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The Construction of "Expertise" in Marriage and Filiation Debates in France and the United States

In the minds of many, including scholars and activists, the vibrant and resilient 2012-2013 French movement against marriage for same-sex couples was unexpected. Many assumed that the debate and passage of legislation on marriage and parenting would resemble that of Belgium or Spain – its linguistic and religious neighbors respectively. Instead, the candor of the French debates and the tactics of same-sex marriage opponents are on par with those of the U.S. where the counter movement to gay rights has been thriving for several decades.

The intellectual, rhetorical, and social movement ties between France and the United States was exemplified on March 24th and 26th 2013 when demonstrators marched on Paris and Washington, D.C. to protest pending legal decisions on marriage for same-sex couples in their respective countries. Both groups, heavily populated by religious organizations and conservative public figures, used slogans warning that children would suffer if not raised by their married biological mother and father. In a sign of international solidarity, a contingent of French expatriates living in Washington joined the protest with their children holding banners with slogans from the French movement and waving French flags. Despite anti-French sentiment that seemed present among American conservatives only a decade ago, the Washington protestors welcomed them enthusiastically. For all the structural and cultural differences between France and the United States, the passion with which activists, intellectuals, and lawmakers battle over rights for same-sex couples is one area where they seem more like each other than other countries.

Beyond the slogans and catch phrases in the protests over same-sex marriage, however, the kind of knowledge political actors use in France and the United States to justify their positions in the media, courts, and legislatures differs. For instance, French supporters and opponents of same-sex marriage primarily use psychoanalysis, philosophy, and sociology to battle over whether sexual difference in marriage is necessary for children and social cohesion. In the United States, they are more likely to draw on economy and the law to argue over financial implications of reforms and what legal solutions represent the best interests of children. How and why do legal actors in each country rely on divergent kinds of knowledge when debating the same issues? How

is this "expertise" socially constructed and used politically to shape laws that recognize the rights, responsibilities, and protections afforded – or not – to gay and lesbian citizens?

Founded on the principles of equality and freedom, these Western industrialized democracies diverge in several ways that make them useful to compare for explaining the relationship between expertise and marriage/parenting law. France is a highly centralized state under a civil law system. Despite passage of the 1999 Pacte Civil de Solidarité (Pacs), opening domestic partnerships to all couples regardless of sex, France remains among the more conservative European nations in marriage and filiation law. Historical events like the Holocaust and post-colonial immigration have shaped current French law on discrimination and human rights. French law increasingly falls under the jurisdiction of the European Union (E.U.). Since France signed the European Convention on Human Rights in 1970 and the Treaty of Rome in 2000, French citizens may appeal cases to the European Court of Human Rights (ECHR) if they believe a right is denied them because of "sex, race, color … or any other status."[1] Academic involvement in policy debates in France takes the form of individual elite public intellectuals who rely primarily on their personal reputation for authority. Finally, its strict interpretation of secularism delegitimizes religion as a viable justification in political matters.

The U.S. is a federation under a common law system in which individual states maintain jurisdiction over issues affecting their gay and lesbian citizens including marriage and adoption laws. This autonomy creates significant variation in statutes between states. California, for instance, has some of the most open surrogacy and adoption policies and recognizes domestic partners, while Texas, on the other hand, prevents same-sex couples from using surrogacy but does not exclude them from adoption even as it bans all unions other than heterosexual marriage. Nevertheless, Federal law supersedes state law and U.S. citizens may appeal cases to federal courts when they believe state policies violate their rights in view of the U.S. Constitution. Currently, federal law prohibits the national recognition of same-sex marriage. These laws, and efforts to change then, are grounded in the legal legacy of the civil rights movement. The American political sphere is populated by a dense network of think-tanks that generate knowledge or harvest existing research and puts it directly into the hands of policy makers. Finally, the separation of church and state in the U.S. does not preclude discussion of religion and faith in political debates.

In light of these contrasts, I analyze the evolution of laws on marriage/filiation for gays and lesbians in France and the United States since 1990. I also analyze the effect of different layers of government that exercise jurisdiction over these laws. In the French case, I examine not only the role of national factors but also those of the E.U. In the U.S. case, I look not only at federal law but also at state laws in California and Texas. As the largest states in the nation, they are similar to each other in terms of size, population, presence of think tanks, and social movement organizations, yet different in their policies toward gays and lesbians, their legal structures, and skew in political ideology as represented by party composition. I thus examine the ways in which jurisdictional differences – state, national, and supranational law – and institutional differences – courts

[1] Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ETS 5, available at: http://www.unhcr.org/refworld/docid/3ae6b3b04.html [accessed 2 May 2012]. See in particular: Protocol 12, Art. 1 § 1, General Prohibition of Discrimination.

versus legislatures – impact the use and effect of expertise. Specifically, I ask: how do political, cultural, and historical differences – at both the national/state and European/federal level – shape the information that lawmakers, judges, activists, and others involved in the legal process use as "expertise" or the people they call on as "experts" to justify their claims?

Significance of France/United States comparison

Although I could have focused my research solely on France, the United States, or another democratic country, the comparison between these nations provides analytical leverage for understanding how expert knowledge is produced and used in the deliberation of sexual orientation law. Lamont and Thévenot (2000) argue that "France and the United States offer especially fruitful cases for sociological comparison" because of their similarities and differences (3). After revolutions occurring at roughly the same time, both countries founded democracies upon the idea of the universality of "modernity, progress, rationality, liberty, democracy, human rights, and equality" which provides a general baseline of similarity for comparison (9). Yet, in addition to the important structural and political differences outlined in the introduction, they have taken strikingly different cultural stances on core democratic values (Lamont 1992, 2).

In France, religion, race, and sexuality are all considered fundamentally private matters that must not enter the public sphere in order to ensure the preservation of the common good. In contrast, these matters often take center stage in the U.S. where public and political identity is infused with racial, religious, and sexual differences, among others (Lamont and Thévenot 2000:3). The role of the public/private and individual/collective divide has already been documented for racism, sexual harassment, sexual morality, and women's equality (Benson and Saguy 2005; Ezekiel 2002; Lamont 1992; Lamont 2000; Saguy 1999; Saguy 2003; Scott 2005; Zippel 2006). Differences in expertise of sexual orientation laws have yet to be compared empirically (Fassin 2005). I also use cross-national comparison in order to highlight how national context shapes the meaning of specific forms of expertise and the role experts (Fourcade 2009).

Experts and expertise

For the purposes of this research, I treat all individuals who are called to speak out by legitimizing institutions such as legislatures, courts, and the media as "experts" regardless of their status, profession, or background. This definition puts categories of people in the same field who generally consider themselves unrelated like doctors, priests, professors, and average people without any special qualifications other than their personal experience. I consider all information provided by these "experts" or used by legitimating individuals, such as legislators, judges, and journalists as "expertise." This approach allows me to analyze the social construction of legitimate knowledge without making a priori assumptions about who or what "counts" as "expertise."

In his study of the social construction of AIDS expertise, Epstein (1996) explains that medical professionals were engaged with "lay experts" – in this case people with AIDS – in a credibility struggle over who had the authority to speak about the effects and treatment of the emerging epidemic. Building on Epstein, I conceptualize legal and political debates about granting gays and lesbians access to the institutions of marriage/filiation as credibility struggles between legal opponents on the issues.

Epstein (1996) defines credibility as "the capacity of claims-makers to enroll supporters behind their arguments, legitimate those arguments as authoritative knowledge, and present themselves as the sort of people who can voice the truth" (3). AIDS activists and doctors had differing amounts of credibility. Doctors could foreground their degrees, "anointment" by the media, and privileged access to technical knowledge, while people with AIDS could rely on social movement connections, intimate experience with the disease, and their own self-taught understanding of the mechanics of HIV transmission and treatment (21). Each actor constituted a kind of "expert" by virtue of his position to the question and the kind of information he used. Moreover, whether or not a knowledge claim is deemed to be credible depends not only on its plausibility and supporting evidence but also on the credentials of who makes it (3).

Credibility is also salient in the political and legal arena. Judges, when they decide a case, and lawmakers when they vote on bills, also determine the credibility of claims by considering who makes them and the knowledge they use to ground them. Claims-makers generally use arguments they hope will be the most convincing and, on morally fraught questions, appeals to credible knowledge like "science" become especially important. This "scientization of politics" has the effect of turning political disputes into technical debates where each side rallies its own panel of experts and draws on credible knowledge (Epstein 1996, 6; Habermas 1971; Stone 2011). This paper explores the degree to which the scientization of politics and the social construction of credibility varies cross-nationally by examining the expertise on which legal actors rely.

Sociologists of experts and intellectuals note how expertise has become increasingly "democratized," particularly in the U.S., by moving beyond the confines of the academy, the professions, and scientific institutions (Andrew 2010; Brint 1996; Eyal and Buchholz 2010; Fischer 2009). The growing participation of multiple actors in the production of "usable knowledge" (Lindblom 1979) also increases the possibility for political actors to generate new information or repackage existing information that they can specifically tailor to their policy goals. This combination is well represented in the phenomenon of "think tanks" that are specifically devoted to this purpose (Andrew 2010; Medvetz 2010). Indeed scholars of gay rights policies have demonstrated how American think tanks, both conservative and liberal, are an undeniable presence in the contemporary American political field (Barclay, Bernstein, and Marhsall 2009; Bernstein 2011; Cain 2000). Because of these trends, I conceive of "experts" in very broad terms, paying attention to institutional affiliations – whether or not an expert works for a think tank or a university for example – and "lay experts," like activists or community members, while also noting national differences. I use an inductive approach, treating people as experts if they are presented as such by themselves or others in the sites I study (legal debates, court cases, and media). I then examine systematic cross-national differences between experts.

Brint (1996) argues that "structural fragmentation" in the U.S. – the federal system and separation of power between government branches – decreases the relative importance of experts in U.S. politics, compared to European politics (134). In contrast, the more centralized nature of European governments favors bureaucracies where technocrats exert more significant influence. France, in particular, is a representative case of a technocracy where the production of knowledge in state institutions bears weight in political debates (193-192). Further, a small number of think tanks have only recently

been established in France (Bérard and Crespin 2010). In light of these differences, I look at whether French and American experts are employed by the state or non-state institutions. Theoretically, these affiliations should impact the credibility and kind of knowledge they bring to debates on sexual orientation.

The political and legal trajectory of sexual orientation law in contemporary France and the U.S. has been marked by expert discourse on the floors of legislatures and in courtrooms. Scholarship on France has focused primarily on how opponents of partnership and parenting rights for same-sex couples have found a strong ally in the corps of high-ranking officials of the states' social services (Commaille 2006). Their testimony is buttressed by the intervention of "family experts," primarily Freudian anthropologists and psychologists from elite French public academic institutions, who claim that parental gender differences are essential for the wellbeing of children (Borillo and Fassin 2001; Mailfert 2002; Verjus and Boisson 2005). What appears common among this expertise is the idea that psychoanalytic principles constitute an unchanging "natural law" that justifies the exclusion of non-heterosexuals from assisted reproduction, which is controlled by the state, and the institution of marriage (Pechriggl 2011).

Studies on the U.S. also suggest that activists and lawmakers on both sides of sexual orientation law use experts and expertise to back up their claims, but none has done so systematically. Like in France, debates about marriage and filiation for gays and lesbians in the U.S. involve both sides arguing about the suitability of same-sex couples for raising children (Mezey 2009). Pro- and anti-gay activists, lawyers, and lawmakers bring concrete data about family structure and childhood outcomes to support their claims (Biblarz and Stacey 2010). Both sides of the debate also use evidence about the etiology of sexual orientation, drawing on psychology, history, sociology, genetics and biology to make claims about the immutability of homosexuality (Stein 2011).

Political and legal opportunity structures

There is a strong tradition in political science devoted to explaining how and why social movements, like the LGBT movement and its opponents, succeed and the conditions under which legal changes happen (Adam 1999; Bernstein 2011; Kriesi 1995; Mucciaroni 2008; Pinello 2006; Smith 2009). Their focus is either on how social movements work to effect change or how we can predict legal outcomes – whether a law will pass or not. Although this paper is focused on differences in expertise and the content of the law – and not on social movements or legal outcomes per se – the concepts of *political opportunity structures* and *legal opportunity structures* help explain why "expert knowledge" varies cross-nationally.

Political opportunity structures (Tarrow 1998), including formal access to political institutions, influential allies inside state institutions, evolving political alliances, and cleavages between and among elites, shape the strategies social movements adopt. In Belgium and the United States, the federal structure gave LGBT social movement organizations the opportunity to play jurisdictions against each other by, say, passing anti-discrimination measures in a state and then pressuring such measures on the federal level (Tremblay, Paternotte, and Johnson 2011). Zippel (2006) calls this the "ping-pong process," whereby supporters of legal change will appeal their cases or lobby legislators at higher jurisdictions, each with its own embedded logic, to create change at home (Armstrong and Bernstein 2008). Some scholars have argued that in France, the highly

centralized state as well as the relative lack of conflict over moral issues among the political parties suggests that the LGBT movement has had less direct access to the political process (Fabre and Fassin 2003; Garnier 2012; Paternotte 2011). Literature on historical institutaionlism (Smith 2009) argues that macro historical, institutional and political differences between nations like the configuration of government, differing institutional and jurisdictional logics, and political alignments shape legal outcomes for gay rights issues. These same processes should theoretically also impact how, when, and why legal actors use different kinds of expertise.

Methods

I focus on the laws and court cases pertaining to the partnership and parenting rights of gays and lesbians since 1990 in both countries.[2] I draw on ethnographic, interview, and archival data from 4 sources: 1) arguments made by key officials who use "expertise" and by individuals who become "experts" by being called to provide testimony or whose opinions are given special weight, including scientists, community members, pro- and anti-gay activists and lawmakers; 2) media coverage in *Le Monde* and The New York Times; 3) legislative and courtroom debates in both precedent-setting cases and also in cases that failed to pass; and 4) laws.[3] I gather ethnographic data observing how experts participate in currently unfolding debates. In analyzing the law, court records, legislative debates, and media coverage, I track the origins, disciplines, and interventions of "experts." In-depth interviews with these experts and key lawmakers will elicit their definitions of sexual orientation and situate their discourse within a larger socio-legal context by mapping how and why they came to be involved in these public debates. Analyzing ethnographic, interview, and archival data allows me to examine how experts articulate their arguments and look for patterns in variation across time, institution, and nation. Finally, comparing marriage/parenting laws in each country, I examine how they are worded and how they do or do not reflect the expertise that went into producing them.

The effect of structural differences on "expertise" in France and U.S.

France and the U.S. differ in several fundamental ways in how law codifies family formation and access to medically assisted reproduction for same-sex couples. My analysis of debates on marriage and parenting for same-sex couples in courts, legislatures, and the media reveals how differences in legal structure, legal frames, policy regimes, welfare systems, and secularism impact "expertise." The centralized, cautionary, welfare, and strict secularist approach in France and the diverse, entrepreneurial, privatized, and open secularist approach in the U.S. each determine how and where knowledge is produced as well as the kinds of knowledge that appear more frequently in each country.

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[2] Major legal reforms in the U.S. during this time period include the 1996 Defense of Marriage Act (DOMA) the 2008 referendum known as Proposition 8 in California and the currently pending U.S. Supreme Court Cases to decide the constitutionality of these measures. In France, reforms include the 1999 Pacs law, the 2013 law on marriage and adoption for same-sex couples, and cases involving same-sex couples that reached the *Conseil d'état,* the *Conseil constitutionnel*, and the ECHR.

[3] The analysis presented in this paper is part of my current dissertation research and reflects a work in progress. Data collection is still ongoing at the time of this writing.

Effects of legal structure

Laws apply evenly across France while European jurisdiction has thus far not impacted France's policies significantly on these issues of marriage, adoption, and medically assisted reproduction. In contrast, the federal system in the U.S. has given individual states near complete autonomy over family law such that some states barely regulate medically assisted reproduction while others take more conservative approaches. Marriage and adoption have a similar range of recognition on the state level with some states, like Texas, having no statues pertaining to adoption. In such states, individual judges determine adoption rights on a case-by-case basis.

Because of the variety of laws across U.S. territory, legal expertise is one of the most prevalent forms of knowledge in American debates. Most articles in the New York Times provide opinions by law professors, independent lawyers, and, more commonly, from activist lawyers. In federal and state legislatures, these legal experts help lawmakers navigate the complicated jurisdictional differences and potential ramifications of changing their laws to restrict or limit the rights of same-sex couples. For instance, in 1996 as Congress debated DOMA, media and lawmakers solicited legal experts on both sides of the issues to determine the Constitutionality of the bill as well as its effect on individual states.

The volume of potential jurisdictions in the U.S. in which supporters and opponents of gay and lesbian family rights can push for legal reform encouraged legal experts to join with social movement organizations to create institutions were scholars, activists, and lawyers generate legal knowledge. Many of the early activists on both sides were also lawyers and brought expertise with them in creating these associations (Andersen 2005). Lambda Legal, the oldest such institution for supports of gay rights, has been training lawyers public policy interventions and representing lesbian, gay, bisexual, and transgender (LGBT) clients since the 1970s. Other organizations, like the American Civil Liberties Union, include specific projects about gay rights issues among their other activities.

In France, legal expertise plays a more marginal role in the media, courts, and legislatures. There is less opportunity for lawyers and other legal experts to advise lawmakers or clients because supporters and opponents of rights for gay and lesbian families can only focus their efforts on the national level. Although in the case of court appeals, plaintiffs can appeal to the European level, cases only rare make it to the ECHR. The lack of diverse opportunities for legal reform may also explain why most social movement organizations in France do not have strong ties to legal organizations. The few French lawyers, including Caroline Mécary, who have represented gay and lesbian couples seeking adoption rights, explained to me that they work independently and without the dense networks and institutional support their American colleagues enjoy.

In addition to these differences in legal expertise, differences in legal structure also explain why economic knowledge is more prevalent in the U.S. than in France. In the U.S., state lawmakers in favor of legalizing marriage for same-sex couples will ask economists to explain the potential financial impact of the law. These experts often explain how states will see an increase in tax revenue from gay and lesbian couples who will travel from states that currently ban same-sex marriage in order to get married in states where it is recognized. Local business leaders in the marriage industry, including

caterers, photographers, and event planners write letters to the New York Times and speak out in public hearings to explain why marriage for same-sex couples represents an important economic opportunity for companies. France, in contrast, has seen little business or economic knowledge on debates for same-sex marriage. Because there is no competition between French regions to attract future spouses, such information is less important than it is in the U.S.

Effects of policy regimes and their rhythms

France and the U.S. diverge in their policy responses to advances in medical science and their potential impact on medical practice. France has tended to take precautionary bans on techniques, sometimes before they were even possible, while the U.S. has usually regulated them only after they were already implemented. France's national, centralized approach set up an a priori ban on surrogacy and prohibited artificial insemination (AI) for lesbians and single women as soon as these technologies were developed. In 1983, out of concern for the possibility of artificial insemination, in vitro fertilization, cloning, and other practices that might emerge from new technologies, the government created a centralized committee of experts, *le Comité consultatif national d'éthique pour les sciences de la vie et de la santé* (CCNE).[4] This interdisciplinary panel, composed of doctors, bioethicists, philosophers, and political appointees, is responsible for authoring non-binding opinions on draft legislation relating to all areas of bioethics. Although legislators and the administration can go against the will of the CCNE, doing so has important political consequences. As with the first round of French bioethics laws, which are regularly revised and deal with issues from stem cell research to end of life care and AI, the CCNE has continually suggested that only stable heterosexual couples should have access to medically assisted reproduction. They have maintained that surrogacy should be banned under all circumstances. Successive administrations have followed these opinions and enacted them into law.[5] As a result, French lesbian couples have never had legal access to AI within their country and have typically traveled to sperm banks in Belgium and Spain (Descoutures 2010). The 2013 law opening marriage to same-sex couples in France does not include a provision for opening AI to lesbian couples.

This policy stance makes certain kinds of knowledge more appropriate in France when legal actors debate family rights for same-sex couples. Lesbians and gay men who went abroad to have access to AI or surrogacy struggled to have their children legally recognized. Only the birthmother or genetically related father were considered the legal parent. Although the new marriage law should remedy this situation, for the last 30 years these families have been in legal limbo and remained relatively invisible. A notable exception to this relative invisibility is the *Association des Parents et futurs Parents Gays et Lesbians* (APGL), founded in 1986 by Philippe Fretté after traveling to the U.S. and witnessing gay and lesbian organizations there (Garnier 2012). Besides this association, however, French gay and lesbian families have remained less socially visible and

[4] *Décret n°83-132 du 23 février 1983 portant création d'un Comité consultatif national d'éthique pour les sciences de la vie et de la santé.*

[5] *Code de la santé publique* - Article L2141-1. Recently modified by *Loi n° 2011-814 du 7 juillet 2011 relative à la bioéthique* and *Loi n° 2002-303 du 4 mars 2002 relative aux droits des malades et à la qualité du système de santé.*

organized than those in the U.S.

A major consequence of these circumstances has been a lack of research on two important topics: children raised by gay and lesbian couples in France and the experiences of surrogate mothers. Until the middle of the 2000s, family experts in sociology or psychology had little empirical material on which to draw to make their case. Martine Gross, one of the earliest sociologists who became interested in this topic, worked intimately with the APGL starting in 1997 to study the families of their members (Verjus and Boisson 2005). In interviews, she explains how lack of data has made it challenging for gay and lesbian families to counter arguments by opponents. During the Pacs debates, most knowledge used to argue for or against gay and lesbian families was theoretical. French philosophers, psychoanalysts, psychologists, and sociologists relied on symbolic arguments explaining to lawmakers and the media that gender differences are an essential component of marriage and the developmental success of children. Without drawing on empirical evidence, they also described how surrogacy is necessarily a form of violence and exploitation. These kinds of arguments still appeared in debates during the 2013 marriage bill particularly by philosophers like Sylviane Agacinski or psychoanalysts like Jean-Pierre Winter.

In the last decade gay and lesbian families have become more visible through activism by the APGL and through more scholarly attention. Recent anthropology, sociology and psychology graduate students have begun defending their dissertations based on empirical research with gay and lesbian couples and their children. In interviews with these scholars who appeared before *Assemblée Nationale* in 2012 to explain their findings, this new generation of scholars explained how their knowledge dwarfs in comparison to that produced by that their U.S. colleagues for the last thirty years. Furthermore, this new generation of scholars operates in a professional environment where demand for their expertise is relatively thin. Few think tanks train them or ask them to write reports. Scholarly associations and professional organizations have only included sections devoted to LGBT issues within the last decade. These new groups and their members find that theoretical arguments grounded in philosophy and psychoanalysis still carry significant influence in policy debates around parenting and family rights for same-sex couples.

The circumstances of knowledge production created by the U.S. policy regime contrast sharply with the French system. As with many other domains of law, the U.S. policy reaction to new medical technologies is characterized by state-level variation and uneven oversight by federal institutions. Politically charged bioethics issues like stem cell research, abortion, or euthanasia attract Congressional action or appeals to federal courts. However, access to reproductive technologies has been the jurisdiction of individual states. As soon as such technologies were available, doctors in many states began practicing them until, in some locations, there were banned or restricted to oversight. Currently, many U.S. states have no statutes relative to AI and none ban that practice for single women, lesbian couples, or unmarried heterosexual couples (Known Donor Registry 2012). State laws pertaining to traditional surrogacy – when the surrogate uses her own ovaries – and gestational surrogacy – when the she shares no genes with the fetus – also very widely (Spivack 2010). Some states regulate surrogacy contracts while others have no specific laws and judges must work on a case-by-case basis in cases of conflict between parties in the surrogacy arrangement.

This diversity of opportunity thus allowed gay and lesbian couples in the U.S. to legally start using these methods to create families as soon as the early 1980s. As explained above, this growing group fed the demand for specialized lawyers who could navigate jurisdictional complexities. Furthermore, these families organized themselves into strong visible organizations that weighed in on state levels fights to change conservative policies, particularly in the area of adoption. Scholarly attention from psychologists, sociologists, and anthropologists on these families and the outcomes of their children began in the 1980s. Furthermore, many of the earliest academics and clinical psychologists to study these issues were gay and lesbian parents themselves. They thus worked within the academy and their professional organizations to bring to light their personal experiences and encourage more scholarly attention from very early on.

Unlike in France where major legal reforms came in discreet periods around successive bioethics laws, the Pacs law, and the 2013 marriage law, legal reforms on parenting and marriage have occurred continuously in various jurisdictions across the U.S. Consequently, the production of empirical knowledge about gay and lesbian families grew in tandem with demands by judges and legislators for such information. Already in 1993 the Hawaii Supreme Court asked the attorney general to present a compelling state interest from prohibiting marriage for same-sex couples. Lawyers representing same-sex couples were able to draw on a significant body of interdisciplinary research on child development to demonstrate that children raised by gay and lesbian couples suffer no adverse effects. The direct pipeline between knowledge production and policy applications has been strengthened and professionalized through think tanks implanted directly in universities and law schools. Examples include the William's Institute at the University of California Los Angeles, which produces data in support of pro-LGBT legislation for lawmakers, or the National Marriage Project at the University of Virginia, which produces research most often used by lawmakers opposed to marriage for same-sex couples. As a result, empirical data on both sides of the debate are more readily available than in France and carry more weight than arguments grounded in principles or philosophy.

Effects of welfare

The organization of welfare, and healthcare in particular, shapes the kind of knowledge legal actors use in debates over marriage and parenting rights for same-sex couples in both countries. In France, access to universal public healthcare does not depend on one's family relationships. Instead, individuals have direct access to coverage rather than through employers or spouses. Although supplemental private insurance (*mutuelle d'assurance)* can be shared between spouses and *Pacs* partners, this practice remains marginal. Marriage and domestic partnership rights for same-sex couples thus carry lower material stakes in France than they do in the United States. Because healthcare is organized through employers and spousal transfer regimes in the U.S., gay and lesbian couples seek access to legally recognized unions in order to get significant material advantages. Furthermore, when an employer provides healthcare to an employee's unmarried partner, state and federal governments consider them as taxable income. This puts gay and lesbian couples at a significant financial disadvantage in the U.S.

The differences between the strong welfare state in France and the privatized system in the U.S. also have ramifications for access to medically assisted reproduction. In France, AI and other fertility treatments are reimbursed by the state because they are considered a treatment for a medical problem – infertility – rather than a service available to any desiring individual or couple (Gross 2012; Théry 1998). Tissue banks, donation centers, and treatment facilities are centrally organized by the state. In contrast, in the U.S., healthcare coverage of medically assisted reproduction varies by state and private insurers. It is particularly complicated for lesbian couples to get coverage through their insurance because a diagnosis of infertility can be difficult to obtain. However, unlike in France, access to these techniques is not legally prohibited for single individuals, unmarried heterosexual couples, or same-sex couples. Instead, such services are available for pay. Furthermore, facilities that organize medically assisted reproduction are often privately operated, usually for profit, and exercise discretion in marketing to and accepting clients (Almeling 2011). In the case of surrogacy, the surrogate can independently arrange contracts with individuals and couples. Over the last three decades actors on all ends of this reproductive industry have established hundreds of organizations, agencies, and associations. Many of these are either entirely geared toward or include resources and information for LGBT individuals and couples seeking access to reproductive services.

These structural differences between France and the U.S. in healthcare coverage and its effects on marriage and parenting rights account for the overwhelming amount of economic expertise that dominates much of the debate in the U.S. Virtually no legal actors in French debates use economic knowledge to justify their policy position on marriage or parenting rights for same-sex couples. The most common, if limited, use of such knowledge appeared in 2012 when lawmakers opposed to legalizing AI for lesbian couples argued that it would be too expensive for the state to reimburse the procedure for lesbians. Otherwise, the media, judges, or lawmakers in France almost never solicit economists, insurers, and business leaders whereas in the U.S., they occupy much of the debate. For example, because healthcare is provided primarily through employment in the U.S., until local jurisdictions mandate it, businesses can choose to provide or deny healthcare benefits to the domestic partners of their gay and lesbian employees. State and local governments solicit the views of business leaders when considering whether to allow marriage for same-sex couples which would automatically require companies to provide spousal healthcare to all married employees, including same sex couples. Business leaders who have already implemented spousal benefits describe how it has made their company more competitive because it makes it easier to recruit top talent and create a positive company image. Other business leaders argue that it would be too much of a financial burden to provide spousal benefits and would cause their companies to suffer.

Effects of secularism

Although both countries observe forms of secularism, religion occupies a different space in the public sphere in each country (Gunn 2004). Institutionally, in France, this has meant that marriage is a strictly civil process over which religious organizations have no direct oversight. Unlike in the U.S. where clergy can act officiate marriage ceremonies in the name of the state, in France only mayors or city

councilmembers may officiate marriages. Culturally, the notion of *laïcité*, or strict secularism, in France has typically been understood by many to mean that religious discourse should not figure into debates on legal issues. In practice, however, religious representatives and religious knowledge have been present both in parliament and in the media. For example, in November 2012, the *Commission des lois* invited the government recognized representatives of French Catholics, Jews, Muslims, Protestants, and Buddhists to speak at a hearing on the proposed legislation to open marriage and adoption to same-sex couples. Only the representative of Buddhists was not hostile to the legislation.

Activists and observers, mainly those in favor of the legislation but not exclusively, denounced in *Le Monde* and other media outlets the legitimacy of religious discourse on this issue and encouraged lawmakers not to rely on their expertise. My analysis of the kind of knowledge these religious representatives presented, however, reveals that they also relied on non-religious information to justify their stances. They used psychoanalysis, philosophy, and bioethics to frame their rejection of marriage for same-sex couples. Using "legitimate knowledge" allows religious figures to avoid critiques that they are breaching the terms of strict secularism. For example, during the Pacs debates in 1998, Monseigneur Tony Anatrella, a Catholic priest and psychotherapist, spoke out in the media against the proposed legislation using his observations as a therapist rather than as a priest. This tactic is also reflected in the statements of social movement organizers, a majority of whom are Catholics, when they rely on non-religious knowledge to justify their stances.

In the United States, where religion enjoys more political and social legitimacy than in France, religious representatives rely more often on justifications specific to the tenets of their faith when publically debating the family rights of gays and lesbians. Those against such legislation speak about the risks to public morality and fears that such practices would infringe upon their religious liberty. Rather than argue that religious expertise should not play a role on these policy issues, supporters of gay and lesbian rights bring their own religious representatives to the table. Indeed, the religious field in the U.S. is characterized by great diversity among faiths. Many denominations, such as Reform Judaism or the United Church of Christ, celebrate marriages between same-sex couples, allow gays and lesbians to become clergy members, and have active gay and lesbian ministries. This diversity of stances on LGBT issues and the legitimacy of religious discourse in the public sphere provide a platform for legal actors to use religious knowledge when debating marriage and parenting rights for same-sex couples in the U.S.

Conclusion

In both France and the United States, activists, lawmakers, lawyers, and other legal actors rely on specific forms of knowledge in order to justify their stances on marriage and parenting rights for same-sex couples. They make arguments they believe will be the most convincing to decision makers in their specific context. However, the structural conditions in each national context shape the production, diffusion, and reception of information suitable for the policy sphere. Differences in legal structure, policy regimes, welfare, and secularism create particular circumstances in the United States and France and help explain why legal actors use divergent forms of knowledge in each context.

The structural context in the U.S. is characterized by diversity. This is most obvious in the multiple layers of jurisdictions from the local to the federal level, the privatization of healthcare and family services, the number of think tanks and activist organizations, and the spectrum of opinions among religious groups. The U.S. is also characterized by independence of knowledge production from the state. Rather than working for state research institutions or consulting for national advisory councils, Americans producing information for policy debates on marriage and parenting are situated in organizations with ties to social movements, the private sector, and the university system. The predominance of legal and economic expertise, empirical data about gay and lesbian families and their children, as well as religious justifications are all connected to these underlying structural characteristics of the U.S. context.

Structural circumstances in France tend toward centralization, state organization of knowledge production, and caution. The universality of legal application across French territory has made it challenging for French gay and lesbian families to organize. French scholars also face more challenges when studying these families than they would if they were in contexts where same-sex reproduction is legal. Unlike in the U.S. where knowledge gathered in one state is used to argue for legal reforms in other states, French legal debates rely relatively little on data from other European nations. In the case of parenting and marriage rights for gay and lesbian families, national borders are still salient within Europe. State oversight and sponsorship of knowledge production in advisory boards like the CCNE gives an official legitimacy to reports that can overshadow knowledge produced elsewhere. The lack of French empirical data on French gay and lesbian couples has allowed for knowledge like psychoanalysis, philosophy, and common sense to dominate the debate, especially until the mid 2000s. In more recent debates, other kinds of expertise, particularly that produced by new researchers and with increasingly visible gay and lesbian families, has started to appear.

Further research is necessary to explore the ways in which these nationally specific kinds of knowledge evolve over time and investigate the conditions that explain such change. The structural factors that shape the kinds of knowledge used as "expertise" in France and the United States are not permanent. For example, French political parties, activists, and scholars are starting to create think tanks and develop knowledge that might begin to impact political debates. University reforms and the growing visibility of research on sexual minorities within the French academy could also create new opportunities for researchers to create expertise for public policy. In the U.S., as professional organizations like the American Sociological Association or the American Psychological Association increasingly take sides in favor of marriage and parenting rights for same-sex couples, sociologists and psychologists who oppose such legal reforms will have to innovate in order to use their expertise in policy debates.

Even some of the most deeply rooted structures, like federalism in the U.S. and centralization in France are evolving. Although Europeanization has yet to make a significant impact on French debates, there is potential for further European-level exchanges between social movement organizations, scholars, religious representatives, and lawmakers. In the U.S., growing oversight of medical issues, exemplified in the recent healthcare reform bill, and the pending decision of the Supreme Court that might overturn DOMA, could diminish the inequality and variety in the legal status of same-sex couples across states. These shifts suggest that differences in expertise will not only

change in each country. Indeed, such evidence would help to nuance the differences between France and the U.S. and highlight their similarities.

This paper argues that the dynamics of structural configurations explain how and why French and American legal actors use specific kinds of knowledge as "expertise." Although these dynamics are currently configured differently in each country, I do not suggest that they are essential or in temporal. On the contrary, these dynamics shift in the wake of legal reforms creating new opportunities for knowledge production. Social movement organizations, lawmakers, and scholars strive to change their structural conditions. The effect of their efforts may lead to the invention of new forms of expertise.

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