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THE CULTURE OF KNOWLEDGE: CONSTRUCTING "EXPERTISE" IN LEGAL DEBATES ON MARRIAGE AND KINSHIP FOR SAME-SEX COUPLES IN FRANCE AND THE UNITED STATES

LA CULTURE DU SAVOIR : LA CONSTRUCTION DE « L'EXPERTISE » DANS LES DEBATS POLITIQUES SUR LE MARIAGE ET LA FILIATION POUR LES COUPLES DE MEME SEXE EN FRANCE ET AUX ETATS-UNIS

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RÉSUMÉ COURT EN FRANÇAIS

(RÉSUMÉ LONG DE 56 PAGES EN FRANÇAIS À PARTIR DE LA PAGE 228)

Comment et pourquoi les décideurs, en France et aux États-Unis, mobilisent-ils différentes formes de « savoir » lors des débats législatifs et judiciaires sur la reconnaissance des couples homosexuels et de l'homoparentalité ? Qui sont les « experts » qui présentent ce savoir, pourquoi interviennent-ils dans les débats, et que pensent-t-ils de leurs rôles ? Pour répondre à ces questions, cette thèse se base sur un corpus comprenant cinq types de données qui se concentrent sur les débats publics entre 1990 et 2013 : 1) plus de 5 000 pages de retranscriptions d'auditions officielles ; 2) plus de 9 000 pages de débats parlementaires ; 3) 2 335 articles parus dans Le Monde et The New York Times ; 4) l'observation participante de congrès, colloques ou séminaires organisés dans le cadre d'universités ou de think tanks ; 5) 72 entretiens avec des individus auditionnés par divers tribunaux et assemblées législatives ainsi qu'avec des élus et avocats ayant fait appel à eux. Définissant « l'expertise » de façon inductive comme la parole de toute personne interrogée par les institutions décisionnelles, ce travail permet d'analyser le savoir véhiculé non seulement par des professionnels et universitaires mais aussi des religieux, des militants, et des citoyens ordinaires. L'analyse révèle que certains savoirs, comme l'économie aux Etats-Unis et la psychanalyse en France, sont présents dans un contexte, mais absents dans l'autre. De plus, certains types d'experts utilisent des savoirs différents selon le pays. Par exemple, les représentants religieux américains font davantage appel au savoir religieux que leurs homologues français qui, au contraire, mobilisent les sciences sociales. Ces différences peuvent être attribuées aux conditions de la production du savoir dans chaque pays ainsi qu'aux logiques institutionnelles qui favorisent des experts ayant des capitaux symboliques spécifiques, comme la « neutralité », la rigueur scientifique, et la notoriété. Ces capitaux permettent à certains experts, et non à d'autres, de jouir d'une légitimité et d'une crédibilité selon le contexte du débat.

ABSTRACT OF THE DISSERTATION

The Culture of Knowledge: Constructing "Expertise" in Legal Debates on Marriage and Kinship for Same-Sex Couples in France and the United States

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This dissertation asks how and why American and French decision-makers—and those striving to persuade them—use specific kinds of "experts" and "expertise" when debating if same-sex couples should have the right (or not) to marry and found families. To answer these questions, I analyze archival, interview, and ethnographic data to study "expertise"—conceived broadly—in media, legislative, and judicial debates on the U.S. state, U.S. federal, French, and European levels from 1990 to 2013. I find that, despite addressing the same issues, decision-makers draw on divergent categories of "experts" mobilizing types of knowledge that follow systematic cross-national patterns. For instance, French institutions hear professors and intellectuals who discuss gay family rights in the abstract while U.S. institutions hear ordinary citizens whose lived experiences ground academic testimony. Furthermore, some "expertise,"

such as economics in the U.S. or psychoanalysis in France, is pervasive in one context but absent in the other. I argue that nationally specific patterns in "expertise" are due to embedded institutional logics, legal structures, and knowledge production fields that impact how information is produced, made available, and rendered legitimate nationally and historically.

Chapter 1 identifies the people U.S. and French newspapers cite and what they say. U.S. reporting prioritizes ordinary citizens and advocacy organizations using personal experience and legal expertise. In contrast, French reporting prioritizes intellectuals and professionals using psychoanalytic and anthropological concepts. Chapter 2 finds national differences in people testifying before legal and political institutions. In contrast to French legislatures, which draw on famous intellectuals, state agencies, and other elite actors, U.S. legislatures hear more ordinary citizens and activists. Courts, which are central to advancing gay rights in the U.S. but not France, combine personal testimony with empirical science from "expert witnesses." Chapter 3 describes how these patterns are partly the result of the way lawyers and legislators navigate cultural and institutional constraints as they organize testimony. Chapter 4 explains how knowledge availability also depends on power and resource distribution in fields where academics and professionals work. Finally, Chapter 5 describes how experts' access to decision-making institutions depends on the relationships they forge with organizations and lawmakers.

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INTRODUCTION

In 2010, lawyers called Edmund Eagan, Chief Economist for the City and State of San Francisco, to testify in Federal court that California's ban on same-sex marriage violated the U.S. constitution. Eagan testified that, "If same-sex marriage were legalized, San Francisco would see an increase in sales tax revenue and an increase in property tax revenue in the future."[1] On the other side of the Atlantic in 2103, legislators at the French *Sénat*'s Judiciary Committee invited psychoanalyst Jean-Pierre Winter to hearings on a bill to allow same-sex couples to marry and adopt children. He warned that allowing two women to both be legal parents of a child constituted an "unpardonable…error" in the eyes of French psychoanalyst Jacques Lacan and instituted a "state lie" denying the biological and symbolic importance of sexual difference for procreation (Michel 2013:94). In each instance, decision-makers heard "expertise"—the economic impact of changes to marriage law in the U.S. and the psychoanalytic principle of sexual complementarity in France—as they considered whether to grant same-sex couples partnership and parenting rights.

These vignettes suggest that U.S. and French judges and lawmakers—who face similar legal questions—appeal to different kinds of knowledge or "expertise" in their decision-making processes in contemporary debates. But are there systematic cross-national differences across these countries in the kinds of "experts" and knowledge they provide to the media, courts, and legislatures? If so, what are they and what might explain them? This dissertation looks at the kinds of people and information these institutions have called on since 1990 in both countries as they grapple with sexual minorities who demand recognition for their romantic and family relationships.

[1] *Perry v. Schwarzenneger* 685 F. Supp. 4 (U.S. D.C. N. CA. 2010).

The United States and France share many characteristics that form a common baseline for comparison (Lamont and Thévenot 2000). They are both rich industrialized countries whose democracies were formed after revolutions in the same era based on the Enlightenment principles of freedom and equality. Yet, they also diverge in key ways, including their institutional approaches to inequality and difference, their political and legal systems, and their structures of knowledge production that bring to light the mechanisms through which certain kinds of "experts" and "expertise" come to matter in a particular context.

Same-sex couples' access to partnership and parenting rights, such as marriage and adoption, is one of the major civil rights issues of our era. As countries have progressively wrestled with these issues, many observers have focused on the rapid pace of change, the uneven progress within regions, and the political and social movement dynamics that have made these evolutions possible (Haider-Markel 2001; Hirsch 2005; Hull 2006; Moscowitz 2013; Mucciaroni 2008, 2011; Pierceson, Piatti-Crocker, and Schulenberg 2010; Smith 2008). Because they emphasize the "morality politics" aspect of gay rights, these analyses tend to overlook the role of "experts" and "expertise." Most of this work has analyzed the United States and described social movement organizations, religious groups, and other actors as they battle in public arenas to shape legal outcomes. Analyses of France, however, point out that other people, such as academics and intellectuals, have both helped and hindered the advance of gay rights there (Borrillo and Fassin 2001; Fassin 1998, 2000b; Gross 2007; Peerbaye 2000; Verjus and Boisson 2005). This cross-national comparison suggests that different categories of people—from social movement groups and ordinary citizens to scientists and intellectuals—may therefore participate in the political and legal process in ways specific to their national contexts. Shifting the focus from legal outcomes to "expertise," this dissertation systematically examines the types of people

and information decision-makers hear in contemporary gay family rights debates in each country.

In order to more accurately see the range of people involved, I take a broad, inductive, and untraditional definition of "experts" and "expertise." Traditional definitions of expertise tend to focus on academics and professionals with specific forms of technical knowledge that decision-makers use to craft policy (Brint 1996; Théry 2005). This focus on elite actors, however, overlooks the ways in which other people, such as ordinary citizens, activists, or religious representatives—whose knowledge is based on their lived experiences and other "unqualified" sources—also interact with decision-makers and sometimes compete with professionals and academics (Saguy 2013). To label this non-elite group, I borrow Epstein's (1996) language of "lay experts," which he used to describe AIDS patients who drew on their experience with treatment to produce biomedical knowledge in tandem and in competition with medical professionals. In the case of political and legal debates, I consider how decision-makers engage in reforms by drawing on both "lay experts," such as ordinary citizens, and qualified professionals and scholars.

I am agnostic about the validity and quality of information either type of expert brings to the table. Instead, I conceptualize "expertise" as a form of intervention (Eyal and Buchholz 2010) in a public sphere traversed by power dynamics that confer legitimacy and power unequally (Fraser 2007). I therefore consider all people heard by the media, courts, and legislatures as "experts" regardless of their qualifications or status and treat what they say as "expertise." However, rather than assume that these people and what they say are equally legitimate and audible, I investigate the ways in which policymaking settings and national context might confer different values and status on specific types of experts and expertise. This

approach allows us to see how these people interact with each other, move between categories, and negotiate decision-making institutions without making a priori assumptions about their relative importance.

I focus on the locations where decision-makers, such as legislators and judges, discuss gay family rights and the "institutional logics" (Friedland and Alford 1991)—defined here as the official rules, tacit codes, and incentive structures—that constrain and enable how they can use evidence, testimony, and knowledge in legislatures and courts. For example, the political calculations and formats of legislatures in the United States foreground "storytelling" (Polletta 2006) that might favor ordinary citizens while courts make higher requirements for information to qualify as "expert" testimony (Caudill and LaRue 2003; Ramsey and Kelly 2004). As I explain in further detail below, these institutions have played different roles in the United States and France in gay family rights reforms. This approach can reveal why some categories of experts and types of information matter or play a more visible role in one country but not the other depending on the cultural and institutional configurations there. More broadly, I look at the social processes behind the production of knowledge claims where information drawn from, say, "objective" science and "subjective" experience, compete and complement each other in decision-making institutions that endow them with meaning (Berger and Luckmann 1966; Foucault 2000).

I also consider the specific national circumstances in which these different categories of experts work and bring their information to the media and decision-making institutions. For instance, certain kinds of lay experts, such as gay families, LGBT organizations, and religious representatives face particular barriers to participation in the French public sphere because of traditions like universalism, which discourage displays of social difference on the basis of race,

gender, or sexuality (Brubaker 1992; McCaffrey 2005; Scott 2005), and *laïcité* (Gunn 2004). The same kinds of experts do not face these barriers in the United States. Comparing these two contexts reveals the opportunities and challenges lay experts negotiate to bring their knowledge to the public debate, if they do at all.

Academic, professional, and intellectual experts also face nationally specific knowledge production fields and relationships to decision-makers. They are best understood when examined as part of a whole where their actions and public interventions are constrained and enabled by their circumstances within their specialty areas and the broader knowledge production context of their countries (Bourdieu 2002; Fourcade 2009). Drawing on insights from analyses of political and academic fields (Bourdieu 1993; Bourdieu and Wacquant 1992; Swartz 2013), I investigate these experts within their university disciplines and professions as well as within the larger policy fields they navigate to bring their information to decision-makers.

Related fields in a given national context, such as those around politics, academics, and the media, can overlap, influence each other, and shape the goals of people within them (Fligstein and McAdam 2012; King and Walker 2014). For this reason, I also analyze how experts' sources of legitimacy and justification for participation in the policy sphere—such as empirical evidence in U.S. courts or personal connections and media-recognition in French legislatures—effect how academic knowledge producers work in their disciplines. For example, U.S. academics on both sides of the debate may prioritize peer-review publication for both professional and policy reasons while their French peers gain more status and recognition through personal relationships to politicians and publishing Op-Eds in newspapers.

Because of the contentiousness of the issue I study, I also examine the relative power and representation of specific "epistemic communities" (Haas 1992; Knorr-Cetina 1999; Smirnova

and Yachin 2015)—in this case researchers and professionals with similar perspectives on same-sex marriage and parenting—within their academic and policy fields. Understanding how supporters and detractors of gay family rights coordinate with each other and advocacy groups in their national and field-specific settings helps shed light on how and why policymakers may hear expertise from one side more than the other.

In the U.S., expertise has become increasingly "democratized," by moving beyond the confines of the academy, the professions, and scientific institutions (Brint 1996; Eyal and Buchholz 2010; Fischer 2000, 2009; Rich 2010). "Structural fragmentation" in the U.S.—the federal system with its multitude of outlets for reform and separation of power between government branches—decreases the relative importance of elite and professional experts in U.S. politics, compared to European politics (Brint 1996:134). The growing participation of multiple actors in the production of "usable knowledge" (Lindblom 1979) also increases the possibility for new entities, such as think tanks, to generate information or repackage existing information that academics produce, which they then tailor to their policy goals (Medvetz 2012; Rich 2010).

As I will argue, in the U.S., activist organizations and think tanks on both sides of LGBT rights, especially those involved in "cause lawyering" (Cimmings and NeJaime 2009), developed strong ties to researchers and academics. Together they have worked to supply a policy context with a high demand for their information (Sarewitz and Pielke Jr. 2007), highlighting how a country's laws and political institutions themselves can create interests (Campbell 2012; Clemens and Cook 1999) leading to the production of specific kinds of information (Jasanoff 2004). These relationships also contribute to the on-going institutionalization of research on sexual minority issues both within American universities as well as professional and academic organizations, where, as I will show, supporters of gay family rights dominate.

In contrast, the more centralized nature of European governments favors bureaucracies where technocrats and elite intellectual experts exert more significant and direct influence on the policy process. France, in particular, is a representative case of a technocracy where the production of knowledge in state institutions bears weight in political debates (Brint 1996:192–193). For example, opponents of partnership and parenting rights for same-sex couples have found a strong ally in the corps of high-ranking officials of the states' social services (Commaille 2006). Further, only a small number of think tanks have recently established in France that could counter state-produced knowledge or act as mediators between elite experts and institutions, as they do in the United States (Bérard and Crespin 2010). Given its small size relative to the U.S. and concentration in Paris, France is also especially marked by a close interrelationship between its academic, political, and media fields, favoring direct ties between elite experts and decision-makers (Bourdieu 1984; Charle 1990; Kurzman and Owens 2002; Sapiro 2009; Swartz 2013). That proximity may give certain elite experts, especially those with strong ties to political parties, the possibility to directly impact legal reforms. However, those close ties could also contribute to the exclusion of lay experts from decision-making institutions in France. Furthermore, as I will show, because research on sexual minorities and their families has struggled for recognition in fields where these elite experts work (Gross 2007; Perreau 2007), French scholars and professionals face specific challenges as they attempt to weigh-in on reforms over the partnership and parenting rights of same-sex couples.

"Expertise," defined broadly, plays a role in advancing—or hindering—the evolution of these rights because it is a part of the toolkit that advocates on either side use when arguing their points as they attempt to change policy and culture (Armstrong and Bernstein 2008). It is thus an integral, but often overlooked, component of social movement strategies. Everyone staking a

claim in these debates, from lawyers to lawmakers and activists, makes arguments in order to justify their stances and process (Boltanski and Thévenot 1991). To gain credibility, they draw on expertise they believe will be convincing, relevant, and resonant in their situation (Ferree 2003). Expertise, therefore, becomes part of broader cultural repertoires (Lamont and Thévenot 2000) and frames (Bleich 2003; Johnston and Noakes 2005; Saguy 2003) that can shape how people, including decision-makers and the public, think about issues. Yet, as I will argue, the value and availability of that expertise is constrained and enabled by the cultural and institutional context in which knowledge is produced and put to use.

Partnership and Parenting Rights in the United States and France: A Brief History

By summer 2015, thanks to the United States Supreme Court's ruling in *Obergefell v. Hodges* in June of that year and a French legislative bill from May 2013, both countries now recognize same-sex marriage on the national level.[2] However, the legal recognition of same-sex couples' relationships, such as civil unions, domestic partnerships, and full marriage have followed a long and complicated trajectory over the last 25 years in ways that reveal distinct national patterns. Moreover, their access to forms of parenting via joint-adoption, second-parent adoption, and medically assisted reproduction, such as donor insemination for lesbian couples or surrogacy for gay male couples are not equal in each country. Currently, in the U.S., parenting rights vary significantly by state and by type of access, while in France joint and second-parent adoption were not legalized until the 2013 bill. Surrogacy is banned there for all people and access to artificial insemination and other reproductive technologies are strictly limited to medically infertile long-term heterosexual couples (Hennette-Vauchez 2009; Mecary 2012;

[2] *Obergefell v. Hodges*, 135 S. Ct. 1039 (2015); Loi n° 2013-404 du 17 mai 2013, J.O. n°0114 du 18 mai 2013, p. 8253.

Théry and Leroyer 2014). These differences in partnership and parenting rights reflect both legal structural configurations across these countries, such as federalism in the U.S. and centralization in France, as well as other factors, including their approaches to new reproductive technologies and public opinion. I argue that these circumstances help explain the availability and utility of certain kinds of experts and expertise in each country.

In the United States, laws relating to marriage and parenting have traditionally been the jurisdiction of individual states. As a result, since as early as the late 1970s, certain locales have offered same-sex couples some limited partnership rights, such as protection against eviction in the case of the death of one of the partners. Mobilization around these issues continued to grow as LGBT rights organizations sought increased protections through state and local legislatures. Courts also became a prime venue for change. In the early 1990s, a same-sex couple seeking full marriage rights filed a suit in Hawaii where the Supreme Court there eventually ruled that the state constitution required same-sex marriage. [3] However, in a referendum, voters there modified their constitution, effectively overturning the court's decision. That ruling sparked a wave of backlash, which propelled same-sex marriage to the Federal level. For the first time, Congress enacted legislation outside of its traditional jurisdiction in the form of the Defense of Marriage Act (DOMA), which prohibited the federal government from recognizing same-sex marriage and permitted states to refuse to recognize them within their borders even if they were legally contracted elsewhere.[4]

After that, states across the country followed divergent and multiple paths. Some, such as Texas, enacted their own versions of DOMA and prohibited civil unions or other marriage-like contracts. Others, such as California, created domestic partnerships but banned same-sex

[3] *Baehr v. Miike*, 910 P. 2d 112, 80 Haw. 341 - Hawaii: Supreme Court, 1996.
[4] Pub.L. 104–199, 110 Stat. 2419, enacted September 21, 1996, 1 U.S.C. § 7 and 28 U.S.C. § 1738C).

marriage (Andersen 2005). A period of increased recognition began in 2004 after Massachusetts's Supreme Court legalized same-sex marriage, followed by other states, such as Vermont. In 2008, after voters passed Proposition 8, which overturned California's Supreme Court decision legalizing same-sex marriage, attorneys began new litigation in Federal courts. The United States Supreme Court ruled in 2013 on two cases, *Hollingsworth v. Perry* (originally known as *Perry v. Schwarzenegger*), which invalidated Proposition 8, and *U.S. v. Windsor*, which invalidated DOMA.[5] Those successes sparked litigation in federal courts that struck down state-level marriage bans and eventually led to *Obergefell*, which legalized same-sex marriage nationally.

As legislation and case law evolved on same-sex partnerships, access to parenting for same-sex couples remained a relatively separate issue. Only a few states had explicit bans on adoption by same-sex couples or, like Michigan, limited adoption to married couples, which created a de facto exclusion of same-sex couples. However, most other states either explicitly allowed joint and second-parent adoption or, in the absence of legislation—which was the case in Texas, for example—courts created case law by allowing such adoptions on a case-by-case basis (Mezey 2009; Richman 2009). In addition, because of liberal policies and lack of any specific regulation, the state never prohibited lesbian couples and single women from access to sperm banks that were willing to offer their services (Almeling 2011). Similarly, only a few states have statutory law explicitly addressing surrogacy. Some, such as Texas, have passed legislation recognizing gestational surrogacy contracts but limited them to married couples, creating a de facto exclusion of same-sex couples until 2015. In contrast, California has enforced surrogacy contracts without regard to sexual orientation. Most states, however, have no

[5] *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013); *United States v. Windsor*, 133 S. Ct. 2675, 2694 (2013).

legislation on surrogacy and judges have created conflicting case law. As a result of these policies, surrogacy agencies have been able to offer their services to gay male couples in some states.

Table 1: Legalization of Same-sex Marriage, Adoption, and Surrogacy before *Obergefell v. Hodges*, 2015

State	Marriage	Joint Adoption	Second Parent Adoption	Surrogacy
Alabama				?
Alaska	2014 [J-F]	?	?	?
Arizona	2014 [J-F]	2014 [J]	2014 [J]	
Arkansas		2011 [J]		?
California	**2013 [J-F]**	**2003 [L]**	**yes**	**1993 [J]**
Colorado	2014 [J-F]	yes	yes	?
Connecticut	2008 [J]	2008 [J]	2000 [L]	2008 [J]
Delaware	2013 [L]	2011 [L]	2011 [L]	
Florida	2014 [J]	2014 [J]	2010 [J]	2014 [J]
Georgia		?	?	?
Hawaii	2013 [L]	yes	yes	?
Idaho	2014 [J-F]	yes	2013 [J]	?
Illinois	2013 [L]	yes	yes	yes*
Indiana	2014 [J-F]	2006 [J]	yes	
Iowa	2009 [J]	2009 [J]	yes	yes*
Kansas	2014 [J-F]	?	[2013]	
Kentucky		?		?
Louisiana		?	?	$
Maine	2012 [R]	2007 [J]	2007 [J]	?
Maryland	2013 [L/R]	yes	yes	?
Massachusetts	2004 [J]	1993 [J]	1993 [J]	yes*
Michigan			?	
Minnesota	2013 [L]	2013 [L]	2013 [L]	?
Mississippi				?
Missouri		yes	yes	?
Montana	2014 [J-F]	yes	yes	?
Nebraska		?		
Nevada	2014 [J-F]	yes	yes	2014 [J]
New Hampshire	2010 [L]	2010 [L]	2010 [L]	yes*
New Jersey	2013 [J]	1997 [L]	yes	$
New Mexico	2013 [J-F]	yes	2012 [J]	$
New York	2011 [L]	yes	yes	
North Carolina	2014 [J-F]	2014 [J]	2014 [J]	?
North Dakota		?	?	yes*
Ohio		?		?
Oklahoma	2014 [J-F]	2007 [J]	yes	?
Oregon	2014 [J-F]	yes	yes	$
Pennsylvania	2014 [J-F]	yes	2002 [J]	?
Rhode Island	2013 [L]	yes	yes	?
South Carolina	2014 [J-F]	yes	yes	?
South Dakota		?	?	?
Tennessee		?	?	
Texas		**?**	**?**	**2003 [L]**
Utah	2014 [J-F]	2014 [J]	yes	2014 [J]
Vermont	2009 [L]	yes	1993 [J]	?
Virginia	2014 [J-F]	yes	yes	$
Washington	2012 [L/R]	2012 [L/R]	2012 [L/R]	$
Washington (D.C.)	2010 [L]	yes	yes	
West Virginia	2014 [J-F]	2014 [J]	?	?
Wisconsin	2014 [J-F]	2014 [J]	2014 [J]	?
Wyoming	2014 [J-F]	yes	yes	?

Legend:

[J] State judicial decision; **[J-F]**Federal judicial decision; **[L]** Legislative decision; **[R]** Referendum

? : No clear statutory law, contradictory or non existent jurisprudence in state lower-level courts

yes: Trial courts have authorized adoptions on a case by case basis. However, no law explicitly formalizes a right to same-sex couple adoption and no cases have been appealed to the state's highest court, which would instantiate a formal right.

yes* : Authorizes surrogacy but no jurisprudence on the sexual orientation of future parents.

$: Authorizes surrogacy but without payment to the surrogate. No jurisprudence on the sexual orientation of the future parents.

Sources: The Human Rights Campaign, *Human Rights Campaign State Maps*, http://www.selectsurrogate.com/surrogacy-laws-by-state.html; Gay & Lesbian Advocates & Defenders, *GLAD Know Your Rights Information by State*, http://www.glad.org/rights/states; The Select Surrogacy Agency, *The Select Surrogate Surrogacy Laws by State*, http://www.glad.org/rights/states; consulted 1/21/15

The complexity of U.S. partnership and parenting law is represented in Table 1, which shows states' stances on marriage, adoption, and surrogacy in 2014, before the *Obergefell* ruling. It shows the variety of state approaches to these issues, creating state-level "experimentation," as well as the strength of the judiciary, especially on the federal level. Both factors have given gay family rights momentum and propelled those issue forward in the United States (Andersen 2005; Bernstein 2011; Bernstein and Naples 2015; Cain 2000; Pierceson 2005).

In France, legal reforms on marriage and parenting have followed a simpler, if not easier path. France's policies apply nationally, so there is no room for lower-level jurisdictional experimentation as there is in the U.S. The national level is thus the primary venue for reform. Furthermore, unlike the U.S. common law system, where courts can make broad case law that significantly modifies legislation, the French civil law system has limited the role of the courts. Decisions by France's *Conseil Constitutionnel*, *Cour de Cassation*, and *Conseil d'État* as well as the European Court of Human Rights (ECtHR)—to which French citizen can appeal if they believe national law violates their rights under the European Convention on Human Rights[6]—have consistently ruled that France's legislature has the authority to determine its policy on same-sex marriage and parenting (Mecary 2012; Paternotte 2011). Furthermore, French law, unlike U.S. state law, has always limited adoption to married couples thus rendering it impossible for same-sex couples to adopt together until 2013. Unmarried single people could also adopt but gays and lesbians were frequently denied approval on the basis of their sexual orientation. Although the ECtHR first upheld and then condemned such practices, in *Fretté v. France* (2002) and *E.B. v. France* (2008) respectively, French adoption authorities have been

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

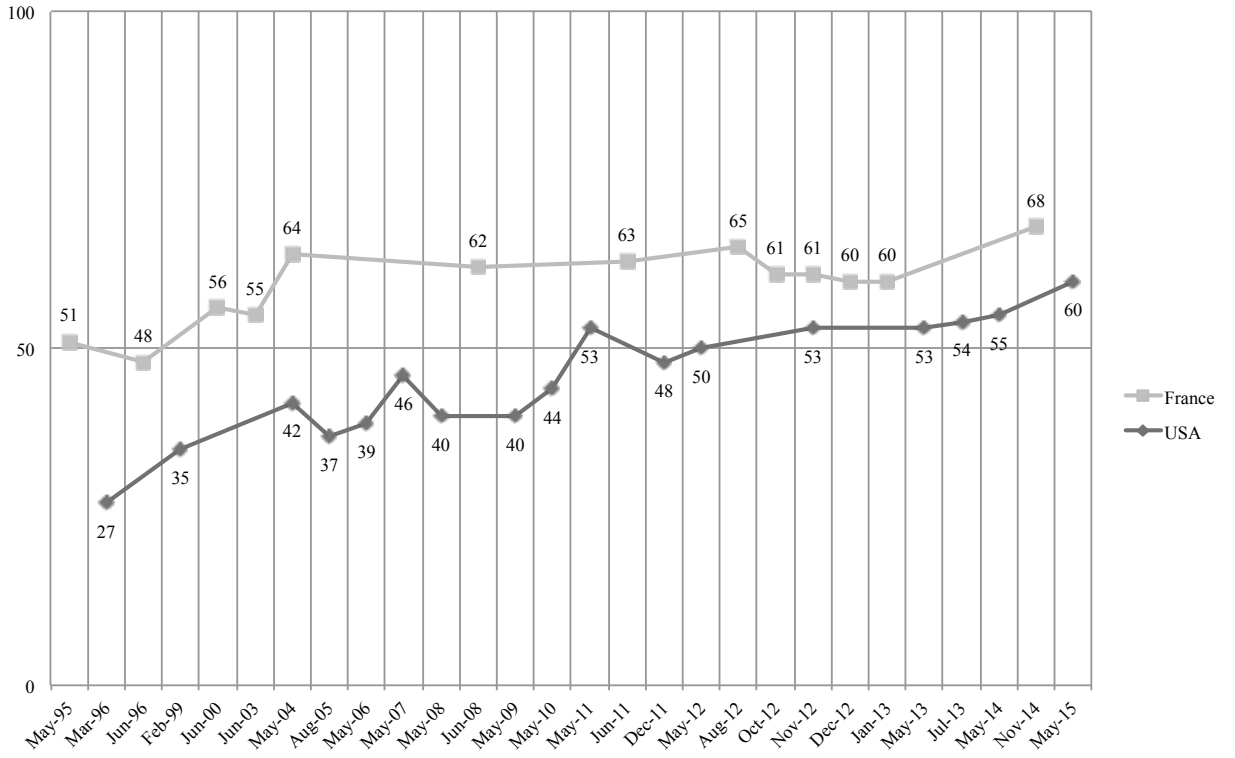
slow to implement that decision (Garnier 2012; Mecary 2012).[7] The ECtHR further ruled in 2012 the case *Gas and Dubois v. France*, that barring access to second-parent adoption for unmarried couples did not violate the Convention.[8]

Before 1999, when the French Parliament passed the *Pacte Civil de Solidarité* (Pacs)—a contract granting same-sex and different sex-couples some partnerships rights but excluding any access to adoption—there was no recognition of same-sex couples.[9] After that, faced with refusal by the *Conseil Constitutionnel* or the *Cour de Cassation* to rule, same-sex marriage and adoption remained off the legislative agenda until the Socialists, who had integrated those issues in their platform, were elected in 2012. Though they had originally planned to legalize access to artificial insemination, they limited themselves to marriage and adoption in the face of strong public and political opposition.

France has also taken the opposite approach of the United States in terms of medically assisted procreation. It instituted a ban on surrogacy and prohibited donor insemination (DI) for lesbians and single women almost as soon as these technologies were developed (Hennette-Vauchez 2009; Mennesson and Mennesson 2010). As a result, French lesbian couples have never had legal access to DI within their country and have typically traveled to sperm banks in Belgium and Spain (Descoutures 2010; Gross, Courduriès, and Federico 2014).

[7] *Fretté v. France* (Application no. 36515/97, March 26, 2002); *E.B. v. France* (Application no. 43546/02, January, 22, 2008).
[8] *Gas and Dubois v. France* (no. 25951/07, March 15, 2012).
[9] Loi n° 99-944 du 15 novembre 1999, J.O. n°265 du 16 novembre 1999, p. 16959.

Figure 1: Favorable Opinions on Marriage for Same-sex Couples in the US and France from 1995 to 2015 **(Sources: Gallup, Ifop)**



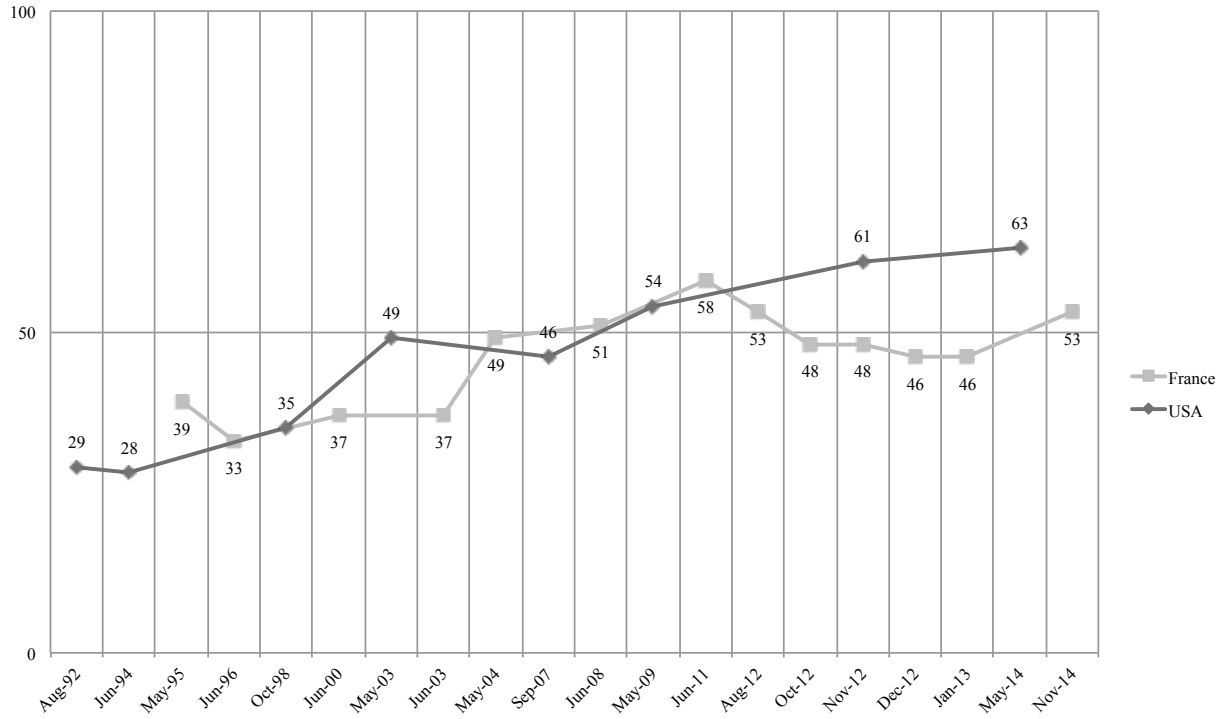
Sources: **Gallup** http://www.gallup.com/poll/183272/record-high-americans-support-sex-marriage.aspx?utm_source=marriage&utm_medium=search&utm_campaign=tiles; Copyright © 2015 Gallup, Inc. All rights reserved; **Ifop** http://www.ifop.com/?option=com_publication&type=poll&id=2839; ; Copyright © 2015 Ifop, Inc. All rights reserved

These differences in legal trajectories over marriage and parenting rights for same-sex couples are also reflected in public opinion polls that reveal the issues that matter most to American and French people. Americans express more opposition, anxiety, and hesitation around same-sex marriage but are, on average, more open to same-sex couples parenting and raising children than the French. In other words, the politically contentious issues are flipped in these countries, likely reflecting the higher cultural importance of marriage in the United States and childrearing in France as well as different meanings of the family in each country (Bellah et al. 1985; Fassin 2001; Heath 2012; Powell et al. 2010; Robcis 2013; Théry and Leroyer 2014).

Figure 1, shows, for example, how French respondents have consistently had more favorable views of same-sex marriage than Americans in major public opinion polls. French

support flagged during the lead up to the Pacs debates in 1996 and then again during the marriage debates. U.S. support fluctuated and did not become majority in favor until May 2011.

Figure 2: Favorable Opinions on Adoption by Same-Sex Couples in the US and France from 1992 to 2014 **(Sources: Gallup, Ifop)**



Sources: **Gallup** http://www.gallup.com/poll/170801/americans-say-sex-couples-entitled-adopt.aspx?utm_source=marriage&utm_medium=search&utm_campaign=tiles; Copyright © 2015 Gallup, Inc. All rights reserved; **Ifop** http://www.ifop.com/?option=com_publication&type=poll&id=2839; Copyright © 2015 Ifop, Inc. All rights reserved

In contrast, Figure 2 shows that Americans have generally been more favorable to adoption by same-sex couples than the French. As gay and lesbian families grew increasingly visible in American public debates, support for adoption increased and remained almost always ahead of same-sex marriage. For example, in May 2009, only 40% of U.S. respondents supported same-sex marriage even as 54% supported adoption. In the meantime, French respondents have been much less favorable to same-sex adoption and their support waned in recent years as the possibility that legal access to it became more likely. Indeed, throughout the 2012-2103 parliamentary debates on marriage and adoption, support dropped below 50%.

These divergences in public opinion highlight the cultural and political contexts in which U.S. and French decision-makers and people hoping to influence them must operate as they deal with legal reforms. I argue that these differences in law, jurisdictional structures, and avenues of reform have several concrete implications for experts and expertise in both countries. In the U.S., legal variety created by federalism and differences in laws on parenting allowed same-sex couples and their children to achieve legal recognition and public visibility. These families became available for research and public testimony. State law variation also created legal contexts within the country that decision-makers, such as lawmakers and judges, could compare or that knowledge providers, such as activists organizations and others, could bring to the discussion. Furthermore, by developing political strategies that took advantage of the plethora of "legal opportunity structures" (Andersen 2005) in state and federal courts on gay family rights issues, LGBT activists created a high demand for knowledge adapted to these settings.

In France, a priori bans on reproductive technologies and restrictions on adoption have limited the visibility and presence of gay families, making information about them more difficult to gather. The homogeneity of the French legal terrain also reduces the ability of activists and other knowledge providers to generate information locally or to compare circumstances within the country. Finally, French experts have dealt primarily with legislatures—rather than courts—and have had far fewer opportunities to participate in reforms. This has inhibited the demand for expertise relative to the United States. The parliamentary avenue of reform also channels experts and expertise into a political institution whose rules about the validity of knowledge are not explicit, as they are in courts.

General Argument of the Dissertation

This dissertation argues that nationally specific patterns in expertise are the result of the ways in which knowledge producers—or experts—and knowledge users—such as lawmakers and lawyers—navigate: 1) the embedded logics within the courts and legislatures where knowledge users make their decisions; 2) the academic and professional fields in which knowledge producers make their information; and 3) the channels and forms of interaction between these two groups of actors. Each of these three components is configured in nationally specific ways and thus creates unique circumstances in each country. The relationship between these three components is affected by broader political and legal structural differences between the United States and France, such as federalism versus centralization, that constrain and enable the demand for and availability of certain kinds of information.

Methods and Data

I analyze a variety of archival, interview, and ethnographic data in both countries to study the role of "experts" and "expertise" in reforms over same-sex family rights. The data focus on legislative and judicial debates that took place between 1990-2013 in France, E.U. institutions affecting France, U.S. federal institutions, and two comparable U.S. states: California and Texas. This time frame is wide enough to capture most major reforms in France and the United States on gay families rights while also being manageable analytically. I began this project before *Obergefell v. Hodges* and the lower-level court cases that lead up to it after 2013. I incorporate those cases as much as possible but did not extend the period to 2015 for the sake of completing the analysis.

I conducted content analysis to identify "experts" and "expertise" in over 5,000 pages of expert testimony; 9,000 pages of congressional and courtroom proceedings, including debate transcripts, amicus briefs, legislative reports, and committee hearings; and news coverage in 2,335 articles in *Le Monde* and *The New York Times*. I use these data to track who provided which kinds of knowledge in these settings and identify patterns in variation across time, institution, and country. To understand how and why they became involved in these debates, I conducted 72 in-depth interviews with "experts" who testified in courts and legislatures and with key lawmakers and lawyers responsible for organizing expert testimony in either country. I also observed and participated in think tank and policy institute seminars and presentations to look at the conditions of knowledge production. In the methodological appendix, I provide a detailed description of these data and how I used them. I also discuss my standpoint doing research in a cross-national context.

Outline of the Dissertation

Chapter 1 analyzes media coverage between 1990 and 2013 in *The New York Times* and *Le Monde*. By identifying both the type of "expertise" and the category of "expert" providing it, this chapter fills a gap in the extant literature, which does not distinguish between the message and messenger (Benson and Hallin 2007). This distinction matters because it reveals whether certain kinds of knowledge, such as personal experience, are shared across categories of experts, such as politicians and academics. I do not take for granted that people speak in terms of their social group; religious representatives, for example, may not only, or even primarily, talk about religion or scripture. My analysis shows that U.S. reporting offers a significant place to the lived experiences of average citizens, especially same-sex couples and their families, while French

reporting is characterized by a detached, top-down view of gay families. Indeed, in contrast to U.S. coverage, which relies more on ordinary citizens and advocacy organizations, French journalists and Op-Ed pieces feature theoretical or academic information provided by professors and mental health professionals. There is thus a clear national distinction between dominance of "lay expertise" in the U.S. and "elite expertise" in France. Moreover, these types of knowledge, such as personal experience in the U.S. and abstract social theory in France, are shared across categories of actors in each country. This suggests that these kinds of information act as a shared language on which many types of "experts" draw to justify their claims.

Chapter 2 shifts the analytical focus to the content of debates in legal and political institutions. It examines the people judges and legislators hear in both countries and what they say. Like American media coverage, U.S. legislatures are forums for ordinary citizens to describe how potential bills, such as those banning same-sex marriage, affect their families and friends. In U.S. courts, however, lawyers call on "expert witnesses," specifically professors and law professionals, to compliment the lived experience of plaintiffs. This institutional context therefore creates opportunities for elite voices that are not often heard in other U.S. contexts. These more academic experts, and the knowledge they provide, resemble those heard in French legislatures. In these forums, French lawmakers call elite experts—but not ordinary citizens—to say whether they agree with legalizing same-sex couples' parenting and family rights, reflecting the kinds of voices heard in the French media more broadly. These findings suggest that cross-national patterns in expertise are a function of the ways in which specific legal institutions process available knowledge in a given context.

Drawing on interview and ethnographic data, **Chapter 3** analyzes how experts in both countries navigate their public interventions and make sense of their place in the debates. It also

examines how the people who use their information, such as lawmakers and lawyers, think about and organize experts and expertise as they carry out their reforms. This analysis reveals that U.S. and French media, legislatures, and courts draw on different kinds of information because of embedded institutional logics that shape how people interact and understand information. Specifically, open legislatures, such as those in the U.S., allow anyone to speak out, thus favoring any interested citizen to testify. U.S. courts, however, put high demands on the quality of knowledge because judges must determine whether what experts say is credible. This favors scientific and empirical evidence that can validate specific legal claims. In France, legislators in the majority decide who gets to testify. Because of the political risks involved and their desire to appear "legitimate" to their peers and the public, they invite famous, elite experts and other people they believe will make their hearings appear not only "balanced" but also convincing. In this context, contrary to U.S. courts, the content of information is less important. Rather, in formal hearings, experts serve a political function to buttress a legal reform that has largely already been decided upon.

While the previous chapters study experts and expertise in policy outlets, **Chapter 4** examines knowledge producers in the fields where they make their information. It contextualizes the relative power of progressive and conservative American and French experts—particularly academics, professionals, and advocates—as they study topics appearing in gay family debates. It finds that U.S. progressives studying sexual minorities and their families have entered the mainstreams of their fields and enjoy strong institutionalized resources to produce high quality, empirical research. Conservatives have been marginalized in the U.S. and are excluded from the academic and professional mainstream. In contrast, French progressives are marginalized and stigmatized because of their research interests and face a chronic lack of institutional support in a

social context where gay families are invisible. Moreover, their field is small, interpersonal, and marked by longstanding conflict, which limits their ability to work effectively. French conservatives, on the other hand, though increasingly decentered, still occupy relatively strong institutional positions. These specific French challenges help explain why French expertise in political debates tends to lack an empirical grounding and has been more conservative. More broadly, this chapter argues that cross-national differences in expertise are a result of the specific conditions in which experts produce their information.

Expertise is also shaped by the channels experts take to bring their information to the decision-making sphere. **Chapter 5** explores the ties experts make to decision-makers in each country. It finds that U.S. experts face a highly professionalized sphere in which advocacy and professional organizations centralize knowledge, which they then distribute to courts and legislatures. In contrast, French experts have direct personal ties with lawmakers and political parties in ways that suggest they work as political advisors. Indeed, unlike their American peers, whose academic and professional spheres operate with a clearer distance from judges and politicians, French experts are intimate friends with elected officials. In this context, the line between the politician and the expert becomes blurred. In the U.S., experts act from a distance and provide information, leaving most advocacy work up to organizations. Many French experts, in contrast, intervene much as politicians or other political actors would to directly shape and influence the debate.

Before examining experts and expertise in decision-making institutions, we now turn our attention to the categories of people and kinds of information they contribute to newspapers in both countries. Analyzing national specificities in reporting on the partnership and parenting

rights of same-sex couples provides on overview of the people and knowledge to which the U.S. and French public are exposed when reading and forming their opinions on these issues.

CHAPTER 1
"Expertise" in the Media: Coverage of Marriage and Parenting Debates in *Le Monde* and *The New York Times*

In 2010, *Le Monde*, published an Op-Ed piece, entitled "Let's Not be the Sorcerer's Apprentice," by Jean-Pierre Winter, a psychoanalyst and author of the book *Homoparenté* [Gay Parenting] (2010). In his piece, he argues against the notion that same-sex couples should be allowed to raise children together. He says:

> We must ask ourselves about the fantastical ideas being hatched in the minds of two women or two men that decide, with the best of intentions, to purposely raise children in the deprivation not only of a mother and father, but also, through them, of a link to the entire ancestral lineage. The fantastical belief that no man has penetrated our mother, that we are born without the coitus that we can only imagine because we are excluded from it, are unconscious imaginings that have long been classified as "primal fantasies."

Drawing on concepts from psychoanalysis, Winter discusses same-sex couples and their children in the abstract and suggests that their desires for parenting are neurotic and dangerous. He focuses on the perceived harms of gay parenting rather than gay relationships. Winter offers readers his opposition in terms of expertise derived from his interpretation of knowledge specific to his profession.

In a 2012 article entitled, "Illinois Clergy Members Support Same-Sex Marriage in Letter Signed by 260," *The New York Times* describes the decision of Reverend Kevin E. Tindell, a United Church of Christ minister at the church New Dimensions Chicago, to sign a petition in favor of same-sex marriage. He states, "It's a matter of justice, and so as a Christian, as a citizen, I feel that it's my duty." The article goes on to describe the life of the clergyman, "Mr. Tindell,

who is gay, is raising three children with his partner of 17 years." The minister draws on his moral beliefs, as a Christian to describe why he supports same-sex marriage and we learn that he has a personal connection to the issue as a father and partnered gay man. Journalists present readers with a religious representative who draws on religion and his own experience to explain his support for gay family rights. The article seems to take for granted the idea that gay men raise children together, suggesting that the problematic political issue is gay marriage.

These quotes present several key contrasts: 1) differences in the issues prioritized; 2) differences in the kinds of information media consumers see; and, 3) differences in the categories of people presenting that information. In the first case, a mental health professional uses psychoanalysis to denounce gay parenting reforms and, in the second, a religious representative uses religious expertise and personal experience to support gay marriage. Several questions emerge from these examples. In the area of gay family rights, from partnerships to access to parenting, which issues garner more attention? To what degree is expertise like this representative of broader media discussions of same-sex couples in France and the United States? How often are psychoanalysis, religion, and other types of information used to support or critique the legal recognition of same-sex families? What kinds of people, other than mental health professionals and religious representatives speak out in the press and what do they say? Have the categories of experts and type of knowledge they use changed over time?

To answer these questions, this chapter adapts framing theory to describe and analyze the role of experts and their knowledge in news media reporting of legal debates over gay family rights. It sheds light on the people and information that dominate what the French and American public read about same-sex couples, their relationships, and their children. That some categories of experts are more prominent in coverage, such as professors in France or ordinary citizens in

the United States, tells us about the people journalists and newspaper contributors consider legitimate to speak. Understanding what those people say, and whether their information is drawn from, say, social science, mental health, or personal experience, tells us about the terms through which readers see gay families. Because the media's wide reach shapes public opinion and perceptions, including that of policymakers and social movement organizers, the expertise and experts the news uses can impact the politics and mobilization around these issues.

This chapter provides a picture of discourse outside of governmental institutions, complementing the other chapters' analysis of how different types of "experts" participate in political and legal arenas. It does not aim to describe the breadth of civil society debates on gay family and parenting issues in both countries; that is beyond the scope of what is possible here. Instead, it focuses on *Le Monde* and *The New York Times*, which offer a fruitful comparison because they are both newspapers of record, share generally center-left editorial viewpoints, and have similar proportions of readership in their respective countries (Benson and Hallin 2007; Benson and Saguy 2005; Brossard, Shanahan, and McComas 2004). Their credibility and status among journalists and the public also gives their reporting a level of reverberation within the media field and some power to shape the public and lawmakers' perception of issues (Golan 2006; Rioux and Van Belle 2005). It is thus reasonable to assume that the kind of experts and expertise discussed in these newspapers, though not necessarily representative of all knowledge present in the media, reverberate in national discourse more broadly. Understanding the patterns of expertise in *Le Monde* and *The New York Times* therefore provides a useful sketch of public discourse, though analyzing other media would no doubt reveal variations. The methodological appendix provides a detailed description of how I collected, categorized, coded, and statistically

analyzed types of expertise and categories of experts in 2,335 articles published between 1990 and 2013 in both newspapers.

Framing, Expertise, and Family Debates

When the media in different countries discuss political issues, such as the legal recognition of same-sex couples and their families, what do they say? Answers to this question traditionally use Goffman's (1986) idea of frames to argue that journalists—as well as political and legal actors—craft particular ways of seeing and understand issues through how they discuss issues. They choose to highlight some facts, themes, or ideas over others, which creates a specific narrative telling readers what an issue is about (Bleich 2003; Saguy 2003, 2013). Comparing frames of the same issue across contexts, such as France and the United States, can show how people portray and understand it in culturally specific ways.

Frames are part of broader cultural contexts that vary across countries. Building on the notion of "cultural toolkits" (Swidler 1986), some scholars talk of "national cultural repertoires" (Lamont and Thévenot 2000), which describe how people make sense of the world, make assumptions, and use concepts in nationally specific ways. Specifically, over a range of widely different issues, from sexual harassment to environmental policy and the art world, the French often frame social problems in terms of "civic solidarity," while Americans draw on "market performance" (Lamont and Thévenot 2000). The former evoke justifications grounded in the idea of the common good while the latter analyze a problem through its financial consequences. Because journalists are embedded within their cultures, media discussions on gay families in each country are likely to resonate to some degree with these broader systems of justification

(Benson and Saguy 2005). We can expect, therefore, to find arguments evoking collective wellbeing in France and economic consequences in the United States.

Specific cultural differences on sexuality also indicate which kinds of information might be more or less common in either country. Because they generally have opposing views on the distinction between the public and private sphere, French and American journalists, politicians, and social movements have reacted to sexuality, gender, and family issues differently (Fassin 2009; Saguy 2003; Scott 2005). In France, they tend to support the idea that one's sexuality and family life should be protected from public scrutiny while in the United States they are tools of public self-identification and interaction. Both customs also favor heterosexuality in specific ways. In France, heterosexual privilege is upheld because it serves as the universal unmarked category in a sphere were all sexuality is "private." In the United States, heterosexuality is reinforced through its public visibility and display.

More broadly, these differences impact the way politics and journalism deal with the "private lives" of politicians. For example, unlike the reaction to President Bill Clinton's affair with Monica Lewinsky, the public acknowledgement of President François Mitterrand's second family did not lead to political outcry (Ezekiel 2002; Fassin 2009; Williams and Apostolidis 2004). They also constrain and enable the degree to which politicians, journalists, and activists involved in political debates can legitimately evoke their families, friends, or sexuality as the basis for claims-making (Lamont and Thévenot 2000). Relatedly, judgments about sexuality are more tightly linked with moral and religious arguments in the United States than they are in France, which reflects larger traditions about the status of religion in the public sphere in either country (Tocqueville 1990) and higher degrees of religiogsity and church attendance in the U.S. relative to France (Saguy 1999). Given these trends, media coverage of gay family debates is

likely to treat "private" and religious information differently. Specifically, people who intervene in the French press may be less likely to talk about their own experiences with sexual minorities and their families or draw on religiously grounded arguments.

Extant research on the United States argues that media and legal debates on gay rights issues in general, and gay partnerships and parenting in particular, are structured around two master frames. Supporters of gay family rights use an "equality frame," emphasizing legal equality and fairness, while opponents use a "morality frame," with arguments grounded in the perceived immorality of homosexuality and its effects on children (Brewer 2003; McFarland 2011; Mucciaroni 2011; Rodriguez and Blumell 2014; Tadlock, Gordon, and Popp 2007). These approaches highlight the necessity of examining how actors on both sides of the issue mobilize different—and often competing—frames to define the issues. Specifically, opponents of gay rights work to define how legal equality of sexual minorities constitutes a threat, while proponents argue the merits of an expansion of rights (Mucciaroni 2008). Politicians speaking out against gay marriage, for instance, argue that it will "weaken traditional marriage," while proponents maintain that measures banning same-sex marriage are divisive and discriminatory (Mucciaroni 2008). Expertise in American media debates will likely reflect the dominance of these frames. Coverage of gay family debates in *Le Monde* and *The New York Times* will also likely focus on the institutions where debates occur most often, such as the dominance of the legislature in France and a mix of courts and legislatures in the U.S.

Rather than analyzing how gay rights are framed, this chapter analyzes which kinds of expertise are deployed and distinguishes the kinds of specific information people use when making arguments (Béland and Cox 2010; Eyal and Buchholz 2010). Identifying the source and category of this information, such as academic knowledge produced by scientists versus personal

knowledge through lived experiences provided by members of the public, reveals the potential power behind an argument. This distinction also allows me to identify the degree to which arguments resonate, or not, with dominant cultural repertoires. For example, arguments grounded in the "expertise" of personal experience, may have less impact on sexuality issues in countries, like France, that feature a strong public-private divide but get traction in places where story-telling is a common political language (Polletta 2006). Statements by economists or featuring knowledge about financial outcomes are likely to have more traction in places like the United States, where market arguments have sway (Fourcade 2009). We can better understand why frames have long-term effects on policy outcomes, public opinion, and social movements by analyzing the cultural specificity of information people use when making justifications in political debates (Druckman 2001; Stone 2011). I am not directly measuring resonance but assume that systematic cross-national differences in categories of experts and types of expertise are indictors of dominate forms of knowledge.

Descriptions of frames alone are also not sufficient to understand the power and weight behind arguments people mobilize in political and media debates (Carragee and Roefs 2004). Drawing on analyses of expertise, however, it is possible to identify which kinds of people use which kinds of arguments to justify their claims in the media. Much extant research on French and American gay marriage debates focuses on opponents and proponents broadly speaking thereby erasing power differences across categories of actors and conflating social movement actors with other members of civil society. Politicians, average citizens, and psychiatrists, for instance, do not necessarily have the same legitimacy or appeal in the political and media arena. By extension, even if they use the same kinds of information it will not necessarily have the same weight or resonance, given their differences in status. The interplay between "lay experts"

on the one hand and elite experts, such as academics, professionals, and politicians, on the other, is especially important in a context of increasing public participation in policy debates (Brint 1996; Rich 2010). For this reason, this chapter considers not only the kinds of knowledge that appears in *Le Monde* and *The New York Times* but also the range of "experts" who use it.

Some framing research has begun to identify the kinds of people, such as politicians, academics, and ordinary citizens the media cites in contributing to frames on gay family debates. In a recent pilot study, Rodriguez and Blumell (2014) analyze framing of gay marriage in 100 articles published in 2013 in *The New York Times.* They argue that the master frames of equality and morality are not mutually exclusive; actors draw on elements of both to support either stance. They discuss the degree to which *The New York Times* cites actors contributing to these frames and find that elites, including politicians, religious representatives, and famous activists dominate sources in the newspaper at the expense of a "human interest" perspectives (354). The voices of ordinary people, they argue, are underrepresented. Their observations may, however, be limited by the single year time frame. Given how quickly issues surrounding gay family rights have changed, an historical analysis of coverage over time is necessary to assess the relative importance of certain actors, like ordinary citizens, in media coverage.

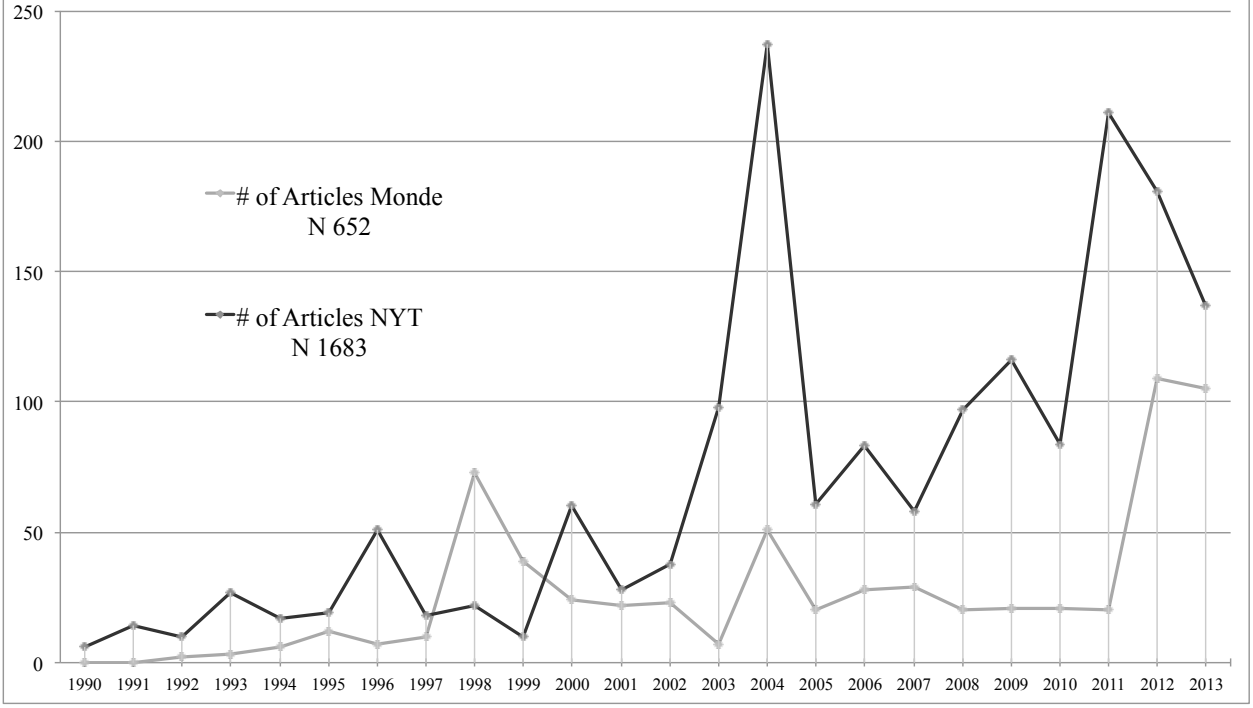
Some French-U.S. comparative work on media framing, which has not addressed gay family rights issues, also identifies actors that contribute to news reporting. Comparing general reporting in *Le Monde* and *Le Figaro* with *The New York Times*, Benson and Hallin (2007), find that the French press is more inclusive of civil society views, especially trade unions, than the American press. In the 1990s, the most recent period of their analysis, they find similar quantities of articles citing ordinary citizens but more professors in French coverage. Comparing climate change coverage in *Le Monde* and *The New York Times*, Brossard et al. (2004) find industry and

business representatives are more common in American coverage but no significant differences in presence in academics or scientists. If these trends hold up for gay family reforms, we should expect to find more members of civil society, especially professors, in *Le Monde*, and similar amounts of statements from members of the public in both. These analyses are limited, however because they only note the presence or absence of these categories of groups and individuals. They do not analyze the specific content of what these "experts" say or their stances on the issues. This chapter builds on their work by assessing how types of knowledge are distributed across categories of experts with different levels of legitimacy as well as their stances. Analyzing the content of what experts say is important because it tells us whether the same experts, such as religious representatives, use difference kinds of information, such as religious expertise drawn from scripture or social science research, in each country. If they use different information, it would suggest they face may face different conditions, such as secularism in France and tolerance of religion in the U.S., that constrain and enable specific kinds of discourse.

Findings: Experts and Expertise in Reporting on Gay family Rights

Having a picture of the way coverage maps onto the chronology of political events in each country provides a context for understanding the trends in experts and expertise discussed below. Figure 3 shows the number of articles published each year from 1990 to July 30, 2013 in both newspapers. There are several notable trends. First, *The New York Times* coverage began earlier. *Le Monde* did not publish its first articles until 1992, and then in small numbers, reflecting the relative lack of legal attention paid to gay families in France until more recently. Coverage in both newspapers appears to be driven primarily by major political and legal battles.

Figure 3: History of Coverage of Expertise in *Le Monde* and *The New York Times*, 1990-2013



In *The New York Times*, the spike in coverage in 1993 is related to a ruling in favor of same-sex marriage by Hawaii's supreme court, which sparked anti-gay marriage referenda and the passage of DOMA in 1996. Coverage increased in the 2000s, peaking in 2004 because of the legalization of gay marriage in Massachusetts and a backlash of state voter and legislative initiatives to ban it. Gay family rights, and same-sex marriage in particular, became an increasingly integral part of electoral politics during this period. Articles were steadily published in the late 2000s and early 2010s as legislative and judicial efforts to either prohibit or establish same-sex marriage spread through state and federal institutions. The higher number of articles in *The New York Times* likely reflects the quantity of legal and political battles on gay family rights in the United States relative to France.

In *Le Monde*, the first spike occurred in 1998 before and after the passage of the Pacs. Reporting increased again in 2004, at the moment of a highly publicized same-sex wedding

celebrated by the mayor or Bègles (Garcia 2004)—which was declared invalid by courts—and then leading up to and during the 2012 French marriage and adoption law debates.

Institutional Domains and Issues Covered

In addition to following the chronology of legal reforms, news reporting also reflects the specific importance of courts and legislatures as well as the types of gay partnerships and parenting reforms that matter most in each country. Table 2 shows the institutional domains of reforms as well as the proportion of specific parenting and family issues journalists in each newspaper cover.

Table 2: Proportion of Articles by Institutional Domain and Issue Covered *Le Monde* and *The New York Times*

Legal Domain	*Monde*	*NYT*	*Monde - NYT*
Courts	0.09	0.34	-0.25***
Legislature	0.65	0.24	0.41***
Multiple	0.08	0.21	-0.12***
None	0.13	0.19	-0.06***
Other	0.05	0.04	0.01
Private Sector	0.00	0.01	-0.01
Referendum	0.00	0.06	-0.06***
N	652	1683	
Issue Covered	***Monde***	***NYT***	***Monde - NYT***
Adoption	0.11	0.04	0.07***
Assist. Reprod.	0.07	0.01	0.06***
Custody	0.00	0.02	-0.02**
Multiple	0.02	0.05	-0.03**
Parenting	0.58	0.04	0.54***
Partnerships	0.71	0.88	-0.17***
N	652	1683	

*$p < .05$; ** $p < .01$; *** $p < .001$ (Chi-square test).

The legislature dominates French discussion (65 percent), while a range of institutions, including courts, legislatures, and referenda (34 percent, 24 percent, and 6 percent respectively), appear in American articles. This disparity in avenues of reform is consistent with my

overarching argument that institutions, because of the way people interact with them, shape the kinds of knowledge and experts required in each country. For example, in the U.S. case, lawyers and judges are necessary for navigating judicial reform just as activists and members of the public work to convince voters in a referendum. And, as is discussed below, all of these actors are cited more frequently in *The New York Times* than in *Le Monde*. These institutional differences, however, do not suggest that courts fill media debates at the expense of legislatures in the U.S. coverage. Rather, these avenues of reform are additive; they increase the opportunity for expert discourse. Thus, the dominant presence of legislatures in *Le Monde* coverage as compared to that in *The New York Times* reflects the absence of the judiciary as a powerful avenue of reform in France rather than a weakness of legislatures in the U.S.

As we saw in the introductory chapter, in public opinion polls, Americans express more opposition to gay marriage than do the French but are, on average, more accepting of gay adoption and parenting. These stances also parallel the legal landscape in each country; same-sex couples have been able to raise children, without access to legal partnerships, in some parts of the United States much earlier than they could in France. Related to this, 88 percent of coverage in *The New York Times* is about partnerships (civil unions, marriage, domestic partnerships, and other issues related to gay couples). Indeed, the fact that gay men and lesbians raise children is taken for granted and used as an argument to justify legalizing marriage. For example, in a 2013 article covering the federal trial against Proposition 8, Justice Kennedy is quoted saying, "There are some 40,000 children in California…[who]…live with same-sex parents, and they want their parents to have full recognition and full status. The voice of those children is important in this case" (Liptak 2013).

In contrast, French poll respondents express more concern about gay parenting than same-sex partnerships. Correspondingly, 76 percent of articles in *Le Monde* deal with legal issues related to having and raising children but only 11 percent do in *The New York Times.* In many instances, French articles about legal reforms strictly affecting same-sex couples, such as the Pacs, which has no implications for access to parenting through adoption, involve opponents expressing concern that if same-sex relationships are recognized, it may inevitably lead to gay parenting. French articles treat gay parenting as a contentious legal issue and a social controversy; they do not take for granted the idea that gays and lesbians can and do raise children. For example, in an Op-Ed by Maurice Berger (2013), a psychiatrist and psychoanalyst who argues against gay couples adopting, writes, "A heterosexual couple, even divorced, is the best thing we have found to inextricably link parental sexuality, conception, and tenderness. And how can a little girl understand that two men that do not want a woman in their lives, could have desired a daughter?" His comments illustrate how French debates cast doubt on the moral legitimacy and demographic reality of gay families.

Differences in Expertise: Academics versus Personal Experience

Beyond their focus on legal issues and decision-making institutions specific to their national contexts, contributors to *Le Monde* and *The New York Times* draw on different kinds of knowledge when discussing gay family rights. Although each type of expertise—from social science and mental health to religious knowledge and personal experience—has at least a few occurrences in either newspaper, their proportions are significantly different. Furthermore, the quantity and distribution of knowledge that is favorable or opposed to these reforms is distinct.

Table 3 shows these proportions for the 23-year period, the differences between them, and whether they maintain a stance for or against same-sex family issues.

Table 3: Proportion of Expertise Occurrences by Type and Stance in *Le Monde* and *The New York Times* between 1990-2013

	All			For			Against		
	Monde	*NYT*	*Monde-NYT*	*Monde*	*NYT*	*Monde-NYT*	*Monde*	*NYT*	*Monde-NYT*
Social Sci.	0.12	0.09	0.03***	0.06	0.05	0.01	0.05	0.02	0.02***
Religion	0.05	0.08	-0.03***	0.01	0.02	-0.01*	0.03	0.06	-0.03***
Pers. Exp.	0.10	0.17	-0.07***	0.08	0.16	-0.08***	0.01	0.01	0.00
Mental Hlth.	0.17	0.07	0.10***	0.07	0.03	0.03***	0.10	0.03	0.07***
Law	0.21	0.29	-0.08***	0.09	0.14	-0.04***	0.06	0.07	-0.01
General	0.12	0.14	-0.02**	0.04	0.08	-0.04***	0.07	0.06	0.01
All Other	0.24	0.16	0.08***	0.12	0.09	0.03*	0.05	0.04	0.01
Total	1	1		0.47	0.57	-0.09***	0.36	0.28	0.08***
N	1318	4243							

Note: Neutral stance not shown.

*$p < .05$; ** $p < .01$; *** $p < .001$ (Chi-square test).

Legal expertise—information about laws, legal code, and processes of reform—is the single most common type of knowledge for both newspapers; 21 percent in *Le Monde* and, at a larger and statistically significant proportion of 29 percent in *The New York Times*. They also include similar quantities of "general" expertise—justifications couched in unspecific terms—tied at 12 percent for third place with social science in *Le Monde* and also in third place with 14 percent in *The New York Times*. Proponents of gay parenting rights often use legal arguments and, as a result, legal information is more supportive than critical in both newspapers, though more so in *The New York Times*. The paper regularly quotes lawyers, such as Jennifer Pizer of Lambda Legal, who speak about the judicial merits of gay marriage (Goodnough 2009). In addition, legal expertise makes up the largest fraction of neutral information in both publications because journalists either quote legal experts, such as law professors, to explain the stakes of a given reform but whose stance is unknown, or to contextualize an article by describing the current status of gay rights. That legal expertise and general statements based on broad principles

are some of the most common forms of knowledge in discussions of legal reforms on a contentious social issue is not surprising.

Beyond these kinds of knowledge that one would expect to find in such a debate, however, the knowledge patterns diverge. Specifically, elite knowledge grounded in academic disciplines and professional information occupies a higher proportion of expertise in *Le Monde* while personal experience is more represented in *The New York Times*. Social sciences and mental health together make up 29 percent of expertise in the French coverage but only 16 percent in the U.S. In fact, after law, mental health is the second most important single type of expertise contributors to *Le Monde* use. Moreover, when they use it, they are more likely to use it to denounce rather than support gay family rights; mental health against gay family rights makes up 10 percent of all expertise occurrences in *Le Monde* and is the largest type of opposing expertise.

Even among social and mental health expertise, there are significant differences among the specific disciplines—presented in Table 4—that each newspaper references.

Table 4: Types of Social Science and Mental Health Expertise Occurrences in *Le Monde* and *The New York Times*

Social Science	*Monde*	*NYT*	*Monde - NYT*
Anthropology	0.36	0.04	0.31***
Sociology	0.42	0.23	0.19***
Economy	0.13	0.42	-0.28***
Politics	0.09	0.31	-0.22***
N	160	370	
Mental Health	***Monde***	***NYT***	***Monde - NYT***
Psychiatry	0.07	0.04	0.03
Psychoanalysis	0.32	0.03	0.29***
Psychology	0.61	0.94	-0.33***
N	227	284	

*$p < .05$; ** $p < .01$; *** $p < .001$ (Chi-square test).

Among social science expertise, anthropology and sociology are significantly more common in *Le Monde* than in *The New York Times*, where economy dominates. Among mental health fields, psychology is most common for both but the significance of psychoanalysis in the French press (32 percent of mental health) is remarkable when compared to its virtual absence in the U.S. For example, Serge Lesour, a psychoanalyst, made statements in an article published during the Pacs debates that uses this kind of knowledge. Explaining his opposition to the hypothetical situation of gay adoption—a reform lawmakers did not take up during the Pacs debates—he says, " [For homosexuals] there is often a psychic denial of sexual difference in adolescence […] It would be dangerous to give a child the impression that there are no limits, no prohibitions, by refusing to recognize the sterility that homosexuality implies. Frustration is the foundation of education" (Kremer 1999). These patterns confirm observations about the specific combination and importance of anthropology and psychoanalysis in historical French public policy debates and their contemporary influence (Borrillo and Fassin 2001; Fassin 2001; Robcis 2013).

Opponents of same-sex families also draw on psychology or the concept of "psychological research" in *The New York Times* but virtually never on the language psychoanalysis. Moreover, unlike their French counterparts, U.S. opponents privilege the importance of marriage, rather than biological relatedness, for children's psychological wellbeing. For example, people like Jim Daly, president of the Christian activist organization, Focus on the Family, make claims that children "fare best with a married mother and father" (Freedman 2013). This stance reflects the wider place marriage, rather than parenting, occupies as a controversial issue in the American political field relative to France.

The relative weight of economic expertise in *The New York Times* (28 percent more than in *Le Monde* and 41 percent of all social science knowledge) also distinguishes U.S. reporting. Exemplifying economic expertise is an article published in 2009 in which the journalists calculated the extra financial burdens, such as taxes, health insurance, and retirement accounts, accrued to a hypothetical same-sex couple because of they could not marry (Bernard and Lieber 2009). Consistent with my overall argument, this knowledge is available and usable in the U.S.—and not in France—because marriage laws vary by state. The presence of economic expertise is also evidence of how human rights issues, such as same-sex marriage, become caught up in the language of markets and intrastate competition, which shapes discourse on a variety of unrelated issues in neo-liberal American policy debates (Fourcade 2009; Lamont and Thévenot 2000; Marzullo 2011). Nevertheless, this kind of elite expertise grounded in the disciplines, which is a predominant feature of reporting in *Le Monde*, is less present in *The New York Times.*

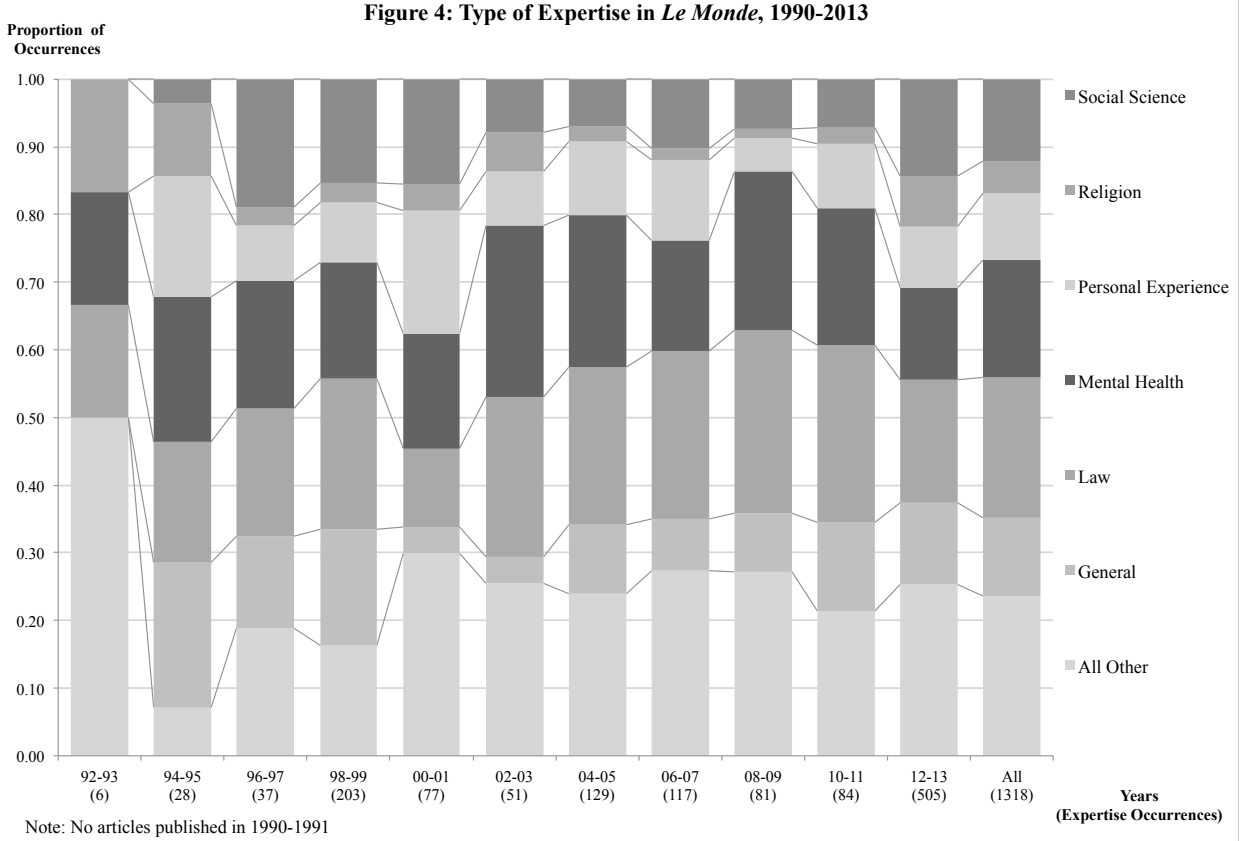
Instead, in *The New York Times*, the conversation on gay family rights is predominantly one in which the lived experiences of different people, such as same-sex couples, their children, and people with gay family members who talk about how the law affects them. Indeed, as shown in Table 3, at 17 percent of all expertise occurrences, personal experience is the second most common from of knowledge, after law. Almost all of this expertise is favorable to extending relationship and parenting rights to same sex couples. *The New York Times* has a much higher proportion of personal experience because its articles consistently include a vignette of a member of the general public talking about how the law affects him or her. Often times these include statements by same-sex couples raising children. As a result, unlike in *Le Monde*, gay family debates are consistently personalized. *New York Times* readers have a direct sense of how legal

reforms affect people concretely while *Le Monde* readers are more likely to be presented with information, such as academic discourse, that views gay families from a distance.

Changes Over Time: Creating Space for New Knowledge?

The knowledge contributors to these newspapers use has changed over the course of the 23-year period both in terms of its proportion and stance. These trends tend to map onto the political and social trends in both countries. For *Le Monde*, Figure 4 details the relative annual proportions of major forms of expertise. Figure 5 depicts annual proportions of several major types of expertise according their favorable or unfavorable stances on gay family rights.

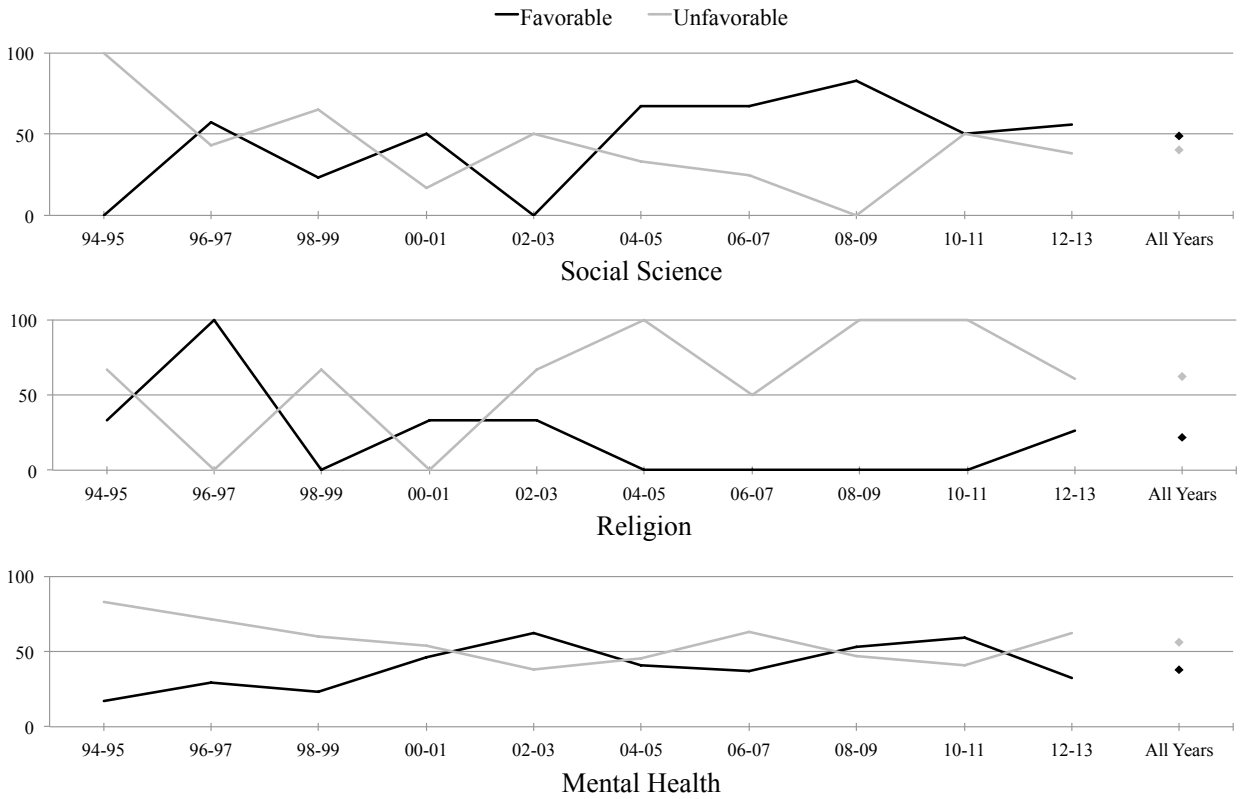
Figure 4: Type of Expertise in *Le Monde*, 1990-2013



Counter to the general impression that the media represent sexual minorities more frequently now than they did in the past, the proportion of personal experience in *Le Monde* has

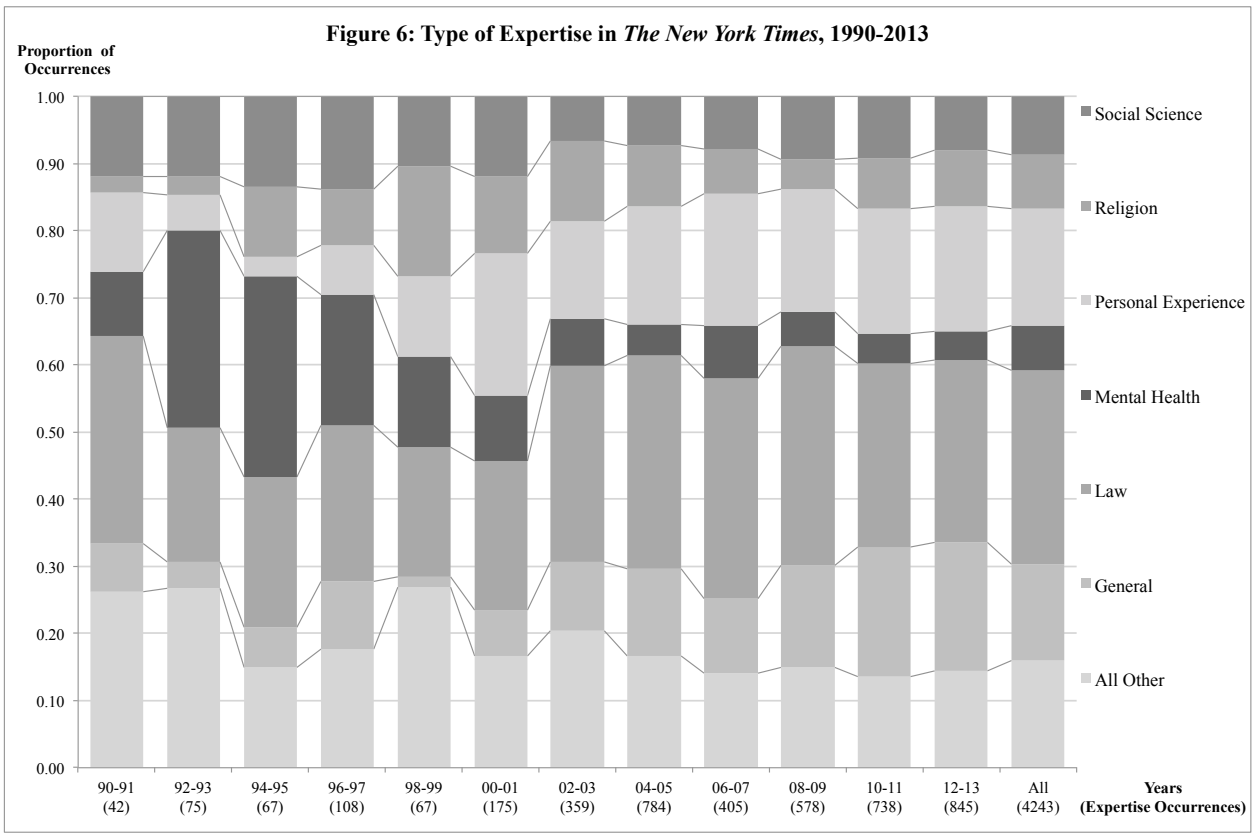
not significantly increased. In fact, the proportion of personal experience was higher during the height of the Pacs debates (1998-1999) than it is overall. Typical of *Le Monde* coverage, mental health expertise has constituted a significant proportion of knowledge throughout the last two decades. Overall, a majority (56 percent) of this expertise has criticized same-sex families. Analysis of the annual breakdown shows, however, that these stances have fluctuated. Negative stances were even stronger in the early 90s and remained dominant (54 percent) during the Pacs debate years. Then, in the intervening years until the marriage and adoption debates of 2012-2013, favorable mental health expertise was more common for most years. This pattern suggests that when legislative attention is not focused on legal reform, the media creates space for dissident stances.

Figure 5: Percent of Favorable and Unfavorable Experitse in *Le Monde*, 1994-2013



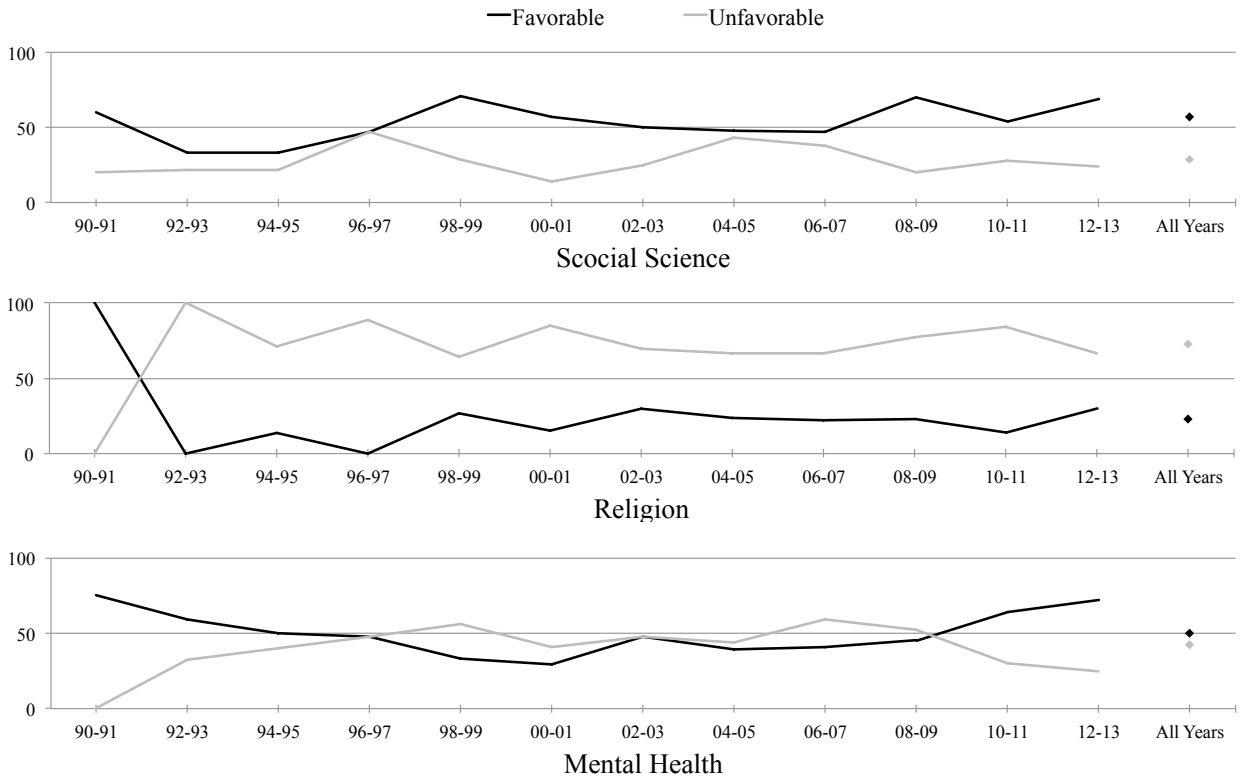
The evidence of social science expertise suggests a similar pattern. While 49 percent of such knowledge is favorable, all years combined, during the Pacs debates, 65 percent of social science expertise opposed the reforms. Since the 2000s, social science expertise has generally been favorable, suggesting a more durable change. One likely explanation is that several major French social scientists, including the anthropologist Françoise Héritier and the sociologists Irène Théry, who were both opposed to the Pacs and adoption for same-sex couples, are now outspoken supporters. Also, note that the annual proportion of social science expertise increases in years of peak political debates, during and around the Pacs debates and during the marriage debates of 2012-2013.

Contrary to sustained presence of academic and elite discourse in *Le Monde*, particularly for mental health, such knowledge actually declines in *The New York Times*. Figure 6 shows these trends.



Defining peak years of political debate, on which to map changes over time, is less obvious in the United States, because of the way reforms have progressed more continuously and less discreetly than they have in France. Nevertheless, there are some clear linear patterns that show gradual changes over time. Legal expertise and personal experience, which characterize knowledge in *The New York Times*, have increased. The contrast between personal experience and mental health is striking. As the proportion of psychology has decreased, stories about same-sex couples, politicians, and others talking about their gay family members, or being gay themselves, have increased. As depicted in figure 7, the proportion of unfavorable social science expertise has been consistently less present than that in favor of gay family rights and decreased in recent years.

Figure 7: Percent of Favorable and Unfavorable Expertise in *The NYT*, 1990-2013



Religious expertise is relatively minor overall in both newspapers, though statistically greater in *The New York Times* (8 percent), than in *Le Monde* (5 percent). The patterns in proportional change of such knowledge, though, are similar. Religious expertise was higher during the Pacs years in *Le Monde*, decreased during the 2000s, but then expanded noticeably in 2012-2013. Similarly, in *The New York Times* appeals to God and scripture decreased from a peak in 1998-1999 throughout the 2000s, only to increase again between 2010 and 2013. One noticeable difference, however, is that religious discourse in support of gay family rights, though still in the minority in both newspapers, is more common in *The New York Times* and has been a consistent presence each year. Such gay supportive religious expertise has been inconsistent or absent in many of the 23 years.

Experts: Messengers, their Messages, and Power

Having discussed the kind of information contributors to *Le Monde* and *The New York Times*, we now turn our attention to the people who provide it. Identifying which kinds of people deliver the messages, as well as the kinds of information they use, gives insight into the particular strength—or weakness—of specific arguments or stances. That some categories of people are cited more than others reveals how institutional arrangements create space for specific voices. These hierarchies between actors also provide insight into the conflicts—described in other chapters—that arise between them as they compete for visibility and legitimacy. Table 5 ranks the principal "experts"—who I categorized based on journalist's descriptions, by-lines, and public records—by the proportion of total articles over the sample period that cite them, as well as the differences in these proportions across newspapers.

Table 5: Proportion of Articles Citing Different Categories of Experts in *Le Monde* and *The New York Times* between 1990-2013

Monde			*NYT*				
	Rank	Proportion		Rank	Proportion	*Monde - NYT*	
Activist	1	0.22	Av. Person	1	0.34	Activist	-0.11***
Organization	2	0.21	Activist	2	0.33	Artist/Pub. Fig.	-0.01
Politician	2	0.21	Organization	3	0.32	Author/Intel.	-0.01
Professor	4	0.20	Politician	4	0.25	Av. Person	-0.17***
Av. Person	5	0.17	Lawyer	5	0.18	Gov. Agency	0.02*
Health Prof.	6	0.14	Professor	6	0.14	Health Prof.	0.09***
Religious Rep.	7	0.12	Judge	7	0.13	Industry	-0.05***
Judge	8	0.07	Religious Rep.	8	0.11	Judge	-0.06***
Lawyer	8	0.07	Think Tank	9	0.06	Lawyer	-0.11***
Gov. Agency	10	0.06	Industry	10	0.05	Organization	-0.11***
Philosopher	10	0.06	Health Prof.	10	0.05	Philosopher	0.06***
Author/Intel.	12	0.02	Gov. Agency	12	0.04	Politician	-0.04*
Artist/Pub. Fig.	13	0.01	Author/Intel.	13	0.03	Professor	0.06***
Think Tank	14	0.00	Artist/Pub. Fig.	14	0.02	Religious Rep.	0.01
Industry	14	0.00	Philosopher	15	0.00	Think Tank	-0.06***
N		652			1683		

*$p < .05$; ** $p < .01$; *** $p < .001$ (Chi-square test).

The categories of actors who are cited most often in each newspaper confirm the disparity between elite discourse from the top down in French coverage and experience from the ground up in American reporting. Looking at the rightmost column, displaying differences in proportions across newspapers, reveals that experts across most categories have higher proportions in *The New York Times*. Tellingly, however, health professionals, professors, government agencies, and philosophers are the only experts who are cited in higher proportions in *Le Monde*. These kinds of experts represent a particularly elite group.

The rankings of most often cited experts in each newspaper show similar patterns. People of a particular institutional and social status are among the top categories of experts in *Le Monde*. While citations involving activists, politicians, and members of organizations are among the top four types of actors across both newspapers, professors and health professionals—which includes medical and mental health professionals—are more highly ranked in *Le Monde*. Note also the relatively similar proportions of media space given to activists and professors. Their relative weight in the French media can help explain the tensions between these categories of actors, discussed in other chapters. In contrast to the elite actors in French reporting, average people are the most commonly cited kind of expert in *The New York Times* (34 percent of all articles), outranking professionals and academics, but only ranking fifth in *Le Monde* (17 percent). Readers of U.S. coverage thus directly encounter the people whose lives the law affects more often than their French peers who, instead, hear arguments about gay families via professionals and activists.

Table 6: Experts whose Proportion of Citations Changed Significantly over Sample Period in *Le Monde* and *The New York Times*

Monde	1990-2001	2002-2013	Change
Author/Intel.	0.01	0.03	+0.02*
Gov. Agency	0.02	0.08	+0.06**
Judge	0.04	0.09	+0.05*
Organization	0.26	0.19	-0.07*
N	198	454	

NYT	1990-2001	2002-2013	Change
Av. Person	0.18	0.37	+0.19***
Health Prof.	0.13	0.03	-0.10***
Politician	0.11	0.28	+0.18***
Professor	0.20	0.13	-0.07**
Think Tank	0.01	0.06	+0.05**
N	282	1401	

*$p < .05$; ** $p < .01$; *** $p < .001$ (Chi-square test).

This dichotomy between types of actors has grown over time. Table 6 shows that between the first and second half of the 23-year period, in *The New York Times* the proportion of articles citing average people doubled. At the same time, the proportion of articles citing health professionals and professors decreased. Think tanks, which began to gain ground in the American policy sphere, also saw their proportions increase. In contrast, there was no significant difference in the proportion of articles citing average people in *Le Monde* between the first and second halves of the period. Thus, unlike their American peers, readers of French coverage did not experience any real growth in the visibility of gay families. Not only does this leave their voices less heard, it likely also leaves the impression that they do not constitute a growing social group. Instead, in *Le Monde*, top down viewpoints, specifically government agencies, judges, and intellectuals, have increased.

Differing proportions of legal and political actors, depicted in Table 5, reflect the role of institutional avenues of reform in both countries. Confirming the relative importance of courts in

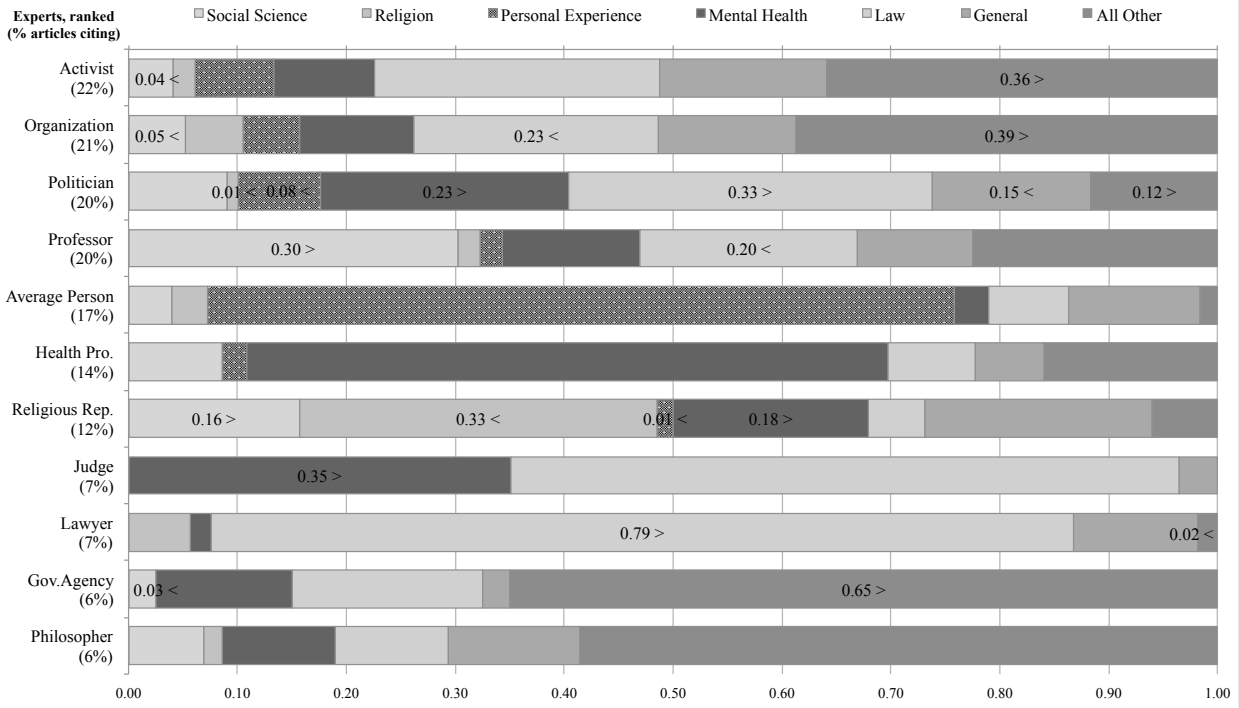
the U.S. as compared to France, articles in *The New York Times* cite judges and lawyers (13 and 18 respectively) more than in *Le Monde* (7 percent each). On the other hand, the difference between the percent of articles citing politicians (4 percent) is smaller. Because politicians speak out on political issues, whether they pass through courts or legislatures, it is unsurprising to find similar proportions of politicians in both newspapers despite the higher proportion of legislative reforms in France. Media presence of judges and lawyers may therefore be more specifically linked to judicial institutions while politicians may not.

As described earlier, religious expertise—arguments grounded in scripture—make up for a smaller proportion of knowledge in *Le Monde* than in *The New York Times*. Alone, this information leaves the impression that media reporting maintains traditions of French *laïcité* and American religiosity. However, as Table 5 reveals, there is no statistically significant difference between the number of articles in these newspapers citing religious representatives, 12 and 11 percent respectively. In other words, clergy are present in equal quantities, which defies the common idea of clear-cut French and American differences in divisions between church and state. Looking more closely at what these religious representatives actually say, however, as well as the ways in which other kinds of actors use, or not, religious discourse reveals a clearer explanation.

Figures 8 and 9 below depict the most commonly cited categories of people in each newspaper and the types of information they provide to the media. They show that religious representatives use different kinds of expertise in France and the United States. Specifically, of all the kinds of knowledge clergy bring to the debate in each newspaper, religious knowledge accounts for 50 percent in *The New York Times* but only 33 percent in *Le Monde*. American clergy also use personal experience (10 percent) more than their French peers (1 percent). In

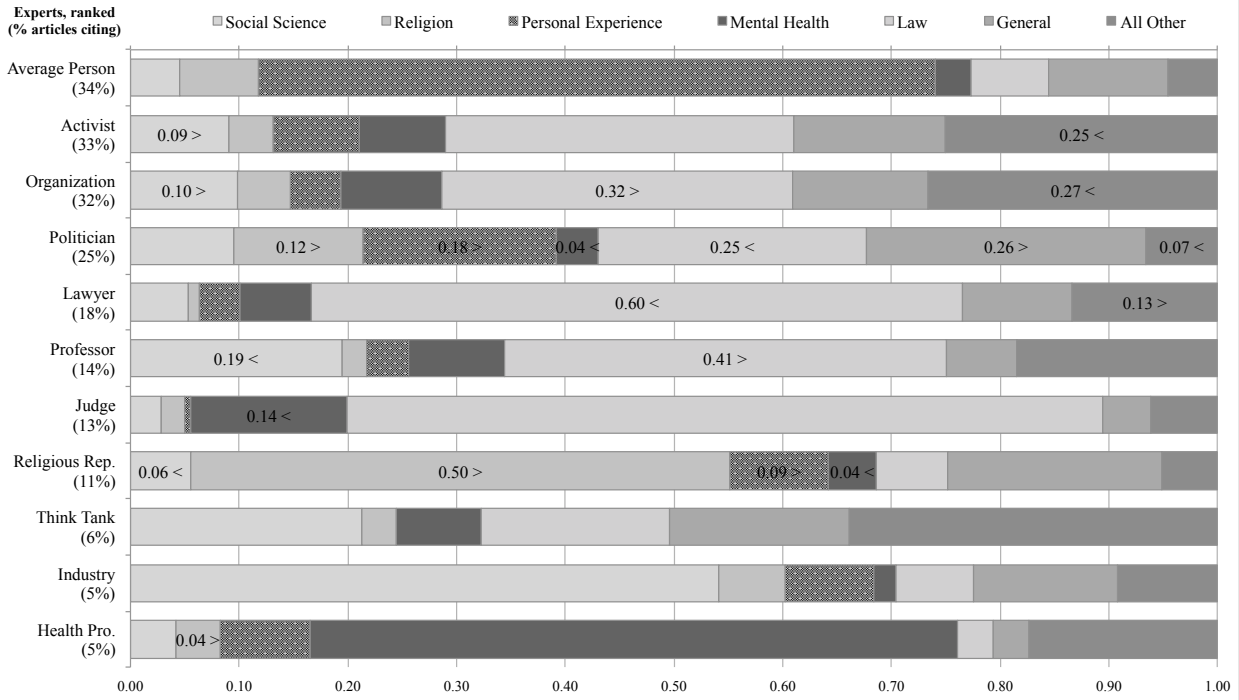
contrast, French priests, bishops, imams, and other religious representatives use significantly higher quantities of social science (16 percent) and mental health 18 (percent), than those in the U.S. (6 and 4 percent respectively). Exemplifying this strategy, the French priest, Vatican counselor, and psychoanalyst, Tony Anatrella, declared in an editorial during the Pacs debates that same-sex couples should not be given legal recognition not because homosexuality is a sin but because it is a "pre-oedipal" sexual fantasy unworthy of institutionalization (Anatrella 1998).

Figure 8: Proportion and Type of Expertise Used by Experts in *Le Monde*



Note: < or > signifies proportion of expert citations is greater/less than that for the same expert in *The New York Times*. All instances p-value <0.05 (Chi-square test).

Figure 9: Proportion and Type of Expertise used by Experts in *The New York Times*



Note: < or > signifies proportion of expert citations is greater/less than that for the same category of expert in *Le Monde*. All instances p-value <.05 (Chi-square test).

These differences in type of expertise suggest that traditions of French secularism do not limit the appearance of clergy in political debates. Rather, expectations that public discourse should be free from religious discourse means that church members—as well as other actors—mobilize ostensibly secular forms of expertise to be audible. Moreover, in *Le Monde*, contrary to their American counterparts, some of who speak out in favor of reforms, French religious representatives provide almost no knowledge in support of gay family rights. If they were to draw exclusively on scripture, their critiques could easily be dismissed as illegitimate. That they draw on social science and mental health suggests that French clergy tap into popular forms of knowledge in their context, which is shared across many types of actors, to be taken more seriously. In contrast, American clergy likely mobilize such quantities of religious discourse precisely because other actors, especially those with more institutional power, such as politicians, use scripture as well.

Because of their desire to appeal to the public and convince their colleagues, politicians provide good insight into the kinds of discourse that have power and currency in a given context. The example of religious expertise is telling. As shown in Figures 8 and 9, French politicians use almost no religious expertise (1 percent) but their American peers use more (12 percent), and on both sides of the issue. For example, President Obama, who initially argued that, "marriage is a sacred union, a blessing from God, and one that is intended for a man and a woman exclusively," later changed his stance (Healy 2008). Explaining his reversal, he states, "The thing at root that we think about is, not only Christ sacrificing himself on our behalf, but it's also the golden rule -- you know, treat others the way you would want to be treated" (Calmes and Baker 2012). Politicians also use more personal experience in American coverage (18 percent), than their peers in French reporting (8 percent). American politicians of all sexual orientations talk about

the effects of legal change on the friends and family. For example, in support of same-sex marriage, democratic politician Hilary Clinton, uses the feelings she had as a mother attending her daughter's wedding to affirm, "I wish every parent that same joy," alluding to parents of gays and lesbians (Stolberg 2013). Some French politicians use their own experiences, such as when Jean-Luc Romero, one of the rare openly gay French politicians, describes his life with his partner (Kremer 2001), but this remains much less present than in American reporting.

In contrast, mental health accounts for 23 percent of what French politicians say but only 4 percent of American lawmakers use. *Le Monde*, for example, quotes the lawmaker, Jean Raquin, explaining why he refused—using his authority as president of a local *département*—to grant Emmanuelle B, a special education teacher living with her female partner, the authorization to begin the adoption process. He says, "your request does not currently present the necessary guaranties to preserve the best interest of the child you would welcome into your home [… because your partner would] occupy a third party to the mother-child relationship" (Chemin 2009). Mobilizing similar knowledge to oppose the 2012 marriage and adoption bill, Éric Woerth—who has held various political positions including mayor, assembly member, and Minister of the Budget—states, "inscribing into the law that one can become a parent without being a man and woman runs the risk of dismantling the structure of society […] We do not know what the consequences will be on children; we're playing with fire" (Bekmezian and Dupont 2012). In both examples, politicians wield psychology—the idea that having two mothers will interfere with maternal bonding or that same-sex parenting will have unpredictable consequences on children's outcomes—to express their opposition. This demonstrates how mental health concepts becomes a politically powerful form of knowledge to delegitimize the rights' claims of gay families in France.

Figures 8 and 9 depict the kinds of expertise the 11 most highly ranked experts in both newspapers employ. It reveals that the differences in type of knowledge religious representatives and politicians in each country use also hold up for the other experts. For instance, the most highly ranked actors in *Le Monde* use important proportions of mental health expertise in their press interventions, while those in *The New York Times* have less mental health and more personal experience. Indeed, in *Le Monde*, only 7 of the top ranked categories of experts use religion and personal experience while all in *The New York Times* draw on religion, and only one, think tanks, does not use personal experience. Not surprisingly, in *The New York Times*, average people, the largest conveyors of personal experience, are the highest ranked experts, while health professionals, who use the biggest proportion of mental health expertise, rank in 11th place. The same institutional experts in both countries, such a judges, also reflect these trends in reporting; French and American judges use similar proportions of legal expertise, which is logical given their roles, but the former use no personal experience and 35 percent of mental health, while the later use some personal experience and only 14 percent of mental health.

Other smaller trends are also noteworthy. Activists and organizations in *The New York Times* use more social science (9 and 10 percent respectively)—which, as described earlier, is primarily economic expertise—than their French equivalents (4 and 5 percent). Activists and members of organizations use a range of knowledge in both newspapers, but only those in the United States present neo-liberal arguments about the economic benefit of same-sex marriage as one of them. Organizations and professors in *The New York Times* use more law (32 percent and 41 percent) than their peers in *Le Monde* (23 and 20 percent). This dichotomy reflects differences between the French and American political spheres more broadly and on gay rights issues in particular. Many organizations advocating for and against gay family reforms, such as Lambda

Legal or the Thomas More Center for Law and Justice, fill the demand for legal expertise generated by judicial reforms in the American context. Similarly, because most professors cited in *The New York Times* are law professors, legal expertise is significantly more common among American professors as a group relative to their French peers, who hail from more disciplines. These two groups of experts provide *New York Times* journalists with analyses of court rulings, reform strategies, and predictions of future judgments. In contrast, in *Le Monde*, 30 percent of the knowledge professors use is social science—compared to only 19 percent in *The New York Times*—reflecting the weight of anthropologists and sociologists who produce this popular form of knowledge for decision-makers and the press.

Conclusion

Experts and expertise in reporting of gay family reforms in *Le Monde* and *The New York Times* show distinct national patterns that reflect differences in institutions, cultural traditions, and political arrangements in each country. Not surprisingly, these newspapers report on the issues and institutions that gay families face in each country. Legislatures and gay parenting occupy much French reporting while American coverage focuses primarily on marriage and features more judicial reforms.

Differences in experts and expertise provide evidence to support the salience of French and American cultural repertoires of civic solidarity and markets. By relying especially on knowledge grounded in social science and mental health, French coverage emphasizes information that speaks to notions of the common good and "universality" rather than "the particular." Indeed, French reporting is characterized by a top-down view of gay families that marginalizes the lived experiences of people, who, in contrast are a significant feature in

American coverage. Even gay politicians and activists rely less on their personal experiences than their American peers. In contrast, by putting forth "scientific" and academic knowledge, French supporters and opponents can appear detached from the issue personally and more easily make appeals to universal values. The significant differences in proportions of economic expertise in *The New York Times* and *Le Monde* seem to support the resonance of market logics within American systems of justification.

The most salient feature of American reporting, however, is the dominant presence of average people, who constitute the most often cited type of expert, and the widespread use of personal experience across most actors. Professionals and academics are less important in *The New York Times* than in *Le Monde*. As we will see in later chapters, the smaller portions of such experts cannot be the result of organizational differences in both countries or the lack of access to the media by U.S. academics and professionals. Indeed, there are institutional incentives in the United States to encourage professionals, like social scientists to engage in the debate; organizations like the American Psychological Association and the American Sociological Association have press services with the explicit purpose of connecting the media to experts. Equivalent French organizations do not have such resources. However, because of the professional prestige and political recognition media interventions can provide in France, individual French academics, unlike their American counterparts, have a strong incentive to actively engage with the press.

The findings in this chapter help nuance research on American framing of gay marriage debates. They support Rodriguez and Blumell's (2014) observation that actors on both sides of the issue use elements of both the morality and equality frames. Opponents and supporters of gay family rights in the United States use religious expertise, which would feed a morality frame, and

the proportion of such information in support has increased over time. Legal expertise and general expertise, which feature arguments grounded in legal notions of discrimination or in principles of fairness, like an equality frame, is also shared by actors on both sides.

My findings diverge, however, on the significant place of personal experience and average people in media reporting in *The New York Times* and *Le Monde*. In their analysis of 2013 reporting of gay marriage in *The New York Times,* Rodriguez and Blumell (2014), argue that human-interest perspectives are lacking. Unlike my analysis, their methodology did not account for the kinds of information, such as personal experience, that journalists cite. As a result, even though they coded for different categories of people cited, they were unable to identify when, say, politicians talk about their lives. Like Benson and Hallin (2007) I find the French press cites professors more often than the American press. Like Brossard et al. (2004), I find that, unlike French coverage, American journalists provide quotes from people in industry and the private sector. However, contrary to their work, I observe a much higher proportion of members of the public in the *New York Times* than they do. This difference is likely due to several factors. First, I included editorials and letters to the editor, some of which are written by members of the public, while Benson and Hallin limited their analysis to news articles. Second, I find that the proportion of average people cited has increased over time. Because their work looked at earlier periods, they might not have captured those changes. Finally, these differences could be due to the way journalists cover gay family rights issues as compared to climate change or general reporting. It is possible that theses legal reforms lend themselves to more intervention by members of the public.

This chapter reveals the kinds of ideas that tap into nationally legitimate forms of discourse. Widely different categories of actors use similar kinds of knowledge specific to their

cultural context. This likely reflects their desire to be audible in their respective political and media spheres. Mental health in France and personal experience in the United States are a shared language from which many experts can draw. They can use it to overcome what might be barriers to their participation. For example, religious representatives in France can counteract pressures against religious discourse, by arguing in terms of mental health, which politicians, activists, professors, and health professionals use. This strategy helps explain the equal numbers of religious representatives in media coverage but sharply lower quantities of religious discourse.

This chapter lends support to the strength of an analysis that distinguishes "experts" from their "expertise" in order to precisely determine who says what and in what quantities. Doing so provides a rich picture of both the types of discourse at play in both newspapers, but also, and more importantly, the power of specific kinds of speech. Looking at the entire field of reporting on a specific issue—across a long period of time and a diversity of actors—allows a more comprehensive picture of who has a legitimate voice. For example, seeing that personal expertise is common in *The New York Times* is important but knowing that it is used both by politicians and members of the public, suggests that it is a more powerful and legitimate kind of knowledge than it might be in *Le Monde*.

On a broader level, the dichotomy between top-down elite knowledge in *Le Monde* and bottom-up "lay expertise" in *The New York Times* means that the public and decision-makers are exposed to fundamentally different representations of gay families in France and the United States. Readers of *The New York Times* have gotten to know same-sex couples and their children much earlier than readers of *Le Monde* and in much higher numbers. Indeed, if popular television series like *Modern Family* or talk shows like *Ellen* are any indication, gay families (at least privileged white ones) seem to have entered the American mainstream. Further empirical

analysis is necessary to confirm the degree to which patterns of gay family invisibility in elite press, such as *Le Monde*, carry over into popular French media. Anecdotally, however, although there are openly gay and lesbian French public figures and several characters on French produced television shows, few put same-sex couples raising children in the spotlight as do their American equivalents.

Relative gay family invisibility, especially in the 1990s and 2000s, may help explain why gay parenting still faces much popular and political opposition in France. Advocates of gay parenting rights face obstacles to representing the people's lives that such reforms affect. Indeed, academic and professional discourse about gay families wields power in the French media—at least in the press—because it is relatively unchecked by the voices of average people, even when that discourse supports them. It could be an effective strategy for French experts to talk more about their personal experience, and there is some indication that this will be the case, especially since the legalization of same-sex marriage and adoption. In the future, as more same-sex couples raise children with legal recognition, their visibility may increase in French media representation. Their representation—and that of other experts and expertise—in political and legal institutional debates in both countries, such as hearings and trials, is the focus of the next chapter.

CHAPTER 2
"Expertise" in U.S. and French Political and Legal Institutions

On April 4th, 2005, the House State Affairs Committee at the Texas legislature held hearings on a proposed bill, HJR6, to give Texans the opportunity to vote to amend their state constitution to ban both same-sex marriage and civil unions. During the course of daylong hearings, a line of representatives of 15 advocacy organizations and 75 ordinary citizens presented very personal testimony, describing how and why the proposed amendment would hurt their friends, families, and co-workers. On the other side of the Atlantic, in the fall of 2012 the Judiciary Committee of the *Assemblée Nationale* held hearings about a proposed bill to allow same-sex couples to marry and adopt. At these hearings, which were held in a series of panels over six weeks, the legislatures heard testimony from 127 people, including 43 academics and professionals, representatives of 29 organizations and agencies, and only 14 ordinary citizens. Much of this testimony was academic and professional.

These two examples suggest that decision-makers in both countries hear different kinds of "experts" as they determine whether or not to grant same-sex couples the right to marry and found families. This chapter asks: What kinds of people present which kinds of information before political and legal institutions in the United States and France? Are there differences across courts and legislatures in terms of the expertise they hear? If so, what are they? To answer these questions, I analyze the archival records of a sample of major legislative and judicial reforms between 1990 and 2013 in both countries. Observing the differences in each context, I argue that cultural norms, rules in decision-making institutions, and the legality of certain gay family rights in the United States and France constrain and enable the specific categories of experts and the kinds of information they provide to lawmakers and judges in each country.

U.S. Institutions

Legislatures

As described in the introduction, most major U.S. legislative efforts on marriage and parenting laws have occurred on the state, not federal levels. State-level hearings are therefore the primary legislative institutional outlet for U.S. expertise. California and Texas generally allow any interested parties to register to testify at hearings and provide their views within an allotted time given to both sides. In addition, bill authors can bring several witnesses with them as they present their legislation to their colleagues and, in the case of California, opposing witnesses are given equal time. Examination of hearings held on major reforms in these states reveal that ordinary citizens, advocacy organizations, and religious representatives outnumbered all other categories of experts. Their interventions have grounded U.S. legislative debates in ways that connect lived experiences of people with values and technical knowledge, such as legal history and economic side effects of reforms. This particular combination is enabled by open legislative rules that create spaces for anyone to speak out as well as by legal and social circumstances that allow these people to generate technical and lay expertise in the first place.

As depicted in Table 7, across hearings for California reforms, advocacy organizations, ordinary citizens, and religious representatives provided 48, 23, and 13 percent of all instances of testimony respectively. Although other types of experts have also provided information, such as professional organizations or professors, their testimony is less present. California legislators have also heard more testimony favorable to legal recognition for same-sex couples but, given the mechanism guaranteeing time for both sides, opponents are still represented, even when the majority of the legislators are in favor of such rights.

Table 7: Proportion of Categories of Experts in California Hearings by Stance

Category of Expert	For	Against	Neutral	Total
Advocacy Organizations	0.33	0.15	0.00	0.48
Average People	0.09	0.13	0.00	0.23
Religious Representatives	0.06	0.06	0.00	0.13
Elected Officials/Politicians	0.07	0.01	0.01	0.09
Professional Organizations	0.04	0.00	0.00	0.04
Professors	0.02	0.01	0.01	0.03
Lawyers	0.00	0.00	0.01	0.01
Professionals	0.01	0.00	0.00	0.01
Total Instances (n=190)	0.62	0.36	0.02	1.00

Note: Sum of instances at hearings for AB 1982, AB 43, AB 205, and Prop 8. Stance is for/against gay family rights.

In Texas legislatures, ordinary citizens provide almost all of the testimony at hearings. As shown in Table 8, they make up 82 percent of all instances of people providing information to legislators in major reforms, followed by advocacy organizations and religious representatives.

Table 8: Proportion of Categories of Experts in Texas Hearings by Stance

Category of Expert	For	Against	Total
Average People	0.76	0.06	0.82
Advocacy Organizations	0.08	0.04	0.12
Religious Representatives	0.02	0.03	0.05
Elected Officials/Politicians	0.00	0.00	0.00
Lawyers	0.00	0.00	0.00
Total Instances (n=251)	0.86	0.14	1.00

Note: Sum of instances at hearings for SB 7 and HJR 6. Stance is for/against gay family rights.

Overall, Texas legislators have heard more from people who favor legal recognition for same-sex couples (86% of testimony). This balance in favor, which may seem surprising given Texas' relatively conservative political makeup relative to California, is likely the result of the content of the bills heard there. Texas legislators have not considered legislation to legalize same-sex couples' rights. Rather, they considered and passed a statutory law and then language for a constitutional amendment—later approved by voters—to ban same-sex marriage and any other legal status, such as civil unions, that afford rights similar to marriage. Therefore, the people

presenting testimony at these hearings, most of whom were ordinary people, were speaking out in order to prevent the state from making it even more difficult for themselves, their families, friends, or acquaintances to one day have their same-sex unions legally recognized.

Given the high proportion of ordinary citizens at California and Texas hearings, much of the knowledge legislators receive is about the personal experiences, stories, and backgrounds of people. Indeed, much like U.S. media coverage, these legal institutions provided a forum for "storytelling" in order to have an impact on the political process (Polletta 2009). The testimony was emotional and intimate. There are many examples of this kind of personal knowledge on both sides. For instance, at a California Senate Judiciary Committee hearing during debates over AB 1982 in 1996—a failed bill that would have prevented the state from recognizing same-sex marriage performed outside the state—Cynthia Asperdidies came with her partner and their daughter to testify about how the proposed legislation would stigmatize their family and make it more difficult to get future legal recognition. Similarly, at a hearing before the California Assembly Judiciary Committee over "The California Domestic Partner Rights and Responsibilities Act of 2003," Lydia Ramos testified about the death of her partner and the financial and logistic burdens she faced because of inadequate legal protection. Her daughter, a minor, then described how the loss of one of her mothers was not only tragic but also a challenge because of the legal protections she was denied because her parents could not marry. In Texas in 2005, at hearings on the constitutional ban HJR 6, a middle-aged man described his family life with his partner and their adopted son, who was a former ward of the state of Texas, and how the measure was an attack on their dignity and rights. At the same hearing, a heterosexual father described his long marriage to his wife and his sadness that his daughters, one whom was lesbian the other who was straight, would not have equal opportunities to experience what he had.

Personal experience was not only limited to the ordinary citizens testifying. Many advocate organization representatives, politicians, and even the few professionals and academics present drew on personal narratives in addition to other types of expertise. Straight witnesses talked about their own marriages and their desires for their LGBT family and friends to have the same experiences. Those who were openly gay described their families. For example, Kate O'Hanlon, a gynecological oncologist, testifying in 2006 in favor of California domestic partnerships described the research on the outcomes of children raised by same-sex couples, the endorsements of same-sex marriage by the United States' major medical and mental health organizations, and the meaning of marriage to her as a lesbian raising children in a committed relationship. Because personal experience was shared across a variety of experts in U.S. legislatures—much as it is in U.S. media coverage—hearings were an especially concrete process favoring "lay expertise."

The range of these stories and the presence of same-sex family narratives since as early as the mid-1990s, including those people who had adopted or raised children through reproductive technology, were only possible in a broader U.S. political context where same-sex parenting—but not marriage or civil unions—was legal in many jurisdictions. These circumstances permitted same-sex couples to lawfully parent in some states, such as Texas, even as they were denied partnership rights. Not only did this allow for personal testimony, it also created visibility facilitating empirical research about them, which I describe further in Chapter 4, that American advocates could also mobilize. At these hearings, for instance, advocacy groups, have described data on the numbers of same-sex couples raising children based on the 2000 Census as well as the research on childhood outcomes and literature reviews by mental health and medical professional organizations.

The presence of gay families at hearings also created a unique American obstacle for marriage and partnership opponents. Even as they argued that heterosexual married households were ideal environments for children, they had to concede that many gay couples raise children. They also had to recognize that LGBT adoptive parents filled a need in places with a critical shortage of people willing to adopt and high numbers of children in the foster system. For instance, during a California hearing on Proposition 8, Jennifer Roback Morse, a think tank founder and economist, argued against same-sex marriage on the grounds that children should be raised by their married biological mother and father. In responding to legislators' questions, however, she had to acknowledge that she did not, in fact, advocate the removal of same-sex couples from adoption rosters or the limitations on lesbians' access to artificial insemination. They therefore had to find other arguments to justify their stances. For example, witnesses opposing same-sex couples frequently described, their frustration that their own children would be taught in public school that two men or two women can marry and that homosexuality is a normal sexual orientation.

Religious expertise, such as information about scripture, was also a common kind of knowledge people presented in hearings. This was especially true for the representatives of churches, religious organizations, and ordinary citizens opposing same-sex partnerships rights. They described, for example, how marriage was a sacred union, enshrined in their holy texts, and that same-sex couples, if granted entry to the institution, would undermine its sanctity. Yet, religious knowledge was not limited to opponents. In fact, as seen in Tables 1 and 2, religious representatives testified almost equally on other side in Texas and California. Proponents described their church's embrace of same-sex couples and their children as well as their views of how scripture viewed them. The U.S. embrace of religious rhetoric in the public sphere, which

this analysis shows carries over into the legislative context, gives people on either side the opportunity to mobilize religious knowledge before decision-makers.

People, especially advocacy organization representatives, also provided other information unique to the U.S. context, including economic knowledge about the costs and benefits of partnership legalization. Proponents and opponents of same-sex marriage drew on these kinds of arguments to support their positions. For example, advocates supporting a ban on same-sex marriage in California argued at hearings for AB 1982 and that recognition would lead to increased health insurance costs to employers through spousal coverage. They also maintained that it would lower tax revenue through by extending fiscal relief to a new category of couples. In contrast, those fighting in favor of same-sex marriage have drawn on data generated by states and locales that have already recognized same-sex partnerships or generated by employers who have already provide spousal healthcare coverage to their employees to show that such measures are economically beneficial. This economic expertise would not have been possible without the combination of U.S. federalism, which generates legal differences across states on marriage rights, or the employer-based healthcare system, which allows companies to extend insurance to their employees' spouses.

Via hearings over the passage of the Defense of Marriage Act (DOMA) in 1996, the failed Federal Marriage Amendment in 2004, and the proposed repeal of DOMA in 2011, Congress has also provided some institutional opportunities for expertise. In comparison to the volume of legislative debates heard in state legislatures, however, federal hearings have been far fewer. Indeed, marriage has almost always been the exclusive purview of the states. Nevertheless, given the effects of DOMA on same-sex marriage mobilization and law in the U.S., these hearings merit investigation.

Unlike state legislatures, which are open to the public and where anyone can register, Congressional hearings concern fewer witnesses because only lawmakers, on both sides, can invite people to testify, though interested parties can contribute written statements for later inclusion in the record. As a result, outside of these written contributions, Congress did not hear much oral testimony from ordinary citizens. Rather, most testimony was provided by a more elite category of experts relative to those heard in state legislatures. For example, of all instances of testimony at federal hearings, representatives of advocacy organizations provided 34%, elected officials provided 31%, professors—all of whom were in law schools—provided 13%, and ordinary citizens provided less than 1%.

This more elite configuration of categories of expertise is likely due to the higher barriers to participation as a result of elected officials' control over the hearings. Moreover, the contentious nature of Congress determining marriage law on the federal level, likely led lawmakers to invite professors and advocates who spoke primarily about the legal grounding—or lack thereof—in their efforts to intervene on a question heretofore outside Congress's jurisdiction. Most of the knowledge heard in this setting, especially during the 1996 and 2004 hearings focused on technical legal aspects of the legislation and the federal mechanisms through which same-sex marriage would or would not spread to different states if were to be legalized in one state. However, illustrating the importance of personal experience in U.S. debates, many politicians, professors, and representatives of advocacy organizations drew on personal experience and their backgrounds to justify their stances, even as they brought technical knowledge to the table.

Courts

Unlike in France, the judiciary has been a particularly fruitful avenue toward the legalization of same-sex marriage in the United States on the state and federal levels. Courts have also built case law on adoption, second parent adoption, and surrogacy in states on a case-by-case level in the absence of any clear legislation on those issues. Yet, unlike legislatures, the place and role of knowledge differs. Whereas legislators offer hearings as a space for people to air their views, courts ultimately use information lawyers and interested parties present before them as the grounds for their rulings. Given the power of U.S. courts to produce case law and the particular status they accord to knowledge, understanding who provides what kind of information is especially relevant.

An analysis of categories of experts and expertise presented in friend of the court briefs, or *amici curiae* briefs, in major cases provides a useful image of the kinds of knowledge judges hear in these arenas. Similar to written statements in legislatures, any interested party can file an amicus brief on behalf of either party in the case in hopes that the court will take their statements into account when making their decisions. However, given the complex process of submission and legal knowledge required to understand how to submit these briefs, the categories of people submitting them tend to be more elite than in legislatures. For example, as shown in Table 9, brief submission on appeal to the U.S. Supreme Court in *Hollingsworth v. Perry* showed higher proportions of professors and professional organizations (20% and 10%) than ordinary citizens (5%). Because many of the same groups and individuals habitually submit briefs, especially in the last 10 years, this pattern of elite knowledge is common across major federal and state cases where briefs are submitted.

Table 9: Proportion of Categories of Experts in Appeals Briefs to U.S. Supreme Court in *Hollingsworth v. Perry*

Category	For	Against	Total
Advocacy Organizations	0.17	0.25	0.43
Professors	0.12	0.09	0.20
Religious Organizations	0.04	0.13	0.16
Politicians	0.05	0.05	0.10
Professional Organizations	0.10	0.00	0.10
Average People	0.03	0.02	0.05
Lawyers	0.03	0.01	0.05
Total briefs (n=104)	0.50	0.49	1.00

Relative to legislatures, these court settings, especially in major civil rights litigation, provide a space for experts with more social and symbolic capital, such as people with degrees or professional backing. As described in the next chapter, attorneys, many of whom are affiliated with legal activist organizations, perceive the high stakes of these cases and seek out credible voices they believe will have an impact on their chances of winning.

The breakdown by stance of brief submitters in Table 9 shows that although equal numbers of briefs were submitted on either side, elite experts submitted more briefs in support of same-sex marriage than against it. Professors, including those in law, mental health, and the social sciences, as well as professional organizations, such as the American Psychological Association, the American Medical Association, the American Bar Association, and most other major professional organizations submitted briefs in favor. In contrast, religious organizations and advocacy groups, such as the National Organization for Marriage and the Eagle Forum, submitted more briefs against same-sex marriage. This imbalance suggests that conservatives do not have the same access or representation in mainstream academic and professional spaces as their progressive peers. It also suggests that although they are equally represented in terms of

quantity of knowledge—as measured by number of briefs submitted—they cannot rally the same kinds of prestigious experts as their rivals in an institution where that kind of support matters.

The content of amicus briefs is grounded in legal information because, as I describe in the next chapter, they must respond to specific legal questions in a given case and make a concrete legal argument relative to constitutional principle, statutory law, and jurisprudence. Beyond legal knowledge, which almost all briefs cited, they also drew on other kinds of knowledge, such as social science, mental health, history, and economics. Thanks to the visibility of LGBT people and same-sex couples in the U.S. and researchers studying them, empirical research about the psychological and social experiences of sexual minorities and gay families was common among briefs of marriage supporters. However, unlike in legislatures, where much of this information is presented by advocacy organizations, academic knowledge producers and their respective professional organizations provided the information themselves to courts, giving it extra weight. Similarly, in addition to economics professors, major business leaders, including executives of U.S. corporations and commerce associations, submitted briefs describing the economic advantages to business and states of recognizing same-sex marriage.[10]

Like in U.S. legislatures, brief authors opposing same-sex marriage in the United States acknowledged that same-sex couples raise children. For example, in a brief submitted in *Hollingsworth v. Perry* by attorney generals of 19 conservative states, even as they argued that sex differences justify excluding same-sex couples from marriage because they cannot procreate together, they admitted the "capacity of same-sex parents to raise their children in a loving and supporting environment."[11] They grounded their arguments in ideas of history, tradition, and

[10] See for example: Brief Of American Companies as *Amici Curiae* in Support of Respondents, *Hollingsworth v. Perry*, 570 U.S. 12-144 (2013).
[11] Brief of The States Of Indiana, Virginia, Alabama, Alaska, Arizona, Colorado, Georgia, Idaho, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Carolina, South Dakota, Texas, Utah, West Virginia And Wisconsin As

religious liberty but, without the support of academic and professional organizations, their claims had less institutional backing. To overcome this barrier and provide information that has at least the imprimatur of scientific rigor, which is especially important in courts because of the way they evaluate evidence, many conservative briefs also drew heavily on the few peer reviewed studies claiming to show children raised by same-sex couples fair poorly, such as that by Mark Regnerus (2012). Others criticized the social scientific and mental health literature as biased and inconclusive in order to attempt to counter the institutional and scholarly weight on the side of same-sex marriage proponents.

These patterns of elite knowledge with institutional and scientific weight are even more present in major federal cases, specifically *Perry v. Schwarzenegger* and *DeBoer v. Snyder*, where the judges called for full trials featuring presentation of evidence and the possibility to hear plaintiffs and witnesses. Unlike hearings in U.S. legislatures or amici briefs, which are comparatively open forums, litigators on either side have full control over whom they call to testify before the judge. They want to provide information they believe responds to precise legal questions, such as whether or not sexual minorities constitute a historically subjugated class or whether states have a demonstrably rational interest in excluding them from marriage. These constraints and the higher standards applied to information in courts, which I analyze in the next chapter, favor higher representation of elite experts relative to U.S. legislatures.

For example, in these two trials, 20 out of the 29 people providing testimony were professors or had specific academic or professional qualifications to speak out. Of these, five were professors and researchers in psychology, five in economy, four in sociology or social studies, two in history, two in political science, one in law, and one in demography. Their respective disciplines highlight the kind of information—knowledge about the demography and

Amici Curiae in Support of Petitioners, *Hollingsworth v. Perry*, 570 U.S. 12-144 (2013).

social circumstances of same-sex couples and families, the history of their discrimination, their relative political power, their fitness to raise children, and the causes and nature of their sexual orientation—at the core of the legal arguments in the trials.

Similar to briefs, the distribution in stances across these experts highlights how litigators on either side face an uneven pool of people from which to draw and how court demands, unlike legislatures, make clear the imbalance of academic information in the American context. Indeed, out of the 20 academic experts, fourteen were on the side of same-sex marriage proponents and six were against. Thus, when faced with the task of deciding the relative weight of evidence, judges in these trials faced significant knowledge, backed by specifically accredited people in favor of same-sex marriage, which likely made the cases of same-sex marriage proponents more successful.

Although courts are more formal and codified than legislatures in their dealings with knowledge providers, they still offer a decision-making forum grounded in personal experience and the testimony of ordinary people. Indeed, even in these specific trials with expert witnesses, the cases are fundamentally about specific people, the litigants, and the circumstances of their lives that led them to demand the state to recognize their relationships. In *Perry v. Schwarzenegger* and *DeBoer v. Snyder*, the plaintiffs who were suing their respective states in federal courts in order to access full marriage rights presented their testimony to the judges. They described their relationships, their children—if they were parents—as well as their experiences of discrimination and stigmatization as a result of their sexual identities. Attorneys in Perry also augmented the testimony of the plaintiffs by having a gay man and a lesbian woman, who were not party to the trial, describe in rich detail how their lives illuminated specific legal points the attorneys were trying to argue. Even in cases without full trials, such as *U.S. v. Windsor*, judges

considered the facts of the lives of the people bringing suit, which personalized and grounded their ruling. Courts therefore are forums for knowledge that combine personal experience grounded in the circumstances of the people in the cases with more academic and research-based knowledge that lend credence to specific legal arguments.

French Institutions

Courts

Courts in France have not provided an especially fruitful avenue for reforms on same-sex marriage and parenting rights. Unlike the U.S., which offers many states in which same-sex couples can attempt to build case law, French national legal homogeny and its civil law system, which does not lend itself to creating case law through precedent and jurisprudence, have limited these opportunities in France. As a result, these institutional outlets for expertise are relatively absent in the French case.

The few cases originating in France that have been appealed to the European Court of Human Rights, all of which concerned adoption, have not featured friend of the court briefs or full trials that could have created the opportunity for expertise as they have in the United States. Several third parties, two European gay rights groups and two gay family organizations were allowed to submit statements in support for the record.[12] These cases also involved the stories of the men and women seeking adoption rights as couples and individuals as well as the unfavorable reports submitted by state-mandated psychoanalysts and child psychiatrists to French adoption administrators, which were at the origin of the trials and appeals process.

Notably, unlike in the United States, where much expertise is based on research and the experiences of same-sex couples and their children, the information cited in these reports

[12] ECHR, *Fretté* v. *France* no. 36515/97 (26 Feb. 2002); EHCR *E.B.* v. *France* no. 43546/02 (22 Jan. 2008).

discussed gay families as a negative potentiality rather than empirical reality; the French mental health professionals described the hypothetical needs of children to be adopted by a mother and father or to at least have a maternal or paternal figure in the case of adoption by a single person. This kind of expertise, which treats same-sex couples raising children from a distance, is typical of knowledge in French gay family debates, which have primarily occurred in the legislatures.

Legislatures

Given the high volume of ordinary citizens in U.S. legislative testimony, particularly on the state level, one could reasonably assume that French parliamentary hearings would also feature people speaking in favor of or against same-sex marriage and parenting on the basis of their lived experiences. Yet, analysis of major French legislative debates on same-sex partnership and parenting rights, particularly in hearings, reveals stark differences in the categories of people legislators called on and the kinds of information they provided. In contrast to U.S. legislative debates, elite knowledge provided by academics, favoring abstract discussions and what Éric Fassin calls "a priori" expertise about whether same-sex couples and families should exist is more common in French hearings (2000b, 2001).

Table 10: Proportion of Categories of Experts Heard by *Assemblée Nationale* and *Sénat* Judiciary Committees by Stance, Pacs Hearings 1998

Category of Expert	For	Against	Neutral/Unknown	Total
Advocacy Organizations	0.38	0.15	0.02	0.55
Professional Organizations	0.00	0.00	0.13	0.13
Professors	0.02	0.07	0.00	0.09
Elected Officials/Politicians	0.05	0.00	0.02	0.07
Religious Representatives	0.00	0.07	0.00	0.07
Mental Health Professionals	0.02	0.02	0.00	0.04
State/Quasi-State Agencies	0.00	0.04	0.00	0.04
Judges	0.00	0.02	0.00	0.02
Average People	0.00	0.00	0.00	0.00
Total Instances (n=55)	0.47	0.36	0.16	1.00

Note: *Assemblée Nationale* hearings were not public. Stances determined by media expression. Otherwise, stance unknown.

As shown in Table 10, during the Pacs debates in the late 1990s, ordinary citizens were completely absent from hearings. As a result, the rich personalized story telling which characterized American legislative hearings was rare in France. The experiences of ordinary citizens were also mostly elided in the reports sociologists and law professors submitted to lawmakers (Dekeuwer-Défossez 1999; Théry 1998). Instead, these hearings primarily concerned advocacy organizations (55% of instances of expertise), including gay rights and HIV prevention groups on the side of proponents and conservative family groups, such as *Familles de France*, on the side of opponents. Legislators also heard 13% of testimony from legal professional organizations, such the Parisian Bar Association, which unlike their U.S. equivalents, did not make a statement either in support or against the proposed legislation. Finally, taken together, professors and mental health professionals represented 13% of testimony at these hearings.

Table 11: Propotion of Categories of Experts Heard by *Assemblée Nationale* and *Sénat* Judiciary Committees by Stance, Marriage and Adoption Hearings 2012-2013

Category of Expert	For	Against	Neutral	Total
Advocacy Organizations	0.15	0.02	0.06	0.22
Professors	0.10	0.06	0.00	0.16
Average People	0.10	0.00	0.00	0.10
Mental Health Professionals	0.04	0.06	0.00	0.10
Religious Representatives	0.00	0.08	0.01	0.09
State/Quasi-State Agencies	0.01	0.01	0.06	0.08
Elected Officials/Politicians	0.05	0.00	0.03	0.08
Medical Professionals	0.00	0.00	0.07	0.07
Professional Organizations	0.00	0.02	0.03	0.06
Judges	0.01	0.00	0.01	0.02
Lawyers	0.01	0.01	0.00	0.02
Total Instances (n=143)	0.47	0.26	0.27	1.00

Occurring 15 years later, the hearings before the passage of same-sex marriage and adoption show similar patterns and confirm the dominance of elite expertise relative to "lay expertise" in the French institutional context. As Table 11 highlights, while the representation of ordinary citizens increased to 10% of testimony, the representation of professors (16%) and mental health professionals (10%) also increased and still outweighed them. During the marriage hearings, only one of the 16 panels held over a period of several weeks featured 14 ordinary citizens speaking from their personal experience. They were same-sex couples raising children, several adult children having been raised by same-sex couples, and same-sex couples hoping to adopt. That this kind of knowledge was not heard in the French legislature until 2012 and in relatively small quantities highlights the invisibility of gay families in French society and the way French lawmakers consider laws at a remove from the people who are most concerned by them.

In terms of ideological breakdown, unlike in the U.S. where academic and mental health experts have supported gay family rights in legislatures and courts, in French hearings, these categories of elite experts have taken stances on both sides. As the tables show, during the Pacs hearings, two thirds of professors, primarily sociologists, anthropologists, and philosophers, and half of the mental health professionals, all of whom were psychoanalysts, provided oral testimony against the reforms. During the marriage hearings, the professors, many of the same people heard during the Pacs debates, were more in favor (62%) than against. This reflects the shift in stance of several key social scientists between the two periods. Nevertheless, relative to their U.S. counterparts, these categories of experts remained more divided. Similarly, during the marriage hearings, legislators heard mental health professionals that also remained divided, with a balance in opposition at 60%.

Testimony by ordinary citizens and expressions of knowledge about lived experiences are constrained in France because of its closed legislative decision-making sphere. Indeed, unlike U.S. legislatures, where any interested party can contribute information, lawmakers in the parliamentary majority control access to French hearings. It is reasonable to assume that if hearings were open to all people interested in providing testimony, like in most U.S. state legislatures, more ordinary citizens might have participated. Ordinary citizens in U.S. debates brought knowledge—personal experience—to the hearings that other experts and lawmakers shared with them in the U.S. context. This common mode of discussing legal reform in personal terms, however, was relatively absent in the French institutional context more generally.

Unlike their U.S. counterparts, other categories of experts and lawmakers debating the bills on the floor rarely drew on personal experience to justify their claims or clarify their stances. While U.S. witnesses and legislators frequently discussed their children, spouses, friends

and families in concrete and direct ways, their French equivalents described them in the abstract, not referring to their own lives but to notions and concepts of family and children. For example, during the 2012 marriage debates on the Parliamentary floor, French legislators talked in terms of "our gay friends," "our neighbors," and "our families," speaking to a universal subject rather than a particular instance.

This lack of personal experience as a form of expertise in the French legislature suggests cultural barriers that go beyond institutional rules barring the participation of ordinary citizens. French lawmakers likely interpret the meaning and traditions of the role of law in a common law system as a universal to be applied the same way in all cases. As a result, personal experience becomes irrelevant or illegitimate because it is grounded in the particular, rather than the universal. This is consistent with the cultural repertoires of universalism and the common good that characterize French public discourse more broadly (Lamont and Thévenot 2000). Some lawmakers may not have even considered bringing up their lives during the debates because it was outside the scope what they perceived as legitimate discourse in that setting. That personal experience was not shared across experts and legislators in France meant that the people who did bring that kind of knowledge—some ordinary citizens and advocacy organizations—were drawing on a marginalized form of expertise. That makes their knowledge less powerful or at least more open to criticism. The French legislative discursive environment also lends itself well to the abstract knowledge, rather than practical knowledge, that characterizes psychoanalysis and structural anthropology, which are common in the French media and legislative debates more generally (Fassin 2001, 2014b; Robcis 2013; Roudinesco 1986).

One could assume that the academic and professional experts who make up a significant proportion of French legislative hearings, especially those in favor, would provide empirical

evidence about same-sex couples and their children or other knowledge that similar categories of experts provide in U.S. courts. Yet, such information has been relatively absent from French hearings. This was especially evident during the Pacs hearings when, even as legislatures and courts in the U.S. were hearing knowledge from researchers and professional organizations about the outcomes of children raised by same-sex couples and statistics of same-sex families, French lawmakers treated same-sex couples as a relative unknown. For example, during Pacs hearings at the *Sénat*, legislators heard information that it was difficult to evaluate the number of same-sex couples and that the likely demand for the Pacs was therefore limited (Gélard 1999).

Laws severely restricting same-sex couples' access to parenting through adoption and reproductive technologies created advantages for French experts opposing the Pacs and same-sex marriage. Unlike U.S. opponents of gay family rights, who could not deny that same-sex couples were raising children together, French law barring same-sex couples from raising children legally before 2013, made them easy to discount. They could describe these families as if they did not exist, deny the size of the phenomenon, or deny their needs. French experts opposing reforms could argue that while some gay families may exist, their access to joint parenting is fraudulent, because illegal, and a denial of essential sexual differences. During legal debates over the Pacs—as others have also noted (Borrillo and Fassin 2001; Robcis 2013)—and same-sex marriage, these experts grounded their arguments in psychoanalysis, structural anthropology, and non-empirical social theory.

For instance, during the Pacs hearings in the *Sénat*, the psychoanalyst Samuel Lepastier argued that while some single lesbians may be raising children after a separation from the child's father or might have adopted as an individual, allowing two women to raise children together as joint mothers would be the symbolic and psychological "denial of everything that makes us

human" (Gélard 1999). "We are constantly constructing ourselves in relation to an anatomical reality of sexually different parents. To be instituted as a child of same-sex parents (rather than to be raised by two parents of the same-sex) is to deny this corporeal representation," Pastier went on to explain. Rather than draw on any examples of actual same-sex couples, he discussed these families in the abstract, exemplifying "a priori" normative knowledge (Fassin 2001). This kind of abstract psychoanalytic knowledge, which is rare in the U.S. institutional and media context, becomes especially important in a French context lacking in empirical knowledge or personal narratives of same-sex couples to counter them.

Empirical knowledge about same-sex couples and families was not entirely absent from hearings, especially the later ones. For example, during the marriage hearings in 2012, several sociologists in favor of same-sex marriage and adoption, such as Martine Gross and Virginie Descoutures, who testified before the *Assemblée Nationale*'s Judiciary Committee, discussed the limited French research on same-sex couples and the strong body of evidence from abroad showing that children raised by same-sex couples fare as well as their peers (Binet 2013). Nevertheless, relative to U.S. institutions, particularly the courts, French institutions saw little of such information. The lack of empirical knowledge on same-sex couples and their children in French is partly the result of legal structural conditions that have hindered same-sex couples from legally creating families via joint adoption, second-parent adoption, or assisted reproductive technology within France. As I describe in further detail in chapter 4, these barriers have made it more difficult for French advocacy organizations and scholars to work on these issues and study sexual minority families in France relative to their American peers.

Yet, even with this increase in favorable empirical social science evidence in later French debates, elite experts opposing same-sex marriage, especially conservative mental health

professional, continued to draw on psychoanalytic knowledge to justify their stances. For example, Pierre Lévy-Soussan, like his other conservative colleagues testifying, explained during the marriage debates to the Judiciary Committee "that every child, even one who is adopted, must be able to recreate the 'primal scene' in his imagination, and, even if one can get beyond the inconsistencies related to differences in skin color in the cases of children adopted from abroad, for example, it is impossible to make conception between two men or two women credible [in the eyes of an adopted child]" (Binet 2013:217). From Soussan's perspective, and that of his colleagues, research on the actual outcomes of children raised by same-sex couples is irrelevant and should be discounted. The psychoanalytic theory, as they interpret it, requires that a child literally be able to picture his adoptive parents credibly having conceived him through heterosexual sex—even if he and his parents are of different racial backgrounds—because that fantasy is important for healthy psychological development. Same-sex couples, by virtue of their inability to conceive children together, are unable to offer this important mental and social structure to children they might raise, these experts argued.

These French opponents could continue to make these claims for several reasons. First, unlike courts, legislative hearings have no mechanism to control for unsubstantiated claims. Therefore, experts can provide hypothetical information about same-sex couples and their children without having to demonstrate the facts on which they base their claims. Second, unlike in the United States, where same-sex couples already had the right to found families, French same-sex couples were always excluded from adoption until the passage of the 2012 bill. Therefore, no domestic couples having jointly adopted could be brought in as examples to counter their claims. Moreover, while in the U.S. there are more children in need of adoptive parents than people willing to adopt them—which has led some U.S. adoption and fostering

service providers to valorize same-sex couples (Brodzinsky and Pertman 2012; Gates et al. 2007)—in France the circumstances are reversed. In France, there is a waiting list of potential adoptive parents and few children in French social services eligible for adoption (Halifax and Villeneuve-Gokalp 2005). As a result, French same-sex marriage and adoption proponents do not have the opportunity to evoke the merits of gay parenting to overcome a fostering crisis. Instead, opponents can continue to argue, from an abstract psychoanalytic perspective, that different-sex married couples are the ideal adoptive parents in a social context where the state can choose from among people on a long waiting-list.

U.S. and French institutions share a category of experts that may seem surprising: religious representatives. As seen in Tables 4 and 5, religious representatives of major faiths in France—Catholicism, Protestantism, Islam, Judaism, Orthodox Christianity, and Buddhism—accounted for 7% of all expertise in oral hearings during the Pacs hearings and 9% during the Marriage hearings. Although these numbers are somewhat lower than those in U.S. hearings, their presence at all seems paradoxical given French political rhetorical attachment to *laïcité*.

However, just as they did in the French media, and in contrast to their American peers, these clergy did not draw primarily on religious expertise. Instead, they spoke more frequently through the abstract language of legal principles, anthropology, psychoanalysis, and ethics. Only the representative of Buddhists was not hostile to the legislation. The others were strongly opposed. For example, André Vingt-Trois, Cardinal and Archbishop of Paris declared to the *Sénat* Judiciary Committee during the marriage hearings that, "The anthropological and social stakes and the protection of children's rights have been silenced by egalitarian discourse that has chosen to ignore differences between homosexual and heterosexual people in their relation to procreation; they want us to believe that the relationship between conjugality and procreation is

not pertinent for life in society" (Michel 2013:64). Evoking the "anthropological" dimension of the reforms and the supposed necessity of biological sex differences for procreation, the Cardinal channeled the same secular language as his conservative social scientist and psychoanalytic colleagues.

In the same hearing, when Gilles Bernheim, the Grand Rabbi of France, drew on similar kinds of knowledge, one of the legislators asked him why he did not use his point of view as a religious representative. "Why use my past and present as a philosopher rather than as a rabbi? The reason is simple," Bernheim answered. "When I want to talk to society, I use its language and not that of my community, with its references. It was therefore normal to develop a way of thinking audible to all, not to make people believe that the other [way of thinking] is wrong but to give them something to think about even if they don't think the way I do" (Michel 2013:70). In this statement, Bernheim makes clear his desire to draw on modes of communication and types of knowledge that he believed would resonate in the French institutional context.

Conclusion

This chapter has revealed stark contrasts between the categories of experts and kinds of knowledge legislators and judges hear in the United States and France. On a broad level, U.S. institutions heard the stories and experiences of ordinary citizens who grounded the debates in the concrete realities of the people most concerned by the reforms. This is especially true in state-level legislatures where open testimony systems allow any interested party to contribute information, creating opportunities for "lay witnesses" to express their views. Religious expertise was also a common and shared kind of information on both sides. Courts, which have significantly advanced gay family rights in the U.S., combined the lived experiences of the

litigants in a given case with empirical historical, psychological, and sociological information that expert witnesses or brief authors provided.

In contrast, these more elite knowledge providers, especially academics, intellectuals, and mental health practitioners, along with advocacy organizations, dominated French institutions. In the absence of any testimony from ordinary citizens until the 2012 marriage and adoption proposals, these experts provided testimony in legislatures—the primary venue for reform on gay family rights in France—that emphasized abstract knowledge. Experts advocating same-sex marriage also faced a lack of French produced empirical knowledge on which to base their claims, especially during the Pacs debates. Opponents could therefore discount the realities or existence of gay families and evoke a priori principles and theories about sexual difference to discount them. Religious representatives, who also had access to hearings, provided testimony that was consistent with the abstract psychoanalytic and anthropological knowledge of their fellow French opponents.

These differences are partly the result of the institutional contexts that hear this information and the ways in which they control who has access to the debate. For example, because U.S. state legislators do not have as much control as their French counterparts to determine access to hearings, ordinary citizens have more opportunities to speak out in the U.S. In institutions with more control, such as Congress, U.S. courts, and the French Parliament, legislators and judges appear to rely more heavily on organizations, academics, and professionals. Yet, as we saw in the previous chapter, many of these patterns also appear in U.S. and French media coverage. This suggests that these popular categories of actors and kinds of knowledge are part of broader cultural repertoires that can transcend specific institutions.

The differences in categories of actors and types of knowledge are also the result of larger macro-structural conditions and legal circumstances in each country that favor certain kinds of information. For example, state-level differences in laws on partnership and parenting for same-sex couples created by federalism, coupled with laissez-faire policies on artificial insemination and surrogacy helped make gay families possible much earlier than in France. This contributed to their visibility, capacity to speak out, and availability for empirical research. Policy variety on the state level also helped produce and create the demand for economic expertise. In France, the longstanding restriction against adoption by same-sex couples and access to assisted reproduction for lesbian couples across the country has limited the visibility and research of gay families. Given this relative absence, knowledge based on principles and theories rather than facts justify these conservative stances. They evoke a "principle of precaution" (Binet 2013:171) claiming that outcomes of children raised by same-sex couples are uncertain.

Looking at the relative balance of elite experts, such as academics, intellectuals, and professional organizations in terms of ideological stance in both countries shows that they are more in favor of same-sex marriage and parenting in the U.S. than France. These differences are partly a reflection of the institutions—courts in the United States and Legislatures in France—that hear their knowledge. The expectations and roles of information and the access to those settings differ. The structure of debate and demands of evidence in courts appear to expose the lack of empirical evidence on the side of U.S. marriage opponents. In contrast, as we will see in the next chapter, French legislators set up hearings to justify their process and claim they heard all sides, which can favor more balance or even unfavorable stances. Yet, the ideological dichotomy across the U.S. and France also suggests that these differences may reflect

circumstances within the knowledge production spheres where these groups work in each country. Specifically, U.S. academics and professional organizations supporting same-sex marriage may have been able to more fruitfully carry out their work—because of legal circumstances favoring the visibility of gay families and support for research in their fields—relative to their French peers. I explore these explanations in the following chapters.

CHAPTER 3
The Work of the Debates: Negotiating the Institutional Logics of Knowledge Outlets

The previous two chapters showed that U.S. and French media, legislatures, and courts have drawn on different types of expertise and categories of experts when dealing with the partnership and parenting rights of same-sex couples. This chapter argues that those differences are due, in part, to the ways in which U.S. and French experts—focusing particularly on academics, professionals, and advocates—interact with and negotiate the expectations about the role of information in these settings. Specifically, while courts play an important role in U.S. reforms, the legislature dominates the debate almost exclusively in France. Yet, these decision-making institutions, as this chapter will explain, constrain and enable expertise and the people who provide it in ways that reflect specific embedded institutional logics, such as political calculations in legislatures and the adversarial system in courts. Because they are distributed unevenly in each country, U.S. experts and decision-makers have had more exposure to the courts—and the unique demands they make of information—than their French counterparts, who, in contrast, have had extensive interaction with legislatures and lawmakers more generally. Moreover, because of the close relationship between the French media and politicians, French elite experts, as I will show, have had more interaction with the press relative to their American academic and professional peers.

This chapter draws on 71 in-depth interviews of U.S. and French academics, professionals, and advocates—all of whom I selected because they testified or provided information to legal and political institutions in either country—as well as with key lawmakers and lawyers who brought experts' knowledge to the decision-making sphere. It is also based on ethnographic observation of these experts—whom I identified through the analysis of the media,

court and legislative archival data—at university seminars, think tank events, and professional gatherings. This chapter asks: What do media, legislative, and judicial participation look like for these people? How do embedded institutional logics shape what knowledge is presented in legislatures and courts and why? How do people who provide that knowledge to these forums perceive their roles and negotiate these settings? How do lawyers in the U.S. and legislators in France understand and carry out their tasks of organizing experts and expertise?

Experts and Institutional logics

This chapter focuses on the public institutions where the people I interviewed put knowledge into action, including in the media, in public and behind the scenes work in legislatures, and in courts. This site-specific focus has two goals. First, it reflects the premise that experts, however defined, intervene in ways specific to the rules and power dynamics of a given context (Eyal and Buchholz 2010). Legislatures and courts have their own "institutional logics" (Friedland and Alford 1991), such as rules defining how hearings take place or how evidence is admitted, that shape how people bring and deliver knowledge (Dilling and Lemos 2011; Stryker, Docka-Filipek, and Wald 2012; Wagner et al. 1991). And, in those contexts, interactions between experts and people using their information, such as lawmakers, lawyers, and judges, imbue knowledge with a specific value or truth (Eyal and Buchholz 2010:116; Foucault 2000).

Second, analyzing interactions within legal and political institutions helps account for differences across the U.S. and France. Indeed, because legislatures and courts have their own formal and implicit rules about the role of knowledge and because these institutions have historically played different roles on gay family rights in each country, we can expect those configurations to help account for the different experiences of knowledge producers in each

country. Put differently, cross-national comparison shows how these institutional factors matter. They create nationally specific policy environments in France and the United States that condition what kinds of issues matter to advocates and decision-makers, on the one hand, and shape the demand for specific kinds of information experts can produce to discuss them, on the other (Campbell 2012; Clemens and Cook 1999).

Unlike informal meetings—a common form of expert-lawmaker interaction in France but not the U.S.—where experts get access to lawmakers because of their personal relationships or status and where the rules of engagement are tacit, legislative hearings are more formal kinds of interaction. They require lawmakers to negotiate the political context and the specific rules of their chamber when deciding who to invite (Baumgartner and Jones 1991; Baumgartner, Jones, and Macleod 2000; Jatkowski 2013). In what I call "open systems," such as U.S. state legislatures, anyone can testify at most hearings. For example, California and Texas legislatures allow any interested party to express their views at most hearings. In addition, bill sponsors and their opponents can bring several witnesses with them. This system takes much of the control out of the legislatures hands and, as seen in Chapter 2, creates a space for average citizens and advocacy organizations to "tell stories" to lawmakers as they consider bills (Polletta 2006).

In contrast, in what I call "closed systems," such as the French Parliament, lawmakers in the majority control hearings. They must therefore manage multiple political logics, including legitimizing their process and preventing backlash or resistance from the political opponents, in deciding whom to invite. In these cases, lawmakers act as knowledge gatekeepers who coordinate precise political objectives with their ideas of what hearings should look like. Understanding how lawmakers navigate these concerns and draw on their own subjective ideas

about what the public ought to hear, sheds light on why certain people or groups—but not others—are invited to French hearings on gay family rights.

Of all legal and political settings, courts provide the most formal rules about who counts as an expert and how their information should be used. First, arguments lawyers make in courts must respond to precise legal questions, such as whether prohibiting same-sex couples from marrying, is legal under specific articles of constitutions or other legal codes. Court cases are about specific people while legislation is more abstract. Second, unlike the media or legislatures, courts create mechanisms that strictly control both the content of what a knowledge provider says as well as the basis on which he or she makes that claim (Andersen 2005; Sheldrick 1995). To provide testimony to the court as an "expert witness," a person must present qualifications that justify her presence and claims (Miller and Curry 2009; Sanders 2007). Opposing litigators have the opportunity to discredit those qualifications and the knowledge the witness provides. Ultimately the judge makes a determination about the scientific, historical, or social validity and accuracy about those claims. This chapter explores how lawyers and expert witnesses navigate the institutional logics of courts, which mater most in the United States, as well as the effects those logics have on the meaning of knowledge they hear.

Negotiating Institutional Logics in the United States

Media: A Low-Stakes Environment For U.S. Academics and Professionals

Media is an important outlet for knowledge in debates on the marriage and parenting rights of same-sex couples in both countries. However, as Chapter 1 showed, while U.S. reporting consisted of higher representations of ordinary citizens and activists, in French news coverage, intellectuals, academics, and professionals occupy a significantly larger place. This

suggests that editors and journalists in each country prioritize different categories of people to interview or for places on their Op-Ed pages. The focus on lived experiences in the U.S. press and elite discourse from above in the French press creates different circumstances for the kinds of people I interviewed, who were primarily academics, professionals, and advocates.

Most American respondents, on either side of the debate, did not describe the media as a high stakes forum that they prioritize. Only a third said they had published in or been solicited by the press and other media outlets. Of all categories of respondents, academics were the least invested in the media. They primarily participated by responding to journalists seeking quotes. These scholars did not specifically seek to express themselves individually in the media but said they were happy to respond when asked. For them, academic incentive structures, which put a premium on publishing in peer-reviewed journals, led them to prioritize their academic research over engagement with the press. Moreover, lawyers and policymakers valued them for their scientifically rigorous work, not for public recognition through media presence. In addition, American organizations have taken up the task of disseminating research, which reduces the necessity for academics to do it directly.

Indeed, most scholarship entered the U.S. media through organizations, such as advocacy groups and think tanks, who gathered and distributed it via press releases and communications strategies. Reflecting this, of all respondents on either side, activists and think tank affiliates spoke most frequently about their media interventions because their missions included packaging and creating knowledge with the express purpose of informing policy debates. Ilya Shapiro, a senior fellow at the Cato Institute, a libertarian think tank, described organizations like his as knowledge "moderators" who, in addition to producing their own information, interface between academics and the broader public sphere.

Only a few U.S. academics, both progressive and conservative, said they intentionally sought to actively participate individually in media debates. These scholars emphasized the importance of media for their work because they were involved in advocacy organizations and think tanks and were especially committed to shaping policy outcomes. For example, Lynn Wardle, who has contributed to several pro-heterosexual marriage organizations, said speaking out in the media is "a very important part of a scholar's responsibility." Similarly, Lee Badgett, who helped found the Institute for Gay and Lesbian Strategic Studies, which is now merged with the William's Institute, said she has written Op-Ed pieces and responded to media interviews because, "That's how people get a lot of their information." She argued that speaking in the media can help "educate the general public about what I think are the best facts, figures, ways of thinking about […] what the situation is for LGBT [people] in the U.S. today." They hoped bringing their scholarship to the media could shape public perceptions and legal outcomes on issues in which they were invested.

Similarly, activists, who seek to favorably shape media narratives to meet their reform goals, sought to speak out in the press. For example, Jennifer Morse of the Ruth Institute, perceived a bias in the press—particularly *The New York Times*—inaccurately obscuring negative consequences to people who establish families outside of heterosexual marriage. To combat this, she wrote, "articles to try to refute […] puff pieces that show up in the press." On the other side, Jennifer Pizer of Lambda Legal and Mary Bonauto of GLAD shared the stories and needs of sexual minorities in the media. For Pizer part of her job included acting as "an amplifier of other people's voices [in order to convey] human stories that people haven't heard and that can help people adjust their understanding." To Bonauto, sharing the lived experiences of same-sex couples in the media helped raise awareness about the objectives and necessity of

federal court cases to repeal DOMA. Her organization's lawsuits and media interventions both sought to illustrate, "how damaging and harmful DOMA was to real married people." These activists, unlike the majority of their American academic colleagues, sought media exposure to influence the debate in the favor. They were also more invested in working with legislators than academics and professionals.

Legislatures: Limited Participation for U.S. Academics and Professionals

Behind the Scenes Work

Some interviewees in both countries described working privately with legislators and other lawmakers, such as ministers. This work is not necessarily secret; lawmakers' public agendas sometimes noted appointments, but these exchanges were not always clearly on the record. Only a few U.S. respondents, most of whom worked for advocacy organizations or think tanks, described this kind of work. For example, according to Jennifer Pizer, much of Lambda Legal's legislative work involves helping specific state and federal lawmakers draft legislation. However, this lobbying—a minority of their workload as compared to their judicial work—primarily deals with LGBT rights issues other than couples and families, such as workplace discrimination.

Even for the few U.S. academics and intellectuals who did have personal interactions with lawmakers, these kinds of exchanges were unusual. Lynn Wardle, for example, who described his acquaintanceship with Orrin Hatch, his state's representative to the U.S. Congress, said instances of lawmakers "asking for [his] advice … [were] quite rare" outside of formal hearings. Individual U.S. academic knowledge producers therefore had little personal proximity to legislators. Moreover, the connections they did have were often mediated by advocacy

organizations and think tanks. As I will describe in Chapter 5, organizations work as pipelines between lawmakers and academic and professional experts because they are better able to navigate across the abundance of policy outlets in the U.S., which far out number those in France.

Hearings

As described in Chapter 2, most legislative hearings in the United States, particularly on the state level, do not often involve the direct participation of academics and intellectuals. Rather, local elected officials, average citizens, and representatives of local and national advocacy organizations occupy these spaces to tell their personal stories or explain their stances for or against proposed legislation. Because most hearings in the state legislative committees I examined are open to any witnesses who register to speak, legislators do not always control who appears. However, as activists on both sides explained, lawmakers can and do coordinate with organizations that support their stances to encourage them to appear or, when possible, to invite them as witnesses. Jennifer Pizer, for example, described mobilizing social movement organization volunteers and concerned citizens in tandem with allied lawmakers to testify at California legislative hearings over gay family rights. They did so to create an impression of political and social force. Also, in both state and federal legislatures, all members of the public are also permitted to contribute written statements in lieu of physical presence at hearings, which movement organizations also often encourage and coordinate.

In some situations in U.S. states, such as when California voters gathered enough signatures to force a ballot measure amending the constitution to prohibit same-sex marriage, legislative committees may hold a hearing where lawmakers are responsible for controlling and

inviting specific witnesses. This is also the case for U.S. congressional hearings. In these situations, as Chapter 2 illustrated, legislators often reach out to local legislators, advocacy organizations, and law professors or professionals who support their stances. Examples of this include Jennifer Roback Morse's participation at California Proposition 8 hearings while she was on staff for the National Organization For Marriage and Professor Lynn Wardle's participation in U.S. Congressional hearings in 1996 for DOMA. Because lawmakers on both sides are permitted to invite a certain number of witnesses, hearings have some ideological balance.

U.S. interviewees on both sides either experienced or observed legislative hearings as political forums where lawmakers, who have already made up their minds ahead of time, rally their supporters and disregard information with which they disagree. Because these settings have, "no constraints," in the words of Terry Stewart, witnesses "can talk about whatever they want or whatever you want them to." They described legislators as "posturing" and not "taking information seriously." Unlike court procedures, which almost all interviewees had experienced, legislative hearings did not involve impartial weighing of the quality and quantity of evidence. Rather, they saw hearings as "parades" and "varieties of theatre" in which lawmakers and advocates seek to display their force through the numbers of witnesses and contributions.

The institutional logics of these settings also favor emotions and story telling, as opposed to science and facts (Polletta 2006; Stone 2011). For this reason, most academic interviewees, even if they had contributed information to hearings directly or through organizations, such as the Williams Institute or the Society for the Psychological Study of Social Issues, doubted whether legislators cared about scientific content. Indeed, in the words of one psychologist, "it's about anecdotes, not data." Nevertheless, many also recognized that it was important to provide all information, regardless of whether lawmakers paid attention, because it would be included in

the official record, which could be used to establish legislative intent in future court cases. Indeed, because of their key role in shaping gay family law in the U.S., courts have become the highest stakes outlet of expertise and the forum with which my interviewees had the most interaction.

Courts in the U.S.: Where Judges Weigh the Value and Worth of Knowledge

The institutional logics governing the structure of debate and the role of expertise in courts create different circumstances than legislatures for knowledge producers, wielders, and organizers as they interact with decision-makers. Unlike lawmakers, judges are meant to evaluate the validity of two parties' arguments vis-à-vis precise legal questions in a specific case. For example, lawyers defending a specific same-sex couple's right to marry could argue, as they did in the Federal case *Hollingsworth v. Perry* against Proposition 8, that limiting marriage to different-sex couples is an unconstitutional form of discrimination. Defenders of the statute would then be required to convincingly demonstrate a state interest justifying differential treatment. If they contend, for instance, that legalizing same-sex marriage would undermine or discourage different-sex marriage, both sides would provide evidence—sometimes delivered by "expert witnesses" called to the stand—such as heterosexual divorce rates in jurisdictions having legalized same-sex marriage. Both sides would also have the opportunity to question the information presented by their opponents—in the form of cross-examination of witnesses, for example—and attempt to undermine its validity. Finally, the judge would then determine if the evidence was sound and sufficiently supported the legal argument. Thus, unlike in legislatures where lawmakers use knowledge politically to justify, legitimate, or inform their process, in courts, lawyers use knowledge to convince judges they have a substantiated legal argument.

In addition to arbitrating between different arguments and evaluating the quality and quantity of knowledge on both sides, judges can also determine which legal questions the trial will address before it even begins. For example, in the federal trial *DeBoer v. Snyder*, the plaintiffs, a lesbian couple, originally sued the state of Michigan for the right to jointly adopt children; the state only allowed married couples, limited to heterosexuals, to adopt. The judge, however, had them amend their suit to sue for the right to marry, which he determined was the underlying cause of their grievance.

These judicial arenas, whose institutional logics make different demands of expertise than legislatures, were an important avenue of reform in the U.S. but not France. As a result, American interviewees had significant interactions with and understandings of courts and their demands on knowledge. Similar to legislative hearings on same-sex marriage in France, U.S. court cases on same-sex couple's rights have generated significant public and political interest. Emphasizing the cases as new iterations of America's civil rights history, the media and social movement organizations publicized the stories of those involved, such the as plaintiff couples seeking legal recognition, as well as those of the lawyers and expert witnesses participating. The stakes around these trials are therefore elevated both because their outcomes can significantly change the legal landscape through case law and because the knowledge that goes into them becomes part of the public conversation. People interested in sharing their information with the courts, such as organizations, average citizens, professionals, academics, or other concerned parties, however, must deal with the rules, barriers, and institutional logics of the judicial arena. Information enters the court through two main channels: amici curiae briefs and testimony or evidence presented at trial. U.S. interviewees were involved in navigating both outlets and all interacted in some way with courts.

Briefs

Any party not formally affiliated with either side in a trial, but who believes they have information the court should consider as it weighs its decision, can submit an amicus curiae brief (Kelly and Ramsey 2009). However, unlike written statements for legislative hearings, would-be amicus authors face high barriers that limit participation by untrained ordinary citizens. They must organize their briefs according to a precise format, use legal language, state why they believe they have a justified reason for submitting, and provide information that contributes to a specific argument pertinent to the trial. For these reasons, amicus authors generally work with advocacy lawyers or law firms who help them format their information and submit it on their behalf. Many U.S. professional groups, advocacy organizations, and think tanks have in-house or contracted legal service providers to perform these tasks, which I will explain in further detail in Chapter 5.

Although lawyers on either side do not officially solicit, assist, or prevent people from submitting amicus briefs, many amicus authors and trial attorneys, most of whom work in legal advocacy organizations, communicate with each other thanks to relationships they have built over the years. Mary Bonauto of GLAD, Leslie Cooper of the ACLU, as well as interviewees at think tanks and other advocacy and professional organizations on both sides said that many of the same attorneys organize trials and the same people and groups submit briefs, they discuss strategies with each other about who should submit briefs and what they should say. As a result, the composition of the body of briefs in these trials, which Chapter 2 described, reflects in part these negotiations between brief authors and attorneys running the trials and their respective objectives and interests.

Contrary to the customary practice of written and oral testimony in legislatures, all parties wanted to avoid what they called "me too" or "copy cat" briefs that repeat or overlap the same information and arguments. Rather, brief authors and attorneys described how specific briefs should speak to precise legal questions as well as also potentially send political or social messages. Brief authors and attorneys coordinating them also had specific interests relative to their positions and objectives.

Brief authors, especially institutional actors like professional organizations such as the APA or ASA, sought to make unique contributions that highlighted their legitimacy and furthered their own internal and public goals. For example, according to Sally Hillsman, the ASA began submitting briefs in major marriage trials to counter anti-gay marriage social scientists' claims, especially those by Mark Regnerus, that the social science evidence is divided and inconclusive about the outcomes of children raised by same-sex couples. The ASA wanted to ensure that "people who speak on behalf of social science…are really presenting as accurate as is possible an understanding of what the social science says," she explained. The brief thus made a legal point about the evidence, which the ASA argued supported allowing same-sex couples to marry and also buttressed the reputation of sociology, while undermining the scientific authority of conservative sociologists.

Similarly, brief authors on the other side of the debate could address specific legal questions while also sending a broader message they hoped would generate more public support for their stance against same-sex marriage. For example, William Duncan explained the brief he authored for the Ethics and Religious Liberty Commission of the Southern Baptist Convention that dealt with whether opponents of same-sex marriage in Proposition 8 were motivated by

animus, a constitutionally unjustifiable reason for denying unequal treatment.[13] Their brief cited moral and religious reasons—specifically scriptural quotes condemning homosexual behavior—for their motivation. Addressing the legal question in the case, the brief aimed to counter the stigmatization of gay marriage opponents more broadly.

As they respond to specific legal questions, briefs also offer opportunities for authors to demonstrate solidarity, share work with other groups or people, and send political messages. For example, a variety of important national professional organizations, such as the American Medical Association, the American Academy of Pediatrics, and the American Psychiatric Association, joined a brief with the APA, which summarizes the social science evidence on the nature of sexual orientation, the children of same-sex couples, and the stigmatizing effects of marriage bans on same-sex couples[14]. According to Clinton Anderson, the brief, which the APA authored and the other groups signed onto but did not have to write, sent a stronger message because of collective institutional and symbolic weight of the groups.

Attorneys and advocacy organizations working with brief authors and coordinating the body of briefs for their side in a given case also had specific objectives. They wanted to ensure that briefs spoke to legal questions they prioritized or presented information they wanted the court to hear. For example, Mary Bonauto described working with groups of jurists for different arguments. Her side wanted a brief, for example, from "constitutional litigators," who could talk about the violation of federalism aspects of DOMA, as well as ones from family law scholars

[13] Brief of the Ethics and Religious Liberty Commission of the Southern Baptist Convention as *Amicus Curiae* in Support of Defendants-Intervenors, *Perry v. Schwarzenegger*, 570 U.S. 12-144 (2010).
[14] Brief of The American Psychological Association, The American Medical Association, The American Academy Of Pediatrics, The California Medical Association, The American Psychiatric Association, The American Psychoanalytic Association, The American Association For Marriage And Family Therapy, The National Association Of Social Workers And Its California Chapter, And The California Psychological Association as *Amicus Curiae* in Support of Respondents, *Hollingsworth v. Perry*, 570 U.S. 12-144 (2013).

and local attorneys, who could demonstrate that states already recognized same-sex parental relationships despite congressional legislators' claims to the contrary when they passed the law.

Attorneys and coordinators also hoped to have briefs that would send a variety of political messages that, William Eskridge argued, might appeal to specific judges, such as Anthony Kennedy. Bonauto described, for example, the centrist appeal of a brief co-signed by hundreds of private sector employers discussing the economic downside of DOMA that sent the political message, "business is standing with us."[15] Similarly, Eskridge described how joint briefs between organizations that usually oppose one another suggest the mainstream and consensual appeal of one's legal case. He mentioned the brief supporting same-sex marriage filed by the Cato Institute, a libertarian thank tank often aligned with conservative causes, and the Constitutional Accountability Center, a progressive think tank.[16]

Witnesses

In addition to amici curiae briefs, courts offer the opportunity for knowledge producers to provide information, such as witnesses. This occurs when the judge overhearing the case decides to call a full "bench trial" as opposed to issuing a judgment based on the written and oral arguments of the attorneys on both sides. Most trials on the constitutionality of same-sex marriage have not gone to full trial. Nevertheless, the few that have, including *Baehr v. Miike* in the Hawaii Supreme Court as well as *Perry v. Schwarzenegger* and *DeBoer v. Snyder*, both in federal district courts, had significant legal and political reverberations (Becker 2015; Eskridge

[15] Brief of 278 Employers and Organizations Representing Employers as *Amicus Curiae* in Support of Respondent, *United States v. Windsor*, 570 U.S. 12-307 (2013).
[16] Brief Of The Cato Institute And Constitutional Accountability Center as *Amicus Curiae* in Support of Respondent, *United States v. Windsor*, 570 U.S. 12-307 (2013).

and Hunter 2011; Kane and Elliott 2014; Walzer 2002).[17] Baehr was the first trial of its kind and triggered major backlash against same-sex marriage in the form of DOMA and state bans. Hollingsworth, the case against Prop 8, was the first serious federal same-sex marriage trial and the first to reach the U.S. Supreme Court. It helped spark other trials like *DeBoer*, which would eventually be consolidated on appeal with *Obergefell v. Hodges* to ultimately legalize same-sex marriage nationwide.[18] Given their role in the history of changing same-sex marriage rights and the public attention they garnered, the information generated in these cases resonated beyond their original context.

In these cases, in addition to the plaintiffs, such as same-sex couples, who testify about their motivations to marry and the negative effects of its denial, attorneys can call "expert witnesses" to the stand. These witnesses must demonstrate specific qualifications to the court that make them particularly well suited to speak to the legal arguments of the case. 11 U.S. respondents testified in this context and 7 worked either as litigators drawing on expert witnesses or helped to coordinate with attorneys who did. Another interviewee, Helen Zia, was heard as a "lay witness" in the Hollingsworth trial where she shared her personal experience about what it felt like to be legally married—versus in a domestic partnership—to her wife. Lay witnesses provide opinions based on their experience but, unlike "expert witnesses," on whom I focus here, do not need to meet any specific qualifications.

French legislators and U.S. attorneys face a similar task picking witnesses to testify before decision-makers. Yet, while the former juggle political calculations, the latter contend with strict conditions on expertise as enshrined in the Federal Rules of Evidence governing expert testimony (Fed. R. Evid. 701-706) and defined by jurisprudence known informally as the

[17] *Baehr v. Miike,* 910 P. 2d 112, 80 Haw. 341-Haw: Supreme Court (1996); *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010); *DeBoer v. Snyder*, 973 F. Supp. 2d 757, 775 (E.D. Mich. 2014)
[18] *Obergefell v. Hodges*, 135 S. Ct. 1039 (2015)

"Daubert" standard (Caudill and LaRue 2003; Ramsey and Kelly 2004). Within these standards, attorneys must convince judges that their "expert witnesses" have the diplomas, training, scientific peer recognition, and publication record to qualify as experts. Moreover, judges must also determine that the testimony is "based on sufficient facts or data; is… the product of reliable principles and methods; and … the expert has reliably applied the principles and methods to the facts of the case" (Fed. R. Evid. 702). In addition, because of the adversarial court setting, lawyers on either side can use pre-trial depositions—the records of which can be admitted in trial—and in-trial cross-examination to question the expert witnesses of their opponents in order to undermine their qualifications or reveal that their application of the facts to the case is flawed.

The high standards of evidence and the unrelenting efforts of their adversaries to delegitimize their witnesses drive attorneys to thoroughly vet and carefully select their experts. Indeed, if their opponents can convincingly undermine the testimony or credibility of their witness, by say, demonstrating that he does not thoroughly know the scientific literature in question or has a disqualifying bias, it could seriously reduce the likelihood of winning. Several respondents on both sides described how, because of these high stakes, when lawyers initially contacted them, they forwarded them to other people they thought would be better qualified and whose testimony could withstand the trial. This suggests that these experts had a vested interest in seeing a particular side succeed and saw how courts emphasized strong credentials, especially academic peer recognition and publication records. Other interviewees described being contacted but then eventually passed over for someone else who lawyers though would be a better fit.

Attorneys find experts that meet these standards through legal advocacy and professional organizations who, as will be described in Chapter 5, act as knowledge banks. Indeed, many of the expert witnesses had either been employed by or collaborated with The William's Institute.

Lawyers described reaching out to their colleagues at advocacy organizations, such as William's, Lambda Legal, GLAD, and the ACLU, who had previously vetted and worked with experts to compare notes. For example, Terry Stewart explained how the Hollingsworth trial litigators, Ted Olson and David Boies, who had never litigated a gay rights trial, delegated much of the expert witness work to her and her colleagues because of their accumulated knowledge and experience as gay rights litigators having already worked with expert witnesses.

In addition to having excellent qualifications and backgrounds, the witnesses must provide testimony that speaks to specific legal issues of the trial. For example, as Stewart described, litigators against Prop 8 wanted to show that the voter approved amendment to ban same-sex marriage in the California Constitution was unconstitutional according the U.S. Constitution because it violated equal treatment, was motivated by animus, and targeted a suspect class. Each of these questions called for specific kinds of experts. For instance, in order to establish that sexual orientation constitutes a suspect class, like race or gender, litigators needed to convince the judge that gays and lesbians are historically subjugated and stigmatized; that the cause of their discrimination, their sexual orientation, is an immutable characteristic; and that they are politically powerless. Judges in past cases have built a relatively consistent jurisprudential legacy setting out these specific elements as necessary for establishing suspect classification (Helfand 2009). To prove these points, lawyers decided to call several experts, including the historian George Chauncey to describe the history of anti-gay discrimination; the psychologist Gregory Herek to talk about the cause of homosexuality and failures to "cure" it; and the political scientist Gary Segura to talk about lack of political power of LGBT Americans. Experts are thus "siloed," as several described it, to address precise questions, some of which are

not even specifically about same-sex marriage, rather than to give their general views as they might in a legislature.

Part of the vetting process, which several witnesses described as "grueling" and time-consuming, involved lawyers thoroughly familiarizing themselves with everything they could find about potential witnesses in order to prepare themselves for the trial and best determine what legal questions the expert would address. Stewart and Cooper described how, in their respective trials, they worked in teams of lawyers each assigned to prepare specific witnesses. They came to learn the science and evidence deeply. Indeed, several academic respondents described how well the lawyers grasped the technical subtleties of empirical social science, including differences between sampling methods, internal and external validity, as well as statistical significance and effect size. Experts also worked with the litigators to help guide them to the information they thought could be most helpful for their case. "[They] teach you what you need to know is scientifically… good evidence," Cooper explained. Working with the demographer Gary Gates and the sociologist Michael Rosenfeld, she learned, for example, that it was possible to show the court "that there is a body of research that has developed over, you know, the past several decades" on childhood outcomes. With their testimony, they could credibly establish for the court—and withstand the cross-examination of the other side and testimony of opposing witnesses—that there is a scientific consensus that children raised by same-sex couples fare as well as those raised by different-sex couples.

These negotiations between experts and lawyers illustrate the specific demands courts put on knowledge. Indeed, their institutional logics tests all the claims supporters and opponents have made about same-sex marriage and parenting in other forums. For example, Judge Vaughn Walker's decision to call for a full bench trial in the federal district suit against Prop 8 created an

opportunity to thoroughly judge the factual claims of both sides in a controlled setting. In the judicial area, opponents could not simply make moralistic arguments but had to defend their claims about the negative social consequences about same-sex marriage. Unlike legislative settings, which have no strict mechanism for evaluating claims, in the words of Nan Hunter, judges like Walker "forced" both sides to organize their defense and rally evidence to support their legal arguments in an "adversarial process." Illustrating this power, when attorneys on one side questioned the suitability of their opponents expert witness during the trial, Walker explained, "I will permit the witness to testify, and make a final evaluation with respect to how much weight to give to that testimony and how to weigh it within in the entire case, as we go along."[19]

Progressive interviewees, who were happy about the outcomes of the trial, felt that the institutional logics of courts, especially cross-examination, were favorable to their stances and more satisfying than legislatures. They described judges as "vindicating" the science and eliminating false equivalences between opposing sides that the media and legislature foster. For example, Walker and Friedman, the judge for *DeBoer*, created broad forums that ended up exposing the lack of evidence of same-sex marriage opponents—they had fewer witnesses—and delegitimizing much of their testimony. For instance, in his opinion striking down Michigan's marriage ban, Judge Friedman, described Mark Regnerus's same-sex parenting article (2012) as a "hastily concocted…'study,'" and his testimony as "entirely unbelievable and not worthy of serious consideration."[20] He made this judgment based on the critical evaluation of the empirical evidence, or lack there of, in Regnerus's article, which the plaintiff's witness, Michael Rosenfeld unpacked in his testimony. This severely negative assessment Regnerus's testimony effectively

[19] *Perry v. Schwarzenneger* 1207 F. Supp. 5 (U.S. D.C. N. CA. 2010).
[20] *DeBoer, et al. v. Snyder, et al.*, 12-10285, 13 (E.D. Mich. March 21, 2014).

rendered his expertise unusable for future trials. Conservative interviewees, who were disappointed with the outcome and believed that the facts were on their side, argued that the judges misunderstood the data, simply ignored it, or ruled ideologically.

While court demands on knowledge can vindicate the science, their constraints can also distort it both before and during the trial. Before the trial, the imperative that witnesses buttress a specific legal argument can lead lawyers to reject accurate scholarly information if they think it could undermine their case. For example, the facts of LGBT political disempowerment, essential for establishing that minority sexual orientation is a suspect classification, created difficulties. According to Terry Stewart and other interviewees, litigators against Prop 8 called Gary Segura rather than Kenneth Sherrill, the leading U.S. expert on LGBT political power, because he had published—accurately—that gays and lesbians had made significant gains through the political process. While this claim is true, lawyers had to emphasize the equally valid claim, which Segura could demonstrate, that despite their gains, historical lack of representation, as well as referenda, laws, and constitutional amendments targeting sexual minorities demonstrate political powerlessness. If Sherrill had testified instead, Stewart and others knew the opposing attorneys would use his publications and statements to undermine their case.

Court logics also distort scientific information by limiting nuance, which creates challenges for expert witnesses. For example, during the trial, this same legal question of suspect classification required George Chauncey to provide a more starkly contrasted—but not inaccurate—history of anti-gay persecution by downplaying episodes of LGBT social resilience than he otherwise would have in an academic forum.

Indeed, while academic debate allows scholars to consider how scientific literature is gradated, evolving, multifaceted, and, in the words of Wendy Manning, "knotty," court

arguments favor definitive, unequivocal statements. Consequently, expert witnesses in these same-sex marriage cases had to train with their lawyers to switch from their academic to court voices. Unlike in a classroom or peer-reviewed article, where a professor might present a range of hypotheses and viewpoints about causal mechanisms on say, the effect of family structure on children's mental health outcomes, in a court, she would have to present a firm answer. Lee Badgett described learning these codes in preparation for the Prop 8 trial:

> Sometimes I was just sounding very professorial, like, well, "some people say this, some people say that." And, finally, somebody said, "No. The point is you're the expert. What do you think? … And I was like "Oh, oh, right. I'm not teaching a class here, or I'm not trying to educate somebody. I'm trying to give my opinion that I have developed after studying this for a long time."

The vetting, training, and trial put witnesses in a position of explaining information in ways that were unfamiliar and sometimes frustrating. Several interviewees described having to unlearn saying, "It depends," when asked a specific question about the science. In a court setting, this answer suggests the speaker is either unqualified to respond or that the information is unclear.

In sum, the importance of these bench trials in the history of U.S. gay rights exposed knowledge producers and their handlers to specific courtroom demands: the adversarial system, close examination of facts, adjudication of accuracy, and tailoring of knowledge to legal arguments. Attorneys supporting same-sex marriage were probably successfully in part because they were able to convince the judge that they had the weight of empirical science behind them. The incentive for strong empirical knowledge has also driven marriage opponents to try to produce more knowledge within the academy that can pass muster. These institutional logics introduced experts to ways of producing, negotiating, and presenting information that set them

apart from the political imperatives of legislatures and the media, which dominate the French case.

Negotiating Institutional Logics in France

Courts: An Institution Most French Experts Do Not Encounter

In contrast to their U.S. counterparts, few French respondents had any direct experiences with courts and the institutional logics constraining expertise that go with them. This reflects the broader lack of judicial avenues of reform in France in general. French law professors and legal professionals contrasted the U.S. common law system, which creates opportunities for U.S. experts, with the French civil law system in which the judiciary has historically been weak on these issues. Indeed, the *Conseil Constitutionnel* and *Cour de Cassation* have deferred to legislators on the questions of same-sex couples and their access to childrearing, suggesting it is not within the courts' domain.[21] Although the European Court of Human Rights (ECtHR) has been a venue for condemning France's refusal to allow single gays and lesbians and same-sex couples to adopt, because the court does not have enforcement capabilities, France has been slow to implement policy changes in response to these rulings (Johnson 2013).

Within these relatively limited circumstances, some French interviewees, all of whom were law professors or lawyers, had some court interactions. Nevertheless, they did not involve the recourse to expertise to the degree that their American peers did. No interactions, for example, involved full bench trials—in which the facts on either side could be clearly evaluated—and create jurisprudence for sweeping change. Instances most resembling those in the U.S. were summary judgment trials in the ECtHR at which attorneys provided written reports about the legal facts in addition to their oral arguments. For example, Robert Wintemute, who

[21] Décision n° 2010-92 QPC du 28 janvier 2010

litigated several of the ECtHR adoption cases with Caroline Mécary, worked with law professor Daniel Borrillo to examine whether French legal history and law required sexual difference to establish *filiation*. Knowledge presented to the court was thus, limited to the legal arguments relative to the European Convention on Human Rights and the facts in the trial. Unlike in U.S. trials, other than the facts in the trial, there was little space for additional information, such as social or mental health science, that could have also spoken to the legal questions

Individual court determinations around adoptions and child custody, which also occur in the United States, were one of the rare places where French tribunals heard expertise. However, these venues in France do not create jurisprudence that builds over time and are out of the public eye. Moreover, expertise here does not follow the same adversarial process as in the full bench trials described above. Rather, as Mécary, who is one of the few French lawyers representing gay and lesbian clients in such situations, explained, courts draw on a pre-established list of mental health professionals, even if they have public anti-gay parenting views, to provide expert assessments on cases. The burden of proof to contest such expertise thus falls onto the lawyers representing gay clients. Mécary, for example, must confront systematically negative reports by the psychiatrist and psychoanalyst Pierre Lévy-Soussan, who is an official expert to the Paris Court of Appeals. She has ordered counter assessments from the progressive psychiatrist and psychoanalyst Serge Héfez, but the court is not required to make an adjudication about the relative weight or scientific accuracy of their evaluations.

As a result of the lack of access to courts in France, French interviewees, even the few that have had experiences with them, had little exposure the institutional logics of courts relative to their American peers. The court process has therefore not put the same kind of constraints—favoring empirical knowledge and the lived experiences of litigants in a specific case—on the

content of French debates over same-sex marriage and parenting as they have in the United States. The lack of court outlets in France also limits the demand for such information and, as a consequence, reduces incentives among French academics and professionals on both sides of the debate that could produce it. Instead, French interviewees were more invested in engaging the debate through participating in the media, which gave them public exposure and sometimes a pathway to influencing lawmakers, who matter most in France.

Media: A High-Stakes Arena Where Academics, Activism, and Politics Interact

While most U.S. interviewees, especially academics, were at a distance from media debates, French respondents of all categories were regularly involved in the press. In contrast to U.S. interviewees, all but four French respondents described the media, including the press, television, and radio, as important arenas for sharing their ideas and competing with other experts, activists, politicians, and public figures with whom they disagree. All categories of French respondents gave the impression that boundaries between the media, academic, and political fields are blurred. For them, investing their time and energy in the media was important because it gave them credibility, public exposure, and potential political power. Their actions make sense in light of the way French intellectual debates prioritize public engagement and strong reputations (Lamont 1987; Sapiro 2009; Swartz 2013).

The proximity and resemblance between the media and legislative fields also helps explain why French interviewees were invested in the media. These field overlap in several ways. First, they draw on the same pool of individuals, consisting of academics, professionals, activists, and other public figures, to represent different views. Second, they both systematically juxtapose the same people on either sides of the debate. As a result, the media, political, and

research fields resemble and inform one another. For example, the psychoanalyst Serge Hefez described how during the marriage debates he "always [faced] the same contradictors […] on the radio, the television, and the benches of the *Assemblée Nationale*." Individuals can also gain access to the legislative arena by first attracting journalists' attention. For example, several conservative law professors said the media around their open letter (AFP 2013) against same-sex marriage put political pressure on Socialist lawmakers to invite them to hearings. Similarly, Virginie Descoutures said it was not a coincidence that she got a call from legislative assistants to appear for hearings a week after *Liberation* interviewed her about her research on lesbian mothers for an article on the pending legislation (Gros and Mallaval 2012).

For some academics and professionals, these media interactions took as much if not more time than their scholarly work. For example, although she was retired, Françoise Héritier remained very busy and could not find time to finish the third volume of her series on sexual and gender difference (1995, 2012) because she had, "radio shows to do [and] journalists to respond to." Some also described these media interventions as an important responsibility. Illustrating this mindset, Maurice Godelier said, "To my eyes, as a scientist, if I have conclusions about a controversial or problematic social fact, I must give my position." Similarly, the anti-gay parenting psychoanalyst, Christian Flavigny explained, "I believe that I am very competent in the domain [and] I feel that I have a duty to give back to society information of which it is ignorant or unaware or that it neglects." Their sense of duty to publicly position themselves on policy issues suggests that the French media sphere is an important forum for interaction.

Unlike in the U.S., French academics and activists alike wanted to speak out in the press to change people's minds, frame the debate, and impact the political process. Fassin, for example, described why it is important to speak out in the media. "It's important for public

opinion. It's important to advance an idea and important to support each other in a debate," he said. For some activists, like Alexandre Urwicz of the ADFH, it was the best way to increase gay family visibility. He had developed working relationships with journalists and told them, "You have to do investigations and reports where you show the families." The media, and in particular opinion pieces in newspapers, are a mechanism through which French advocates, academics, and public figures can express solidarity and support on issues. For example, Urwicz described his satisfaction over co-signing an editorial with Elisabeth Badinter and Irène Théry (Badinter et al. 2012) in *Le Monde* where they argued in favor of legalizing access to ethical surrogacy. These signatures are mutually beneficial for academics and activists; advocates like Urwicz share in the social legitimacy of famous academics and intellectuals and the latter can claim to have the support of people on the ground. Note, however, that unlike in U.S. debates, where activist organizations and think tanks gathered and distributed information in the absence of significant media participation by academics, French scholars intervened in the media independently of activist organizations or think tanks and—occasionally—agreed to offer their signatures and statements.

Because of the attention they garner, many French academics and intellectuals saw their individual media interventions as integral components in their personal strategies to influence political decisions and earn the attention of their peers. Without this media presence, one's adversaries—either fellow intellectuals, politicians, or social movement spokespeople—could dominate the discourse without any counter narrative. Many respondents described paying attention to what others wrote in the press and organizing their own reactions around them. This was true for interviewees on both sides of the issue. For example, the anthropologist Anne Cadoret and psychoanalyst Geneviève Delaisi de Parseval were motivated to debunk

misinformation about parenting spread by anti-same-sex marriage and adoption advocates. They wrote a special piece (Seyman 2013) with the women's magazine *Marie Claire* in which they use anthropological and psychoanalytic theories to analyze children's drawings of their "two mother households." Conservatives reacted similarly. To respond to progressive criticism of anti-gay marriage psychoanalysts, Christian Flavigny (2012) wrote editorials in *Le Monde*, some with other conservative colleagues (Delsol et al. 2012), warning that same-sex marriage and adoption would undermine parental sexual differences, which they argued are essential for children.

Given the high political stakes around the media and scholars' desires to occupy the terrain, intellectual battles over contentious issues that might otherwise remain within academic seminars and professional journals become public affairs. Respondents described many examples of writing editorials in response to other pieces written by their rivals or described articles against them as attacks or "shots fired in a battle." These interactions created an opportunity for intellectually aligned people to coordinate their efforts and develop connections. Examples include aggressive critiques against psychiatrist Stéphane Nadaud's (2002) dissertation on the children of same-sex couples and back and forth editorials between Irène Théry and Éric Fassin two sociologists who opposed each other during the Pacs. In both examples—which I describe in further detail in the coming chapters—the media conflicts generated alliances between people and defined intellectual and political fault lines that activists and policymakers could see. In many situations, these attacks concerned both advocates and academics. For example, Denis Quinqueton of HES described writing a response (2013) to philosopher Sylviane Agacinski's opinion piece in *Le Monde* (2013) in which she claimed his organization contributed to the "commercialization of women's bodies" by advocating for surrogacy. Irène Théry defended HES and other gay family organizations against Agacinski's attacks in her own piece (2013) arguing

that same-sex couples' demands for access to parenthood are legitimate and can be achieved ethically and democratically.

Journalists, editors, and other media actors maintain this battlefield of ideas by structuring "balance" into their reporting and editorial pages. This institutional logic provides opportunities for underrepresented perspectives, both conservative and progressive. Thibaud Collin, for instance, described his satisfaction when editors at *Le Monde*, who, despite supporting same-sex marriage, solicited an editorial for him to explain his opposition, as a philosopher, to the reform. Similarly, during the Pacs debates, at a time when many public figures and intellectuals were still against legal recognition for same sex couples, journalists reached out to Daniel Borrillo to provide a counterpoint to such opposition. The imperative to provide contrasting viewpoints, however, can also suggest to readers that all ideas carry the same weight or value, which some experts disliked; they expressed frustration over journalists and television show hosts who systematically juxtaposed their stances with those on the other side. These artificially created binaries produce false equivalences by treating all voices, regardless of their training or background, as equal, they argued. This media polarization, which French legislators also reproduce in hearings, as described below, also gives the impression that academic and professional fields are divided even if they are not.

In sum, the experts I interviewed in France—but not the U.S.—talked about media interventions, particularly those in major newspapers, as essential for accessing and influencing the public debate. Indeed, publishing in *Le Monde* and other media outlets can be the reason why lawmakers invite experts to give their points of view in the legislative arena. They also gave the impression that media debates are not merely reflections of the academic and intellectual field, on the one hand, and the political field, on the other. Rather, media debates are extensions of

these fields; disputes in the media between experts or between experts and politicians have ramifications both in the academic and political arenas.

Legislatures: An Important Venue for French Experts

Behind the Scenes Work

In contrast to their U.S. counterparts, most French interviewees of all categories had multiple meetings with legislators and other politicians outside of formal hearings and reports. Interactions between French lawmakers and activists or people affiliated with organizations, such as the APGL, ADFH, and Aides, resembled those of their American equivalents. Organizers could bring their needs and demands to the attention of politicians who could then use that information as they crafted laws. For example, when they worked at Aides during the Pacs debates, Daniel Borrillo and Marianne Schulz, met regularly and privately with ministers and elected officials to tell them about the specific legal and financial issues same-sex couples were experiencing because they had no legal recognition.

Almost all French respondents, on both sides, described meeting at least once individually with ministers or elected officials to discuss reforms. Some people who have been involved in these background settings for decades, such as Daniel Borrillo, Françoise Dekeuwer-Défossez, Geneviève Delaisi de Parseval, Éric Fassin, Maurice Godelier or Irène Théry, took on roles similar to political advisors. They provided individual politicians with political advice, technical suggestions, and arguments. For example, during the 2012 marriage debates, several described invitations to lunch with President François Hollande and private meetings with the Ministers of Justice and of the Family as well as with some members of parliament. These conversations were not primarily to provide information from their academic specializations.

Rather, politicians also sought these academics out to ask them whether they thought the reforms had a chance of passing, whether there might be popular resistance, and what the political consequences of passing the legislation might be. In these settings, depending on their level of influence with lawmakers, it is possible that experts are able to directly help or hinder the legal reforms.

French academics and professionals also met privately with political party groups both at the legislature and in their party headquarters. These meetings functioned like informal hearings to prepare lawmakers—especially those in the opposition who cannot control the formal hearings—with arguments they could use to justify their stance in floor debates and in the media. The political groups generally invited people who agreed with their stance on the issues. For example, both Claire Neirinck and Françoise Dekeuwer-Défossez said that conservative politicians interviewed them because they wanted "weapons" to fight against progressive arguments in favor of same-sex marriage and parenting. These interpersonal and quasi-private interactions further illustrate the proximity between experts and decision-makers in France; they highlight the intermingling between the political and academic knowledge production fields.

Governmental Reports

Governmental reports are a more immediately visible example of expert-lawmaker interaction. In the French—but not U.S.—case, elected officials and ministers commissioned several reports on the evolution of French couples and families directly from French academics, such as Irène Théry, a famous French sociologist with a long history of working with Socialist administrations. Politicians used these reports to inform future legislation, some of which involved recognizing same-sex couples or their parental rights. Irène Théry's two reports—the

first published before the Pacs debates (1998) and the second published after the passage of same-sex marriage (Théry and Leroyer 2014)—as well as Françoise Dekeweur-Défossez's (1999), are the most prominent. The reports' missions included making suggestions for legislative modifications to address the needs of couples and families in a context of social changes, such as divorce, remarriage, and out of wedlock birth. Rather than simple assessments of contemporary families' legal needs, these reports were caught up in party politics, ideological differences, and negotiations between politicians and experts.

Specifically, according to Théry, the Minister of Justice, Elisabeth Guigou, did not agree with the conclusions of the first report she commissioned from her. The report did not address the Pacs, which was under consideration in the Parliament, and argued against granting same-sex couples legal custody of children on par with heterosexual couples. Yet, even as she publically opposed the Pacs, Théry recommended same-sex couples have access to *concubinage*. Except for her opposition to gay parenting, these positions were against the Socialist Party's desired legislative goals at the time. Because of these politically problematic recommendations, Théry said the Minister did not publically support her report and ultimately ordered a separate one from Dekeuweur-Défossez, a professor of law. This new report did not make any recommendations or references to same-sex couples or sexual minorities raising children and therefore did not run counter to the political majority's reforms.

The negotiations and outcome of Théry's recent report on parenting and reproduction (2014)—co-authored with Anne Marie-Leroyer and a team of social scientists and jurists Théry picked—further reveals the political exchanges over expertise in the French case. In particular, Théry explained that when Dominique Bertinotti, the Minister of Family, initially approached her to order the report, she accepted on the condition that the scope of her mandate be widened.

Originally intended to focus on custody, parental authority, and children's access to the identity of their biological parents, Théry negotiated the specific terms of the mission, "line by line," to include broader analyses of kinship. After these exchanges, Théry received her official, public commission reflecting these extended parameters. Nevertheless, like for her first report, the conclusions—in this case authorizing lesbian couples access to donor insemination and guaranteeing citizenship to children of French citizens born through surrogacy abroad—were politically untenable. Indeed, backlash against the recently passed same-sex marriage and adoption legislation led the Socialist majority to indefinitely postpone planned legislation to open donor insemination for lesbians. As a result, the ministry and other Socialist politicians did not publicize Théry's report when it was completed.

The stories around these reports highlight how some well-connected French academics, unlike their U.S. peers whose policy interventions are usually mediated by organizations, become intimately involved as individuals in political and legislative negotiations around the relationship and parenting rights of same-sex couples. Even as they maintain their status as researchers or scholars, their implication in the lawmaking process suggests that they become like policymakers in their own right. This is facilitated by the overlap and proximity between the political and academic spheres.

Hearings

In contrast to the U.S. case, in France, lawmakers have frequently invited academics, professionals, and advocates to provide opinions on legislation dealing with the relationship and parenting rights of same-sex couples. Indeed, all but one French interviewee had been directly involved in at least one hearing over the last two and a half decades. Legislative dominance in

France and lawmakers' decisions to invite such experts, as opposed to, say, average citizens, helps explain why these elites are more commonly heard in the French political arena. These hearings have high stakes and broad social impact even when the passage of the legislation is almost guaranteed because of a large parliamentary majority. This is especially true when they are broadcast or widely discussed by the news media, which was the case for same-sex marriage. Indeed, the President of the *Assemblée Nationale* created a special parliamentary budget to record, live stream, and make the hearings available for download, partly in response to growing conservative backlash. This public availability facilitated widespread media attention.

Socialists Erwann Binet, Patrick Bloche, and Jean-Pierre Michel, who organized hearings in both chambers of the French Parliament either for the Pacs, same-sex marriage, or other family reforms, had exclusive authority to decide which witnesses to invite. They said they had to weigh multiple political considerations, including solidifying support among those on their side, attempting to change the minds of reticent politicians and the public, and maintaining the legitimacy of their reforms in the face of strong opposition.

Within these constraints and political pressures, lawmakers in the majority, who have the exclusive power to organize hearings, can ultimately invite anyone they believe will best reflect the needs and purpose of the legislation. Indeed, they can even specifically limit hearing experts they disagree with. For example, Alexandre Urwicz described how gay family organizations were infrequently invited to legislative hearings in the 2000s when conservatives were in the majority. This power, however, can lead to resistance from the minority party. When the newly elected Socialist majority introduced its same-sex marriage bill in 2012, for instance, conservatives unsuccessfully campaigned for a special commission, which would have been bi-partisan, in order to preempt Socialist control of the hearings.

Because of these tensions and the risk of backlash, lawmakers have learned to seek, in the words of Erwann Binet, ideologically "balanced" hearings. Jean-Pierre Michel described that lawmakers feel "obliged," to invite experts who disagree with their bills because, if they do not, their political opponents attack them and delegitimize them in the press, claiming that the hearings are unfair. These pressures to balance views and grant space to people who have the institutional capacity to demand it can thus lead French lawmakers to set up hearings that ultimately reproduce power struggles and hierarchies within professional and academic fields.

Indeed, Binet opened himself up to loud critique from conservative lawmakers and famous conservative law professors when his panel for legal experts only included jurists who had actually studied or worked with sexual minorities and their families. All were in favor of same-sex marriage and in the minority in their professional and academic fields. The conservative mobilization, led Binet to organize a second legal experts hearing where some of these conservative professors, such as Claire Neirick, could express their views. Similarly, when considering which social scientists to invite, he expressed frustration that the few who had empirically studied same-sex couples and their children "had all [publically] spoken out in favor of the text." In other words, because of political constraints, he was more worried about creating hearings that artificially presented views on both sides than attempting to discern the weight of the evidence in a given discipline.

Over time, political pressures and progressive concerns over conservative backlash can also create space for representatives of major religious organizations to be heard, despite French traditions of *laïcité*. For example, Jean-Pierre Michel did not invite religious representatives to his Pacs hearings because, "they have nothing to do with the elaboration of a law… in a secular state." Yet, by the time the marriage hearings occurred, he felt obliged to invite them to *Sénat*

hearings after Binet had invited them to the *Assemblée Nationale* out of concern for hearing all perspectives. However, in the public hearings, Binet said he was constrained by the centralization of church hierarchies to only invite official representatives of the major faiths. Those of dissenting organizations and people—many supporting gay family rights—were only heard in private, thus diminishing their voices in the conversation.

These lawmakers, however, can also use the perceived need for balance to justify creating a space for minority progressive voices within a specific field. For example, as described in the next chapter, the government is required to solicit the views of the *Union Nationale des Associations Familiales* (UNAF), a powerful quasi-state Family organization that is meant to represent all French families but is actually dominated by conservative religious and rural family associations; it has also excluded LGBT families. Knowing these exclusions, Bloche, Binet, and Michel have reserved hearing seats for organizations like the APGL and ADFH—France's main LGBT family groups—as well as secular and progressive associations within the UNAF to present their stances independently. Similarly, when official law professional organizations, who lawmakers felt obligated to hear, took stances against same-sex couples rights, lawmakers also worked with jurists at associations, such as Aides, France's premier HIV prevention group. In so doing, they amplified minority voices that would have otherwise been erased.

Because of their desire to project validity and legitimacy, lawmakers are also particularly interested in hearing famous academics and intellectuals, such as Maurice Godelier, as well as people who speak out regularly in the media, such as Thibaud Collin or Christian Flavigny. They know these people are already in the public eye and are shaping public opinion. Indeed, in our interviews, they all said it was important to hear people who are "known" and "recognized."

Thus, as highlighted above in the section on the media, fame and media exposure can create access to hearings.

During the Pacs debates, many of these well known invitees were problematic for advancing progressive lawmakers' goals because they opposed same-sex marriage and parenting. For example, although it did not ultimately prevent the legislation from passing, Jean-Pierre Michel described feeling a sense of competition with Irène Théry despite their on-going friendship. Her voice, as well as that of other famous leftist intellectual opponents made it more challenging for him to argue in favor of the Pacs. As they changed their stances, however, these famous intellectuals became assets to lawmakers. Binet, for example, argued that hearing Maurice Godelier and Françoise Hériter—France's most famous anthropologists—bear favorable witness in the name of their discipline, helped undermine opponents who were claiming that same-sex marriage was an "anthropological aberration" (Dupont 2012). Rather than oppose their legislative efforts, these experts lent their powerful voices to the cause and demonstrated that even famous academics can change their stances.

Within these constraints, lawmakers also make assessments about which experts to invite depending on what they believe justifies the purpose of their legislation to their fellow citizens. If they do not see a purpose for it, lawmakers in charge could reject potential experts that are common in other countries or in other forums, such as the media. For example, Binet specifically decided not to invite any demographers or statisticians to the hearings even though he knew they had data, which was published in the press, about the number of same-sex couples and same-sex couples raising children in France. For him, the bill was motivated by a "principle of equality" and not by the numbers of people the law would effect. Those numbers, he said, could be harmful to the debate. "Even if it only concerned 1% of the population," Binet explained, "we

were not illegitimate to … defend [the bill]. I didn't want people to weigh heterosexuals against homosexuals to gauge, to judge, the legitimacy of the text."

Binet's assessment about what is necessary to hear, however, also led him to break with long standing Parliamentary convention and invite people that never appear at hearings. Specifically, Binet's conviction that the public had to hear average citizens directly concerned by the legislation—children of same-sex couples and same-sex couples themselves—overrode the rule that Parliament "can't invite just anybody to a hearing." The *Assemblée Nationale* never invites people who only "represent themselves," he said. Rather, "out of concern for equality and respect for the institution, we [only] hear representatives of [relevant] organizations." His colleagues resisted his decision, telling him there was no place for "personal experience [and] emotions" in the legislature.

Yet, out of a desire to counter the anti-gay parenting messages of conservatives and protestors, Binet, who organized the 2012 marriage hearings at the *Assemblée Nationale*, disregarded tradition and the warnings of his peers. He invited several adult children of gays and lesbians, as well as a few parents and couples, who had spoken out in the press, written to him, or whose names were given to him by gay family organizations. In his estimation, and that of most of the progressive experts I interviewed, this panel was the most successful and important. They told me stories of friends and acquaintances, who saw the hearing on TV, tell them it was moving and effective. For many, it was their first introduction to gay families.

The chronic invisibility of gay families in formal hearings, outside of this important exception, illustrates how institutional logics, specifically tradition and a desire for "equality" and legitimacy in this case, can limit specific kinds of knowledge, such as the personal experience of gay families. Yet, Binet's decision also reveals that, under certain conditions,

including political will and the availability of knowledge and the people to deliver it, lawmakers can sometimes overcome these constraints.

These institutional logics also affect how experts themselves navigate hearings and perceive their participation. My interviews with French experts having been invited to hearings revealed that, like their U.S. counterparts, they experienced hearings as forums where their presence and knowledge are subsumed under political logics. On the one hand, most said it was important to testify when invited to "at least be heard," as Urwicz put it. Hearings were a valuable venue to put their opinions and analyses on the public record. On the other hand, they had the impression that lawmakers were more interested in making a political statement than using their information to modify their legislation. They had the impression that legislators held hearings for form in order to claim they had taken all views into account; they were aware of legislators' desires to create an appearance of a legitimate, balanced debate. Indeed, experts' public stances on gay family issues made them part of a political calculus. They were either there to bolster the progressive majority or represent conservative voices so lawmakers could claim the hearings were fair.

Experts' interactions with conservative and progressive lawmakers are shaped by their positions as de facto representatives of specific sides in a politicized process. Their experiences during the 2012 hearings illustrate these interactions. Interviewees in favor of same-sex marriage and adoption had the accurate impression, which I noted from observing the hearings, that few opposition politicians attended. When they did come, they would come late to the session, leave before it was over and, breaking with Parliamentary decorum, interrupt witnesses during their speeches. Several described feeling unsettled and insulted when Hervé Mariton loudly exclaimed "Rubbish!" and "Nonsense!" as they described their research on same-sex couples during their

allotted speaking time. Conservative lawmakers also rarely asked questions of favorable experts. By essentially boycotting the hearings and attacking experts in favor of the legislation, conservative lawmakers hoped to undermine the legitimacy of the process and discredit expertise they disagreed with.

In contrast, experts opposing same-sex marriage felt supported by conservative lawmakers, many of whom they were also meeting in private, but ignored by the lawmakers running the hearings. The hearings gave these experts a highly visible public platform to express their opinions but came with a price. Their presence helped bolster the notion that the hearings were fair and balanced, which worked to strengthen the position of the lawmakers they disagreed with. This paradox led to expressions of resentment. Neirick, for example, said she was frustrated knowing that she was ultimately "serving as a support [*caution*]" to the process. Many said they knew the Socialists were determined to pass the bill regardless of what they said or the circumstances and therefore, in the words of Dekeuwer-Defessez, the lawmakers only "pretended to listen." While progressive lawmakers felt obligated to invite them, conservative experts felt obligated to attend, both sides hoping to get their messages across.

In sum, formal rules, traditions, and public expectations shape how experts and lawmakers in the U.S. and France negotiate legislative hearings. In France, because hearings have higher stakes and are controlled by legislators in the majority, lawmakers and experts juggle delicate political calculations to negotiate the process while also staking a clear ideological claim on other side. Furthermore, the proximity between the French political, academic, and media spheres allows power relationship established in one field to influence and bleed over into the others.

Conclusion

U.S. and French interviewees faced different sets of institutions, each with its own internal logic, as they provided information to public debates. The demands of each setting and the ways knowledge producers and knowledge users, such as lawmakers, lawyers, and judges, negotiated them have an impact on the meaning, role, and value of knowledge. At the outset, legislators organizing hearings in France and attorneys litigating in bench trials in the United States faced similar tasks. Majority-rules legislative hearings, like those in France, and courtroom trials in the U.S. gave them the power to control which people and information they wanted decision-making bodies to hear. With this power, they became what I call "knowledge gatekeepers." Yet, despite their similar power to select experts, they navigated specific institutional logics that constrained their choices about what kinds of information to hear. Those circumstances shape the meaning and role of expertise in each context and can have an effect on how knowledge is produced.

Legislatures are quintessentially political spaces where lawmakers, especially in formal hearings, use knowledge to justify their process and legitimate a decision they have largely already made. In France's closed system, knowledge gatekeepers worried primarily about creating ideological "balance" across experts, many of whom were selected because of their media exposure, to attempt to defuse their political opponents and quell street protest. They also focused on inviting people, such as religious representatives, who allowed them to claim they had heard all views. As a result, expertise mattered less for its specific content than for its role as part of a broader political calculus. It is difficult to determine whether or not experts, at least in formal hearings, had an impact on the success or failure of French legislation. It is clear, nevertheless, that French lawmakers perceived the hearings as a source of potential political risks

that could make their jobs more difficult—if not actually prevent the law from passing—and worked to invite experts they hoped would minimize them.

In contrast, in courts, lawyers value expertise for its capacity to support specific legal arguments and withstand the critical scrutiny of judges and opposing litigators. In the United States, formal court rules defining who qualifies as an expert and the adversarial system of depositions and cross-examination, pushed lawyers to seek experts they believed could withstand this scrutiny, such as academics and scientists. Experts' fame, media presence, or personal ties to politicians were irrelevant. In this setting, the abundance of research provided by same-sex marriage supporters—both in trials and amicus briefs—may help explain why they succeeded. Because of their success, academic and professional knowledge producers on both sides saw the value of investing in empirically sound, peer-reviewed research.

Institutional logics in legislatures and courts also matter for the ways they represent or distort research in specific ways. In French legislatures, because lawmakers felt obliged or were forced by political circumstances to systematically contrast pro and con views among experts, they created false equivalences. Their hearings gave the impression, for example, that researchers and professionals were very strongly divided on the outcomes of children raised by same-sex couples, which did not represent the state of international research on the subject. Unlike courts, legislatures have no built-in mechanism to control for the idea of scientific consensus. In contrast, in U.S. courts, the weight of pro-gay marriage expertise was an asset to litigators defending same-sex marriage, rather than an obstacle that needed to be "balanced." They could convince the judge that the empirical evidence supported their legal claims. However, court logics, even as they value empiricism, constrain the nuance, gradation, and

subtlety of science and history in order to make unequivocal statements. This can, in turn, leave the impression that research is more clear-cut and definitive than it actually is.

Finally, this chapter highlights that there is a feedback relationship (Campbell 2012; Clemens and Cook 1999) between institutional outlets for expertise and knowledge producers, such as academics and professionals, as well as relationship between the political and academic fields (Fligstein and McAdam 2012). The political role of knowledge in legislatures and the legal role of knowledge in courts create different incentive structures for specific kinds of information. Specifically, in U.S. courts, high quality, peer-reviewed empirical research has concrete applications for court cases, such as *Hollingsworth* and *DeBoer*, that can dramatically impact the legal landscape. That value of that information in the policy field elevates the status of researchers capable of producing it in their academics fields. U.S. advocates and experts on both sides understand that having the research on their side may help them succeed, which also helps stimulate demand for such information. Same-sex marriage opponents, for example, deliberately worked to support and encourage academics to publish peer-reviewed material that their experts could present in court. Progressive experts and advocates were pleased by the court's "vindication" of the science, which encouraged them to continue to produce their knowledge.

In contrast, in French legislatures, the value of empirical research published in peer-reviewed journals is less relevant. Because they put a premium on public recognition and political dynamics, legislatures do not create an incentive among French scholars to produce such knowledge. Rather, they favor experts who take a clear, strong stance in the media regardless of their empirical grounding or scholarly knowledge of the issues. These nationally differing demands and incentives for knowledge and their effect on expertise also depend on the context in which American and French experts work to create their information. It is to these

academic and professional fields—and the ways progressive and conservative knowledge producers negotiate them—that we now turn our attention.

CHAPTER 4
"Experts" in Their Academic and Professional Fields

As shown in the previous chapter, institutional demands and traditions in the media, legislatures, and courts impact how American and French experts and the people who use their information, such as lawmakers and lawyers, deal with and understand the role of knowledge in these settings. Although national differences in the kinds of experts and knowledge that matter in each country are partly the result of divergences in these institutional logics in both countries, this chapter will argue that they are also the result of differences in French and U.S. knowledge production fields. Specifically, French and U.S. academics, intellectuals, professionals and other knowledge producers working on issues related to gay family rights do not have access to the same levels of economic and social resources or recognition in their fields. In the U.S., they have a larger, older, and more institutionalized field in academic disciplines and in the professions. In France, the field is smaller, more contested, and lacking in professional and academic recognition. In addition, experts supporting increased legal recognition for same-sex couples and their families now dominate their fields in the U.S., where conservatives are more marginalized, while in France they have only recently become more prominent relative to conservatives.

Drawing on interviews and observation, this chapter describes how experts on both sides of the debate have carried out their work under these nationally divergent conditions. Their experiences can help us better understand why knowledge producers working on certain issues, such as empirical research on sexual minorities and their families, are more successful in the United States than France.

Knowledge production fields and political interventions

In order to examine the role and place of intellectuals, academics, and their advocate allies in these debates in the U.S. and France, it is necessary to understand the specific legal, political, and social conditions under which they work. Indeed, knowledge producers are best understood when examined as part of a whole where their actions and public interventions are constrained and enabled by their circumstances within their specialty areas and the broader context of their countries (Bourdieu 2002). Drawing on research about political and academic fields (Bourdieu 1993; Bourdieu and Wacquant 1992; Swartz 2013), I investigate U.S. and French experts within their knowledge production fields, such as disciplines within universities or professions. I pay particular attention to the balance between pro and anti-gay marriage stances they encounter, as well as their access to resources, including institutionalization of their topics, funding, and the support of organizations.

In the United States, which is at the center of global knowledge production (Medina 2013), issues around gender, sexuality, and minority families are institutionalized within the academy (Scott 2008). In France, however, such work remains relatively uncommon (Gross 2007; Vecho and Schneider 2005), lacks institutional recognition (Perreau 2007), and is perceived more negatively (Vecho and Schneider 2015). Moreover, because of negative connotations of the United States and discourse about importing "American" ideas into France, people working on such topics can face specific challenges if people perceive their work as imported (Ezekiel 2002; Saguy 2003). Experts who have intervened in public debates, most of whom work on these topics within their respective disciplines and professions, confront these contrasting circumstances in each country.

People who produce knowledge for policy purposes, such as my interviewees, and who share the same policy stance or ideological outlook form "epistemic communities" (Haas 1992; Knorr-Cetina 1999; Smirnova and Yachin 2015). These groups are defined both by their mutual policy goals and the challenges or advantages they face given how their ideological stance is represented in the field overall and the relationships that they create with political and activist allies. Examining these communities in both countries, I analyze, how groups in the ideological minority, such as conservative social scientists in the United States and progressive social scientists in France, navigate marginalization and episodes of "symbolic violence" (Bourdieu 1979) because their work challenges local dominant discourse. I also examine how, when some people change their stances and join the epistemic community of their former rivals, as was the case with some French experts formerly opposed to same-sex marriage, it can generate conflict that affects the field more broadly. These configurations impact the capacity of American and French academics to produce information for the policy sphere.

U.S. Experts in their Fields

Over the last 30 years, research on sexual minorities, same-sex couples, and their children has become well respected and integrated in the U.S. academic sphere. Researchers and professionals focusing on these issues, who initially faced resistance or difficulties, no longer face enduring systematic barriers. U.S. academic and professional fields have also become more supportive of same-sex marriage and parenting. As a consequence, experts in favor of such reforms have entered the mainstream while those against it have become more marginalized. Respondents' stances on these issues thus shape how they navigate and understand the field.

U.S. Supporters: Growing Recognition, Support, and Power In their fields

Relative to conservatives, progressive U.S. scholars and professionals have gained a dominant position within their fields. Their appointments as faculty within prestigious universities, their positions within research centers and professional organizations, and the public or scholarly recognition of their work attest to that place of power. Although they faced barriers at the beginning of their careers or reticence from some of their peers, their stories illustrate how work on gender and sexuality has, over time, become integrated and institutionalized within their fields. Their success suggests that the academic, legal, and social circumstances in the United States made this evolution possible. They could mobilize university resources, support networks, and disciplinary organizations. They also lived in a context where, relative to France, sexual minorities, including same-sex couples raising children, were visible, making it more legitimate to study them.

Most academic interviewees described developing new areas of research on sexual minorities several decades ago. Their work was uncommon and, although it took time and some insistence for their subjects to gain recognition, all eventually found support from colleagues, mentors, and institutions to pursue their work. For example, Gregory Herek's research on the psychology of anti-gay attitudes and their effects was "not a very respected area of study" in the early 1980s, which made it difficult to publish in the "big journals" of his field at the time. However, by the 1990s he was receiving funding from major organizations like the National Institute of Mental Health (NIMH). Analyses of same-sex couples and their children were also relatively limited within family demography until the late 1990s and early 2000s. But, with the growing realization of the importance and utility of research on same-sex families for public debates, according to Gary Gates, demographers and institutions like the Census Bureau have

progressively embraced studying them. That Gates is now on the Scientific Advisory Committee of the U.S. Census, one of the most important data-gathering U.S. enterprises, attests to the legitimization of this kind of work.

Charlotte Patterson, who pioneered psychological research on gay families, also got recognition, enthusiasm, and support when her work was novel. For example, in 1989, she spent a sabbatical year with her partner at the University of California drafting the first review of the extant literature on the outcomes of children raised by same-sex couples, which was eventually published in the flagship journal in her field (Patterson 1992). She attended meetings at the psychology department and the Beatrice Bain Research Group, a feminist studies community. In both settings, she said, fellow faculty told her the subject was interesting and important.

Researchers also received positive support and encouragement from the gay and lesbian communities around them to pursue new work. Visible communities of lesbians raising children from donor insemination she encountered in Berkeley, for instance, inspired Patterson to study them. For Anne Peplau, a professor of psychology specializing in romantic relationships, it was her gay and lesbian students' questions at UCLA in the 1970s about their relationships that prompted her to become one of the first in her field to address those issues. They were, of course, both in relatively progressive parts of the country, which no doubt made it easier for gays and lesbians and their families to be visible and encourage their work.

Sometimes they faced skepticism about their research that stemmed from a concern about the representational or political effects their work might have on LGBT people. For instance, when Ilan Meyer began graduate research in the late 1980s, the accepted discourse was that sexual minorities did not differ from heterosexuals in their risk of psychiatric disorders. But Meyer wondered if "gay people [were] suffering the impact of homophobia" and helped develop

the concept of "minority stress," showing that experiences of discrimination can have negative psychological consequences on sexual minorities. At first, some in his field resisted his work, worried the findings themselves would be stigmatizing or counterproductive. Similarly, Peplau explained how researchers in the earlier decades did not compare same-sex and different sex couples—to avoid, "imply[ing] heterosexuals were the standard,"—but, by the 1990s, studies on same-sex couples had become so well-established that researchers felt comfortable setting up comparisons. Note that this resistance was not about the illegitimacy of studying or disregard for sexual minorities within the field. On the contrary, it originated from those within the field concerned about supporting LGBT people and research about them.

The institutionalization of LGBT issues within professional organizations, often spearheaded by sexual minorities and the people doing work on them, further demonstrates the strength of these subjects in the field and the relative weight of progressive stances. Psychologists, for instance, described the American Psychiatric Association's removal of homosexuality from the list of mental illnesses listed in The Diagnostic and Statistical Manual of Mental Disorders (DSM) in 1973 as a catalyst for positive change. The American Psychological Association (APA), whose important role as a policy shaping body I discuss further below, has supported the work of the psychologists I interviewed and made public statements in favor of same-sex marriage and child rearing (2005). This institutional support is even found in U.S. psychoanalytic organizations where progressive psychoanalysts have used empirical research on same-sex parenting and same-sex couples to neutralize conservative arguments within the organization against gay marriage. Robert Galatzer-Levy, author of a report on same-sex romantic relationships (Cohler and Galatzer-Levy 2000) commissioned by The American Psychoanalytic Association (APsA) described how his colleagues "universally positively"

supported his work on sexual identity and worked with him to steer APsA toward progressive stances. Similarly, the American Sociological Association (ASA) has been relatively open and welcoming to research on sexuality, sexual minorities, and their families. It even mobilized institutional and organizational resources to support public policy debates on same-sex marriage. When Mark Regnerus, published and used a peer-reviewed article (2012) to publically argue against same-sex marriage, members of the ASA's Section on the Sociology of the Family's leadership convinced the ASA to intervene against his work before courts considering gay marriage cases.

Support and institutionalization of work on sexual minorities also extends to U.S. legal scholars and professionals. All of the interviewees in this field suggested that gender and sexual research has become a well-regarded and thoroughly established subfield in their discipline. They described teaching courses on LGBT law, working with well-funded research centers at mainstream universities, such as the Williams Institute, as well as praise and support from colleagues. Unlike their French peers, progressive American legal scholars found themselves in a relatively open, welcoming field that has rewarded and promoted their work, elevating some of them to prestigious positions. For instance, although he described some difficulty as an openly gay professor early on in his career, William Eskridge, one of the pioneers of the field of LGBT law, is now a professor at Yale, currently the highest ranked law school in the country.

The U.S. legal field also provides institutionalized and organized structures for supporters of gay marriage and parenting as well as for gay rights more broadly. They described groups like the LGBT Bar Association, the LGBT judge's association, and many other local organizations supporting their work and fighting for sexual minority rights. Working with these organizations, many of which grew through friendship and support networks that formalized over time, did not

hurt their careers. For instance, Nan Hunter, a professor at the prestigious Georgetown school of law, created a feminist law collective with Nancy Polikoff in Washington during the 1970s, focusing on "employment, family law, [and other] issues of gender and sexuality." She then moved on to work for the American Civil Liberties Union (ACLU) and the Lambda Legal Defense Fund, the oldest and largest LGBT legal advocacy organization (Andersen 2005; Cain 2000; Mezey 2007).

The dominant pro-gay marriage stances that interviewees saw among law professors and professionals today were not always forthcoming. In the 1980s, major law firms would rarely participate, Pizer explained, because, "It was just too controversial and dubious." Since then, however, "There's been such a shift over these years from the early days when mainstream law firms would not touch gay rights work," she said. According to Eskridge, same-sex marriage is "embarrassingly…accepted" among law professors now. To Terry Stewart, "The legal community's been really on the forefront in many ways of LGBT equality." She described how, when she was a private practice lawyer and president of the San Francisco Bar Association, "we got the bar to adopt the policy advocating for firms to provide domestic partners benefits." Similarly, according to Jennifer Pizer of Lambda Legal, even major mainstream law firms are willing to lend financial support to gay marriage and family litigation or organizations.

The former stigma of gay rights, which prevented mainstream firms from publicly participating in gay rights reforms, has reversed. "The major law firms are insistent on being able to [produce]…amicus briefs in the marriage cases with a sense…that if they're not visibly present, their ability to recruit…[and hire] will be impaired," Pizer explained. If these firms do not take a stand, or worse, take a stand against same-sex marriage, it could hurt their public image. Newer generations of law school students, who were exposed to LGBT legal issues in

their training and are more open-minded then their predecessors, are more likely to seek employers who participate in progressive legal reforms for sexual minorities. Stewart said that at this point, no major law firms publically support an anti-gay stance and conservative advocates have to find attorneys outside of such firms to support their efforts.

In sum, American interviewees, even those that were openly gay and unabashedly studied or worked with sexual minorities, same-sex couples, and gay families, occupied powerful and well-regarded positions in their disciplines. Furthermore, their work has become a legitimate and fully recognized part of knowledge production institutions, such as universities, research centers, and agencies. Their academic and professional organizations supported them and have even engaged in public policy debates.

U.S. Opponents: Institutional and Professional Marginalization

In stark contrast, American experts against same-sex marriage have experienced increasing marginalization within their fields. As progressive stances and research on sexual minorities and families have grown, people espousing "traditional" family views have lost a platform for action and space for expression within mainstream American universities and professional organizations. U.S. conservatives created alternative parallel structures to traditional academic institutions and worked with their allies in the academy. Moreover, unlike the French university system, conservative or religiously affiliated groups have created their own large and well-funded universities, such as Liberty University in Virginia, founded by Evangelical Christians, and Brigham Young University in Utah, founded by Mormons. They have also developed alternative professional and advocacy organizations to create spaces to collaborate with people who share their views.

Stories of the challenges facing academics who support traditional marriage were a reoccurring theme among conservative interviewees. For instance, Maggie Gallagher, an activist, writer, and former director of the National Organization for Marriage (NOM), the largest U.S. anti-gay marriage organization, observed that "the academy is closed or extremely difficult to navigate" for her conservative academic allies. Her work in the religiously affiliated "marriage movement," which has sought to discourage divorce and promote heterosexual marriage to remedy social problems (Heath 2012), has led her to establish working friendships to academics within universities and seen their difficulties. For example, she described how Bradford Wilcox experienced challenges to his tenure at his university, despite his publication record in top sociology journals, such as the American Sociological Review (1998), because of his work with the marriage movement. Academics who have unpopular views in a progressive-dominated field must navigate "dangerous waters," in Gallagher's words.

All conservative interviewees described "attacks" on Mark Regnerus as an illustration of these dangers. William Duncan, who has worked at several conservative marriage law organizations at private religious universities, such as the Marriage Law Project at the Catholic University of America, described a "whole industry of people," working to undermine and delegitimize Regnerus because his findings were published in a respected peer-reviewed journal (2012) and thus carried policy weight. Though I could not verify it independently, several conservative interviewees told me that his departmental colleagues had ostracized Regnerus and called on the university to block his career. As described elsewhere (Moore and Stambolis-Ruhstorfer 2013), sociologists, including Gary Gates, organized a campaign to force the journal to investigate the peer review and editorial process behind the publication of his article. The swift, strong, visible reaction of the ASA against Regnerus's public policy stance illustrates the

mobilization of the academic mainstream against a politically active anti-gay marriage social scientist.

These reactions demonstrated to conservative interviewees that progressives in their fields had institutional and social resources to organize against a perceived threat; they sent a clear message to conservative scholars. For example, Lynn Wardle, a law professor at Brigham Young University said attacks on conservative academics, particularly in the social sciences, are designed to dissuade others from speaking out. Regnerus as been "punished" in part to "send a message to other academics that if you come down on this side, here's what you can expect in the way of reaction," he explained. These conservatives say their allies, such as Mark Regnerus, who use the scientific system to publish work to influence the policy debate, are unwelcome in a U.S. knowledge production field dominated by progressives.

In addition to punishment, some conservative scholars described being ostracized and ignored. Jennifer Roback Morse, for example, who was an assistant professor of economics at Yale and an associate professor at George Mason University before founding a think tank affiliated with the marriage movement, the Ruth Institute, said most of her colleagues disregarded her work. Before advocating against same-sex marriage she argued in her work that liberal economic logics, when applied to families, undermine their strength and social benefits (Morse 2001). While her work resonated with religious organizations and people outside the academy, her economics colleagues discounted it. Similarly, Douglas Allen, was shut out of the mainstream academic community when he and some colleagues decided to publish flaws (2013) they perceived in Michael Rosenfeld's (2010) work on the outcomes of children raised by same-sex couples. Collaboration with progressive colleagues was impossible. He said that, he and his co-authors "contacted all of the major players asking them for their data, and over the years, I've

sent papers to these people for comments, or I've asked them questions about their work and other details, and over all the years *not a single one* has ever replied [his emphasis]." This example of exclusion illustrates the degree to which conservative scholars find themselves on the margins of academic space. However, the fact that Allen and Regnerus could publish their work in highly ranked peer-reviewed journals does suggest that they have some access to scientific debate, even if they feel otherwise excluded.

U.S. conservative experts said they felt increasingly isolated and stigmatized in their fields. As Eskridge explained, among his law professor colleagues, "Almost nobody…will sit up and say I think gay people ought to be excluded from marriage. Some might believe it and would vote that way in private, but almost no one will say that in print or publically." These traditional marriage supporters' stories highlight their marginalization within mainstream academic and professional institutions as well as growing distance from majority public opinion. To overcome this exclusion, they have created their own spaces to share ideas and provide knowledge to the public policy sphere.

French Experts in their Fields

In contrast to the U.S., France's knowledge production field is small and mostly concentrated in one city, Paris (Bourdieu 1984; Fourcade 2009; Musselin 2013; Sapiro 2009). Reflecting that difference, during my fieldwork in France, I quickly became aware that everyone knew each other; that friendship and acquaintance networks overlapped; and that the same groups of people saw each other across personal, academic, and political contexts.

The field is also conflictual and relatively hostile to research on sexual minorities and their families. In France, unlike the U.S., it is supporters of gay family rights who face specific

social, institutional, and political barriers that make their jobs especially difficult. Whereas some of their American peers faced barriers at the beginning of their careers, French difficulties have endured and only recently begun to change. Conservatives, though facing growing marginalization and an ideological and political shift away from their stances, remain in influential positions.

French interviewees on both sides of the debate were also aware of the institutionalization of women's, gender, and sexualities studies in North American universities and professional organizations. People studying these subjects, particularly those in favor of increased legal recognition of gay families, said their perceptions or experiences with the North American field made them particularly aware of how their work is stigmatized or ignored in France. Daniel Borrillo, for example, a long-time gay rights supporter and law professor, found no support in favor of same-sex marriage from his French jurist colleagues but, as an invited professor at Boston College in 1997, he discovered the "immensity" of favorable U.S. and Canadian legal arguments. Even conservative scholars observed the lack of institutionalization of research on minority families and sexuality as compared to the U.S. For example, speaking about the legal scholarship field, Françoise Dekeuwer-Défossez—a legal scholar who has supported sexual harassment law and women's rights but believes parental sex differences are essential for marriage and childrearing—said, "It's not imaginable in France to open a course on LGBT oriented law." Other scholars also said their work was more recognized outside France. For instance Maurice Godelier, a famous French anthropologist, explained that even his work on family transformations is better accepted in the United States "where you have a veritable [literature on] 'gay kinship, lesbian kinship,' with dozens of books that sell well." These scholars found support for their work in the United States, the global center of knowledge production,

where their work fits within established ways of thinking. In France, however, their work was marginalized. Comparing their home circumstances with those in the U.S. accentuated their experiences of challenge in their fields.

French Supporters: Institutional Weakness, Gay Family Invisibility, Conflict, and Change

Lack of Institutional Support, Marginalization, and Symbolic Violence

French academics and professionals doing research on sexual minorities, regardless of whether they are for or against same-sex marriage, have faced chronic skepticism from their peers and institutions. They conducted research on marginal topics, like their American peers, but did so in a hostile environment resistant to their ideas and methodology. They not only faced criticism from conservative opponents to legal recognition of same-sex couples and parenting, they also had to navigate a field in which their topics were perceived as foreign and illegitimate.

For instance, Stéphane Nadaud, a child psychiatrist and psychoanalyst, defended one of the first French dissertations on the wellbeing of children raised by same-sex couples in France in 2001. He interviewed same-sex couples raising children using standard measures and techniques common among U.S. child psychologists when researching childhood outcomes, such as the Child Behavior Check List. Much of the press publicized the results of the book in which he found that children raised by same-sex couples have similar results on standardized measures as their peers raised by different-sex couples. Yet, the responses to his publication were generally critical (Garnier 2012). Nadaud's supporters described how well-known psychoanalysts, such as Caroline Eliacheff (2001), accused him of being naïve about gay parents who, she argued, "manipulate" their children so they appear to be more well adjusted than they actually are. Her decrying the findings and delegitimizing the research topic typified the reactions of

psychoanalysts at the time, many of whom spoke out against gay parenting. According to Martine Gross, Naduad's critics also attacked his empirical methodology, which departed from psychoanalytic orientations of his French colleagues at the time, because they did not understand it. These kinds of hostile reactions were typical of those experienced by French scholars studying gay families and couples.

Other researchers experienced difficulty securing funding, systematic erasure in their fields, and episodes of symbolic violence as they confronted and navigated this environment. Scholars having defended their dissertations in the last 15 years, for example, made repeated demands for funding for research that had gone unfulfilled. Family sociologists, they explained, took for granted that "family" meant heterosexual families. Several cited the remarkable omission of any discussion of gay families in François de Singly's authoritative *Sociologie de la Famille Contemporaine* until the 3rd edition (2007), despite the fact that he already been in touch with a gay family organization and had chaired Virginie Descoutures's dissertation on lesbian mothers (2010).

Even senior scholars, such as Anne Cadoret, encountered symbolic violence when they began to study gay families. She described how her anthropologist colleagues "sometimes [reacted] very violently" when she began studying gay families in the early 2000s. During a seminar at the *Collège de France*, one of her colleagues shouted at her to "stop talking" because the colleague "could not stand what [she] was saying." Their hostility to Cadoret's research stemmed from how it made the parenting styles and systems of gay families seem "banal."

Those in the legal field also described institutional refusal to recognize their subject matter, outright rejection from peers and mentors, threats to their work, and an environment dominated by conservatives. One jurist, who studies surrogacy law and did not want to be named

on this issue, told me that the law professor who mentored her during law school recently told her she works on, "perverted subjects." Borrillo was warned by fellow law professors that analyses of sexual minority issues "were illegitimate questions" and that he would "face lots of problems." These warnings were substantiated by the stories of other interviewees who described the generally conservative attitudes that dominate the French legal sphere. Several cited the example of an open letter written by 170 jurists—law professors, lawyers, and magistrates—to the *Sénat* in protest against the marriage and adoption bill (AFP 2013). Because "very well-known law professors at the *grandes universities*" signed the letter, it left progressive law scholars, such as Laurence Brunet, feeling especially marginalized in their field.

Gay Family Invisibility

The social, political, and scientific erasure of gay couples and their families has been a lasting feature of the French—but not U.S.—case. Indeed, while their U.S. peers could work in an environment that made these groups visible, French scholars have not only faced institutional barriers in the academy but also the social and legal invisibility of gay couples. Gay family invisibility in French media and political spheres, described in previous chapters, is both a symptom and cause of their illegitimacy as research subjects. Legal bans on gay parenting made it difficult for French gays and lesbians to have children as couples. It also made it difficult for them to collaborate with researchers to provide information about their experiences and those of their children.

Despite the ongoing and historical efforts of France's two major gay family organizations—the APGL and the ADFH—to work in tandem with researchers and make policymakers aware of gay families, most of the people I interviewed, including gays and

lesbians, said gay families have been socially invisible. This was true, even as late as the last few years. For example, in the words of Erwann Binet, the lawmaker responsible for organizing legislative hearings in 2012, gay families were, "totally abstract and inexistent in the minds of the French … For them, homosexuals could not have children." The marriage debates were thus an opportunity for major social visibility, but did not come until very recently and in a context of anti-gay public protest.

The invisibility of same-sex couples raising children has been compounded by the exclusion of the APGL—the first French gay family organization—and later the ADFH from organizations that could have facilitated both their legal and social acceptance. Both have unsuccessfully sought representation in the *Union Nationale des Associations Familiales* (UNAF) [National Union of Family Associations], a federation of French family associations of different religious and social orientations. Since World War II, it enjoys a government mandate—as well as generous public funding—to act as the privileged interlocutor to the state as the representative of all French families (Robcis 2013). Until the last two years, gay family association petitions to join have been consistently rejected by the UNAF. Thus, at the time of the marriage hearings in 2012, the organization meant to represent all French families included no organizations speaking for same-sex couples and their children. Moreover, its representatives argued to lawmakers during the hearings that same-sex couples should not be allowed to marry or adopt (UNAF 2012).

During the late 1990s, at the time of the Pacs debates, gay family invisibility was even more acute than it was before the marriage debates. Almost all of the French experts active in the debates at the time, including those who conducted research with the APGL remembered the late 1990s as a time when few imagined that gays and lesbians wanted or already had their own

families. Indeed, both Stephane Nadaud—who is gay—and Anne Cadoret, each of who had studied families at the APGL, said gay parenting was "not a visible phenomenon." Even among activists and gay family organization leaders, the notion that children could have two mothers or two fathers, as opposed to, say, a mother and her partner, was uncommon. Like Marianne Schulz, they suggested that same-sex couples were "censoring themselves," because of the political and legal context, which made gay parenting impossible. Even Martine Gross, who has seen the changing status of gay parenting in France as the former president of the APGL and as a sociologist pioneering French empirical research on gay families, confirmed that gay parenting was, to a large extent, underground in France in the early 1990s. She suggested that the idea of raising children as a same-sex couple seemed impossible not only legally but also intellectually. Except for her and her partner, "…there were very few people who were trying to have children after having already accepted their homosexuality," she explained.

According to Gross, perspectives at the APGL began to slowly change in the mid-1990s when the Hawaii Supreme Court issued a ruling in favor of gay marriage. The court justified its decision citing expertise—including Charlotte Patterson's—confirming the wellbeing of children raised by same-sex couples. It was eye-opening for Gross and other APGL members that the Hawaii court, "was for marriage because [same-sex couples] were good parents." Not only did this change their minds about their own families, it also demonstrated how gay family visibility among researchers could impact gay family rights. At this point, Martine and her colleagues created the neologism "*homoparentalité* [gay parenting]" to describe their experiences and make them legible to the media and academics (Gross 2007). The APGL also created a series of initiatives to try and attract scholarly attention based on the assumption that if they could get recognized scientists to start acknowledging and studying gay families, it would give them more

legitimacy and political leverage (Gross 2007; Peerbaye 2000). For example, Gross wrote letters to all French research units and scientists studying family and childrearing asking them if they would were interested in studying gay families. Yet, despite these efforts, "They weren't interested [because]…it's about gays," she said. Gross received two positive responses, one of which was from Cadoret, but, as we have seen, unlike in the U.S., the French academic community was not a conducive environment even for those few scholars willing to conduct novel work.

Internal Conflict

In addition to marginalization and gay family invisibility, the French field is characterized by historic and enduring conflict between and among scholars and activists who currently support gay family rights. This conflict is fundamentally about several especially prominent and politically connected experts who changed their stances to defend same-sex marriage in the early 2000s. Although they are now strong supporters, before shifting positions, they vocally opposed allowing same-sex couples to marry and legally be co-parents, which put them in direct opposition with their peers who already had more progressive stances.

Unlike in the U.S., where few academics and intellectuals have gone from fighting same-sex marriage to supporting it, in France, several well-respected and politically connected experts on the Left, including Françoise Héritier, Maurice Godelier, and Irène Théry, did. For example, before becoming a pro gay-marriage advocate, Théry was an opponent of marriage and the Pacs in the 1990s. "…We must continue to refuse homosexual marriage," she explained in an interview to *Le Monde,* "because matrimony is the very institution of sex differences, linking together the couple and *filiation* through the presumption of paternity, which is the heart of

marriage" (Aulagnon 1997). She favored a solution that would preserve reproduction and childrearing for married couples—by her definition heterosexual—and acknowledge the "reality of the finiteness of [homosexual] relationships." She proposed creating civil unions limited to same-sex couples—unlike the Pacs, which she also publically opposed—that would provide legal recognition, but "not open the right to adoption or assisted reproductive technologies."

The conflict thus originated at a time when there was a clear demarcation between these key, influential scholars, who had relatively conservative stances, and other progressive academics who supported the Pacs and full marriage equality. Therefore, in the last decade, experts who had always supported gay family rights—especially those who were politically active, such as Daniel Borrillo, Éric Fassin, and Didier Eribon—found themselves on the same side as their former political and academic rivals. Some differences between them, notably on the question of donor anonymity, remain (Borrillo 2011; Théry 2010). This was also true for advocacy organizations, such as the APGL, HES—the LGBT group within the Socialist Party—and *Aides*. During the Pacs debates, these groups had complicated relationships with Théry because of her opposition to marriage and parenting. Yet, once she changed her stance, these organizations found themselves supporting her and relying on her political and academic influence.

Many interviewees described the origin of the division and rivalry within the field around the time of the Pacs debates, before Théry and others changed their stances, and when both sides were openly fighting with each other in the press as well as in public and academic conferences (Borrillo and Fassin 2001; Borrillo and Lascoumes 2002; Gross 2007; Prearo 2014; Robcis 2013). In particular, they described a two-day conference in 1999 on gay couples and parenting, hosted by the APGL, as an especially striking example. At the conference, Irène Théry, Éric

Fassin, and Daniel Borrillo confronted each other in a debate about whether supposed sex differences between men and women justify prohibiting same-sex couples from joint-adoption and full marriage rights or whether principles of equality trump such considerations (Peerbaye 2000). The debate, which was "explosive" and dramatic according to several interviewees, led Fassin, Borrillo and their supporters, to leave the conference the next day and not publish in the proceedings. They were also simultaneously organizing their own conferences, one in 1998 and another 1999, which involved a critique of the role of experts, including Irène Théry, in the Pacs debates. They also published several academic articles developing these arguments (Fassin 1998, 2000a, 2000b) and an edited volume (Borrillo and Fassin 2001). At the same time, Théry was reiterating her critiques of them, for example, in an interview with the French intellectual journal *Esprit* (Abel et al. 1998).

As a result of this personal, public, and political conflict, interviewees on both sides described episodes of career blockages, negative professional side effects, and defamation from their rivals. Substantiating the veracity of these claims or the reality of who suffered worse consequences is not my objective. Rather, I argue that ill-will generated by this conflict has reverberated beyond the individuals involved; it effects the French field more generally because it still requires French academics and advocates to situate themselves on one side or the other. It has made life more complicated for French knowledge producers because it created political tension in an already small and marginalized field where everyone knows each other. All French interviewees mentioned these tensions and said they felt like they were caught in a political and ideological battle where they were expected to take sides. I did not observe this kind of fracture and contention in the U.S. case where, on the contrary, interviewees supporting same-sex

marriage expressed solidarity with each other, even if they acknowledged some ideological differences.

Gradual Change

In the last decade, Françoise Héritier, Maurice Godelier, and Irène Théry have become intellectual advocates for same-sex marriage, adoption, and access to artificial insemination for lesbians and ethical surrogacy for all couples. They have used their influence in the media and among their friends and connections within the Socialist Party to push for these positions. Although the ramifications of the conflict over their previous stance persist, that major academic voices who publicly argued against the Pacs are now strong advocates for same-sex marriage has helped accompany other ideological shifts. Interviewees saw growing acceptance and public support, for example, from psychoanalysts, who had traditionally been aligned against them.

Progressive experts have also observed institutional change in the French knowledge production sphere. They suggested that some professional and academic domains, particularly in the social sciences, were also gradually becoming more open to research on sexuality and gay families more broadly and formalizing that work in research units. Several provided examples of new large-scale research studies initiated in the last few years and described new sources of funding, such as the *Institut Emilie de Châtelet*, which provides dissertation grants, funds research, and sponsors conferences on gender and discrimination. Finally, attesting to growing recognition, in the last 5 years several scholars and professionals working in these areas, including Martine Gross, Caroline Mécary, and Irène Théry have been decorated with symbolic national honors, such as the Order of Merit and Legion of Honor.

French Opponents: Waning Dominance

Like their American counterparts, French interviewees not supporting access to marriage and parenting for same-sex couples have become increasingly marginalized within their fields. Nevertheless, their experiences contrasted with American conservatives in several key ways. First, although they are among the minority socially, the have not experienced the same degree of exclusion within their fields that U.S. conservatives described. In fact, in contrast to the U.S., conservative law scholars still dominate the French legal field. However, French conservative legal scholars who study families faced some issues of delegitimization as their progressive French peers. Family law, they said, is not as prestigious as other subfields in their discipline. Nevertheless, because their ideological stances were still dominant, they did not experience the same kind of symbolic violence as progressive law scholars and other academics. Second, unlike American conservative scholars and professionals, they do not have well-funded conservative universities and organizations as resources to carry out their work.

Fading Conservative Dominance among Legal Scholars and Professionals

French scholars not supporting same-sex marriage gave the impression that the French political and academic fields on the questions of same-sex marriage are beginning to shift away from their stances. For example, Françoise Dekeuwer-Défossez, a family law professor, said "Times have changed in France. There aren't tons of intellectuals on the right." They cited how scholars who used to share their views on marriage and gender, such as Irène Théry and Françoise Héritier, have shifted over the years, leaving their anti-gay marriage colleagues behind. These changes, they argued, were either based on "a progressive or historicist," way of seeing the world, in the words of Thibaud Collin, or they were political. As the Socialist party—with which Théry, Godelier, and others were aligned—adopted same-sex marriage in its

platform, experts on the left that did not also evolve, such as Sylviane Agacinksi, became politically isolated.

Yet, although some public intellectuals have shifted to the left, conservative academics within the legal field—both law professors and lawyers—have maintained their dominant positions. Claire Neirinck, an institutionally powerful law professor, and outspoken critic of same-sex marriage, illustrates that position. Unlike her U.S. colleagues, she has not suffered because of her public stances. She is a distinguished family law professor at the *Université de Toulouse*, a member of the editorial board of the flagship journal in her specialty, *Droit de la Famille*, and author of the adoption sections in the civil law edition of *JurisClasseur,* the reference manual for legal professionals. Her position is tenable because of conservative dominance in the French legal field. Indeed, confirming the observations of the liberal colleagues in the legal field, conservative law professors, such as Dekeuwer-Défossez, argued that "among jurists, there are lots of people on the right."

The open letter signed by 170 jurists against same-sex marriage, including Neirinck and Dekeuwer-Défossez, is an example of the enduring conservative strength within their discipline. Its organization and development highlight the involvement of conservatives across generations and ranks. Dekeuwer-Défossez described, for example, a group of early career law professors, including Aude Mirkovic, Clotilde de Ponse Brunetti, and Jean-René Binet who were active in organizing the petition drive and letter writing, which they conducted discreetly through a private electronic network. This discretion was necessary, she said, because, "several judges, especially those on the *Conseil d'État*, [have] a duty of silence that totally forbids them from any form of participation in the public debate."

Although they remain dominant within their fields, some conservative law scholars did express concern that their views could eventually become problematic in the face of growing social and legal acceptance of gay families. Dekeuwer-Défossez respected her younger colleagues who spearheaded the open letter drive. "Despite being at the beginning of their careers, [they launched] themselves into something that could nevertheless be very costly for them…especially for the assistant professors [*maîtres de conférence*]," she said. It was a risk to take a stance against same-sex marriage because they knew they were fighting a losing battle. Indeed, both Dekeuwer-Défossez and Neirinck felt they could both be more vocal about their opposition because of they were close to retirement. Neirinck, for example, said, "I have nothing in particular to prove and, second, I think that when you have nothing to prove or when you don't have to carry that weight for an entire career, it's easier…" These concerns thus suggest that their dominance is on the wane or, at the very least, that their conservative views could become more professionally stigmatizing. Indeed, because these scholars were willing to talk to me, it is reasonable to assume that those who did not may already experience such stigma.

Despite their relative ideological dominance in their fields, French conservative legal scholars studying family issues were marginalized in some ways that resembled those of their progressive peers. They described how in the 1970s, family law was not, in the words of Dekeuwer-Défossez, "a very fashionable subject." "Women and children basically weren't considered law," she said. Similarly, Hughes Fulchiron told me his colleagues still look down on family law, but that this disregard can be overcome by extending one's family scholarship to inheritance and property rights or international private law, which are more "noble" subjects. However, unlike their progressive counterparts, conservative law scholars—whose stances on the

issues put them in alignment with the majority of their colleagues—did not experience symbolic violence and rejection.

Although it may be stigmatizing, family law's particular nature at the intersection of politics and knowledge has given conservative scholars a platform to speak out on policy decisions. Fulchiron said that issues in family law, "are very bizarre [subjects] at the boundaries of law, morality, and sociology, where one can have a discourse that is more moralistic than legal or a discourse that is more sociological than juridical." Precisely because, "it's not only technical [but] … also symbolic," family law scholars can act as voices of moral opposition to changes they disagree with. For example, Dekeuwer-Défossez said that once advances in biomedical technologies, such as artificial and in vitro fertilization opened up new ways to procreate and found families, she found new esteem within her field. "At that moment, we needed law to tell use what was licit and what was illicit. We found a need for law to impose limits and define structures," she said. Medical advances created opportunities for conservative French family law scholars to weigh-in on policy decisions about which people—in this case, heterosexual couples—they believe should be allowed to access them.

Conservative Psychoanalysis on the Wane

Mirroring progressive observations, conservative mental health practitioners have lost ground as the dominant force in their field on questions of marriage and parenting for same-sex couples. Though they maintained important positions within professional institutions and state agencies, their views were increasingly challenged by liberal opponents and abandoned by those who used to listen to them. Psychiatrist and psychoanalyst Christian Flavigny, for example, said his peers who agreed with him offered support in private but "let him go to the fire" in the media

and before lawmakers. He described his declassification as the result of an invasion of "gender theory" from abroad. His public opposition no longer resonates as it used to because this import, "which comes from the United states [and] is a way for communitarian American homosexuals to twist a psychological theory to them, [has taken] hold on France." Framing this loss of dominance this way allows Flavigny to more easily rationalize his stigmatization as the fault of foreign others. Yet, the decentering of conservatives within psychoanalysis is primarily the result of growing vocal opposition from progressive French psychoanalysts who have undermined their public interventions.

Psychoanalyst and psychiatrist Pierre Lévy-Soussan told me that on the whole, psychoanalysis has lost its place as France's moral compass and its capacity to influence French intellectuals. Indeed, its critics, such as the prominent historian of psychoanalysis, Elisabeth Roudinesco, have been successful in reducing the salience of psychoanalytic discourse in the media and political spheres. She has made "permanent enemies in the psychoanalytic milieu," she said, because, in the last few years, she went on the evening news—which is a cultural institution in France—to say that psychoanalysts needed to stop abusing psychoanalysis in public debates on marriage and family. Similarly, by changing their stances to favor same-sex marriage and parenting, the prominent French experts who originally fought against the Pacs using psychoanalytic arguments, signaled the waning influence of conservative psychoanalysis.

In sum, French conservative experts no longer occupy the terrain alone, their stances do not go uncontested, and those who oppose them have gained in notoriety. Nevertheless, the media and decision-makers continue to solicit their views and they continue to work in important institutions, such as major hospitals, state agencies, and governmental advisory boards. Indeed, despite the relative marginalization of family issues in the field of law, conservative law scholars

have been able to use government reports and other platforms to express their ideological dominance in the field to lawmakers.

Conclusion

Drawing on interviews with and observations of the people and groups who work and intervene publically on the issues of same-sex couples' partnership and parenting rights, this chapter reveals striking differences between the American and French fields. In the United States, where gay families and same-sex couples have been visible in some more liberal jurisdictions for decades, scholars and professionals have worked together with advocates to pool their knowledge into large, professional, and institutionalized organizations. Within universities and professional spaces, people who support gay family rights and study these issues are no longer on the margins of their fields. They have institutional resources and the backing of their respective academic and professional organizations that also intervene on their behalf before decision-makers. At the same time, U.S. experts who advocate against same-sex marriage have organized alternative resources within their own institutions to produce information in the face of isolation and displacement from mainstream academic and professional spaces. When they have used traditional avenues of knowledge production as platforms for conservative political action, such as Mark Regnerus, who used his article published in a respected journal as a basis for public anti-gay marriage claims, they face swift backlash.

In France, even though the situation is gradually changing, researchers and professionals working on sexual minorities have faced steep challenges carrying out their work. The chronic social invisibility of gay families, which has hindered French research, is symptomatic of the systematic delegitimization of such topics within the knowledge production field and the lack of

academic and professional resources that goes along with it. Without structural support both within universities and professional organizations to channel and coordinate their efforts, experts advocating same-sex marriage have had to navigate a small field characterized by informal networks and conflict generated by ideological differences among prominent people who are now on the same side. These circumstances have hindered their ability to mount coordinated and institutionalized efforts to study gay family issues and bring that information to decision-makers. On the other side, experts advocating against same-sex couples have faced growing displacement as the ideologically dominant group within their disciplines and professions. Nevertheless, relative to their U.S. counterparts, they still occupy important positions within quasi-state organizations, which facilitates their access to and influence in public debates.

I do not suggest that the U.S. field among progressive scholars and intellectuals is devoid of conflict. On the contrary there is a long history of debate between radical and moderate scholars and advocates, many of whom occupy dual positions in the academic and activist groups, over the merits of same-sex marriage (See for example: Barker 2103; Warner 1999). However, save for the exception of David Blankenhorn (2012), none with major prominence has politically and academically advocated barring same-sex couples from equal access to partnership and parenting rights and then changed their stances. In France, experts associated with the political left, and the Socialist Party in particular, have. And, because of those close political ties and the small size of the French field, on the one hand, their changes have encouraged recent progressive political and academic changes, but, on the other, they have also created tension among those who now find themselves on the same side.

In addition to material problems, experiences of symbolic violence and stigmatization were reoccurring themes across the interviews. Progressive and conservative knowledge

producers, professionals, and advocates in both countries told stories of experiences of victimization. However, reflecting the relative ideological balances in their fields in both countries, these stories were most acute among U.S. conservatives and French progressives. Indeed, while supporters of same-sex marriage and parenting rights in the U.S. told stories of issues they experienced, many of these were episodes from the more distant past. Among their peers—if not necessarily among the general public more broadly—they said they felt supported and valued. The stories of U.S. conservatives of French progressives, however, were similar in many ways. Both groups told stories of public character assassination, skepticism from their peers, and belittling. For conservatives in the mainstream U.S. academic and professional circles I observed, their experiences suggest that the inversion of gay stigma (Fassin 2005)—when anti-gay stances rather than pro-gay stance are discrediting—is the norm. In France, progressives' experiences of symbolic violence because of their work on sexual minorities and their pro-gay stances were more recent than those of their American peers.

The differences between French and American proponents in their experiences of marginalization may be a question of time. Many respondents suggested that France was "catching up" to the United States. The growing acceptance of research on gender and sexuality, as well as the increasing visibility of LGBT people and gay families—not to mention the legalization of same-sex marriage and adoption—do suggest change. Nevertheless, without the high demand for policy expertise that has sustained knowledge production in the U.S., as well as conservatives' efforts to paint "gender theory" as a dangerous American import (Chetcuti 2014; Fassin 2014a)—as they have done also done with other feminist issues (Ezekiel 1996; Saguy 2003)—French challenges to progressive knowledge production are likely to persist.

Evidence from this chapter suggests that the global circulation of knowledge and distribution of ideological stances in both countries has encouraged conservative American experts, on the one hand, and progressive French experts, on the other to seek support for their ideas outside of their home settings. Lynn Wardle, for example, found support for his conservative ideas in the ISFL, where he interacted with his French colleague, Hughes Fulchiron. Similarly, Daniel Borrillo described feeling much more supported by law professors and legal professionals in Canada and the United States, especially in the 1990s and 2000s, where he discovered a body of legal research supporting his pro-gay marriage stance. However, the extent to which they can use what they learn in those contexts depends on the policy knowledge outlets in their own countries. It also depends on their ability to access to the policymaking sphere and the direct relationships they develop with decision-makers or with advocacy and professional organizations that mediate that access. It is too these channels between knowledge producers and decision-makers that we know turn our attention.

CHAPTER 5
"Experts" and their Connections to the Policy Sphere

In the late 1980s, American psychology professor, Gregory Herek, was publishing on the psychology of homophobia and homosexuality when acquaintances at the ACLU's Lesbian and Gay Rights Project reached out to him to find out about the extant research they could use in upcoming litigation. As he reviewed the literature for them, he began working within the American Psychological Association to pool psychological research findings that the organization could deliver to the policymaking sphere and other advocacy groups. Overtime, according to Herek, "the APA [has] really been very important" in organizing and institutionalizing this practice of distributing research to decision-makers. "It's amazing how big of a role they've been willing to play," he explained.

In contrast, in France, even as recently as the last five years, professional organizations have been largely silent on gay family rights issues. According to the anthropologist Anne Cadoret, French mental health and social science associations and societies do not get involved in the political decision-making process. "It's not their habit [or] their way of being. They don't make that commitment," she said. Without professional organizational support, Cadoret worked with other social scientists who had direct, personal connections to lawmakers in order to bring her information to the policy-making sphere.

These examples highlight the ways in which U.S. and French experts rely on different forms of networks, channels, and organizations in order to access the policy sphere and interact with decision-makers. Building on the previous chapters' findings about the academic and professional fields in which progressive and conservative knowledge producers in both countries work to create their expertise, this chapter focuses on the paths they take to deliver that

information. It asks: How do academics, professionals, and advocates organize themselves to provide knowledge to decision-makers and influence them? What kinds of social and institutional resources do they have at their disposal in that delivery process? What role, if any, do professional and activist organizations play? The answers to these questions help explain why certain kinds of experts and expertise are more or less successful in providing information to the decision-makers.

As described in Chapter 3, interactions between different categories of experts and decision-makers can take multiple forms depending on the institutional context, each with its own power dynamics, rules, norms, and forms of access (Zald and Lounsbury 2010). Access to courts and legislatures require that experts and decision-makers connect with one another. In the United States, these connections—as well as interactions between experts, decision-makers, and the media more generally—have become progressively institutionalized (Medvetz 2012). This is partly the result of the high barriers to access to courts as well as the need for organizations to handle the sheer number of jurisdictions in the U.S. federal system. This chapter explores how these factors matter for experts and advocates working on gay family rights in the U.S.

In contrast to the U.S., unmediated interpersonal interactions and close ties between experts—especially intellectual elites—and politicians have been a historically defining feature of the French case (Bourdieu 1984; Charle 1990; Kurzman and Owens 2002). Indeed, because of its small size and concentration in Paris, the French intellectual field is at the intersection of knowledge production, the media, and political decision-making (Fassin 1998; Sapiro 2009). These personal relationships can be the reason why French lawmakers have asked certain academics and intellectuals for personal advice—as we saw in Chapter 3—or commissioned them draft official reports on French family law. As this chapter will show, thanks to these

relationships, some experts can become full-fledged political counselors, "prophesying" social outcomes of potential reforms (Sapiro 2009).

Findings: U.S. and French Experts and their Channels to the Policy Sphere

In addition to their distinct positions within their fields, U.S. and French knowledge producers also faced nationally specific ways of organizing themselves to access policy debates. Compared to the French legal and political sphere, the U.S.'s is much larger and affords many more opportunities for reform. With the courts and legislatures on both the state and federal levels, proponents of same-sex marriage have constantly needed information and expertise to engage in the debates. This situation has lent itself to the development of powerful, well-funded, organizations to satisfy the demand for expertise on both sides. These groups worked as pipelines between knowledge producers and decision-makers. They also helped consolidate and create expertise for public debates.

In contrast, French professional organizations, think tanks, and other groups are comparatively financially weak. They do not have the organizational capacity to channel knowledge the way their American counter parts do. Moreover, the many state and local-level opportunities for reform, which help sustain demand for knowledge in the U.S., are absent in France. French experts of all ideological stances must therefore navigate through less formal channels or through state organizations to access the political debate. Indeed, consistent with my observations of the French knowledge field more generally, French knowledge producers and policymakers worked in a smaller, more informal field, where personal connections and proximity to lawmakers were the norm. Channels to the policy sphere were therefore primarily ad-hoc and organized around interpersonal networks.

U.S. Proponents: Organizations as knowledge banks and information centralizers

Advocates working in favor of the legal rights of same-sex couples and their children have needed research to support their work, particularly in courts, going back decades. To meet that need, they created their own organizations, which have become professionalized and institutionalized, and worked with academic and professional associations, such as the APA, who have organized and provided knowledge to pro-gay causes.

Terry Stewart described some of this early work. Donna Hitchens, who is now a retired San Francisco Superior Court Judge, founded the Lesbian Right's Project. In the late 1970s and early 1980s, the Project worked to defend lesbians who sought to maintain custody of their children after their former husbands or other family members contested their parental rights because of their sexual orientation. During that time, Stewart said that Hitchens created a "Lesbian Mother Custody Manual," because, "they couldn't represent everybody in every state that had these issues, but they were trying to be supportive of attorneys who were doing it elsewhere." In addition to legal strategies and advice, the manual also included, "some kind of expertise," that attorneys could use in their cases.

Since then, organizations have grown and built repositories of knowledge, both legal and scientific, that they could use to weigh in on jurisprudence and legislature. These groups, including Lambda Legal, Gay and Lesbian Advocates and Defenders (GLAD), The Human Rights Campaign, The National Center for Lesbian Rights, the LGBT project at the American Civil Liberties Union, (ACLU) Freedom to Mary, and many others have become so established and professionalized that they are known colloquially as, in the words of Stewart, "Gay inc." Leaders at these organizations, such as Jennifer Pizer, see this information as part of their

success. “Those of us representing same-sex couples and families of LGBT people are benefiting from there being more research and good quality research,” she said.

Attorneys at these organizations have reached out to scholars for many years to ask them to provide information they could use because they believed that academic information was important. For example, Nancy Cott explained how lawyers at GLAD reached out to her in 1999 to give “a history lesson” to the Vermont legislature. The Vermont Supreme Court had ruled that same-sex couples must be provided with legal rights but left it up to the legislature to determine whether to legalize marriage or create some other system. “The lawyers who were working at GLAD thought that history was important,” she said. She was a specialist in the history of marriage in the United States but, up until that point, was not studying same-sex marriage. In another example, Charlotte Patterson described how Evan Wolfson, founder of Freedom to Mary, contacted her in the early 1990s when he was litigating before the Hawaii Supreme Court to prove that the state had no compelling justification for banning same-sex marriage. They asked her and other academics who had work on gay couples and families to testify as expert witnesses about childhood outcomes.

As organizations worked in different jurisdictions and in different legal arenas, they reached out to each other to learn about which experts they had used and what kinds of knowledge they had presented with success. For example, Stewart, who successfully litigated for same-sex marriage in California before it was overturned by Proposition 8, joined the attorneys, Ted Olson and David Boies, who fought against the proposition in federal court. Part of her responsibility was contacting allied organizations, such as GLAD, Lambda, and the ACLU, to ask them about which experts they had already worked with. “Look, when you go through the process, you look at lots of people, and you try to figure out who’s doing the current work, what

other testimony have they given," she told me. These organizations acted like a bank of experts from which she could draw to craft her legal argument in tandem with the main team.

American academic and professional organizations have also been active participants in the legal and political spheres and used the knowledge of scientists and scholars in their disciplines and fields. The best example is the APA, which has both professional and public credibility. Several advocacy lawyers explained their long relationship with the APA and how their statements, policy positions, and briefs have been effective in litigating gay rights because they have the weight of an entire profession.

The organization, which is highly professionalized and includes in-house staff to draft legal briefs, has a vibrant and well-instituted unit devoted to sexual minority issues. Clinton Anderson, the associate executive director of the APA's Lesbian, Gay, Bisexual and Transgender Concerns Office, described how the APA has worked to issue public position statements and policy resolutions supporting a variety of gay right issues, including the support for same-sex marriage and gay parenting (American Psychological Association 2005). The organization has also filed briefs on behalf of LGBT people, same-sex couples, and sexual minority parents in legal cases throughout the country and going back decades. To create these policy documents, Anderson has worked with the psychologists who have expertise in these areas for decades, including Anne Peplau, Charlotte Patterson, Greg Herek and others.

Though less involved in the debates and less professionalized or prepared to draft many legal briefs, the American Sociological Association (ASA), as described earlier, has also worked to produce and centralize knowledge on gay families in order to weigh in on political debates. Sally Hillsman, ASA's Executive Director, and the executive council decided to respond to demands from within the organization to produce a brief for federal courts that would explain the

state of the art on the research of childhood outcomes in families headed by same-sex couples. The ASA provided research funding to Wendy Manning, a professor of sociology specializing in families but who had not taken a public stance on the Regnerus affair, unlike many of her equally qualified colleagues, to review the literature. Manning described how she conducted the review as she would for any other project and then provided her findings to the ASA, which then transformed them into a brief. She and her co-authors—graduate students who received a small stipend from the ASA to help with the review—eventually published their findings in a peer-reviewed journal (Manning, Fettro, and Lamidi 2014). The examples of the APA and ASA highlight how professional organizations produce and translate scientific knowledge for policy debates. They also further demonstrate how the demand for empirical knowledge in U.S. courts creates an incentive for American scholars to produce research, which creates a feedback loop between policy and knowledge production.

Advocates and researchers have also founded think tanks, such as the William's Institute, whose specific purpose is to fund and produce high quality empirical research for direct application to the policy sphere. It occupies a unique space in the U.S. knowledge production field because it is housed at a university and is devoted to social science but its members include lawyers and law professors who can apply that information to legal and political transformation. In essence, this group represents the ultimate formalization and institutionalization of the expertise knowledge bank that developed more organically over the last few decades. Most pro-gay marriage and family researchers had either worked with Williams, been funded to some degree by them, or participated in some way in their scholarly activities.

U.S. Opponents: Creating Alternative Structures

U.S. opponents to same-sex marriage and parenting have developed their own set of structures to provide information to lawmakers. Indeed, in the face of marginalization within their fields and professional organizations that advocate for same-sex couples and families, U.S. conservatives have had to create their own institutions from which to work. Indeed, progressive scholars stated that conservatives are relatively absent from their mainstream professional organizations. I have observed, for instance, how Mark Regnerus has not attended the annual meeting or been involved in any visible way with the ASA since the issues surrounding his article and public stances. Lynn Wardle echoed these feelings of exclusion when he told me that he is the "token conservative" in American law societies and prefers to work in international organizations, such as the International Society of Family Law (ISFL) where he has met with French colleagues who share his views.

These alternative spaces include a constellation of dozens of conservative organizations and think tanks, such as the National Organization for Marriage, The Marriage Law Foundation (MLF), the American College of Pediatricians, and the Family Research Council. Like their progressive counterparts, these conservative organizations helped to centralize information and facilitate networking between experts and advocates. Wardle described how conservative legal advocacy organizations, such as the Alliance Defense Fund, are modeled after progressive groups, like the ACLU. And, like those groups, they perform litigation and knowledge sharing activities. For example, as William Duncan told me, his organization, the MLF, works with lawyers who come to him to learn about which kinds of experts to rely on and what kinds of information they can use in their briefs and trials. Many—but not all—of these organizations are also linked to religiously affiliated universities that also provide alternatives to their mainstream

counterparts. Law schools at these universities, for example, sponsor their own law review journals in which conservative scholars can publish their work.

Other well-established think tanks, such as the Heritage Foundation, help sponsor events through which different conservative experts can meet and network, in lieu of their own professional organizations. Most conservatives met one another this way. For example, Allen told me that he met his future co-author Joseph Price, at a Heritage Foundation conference. The Ruth Institute, which has a "circle of experts," helps facilitate similar contacts. One of its experts, Robert P. George, is a professor of jurisprudence at Princeton University, and founder of the Witherspoon Institute. This think tank was the major funder for Mark Regnerus's data collection on the New Family Structures Study. George, Regnerus, Gallagher, Allen, Price, Duncan and others have met and exchanged ideas at events sponsored by such groups.

These various forums have become an important component to the conservative cause against same-sex marriage. Maggie Gallagher, who has worked in several of these organizations described that it is "precisely because of the rarity of intellectual conservatives [in] sociology and a lot of professions" that conservatives need to fund and support work to contribute the political debate. She and her colleagues were missing opportunities to impact the scientific and political process if they did not get involved in producing their own information to compete with that of mainstream professional groups and LGBT advocacy organizations.

French Proponents: Interpersonal networks and proximity to lawmakers

In contrast to circumstances in the U.S., French knowledge producers in support of marriage and parenting for same-sex couples have not had the same kinds of institutionalized and organized resources. Though French proponents have had the support and backing of some

advocacy organizations and think tanks, their influence remains limited. Moreover, while U.S. professional and academic organizations have taken open stances in favor of same-sex couples and their children, their French equivalents have no real mechanism for doing so. In the absence of such institutionalized and formalized support systems, progressive French experts' access to the policy sphere depended primarily on personal connections and networks they established with each other and with lawmakers. French advocacy organizations, which did not have as many resources as their U.S. equivalents, also worked through these interpersonal networks via the friendships and connections their members made with scholars or because scholars had founded and worked within them.

France does not have powerful and well-financed LGBT organizations that would be capable of mounting large-scale efforts to coordinate expertise. In addition, because the judicial branch is a weak avenue of reform for gay family rights issues, unlike in the U.S., French activist organizations, like the Inter-LGBT, a federation of social movement groups, do not have the same incentive to reach out to experts for court cases as their American counterparts do. Reflecting on her situation in France, Mécary explained, "The Inter-LGBT has not understood the potential importance or interest of mounting judicial proceedings." Although Mécary was involved with Didier Eribon, Éric Fassin, and other intellectuals, activists, and politicians to set up the Bègles marriage as a test case, the courts invalidated the marriage and deferred to the legislature (Eribon 2004). This lack of judicial mobilization, which has also affected the French feminist movement (Saguy 2003), leaves French advocates without any organized institutional resources comparable to those of U.S. advocates.

Despite the relative lack of judicial opportunity for reform, some French gay and lesbian advocacy organizations have played an important role in bridging the gap between knowledge

producers and the public policy sphere. The APGL is the best example of French knowledge pipeline and production work. As discussed above, Martine Gross and other members drew researchers into the group and encouraged them to study their families, hoping that such attention would advance their rights. The legal services clinic at the AIDS organization *Aides*, co-organized by Daniel Borrillo in the 1990s, is another example. The group used the legal expertise they gained from helping partners of gay AIDS victims deal with their lack of legal protection to pressure the Socialist Party to recognize gay couples (Borrillo and Lascoumes 2002).

These groups are less numerous, smaller, and newer than their American counterparts. Importantly, most French advocacy organizations are run almost entirely by volunteers and lack the professional staff and resources of their American counterparts. Therefore, they cannot finance their own research or regularly engage in other costly and time-consuming tasks, such as organizing conferences, sponsoring consultations, or reaching out to the media. Rather, they rely on individuals like Gross and Borrillo, who bridge gap between the academic and activists spheres because of their posts within the university. These organizations also rely on the networks they build with other experts who have direct access to lawmakers.

Indeed, many of the progressive experts I interviewed had informal networks and direct relationships with decision-makers in the Socialist Party and other parties on the left. This suggests that, in a field where advocacy and professional organizations have relatively limited power to harness or channel expertise for the policy sphere, well-connected experts gain access to and influence the debate through direct, personal connections. Some experts, such as Elisabeth Badinter and Sylviane Agacinski, whose husbands Robert Badinter and Lionel Jospin respectively, were both major Socialist politicians, had direct relationships to decision-makers.

Many other interviewees described working relationships with lawmakers with varying degrees of success in persuading them to adopt their stances.

For some prominent, famous experts who have been active in the debates over the last few decades, these relationships to decision-makers were not only enduring, they also allowed them to act as personal advisors and political sponsors. Maurice Godelier, for example, described his relationship with Christiane Taubira—the Minister of Justice during the marriage debates—and his role as a "counselor" to the Socialist Party. Other examples include Françoise Héritier and Elisabeth Roudinesco, both of whom described their friendships with senators, ministers, and Socialist Party members, two of whom asked them for their personal support in their bids for presidential candidate. These relationships are facilitated by France's small size and the concentration of academic and political power in Paris.

In addition to these behind-the-scenes interactions, in which prominent experts lent their legitimacy and public recognition to politicians, some experts also worked to actively shape Socialist Party stances on policy issues. Irène Théry in particular described close working relationships with many Socialist politicians, including successive ministers who have commissioned official expert reports from her. These reports, dealing with family rights issues, gave her the opportunity to directly provide her arguments and information to decision-makers. Although she was in conflict with politicians fighting for the Pacs, such as Jean-Pierre Michel, as both she and the party became more progressive over gay rights issues, these relationships strengthened. Indeed, as she described it, Théry was one of two people heard by the Socialist Party in 2006 as it was considering including same-sex marriage in its platform. She argued that this change would only work if it maintained the presumption of paternity for heterosexual married couples—where the husband is automatically the legal father of the children born to his

wife—but carved out an exclusion for same-sex couples, who could then seek a second-parent adoption for the non-biological parent. Taking her suggestion the party, she said, had "understood her" and has continued to work with her since.

These interpersonal political connections allow some experts to fill the role of knowledge providers that organizations occupy in the United States. Indeed, Théry, with the support of government mandates to draft reports and her relationships to politicians, has the capacity to produce, organize, channel, and distribute expertise for public policy purposes. She has become a bridge between knowledge producers, such as other academics, and the policy-making sphere. Indeed, she has worked with 17 of the French experts I interviewed and is friends and acquaintances with many others that she feels comfortable working with or that share her policy perspectives. Théry has drawn extensively on this network as she carries out official expertise work for the government.

These kinds of ad-hoc interpersonal networks were characteristic of the ways French knowledge producers interacted with each other as they worked to bring information to policy-makers. They all knew each other and regularly worked together. I saw how the same groups of experts, without much support from organizations, worked within academic spaces or in informal meetings to co-publish books and other materials they hoped would influence the political debates. Notable examples include Fassin and Borrillo's edited volume, published during the Pacs debates (2001), and a report supporting same-sex marriage published by a group of experts working with Théry (Brunet et al. 2012). These networks also showed up in other contexts, including the rare French think tanks that took a stance on gay family rights. For example, in the mid-2000s, Terra Nova, a think tank associated with Socialist Party, established a temporary working group to draft recommendations for updating French family law. Geneviève Delaisi de

Parseval, who co-led the group, recruited from within the same pool of experts that have participated with Théry in other settings, including Martine Gross, Serge Hefez, and others.

French Opponents: Continuing influence in state organizations

Despite their increasing marginalization within their fields, conservative experts were able to organize and access the policy debate relatively easily through multiple channels. Though, like their progressive French colleagues, they did not have major legal advocacy organizations of their American counterparts, they did have the support of, or at least representation within, state or quasi-state agencies and organizations that provided them with channels to the policy sphere. Like American conservatives, they also worked within protest movements and religious organizations to provide them with knowledge they could use to fight against gay family reforms. Finally, much like French progressives, most conservatives knew each other and activated interpersonal networks to collaborate and gain direct access to lawmakers.

There were several examples of conservative academics and professionals within quasi-state organizations that act as official advisory bodies to the government, which in the words of one progressive expert, meant "that people who are against a certain social evolution are in strategic positions…" For instance, the government nominated Pierre Lévy-Soussan to the advisory board of the *Agence de la biomédecine*, the state administrative body responsible for regulating transplants, embryology, human genetics, and procreation. Similarly, Xavier Lacroix, a retired professor and longtime adversary of legal recognition for gay families, was appointed in 2008 by the President of France to the *Comité consultatif national d'éthique pour les sciences de la vie et de la santé* (CCNE), a state-mandated advisory board responsible for authoring non-

binding opinions on draft legislation relating to all areas of bioethics. Thanks in part to the influence of such conservative experts, the CCNE has consistently advised against allowing lesbian couples to access artificial insemination. Finally, the UNAF, in addition to its historical exclusion of gay family associations, as worked with conservative law professors, such as Claire Neirinck, to help them draft their official stances on government reforms over same-sex marriage and parenting (UNAF 2012).

In addition to their influence within these agencies, several conservative experts also developed connections to social movement organizations, advocacy groups, and churches fighting against same-sex marriage. For example, the *Manif Pour Tous* invited several to speak out at their rallies, public debates, conference, and demonstrations. I observed Neirinck at one such rally in February 2013 describe to the audience that allowing same-sex couples to have families would be dangerous for their children. Several interviewees were also involved in helping the Catholic Church prepare its public interventions against the marriage bill. Dekeuwer-Défossez said that the Bishop's Conference of France brought her and a theologian in for hearings so that could prepare their public arguments. Similarly, Xavier Lacroix, who is affiliated with the Church hierarchy, told me he works regularly with the bishops. In these situations, conservative experts help provide these groups with information that is palatable to secular French public, which would make them more audible in the debates. We saw evidence of how religious experts rely on secular expertise in Chapters 1 and 2.

Like their progressive French peers, anti-gay marriage French experts collaborated with each other in ad-hoc interpersonal networks to share information and resources. A notable example was a small working group that Pierre Lévy-Soussan, Christian Flavigny, and their colleague Maurice Berger, created to lend each other moral support—"…because we get beat up

a lot," Flavigny explained—and give each other ideas about their shared public discourse against same-sex marriage and parenting. Through this group, according to Flavigny, they became familiar with Regnerus's study, which they began to refer to in their media and political interventions. That they felt comfortable drawing on an American study in their public interventions even as they denounced "gender theory" suggests that the symbolic value of U.S. "imports" depends on the degree to which they ideologically oppose them.

Several conservative experts also described some direct relationships to lawmakers, but unlike their progressive peers, none of them said they were close friends with them. This may reflect reluctance on their part to talk about such relationships. However, as described in Chapter 3, conservative politicians, who were in the minority for most of the major French legislative changes, called conservative experts to private, party-only hearings, where they asked them for legal and intellectual arguments against the reforms. Lacroix and Collin described indirect contact with legislators that none of the progressive experts mentioned. Collin's publisher sent free copies of his book, *Les lendemains du mariage gay* [The Day after Gay Marriage] (2012), to "many lawmakers," which he believes brought his argument to their attention. Similarly, Lacroix explained that a friend and benefactor paid to have his book, *La confusion des genres* [The Confusion of Genders] (2005), sent to every lawmaker in both chambers of parliament. This strategy likely reinforced the notoriety and access both experts had to French lawmakers.

Conclusion

U.S. and French knowledge providers on both sides of the issues face disparate national circumstances in they ways they navigated the dynamics of their respective policymaking fields. Save for a few exceptions, in the U.S., individual scholars and professionals did not describe

many close personal ties with lawmakers the way their French peers did. Instead, they engaged in the political field through large professionalized organizations that centralized their knowledge and adapted it for specific political and legal environments. The creation and growth of these relationships has been facilitated by the demand for their information generated by the size of the U.S. legal field and the outlets it creates for such knowledge (Sarewitz and Pielke Jr. 2007; Stryker et al. 2012).

These institutionalized connections have helped sustain a feedback loop between U.S. policy outlets, organizations, and knowledge producers (Campbell 2012; Clemens and Cook 1999; Jasanoff 2004). The example of Wendy Manning's literature review for the ASA, which became a piece of academic scholarship directly triggered by court cases on same-sex marriage, is an especially strong example. For same-sex marriage opponents, however, those feedback loops have not benefited from the support of mainstream professional organizations. Nevertheless, with financial backing and the policy arena providing the incentive to do so, they have used their own think tanks, advocacy groups, and alternative conservative professional organizations, to fund and facilitate the research of social scientists, such as Mark Regnerus.

The French policy field is small and marked by an overlap between the political and knowledge production fields. Knowledge producers on either side create interpersonal ties with their respective political parties. For some well-connected experts, such as Irène Théry, their relationships and involvement with decision-makers over the years have endured to the point that they themselves, through their ad-hoc peer networks, take the position of coordinating and bringing knowledge from other actors to policymakers. Moreover, in this environment, which has far fewer outlets for policy knowledge, professional, academic, and advocacy organizations are not professionalized and do not have the same capacity or incentive to generate and channel

policy knowledge; the French legal and policymaking sphere has not created strong demand for their information. French academics and professionals do collaborate with these groups and some, such as Gross and Borrillo, have their feet in both worlds. But experts have generally operated independently of these groups, even if they provided them with information, to work personally with lawmakers.

CONCLUSION

In debates on the partnership and parenting rights of same-sex couples, U.S. and French media and decision-makers call on experts to provide information that follows distinct national patterns. Although there is overlap in the kinds of experts and expertise that intervene in the debates—activists and legal professionals are common kinds of experts in both countries—there are many ways in which they diverge.

In U.S. media coverage, ordinary citizens providing information about their lived experiences are the most commonly cited experts while French reporting prioritizes analytic stances from elite experts, such as professors and mental health professionals, who talk about gay family rights from a distance. These patterns are reflected in legal institutions in both countries, but to different degrees. Both U.S. courts and legislatures draw on the testimony of ordinary citizens either as litigants in specific cases or through testimony in hearings. U.S. courts also augment that testimony with information from more elite experts, who bring empirical evidence tailored to specific legal questions. French political institutional debates, which are dominated by the legislature, rely on similar kinds of experts as the French media: elite professionals, intellectuals, and academics who tend to discuss the issues in the abstract.

I argue that these patterns are the result of the ways in which experts and decision-makers navigate: 1) the institutional logics of legislatures and courts; 2) the academic and professional fields where knowledge producers work; and 3) the channels between knowledge producers and decision-makers. Each of these three components is configured in nationally specific ways that constrain and enable the participation of certain kinds of experts and expertise. Information in these debates is also contingent on broader legal structures, such as federalism in the U.S. and centralization in France, as well as on policy differences, such as opposite approaches to

medically assisted reproduction, that shape the availability, usability, legitimacy, and demand for specific kinds of information.

For instance, that favorable empirical research on same-sex couples and their children is heard more often in the United States than France is not only the result of marginalization of such research in the French academy and weak relationships between academics and social movement organizations. It is also the result of the legal structural conditions that allowed scholars to study those issues at all. Specifically, federalism in the U.S. and free market approaches to artificial insemination have meant that gay families have actually existed, and publically, for much longer than in France and have therefore been available for research purposes. Moreover, the plethora of court cases in the U.S. has fueled a demand for that information, sustaining it over time, and encouraging professional and advocacy organizations to institutionalize it.

Abstract psychoanalytic information has long been an integral part of French public debates (Blevins 2005; Borrillo and Fassin 2001; Fassin 2000b, 2001; Kirsner 2004; Robcis 2013; Roudinesco 1986). My research finds that such information, especially that provided by experts opposed to same-sex marriage, continues to be important in French decision-making institutions partly because of the historic invisibility of same-sex couples—itself a result of conservative French family law—that prevented French researchers from analyzing them. Conservative experts could thus more easily discuss same-sex couples and their children without confronting information that could prove them wrong. Legislators invited these opponents to hearings in part because of their reputations in the media, which made them popular figures. Lawmakers felt they would face critique and attack on their legitimacy if they did not invite

them. Furthermore, the legislative arena, unlike courts, provided no way for other experts to effectively counter and debunk same-sex marriage opponents' abstract psychoanalytic claims.

The presence of such expertise in France is also related to conditions of knowledge production. French scholars who might have provided more empirical research found themselves marginalized in the academy, without resources or the support of professional organizations. They faced resistance from official French family organizations. French legal circumstances—particularly the absence of many jurisdictions to pursue reforms—did not create a high demand for their information, which could have sustained more knowledge production, as it did in the United States. Finally, unlike in the U.S., high-powered elite experts in sociology and anthropology were originally opposed to same-sex parenting and, although they are now major supporters both of research on the topic and the political advancement of rights, their initial stances contributed to the delegitimization of such topics.

We can also explain the presence or absence of other kinds of expertise, such as economics, personal experience, and religion by examining the ways in which experts and decision-makers navigate the typology explained above. As we saw in Chapters 1 and 2, economic expertise is present in the U.S. media, courts, and legislatures but almost entirely absent in France. This discrepancy is consistent with other analyses finding that market-based justifications are more common in the United States relative to France and constitute a common cultural repertoire in that country (Fourcade 2009; Lamont and Thévenot 2000). In the case of gay family rights debates, I find that these differences are also partly due to the way interstate competition and experimentation in the United States allow economists, activists, and think tanks to study the financial effects of same-sex partnership rights within the country's borders. Because the research suggests that same-sex marriage has positive economic benefits for states

(Badgett 2009), pro-gay advocacy organizations have created relationships with knowledge producers and members of the business community to channel that information to legislators, who may be persuaded by economic arguments. Moreover, in courts, when opponents argue that same-sex marriage hurts states, proponents can bring economic evidence to prove them wrong.

In France, in the absence of interstate economic competition and with direct individual access to health insurance and other social services independent of marital status, French knowledge producers have difficulty generating economic information relevant for same-sex marriage debates. Unlike in the United States, French business organizations and companies operate in a country with uniform marriage policies and therefore have little perceivable economic arguments to make about same-sex marriage and parenting. French LGBT advocacy organizations have not created alliances with members of the business community in part because, unlike in the U.S., they do not have a shared economic interest in the legalization of same-sex partnership rights. Even if French economic expertise were hypothetically available, given how market justifications are not part of French cultural frameworks (Lamont and Thévenot 2000), it is possible that the lawmakers in charge of hearings might not have invited any economists to provide it anyway.

The disparate presence of personal experience and ordinary citizens reveals how common cultural modes of communication are shared (or not) across institutions in the United States and France. This dissertation has shown how personal experience is shared by a variety of actors—from politicians to academics and ordinary citizens—across institutional contexts in the United States. Yet different institutional logics appear to operate in different ways to make this possible. In the media, U.S. journalists personalize their coverage by systematically reaching out to ordinary citizens for vignettes. In legislatures with open access to testimony, ordinary citizens

can share their stories in an effort to persuade lawmakers. In courts, personal experience and ordinary citizens enter through the lives of the litigants and opinion witnesses who provide some of the facts judges consider. Organizations have been instrumental in working with individuals in specific cases but also in packaging their stories and bringing them to decision-makers more broadly. This kind of expertise also fits into broader U.S. cultural narratives and common law traditions that emphasize the personal and the particular relative to France (Lamont and Thévenot 2000; McCaffrey 2005; Saguy 2003).

As we saw in the first two chapters, personal experience is not a shared form of expertise in French debates. Testimony from ordinary citizens, especially LGBT people and their families, remains marginal in French media reporting and in legislatures. I argue this is partly due to the way neither media nor lawmakers have systematically reached out to them for their information. One of the reasons they have not done so is because French law—by formally barring same-sex couples from joint adoption, second parent adoption, and reproductive technologies—has made these families invisible and illegitimate. They also have no effective channel to the public sphere except through family organizations like the APGL and ADFH, which are relatively new and small compared to their U.S. equivalents. French legislators also negotiate particular institutional logics that put them in stark contrast with their American peers. Even when they believe that hearing the lived experiences of ordinary citizens is important, as did Erwann Binet, they face serious critique from their peers who explain that the role of law is to deal with the common good and the universal, not the particular or specific. Because French legislators have the power to determine who has access to hearings, unlike their U.S. peers on the state-level, they can prioritize witnesses who speak about the law from a distance, such as academic and professional experts, rather than lay witnesses.

My analysis of the media and decision-making institutions shows that religious representatives are present in both the United States and France but that they draw on different kinds of information when speaking out. In the U.S. they frequently draw on religious knowledge, such as information about scriptures and appeals to God, to defend and condemn gay family rights in the media and legislatures. Neither of these forums delegitimizes their information. They also provide information through amicus briefs to courts, which advocacy organizations on both sides encourage because they believe it helps project popular support for their side to the judges. These findings are consistent with other work on the historic and contemporary value of religion as a legitimate form of public knowledge in U.S. politics across many policy issues (Backer 2002; Bellah et al. 1985; Blevins 2005; Kuru 2009; Tocqueville 1990).

In France, religious representatives write Op-Ed pieces in the media and journalists interview them. Surprisingly, I find that despite French rhetoric around *laïcité*, French lawmakers also invite them to legislative hearings either because they feel they have to or because they believe it will defuse conservative opposition. Unlike their American peers, however, religious representatives draw less often on religious expertise and rely instead on secular information, such as psychoanalysis, anthropology, and law, which are common to the French debate. This tactic, which other scholars have also observed (Fassin 2001, 2014b; Robcis 2013), allows them to cover the stigma of their religious affiliation to some degree. I also find that religious organizations with official representation to the French government, such as the Catholic Church and the Israelite Central Consistory of France, have coordinated with secular conservative experts who provide them with information for their hearings. This strategy resembles the way U.S. anti-same-sex marriage activists sought out allies in the social sciences

to produce peer-reviewed information for courts. In both instances, they were motivated to find experts who could give them information that corresponded to the cultural and institutional expectations of the decision-makers they were trying to convince.

Some might say that this research and the typology I have developed and applied in the above examples cannot account for why we observe differences across types of knowledge in the U.S. and France. I would argue that my analysis provides a proximate explanation for why decision-makers and the media in each country have called on particular categories of people and types of information in contemporary political debates. However, more comparative cases, including counterfactuals, and historical analysis of factors such as evolutions in university systems, changes in civil society structures, or long-term developments in political dynamics would be necessary to get at deeper causal mechanisms (Pierson 2004). Nonetheless, I have shown that contemporary decision-makers and knowledge producers constrain and enable experts and expertise as a result of the ways they negotiate nationally specific legal, cultural, and institutional circumstances. Future inquiry into the causes of national differences in expertise can build on these insights and extend this work.

Why "Experts" and "Expertise" Matter

Much political sociology focuses on factors that explain why certain laws pass and others do not. This study has not attempted to measure the degree to which the participation of experts and expertise predict the fate of legal reforms. In fact, I do not argue that experts and expertise matter *because* of their effect on outcomes. Rather, I argue that they matter *regardless* of whether or not they have a direct measurable effect on legal reforms in terms of their success, failure, or content.

Expertise—broadly defined—is important because it becomes part of the public dialogue, like frames, which shape how people think and understand political issues. For example, that there has been a dearth of work on gay families in the French academy and an invisibility of "lay experts" that could at least talk about their personal experiences—as they do in the U.S.—has made it very difficult for same-sex marriage proponents, including legislators, to describe the realities of queer people. In this sense, expertise is one of the tools that social movement organizations in favor of same-sex marriage can use to advance their cause. If they have it, it can help them do their work and, if they do not, it can make their jobs more difficult. Building credible expertise that helps change decision-makers' and the public's perception should be included as one of the many activists' goals scholars currently analyze (Armstrong and Bernstein 2008). As I argue, whether or not social movements will be successful at mobilizing certain forms of knowledge will depend on their capacity to leverage specific kinds of experts adapted to institutions where reforms take place, assuming that such people are even available and willing to participate in their given context.

An inclusive definition of experts allows us to see the range of people providing knowledge in a given setting and pinpoint those who, because of their position in their fields and relationships to decision-makers, have more or less power. Social movement scholars can build on these insights to better understand how expertise is a form of political capital and an integral component of political opportunity structures that activists deal with on their way to political success or failure (Swartz 2013; Tilly and Tarrow 2007). My analysis suggests that such negotiations can be particularly important in contexts where the political, academic, and media fields overlap. In France, some high-powered experts have become de facto party leaders—as well as knowledge centralizers who coordinate with other experts—who can actually help or

hinder legal reforms depending on their stances on the issues. Similarly situated experts in other contexts would be prime targets for social movement strategies and those trying to explain them. Scholars studying political reforms in other countries could use these findings to examine the relationship between the policy and knowledge production fields, the dynamics within them, and the institutional logics of the settings where decision-makers work.

The relationship between expertise and decision-making institutions also matters because it creates a demand and outlet for information that can support, sustain, and shape knowledge production. In other words, expertise is not necessarily significant because of its effect on legal outcomes per se as much as legal institutions and structures are significant because of how they shape expertise. For example, that there are so many courts and legislatures in the U.S. drawing on knowledge helps sustain demand for it, which in turn motivates organizations to ask knowledge producers, including academics and lay experts, to produce it. Highlighting the influence of political debates on knowledge production, this study has shown how embedded institutional logics, such as the demands for empirical rigor, drove conservative activists to coordinate with conservative social scientists in order to produce peer-reviewed research. Together they increased the funding and publicity of their scholarship in direct reaction to the successes of same-sex marriage supporters who mobilized the "scientific consensus" (Adams and Light 2015) on the well being of children raised by same-sex couples.

This dissertation's insights add to the ongoing conversation about the politicization of science in general (Gauchat 2012), and research about same-sex families and their children in particular (Biblarz and Stacey 2010; Fassin 2000b). It draws our attention to the feedback between politics on the one hand, and scientific knowledge production, on the other (Jasanoff 2004). It suggests that both sociologists of social movements and of science and technology

could benefit from investigating the relationships activists, knowledge producers, and policy-makers build with each other in a given cultural and institutional context. Those relationships can affect how researchers create new information and how activists use it (or work around the lack of it) to define social problems and push a political agenda. For example, institutional logics can shape the political debates about climate change or the dangers of tobacco. If debates shift to courts, where empirical evidence matters more than legislatures, people advocating against, say, regulating carbon emissions or smoking have an incentive to reach out to ideologically allied researchers to produce evidence that supports their stance (Dilling and Lemos 2011; Jasanoff 1996). They can also work to cast doubt on the idea of the scientific consensus against them, as opponents of same-sex marriage and parenting have done.

Although I contend that expertise is important in its own right, I do not suggest that expertise has no effect on legal outcomes or their content. The effect of knowledge on outcomes, I argue, depends on institutional logics that attribute knowledge a specific role in the decision-making process. Legislatures, as I show, use knowledge in formal hearings to justify and inform a process that has largely been decided ahead of time. In this setting, which dominates France, whether or not a law passes or addresses some issues but not others, is largely determined by social movement dynamics, public opinion, political configurations, and many other factors. In France, it is possible that conservative experts—taken together with street protests and major political backlash—helped contribute to the failure of planned legislation that would have given lesbian couples access to artificial insemination. Similarly, French legislators may have had difficulty passing the Pacs in the late 1990s as a result of powerful elite experts who opposed them. However, knowledge heard by decision-makers is a small part in a much larger process and the degree to which knowledge makes or breaks a law is extremely difficult to determine.

Nevertheless, regardless of the reform in question, knowledge can give legislators grounding on which to stake their claims. This can make their jobs more or less difficult and require them to spend more or less political capital depending on whether the knowledge they need is available and usable.

Unlike legislatures, courts balance legal arguments with facts in a trial, which can include expert and lay testimony. The strength and value of that testimony can therefore help a case succeed. Indeed, all of the powerful personal testimony coupled with academically rigorous evidence in U.S. federal trials on same-sex marriage no doubt made the case of marriage proponents more likely to succeed. In this setting, knowledge therefore appears to play a more central and concrete role than in legislatures. Nevertheless, a judge's rulings depend on many of other factors, including the social context, the politicization of the court in question, and the strength of the legal arguments. Even excellent expertise would not save an illogical or poorly formulated legal argument from rejection.

At their core, reforms on the legal recognition of same-sex couples and their family relationships are about political and democratic values. This study has not been critical of the role or stance of any of the categories of experts it analyzed. However, it should not be read as an endorsement of their legitimacy—especially in terms of elite experts—to speak out on these reforms. Indeed, this research should draw our attention to some of the risks involved when social scientists—especially those committed to LGBT equality—become integral parts of civil rights strategies. By actively contributing their research to the debate, they can inadvertently legitimize the idea that science, rather than democratic principles ought to determine whether same-sex couples have equal rights. It is relatively easy for gay rights proponents to brandish the scientific evidence as a tool for change because the findings currently support them. However, by

supporting the validity of science as a justification for legal change, they beg the question of what would happen if the research were to show, say, that children fare much less well off when raised by same-sex couples. Going forward, we should look at how experts and advocates on both sides of the issues navigate that question.

METHODOLOGICAL APPENDIX

This dissertation was based on the analysis of a variety of data collected from multiple sources in both countries, which were only briefly described in the introduction and substantive chapters. These data include: 1) content analysis of 2,335 articles covering gay partnership and parenting reforms published in *The New York Times* and *Le Monde*; 2) content analysis of legislative and judicial archives of proceedings, debates, hearings, briefs, and reports of major bills and cases in California, Texas, the U.S. Federal level, the French national level, and European cases affecting France; 3) interviews with 72 people involved in the debates, including experts who provided oral or written testimony to courts and legislatures, lawyers who coordinated experts and expertise in court cases, and legislators who set up hearings; 4) participation observation of experts at public events sponsored by think tanks, professional organizations, and advocacy groups as well as at research meetings and seminars. In this appendix, I describe in greater detail how I gathered and analyzed these data and conclude with a discussion of my standpoint doing cross-national comparative research.

Media Analysis (Chapter 1)

I used the Lexis-Nexis electronic archives to search *The New York Times* and *Le Monde*, both newspapers of record in the United States and France, for all articles that discuss same-sex couples and their families in relation to laws and legal reform. Conducting media analysis of gay parenting rights requires search terms that can capture a complex and fluctuating social and linguistic object. Journalists, editorialists, and letter writers, describe sexual minorities and their rights using several words, such as homosexual, gay, lesbian, or queer. Moreover, their usage has changed over time. For example, *The New York Times* gradually shifted from using homosexual, to gay or lesbian, around the turn of the 21st century. Also, while it was common to talk about

"domestic partnerships" and "civil unions" in the 1990s and early 2000s, "gay marriage," "same-sex marriage," and "same-sex unions" became more politically and journalistically popular in the last 10 years. Because of individual habits, there can be systematic differences in word preference between journalists. Similarly, barriers to legal recognition of gay parenting cover the many ways in which same-sex couples gain access to parenthood, from custody battles with former different-sex spouses to surrogacy contracts, adoption, and artificial insemination. No single term sufficiently captures all of these modes of access. I thus designed my search query to deal with these linguistic and historical complexities.

I queried the database for articles whose full text contain co-occurrences of words in English, and their French equivalents, for sexual minorities—such as gay, lesbian, homosexual, and same-sex—for gay family issues—such as partnership, marriage, civil union, spouse, couple, adoption, assisted reproduction, surrogacy, and parenting—and for legal reforms—such as right, proposal, law, bill, committee, hearing, court, senate, and house of representatives. I expected this search to generate a list of all articles covering legal issues germane to my research question.

Consistent with the historical scope of the broader project (from 1990 until 2013), I limited my search to articles published between January 1st, 1990 and July 31st 2013. This covers the period of legal debates, ending two months after the French legislature passed a law allowing marriage and adoption for same-sex couples and one month after U.S. Supreme Court decisions invalidated certain previsions of the Defense of Marriage Act (DOMA), allowing federal recognition to same-sex couples legally married in their home states. I also limited my search to newspaper articles, excluding blogs hosted on the newspapers' websites. This search yielded a total of 1,166 articles in *Le Monde* and 3,534 articles in the *New York Times*.

I used two criteria to filter out articles from this initial list that were unrelated to my research question. First, I eliminated articles that do not actually discuss gay family rights. These newspapers cover an especially broad variety and number of legal and political questions that fall under the umbrella of "gay rights." Workplace discrimination, hate crimes, military service, youth and sex education, sexual minorities in the media, the lives of public figures, as well as the ordination of gay and lesbian clergy are some examples. Because of the overlap between gay rights issues and the way journalists treat the question as a coherent field, many articles that do not center on gay family rights still mention them in passing. In addition, articles describing parliamentary strategies, lobbying, fundraising, and political campaigning in electoral and legislative seasons also often mention gay family rights issues, but in a cursory manor. I also eliminated all articles that do not cover national or local gay partnership and/or parenting rights, per se, but only mention them as part of a story on another topic. An example of such an article describes a legislative session in detail but only makes mention of a same-sex marriage bill under consideration.

I eliminated other articles using criteria specifically adapted to my analytical framework. Unlike frame analysis, which considers all articles as having a frame, in "expertise" analysis, one must identify whether or not an article does, in fact, contain "expert" knowledge. I therefore removed all articles describing gay family rights but that did not cite or include any form of expertise. Consistent with the project, I broadly define "expertise" as any statements that include justifications on a stance or information that clarifies a point of view. Therefore, articles only containing quotes or phrases simply asserting stances, such as, "I am against gay marriage," were excluded. Those that included quotes or ideas with justifications, such as, " I am against gay marriage because homosexuality is a sin," were retained.

This filtration yielded a total of 652 articles in *Le Monde* and 1,683 in the *New York Times*, representing 55 percent and 47.6 percent respectively of the initial search results, a rate not uncommon in news media analysis of gay marriage (Rodriguez and Blumell 2014). To develop my analytical framework of expertise, I read a sample of 200 articles from both newspapers, examining the factual information and quotes, inductively coding for the content of expertise and the types of people quoted. After identifying and labeling all of the information observed, I developed a list of 19 types of "expertise" appearing across the newspapers. Some types are rooted in scientific or academic disciplines, such as "anthropology," "economics," "sociology," and "psychology." Other kinds, like "personal experience," are forms of lay expertise, in which speakers draw on their lives to justify their stances. Some arguments, which I label "religion," draw on scriptural and moral justifications. Some people justify their stances with knowledge too broad or arguments too unspecific—such as politicians who say they support gay marriage because it is "the right thing to do"—to belong to a category. I call these sorts of arguments "general" expertise. When they do so, I use the same label journalists, Op-Ed writers, or the people they quote use to qualify their statements. For example, when a journalist writes that, "psychological studies show that children of same-sex couples fare as well as their peers," I label that occurrence of expertise as "psychology." For each type of expertise, I also observed whether it takes a neutral, affirmative, or negative stance on gay parenting rights. Table 12 provides the complete list of types of "expertise."

Table 12: Complete List of Expertise Codes

Type of Expertise	Description	Example
Activism	Discusses activist organization practices; knowledge activists have gathered about the issues	"Ending DOMA will not end the legal and personal issues gays and lesbians face."
Anthropology	Cites an anthropologist or uses the word anthropology	"Marriage is a universal anthropological truth."
Demography	Demographic information	"In 2008 about 116,000 same-sex couples across the country were raising a total of about 250,000."
Economy	Public and private finances; businesses, and the private sector	"…legalizing same-sex ceremonies in the state would result in about $63.8 million in government tax and fee revenue over three years."
Ethics	Specifically labels ethics or bioethics	"The Catholic Church does not emphasizes ethics, not beliefs."
General	Provides justification for stance but in general/unspecific terms	"We should pass gay marriage because it is fair and the right thing."
History	Appeals to history, past events or cites historian	"For thousands of years marriage has been between a man and woman."
Law	Legal code; the status of a legal issue; juridical arguments	"Proposition 8 essentially nullifies the equal protection guarantee."
Medicine/Biology	Medical and biological research	"Soon it will be possible for same-sex couples to reproduce using their own genes."
Other	Does not fit into another category but too few articles to justify new category	"Same-sex couples require new linguistic categories."
Personal	Person's experience; descriptions of same-sex couples lives	"This is about the possibility that half of the state of Oregon thinks that I don't deserve to be treated equally as the majority."
Philosophy	Specifically sites philosophical principles or concepts; cites philosophy	"There is no philosophical obstacle to gay parenting in terms of the rights of children."
Politics	Cites political science; uses political institutional arguments	"It should be clear that these religious institutions have the right to refuse to marry anyone within their own religious houses."
Psychiatry	Discusses mental and emotional wellbeing, specifically mentioning psychiatry	"The psychiatric literature shows no harm to children of same-sex couples."
Psychoanalysis	Citing psychoanalysts or psychoanalytic ideas.	"Gays that want to have children suffer from a pathological narcissist fantasy of self reproduction."
Psychology	Discusses mental and emotional wellbeing	"Studies show children need a mother and father to develop properly."
Public Opinion	Polling	"Recent polls show that the electorate is now evenly split."
Religion	Scripture, moral concepts, appeals to deities	"Same-sex marriage is against the word of God."
Sociology	Discusses norms, and social structures. Cites sociology.	"Regnerus finds that children do best with intact families."

To distinguish between types of knowledge and the people who provide it, I developed a list of 18 types of "experts" that journalists quote or who write letters and Op-Ed pieces. This list encompasses people from the professions—such as professors, doctors, and lawyers—from the political sphere—such as judges, politicians, and activists—and from civil society—such as religious representatives and members of the public. It also includes labels for when people speak in the name of organizations or think tanks. Experts can belong to multiple categories. For instance, I would include someone such as Mary Bonauto, the director of the Civil Rights Project for the Gay and Lesbian Advocates and Defenders, in three categories: "activist," "lawyer," and "organization." Table 13 provides the complete list of types of expertise and categories of experts. I analyzed experts' stances for or against gay family rights, but, save for several exceptions, those patterns reflect their overall proportions, and are therefore not represented in the chapter. In other words, if a category of expert is more often cited in one newspaper, that category is higher in arguments both for and against gay family rights. Where pertinent, exceptions are described in the text.

Table 13: Complete List of Category of Experts

Type of Expert	Description
Activist	Belonging to an activist organization or doing activist work, such as phone banking
Artist	Member of a creative field, such as actor, visual artist, performer, etc.
Author	Having published but not a professor or academic within an institution
Average Person	Members of the public
Government Agency	Organization affiliated with the state, such as the Census Bureau
Industry	Business owners, investors, a private sector workers
Intellectual	Unaffiliated academic
Journalist	Author of the article or other journalists cited
Judge	Judges of any type
Lawyer	A person practicing law
Medical/Mental Health Professional	Doctors, psychiatrists, psychologists, psychoanalysts
Organization	Associations and groups of any kind, including professional organizations
Philosopher	A person specifically labeled philosopher, particularly in the French case
Politician	Any elected official
Professor	Affiliated academic in any field
Public Figure	Person with notoriety but not belonging to another category, such as the child of a politician, like Chelsea Clinton
Religious Representative	Member of the clergy or religious organization
Think Tank	Organization specifically calling itself a Think Tank

Using these lists, I created a spreadsheet database by recording every occurrence of expertise for each article. Take for example an article about a U.S. civil union debate describing a lawyer affiliated with a liberal activist organization who argues that civil unions are inadequate because they are not recognized by other states. I would code that occurrence as "legal expertise 'for'" and note the speaker's expert category as "lawyer, activist, organization." The same article quotes a Catholic Bishop and member of the Conference of Bishops stating that civil unions are unacceptable because homosexuality is a sin; I would code that as "religious expertise 'against'" and the speaker as a "religious representative, organization."

With information on the content of expertise by category and expert for each article and newspaper, I used the database to quantify and compare trends in time, stance, category of expertise, and type of expert, as well as compare across newspapers. I conducted Chi-square tests using Stata in order to verify the statistical significance of these comparisons. My analysis examined each kind of expertise independently, but to ease understanding, in the data presentation below, I grouped together similarly themed types into clusters. "Social sciences" includes anthropology, economy, politics, and sociology. "Mental health" combines psychiatry, psychology, and psychoanalysis. Some types of expertise, such as "medicine and biology," had limited occurrences of expertise in either newspaper. These were grouped together as "all other." Statistical tests were done both for the independent types of expertise, as well as for these aggregate clusters. When pertinent, I discuss differences within the clusters. Full results of the tests for all categories are available on request.

Legislative and Judicial Archival Analysis (Chapter 2)

I analyzed the role of experts and expertise in the content of proceedings in courts and legislatures in the United States and France. Because of the jurisdictional structures on the issues of same-sex couples' partnership and parenting rights, I included several analytical levels to these national cases. As explained in the introduction, in the United States, individual states have primary jurisdiction over these issues. It was therefore necessary to examine legal reforms on the state-level. Rather than analyze all fifty states in detail, to make this study feasible, I selected two comparable states: California and Texas. They are the first and second most populous states, with active think tanks, strong local and national gay and anti-gay social movement organizations, and significant media presence on the national stage. They differ, however, in their political alignments—California has traditionally been more Democratic and Texas more Republican—as well as on their laws on gay families. Before 2015, whereas both states had constitutional amendment referenda banning same-sex marriage, California briefly recognized such unions and had a domestic partnership law offering almost all of the same rights, while Texas did not. Because of the role of U.S. Federal courts in constitutional law, as well as the role of Congress in passing the Defense of Marriage Act, I also examined the U.S. federal level.

In France, I focused on the national level because only the national Parliament, with the approval of the *Conseil Constitutionnel*, has the power to create or modify laws relative to marriage and parenting. Furthermore, although lower-level courts can sometimes vary in their judgments on issues, such as adoption and custody cases, they do not build case law. Because French citizens can appeal rulings in France's highest courts—the *Conseil Constitionnel*, the *Conseil d'Ét*at, and the *Cour de Cassation*—to the European Court of Human Rights, I also analyzed those decisions that had an impact—or not—on French law.

To identify the major legislation and court cases on the relevant issues, I surveyed the secondary scholarly literature on gay family rights in the United States and France, concentrating especially on surveys detailing legal reforms (see for example: Eskridge and Hunter 2011; Fabre and Fassin 2003; Mécary 2008; Mezey 2009). I also consulted the extensive on-line legal analysis of U.S. and international LGBT rights organizations, which provide maps and detailed up-to-date descriptions of constantly evolving legislation and jurisprudence.[22] Finally, I searched the databases of the relevant legal institutions for bills and cases with pertinent keywords in both languages, such as adoption, marriage, and partnership.

Because of the high number of cases and bills and the amount of data they implied, I narrowed my analytical focus to those that had significant implications for the rights of same-sex couples and their families. In California legislation, I focused on: AB 1982 (1995), which attempted to prevent the recognition of out-of-state same-sex marriages and eventually inspired Proposition 22, which banned same-sex marriage in statutory law; AB 205 (2005), "The California Domestic Partner Rights and Responsibilities Act," which established civil unions for same-sex couples; AB 43 (2006), which would have legalized same-sex marriage; and hearings held before the passage of Proposition 8 (2008). In Texas, which had fewer bills overall, I focused on SB 7 (2003), which banned same-sex marriage and civil unions in law, and HJR 6 (2004), which created a referendum that inscribed that ban into the state's constitution. On the U.S. Federal level, I examined DOMA (1996) and later attempts to create a federal anti-gay marriage amendment in 2004 and repeal DOMA in 2011. In courts, I focused on the case *In Re Marriage Cases* (2008), which legalized same-sex marriage before Proposition 8, *United States*

[22] The Human Rights Campaign, Human Rights Campaign State Maps, http://www.selectsurrogate.com/surrogacy-laws-by-state.html; Gay & Lesbian Advocates & Defenders, GLAD Know Your Rights Information by State, http://www.glad.org/rights/states; consulted 1/21/15. European Region of the International Lesbian, Gay, Bisexual, Trans, and Intersex Association, Rainbow Europe, http://www.ilga-europe.org/rainboweurope; consulted 8/3/15.

v. Windsor (2013), *Hollingsworth v. Perry* (2013), and *DeBoer v. Snyder* (2014).[23] In the French case, I focused on the *Pacte Civil de Solidarité* of 1999, which authorized civil unions, and the 2013 bill authorizing same-sex marriage and adoption.[24] At the ECtHR, I studied the cases originating in France: *Fretté v. France* (2002), *E.B. v. France* (2008), and *Gas and Dubois v. France* (2012).[25]

After identifying the cases and legislation, I used the online archives of the relevant institutions to access the records of proceedings, debates, hearings, reports, briefs, and other materials on file. These records represented more than 14,000 cumulative pages of judicial and legislative work around these reforms. Some legislative hearings were only available in video format. These included those for California, Texas, and the hearings during the marriage debates in France. I downloaded those from Texas and France and traveled to the State Archives in California to access the physical copies, which could only be consulted in person. These video records totaled more than 100 hours of testimony.

In analyzing these records, I concentrated particularly on the parts of the process involving experts, such as briefs and full trials in courts and oral and written testimony during hearings in legislatures. I studied the number of people who provided this information and categorized them according to the same typology I use in the media analysis. This allowed me to identify the categories of experts, such as professors, mental health professionals, religious representatives, or ordinary people that provided information most often to decision-makers. I also examined the kinds of information these people shared in their testimony. I traced whether

[23] *In re Marriage Cases*, 43 Cal.4th 757 (2008); *United States v. Windsor*, 133 S. Ct. 2675, 2694 (2013); *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013); *DeBoer v. Snyder*, 973 F. Supp. 2d 757, 775 (E.D. Mich. 2014).
[24] Loi n° 99-944 du 15 novembre 1999, J.O. n°265 du 16 novembre 1999, p. 16959; Loi n° 2013-404 du 17 mai 2013, J.O. n°0114 du 18 mai 2013, p. 8253.
[25] *Fretté v. France* (Application no. 36515/97, March 26, 2002); *E.B. v. France* (Application no. 43546/02, January, 22, 2008); *Gas and Dubois v. France* (no. 25951/07, March 15, 2012).

there were differences in the categories of experts and kinds of knowledge they used across courts and legislatures as well as across national cases and jurisdictions.

Interviews and Observation (Chapters 3, 4, and 5)

I directly solicited interviews from experts that had participated in either French or American debates. I used the media, legislative, and judicial data to identify them. I prioritized people who had spoken in front of legal institutions, such as courts or legislators, as well as people who have organized or brought expertise to how legal institutions, such as lawyers and lawmakers. I aimed to speak to experts who had testified either in favor or against gay family reforms. To have a variety of perspectives, I also sought to speak with people from multiple academic disciplines and who had been involved in the debates for different lengths of time. I hoped to speak to scholars and professionals who had been involved in the debates for the entire 23-year historical period as well as those who were involved more recently.

I contacted interviewees by email. In France, I contacted several experts via hand written letters after French researchers told me this would be more effective. My interview request stated the objective of my research, my institutional affiliations, and my motivation for contacting them specifically. During the course of the interview, I asked respondents if they had personal or professional connections with other experts I hoped to interview. If they did, I asked if they could either put me in touch with those people or if I could use their name to request an interview on their behalf. I suspected this approach would be helpful in opening doors. It proved especially necessary for gaining access to conservative experts. It was also essential for gaining access to famous respondents whose email addresses and telephone numbers are private and who receive constant solicitation. I also knew that I was more likely to get a positive response, or at

least an acknowledgement of my request and a denial, if another well-known expert or trusted friend of theirs could vouch for me. In one case that I am aware of, the potential interviewee contacted one of my faculty mentors, unbeknownst to me, to ask whether I was trustworthy.

I interviewed 72 experts, 37 who participated in French debates and 35 who participated in American debates. 56 interviewees (28 in France, 29 in the U.S.) were supportive of allowing same-sex couples to marry at the time of the interview. Of these, 8 (7 in France, 1 in the U.S.) were formerly opposed but later changed their minds. Though also generally supportive of their access to adoption, assisted reproductive techniques, and surrogacy, several interviewees in support of same-sex marriage expressed some reservations about one or more of these questions. 15 interviewees (9 French, 6 American) did not support either relationship or parenting rights for same-sex couples. Tables 14 and 15 list the interviewees, their professions, their affiliations, and their stance at the time of the interview.

Table 14: Interviewees in U.S. Debates (n=35)

Name	Profession / Activity	Organization / Affiliation
	Opponents	
Allen, Douglas	Professor Economy	Simon Fraser University
Duncan, William	Activist Organization Researcher	Marriage Law Foundation
Gallagher, Maggie	Activist Organization Founder / Scholar	Institute for Marriage and Public Policy
Lund, Nelson	Professor Law	George Mason University
Morse, Jennifer Roback	Activist Organization Founder / Scholar	The Ruth Institute
Wardle, Lynn	Professor Law	Brigham Young University
	Supporters	
Anderson, Clinton	Professional Organization Staff	American Psychological Association
Avery, Shannon	Judge	State of Maryland
Badgett, Lee	Professor Economy / Think Tank Researcher	UMass Amherst / The William's Institute
Boaz, David	Think Tank Executive Vice President	The Cato Institute
Bonauto, Mary	Activist Lawyer	Gay and Lesbian Alliance and Defenders
Carpenter, Dale	Professor Law	University of Minnesota
Cherlin, Andrew	Professor Sociology	Johns Hopkins University
Cooper, Leslie	Activist Lawyer	American Civil Liberties Union
Cott, Nancy	Professor History	Harvard University
Egan, Edmund	City Government Economist / Professor Economy	City of San Francisco
Eskridge, William	Professor Law	Yale University
Galatzer-Levy, Robert	Professor Psychology/Psychoanalyst	University of Chicago
Gates, Gary	Think Tank Researcher	The William's Institute
Haider-Markel, Donald P.	Professor Political Science	University of Kansas
Herek, Gregory	Professor Psychology	University of California Davis
Hillsman, Sally	Professional Organization Executive	American Sociological Association
Hunter, Nan	Professor Law	Georgetown University
Lamb, Michael	Professor Psychology	Cambridge University
Manning, Wendy	Professor Sociology	Bowling Green State University
Meyer, Ilan	Professor Psychology	The William's Institute
Patterson, Charlotte	Professor Psychology	University of Virginia
Pepleau, Letitia Anne	Professor Psychology	University of California Los Angeles
Pizer, Jennifer	Activist Lawyer	Lambda Legal
Rosenfeld, Michael	Professor Psychology	Stanford University
Shapiro, Ilya	Think Tank Researcher	The Cato Institute
Stein, Edward	Professor Law	Cardozo School of Law
Stern, Marc D.	Activist Lawyer	American Jewish Committee
Stewart, Therese	City Government Lawyer	City of San Francisco
Zia, Helen	Author / Activist / Average Person	None

Table 15: Interviewees in French Debates (n=37)

Name	Profession / Activity	Organization / Affiliation
	Opponents	
Collin, Thibaud	Professor Philosophy	Collège Stanislas
Dekeuwer-Defossez, Françoise	Professor Law	Université Catholique de Lille
Flavigny, Christian	Psychoanalyst / Hospital Psychiatrist	Hôpital de la Pitié-Salpêtrière
Fulchiron, Hugues	Professor Law	Université de Lyon III
Lacroix, Xavier	Professor Philosophy / Theology	Université Catholique de Lyon
Levy-Soussan, Pierre	Psychoanalyst / Psychiatrist	Psychology practice / Université Paris-Diderot
Neirinck, Claire	Professor Law	Université de Toulouse I
Ménard, Claire	Agency Staff	Union National des Associations Familiales
Vallat, Jean-Philipe	Agency Under Director	Union National des Associations Familiales
	Supporters	
Badinter, Elisabeth	Professor Philosophy	École Polytechnique
Binet, Erwann	Legislator	Assemblée Nationale
Bloche, Patrick	Legislator	Assemblée Nationale
Borrillo, Daniel	Professor Law	Université Paris Ouest Nanterre
Brunet, Laurence	Researcher and Scholar Law / Bioethics	Université de Paris / Hôpital Cochin
Cadoret, Anne	Professor Anthropology	Centre National de le Recherche Scientifique
Courduriès, Jérôme	Professor Anthropology	Université de Toulouse II
Delaisi de Parseval, Geneviève	Psychoanalyst / Professor	Multiple
Descoutures, Virginie	Researcher Sociology	Institut National d'Études Démographiques
Fassin, Eric	Professor Sociology	Université Paris 8
Godelier, Maurice	Professor Anthropology	École des Hautes Études en Sciences Sociales
Gross, Martine	Researcher Sociology	Centre National de le Recherche Scientifique
Hefez, Serge	Psychoanalyst / Hospital Psychiatrist	Hôpital de la Pitié-Salpêtrière
Héritier, Françoise	Professor Anthropology	Collège de France
Jouannet, Pierre	Doctor / Professor	Université Paris Descarts, Multiple
Le Déroff, Joël	Activist Organization Staff	ILGA - Europe
Mécary, Caroline	Lawyer	None
Michel, Jean-Pierre	Legislator	Sénat
Nadaud, Stéphane	Psychoanalyst / Hospital Psychiatrist / Philosopher	Hôpital de Ville-Évrard
Neiertz, Nicolas	Activist Organization President	Association David et Jonathan
Quinqueton, Denis	Activist Organization President	Association Homosexualités et Socialismes
Roudinesco, Élisabeth	Professor of History	Ecole Normale Supérieure , Multiple
Sanguinetti, Patrick	Activist Organization President	Association David et Jonathan
Schulz, Marianne	Ministry Staff Member	Ministère des solidarités
Seban, Pablo	Average Person / Activist	Indépendent
Théry, Irène	Professor Sociology	École des Hautes Études en Sciences Sociales
Urwicz, Alexandre	Activist Organization	Association des Familles Homoparentales
Wintemute, Robert	Professor Law / Lawyer	King's College, London

Although there is a preponderance of supporters among the pool of experts heard in courts and legislators, I strove to interview as many opponents as possible. Despite considerable effort, their limited representation in my sample likely reflects a distrust to speak to a doctoral candidate in sociology who has published on sexual minorities and gay parenting. They likely assumed that my political stance reflects that of most sociologists, who appear to dominate the

American field today, and that I would portray them unfavorably. Moreover, some have had their scholarly reputations and personal reputations publically smeared, which probably makes them leery of interviews.

Many interview solicitations to them went unacknowledged and unanswered. I attempted to contact them through multiple avenues. For example, I had three interviewees contact researchers at the Heritage Foundation who were among their personal contacts, but never got a response. Similarly, I contacted David Blankenhorn on behalf of several interviewees and over the course of several months but my requests went unacknowledged. Three people, Bradford Wilcox, professor of sociology at the University of Virginia, Monseigneur André Vingt-Trois, a French Cardinal, and Tony Anatrella, a Parisian priest, author, and psychoanalyst, all wrote back but declined to be interviewed. They said they were unavailable or did not see a reason their testimony should be heard. A senior researcher at the Family Research Council, whom I met at one of their public conferences, agreed to be interviewed pending permission from his organization's Public Relations department. They denied my request.

Two conservative experts, Mark Regnerus, professor of sociology at the University of Texas, and Robert P. George, professor of jurisprudence at Princeton and founder of several advocacy organizations, initially agreed to interviews but then, after repeated communication to set up a time, stopped responding. One conservative respondent, who asked not to be identified, agreed to an interview and we spoke for several hours. He called back several days later and asked to be retracted from the study. He cited fears of retribution and potential harm to his ability to engage in future policy debates. I offered to let him read and correct any quotes of his I would include in the write up as well as exclude any information he felt uncomfortable seeing published, but he refused. Some American experts supporting gay family rights, such as Jonathan

Rauch and Andrew Sullivan, both conservative gay intellectuals, and declined to be interviewed or did not respond to requests. Similarly, in France, Nicolas Gougain, the spokesperson of the Inter-LGBT, a French advocacy organization, and François de Singly, a sociologist, declined or did not acknowledge my interview request, despite repeated solicitation.

Several respondents, both supporters and opponents, asked to see my complete interview guide before agreeing to speak with me. One submitted his responses in writing, but then agreed to a follow-up interview. One respondent asked to read and edit the transcript of our interview. Two respondents also declined to allow me to quote them verbatim and two others asked to read any work before publication to ensure that I was not misquoting them. Finally, most respondents, at least once during the interview, asked to speak off the record. All of these requests suggest their desire to control their public image and manage their reputations. These requests make sense in light of the elevated political stakes of gay family rights and the pressure they exert on experts; anything and everything they say is scrutinized and could be used to undermine their credibility in their professions and before lawmakers and judges.

I conducted interviews in person, over the telephone, and via videoconferencing technology. Interviews ranged from 1 to 4 hours. Interviews were shortest with professionals who bill by the hour. I had the interviews fully transcribed and used HyperResaerch to code and analyze them.

I supplemented these interviews with ethnographic fieldwork in both countries. Between 2008 and 2015, I attended workshops, public debates, academic seminars, professional conferences, academic meetings, and other events featuring knowledge producers I identified through my media and institutional analysis. Table 16 includes the complete list of events I attended in person, but does not list the webinars and online conferences I also watched.

Throughout this ethnographic fieldwork I had hundreds of informal conversations with experts—some of whom I was able to later formally interview—and observed their interactions with one another.

Table 16: Conferences, Seminars, and Events Attended in Person

Type	Organization/Event	Title	Date	Location
		United States		
Think Tank Conference	The Williams Institute	14th Annual Update: Marriage and Beyond	4/17/15	Los Angeles
Public Conference	KPCC Radio	Forcing the Spring: Inside the Fight for Marriage Equality. Featuring Terry Stewart, Torie Osborne, and Jo Becker	4/28/14	Los Angeles
Think Tank Conference	The Williams Institute	More Progress, More Stagnation, More Setbacks: A Global Picture of Legal Recognition of Same-Sex Orientation	4/13/14	Los Angeles
University Seminar	UCLA School of Law	Comparative Sexual Orientation Law. Featuring Robert Wintemute	4/8/14	Los Angeles
Think Tank Conference	The Family Research Council	Pro-life Con	1/22/14	Washington
Professional Conference	American Sociological Association	When the Professional Becomes Political: Responding to the New Family Structures Survey	8/19/13	New York
Professional Conference	Eastern Sociological Association	Infertility and Assisted Reproductive Technologies	2/21/13	Boston
Think Tank Conference	The Williams Institute	11th Annual Update: Fair Play? LGBT People, Civic Participation & Political Process	4/13/12	Los Angeles
Academic Conference	The Williams Institute UCLA Department of History	Why History Matters. Same-Sex Marriage: Past, Present, and Future	2/24/11	Los Angeles
Academic Conference	UCLA School of Law	The Aftermath of Prop 8: Is Gay Really the New Black?	11/13/08	Los Angeles
		France		
Professional Conference	Association Française de Sociologie	Vers une dénaturalisation du genre, de la sexualité et de la famille?	7/2/15	Saint Quentin en Yvelines
University Seminar	EHESS "Genre, Personne, Interlocution," directed by Irène Théry	"Etat civil des enfants nés de GPA : quand la politique interfère dans l'application du droit positif" Featuring Caroline Mécary	5/26/15	Paris
University Conference	Centre de recherche « Droit, sciences et techniques » de l'Université de Paris I and Centre d'études et de recherches en sciences administratives et politiques de l'Université de Paris II	Don, contre-don et rémunération des gamètes dans l'assistance médicale à la procréation : Perspectives de droit comparé	12/10/14	Paris
Professional Hearing	Académie Nationale de Médicine	Audition sur l'accès aux PMA et la GPA aux couples homosexuels	11/16/13	Paris
University Conference	EHESS	History Politics and the Supreme Court in the US Debate over Same-Sex Marriage	10/25/13	Paris
University Seminar	Université de Toulouse, Master Anthropologie	Procéation et parentalité	10/9/13	Toulouse
Professional Conference	Association Française de Sociologie	La science au service de la religion	9/4/13	Nantes
University Conference	EHESS	Contre la tyrannie du genre	6/5/13	Paris
University Conference	Université de Toulouse	Les familles homoparentales aujourd'hui : les enjeux	4/18/13	Toulouse
University Conference	Association Master 2 Droit Privé at Droit Privé Général de l'Université Panthéon-Assas, Paris II	L'ouverture du mariage aux personnes de même sexe	4/15/13	Paris
Activist Conference	Manif Pour Tous	Grand Meeting Régional La Manif Pour Tous	3/12/13	Toulouse
Think Tank Conference	Terra Nova	"Poings de vue," PMA-GPA : un débat en gestation ?	3/6/13	Paris

Some of these events I attended were part of my standard academic activities as a sociologist. For example, I attended the meetings of the American Sociological Association and the French Sociological Association at which experts held panels and gave papers. I also audited

seminars and classes run by experts, such as Irène Théry and Martine Gross. I was also formally heard by the French *Académie Nationale de Médecine* about the state of the U.S. empirical research on the outcomes of children raised by same-sex couples because of a review article I co-authored (Moore and Stambolis-Ruhstorfer 2013). Working on that article provided me with an insider's view into the way American family sociologists collaborate and work together. Since June 2014, I have also been participating as a volunteer researcher with France's first large-scale interdisciplinary cohort study of children raised by same-sex couples. This opportunity gave me an ethnographic perspective of the opportunities and challenges facing French researchers who are working in a changing field.

Standpoint in Comparative Research

In conducting this comparative cultural sociological research, I brought my perspective as a person raised in the United States but who has lived and worked in France regularly for a decade to study people working in both countries. I attempted to remain conscious of my position as a relative insider in the U.S. and outsider in France in order to remain sensitive to the ways I might be relying on my own cultural assumptions as I interpreted how American and French experts and policy-makers worked. Cultural sociologists and anthropologists describe how working in a cultural context that is new and unfamiliar can help bring to light people's taken-for-granted assumptions and worldviews in ways that might be difficult for locals to perceive. At the same time, researchers run the risk of imposing their own culturally informed frameworks on the people they are studying. And, if they conduct comparative work, they may reify their own cultures as normal relative to the other contexts they study. I strived to be aware of these issues as I lived and carried out fieldwork in both countries.

Gaining a more than superficial understanding of the cultural contexts that shape how people think and work requires living and immersing oneself in those countries. I was raised in the United States and learned French in high school—which I now speak fluently—before pursuing a Bachelor's degree in French studies. After college and spending a "year abroad" in France, I moved there to work and study for four years. I earned a Master's degree in American Studies from the University of Toulouse, which gave me a French academic perspective of the United States, and taught post-secondary and high school English and U.S. government courses. Since starting my Ph.D. in the United States, I have spent my time living between both countries. These experiences have not only helped me to gain a deeper understanding of French culture but have also helped me to see American cultural norms in ways that would not be possible if I had not lived abroad for so long. I now have family, friends, and colleagues in both places. My discussions with them as I gathered and analyzed my data helped make me sensitive to the perspectives and assumptions I brought to my work.

My status as an American in France provided some unique advantages in conducting interviews with and observing French academics, professionals, activists, and policymakers. First, I believe that they may have been more willing to meet and speak with me because they perceived me as an outsider who did not have political stakes in the conflicts and struggles between and among French experts and political actors. As described in Chapter 4, the French knowledge production field is small and conflictual. Therefore, my interviewees might have perceived a French sociology graduate student as a potential threat or expected him to represent a particular intellectual or political "camp." I was likely exempted from some of those issues. Second, because French respondents assumed I was not especially familiar with their context, they were probably willing to answer questions and be more explicit about their processes,

challenges, and issues in ways they might not have been with a French native. In the United States, although I was not perceived as an outsider, I emphasized that I was conducting comparative work and the fact I had received a grant from the French government, which may have encouraged interviewees to respond to my request for interviews.

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RÉSUMÉ DE LA THÈSE EN FRANÇAIS

Avis aux lecteurs : En raison de sa taille réduite, ce résumé ne peut contenir les détails et les nuances de l'analyse contenus dans la version intégrale de la thèse. Veuillez vous rapporter à la thèse dans sa version originale pour avoir l'argumentation en entier. Ce résumé traduit l'intégralité de l'introduction et de la conclusion. Il présente également des extraits des éléments d'analyse les plus centraux des cinq chapitres empiriques.

Résumé court :
Comment et pourquoi les décideurs, en France et aux États-Unis, mobilisent-ils différentes formes de « savoir » lors des débats législatifs et judiciaires sur la reconnaissance des couples homosexuels et de l'homoparentalité ? Qui sont les « experts » qui présentent ce savoir, pourquoi interviennent-ils dans les débats, et que pensent-t-ils de leurs rôles ? Pour répondre à ces questions, cette thèse se base sur un corpus comprenant cinq types de données qui se concentrent sur les débats publics entre 1990 et 2013 : 1) plus de 5 000 pages de retranscriptions d'auditions officielles ; 2) plus de 9 000 pages de débats parlementaires ; 3) 2 335 articles parus dans *Le Monde* et *The New York Times* ; 4) l'observation participante de congrès, colloques ou séminaires organisés dans le cadre d'universités ou de *think tanks* ; 5) 72 entretiens avec des individus auditionnés par divers tribunaux et assemblées législatives ainsi qu'avec des élus et avocats ayant fait appel à eux. Définissant « l'expertise » de façon inductive comme la parole de toute personne interrogée par les institutions décisionnelles, ce travail permet d'analyser le savoir véhiculé non seulement par des professionnels et universitaires mais aussi des religieux, des militants, et des citoyens ordinaires. L'analyse révèle que certains savoirs, comme l'économie aux Etats-Unis et la psychanalyse en France, sont présents dans un contexte, mais absents dans l'autre. De plus, certains types d'experts utilisent des savoirs différents selon le pays. Par exemple, les représentants religieux américains font davantage appel au savoir religieux que leurs homologues français qui, au contraire, mobilisent les sciences sociales. Ces différences peuvent être attribuées aux conditions de la production du savoir dans chaque pays ainsi qu'aux logiques institutionnelles qui favorisent des experts ayant des capitaux symboliques spécifiques, comme la « neutralité », la rigueur scientifique, et la notoriété. Ces capitaux permettent à certains experts, et non à d'autres, de jouir d'une légitimité et d'une crédibilité selon le contexte du débat.

1. Introduction

En 2010, à la demande d'avocats de droit constitutionnel, Edmund Egan, économiste en chef pour la ville et le comté de San Francisco, a témoigné en justice au tribunal fédéral que l'interdiction du mariage entre personnes de même sexe de l'état de Californie violait la

Constitution américaine. Egan a déclaré que « si le mariage entre personnes de même sexe était autorisé, San Francisco verrait une augmentation des recettes de TVA et une augmentation des recettes des impôts fonciers »[26]. En 2013, de l'autre côté de l'Atlantique, les législateurs de la Commission des lois du Sénat français ont invité le psychanalyste Jean-Pierre Winter aux auditions sur le projet de loi ouvrant le mariage et l'adoption aux couples de même sexe. Il les a mis en garde que permettre aux couples de même sexe d'être légalement les deux parents d'un enfant serait « une erreur…impardonnable » selon le psychanalyste français Jacques Lacan. Ce serait un « mensonge d'État » qui nierait l'importance biologique et symbolique de la différence des sexes dans la reproduction, a-t-il dit (Michel 2013 : 94). Dans chacun de ces exemples, des décideurs ont entendu de « l'expertise » lorsqu'ils envisageaient de donner ou non des droits conjugaux et parentaux aux couples de même sexe : l'impact économique suite au changement du droit du mariage aux Etats-Unis et le principe psychanalytique de la complémentarité des sexes en France.

Ces anecdotes donnent l'impression que les juges et les législateurs américains et français, qui sont face aux questions similaires de droit, font appel à différentes sortes de savoirs ou « d'expertise » lorsqu'ils prennent une décision. Mais, y-a-t-il des différences nationales systématiques entre ces deux pays dans le type « d'experts » et le genre de savoir que ces personnes donnent aux médias, aux tribunaux, et aux législatures ? Si oui, lesquelles et quelles seraient leurs causes ? Cette thèse examine le type de personne et d'information auxquelles ces institutions font appel dans les deux pays lorsqu'elles essaient de venir à bout des revendications des minorités sexuelles qui demandent une reconnaissance pour leurs liens conjugaux et familiaux.

[26] *Perry v. Schwarzenneger* 685 F. Supp. 4 (U.S. D.C. N. CA. 2010).

Les Etats-Unis et la France partagent plusieurs caractéristiques qui établissent un point de comparaison (Lamont et Thévenot 2000). Ce sont deux pays riches et industrialisés dont les démocraties ont été fondées sur des principes des Lumières, et suite aux révolutions à la même époque. Cependant, ils présentent des divergences clefs, notamment la façon dont leurs institutions gèrent les inégalités et les différences sociales, leurs systèmes judiciaires et politiques, et leurs structures de production de savoir. Ces différences mettent en relief les mécanismes qui font que certains types « d'experts » et « d'expertise » deviennent importants dans un contexte national particulier.

L'accès aux droits conjugaux et familiaux, tels le mariage et l'adoption, est une des problématiques de droits civiques majeure de notre époque. Alors que les pays ont progressivement lutté avec ces questions, beaucoup d'observateurs se sont concentrés sur la rapidité du changement, le progrès déséquilibré dans des zones géographiques, et les dynamiques politiques et des mouvements sociaux qui ont rendu ces évolutions possibles (Haider-Markel 2001 ; Hirsch 2005 ; Hull 2006 ; Moscowitz 2013 ; Mucciaroni 2008, 2011 ; Pierceson, Piatti-Crocker, et Schulenberg 2010 ; Smith 2008). En mettant en avant l'aspect de « politique morale » des droits des homosexuels, ces analyses ont tendance à négliger le rôle des « experts » et de « l'expertise ». La majorité de ces travaux ont analysé les Etats-Unis et ont décrit les luttes des organisations militantes, les groupes religieux, et d'autres acteurs dans leurs tentatives de changer la loi. Les études sur la France signalent, cependant, que d'autres personnes, telles que les universitaires et les intellectuels, ont été des soutiens ou des obstacles pour certains droits des homosexuels (Borrillo et Fassin 2001 ; Fassin 1998, 2000b ; Gross 2007 ; Peerbaye 2000 ; Verjus and Boisson 2005). Cette comparaison internationale suggère que différentes catégories de personnes, d'associations militantes et citoyens ordinaires aux scientifiques et intellectuels,

contribuer alors à des processus politiques et juridiques de façon spécifique à leurs contextes nationaux.

Afin de cerner plus précisément le genre de personnes impliquées dans les débats, j'utilise une définition large, inductive, et non traditionnelle « d'experts » et « d'expertise ». Les définitions traditionnelles de l'expertise se concentrent habituellement sur les universitaires et les professionnels avec des formes de savoirs techniques que les décideurs utilisent lorsqu'ils mettent en place des politiques publiques (Brint 1996; Théry 2005). Cependant, cette attention portée aux élites peut occulter les interactions entre les décideurs et les « experts profanes [*lay experts*] » (Epstein 1996), tels que les citoyens ordinaires, les militants, ou les représentants religieux, dont le savoir émane de leurs expériences de vie et d'autres sources « non qualifiées ». Elle peut également occulter la compétition entre les experts profanes et les universitaires ou professionnels (Saguy 2013). Je ne prends pas de décision sur la validité et la qualité de l'information apportée par ces deux catégories d'experts. Au lieu de cela, je conceptualise « l'expertise » comme une forme d'intervention (Eyal and Buchholz 2010) dans un espace publique traversé par des dynamiques de pouvoir qui confèrent la légitimité et le pouvoir de façon inégale (Fraser 2007). Par conséquent, je considère que toute personne entendue par les médias, les tribunaux, et les législatures sont des « experts », indépendamment de leurs qualifications ou statut et je considère leur parole comme étant de « l'expertise ».

Cette approche nous permet de voir comment ces personnes interagissent entre elles, traversent les frontières entre les catégories, et négocient des demandes et logiques institutionnelles spécifiques sans avoir un avis a priori sur leur importance relative. Par exemple, les logiques et formats politiques des législatures aux Etats-Unis mettent en avant la « narration [*storytelling*] » (Polletta 2006) qui peut favoriser la parole des citoyens ordinaires alors que les

tribunaux ont des exigences plus élevées pour que l'information puisse être qualifiée comme un « témoignage expert » (Caudill et LaRue 2003 ; Ramsey et Kelly 2004). Comme nous le verrons de façon plus détaillée plus loin, ces institutions n'ont pas joué le même rôle aux Etats-Unis et en France dans les réformes concernant les familles homosexuelles[27]. Cette approche de l'expertise assez large peut nous aider à mieux expliquer pourquoi certaines catégories d'experts comptent davantage ou ont un rôle plus visible dans un pays que dans l'autre selon les configurations culturelles et institutionnelles présentes.

Je considère également les circonstances nationales spécifiques dans lesquelles ces différentes catégories d'experts travaillent et apportent leur information aux médias et aux institutions décisionnelles, comme les tribunaux et les législatures. Par exemple, certains types d'experts profanes, comme les familles homosexuelles, les organisations LGBT, et les représentants religieux rencontrent des barrières à leur participation dans la sphère publique française à cause des traditions comme la laïcité (Gunn 2004) et l'universalisme, qui décourage l'affichage des différences sociales sur la base de la race, du genre, ou de la sexualité (Brubaker 1992 ; McCaffrey 2005 ; Scott 2005). Ces mêmes experts ne rencontrent pas ces barrières aux Etats-Unis. La comparaison entre ces deux contextes révèlent alors les opportunités et les défis que les experts profanes négocient afin d'apporter leur savoir au débat publique, s'ils arrivent à le faire tout court.

Les experts universitaires, professionnels, et intellectuels évoluent également dans des champs de production de savoir et dans des relations avec des décideurs spécifiques au contexte national. Nous pouvons mieux les comprendre en les examinant comme une partie d'un ensemble plus grand où leurs actions et leurs interventions publiques sont contraintes ou rendues

[27] J'utilise l'expression « famille homosexuelle » pour désigner couples de même sexe élevant ou non des enfants. L'expression « famille homoparentale » exclue les couples qui n'ont pas d'enfant.

possibles par les circonstances dans leurs spécialités et dans le contexte de production de savoir de leur pays plus largement (Bourdieu 2002; Fourcade 2009). En m'inspirant des analyses de champs politiques et universitaires (Bourdieu 1993; Bourdieu et Wacquant 1992; Swartz 2013), j'étudie le positionnement de ces experts au sein de leurs disciplines universitaires et professionnelles ainsi que la façon dont ils apportent leurs informations aux décideurs.

Aux Etats-Unis, l'expertise s'est progressivement « démocratisée », en se décalant au-delà des cercles académiques, des professions, et des institutions scientifiques (Brint 1996; Eyal and Buchholz 2010; Fischer 2000, 2009; Rich 2010). « La fragmentation structurelle » aux Etats-Unis, c'est-à-dire le système fédéral et la séparation des pouvoirs entre les branches du gouvernement, diminue l'importance relative des experts élites dans la politique américaine par rapport à l'Europe (Brint 1996 : 134). La participation croissante d'acteurs multiples dans la production du savoir « utilisable » (Lindblom 1979) augmente également la possibilité pour de nouvelles entités, comme des *think tanks*, de générer leur propre information ou de transformer de l'information existante à des fins politiques (Medvetz 2012; Rich 2010). Comme cette thèse essaie de le montrer, les organisations militantes et les *think tanks* des deux bords dans le domaines des droits LGBT, surtout ceux qui sont impliquées dans le « *cause lawyering* » (Cimmings et NeJaime 2009), ont tissé des liens étroits avec des chercheurs et des universitaires américains. Ces liens ont aidé à soutenir l'offre et la demande pour leur savoir (Sarewitz et Pielke Jr. 2007) et contribuent à l'institutionnalisation continue de la recherche sur les problématiques des minorités sexuelles à la fois au sein des universités et dans les organisations professionnelles et académiques.

Contrairement aux Etats-Unis, la centralisation plus importante des gouvernements européens favorise les bureaucraties où les technocrates et les experts élites exercent une

influence plus directe et importante sur le processus décisionnel. La France est un cas particulièrement représentatif d'une technocratie où la production du savoir dans les institutions publiques de l'État a un poids dans les débats politiques (Brint 1996 : 192–193). Par exemple, les opposants aux droits conjugaux et familiaux des couples de même sexe ont trouvé des alliés puissants parmi les fonctionnaires haut-gradés des services sociaux de l'État (Commaille 2006). En plus, seulement quelques *think tanks* ont été récemment établis en France qui pourraient contredire le savoir produit par l'État ou être des médiateurs entre les experts élites et les institutions, comme ils le font aux Etats-Unis (Bérard et Crespin 2010). La France est aussi particulièrement marquée par une relation proche et une interdépendance entre les universitaires, les politiciens et les médias, qui favorisent des liens directs entre les experts élites et les décideurs (Bourdieu 1984 ; Charle 1990 ; Kurzman et Owens 2002 ; Sapiro 2009 ; Swartz 2013). Cette proximité peut donner à certains experts issus de l'élite, surtout ceux qui sont proches des partis politiques, la possibilité d'avoir un impact direct sur les réformes de droit. Néanmoins, ces liens étroits pourraient également contribuer à l'exclusion des experts profanes des institutions décisionnelles en France. En outre, comme cette thèse essaiera de le montrer, puisque la recherche sur les minorités sexuelles a du mal à être reconnue dans les champs où les experts issus de l'élite travaillent (Gross 2007; Perreau 2007), ils rencontrent des défis particuliers lorsqu'ils essaient de peser sur les réformes sur les droits conjugaux et parentaux des couples de même sexe.

« L'expertise », avec une définition large, joue un rôle dans l'avancement (ou l'empêchement) de l'évolution de ces droits parce qu'elle fait partie des outils utilisés par les défenseurs des deux bords de la cause dans leurs tentatives de changer les politiques publiques, les représentations et les mentalités (Armstrong and Bernstein 2008). Tous ceux qui ont une

revendication dans ces débats, des avocats et politiciens aux militants, utilisent des arguments afin de justifier leurs prises de positions et leurs approches (Boltanski et Thèvenot 1991). Afin d'avoir une crédibilité, ils se servent de l'expertise qu'ils croient convaincante, pertinente, et résonnante dans leur situation (Ferree 2003). L'expertise devient alors une partie des répertoires culturels plus larges (Lamont et Thévenot 2000) et des cadres (Bleich 2003; Johnston et Noakes 2005; Saguy 2003) qui influencent la façon dont les individus, y compris les décideurs et le public, perçoivent et comprennent les problèmes sociaux. Néanmoins, comme cette thèse essayera de le souligner, la valeur et la disponibilité de cette expertise sont façonnées par le contexte culturel et institutionnel dans lequel le savoir est produit et mis en service.

1.1 Les droits conjugaux et parentaux aux Etats-Unis et en France : un bref historique

Depuis juin 2015, suite à la décision de la Cour suprême des Etats-Unis dans le procès *Obergefell v. Hodges* et depuis le passage d'un projet de loi français en mai 2013, les deux pays reconnaissent le mariage entre personnes de même sexe au niveau national[28]. Néanmoins, la reconnaissance légale des couples homosexuels, que ce soit à travers le mariage, les unions civiques, et d'autres statuts, a suivi une trajectoire longue et sinueuse depuis plus de 25 ans, révélant des différences nationales. Par ailleurs, l'accès des couples homosexuels à la parentalité à travers l'adoption conjointe, l'adoption par le second parent, et l'aide médicale à la procréation, comme l'insémination par don pour les lesbiennes ou la gestation pour autrui pour les couples gays, n'est pas égal dans les deux pays. Actuellement, aux Etats-Unis, les droits concernant l'accès à la parentalité varient de façon significative entre les états fédérés et selon le mode d'accès, alors qu'en France l'adoption conjointe et l'adoption par le second parent n'ont été

[28] *Obergefell v. Hodges*, 135 S. Ct. 1039 (2015) ; Loi n° 2013-404 du 17 mai 2013, J.O. n°0114 du 18 mai 2013, p. 8253.

légalisé qu'en 2013. La gestation pour autrui y est interdite pour tout le monde et l'accès à l'aide médicale à la procréation est strictement limitée aux couples hétérosexuels de longue durée avec une infertilité médicale (Hennette-Vauchez 2009 ; Mecary 2012 ; Théry and Leroyer 2014). Ces différences dans les droits conjugaux et parentaux reflètent à la fois des différences dans les configurations des structures juridiques entre les deux pays, comme le fédéralisme aux Etats-Unis et la centralisation en France par exemple, et d'autres facteurs, y compris leurs approches aux nouvelles technologies reproductives et l'opinion publique. Ces circonstances peuvent nous aider à expliquer la disponibilité et l'utilité de certains types d'experts et d'expertise dans chaque pays.

Aux Etats-Unis, les lois concernant le mariage et la filiation relevaient traditionnellement de la compétence des juridictions des états fédérés. Par conséquent, dès les années 1970s, certaines localités ont offert certains droits limités, comme la protection contre l'expulsion en cas de décès du conjoint, aux couples de même sexe. La mobilisation autour de ces questions s'est intensifiée au fur et à mesure que les organisations LGBT cherchaient à améliorer les protections à travers les législatures locales et étatiques. Les tribunaux sont devenus un lieu principal de réforme. Au début des années 1990s, une couple de même sexe cherchant l'accès au mariage civil a intenté un procès à l'Hawaii où la Cour suprême de l'état a jugé que la constitution de l'état obligeaient la reconnaissance du mariage des couples de même sexe[29]. Cependant, les électeurs de cet état ont voté par voie référendaire pour modifier leur constitution, annulant ainsi la décision de justice. Par ailleurs, la décision de la Cour suprême de Hawaii a déclenché une vague de réactions contre le mariage entre personnes de même sexe, ce qui a propulsé la question vers la juridiction fédérale. Pour la première fois, le Congrès fédéral a promulgué une loi sur une question en dehors de sa propre juridiction traditionnelle, le *Defense of mariage act* (DOMA),

[29] *Baehr v. Miike*, 910 P. 2d 112, 80 Haw. 341 – Hawaii : Supreme Court, 1996.

qui a prohibé la reconnaissance du mariage entre personnes de même sexe par les instances du gouvernement fédéral et a permis aux états fédérés de refuser de reconnaître ces mariages entre leurs frontières, même s'ils étaient légalement contractés ailleurs[30].

Après cette période, des états à travers le pays ont suivi des chemins multiples et divergents. Certains états, comme le Texas, ont promulgué leurs propres versions du DOMA et ont interdit des unions civiles et autres contrats conjugaux entre les couples de même sexe. D'autres, comme la Californie, ont crée des *domestic partnerships* tout en interdisant le mariage (Andersen 2005). En 2004, une période de légalisation a débuté après que la Cour suprême du Massachussetts a reconnu le mariage entre personnes de même sexe, suivie par celle du Vermont. En 2008, après que les électeurs ont voté la Proposition 8, qui a annulé une décision de la Cour suprême de Californie légalisant le mariage, des avocats ont lancé une série de plaintes devant les tribunaux fédéraux. En 2013, la Cour suprême des Etats-Unis a statué dans deux procès, *Hollingsworth v. Perry* (connu d'abord sous le nom de *Perry v. Schwarzenegger*), qui ont invalidé la proposition 8, et *U.S. v. Windsor*, qui a invalidé DOMA[31]. Ces succès ont inspiré des litiges dans les tribunaux fédéraux qui ont invalidé d'autres lois étatiques interdisant le mariage entre personnes de même sexe et qui, en appel, ont fini par aboutir à *Obergefell*, le procès qui a légalisé le mariage sur tout le territoire.

Parallèlement à l'évolution de la législation et la jurisprudence sur les couples de même sexe, l'accès à la parentalité et la filiation demeurait une question relativement indépendante. Seulement quelques états avaient des interdictions explicites de l'adoption par les couples de même sexe ou, comme dans le Michigan, le limitaient aux couples mariés, ce qui excluait de facto les couples de même sexe. Cependant, la majorité des autres états permettait explicitement

[30] Pub.L. 104–199, 110 Stat. 2419, enacted September 21, 1996, 1 U.S.C. § 7 and 28 U.S.C. § 1738C).
[31] *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013) ; *United States v. Windsor*, 133 S. Ct. 2675, 2694 (2013).

l'adoption conjointe ou par le second parent pour les couples de même sexe, ou en l'absence d'une législation précise, qui était par exemple le cas au Texas, les tribunaux avaient créé une jurisprudence en permettant ces adoptions au cas par cas (Mezey 2009 ; Richman 2009). Par ailleurs, grâce aux politique publiques libérales, et dans l'absence d'une réglementation spécifique, les états n'ont jamais interdit aux couples lesbiens ou aux femmes seules l'accès aux banques de sperme, souvent privées, qui voulaient leur vendre leurs services (Almeling 2001). De la même manière, seul quelques états ont une législation spécifique concernant la gestation pour autrui. Certains états, comme le Texas, ont promulgué des lois qui reconnaissent les contrats de gestation, mais en les limitant aux couples mariés, ce qui excluaient de facto les couples de même sexe avant 2015. La Californie, en revanche, fait respecter les contrats de gestation sans regard pour l'orientation sexuelle des demandeurs. La plupart des états, cependant, n'ont aucune législation sur la gestation et les juges ont créé des jurisprudences divergentes. Le résultat de ces politiques publiques est que les agences de gestation dans certains états ont toujours pu offrir leurs services aux couples homosexuels masculins.

Tableau 1: Dates d'autorisation du mariage, de l'adoption et de gestation pour autrui pour les couples de personnes de même sexe aux États-Unis avant *Obergefell v. Hodges*, 2015

État	Mariage	Adoption conjointe	Adoption par second parent	GPA
Alabama				?
Alaska	2014 [J]	?	?	?
Arizona	2014 [J]	2014 [J]	2014 [J]	
Arkansas		2011 [J]		?
Californie	**2013 [J]**	**2003 [L]**	**oui**	**1993 [J]**
Caroline du Nord	2014 [J]	2014 [J]	2014 [J]	?
Caroline du Sud	2014 [J]	oui	oui	?
Colorado	2014 [J]	oui	oui	?
Connecticut	2008 [J]	2008 [J]	2000 [L]	2008 [J]
Dakota du Nord		?	?	oui*
Dakota du Sud		?	?	?
Delaware	2013 [L]	2011 [L]	2011 [L]	
Floride	2014 [J]	2014 [J]	2010 [J]	2014 [J]
Géorgie		?	?	?
Hawaii	2013 [L]	oui	oui	?
Idaho	2014 [J]	oui	2013 [J]	?
Illinois	2013 [L]	oui	oui	oui*
Indiana	2014 [J]	2006 [J]	oui	
Iowa	2009 [J]	2009 [J]	oui	oui*
Kansas	2014 [J]	?	[2013]	
Kentucky		?		?
Louisiane		?	?	N$
Maine	2012 [R]	2007 [J]	2007 [J]	?
Maryland	2013 [L/R]	oui	oui	?
Massachusetts	2004 [J]	1993 [J]	1993 [J]	oui*
Michigan			?	
Minnesota	2013 [L]	2013 [L]	2013 [L]	?
Mississippi				?
Missouri		oui	oui	?
Montana	2014 [J]	oui	oui	?
Nebraska		?		
Nevada	2014 [J]	oui	oui	2014 [J]
New Hampshire	2010 [L]	2010 [L]	2010 [L]	oui*
New Jersey	2013 [J]	1997 [L]	oui	N$
New York	2011 [L]	oui	oui	
Nouveau Mexique	2013 [J]	oui	2012 [J]	N$
Ohio		?		?
Oklahoma	2014 [J]	2007 [J]	oui	?
Oregon	2014 [J]	oui	oui	N$
Pennsylvanie	2014 [J]	oui	2002 [J]	?
Rhode Island	2013 [L]	oui	oui	?
Tennessee		?	?	
Texas		**?**	**?**	**2003[L]**
Utah	2014 [J]	2014 [J]	oui	2014 [C]
Vermont	2009 [L]	oui	1993 [J]	?
Virginie	2014 [J]	oui	oui	N$
Virginie Occidentale	2014 [J]	2014 [J]	?	?
Washington (D.C.)	2010 [L]	oui	oui	
Washington	2012 [L/R]	2012 [L/R]	2012 [L/R]	N$
Wisconsin	2014 [J]	2014 [J]	2014 [J]	?
Wyoming	2014 [J]	oui	oui	?

Légende:

[J] par décision de justice ; **[L]** par un texte de loi ; **[R]** par référendum

? : Absence de législation et jurisprudence inexistante ou contradictoire

oui : Autorisation d'adoptions au cas par cas par les juridictions de première instance, en l'absence de décision du législateur ou de la Cour suprême de l'État.

oui* : Autorisation des contrats de GPA, mais absence de jurisprudence concernant l'orientation sexuelle du/des futur(s) parent(s).

N$: Autorisation des contrats de GPA, mais sans rémunération de la gestatrice. Absence de jurisprudence concernant l'orientation sexuelle du/des futur(s) parent(s).

Sources: The Human Rights Campaign, *Human Rights Campaign State Maps*, http://www.selectsurrogate.com/surrogacy-laws-by-state.html, consulté le 21 janvier 2015 ; Gay & Lesbian Advocates & Defenders, *GLAD Know Your Rights Information by State*, http://www.glad.org/rights/states, consulté le 21 janvier 2015 ; The Select Surrogacy Agency, *The Select Surrogate Surrogacy Laws by State*, http://www.glad.org/rights/states, consulté le 21 janvier 2015.

La complexité des lois concernant la conjugalité et l'accès à la parentalité est représentée dans le Tableau 1, qui montre les lois et jurisprudence sur le mariage, l'adoption (conjointe ou par le second parent), et la gestation pour autrui en 2014, avant la décision d'*Obergefell*. Ce tableau montre la variété importante d'approches selon les états sur ces questions, créant un cadre « d'expérimentation » juridique au niveau des états fédérés, ainsi que la puissance de la voie judicaire des réformes, surtout au niveau fédéral. Ces deux facteurs ont donné un élan aux luttes pour les droits des familles homosexuelles et ont propulsé l'évolution de ces questions aux Etats-Unis (Andersen 2005; Bernstein 2011; Bernstein and Naples Forthcoming; Cain 2000; Pierceson 2005).

En France, les réformes du droit concernant le mariage et la filiation ont suivi un chemin plus simple, mais tout aussi difficile. Les politiques publiques sur ces questions s'appliquent universellement sur le territoire français. Il n'y a donc pas de possibilité d'avoir une expérimentation dans les juridictions sous-nationales, comme dans le cas américain. Le niveau national est donc le forum principal pour les réformes. En outre, contrairement au système du droit commun américain, ou les tribunaux peuvent modifier la législation de manière significative, le système du droit civil français a limité ce genre de pouvoir des tribunaux. Le *Conseil constitutionnel* français et de la Cour européenne des droits de l'homme (CEDH), le tribunal auquel les citoyens français peuvent faire appel lorsqu'ils considèrent que leur législation viole leurs droits en vue de la Convention Européennes de droits de l'homme[32], ont toujours rendu des avis indiquant que la législation du mariage entre les personnes de même sexe est le ressort exclusif du Parlement français (Mécary 2012; Paternotte 2011). En outre, le droit français, contrairement au droit étatique américain, a toujours limité l'adoption aux couples

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

mariés, rendant ainsi l'adoption conjointe par les couples de même sexe impossible avant 2013. Les célibataires pouvaient adopter, mais les gays et lesbiennes ont souvent vu leurs demandes d'agrément refusées à cause de leur orientation sexuelle. Bien que la CEDH ait d'abord maintenu et ensuite condamné ces refus, lors des procès *Fretté v. France* (2002) et *E.B. v. France* (2008) respectivement, les autorités françaises de l'adoption n'ont respecté cette décision que très progressivement (Garnier 2012 ; Mécary 2012)[33]. Plus récemment en 2012, la CEDH a rendu un avis dans le procès *Gas et Dubois v. France* stipulant que refuser l'adoption par le second parent au sein des couples non mariés ne constitue pas une violation de la Convention[34].

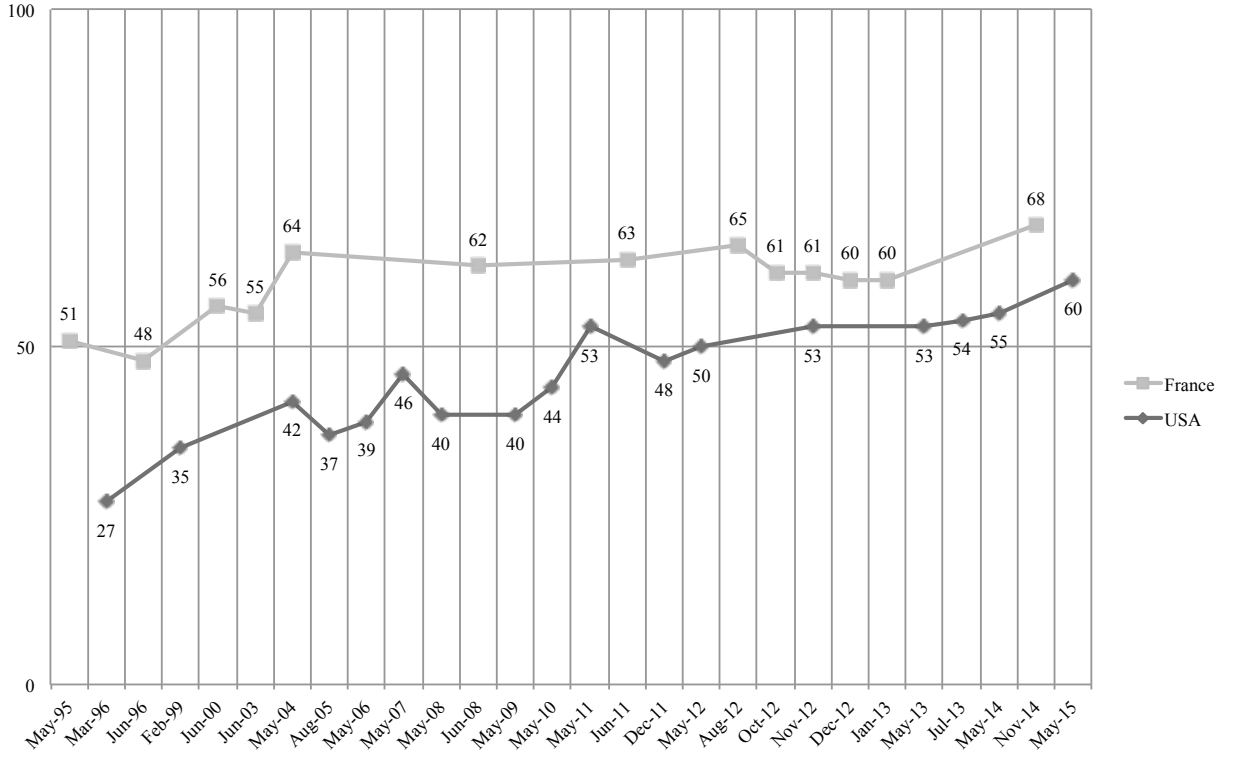
Avant 1999, lorsque le parlement français a légiféré sur le Pacte civil de solidarité (Pacs), un contrat donnant aux couples de même sexe et de sexes différents certains droits conjugaux mais excluant la possibilité d'adopter conjointement, il n'y avait pas de reconnaissance légale significative des couples de même sexe[35]. Après cette date, face aux refus du *Conseil constitutionnel* de statuer sur la question, le mariage personnes de même sexe et l'adoption n'ont pas fait partie de l'agenda législatif jusqu'à ce que les socialistes, qui avaient intégré ces légalisations dans leur programme politique, remportent les élections en 2012. Malgré leur promesse d'ouvrir également l'accès à l'aide médicale à la procréation (AMP) pour les couples lesbiens, face aux fortes mobilisations politiques et militantes, ils se sont limités au mariage et à l'adoption.

La France a également suivi une voie opposée à celle des Etats-Unis en terme de politique publique concernent l'aide médicale à la procréation. Elle a mis en place des interdictions contre la gestation pour autrui et l'insémination artificielle par donneur (IAD) pour

[33] *Fretté v. France* (Application no. 36515/97, March 26, 2002) ; *E.B. v. France* (Application no. 43546/02, January, 22, 2008).
[34] *Gas and Dubois v. France* (no. 25951/07, March 15, 2012).
[35] Loi n° 99-944 du 15 novembre 1999, J.O. n°265 du 16 novembre 1999, p. 16959.

les couples lesbiens et les femmes célibataires presque aussitôt que ces techniques ont été développées (Hennette-Vauchez 2009 ; Mennesson and Mennesson 2010). Par conséquent, les couples lesbiens français n'ont jamais eu accès de manière légale à l'IAD dans leur propre pays et ont dû faire appel à des centres d'AMP d'autres pays, souvent en Belgique ou en Espagne (Descoutures 2010 ; Gross, Courduriès, and Federico 2014).

Figure 1: Opinions favorables sur le mariage pour les couples de même sexe aux USA et en France de 1995 to 2015 **(Sources: Gallup, Ifop)**

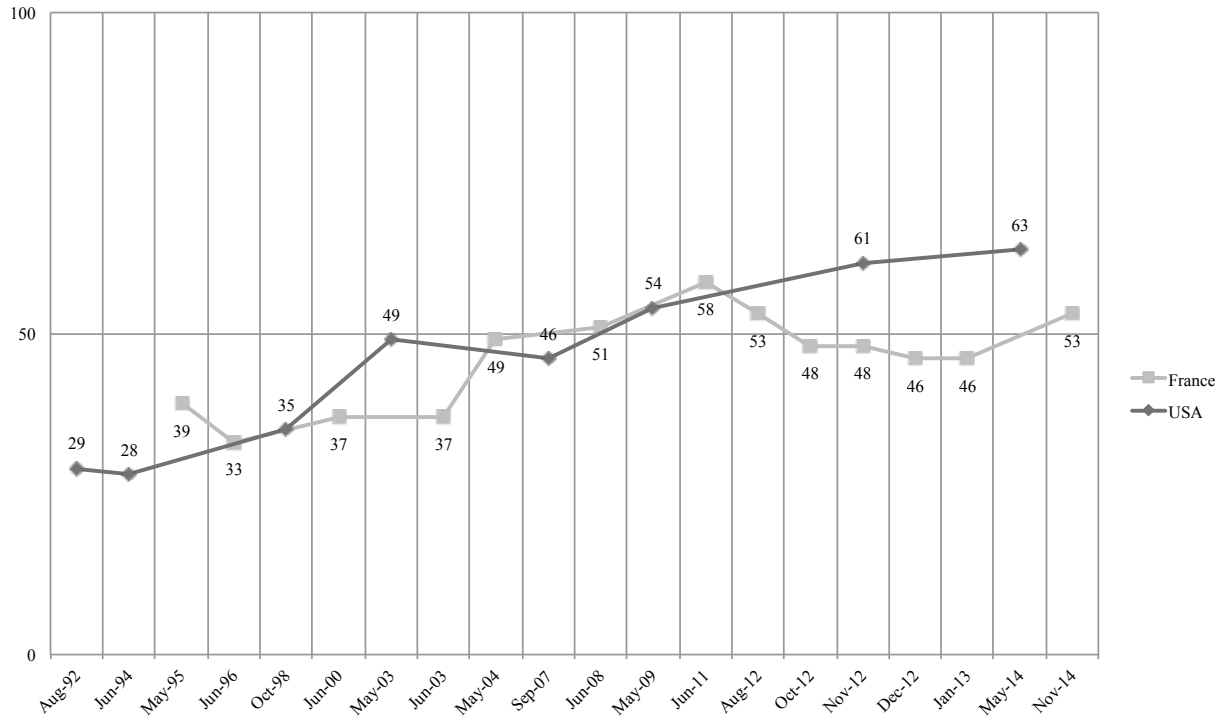


Sources: **Gallup** http://www.gallup.com/poll/183272/record-high-americans-support-sex-marriage.aspx?utm_source=marriage&utm_medium=search&utm_campaign=tiles;
Ifop http://www.ifop.com/?option=com_publication&type=poll&id=2839

Ces différences nationales dans les trajectoires des reformes des droits conjugaux et familiaux pour les couples de même sexe se reflètent également dans les sondages d'opinion publique qui révèlent les questions qui importent pour le public américain et français. Le mariage était la question controversée dans la politique publique et l'opinion américaines alors que l'adoption et la filiation sont les sujets plus contestés en France. La Figure 1 montre, par

exemple, que les répondants français ont invariablement eu des opinions plus favorables sur le mariage des couples homosexuels que les répondants américains dans les sondages majeurs d'opinion publique. L'opinion favorable française a fléchi en amont des débats sur le Pacs en 1996 et encore lors des débats sur le mariage en 2012. L'opinion favorable américaine a fluctué et n'est devenue majoritaire qu'au mois de mai 2011.

Figure 2: Opinions favorables sur l'adoption par les couples de même sexe aux USA et en France de 1992 à 2014 **(Sources: Gallup, Ifop)**



Sources: **Gallup** http://www.gallup.com/poll/170801/americans-say-sex-couples-entitled-adopt.aspx?utm_source=marriage&utm_medium=search&utm_campaign=tiles; **Ifop** http://www.ifop.com/?option=com_publication&type=poll&id=2839

À l'inverse du mariage, la figure 2 montre que les Américains étaient généralement plus favorables à l'adoption par les couples de même sexe que les Français. Alors que des familles gays et lesbiennes devenait progressivement plus visibles dans les débats publics aux États-Unis, les opinions favorables à l'adoption sont devenues de plus en plus importantes et ont presque toujours devancé les opinions favorables au mariage. Par exemple, en mai 2009, seulement 40%

des répondants américains soutenaient le mariage entre personnes de même sexe alors qu'au même moment 54% soutenaient l'adoption. Pendant ce temps-là, les sondés français étaient beaucoup moins favorables à l'adoption et leur soutien a fléchit ces dernières années alors que la possibilité réelle d'un accès autorisé à l'adoption conjointe est devenue plus concrète. En effet, tout au long des débats parlementaires sur le mariage et l'adoption entre 2012 et 2013, l'opinion favorable à l'adoption est passée en dessous de 50%.

Ces divergences dans l'opinion publique mettent en lumière les contextes politiques et culturels dans lesquels les décideurs américains et français, ainsi que les personnes qui souhaitent les influencer, doivent travailler sur les reformes de droit. Un des arguments que cette thèse propose est que ces différences dans les droits, dans des structures juridiques, et dans les voies de réformes ont des implications concrètes pour les experts et l'expertise dans les deux pays. Aux Etats-Unis, la variété des lois qui est générée par le fédéralisme et les différences des droits entre les états a permis aux couples de même sexe et à leurs enfants d'avoir une certaine reconnaissance légale et une visibilité sociale. Ces familles sont ainsi devenues disponibles pour la recherche et pour les témoignages publics. La variation des lois entre les états a également créé des contextes juridiques à l'intérieur du pays que les décideurs, comme les juges et les parlementaires, peuvent comparer ou que les pourvoyeurs de savoir, telles que les organisations militantes et autres, peuvent apporter aux discussions. En plus, les militants LGBT ont crée une demande importante pour ce savoir adapté aux institutions décisionnelles en développant des stratégies qui profitaient de la pléthore des « structures d'opportunité juridiques » (Andersen 2005) dans les tribunaux étatiques et fédéraux sur les questions des droits des familles homosexuelles.

En France, les interdictions a priori des nouvelles techniques reproductives et les restrictions sur l'adoption ont limité la visibilité et la présence des familles homosexuelles, rendant ainsi l'information à leur égard plus difficile à recueillir. L'homogénéité du terrain juridique français réduit également la capacité des militants et d'autres producteurs de savoir à générer de l'information au niveau local et à comparer les circonstances à l'intérieur du pays. Enfin, les experts français ont presqu'exclusivement été entendus par des législateurs, plutôt que par des tribunaux, et ont eu bien moins d'opportunités pour participer aux débats par manque de multiplicité de voies de réforme. Cette situation a inhibé la demande d'expertise par rapport aux Etats-Unis. Par ailleurs, la voie parlementaire de réforme achemine les experts et l'expertise dans une institution politique dont les règles concernant la validité du savoir ne sont pas explicites, contrairement aux tribunaux.

1.2 L'idée principale argumentée dans la thèse

Cette thèse soutient que les différences nationales dans l'expertise peuvent être attribuées à la façon dont les producteurs de savoir, ou les experts, et les utilisateurs de savoirs, tels que les législateurs et les avocats, composent avec : 1) les logiques institutionnelles des tribunaux et des législatures où les décideurs prennent leurs décisions ; 2) les champs académiques et professionnels dans lesquels les producteurs de savoir créer leurs informations ; et 3) les canaux et les formes d'interaction entres ces deux groupes d'acteurs. Chacun de ces composants est configurée d'une manière nationale spécifique, créant ainsi des circonstances particulières dans chaque pays. La relation entre ces trois composants est structuré par les différences plus larges dans les structures politiques et juridiques entre les Etats-Unis et la France, telles que le

fédéralisme versus la centralisation, qui contraignent ou rendent possible la demande et la disponibilité de certains types d'information.

1.3 Méthodes et données

Danse cette thèse, j'analyse une variété de données d'archives, d'entretiens, et d'observations ethnographiques dans les deux pays afin d'étudier le rôle des « experts » et de « l'expertise » dans les réformes sur les droits des familles homosexuelles. Les données se concentrent sur des débats législatifs et judiciaires ayant eu lieu entre 1990 et 2013 en France, dans les institutions européennes affectant la France, dans les institutions fédérales américaines, et dans deux états américains comparables : la Californie et le Texas. Ce faisceau historique est suffisamment large pour capturer la plupart des réformes majeures en France et aux Etats-Unis sur les droits des familles homosexuelles tout en étant gérable analytiquement. J'ai commencé ce projet avant le procès *Obergefell v. Hodges* et les procès des tribunaux fédéraux inférieurs qui l'ont précédé après 2013. J'analyse ces procès autant que possible, mais n'ai pas rallongé la période étudiée jusqu'à 2015 en raison de la nécessité de terminer mon analyse.

J'ai mené une analyse de contenue afin d'identifier des « experts » et de « l'expertise » dans : 1) plus de 5 000 pages de témoignage d'experts ; 2) plus de 9 000 pages de procédures dans les parlements et les tribunaux, y compris les retranscriptions des débats, des mémoires d'*amicus curiae*, des rapports législatifs, et des auditions des commissions ; 3) la couverture médiatique à travers 2 335 articles dans *Le Monde* et *The New York Times*. J'ai utilisé ces données pour suivre la trace des gens qui ont fourni du savoir dans ces lieux et afin d'identifier des schémas récurrents dans le temps, dans l'institution, et dans le pays. Afin de comprendre comment et pourquoi ces individus sont devenus impliqués dans ces débats, j'ai fait 72 entretiens

approfondis avec des « experts » ayant témoigné dans les tribunaux et les législatures et également avec des parlementaires et des avocats clefs ayant eu pour responsabilité l'organisation des témoignages d'experts dans chaque pays. Enfin, j'ai aussi observé et participé à des séminaires et des présentations avec des *think tanks* et d'autres organisations de production de savoir dans le but de comprendre leurs conditions de production. L'annexe méthodologique (dans à la version intégrale de la thèse) donne un descriptif détaillé de ces données et les outils et méthodes que j'ai utilisés pour les analyser.

1.4 Plan de la thèse

Le **Chapitre 1** analyse la couverture médiatique entre 1990 et 2013 dans *The New York Times* et *Le Monde*. En identifiant à la fois le type « d'expertise » et la catégorie « d'experts » qui le fournit, ce chapitre permet de combler une lacune de la littérature existante qui ne distingue pas entre le message et celui qui le donne. L'analyse démontre que la couverture américaine offre une place importante à l'expérience personnelle, surtout par les couples homosexuels et leurs familles, alors que la couverture française est caractérisée par un point de vue détaché et surplombant sur ces familles. En effet, contrairement à la couverture américaine, qui repose davantage sur les citations de citoyens ordinaires et de représentants d'organisations militantes, les journalistes et les rédacteurs de tribunes mettent la priorité sur de l'information théorique ou universitaire fournie par des professeurs et de professionnels de la santé mentale. Il y a donc une distinction nationale nette entre la domination « d'expertise profane » aux Etats-Unis et « d'expertise d'élite » en France. De plus, ces types de savoir, tels que l'expérience personnelle aux Etats-Unis et la théorie sociale abstraite en France, sont partagés par-delà des catégories distinctes d'acteurs dans chaque pays. Cela suggère que certaines formes

d'information fonctionnent comme un langage partagé dans lequel une multiplicité d'acteurs peut puiser pour justifier leurs revendications.

Le **Chapitre 2** déplace le regard analytique vers le contenu des débats au sein des institutions juridiques et politiques. Il examine les personnes interrogées par les juges et les législateurs dans les deux pays et ce qu'elles disent. Comme pour la couverture médiatique américaine, les législatures aux Etats-Unis servent de forums pour les citoyens ordinaires pour décrire comment les propositions de loi peuvent avoir un impact sur leurs familles et leurs amis. Dans les tribunaux américains, cependant, les avocats font appel aux « témoins experts », plus précisément des professeurs et des juristes, afin de compléter les témoignages des plaignants. Ce contexte institutionnel crée donc des opportunités pour des voix d'élites qui ne sont pas souvent entendues dans d'autres contextes américains. Ces experts plutôt académiques, et le savoir qu'ils fournissent, ressemblent à ceux qu'on entend dans les législatures françaises. Dans ces lieux, les parlementaires français appellent des experts élites, et non les citoyens ordinaires, à dire s'ils sont d'accord avec la législation des droits conjugaux et parentaux des couples de même sexe, reflétant ainsi le genre de voix entendues dans le contexte français plus largement. Ces résultats suggèrent que les schémas récurrents nationaux dans l'expertise dépendent de la manière dont les institutions décisionnelles contrôlent le savoir disponible dans un contexte donné.

En mobilisant les données des entretiens et de l'observation ethnographique, le **Chapitre 3** analyse comment les experts dans les deux pays organisent leurs interventions publiques et comment ils comprennent leurs places dans les débats. Il examine également comment les gens qui utilisent leur information, tels que les parlementaires et les avocats, évaluent et choisissent les experts et l'expertise lorsqu'ils effectuent leurs réformes. Cet analyse révèle que les médias, les législatures, et les tribunaux américains et français puisent dans différentes formes

d'information à cause de logiques institutionnelles qui ont un impact sur la façon dont les gens comprennent et utilisent le savoir. Plus précisément, les législatures dites ouvertes, telles que celles aux Etats-Unis, permettent à n'importe qui de prendre la parole, favorisant ainsi tout citoyen intéressé à témoigner. En revanche, les tribunaux américains, mettent des standards élevés sur la qualité du savoir parce que les juges doivent déterminer si la parole des experts est crédible. Cela favorise des éléments de preuve scientifique et empirique qui peuvent valider des arguments juridiques spécifiques. En France, ce sont les législateurs au sein de la majorité qui décident des personnes qui auront la possibilité de témoigner. À cause des risques politiques impliqués par un tel pouvoir et du désir d'avoir l'air légitime aux yeux de leurs pairs de l'opposition et du public, ils invitent des experts célèbres et de l'élite et d'autres personnes dont ils pensent que l'invitation donnera un air « équilibré » et convainquant à leurs auditions. Dans ce contexte, contrairement aux tribunaux américains, le contenu de l'information apportée par les experts est moins important. Au contraire, dans les auditions formelles, les experts servent une fonction politique d'étayage d'une réforme juridique qui a été décidée plutôt au préalable.

Alors que les chapitres précédents étudient les experts et l'expertise dans les forums de débats publiques, le **Chapitre 4** examine les producteurs de savoir dans les champs ou ils fabriquent leurs informations. Il contextualise le pouvoir relatif des experts conservateurs et progressistes français et américains, particulièrement les universitaires, les professionnels, et les militants, lorsqu'ils étudient des sujets en rapport avec les débats sur les familles homosexuelles. Cette analyse révèle que les progressistes américains qui étudient les minorités sexuelles et leurs familles sont rentrés dans le courant dominant de leurs champs respectifs et bénéficient de ressources institutionnalisées importantes pour produire un savoir empirique et de haute qualité. Les experts conservateurs se sont retrouvés marginalisés aux Etats-Unis et sont exclus du courant

majoritaire académique et professionnel. En contraste, les progressistes français sont marginalisés et stigmatisés à cause de leurs sujets de recherche et doivent faire face à un manque chronique de soutien institutionnel dans un contexte ou les familles homosexuelles sont relativement invisibles. Par ailleurs, leur champ est petit, interpersonnel et marqué par un conflit de longue date, qui limite leur capacité à travailler efficacement. De l'autres côté, les conservateurs français, bien que progressivement décentrés, occupent toujours des positions institutionnelles relativement importantes. Ces difficultés spécifiquement françaises peuvent nous aider à comprendre pourquoi l'expertise française dans les débats publics manquait souvent de bases empiriques et était plus conservatrice. De manière plus large, ce chapitre a pour objectif de montrer que les différences nationales dans l'expertise sont le résultat des conditions spécifiques de production de savoir des experts.

L'expertise est également façonnée par les canaux empruntés par les experts pour fournir leurs informations à la sphère décisionnelle. Le **Chapitre 5** explore les liens que les experts tissent avec les décideurs dans chaque pays. Il montre que les experts américains font face à une sphère extrêmement professionnalisée dans laquelle les organisations professionnelles et militantes centralisent le savoir, qu'elles délivrent ensuite aux tribunaux et aux législatures. En contraste, les experts français ont des liens directs et personnels avec les politiciens et des partis politiques, ce qui suggère qu'ils travaillent comme des conseillers politiques. En effet, contrairement à leurs homologues américains, dont les sphères universitaires et professionnelles opèrent avec une distance plus nette avec les juges et les politiciens, les experts français sont souvent amis avec des politiciens. Dans ce contexte, la ligne entre le politicien et l'expert devient floue. Aux Etats-Unis, les experts agissent avec une certaine distance et donnent de l'information, laissant ainsi l'action militante aux organisations. Beaucoup d'experts français, en

revanche, interviennent dans le débat d'une manière qui ressemble à celle des politiciens et d'autres acteurs politiques, pour influencer directement le débat.

2. Chapitre 1 – « L'expertise » dans les médias : la couverture des débats sur le mariage et la filiation dans *Le Monde* et *The New York Times*

L'analyse de la couverture médiatique des réformes sur les familles homosexuelles dans *Le Monde* et *The New York Times* de 1990 à 2013 révèle des différences nationales récurrentes. Ce chapitre présente une image du discours en dehors des institutions gouvernementales, complémentant ainsi l'analyse des autres chapitres sur le rôle des experts et l'expertise dans les arènes politiques et juridiques. Nous analysons les articles parus dans *Le Monde* et *The New York Times* parce que ces deux journaux, étant les « journaux de référence » dans les deux pays, ont une crédibilité, une influence, et une ligne éditoriale de centre gauche qui permettent de faire une comparaison utile (Benson et Hallin 2007 ; Benson et Saguy 2005 ; Brossard, Shanahan, et McComas 2004).

2.1 Les domaines institutionnels et les questions politiques dans les médias

Les résultats montrent qu'une des particularités de la couverture médiatique se retrouve dans les domaines institutionnels des réformes et dans les questions politiques qui apparaissent le plus souvent dans les articles.

Tableau 2 : La proportion d'articles par institution et question de réforme dans *Le Monde* and *The New York Times*

Institution	*Monde*	*NYT*	*Monde - NYT*
Législatures	0.65	0.24	0.41***
Multiple	0.08	0.21	-0.12***
Référendum	0.00	0.06	-0.06***
Secteur privé	0.00	0.01	-0.01
Tribunaux	0.09	0.34	-0.25***
Aucun	0.13	0.19	-0.06***
Autres	0.05	0.04	0.01
N	652	1683	
Réforme	*Monde*	*NYT*	*Monde - NYT*
Adoption	0.11	0.04	0.07***
AMP	0.07	0.01	0.06***
Conjugalité	0.71	0.88	-0.17***
Garde d'enfant	0.00	0.02	-0.02**
Multiple	0.02	0.05	-0.03**
Parentalité	0.58	0.04	0.54***
N	652	1683	

*$p < .05$; ** $p < .01$; *** $p < .001$ (Test du X^2).

Comme le montre le Tableau 2, les législatures dominent les discussions en France (65%), alors qu'un éventail d'institutions apparaissent dans les articles américains, y compris les tribunaux (34%), les législatures (24%), et les referendums (6%). Cette disparité est en rapport avec une des idées centrales de la thèse selon laquelle les institutions façonnent le savoir parce qu'elles ont leurs propres règles sur l'utilisation de l'information. Par exemple, dans le cas américain, les avocats et les juges sont nécessaires pour négocier des réformes qui passent par des tribunaux tout comme les membres du public et les militants sont importants pour convaincre les électeurs lors des referendums. Comme nous le verrons plus loin, toutes ces catégories d'acteurs sont citées davantage dans *The New York Times* que dans *Le Monde*.

En plus des ces différences institutionnelles, les articles publiés dans les deux journaux couvrent des réformes qui reflètent la situation juridique et l'opinion publique spécifiques à

chaque pays. 88% des articles dans *The New York Times* parlent des réformes concernant les droits conjugaux (l'union civile, le mariage, le partenariat conjugaux, et d'autres questions en rapport avec les couples homosexuels). En effet, le fait même que les couples homosexuels élèvent des enfants ensemble est tenu pour acquis et utilisé comme un argument pour défendre la légalisation des droits conjugaux. Par exemple, en 2013, dans un article décrivant le procès fédéral contre la Proposition 8, le juge à la Cour suprême, Anthony Kennedy est cité en disant : « Il y a quelques 40 000 enfants en Californie …[qui]…vivent avec des parents de même sexe, et ils veulent que leurs parents aient une pleine reconnaissance juridique et un statut entier » (Liptak 2013). A l'inverse, dans *Le Monde*, 76% des articles sont concernés par des questions en lien avec des réformes sur l'accès à la parentalité et la filiation, contre 11% dans *The New York Times*. Dans beaucoup d'exemples, les articles de presse français traitant des réformes qui concernent strictement les couples de même sexe et non la parentalité, décrivent les craintes des opposants de voir ces réformes ouvrir la voie à l'homoparentalité. L'homoparentalité est traitée comme un sujet sociétal et politique extrêmement polémique dans les articles français. Dans les articles du *Monde*, il n'est pas tenu pour acquis que les couples gays et lesbiens peuvent être et sont déjà des parents. Par exemple, dans une tribune écrite par Maurice Berger (2013), un psychiatre et psychanalyste qui dénonce l'homoparentalité, l'auteur écrit : « Le couple parental hétérosexuel, même divorcé, est donc ce qu'on a trouvé de mieux pour que sexualité, conception et tendresse parentale soient indissociablement liées. Et comment une fillette peut-elle comprendre que deux hommes qui ne veulent pas avoir de femme puissent avoir désiré une fille ? ». Ses commentaires illustrent comment la légitimité morale et la réalité démographique des familles homoparentales sont remises en cause dans les débats médiatiques français.

2.2 Différences dans l'expertise : savoirs universitaires contre expérience personnelle

Il y a également des différences systématiques dans le genre d'expertise citée par les journalistes et les auteurs de billets dans les deux journaux. Bien qu'il y ait des formes de savoir qui se recoupent dans les deux cas, il y a des particularités nationales qui sont statistiquement significative. Le Tableau 3 présente les proportions de plusieurs catégories d'expertise en fonction de la position pour ou contre les droits des familles homosexuelles que cette expertise soutient.

Tableau 3: La proportion d'occurrences d'expertise par type and position idéologique dans *Le Monde* et *The New York Times* entre 1990-2013

	Tout			Pour			Contre		
	Monde	*NYT*	*Monde-NYT*	*Monde*	*NYT*	*Monde-NYT*	*Monde*	*NYT*	*Monde-NYT*
Droit	0.21	0.29	-0.08***	0.09	0.14	-0.04***	0.06	0.07	-0.01
Exp. personn.	0.10	0.17	-0.07***	0.08	0.16	-0.08***	0.01	0.01	0.00
Générale	0.12	0.14	-0.02**	0.04	0.08	-0.04***	0.07	0.06	0.01
Religion	0.05	0.08	-0.03***	0.01	0.02	-0.01*	0.03	0.06	-0.03***
Santé mentale	0.17	0.07	0.10***	0.07	0.03	0.03***	0.10	0.03	0.07***
Sc. sociales	0.12	0.09	0.03***	0.06	0.05	0.01	0.05	0.02	0.02***
Autre	0.24	0.16	0.08***	0.12	0.09	0.03*	0.05	0.04	0.01
Total	1	1		0.47	0.57	-0.09***	0.36	0.28	0.08***
N	1318	4243							

Note: La prise de position neutre n'est pas montrée.
*p < .05; ** p < .01; *** p < .001 (Test du X^2).

Au-delà de l'expertise de droit, qui est la forme d'expertise la plus courante dans les deux cas, ce qui est n'est pas surprenant étant donné qu'il s'agit de réformes de droit, des différences nettes apparaissent. Plus précisément, le savoir issu de l'élite provenant des disciplines universitaires et des professions prend des proportions plus importantes dans le volume de l'expertise dans *Le Monde* que dans *The New York Times*, où, en contraste, l'expérience personnelle est plus représentée. L'expertise issue des sciences sociales, comme la sociologie ou l'anthropologie, et de la santé mentale, comme la psychologie et la psychanalyse, font ensemble 29% du savoir cité dans *Le Monde* et seulement 16% dans *The New York Times*. En effet, après

le droit, la santé mentale est le second type d'expertise le plus important dans la couverture médiatique française. En outre, lorsqu'il est cité, ce savoir dénonce les réformes qui donneraient un accès à la parentalité aux couples homosexuels.

Dans *The New York Times*, la conversation sur les droits des familles homosexuelles est principalement décrite à travers l'expérience personnelle de plusieurs personnes, comme les couples de même sexe, leurs enfants, et des individus dont un membre de la famille est homosexuel. Comme le montre le Tableau 3, après le droit, l'expérience personnelle, à 17%, est la seconde forme d'expertise avec la proportion plus importante dans ce journal américain. Presque la totalité de cette expertise est favorable à l'ouverture des droits aux couples de même sexe. Cette présence importante d'expérience personnelle dans *The New York Times* peut être expliquée par le fait que les journalistes mettent presque systématiquement des citations de citoyens ordinaires dans leurs articles qui parlent des effets de la réforme sur leurs vies. Par conséquent, contrairement à la couverture dans *Le Monde*, les débats sont personnalisés dans la presse américaine. Les lecteurs du *Monde* ont plus tendance à être exposés à une information qui voit des familles homosexuelles de loin, comme à travers le discours universitaire.

2.3 Les catégories de personnes citées dans la presse

En plus des différences dans le type d'information fourni dans les articles, nous observons également des différences dans les catégories de personnes citées dans la presse. Le Tableau 4 classe les « experts » cités le plus souvent dans les deux journaux et les différences dans leurs proportions.

Tableau 4 : La proportion d'articles citant differentes categories d'experts dans *Le Monde* et *The New York Times* entre 1990-2013

Monde			*NYT*			*Monde - NYT*	
	Rang	Proportion		Rang	Proportion		
Militant	1	0.22	Per. ordinaire	1	0.34	Agence gouv.	0.02*
Org. (sauf think tank)	2	0.21	Militant	2	0.33	Artiste/Per. public	-0.01
Politicien	2	0.21	Org. (sauf think tank)	3	0.32	Auteur/Intellec.	-0.01
Professor	4	0.20	Politicien	4	0.25	Avocat	-0.11***
Per. ordinaire	5	0.17	Avocat	5	0.18	Industriel	-0.05***
Pro. Santé	6	0.14	Professor	6	0.14	Judge	-0.06***
Rep. religieux	7	0.12	Judge	7	0.13	Militant	-0.11***
Judge	8	0.07	Rep. religieux	8	0.11	Org. (sauf think tank)	-0.11***
Avocat	8	0.07	Think tank	9	0.06	Per. ordinaire	-0.17***
Agence gouv.	10	0.06	Pro. Santé	10	0.05	Philosophe	0.06***
Philosophe	10	0.06	Industriel	10	0.05	Politicien	-0.04*
Auteur/Intellec.	12	0.02	Agence gouv.	12	0.04	Pro. Santé	0.09***
Artiste/Per. public	13	0.01	Auteur/Intellec.	13	0.03	Professor	0.06***
Industriel	14	0.00	Artiste/Per. public	14	0.02	Rep. religieux	0.01
Think tank	14	0.00	Philosophe	15	0.00	Think tank	-0.06***
N		652			1683		

*p < .05; ** p < .01; *** p < .001 (Test du X^2).

Les catégories d'individus cités confirment la disparité entre le discours d'élite en France et une couverture plus personnelle axée sur le vécu aux Etats-Unis. En regardant la colonne de droite, qui montre les différences dans les proportions des catégories dans les deux journaux, nous voyons que la majorité des catégories d'experts occupent des proportions plus importantes d'articles dans *The New York Times*. Cependant, dans *Le Monde*, ce sont les professionnels de santé, tels les médecins et les psychologues, les professeurs, et les agences gouvernementales qui apparaissent dans des proportions plus importantes. Cela est révélateur du poids de ces acteurs, issus d'une élite, qui domine en France. Il est également intéressant de noter qu'il n'y a pas de différence statistiquement significative dans la présence de représentants religieux. Cela peut laisser croire que, malgré la laïcité, la religion est bien représentée dans le débat français. Mais, en se référant au Tableau 3, nous voyons que le savoir religieux est bien moins présent dans les articles du *Monde*. En réalité, lorsque les représentants religieux sont cités, ils utilisent moins de

savoir religieux et plus de savoir psychanalytique ou anthropologique que leurs homologues américains.

3. Chapitre 2 – « L'expertise » dans les institutions juridiques et politiques américaines et françaises

Ce chapitre examine le genre de savoir et la catégorie de personnes qui sont entendus dans les législatures et les tribunaux des deux pays.

3.1 Les institutions aux Etats-Unis

Comme nous l'avons vu dans l'introduction, la majorité des efforts législatifs sur le mariage et la parentalité ont eu lieu au niveau étatique et non au niveau fédéral. Les auditions au niveau des états sont alors les débouchés institutionnels principaux pour l'expertise dans les législatures américaines. La Californie et le Texas permettent généralement aux parties intéressées des deux côtés de s'enregistrer sur une liste de témoins et de donner leur point de vue lors des auditions. En plus, les auteurs des propositions de loi peuvent venir avec quelques témoins lorsqu'ils présentent la réforme à leurs collègues et, dans le cas de la Californie, des témoins qui s'y opposent ont droit à la parole pendant autant de temps.

L'analyse des données d'archives des législatures dans ces états montrent que les citoyens ordinaires, les organisations militantes, et les représentants religieux sont les plus représentés. Par exemple, le Tableau 5, qui montre les personnes ayant participé aux auditions en Californie, révèle que les organisations militantes constituent 48 % des témoignages, les citoyens ordinaires 23 %, et les représentants religieux 13 %.

Tableau 5 : La proportion de catégories d'experts entendus lors des auditions législatives en Californie et leur prise de position

Catégorie d'expert	Pour	Contre	Neutre	Total
Organisations militantes	0.33	0.15	0.00	0.48
Citoyens ordinaires	0.09	0.13	0.00	0.23
Représentants religieux	0.06	0.06	0.00	0.13
Politiciens/Élus	0.07	0.01	0.01	0.09
Organisations professionnelles	0.04	0.00	0.00	0.04
Professeurs	0.02	0.01	0.01	0.03
Avocats	0.00	0.00	0.01	0.01
Professionnels de santé	0.01	0.00	0.00	0.01
Instances total (n=190)	0.62	0.36	0.02	1.00

Note: Somme d'instances d'expertise aux auditions pour AB 1982, AB 43, AB 205, et Prop 8. Prise de position et pour/contre/neutre par rapport aux droits des familles homosexuelles.

Les interventions de citoyens ordinaires donnent un caractère personnalisé aux auditions, accompagnant les informations techniques, telles que l'histoire juridique et l'expertise économique qui sont également présentes lors des discussions dans les législatures américaines. Les règles ouvertes des auditions, qui permettent à n'importe qui de participer dans la plupart des cas, favorisent ce genre d'expertise.

Contrairement à la France, la voie judiciaire a été particulièrement fructueuse pour les partisans de la reconnaissance des droits des familles homosexuelles aux Etats-Unis. Cependant, les tribunaux n'utilisent pas le savoir de la même manière que les législateurs. Alors que les législatures, surtout aux Etats-Unis, donnent un espace pour que les individus s'expriment, les tribunaux utilisent l'information présentée par les avocats ou les auteurs de mémoires *amicus curiae* (des sortes de lettres argumentées données aux juges par les parties intéressées qui estiment que les juges devraient prendre en compte leurs arguments) pour prendre une décision dans un procès précis. Les procédures de participation dans les procès sont plus complexes que dans les législatures : il faut être appelé comme témoin par un avocat ou soumettre un *amicus curiae*. Pour cette raison, le type de savoir et la catégorie d'experts ont tendance à y être

davantage issus d'une élite, même si les experts profanes sont toujours présents. Par exemple lors du procès *Hollingsworth v. Perry* (2013), 20% des *amicus curiae* ont été soumis par des professeurs, 10% par des organisations professionnelles, et 5 % par des citoyens ordinaires. Nous voyons une situation similaire en regardant les personnes qui sont appelées à être témoins experts lors des procès. Par exemple, parmi les 29 témoins appelés lors des procès *Perry v. Schwarzenegger* et *DeBoer v. Synder*, 20 étaient des professeurs ou avaient des qualifications scientifiques ou professionnelles. Parmi eux, cinq étaient des professeurs ou des chercheurs en psychologie, cinq en économie, quatre en sociologie, deux en histoire, deux en science politique, un en droit, et un en démographie. Leurs disciplines révèlent le genre d'information qui est central pour l'argument juridique au cœur de ces procès : le savoir empirique sur la démographie et les circonstances sociales et psychologiques des couples homosexuels et leur familles, l'histoire de la discrimination envers eux, leur pouvoir politique relatif à d'autres groupes, le bien-être de leurs enfants, et les causes de leur orientation sexuelle.

3.2 Les institutions en France

Les tribunaux n'ont pas ouvert de voie particulièrement fructueuse sur les réformes du mariage et de la filiation pour les couples de même sexe en France. Par conséquent, ces institutions sont relativement absentes pour recevoir l'expertise. Ce sont donc les législatures qui y prédominent. Etant donné le volume important des citoyens ordinaires qui témoignent dans les législatures américaines, on pourrait s'attendre à les retrouver également lors des auditions en France. Pourtant, l'analyse des auditions des réformes majeures révèle des différences nettes dans les catégories d'experts appelés par les parlementaires français et dans le genre d'information qu'elles fournissent. Contrairement aux débats législatifs aux Etats-Unis, ce qui

prédomine en France est un savoir abstrait souvent basée sur la psychanalyse et l'anthropologie et non sur la recherche empirique sur des familles homosexuelles existantes. Ce savoir, qu'Eric Fassin (2000b, 2001) appelle « l'expertise a priori », est donné par des universitaires, des chercheurs, des professionnels, et des intellectuels.

Tableau 6 : La proportion de catégories d'experts auditionnés par la Commission des lois à l'*Assemblée Nationale* et au *Sénat,* Pacs 1998

Catégorie d'expert	Pour	Contre	Neutre/Inconnu	Total
Organisations militantes	0.38	0.15	0.02	0.55
Organisations professionnelles	0.00	0.00	0.13	0.13
Professeurs	0.02	0.07	0.00	0.09
Politiciens/Élus	0.05	0.00	0.02	0.07
Représentants religieux	0.00	0.07	0.00	0.07
Professionnels de la santé mentale	0.02	0.02	0.00	0.04
Agences affiliées à l'état	0.00	0.04	0.00	0.04
Juges	0.00	0.02	0.00	0.02
Citoyens ordinaires	0.00	0.00	0.00	0.00
Instances totales (n=55)	0.47	0.36	0.16	1.00

Note: Les auditions à l'*Assemblée Nationale n'étaient pas publiques*. Prise de position trouvée dans les médias. Sinon, inconnue.

Table 7 : La proportion de catégories d'experts auditionnés par la Commission des lois à l'Assemblée Nationale et au Sénat, marriage et adoption 2012-2013

Catégorie d'expert	Pour	Contre	Neutre/Inconnu	Total
Organisations militantes	0.15	0.02	0.06	0.22
Professeurs	0.10	0.06	0.00	0.16
Citoyens ordinaires	0.10	0.00	0.00	0.10
Professionnels de la santé mentale	0.04	0.06	0.00	0.10
Représentants religieux	0.00	0.08	0.01	0.09
Agences affiliées à l'état	0.01	0.01	0.06	0.08
Politiciens/Élus	0.05	0.00	0.03	0.08
Professionnels médicaux	0.00	0.00	0.07	0.07
Organisations professionnelles	0.00	0.02	0.03	0.06
Juges	0.01	0.00	0.01	0.02
Avocats	0.01	0.01	0.00	0.02
Instances totales (n=143)	0.47	0.26	0.27	1.00

Les Tableaux 6 et 7 montrent ces caractéristiques des auditions dans les parlements français lors du Pacs et du mariage respectivement. Nous voyons, par exemple, qu'il n'y a aucune participation des citoyens ordinaires lors du Pacs et qu'ils ne sont que 10 % des instances de témoignages lors des auditions au moment des débats sur le mariage en 2012-2013. Nous y remarquons également qu'il y a une différence entre la France et les États-Unis dans la prise de position de certaines formes de savoir. Par exemple, contrairement aux Etats-Unis où les chercheurs universitaires et les professionnels de la santé mentale ont en majorité soutenu les droits des familles homosexuelles dans les législatures et les tribunaux, dans les auditions françaises, ces catégories d'experts sont présentes dans les deux camps. Lors des débats sur le Pacs, trois quarts d'entre eux étaient contre. Lors des débats sur le mariage, 62 % des professeurs, souvent les mêmes individus entendus lors du Pacs, étaient pours. Cela reflète le changement de position de plusieurs professeurs français importants entre les deux réformes.

4. Chapitre 3 – Le travail des débats : la négociation des logiques institutionnelles

Ce chapitre s'appuie sur les entretiens et l'observation participante auprès de chercheurs, de professionnels, et de militants, ainsi qu'avec des législateurs et des avocats clés qui apportent le savoir des autres à la sphère décisionnelle en France et aux Etats-Unis. Il analyse la façon dont les experts et les décideurs négocient les attentes et les règles lorsqu'ils participent aux débats dans les médias, dans les législatures, et dans les tribunaux.

4.1 La négociation des logiques institutionnelles aux Etats-Unis

La plupart des répondants américains des deux bords de la question des droits des familles homosexuelles n'ont pas décrit les médias comme un forum avec des enjeux élevés. Pour eux, participer dans la presse n'était pas prioritaire. Seulement un tiers d'entre eux avaient déjà publié une tribune où avaient été sollicité par un journaliste. Parmi toutes les catégories des enquêtés, ceux qui répondaient le moins aux sollicitations de la presse étaient des universitaires, ce qui est l'inverse chez les enquêtés français.

Ils participaient davantage aux les législatures. Alors que la majorité des répondants français avait décrit avoir été sollicitée ou avoir travaillé directement avec les législateurs en dehors des auditions officielles, les enquêtés américains n'avaient que peu d'interactions avec les élus parlementaires en dehors des auditions. Les membres d'organisations militantes et des *think tanks* avaient le plus de liens avec les législateurs. Comme nous l'avons vu, les auditions parlementaires aux Etats-Unis concernent essentiellement les militants, les citoyens ordinaires, et les représentants religieux. Par conséquent les professionnels, les professeurs, et les chercheurs, qui constituaient la majorité de mon échantillon d'enquêtés, avaient une participation plus limitée aux auditions que leurs homologues français.

Les logiques institutionnelles qui gouvernent la structure du débat et le rôle des experts dans les tribunaux créent des circonstances différentes des législatures. Contrairement aux législateurs, les juges sont censés évaluer la validité des arguments des deux parties vis-à-vis des questions juridiques précises dans un procès spécifique. Par exemple, des avocats qui défendent le droit d'un couple homosexuel particulier à se marier peuvent argumenter que l'interdiction de se marier est contraire à la Constitution fédérale américaine, comme ils l'ont fait dans le procès fédéral *Hollingsworth v. Perry* contre la Proposition 8. Les avocats qui défendent la proposition 8 seraient donc obligés de démontrer de manière convaincante que l'État a un intérêt spécifique justifiant un traitement différent des couples homosexuels et hétérosexuels. S'ils affirmaient, par exemple, que la légalisation du mariage entre personnes de même sexe pouvait nuire ou décourager le mariage entre personnes de sexe différents, les avocats des deux parties apporteraient des éléments de preuve pour appuyer leur argument : par exemple, le taux de divorce dans les juridictions ayant légalisé le mariage entre personnes de même sexe. Ce sont des témoins experts, tels que les professeurs de démographie, qui apportent cette information lors des procès. Les avocats des deux parties ont également l'occasion de questionner les experts de leurs adversaires lors de contre-interrogatoires et de dépositions. A cette occasion, ils essaient de délégitimer la validité du savoir qui fonde l'argument de leurs adversaires. Enfin, le juge décide si les éléments de preuve sont suffisamment convaincants et en rapport avec l'argument juridique.

Ces circonstances, qui mettent la priorité sur une expertise qui puisse tenir tête aux regards critiques des adversaires et des juges étaient une des occupations centrales des enquêtés aux Etats-Unis. Les avocats que j'ai interviewés, décrivaient leurs efforts pour trouver des témoins experts hautement qualifiés. Ils se sont appuyés sur d'autres avocats ayant déjà travaillé

avec des experts et également avec des associations militantes américaines qui sont très professionnalisées et où la formation et l'entraînement des avocats pour des procès est une des activités principales. Les enquêtés qui étaient des chercheurs et des professionnels, surtout ceux qui étaient pour la reconnaissance de l'égalité juridique des couples homosexuels, étaient satisfaits de leur participation dans les tribunaux parce qu'ils avaient l'impression que la rigueur empirique de leurs travaux scientifiques était reconnue par les juges.

4.2 La négociation des logiques institutionnelles en France

Contrairement à leurs homologues américains, très peu d'enquêtés français avaient eu l'expérience des procès car la grande majorité des réformes passe par la voie législative en France. En revanche, alors que la plupart des enquêtés américains étaient assez distants avec les médias, tous les enquêtés français sauf quatre, décrivaient les médias, tels la presse, la télévision, et la radio, comme des arènes importantes pour partager leurs idées et pour concurrencer avec d'autres militants, politiciens, universitaires, et figures publiques avec qui ils étaient en désaccord. Toutes les catégories de répondants français donnaient l'impression que les frontières entre les médias, le milieu de la recherche, le milieu intellectuel, et le milieu politique étaient poreuse. Pour eux, investir leur temps et leur énergie dans les médias était important parce que cette participation leur donne une crédibilité, une visibilité publique, et un certain potentiel de pouvoir politique. Leurs actions peuvent être comprises lorsqu'on sait que les débats intellectuels en France mettent la priorité sur les réputations et l'engagement public (Lamont 1987 ; Spario 2009 ; Swartz 2013).

La proximité et la ressemblance entre le champ médiatique et le champ législatif peuvent également nous aider à comprendre pourquoi les enquêtés français s'investissaient dans les

médias. Ces deux champs se chevauchent de plusieurs manières. Premièrement, ils font appel aux mêmes groupes d'individus, les universitaires et intellectuels, les professionnels, les militants, et d'autres figures publiques, pour représenter différents points de vue. Deuxièmement, ils juxtaposent systématiquement les mêmes personnes de chaque côté du débat. Par conséquent, le champ médiatique, politique, et académique se ressemblent et s'informent. Par exemple, le psychanalyste Serge Hefez a décrit comment, pendant les débats sur le mariage, il était « toujours face aux mêmes contradicteurs…à la radio, la télévision, et sur les bancs de l'Assemblée nationale ». Les individus peuvent également avoir accès à l'arène législative en ayant d'abord l'attention des journalistes. Par exemple, plusieurs professeurs de droit conservateurs ont expliqué que la couverture médiatique autour de la lettre ouverte contre le mariage pour les couples de même sexe (AFP 2013) a mis la pression sur les parlementaires socialistes pour qu'ils soient invités aux auditions.

En plus des médias, presque tous les répondants français, toutes catégories confondues, avaient eu de multiples interactions avec des politiciens. Ces interactions avaient lieu lors des auditions publiques officielles, mais également lors de rencontres privées en tête-à-tête. En plus, quelques répondants, tels Irène Théry et Françoise Dekeuwer-Defossez, avaient été commissionnés par le gouvernement pour rédiger des rapports sur les questions concernant le mariage et la filiation. Ces interactions en dehors des auditions, étaient relativement absentes de l'échantillon américain, témoignant de la proximité entre les experts et les décideurs en France.

Contrairement au cas américain, en France, les législateurs ont fréquemment invité les universitaires, les professionnels, et les militants à donner leurs avis sur la législation en travaux lors d'auditions dans les commissions. En effet, tous les enquêtés sauf un avaient été invités au moins une fois à une audition depuis 1990. Ces auditions ont des enjeux élevés puisqu'elles

peuvent avoir un impact social important, surtout lorsqu'elles sont filmées et diffusées par les médias, ce qui était le cas pour les débats sur le mariage en 2012-2013. Les parlementaires qui organisent les auditions sur les droits conjugaux et parentaux pour les couples de même sexe doivent composer avec les règles et les logiques institutionnelles lorsqu'ils essaient de déterminer qui inviter à témoigner devant leurs commissions. Contrairement aux législatures aux Etats-Unis, en France les parlementaires de la majorité ont le pouvoir exclusif d'inviter des gens à s'exprimer lors des auditions. Le choix des experts dans ces auditions, donc, n'est pas forcément fait dans le but d'avoir une information empirique précise, comme c'est le cas dans les tribunaux américains, mais de répondre à des enjeux politiques : solidifier le soutien parmi ceux qui sont dans leur propre camp, essayer de changer les avis réticents des parlementaires indécis et du public, et maintenir la légitimité des réformes face a une opposition forte et organisée.

À cause de ces pressions et du risque d'une résistance forte, les parlementaires essaient de créer des auditions qui soient, selon l'expression d'Erwann Binet, idéologiquement « équilibrées ». Jean-Pierre Michel dit que les parlementaires se sentent « obligés » d'inviter des experts qui ne sont pas d'accord avec les réformes, parce que s'ils ne le font pas, leurs opposants politiques pourront les attaquer et les délégitimer dans la presse en disant que les auditions étaient injustes. Cette pression qui pousse à équilibrer les points de vue a conduit les parlementaires français à mettre en place des auditions reprenant les mêmes équilibres que dans les médias et les champs professionnels et académiques. Les hiérarchies et jeux de pouvoir déjà présents dans ces champs sont ainsi reproduits lors des auditions.

5. Chapitre 4 – Les « experts » dans leurs champs universitaires et professionnels

Comme nous l'avons vu dans le chapitre précédent, les règles institutionnelles et les habitudes dans les médias, les législatures, et les tribunaux ont un impact sur la façon dont les experts et ceux qui utilisent leurs savoirs, comme les avocats et les parlementaires, organisent et comprennent le rôle du savoir aux Etats-Unis et en France. Bien que ces différences nationales dans le genre d'experts et d'expertise qui comptent dans chaque pays peuvent être en partie attribuées à ces logiques institutionnelles, ce chapitre nous montre qu'il est également important de regarder les champs de production de savoir dans les deux pays. En particulier, les universitaires et les professionnels travaillant sur les minorités sexuelles et leurs familles n'ont pas accès aux mêmes niveaux de ressources économiques et sociales dans les deux pays ni à la même reconnaissance dans leurs champs. Aux Etats-Unis, leur champ est plus grand, plus ancien, et plus institutionnalisé dans les disciplines universitaires et dans les professions. En France, le champ est bien plus petit, plus contesté, et sans reconnaissance professionnelle ou universitaire importante. En outre, les experts qui soutiennent la reconnaissance juridique des familles homosexuelles dominent aux Etats-Unis, où les conservateurs sont plus marginalisés, lorsqu'en France les partisans de l'égalité juridique n'ont gagné en importance que récemment vis-à-vis des conservateurs.

5.1 Les experts américains dans leurs champs

Par rapport à leurs homologues conservateurs, les chercheurs et les professionnels progressistes aux Etats-Unis sont dans une position dominante dans leur champ. Ils occupent des postes de très haut niveau dans les universités les plus prestigieuses et dans les centres de recherche et les organisations professionnelles. Et, ils ont une reconnaissance publique et

scientifique de leurs travaux qui atteste de leur position de pouvoir actuel. Bien qu'ils aient été obligés de faire face à la réticence de certains de leurs pairs au début de leurs carrières, leurs histoires montrent que les travaux sur le genre et la sexualité sont devenus, dans le temps, bien intégrés et institutionnalisés dans leurs champs respectifs. Leur succès suggère que les circonstances universitaires, juridiques, et sociales ont rendu cette évolution possible aux Etats-Unis. Pour faire leur travail et pour participer dans les débats, ils ont pu mobiliser des ressources universitaires, des réseaux de soutien, et des organisations professionnelles et disciplinaires, telles que l'Association américaine de psychologie, l'Association américaine de sociologie, et l'Association américaine du barreau. En plus, ils ont vécu dans un contexte où les minorités sexuelles, y compris les couples de même sexe élevant des enfants, étaient visibles, rendant la recherche empirique sur elles plus facile à mener qu'en France.

Les experts conservateurs, en revanche, sont de plus en plus marginalisés dans leur domaine. Alors que les positions progressistes et la recherche sur les minorités sexuelles et leur famille sont devenues importantes aux Etats-Unis, ceux qui soutiennent les définitions « traditionnelles » de la famille ont perdu un espace de travail et de mobilisation à l'intérieur des universités et des organisations professionnelles classiques américaines. Les conservateurs américains ont créé leurs propres structures alternatives parallèles aux institutions académiques traditionnelles et travaillent avec leurs alliés dans le monde académique. En outre, contrairement au système universitaire français, les groupes conservateurs ou religieux ont créé leurs propres universités, grandes et bien financées, telles que Liberty University en Virginie, fondée par les évangéliques, et Brigham Young University dans l'Utah, fondée par les mormons. Ils ont également développé des organisations professionnelles et militantes alternatives pour

s'organiser face au rejet dont ils sont souvent victimes dans les milieux universitaires et professionnels traditionnels.

5.2 Les experts français dans leurs champs

Contrairement aux Etats-Unis, le champ de la production du savoir en France est relativement petit et concentré dans une seule ville, Paris (Bourdieu 1984 ; Fourcade 2009 ; Muselin2013 ; Sapiro 2009). Lors de mes observations et mes entretiens en France, je me suis vite rendu compte que tout le monde se connaissait ; que les réseaux d'amitié et de connaissances se chevauchaient et s'imbriquaient ; et que les mêmes groupes de personnes se voyaient dans les sphères privées, académiques, professionnelles, et politiques. Cette proximité entre les enquêtés n'était pas aussi marquée dans le cas américain. Le champ français est également un champ conflictuel et relativement hostile encore à la recherche sur les minorités sexuelles et leurs familles. En France, contrairement aux Etats-Unis, ce sont les partisans des droits des familles homosexuelles qui rencontrent des difficultés sociales, institutionnelles, et politiques qui rendent leur travail particulièrement difficile. Alors que certains de leurs pairs américains avaient des difficultés aux débuts de leurs carrières, surtout dans les années 1970s et 1980s, les barrières subsistent en France, même si elles sont en train de tomber progressivement. Bien que les conservateurs doivent composer avec une marginalisation idéologique et politique croissante, ils gardent néanmoins des positions d'influence importante.

Les chercheurs et les professionnels français qui travaillent sur les minorités sexuelles doivent faire face au scepticisme de leurs collègues et de leurs institutions. Ils travaillent sur des sujets marginaux, comme leurs homologues américains, mais ils l'ont fait dans un environnement hostile et résistant à leurs idées et à leurs méthodologies. Ils ont dû non seulement

confronter la critique provenant des conservateurs opposés aux droits des couples homosexuels mais aussi venant de la part des gens dans leur champ qui perçoivent leurs sujets comme étrangers et illégitimes. En outre, ils ont dû faire face à une invisibilité sociale et politique des couples homosexuels et des familles homoparentales, ce qui rendait les travaux sur ces populations particulièrement difficiles à mener. Enfin, une dernière particularité française dans le champ des chercheurs qui soutiennent actuellement la reconnaissance juridique pour les couples homosexuels et leurs familles, est que plusieurs chercheurs bien connus et influents ont changé leur avis sur ces questions entre le Pacs et le mariage. Alors qu'ils luttaient activement contre le Pacs, ils mettent maintenant leur pouvoir et leur visibilité derrière l'évolution des droits. Ces changements de position sont une source de tension et de conflit à l'intérieur du champ français, qui est absente dans le cas américain. Cette situation rend le travail sur les minorités sexuelles plus compliqué dans un champ qui est déjà petit est en manque de légitimité.

Les experts conservateurs en France ne sont plus les seuls à occuper le terrain et leurs prises de position ne sont plus incontestées[36]. Ceux qui s'opposent à eux ont gagné en notoriété. Néanmoins, les médias et les décideurs continuent à faire appel à eux et à demander leurs avis. Ils continuent à travailler dans des institutions importantes, comme les hôpitaux majeurs, des agences affiliées à l'État, et des comités d'éthique, où ils exercent une certaine influence.

6. Chapitre 5 – Les « experts » et leurs connexions avec la sphère des politiques publiques.

Dans les années 1980s, le psychologue Américain, Gregory Herek, publiait sur la psychologie de l'homophobie et de l'homosexualité alors que ses amis du *Gay and Lebsian*

[36] J'utilise les termes « conservateur » et « progressiste » pour décrire la position de l'individu sur les questions de la reconnaissance des droits conjugaux et parentaux des couples de même sexe au moment de l'entretien. Il s'agit d'un raccourci linguistique qui permet la facilité de lecture. Ces catégorisations ne sont pas censées représenter l'ensemble des idées de l'individu.

Rights Project de l'ACLU, l'une des organisations militantes les plus importantes aux Etats-Unis, l'avaient contacté pour connaître l'état de la recherche scientifique qu'ils pouvaient utiliser dans une litige en cours. Alors qu'il travaillait sur un recensement de la littérature pour eux, il a commencé à travailler à l'intérieur de l'Association américaine de psychologie (APA) afin de réunir les connaissances de la recherche en psychologie que l'association pouvait fournir aux institutions décisionnelles et à d'autres organisations. Selon Herek, avec le temps, « l'APA est devenue vraiment très importante » dans l'organisation et l'institutionnalisation de cette pratique de distribution de recherche aux décideurs. Comme il l'a expliqué, « c'est incroyable comment ils sont prêts à jouer un rôle aussi important ».

En contraste, en France, les organisations professionnelles ont été largement silencieuses sur la question des droits des familles homosexuelles, même dans la période la plus récente. Selon l'anthropologue Anne Cadoret, les associations de science sociales et les sociétés du milieu médical et de la santé mentale ne s'impliquent pas dans le processus décisionnel. Elle a expliqué cette silence en disant : « C'est pas une habitude, c'est pas la manière d'être. C'est pas un engagement ». Sans le soutien d'organisations professionnelles, Cadoret, comme beaucoup d'autres experts français, a travaillé directement avec d'autres scientifiques qui avaient des contacts directs et personnels avec les décideurs afin d'apporter son savoir à la sphère décisionnelle.

Ces exemples mettent en lumière le fait que les experts français et américains s'appuient sur différentes formes de réseaux, de canaux, et d'organisations afin d'accéder à la sphère politique et d'interagir avec les décideurs. La façon dont les experts dans les deux cas gèrent ces situations est le sujet de ce chapitre.

En plus de leurs positions distinctes dans leurs champs de recherche, les producteurs de savoirs américains et français sont obligés de s'organiser selon des schémas nationaux spécifiques à fin d'accéder aux débats sur les réformes. Par rapport à la sphère juridique et politique française, la sphère américaine est bien plus grande et offre beaucoup plus d'opportunités de réforme. Avec des tribunaux et des législatures dans les 50 états en plus du niveau fédéral, les partisans et les détracteurs des droits conjugaux et parentaux pour les couples de même sexe ont constamment eu besoin d'expertise afin de s'engager dans les débats. Cette situation est propice au développement d'organisations puissantes et bien financées capables de satisfaire la demande pour l'expertise des deux côtés. Ces groupes fonctionnent comme des tuyaux entre les producteurs de savoirs d'un côté et les décideurs de l'autre.

En contraste, en France, les organisations professionnelles, les *think tanks*, et d'autres groupes sont relativement moins bien dotés en financement et sont plus petits. Ils n'ont pas la capacité organisationnelle d'acheminer le savoir comme leurs homologues américains. En plus, la pléthore d'occasions de réforme, qui maintient la demande pour le savoir aux Etats-Unis, est absente en France. Les experts français de tous bords idéologiques doivent alors naviguer à travers des canaux moins formels, comme les réseaux d'amitiés, ou alors à travers des organisations affiliées à l'État, afin d'apporter leur savoir au débat. En effet, en cohérence avec nos observations sur le champ de production de savoir français plus généralement, les producteurs de savoirs en France et les décideurs travaillent dans un champ plus petit et plus informel où les relations personnelles et la proximité avec les parlementaires était la norme. Les transferts vers la sphère politique était donc principalement ad hoc et organisées autour de réseaux interpersonnels.

7. Conclusion

Dans les débats sur les droits conjugaux et parentaux des couples de même sexe, les médias et les décideurs français et américains font appel aux experts donnant des informations qui suivent des schémas récurrents spécifiques aux contextes nationaux. Bien qu'il y ait un chevauchement entre le type d'experts et d'expertises dans le débat (les militants et les juristes sont deux sortes d'experts communs dans les deux pays) ils divergent de plusieurs manières importantes.

Dans la couverture médiatique américaine, les citoyens ordinaires fournissant de l'information sur leurs expériences de vie sont le type d'experts le plus souvent cités, alors que la couverture médiatique française met la priorité sur des positions analytiques d'experts élites, telles que les professeurs et les professionnels de la santé mentale, qui parlent des familles homosexuelles avec une certaine distance. Ces schémas récurrents sont reflétés dans les institutions juridiques et politiques dans les deux pays, mais à des degrés différents. Et les tribunaux et les législatures américaines puisent dans le témoignage de citoyens ordinaires soit en tant que plaignant dans un procès précis, soit à travers des témoignage lors d'auditions. Les tribunaux américains augmentent également ces témoignages avec de l'information provenant d'experts plutôt élites, qui apportent des éléments de preuve empirique façonnés spécifiquement pour les arguments juridiques. Les débats dans les institutions politiques françaises, qui sont dominés par la législature, mobilisent des types d'experts similaires à ceux que l'on rencontre dans les médias français : des professionnels élites, des intellectuels, et des universitaires qui ont tendance à discuter de ces questions de façon abstraite.

Cette thèse maintient que ces schémas récurrents sont le résultat de la manière dont les experts et les décideurs composent avec: 1) les logiques institutionnelles des législatures et des

tribunaux ; 2) les champs académiques et professionnels où les producteurs de savoirs travaillent ; 3) et les canaux entre les producteurs de savoir et les décideurs. Ces trois composants sont configurés de manière nationalement spécifique, ce qui contraint ou rend possible la participation de certains types d'experts et d'expertise. L'information dans ces débats dépend également de deux autres facteurs : les structures juridiques plus larges, comme le fédéralisme aux Etats-Unis et la centralisation en France, et les différences des politiques publiques concernant l'aide médicale à la procréation. Ces deux facteurs ont un impact sur la disponibilité, l'utilisabilité, la légitimité, et la demande pour des formes spécifiques d'information.

Par exemple, le fait que la recherche empirique favorable sur les couples homosexuels et leurs enfants soit entendue davantage aux Etats-Unis qu'en France est non seulement le résultat d'une marginalisation de cette recherche dans l'université française mais aussi le résultat des liens faibles entre les universitaires et les organisations militantes. C'est également le résultat des conditions des structures juridiques qui ont permis aux chercheurs d'étudier ces questions tout court. Plus précisément, le fédéralisme aux Etats-Unis et l'approche de marché libéral sur les questions d'insémination artificielle a fait que les familles homosexuelles ont réellement existé, et cela publiquement, depuis beaucoup plus longtemps qu'en France et ont été donc disponibles pour la recherche. De plus, la pléthore de procès aux Etats-Unis a soutenu la demande pour cette information, l'a maintenue dans le temps, et a encouragé les organisations professionnelles et militantes à l'institutionnaliser.

L'information psychanalytique abstraite a longtemps fait partie intégrante du débat public français (Blevins 2005 ; Borrillo and Fassin 2001 ; Fassin 2000b, 2001 ; Kirsner 2004 ; Robcis 2013 ; Roudinesco 1986). Cette recherche a montré que cette information, surtout celle qui est fournie par les experts opposés au mariage entre les personnes de même sexe, continue à être

importante dans les institutions décisionnelles françaises en partie à cause de l'invisibilité historique des couples homosexuels (également le résultat du droit conservateur de la famille en France) qui a empêché les chercheurs français de travailler sur eux. Les experts conservateurs ont pu, par conséquent, discuter des couples homosexuels et de leurs enfants sans être confrontés à des informations qui pouvaient les contredire. Les législateurs ont invités ces opposants aux auditions en partie grâce à leurs réputations dans les médias, qui faisaient d'eux des personnages connus. Les parlementaires avaient le sentiment qu'ils auraient été critiqués et attaqués sur leur légitimité s'ils ne les avaient pas invités. En plus, l'arène législative, contrairement aux tribunaux, n'offre aucun mécanisme pour que d'autres experts puissent contredire ou discréditer les assertions psychanalytiques abstraites des opposants au mariage entre personnes de même sexe.

La présence de ce genre d'expertise en France peut être également attribuée aux conditions de la production du savoir. Des chercheurs français qui auraient pu fournir plus d'expertise empirique se sont retrouvés marginalisés dans l'université, sans ressources ni soutien d'organisations professionnelles. Ils ont dû faire face à la résistance d'organisations familiales officielles françaises. Les circonstances juridiques en France (particulièrement l'absence de multiples juridictions pour poursuivre des réformes) n'ont pas créé une demande forte pour leur information, qui aurait pu soutenir davantage de production de savoir, comme cela était le cas aux États-Unis. Enfin, contrairement aux Etats-Unis, des experts élites puissants en sociologie et en anthropologie se sont d'abord opposés à l'homoparentalité. Bien qu'ils soient actuellement des soutiens à la recherche sur le sujet et à l'avancement politique des droits, leurs prises de position au début a contribué à la délégitimation de ces sujets.

Nous pouvons également expliquer la présence ou l'absence d'autres sortes d'expertise, telles que l'économie, l'expérience personnelle, et la religion en examinant la façon dont les experts et les décideurs composent avec la typologie expliquée ci-dessus. Comme je l'explique dans les Chapitres 1 et 2, l'expertise économique est présente dans les médias, les tribunaux, et les législatures américaines, mais est presque absente en France. Cette divergence est concordante avec d'autres analyses qui montrent que des justifications qui puisent dans les explications de marché sont plus courantess aux États-Unis qu'en France et y constituent un répertoire un culturel commun (Fourcade 2009 ; Lamont and Thévenot 2000). Dans le cas des débats sur les familles homosexuelles, cette thèse montre que ces différences peuvent être expliquées en partie par la façon dont la compétition interétatique et l'expérimentation aux États-Unis permettent aux économistes, militants, et *think tanks* d'étudier les effets financiers de la reconnaissance des droits conjugaux des couples de même sexe à l'intérieur des frontières du pays. Puisque la recherche suggère que le mariage entre personnes de même sexe a des retombées économiques positives pour les états (Badgett 2009), les organisations militantes et LGBT ont tissé des liens avec des producteurs de savoir et des entreprises afin d'apporter cette information aux législateurs, qui pourraient être convaincus par des arguments économiques. En outre, dans les tribunaux, lorsque les opposants disent que le mariage entre personnes de même sexe nuit aux états, les partisans peuvent évoquer les preuves économiques afin de démontrer que ces détracteurs ont tort.

En France, en l'absence de concurrence économique interétatique et avec la possibilité offerte aux personnes d'avoir un accès direct à une couverture de santé sans forcément passer par la couverture de son époux, les producteurs de savoir français ont eu du mal à élaborer des informations économiques pertinentes lors des débats sur le mariage entre personnes des même

sexe. Contrairement aux États-Unis, les entreprises françaises et les associations du secteur privé, comme les chambres de commerce, fonctionnent dans un pays avec des règles et des lois uniformes sur le mariage et la filiation. Les organisations militantes LGBT françaises n'ont pas forgé d'alliances avec les représentants du milieu des affaires, en partie parce que contrairement aux Etats-Unis, ils n'ont pas un intérêt commun pour la légalisation des droits conjugaux pour les couples de même sexe. En outre, même si l'expertise économique française était disponible en théorie, les justifications marchandes ne faisant pas partie des répertoires culturels français (Lamont et Thévenot 2000), il est possible que les parlementaires responsables des auditions n'auraient pas invité d'économistes à donner leurs avis de toute façon.

La présence et l'absence d'expérience personnelle et de citoyens ordinaires révèle comment des modes culturels communs de communication sont partagés (ou non) à travers les institutions aux États-Unis et en France. Cette thèse a démontré comment l'expérience personnelle est partagée par une variété d'acteurs, des politiciens aux universitaires et citoyens ordinaires, dans tous les contextes institutionnels aux États-Unis. Pourtant des logiques institutionnelles semblent s'opérer de manière différente pour rendre possible son utilisation. Les journalistes américains personnalisent leurs articles en incorporant systématiquement des anecdotes de citoyens ordinaires. Dans les législatures avec un accès libre aux témoignages, des citoyens ordinaires peuvent partager leurs histoires et essayer de convaincre les parlementaires. Dans les tribunaux, l'expérience personnelle et les citoyens ordinaires rentrent à travers les vies des plaignants et les témoins d'opinions qui fournissent une partie des faits que les juges prennent en considération. Ce type d'expertise rentre également dans les récits culturels américains plus larges et dans les traditions du droit commun qui mettent l'accent sur l'individu et l'expérience

personnelle plus souvent qu'en France (Lamont et Thévenot 2000 ; McCaffrey 2005 ; Saguy 2003).

Comme nous l'avons vu dans les deux premiers chapitres, l'expérience personnelle n'est pas une forme d'expertise partagée dans les débats français. Les témoignages de citoyens ordinaires, et en particulier des personnes LGBT et leurs familles, demeurent marginaux dans la couverture médiatique et dans les législatures françaises. Cette thèse a pour argument que cette situation est en partie due au fait que ni les médias ni les législateurs n'ont systématiquement cherché à leur parler pour avoir leurs histoires. L'une des raisons pour lesquelles ils ne l'ont pas fait est que le droit français, en interdisant formellement aux couples de même sexe l'accès l'adoption conjointe, l'adoption par le second parent, et l'AMP, a rendu ces familles invisibles et illégitimes. Par ailleurs, ils n'ont pas de réseau efficace pour accéder à la sphère publique sauf à travers des organisations familiales comme l'APGL et l'ADFH, qui sont relativement nouvelles et petites par rapport à leurs équivalentes américaines. Les législateurs français doivent également négocier des logiques institutionnelles particulières qui les mettent dans des conditions nettement différentes de celles de leurs homologues américains. Même lorsqu'ils pensent, comme Erwann Binet, qu'il est important d'entendre l'expérience personnelle de citoyens ordinaires, ils sont vivement critiqués par leurs collègues qui leur expliquent que le rôle de la loi est de s'occuper du bien commun et non de problèmes particuliers et spécifiques. Puisque les législateurs français ont le pouvoir de déterminer l'accès aux auditions, contrairement à leurs pairs américains au niveau étatique, ils peuvent mettre la priorité sur des témoins qui parlent du droit avec une certaine distance, tels que les experts universitaires et professionnels, plutôt que des témoins profanes.

L'analyse des institutions médiatiques et décisionnelles montre que les représentants religieux sont présents à la fois aux Etats-Unis et en France, mais qu'ils puisent dans des sources d'information différentes lorsqu'ils prennent la parole. Aux Etats-Unis, ils utilisent souvent le savoir religieux, tel que l'information des textes sacrés ou des appels à Dieu, pour défendre ou pour condamner les droits des familles homosexuelles dans les médias et les législatures. Aucun de ces forums ne délégitime leurs informations. Ils donnent également leurs informations à travers des mémoires d'*amicus curiae* aux tribunaux, une pratique encouragée par les organisations militantes des deux bords parce qu'elles pensent que cela donne un soutien populaire à leurs arguments aux yeux du juge. Ces résultats sont concordants avec d'autres travaux sur la valeur historique et contemporaine de la religion comme une forme de savoir public dans la politique américaine sur de nombreux sujets (Backer 2002 ; Bellah et al. 1985 ; Blevins 2005 ; Kuru 2009 ; Tocqueville 1990).

En France, les représentants religieux écrivent des tribunes dans les médias et sont interrogés par les journalistes. Les travaux de cette thèse montrent que chose étonnante, malgré la rhétorique française autour de la laïcité, les parlementaires français invitent aussi les religieux aux auditions législatives soit parce qu'il pensent qu'ils sont obligés de le faire soit parce qu'ils pensent que cela aidera à désamorcer l'opposition conservatrice. Cependant, contrairement à leurs homologues américains, les représentants religieux utilisent moins souvent l'expertise religieuse. Ils se fient plutôt à l'information séculaire, telle que la psychanalyse, l'anthropologie, et le droit, des formes fréquentes d'informations dans le débat français. Cette tactique, que d'autres chercheurs ont observé (Fassin 2001, 2014b ; Robcis 2013), leur permet de couvrir plus ou moins bien la stigmate de leur affiliation religieuse. Les travaux de cette thèse montrent également que les organisations religieuses avec une représentation officielle auprès de l'État

français, telles que l'Église catholique et le Consistoire central israélite de France, se sont coordonnées avec des experts laïcs conservateurs, qui leur donnent des informations pour les auditions. Cette stratégie ressemble a celle employée par les militants américains contre le mariage pour les couples des même sexe qui ont pris contact avec des alliés dans les sciences sociales afin de produire de l'information empirique publiée dans journaux scientifiques qu'ils pouvaient utiliser devant les tribunaux. Dans les deux cas, ils étaient motivés pour trouver des experts qui pouvaient leur donner de l'information qui correspondait aux attentes culturelles et institutionnelles des décideurs qu'ils essayaient de convaincre.

7.1 Pourquoi il est important d'étudier les experts et l'expertise

Une grande partie de la sociologie politique se concentre sur des facteurs qui peuvent expliquer pourquoi certaines réformes réussissent et d'autres échouent. Cette thèse n'a pas essayé de mesurer si la participation des experts et l'utilisation de l'expertise peut prédire le destin des réformes politiques. En effet, le propos de cette thèse n'est pas que les experts et l'expertise sont importants *parce qu*'ils ont des effets sur l'aboutissement des reformes. Au contraire, nous soutenons l'argument qu'ils sont importants *en dépit de* leur influence (ou non) directe, véritable et mesurable sur les réformes juridiques et politiques en terme de réussite, d'échec, ou de contenu.

L'expertise est importante parce qu'elle devient une partie intégrante du discours public, comme les « cadres » (Saguy 2003 ; Bleich 2003), et peut ainsi façonner la manière dont les gens comprennent des problèmes sociaux et politiques. Par exemple, à cause de la pénurie de travaux sur les familles homosexuelles dans les institutions de recherche françaises et de l'invisibilité des « experts profanes » qui pourraient parler de leurs expériences personnelles, il est très difficile

pour les partisans du mariage des couples de même sexe, y compris les législateurs, de décrire les réalités des minorités sexuelles. En ce sens, l'expertise est un des outils que les mouvements sociaux peuvent utiliser pour faire avancer leur cause. S'ils en ont, cela peut faciliter leur travail, et si ils n'en ont pas, cela peut rendre la tache plus difficile. Cette nécessité de créer une expertise crédible qui peut changer les perceptions du public et des décideurs, devrait attirer l'attention des chercheurs analysant les mouvements sociaux et les activités des militants (Armstrong and Berstein 2008).

Les chercheurs étudiant des mouvements sociaux peuvent s'appuyer sur ces observations afin de mieux comprendre comment l'expertise est une forme de capital politique et une partie intégrante des « structures d'opportunité politique » avec lesquels les militants doivent composer (Swartz 2013 ; Tilly et Tarrow 2007). Ces négociations sont particulièrement importantes en France parce que les champs politiques et universitaires s'y recoupent. Comme les recherches de cette thèse ont essayé de le montrer, une définition inclusive des experts nous permet de voir l'éventail de personnes qui fournissent du savoir dans une situation spécifique et d'identifier celles qui, grâce à leurs positions dans leurs champs respectifs et leurs relations avec les décideurs, ont plus ou moins de pouvoir. En France, certains experts puissants sont devenus des chefs de parti politiques de fait, en plus d'être des centralisateurs de savoir qui se coordonnent avec d'autres experts, qui peuvent, selon leur position idéologique sur ces questions, faciliter ou nuire à l'évolution concrète des réformes. Mis en application dans d'autres contextes nationaux, cette conceptualisation des experts et de l'expertise pourrait nous aider à discerner les personnes qui sont actuellement négligées dans les travaux existants.

Le lien entre l'expertise et les institutions décisionnelles est également important parce qu'il crée une demande et un débouché pour l'information qui peut soutenir, maintenir, et

façonner la production de savoir. En d'autre termes, l'expertise n'est pas obligatoirement importante parce qu'elle a un effet sur les résultats des réformes en soi. Ce sont plutôt les institutions et les structures juridiques et politiques qui sont importantes dans leur capacité à façonner l'expertise. Par exemple, le fait qu'il y ait autant de tribunaux et de législatures aux Etats-Unis qui font appel au savoir nourrit une demande pour ce savoir qui, par la suite, motive des organisations à demander aux producteurs de savoirs, y compris les universitaires et les experts profanes, de le fabriquer. En mettant en lumière la façon dont les débats politiques peuvent avoir une influence sur la production du savoir, cette étude nous montre comment les logiques institutionnelles, telles que l'exigence des tribunaux d'une rigueur empirique, ont conduit des militants et des chercheurs conservateurs à se coordonner pour de produire de la recherche scientifique.

Cette connaissance contribue à des conversations académiques en cours sur la politisation de la science en général (Gauchet 2012), et de la recherche sur les familles homosexuelles et leurs enfants en particulier (Biblarz et Sacey 2010 ; Fassin 200b). Elle attire notre attention sur les liens entre la politique d'un côté et la production du savoir scientifique de l'autre. Les résultats de cette thèse suggèrent que les sociologues des mouvements sociaux et de la science et de la technologie devraient être plus sensibles aux liens que les militants, les producteurs de savoirs, et les décideurs tissent entre eux dans un contexte culturel et historique donné. Ces liens peuvent avoir un impact sur la façon dont les chercheurs créent de nouvelles informations et sur la façon dont les militants les utilisent lorsqu'ils essaient de définir les problèmes sociaux et avancer un agenda politique.

Je ne suggère pas dans cette thèse que l'expertise n'a aucun effet sur l'aboutissement des réformes politiques ou sur leur contenus. Cette thèse soutient l'idée selon laquelle l'effet du

savoir sur les réformes dépend des logiques institutionnelles qui donnent au savoir un rôle spécifique dans les processus décisionnels. Comme nous l'avons vu, les législatures utilisent le savoir dans les auditions pour éclairer un choix politique qui a largement été décidé à l'avance. Dans ce milieu, qui domine en France, la réussite, l'échec, et la portée des réformes sont déterminés surtout par les dynamiques des mouvements sociaux, l'opinion publique, les configurations politiques, et beaucoup d'autres facteurs. En France, il est possible que les experts conservateurs (en parallèle avec des manifestations populaires et une résistance politique forte des partis d'opposition) ont contribué à l'échec de la législation qui aurait pu ouvrir l'AMP aux couples lesbiens. Cependant, le savoir entendu par les décideurs n'est qu'une petite partie d'un processus beaucoup plus large. Le degré de son influence sur l'aboutissement des réformes est extrêmement difficile, voir impossible, à déterminer précisément. En revanche, le savoir peut donner aux législateurs des justifications sur lesquelles ils peuvent se baser, ce qui peut rendre leur tâche plus ou moins difficiles.

À l'inverse, les tribunaux font une délibération entre les arguments de droit et les faits dans un procès particulier, qui peuvent inclure des témoins experts ou profanes. La puissance et la valeur de ces témoignages peut aider à la réussite d'un procès. En effet, tous les témoignages d'expériences personnelles des plaignants ainsi que les éléments de preuve issus d'études empiriques universitaires et rigoureux ont sûrement aidé les partisans du mariage pour les personnes de même sexe à réussir dans les procès devant les tribunaux fédéraux aux Etats-Unis. Dans cette institution, il paraît que le savoir joue donc un rôle plus central et concret que dans les législatures. Néanmoins, les décisions des juges dépendent également d'autres facteurs, tels que le contexte social, la politisation du tribunal en question, et la puissance des arguments de droit.

Une expertise, aussi excellente qu'elle puisse être, ne peut sauver un argument de droit mal formulé ou illogique.

Au fond, les réformes sur la reconnaissance légale des couples de même sexe et leurs relations familiales sont des questions de valeurs politiques et démocratiques. Cette thèse n'a critiqué ni le rôle, ni la prise de position des experts analysés, toutes catégories confondues. Cependant, cette absence de critique ne devrait pas être interprétée comme une approbation de leur légitimité, surtout en ce qui concerne les experts issus de l'élite, à prendre la parole dans ces réformes. En effet, les résultats de cette recherche devraient nous attirer l'attention sur des risques encourus lorsque les chercheurs en sciences sociales, surtout les partisans de l'égalité des droits pour les personnes LGBT, sont intégrés dans les stratégies des mouvements sociaux. En apportant activement leurs recherches aux débats, ils peuvent malencontreusement légitimer l'idée selon laquelle la science, plutôt que les principes démocratiques, devrait déterminer si les couples de même sexe doivent avoir accès aux mêmes droits que les couples hétérosexuels. Il est plutôt aisé pour les partisans de l'égalité de brandir les recherches scientifiques comme un outil dans leurs luttes pour le changement des droits alors que, pour le moment, la littérature les soutient. Cependant, en soutenant la validité de la science comme une justification pour ces réformes, ils soulèvent la question de ce qui se passerait si, par exemple, la recherche montrait que les enfants élevés par les couples de même sexe se portaient beaucoup moins bien que leurs pairs élevés par les couples de sexes différents. Dans l'avenir, nous devrions prêter attention à la façon dont les experts et les partisans des deux côtés traitent cette question.