

# Gender in the French Constitution: the Case of *Parité*<sup>1</sup>

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I will start with a few definitions regarding the title of this presentation, “Gender in the French Constitution: the case of *Parité*.” The word “gender” is not to be found in the French Constitution. I understand the word “gender” to mean social and cultural differences between the sexes, as opposed to simply biological ones. One can therefore speak of “gender roles” or “gender equality”. In the French language, the word “genre” is a recent import from English. It didn’t exist at the time the French Constitution was drafted. Instead, one finds the word “man”, as in the “Declaration of the rights of Man and Citizen.” Here “Man” refers to mankind as a universal, abstract concept. One also finds the words “men” and “women” in their usual meaning. The word “*parité*” is not in the Constitution either. Non-French speakers may wonder what it means. As I will explain, it means “full equality of the sexes,” of men and women. I will explain how this concept of *parité* came into being, and how it led to several constitutional revisions and the adoption of “*parité* laws”.

This presentation will have the following outline. I will first present a brief history of the French republican tradition, leading to the adoption of the current Constitution which dates back to 1958. I will then review a 1982 ruling of the Constitutional Council which decided that quotas for women in local elections were unconstitutional. As a consequence,

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a political campaign emerged to enshrine the principle of *parité* in the Constitution. This led to a constitutional revision in 1999, and a second one in 2008. These constitutional revisions were implemented into laws promoting equal access for women in politics, but also in professional and social positions. I will conclude with a brief overview of the current French situation.

I will start with a brief history of what I call republican universalism. By “universalism,” I mean that abstract notions such as freedom, equality, or human rights are valid regardless of any social and cultural context. According to its defenders, French universalism has been, since the revolution of 1789, the guarantee of equality before the law. Thus the Declaration of the Rights of Man and Citizen, adopted in 1789, proclaimed that “Men are born and remain free and equal in rights” (Article 1). But at the time, women were not given the same rights as men; in particular, they didn’t have the right to vote or to run for elections. It was only in 1944 that an ordinance drafted by the provisional government of Charles de Gaulle stipulated that “women are eligible voters and under the same terms as men.” The equality between men and women was further elaborated in the preamble of the Constitution of the Fourth Republic in 1946: “The law guarantees women equal rights to those of men in all spheres.”

The current Constitution of France was adopted on 4 October 1958. It is typically called the Constitution of the Fifth Republic, and replaced that of the Fourth Republic. It refers in its preamble to the Declaration of the Rights of Man of 1789 and to the preamble of the Constitution of 1946, which added a number of social and economic rights as well as the equality of men and women. These texts form a “constitutional block” that was given constitutional value in a landmark decision of the Constitutional Council in 1971: therefore any law that contravenes these texts may be ruled unconstitutional. The 1958 Constitution also include an article about the equality of all citizen “without distinction of origin, race, or religion” (Article 1) and another about universal suffrage for all adult French citizen of either sex (Article 3).

Despite the equality of all citizens, until the early 1990s there were many more men than women in elected bodies. Typically, the proportion of women in the National Assembly was only 6%, and 3% in the Senate. There were also very few women in municipal and regional councils. So when a law revising procedures for municipal elections was introduced into the National Assembly in 1981, a socialist lawmaker offered an amendment that no more than 70% of municipal council seats could be held by members of one sex. After some debates, during which the figure was brought down to 80%, the law was submitted to the Constitutional Council to pass a constitutionality test. The Council, which had no women members at the time, reviewed the law and ruled it as unconstitutional.

The grounds on which the Council ruled referred to both the 1958 Constitution of the Fifth Republic, in particular its Article 3, and the 1789 Declaration of the Rights of Man and Citizen and its Article 6. Taking these two articles together, the Council ruled that the Constitution, already considered women part of the sovereign people and that quotas, because they established an inadmissible distinction of sex, not only threatened the unity required for sovereignty but also contravened the notion of careers open to talent in Article 6 of the Declaration. The constitutional principles, the Council members found, were “opposed to all divisions of voters or candidates by category” even if the purported goal of quotas was precisely to realize equality of access to office.

Note that the wording of the law proposal didn’t favor one sex over another; it said simply that there could be no more than 80% of either sex on a list. And yet it was deemed contrary to the principles of abstract individualism and universalism as contained in the republican tradition dating back from the French revolution. So to get a law passed, supporters of gender equality first had to revise the Constitution. This they did by launching a campaign in favor of “*parité*”.

The *mouvement pour la parité* was a feminist movement that sought to refigure the terms of French universalism in order to increase the number of women in elected office. The attention to gender discrimination in France echoed and drew on concerns developing in European institutions in this period. As the Council of Europe (an intergovernmental organization dating to 1949) and the European Commission (part of the executive arm of the European Union charged with preparing propositions for the European Council to consider) took up requests for membership from former communist countries after 1989, discussion turned to standards for evaluating democracy. Advocates for women argued that these standards must include a commitment to equality and to ending discrimination against women: “Democracy without women is not democracy,” became their watchword.

In 1989, the Council of Europe organized a seminar on *démocratie paritaire*. In 1992, a network of national experts devoted to women’s access to decision-making was established, this time by the European Commission. Later that year, the first European summit on “women in power,” meeting in Athens, proclaimed that “democracy requires *parité* in the representation and administration of nations.” In France, the Green Party included *parité* in its statutes and applied it to its lists of candidates. Comparative figures on women’s political participation showed France to be persistently near the bottom of the list—the “red light” of Europe—and this low ranking became a rallying cry for political women in France.

So what is *parité*? *Parité*’s supporters denied that their law was an imposition of quotas; it is rather the recognition of the universality of the physical difference between men and women. Nor is it affirmative action as Americans have conceived it: it is not a program

to remedy past discrimination by positively favoring an excluded group. Women are not a separate social category; according to advocates of *parité*, women are individuals. The point of *parité* was to create a place for women in the political sphere, not to defend some special “women’s interest,” or to bring a unique feminine capacity to lawmaking: these goals are linked to cultural ideas about gender that are not universally shared.

The fundamental principle of *parité* is equality of the sexes. Women constitute half of the sovereign people, and elected bodies should reflect that fact. *Parité* was also conceived as a possible solution to what was diagnosed at the time as a “crisis of representation”: the idea that the political class was out of touch with civil society. The idea was not that women (or, for that matter, any other group) needed representatives of their own to speak in their name, but rather that elected assemblies should in their composition reflect the duality of men and women the French population.

Within fewer than five years of the launching of the campaign, opinion polls showed overwhelming support (with hardly any distinction between men and women) for gender equality among elected representatives. Endorsement of *parité* was not limited to women voters; nor was it limited to the left, as conservative politicians found out the *parité* principle was also popular with their electorate. In 1995, prime minister Alain Juppé created an official body, the Observatoire de la Parité, to monitor the status of women and the progress of gender equality. Pressure for a constitutional amendment grew and was proposed as a solution to overcome the objection that the Constitutional Court had raised about quotas in 1982.

The constitutional revision took the form of an addition to article 3 stipulating that “The law shall promote equal access by women and men to elective offices and posts.” Stronger versions of the text, such as “the law shall guarantee” or “the law shall establish,” were rejected in favor of the weaker “The law shall promote.” Another article stated that political parties were expected to “contribute” to the implementation of this principle in ways that would be spelled out in new electoral laws. “Contribute”, like “promote” was a vague term, carrying none of the force that the *parité* movement had envisioned. In the end, the claim of the paritaristes to put the word “*parité*” in the constitution was also rejected. But when the law applying the constitutional principle did pass in 2000, it was referred to, even in official government publications, as the “*parité* law”. A second revision was introduced in 2008, adding that the law shall promote equal access “to professional and social positions” as well.

Since the 1999 constitutional revision, several laws have been adopted to translate the principle into practice. The law now requires that half of all candidates for almost all political offices be women. The law applies to different kinds of elections in different ways. France has two systems of election: proportional representation, and majority

selection of single candidates. Proportionality applies in municipal elections, regional assemblies, as well as to the selection of French representatives to the European Parliament. The place one is assigned on the list determines who will actually hold office. The law makes it impossible to place all women at the bottom of a list. Regarding single candidacies (for the National Assembly and part of the Senate), the law was less forceful. It set penalties for political parties that didn't comply, depriving them of some of government's subsidies. But the financial penalty was not large enough to force the largest parties to comply with the letter of the law.

The goals of the paritaristes are not fully met: it takes time for the effects of legal change to be felt in the mentalities and behavior of social actors. The *parité* principle also applies to corporate boards of medium and large firms, supervisory boards of public institutions, the highest category of civil servants in public administration, university juries, chambers of commerce, and sports federations. Again, the law doesn't impose the application of a strict 50/50 rule, but encourages and promotes progress towards that objective.