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The Challenges of Advancing Equal Rights for LGBT Individuals in an Increasingly Diverse Society: the Case of the French Taubira Law (*Loi n° 2013-404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe – Mariage Pour Tous*)

By

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Introduction

Globalization has brought unprecedented progressive change to society. The world has become significantly more connected with new technologies able to link individuals from across the world almost instantly, and people are more mobile than at any point in history (Blommaert 2010). On a deeper level, globalization has also brought about progress in terms of cultural awareness, acceptance, and understanding, surpassing societal and geographic borders. More than ever before, individuals from different backgrounds, nationalities, ethnicities, religions, cultural viewpoints, and beliefs are converging on a daily basis in even the most remote areas of the planet, sometimes in person, often online creating communities based on affinity (Gee 2005) and reassembling the social (to paraphrase Latour 2005). Though generational changes have led to growing acceptance of this convergence of cultures and differences, work remains to be done in the area of human rights and equality. Indeed, historical responses of tension and violence are still realities in some societies and cultures today where outward differences, or internal differences once unveiled, are viewed as threatening, and where there seems to be little movement towards progress.

The topic of human rights has risen in prominence over the last 70 years, though the very notion rests on the ideas and movements of previous centuries regarding the dignity and morality of the human condition. Various periods throughout history, such as the French Revolution and two World Wars, though plagued with violence and a lack of understanding, have sparked dialogue and action with the aim of combatting widespread incivility and injustice and bringing human decency and equality to the forefront. In many instances, new societies and governments (e.g., those of the US and France) were created on the basis of these new ideas, which inspired and set the groundwork for subsequent movements, such as the Civil Rights Movement of the

1950s and 1960s and the Gay Rights Movement, demanding respect and freedom for all. In many ways, these movements throughout history, such as the French Enlightenment, precipitated the modern human rights movement and the wide variety of documents – legal, cultural, or otherwise – now surrounding it. Although the concept of human rights seems to be very straightforward, it is certainly not one that is static or concise. Since World War II, the push for universal human rights has accelerated significantly, and today, human rights laws and doctrines are still continually altered to account for the complexities and limitations that emerge from the fact that hardly any situation can be dealt with in exactly the same manner as another.

In recent years, one of the most contentious human rights issues has been lesbian, gay, bisexual, and transgender (LGBT) rights. Even in the most progressive societies, including those in Western Europe and the United States, the issue of same-sex marriage and full civic equality in many facets of life remains vastly contested, and human rights for LGBT individuals have only recently become highly salient. In some nations, the situation is quite dire as LGBT individuals are persecuted and sometimes even sentenced to death for “sinful” homosexual behavior. In countries such as the US and France, such capital punishment does not exist. Still, many anti-LGBT interest groups stand up in staunch opposition to LGBT rights, and the LGBT community is still denied full equality. Many countries, however, are making inroads in granting such civil liberties as marriage and adoption to LGBT individuals. One such country that has recently instituted a law legalizing gay marriage is France, and the whirlwind of events surrounding the passage of “Mariage Pour Tous,” or “Marriage for All,” is notable. Although it appears that full equality in this area has been attained, a certain loophole in the “Taubira Law,” as it is known (owing to the current Minister of Justice, Christiane Taubira, who championed the law), indicates otherwise. A “circulaire,” or memorandum, signed only a few weeks after the

passage of *Mariage Pour Tous*, indicates that if one member of a same-sex partnership in France holds citizenship in one of eleven countries, mostly those formerly a part of Yugoslavia and those of the Maghreb in northern Africa, the couple cannot, in fact, marry in France due to bilateral agreements indicating that the laws of these countries must be upheld for nationals of those countries residing in France.

In the following thesis I will examine complications surrounding the quest for human rights in developed, western societies by examining this particular exception to marriage equality law in France. The persistent push for non-excludable human rights continues, but, as is evident by this particular loophole, is difficult to attain even in societies self-proclaimed as bastions of human rights and equality. My thesis will answer the following question: What are the challenges of advancing equal rights for LGBT individuals in an increasingly diverse society? I will answer this question by examining the case of the French Taubira Law (*Loi n° 2013-404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe*), also known as *Mariage Pour Tous*. I will begin by providing background and historical context of human rights legislation in France pertaining to LGBT individuals. I will pay particular attention to the passage of *Mariage Pour Tous*. Next, I will describe the law in some detail, paying special attention to challenges it faced as well as the context of the loophole. I will conclude with a discussion of why the loophole exists, and, more importantly, its implications for the future, with special attention to the persistent challenges that face LGBT rights advocates.

Background: Why France?

Before analyzing why France provides for such a unique case study in terms of marriage equality, it is necessary to understand the nation's cultural context. The idea of a French "national identity" is a recent construct that made little sense until the French Revolution and has been contested since due to the multitude of different "regional" identities that have existed on the French territory. These identities were manifested in a variety of regional languages including Basque, Normand, Breton, Alsatian, etc. that corresponded with different cultures existing within French territories not frequently penetrated by others. During the French Revolution, countrymen from these separate cultures allied together to topple the oppressive monarchy of Louis XVI. The revolutionary period was one of extreme economic, political, and cultural change based largely on the ideals of the Enlightenment, which laid the foundation for modern France (Allen and Dubreil 19). Emerging from the French Revolution, and also heavily inspired by the ideals of the Enlightenment period, came the Declaration on the Rights of Man and the Citizen, an attestation of the human and civil rights of French citizens. This marked one of the first formal recognitions of such rights in the world. Given that universal human rights do not exist despite the presence of a Universal Declaration of Human Rights drafted and codified by the United Nations, ubiquitous recognition of national human rights in France was not a reality after the passage of the Declaration. While the new form of French identity emerged – that of a "French citizen" as opposed to Normand, Basque, etc. – the notion of *universal* respect and understanding was still far from recognized.

During France's colonial period, it became clear that the ideals of the Declaration on the Rights of the Man and the Citizen were not intended to extend past France as "the White Man's Burden" was a prevalent mindset of those in positions of power in the French government. Many

saw it as the moral duty of France to bolster the development and position of lesser-developed countries by spreading Christianity and the culture of the West (the so-called “mission civilisatrice de la France”). In 1884, then French Prime Minister Jules Ferry declared, "The higher races have a right over the lower races, they have a duty to civilize the inferior races" (Fordham) The idea of the inequality of human beings and the moral superiority of French citizens, despite the nation's constitutional verbiage in the Declaration on the Rights of the Man and the Citizen, was ever-present, even in the highest ranks of the French government. Today, the view is less a disparity between races and nationalities and more a lack of self-monitoring in the realm of human rights. France and other developed western countries view themselves as bastions of human rights and equality, so they do not as frequently question possible domestic transgressions in this area.

As globalization has engendered the swift and continual osmosis of peoples from all over the world across borders, immigration has become a much more prevalent reality in France (as elsewhere). For over a century, the identity of France rode upon the idea of a particular image of a French collective of white, Catholic, and, obviously, French citizens. The immigration of people from other countries, language groups, religions, and cultures has rendered France's idealized national identity (as introduced during the Napoleonic Era) more complex. The assimilation of regional identities that once existed is now happening on a much larger scale as migrants from countries around the world are coming to France, and the French ideal of assimilation is becoming much more problematic (Heckmann 15). In France, unlike the United States, there is no widespread notion that immigrants can come and retain their cultures and ways of life easily. Instead, immigrants are expected to transform themselves into “French citizens” in order to be fully accepted into modern French society (Heckmann 15).

National assimilation is certainly a political question in France. “Through its universal and abstract ambitions, the [French] Revolution implied that all those who adhered to the nation’s values, in particular human rights, could all become its members” (Heckmann 15). Although this influx of immigrants has engendered many opportunities for those groups in France, it has also incited a lot of friction in French society. France houses more than 7 million immigrants; approximately one in nine people living in France are considered to be immigrants (Allen and Dubreil 136). The various cultures and ethnicities brought in through this constant influx of individuals are becoming enmeshed within and are intertwining with existing French culture. This new diversity becomes problematic considering the French prospect of assimilation. The idea of “minorities” exists much less in France than in the United States. For example, in France there is no widespread belief that multiculturalism and individual ethnic cultures “should remain in the private sphere and should not be recognized in the public domain“ (Heckmann 15). A 2004 law banning forms of religious symbol or dress in public schools exemplifies this. Following the French Revolution, the nation largely rescinded its staunchly Catholic past and elected to follow a more secular future based on the precept of *laïcité*, more or less the separation of church and state, which it continues to espouse today. Although it is certainly much less difficult for groups to immigrate to France than to other nations such as the United Kingdom or the United States, the stipulation of assimilation is significantly more institutionalized.

This problem of assimilation with what is understood to be “French” rests not only with diverse ethnic and religious groups, but also with other minority groups. For example, the problem of assimilation exists for LGBT individuals as well as racial, ethnic, and religious minorities. Until fairly recently, sexual orientation other than heterosexuality was another minority status that was considered best left to the private domain in France. With globalization

inciting the immigration of various ethnic and national groups to France, it has engendered incredible opportunity but also incredible friction. Washing in with this wave of globalization is a notion of acceptance for diversity regardless of identity. Furthermore, with the rise of the European Union, there is an additional friction on the potential of a new “European” identity emerging (Bruter 2005). With the possibility of entirely new identities emerging, many French citizens are choosing to unofficially relinquish their status as solely “French,” instead electing to assimilate into additional identities of Breton, Muslim, atheist, in a relationship of someone of a different nationality or religion, and even gay. The identity of being “French,” as in many other globalizing western nations, is now unavoidably expanding beyond simply being a white, heterosexual Catholic who was born and raised in France.

Not everyone in France is so quick to warm up to such overarching and drastic changes, however, and this reality has incited debate not only at the social level but also at the legal and political level. Those who welcome this diversity and change argue that the framework that exists in France is behind reality. France is home to the largest number of Muslims outside of the Middle East and Asia, yet France stands to force them to hide any public indication of this. The number of homosexuals who live in France is staggering, yet the debate of civil equality persists. Now many are standing up to assert equal rights the same as any other French citizen. There are those, however, who stand to suppress such progressive and liberal reform in the name of the old French framework: in the name of a nuclear family, Catholicism, tradition, and simply being “French” as it used to mean. If such debate and friction still exists in France, a nation considered to be one of the most liberal and progressive in the world, the global potential for fully recognized human rights is likely far from being reality.

Historical Context

The history of France has been marked by a long list of violent episodes. The close proximity of France to many other countries in Western Europe has engendered tension and violence throughout the country's long history. Virtually all Western European countries have had contentious pasts with "The Other" – those who speak different languages, come from different villages, possess a different religion, and, certainly, homosexuals. As for France, its strong Judeo-Christian roots not only have incited wars of religion and other tensions with surrounding groups but also engendered systemic homophobia that continues to this day: repression in the name of criminal sin and "indecent behavior."

French society is not traditionally viewed as repressive. Although pre-revolutionary society consisted of suppression in virtually all aspects of life for those who were not a part of the nobility, the French Revolution brought about drastic change in the structure of society. During the Ancien Régime, homosexuality was a capital crime that was punishable by burning at the stake. Very few individuals had to endure the full penalty of partaking in homosexual activity, however, and many arrested for the act were simply imprisoned for a few weeks (Corriveau and Roth 2011). With the invalidation of established religion following the Revolution, the National Constituent Assembly introduced the Penal Code of 1791, which decriminalized homosexuality and repealed all laws against sodomy. This revamping of French Civil Law did not make changes uniquely for homosexuality, however, as it invalidated many crimes whose creations were inspired by established Christianity, such as blasphemy (Backer). Sibalis 1996 outlines:

In his presentation of the newly drafted penal code to the Constituent Assembly, Le Pelletier de Saint-Fargeau commented that it outlawed only 'true crimes' and not 'those phony offenses created by superstition, feudalism, the tax system and despotism.'

Although he did not list the crimes 'created by superstition' -- meaning the Christian religion -- they undoubtedly included blasphemy, heresy, sacrilege, and witchcraft, and also quite probably bestiality, incest, pederasty and sodomy. By dropping any mention of these former offenses, Revolutionary legislation simply passed over in silence acts that had once, at least in theory, merited the most severe penalties [including death] (Sibalis 82).

The Penal Code of 1791, however, did not mention private same-sex behavior; this particular aspect was not addressed until twenty years later.

Much of the basis for modern French Civil Law lies with the Napoleonic Code, which was written in 1804 by Jean-Jacques-Régis de Cambacérès, a French lawyer and statesman who was openly gay. Following the French Revolution, the Napoleonic Code privatized homosexuality and removed it from direct regulation (Corriveau and Roth 2011). The vagueness of the code, however, allowed legal authorities to continue to exert homophobic authority over homosexual behavior (Corriveau and Roth 2011). Although homosexuality was officially decriminalized, authorities with an aversion to it used the vague verbiage of the code to their repressive advantage.

Since Jean-Jacques-Régis de Cambacérès was gay himself, it is understandable that many believe he was responsible for eradicating the criminalization of homosexual individuals; however, the true revamping of Civil Law did not come until the Penal Code of 1810, which dealt specifically with sexual crimes (Butterworth). Although deemed legal by the Code, homosexuality was not widely accepted in wider French society at the time. It was still viewed as intensely immoral, and many homosexuals were still persecuted by Napoleonic officials not under charges of sodomy or homosexual behavior but on more vague charges of immorality and

public indecency (Butterworth). Despite these repressive actions, this era was “a time of relative freedom for homosexuals and opened the modern era of legal toleration for homosexuality in Europe” (Merrick 1996). Napoleon’s conquests spread and imposed the principles of his Penal Code throughout Europe including Belgium, the Netherlands, and Italy. Other states not under Napoleonic rule, such as Bavaria and Spain, still followed Napoleon’s example and decriminalized homosexual activity in their own states as well (Merrick 1996). Most specifically, the Penal Code established sexual conduct as a private matter.

Although there was never any harsh and extraordinary opposition to or push for LGBT rights and equality in France through the 19th century and early 20th century, the most overarching liberal reforms came in the 1980s with the administration of François Mitterrand, the 21st President of France who served from 1981 to 1995. Mitterrand was a member of the Socialist party and is today still widely considered to be one of the most accomplished western liberal leaders. Mitterrand is not considered to be a great and impactful leader simply because of the longevity of his administration – 14 years – but, more importantly, due to the widespread liberal reforms that he instituted in the country. He sought to nationalize French banks and businesses in order to improve worker pay, worked to combat unemployment, and also successfully abolished the death penalty (“François Mitterrand”). In terms of advancing LGBT rights in France, Mitterrand equalized the age of consent for homosexual activity early in his administration in 1982. The beginning of his administration occurred during a period of great change in the world of marriage in France. The social movements of 1968 introduced these new liberal ideas only 10 to 15 years earlier, and this new manner of thought was continuing to unroll (Martin and Théry). The increase in the number of couples cohabitating and births outside of wedlock indicate a new acceptability and also perhaps a renunciation in the social necessity for

traditional marriage, a so-called “soft revolution” (Martin and Théry 12). During his administration, various project proposals to advance the cause of LGBT equality were put forward by the left including the *partenariat civile* (Senate, 1990) and the *contrat d’union civile* (National Assembly, 1992), noteworthy though not terribly significant advancements (Martin and Théry 16). The Mitterrand administration set a wave of socially liberal policies that gave way to many more to come following his years in office.

A few more proposals were put forth and passed in the National Assembly in the few years after Mitterrand left office, but perhaps the most notable liberal establishments towards advancing LGBT rights in France came in 1999 when the PaCS, or the Civil Solidarity Pact (*Pacte Civil de Solidarité*), was voted into effect by the French Parliament. The PaCS is officially defined as, “a contract between two adults, of different or of the same sex, intended to help organize their life in common. It entails both rights and obligations for both partners, especially ‘mutual and material support’” (Consulate General of France). It still remains a prominent institution in French society today and was passed largely to advance the cause of LGBT couples by offering a legal recognition of their union but not quite to the extent of actual marriage. Approximately 94% of those who choose to register a PaCS are homosexual (Wullus). Often, couples can even participate in a formal ceremony for a PaCS, and, passed only in the past few years, couples who sign off on the PaCS agreement are considered “pacsés” in terms of official marital status rather than “single” as they were considered for the first six or seven years of the institution’s existence (Godard).

The PaCS debate exhibited a noteworthy change in French public opinion, and many viewed traditional family associations as too conservative to represent their interests, which now lied in the realm of individualism, secularism, and equality (Martin and Théry 26). The

“homosexual community,” now more commonly referred to as the LGBT community, an emerging interest group, though fragmented and decentralized, began to make inroads gaining power and prominence on the French social, political, and legal agenda (Martin and Théry 10). Despite staunch opposition from many angles and an intense debate in the National Assembly, the PaCS (*loi sur le concubinage et le pacte civil de solidarité*) was signed into law on November 15, 1999 and still exists as a social and legal institution and option for both homosexual and heterosexual couples today (Martin and Théry 15). The PaCS is not, however, intended to be legal recognition for homosexual couples as “legal couples.” Furthermore, it is also only intended to be concluded between cohabitating couples. Around the turn of the 21st century:

homosexuals who want to conclude a legal union [did not] have in France the equal rights and dignity [that existed], through registered partnerships, in other European countries like Denmark or Sweden. Marriage, now possible for same-sex couples in the Netherlands, [was not at the time] considered a serious legal issue by French politicians, in spite of the efforts of some very active leaders of the homosexual movement” (Martin and Théry 22).

Although then, and even now, there were couples, both heterosexual and homosexual, who were satisfied with the advantages obtained from a PaCS, including inheritance and housing rights as well as social security benefits (“Benefits and Obligations of a PACS”), there were many homosexual couples who were still not content and sought further equality. The hunger for full equality and human and civil rights amongst the LGBT community in France was far from satisfied.

Mariage Pour Tous

Loi n° 2013-404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe

Although the passage of the PaCS presented significant gains in terms of LGBT couple rights in France, the debate over equality was not over. In 2004, Noel Mamère, former presidential candidate and leftist mayor of Bègles, a suburb of Bordeaux, conducted a marriage ceremony for a same-sex couple. He stated that there was nothing in French law officially prohibiting it, and furthermore stated that should anyone oppose it, he would uphold his actions in the European Court of Human Rights. He stated that he wanted to take a stand and “fight all forms of discrimination, including homophobia” (“First gay marriage held in France”). The event sparked widespread media coverage, and both pro and anti-gay groups flooded the city to applaud and protest. The PaCS was the only means for homosexual couples to enter into a civil union with one another; however, it still does not grant adoption, lineage, or custody rights (“Benefits and Obligations of a PACS”). Then Prime Minister Jean-Pierre Raffarin insisted immediately following the ceremony that, under French law, marriage only be between a man and a woman, and that the marriage performed by Mamère would be declared null and void, which it was soon after (“First gay marriage held in France”). This event sparked a more specific debate on the front of LGBT equality in France, focused not generally on the rights of individual homosexual individuals or couples, but more precisely on the right to marry.

In 2006, entering into the debate were concerns regarding the rights of children in such circumstances of same-sex marriage. In a parliamentary report released in January of the same year regarding the family and rights of children in the nation, writers emphasized the desire to understand and acknowledge the evolution of and current state of the modern French family in order to best keep with the interests of the children of the country (Assemblée Nationale). The

report seemed, at least in its phrasing, to be somewhat open to a “new” conception of the family stating, “The civil code contains no definition of the family. Article 213 affirms that, ‘spouses assure together the moral and material direction of the family. They provide for the education of their children and aid in preparing for their future’” (Assemblée Nationale). The code of social action and families emphasized the diversity of family forms in providing three different criteria for what would constitute the character of a family in Article L 211-1. These included families created by marriage and filiation, married couples without children, and “all physical people with legal burden of having children by birth or adoption, or having custody or guardianship of a child or children under their effective and permanent responsibility” (Assemblée Nationale). The final category was undeniably added, though not comprising a “traditional” family, to include single-parent households, particularly since almost half of the children in France were born out of wedlock at that point and the marriage rate was down 27 percent compared to 35 years earlier (Schuck). It was argued, however, that same-sex couples are not included within any of the categories (Assemblée Nationale).

A poll by nationally renowned *Figaro* magazine in August 2006 indicated that a majority of French citizens supported the idea of legalized gay marriage in the country. The debate was highly polemical between separate corners of the government. Then current President Jacques Chirac, a conservative, spoke publicly against it, while left-wingers, such as current president and then Socialist part leader François Hollande, were pushing for full equality of homosexual couples with heterosexual couples (Schuck). The debate continued for five more years, with new LGBT associations forming and existing ones gaining support and traction. These associations, towards the end of 2010 and beginning of 2011, urged the Constitutional Council to review the Constitution and the Civil Code to determine whether the prohibition of same-sex marriage in

France was unconstitutional or not. The Council determined that the illegality of same-sex marriage in the country was not, in fact, unconstitutional, and determined that it was a question better suited for the French Parliament (Conseil Constitutionnel). Thus, a few months later in June of 2011, the National Assembly voted on Bill 586, the first bill regarding the legalization of same-sex marriage to be voted on by the French parliament. With a right-wing majority in the parliament, the vote came out decidedly against the legalization of gay marriage, 293 votes to 222. The Socialist party, those who voted overwhelmingly in support of the bill, stated that, should they gain the majority in the next election, the legalization of gay marriage would become a distinct priority in their administration ("French Parliament Rejects Same-Sex Marriage Bill").

In the subsequent national election the following year in 2012, Socialist party leader François Hollande, who had expressed his support for the legalization of same-sex marriage in France early on six years before, emerged as victor. As the party had promised the previous year, his administration included the legalization of same-sex marriage as well as the possibility of adoption for same-sex couples as high on their political agenda. As with the PaCS that came thirteen years earlier, the debate for full same-sex civil marriage divided the citizens of France. The protests and demonstrations that surrounded both sides of the gay marriage debate were much more widespread and gained significantly more media attention. Hollande made the issue a cornerstone of his campaign and was pushing for a law to be passed by mid-2013, and the legislation was presented to Parliament in January of 2013. The law “allows marriage for all, regardless of sexual orientation. This [means] gay couples – who have had the right to civil partnerships since 1999 – could, through marriage, take their partner's name and gain inheritance and pension rights. Adoption would also become legal for married same-sex couples” (Chrisafis 7 Nov.). Hollande hoped that, should this law be passed, it would be a “milestone of social

progress,” and particularly, a progressive paradigm-shifting piece of legislation with his name on it (Chrisafis 14 Dec.).

Whether the bill was presented due to the progressive intentions of Hollande or as a distraction from the French financial crisis that was happening at the time, or perhaps a mix of both, the Constitutional Convention blocked opposition to the bill from right-wing groups in May, giving Hollande the go-ahead to sign it into law (“France Gay Marriage: Hollande Signs Bill into Law”). *Loi n° 2013-404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe* (Law n. 2013-404 of May 17th, 2013 opening marriage to same-sex couples) was signed in mid-May of 2013 and came to be known as “Mariage Pour Tous,” or “Marriage for All.” Many also refer to it as the “Taubira Law” due to the actions of Christiane Taubira, current French Minister of Justice and staunch advocate for minorities, in setting the movement for LGBT equality in motion and introducing the law. On May 17th, 2013, France became the ninth European country and the twelfth country in the world to legalize same-sex marriage (“Le Mariage Pour Tous”). The decision proves, however, to be the most influential of all countries authorizing same-sex marriage in terms of economic and diplomatic consequence (Chrisafis 7 Nov.).

Article. 143: “Marriage is contracted by two opposite-sex or same-sex individuals” (“Loi N°2013-404 du 17 mai 2013 - Article 1”). The legal acknowledgement of marriage equality had finally been made. Furthermore, “Mariage Pour Tous” is unique amongst policies legalizing same-sex marriage in that the law provides for adoption for same-sex couples as well. Although quite a significant step towards equality for the nation in providing gay and lesbian couples the primary marriage rights they had been seeking, the law was not as generous as it seemed. The law only offered homosexual couples the right to adopt if they were *married*, ignoring the desire

of the countless couples “pacséd,” or those simply in a civil union. Furthermore, the law does not provide for medically assisted procreation for same-sex couples, married or otherwise. Many equality groups were still unsatisfied after the law was passed since it still did not provide for *full* equality (Chrisafis 14 Dec.) Many could argue, however, that, despite the stipulations and nuances of parenthood for same-sex couples that the law either did or did not provide for, the issue of *marriage* equality for all, “*Mariage pour Tous*” as the law’s namesake exhibited, was finally resolved.

Challenges to Equality

The passage of the PaCS was hotly contested in last few years of the 20th century, particularly by right-wing politicians who believed that providing such a right to LGBT couples would prove destructive for French society. Nevertheless, “homosexuals increasingly demanded social recognition of their partnerships and legal protection [and] the debate about PaCS was a result of that mobilization” (Godard 8). Due to the successes of the Socialist party and the close political proximity of many of the homosexual associations to the party, which was in power at the time, it was much easier for the debate to be placed on the political agenda (Godard 8). The debate over the PaCS incited significant questioning on the “frontiers of the family,” most notably led by MP Christine Boutin, who spearheaded the “Pacs out” campaign (Martin and Théry 20). “To recognize the right of homosexuals to live in partnerships and to obtain legal advantages equivalent to those of “legitimate” couples, and to break with discriminatory attitudes and homophobia leads ineluctably to the acceptance of homosexuality as a legitimate way of life and even as a form of family life” (Godard 8-9). The homosexual movement gained significant traction in the mid-90s due to a party in power with great fertility to advance the cause and

strong grassroots mobilization (Godard 9). The debate ranged on a variety of homosexual issues, from recognition of the individual to recognition of the rights of homosexual couples to debates involving and surrounding adoption (Godard 9). On all issues, family associations and right-wing associations defended tradition (Godard 9 and Commaille & Martin, 1998).

At the time Hollande assumed Presidential office in 2012, a poll conducted by national newspaper *Le Monde* indicated that 65 percent of French citizens were in support of same-sex marriage, but the backlash and protest that emitted from the political and social conservatives, namely the Catholic Church, was intense (Chrisafis 7 Nov.). Cardinal André Vingt-Trois, the archbishop of Paris, stated that legalizing same-sex marriage would “shake the foundations of [their] society” (Chrisafis 7 Nov.). The strong opposition to the law from the Catholic Church and from right-leaning individuals on the basis of religion was also surprising considering the secular nature of French government and society. Simply the introduction of the bill in late 2012 sparked widespread street demonstrations surrounding the passage of the law, which revealed the profound divisions that existed in French society on the issue.

One of the largest associations in France that arose in opposition to the potential passage of *Mariage Pour Tous*, “Manif Pour Tous,” or “Protest for all,” garnered a strong support network that still maintains power and influence in France today. *Manif Pour Tous* is not a specifically homophobic association, nor an association with the predominant goal of countering the legalization of gay marriage in France. Rather, their mission is to uphold the values of the traditional family, which it views the legalization of gay marriage in France as considerably jeopardizing. “[...] we bear a historic responsibility...for preserving our civil statuses, our society, and our humanity, let us stand up with determination, with *no homophobia* [...] to demand that this bill be withdrawn” (La Manif Pour Tous). The organization’s primary qualm

with Mariage Pour Tous is that it “intends to erase sexual differentiation and complementarity from the law and jeopardize the foundation of human identity: sexual difference and the resulting structure of parentage” (La Manif Pour Tous). Their primary concern is children raised in a familial situation other than what is “traditional” and accepted – i.e. one father and one mother. “With plenary adoption for two men or two women, children will be considered, by law, born of two parents of the same sex, thus willingly deprived of a father or a mother. They will be deprived of half their origins. This is profoundly discriminatory and unjust for children” (La Manif Pour Tous). What is interesting to note, however, is their apparent lack of consideration for single or otherwise non-traditional heterosexual parents, and their willingness to advocate for something arguably discriminatory and unjust for one group for the “benefit” – in their assessment – of children. The two issues of gay marriage and adoption, however, for protesters on both sides, remain indivisible.

Perhaps it is the differences in the variation in the conceptions of marriage in general between the two sides that sparked so much controversy and protest. For example, Manif Pour Tous alleges:

Marriage is always a choice for couples. As current wedding statistics show, many choose a different way of living their relationship, such as a PaCS (a type of civil union) or cohabitation. To recognize this diversity of life choices for both heterosexual and homosexual couples is to recognize marriage as a particular and demanding choice, which has no pretension to be universal. As society has progressed in its acceptance of homosexual couples for what they are, so it must recognize marriage for what it is (La Manif Pour Tous).

Furthermore, “Marriage is not a consecration of love [...] the law [Mariage Pour Tous] makes distinctions between different types of couples with respect to familial stability. That is the point of republican marriage. The "differences in treatment" lawfully recognized in this context are not discriminations, but serve the well being of children and families” (La Manif Pour Tous). Manif Pour Tous, and many of those protesting against the legalization of gay marriage in France, was protesting on behalf of the family – the potential of homosexual couples adopting children – not simply in stark opposition to gay marriage itself. Those protesting in support of the legalization of Mariage Pour Tous, however, were likely more specifically in support of the institution of marriage being made legal to two individuals in love, regardless of their gender identity or sexual orientation, and secondarily the ability of those couples to adopt and raise children, though not as a primary motivation for protest. It was Manif Pour Tous’s strategy in framing their movement as a movement for all French citizens that likely aided in their success in garnering so much support.

The political landscape in France grants significant power to non-governmental organizations and associations who provide significant steam in influencing public opinion as well as motivating activity both counter and pro government policy. This very democratic aspect of power of the people engenders widespread *manifestations*, or public protests, regarding a variety of issues in France, but few have been as notable or as extensive as those surrounding the passage of Mariage Pour Tous. In early 2013, one of the largest demonstrations occurred in Paris in the hopes of countering the advancement of the bill. Over 340,000 anti-gay marriage protesters rallied through the streets as well as 125,000 of those in support of same-sex marriage. Manif Pour Tous fueled much of the demonstration on the anti-side, which shocked many observers since strong protest backing typically comes from the political left (Schofield).

Furthermore, with relation to France's political system, existing institutions dictate that, regardless of whether or not there is a religious marriage ceremony conducted, couples wishing to wed must have a civil ceremony either as the sole ceremony or in addition to one that is religiously conducted (Schofield). Since, in many other nations, religiously-based ceremonies are also considered to be valid by the state, it is likely that conservatives in France expressed so much discontent with the law because legalizing gay marriage would fully equate with heterosexual marriage, perhaps, in their opinion, somehow downgrading or slightly illegitimizing their own conception of marriage.

As the bill progressed slowly but surely through the National Assembly and moved onto the Senate in the last few months before it was ratified, protests intensified on both sides, with much of the heat emitting from right-wing groups. SOS Homophobie, a pro-gay non-profit association, "received three times as many reports" of homophobic violence and incidents in the months leading up to the passage of *Mariage Pour Tous* compared to the year prior ("Anti-gay Marriage Rally Keeps Debate Alive in France"). Inching closer to potential ratification, gay bars were attacked, "anti" protesters breached barricades on the Champs-Elysees, and the "National Assembly president received a letter containing gunpowder and a threat of war signed by unknown 'social forces of order'" (Pathe). Through it all, many protesters asserted, to the likely surprise of many uninformed onlookers, that they are certainly not homophobic but simply concerned about homosexual couples adopting with the well-being of children raised by same-sex couples at stake. Even when the bill was signed into law in May of 2013, *Manif Pour Tous* protests did not relax, and the anti movement determined not only to keep the debate alive but also to aim to reverse the law entirely during the next election cycle ("Anti-gay Marriage Rally Keeps Debate Alive in France"). With the National Front party faring quite well in terms of

citizen support, the potential, even though the 2014 election cycle has since passed, of rescinding the law is never far from being a possibility.

Although protests still continue on the part of *Manif Pour Tous* and other right-wing groups aimed at countering *Mariage Pour Tous*, they have relaxed for the most part. Homosexual couples in France are able to enter into civil unions, marry, and even adopt children. On the exterior, it seems only fitting that proponents of gay rights should be celebrating the achievements that have been made in the arena. Though certain privileges for gay couples remain unresolved such as medically assisted procreation, it seems that those in support have, by and large, won the gay rights struggle. As the history of human rights predicts and validates, however, the struggle for full equality is never truly over. Recognizing the universality of human rights is an unavailingly elusive goal, and even though full attainment seems so much closer today, it's still not quite achieved. Even after much of the public protest has, for the most part, died down, a very small challenge to full LGBT equality in France remains. The loophole described in the memorandum on Law 2013-404 dated May 29th, 2013, signed only twelve days after *Mariage Pour Tous* was signed into law and by the same justice minister, Christiane Taubira, prevents full LGBT marriage equality from being a reality in France.

The Loophole

Circulaire du 29 mai 2013 de présentation de la loi ouvrant le mariage aux couples

de personnes de même sexe (dispositions du Code civil)

Less than two weeks after the law legalizing same-sex marriage in France was passed, Decree No. 2013-429 of May 24th, 2013 amended various provisions regarding *Loi n° 2013-404 du 17 mai 2013 ouvrant le mariage aux couples de personnes de même sexe*, or “*Mariage pour Tous*,”

relating to civil status and the Code of Civil Procedure with immediate application. The 29-page memorandum outlines various amendments to the gay marriage law, not specifically outlined within the law itself. The memorandum upholds many of the benefits intended by the law, such as equal treatment of both homosexual and heterosexual married couples and parents and inserts such in the new Article 6-1 of the Civil Code. Although much of the first part of the memorandum is directed at the parentage of same-sex couples and related intricacies, it indicates a few important stipulations to the fundamental legalization of gay marriage “for all.”

The memorandum states, “Apart from the requirement related to sexual otherness, which is no longer required, the legislation opening marriage to couples of the same sex does not change any of the other substantive requirements for a valid marriage in France” (“Circulaire du 29 mai 2013”). Section 2.1.2 of of the the memorandum, however, introduces a few surprising exceptions to the newly passed law, drawing on Article 202 of the Civil Code “to adjust the difficulties related to conflict of laws, where the planned marriage has foreign elements” (“Circulaire du 29 mai 2013”). Specifically, Article 202-1, paragraph 2 stipulates, “Two people of the same sex can marry when at least one of them, either by personal law or the law of the state in which he has his domicile or residence, permits it” (“Circulaire du 29 mai 2013”). Essentially, the new law granting same-sex couples the right to marry applies to couples residing in France in which at least one of them is a citizen of France. The law cannot be applied, however:

to nationals of countries with which France is bound by bilateral agreements, which provide that the applicable substantive conditions of marriage law is the personal law. In this case, because of the hierarchy of norms, such conventions have a value above [law 2013-404] and should be applied in the case of a marriage involving one or two

national(s) of the countries with which these agreements were concluded. In the state of right and jurisprudence, personal law will be dismissed for nationals of these countries ("Circulaire du 29 mai 2013").

Such bilateral agreements were signed between France and the following 11 nations: Poland, Bosnia and Herzegovina, Montenegro, Serbia, Kosovo, Slovenia, Cambodia, Laos, Morocco, Tunisia, and Algeria. In cases where two individuals of the same sex should attempt to marry in France and in which one of them is a national of one of these 11 countries, the civil officer will be unable to lawfully perform the marriage.

The memorandum lists the relevant conventions signed between each individual country and France but does not outline the particulars of the agreements and conventions that would necessitate such an exception to the same-sex marriage rule. It does, however, list specific articles and paragraphs of the conventions that directly contradict the application of *Mariage Pour Tous* for said citizens. Many of the bilateral conventions signed between France and the 11 nations were validated in the 1950s, 1960s, and 1970s, indicating long-standing legal and historical ties between the nations that persist today and retain considerable importance. In the context of the entire memorandum, however, the explanation for this particular aspect regarding nationals of the particular 11 countries is quite vague, so reading the original bilateral conventions is required to better understand why such a barrier exists for citizens of these relevant countries.

Entangled Histories

When taking a closer look at the eleven countries whose homosexual citizens in France are prevented from marrying, the list comes at no surprise: each of the eleven comprises a region of

the world with which France has a long-lasting and fairly active diplomatic relationship. The eleven countries all fall within one of three principal regions of French interest: Southeast Asia (Laos and Cambodia), North Africa or the “Maghreb” (Tunisia, Algeria, and Morocco), and Eastern Europe/former Yugoslavia (Poland, Bosnia-Herzegovina, Montenegro, Serbia, Kosovo, and Slovenia).

During 19th century, at the beginning of France’s colonial prime, France extended its colonial reach into Southeast Asia. What began as religious mission work in the region and a means to protect the Catholic religion eventually turned into military and colonial expansion (Tucker 1999). In 1859, the French captured Saigon in Vietnam, the first of its Southeast Asian pursuits. In the fifty years that followed, France moved north and completed its conquest of Indochina by 1907 (Wilson). French Indochina, which came to be known as the Indochinese Union and later the Indochinese Federation, comprised the grouping of French colonies that existed in the region, including the nations of Vietnam, Cambodia, Laos, and parts of China. The primary reasons for colonization in the region were economic as the early colonial government had almost exclusive control over the trade of opium, salt, and rice alcohol. Natural resources eventually became extremely important as well as rubber (“Effects of French Colonial Rule”). As a result of the over half-century of colonization in the region, the French culture, French language, and Catholicism penetrated the region, and left its mark for years to come.

French colonial acquisition specifically in Cambodia, the first in the two Southeast Asian nations in current question with Decree No. 2013-429, began in the mid-late 19th century. When France established its first Southeast Asian colony in present-day Vietnam, King Norodom of Cambodia requested a French Protectorate be established over his kingdom, which was initiated in August of 1863 (“Effects of French Colonial Rule”). Under the treaty signed that initiated the

establishment of the Protectorate, much of the power of the Cambodian monarchy was ceded to a French Resident-General. France was interested in the territory because it would serve as a useful “buffer colony” between its Vietnamese colonies and Siam, in addition to providing military protection of the country, was also placed in charge of Cambodia’s foreign and trade relations (Franchini 92). Although France’s acquisition of almost complete power in the region was met with backlash from time to time, it began to make inroads both in Cambodia and in the region as a whole.

In 1893, following a victory in the Franco-Siamese War, the nation of Laos, the second nation in question in the current gay marriage law in France, was added to France’s colonial sphere of influence in the establishment of the French Protectorate of Laos. Interest in the nation began in the 1860s with the mission of utilizing the Mekong River to reach southern China (Hahn). After the Protectorate was established towards the end of the 19th century, a Resident-General or “Resident Superieur” was established, as in Cambodia, to organize the administration of the colony (Hahn). There were a few mild uprisings regarding French colonial rule in the country, which were quickly quelled, but Laos was an overall relatively passive colony. World War II placed France at a highly disadvantaged position in terms of retaining control of French Indochina, particularly with regards to Japanese presence in the region. Japanese surrender in 1945, however, put France in a position of regaining Indochina, and they were able to do so the following year (Hahn). Over the course of the next seven to eight years, many of the French actions taken in its Indochinese colonies were aimed at relinquishing power back to the native people, and in 1953-1954 full independence was granted to all colonies previously in French Indochina, Laos and Cambodia included.

A few years following independence in 1959, a formal decree (décret n° 59-593 du 22 avril 1959) was published outlining the formal agreements made between each of the now independent Indochinese nations, notably those made between France and Cambodia on August 29th and September 9th of 1953 and that made between France and Laos on October 22, 1953. The decree outlines the various transfers of judicial authority granted from France to the newly-independent nations ("Laos Convention Bilatéral"). Regarding power transfer protocol between France and Cambodia/Laos, it was agreed to that the French government "transfers to the Royal government [of Cambodia and Laos] all expertise performed to date in the territory regarding judicial matters [...] regarding all litigants of the French courts in Cambodia" ("Laos Convention Bilatéral" 68). These decrees acknowledge the transfer of judicial authority over Cambodian citizens over to the judicial courts of Cambodia from the judicial authority of the French courts.

In a letter exchange between the High Commissioner of the French Republic in Cambodia and the Cambodian Prime Minister, High Commissioner Risterucci asked Prime Minister Phnom-Penh how conflict of laws would be dealt with by the new independent nation, to which Phnom-Penh replied, "[...] the royal government intends to apply the rules of private international law to resolve conflicts of law that may occur before the Cambodian courts. The personal status of nationals of the French Union shall, following the rules of private international law, fall to their national law" ("Laos Convention Bilatéral"). Such an exchange of letters between the two individuals has the value of an international treaty in and of itself ("Mariage Homosexuel. Situation Des Couples Binationaux"). Article 19 of the agreement between France and Laos outlines that, particularly in those cases related to marriage, "[...] in all cases where the laws of conflict will not be provided by Lao law, they will be resolved according to French rules of conflict of laws" ("Laos Convention Bilatéral" 34). Although certain provinces in Cambodia

now recognize lesbian partnerships as marriages, Cambodian national law does not recognize same-sex marriage, and Article 1 of Lao marriage law defines marriage as between a man and a woman ("LGBT Rights in Laos").

France's colonial relationship and history with Southeast Asia was long and involved, but the vast distances that separated France from the region prevented the nation from having a durable influence in numbers, culture, and governance. France's colonial relationship with the countries of northern Africa (Tunisia, Algeria, and Morocco), commonly referred to as the "Maghreb," however, is significantly more intertwined and ripe with prominent conflicts, perennial issues, and persistent influence today. Separated only by the Mediterranean Sea, the Maghreb and France have a very close relationship, arguably closer than even that of the Maghreb and the rest of Africa. Though the context of France's relationships with each of the three nation-states – all three of concern to *Mariage Pour Tous* – is quite similar at the base in all three cases, in-depth study reveals distinct differences between the three.

"If we view the process of colonialization as a wound – which many Maghrebian writers do – we must conclude that Algeria's wound was deeper and more painful than that of its North African Neighbors, Morocco to the west and Tunisia to the east" (Mortimer 2000). Before France ventured into Southeast Asia to satisfy its deep oriental colonial pursuits, it did not venture far to begin its colonial acquisition in northern Africa. France began its conquest of the Maghreb in 1830 with Algeria, the second largest country in Africa (today) and geographically five times the size of France (Walker). With economic pursuits in mind, French troops mercilessly entered Algeria, and many European civilians, mainly working class individuals – French migrants were officially dubbed "pied noirs" or "black feet" – entered into Algiers, the capital ("French Algeria 1830-1962"). Rather than being established as a protectorate or colony,

Algeria was declared actual French territory. The pied noirs in Algeria were able to participate in French elections, but Algerians were not granted the same rights. The French exploited the resources and land to the benefit of the French state, arguably to the detriment of the natives of the colonies.

Once France initially stepped foot into Algerian territory, the backlash was strong and prevalent. Abd al Qadir, considered one of the first champions for Algerian independence during the 1830s and 1840s, built up a strong and notable backing of support to counter French occupation, but he was defeated in 1847. Over the course of the next century, France upheld a strong military presence in the region, both discouraging and halting any resistance movements that arose. During this time, the native Muslims of Algeria were considered to be “subjects” of the French state and were not permitted to “obtain French citizenship unless they gave up their religion and culture” (“French Algeria 1830-1962”). The situation was arguably a form of Apartheid with the pied noirs receiving all benefits in terms of habitation, employment, etc., while the native Algerians were marginalized in almost every case. Algeria’s economy was exploited to support the French Republic as virtually all crops and resources were exported to France. It is likely due to French colonization and exploitation that Algeria did not fully industrialize and remains to be a “lesser-developed” state today. France had overstepped boundaries in a variety of areas in Algerian society, and in November of 1954, revolutionaries comprising the National Liberation Front, or FLN, initiated the Franco-Algerian War, or the Algerian War of Independence. The war, lasting less than a decade, exhibited the power and brutality of the French military, but they were seen as far from legitimate. Then President Charles de Gaulle, though met with hot opposition from many French citizens, decided to rescind

control over the Algerian territory in 1961, and with the 1962 Evian Accords, Algeria was granted independence.

Although the circumstances in France's two other Maghreb colonies of Tunisia and Morocco were certainly not as entrenched and bloody as they were between France and Algeria, the effects of French colonization were still profoundly felt. Both Tunisia and Morocco are significantly smaller nations in terms of both territorial scope and French economic interest. The political situation was also much less fortified in Tunisia and Morocco than in their sister nation of Algeria. Economic interest in Tunisia was significantly less than that in Algeria, so the conflict was minimal. Furthermore, Morocco was only considered to be a protectorate, so they retained their own local government and administration. The two nations experienced a much shorter period of French colonization than neighboring Algeria, and independence came quicker to them. As in Southeast Asia, World War II made possession of colonies to be significantly difficult for France, and it granted independence to Tunisia and Morocco in 1956 without much tumult (Tarwater 4).

Tunisia was the first of the three Maghreb states to have a convention signed between leaders outlining the conditions of independence. Decree n. 58-86 of February 1, 1958, publishing the judicial convention between France and Tunisia, was signed on March 9, 1957. Upon the legitimation of this convention, Article 1 states that "the French courts in Tunisia are dissolved, and all skills once assigned to them are now assigned to the Tunisian courts" (Décret N° 58-86 du 1er février 1958 2). Furthermore, Article 2 states, "In matters of personal status, as defined by the Bey's decree of July 12, 1956, French nationals are governed by their own law" and "in all civil, commercial, and, by default, Tunisian matters, the French text in force in

Tunisia at the date of application of this convention will continue to apply before Tunisian courts” (Décret N° 58-86 du 1er février 1958 3).

Four years later, France solidified Algerian independence with the Evian Accords, which were the result of negotiations between France and the now independent Algerian state, officially ending the Algerian War and outlining the intricacies of Algerian independence ("Accords d'Evian"). The convention underscored the necessity for Algeria to be a signee of the Universal Declaration on the Rights of Man as well as the necessity to found “its institutions on democratic principles and on the equality of the political rights between all citizens without discrimination on the base of race, origin, or religion” ("Accords d'Evian"). Sexual orientation, of course, had not yet been added to the list. The 2013 memorandum outlining the particular *Mariage Pour Tous* loophole indicates the “declaration of guarantees” as the particular aspect of the Evian Accords trumping *Mariage Pour Tous* in this case. Point six of the third part indicates that in terms of a personal status, French citizens residing in Algeria as foreigners will be governed by French law ("*Mariage Homosexuel. Situation Des Couples Binationaux*"). Furthermore, “French nationals exercising Algerian civil rights can not simultaneously exercise French civil rights” ("Accords d'Evian"). The principle of reciprocity exists within these conventions, necessitating that Algerian law apply to Algerians ("*Mariage Homosexuel. Situation Des Couples Binationaux*").

Although the previous two conventions of Tunisia and Algeria do not explicitly outline same-sex marriage as prohibited in terms of laws under which nationals of each individual country fall under, the convention between France and Morocco, published significantly later in the early 1980s, directly mentions marriage. Morocco was granted independence in the late 1950s at the same time as Tunisia, but the convention cited as directly prohibiting homosexual Moroccan nationals from marrying in France is not the initial convention outlining the terms of

independence. Rather, the convention cited is the “Convention relating to the status of people and the family and to judicial cooperation dating August 10, 1981” (published by Decree No. 83-435 of 27 May 1983, Article 5). Though an initial convention exists outlining the conditions of independence, this convention was ratified more recently to explicitly delineate the rules on conflict of laws related specifically to marriage and family amongst nationals of France and Morocco. Article 1 states, “The status and capacity of physical persons are governed by the law of the State in which such persons are nationals” (“Convention entre la Republique Française et le Royaume du Maroc”). Chapter 1 Article 5 of this particular decree, indicated as the contingent factor of this loophole in the 2013 memorandum, states that “the conditions at the base of marriage such as marital age and consent, as well as impediments, particularly those arising from kinship or marriage, are regulated for each spouse by the law of one of the States which they are nationals” (Convention entre la Republique Française et le Royaume du Maroc”). Marriage laws for each individual, regardless of the nationality of their partner, fall to the laws of the state for which they hold nationality. Thus, Moroccan LGBT individuals wishing to marry French citizens are prohibited from doing so because Moroccan marriage law prohibits same-sex marriage.

The last grouping of nations affected by conventions rendering same-sex marriage in France still illegal for their nationals are all located in Eastern Europe. These countries, including Poland, Bosnia and Herzegovina, Montenegro, Serbia, Kosovo, and Slovenia, have a much less direct relationship with France, however, than their Southeast Asian and North African counterparts. These six nations, all but one comprising part of former Yugoslavia, were never French colonies, and the bilateral conventions signed between France and them do not treat the subject of newly given self-determination from France and the resulting intricacies. Although there is no extensive or noteworthy historical information regarding relations specifically and

solely between France and Poland, the past 100 years have shown drastic changes in Polish-France relations. After World War I, France and Poland enjoyed amicable relations as political and military allies. When Germany invaded Poland twenty years later at the start of WWII, however, relations between the two nations strained because France refused to aid floundering Poland. Once the war concluded, Poland and France relations did not improve but worsened as the countries found themselves on opposite sides of the political ideological spectrum (Buhler). France was capitalist, and Poland was communist.

In 1969, during the height of the Cold War, a convention was signed between the France and Poland, outlining laws specifically relating to the rights of individuals, especially on family matters, of the two states. Specifically, the convention aims to develop the relations of the two countries in the judicial domain. Pertaining to the memorandum in question, it lists Article four, paragraphs two and three as prohibiting the application of *Mariage Pour Tous* to homosexual Polish nationals in France. The statements indicate, “The conditions at the base of marriage are those of the law of the High Contracting Party in which the members of the couple are nationals” (“Décret n. 69-176 du 13 février 1969”). Furthermore, “If one of [them] possesses the nationality of one of the High Contracting Parties and the second of the other, the conditions set out in paragraph two for each obey the law of the state of which he [or she] is a national” (“Décret n. 69-176 du 13 février 1969”). Thus, same-sex couples in France in which one of them is a Polish national are prohibited from marrying despite France legalizing same-sex marriage.

The other Eastern European nations included in the memorandum comprise the now-dissolved nation of Yugoslavia. Yugoslavia emerged as a communist nation following World War I. During the war, many Yugoslavian intellectuals came to France to train militarily or study. In the thirty years following World War II, the number of Yugoslav immigrants to France almost

tripled from 20,000 before the war to over 70,000 in the mid-1970's (Boskovic) . In the years following 1960, the primary motive for Yugoslavian immigration to France was economic. The economic crisis in their home country necessitated leaders to allow Yugoslavian citizens to pursue temporary work in other countries. Between 1965 and 1975, approximately one million people left Yugoslavia, many of them to work and reside in France (Boskovic). Likely due to the influx of Yugoslavian individuals to France, in 1971, France and Yugoslavia signed a bilateral convention relating specifically to the rights of people and families between the two nations. Article four of the convention specifically references marriage and includes almost identical wording as the conventions between France and the other aforementioned nations. "The qualities and conditions required for marriage are regulated, for each spouse, by the law of the contracting party to which he [or she] is a national. [...] However, the requirements for kinship and alliance are also governed by the law of the contracting party whose authorities celebrate the marriage" ("Mariage Homosexuel. Situation Des Couples Binationalaux").

When Yugoslavia was disbanded with the fall of communism in the early 1990s, the now-sovereign nations of Bosnia and Herzegovina, Montenegro, Serbia, Kosovo, and Slovenia emerged. The former bilateral convention between France and Yugoslavia remained, however, and was reinforced in the form of letters between France and each of the new individual states. The letters are spread out over a decade (March 28, 1994 for Slovenia (Decree No. 96-229 of 15 March 1996); March 26, 2003 for what was then Serbia and Montenegro (Decree No. 2003-457 of 16 May 2003), December 3, 2003 for Bosnia and Herzegovina (Decree No. 2004-96 of 26 January 2004); September 30, 2010 for what was then became the Montenegro (Decree No. 2012-621 of May 2, 2012); and February 4 and 6, 2013 for Kosovo (Decree No. 2013-349 of 24 April 2013). Each of these letters upholds and reaffirms the stipulations on marriage law that

were first introduced in the French-Yugoslav convention, thus preventing homosexual nationals from said countries from marrying a French individual in France. Gay marriage is not legal in any of the former Yugoslav republics nor Poland, so homosexual nationals are still prohibited from marrying in France, even though their partner is French and they are not residing in their nation of origin.

Although the context of the bilateral agreements between France and the 11 nations varies greatly, most speak of a “personal status,” or marital status, that can only be determined by their nation of origin. Thus, if same-sex marriage is not recognized in their home nation, even though they are residing in France, the passage of *Mariage Pour Tous* does not benefit them. The original goals of said bilateral conventions were certainly not to aim to prevent homosexual nationals from said countries from marrying should France eventually legalize same-sex marriage, but due to the intricacies of the international legal landscape, certain phrases within the conventions are interpreted as contradicting *Mariage Pour Tous* in their application. Thus, one can reasonably interpret *Mariage Pour Tous*, *Marriage For All*, as clearly not being for all.

Questions and Consequences

Although the number of bi-national same-sex couples wishing to marry in France, in which one is a national of one of the 11 aforementioned nations is likely few (though an exact number is indetermined), the overarching consequences of such bilateral conventions are severe for such couples. The memorandum ultimately put into question the state of human rights in France and developed countries today.

In one specific instance, French citizen Lise and her Polish girlfriend Agnieszka were excited about finally having the opportunity to marry after being together for years, but when

they went to the town hall in France, they were prohibited from marrying. Due to the 1967 bilateral convention outlined above between France and Poland, “a French magistrate would have to overrule Polish law to approve the wedding” (Ng). Although the initial intentions of the bilateral conventions were not discriminatory in nature in and of themselves, the resulting legal intricacies and arguably discriminatory consequences of them over 50 years later are still being felt. “They cannot put people in a different category just because of their nationality,” Agnieszka stated in her RFI interview (Ng). When such instances arise, however, the 2013 memorandum indicates that, “Officials must therefore refuse to marry these couples, and send the case to a magistrate, who will then decide on a case-by-case basis” (Ng). Thomas Fouquet-Lapar, spokesman for Ardhis, a French association that provides support for foreign gay and transsexual individuals in France, indicated:

Some people [and] the government tell us that, in reality, we can overlook the ministry’s document. And today, magistrates have handed down favourable decisions to French-Algerian couples, French-Tunisian couples, and maybe tomorrow it will be the same for all the 11 nationalities affected. But why make people go through the legal system instead of making things simpler? French law should be applied the same way across France with no exceptions, so the ministry’s document must be rewritten (Ng).

This particular legal formality implies significant subjectivity. One can infer that most relevant cases would be sent to the magistrate, who has the power to determine whether or not the marriage should be performed. It is worth examining the potential consequences in terms of foreign legal relations between the two nations if a same-sex marriage would disrupt normal amicable relations between France and one of the relevant 11 countries, but if the magistrate has

a personal philosophy that contradicts the legalization of same-sex marriage, it is difficult to believe that they would be willing to grant an exception if there is a form of legal barrier in place.

In Southern France, an official refused to marry a same-sex French-Moroccan couple. In court, the couple argued that France had for years ignored the aspect of Moroccan marriage law that prevents non-Muslims from marrying Muslims. In such a case where a Muslim woman from Morocco was prevented from marrying a non-Muslim man in France, the courts established that the bilateral convention between Morocco and France would not be upheld because it contradicted French law (Ng). It seems only sensible that a case involving the marriage of a same-sex couple of both French and Moroccan nationalities should be upheld as well. The available evidence remains inconclusive as to why this double standard exists. Furthermore, the bilateral convention between Morocco and France outlined above states, “The law of one of the States designated by this Convention may be refused by the courts of another State unless it is manifestly incompatible with the public order” (“Convention entre la République Française et le Royaume du Maroc”). One could argue that preventing a same-sex couple from marrying in France in which one of the partners is Moroccan is incompatible with the established public order of human rights and equality in France, yet the contradiction remains. It might be reasonable to conclude that since *Mariage Pour Tous* was only recently adopted two years ago, the legal system simply has not caught up. Only time will tell if this is the case.

One of the most interesting and seemingly contradictory aspects of this particular memorandum is that Christiane Taubira, the current Minister of Justice in France and champion of minority rights in France and primary proponent of *Mariage Pour Tous*, was also the signatory of the memorandum, barring certain same-sex couples from marrying in France. In an inquiry set forth by Senator M. Jean-Yves Leconte in June of 2013, approximately a month after *Mariage*

Pour Tous was instated, the Senator directly poses questions regarding the memorandum to Mme. Taubira. He inquires as to the consequences of simply rejecting “hierarchy of norms” upheld by the May 29th memorandum that contradict Mariage Pour Tous for nationals of the aforementioned 11 countries. He mentions that “to interpret things, in the case of nationals of countries of the European Union such as Poland and Slovenia, is to practice, on national territory, discrimination with the general principles of EU law of non-discrimination of nationals EU by the Member States. This principle is incorporated in a treaty that has been ratified” (“Mariage et Loi Personnelle”). Furthermore, he states that “personal law,” which many of the bilateral conventions cite, is “not an inviolable principle in France,” and that in the case of the five nations formerly a part of Yugoslavia, France never formally signed bilateral agreements with them. Simple letter exchanges are upheld as valid documents in terms of international law.

Taubira acknowledged the validity of Leconte’s concerns in her response, but stated that for the 11 nations indicated, the bilateral agreements were fundamentally different than those of over one hundred other countries examined. In such bilateral agreements, it was explicitly stated that the “personal law” of those nations cannot, in any circumstance, be infringed upon by French law. This stipulation was instated to protect the nations during decolonization. Furthermore, no revision of the bilateral agreement with former Yugoslavia is expected. Taubira acknowledged the fact that a judge, should he or she wish, can state that the marriage ban is contradictory to established French public order. She seemingly contradicts herself, however, in stating, “I agree that it is unsatisfactory to rely on court decisions. However, we must respect our domestic law and international law. Hence the meaning of this memorandum” (“Mariage et Loi Personnelle”). It seems that if she agrees that cases should not be under the jurisdiction of individual judges then there should *not* be a memorandum that grants them subjective power.

Regardless, she hints at her and her office's determination to nullify the obstruction to full equality but that it will certainly not be immediate as there are no revision dates scheduled for any of the conventions.

Leconte mentions that Belgium uses contracting parties to determine which law should apply in particular circumstances, and that this could potentially be a viable solution for France. On the other hand, France could simply just declare these conventions as conflicting with French public order ("Mariage et Loi Personnelle"). These conventions, however, offer protections on many different fronts, and it is difficult to rescind the validity of one particular point and not inherently ignore the entire document, which could lead to problems on the diplomatic front. Furthermore, it could also be concluded that the potential backlash that might result from ignoring this aspect of the bilateral conventions between France and the 11 nations would cause more harm and difficulties for the nation than the civil rights of only a handful of same-sex couples in France are arguably worth.

Although the 2013 memorandum lists the particular articles and paragraphs of each bilateral convention between France and the 11 nations that specifically or indirectly prohibit the validation of *Mariage Pour Tous* for gay and lesbian nationals from those countries, many questions remain unanswered. For instance, although France held the Southeast Asian colonies of Laos, Cambodia, and Vietnam, Vietnam is not included as an affected nation in the memorandum for unclear reasons. Moreover, under which state's laws are homosexuals who hold dual citizenship considered? For instance, if a French gay man wishes to marry a man with both Tunisian and French citizenship, would the two be able to successfully marry without legal barriers? Does it matter with which nation he has his original citizenship, or does current habitation trump initial citizenship? Would this be another case left up to the subjective opinion

of the French magistrate? Neither the bilateral conventions nor the memorandum are specific in this particular aspect.

Due to the relatively small number of same-sex couples in France that this particular loophole affects, this exception to the rule has gone relatively unnoticed in France and in the larger context of global LGBT equality. “Mariage pour Tous” has provided marriage equality rights to most, but, as exhibited by this particular exception, clearly not to all. The quest for full human rights and equality, despite the passage of Mariage Pour Tous in France, is not as straightforward and simple as it seems. France, though certainly not the first nation to legalize same-sex marriage, is viewed as one of the beacons of human rights in comparison to the rest of the world. If arguably one of the most socially progressive nations in the world still does not guarantee full human rights to its inhabitants even after passing Mariage Pour Tous, then the virtuous goal of global human rights seems pervasively elusive. Although the passage of Mariage Pour Tous was a significant step towards granting more rights to individuals, barriers still remain for many. If human rights are not granted to all individuals, then are they truly rights or should they be considered, to paraphrase George Carlin, privileges instead? Though many are celebrating such advancement in French policy, others argue that it still is not the guarantee of full marriage equality that it should be. Mariage Pour Tous, “Marriage for All,” is, some could say, a misnomer, as it still is not for *all*. As is indicated in this particular case, the fight for full equality is hard and perpetual, and France and the rest of the “developed” world in particular still have much to do before they can truly live up to their potential as beacons of human rights and equality.

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