

How the legal context matters: the impacts of the French legislation for same-sex couples choosing marriage

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Introduction:

Throughout the last decades, the rights of same-sex couples have significantly increased in Western countries and simultaneously, young LGB more often aspire to a family life while raising children and being married than in the past (D'Augelli et al., 2008). After various countries had adopted registered partnerships as the first opportunity for same-sex couples to be recognized by law, the Netherlands legalized same-sex marriage in the early 2000s and it rapidly spread to other countries — especially in Europe, where the European Union leads to legislative uniformity (Digoix, 2008). However, in the countries where it has been authorized, same-sex couples get married much less often than different-sex couples (Badgett, 2009), probably because gay men and lesbians are more often ideologically opposed to marriage (Eskridge and Spedale, 2007) and less likely to have children (Badgett, 2009). In 2013, France allowed the first time same-sex couples to marry, and in over five years since enacting the law (2013-2017)¹, 39 916 same-sex couples have married there. According to our estimates, there are between 100 000 and 150 000 same-sex couples in France (Algava and Hallépée, 2018 ; Buisson and Lapinte, 2013), meaning that approximately one-third of them got married². This rate is relatively high in comparison with other countries, such as in Scandinavia (Banens, 2017), and this is most likely due to practical as well as ideological reasons, given the French political and legal context. In terms of rights, the filiation between same-sex couples and their children require that they be married, including cases where one is the biological parent and the other adopts the child (adoption in France is restricted only to married people, which is not the case in other European countries). Furthermore, marriage is also required for receiving the survivor's pension (an important issue when getting older) and for obtaining residence rights when one partner is a foreigner. All these elements undoubtedly matter in the decisions of French couples. Previous studies showed that same-sex unions reveal gender differences and lifestyles. Among the married, women couples are younger and those aged 25-34 are over-represented whereas men couples are older (Meslay, 2019). These results can be explained by the fact than women couples live much more frequently than men couples with children (Buisson and Lapinte, 2013) and thus are more likely to marry to access adoption processes. It also calls for further comparison between married and unmarried couples, in order to study variations between the groups, and it thereby sheds light on the factors influencing their choices regarding the specificities of French legislation about marriage.

¹ Currently, the data are only available for this period.

² We have no information concerning the proportion of divorces, but considering the fact there are a maximum of 26 divorces for 1000 marriages after 5 years of union among different-sex couples, it is probably marginal. Applying this rate to same-sex marriages would lead to 1057 divorces.

Do married same-sex couples differ from unmarried same-sex couples? In addition, how can we explain these variations? Some specific characteristics stand out and provide new aspects for sociological research on couples and unions. I will use mixed methods combining a quantitative survey to a qualitative study I conducted for my PhD research. Virage-LGBT is a specific part of a French survey concerning violence, conducted by INED (the French National Institute of Demographic Studies), in 2016 and addressed to LGBT people. The questionnaire integrates various questions on health and violence, but also some questions on gender and sexual identities, affective and sexual relationships, couple, parenthood, and detailed information on LGBT life courses. Virage-LGBT's survey was disseminated through LGBT media, websites and associations. Thus, this is not a representative survey. However, these data are the best French data to analyze LGBTQ people, as this is one of the only surveys including various indicators of gender and sexual minority identities within a big sample (7148 respondents). As a minority group, same-sex couples are difficult to count (Festy, 2007) and consequently, many surveys must deal with size problems concerning LGB respondents. Using the same data, we can compare married couples to the unmarried ones, while restricting it to cohabiting couples, more likely to be similar to the married than non-cohabitant couples do. Using mixed methods, I will also refer to a qualitative study including 50 interviews with LGB people married to a same-sex partner in France in order to highlight the meanings they attach to decision of getting married.

The French legislation concerning the access to adoption

As there are really few minor children to adopt in France, and as only four countries in the world allow international adoption for same-sex couples (Mignot, 2017), most same-sex couples in France try to conceive their own biological children. So far, artificial reproductive technologies are restricted to heterosexual couples who were medically diagnosed as infertile. Women couples and single women are prevented from using it. Because of that restriction, the legislators only provided rules for the case of adoption by a same-sex couples and nothing was made to allow the non-biological parent to make a parental recognition, which exists in most European countries (Waaldijk et al., 2017). There is nothing like the presumption of motherhood in a women couple, which exist in Spain, Québec, and Great Britain for example. In doing so, the French legislation constraint non-biological parent in same-sex couples to adopt their own children. They must wait the birth of the child, and to build a file for a judge with many components to justify their parental investment.

Yet, adoption in France is still restricted to married couples. This legal rule dates to 1804 and the Napoleon Code, when children born outside marriage were considerate as illegitimate children. This conception of matrimonial privilege toward filiation was criticized and reversed progressively during the 20th century (Théry, 2016) but there are still marks of it in the law.

Differences between married and unmarried LGB: legal and symbolic benefits. Parenthood, relationship stability, income differences

Virage-LGBT survey reveals that among LGB people, married couples are much more likely to have children than unmarried couples. Indeed, 19% of married gay men are parents versus 8% of unmarried gay men, as 48% of married lesbians versus 9% of unmarried lesbians (Table 1). In the qualitative study, most people raising children conceived them through artificial reproductive technologies. They also refer to getting married as a decision that occur

in their life in order to establish a filiation with their children and being legally recognized as parents. Even if some wanted to get married for other reasons, a part are ideologically opposed to marriage as an institution and explain how it could represent a legal constraint in their views.

Table 1. Children declared by same-sex couples, depending on the type of couple (%)

	Men		Women	
	Married couples	Unmarried couples	Married couples	Unmarried couples
No children	80,9	91,7	52,2	91,5
One child or more	19,1	8,3	47,8	8,5
Total	100	100	100	100
Individuals	325	914	381	916
P	<0,001		<0,001	

Source: Virage LGBT Survey, Ined (2016).

Field: Cohabiting people in a same-sex couple.

Reading guide: 19,1% of men married with another man have one child or more.

Note: In the questionnaire, we asked people if they have « had » or « adopted » children.

Moreover, the relationships of married couples are more stable than those of unmarried couples. The relationships of married men have lasted on average 15 years, versus 9 years for unmarried men, and 10 years for married women versus 6 for unmarried women. These results could in part be explained by the fact that marriage occur after several other steps associated with the stability of the relationship and life patterns in general (such as cohabitation, finding a job, buying a house...) (Smock, Manning and Porter, 2005). The lengths are thus lower among women, which fits with the results already observed by scholars in the international literature (Joyner, Manning and Bogle, 2017 ; Ketcham and Bennett, 2019). Women couples are more likely to split up than men couple and different-sex couples.

Finally, gay men married with another man perceive higher incomes than gay men in unmarried couples, and to a lesser extent, this is also the case for women. 44% of married men perceive more than 3000 euros versus 35% of unmarried men, and this is also the case for 23% versus 12% for women (Table 2).

Class effects can thus be observed and explain the attractiveness of marriage, linked with its economic and social benefits. Cultural norms associated with luxury weddings (Ingraham, 2008) can also force people with less financial resources to delay it or giving up (Maillochon, 2016).

Higher incomes are always less frequent for women couples, which can be explained by the gender gap inequalities between sexes (Chamkhi et Toutlemonde, 2015).

Table 2. Individual income by month for people in same-sex couples, depending on the type of couple (%)

Individual income by month	Men		Women	
	Married couples	Unmarried couples	Married couples	Unmarried couples
< 700 euros	2,8	6,8	4,5	14,7
700 - 1 300	8,9	10,4	13,1	21,7
1 300 - 2 000	18,2	20,8	26,0	29,5
2 000 - 3 000	23,7	24,6	29,4	19,6
3 000 +	44,3	34,8	23,1	11,9
No response	2,2	2,6	3,9	2,7
Total	100	100	100	100
Individuals	325	914	381	919
P	0,014		<0,001	

Source: Virage LGBT Survey, Ined (2016).

Field: Cohabiting people in a same-sex couple.

Lastly, married couples are also more religious than unmarried couples (40% of men and 33 % of women say they have a religion among the married versus 35% of men and 24% of women among the unmarried).

A strong effect of parenthood, explained by the French legislation concerning adoption

These differences in the structure of married and unmarried couples could combine in the explanation of this choice. Yet, a logistic regression allows to show that sociodemographic statuses do not impact the probability of being married rather than unmarried after a control. However, parenthood appears strongly important as mothers in women couples are seven times greater to be married than non-parents, and fathers in men couples are also two times more likely to be married than non-parents do (Table 3, Models 1 and 2). These results confirm that having a child plays a role in the decision of getting married, in order to ensure the legal protection of families (Rostosky et al., 2016). This is probably even more the case in France because being married is required to obtaining filiation rights with children. The qualitative study (n=50) with LGB married with a partner of the same sex confirms that the legal context for filiation and constraints a significant part of the couple who raise or plan to raise children to get married. Some of them related that they would certainly no got married if the legislation on parental recognition have been different. These effects are far less important for men, but still significative. As they are much more childless than women (Buisson et Lapinte, 2013), they mention various uses of marriage: as the political act, other legal dimension, or the symbol of love and commitment.

For men and women, education has no impact on the decision of marrying. But higher lengths of relationships are associated with the choice of marriage: men that are in a couple for more than ten years are three times more likely to be married than the ones with a shorter relationship, and women in the same situation are four times more likely to be married (Table 3, Models 1 and 2). Conjugal stability thus seems to reinforce this choice.

At a lesser extent, economic issues such as being owner of a housing together, but the effects are a bit less important.

Religion has no effect after a control on other variables.

Table 3. Probability of being married rather than unmarried among same-sex couples (logistic regression)

		Model 1	Model 2	Model 3
		Men O.R.	Women O.R	Total O.R
Sex	Men	-	-	ref.
	Women	-	-	1,56 ***
Age	18-24 years old	0,68 n.s	0,18 **	0,28 ***
	25-34	ref.	ref.	ref.
	35-44	1,00 n.s	0,85 n.s	0,93 n.s
	45-54	0,82 n.s	0,77 n.s	0,76 n.s
	55+	1,50 n.s	0,52 n.s	1,05 n.s
Length of relationship	0-2 years	0,29 **	0,43 **	0,38 **
	3-5	ref.	ref.	ref.
	6-10	1,14 n.s	1,95 ***	1,57 **
	11 +	2,52 ***	3,56 ***	3,11 ***
Parenthood	One child or more	2,38 ***	6,92 ***	4,47 ***
	Childless	ref.	ref.	ref.
Education	< Bachelor's degree	1,23 n.s	0,23 **	0,83 n.s
	Bachelor's degree	ref.	ref	ref.
	2 years after bachelor's degree	0,58 n.s	1,22 n.s	0,83 n.s
	More	0,84 n.s	0,84 n.s	0,84 n.s
Religion	Religious	1,16 n.s	1,11 n.s	1,17 n.s
	No religion	ref.	ref.	ref.
Nationalities	Both have French nationality	ref.	ref.	ref.
	One has not	1,33 n.s	1,48 n.s	1,35 n.s
	No one has	2,38 n.s	0,54 n.s	1,56 n.s
Housing in the couple	Own a housing together	1,66 **	1,92 ***	1,83 ***
	One is owner, but not the other	0,59 *	0,88 n.s	0,73 *
	Tenants	ref.	ref.	ref.
	Other	0,31 *	0,40 *	0,40 **

Source: Virage LGBT Survey (2016), Ined.

Field: Cohabiting people in a same-sex couple.

***: $p < 0,001$; **: $p < 0,01$; *: $p < 0,05$; ns: $p > 0,05$.

Conclusion

To conclude, same-sex couples who married in France since the opening of this possibility have different characteristics than those who stayed unmarried. They perceive higher wages, they are more religious, and they live much more often with children. But after controlling all structural effects, it appears that the probability of being married depend mostly on the fact of having children, especially for women.

These results highlight the impact of the legal context on conjugal choices. For that reason, further research should study the legal variations, by analyzing the profiles of couples and develop comparisons between countries.

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