France since the 1970s
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History, Politics and Memory in an Age of Uncertainty

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Republicanism and the Critique of Human Rights

Camille Robcis

In the summer of 1980, Marcel Gauchet, the editor of the journal *Le Débat*, developed one of the most forceful post-war French critiques of human rights in an article entitled 'Human rights are not a politic'.¹ Gauchet contended that his piece was inspired by the sudden revival of human rights in French political and intellectual life during the late 1970s. As Gauchet argued, this revival was surprising since Marxists had, throughout the 1960s, denounced rights as formal fictions and alienating abstractions designed to mask class domination. Furthermore, during these same years, influential thinkers such as Lacan, Foucault, Derrida and Althusser had repeatedly called for the decentering of the human in philosophy and in politics. Yet, human rights were back, and not only in ‘the East’ where they were being deployed to fight totalitarianism, but in ‘the West’, where they were increasingly mobilised against governments that had not been particularly notorious for violating basic individual rights. But more than ‘the West’ in general, Gauchet’s target was France and, specifically, two important currents within the French left. The first was minority groups such as homosexuals, feminists, immigrants, and environmentalists. Inspired by May 68 and the *droit à la différence* movement, these groups had begun to use the discourse of rights to make various political claims. The second was anti-totalitarian thinkers. Bound together by their disillusionment with Marxism and the ‘Gulag effect’, they too had begun to champion human rights during the 1970s as the best antidote to state bureaucracy. In both cases, Gauchet contended, the discourse on human rights served as a subterfuge to avoid tackling the real question haunting the French political and intellectual left at the end of the 1970s – namely, the problem of
imagining a new political and social model that could replace Marxism and fill the void left by its demise. In this context, human rights were merely ‘a way of avoiding, by giving a prepackaged answer, the questions that emerge with the collapse of the social project (projet de société) forged throughout a century and a half of the workers’ movement’. Can and should human rights constitute a politic (une politique), our politic?, Gauchet asked, adding the ‘our’ to emphasise that he was referring to France. The answer in this article and in his subsequent work was an unambiguous no.

Gauchet’s essay appeared in the third issue of Le Débat, the journal that he had founded with the historian and editor at Gallimard, Pierre Nora, a few months earlier in May 1980. It was one of Gauchet’s first publications in the journal and in many ways served as a theoretical manifesto for the journal and for much of Gauchet’s future work. As he recounted in 2002, the critique of human rights that he articulated in his articles for Le Débat and expanded in several books, including Le Désenchantement du monde (1985), La Révolution des droits de l’homme (1989) and La Religion dans la démocratie (1998), had one ultimate purpose: to decipher and understand the disconcerting faces of the new democracy that had arrived: triumphant, doctrinaire, and self-destructive. Gauchet was not the only French intellectual of the time to explore the social and political ramifications of human rights and democracy. His writings were in conversation with those of François Furet, Pierre Rosanvallon, Jacques Julliard, Philippe Raynaud, and others interested in the legacy of the French Revolution and in the limits and contours of popular sovereignty. Like Gauchet, many of these thinkers turned to the Revolution and the nineteenth century to explore the problem of political embodiment and analyse the tension between individual liberty and social cohesion. Moreover, the connection between these thinkers was not only intellectual. Many were affiliated with the Centre de recherches politiques Raymond Aron founded in 1982 at the École des hautes études en sciences sociales (EHESS), a research centre that Gauchet joined in 1989.

For some, this group of historians and philosophers inaugurated a much-needed revival of liberalism in France. For others, they contributed to the development of a new republicanism. Gauchet, however, refused both labels. He was particularly explicit with regard to liberalism. If it consisted in ‘valorising the spontaneous dynamic of individual liberties within civil society and consequently restricting the role of the state (puissance publique)’, then he was not a liberal. Rather, he thought of himself as a democrat and a Socialist, albeit a Socialist deeply disillusioned by the history of socialism in the twentieth century. In this chapter, I follow Gauchet’s own interpretation: I read his essay on human rights as a strong critique of liberalism but also as a plea for a new republicanism, which he defines as a theory of the public, or the res publica. Although the republicanism of the 1980s shared some of the characteristics of previous historical and philosophical republicanisms – particularly that of the Third Republic – most of its defining features were specific to the French political, social, and intellectual landscape of the time.

My goal is thus neither to reinscribe this political philosophy within older republicanisms nor to evaluate its allegiance to a predetermined historical or theoretical framework. Instead, I want to highlight three of its defining features. First, the new republicanism that emerged in the 1980s was defined in opposition to the two dominant political models of the time: Marxism and ‘human rights’ understood as rights-based Anglo-Saxon liberalism. Second, it insisted on a specific division of private and public. According to Gauchet, the political failure of both Marxism and liberalism was due to their shared inability to balance individual rights and state power – in other words, their inability to imagine the public and the private simultaneously. For Gauchet, only the two most ‘talented’ theorists of liberalism – Benjamin Constant and Alexis de Tocqueville – had diagnosed the fundamental interdependence of private and public, but the consequences they had derived from this discovery were erroneous.

Third and finally, Gauchet’s republican articulation of private and public implied a particular organisation of race, gender and sexuality within society. Although he rarely addressed these topics directly, I want to show how other scholars adopted almost verbatim the chronology and typology underpinning Gauchet’s critique of rights. This was the case, for instance, of Paul Yonnet who applied them to the study of race in his pamphlet against SOS Racisme, Voyage au centre du malaise français (published in 1993 in Gallimard’s Le Débat series). Likewise, Mona Ozouf, Philippe Raynaud, and Claude Habib adapted them for their study of gender, and Irène Théry and Frédéric Martel referred to them in their analyses of sexuality. Many of these conversations around private and public took place in Le Débat for which the scholars listed above frequently wrote, but also in other journals such as Esprit directed after 1988 by Olivier Mongin, and Commentaire founded by Raymond Aron in 1978. They also developed in institutions such as the Centre Raymond Aron and the Fondation Saint-Simon where much of this republican theory was, throughout the 1980s and 1990s, adapted into concrete legislation. Ideas that began as abstract debates within the confines of the intellectual left soon found a direct political application. More than simply a theory, republicanism functioned as a practice that guided many policy decisions during these two decades.

Gauchet’s critique of rights

Gauchet’s critique of rights takes shape within two parallel but intersecting chronologies: one more immediate and specific to the French left since May 68; and a longue durée narrative of the advent of democracy, from feudalism, through absolutism, to the age of revolutions. As Gauchet makes clear, his object of attack is not the defence of human rights in ‘the East’ where in their ‘minimal expression’, they served as an umbrella concept to gather a wide range of people fighting the ‘dictatorships, despots, tyrannies, and
totalitarianisms of all sorts that have flourished on the planet'. His concern is the transformation of human rights from a specific mode of political action into the single element holding together the entire social body: from la politique to le politique. According to Gauchet, in 'the West', and more specifically in France, human rights has become the official politique of the left in the post-totalitarianism era. One of the examples of this phenomenon that Gauchet mentions is the *programme commun*, the alliance that the French Socialist and the Communist parties signed in 1972. In this context, human rights provided the consensus that various conflicting groups on the French left needed to mask the flagrant contradiction between their unconditional advocacy of freedom in 'the East' and their endorsement of economic planning and nationalisation in 'the West' - or, in Gauchet's words, the contradiction between the 'imperative of autonomy and the means of political, administrative, and economic concentration that desperately continue to figure in the programmatic horizon of the left's past (antiquités)'.

Beyond the *programme commun*, however, Gauchet attributes the turn to human rights to the larger intellectual failure on the part of the left to understand power, except negatively:

There is an intrinsic curse to power. One must above all not seek to take power because it will automatically reverse the project of emancipation and turn it into a project of oppression; no politics that stain, only moralisms that cleanse and save - all we can do is resist.

Resistance, in other words, demands domination and requires the demonisation of the state, 'an adversary imagined as substantially intangible and always self-identical'. This 'curse to power' was obvious even in the workers' movement, which never recognised that it needed capitalism just as much as capitalism needed workers. By refusing to grapple with the complexities of power, the left has, according to Gauchet, trapped itself in a political and theoretical deadlock. From this perspective, human rights no longer signify 'the preservation and consolidation of the acquired democratic guarantees'. Instead, they function as a 'lever of critique designed to shatter the existing order'. As an example of the latter, Gauchet lists the 'multiple “dissidences”' of groups who, over the past decade, have affirmed their 'sexual, ethnic, and generational differences'. Gauchet also pauses on the environmental movement to illustrate the impasse facing the many leftist groups born out of May 68 who, despite their ability to gather great support and legitimacy, remain 'caught in apocalyptic fantasies and bucolic dreams' and are thus unable to participate in the political process or the *res publica*.

The return to human rights, then, is a product of the particular history of the French left in the 1970s, caught between two legacies of May 68: antitotalitarianism and *droit à la différence*. But contemporary rights talk is also the result of a longer history, one that has interested Gauchet throughout his career: the emergence of democracy and the concurrent invention of the individual. As Gauchet suggests, the 1970s may have been one of those 'great oscillations' in western civilisation, 'linked to the difficulty, if not the impossibility of imagining the individual and society together, of reconstituting a society from individuals'. In the *longue durée*, the story of the relationship between the individual and the social is also a story of the construction of public and private. Gauchet argues that the eighteenth century brought about a fundamental shift in the organisation of the relations between individuals and society. Prior to this turning point, the foundation of the collectivity and the social came from above - from the king, and ultimately from God. In this context, the individual as such did not exist: he could only participate in society as a member of his various innate communities (familial, parochial, corporate ...). With the democratic revolutions of the eighteenth century, the base of power shifted: the individual became the social unit, the bearer of sovereignty. From a world governed by *heteronomy*, we shifted to a world of *autonomy*. This shift brought about the fundamental problem of how to define and delimit society:

if we admit that there are first and foremost individuals, that there are only individuals at the origins, how do we imagine their coexistence, their assemblage (*compossibilité*) within a given society? How do we reach a viable collective sum from the irreducible plurality of separate existences?

Historically, Gauchet tells us, there have been two solutions to this political dilemma: the market and the social contract. But each one tends towards its extreme form: With the market model, this means a conception of the social body as a simple 'association of individual monads (of equal property holders)' and with the social contract, a 'radical and totalitarian negation of the individual' forced to blend into an undifferentiated collectivity. Neither Marxism nor market-driven liberalism has been able, according to Gauchet, to imagine the individual and the social together, as they have emerged and as they will forever continue to exist. With the critique of totalitarianism in the late 1970s, the market and individualism re-emerged as the only viable *politique* for the West, and with it the assumption that

if we were alone in our corner, everything would be better. Unfortunately, we are destined to live in a society, and constituting a society is necessarily harming the autonomy of each individual who is assembled to constitute it. It is necessarily inflicting an irreparable damage to personal sovereignty.

Here lies, Gauchet continues,

the greatest peril concealed by this return to human rights: the possibility of falling back in the rut and the impasse of a theory of the individual against society. This would mean succumbing to the old illusion that we can build upon the individual and begin with the individual, with his
demands and his rights, to reach back up to society. As if we could separate the search for individual autonomy from the push towards social autonomy.22

For Gauchet, however, the problem with modern individualism is not just social and political. It also has important psychic consequences—consequences particularly pertinent given Gauchet's long-standing interest in psychoanalysis and psychiatry.23 The affirmation of individual autonomy, Gauchet writes, 'has invariably gone hand in hand with the increase of collective heteronomy,' and with the alienation of all.24 This concept of alienation—in its basic definition as a disjunction between individual and collective points of view, or between private and public—is central to Gauchet's work.25 As he sees it, human rights and individualism have brought about three types of alienation: the alienation of individuals from the state, from each other, and from their own autonomy. Indeed, as his longue durée narrative makes clear, and as his analysis of the French left corroborates, the rise of the individual is inextricably linked to the rise of state power and the bureaucratic management of society. It was only with absolutism and with the king imagined to represent popular sovereignty that the individual could emerge. Autonomy, in other words, did not arise spontaneously as an 'intimate conviction'. Rather, the idea that individuals constituted 'independent, self-sufficient, equal entities' came from the outside, from a power strong enough to transcend local, familial, religious, and corporate bodies. 'There can be no free and active citizens', Gauchet argues, 'without a separate power able to embody the social universe (univers social).'26 This is the paradox of freedom in modernity that Constant—whose political works Gauchet prefaced around the same time he wrote the human rights article—had already observed in the nineteenth century.27 The development of freedom historically and theoretically entails the expansion of administration, bureaucracy, control, and hence, dispossession: 'state expropriation and consolidation of human rights have to this day gone hand in hand.'28

The second form of alienation that Gauchet explores is produced by abstract individualism. At the same time as the state recognises and caters to the specificity of the individual, it constructs him as an anonymous and interchangeable being, hence once again dispossessing him from his subjectivity.29 Finally, the third and perhaps most pernicious expression of this alienation is the alienation of the individual from his own autonomy. The fact that society grants rights to individuals does not in any way imply that it gives individuals the means with which to exercise this freedom. Thus, in modernity, human rights become 'the right to disinterest oneself from the consciousness of social existence, to enclose oneself into one's private sphere'.30 Privacy in this sense, leads to two problems: one at the scale of the individual who becomes narcissistically isolated, and another at the scale of society where the individual seeks others exactly like him.31 Although Gauchet does not give specific examples of this kind of behaviour, we might think of fascism or the politics of the far-right Front National, which had begun to gather steam in the early 1980s. Gauchet developed this thesis in later works, particularly in La Religion dans la démocratie in which he accounts for the emergence of 'radical communitarianism' (communautarisme) as an effect of democracy and human rights understood as privacy.32 This is also Yonnet's argument in Voyage au centre du malaise française. Yonnet blames the rise of the Front National—which he interprets as populism—on the philosophy of the droit à la différence emerging out of May 68 and more specifically, on the antiracism movement epitomised by the organisation SOS Racisme.33

Gauchet concludes his 1980 essay by arguing that human rights should in no way constitute a politique because they have and always will entail 'the reinforcement of the role of the State, the deepening of social anomy, the aggravation of the disinterest for the public good, and the anguished banalisation of behaviours'.34 Human rights, in other words, can only function as vectors of depoliticisation. We might feel more free in modernity, but only within a society entirely taken care of by the State (de part en part prise en charge par l'Etat). We might feel like ourselves, we may live according to our particularities, but we are interchangeable (n'importe qui) from the point of view of the overall organisation in which we are inscribed. From the outside, we are independent social units, but from the inside we are incapable, on the one hand, of imagining ourselves amid others and in relation to the collectivity, and on the other hand, of acknowledging our difference in relation to others.35

For Gauchet, but also for many of the contributors to Le Débat, France was at a turning point in the early 1980s. It was caught between the crisis of the left and the rise of the extreme-right on the domestic front and the growth of the European Union, the progressive weakening of the Soviet Union, and the rise of the 'American model' abroad. Even so, as Gauchet and many other neo-republican thinkers made clear, human rights and liberalism were not the answer.

**Privacy at the Fondation Saint-Simon**

The critique of individual rights and of privacy that Gauchet so cogently articulated in Le Débat found echoes in many sectors of French political and intellectual life during the 1980s and 1990s. In particular, Gauchet's plea for a new politique beyond left and right concurred with the mission of an important think tank, the Fondation Saint-Simon. Founded in 1982, the Fondation Saint-Simon was named after the Comte de Saint-Simon who had wrestled with the social effects of industrialism at the beginning of the nineteenth century.36 The Fondation was originally set up by Philippe Vianney (a resistance fighter who, after the war, had sought to promote a dialogue
between Communists and priests, and between workers and the bourgeoisie), Roger Fauroux (the president of the glass factory Saint-Gobain), and his right-hand man, Alain Minc. Fauroux - a graduate of the prestigious École normale supérieure - was weary of economic reductionism and his idea for the Fondation was that it would encourage industrialists and businessmen to engage more actively with intellectual culture. Fauroux convinced the historian of the French Revolution François Furet to join him, as well as the political scientist Pierre Rosanvallon, an economic advisor at the Confédération française démocratique du travail (CFDT) trade union and a professor at Sciences Po. During the two decades in which it was operational, the Fondation gathered some of the most prominent and influential intellectuals, business leaders, civil servants, elected officials, and journalists. The members of the Fondation met for monthly lunches that were followed by a talk by an invited speaker. Several of these were subsequently published as short essays (notes) ranging from 10 to 100 pages, of which a thousand or so copies were printed.

Many of the talks and notes at the Fondation developed the critique of privacy articulated by Gauchet in 1980. Those involved with the Fondation were by no means ideologically and politically uniform, but they did share the sense that France was at a point of transition, between the ongoing demise of Marxism on the one hand, and the growing influence of the United States on the other. As Alain Minc put it, the mission of the Fondation was to overcome the 'ideological and sociological cold war' that had paralyzed France at the end of the 1970s. In the words of Pierre Rosanvallon, the Fondation was born after the 1981 election of Mitterand, 'at a time when the French left was still entangled with the intellectual and political archaism of the programme commun'. Like Gauchet, Rosanvallon emphasised the need for the left to put an end to the 'demonisation of governmental culture'. This meant the elaboration of a new form of republicanism, one of the central axes of which was the distinction between private and public, expressed as the difference between individual rights and the state. At the same time, the members of the Fondation were aware of the dangers of modern democracy: it was here that the powerful concept of communautarisme was developed and popularised. Soon, communautarisme came to be defined tautologically as what was not republican, what was not French, and what was symptomatic of human rights having become a politique.

Two of the Fondation's notes from the mid-1990s were particularly important in establishing the limits of privacy in the context of sexuality. The first, written by the sociologist Frédéric Martel, was entitled 'The communitarian temptation: Homosexual liberation and the fight against AIDS'. The second, by the sociologist Irène Théry, focused on France's first domestic partnership bill - the Contrat d'union sociale (CUS). Martel entered the debate around privacy by distinguishing good homosexual politics from communitarian 'temptation', which turned human rights, understood in Gauchet's sense of the term, into a politique. Théry, for her part, reframed public and private by assimilating heterosexuality to publicity and homosexuality to privacy.

Martel's talk at the Fondation Saint-Simon in April 1996 was an excerpt from his history of French homosexuality since 1968, Le Rose et le noir, which was released at the same time. Much has been written about Martel's controversial theses in this book, particularly his assertion that French gay circles were partly responsible for the spread of AIDS in the early 1980s because of their 'denial' of the virus. What interests me here, however, is Martel's chronology of the homosexual movement, from the 'revolution of desire' (1968–79), through the 'era of socialisation' (1979–84) and the 'era of the end of carefree life' (1981–9), to the 'era of contradictions' (1989–96). If the 'era of socialisation' is characterised by the final decriminalisation of homosexuality under the auspices of the Socialist Party - in other words, the good kind of human rights - the 'era of contradictions' corresponds to the rise of homosexuality as a politique. To elucidate this distinction, Martel targets the group Act Up, 'a political movement' that he contrasts with Aides, the association founded by Michel Foucault's long-term partner Daniel Defert in 1984, which Martel describes as a 'social movement'. Martel's interest in Aides lies primarily in the fact that it stressed the moral character of its mission; it emphasised the importance of cross-community solidarity and it refused to be considered a 'gay organisation' despite the fact that it was fighting AIDS. As he puts it, they were 'homosexual activists but not homosexuals engaged in identity politics (lettres identitaires)'.

In contrast to Aides, Martel argues, Act Up was an organisation of complicated origins. On the one hand, it was imported from the United States, the country that had given birth to the most radical forms of communautarisme 'where it is possible to be promoted to a full professor because you are gay'. On the other hand, it was in line with the philosophy and political tactics of the French extreme left during the 1970s from which it borrowed 'its contestatory sense, its general assemblies . . . , its appearance of direct democracy'. In Martel's narrative, Act Up epitomised the type of minority group - a 'homosexual association' - that mobilised human rights at the expense of the social and of the state. 'Act Up', Martel writes, 'believes in the role of state, (only) by criticizing it permanently.' Within this model, the state is necessary, both as the structure that constantly needs to be attacked and as the solution to the most pressing political problems.

Although Martel is unequivocal in his support for the decriminalisation laws of the 1980s, and even more for the domestic partnership legislation of the late 1990s - both of which were promoted by its advocates as 'human rights' - he is particularly sensitive to the limits of the discourse on rights. Martel pauses on two examples to illustrate its excesses (dérapages). The first is the defence of rape and paedophilia that certain gay activists, 'swept by the new logic of rights, almost intoxicated by it', staged in the 1970s. The second is the phenomenon of 'Gay Pride', which Martel denounces as 'offensive communitarianism' and indicative of the 'gradual move towards
the Americanisation of French society'. Although Martel recognises that 'Gay Pride' reflects a legitimate concern about the place of homosexuals in tomorrow's society', he contends that these communitarian demands also reveal modes of disarticulation, the dissolution of the bonds of society in contemporary France. And every society must be able to rely on all its members, who must be able to communicate among themselves... Today, it seems that homosexuals are demanding not just equal rights but also, perhaps, collective recognition.48

Homosexuals, Martel argues, should not be assimilated to other minorities – ethnic or religious – and homophobia is neither eternal nor natural:

Those who suggest that homosexuals of necessity face a hostile world are not quite in touch with reality, and they show an immoderate interest in being cast as victims. Or perhaps the repeated denunciation of homophobia is a strategy aimed at maintaining a semblance of unity in the 'homosexual community'. If so, then it is a very risky business, since the gays' salvation will not come from a logic of victimization or from the conviction that, as people, they are pariahs.49

Martel's analysis of homosexuality thus forecloses any analysis of structural violence. It suggests that if integration has been a problem for homosexuals – as the case of AIDS made especially evident – it is because of their own failure to integrate themselves into society. Martel ends his book, and his talk at the Fondation Saint-Simon, with a call to leave behind communitarianism and a reductive, 'homogenizing' identity... to abandon a form of sexual kinship that cannot keep its promise of community... to propose that the issue of homosexuality no longer has any meaning or reason for being.

As he concludes, 'homosexuality', in quotation marks, as an identity or a 'human right' mobilised to make a series of specific political claims, should no longer exist.50

One of the best mechanisms of integration according to Martel – and consequently, one of the best protections against communitarianism – is the domestic partnership law that France debated throughout the 1990s and that was eventually adopted in 1999. Irène Théry's note at the Fondation Saint-Simon addressed the first version of the bill – the CUS – that preceded the better-known Pacte civil de solidarité (PACS), and sought to grant a series of rights to all cohabiting couples, whether heterosexual, homosexual, roommates, siblings, or joined by any other bond. The promoters of the CUS strategically designed the bill to include unions of all sorts, thereby ensuring that it remained within a 'republican logic'. The influential philosopher and intellectual Elisabeth Badinter, for example, gave her support to the bill precisely because it was 'universalistic'. As she told the newspaper Libération in 1992:

I am convinced that we are now within the right to 'indifference': leave us alone, we are like everyone else. The right to differentiation is what gives rise to the ghettoisation of minority communities, to the rejection of the majority community, and to oppression.51

The organisers of the Gay Pride parade took a similar view of the CUS. In 1996, more than 100,000 people marched in the streets of Paris demanding the 'right to indifference'. As one of the Pride coordinators explained:

We are not within an Anglo-Saxon communitarian logic of 'ghettos'. It is exactly the opposite. This contract has a universal impact: it seeks to recognise the link between two persons who have a project of common life, whatever their sex may be.52

After a long and complex argument, Théry ended up opposing the CUS for three main reasons: because the CUS sought to encompass non-sexual relationships; because it refused to distinguish homosexual from heterosexual couples; and because it undermined the power of republican marriage. She proposed to replace the new law with a series of specific and limited reforms. She advocated more rights (housing rights, tax breaks, and health insurance) for all cohabiting couples, as she drafted a reform of marriage, divorce, and inheritance laws, to make marriage more accessible and attractive for heterosexual couples. Parallel to this, Théry suggested that the government create a 'contract of coupled life' restricted to same-sex couples, similar to the one that many Scandinavian nations had set up. 'The proposition of a true "contract of coupled life"', Théry argued, 'is a way to engage much more clearly in the legal recognition of the homosexual couple, in the name of equality, while saying no to assimilation, in the name of difference.'53 This new contract, Théry specified, would grant same-sex couples exactly the same rights given by marriage but it would not give access to adoption or to reproductive technologies, two of the most controversial questions during these debates.54

Théry's talk at the Fondation was republished in the journal Esprit in October 1997. A few months later, Théry was solicited by the Socialist Minister of Justice, Elisabeth Guigou and by the Socialist Minister of Labour and Solidarity, Martine Aubry, to produce a report on the state of the family – including an assessment of same-sex partnerships. Her thoughts thus had a direct impact on legislation. In this sense, Théry provides a good case study of how the republican theory of private and public was applied to actual policy. Much of Théry's analysis of the CUS was premised on her previous work on the family, and especially her 1993 book, *Le Démariage: Justice*.
et vie privée, in which Théry conducted a vigorous critique of rights and privacy in the domain of sexuality and family law. Théry's book centres on the question of divorce, but it also offers a history of marriage in France, the chronology of which is remarkably similar to that of Gauchet. In fact, Théry explains that she chose to title her book *le démariage* (as opposed to *le divorce*), in reference to Gauchet's work, and more specifically to his *Désenchantement du monde*, in which Gauchet discusses secularism not as the opposite of religion but rather as an 'exit from religion'. Marriage therefore serves as the primary frame of reference for Théry, in the same way that religion does for Gauchet:

When we say that marriage has become a private matter, we do not simply designate a change in the personal expectations vis-à-vis a union, but rather a cultural phenomenon analogous to ... the 'disenchantment of the world' that Marcel Gauchet describes in relation to religion. Like religion, marriage is no longer consubstantial with the human universe of our societies. It has become a subjective experience. To embrace it or to break it is a question relegated to one's individual conscience.55

This sense of freedom deriving from the phenomenon of *démariage* has shattered the very definition of the private.

Théry's argument rests on a very specific history of marriage in France. It begins in 1792 with the secularisation of the sacrament and the establishment of civil marriage. The years that followed were marked, according to Théry, by a tension between two legal understandings of marriage and family. She calls the first a *droit de principe* (law of principles). According to this legal philosophy, 'human rights do not stop at the door of the private' and the family has no particular specificity. As a result, it is governed by the same principles that underlie all political rights. Théry opposes this *droit de principe* to what she calls a *droit du modèle* (law of models), 'founded on the idea that the family is an irreducibly specific society and that the role of the law is to preserve the particular nature of the relations between father, mother, children and spouses'.6 If revolutionary family law ended up privileging the *droit de principe*, the 1804 Civil Code represented the consecration of the *droit du modèle*, and thus of a particular configuration of the public–private divide. The architects of the Civil Code were indeed adamant about the fact that the family was constitutive of the social. Writing in the aftermath of the Terror, they argued that the family controlled and framed men's natural instincts and passions, that it constituted a crucial normative structure, and that it provided the social and psychic stability necessary for a steady and secure political life.

For Théry, the 'turning point' – which is akin to the turning point of 1968 in Gauchet's history of secularisation – was the 'quiet revolution in family law' in the 1960s and 1970s, which modified several of the key clauses in the Civil Code concerning marriage, filiation, adoption, parental authority, and divorce. According to Théry, these reforms were inspired by a new legal philosophy of 'human rights' that privileged freedom and equality at the expense of the cohesion of the social body.57 Family law, in other words, became exclusively governed by a *droit de principe* as opposed to a *droit du modèle*. The new laws were presented as the simple adaptation of law to the more 'liberal, pluralistic, and “neutral”' mores of the day. But they also implied a greater degree of involvement of the state. In short, they were increasingly 'managerial (gestionnaire)'.58 In her narrative, Théry holds the left particularly responsible for abandoning 'a normative logic in favour of a social logic'.59 The left, she writes, was characterised by a 'mistrust of the law as an instrument of domination. This is why it claimed for itself, not an alternative legal norm, but rather the pure and simple refusal of all legal limits on individual autonomy.'60 The best example of this is the 1975 divorce law, which doubly illustrates Gauchet's critique of human rights. First, it reveals the left's inability to understand power positively and to work with the state, rather than against it. Second, it exemplifies the double-bind of modernity described by Gauchet whereby the liberalisation of the law and the increase of individual freedom actually bring about greater state surveillance and a tighter administrative control of the family and private sphere.

In Théry's view, private life since the 1970s has become 'a space in which the individual no longer wants to account to anyone but himself'.61 This means that we are at once 'more free and more exposed, more responsible and more insecure, more autonomous and more fragile'.62 The question of *démariage* is a collective one, Théry writes, because 'it explodes our normative universe. The real stake is not the withdrawal of the law but the problem of how to establish a new foundation for our common law'.63 Théry, like Gauchet, attributes this new individualism to the history of France during the 1960s and 1970s. She also portrays it as an American import. In particular, Théry relies on an article by Philippe Raeymaek, entitled 'From the tyranny of the majority to the tyranny of minorities' (published in 1992 in Le Débat and also presented at the Fondation Saint-Simon) and on François Furet's work on American 'democratic utopianism'. Both texts depict the United States as the land of political correctness, hyperindividualism, and the reigning 'ideology of minority rights'.64 In Théry's analysis, the US serves as a case study to explore the social consequences of human rights having become a politique. In the American model, the state has merely 'one power and one duty: to protect the rights to self-determination and self-fulfilment'.65 As for the individual, 'his only collective identity is that which his group of belonging – or his biological group – grants him'.66 And like Gauchet, Théry pauses on the psychic effects of this new individualism, and particularly on the alienation of individuals absorbed with their insular concerns – theirs petites affaires, to use Tocqueville's term.67 Like Martel, Théry concludes with an ominous warning about the dangers of this 'dubious communitarianism'. Thankfully, she writes, France has not yet reached the stage of the US but the recent debates concerning the rights of children, the
most useful for Théry in this ‘return to the law’ is that of ‘the symbolic’. Loosely derived from the works of Claude Lévi-Strauss and Jacques Lacan, ‘the symbolic’ allows Théry to establish a causal relationship between psychic, familial, and social structures, and to ground them in heterosexuality. Thus, her ‘return to the law’ is premised on the centrality of heterosexual marriage, the institution required to guarantee psychic well-being and social cohesion, which is the necessary condition for France’s politique.

This concept of the symbolic is also crucial for Gauchet who has described his project as a ‘transcendental anthroposophy’ inspired by two great ‘masters’: Claude Lévi-Strauss and Jacques Lacan. From anthropology, Gauchet derives a theory of the human, ‘of what constitutes the humanity of man’. Sociology is the necessary counterpart to anthropology since man is intrinsically social. Furthermore, Gauchet’s theory is transcendental in the sense that it aims to discern the conditions of possibility and the philosophical dimension of ‘the whole’. In his words: ‘I seek to understand the articulation of what makes man social by nature – that is to say, that which governs the architecture of our societies – and the psychic organisation that is ours’. Gauchet’s notion of a ‘transcendental anthroposophy’ offers us a model of private and public (the anthropological and the social) that is universal, structural, and solidly grounded in sexual difference. Within this paradigm, heterosexual exchange serves as the necessary condition for social and psychic development. Because Gauchet presents this model as structural, his construction of private and public appear normative, logical, and beyond all geographic and historical specificity. Gauchet’s ‘transcendental anthroposophy’ – his symbolic – can be interpreted precisely as a republican politique. It is a political, social, and psychic model able to unify public and private in a universalist and transhistorical framework premised on heterosexual exchange.

More generally, Gauchet’s critique of rights had important intellectual and political ramifications. It shaped the agenda of Le Débat for two decades and offered a template for other scholars interested in examining how Gauchet’s articulation of private and public might be ‘applied’ to specific social groups. The talks delivered by Frédéric Martel and Irène Théry at the Fondation Saint-Simon were two examples of this ‘application’ in the context of sexuality. Because these talks were attended or read by some of the most prominent figures of the French political world, they also allow us to trace how republican ideas were translated into concrete legislation. The republican vision of sexuality, in other words, did not simply remain an object of theoretical speculation: it actually guided many of the laws concerning homosexuality throughout the 1990s, including the PACS. Most importantly, the interventions of Martel and Théry highlighted the significance of Gauchet’s analysis: his discussion of private and public was not simply about rights and the domain of the law; it was also a battle over norms. The new theory of democracy devised by Gauchet and developed by Martel and Théry depended on a transcendental, universal,
and ahistorical understanding of (sexual) norms. As a political theory, republicanism offered the possibility of resisting history and refusing the social diversity that was increasingly visible and vocal in late twentieth-century France.  

Notes


2 Gauchet, 'Les Droits de l’homme', see Note 1, 5.

3 Gauchet, 'Les Droits de l’homme', see Note 1, 4.

4 For a history of these early years of Le Débat, see Marcel Gauchet, La Condition historique (Paris: Stock, 2003), 197–220.

5 Gauchet, La Démocratie contre elle-même, see Note 1, i.


8 Gauchet, La Condition historique, see Note 4, 342.


11 Gauchet, La Démocratie contre elle-même, see Note 1, 2–3.

12 Gauchet shares Lefort’s understanding of le politique as that which institutes society (la forme de la société) and which ‘constitutes social space’. See Claude Lefort, Essais sur le politique: XIXe–XXe siècles (Paris: Seuil, 1986), 20.

13 Gauchet, La Démocratie contre elle-même, see Note 1, 9.

14 Gauchet, La Démocratie contre elle-même, see Note 1, 10.

15 Gauchet, La Démocratie contre elle-même, see Note 1, 11.

16 Gauchet, La Démocratie contre elle-même, see Note 1, 11.

17 Gauchet, La Démocratie contre elle-même, see Note 1, 12.

18 Gauchet, La Démocratie contre elle-même, see Note 1, 13.

19 Gauchet, La Démocratie contre elle-même, see Note 1, 15.

20 Gauchet, La Démocratie contre elle-même, see Note 1, 15.

21 Gauchet, La Démocratie contre elle-même, see Note 1, 16.

22 Gauchet, La Démocratie contre elle-même, see Note 1, 17–18.


24 Gauchet, La Démocratie contre elle-même, see Note 1, 18.

25 Gauchet, La Démocratie contre elle-même, see Note 1, 25.

26 Gauchet, La Démocratie contre elle-même, see Note 1, 19–20.


28 Gauchet, La Démocratie contre elle-même, see Note 1, 21.

29 Gauchet, La Démocratie contre elle-même, see Note 1, 22–3.

30 Gauchet, La Démocratie contre elle-même, see Note 1, 23.

31 Gauchet, La Démocratie contre elle-même, see Note 1, 23–4.


34 Gauchet, La Démocratie contre elle-même, see Note 1, 25.

35 Gauchet, La Démocratie contre elle-même, see Note 1, 25–6.


38 For more on how the rhetoric of communautarism developed during these years, see Clarisse Fabre and Eric Fassin, Liberté, égalité, sexualité: Actualité politique des questions sexuelles: entretiens (Paris: Bellond, 2003); Laurent Lévy, Le Spectre du communautarisme (Paris: Éditions Amsterdam, 2003); and Joan Wallach Scott, Parti! Sexual equality and the crisis of French universalism (Chicago, IL: University of Chicago Press, 2005).


Théry, *Le Démariage*, see Note 55, 79.

Théry, *Le Démariage*, see Note 55, 80.

Théry, *Le Démariage*, see Note 55, 91.

Théry, *Le Démariage*, see Note 55, 120.

Théry, *Le Démariage*, see Note 55, 444.

