

Same Sex, Different Politics: “Gay Marriage” Debates in France and the United States

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In France, “America” is always (to borrow a phrase from Claude Lévi-Strauss) “good to think.”¹ It is not, of course, that actual, in-depth knowledge of the United States is required in French intellectual life. On the contrary, sociology or anthropology might unduly complicate matters for intellectuals and unfairly undermine their legitimacy. Thus it probably is no accident that there should be so few academic specialists of contemporary American society in France (probably fewer than scholars competent on, say, Côte d’Ivoire).² In the absence of specialized knowledge about the United States, generalist intellectuals feel entitled to elaborate arguments about America. The rhetorical figure stands for the empirical image. Indeed, one could argue that this has become the defining feature of the public intellectual in France: an intellectual is someone whose legitimacy

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1. Claude Lévi-Strauss, *Le totémisme aujourd’hui* (Paris: Presses Universitaires de France, 1962), 132.

2. The comparison is inspired by my first fieldwork experience, in West Africa. However, beyond this personal element, I believe the contrast reveals something about cultural domination: as in the relation between colonized and colonizer, knowledge is anything but symmetrical. A dominant culture tends to produce the representations through which it is perceived (whether rejected or imitated) by others. Thus, in a struggle for cultural emancipation, while the control of its self-representations may constitute the first step for a dominated culture, the second step does require elaborating its own representations of the dominant culture. This could well be my political justification for becoming a French specialist of American society.

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allows him (more often than her) to address French issues through references to America.

From the “Rhetoric of America” to the Transatlantic Comparison

Throughout the 1990s, the “rhetoric of America” was constantly invoked in French public discourse, especially in debates regarding minority issues—ethnicity as well as gender and sexuality. Today as much as ever, America is indeed good to think, as a model or (more frequently) a countermodel for French identity politics. This is most manifest in the case of gay and lesbian issues, whose very vocabulary is borrowed from American culture—from “drag queens” to “back-rooms,” from “coming out” to “outing,” from “gay” to “queer.” This imitation, which may be called “Americanization,” even extends to the name of an association like *Act-Up* or a ritual such as the yearly *Gay Pride* march. The language of queer politics is (American) English, albeit with a French accent. Conversely, opposition to gay and lesbian politics (even among moderate gays) is often formulated as a rejection of so-called American identity politics in the name of French political culture.

In France, the contrast between the two models of the nation gained prominence in public debates around 1989. This rhetorical contrast was then developed around immigration issues—as a reflection on what was presented as a national model of citizenship—and later extended to other minority issues with the revival of feminist as well as gay and lesbian politics. The French model of the nation is called *républicain*, as it claims to prolong a political tradition formulated by the Third Republic (in reference to the principles of the 1789 Revolution). This ideal of national integration does not acknowledge group identities of any kind: the universalist model of citizenship is based on abstract individuals. Regional, religious, and ethnic differences are not to be taken into account by the state. Citizens are all supposed to be equivalent: as a consequence, such differences belong to the private sphere rather than to the public realm of politics. At the end of the nineteenth century, this ideology was meant to unify the nation by transforming “peasants into Frenchmen.”³

The rhetoric that was developed at the end of the nineteenth century through a contrast with Germany was rehabilitated in the 1990s through a contrast with the new dominant model. It is hardly surprising that America should play this role

3. Eugen Weber, *Peasants into Frenchmen: The Modernization of Rural France, 1870–1914* (Stanford, Calif.: Stanford University Press, 1976).

today, since the central political issue has recently become the transformation of “immigrants into Frenchmen.” According to this updated rhetoric, the American model of citizenship is based on group identities. Individuals belong to “communities,” who find their political voices through “lobbies.” Both terms (and both realities) are said to be fundamentally foreign to the French tradition: it is assumed that political representation is always “color-blind” in France, while in the United States it could only be “color-conscious”—in terms of race and ethnicity as well as gender and sexual orientation.

Obviously, this contrast has a political function: it is prescriptive, rather than descriptive. The transatlantic mirror is meant to discourage political groups from “importing” minority issues, lest “communities” should become “ghettoes.” American-style fragmentation (ethnic and otherwise) appears as the ultimate threat when a differentialist ideology replaces universalist principles; this is how multiculturalism has been depicted in French debates throughout the 1990s. The rhetoric of the Republic thus functions as a warning against “the disuniting of France”⁴—and it is not coincidental that the American controversies surrounding so-called political correctness found such an echo in France precisely at the time when the rhetorical contrast between the two models was elaborated.

This is not the place to discuss the culturalist premises of this rhetoric⁵—although we shall see at the end of this essay how the debate on immigration may have overlapped with the debate on same-sex couples, insofar as the two reflect on the definition of culture and the nation. Given this comparative obsession, it would seem quite logical that in France the public polemic on same-sex unions should have been accounted for in the language most readily available for minority issues. This would appear all the more natural since the debate started on both sides of the Atlantic at the turn of the 1990s. It first gained importance in the United States in 1993, following *Baehr v. Lewin*, the momentous Hawaii Supreme Court decision that opened the theoretical possibility of same-sex marriage—this case asked whether there were any “compelling” reasons to refuse marriage for same-sex couples.⁶ In France, it became most visible in 1997 once the Socialists returned to power with their platform that included the legal recognition of

4. See also Arthur M. Schlesinger Jr., *The Disuniting of America: Reflections on a Multicultural Society* (New York: Norton, 1992).

5. I have developed this critique elsewhere. See Eric Fassin, “‘Good to Think’: The American Reference in French Discourses of Immigration and Ethnicity,” in *Multicultural Questions*, ed. Christian Joppke and Steven Lukes (Oxford: Oxford University Press, 1999), and Fassin, “The Purloined Gender: American Feminism in a French Mirror,” *French Historical Studies* 22, no. 1 (1999): 113–38.

6. *Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993).

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same-sex couples—which lead to the 13 October 1999 vote of approval for the Pacte Civil de Solidarité (Civil Pact of Solidarity, widely known as PaCS).⁷

The PaCS status is open to same-sex and different-sex couples (this point remained in all versions proposed under different names throughout the 1990s). It offers a halfway solution between *concubinage* and *mariage*, that is, between an informal domestic partnership and the full legitimacy of the marriage institution. The law guarantees social rights for the new *pacésés* (a word that gained currency after the passage of the law), including access to health insurance, tax exemptions, and even inheritance. But these are limited rights (access to citizenship is notably not included) and, moreover, are granted with obvious reluctance (delays are imposed before the rights take effect, under the suspicion of fraud). However, the two-year public debate focused on an issue the bill deliberately left aside: whether such a status might in the future open legal access for same-sex couples to reproductive technologies (now available only for different-sex couples, whether married or not) and adoption rights (currently open both to married couples and to unmarried individuals, in principle whether gay or straight—though today sexual preference is, in practice, a discriminating factor).

The chronological parallel between the two debates, in France and in the United States, could thus have been expected to reinforce the necessity of the rhetorical comparison. However, it is precisely on the issue of same-sex marriage, and precisely at the time when the debate erupted on the public stage, that the rhetoric of America all but vanished in France. Since 1997 there have been virtually no references to the United States—whether among intellectuals or politicians, journalists or experts. This indifference may not come as a surprise for an American audience: no one felt it useful to invoke France when debating the consequences of the Hawaii decision. But of course there is no symmetry between the two sides of the transatlantic mirror: the “rhetoric of France” clearly does not carry the same weight in the United States as its counterpart does in France. Moreover, it may be that American curiosity will prove somewhat greater in this instance. In any case, what remains profoundly paradoxical is the sudden shift—as if, almost overnight, the rhetoric of America had become a useless tool.

How can one account for such a paradox? The explanation is to be found in the very definition of this rhetoric. The politics of homosexuality that occupied

7. “Loi 99-994 du 15 novembre 1999 relative au Pacte Civil de Solidarité,” *Journal Officiel de la République Française*, 16 November 1999, 16959–60. For more information on the law, see Caroline Mécary and Flora Leroy-Forgeot, *Le PaCS* (Paris: Presses Universitaires de France, 2000).

center stage in the United States at that time (and one should remember that the integration of gays in the military was the *other* issue in 1993, after Bill Clinton first rose to the presidency) did not in the least correspond to the rhetoric of America then prevailing in France: if American gays were to become good husbands, good soldiers, and even good priests, whether one liked it or not, such an evolution led to “integration” rather than “ghettoization.” Thus, minority politics in the United States were not necessarily “differentialist.” Opening marriage to same-sex couples in the United States proved more *républicain* in its universalist logic than anything considered on the other side of the Atlantic. In a word, Hawaii proved more French than France herself.

As a consequence, the politics of same-sex marriage did not translate well. This is why the rhetoric of America suddenly became irrelevant to minority issues in France: its logic was thus undermined by the social and political reality of the United States. The idea that America suddenly became irrelevant is not to be generalized, of course: anti-Americanism is alive and well, and in fact, at the same time, it has been revived in more recent debates on economic globalization and international imperialism. The shift revealed by the specific issue of same-sex marriage only concerns minority issues. Indeed, one could argue that the rhetoric of America, once it had become irrelevant for minority issues, became available for other purposes.⁸

Same-sex union politics manifest this rhetorical shift. The original versions of the PaCS were first proposed in the name of the French *républicain* tradition—how could its initiators acknowledge that, by contrast to the Hawaiian solution, theirs was only a halfway solution on the universalistic path? However, as a consequence, unlike in previous years, those who opposed the PaCS were no longer in a position to invoke universalism—which had been preempted—to deny minority rights. They had to invent other arguments—the universality of “sexual difference” thus became a way to avoid the transatlantic rhetoric while opposing same-sex marriage.

8. The parallel debate on *parité*, that is, equal political representation for women, reflects this shift in a symmetrical fashion. What had first been presented as an opposition between American-style differentialism (quotas) versus French-style universalism (individual citizenship) was reformulated around 1997 by some advocates of *parité* (such as Sylviane Agacinski) in the language of the universality of sexual difference. In refusing to consider “women” as a minority (sexual difference to them was not only different but also more essential than any other difference based on sexuality or ethnicity), they bypassed the rhetoric of America and thus undermined the *républicain* argument. See Sylviane Agacinski, *Politique des sexes* (Paris: Seuil, 1998). See also Eric Fassin and Michel Feher, “Parité et PaCS: Anatomie politique d’un rapport,” in *Au-delà du PaCS: L’expertise familiale à l’épreuve de l’homosexualité*, ed. Daniel Borrillo, Eric Fassin, and Marcela Iacub (Paris: Presses Universitaires de France, 1999).

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My argument is that the American reference could then become all the more interesting: it is precisely when the rhetoric of America does not function any longer as a cliché that we can revive the comparison with the United States (as opposed to “America”) for heuristic purposes. As a matter of fact, this is what I have done, or tried to do, in my own interventions in this public debate—both politically, as a citizen, and academically, as a sociologist.⁹ This has been my attempt not only (though, of course, this is my starting point) because, as a French specialist of contemporary U.S. society (and more specifically, the politics of gender and sexuality), this was the reality with which I happened to be most familiar. But I also have tried to do this because I think the comparison helps us understand both the French and the American debates in a different light: their different histories force us to reconsider our political positions in historical perspective.

To be explicit and briefly summarize my argument: It seems to me that defending or opposing same-sex marriage and family rights for same-sex couples can take very different political meanings depending on the historical context—both positions can be considered radical or conservative.¹⁰ Political meaning varies with time and place. The consequence is that we need to reject, or rather reach beyond, the opposition that I just suggested between a political and an academic logic. In order to define our political strategies, we always need to analyze their historical setting: the principles that justify our choices can never be abstracted from their context. The difficulty is that we are part of the history we try to analyze. At this point, a comparative perspective might prove helpful because it helps to create a distance. The comparison provides a mirror that might be favorable to this “reflection.”

A Political Mirror: Gay Conservatives in the United States

As the rhetoric of America unraveled in France, it was certainly because of the alleged *communautarisme* of American identity politics—which made the reference politically counterproductive—that those who supported the PaCS (and,

9. This has been the case from my first public intervention, “Homosexualité, mariage et famille,” *Le Monde* (Paris), 5 November 1997, 11; to one of my more academic contributions, “Homosexualité et mariage aux Etats-Unis: Histoire d’une polémique,” in *Homosexualités*, a special issue of *Actes de la recherche en sciences sociales*, no. 125 (December 1998): 63–73.

10. This is, of course, a reflection on my own political ambivalence: I have felt more comfortable defending same-sex marriage in France than I would have been in the American context. The political implications (as developed later in this essay) seem to me different enough to justify this paradoxical situation.

beyond rights for couples, family rights) did not feel the need to resort to the comparison. But there are other reasons that make the comparison simultaneously more complex and interesting. Whether looked at from France or the United States, the transatlantic mirror reflects a puzzling picture. In a nutshell, the paradox is that while the defense of same-sex marriage may have seemed conservative to some on the American side, it appeared radical to all on the French side.

My argument is that this surprising difference in political meaning is to be understood through the difference in the history of politicization in this debate. We could say that while the defining feature in the United States has been the emergence of gay conservatives who favor same-sex marriage, in France the defining feature has been the rise of opposition to the PaCS among moderates whom I would call “conservative progressives.” In a word, the symmetry between a conservative American front (pro) and a progressive French front (con) is the key to understanding the diverging evolutions of the debate on both sides of the Atlantic: it opens the possibility of interpreting in a historical fashion all the different positions in both national contexts.

On the American side, the struggle for same-sex marriage was certainly not high on the list of priorities of gay and lesbian activists in the 1980s—because marriage was not the ideal choice for most and because this political claim seemed doomed to failure. Both terms of the equation changed in the late 1980s and the early 1990s. First, gay conservatives erupted on the American scene—from Log Cabin Republicans (see Marvin Liebman’s *Coming Out Conservative*) to conservative (Bruce Bawer) or neoconservative (Andrew Sullivan) intellectuals.¹¹ This was when “a (conservative) case for gay marriage” was first made.¹² In 1993, the Hawaii Supreme Court revived the question in legal terms with *Baehr v. Lewin*. With the Hawaii case raising the possibility of new rights, it was only then that marriage ranked high on the agenda of gay and lesbian activists. But the rhetoric most readily available was that which gay conservatives had just developed, a rhetoric that affected the terms of the debate for gay liberals and, in reaction, gay radicals.

11. Marvin Liebman, *Coming Out Conservative: An Autobiography* (San Francisco: Chronicle Books, 1992); Bruce Bawer, *A Place at the Table: The Gay Individual in American Society* (New York: Poseidon Press, 1993). Andrew Sullivan’s work ranges from his article “Here Comes the Groom: A (Conservative) Case for Gay Marriage,” *New Republic*, 28 August 1989, 20–22, to his book *Virtually Normal: An Argument about Homosexuality* (New York: Knopf, 1995).

12. Sullivan, “Here Comes the Groom.” Of course, Sullivan repeated and developed this argument in other articles, a book, and an anthology. But this text launched the conservative version.

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The conservative rhetoric is well known. The problem is the “lifestyle” of American gays—gays, rather than lesbians, as the former are supposed to be promiscuous, while the latter are assumed to be monogamous, if not chaste. This sexual counterculture explains gay radical politics, the other side of their social marginalization. Homophobia can thus be interpreted as both cause and effect of this sexual and political “ghetto”: gays live in a ghetto because they are rejected from the “mainstream,” and they are rejected from the mainstream because they live in a ghetto. Gay conservatives suggest marriage as the virtuous way out of what they claim is a vicious circle. And so, it is by normalizing homosexuality that homosexuals are made “normal.”

Is not marriage supposed to be the institution dearest to the hearts of conservatives? This is precisely why conservatives should wish for the opening of marriage to same-sex couples: this would be an “incentive” for gays, just as it helps straight men get onto the path to virtue. The moralizing influence of marriage should be extended to gays—instead of excluding them and thus reinforcing their lack of morality. This conservative version of same-sex marriage clearly proposed much more than a right—it defined a norm. Instead of opposing gays to the heterosexual norm, it suggested broadening the norm so that it should police sexuality, whether straight or gay.

This conservative argument took place in a broader context: the assimilation of gays (or rather of gay issues) in the mainstream was most obvious around 1993, shortly after Clinton was first elected, when there was public debate on gays and lesbians in the military. The leitmotiv of the “good citizen” (good husband, parent, soldier, and priest) was then at its highest. And more generally, homosexuality was for a while on magazine covers and all over television. This moment of normalization has been analyzed, and criticized, by many—most notably by Leo Bersani, in *Homos*.¹³

What is most remarkable, perhaps, was the effect of the gay conservative argument on other conservatives as well as on liberals and radicals. The first consequence was that other conservatives were thrown on the defensive: unless they admitted to homophobia, they had to recognize that same-sex marriage is the path to the moralization of homosexuals. One result of this new campaign was that homophobia became even more explicit among conservatives at that time and could be seen in a revival of the “culture wars”—from the politics of art to the art of politics. But another result was the embarrassment of conservative intellectuals, such as William Safire and William F. Buckley Jr.

13. Leo Bersani, *Homos* (Cambridge: Harvard University Press, 1995).

The second consequence was of equal importance: the conservative case did influence the liberal argument. For liberals, the language of rights was not incompatible with the language of the norm. On the one hand, same-sex marriage could be defended in the name of equality for all, but on the other hand, this claim was less threatening if it was presented along with a kinder, gentler image of homosexuality: if gays and lesbians are to be granted the same rights as everybody else, is it not because they are no different from anybody else? This combination is perhaps best illustrated in William N. Eskridge Jr.'s *The Case for Same-Sex Marriage* where the legal argument, in terms of rights, was accompanied by a moral and sociological argument, in terms of norms.¹⁴ The subtitle is revealing: *From Sexual Liberty to Civilized Commitment*. The rhetoric of "civilization" proved tempting far beyond the limits of conservative ideologues, insofar as it seemed politically efficient.

The third consequence followed logically: radicals rejected this process of civilization. Their original suspicion—first expressed as early as 1989 by feminists—was reinforced by the war waged on "public sex," not only by officials like New York mayor Rudolph Giuliani but also by gay figures. In 1997, visible personalities such as Michelangelo Signorile and Gabriel Rotello revived an argument that had first been formulated by Randy Shilts—and the recurrent presence of Larry Kramer confirmed the parallel.¹⁵ The moral critique of gay promiscuity was once more couched in terms of public health—AIDS was again the linchpin of this argument, and monogamy was again the answer. It is in reaction against this revived attempt at normalizing homosexuality that intellectuals and activists organized as a group called Sex Panic! in order to fight the regulation of sexuality, including through marriage.¹⁶ This is, for example, the logic of Michael Warner's argument.¹⁷

14. William N. Eskridge Jr., *The Case for Same-Sex Marriage: From Sexual Liberty to Civilized Commitment* (New York: Free Press, 1996).

15. Michelangelo Signorile, *Life Outside: The Signorile Report on Gay Men: Sex, Drugs, Muscles, and the Passages of Life* (New York: HarperCollins, 1997). Gabriel Rotello, *Sexual Ecology: AIDS and the Destiny of Gay Men* (New York: Dutton, 1997). Larry Kramer, "Sex and Sensibility," *The Advocate*, 27 May 1997, 59–63.

16. See the first leaflet by Sex Panic! put out in November 1997 (New York, 36 pp.).

17. Michael Warner's argument is first presented in "Media Gays: A New Stone Wall," *The Nation*, 14 July 1997, 15–19. See also Lauren Berlant and Michael Warner, "Sex in Public," *Critical Inquiry* 24 (summer 1998): 547–66, and Michael Warner's recent book, *The Trouble with Normal: Sex, Politics, and the Ethics of Queer Life* (New York: Free Press, 1999).

A Political Mirror: Conservative Progressives in France

The emergence of a conservative case for same-sex marriage thus helps us understand the debate on the American side. In France, symmetrically, the rise of opposition to the PaCS among progressives is the key to apprehending the debate. The chronology follows closely on the steps of the American debate: while the issue was shaped at the same time (at the very end of the 1980s), it gained public prominence after the Left returned to power in 1997. The debate erupted then and continues today. And yet, in late 2000 (a full year after its implementation), with 40,000 pacsés,¹⁸ the PaCS is considered a success—as confirmed by polls showing massive approval.¹⁹

This political chronology is fundamental: the PaCS was on the Socialist agenda. What had until then been a project with limited political support was about to become a reality. This is when “progressive” intellectuals, for the first time, expressed their opposition, thus assuming the position of “conservative progressives.” The catalyst was sociologist Irène Théry’s essay jointly published by the journal *Esprit* and as a *Note de la Fondation Saint-Simon* in October 1997.²⁰ Théry’s essay found echoes in a January 1999 manifesto published in *Le Monde*, entitled most explicitly: “Let us not leave the critique of the PaCS to the Right!”²¹ Rather than objecting to the PaCS itself, the progressive opposition objected to its potential consequences. Because of an antidiscriminatory logic no self-respecting progressive could object to, the legal recognition of same-sex couples in this institutionalized form would inevitably lead, it was feared, to other rights—namely access to adoption and reproductive rights.

The political logic of this opposition can be explained in those terms. When the Socialists first came to power in 1981, they finally abolished the sole form of legal discrimination against homosexuality (this was the battle first engaged in the late 1970s against the difference in age of consent between homo- and heterosexual acts), and they even passed a 1985 law against discrimination that

18. Of the more than 20,000 PaCS couples, the percentage of same-sex couples remains unknown for legal reasons—the law prevents anyone, including the National Institute of Demographic Studies (INED) from having access to this information, even in statistical form.

19. See the opinion poll commissioned by the gay and lesbian monthly magazine *Têtu*, October 2000, 52–53, which shows 70 percent approval of the PaCS and equal approval and disapproval for the opening of marriage itself to same-sex couples.

20. Irène Théry, “Le contrat d’union sociale en question,” *Esprit* 10 (October 1997): 159–87, also published as an October 1997 *Note de la Fondation Saint-Simon*, a pamphlet of the Paris think tank Fondation Saint-Simon.

21. Nathalie Heinich et al., “Ne laissons pas la critique du PaCS à la droite,” *Le Monde* (Paris), 27 January 1999, 9.

included sexual orientation in its definition. On the issue of homosexuality, the Socialists had then reached their goals: gays and lesbians were to be left alone. This meant that sexuality was a matter of privacy: individuals were entitled to this right. What the 1980s revealed, however, was that discrimination was not simply a matter of individuals. With the rise in AIDS-related deaths, it became clear that there could be discrimination against gays as couples, for gay couples lacked access to health insurance, tax exemptions, and inheritance, and even the right to jointly own or rent property.

In this context, a radically new question arose along with the first drafts of what was to become the PaCS—in a context that was both specifically French and more broadly European, following recommendations of the European Union in the Roth Report.²² The shift was from individuals to couples. As a consequence, the issue was not merely “toleration” any longer; it now became “recognition.” The problem, which was accurately perceived by the conservative progressives, was that once engaged in such a logic, there was no reason not to continue. Why not proceed beyond couples to families? Why stop at domestic partnerships without including reproductive rights?

Even intellectuals who had signed a petition for the recognition of same-sex couples in 1996 realized after 1997 that this logic could lead further than they were willing to go. This is when some attempted to find a solid foundation for the politics of *juste milieu*—what I call the conservative progressive politics of a “halfway solution.”²³ The foundation could not be found in political terms; this is why it was defined metapolitically, through the invocation of a “symbolic order.”²⁴ At the crossroads of anthropology and psychoanalysis, the French word *filiation* then became the cornerstone of this rhetoric, whose legal foundation it provided. Filiation structures the human psyche (as a symbolic link between parent and child) and at the same time culture itself (as consanguinity complements affinity)—does it not structure both through inheritance laws?

Both “symbolic order” and “filiation” all of a sudden circulated in the public debate, with the terms being used by intellectuals and politicians alike. Psycho-

22. “Rapport de la commission des libertés publiques et des affaires intérieures sur l’égalité des droits des homosexuels et des lesbiennes dans la Communauté européenne,” European Parliament, 26 January 1994. This report included recommendations on equality between same-sex and different-sex couples to be taken into account by all members of the European Union.

23. Eric Fassin, “PaCS Socialista: La gauche et le ‘juste milieu,’” *Le Banquet* 12–13 (October 1998): 147–59. This piece has been reprinted in *French Politics and Society* 17, no. 2 (spring 1999): 3–13.

24. Irène Théry, “Le contrat d’union sociale en question,” *passim*. The phrase gained currency in public discourse following this article.

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analysts whose credibility had been eroded now regained an audience. The public relevance of anthropology, long forgotten, now became obvious: the name of Claude Lévi-Strauss was invoked in Parliament, right and left (somewhat paradoxically, and, as it turns out, against his will), and his successor in the Collège de France, Françoise Héritier, expressed her political rejection of the PaCS as well as her belief in “insurmountable” limits of thought resulting from sexual difference.²⁵ The argument was that if sexual difference is defined within culture by the observation of nature, then it is the key, not only to (biological) reproduction, but also to (symbolic) filiation.²⁶ This argument proved particularly powerful, as it provided intellectual legitimacy to the defense of a “symbolic” (that is, social) order: the foundations of “our” culture (the French nation) could be presented as the foundations of culture itself. “Our” kinship system had a universal reality—(French) “universality” was thus reclaimed through a play on words.

This realization of the consequences of the PaCS on the “symbolic order” was reinforced by the political stance of gay and lesbian activists in France: for the first time, they started presenting a united front in 1997 (and this alliance was not to survive the success of the PaCS). Moderates and radicals, from the very mild Association des Parents et Futurs Parents Gays et Lesbiens to the somewhat wild French association also called Act-Up (not to forget AIDES and the Centre Gay et Lesbien), joined forces in support of the PaCS—and, beyond, of marriage and family rights. This confirmed the worst fears of conservative progressives: they could not even hope to rely on the traditional opposition between moderates and radicals—between those who would content themselves with the PaCS and those who would eventually ask for more. It was obvious that the PaCS would be a beginning as much as an end.

The Socialists in power were then in an awkward position, for they clearly preferred the halfway solution between individual rights and family rights—that is, the recognition of couples. They were neither ready to go beyond the PaCS,

25. Héritier’s argument, fully developed in *Masculin/Féminin: La pensée de la différence* (Paris: Odile Jacob, 1996), is applied to same-sex “filiation” in an interview published in *La Croix*. Françoise Héritier, “Aucune société n’admet de parenté homosexuelle,” interview by Marianne Gomez, *La Croix*, 9 November 1998, 16. She cosigned the *Le Monde* manifesto against the PaCS (Heinich et al., “Ne laissons pas la critique du PaCS à la droite”).

26. I have argued that Héritier’s reading and rewriting of Lévi-Strauss, rather than his book *The Elementary Structures of Kinship*, provides the basis for such a definition of culture through sexual difference. Claude Lévi-Strauss, *Les structures élémentaires de la parenté* (Paris: Presses Universitaires de France, 1949); in English, *The Elementary Structures of Kinship*, trans. Rodney Needham (Boston: Beacon Press, 1969). See Eric Fassin, “Usages de la science et science des usages: A propos des familles homoparentales,” *Question de parenté*, special issue of *L’Homme* 154–55 (2000): 391–408.

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following the encouragement of gay associations, nor to stop before the PaCS, as conservative progressives admonished them to do. Their ambivalence was clearly revealed in October 1998 when the bill was soundly rejected on the first day of parliamentary debate: left-wing representatives had simply forgotten to show up for a preliminary vote. This surprise had a major consequence: the government was now forced to win this battle; otherwise, it was bound to appear as a defeat. Socialists may have shared the fears of conservative progressives: philosopher Sylviane Agacinski, who happens to be married to Prime Minister Lionel Jospin, also invoked the “symbolic order” against the opening of filiation to gay couples—but she still supported the PaCS.²⁷ This is why, in spite of everything, the PaCS prevailed: the appearance (let alone the reality) of cowardice would have proved politically disastrous.

This comparison between the two political debates illuminates their differences: the politics of norms play in opposite ways on both sides of the Atlantic. Whereas in the United States, normalization is the justification invoked by gay conservatives to defend same-sex marriage, in France, conservative progressives use symbolic, social norms to resist the entry of gays and lesbians into the institutions of marriage and the family, for fear that homosexuality and heterosexuality should be equally legitimate—that is, lest the heterosexual, not to say heterosexual, norm falls apart. Because they are progressives, however, and not simply conservatives, they compensate for this refusal by encouraging gays and lesbians to remain “subversive” while staying out of marriage, in *unions libres* (unions “free” from institutional legitimation) or even in a form of “radicality” that they trace either to Michel Foucault (Théry) or to Jean Genet (Agacinski).

Comparative Rhetorics: Sexual Difference

The spectrum of political positions and arguments in both countries can thus be understood in its historical logic: a political stance is obviously always a political strategy that takes into account the context in which it operates. The political positions in the debates that more or less simultaneously took place on both sides of the Atlantic help us to understand the rhetorics invoked in both cases. Again, they do not translate well—all the more reason to compare them. The examples of these differences in the rhetorical structure of the two debates are numerous: the way in which AIDS has been invoked has already been mentioned. In the United States the reference to AIDS has played in an a priori logic, as monogamy

27. Agacinski, *Politique des sexes*.

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is presented as a form of prevention. In France, by contrast, the ex post logic has prevailed: the PaCS is a way to deal with painful situations created by AIDS. Clearly, the logic of normalization does not function in the same way in both polemical contexts.

I would like to focus on two major differences between the French and American debates. The first has to do with the question of sexual difference. Through the transatlantic comparison, I have tried to show how the meanings that can be attached to a specific position can vary between different national contexts. It should be added that this historicist approach also applies within each national context: in neither France nor the United States was it a priori necessary that the debates and positions should have been shaped in the way they have been. Necessity only comes in a posteriori. This theoretical point has political consequences: we are not necessarily trapped in these logics. Sexual difference is a case in point. In the United States, feminist arguments were originally presented both for and against same-sex marriage: this was the debate formulated by Nan Hunter or Susan Moller Okin (pro), and by Paula Ettelbrick or Nancy Polikoff (con), as to whether or not same-sex marriage will “dismantle the legal structure of gender in every marriage.”²⁸ Not surprisingly, as Sullivan’s “conservative case” gained prominence, the feminist argument in favor of same-sex marriage vanished from the public stage—but its initial presence should not be forgotten.

Conversely, the Hawaii Supreme Court’s *Baehr v. Lewin* decision was based on an argument that (to quote Eskridge) “dresses a gay rights issue up in gender rights garb.”²⁹ This was not about gay marriage, according to the decision, but about same-sex marriage. One could choose a spouse, regardless of his or her gender. This was the way to circumvent the absence of antidiscrimination laws that encompassed sexual orientation (contrary to in France): same-sex marriage was about discrimination in terms of sex. Whether gay marriage contributes to undermining gender roles or, to the contrary, helps impose a heterosexual norm upon gays and lesbians, gender, or sexual difference, has thus proved the best weapon in the hands of gay rights proponents in the United States.

28. Nan D. Hunter, “Marriage, Law, and Gender: A Feminist Inquiry,” *Law and Sexuality: A Review of Lesbian and Gay Legal Issues* 1 (summer 1991): 9–30. Susan Moller Okin, “Sexual Orientation, Gender, and Families: Dichotomizing Differences,” *Hypatia* 11 (winter 1996): 30–48. Paula Ettelbrick’s argument (“Since When Is Marriage a Path to Liberation?”) is presented in a debate, alongside Thomas Stoddard, in *OUT/LOOK: National Gay and Lesbian Quarterly* 6 (fall 1989): 9–17. Nancy D. Polikoff, “We Will Get What We Ask For: Why Legalizing Gay and Lesbian Marriage Will Not ‘Dismantle the Legal Structure of Gender in Every Marriage,’” *Virginia Law Review* 79, no. 7 (October 1993): 1535–50.

29. Eskridge, *The Case for Same-Sex Marriage*, 172.

By contrast, in France, sexual difference is the weapon that has consistently been used against the PaCS and its potential consequences in terms of filiation. This is the argument made by sociologists such as Théry, philosophers such as Agacinski, and anthropologists such as Héritier, as we have seen, as well as by many others, including psychoanalysts such as Pierre Legendre.³⁰ They all explain that sexual difference is a fundamental (they say “anthropological”) reference that is prepolitical insofar as it structures society: as a consequence, it should not be trifled with politically. Filiation without sexual difference would thus undermine a symbolic order that is the very condition of our ability to think and live in society.

This argument is to be understood in the context of the simultaneous feminist debate on *parité* (equal political representation for women). French feminists have been sharply divided on this issue, as the theoretical foundation of this political claim has been, precisely, sexual difference. While many have supported *parité*, despite (as strategy) or because of (as principle) its reliance on this rhetorical justification, many others have virulently opposed this return of a model that they fear might throw women back, yet again, to their “natural” role—and this is where the debate within feminism encounters the debate on homosexuality. Reproduction is the key: if sexual difference is to have a foundation, it is bound to be in the reproductive role of women. Bypassing sexual difference in the definition of same-sex filiation would thus pose questions for the political agenda of some feminists.

As a consequence, it is not surprising that Agacinski’s argument against “homosexual” filiation should appear in the context of her defense of *parité*: this is how she encounters the issue of the PaCS in her book *Politique des sexes*. As she justifies *parité* in the name of sexual difference, she feels compelled to oppose filiation without sexual difference. On the contrary, a universalist feminist philosopher such as Evelyne Pisier, logically following her opposition to the use of sexual difference as a political weapon, starts from her rejection of *parité* and ends up supporting reproductive rights for same-sex couples.³¹ Things can, of course, be more complex: there are those, like Théry, who oppose both *parité* and the PaCS and argue that while sexual difference is unduly forgotten in the latter, it is absurdly evoked in the former “where it does not belong.”³² To Théry (and

30. See Pierre Legendre, interview by Catherine Portevin, “La loi, le tabou et la Raison,” *Télérama*, no. 2555 (December 1998): 12–14.

31. Evelyne Pisier, “PaCS et *parité*: du même et de l’autre,” *Le Monde* (Paris), 20 October 1998, 18, and Pisier, “Contre l’enfermement des sexes,” *Le Monde* (Paris), 11 February 1999, 12.

32. Irène Théry, interviewed in the “*Parité*” dossier published by the weekly *L’Express*, 11 February 1999, 83.

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others), sexual difference is an anthropological, rather than a political, principle. And there are those (including myself) who have supported both while rejecting the terms of the debate by relying on the language of equality and discrimination (rather than of sexual difference), whether addressing feminist or gay and lesbian issues, *parité* or PaCS.

Comparative Rhetorics: Marriage and Filiation

A second comparison can be drawn between the rhetorics developed in both countries. It has to do with the comparative importance of marriage and filiation in the American and French debates. In a word, one could summarize it thus: while in France it seems that filiation is sacred, the same may be the case in the United States for marriage. The sacred character of filiation in France is apparent in the reference to a “symbolic order” that would be put at risk should reproductive rights be granted to same-sex couples. Théry even evokes our “anthropological duty” to preserve filiation.³³

In France, conservative progressives (as opposed to real conservatives) welcome the privatization of marriage (*démariage*) and its logical consequences—unmarried couples as well as “blended” (*recomposées*) families. But they feel that this recognition of change within marriage should be counterbalanced by a refusal of change within filiation. The lives of children may be affected (for example, by divorce) but not their lines of descent. This is the reason for the immutable nature of filiation that conservative progressives proclaim: it is precisely because the norms of conjugality (or affinity) can legitimately change that it would be illegitimate to change the norms of filiation (or consanguinity). As a consequence, they oppose same-sex marriage only insofar as it would open the way to a radical change in filiation—which they must then define in universal terms, beyond historical change, through “sexual difference.”

On the contrary, in the United States, it is notable that the link between both issues is quite different. For example, when, in 1997, New Jersey first granted adoption rights to gays as couples (joint, as opposed to individual, adoption), the decision did not seem to be in any way associated with the issue of same-sex marriage.³⁴ More precisely, it seems that in the United States today, should the

33. Irène Théry, “L’homme désaffilié,” in “Malaise dans la filiation,” ed. Irène Théry, *Esprit*, 12 December 1996, 51.

34. Following a ruling by Judge Sybil R. Moses on 22 October 1997, an agreement was established with state child welfare officials on 17 December 1997. See Ronald Smothers’s articles in the *New York Times*: “Court Lets Two Gay Men Jointly Adopt Child,” 23 October 1997, B5, and “Accord Lets Gay Couples Adopt Jointly,” 18 December 1997, B4.

issue of children arise, it then tends to be used in favor of same-sex marriage. The decision of Circuit Judge Kevin S. C. Chang in Honolulu in 1996 is interesting in that respect: the question of children was raised because the state had tried to oppose same-sex marriage on the grounds of the interest of children.³⁵ But of course, experts were of no help to the state: the judge could not but infer that the interest of children is to have parents, sexuality or sexual difference notwithstanding. The contrast with France also applies to the kind of expertise invoked in legal arguments: while a priori expertise, founded on the principles of anthropology and psychoanalysis, has prevailed on the French side, the American counterpart has been the a posteriori expertise of social psychologists, based on empirical knowledge.

In fact, more generally, whereas the passions of this debate have focused in France on filiation, in the United States, marriage has been the crucial issue: the reaction against *Baehr v. Lewin* was aptly named the Defense of Marriage Act.³⁶ Meanwhile, in France, conservative progressives could present the PaCS as a threat against the family, rather than marriage, and they could rail against the paradoxical devotion to marriage of gay activists. Again, this may have to do with the fact that this debate developed on the American public stage as part of a conservative agenda, in a society in which the stigma of children out of wedlock remains a defining feature of social exclusion; whereas, in France, sociologists (such as, not surprisingly, Théry) now insist that there is no social difference between married and unmarried couples: the alternative has lost its social meaning; it has become a private issue.³⁷

Why should not this privatization extend to filiation, one may ask? I would like to venture a hypothesis in conclusion—which brings us back to our starting point about the transatlantic rhetorical contrast. Filiation is today linked to another

35. *Baehr v. Miike*, 994 P.2d 566 (Haw. 1999), *appeal from final judgment filed* 11 December 1996 (1st Cir. Ct., Honolulu), CIV. No. 91-1394-05. In a similar way, the issue of children was raised in support of marriage in the 20 December 1999 decision by the Supreme Court of Vermont: plaintiffs challenged “the logic of a legislative scheme that recognizes the rights of same-sex partners as parents, yet denies them—and their children—the same security as spouses.” *Baker v. Vermont*, 744 A.2d 864, 870 (Vt. 1999).

36. The Defense of Marriage Act (Public Law 104–199, 104th Cong., 2d. sess. [21 September 1996]) was voted by Congress and signed into law by President Clinton in 1996. It was an attempt to limit the potential consequences of the legal logic then unfolding in Hawaii. On the one hand, the Defense of Marriage Act (section 3) defines marriage, for federal purposes, as “the legal union between one man and one woman as husband and wife.” On the other hand, it allows states not to recognize (despite the so-called Full Faith and Credit Clause in the Constitution) same-sex marriages that might become legal in other states.

37. Irène Théry, *Le démarriage: Justice et vie privée* (Paris: Odile Jacob, 1993).

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passionate debate in France: the definition of the French nation and *nationalité* through citizenship. Who is French, and who is not? This question has sharply divided left-wing politicians and intellectuals alike, as they have devised strategies and ideologies to deal with the pervasive influence of the extreme Right since the 1980s. The National Front then insisted on defining citizenship through *jus sanguinis* (citizenship determined by parental citizenship, i.e., filiation), in order to close the door to new (as well as old) immigrants, while the universalist model of the Republic depended much more on *jus soli* (citizenship determined by country of birth, i.e., soil), which of course opens the gate of immigration. The French political dilemma has been whether to resist the National Front by insisting on the contrast between “blood” and “soil” or by devising a compromise. Should Republican politics be defined by a clean break with the logic of exclusion or by what conservative progressives defined as a pragmatic resolution—a halfway solution, a *politique du juste milieu*? It may be (this, again, is only a hypothesis) that this debate about same-sex unions, with the sacralization of filiation it reveals, opens onto a wider array of minority issues, including not only feminist but also ethnic politics in France. It is also a debate about the nation.

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