constitution of 1791 with a preamble imprudently addressed to Queen Marie-Antoinette, is one of the few who raised her voice. But she was an aristocrat. And she was to be guillotined after having made her famous statement: "If woman has the right to go to the scaffold, she must also have the right to speak from the platform."[15]

The consequences are familiar enough. Napoleon Bonaparte's Civil Code crystallises the inferior status of women. Portalis, one of its draftsmen as a jurisconsult, considered that "we discussed equality and the preference of the sexes for a long time, but nothing was more futile than these disputes". Even so he came down on one side of the discussion when he said, for instance, that "the difference between their nature [men and women] justifies a difference in their rights and duties . . .. It is not the laws but nature itself which determined the lot of each of them. Woman needs protection because she is weaker, man is free because he is stronger". Woman's political incapacity is therefore accompanied by civil incapacity. This situation is, moreover, comparable with that of women in other countries. In France, it flows from the idea that there must be an authority within the family, as there must be a head of State. In the family, the head can only be the husband. In the common law countries, the United States and Great Britain for instance, the basis is different but the result is the same. The legal concept of *coverture* makes it possible to assign to the husband—as in the Civil Code, the *Code Napoléon*—all the rights which a woman should normally enjoy regarding the management and disposal of her assets.

But what distinguishes France more from other democracies in North America and in Europe is—as we have seen—the relative lack of awareness of French women of questions concerning their civic rights. It is well known that on the contrary, in the United States and especially in

14. See Jacques Guilhaumou and Martine Lapied, "L'action politique des femmes sous la Revolution française" in *Encyclopédie politique and et historique des femmes*, *op. cit*.

15. See Olympe de Gouges, *Oeuvres*. Paris: Editions Mercure de France, 1986.

Great Britain, these questions, from the mid-19th century, rarely left the forefront of the political scene. This is not the place to give a full account of the history of the suffragist movements. To put it simply, in Great Britain, 50 years after the publication by Mary Wollstonecraft of her famous manifesto on the "Vindication of the Rights of Women" in 1792, the women's rights movement resumed more vigorously than ever in the full glory of Victorian England. Having been elected to Parliament, the philosopher John Stuart Mill, in 1867, actually presented a petition to the House of Lords to extend the right to vote to "any person" instead of limiting it to "men". The campaign was carried on by militants, both men and women, many of whom were ready even to break the law. The famous feminists of the Pankhurst family, mother and daughter, were sent to prison several times.

Likewise, in the United States, the effect of the tradition of acting through associations was that women very early organised their attempts to play their fair role in public life. It has to be recognised that the ideas of the French Revolution were very present at the time of the American Declaration of Independence at the end of the 18th century. As in France, the new Republic stressed the masculine character of politics,[16] women being basically the home-keepers.[17] Slaves, women, men who were not property-owners, children and mental patients were all regarded as incapable of rational thinking and were therefore deprived as a matter of course of the right to take part in elections. And yet very early on, women's causes, feminist causes even, appeared in American history.[18] Mostly religious-based, numerous women's clubs and associations emerged. They had a variety of objectives. Some were charitable and sought to help deprived women; others, pursuing a moral aim, sought to eradicate prostitution; yet others promoted women's access to education, the aim being to prepare them for their duty of teachers of future citizens. These actions were sometimes combined with political demands and generated considerable advances, such as the grant of the right to vote to women in the State of New Jersey (where it was, however, withdrawn in 1807). Women's clubs and feminist movements did not always act in unison. Moreover, their members did not always share the same level of political awareness. The feminist movement itself was far from unified. The organisations involved in it had differing objectives, though feminism was very often combined with the fight for abolition, i.e. for the release of blacks from slavery. But on the whole, the intense social activity of all

16. Tocqueville further affirms in "Democracy in America" that "democratic people must preserve virile manners …" Paris, 1842 (Volume IV, p.346).

17. "L'action des femmes sous la Révolution américaine", in Christiane Fauré, *op. cit*.

18. See Linda K. Kerber, *No constitutional right to be ladies*. New York: Hill and Wang, 1998.

these organisations, highlighted by the French political writer Tocqueville[19] in the 19th century as evidence of the Americans' propensity to set up all manner of associations, had major consequences. American women acquired the habit not only of organising themselves but also of practising a form of militancy that was almost non-existent in France. In the United States as in France and elsewhere, the fight for women's rights could not be taken up by the parties and the trade unions, for society was by and large decidedly misogynous. So it was through their associations that women were able to express their own aspirations. In 1903 some of them even founded a female trade union, the "Women's Trade Union League", which was behind a series of strikes organised in collaboration with socialist women.[20] From the end of the civil war of secession in 1865, the associations of women in the United States had already made obtaining the vote their priority; the majority also worked for votes for the blacks. The major feminist movements were greatly encouraged as information on the British suffragists' demonstrations of the 1900s reached them regularly through the press. This feminist "lobbying" obtained results, the question of universal suffrage being entered on the agenda of the major American parties as from the First World War. At any rate it was no longer possible from then on for a candidate for election to claim he was not interested in the question. In 1920, almost at the same time as in Great Britain, American women obtained the right to vote and stand for election, after ratification by 36 states of the Act passed by the House of Representatives in 1918 and incorporated as the 19th amendment in the Constitution of the United States.[21]

By contrast, the feminist movements in France never had either the breadth or the impact of their Anglo-Saxon counterparts. Is that because the French Revolution prohibited "women's clubs and societies, however they may be described . . ." (Decree of November 1793)? In any event, the degree of organisation of women in France never reached what it was in the United States and in Great Britain, or even in Northern Europe. There, women acquired the right to vote between 1906 (Finland) and

19. In "Democracy in America", Tocqueville records this propensity of Americans to form associations "of all kinds, religious, moral, serious or futile, with general or specialised, large or small remits . . .".

20. See Sarah Evans, *op. cit*., Chapter 7.

21. See the very interesting work of Sarah Evans, *op. cit*. The author mentions in particular President Wilson's arrival in 1916 at a meeting of one of the principal female organisations: the "National Woman Suffrage Association". "I have not come to ask you to be patient, because you have been, but I have come to congratulate you that there has been a force behind you that will beyond any peradventure be triumphant and for which you can afford a little while to wait", he said to reassure members on the future success of their demands. (When the 19th Amendment to the Constitution in 1920 was passed, 11 States had already granted women the right to vote.) It should be noted that in New Zealand, another common law country, women acquired the right to vote in 1893.

1919 (Germany and Sweden). The influence of Latin culture probably explains that in Southern Europe, the right was acquired later. Women were dissuaded from embarking on a form of militancy that was looked down on, or even ridiculed. Two series of lithographs by Honoré Daumier, the French painter and caricaturist (1808–79), who firmly defended the Republic and its freedom-oriented values, testify to the way in which the involvement of women in politics was discredited at the time. One is called "Les bas bleus" (the blue stockings) (1844) and the other, "Les femmes socialistes" (The socialist women) (1849).[22] Published in the satirical journal *Le Charivari*, these drawings deride the few literate women who embarked on collective action to assert rights. All Daumier was doing was to reproduce the common prejudices of the republican and socialist circles of the time. The views of the socialist theorist Proudhon are well known: in *Le Peuple* he wrote in 1849 that "For women, freedom can consist only of the right to keep house".[23]

What is even more astonishing is the refusal of the most outstanding female intellectuals in France to get involved in the fight for women's political rights. While they manifest an exceptional degree of independence for their time, these "superior women", as Balzac caustically said,[24] sought on the contrary to distance themselves from ideas that they criticise openly. Germaine de Staël, for instance, baroness and woman of letters, felt no hesitation in stating that it was "right to exclude women from public and civil affairs; nothing is more contrary to their natural nature than anything which places them in a position of rivalry with men".[25] George Sand herself, baroness Dudevant and a famous writer, dissociated herself from the feminists who saw fit in 1848 to call on her to stand for the Constituent Assembly. She responded with a letter to the newspapers regretting that she had been taken "as a female icon with which I never had either a happy or an unhappy relationship", as she

22. These lithographs are reproduced in a work published by Editions Vilo-Paris, 1974, with foreword by Françoise Parturier.

23. In the foreword to the above work on Daumier, F. Parturier notes that "while generalisations are usually false, it must nevertheless be pointed out that among republican and socialist thinkers it was the aristocrats Condorcet under the Revolution and Saint-Simon after the Restoration who pleaded the cause of women", while the upper and lower middle classes supporting the same philosophies "could not tolerate a woman dealing with anything but her house and children".

24. "George Sand's illustration had the main purpose of gaining recognition for the fact that France had an excessive number of superior women" after considering it regrettable that "this sentimental leprosy spoiled many women who, without their claim to genius, would have been charming", in *La Muse du Département*, Paris, 1843.

25. "De l'Allemagne", Paris, 1815.

herself wrote.[26] But there was nothing special about that. Throughout the Third Republic (1870–1940), the feminist movement was not strongly supported. Who remembers the name of the most active militant French women, whatever the determination they displayed then? The textbooks of law or of the history of political institutions in France never even mention them. How many people in France still know the name of, for example, Jeanne Derouin, the first woman to stand at the general election in 1849, or of Maria Desraismes, who worked with the first French feminist newspaper *le Droit des Femmes* in 1870, or of Hubertine Auclert, the suffragists' leader who managed to disrupt the municipal elections at a polling station in Paris in 1908? Admittedly, as William Guéraiche points out in his book on *Les Femmes et la République*,[27] "the creation of the Union for Women's Suffrage" (UFSF) in 1909 marked a turning-point". But as he also rightly points out, the feminist movement quickly lost its effectiveness when it accepted compromises, as its leaders looked for support to all political circles, even the most conservative amongst them. This strategy proved all the more vain as French political parties, on the right and on the left, were hostile to votes for women. The Cour de cassation, France's Supreme Court, had no hesitation about approving the exclusion from the electoral rolls of the few women who had miraculously managed to be registered in three Paris districts in 1914.[28] And on the eve of the First World War, the situation was all the more blocked as the question of women's political rights did not truly interest public opinion.

II. The long march towards equal political rights

This is not the place to analyse the parliamentary debates on the vote for women in the Chamber of Deputies and the Senate under the Third Republic. Several recent studies have gone into the question in depth,

26. In "La Voix des Femmes", Eugénie Niboyet published a letter calling readers to vote for George Sand, thinking that she would be "accepted by men". Quoted in the work devoted to G. Sand by Michelle Perrot, Paris: *Imprimerie Nationale*, 1997, p.531. Michelle Perrot reproduced a text published posthumously which enlightens us on the positions of G. Sand, showing that she intended to plead for equality in marriage, while seeking to dissuade women from standing as candidates, "as they might be taken seriously" (p.542).

27. *Op. cit.*, pp.36 ff.

28. In Cass. 6 Apr. 1914, *Delle Halbwachs*, S. 1915.1.64, the Cour de cassation held that "the exercise of civil rights is independent of the quality of citizen, which confers solely political rights . . . the Constitution of 4 Nov. 1848, by substituting the universal suffrage for the restricted or electoral-tax-based suffrage, from which women were excluded, never extended to non-male citizens . . . the right to elect the representatives of the country to the various electoral offices . . . this is clear, not only from the text of the Constitution of 1848 and of the electoral laws which followed it, but more still from their spirit, attested by the legislative history, and also by the fact that it has been applied without interruption since the universal suffrage was introduced".

such as the work entitled "L'Egalité en Marche", published in 1989.[29] Nor can there be any question of outlining the circumstances in which the right to vote was acquired at the Liberation in 1944.[30]

Let us simply try to understand how a country like France, where society claimed to be as open as any other to the values of freedom and equality, could take so long coming into line with the other democracies which already recognised the political equality of men and women.

Let us recall that France, in 1944,[31] was only the 25th State in a world which then had 58 States[32] to give women the full status of citizens, even later than Spain (1931) and Turkey (1934). Let us also recall that between 1906 and the declaration of war in 1939, more than 20 bills had been laid before Parliament to give women the vote, either at all elections or only at local elections. And let us recall that six of these bills, although approved by a very strong majority of the Chamber of Deputies, failed to gain acceptance in the Senate, which systematically blocked any advance in women's political rights. One of them was the bill presented in 1910 by several lawyers who were Members of Parliament, including one of the best known at the time, Pierre Etienne Flandin. The same applies to the bill presented by Mr René Viviani[33] and Aristide Briand,[34] passed by the Deputies by a majority of 329 to 95 in 1919. Yet Senator Massabuau, at a sitting of 21 November 1922,[35] argued the duties of a mother to support the prohibition on women being involved in politics. "The fact is that women who call for universal suffrage are usually capable of doing everything except making children. It is not mothers who call for universal suffrage, it is those who want to throw themselves into political life". This is revealing as to the mentalities of the time, as we learn from Catherine Tasca.[36] Other arguments, based on natural law, are no less typical. Senator Héry, for instance, rapporteur in 1932 on a bill transmitted to the Senate by the Chamber of Deputies, states that "in all human history, the genie has never been female…". He went on to qualify "integral feminism" (*sic*) as a "monstrous drama" likely to entail "the

29. By Laurence Klejman and Florence Rochefort, with foreword by Michelle Perrot, at Presses de la Fondation Nationale de Sciences Politiques.

30. Here again there is a substantial number of extremely interesting works of political science, including the already quoted book of William Gueraiche who covers the period between 1944 and 1979.

31. At the meeting in Geneva in 1920 of the "Congress of the International Alliance for Women's Suffrage", out of the 28 States represented in this NGO, 15 had already given women the right to vote either at all elections or at some of them.

32. And not 200 States or so, as is now the case.

33. René Viviani was the first Minister of Labour in France (1906–10).

34. Aristide Briand (1862–1932) was minister 25 times and Prime Minister 11 times.

35. See the report on parity (No. 1240, 2 Dec. 1998, p.11) by Catherine Tasca, then Chair of the Legal Affairs Committee of the National Assembly.

36. Catherine Tasca is today Minister for Culture and Communication in Lionel Jospin's Government.

derailment of French civilisation".[37] Conservatism is not the only issue here. These remarks also masked electoral concerns; the Senate feared that "even if it is confined to the municipal elections, it [the vote for women] would influence the membership of municipal councils and indirectly the elections to the Senate", as Professor Jules Laferrière observes in his treatise on constitutional law of 1947.[38]

A whole range of factors therefore combine to explain the situation of France at the time. Let us not forget either that France had been functioning under the Third Republic Constitution since 1870 and that the triumph of secularity—in particular, in the schools—was a powerful influence. The law on the separation of Church and State enacted in 1905 was the high point of this conflict. Yet even so, the Roman Catholic Church had not lost all its influence, a considerable number of its faithful refusing to accept this law. In particular, many women remained sensitive to the teaching of the Church and the advice of the clergy.[39] It was logical enough for lay and republican politicians to fear that the power of the "priests' party", as it was called, might yet be exercised through the female vote, as a kind of "Trojan horse" to combat the secular Republic? Giving women the vote could appear risky in this context.[40] A subsequent event consolidated this view. The democratic countries of Southern Europe, impregnated with the Latin culture, were among the last to allow women to enjoy political rights. But there were other reasons too. In particular, a certain machismo remained powerfully present in this Latin culture, leading to the refusal by many men to share power. French women themselves showed little interest and combativeness in defending the equality of all citizens. And lastly, the senators, whose election depended in part on the choice of mayors and town councillors as "grand electors", wanted a stable electorate, close to them.[41]

At all events, it is surprising to see how little reaction there was when women obtained the right to vote and stand for election in France. On 14

37. JO. Sénat, Sitting of 7 July 1932, pp.1029 ff.

38. Editions Domat Montchrestien, pp.481 ff.

39. In his Treatise of constitutional law, published in 1923 (Boccard ED), Duguit quotes Saint Paul: "But I suffer not a woman to teach, nor to usurp authority over the man, but to be in silence" (1 Timothy 2,12 (AV)): These words actually apply by way of practical advice from the Apostle Paul to the early Christians regarding conduct of prayer meetings, and in particular, to women, and not as political injunctions.

40. In these years, moreover, a group of determined Catholic women, mostly from the upper middle class, banded together in a movement to promote women's rights and responsibilities (like Louise Weiss). These "Ladies of the League", as they were called, later formed "L'Action Catholique Générale Féminine" (ACGF), a movement that was strongly committed in social and Christian terms. Highly influential in the French provinces, thanks in particular to its newspaper "L'Echo des Françaises", with a circulation in the hundreds of thousands.

41. Senators in France are elected at the second degree by a college of "grand electors" composed above all of mayors and municipal councillors of the rural districts.

March 1944, General de Gaulle declared before the provisional Consultative Assembly in Algiers that "the new system must comprise the electoral representation of all our men and all our women". This Parliament adopted the proposal a few days later (by 51 votes to 16) on an amendment presented by the communist internal resistance delegate, Fernand Grenier. Section 17 of the Ordinance of the French Committee of National Liberation of 21 April 1944 organising the public authorities provided: "women shall be eligible to vote and stand for election in the same way as men".

Oddly enough, the press had little to say on this. The parties and even the feminist movements had even less to say. It is true that France had other priorities when the country had to be reconstructed. But the scant importance attached to votes for women is perplexing. It was a veritable sea-change: at the general election of 21 October 1945, the number of voters in France rose to almost 25 million from 11.5 million in 1932; women immediately constituted a majority of the electorate. And 34 of them were elected to the Constituent Assembly (which was to draft the Constitution of 1946).

Another oddity is that the textbooks of public law published after the last World War are virtually silent on the reform. This is all the more astonishing as legal textbooks published between the two wars actually dealt at great length with the then controversial question of the relationship between women and politics. The majority of academic lawyers was never reluctant to take sides one way or the other. Known for his left-oriented ideas, Professor Léon Duguit, in his Treatise on constitutional law published in 1923, obviously argued in favour of giving women the vote. "There is no logical reason for the political incapacity of women", he states, because if "the explanation lies in the survival of an earlier social situation where women were expected to keep the home and stay out of public affairs, reserved for men only, … this concept … no longer corresponds to the moral and economic state of our societies …".[42] In this he differs from his almost as influential colleague Professor Adhémar Esmein, who, in his own treatise on constitutional law in 1927, considers that "there is nothing arbitrary in the exclusion of women. It derives from a natural law of the fundamental division of labour between the two sexes, which is as old, if not as humanity, at least as civilisation. It is as unreasonable to give them voting rights as to subject them to military service".[43] At the time, at least there was debate on the issue; and the debate transcended religious and political affiliations. Thus, in their

42. See his treatise referred to above of 1923, pp.453 ff.

43. See his treatise referred to above of 1927, in the chapter entitled "National Sovereignty".

treatise on constitutional law published in 1933,[44] Professors Joseph Barthélémy and Pierre Duez, although belonging to a highly conservative Catholic tradition, invoked "the democratic principle that any reasonable individual should enjoy a share of the political power which enables them to assert and protect their personality; woman is a reasonable human being. The Nation must be consulted; woman is part of the Nation."[45] Their idea is indeed to make the people coincide with the active citizenship shared by all those whom it comprises.

Given these views and arguments, the almost total absence of any reference to the circumstances in which women acquired their political rights in academic writings published in France between 1947 and the 1990s appears strange. Does it mean there is no interest in a question which was at the centre of political debate for decades? Does it mean that men are regaining power, or is it evidence of an uneasy conscience so that there is no inclination to highlight France's delay in this respect? In any event, the question of the place of women in politics was never again mentioned seriously in French legal literature until the debates on parity reform in the 1990s.[46]

The French Constitution itself and the commentaries on it reveal the scant attention paid to gender equality. Let us simply note here that, according to the case-law of the French Conseil Constitutionnel[47] set up to compensate for the absence of a "Bill of Rights" in the 1958 Constitution—currently applicable—the French constitutional corpus consists of three texts: the Declaration of the Rights of Man and of the Citizen of 1789, which lists civil and political rights (freedom of speech, equality of rights etc.); the Preamble to the 1946 Constitution, which lists economic and social rights (right of association, right to strike, right to social welfare etc.) and the Constitution of 4 October 1958 itself, which primarily deals with the organisation of public authorities (President of

44. Editions Dalloz, pp.312 ff.

45. Joseph Barthélémy, Deputy, had already moved in this direction, in particular in a report to the Chamber of Deputies of 20 Feb. 1923 (No. 5610). He became infamous for serving as Minister for Justice under Marshal Pétain's Vichy régime introduced in France in 1940. His progressive standpoint on women's political rights probably explains that the draft constitution of Pétain (which never succeeded) would have extended the right to vote and stand for election to women as well as to men.

46. It is odd to observe in certain law manuals comments on the "intrinsic" characteristics of the female nature which are alleged to influence their voting patterns, where anti-feminist undertones are scarcely concealed. The same arguments are always used to decry women's lack of political maturity: "... women do not vote for women, a constituency set aside for a woman is a lost constituency, etc". Gisèle Halimi, in *Le Préambule de la Constitution de 1946, un contrat de société*, Paris, 1994, Documentation Française, p.39, quotes these prejudices which still appear in law textbooks in 2000, updated to include the parity provisions.

47. See the decision of this Court of 16 July 1971 on freedom of association (CC decision n° 71–44 DC, Rec. p.29; J. Bell, *French Constitutional Law* (Oxford 1992), p.272.).

the Republic, Government and Parliament) and of the judicial authorities (Conseil Constitutionnel, judiciary). Already, there was little comment on Article 4 of the 1946 Constitution, the first French constitutional instrument to state the principle that "all French nationals of both sexes shall be entitled to vote",[48] as if this had always been the rule. Paragraph 3 of the 1946 Preamble, which remains in force and declares that "[T]he law guarantees women equal rights to those of men in all spheres", aroused the same lack of reaction. But the consequences of this provision proved considerable by giving women access to the public service appointments from which they were excluded hitherto (the judiciary, in particular). Even if it was no more than symbolic, the statement by the Preamble to the 1946 Constitution of equal rights for men and women gave full value to the founding principle of the Republic laid down by Article 6 of the Declaration of 1789. This article, which declares that all citizens enjoy equal access to public posts "according to their ability, and without other distinction than that of their virtues and talents",[49] now applied, in law at least, to all French citizens and no longer to only half of them. But it was entirely as if there was an attempt to minimise the scope of innovation.

Here again, the difference with other countries is striking. In the United States, in particular, the recognition of gender equality was called for very early by women. In 1921 the feminist movements had proposed inserting a new amendment, the "Equal Rights Bill", into the Constitution.[50] Discussions immediately took place on the legal issue, as the feminists pleaded the unconstitutionality of the multiple discriminations from which women still suffered. Reference was especially made to the legislation of the American states which, on the basis of the "*coverture*" that was specific to the common law, automatically deprived a woman of freedom to dispose of her assets and gave it to her spouse from the time of her marriage. Although American feminists put up a keen fight, the amendment on gender-equality of rights remained without impact. During the major crisis of 1929, the question was all the less obviously interesting—laws were then enacted forbidding married women to take

48. With the almost unique but considerable exception of Jules Laferrière's textbook; in his work referred to above on Constitutional Law, he devotes almost 10 pages to the question of the vote for women, studying it most delicately in terms of comparative law and of political history. Reference can also be made to Professor Robert Pelloux's article on the Preamble to the 1946 Constitution, a *locus classicus* (*Revue de Droit Public*, 1947, p.347). The author stresses that the recognition of women's rights "equal to those of man" represents "a considerable extension … owing to the tradition of masculinity strongly anchored in our public law". But he devotes no more than 15 lines or so to the subject.

49. Article 7 of the *loi* on the Civil Service of 1946 prohibits "all discrimination … between the two genders"; but the practical implementation of this provision was gradual, to say the least.

50. The draft amendment read: "men and women shall have equal rights throughout the United States and in every place subject to its jurisdiction".

employment so that they could leave jobs free for unemployed men. Under John Kennedy, a National Commission was formed to study the place of women in society. But the hopes placed in it were dashed when its report published in 1963 concluded that nothing would be contributed by a gender-equality clause, seen as superfluous; it felt that the statement by the 14th Amendment of the Constitution of the principle of equality ("equal protection of the law") was enough.[51] Although finally passed by Congress in 1972, the Equal Rights Act failed to enter into force in the absence of a sufficient number of ratifications by the states.[52] Even so, there has been keen discussion of the issue down to the present day.

In France, the objective of promoting women's rights was incorporated in party manifestos much later than in the United States. Yet the question entered the political arena only gradually. Witness the fact that the French Constitution of 1958 makes no allusion to gender equality since this was not a political issue at the time. The French Constitution therefore merely prescribes that "the Republic … shall ensure the equality before the law for all citizens, without distinction as to origin, race or religion". In this respect it differs from other Constitutions in Europe, most of which not only expressly prohibit gender-based discrimination but in many cases now envisage the possibility of positive discrimination in favour of women.[53] Another characteristic of France is that whereas elsewhere in Europe, positive discrimination applies first

51. This Commission was, however, chaired by Eleanore Roosevelt.

52. Of the 35 needed, only 11 responded (see Sarah Evans, *op. cit.*).

53. For example, Article 3(3) of the German Constitution of 1949, according to which "no-one may be discriminated for or against on grounds of gender …" is supplemented by Article 3(2) (inserted by the *loi* of 27 Oct. 1994) which provides (para.2) that "the state shall promote the effective implementation of equality of rights for women and men and shall act to eliminate existing advantages". Likewise in Portugal, the 1976 Constitution which merely provided that "no-one may be privileged, favoured, disadvantaged, deprived of a right or exempted from a duty on grounds of … gender …" today confers on the State, following revision of the Constitution on 3 Sept. 1997, responsibility for promoting equality between men and women, which opens the way indeed to positive discrimination (new article 9h). The Austrian Constitution developed in the same direction. Since the constitutional revision of 22 July 1998, it has encouraged local authorities—the Federation, Länder and communes—to take all measures to encourage *de facto* equality between men and women (Article 7–2). Last illustrative example: The Finnish Constitution, as last amended on 11 June 1999, not only provides that "discrimination on grounds of gender" to promote equality between men and women is possible "if there is a valid reason" but also promotes measures to develop "the equality of the sexes … in social activities and in working life, in particular in the fixing of remuneration and other terms of employment …" (article 6).

and foremost in the social field,[54] in France parity covers only political elections.[55] But the point must be made that women's demands for easier access to positions of political responsibility, to which parity is designed as the response, did not emerge immediately. First, from the 1960s, feminist demands in France, strongly relayed in public opinion and through the media, concentrated on sexual liberation, the right to contraception and the right to abortion.[56] The emancipation of the civil status of married women,[57] who until 1985 were still under the sovereignty of their husbands as regards management of family assets, gradually came to acquire parallel status. So it was only about 20 years ago that genuine equality of political rights was secured. Women active in political parties realised that it was much more difficult for them than for men to attain positions of power, both within the parties and in parliamentary or governmental authorities.

At the time when these concerns were being expressed, studies on women's voting rights began to appear.[58] Did they encourage the emergence of an awareness by women of the inadequacy of their representation in politics by showing that it did not match the real influence of the female vote in public life? Identifying a "female vote" can be as ambiguous as the Jewish, Corsican, Breton or Basque vote. Such

54. The new constitutional provisions adopted in Portugal at the revision of 3 Sept. 1997 might enable the law to establish positive discrimination in political life. While Article 9 entrusts to the public authorities the responsibility for "promoting equality between men and women", article 112, like the French constitutional reform on parity, requires the law to "promote equality in the exercise of civic and political rights". But no electoral legislation has so far been enacted to give concrete expression to this objective (see Gwenaële Calves, "La parité entre hommes et femmes dans l'accès aux fonctions électives. Faut-il réviser la Constitution?" in CURAPP, *Questions sensibles,* PUF, 1998).

55. In general, positive discrimination is not provided for only at internal constitutional level but also in international law. The concept of positive discrimination in employment also appears in article 141(4) of the Treaty establishing the European Community, which provides: "With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers". In its decision on the Treaty of Amsterdam (CC decision n° 97–394 DC, 31 Dec. 1997, Rec. p.344), the Conseil Constitutionnel made no comment on these provisions but recognised that they were constitutional.

56. See Noëlle Lenoir "Les aspects juridiques et éthiques de la contraception" in *La Contraception, Liberté ou Contrainte*, collective work published by Editions Odile Jacob, 1999, Paris (forthcoming in English).

57. Under the Civil Code (*Code Napoléon*), married women lacked capacity at civil law. Only gradually did a series of Acts (1938, 1945 and 1985, in particular) remove the inferior status of married women.

58. See in particular, Janine Mossuz-Lavau, "Le vote des femmes en France (1945–1993)", in *Revue Française de Sciences Politiques* No. 4, Aug. 1993, p.673. The author proceeds on the basis of, in particular, the analyses of electoral sociology of the Political Science professor, Alain Lancelot (subsequently appointed to the French Conseil Constitutionnel).

classifications, given that those who belong to them do so on the basis of "ethnic" or biological characteristics, are extremely reductionist. They are therefore likely to be misleading and to strengthen even further the attitudes of withdrawal into a specific identity which we can observe in Europe and which are so dangerous for democracy. Referring to the female vote is, however, of sociological and political interest. It provides a means of testing the validity of the *a priori* criteria to which the civic behaviour of women has been subjected through the ages.

First of all, contrary to certain allegations, wives were not inevitably brought into step with the electoral choices of the "head of household"; they quickly asserted their independence. In particular, the female vote in France led to the rejection of the first draft Constitution in 1946, worked out by the socialist and communist majority. Second observation: women take the same interest in politics today as do men. As the French political economist Janine Mossuz-Lavau underlines,[59] the electoral turn-out rate of men and women in France is much the same. Since 1973, women have been no more inclined to abstain than men. They have become accustomed to the ritual of voting and turn out in the same proportion as men. Lastly, if the results of the first elections in which women took part after the war of 1939–45 revealed them to be more legitimist, or even conservative, than men, the situation is no longer the same today. Women even vote slightly more than men for the left-wing parties.

III. From equal rights to parity in politics

However strange it might seem, the increasing involvement of women in electoral processes in France was far from encouraging their representation in public assemblies—Parliamentary, regional, departmental or municipal. Did this fact play a role in the appearance of new types of demand, this time directly centred on women's genuine access to political responsibility? The involvement of the European authorities, both in the European Union and in the Council of Europe, in the promotion of women's rights, and the correlative publication of comparative statistics on their representation in the various national political authorities, probably encouraged the awareness of France's backwardness in this field. The parity prescribed by the Constitutional *loi* of 8 July 1999 and the Electoral *loi* of 6 June 2000 which implemented it[60] aim, as is clear from the parliamentary debates, to rectify the situation. The manner of doing so "à la française" is particularly voluntarist. Was it possible to proceed differently? Probably not, given the case-law of the French Conseil

59. *Op. cit.*

60. *Loi* n° 2000–493 of 6 June 2000 to promote equal access of women and men to electoral office (*Journal Officiel* 7 June 2000, p.8560).

Constitutionnel and also, and above all, the sociological factors that burden France.

The choice of the constitutional path to "parity"—to use the term commonly used by the press in France, although not defined in the legislation[61]—is first of all the direct consequence of the decision of 18 November 1982 on the law concerning the election of municipal councillors,[62] in which the French Conseil Constitutionnel excluded any gender-based quota system on the electoral lists. This was a curious case. For one thing, the system envisaged at the time was extremely limited in scope compared to the vast legislative changes required by parity; the point was simply to forbid lists of candidates for municipal elections to contain "more than 75 per cent of persons of the same gender". Moreover, the law had been passed almost unanimously by the National Assembly (476 Deputies for and four against, with three abstentions).[63] Finally and above all, while the Deputies who referred the Act to the French Conseil Constitutionnel[64] criticised other provisions of it, the Court saw fit to raise the question of the unconstitutionality of quotas at municipal elections of its own motion. For the Court, this system affects the principle of universal suffrage. Why such rigour? First, it is rare that the French Conseil Constitutionnel raises questions of unconstitutionality of its own motion. Furthermore, it does so in general to censure obviously abusive restrictions on freedoms, which were not in issue here.

61. The word "parity" is never used. It appears neither in the Constitutional Act nor in the Electoral Act that establish it. But the term is so often used by lawyers and political economists in their comments on the reform that there is no escaping it. See, for example, Janine Mossuz-Lavau, "Femmes/Hommes, pour la Parité", *Editions des Presses de la Fondation Nationale des Sciences Politiques*, 1998, Paris).

62. CC decision n° 82–146 of 18 Nov. 1982, Rec. 66; J. Bell, *French Constitutional Law*, p.349.

63. The reform was not a party political matter. What this means is that it was not promoted by a particular party or group of parties against the others, as is often the case in France with regard to the legislative reforms on social matters, such as the Abortion Act (enacted with support from the left after a Bill had been presented by the Government of President Giscard d'Estaing and promoted by Mrs Simone Veil, then Minister for Social Affairs).

The provision on the "mixité" of municipal lists, annulled by the Constitutional Council in 1982, did not appear in the Bill submitted by Gaston Deferre, Socialist Minister for the Interior, on the reform of municipal elections in 1982. Taken over from an idea put forward by Ms Monique Pelletier, then Liberal Minister for Family and Women's Affairs, it was the subject of a Bill of Raymond Barre's Government passed at first reading by the National Assembly in 1980. It is therefore on an amendment moved by Ms Gisèle Halimi, Socialist Deputy, that mixité was reintroduced in the Bill presented by François Mitterrand's Government in 1982.

64. Constitutional review of statutes in France is on an *a priori* basis. The statute can be referred to the Conseil Constitutionnel (nine members) only by the public authorities (in particular Members of Parliament) before entry into force: i.e. after Parliament has passed it but before promulgation by the President of the Republic. The provisions of the statute declared unconstitutional are annulled and the statute is published in the *Journal officiel de la République française* without the offending provisions.

In his critical commentary on the decision of 18 November 1982, the French law professor Danièle Loschak suggests that the Act was struck down to the great relief of Deputies who feared that their parties "would face difficulties in their delicate vote-catching manoeuvres by irritating problems of percentages".[65] This interpretation cannot be derived expressly from the Court's decision. But it is credible nevertheless. As Danièle Loschak further pointed out, even Deputies who had expressed support for the reform were somewhat sceptical as to its constitutionality.[66] To annul the provision in question, the Conseil Constitutionnel relied neither on the threat to the total freedom of the political parties and groups secured by article 4 of the Constitution, nor on the violation of the principle of voter freedom, nor even on the violation of legal gender equality that a quota system might appear to generate. It proceeded solely from the unitary concept of citizenship which flows from article 3 of the French Constitution of 1958[67] and article 6 of the Declaration of the Rights of Man and of the Citizen of 1789, holding that the principles of the universal suffrage and equality between citizens laid down by these articles "preclude any division by categories of voters and candidates".

For a long time, this unfruitful attempt to ensure mixed representation on municipal lists appeared to be no more than a mere incident. And there was little discussion of the question at the time. In 1982, the decision of the French Conseil Constitutionnel went broadly unremarked, except by Professor Loschack and by Gisèle Halimi, a well-known feminist advocate in France and a Member of Parliament. This reaction was natural, however, Gisèle Halimi having been the author of the amendment on the quotas that was struck down by the Conseil Constitutionnel. French case-law, however, did not remain isolated. It was followed a few years later by the Italian Corte Costituzionale. An Electoral Act (No. 81) of 25 March 1993 prescribed, like the provision struck down in France in 1982, that lists of candidates for municipal and provincial Italian elections could not comprise more than two thirds of candidates of the same gender. The reference to the Italian Corte Costituzionale was made by the objection procedure by the Italian Council of State following an action brought by a male candidate at the municipal elections; the Corte Costituzionale relied on two articles of the 1947 Constitution (article 3 on

65. See his article entitled "Les hommes politiques, les "—sages—" (?) … et les femmes—", in *Droit Social*, 1983 p.131.

66. With the considerable exception of Alain Richard, rapporteur of the amendment having given rise to the provision on mixité (and current Minister for Defence in Lionel Jospin's government).

67. Article 3 of the 1958 Constitution provides that "National sovereignty belongs to the people, which shall exercise it through their representatives and by means of referendum. No section of the people nor any individual may arrogate its exercise to itself".

equality and article 51–1 on voting rights) to annul the provision: the Italian Court held in its decision (No. 422) of 6 September 1995 that equal access of citizens to public positions cannot support a gender-based distinction.[68] It further held that if the fact of belonging to one or other gender cannot be retained as a condition of eligibility, the same applies *a fortiori* to candidatures for elections. The Court held that positive discrimination in the economic and social field are acceptable as they do not raise the same constitutional objections as the quotas in politics. This decision, like the case in France, prompted a proposal for constitutional revision which was submitted to a bicameral parliamentary committee; the purpose of the Constitutional Act was officially to reverse the effect of the invalidation by the Corte Costituzionale of the Electoral Act of 1993 on quotas.

In France, the idea of encouraging the access of women to political office, and in particular to elected assemblies, regained topical interest in the 1990s.[69] Parity then became a slogan taken up far beyond purely feminist circles.[70] The majority of the candidates for the presidential elections of 1995 were invited to express a view on the subject. Why this demand for parity and not just for electoral quotas? The answer is not obvious, because the place of women in French society underwent the same development as in other European countries which had not, however, introduced such a system. Does this mean that the French political parties had been less accessible to women than parties elsewhere in Europe? The unavoidable fact, at any rate, is that the reform was primarily supported by women intellectuals, but also by women involved in politics who had personally encountered obstacles in their own parties.[71]

Many figures on the presence of women in politics were published in the reports laid before the French Parliament when it was debating the parity legislation—the Constitutional *loi* of 8 July 1999 and the Electoral

68. Published in the *Gazzetta Ufficiale*, First Special Series, No. 39 of 20 Sept. 1995 (*supra*). See in "Foro Italiano": I, 3386, 1995, quoted by Alessandro Pissorusso in his article "Le principe d'égalité dans la doctrine et dans la jurisprudence italiennes" published in *Etudes et Documents du Conseil d'Etat* No. 48 on the principle of equality (Paris, *Documentation Française*, 1996).

69. It was in particular popularised by the book of Françoise Gaspard, Claude Servan-Schreiber and Anne Gall entitled *Au pouvoir citoyennes! Liberté, égalité, parité*, published in 1992, Editions du Seuil, Paris.

70. A group of 10 women (all ex-ministers) belonging to various political sensitivities thus published in the French magazine *L'Express* of 6 June 1996 a "manifesto of the ten for parity" calling for the adoption of a parity system in France, not without criticising "the focal point of our republican culture" as being "centralising and hierarchical, bombastic and arrogant, a teacher, rhetoric and rationalist to the point of being a chimerical abstraction".

71. A survey done a few years ago by a polling institute on behalf of the National Council of French Women showed that women were almost as likely to stand as non-party independent candidates (See "Parité Infos", No. 1, Paris, Mar. 1993).

loi of 6 June 2000.[72] It is not possible to list them all here, but it is worth mentioning some of them since they offer comparisons between the French situation and the situation in other countries. First conclusion: the place of women in politics in France varies over time. At the Liberation, for example, the percentage of women elected to the National Assembly was far from negligible, several women having been committed to the war effort, in particular in the Resistance. The first post-war general elections under the Fourth Republic (1946–58) broke records in this respect: on 10 November 1946, 35 women were elected to the National Assembly (almost 7 per cent of the Deputies) and from 1946 to 1951, 43 women sat in it.[73] But the figures fell very quickly, and from the 1970s women represented no more than about 2 per cent of the elected representatives in Parliament or the Senate. Their presence in the local assemblies was just as discreet: in 1970, 1.7 per cent of the general councillors and 2.4 per cent of municipal councillors were women.[74] Varying over time, French women's representation in politics also varied in the political area of elected representation. The regional councils and the European Parliament are the most accessible; in 2000, considerable progress having been made in representation by women, they occupy 24 per cent and 40 per cent of the seats respectively,[75] thanks to the system of proportional representation. Despite this progress, there are nevertheless still few of them in departmental councils (where there are 7.9 per cent women) and in the municipal councils for the communes (21 per cent of municipal councillors are women). Local executive functions, which confer genuine power, remain substantially in men's hands (only one woman is a mayor of a commune of more than 100,000 inhabitants, and, out of the 8 per cent of mayors who are women, most are in very small communes).[76] Lastly, women account nowadays for less than 11 per cent of the Deputies.[77] This percentage is comparable with that observed in the United States Congress. Certainly, it almost doubled following the general election of 1997, since the previous figure was less than 6 per cent (which is the

72. See the report of Bernard Roman to the National Assembly, registered on 20 Jan. 2000, on the draft Electoral Act on parity, n° 2103.

73. See William Guéraiche, *op. cit*., p.76.

74. William Guéraiche, *op. cit*., p.183.

75. Following the European elections of June 1999.

76. The exception is Strasbourg, where the mayor is Ms Catherine Trautmann, former Minister for Culture and Communication in Lionel Jospin's government. See Bernard Roman's report *supra*.

77. In 2000, two women are President of a Regional Council (Guadeloupe and Rhône-Alpes), only one woman is a President of a General Council (Calvados) and only one woman is mayor of a town of more than 100,000 inhabitants (Strasbourg) of the 7.6 per cent or so of mayoral posts held by women. But more and more of them occupy positions of senior political responsibility at governmental level, from Simone Veil in 1974 to Martine Aubry and Elisabeth Guigou today; Edith Cresson was the first woman Prime Minister in 1991.

proportion of women currently holding electoral office in Greece). France is not therefore entirely in a category of its own among the democracies. The fact remains that the number of women elected to the French Parliament remains far lower than in its European neighbours. In the Scandinavian countries and the Netherlands, women occupy more than a third of the seats in Parliament; in Sweden, more than 40 per cent; in Germany, Austria and Spain, approximately a quarter; in Great Britain and Luxembourg, 20 per cent. In the European Union, only Italy, Ireland and Belgium have figures only slightly higher than those of France, with women accounting for approximately 12 per cent of Members of Parliament.[78]

In France, the general election of 1997 substantially changed the facts and mentalities. There were two reasons for this. First, the political parties, such as the Socialist Party, the Communist Party and the Greens, that had opted to present a significant number of women (30 per cent of Socialist candidates, for example), saw a great number of them being elected, which made it obvious that female candidates were far from objectionable to the electorate.[79] Second, the increased presence of women in the National Assembly and the appointment of women to key government posts meant there was no longer anything unusual about the idea that political activity was not necessarily contrary to the "female nature". The majority of the major parties, even before these elections, had moreover declared support for quotas for women at various elections, like a number of other parties in the world.[80] Was there any need, therefore, to legislate for something—parity—that was entering custom? Was it essential to demonstrate such a legal voluntarism, French legislation being the only one to have established this "parity" which supposes absolute equality in the number of female and male candidates?

One might think so. For one thing, parity aims to ensure that the concern for egalitarianism prevails in the parties, where there was hitherto little concern for it. It also aims in practical terms to avoid the risks of the quota system, the example of a Belgian law adopted in 1994

78. See the statistics on "Women in Parliament" on the Council of Europe's website http://stars.coe.fr/equality/tableau2.htm.

79. See Janine Mossuz Lavau, "La percée des femmes aux élections législatives de 1997", in *Revue Française de Sciences Politiques*, No. 3 and 4, June–Aug. 1997, p.469.

80. See the interesting article by Louis Favoreu in the report of the Council of State for 1996, No. 48, on "equality", entitled "Principe d'égalité et représentation politique des femmes: la France et les exemples étrangers", which gives an account of practices and comparative law. It is also very instructive to refer to the impressive list of parties applying a quota system, published by the Socialist Women's International, accessible at: <www.socintwomen.org.uk/quota/quotaeng1.html>.

having shown its limits. Without reforming its Constitution,[81] Belgium passed legislation in 1994[82] providing that on each list for national, regional and local elections, "the number of candidates of the same sex shall not exceed two thirds of the total made up of the sum of the seats to be filled at the election and of the maximum permitted number of alternate candidates". This means that quotas are calculated in relation to the number of potential candidates. The penalty for infringement is that the principal electoral office may refuse to register the offending list. But no fines are provided for. Moreover, the Belgian law says nothing of the respective place of men and of women, so it is quite possible to relegate women to the end of the lists[83] or even, in some cases, to enter them in a *de facto* non-eligible position. The result of this quota system is disappointing. Following the communal elections of 9 October 1994, the number of female municipal councillors rose only from 14 per cent to 20 per cent and the number of female mayors rose only from 4 per cent to 5 per cent.[84] The general elections in June 1999 were more convincing: in Belgium women account for 23.3 per cent of members of the Chamber of Representatives and 28.2 per cent of the Senate. The legislation enacted in Argentina on 6 November 1991, providing for a quota of 30 per cent of female candidates for all elections, has also had an impact. There were only 5 per cent of women sitting at Parliament in 1991; the figure rose to 13.2 per cent in 1993 and to 22.8 per cent in 1999.

Parity, in France, is far more ambitious than the gender quota system. But what is the purpose? Is the point to modulate the citizenship concept by a concept of type, male and female citizens each having a specific representation function? Is parity the prelude to a society on the American model, in which groups of individuals, determined by their cultural or ethnic links, exert collective rights in their own right?[85] It is submitted that the French concept of citizenship is not threatened by parity, the aim of which is above all to bring about an immediate concrete change in the current situation. It proceeds from a primarily pragmatic

81. In an opinion on 17 Nov. 1993, the Belgian Council of State considered that the provision on the inadmissibility of lists not respecting the quotas envisaged by the draft reform legislation was unconstitutional. The penalty, it stated, was manifestly disproportionate. But the government went ahead none the less; an ordinary Bill was laid before Parliament and enacted. Thereafter it was not submitted to the Court of Arbitration, which had no opportunity to review it for constitutionality.

82. Act of 24 May 1994 "to promote balanced distribution of men and women on lists of candidates for election", published in the *Moniteur Belge* on 1 July 1994.

83. See Marc Verdussen, "La parité sexuelle sur les listes de candidat(e)s", *in Revue Belge de Droit constitutionnel*, 1994, p.33.

84. See the information paper, submitted for the parliamentary delegation for women's rights and equal opportunities between men and women by Odette Casanova, female Deputy. Report of the National Assembly, registered on 12 Jan. 2000, p.12.

85. See Michel Rosenfeld, "Affirmative Action and Justice", Yale University Press, 1991.

voluntarism, at a time when women are increasingly impatient to attain the same levels of responsibility as men.[86]

The two articles of the French Constitution of 1958 in which provisions were inserted on parity illustrate the direction of the reform. But they do not seem to call into question the conditions in which national sovereignty is exercised. In article 3 (national sovereignty), which is the basis for the principle of universal suffrage, the constitutional reform of July 1999 added a new paragraph providing that "Statutes shall promote equal access by women and men to elective offices and positions".[87] There is nothing to warrant a conclusion that this formula marks a shift in the concept of sovereignty, as the exercise of it is entrusted by the Constitution to the entire people. There is nothing to say that parity would mean dividing people into two components, male and female. The second provision of the Constitution of 1958 amended by the Constitutional *loi* of 1999 is article 4, relating to the role of political parties and groups. The paragraph inserted in this article at the request of the Senate is intended to determine the responsibility of the parties in the application of parity. It provides that the parties "shall contribute to the implementation of the principle set out in the last paragraph of article 3 as provided by statute". Beyond their role of "contribut[ing] to the exercise of the suffrage", according to the Constitution, parties are given the task of promoting gender equality. Those who did so much to delay the participation of women in public life now turn out to be responsible for implementing parity. But can we go on to deduce from this new constitutional function of the political parties that there is an attack on the unity of the French people? Certainly not.

Without going into the details of the Electoral *loi* of 6 June 2000, which implements the parity principle, let us, however, point out its scope—it affects all elections except departmental councils. Initially, all list-system elections are thus concerned—municipal, regional, European and senatorial (in those districts where Senators are elected by proportional representation, i.e. two thirds of them). Although general elections are based on the constituency majority system, they are also covered. It was not possible, because of the constituency majority system, to apply the parity principle constituency by constituency. Yet these are the most decisive elections, since their result conditions the composition of the government. In addition, to amend the Constitution while leaving them outside the scope of the reform would have been unthinkable. The new

86. See the contribution by Dominique Rousseau on parity in France in the Spanish work "Mujer y Constitución en España", Centro de Estudios Politicos y Constitucionales, Madrid 2000.

87. The word "promote", used on a suggestion from the Senate, aims to leave Parliament with the choice of the most suitable formula to achieve this objective.

French Electoral *loi* therefore obliges the parties to respect the parity principle at general elections also, but in aggregate terms, i.e. at the national level. Each party is now required to present at each general election an equal number of male and female candidates. Otherwise the financial support available from the state by way of amounts allocated on the basis of the number of votes cast for each of them can be reduced by half.[88] The penalties in the event of lists being presented that do not comply with the parity system are even more drastic; the list may be purely and simply rejected when registered by the prefectoral administration, which depends on the State. The parity mechanism for electoral lists is also very strict: in the event of a single-ballot list system,[89] male and female candidates must be registered in alternation, man/woman. In the two-ballot system,[90] parity applies by group of six (possibly six men then six women, for instance). Accordingly, unlike the situation in Belgium, parties have no freedom to fix the order of presentation of their candidates on the lists.

There has been extensive comment on the impact of parity on the very concept of the Republic. Some have seen a break with the principles that underlie republican citizenship; this citizenship rests on the doctrine that no account is to be taken of religious, linguistic, ethnic or, *a fortiori*, biological distinctions. The universalist republican tradition is thus said to be giving way to the Anglo-Saxon tradition, which is differentialist and "communitarian".[91] This fear could indeed be fuelled by the media debate between those who, often ardently, supported parity and those who no less vehemently opposed it.[92] But the fear is unfounded. Parity makes no substantial change to the French citizen's relationship with the Republic; it merely reflects the observation that the spontaneous development of political practice does not suffice to secure quick enough progress in the situation of women in politics. Such pragmatism is, of course, a relatively

88. Since 1995, political parties have not been allowed to be financed by private-sector companies but only by their members (for a limited amount) and by the State. The State each year gives them assistance in two portions: one is calculated according to the number of seats obtained by the party in the National Assembly; the other is evaluated according to the number of votes cast for them at the general election (*loi organique* no. 95–62 of 19 Jan. 1995, J.O. p.1005)

89. Regional elections and elections to the European Parliament take place by the single-ballot list system.

90. The elections by the two-ballot list system are municipal elections and elections to the Senate in districts where proportional representation applies (two thirds of the districts).

91. See for example, Michel Clapié's article, "Parité constitutionnelle et égalité républicaine, à propos de la loi constitutionnelle n° 99–569 du 8 juillet 1999", in *Revue Administrative* No. 314, Mar.–Apr. 2000.

92. See the arguments in the articles published in the review "Le Débat" of May-August 1998 and in the press, in particular by Elisabeth Badinter, against parity, and Sylviane Agazincski, for it. Also see the chronicles published in the report of the Conseil d'Etat of 1996 (*supra*): "Des impasses de la parité", by Evelyne Pisier, and "Parité et principe d'égalité", by Blandine Kriegel.

new phenomenon in France. But it meets a powerful need of our times, as society visibly needs increasingly prompt answers to the difficulties facing it.[93] This is at any rate the interpretation of the reform which emerges from the decision given by the French Conseil Constitutionnel on 30 May 2000 on the electoral parity law.[94] The Court does not seem to have concluded that the constitutional revision of 1999 ran counter to the principles underlying the unitary concept of citizenship which prevails in France. In this respect, the decision of 30 May 2000 follows directly from the decision given on 9 May 1991 on the status of Corsica.[95] In that decision, the Court had regarded the concept of the "French people" as being of constitutional status, thus excluding the recognition of a "Corsican people". This decision expresses the concept that the current constitutional organisation of France does not allow national minorities to be identified. In its decision of 15 June 1999 on the European Charter for Regional or Minority Languages,[96] the French Court follows the same reasoning when it holds that the existence of linguistic minorities within the Republic cannot be recognised unless the Constitution is amended.[97]

This is basically an attempt to demonstrate that parity, contrary to certain appearances, did not jeopardise the unitary vision of citizenship. We may be delighted by this or we may regret it. This much is clear from the French Conseil Constitutionnel's decision on the electoral parity law.[98] For the Court, parity is indeed only a minor departure from the principle of universal suffrage. The effect of parity is not to transform the French Republic into a society of communities. Thus the Court points out that, in implementing the parity principle, the legislature must nevertheless "reconcile the new constitutional provisions with the other constitutional rules and principles from which the constituent authority did not intend to derogate". The purpose of parity, it also holds, is to "give full effect to the principle of equal access for women and men to elective

93. The constitutional revision was passed by a huge majority—741 to 42—by the two Houses of Parliament in Congress at Versailles on 28 June 1999, which proves that members of Parliament were aware of this social demand.

94. CC decision n° 2000–429 DC, AJDA 2000, 653, note Jean-Eric Schoettl on the Act to promote equal access of women and men to electoral office.

95. CC decision n° 91–290 DC, Rec. 50 RFDA 1991, 407, note Genevois.

96. CC decision n° 99–412 DC, RDP 1999, 987, obs. Ferdinand Soucramanien. The Treaty had been referred to the Council by the President of the Republic and the Prime Minister before ratification, for constitutional review under Article 54 of the Constitution.

97. France entered a reservation on Article 27 of the United Nations International Covenant on Civil and Political Rights of 16 Dec. 1966, which provides that "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language".

98. In a decision of 14 Jan. 1999 concerning elections to regional Councils, predating the constitutional revision of July of the same year, the Conseil Constitutionnel followed its decision of 1982 and held that the provisions envisaging reserving seats for women on the lists of candidates for the relevant elections were unconstitutional.

offices and positions". Parity is thus intended to guarantee the effectiveness of the principle of equality; it does not, in itself, constitute a fundamental right based on gender distinctions. The nuance is very important, because this approach means it is impossible to regard parity as a new "basis of democracy, like the separation of powers or universal suffrage".[99] Parity is not therefore, on this concept, one of the aspects of citizenship, alongside the right to vote and the right to stand for election,[100] as certain supporters of the reform advocated. Contrary to the philosophy advocated by them, parity does not annihilate the universality of rights and freedoms by distinguishing two sources of citizenship, determined by the gender duality of humanity consisting of both men and women.[101] It is an operational mechanism set up to ensure that equal access to political responsibility does not remain purely formal but becomes genuinely real. Is parity thus a tool in the service of republican universality? We believe so. In this respect, it represents decisive progress. It meets a preoccupation expressed in the case-law of the majority of the national Conseils Constitutionnel in Europe and of the European courts themselves (at Strasbourg and at Luxembourg) of ensuring that the affirmation of fundamental rights does not remain a "mere" principle but is accompanied by concrete means of making them effective. The European Court of Human Rights at Strasbourg thus underlines that the rights of which it is the guardian are "not theoretical and illusory, but concrete and effective rights".[102] These rights need, it says, to be interpreted "in the light of today's conditions".[103] In the European Union, such an approach is adopted particularly to enforce the social principle of non-discrimination on the basis of gender.[104] The importance of using this legal technique, based on the concepts of "rights and remedies", should not be under-estimated. It forms the basis for the operation of democracies which nowadays must meet the increasingly concrete aspirations of their citizens. It is in this spirit that positive discrimination in favour of women tends to be envisaged, whether in international instruments or in national legislation. The United Nations Convention on the Elimination of All Forms of Discrimination against

99. See Claude Servan-Schreiber's editorial in *Parité Info*, No. 1, Mar. 1993).

100. See Françoise Gaspard, "Au pouvoir citoyennes!" (*supra*), p.36. For Françoise Gaspard, the purpose of parity is to call into question the abstract universalism which is a misleading mask, concealing the sovereignty of men in public life. In opposition to abstract universality, she argues, the principle that "the female citizen is not reducible to the male citizen" has to be posited.

101. See Gwenaële Calves: *supra* n.54.

102. ECHR case *Airey* v. *Ireland*, judgment of 9 Oct. 1979, series A No. 32.

103. ECHR case *Marckx* v. *Belgium*, judgment of 13 June 1979, series A No. 31.

104. See C. McCrudden, "The Effectiveness of European Equality law: National Mechanism for Enforcing Gender Equality Law in the light of European Requirements" 1993, 13 *JO* LS 320.

Women, signed in New York on 1 March 1980,[105] provides that "Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination", but goes on to provide that "these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved". The national legislation on measures for women enacted in the 1990s, in particular in Iceland and Denmark, likewise stresses the temporary character of the "gender-based preferential treatment" brought in "to remedy existing inequalities".[106] France, then, is no great conspicuous exception in having established parity, even if the mechanism adopted by the legislature is bold and hopefully effective on a scale so far unequalled in other countries.[107]

Is it fair to imagine, then, that in the more or less short term, parity in France becomes useless, as the presence of women in politics will be no more remarkable than the presence of men? We have not come that far yet. And it would be highly regrettable to go backwards again, even though there is the sad possibility that the French political parties might bring pressure in the next few years to obtain a system that is less of a constraint for them. Moreover parity, as a factor for developing mentalities, will not solve all the problems. Much remains to be done to break the glass ceiling and remove the obstacles of all kinds that prevent women from reaching the highest levels of responsibility in the professions, the public sector and even more in the private-sector business world.

Even so, parity represents progress, going beyond the mechanism designed to guarantee the political equality that it represents. First, it was the opportunity for a genuine dialogue in society, not only a French but a European and even a world dialogue, as the debates in France were followed attentively in other countries and by several NGOs. Then, the debate on parity made it possible to stress the citizens' current requirements to be able to play a more active role in public affairs.[108] That is not to say that France is moving towards a communitarian society—a State which acknowledges that it is made of a variety of ethnic, linguistic or religious minorities. Nor is it to say that, by admitting a more active form

105. Entered into force with regard to France 13 Jan. 1984, published in the *Journal Officiel* by decree 84–193 of 12 Mar. 1984.

106. See the very interesting report drawn up by David Bodkier in July 1997, during his internship at the French Conseil Constitutionnel, on "la participation des femmes aux élections nationales" (available in the Library of the Court).

107. Parity will apply for the first time to the municipal elections of spring 2001 and then to the general election of spring 2002.

108. For reasons difficult to explain here, this demand for participation is not contradicted by the record abstention rate (almost 70 per cent of the registered voters) at the referendum of 24 Sept. 2000 on the reduction of the presidential term of office from seven to five years, for which there are other specific causes.

of citizenship made up of diversified forms of cultural expression, the French Republic is ready to give up its belief in the universality of rights, a major central feature of civilisation.[109] Parity is, however, a sign of the development of French society which is more open to the pluralism that it must itself incorporate as an asset, in this melting pot that the French nation is within Europe. If it does not generate new forms of ethnic or religious conflicts, this development can only be regarded as positive. Requiring more tolerance and a greater sense of otherness, it does not deny but actually stresses the fundamental unity in diversity of all members of the human family, as put by the Preamble to the United Nations Universal Declaration of Human Rights of 1948. Lastly, parity has another merit. Revealing the importance of the demand from citizens in France to feel truly involved in the decisions which concern them all, it is an indicator of other developments. For example, there is every reason to believe that the effect of this parity will be a review of the territorial decentralisation which remains inadequate in France. As the articulation between the power of local representatives and the power of central government, should decentralisation not be based on the truly pluralist regionalism that is anchored in European culture? Another major French debate in prospect.

109. See in this connection Linda K. Kerber, "the meaning of citizenship" in *Journal of American History*, Dec. 1997.