Mixed-status informal couples in a cascading crisis. Immobilisation, mobilisation, and normalisation?

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Mixed-status informal couples in a cascading crisis. Immobilisation, mobilisation, and normalisation?

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Abstract

In France, the COVID-19 pandemic was experienced as a cascading crisis, with its effects rippling out beyond its initial health domain. Due to the lockdown and ban on travel, the closure of borders, and the slowdown of administrative services, the pandemic had an unanticipated effect on transnational French/foreign couples lacking formal legal relationship status, causing separation and uncertainty. Overlapping health and migration concerns generated a new specific border regime, which reinforced the already existing 'deservingness' criteria for seeking to move to and integrate into the nation. The imposed geographical and administrative immobilisation led to some couples creating online self-help communities, which offered emotional support and shared coping strategies for couples caught in the deadlock. These communities have given the challenges faced by mixed-status couples fresh visibility. Drawing on an ethnography conducted in four online communities, in-depth interviews with transnational couples, and an analysis of politico-juridical materials and grey literature, this article focuses on marriage becoming *the* option for French/foreign couples seeking the right to reunite in France during an uncertain period. More precisely, by using crisis studies to frame the impact of the pandemic and articulating the scholarship on socio-legal and intimate citizenship, the experiences of such couples can be understood as specific processes in legal consciousness, producing acts of intimate citizenship. This perspective helps demonstrate how the pandemic emphasised the policing of migrant couples, and how institutional and legal opportunities narrowed the choices available to such couples, reducing the potential of change that is generally inherent in crises.

Keywords: intimate claims, legal consciousness/legal activism, marriage, pandemic, partners' migration

1. Introduction

'We fought hard for free unions and civil partnerships and going back to the imperative of marriage seems to us to show the extent to which the health crisis has blown up our fundamental rights', observed Anne, interviewed by an online media outlet following a 2021 French State Council ruling. The ruling ordered the French government to permit foreigners to enter France for the purpose of contracting a marriage with a French citizen during the pandemic. Reviving a type of visa that had fallen into disuse, the State Council ruled in favour of a request filed by five transnational couples and the support association with which Anne volunteered. In accord with the grassroots principle of standing by the couples, her association replied positively to a request that they join the case as co-appellants. The appellants argued that the travel ban failed to acknowledge the specific situation of French/foreign couples, whose rights had been disproportionately violated by the ban.

This contentious action, together with Anne's statement, takes us to the heart of this article. It explores the (side) effects of measures implemented to curb the spread of COVID-19 in France for heterosexual French/foreign couples who were unmarried, not in a civil partnership, and not recognised as cohabiting at the onset of the pandemic—and thus invisible in state law. By interrogating the status of the ties that did allow movement and reunion during this unique period and the mobility regimes' inequalities, this article explores how the 'health crisis' cascaded through society, affecting both family life and political rationalities. More precisely, it zooms in on an intensified focus on marriage as an option, albeit controversial, for securing couple reunification rights and ensuring legal stability in an uncertain time.

In March 2020, when the French government opted for a lockdown strategy to limit the spread of the virus, there were couples preparing to begin a joint life together; couples abroad, in the process of formalising their relationship in order to facilitate their move to France; couples who had already published town hall banns as a precursor to their forthcoming marriage ceremony; and some not planning to take any of these steps, as they had maintained their relationship through tourist visits before the pandemic. Travel bans curtailed movement abroad through the implementation of an 'international travel certificate', which created categories of potential travellers either exempted from the ban on international movement (i.e. transporters, the French spouse of a French national), or able to cite essential reasons for travel. But none of these provisions, put in place in March 2020, acknowledged the circumstances of unmarried French/foreign couples. Hence, the government's measures, alongside the slowdown in administrative bureaucratic functions, created an 'overall encompassing impeding condition' (Bergman-Rosamond et al. 2022: 476), jeopardising the reality and plans of *some* French nationals and their non-national loved ones. Beyond health-related consequences, the crisis exposed regimes of (im)mobilities (Glick Schiller and Salazar 2013; Adey et al. 2021); in addition, their inherent inequalities resulted from the entanglement of intersecting boundaries and borders that gives rise to specific forms of exclusion and inclusion along migration trajectories (Amelina and Horvath 2020). Aspirations and the fulfilment of fundamental rights, already eroded by restrictive policies addressing some migrant partners, mainly from the Global South, due to their nationality and

characteristics (such as race, gender, religion, social class, and sexuality), were narrowed further by the pandemic and its bureaucratic aftermath. The exceptional 'crisis regimes of (im)mobility', developed by authorities 'to (re)define what is considered essential mobility' (Salazar 2021: 31), intensified geographical, bureaucratic, and intimate inequalities. Concretely, the crisis '[cascaded] from the sickness and death into polity, economy and civil society' (Walby 2022: 506), affecting adjacent domains like (family) migration. Policies implemented during the 'health-related state of emergency' (fr. *état d'urgence sanitaire*), which lasted from 23 March 2020 until 31 July 2022, discriminated between nationals with respect to the possibilities for a couple to live their lives as they wished.

Despite their negative charge, crises can also be turning points, creating the potential for change. Here, the health crisis stimulated grassroots mobilisation of affected couples, contributing to the discourse regarding what a couple *is* and what this implies for the enjoyment of basic rights. This state of crisis thus had the potential to change the established conception of family in migration law.

Based on fieldwork conducted with online and offline self-help and socio-legal activist groups working with and on behalf of mixed-status couples, this article sheds new light on the construction of intimate 'deservingness' to integrate into the nation. Drawing on crisis studies, and from the scholarship on socio-legal and intimate citizenship, the article unpicks the interweaving of intimate choices (and their recognition) and their legality—a state of affairs with implications extending far beyond the field of migration.

The article is structured as follows. First, while proposing to define COVID-19 as a compounded crisis—albeit one with the potential to engender change in family migration regimes—I frame an argument proposing an interpretative approach to the legal consciousness and socio-legal activism of mixed-status couples that considers the inequalities that stratify the mobility opportunities of this heterogeneous category.Their experiences are interpreted as processes towards legal consciousness and as pro- ducing different acts of intimate citizenship. After presenting the research fieldworkand the empirical material, I outline the institutional criteria of 'deservingness', as imposed on such couples. These criteria inform the legal consciousness of such couples, specifically both their individual and collective tactics to overcome imposed separa- tions. Vignettes help illustrate the complexity of the legal structures framed by the state, and negotiated by couples and other experts supporting them during the ensuing dead- lock. The initiatives identified are built on emotional cooperation and online–offline alliances; while directed at subverting the government's definition of an acceptable het- erosexual relation, these alliances ultimately served to legitimise it. In this way, to escape their immobility they end up normalising the institutional preference for a marriage- like couple. Marriage thus turns out as not quite an imposed choice, but certainly the least bad bottom-up solution at an uncertain time. I conclude that (im)mobility regimes are stratified and influenced by international relations and transnational injunctions, which engender intimate desires and impose on transnational couples the need to permanently readjust personal and joint life courses. The nexus between legal consciousness, legal activism, and family migration rationality opens up reflections on the 'normalisation' of marriage in praxis.

2. Cascading crisis and intimate rights claims

'The definition of crisis as an event in a short period of time and a longer period of consequences that cascades in non-linear form helps to make sense of developments related to COVID-19' (Walby 2022: 511). Health concerns created by the exponential spread of the virus led to immediate political responses, extending beyond the public health domain and 'imbued with the politics of bordering' (Kenwick and Simmons 2020: E36). This not-new way of dealing with a global health crisis that 'reflects growing anxiety about border security' (*ibidem*) should be set in context. Crisis, in fact, 'does not occur in a societal void but intersects with the difficulties already faced and the [. . .] intersectional socialinequalities in place' (Bergman-Rosamond et al. 2022: 477). In the case of migration, thepandemic reinforced an 'enduring global mobility apartheid' (Heller 2021: 126) built on citizenship and visa selective policies—the main tools for differentiating between travel-lers, and between desired and undesired migrants, on the basis of race and class. For some time, borders have been conceived as spaces for not only filtering, but also accelerating, mobility (Rea 2017). Now, despite the pandemic slowing down mobility for everyone, the new precarious normality established during the crisis has led to some being prevented from enjoying their fundamental human rights **(**Odasso and Fornalé, 2022**)**, including family life.

The reality of the crisis is fuelled by other constructed aspects. Following Walby (2022), in a crisis 'there is something of substance but . . . its interpretation by social actors makes a difference to the outcome' (511). For instance, limitations on interpersonal contact and non-essential movement, to contain the virus, moulded with ancestral fears of strangers carrying diseases (Snowden 2019), and with the migratory risk logic that has historically shaped migration policies in Europe turned the pandemic into a multidimensional crisis (Heller 2021). The crisis also shifted from the public sphere to the private one, constituting 'a time of cumulative hardship' with respect to the everyday reality of migrants already in France (Carillon et al. 2020). But governmental measures also, unexpectedly, impacted French citizens with foreign partners not in France. Provisions to contain the health crisis found themselves on a continuum with the discriminatory migration dynamics already in place (Odasso and Fogel 2022), and with the policing of the intimate borders of the nation (Bonizzoni 2018).

Here, temporality—an essential dimension of all crises (Walby 2022; Bergman-Rosamond et al. 2022)—assumed a novel key role. The length of the enforced separation of couples residing in different countries became unpredictable, due to the crisis's uncertain duration and the changing character of the legal regime. The frictions generated between personal time and institutional time have been extensively documented by migration studies, whereby time is considered a 'tool used by immigration law, policy and control' (Cwerner 2001: 10). Time becomes relevant in the governance of mobility—not just geographic, but also between administrative statuses. The unpredictability of bureaucratic procedures, in countries of origin and of arrival, is the hallmark of migratory trajectories, in particular, those of Global South migrants. My argument here is that 'pandemic time' further amplified these temporal dissonances and their consequences. The time-based implications of the *ad hoc* institutional conception of essential affective bonds

forced reconsideration, from an intersectional perspective, of inequalities in bureaucratic procedures.

Migration studies have described how, by narrowing the criteria that determine the 'good family' able to integrate into the nation, family migration regulations have influenced strategies for 'doing' family by some migrants (Strasser et al. 2009). 'Same-sex couples, unmarried heterosexual couples, and polygamous relationships and "arranged marriages" have traditionally been the "undesirable" subjects of family reunion policies' (Simmons 2008). With mixed-status couples, moral representations of what a 'real' couple is and how a family should be are influenced by assessments of the couple's ability to live together legally. Conversely, couples—according to both partners' social characteristics—try to undermine their stigma and accommodate administrative expectations. Besides the materiality of this assessment and the couples' practices, a few research studies have noted the still relevant weight of a formalised union. Some studies describe marriage as an injunction for ensuring legal stability for the migrant partner and, in turn, the couple itself (Salcedo 2015; Odasso 2021a). It is assumed that when the benefits of civic rights (i.e., entry, residence) are at stake, then the relationship should be marriage-like. Critical queer scholarship conceives marriage as part of a wider trend of rights privatisation (Duggan 2003), reinforcing state protection of—and control over—privatised spaces and relationships (Floyd 2009). Marriage, the heterosexual variety particularly, is the ultimate symbol of an acceptable kinship and a 'valuable' nation bond (Luibhéid 2008). While migration scholarship tends to consider marriage as a taken-for-granted, its realms and its significance for social actors are rarely interrogated in depth. This is particularly relevant when considering it in a context where the institution is merely a step on the path to 'doing' the family (Godelier 2004). Increasingly, marriage is a contracting option for national couples in France, and even for French/foreigner couples. Nevertheless, Bourdieu (1993) has already shown that the state, with its juridical–political work, structures populations, and minds through a work directed at favouring a certain form of family organisation: prescribing a mode of existence and, thus, turning a 'private' into a 'public' matter (36). This doubly objective and subjective construction, of what a family is and should be, can be applied to conceptions of 'acceptable' relationships, and how this related to the right to move across international borders during the pandemic. Its evolution should be understood as the dynamic result of contingent legal opportunities both in France and in the foreign partner's country of origin, the couple's intimate desires, and their consequent actions. Elsewhere, I have shown how the agency of mixed-status couples suspected by the administrations of concluding a sham marriage for residence papers—triggered by intimate intentions and expectations—is contingent and relational (Odasso 2021a). Now, the contingency created by the pandemic and the uncertainty of its outcomes provides an excellent frame for exploring how this intimacy-based agency has evolved, via legal-administrative tactics, towards the normalisation of marriage formalisation.

Crises in general are, in fact, also opportunities: change must come at some point, for better or worse (Habermas 1976–1992). Nevertheless, crises can also be 'recuperated', and thus 'the possibility of significant and permanent change is not fulfilled' (Walby 2022: 502). Under this perspective, the pandemic was, for many transnational couples, a cascad- ing crisis: they were forced to endure separation, and find a way out of immobility. This phenomenon offers excellent insight into potential changes in the hierarchy of

(in)formalised unions which afforded mixed-status couples' access to the nation. It also permits us to better demonstrate the interlocked inequalities attached to kinship ties—the still preferred pathway to the enjoyment of residence rights and to entry in the national community often described as a 'big family' (Ngaire 2005). The 'government through the family' (Martin 2012) and its 'domestication' (Turner 2020) justify the establishment of explicit links between social reproduction and the future of the nation. These approaches emphasise the means deployed by the state to manage the affective ties of migrant and national partners, and to conform their private world to what is posited as being in the interest of the whole society. The differential implementation of these means informs intersecting discriminations along lines of class, race, gender, age, sexual orientation, nationality, and so forth (Scheel and Gutekunst 2019) that the pandemic crisis reinforces.

During the pandemic, the development of 'public talks and actions about the intimate' (Lister 2002: 199), in part due to the proliferation of online self-help groups, interpellations in parliament, legal challenges, and media coverage, questioned the norms concerning (in)formal mixed-status unions, and those established due to the health-related state of emergency. These coping strategies were shared within the communities of concerned couples: direct actions initiated by active participants in the cause, and legal challenges filed with the help of cause-lawyers and related experts are excellent examples of 'acts of intimate citizenship' (Odasso 2021b). Framed by a certain conscience and uses of the law during the pandemic, these acts originate from forms of (shared) legal consciousness, rooted in intimate-based claims 'that cluster around personal life, which are themselves not just personal but political and social' (Plummer 2003: 70).

To expand on this point, I propose a relational approach to legal consciousness (Chua and Engel 2019), permitting the articulation of 'conscience' and 'practices', incorporating both individual dimensions and contextual relational factors in understanding how the intimate individual common sense understanding of one's rights has moved towards legal activism—and the consequences of this. Migration studies have extended the original notion of legal consciousness and emphasised the specific social contexts of its development by considering the manifold facets of the norms that travel with migrants across national borders and their uses by those who do not seem to be entitled to any rights, that is, undocumented migrants. For instance, the transnational space lived by mixed-status families offers a specific site for exploring how consciousness is a dynamic process along legal–administrative experiences. Transnational families can 'make use of the diverse normative options that are open to them' (Kulk and De Hart 2013: 1060) but this capacity to handle the law is not developed individually, but rather in a context of shared narratives and information circulation that account for a shared understanding of the law (Kulk and De Hart 2013: 1068). Dealing with undocumented migrants, Abrego (2011) showed that their appraisal of the law is closely related to their social position and shifts over time, due to new legal opportunities relating to their status—that is, a sceptical attitude towards legality may turn into a 'gaming' approach and consequent engagement with the law (Ewick and Silbey 1998). As I will argue below, for mixed-status couples, these migrants are not dealing with the law in a monolithic way as a homogeneous group. Life stage at migration, fear of deportation, and the legal status-related stigma differently inform their legal consciousness and thus undermine or motivate their rights to claim makings for inclusion through regularisation. Social characteristics, context, and legal consciousness variations

over time, spaces and status are key for legal activism and mobilisations, which happens 'when a desire or will [is] translated into a claim or assertion of rights' (Zemans 1983: 700). Social practices and discourses around and about the law give rise to rights consciousness and interpretation of norms even outside formal legal institutions (Minow 1987) among those acting to have such rights recognised and using the law as an instrument to serve this cause. But if rights are a powerful repertoire of action to rethink injustice and make claims, the legal field is not easily accessible to laypersons (Agrikolianski, Sommier and Fillieule 2010: 225). On the one hand, by contesting the myth of rights (Scheingold 1974), some concerns have been raised by critical legal studies about the potential of social change related to traditional legal strategies. On the other hand, cause lawyering practices and the ordinary use of rights to protest and to achieve justice should also be considered for their indirect consequences (McCann 1991) or radiating effects (Kawar 2015). Now, even if often studied separately, these levels are highly interconnected. Legal consciousness cannot be disjointed from rights' consciousness, nor can a performative perspective on rights be disjointed from declining people the right to make claims (Zivi 2012), that is, via activism, social movements and cause law, which correlates to a certain degree of legal and rights consciousness by those who partake in collective actions.

When the couples' desire to reunite despite institutional constraints is at stake, the pivotal role of the law in defining legality and the salience of rights consciousness cannot be neglected. The situation of these couples is not only a matter of campaigns but also of a personal and shared understanding and interpretation of norms. Now, the tension between personal and shared legal consciousness, and legal activism, in the shadow of the overhanging square of the law, seem to trace a trend of normalisation and to mirror already established inequalities among patterns of couples, as an analysis of the empirical data shows.

3. Fieldwork and methodologies

The pandemic has pushed further the dematerialisation of affective relations, shaping new, virtual—but no less real—forms of administrative–legal self-help and solidarity, in turn leading to adjustments in qualitative research methods. To account for the new geographies of (im)mobilities and on/offline interactions, I conducted online ethnography (Kozinets 2021; Hine 2015). In line with its recent development in migration studies (i.e. Boccagni and Schrooten 2018; Leurs and Prabhakar 2018), I became a participant in these virtual dynamics and 'digitally mediated sociality' (Alinejad and Ponzanesi 2020: 625), first by joining four online Facebook self-help groups, all founded since the spring of 2020. The groups are all 'closed'; most are led by French national partners, but some have non-nationals helping to translate queries. New members are admitted after their statedreasons for joining the group are confirmed. Presenting myself as a researcher with an interest in binational couples, and supported by an introduction from an informant, I began by interviewing the four administrators, before requesting in-depth interviews with some of the couple members. Due to the limitations imposed by the lockdown, the inter-views were mostly conducted online via Zoom or WhatsApp, with cameras switched on. De facto, I methodologically experienced the same pivotal change in time-space that my

interlocutors faced, forced to nurture their relationship through 'mediated absence' (Acedera and Yeoh 2019). The narratives presented in the next sections are the outcome of this trust-building process. The couples encountered were all made up of one French citizen and one foreign national.[1] For such couples, French migration law reserves an *ad hoc* procedure less related to fulfilling administrative criteria—such as income and housing, as demanded of the citizen partner in Northern European countries—and more to a 'burden of proof', incumbent on both partners. They need to prove the veracity of their relationship through both administrative and personal documentation. Most of my respondents were women in relationships with North African men, or men in relationships with women from Asia and Caucasus.

These interviews were complemented by interviews with lawyers and volunteers with activist associations, follow-ups of wall posts in the Facebook groups, and by tracking the main legal strategies adopted to resist or even overturn the status quo. Activities in the last category ranged from informally sharing coping strategies to legal challenges. Having chosen not to web-scrape data for ethical reasons, I reviewed exchanges online—weekly during the pandemic's peak, less frequently after June 2021 (the end of the third lockdown, with the relaxation of some restrictions)—by applying a selective sampling method based on gender, nationality, and age. These methods and a total of twenty-four in-depth interviews aside, I reviewed and analysed relevant legal documents (e.g. decisions of the State Council, decrees), parliamentary interpellations, and grey literature to assess the positioning of the 'traditional' associative milieu. I also monitored media coverage of separated mixed-status couples and their predicaments via online main newspapers, and web, radio, and TV chains (many of which were flagged in the online self-help groups).

The challenge in the analysis lies in pulling together the changing macro policy framework, the meso context, and the experiences of couples, in order to identify the tactics and claims used to negotiate the imposed immobilisation.

4. Temporary and unclear ad hoc solutions

Facing common problems and a legal vacuum after the outbreak of the pandemic, some couples organised themselves into self-help online communities on social media networks. They developed informal counselling and legal activism strategies, ranging from 'making noise online'—as one interviewee described the online campaigns—to lobbying MPs and taking legal action. The first online group, *Couples séparés par la pandémie*, was made up of couples who had arrangements to meet via periodical tourist visas in France, in the country of the foreign partners, or in a third country. Many had not been directly affected by immigration issues until then. After a few months, the group changed its name to *Love Is Not Tourism France* (LINT), aligning itself with the *#loveisnottourism* so- cial media hashtag. Then, following strategy differences—some members wanted to go down the legal action route, others favoured negotiating with the government—LINT split and another group, *LoveIsNotTourism couples franco-e´trangers* (LINT *fr-e´trangers*),was born. An internal survey conducted by leaders of the new group during the first halfof 2021[2] shows a prevalence of middle-upper-class high-skilled partners (half of them were professionals; 18 per cent were independent and 18 per cent were students), the

most represented foreign countries were the USA, Brazil, Algeria, Russia, and India, and about 70 per cent of respondents were between 20 and 35 years old. This group lobbied MPs to make unmarried foreign partners of French nationals eligible as visiting partners by means of *ad hoc* administrative tools. They performed their rights as deserving couples by online activism and offline activities, such as letters to MPs and demonstrations. After a demonstration at the Ministry of Foreign Affairs in August 2020, the group secured a meeting with the Ministries of Foreign Affairs and of the Interior. While movement restrictions were being justified on public health grounds, their interlocutors were the ministries in charge of border controls and immigration—highlighting how health concerns had been tied to the matter of who could enter France. The government agreed to the establishment of a *laissez-passer*, which would allow *some* couples to meet in France for a predetermined period of time. Defined by law as an 'individual travel document issued for a single journey and a maximum duration of thirty days from the date of issuance,[3] the new *laissez-passer* was conditional on applicants meeting selective criteria.[4] The eligible couple needed to prove that their relationship had begun more than six months before the outbreak of the pandemic (i.e. before September 2019), and that they had met in France at least once. Through this exception to the normal procedure, the government—in particular the Ministry of Interior—reserved the right to check the bona fides of applicants to filter out false applicants, and to fight migratory risk (Pawlotsky 2021). Furthermore, only foreign spouses of French citizens *residing in France* were eligible for the *laissez-passer*. This *ad hoc* rule was combined with existing migration law and on-the ground officious practices (Lochak 1985); the laissez-passer did not replace a visa applied for previously. The superposition of both applications, tied to the nationality of the partners and marital status, served to discriminate between different constellations of French/ foreign couples—with deleterious consequences for newly formed couples and those sub- ject to prejudicial visa policies. Among respondents to the *LINT fr-e´trangers* survey, 56 per cent applied for a *laissez-passer*; only 52 per cent received a positive reply. Many appli- cations went unanswered,[5] and formal refusals were accompanied by a statement accord- ing to which applicants had no right to appeal the decision. Ioan, a cause lawyer interviewed for this research, explained that this claim was misleading: *all* administrative decisions, whether based on official documents or on a statement (i.e. even a tweet) were subject to appeal. Time, bureaucracy, and unclear and erroneous information sowed fur- ther confusion until February 2021, when a tweet on *France Diplomatie'*s Twitter account announced the interruption of *laissez-passer* provisions—further complicating the situation.

'This *laissez-passer* is "fait du prince" rule, a unilateral decision of the government that states "such persons have the right to enter, such persons do not"', observed Daniel,[6] a 30-year-old French engineer who had been in a three-year relationship with Heng, a Burmese financial consultant of the same age. For Daniel, an active member of the group,the French government's rationale made explicit how the health crisis had become a multifaceted political matter: 'one year from the political elections, immigration is a sub-ject that scares even more than COVID'.

Daniel also confirmed the difficulty in tracking down reliable information about the *laissez-passer* procedure. For instance, he and Heng had already scheduled their wedding in France, but plans were disrupted by the pandemic. While looking for a solution, Daniel

happened to discover a reference to a *laissez-passer* in the text of a parliamentary interpellation. Buoyed by this, the couple relaunched their wedding plans, requesting a new date for the celebration and applying for this particular *laissez-passer*. The date of the celebration approached, but the couple had not received a reply. Daniel wrote to the French border police, who confirmed by email that as a spouse-to-be, Heng would be allowed to travel if the marriage banns had already been published by the relevant town hall. Armed with this email, Heng set off to fly from Singapore to France two days before the rescheduled wedding date. But airline staff stopped her from boarding the aircraft, asking French border police to verify whether she could indeed take the flight. Alerted to the problem, Daniel also called the border police from inside France. The two received incongruent responses. The airline staff were told that the possession of the required documentation and publication of their marriage banns was sufficient; but Daniel was told that a consular *laissez-passer* document was necessary. Daniel did not say anything to his beloved until after her arrival—the airline, satisfied with their response, allowed Heng to travel. They married, and a few days later they received the no-longer-useful *laissez-passer marriage*. This incongruent implementation of the legal framework reinforced the couple's conviction that being brave to play with the law implies some cultural capital and a touch of luck.

Under the legal framework of this crisis, manifold actors (i.e. the airline, national authorities, and consulates) obstructed the couples' trajectory, leading to paradoxical situations. Here, a planned marriage appeared to be a valid reason that facilitated a reunion under the exceptional *laissez-passer* regime, but a certain discretion persists about what is considered consistent proof to cross borders, even for this reason, and who is responsible for assessing it. And then, if the marriage is acknowledged, the residence right remained an unknown administrative issue during the pandemic. The derogation of immobility is temporary, the principle being that the external borders are closed. Heng remained, in fact, 'illegal' on French territory for a while before regularising her status thanks to the conjuncture of the institutionalised bonds with Daniel (main tie with France) and the troubled political situation in her home country, Myanmar. But not all French/foreign couples were on the path to nuptials before the pandemic, and had the same luck as Heng and Daniel.

5. Invisible couples playing with the law

These informal couples were invisible before the pandemic. As Michel says:

> We didn't exist! An unmarried couple who (. . .) meet every three months (. . .), for many, it was a way of life. You can be a couple without having a house, a cat, a dog! But our old politicians seemed to have just discovered all these couples who had been travelling for years on tourist visas and I think it really pissed them off. . .

French, in his sixties, Michel had been in a relationship with Agnieszka, a 50-year-old Kazakh woman, since October 2019. Agnieszka obtained a tourist visa to visit him at the beginning of the pandemic, but was unable to travel, and thus the couple was unable to

meet for months. Agnieszka and Michel were not only in an informal relationship but also not eligible for a *laissez-passer*. They were among the 51.7 per cent of LINT members (online survey, September 2020)[7] who did not meet two selective criteria: relationship length, and meeting in France *before* the pandemic. Since the 2000s, both criteria have already been employed at the discretion of immigration officials with respect to binational marriages; to be deemed as such, these relationships needed to be backed by a long and documented process of dating and meeting. But during the COVID crisis, the requirement to have met in France sent a clear exclusionary message to those nationals who were subjected to visa policies. Daniel observed:

> It's a double penalty! Those partners who were not eligible for the *laissez-passer* and who also needed a visa had almost no recourse, yet those who were not eligible for a *laissez-passer* but who could come to Europe without a visa found ways to enter France. . .

The legal framework forced partners to find alternative ways to meet, with economic and affective consequences that they were unequally prepared to deal with. Online self-help groups carefully identified unofficial possibilities for those who could not apply for a *laissez-passer* but did not need a visa. Awareness of options quickly spread a new shared consciousness among members on how to circumvent in-place legal opportunities. Before Brexit and the British COVID variant scare, one option was the 'Eurostar route'. Due to the relatively lax UK travel restriction, after entering the Schengen area via London, one could then take a Eurostar to Paris. The international travel certificate did not take into account the travellers' place of residence, only their point of departure. But not everyone could avail themselves of this option. Michel observed that, 'when you arrive at a Paris airport or station, if you come from Toronto (. . .) or Kinshasa you will not be welcomed in the same way, it's an unfortunate reality!' Race and origin intersect with the law in practice, and the associated experience of stigmatisation contributed to the development of legal consciousness among my interlocutors. As Abrego (2011) shows, social and administrative positions produce fear and stigma, and inform the way people on the move play with the law. This does not always translate in a public legal action, but in micro daily strategies to turn the normative frame in one's own favour or to open loopholes in the law. Nevertheless, as for my couples, the parallel new visibility of the couples' situation and their diverse forms of mobilisation reassure those engaged in couple illegal micro-strategies.

Once reunited through a *laissez-passer* or other strategies, many couples—who would never have considered taking such a step at that point in their relationship—decided to formalise their relationship, as a viable path to staying together. Owing to the difficulty of estimating the likely duration of the pandemic, this choice provided some reassurance. But it also added 'precariousness to precariousness' (Desgrées du Loû 2020: 33), given the cumbersome immigration rules in force. Retrospectively, some of my interlocutors realised that complying with legal migration formalities does not ensure success and legality. Nevertheless, at that juncture, many of them contracted a marriage, others a civil partnership. In France, marriage is useful for proving an official bond between partners, but not sufficient in itself for applying for long-term residence. Six months evidence of 'common family life' is required, aside from proof of legal entrance into France (i.e. possession of a

long-term visa if required). A civil partnership allows an applicant to apply for residency on the basis of providing evidence of one year of 'common family life'. This route did not require proof of legal entry into France. Some foreign partners took the risk of overstaying as irregular residents, waiting for the one-year period required under binational family life immigration requirements before applying for residency, rather than continuing with distance and separation.[8] During the pandemic, the encounter with migration law awoke a new legal awareness among both French and 'privileged' foreigners. Alison, a 28-year-old US citizen, was caught in this situation. She did not need a visa to enter France for up to three months and could circumvent COVID movement regulations to reunite with her boyfriend in Lille. She observed that 'the more constraints the state puts, the more people will find ways to get around it [. . .] If the rules were simpler and more realistic, I'm sure, we would have fewer overstayers'.

But many foreign partners were unable to gain entry to the Schengen area. Some could meet with their French partner in a third country, and some even decided to get married immediately, enjoying the opportunities opened up by transnational spaces. This was the case with Michel and Agnieszka, who, after meeting in Turkey in 2020, decided to get married in Kiev. A marriage contract issued in Ukraine could be easily transcribed into the Kazakh civil register without the need for translation. Michel could, in fact, enter Kazakhstan as a spouse of a national. But the reverse was impossible, as their marriage had not been deemed valid by France. The couple had not requested a pre-marriage certificate (*certificat de capacité à mariage*)—a prerequisite for transcribing a marriage contracted abroad into the French civil register. A complex derogation procedure, centralised by Nantes's visa offices—with new files to fill out, new police assessment and controls—was required. The couple is still in the process.

Informal couples, excluded by the exceptional legal framework established during the pandemic, searched for borderline legal strategies to stay together. However, even whilst engaging in illegality, they apparently still subscribed to the mainstream idea: an institutional affective bond permit is required to integrate into the nation. More precisely, with the disruption wrought by the pandemic, the institution of marriage became the more suitable and utilitarian tactic for reunification. Thus, consciously, the couples who could play with visa policies thanks to their nationalities made the most of the imposed marriage norm. These cascading effects of the pandemic are notable in a general context where marriage, as an institution, is gradually losing relevance.

6. Going to court

While some partners took the previously unimagined step of getting married, others were caught in a total deadlock. This was the case, for instance, with Franco-Algerian couples. Helene, 35 years old, had been in a relationship with Omar, a 38-year-old Algerian, for a year, after meeting in December 2019 in Algeria. Helene was pregnant when the pandemic broke out. Like most Franco-Algerian couples, they were not eligible for the *laissez-passer*: it was impossible to satisfy the criterion of spending time together on French territory, due to the extremely low number of visas that the French consulate in Algeria had issued over recent years. In addition, the closure of Algeria's borders (even for its own nationals)

cast doubt over Omar's ability to return to his country of origin, as required by the *lais- sez-passer*. Helene lost her baby; even in these tragic circumstances, there were no options that Omar could use to travel to France and support Helene. Helene approached the group *LINT*; but, like other Franco-Algerian couples, she realised that despite their signifi-cant numbers, their specific situation was a side issue as opposed to those of other mem-bers. 'All the solutions were pointless for us, as Algerian borders completely closed', she observed, 'And the fact that our spouse is from the Maghreb has a negative connotation (.. .) *#Loveisnottourism* couldn't put us forward in its lobbying campaign. We felt very isolated.'

With other French-Algerian couples seeking to overcome this feeling of exclusion, she contributed to the creation of a new self-help online community, *Franco-Algerian Couples—The Forgotten ones*. Managed mainly by French women who had acquired legal expertise through their dealings with the bureaucracy of immigration, the group lobbied MPs representing Algerians in France, referencing a wide range of situations (i.e. couples in the process of marrying in Algeria; unmarried couples; couples with children; women at risk of giving birth alone during the pandemic). This form of activism is embedded in the politicisation of rights and Franco-Algerian transnational power relations.

But online activity and political lobbying were not enough for some members. At the beginning of 2021 another group, called *Fiance´ visa collective: French-foreigner binational couples* (*Visa Mariage Collectif: Couples Binationaux Franco-e´trangers)* was created, with the aim of challenging the government travel ban under the argument that the visa was for a 'spouse to be'. Melanie was the leader of the group. A 38-year-old French single mother woman of two children and in a relationship with Akim, an Algerian of her age, she spearheaded legal action, bringing her situation to court. Aware of the potential inher- ent to playing with the law for her couple's rights and believing in the case law's power ofsocial change, she turned her legal consciousness into a collective claim by using the pathof urgent legal litigation via the interim proceedings judge of the State Council (*juge des r´ef´er´es administratifs*). During the exceptional pandemic, the Council of State received more than 647 urgent appeals to contest the restriction of fundamental freedoms and suspended measures deemed illegal on 51 occasions. I counted a dozen appeals (*re´f´er´e liberte´* and *référé suspension*) concerning mixed-status (even intra-European) couples' freedom of movement—a significant number in such a short time. In this new, unprecedented momentum of judicialisation, the only successful one was the one led by Melanie. To better fit the formalities demanded, she chose a legal expert in State Council litigation who believed more in the force of law than in the couple's cause. He contributed with legal procedural knowledge, while Melanie contributed with activism and practically acquired knowledge of migration formalities. Following his advice, she contacted some organisations working to defend migrant rights, inviting them to join the proceedings in order to reinforce the general interest in the request. Sceptical about the likelihood of success and already fully engaged in urgent actions (i.e. exiles' rights, difficulties in renewing residence permits), the associations all turned her down, except one, which specialised in defending French/foreign couples' rights—mentioned at the beginning of the paper. Basing the legal reasoning on the rights of marriage and the disproportionate impact of the anti-COVID measures, the appeal unexpectedly succeeded. First, in April 2021, the State Council (ruling n. 450884, 9/04/2021), ordered the Prime Minister to take proportionate travel ban

measures, and to reinstitute the fiance´ visa (fr. *visa mariage*) procedure. This visa already existed but was rarely used. An immigration note for internal use, dated back to 2014—found in the association's archives during the proceeding—advised volunteers to suggest that couples negotiating immigration procedures apply for a tourist visa, rather than the more demanding fiance´ visa. This tip spread widely among the associations defending migrant rights. But the de facto stricter response to visa applications led to the misuse of the tourist visa. The pandemic amplified the problematic issues with this visa.

Using delaying tactics, the government did not implement the State Council's decision for several weeks. In the self-help online communities, the decision created some uncertainty about the correct procedure to follow, especially for those couples who had already initiated marriage procedures in the foreign partner's country. Contradictory advice circulated until finally, on 25 May 2021, a Ministry of the Interior announcement was published during a parliamentary interpellation.[9] A few days later, the fiance´ visa option appeared on the websites of some consulates. Nevertheless, marriage still was not referenced under the heading of compelling reasons justifying entry to France in the overriding international travel document. Facing this incomplete governmental interpretation of the State Council's ruling and the mixed consular response, the applicants appealed again.[10] In November 2021 the State Council confirmed its position. A marriage is an imperative reason to cross borders, it ruled; a fiance´ visa can be demanded and issued, either for a short or long stay, and must be processed regardless of whether the borders of the other country concerned were open or closed. The Ministry of the Interior was enjoined to issue a note confirming that marriage is a compelling reason to be allowed entry to France, and to implement this.

According to Anne, a volunteer with the association, 'Melanie has an incredible legal sense, she advises the lawyer by reading the proposal of proceedings and proposing changes. Without any legal education, she has become a legal expert!' Despite her counter-intuitive laywoman profile, Melanie turned her intimate cause into a public collective cause; her legal consciousness provided a solution for others through her in-court legal activism.

Marriage is the pillar of the contentious action she filed. For the lawyer, 'it couldn't have been otherwise, impossible to plead for anything other than marriage in that context'. Two previous interim proceedings concerning family border crossing during the pandemic were both rooted in marriage-like rights, and had a double knock-on effect on the claims. In January 2021, State Council had already underscored the need to balance the protection of family marriage rights and health concerns to reactivate the issuance of a fully migrant family reunification visa—the very last step of the procedure—the processing of which was stopped on the breakout of the pandemic.[11] Instead, another proceeding introduced by the *LINT* group was rejected because the plea for the right to entry to get married was based on the example of a couple that had yet to exhaust all means of appeal beforehand, and was able to demand marriage in the foreign country. Now, marriage and family reunion are fundamental rights, but marrying in France should be the last solution to enjoy them. Now, Melanie, like the other applicants, was constrained by the legal framework and the situation of her partner's state of origin. First, the unforeseen pandemic closure obliges them to enter into an ongoing procedure to marry in Algeria. Second, Algeria does not recognise any other forms of union except marriage. Moreover, due to

Franco-Algerian post-colonial agreements, a marriage contracted with a French national opens direct access to a long-term residence permit in France for Algerians. Hence, in the pandemic contingent and more widely, marriage is, for Franco-Algerian couples, the privileged option. This case displays how the legal rationalities of the state of origin and installation overlap and mould couples' desires (Kulk and De Hart 2013).

Despite the ruling on the fiance´ visa constituting a legal victory with the potential to open up rights for hitherto marginalised couples, it is worth noting that the issuance of such a visa is not automatic, but rather at the discretion of the administration. This point has cascading effects in a context where the immigration apparatus is already engaged in screening *some* binational unions. This contentious experience represents an undeniable turning point in legal activism for mixed-status couples and is particularly significant for my argument. Ostensibly a victory, this action in fact has turned out being a 'double-edged sword'. First, as affirmed in the vignette at the beginning of the article, it puts the associations in an ambiguous ideological position about their aims to harness the pandemic in order to enhance the couples' rights to 'informal' relationships and, in some cases, their advice that civil partnership provides a less risky route to immigration regularisation. Second, the curtailing of the fiance´ visa offers a wider margin for the state to police such subaltern couples. Furthermore, this action shows the influence of the country of origin in the available choice of unions. Algeria, for example, does not recognise *de facto* unions and civil partnerships. In sum, this contentious action seems less a change than an emblematic symbol of the COVID crisis.

7. Marriage, a solution that exposes couples to migration control

The content of the posts in the online communities studied—even those of *#Loveisnottourism* groups, created explicitly to defend the interest of informal international couples—changed during the pandemic. At the beginning of the pandemic, posts discussed strategies to meet and claim for recognition as informal but substantive unions; since 2021, the posts related more to obtaining a fiance´ visa and how to obtain a residence permit after marriage. This confirms the convergence towards the formalisation of unions in the groups. Nevertheless, meanwhile, some concerns about marriage as the best 'solution' for unlocking the immobilisation of couples spread, both online and among my respondents. 'I've never met and seen my spouse in real life, but I'm getting married to him so we can spend time together... do you think this is fine?' asked Soumia on a wall post in December 2021. Similar queries recurred. Michel observed that 'it's a shame that we're forced to get married to meet each other in the 21st century!'

In a September 2022 post, Catherine, a French citizen in a relationship with Chris, a US citizen, wrote:

> Despite the end of the pandemic, my partner and I (a French-American couple) are still unable to find a way to live together legally (in any country). We would like to avoid marriage right away because we still need time to get to know each

other better. But this is impossible without being able to be together every day. What solutions have you found for your couples (outside marriage)?

Some members suggested civil partnership as a solution, but this would mean one year of illegality, and no right to work. Furthermore, this option is not recognised in the United States. A member observed, 'Marriage is always best. You can do it under the re-gime of separation of property to avoid any problems in the event of divorce'.

Others, like Florence, in a relationship with Aziz, were not particularly attached to the institution of marriage; both are divorced and atheists. But, in spring 2022, she said that if Algerian borders did not reopen, given the new legal framework created by the fiance´ visa, she would consider marriage—even if her couple history, quite recent and mainly remote, would probably raise immigration suspicions.

This hesitation turned out to be well-founded; the fiance´ visa route is particularly harsh. Some of the couples interviewed for this study said that, even after clearing the necessary assessment procedure of their matrimonial intentions, they were turned down on the basis that, their 'plan to settle in France is of a fraudulent nature as it is unrelated tothe purpose of the visa for the spouse of a French national that you are applying for'.[12] Such applicants can appeal at the Commission for Appealing against visa refusals and, if this is unsuccessful, at the Administrative Court. But legal action of this sort is lengthy and costly. Some couples described waiting for five or six months before a hearing; others had requests for pro bono representation rejected on the grounds that they had no grounds for appeal. Among the couples refused the visa, many are made up of Frenchnationals of low-income and precarious social status. The fiance´ visa application, like other visa procedures, requires proof of the foreigner's economic independence, or of the national's ability to support the foreigner without recourse to state funds. This eco- nomic dimension—not officially included in the immigration procedure of marriage and residence for binational couples—is part of a new form for these couples in the exceptional new visa application procedure, part of the cascading post-pandemic constraints.

The obstacles encountered by the couples also relate to other steps of the procedure. Some couples remain unable to publish their marriage banns (a necessary step for applying for a fiance´ visa) because some municipal authorities insist that the request be submitted in person together with the foreign partner—impossible, as they are stuck abroad. When marriage obstacles are overcome, the fiance´ visa requires an online application on the governmental website *FranceVisa*—which only offers the options 'short-term visa' and 'family and private life'. This means that in fact, it is almost impossible to obtain the long-term visa needed before applying for residence after contracting a marriage. The fiance´ visa, and the hardening of its administrative procedures, was negatively impacted by a September 2021 French governmental decision to reduce the number of visas issued to Algerian, Tunisian, and Moroccan nationals—effectively a form of blackmail, connected to these countries refusing to sign the readmission accords and, concretely, to repatriate their irregular nationals from France. In sum, all paths to accessing the visa procedure are hindered.

8. Conclusions

Related to public security and health concerns, the pandemic and its governance overlapped with the pre-existing logic of migration risk, post-colonial relations, and family migratory preferences, creating a framework for institutional bias and interiorised 'deservingness' of social actors seeking mobility across borders. Deservingness is established and modified by (changing) policies and practices, but it can also be 'gained' by couples, thanks to the development of a shared legal consciousness through online information-seeking practices and to the performance of rights through diverse forms of legal–administrative activism.

This article reveals how the pervasiveness of the French measures cascaded into the everyday lives of informal French/foreign couples, amplifying the manifold borders that some couples were already contending with before the onset of the health crisis, and impacted couples previously preserved from the challenges of immigration law. The legal vacuum revealed previously invisible affective transnational dynamics, facilitated before the pandemic for those able to apply for a tourist visa, while the exceptional legal measures only deepened cross-border inequalities. At the very beginning, the pandemic generated unexpectedly similar deadlock situations among separated informal partners, cutting across class, race, and national origins. But over the months, its uncertain manifestation exposed more clearly the rationales of (migration) policies, and the hierarchies of (new/old) desirability that have permeated family migration processes for many years. The specific bordering regime that became normalised during the pandemic renewed the boundaries between more and less deserving partners in French/foreign relationships, promptingthe emergence of different forms of legal awareness and strategies for mobilisation (Abrego 2011). The types of activism described—social media posts, political advocacy, 'illegal' coping strategies, and contentious actions in court—are part of an edgy process ofintimate citizenship, which found fertile terrain in the crisis context for potential change.But it should not be overlooked that legal activism is a matter of few; the majority of thecouples opted to enhance their personal understanding of the legal framework, and limited their actions to reading, posting, and sharing narratives on closed online communities. Although these manners of dealing with the law—ranging from the personal need to understand the law in practice to the personal but collective performance of rights claims in litigation with the State—all consist of questioning the definitions of the legitimate family/affective bonds in a globalised world and produce some 'radiating effect' (first of all among the couples), the potential change of this new awareness, in the end, was only taken up to a limited degree. In fact, despite the pandemic paving the way for claims for free union (considered much the social norm for nationals, see Balke Staver and Eggebø 2023) and so towards subverting existing immigration legal norms, almost all interlocutors interviewed were forced to fall back on formalising their relationships, mainlythrough marriage. Marriage, for heterosexual partners, is reified as an essential reason for entering the nation. Not without its criticisms, marriage has been the preferred tool for fighting against uncertainty and distance, pushing back against the heteronomous pandemic era by entering the mould of the recognised essential relationship (Odasso 2023).But, due to intersecting migration regimes, not all mixed-status marriages are equal before this legal possibility. Some are deemed suspect due to the relationship trajectory, the

backgrounds, and social characteristics of the partners—that is, few couples who did not fulfil the criteria of the 'good relationships' as defined by the exceptional pandemic rules were able to circumvent the law—mainly partners from Global Northern countries, who do not need a short-term visa to enter France or the so-called Schengen countries. Nationality, as an aspect of visa regimes, functions as a proxy for other intersecting axes of differentiation, serving to marginalise further, in a time of crisis, partners already under enhanced scrutiny. These couples, mainly French women and men from colonial countries deemed migration risks (i.e. from Maghreb and Central Africa) were front and centre in the picture that this article studies. Going to court was a courageous act of intimate citizenship and a symbol of the will to play with the law by publicly articulating the harsh situation imposed on them during the pandemic, extending the discriminatory treatment they already suffered. This type of action also shows the trust in the potential of social change related to traditional legal strategies; case law is still, in fact, a key tool to reply to unjust administrative treatment. This mobilisation has provided new paths to 'traditional' social movements defending the rights of binational couples, but—paradoxically—also requires them to retrace their previous positioning about marriage as the solution *par excellence* for immigration challenges. In France, getting married is easier than proving a sta- ble informal relationship; but this has been complicated by the pandemic, and by informal couples searching for solutions to their problems. State forces marriage and cou-ples accept this as a—undoubtedly high-risk—strategy in uncertain times. Marriage has become both a source of hope for living not apart together life as a couple, but it is also a trap allowing the state to police such couples more closely. Nation states, both 'here and there', continue to have a hold on heterosexual mixed-status couples exploring the (limited) legal possibilities available to them. Marriage is a 'normalised' procedure for couples, but this normalisation remains subject to the everyday screening of the binational affects. Hence, rather than putting all couples on an equal footing, the pandemic and health-related concerns cascaded upon family mobility and immigration controls, revealing more clearly the rationality of the domestication of intimacy through nation-building- related policies.

Beyond the scope of this article, an international comparison could be a path to explore for further insights into the trends of informal couples' normalisation, and domestication through marriage.

Notes

1. This article not only addresses the case of European-European informal couples—that is, Franco-Belgian, Franco-Spanish—entitled to Schengen-free movement before the pandemic, but also impacted by border closures during the pandemic.
2. Conducted online between 18 March and 7 April 2021, the survey had 443 respondents.
3. Art. 5, Decree no 2004-1543, 30 December 2004 '*relatif aux attributions des chefs de poste consulaire en matie`re de titres de voyage*'.
4. A similar instrument had already been implemented elsewhere, that is, in Denmark (Lee et al. 2021) and Norway (Balke Staver and Eggebø 2023).

5. After two months, the absence of an answer constitutes, by default, a refusal. According to a survey conducted by *LINT fr-e´trangers* online, at the end of August 2020, there were consulates that were unaware of the procedure and that did not respond formally to queries. Forty per cent of the couples who filed an application did not receive acknowledgement of receipt, and 76 per cent received no indication of the processing time. Some consulates requested flight schedules or even proof of purchase of tickets in advance. More than half of the refusals were without explanation.
6. All the interviews were conducted in French, and translated by the author.
7. 524 respondents to an online survey about the *laissez-passer* procedure conducted on Facebook between 27 and 29 September 2020.
8. The 'overstaying solution' is well known in family and marriage migration mechanisms. French immigration law states that after marriage to a national, an irregular migrant should return to their own country, apply for a long-term visa, and then return to France legally to undertake the residence procedure. The alternative option is to remain illegal, and, after some years of common family life, apply for regularisation under exceptional circumstances. It seems less risky to remain as an irregular, as the relevant visas are rarely issued, or are delivered after several months of cross-national police control, separating married couples for lengthy periods.
9. Interpellation no 37208, Official Journal 16/03/2021, answer published on 25 May 2021.
10. State Council ruling n. 453113, 17 June 2021.
11. State Council ruling n. 447878, 447893, 21 January 2021.
12. Typical justification for rejection.

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