The French Law "Marriage for All" a lot of Noise, and Then?

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Summary

Upon a recent decision of the Federal Supreme Court, the USA has become the 15th country in the World to act marriage as a civil right for same-sex couples. Just two years before, in a very different constitutional environment, France acted an equivalent law including adoptive filiation. France had to overcome a long debate at the parliament and passionate reactions among the various secular and religious constituencies of its society. This article tends to address three main questions: How does the law actually change the family environment of same-sex couples? Why the most willing legislators advised by the most competent lawyers had to revise their initial project? Looking forward, what could be next? I attempt to answer those questions based on an analysis of the dispositions of the law itself and an understanding of the cultural and historical context of French society. I argue that the law passed is only a second step to a series of reform France will necessarily adopt in order to keep path with most advanced democracies and achieve full civil right equality for LGBT persons, couples and families.

Key words

Same-sex marriage, adoptive filiation, civil rights, couple, family, medically assisted procreation, surrogacy, social parent, gender identity, sexual orientation, religion, Judaism, interfaith, LGBT.

On April 23, 2013 at 17:00 pm or so in the Assemblée Nationale (French House of Representatives): 566 voters; 556 votes cast; 331 votes in favor; 225 votes against. With this solemn vote of the law called "Marriage for All", the public debate closes. It has given rise to over 170 hours of parliamentary discussions, strong positions marked among representatives of religions and in civil society and many demonstrations in the streets of France’s major cities for six months.

With hindsight, it is useful to review three issues: Concretely, what has this law changed? Why did it wake up so much underlying passion? What areas for future improvements can we imagine?

What does the legislation say?

To answer the first question, we should come back to the wording of the law itself. That analysis should have been a prerequisite for all those who have spoken publicly on the subject. It is impossible here to review all the details of the law; so we will limit ourselves to the most significant changes to some articles of the Civil Code.
The new Art. 6-1 is the founder: "Marriage and adoptive filiation imply the same rights and obligations recognized by the law (...) whatever the spouse or parents have opposite or same sex." This amendment gives the same rights and obligations to all couples regarding marriage and adoption. No specific right is granted to LGBT persons nor any right removed to straight persons.

Other more known modifications are just details compared to the above mentioned article:
- In Art. 34, the words "father and mother" are replaced by the word "parents".
- In Art. 75, the words "husband and wife" are replaced by the word "spouse".
- And of course the Art. 143: "Marriage is contracted by two persons of different sex or the same sex."

After provisions for adoptive filiation which, in addition to open adoption to same-sex couples when they are married, states in Art. 360 that "The child previously adopted by one person, in the simple or full form, can be adopted a second time, by the spouse of the latter, in the simple form." Needless to recall that the adoption was already open to single people aged over twenty-eight and it remains impossible to unmarried couples.

Finally, in Art. 371, a provision maintaining links between the child and the third or social parent (divorced spouse of legal parent), "especially when the third parent has resided stably with the child and one of his parents, has provided for his education, its maintenance or installation, and established with him lasting emotional bonds."

By reading objectively this text, we search in vain for the "change of civilization" that some have feared and others hoped.

**Specifically, what did the law change?**

Not much for the overwhelming majority of French who already had access to these rights ... But much to the minority who did not yet have access. Homosexuals have yet lived well without this law. They were already living with a partner like all unmarried or civil partners and some did not wish to marry. They could already have children and raise them as all the parents who do not live together. Even after the law, it is likely that the majority of same-sex couples continue to be candidates for adoption as singles, at least as long as most foreign countries refuse to entrust children to homosexuals.

So why is this step towards equal rights so important? First it recognizes the changing family structures and diversity of experience of each in French society today; in this, it will help to change attitudes. Then it secures the connection between the partners in the couple and between the parents and their children, including after divorce; in this, it will protect the weakest, especially the children. Finally, it meets the long wait of all those for whom the symbol and the marriage ceremony are so important. They are a minority in the national community, certainly. But a democracy honors itself above all by how it treats its minorities? Arguably, the situation was similar when Jews were granted full citizenship by the Revolution on November 13, 1791. They also represented a tiny minority of the French population.
Specifically, according to INSEE (French Agency for Statistics):
- In 2013, 7,500 same sex marriages were celebrated, in 2,900 cities in France, out of a total of 231,000 marriages.
- In 2014, the first full year of application of the law, 10,000 same sex marriages were celebrated, in 6,000 cities of France, out of a total of 241,000, or exactly 4.1%.
- Meanwhile the number of same-sex civil unions decreased of about 1,000 to 6,000 in 2013.
- We count in France 100,000 homosexual couples.
The proportions are representative of the actual weight of homosexuals in the French population, or about 5%. Those proportions are also similar within the marriage and within the civil union statistics.

So why did this law arise such passionate reactions?

The representatives of the religions of the Book have been the first to express their hostility in a single voice with some notable exceptions. It is ironic in the case of a civil law. But should we be surprised since the secular Republic formally seeks their views, just as it solicits civil society - "qualified experts" or "representative associations" - during formal hearings in the Ministry of Justice, the House of Deputies and the Senate?

We cannot discuss here all the arguments used by each of them. We just try to recall the main and especially to highlight those little taken back by the media.

The Catholic Church has been particularly pointed. Its hierarchy justifies its total opposition to the law by referring to the traditional and supposedly unique family unit - father, mother, children, and preferably biologic children -. Other less respectable reasons can also explain this visceral reaction. Is one of those reasons the fact that the Catholic clergy hierarchy wanted to avoid a real and substantial debate on homosexuality? Did they feel a threat hovering on celibacy in the clergy? As an exception to what was just said, we note the more balanced position of the news magazine “Témoignage Chrétien” (Christian Witness) and the support to the law brought forward by some Protestant churches (La Maison Verte - The Green House, Le Carrefour des Chrétiens Inclusifs – Inclusive Christians Crossroad) and the Christian LGBT movement David and Jonathan.

The chief rabbi of France had also a prominent voice in the debate. In September 2012, he signed and circulated an essay which incorporates and complements the anthropological argument of the Catholic Church, which made the chief rabbi of France then be cited by Pope Benedict XVI in person. This text borrows from the language of war to denounce such a law would be "a Trojan horse (...) to dynamite the heterosexual foundations of our society." Terms that have surprised everyone who knew the authentically moderate positions Gilles Bernheim have adopted for decades. The internal politics of the Consistoire (French Jewish religious Council) probably explains, at least in part, this awkward wording. Another possible reason: Judaism prides itself to respect the civil laws of the country; is there then the fear of one day having to recognize same-sex marriages and celebrate them religiously? Other rabbis have spoken and written in different
terms while still very well documented. That was particularly the case among Conservative and Reformed Judaism, a reminder that Judaism is diverse in France and in all countries of the world.

Not surprisingly, the CFCM (French Muslim religious Council) has followed suit to the proponents of the family orthodoxy.

We do not believe that all opponents of the law are homophobic. But traditionalists must deconstruct prejudices. Their prism saw homosexual individuals choosing sex rather than love, preferring the comfort of celibacy to the commitment of marriage and fleeing the responsibility of parenthood and family. This prism was already quite shaken by civil union law in 1999; now this new law threatens to blow it away!

An undeniable popular movement was then mobilized pro or against the project. Rather soft movement at the beginning but gradually preempted by radical movements, particularly among "anti gay marriage". Following the religious organizations, some political parties - in lack of alternative project - attempted to benefit from the movement they had not created. However, they only achieved to make their voice loud during parliamentary debates.

To relativize the violence of these debates and demonstrations, recall that France has seen similar reactions to many reforms of society: re-establishment of divorce in 1884, liberalization of contraception and legalized abortion in 1974 and 1975, abolition of the death penalty in 1981, introduction of civil union (PACS) in 1999. In all cases traditionalist Catholic circles, combined with the more conservative politicians are crying conspiracy. The anti-Semites attacks the bearer of the law (Alfred Naquet; Simone Veil; Robert Badinter) or, when such bearers are not identified as Jews for civil union and same sex marriage, the attacks target their advisors and Beit Haverim who is supposed to summarize Judeo-gay lobby.

Finally, to reassure those who sincerely would fear a societal tipping caused by this law, recall that France is not particularly advanced on the subject. 13 countries in the world (not counting several American States) and 8 countries in Europe had preceded us without much incident. Not only the Nordic countries, as one would imagine, but also Latin and Catholic countries like Spain, Portugal or even Argentina. None of these countries has seemed to suffer from societal revolution let alone a "change of civilization."

This law has not led to more turmoil in France. Just can you worry about a national community doubting so much of itself as to resist any reform in a desperate conservative protection?
You said change or end of civilization? Perhaps, but because of a failure of political trust, economic growth and social mobility much more than "gay marriage"!

**And now, what future reforms can we imagine?**

Marriage and adoption are two important steps. Four other subjects will be addressed sooner or later in France as they were (or will be) in other democratic countries.
The first topic will likely be the MAP (medically assisted procreation) commonly known as "artificial insemination". Today, in France, it is legal only for different-sex couples and under medical prescription. It is therefore grossly unfair to same-sex couples and it falls of great hypocrisy because thousands of lesbian couples have already used the MAP in neighboring countries with legal assurance, namely Belgium and Spain. One also wonders why the MAP would be limited to couples while the adoption is open to singles.

The most sensitive issue is that of the GPA (Surrogacy) better known as the "surrogate mother". Legalized in many countries, it remains totally prohibited in France. A real taboo on which feminists remain divided. Some feminist activist, and not the least, as Elisabeth Badinter, Antoinette Fuchs, Elizabeth Roudinesco or Irène Théry expressed more open positions. Reportedly, surrogacy is secretly practiced by hundreds of French gay couples. This taboo leads to a double injustice:
- The unfairness of civil status a priori refused to children, whatever born from French parents, leading to dramatic family situations; Taubira circular has only partially solved the problem.
- The injustice of the selection by money that eliminates those who do not have the means to finance a surrogacy abroad, including the United States, Russia, India, Thailand then Nepal.

The third topic is one that concerns the majority. We will call it "status of the third party" or "social parent". We have seen that the civil code was seeking to secure links between a child and his or her social parent, even after divorce. But the law is silent when the spouses are not married, which is the environment of one out of two births in France nowadays. Theoretically, therefore, a social parent who lives and contributes to the child's education from her husband for several years has no right or responsibility to that child. He/she can perform for him/her no act of daily life whether at school, in the hospital or other.

The government had first promised to introduce one or more "family" legislation before the end of 2013. The project was then delayed and forgotten.

We nevertheless believe that these laws would be an opportunity to modernize and "groom" the family law. We are well aware that it will be politically difficult to quickly open new societal reforms, but we do not see why France would still take ten years behind compared to other democratic countries.

In Israel, for example where civil marriage does not exist, same-sex couples have access as do couples of different sexes, the civil union and the adoption of course, but also to the MAP. Social rights of third party parent are highly developed there. In addition, surrogacy practiced abroad in a legalized environment is already recognized in the country and those practiced in Israel are legalized for straight couples. The parliament and the Ministry of Health have even considered legalizing surrogacy for all in May 2014. The project did not turn into a law yet.

The fourth topic was not even mentioned in the debate on equal civil rights and it concerns the transgender persons. Though their rights may be different in different countries, trans suffer to be a minority within the LGBT minority. They have waited too long and it is now more than time that all LGBT NGOs speak one united voice to advocate trans civil rights.

On the occasion of governmental and parliamentary consultation, three concrete proposals were made that concern both heterosexual and homosexual families and one specifically for trans persons.
Proposal 1
Open of the MAP to all women over 26.
Maintain the anonymity of sperm donation as a general rule and raise anonymity only in the case of an explicit request of the child having reached majority and an express wish of the donor.

Proposal 2
Launch a debate on the surrogacy to determine what could be the best ethical safeguards and the necessary legal framework for this mode of reproduction in France.

Proposal 3
Implement a third party status to secure the relationship between the child and the "social parent", whenever he/she does not adopt the child of his/her spouse, married, civil partnership or partner. This status would be implemented voluntarily at the request of the "social parent" and with the agreement of the biological parents.

Proposal 4
Recognize legally the gender identity of transgender persons, through a volunteer and free (or with nominal cost) administrative procedure. Recognition should not rely on surgery, sterilization or hormone treatment but on assessed identity.

Family structures are changing and experience of each is different in the Jewish community in France as in the rest of the national community. So it is natural and desirable that for a law concerning family rights, a wide range of opinions raised within Jewish institutions of France, whether religious or secular. The Consistoire had a loud voice; FSJU (Jewish Social Fund) would also have to make him that manages many Jewish schools; CRIF (Jewish political council) considered it far from their direct concerns, but they opened the columns of their Newsletter at different sensitivities, including that of Beit Haverim.

All studies show that there is a strong desire to transmission among LGBT Jews, as among the Jews in general. Today, this transmission also means marriage and children. Moreover, scientists have now shown that children born and/or raised in LGBT families are neither more nor less balanced than other children. They also found that children were building their balance from the harmony of the couple and the love that the parents gave them.

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* The World Congress of GLBT Jews – Keshet Ga’avah was founded as a group in 1975 and incorporated in San Francisco as a Non For Profit organization in 1980. It is the umbrella NGO for fifty Jewish LGBTQ organizations in fifteen countries worldwide.
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