



HAL
open science

The Pacs, Four Years Later

Daniel Borrillo, Eric Fassin

► **To cite this version:**

Daniel Borrillo, Eric Fassin. The Pacs, Four Years Later: A Beginning or an End?. 2004, https://www.ined.fr/fichier/s_rubrique/19410/124.fr.pdf. hal-01232056

HAL Id: hal-01232056

<https://hal.science/hal-01232056>

Submitted on 29 Nov 2015

HAL is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

The *Pacs*, Four Years Later: A Beginning or an End?¹

Daniel Borrillo* & Eric Fassin**

Introduction

Nearly four years after it became law, the history of the *pacte civil de solidarité (pacs)* is defined by a paradox. Before it was adopted in October, 1999, the pacs was the source of a major public controversy for a couple of years, in the media, in the political world - and even in the streets, with important public demonstrations. According to opponents of the pacs, who often resorted to the authority of psychoanalysis as well as of the social sciences, the "symbolic order" that defines culture was at stake, along with the "anthropological foundations of our society" - *i.e.* the very order of the world. Whereas for them apocalyptic fears arose out of the pacs, by contrast, for its supporters it raised revolutionary hopes of social transformation.

However, after October 1999, both fears and hopes seem to have vanished along with the debate. After a year, the new law met with massive approval in public opinion (70%). Today, no one (except on the extreme right) is talking of repealing the law - whose existence was not even threatened by the political changes of 2002 (the left-of-center alliance led by Socialist Prime Minister Lionel Jospin giving way to President Jacques Chirac's right-wing government headed by Conservative Jean-Pierre Raffarin). Not only is there no evidence of a political backlash, but it could almost be said that the pacs has become consensual. At the same time, those who supported the bill now mostly emphasize the limitations of the law: could the starting point turn out to be a dead end? Whereas opponents of the pacs seem mostly reassured, supporters sound rather disappointed: the beginning may after all be the end.

For both sides, the stakes are not so high any longer - the passions are not to be rekindled. *Pacs* is now part of the culture, as evidenced by its acceptance in the French language: the acronym *PaCS* is no longer capitalized, as both noun - *les pacés* - and verb - *se pacser* - have entered everyday parlance. In other words, we have witnessed an astonishingly rapid shift from controversy to consensus, from polemic to appeasement. Cultural representations (or so-called *mentalités*) are supposed to transform ever so slowly. But it seems that in this case, they changed radically, without transition, almost overnight.

Unless we turn the argument around: could it be that the pacs has not altered much in our society? The paradox thus raises a fundamental question: should the pacs be understood, in the light of the passionate polemics that paved the way for the law, as a radical reshaping of French society, or on the contrary, under the new light of the quiet indifference with which it has met since, as a minor reform of limited impact? To approach this question, we shall analyze the pacs in its three main dimensions - legal,

¹ An earlier version of this text appeared in French under the title: "L'aventure ambiguë du pacs", in *Regards sur l'actualité*, La documentation française, Paris, n°286, December 2002, pp. 47-53.

* Paris-X, CERSA/CNRS.

** ENS, LSS and GTMS.

political, and social. Woven together, they will help us understand the symbolic impact of the pacs in its complexity, which also turns out to be its ambiguity.

I. The legal meaning of the pacs

Until 1999, the controversy surrounding the bill focused on homosexuality - despite the fact that the pacs is a status designed for both same-sex and different-sex couples. Moreover, the debate had little to do with the exact terms of the law: it addressed mostly its symbolic meaning. From the start, the pacs debate actually extended beyond the pacs (*au-delà du pacs* is a phrase some of us used repeatedly, if not *ad nauseam*, to describe as well as to encourage this extension). On the one hand, it raised the question of marriage itself, though even its proponents in Parliament took pains to differentiate one from the other as much as possible. On the other hand, more importantly, it evoked the question of *filiation*, i.e. of reproductive rights (access to adoption and reproductive technologies), despite the fact that the pacs has nothing to say on this matter, as it concerns couples, not families. The pacs debate was not about the pacs *per se*. It is thus all the more necessary to recapitulate what the pacs itself is, and is not, from a legal standpoint.

Before the pacs, couples had two options: *concubinage* (a sort of common-law marriage) or marriage itself - provided the couple was made up of a man and a woman. What the pacs creates is an intermediary status between marriage and concubinage, that leaves out the question of the sex of the partner. At the same time as pacs was voted, concubinage was actually extended to same-sex couples (whose explicit exclusion in a 1989 decision of the *Cour de Cassation* initiated a political awareness that eventually led to the pacs). The pacs entails more rights than concubinage, and fewer than marriage. It goes beyond the possibility to share a lease - a political demand first expressed in the context of AIDS, with the revelation that when one partner died the other was evicted. The pacs is a status that makes it possible for couples to organize their lives jointly.

The pacs guarantees mutual support, which includes a shared financial responsibility when incurring debts, and opens the possibility of joint taxation. It creates the possibility of ownership in common, and of mutual inheritance with a testament or through a donation (within fiscal limits). But there is more than the financial side: the pacs opens immediate access to the social benefits of the partner (*Sécurité sociale*, the national health plan). For state employees, it may justify requests for appointments in the vicinity of the partner's professional position. Also, the pacs makes it possible to represent one's partner in dealings with hospital administrations. Finally, a pacs with a French national enables a foreigner to request a long-term visa or residence permit (although this remains dependent on the goodwill of the central administration in the *préfectures*).

Of course, the pacs is less meaningful than marriage. Not only symbolically (it is signed in a lower court rather than celebrated in *mairies*, i.e. townhalls), but also practically: for example, in terms of inheritance rights (even with a testament). There is no pension for "widowers" in case of a pacs. The difference with marriage has actually increased since the December 2001 law that reinforces the inheritance rights of the surviving spouse (by contrast to the children). Moreover, the rights attached to the pacs are not immediate (contrary to what happens with marriage): donations require a waiting period of two years; joint taxation supposes three years of pacs.

This is why it can be said that the pacs is not only an intermediate status, but also an ambiguous one. On the one hand, it clearly corresponds to a sexual link: the legal restraints on incest apply equally to marriage and pacs. Contrary to early propositions, the pacs is not open to siblings, for example. The Constitutional Council made explicit this implicit sexual definition: the pacs goes beyond joint residence; it presupposes that the *pacsés* are a couple, and not simply roommates. On the other hand, the pacs excludes many rights attached to married couples, such as days off for family occasions, or the

exemption from the obligation to denounce the crime of a spouse, and the rights it does provide are much more limited than in the case of marriage, both for separation and death.

The deliberate distancing of *pacs* from marriage and family life is most obvious in two areas: nationality, and reproductive rights. The *pacs* does not enable a foreign partner to request French citizenship, like a spouse after a year of marriage. The *pacs* does not allow family regrouping with foreign nationals, nor does it protect these from the threat of expulsion - as would be the case with marriage. This distrust of foreigners expressed in the *pacs* is not restricted to the letter of the law, as it is prolonged and reinforced by the resistance of French bureaucracy.

As far as reproduction is concerned, there are no rights attached to the *pacs*. For couples, adoption is restricted to marriage. Individuals may adopt - but in February 2002, the European Court of Human Rights authorized France to reject a demand from a single gay man based on his sexual orientation. Not only then does the *pacs* not open the possibility of joint adoption: worse, in practice, a same-sex *pacs* can become grounds for refusing adoption to individuals. It is no wonder that then-député Jean-Pierre Michel's bill allowing second-parent adoption (in the absence of a living second biological parent) for couples in a *pacs* was soundly rejected.

Reproductive technologies do not require marriage - but since the 1994 law (and forthcoming revisions probably will not change this) they are reserved to different-sex couples: the *pacs* has nothing to do with it. The limitation or exclusion even affects parental roles: in a *pacs*, the parent's partner has no legal authority whatsoever on the child, nor any rights (visitation or even everyday matters such as signature rights for schooling, etc.). The parallel between restrictions on nationality and reproductive rights reveals a common logic: the *pacs* may be a matter of sex; it is not regarded as a matter of blood. This is why the *pacs* has to do with the sexual order, quite obviously, but neither with *nationalité* nor with *filiation* - at least from a legal perspective.

II. The political meaning of the *pacs*

The political meaning of the *pacs* is no less ambiguous than its legal one. As we have seen, from the beginning, the debate reached beyond the *pacs* towards reproductive rights. Not so among left-wing politicians then in power: Justice Minister Elisabeth Guigou at the time insisted that never would Socialists let the new *pacsés* enter the hallowed circle of the family, *i.e.* have access to adoption. It did not come as a surprise when the French association representing gay and lesbian parents (APGL) had its application to join the national coalition of family associations (UNAF) rejected, nor when (after the right came to power) it was excluded from the national council of sexual information to which it had belonged until then. The fear of "same-sex families" may very well be one of the reasons why the much-needed updating of the laws on reproductive technologies has been postponed for years now: how could the debates not raise the question of lesbian couples?

In fact, despite reforms throughout Europe (from Scandinavia to the Netherlands), and even throughout the world (from Canada to South Africa), no change is currently envisaged in France. One may wonder, though, how long this could go on - not only because of the direct pressure of the European Union, which might play a role in the future, but also indirectly through international comparisons that make it more and more difficult to ignore the possibility of change: how could access to reproductive rights for same-sex couples remain "unthinkable", when it becomes an option in cultures that are anything but remote from France? Especially if we think that "lagging behind" could become a source of national embarrassment: for gallic pride, it is one thing to see Northern Europe ahead in terms of social and moral norms; it would be quite another, if so-called Latin countries were more "advanced" than France.

At the same time, the debate that came as a prelude to the pacs had political consequences that extend, beyond same-sex families, to the very definition of filiation. "Sexual difference" had been invoked as the principle that precluded new rights for gays and lesbians, in particular reproductive rights. On the one hand, this led some to question the 1966 law that makes it possible for individuals, and not only married couples, to adopt: until the pacs debate, the absence of "sexual difference" (*i.e.* a man and a woman) in this case had not been noticed, let alone perceived as a problem.

On the other hand, the debate about "filiation" may explain a reform that was soon to be initiated by the Left (and, not surprisingly, postponed once the Right returned to power). In France, the child's family name is always the father's name. The new law made it possible for parents to choose the mother's name, or to keep both names. This introduction of equality between the sexes in the family also means a critical reappraisal of the division of family positions between the mother (assumed to be biological) and the father (considered as symbolic). In that sense, this reform is indeed a continuation of the pacs - and an interrogation of the so-called symbolic order.

The debate has thus played an important role in French political representations, as evidenced in the emergence of hitherto unknown figures, revealed to the public thanks to (or because of) the pacs debate. This is true on the Left (with députés Patrick Bloche and Jean-Pierre Michel), but even more on the Right (with Roselyne Bachelot, a lone supporter of the pacs in the conservative opposition, and Christine Boutin, a vocal opponent of the reform). Then-Prime Minister Jospin understood well the political importance of a debate he had initially underestimated: whereas he had first displayed the most tepid support for the reform, he eventually claimed it as one of his government's major accomplishments. Only since this debate have political figures started systematically addressing the gay community through the gay press - first, in the Paris election for Mayor (2001), then in the Presidential election (2002).

The political shift that accompanies the legal shift, from tolerance (for individual practices) to recognition (of couples), means that homosexuality has gained more legitimacy: it is much more than before out in the open - including in politics. "Outing" remains a taboo (even when gay militants considered outing a conservative representative who had participated in a homophobic demonstration, the outcry was unanimous); however, "coming out" becomes the norm (Bertrand Delanoë made a point of publicly stating his sexual orientation as he - successfully - entered the race to become Mayor of Paris).

This helps understand why the political impact of the pacs is most visible on the subject of homophobia: just after the pacs, several bills came up on the legislative agenda aiming to combat homophobia - not only on the Left, where the different parties seemed to compete for a part in this new battle, but also with initiatives from the Right, whose more lucid leaders were eager to distance themselves from the opposition to gay rights manifested in the debate, and evidenced in unsavory remarks and slogans. Not that this had led to real reforms: in fact, for the moment, it is mostly the question of discrimination (based on sexual orientation) that seems to inform current plans (for example, with the November 16, 2001 law, or perspectives for an anti-discrimination national structure). Probably fighting homophobia itself would lead more rapidly to a question it now becomes difficult to avoid altogether: if not homophobia, what remains as an obstacle to actual marriage and reproductive rights for gays and lesbians in France?

In political terms, there is another paradoxical consequence of this new law. After the pacs (and *parité*, the law simultaneously debated and voted on equal numbers of men and women as candidates for public office), a series of sexual debates have taken place in France, where they had been conspicuously absent until then - concerning harassment and

sexual violence, prostitution and pornography. What is remarkable is that all these new debates have implicitly focused on heterosexuality, although gay porn is certainly not unknown in France, despite the fact that male prostitutes have become more numerous - not to mention the lack of heterosexual prerogative on abuse of authority or violence.

Maybe politicians are careful not to repeat the mistakes of the *pacs* debate - they all want to make sure they do not sound homophobic, as this now carries archaic connotations. If there is something like social progress in the realm of sexual morality, politicians clearly do not want to be ahead of their times; but they do prefer not to be left behind either. But there may be more to this surprising silence: perhaps the increase in social legitimacy for homosexuality raises questions about heterosexuality. What happens to heterosexuality, if it is not defined as the norm any longer? The depth of social anxiety about sexual matters may be (in part) a reflection of today's redefinition of norms, where sexual orientation might not be a criterion of legitimacy any longer.

III. The social meaning of the *pacs*

The question remains, which cannot be answered simply by looking at the law or politics, as neither simply reflects society: what happened in society itself? Those who feared for the very fabric of society must now stand reassured. Birthrates have not collapsed, and marriage itself seems to have been, if anything, reinforced by the new option offered with the *pacs*. Far from weakening the foundations of society, the *pacs* may serve to establish them more firmly - does not marriage regain meaning in the new context as the one option reserved to straight couples?

Can it be said then that the *pacs* is a success? Figures cannot provide an answer to that question, as their interpretation depends on the political reading. The problem is thus not just lack of perspective (it is recent), nor lack of information (for the *pacsés*, we do not know how many are same-sex, and how many different-sex couples). It is more that there is no objective way of reading the figures. First, it depends on the question. After three years, about one out of twenty *pacs* had been dissolved: is that many, or few? One thing seems clear: there have been few legal disputes occasioned by separations (despite fears of brutal "repudiations" expressed by opponents of the *pacs* during the debate).

Second, it depends on the point of comparison. If we compare the number of *pacsés* to the number of *concubins* (hundreds of thousand compared to millions), or the number of *pacs* to the number of marriages (ten times fewer), it is clear that this is not the most frequent option - by far. But it may be equally significant that the number of *pacs* has not declined: the initial surge has not been followed by a decline of the *pacs*. The numbers seem to rather constant for the moment (over 20,000 a year): the *pacs* is not a mere fad. It is now part of the social landscape.

What is more interesting than rating the *pacs* (how successful?) is to reflect on its social significance (how meaningful?). Not much is known with certainty yet. However, we can hypothesize, with some empirical evidence to support it, that straight couples invest their *pacs* with a meaning that is quite different from that of gay and lesbian couples - for obvious reasons: the range of options is not the same. Whereas for the former the *pacs* is an intermediate version between concubinage and *pacs*, for the latter, it is the most formal, the most official, the most legitimate option available. One of the consequences is that same-sex couples are more likely to consider their *pacs* as a private gesture, while different-sex couples will tend to invest it with public meaning. For gays and lesbians, the *pacs* may have something do with the coming out - a sort of second stage in the process of coming out, as a couple and not only as individuals.

While for different-sex couples the *pacs* provides an opportunity to distance themselves from marriage, this does not mean that it is a mere copy of marriage for same-sex couples

- although the imitation may be there (with wedding rings, honeymoons, etc.). But even the imitation takes on a political meaning that is absent from straight marriage - or at least different (it cannot be an endorsement of "tradition"). For the public nature of the event is anything but traditional, concerning gays and lesbians: hence the importance of pacs announcements in newspapers, next to births, marriages, and deaths (which of course is not specific to France, as evidenced in American parallels in the press). The pacs may not be part of the *État-civil*, *i.e.* of state identity, but this publicity is a way to grant social, symbolic recognition, if not officially, at least in social practices. This explains why some couples insisted on having the signature of the pacs in public - despite the fact that the court where it takes place (*tribunal d'instance*) is not open to the public.

Law is but an empty form. In the case of the pacs, it has rapidly been filled with social meaning through social practices. This can be explained if we understand it as the continuation of two major evolutions that have been under way in French society for a while, and whose combination had not been examined before - neither by the sociology of the family, which had completely ignored gays and lesbians, nor by the sociology of sexuality, which had been indifferent to family matters.

On the one hand, the pacs is a continuation of the logic of what has been called "*démariage*". This is quite different from a so-called decline of marriage, threatened both by divorce and by common-law marriage (or *concubinage*). *Démariage* implies the privatization of marriage, *i.e.* the fact that marriage is a private option, not a social obligation. The institution of marriage is far from disappearing; however, the choice between marriage and cohabitation, between a formal and an informal arrangement, is now a matter of personal choice. The pacs is simply one more option available to both straight and gay couples. Thus it can be understood in the light of this privatization.

On the other hand, the social practices of gays and lesbians have evolved - in particular since the 1980s, in the context of the AIDS epidemic: same-sex couples first gained legitimacy among gays and lesbians themselves. This does not mean, once again, that these couples simply replicate heterosexual models: in fact, the very definition of what is a couple is at stake in the way the practices of the couple are organized. For example, a stable couple does not mean exactly the same thing for a gay couple as it would for a straight couple: it may not imply a claim of exclusivity - not even of cohabitation. The social life is no less different than the sexual life, whether we talk of gay or straight couples.

The pacs is thus at the intersection of both evolutions. The question may then be asked: will pacs change these trends as they intersect? Will the new law be the framework for new practices - for the invention of new lifestyles, in a foucauldian sense? Some have wondered - in France and elsewhere - whether the recognition of same-sex couples would entail the normalization of homosexuality, *i.e.* not only its transformation for public opinion into a banal social and sexual practice, but also its conformity with the heterosexual norm. There is no such indication today: the diversity of lifestyles remains, as the social meaning of the form created by the law did not preexist.

It remains to be seen how straight couples will be changed by this status they share with gay couples: will *they* imitate their homosexual counterparts, or on the contrary distance themselves and re-establish a difference - or perhaps just ignore them? The question is thus turned upside down, so to speak. It may well be that the individualization of social practices means that both straight and gay couples will feel a lesser need to conform to a norm, *i.e.* to define their identity in relation to a norm, even though (of course) practices are never pure individual inventions, as actors would like to think most of the time.

Conclusion

It is far too early to provide a serious assessment of the *pacs*. First, the meaning remains ambiguous, both in legal terms and politically. A logic has been initiated that goes beyond the law: the shift from toleration to recognition is not to be stopped half-way. At the same time, political actors seem to be willing to stop half-way - at least until they cannot oppose change any longer. This means that the social logic will predate the political logic, as was the case during the debate leading to the *pacs*. The political class is not the origin, but merely the reflection of social transformations in this matter.

Second, the social meaning of the *pacs* is taking shape before our own eyes, although we may not be aware of it, through the everyday practices invented by social actors. This means the *pacsés* themselves, of course, the way they articulate their private lives and public norms; but it also includes the changing perception of these couples in public opinion, in part through the influence of the media. The *pacs* may have relegated in the past the logic of discretion (or conversely exhibition) that prevailed in all our thinking about homosexuality. This means that the law shapes society, of course; but as society evolves, the law may have soon enough to catch up with further evolutions of society. Unless outside pressure (from the European Union) forces change, without waiting for public opinion.

