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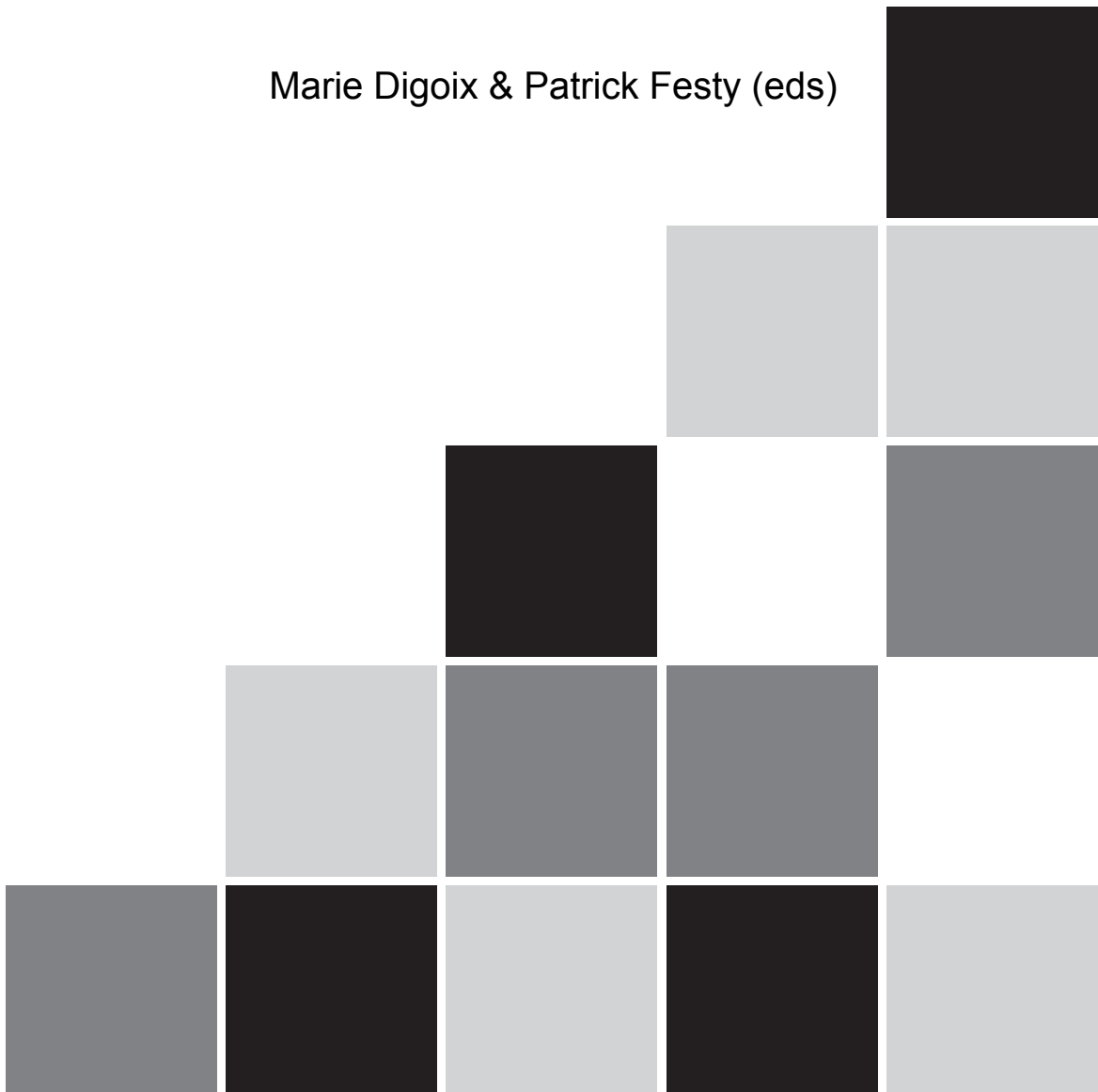
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DOCUMENTS DE TRAVAIL

SAME-SEX COUPLES, SAME-SEX PARTNERSHIPS & HOMOSEXUAL MARRIAGES

A Focus on cross-national differentials

Marie Digoix & Patrick Festy (eds)



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Foreword

Patrick Festy*

The present volume reports the proceedings of a conference that took place in Stockholm in September 2003. It was a joint venture, which associated the department of Economic History at Stockholm University, as a host of the event, and the International Comparison research unit at INED, as a co-ordinator of the preparatory and editing activities. The two institutions channelled the necessary funding.

The introductory text by Marie Digoix is entitled "Paths towards equality..." It is probably the most elegant and concise answer to those who would wonder about the interest historians could take in the conference. Recognition of rights to the homosexuals has been a long way and often a tough fight along the 20th century, which have involved intellectuals, activists, politicians, etc. and which have shared a lot of similarities with movements towards the recognition of women's rights, children's rights, etc.

Since 1989 in Denmark, then in other countries, rights have been attached not to individuals but to same-sex couples who register before public authorities, through acts that do not differ formally from birth, death or marriage acts. This publicity has put homosexual partnership under the observation, the numbering and the quantitative analysis by demographers, the same way the "bills of mortality" had opened John Graunt the doors of political arithmetic, the ancestor of demography.

This joint initiative by historians and demographers has attracted scholars from a much broader panel of disciplines. Their contributions are compiled here. They must be warmly thanked for their active participation, as much as University of Stockholm and INED must be. In both institutions, staff members have played a decisive role in the organisation of the conference: Ulla Wikander, who continuously supported the project and opened us the doors of the Swedish sponsors, Jens Rydström, who greatly contributed to the preparation of the scientific programme at the same time he helped solving very practical problems, Isabelle Milan, who designed all the documents that attracted the participants to Stockholm (including the still active website that hosted the conference information: <http://www-same-sex.ined.fr>). Nathalie Le Bouteillec had a foot in each institution and had the initiative of this French-Swedish collaboration; but she was much more than a go-between: she participated on both sides and cumulated a double burden. Finally, special gratitude goes to Marie Digoix for her intellectual and practical involvement in the preparation of the conference and the present edition of the proceedings. Those who know the degree of dedication the smooth functioning of an international network requires will appreciate.

Even if centred on scientific aspects of a major social phenomenon, the conference is likely to have strong policy implications in the battle for equality between citizens, whatever their sex and their sexual orientation. The opening presentation by the Ombudsman against Discrimination because of Sexual Orientation, Hans Ytterberg, testimonies for the relevance of our collective work. This personal implication and friendly support during all the stages of our project have been priceless. Thank you.

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Paths towards equality...

Marie Digoix^{*}

« It is historical evolution which tends to abolish history, in particular by relegating to the past, to the unconscious, all the «lateral possibles» which have been excluded; it thus comes to be forgotten that the « natural attitude » that the phenomenologists refer to, that is, the primary experience of the world as self-evident, is a socially constructed relationship, as are the perceptual schemes that make it possible". »

Pierre Bourdieu, *Méditations Pascaliennes*

When Denmark adopted a law on same-sex partnerships in 1989, the news struck the world. It was the first law ever to authorize the union of same-sex couples and was celebrated as equal to heterosexual marriage. It took few years to spread to the other Nordic countries. Why there?

Nordic countries pioneered the gender-neutral policy of family relationships basically in reforming their marriage laws very early and giving more attention to that social rights would be attributed on individual basis rather than on family basis. Unmarried women obtained civil rights as soon as the mid 19th century, then it was the turn of the married ones by the end of the century. Equal rights towards property and children were set between men and women introducing more social reforms. It would be far too simplistic to see lying there the only reasons. This would however privilege the hypothesis of a political evidence sustaining that if family and marriage were not anymore ruled by gender differences, there would be no reason to grant anymore same-gender couples the access to a legal form of union. Moreover, society as conceived by the Nordic Welfare States would have to enforce the equality towards this type of couple as well as others.

Changes occurring in the Nordic countries were soon followed by others with different legal choices. It is easily arguable that the form of registered partnerships was adopted in the North of Europe due to the internal organisation of *Norden*. It however spread in a more or less similar type in The Netherlands while they were reflected at the opening of marriage. Different choices were made in the other countries. What are the main features of these choices and the interactions of this ongoing process of appearance of same-sex unions' laws? Can we see deeply rooted in the societies, the genesis of the different processes that would, for instance, reveal that it is possible somewhere and not elsewhere?

A parallel analysis of these phenomena in a broad perspective is necessary to understand the step from the law to its use and the meaning of the different levels of recognition of the couple as well.

At what level of efficiency, the relation between the State and the people, can produce laws that open society upon differences and that reflects also, on the right of everybody to be part of this society?

Another level of interrogation leads to wonder the behaviours of the individuals facing these new laws, the connection between the existence of the laws and their use, the link between the States and their legislations to the people concerned. To what types of needs these laws were answering and were they the same in all the countries, moreover, what were the reactions towards the registration in it?

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All these considerations lead to different investigations in the historical, legal and social area of research.

Facts towards equality: Law factors and social meanings of the law

By 2002, nine countries had adopted a national law on the registration of same-sex couples, some countries like Spain or Switzerland, strongly decentralised, had regional laws.

The analysis of these laws is basic to the understanding of their use by the persons concerned. It should be done in a comparative perspective as nine countries meant nine different laws. From marriage in The Netherlands and Belgium, pacs in France or Lebenspartnerschaft in Germany, to registered or confirmed partnerships in the other countries, the contents of the laws were somewhat more diverse than one thought heterosexual marriage was¹.

To compare their intrinsic significance, Kees Waaldijk has put the legal consequences attached to the new laws in each country in parallel with the marriage laws and the (sometimes) more informal cohabitation rights opened to couples, either heterosexual or homosexual, in order to think in terms of equality. Basically, what are the consequences, positive or negative, of the different laws that acknowledge legally the union of a couple? This analysis of legal situations, showing the distance between the registered and the not registered, between the heterosexually married and the heterosexually not married, and also between the heterosexually married and the registered, meant to reveal the differences between the registered (or homosexually married) couples and those, which are not and show the various levels of recognition that the law of their country proposes to them.

Regarding the difference between the legal positions of homosexual and heterosexual couples, one essential question is the distance between "registered" and married, the distance being also a potential factor of registration or refusal of registration for homosexuals, as a matter of equality or/and marriage value.

From a strict legal point of view, are the registered partnerships and the same-sex couples unions laws a poor substitute to marriage or are homosexuals placed with full parity to heterosexuals?

One assumption underlying this analysis was that the existence of material and immaterial rights reserved to the registered couples could support the practice of the registration and that in the countries where these rights are most numerous or/and profitable, the registration could be more frequent. The manner of how people apprehend the law and their degree of knowledge of their field of application being still unknown, the level of influence of legal factors on people's will is still to show. However, because of a long time stigmatisation, because of a social demand reflecting social needs, it is likely that homosexuals know more about the laws everybody had access to but them.

Not surprisingly, the main finding of Kees Waaldijk is that the heterosexual relationship is by far legally privileged and grants access to more rights than the homosexual one, in all countries, even The Netherlands and Belgium which allow marriage for same-sex couples. The main rights attached to marriage that are absent or partial in the same-sex laws are those related to parenting. However, some differences exist also in various areas of the laws, even in the countries with the least rights attached to marriage like Sweden.

The extension to cohabitation of the information gathered by Kees Waaldijk shows how much informal couples are taken into consideration by the law, even if, in most of the countries, it is not necessary to declare one's cohabitation (only Iceland provides such registration's possibility). In this case once more, heterosexual couples are privileged.

¹ This proves to be wrong: a side finding of the study is that marriage hides under one identical word as many different meanings and legal consequences as the same-sex unions' laws in the different countries.

One can see here a linear coherence of the law which works gradually in each category, the cohabitation offering less rights than the registering, but offers rights non accessible to the single people. In the same way, except with regard to the parentality, the registered homosexual couples have often more rights and duties than cohabiting heterosexuals. Even in the countries, which cover pretty well cohabitation, the premium to the registering is increasingly more significant.

The difference between the rights and constraints of both types of partnerships, legalised same-sex unions and heterosexual marriage, is also pointed by Ian Sumner, in his examination of the termination of partnerships, the easiness of some termination modes showing, up to him, the little consideration accorded to same-sex partnerships.

Regarding the distance between informal cohabitation and marriage or registered partnerships that could directly be of influence towards registration, the point is important, even if, in The Netherlands and Sweden, the latter being one of the countries where informal cohabitation is the most protected, the difference of termination's procedure tends to disappear.

Overall, Kees Waaldijk comparative detailed data gathered in the nine countries by nine specialised lawyers is an invaluable source of documentation that needs to be exploited further on. It didn't only draw a picture of the legal situation of heterosexual and homosexual couples but also a true portrait of the country-specific legal and social orientations. Whether people know the effects of the laws, and in what way, a law is more attractive to their particular situation is another story that may be left to sociological analysis.

From the political sphere to public reception

For a better understanding of the laws, and also their effect, it is also essential to go further back to their origins. How the law has appeared and has been constructed. What role for the politics, the involvement of the parties concerned and for the population?

From the rough analysis of the laws and their effect, one moves slightly to the meaning of them.

Screening of the specific contextual and historical factors that led to the adoption of the laws intends to reveal how the society had welcome the laws and what kind of interaction had played a role in their construction, the further step being more country-specific studies of the national debates that have surrounded the construction of the laws and that put a light on the choices made by the States in selecting their types of legislation. More precisely, it is commonly assessed that a careful study of the "making of" the laws, political discussions and scientific arguments used during their preparation and after their entry into force, can give an insight into broader concerns on specific social schemes; reviewing the kind of arguments which have been used in the different countries could reveal different public, social, legal stakes. Further on, an analysis of how the topic has been brought up in the debates is also significant of the different positions towards homosexuality as well as its level of social recognition.

Regarding same-sex unions laws, in the majority of the countries concerned, the first basic observation is that once over the discussions, more or less passionate, leading to the passing of the laws, calm and silence have surrounded the topic. How to interpret this silence?

Despite the findings of Kees Waaldijk that none of the laws was that equal to marriage, the general impression, what governments tried sometimes to make believe also-whether they managed to success or not-, is that the will was to offer equal opportunities for same-sex couples. It surely has an importance in the pioneering countries as shown already by Hrefna Friðriksdóttir². It was less obvious for others. Little has been investigated so far outside the Norden influence.

One of the main topics of discussion in the local debates - or the one that raised the most controversial and passionate fights- was the issue of parenting and the questioning of the

² Hrefna Friðriksdóttir.- *The Nordic gay and lesbian «marriage»: No children allowed.*- Harvard Law School LLM paper, 1996, *mimeo.*- 144 p.

family law. But, why what was so controversial at one point became obvious for all so quickly, or at least not anymore a matter of discussion?

Perhaps the answer might be found in the light of French studies performed around the pacs by Daniel Borrillo and Eric Fassin from one hand, and Wilfried Rault on the other hand, investigating the symbolic order. They show that in France, the debate was more on symbolic matters than on practical grounds and that little, if any, controversy was left to discuss once over. Marriage and filiation in the centre of the debates had lost their passionate interest once it has been acknowledged they were not in danger. In fact, the French pacs, as the registered partnerships in the Nordic countries, created a new institution, and therefore, once established, didn't threaten anymore directly the marriage, having a life of its own.

Sustaining this hypothesis, Guðný Björk Eydal and Kolbeinn Stefánsson think that creating a separate framework for same-sex relationships prevents the State from re-thinking the heterosexual relationships, which was a, maybe unconscious, but underlying, stake. When a new category appears, it questions the previous ones and the legalisation of homosexuality first, then the legalisation of the homosexual couple give a name to what until then remained implicit: if the State was to "create" an homosexual couple, it was in comparison to an heterosexual couple. Or, who, until then, had questioning at such level, the existence of heterosexuality? If heterosexuality were not anymore the unique norm, what would be the consequences on its privileges?

In scanning through the details whether they could or not grant some more rights to same-sex couples, the State and legislators had to look to the "reference" and, inevitably, the heterosexual hegemonism has not been left untouched, even if it remains dominant.

In Sweden, Jens Rydström sees the registered partnerships law in the continuity of the political wish of the Swedish State to lock homosexuals in a new category so they can be clearly identified. The Swedish State seems more confident than the French or the Icelandic ones in its power to assume the categorisation of its society. Why? It is often underlined that decisions are taken after large public and technical consultations among specialists when changes in law are to be done³. Jens Rydström raises the question of the assimilation -indeed the mix-up- by the people of State and society, the State, in its will to control and integrate mixing private and public in a very confusing way. That could be why integration didn't lead the State neither to open marriage nor to use the same symbolic features as for married people. Small details of distinction between the two categories are kept that can be interpreted in different ways. The remaining challenge, now the law passed, is whether same-sex couples will be strong enough to get appropriation of terms reserved to marriage in order to carry on, in the symbolic domain, regardless the State will.

This question of categories that would divide society is persistent, and it is significant too that discussions in France on the pacs, once the law passed, are coming back in the media front pages when one underlines the decrease of marriage numbers, as the pacs is also accessible to heterosexual couples. It is when it threatens the heterosexual order that the homosexual union disturbs, when one wishes to establish filiation like with medical assisted procreation in Denmark, adoption in other countries, etc. In France, where the progress of reason didn't drive the legislator to attempt to grant equality to same-sex couples, when it was in the preparation phase, the attention focused on homosexuality and what should be granted to homosexuals. Few years after, the pacs suspected by the media to attract mostly heterosexuals raised some questions but not in a passionate way as it was during the previous debates. The formal opponents from the right political parties are now advocating its consolidation in defence against the opening of marriage

³ Indeed, in ten years time, the Swedes have conducted two extended surveys on the conditions of the homosexuals, in 1984 that led to adopt anti-discrimination laws and a law on homosexual cohabitation, and in 1993, in the perspective of the law on same-sex partnerships. In 2001, reflecting on homosexuals and family, they issued another sizeable report to support the adoption law that grants as much rights to the homosexuals as to the heterosexuals to adopt a child, including international adoption, that was left aside by The Netherlands.

claimed now by the Green and Left parties, in a desperate movement of self-defence of conservative features... Difficulties to reflect the changes of society and the will to stick to known categories are underlined if put into light. Homosexuals' claims to legal protections for their couples and families raised questions on what the couple and the family are?

But how to explain that what is political in France is found rather depoliticised in Iceland? Guðný Björk Eydal and Kolbeinn Stefánsson show that a favourable context was progressively but quickly created when questions were raised around the rights of homosexuals in the beginning of the eighties. When France tried to avoid the debate on social principles, Iceland as the other Nordic countries tackled straight into them. When France was trying to disguise the grant of some rights to same-sex couples in the context of Aids essential needs in a contract also available for the heterosexuals, Iceland and other Nordic countries were pleading for the pedagogic virtues of their laws⁴, sustaining a follow-up of their reflection by the creation of committees, actions in school, etc. If the de-politicised context was also explained in Iceland by the influence of Norden, a closer look on the Parliament debates and votes shows no indication that any party had a particular view on the topic. This was there rather a question of persons supporting clearly or not the bill on their own beliefs, discussion in the political area not being taken over by the population. Does this comparison between both countries give an indication of the political atmosphere and the society acceptance on both sides?

A lot is learnt from the preparation of the laws. Each country had a different manner to work out a new law, though the Nordic countries tend to have had the same approach in this case. The registered partnerships' laws have been the results of broad consultation of many spheres of research, administration and, society. It gave information on the situation of homosexuals, their needs and wills regarding their social life, not only the life in couple. The question of homosexuality has been broadly tackled. Other countries had a pure political approach like France where the law was presented by members of the Parliament with their own networks, mostly in connection with homosexual associations and no doubt that the Nordic studies explaining the needs of homosexuals gave more weight in the perspective to elaborate the new laws.

Of course, the hypothesis of diffusion is heavily sustained in the Nordic countries and especially in Iceland, the last of the Norden sphere (Finland lagged behind for the law only passed in 2002) to adopt the registered partnership law and, for instance, regarding the adoption topic, the example of Denmark has been called to move towards any direction.

In France, the context was completely different, the "republican values" motto leading to a brand new law that would be accessible to both hetero- and homosexuals, the political climate being tense in front of the challenge to make disappear the homosexual purpose behind the republicanism.

On the political ground, the case of Belgium presented by Martine Corijn is also interesting. In Belgium, it seems that the opening of the marriage law appeared suddenly with no particular old roots. Belgium had passed a law on Legal cohabitation in 1998 that was opened to same-sex couples as well as other form of cohabitations (different sex couples, or siblings couples) and there is no clear explanation found between the evolution from one to another as it is in The Netherlands for example where the marriage law was underlying the discussions around the register partnerships' one. In Belgium, studies on homosexuality are scarce, delimited in one domain, psychology, and the topic didn't raise much more interest until now. However, Belgium is the centre of European institutions that are acting a lot on the ground of antidiscrimination laws. Moreover, the Belgian government, with Flemish ministers in the key positions, was closely watching what their Dutch neighbours were doing.

In Spain, a country that didn't have yet a national law in 2002 and that was studied by José Ignacio Pichardo Galán, same trends than in France are noticed. By a close

⁴ Digoix, Marie & Festy, Patrick.- *L'Etat, la loi et le couple homosexuel : l'esprit nordique*.- Paper presented at the XVIIe Congrès de l'association internationale des sociologues de langue française, Tours, 5-9 juillet 2004, CR 03, sociologie du droit.- 17 p.

examination of the adoption debates and laws, one can clearly see that the politicians were trying to get rid of the decision in calling in for social scientists' expertise of what should have been a matter of pure political decision. Everything has often been treated as if family was not a social, therefore political, construction as the recent researches by Rémi Lenoir in the footsteps of Pierre Bourdieu have shown⁵. Eric Fassin has perfectly analysed as well the use of the science as a science of usages⁶.

Is it possible to see in the long length Nordic studies and these attempts to refer to a scientific legitimacy, a social difference to tackle the question?

Today one sees clearly the political shift in the case of Spain, since it is by a pure political decision, supported by numerous survey polls that indicate that the population is favourable, that the opening of marriage is about to be realised by a new government from the Left.

All these insights of the little will of the political class to sustain the debates are closely akin to the findings of Rune Halvorsen when studying the Norwegian debates⁷. From an analysis of the parliament members and their positions towards the law, he determined they nearly were all with a high educational background that couldn't possibly oppose the human and equality values borne by the laws and, for the most extreme, had to consider how to balance between their personal conviction (mainly Christian values) and what they imagine the population would expect from them.

Does public opinion exist?

Far from the pioneer Nordic countries and the particularities of Spain, let's examine in detail the case of The Netherlands, which was the first country to open the marriage law. Why?

One of the assumptions that would favour not only the early emergence of the laws but also the registration process, is that the general population is likely to welcome both in good terms. This kind of analysis is difficult to conduct, the results hard to evaluate as part of an estimation of the social context. Nevertheless, some quantitative surveys like the World and European Values surveys that are meant to be comparative, have been tentatively working in this direction for years. The kind of information given by this type of surveys is a bit tricky, especially regarding the topic of homosexuality, and one can also read in the questions themselves, the still existing gap between the usual and the exceptional. But in the general vacuum of information we are facing, everything that exists is needed, on condition that it is controlled, especially by other sources⁸.

Bas van de Meerendonk and Peer Scheepers, have driven their investigation towards the study of the population with this kind of material. Starting from the results of a European Gallup survey poll held in 2003, where The Netherlands was, with Denmark, the country the most favourable to same-sex marriage, they got a closer look at the Dutch population and the socio demographic characteristics that are likely to favour this tendency, using the 2000 Dutch social survey.

It is confirmed that women, younger cohorts, the most educated and the least religious people are among those who favour equal rights for all. Not surprising is that tolerance to homosexuality is higher in the countries that have same-sex unions' laws as Osmo Kontula shows in his analysis of comparative European sex surveys.

Strengthening these findings, Lee Badgett also used the World Values Surveys mixed with innovative material to investigate the social climate of the countries she studied in order to give a picture of levels of tolerance to homosexuality.

⁵ Lenoir, Rémi.- *Généalogie de la morale familiale*.- Paris : Editions du Seuil, 2003.- 587 p. ; Bourdieu, Pierre.- "A propos de la famille comme catégorie sociale réalisée".- *Actes de la recherche en sciences sociales*, n° 100, décembre, 1993, p. 32-36.

⁶ Fassin, Eric.- "Usage de la science et science des usages : à propos des familles homoparentales".- *L'homme*, n° 154-155, 2000, p.391-408.

⁷ Halvorsen, Rune.- "The Ambiguity of Lesbian and Gay Marriages. Change and Continuity in the Symbolic Order".- *Journal of Homosexuality*, n° 35, 3/4, 1998, p. 207-231.

⁸ Bourdieu, Pierre.- "L'opinion publique n'existe pas".- *Les Temps modernes*, n° 318, 1973, p. 1292-1309.

Using a set of original indicators in a bi-directional framework, she screened countries with and without same-sex partnerships laws to identify the major factors existing in ones and not in the others, which support the idea that the existence of the laws, if clearly economically and socially anchored, is still politically linked.

A close study on the political positions would be necessary to determine the arguments presented and if the Icelandic and Norwegian findings are particular or not to the Nordic area, if the role of public opinion of what is usually said or used as, is considered or not and at which level.

The political role and the population acceptance, or moreover, the interaction of both, are still to evaluate and this makes us call for more studies in this area.

What sexual identity?: The number and its construction

To identify the population at risk is the main question of the statistical purpose. For a sharp quantification of the process of registration, it would be necessary to know the number of homosexuals. It is of course impossible, sexuality not being established forever, and still subjected to stigmatisation. A more realistic approach is to evaluate the number of homosexual couples and to compare it to the number of those which register. However, the scarcity of the statistical sources makes not possible to count the homosexuals, nor the same-sex couples, even if in some countries sources reveal information on their coresidence.

The homosexual couple

In the field of the estimation of cohabitation, one important source of information that remains to be investigated, is the population registers. Research on fecundity and its link to the raise of births out of wedlock and decrease of marriage, led to conduct research on heterosexual cohabitation.

Cohabitation statistics are available for heterosexual couples in Denmark and Finland where they are technically feasible, it will be soon the case in the other Nordic countries, but what about the release of same-sex cohabitation data that for the moment remains hidden as sensible data? Those statistics are held back by the statistical institutes without any wider consultation, even with homosexual representatives such as the gay and lesbian associations.

A recent study that led Canada to add a new category (same-sex partner) in the population census had shown that, with respect of anonymity, homosexuals' associations and representatives are quite opened to this kind of changes that integrate in the society⁹.

The first analyse of same-sex coresidence has been made by the Dutch statisticians, Carel Harmsen and Liesbeth Steenhof. From the Dutch population registers that give the family ties and precise individual addresses, they tried to evaluate co-residency of two persons of the same-sex using a refined and complex model that gets rid of most of the hazardous cases, like student coresidence for example. They thus have been able to draw a picture of a potential cohabiting population of same-sex among which they found 5% married and 10 % in registered partnerships, giving a first insight of the proportion of persons willing to register their union.

Using the same scheme but with a different tool, the French population census, the study by Marie Digoix, Patrick Festy and Bénédicte Garnier is reaching the same conclusions regarding the socio-demographic profile of the population thus found and compared.

Questions are still remaining: are they really homosexuals and are they the only homosexuals living in a couple relationship? Of course not. Everything leads to think that

⁹ Turcotte, Pierre; Renaud, Viviane & Cunningham, Ron.- *Same-sex relationships and sexual orientation in Canada: Data, concepts and methodological issues- Paper presented at the 2003 PAA Meeting, Minneapolis, May 2003.- 32 p.*

most of the homosexual couples that coreside are included in the population found but what about the others, what about the non-cohabiting couples that are, as for example Michael Bochow shows with the Press Gay Surveys conducted among volunteers samples in Germany, up to a rate of 50 %, the living apart together scheme being until now the most popular in the homosexual circles?

The Press Gay surveys conducted in some European countries among volunteer samples depict the most visible part of the population with accuracy. Despite their inherent biases, they are thus, especially when they are conducted regularly and analysed on a period of more than ten years like Michael Bochow did, or previously Michael Pollak and Marie Ange Schiltz in France¹⁰, precious to characterize the homosexual population, independently from their life modes, but also from their living arrangements. It's the best quantitative source of information on homosexuals so far.

From these surveys, they have been able to draw a picture of the homosexual relationship as rather the existence of a steady partnership than a couple. The steady partnership identifies one or more regular partner, with or without exclusivity, with or without coresidence. The share is sexual, sometimes emotional and often not material, while the laws ruling same-sex unions being based on the heterosexual model of the couple are directed towards the closest to heterosexual behaviours.

In the case of Germany, the over 10-year period covered by the study led to characterize the population with over the years coherent findings. In focusing on the last survey conducted in 2003, 49% of men declaring a steady partnership among whom 41% are living together are quite similar to results found in France in the 2000 wave¹¹. In the last German wave, 2/3 of the population in steady relationship expressed a positive attitude towards domestic partnership which tackles directly the link between steady relationship, cohabitation and registration.

The major socio-demographic characteristics found in Press gay surveys are matching with the population found in the Dutch and French studies, which leads us to conclude that, especially when dealing with fragile data, multiplying the sources and methods are essential to our purpose.

But this kind of surveys touches mostly men, still leaving to the unknown the lesbian population. The quasi-total absence of knowledge on lesbian couple in particular and more generally on lesbianism is rather problematic. Lesbianism has been treated by literature or most recently by philosophy and cultural studies in the light of feminism, but scarcely by social sciences.

This lack of information is merely a question of historical conditions. Most of the social surveys performed among the homosexuals have been conducted in the Aids context and thus were, and still are, mostly related to men. This leads us to a paradoxical situation where the access to legal statistical sources, like in the Nordic countries and in the Netherlands, opens to more information than it has ever been on the lesbian couple, leaving the researchers to even more questions.

The lowest common denominator

The Dutch and French studies were based on the couple, as a population potentially to register, the German one on the homosexual male community, but what about the overall population at risk?

One will wonder if homo/bi-sexual populations even exist, given hetero/homo/bi-sexuality are not once-for-all characters. Sex surveys are confronted with such questions. If the reliability of any information on this topic is to be questioned, cross-national comparisons are even more difficult to build.

¹⁰ Schiltz, Marie-Ange.- "Le couple homosexuel : un ordinaire insolite".- *Actes de la recherche en sciences sociales*, n° 125, "Homosexualités", 1998, p. 30-43.

¹¹ Adam, Philippe ; Hauet, Eric & Caron, Caroline.- *Recrudescence des prises de risque et des MST parmi les gays: résultats de l'enquête Presse gay 2000*.- Paris : Ministère de l'emploi et de la solidarité, ANRS, INVS, 2001.- 56 p.

Osmo Kontula has dug into that direction to give a broad overview of national sex surveys and how they parted with the issue of sexual behaviours, sexual orientation and self-identification. The question of definition here is of major importance as sex surveys in general population suffer from the low number of homosexual prevalence if the sample is not large enough. However, many obstacles prevent from giving the reliable data we're looking for. Among others, the definition of bisexuality is examined and identified as a main bias, as well as the definition of sexual intercourse. Thus, the wording of questionnaires is paramount in the countries but still more crucial with comparative purposes. From the analysis of the existing surveys, Osmo Kontula has been able to draw some recommendations that would be essential to future research.

Regarding the living arrangements, the surveys are of course less orientated towards them than towards the sexual behaviours. The interest of homosexuality has been raised by the increase of Aids and thus is related to the mode of transmission, slightly extended to sociological features and mostly concerning men sexuality. Moreover, although a slight relapse is noticed, trends in HIV contamination and therefore prevention are now turned to heterosexuals, which leads to think that raising funds to specifically study homosexual population is not anymore a priority.

Most surprisingly for the years thereafter, the general concern in Europe didn't lead to build comparative tools and most of the surveys conducted are scarcely comparable, except, to a certain extent, the NEM surveys which Osmo Kontula has focused on and compared to US experiences.

Those who did it...

To be able to register their couple, people should not be married. Their age must be higher than a legal minimum. These two conditions define a population "likely" to register. The ratio of the annual number of registration to this population is a measurement of the frequency of the registration more precise than the ratio with the total population. It also can be done according to the sex (male couples and female couples) and according to age. An international comparison is possible on this basis and a first analysis reveals a great diversity between countries and men and women¹².

From population registers, Gunnar Andersson, Turid Noack, Ane Seierstad and Harald Weedon-Fekjær have performed the first detailed analysis of the population in registered partnerships in Norway, where the law passed in 1993, and Sweden, where it happened in 1995. The study put together raw data of registration coupled with a vast range of background information taken from different population registers that give longitudinal history of family dynamics of each person involved in a partnership and provide so a detailed socio-demographic profile of the population concerned.

This study is very rich in information that meant to feed sociological analyses, as the raw results need further investigation to fully understand the findings. Once again, the results are matching perfectly well with what others have found in the different types of analysis previously described, such as surveys and censuses sustaining the interest of multiplying sources, techniques and disciplines.

A larger set of data allowed them to perform a comparison with heterosexual married population in Sweden. At the couple level, the profile of the homosexual population clearly differs from the heterosexual one. Higher age at union, higher age-gap between the partners, high educational attainment, high concentration in metropolitan areas or more foreigners involved in partnerships, everything concurs to suggest that the same population than with the studies on cohabitation has been reached.

The destiny of registered couples is of living together, separating or to undergo the loss of one of the partners. Interviews conducted among divorced people have shown that a lot

¹² See Digoix, Marie, Festy, Patrick & Waaldijk, Kees.- *Same-sex couples and heteronormativity*.- Paper presented at the Population Association of America 2004 annual meeting, Boston, April 1-3, 2004.- 23 p.

can be learnt from the dissolution of an union on the reasons and conditions which had led to its formation. The study of Norway and Sweden analysed in a comparative perspective by Gunnar Andersson and colleagues has provided some results that question a lot, for instance that the frequency of separations is not far from that of the divorce; it is stronger for women than for men.

The type of analysis conducted on Nordic statistics cannot be replicated in France, as demonstrated by Marie-Ange Schiltz. The fact that registered partnership gives same-sex couples a civil status that enters a recording process -as all public acts- is not true in France, where pacs doesn't alter the civil status -the "pacsed" remaining single- and where statistics are not available at the individual level. The French state through its statisticians feels not only uncomfortable with the informal homosexual couple, which it makes disappear from its census, as shown in the Marie Digoix, Patrick Festy & Bénédicte Garnier paper, but also with those who chose to legalize their relation in a pacs, since those, in the majority of the new conducted surveys, are by law assimilated with single people. This leads Marie-Ange Schiltz to question the validity of the category "civil status"¹³ since, to give a correct view of the real life modes, it is necessary to add complementary questions regarding, for instance, the cohabitation, a lot more relevant information nowadays. This category, which used to be essential but was altered by population behaviours initiated by the decline of marriage, is now distorted by the State itself. Let's notice with her that what is not anymore relevant now about heterosexual living arrangements is nearly the only reliable source of information for homosexual couples, an information moreover altered that the French government assorted the pacs law with the prohibition of releasing any legal statistics by sex and age¹⁴.

The social and the symbolic

Having reviewed all the phenomena that interfere with the laws and the registration, the technical features of statistical evaluations needed and the registered figures, let's return to where everything started, the individual and its behaviour.

The Space of possibles

The symbolic aspects of changes in society are difficult to tackle. All the papers presented in this volume gave a broad overview of the research tracks to follow. The recent years have seen the production of studies on the topic of homosexuality, we know more but it is still too little. The event produced by the emergence of the laws has put the research in front of an ill-defined object. An interdisciplinary research is essential to fully understand the mechanisms that lead to the registration, but we also call for a systematic country analysis that would be confronted. Laws and statistics can to some extent be compared in a standardized framework. What about historical and societal factors? The material it deals with is not easily reducible for comparison purposes but is the one that can explain differences or sustain similarities.

Research must face also the quick changes of our societies. The laws are the first step towards a movement of recognition of homosexuality in a broader sense than just from a legal point of view. As previously mentioned, it's difficult to measure the level of acceptance in an historically hostile population but there are few indications that can be perceived in the different areas.

All the countries studied have decriminalised homosexuality at different periods, Denmark, once again, removing very early the ban on same-sex relations, from the relation itself to the same age of consent as heterosexuals'. It would be interesting to see

¹³ that used to be in four modes, single, married, divorced, widow.

¹⁴ In a somewhat confusing way, the law of August 6, 2004 amending the disposition prohibiting the release of age and sex statistics, authorizes now the production by the recording administration, statistics on sex and mean age of couples registering a pacs.

the time elapsed between the decriminalisation and union's laws. The topic has been slightly raised by Guðný Björk Eydal and Kolbeinn Stefánsson but would worth to investigate in all the countries as an indicator of social awareness. This would allow measuring time individuals have had to incorporate, not yet the "normality" that same-sex unions' laws aim to institute but the lawfulness of their behaviours.

In calling for extended studies before the passing of the laws, Nordic countries have made a huge work in analysing in-depth not only the question of the couple in the perspective of an union law but also the social condition of homosexuals and of the acceptance of homosexuality in general, in order to be able to give tracks to solve the problems listed, thus pointing out that the acceptance of homosexuality is not self-evident but will be the result of a long-term process, a continuous work. That a law which would let the individual manage all alone by its simple use is not enough but must be accompanied by measures which will create a favourable environment, a space of possible, to define. Thus, antidiscrimination laws have preceded or followed, as well as anti-homophobia laws, instructions so that the school should present homosexuality a sexual behaviour like another.

At some point, in the history of the laws, the importance of external factors has been called on, depending the countries. They remained to be investigated to see what role they could have played.

It is still, for instance, very little known about the role of Aids. It has been surely important in the origin of the French law where the lawyers from the *Aides* association participated at the writing, but what about the Nordic countries where the laws appeared at the top of the epidemics? Among the Nordic countries, Denmark was the most affected, is it a hazard if the first law appeared there? In the drafting proposal of the law, Aids appeared as a grounds supporting reasons to reduce the multi-partner way of life in securing the couple relation¹⁵. In France, 10 years after, it was rather the daily life during the disease and the destiny of the remaining partner that were put in front.

A probably important source of information has also not yet been investigated. Gay and lesbian associations have played an important role in the appearance of the laws. They intervened at different levels, as representatives of the homosexual community, at the national level when consulted or lobbying but also at the international level as exchanging news and experiences in between them. The role of the Danish National Gay and Lesbian Association¹⁶ is paramount in the passing of the Danish law or the one of Samtökin'78¹⁷, very important in regards to the quick progresses made by the Icelandic government towards the situation and the rights of homosexuals in Iceland.

All the countries with same-sex unions' laws are recognised as countries with decreasing religious influence. However, all the original laws passed without the agreement of the Church, neither the Protestant Nordic countries with State Church nor the Catholic France, which however produced the less progressive law. None of the Scandinavian countries, where the Church ministers are legally entitled to perform marriage, has authorized the registration of the act, nor permitted a religious celebration of the registered partnerships. It's only recently that, once again the pioneer, Denmark officially, followed more informally by Iceland or Norway, offered a possibility of Church blessing, left to the will of the minister. The Danish committee of Bishops that opened the Church Blessing to registered partners processed to real historicisation of the religious texts and advocated their obsolescence in the context of our society to finally find "*neither theological nor general moral objections to homosexual practice that are*

¹⁵ Nielsen, Linda.- "Family Rights and the Registered Partnership in Denmark".- *International Journal of Law and the Family*, n° 4, 1990, p. 298.

¹⁶ <http://www.lbl.dk/>

¹⁷ <http://www.samtokin78.is/>

*tenable*¹⁸. On her side, Ragnhild Schanke has closely investigated biblical texts dealing with same-sex relationships to show how translations in our modern languages have altered the meaning of them. In her demonstration, this is clear that a possibility to restore original meanings will deprive most of the arguments against homosexuality rejoining the conclusion of the Danish bishops.

If the importance of the Danish Church Statement is reckoned, information is still lacking on the possible consequences on individuals' behaviours. Even in the Scandinavian countries where people belong to the Lutheran State Church by birth, it's difficult to evaluate the role of the Church in everyday life. It is said that the secularisation process is far behind and well integrated but still religious belief shaped the society deeply and got long-term consequences. In Iceland, in 2003, only 2,39% of the population is identified in the population registers as not belonging to any religious movement (86 % are belonging to the Lutheran State Church) and more than 82% of heterosexual marriages are performed by the Church (in 2003, 1214 ecclesiastic marriages for 259 civil marriages)¹⁹, but there is a clear decline in the marriage rates²⁰. Danish, Icelandic, Norwegian and Swedish Churches allow Church blessing and Norwegian State church accepted last year the idea of same-sex adoptions. Swedish church is now discussing about celebrating registered partnerships. It seems like there, the secularisation of Church in its public function has been realised without damaging its symbolic aspect.

Will an opening of religious statements on homosexuality bring more confidence for the people to come out? It is of course only one of the aspects of the social environment in which an individual must fit and live.

The individual and its behaviour

Behaviours are thus to be replaced in their context and considered with the possibilities offered. Studies on homosexual behaviours in general being mostly focused on sexuality in the context of Aids or among the homosexual community which is visible, little is known of the rest of the population, those who are living far from big cities and have no choice than part with society as it is.

As it has been previously mentioned, surveys among the gay community have shown that the proportion of homosexuals living in a steady relationship progressed with the rise of exclusive relations (with or without cohabitation). This tendency must have a social meaning that can be read through a sociological grid revealed by recent changes. Looking at the different social factors that interfere in the social process of the coming out or that influence the integration in the society (such as cohabitation, social life with the family, colleagues and neighbours, etc.), it is unlikely that the trend will reverse, more probably the heterosexual behaviours will make one step towards a standardisation of behaviours.

It is clear that the emergence of laws is paramount to make acknowledge the existence of homosexuality. However, a study of the symbolic meanings attached to the content of the laws has already revealed the ambivalence of them, Wilfried Rault and Jens Rydström in

¹⁸ (section 2.5. and chapter 4). *"The registered partnership/homosexual relationship is in the opinion of the committee not in conflict with Christian teaching and moral. The committee has not found that the general ethic arguments adduced against homosexual practice are tenable. The committee reckons the biblical statements against the practice of homosexuality among the Bible's culturally conditioned historic statements which do not have normative character. The committee does not find that the 'orders of creation'-theology inspired by Luther is tenable such as it has been advanced in these contexts where it has been applied to let the traditional marriage stand out as the only acceptable Christian framework around common life, sexual life, and formation of the family"*. English summary: *Registreret partnerskab, samliv og velsignelse.- Rapport fra et af biskopperne nedsat udvalg vedrørende kirkelig velsignelse af registreret partnerskab.- Århus: Udgivet af Århus Stift 1997.*

¹⁹ Hagstofa Íslands, - *Landshagir 2003*, - Hagskýrslur, Íslands III m 96.

²⁰ In Iceland, the most recent cohorts marry less than the previous ones (less than 75% of women born around 1965 versus more than 85% ten year earlier) and at a later age (over 28 year-old versus less than 24 before). [Conseil de l'Europe, *Annuaire démographique 2003*]

particular have started to investigate in this direction. This has also led to understand why a law can't simply favour or influence the social recognition of behaviours diverging from the majority in societies based on the accordance to the norm, especially when people are used to adjust their behaviours to this norm. From one hand, it is by creating a recognized group, a community on which one could (or not) be relying on but thanks to which the existence with the sight of all became viable, that homosexuals, especially gays, succeeded in freeing from the complex of difference. It gives at least the choice to refer to or disappear in the mass, or both. On the other hand, the visibility thus brought might endanger the slow progress made in a non-prepared society. What is complex and somewhat frustrating is that the ongoing process needs always more involvements.

The great diversity of homosexual living modes (with an exclusive partner or not, in cohabitation or not) and the scarcity of social and material engagements of the partners are part of the characteristics of homosexual way of life. The absence of social legitimacy could partly explain the fragility of the homosexual relation. The wish to stick to the particularity of the free spirit of "open gay life" could be as well. One would talk of a way of life that is now threatened by the marriage and registration laws, but as Henning Bech has demonstrated, are part of a process initiated earlier on and that could have precisely result in the creation of the laws²¹. Perhaps the establishment of a different law for same-sex unions, especially in the Nordic countries, which is nearly the same than the marriage law, is an acknowledged defeat of the pioneering generation of liberated gays, the law being copied on the marriage and not offering even all its advantages (the parenting) and not taking into account the specificity of the homosexual ways of life. The law integrating in standardizing, and here, standardizing downwards.

In the actual situation, in between a slow progress towards more acceptance and more visibility through legal process, Jean Yves Le Talec depicts the "gay identity", under crisis, in search, through some excesses and sometimes critics, of a reappropriation of the self. Everything goes like if we were in the middle of a process, admittedly slow, that will change the society, and, consequently, what is not any longer the Community.

A moving society

One learns a lot from the past but also may look forward the future. This is not impossible that a lot will be learnt in a near future from the existence of homosexual families and the discussions around them. All the laws but the opening of the marriage in The Netherlands have passed, leaving aside the field of parenting, considering in one sense that it was two different topics, marriage being disconnected from filiation. This is what has made possible the adoption of the laws close to marriage, the parenting being solved -or not- in different laws.

Nordic countries once again have pioneered the field. Extensive multidisciplinary surveys have been conducted by the Swedes in order to legalize adoption, including international adoption, by same-sex registered partners²² and also to a lesser extent, the Icelanders with their new report on the legal situation of homosexuals²³. It is clear that the new challenge is the parenting question, although the Swedes are now tackling the opening of marriage (but they have already ruled in first the parenting). This was one of the major points of discussion in the debates, the State securing the passing of the laws in avoiding the question, the Gay and Lesbian associations regretting the lack of debates, the situation of the associations there being quite ambiguous and not unanimous.

²¹ Bech, Henning.- *When men meet: Homosexuality and modernity [Når mænd møtes]*.- Cambridge/Oxford: Polity Press/Blackwell, 1997.- 314 p.

²² SOU 2001:10.- *Barn i homosexuella familjer: Betänkande från kommittén i homosexuella familjer*.- Stockholm: Justitiedepartementet, 2001.- 554 p. + 194 p.

²³ Nefnd sem forsætisráðherra skipaði til að kanna réttarstöðu samkynhneigðs fólks.- *Skýrsla nefndar um réttarstöðu samkynhneigðra*.- Reykjavík: Ágúst, 2004.- 133 p.

The fact is that homo-parent families exist and are outside the law, with more damaging effects than those to the couple, parental authority and all what goes with being only given to the biological parent. One moves away the ideological conception of the family, but sticks to the reality of life. This is this practical question that the Nordic countries have tackled in *the best interest of the child*. The Icelanders have been the first to grant parental authority and fostering to the partner of a single parent in 1996, then Denmark, Iceland and Norway have amended their laws to authorize secondary adoption for the parent's partner later on. The Swedes have gone one step further in 2002 granting full adoption to same-sex registered partners, including the international adoption. The Swedish State, confident with its scientifically and socially based report, has decided once again to integrate. What will be the effects abroad? As it stands now, all the Nordic countries allow secondary adoption which doesn't seem to challenge the foundations of society as the opponents of same-sex marriage laws had threaten a decade or so earlier.

By the means of this necessary measure, the State has taken again its control over the behaviours, since the adoption is conditioned with the registering of the partnership, and if the heterosexual couple can have recognition of filiation apart from the marriage, it is not the same for the homosexual couple. However, the Swedish State is going further in its decisions to frame the behavioural choice of the society.

Remains now, the inclination of parenting of homosexual couples. In this area, there are more studies at our disposal, mainly made on lesbian motherhood, especially in Northern America. It appeared now that the homosexual families have as much as configurations than the heterosexual family. Children from previous heterosexual unions, biological children from medically assisted procreation, which is legal for single -or not- women in many countries, single adoption, and now joint-adoption. The legalisation and protection of the child through the registering of the union should be a strong incentive to registration, until the State decides the union is not anymore a State construction to protect family.

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**Facts towards equality:
Law factors and social meanings of law**

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 pacsés* - 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.

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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 to 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.

The best way to court. The French mode of registration and its impact on the social significance of partnerships

Wilfried Rault*

In France same-sex couples have had the opportunity to register their union in the presence of a representative of the State since 1999. The fourth anniversary of the *Pacte Civil de Solidarité* will be celebrated on November the 15th. Compared to most European legislations on same-sex partnerships, the pact displays some specificities, such as for instance the fact that it applies to both same-sex and different-sex couples. This paper focuses on another specificity : the conditions under which same-sex couples register. The first part will highlight the mode of registration of the Pact and how characteristic it is. The second will explain how the legislator legitimised this choice for political reasons. These first two parts will lead us to consider how same-sex couples experience this mode of registration on a personal level and provide an interpretation about its social meaning.

1 - The French mode of registration and its specificities

Three main symbolic aspects can be distinguished in the mode of registration of the pact. First, the place where the partners have to register itself. Concerning *the PaCS*, people have to go to a court called *the tribunal d'instance*, a jurisdiction usually dealing with daily life conflicts like disputes between a property owner and a tenant, between neighbours or in cases of indebtedness or seizures.

The second symbolic aspect lies in the status of the representative who greets the couples. Couples have to make a statement of their own *PaCS* to the office of the clerk of the court. More precisely, they are either invited to enter the Clerk office or they can register the Civil Solidarity Pact at the counter of the Court. Besides, people do not have to sign the document in the presence of the clerk. They can do it before the registration. For this reason, one can consider that the clerk does not play any significant role except to record the union.

The third symbolic feature is to be found in the interaction between the State Representative and the couples themselves. Since there is no institutionalised ritual in the registration of the pact, a Civil Solidarity Pact is registered in a few minutes.

Why can this mode of registration be considered as an anomaly ?

A quick comparison between France and the other European Countries allowing same-sex unions leads us to speak about a specificity.

Basically, two configurations can be distinguished:

In the first one, same-sex couples have like heterosexual couples the choice between three types of unions : informal cohabitation, registered partnership and marriage. Cohabitation requires no practical modalities. Registered partnerships usually require a simple administrative procedure. Marriage involves a ritualised and public ceremony. Belgium & the Netherlands illustrate today this situation.

The practical modalities differ only in terms of legal links but not according to the sexual orientation.

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In the second configuration, a specific registered partnership has been provided by the State. Marriage is offered to heterosexual couples only whereas registered partnership was exclusively created for same-sex couples. Both marriage and registered partnership provide nearly the same legal rights, except in terms of adoption and parental rights (Leroy-Forgeot and Mécary, 2000). The institution in which couples register and marry are generally the same and the representative is often the same person. Despite some differences existing between European laws, citizens are more or less treated in the same symbolic way by the authorities, whatever their sexual orientation.

Compared to these two models, the French legal structure appears as an anomaly because it does not fall into any of these categories. Different-sex couples can choose between marriage, the *PaCS* and "informal cohabitation" [that has legal consequences too] while only the *PaCS* and "informal" cohabitation are "proposed" to same-sex couples.

This difference has both legal and symbolic consequences. To understand this aspect as well as possible, it is essential to bear in mind some elements of the institutionalised symbolism of the heterosexual marriage.

Institution, Representative, Institutional ritualization : the same three features can be used to describe the French civil marriage.

A - The institution:

In France, the *Mairie*, the Town hall performs civil marriages. This aspect might appear meaningless, but nonetheless this institution has a very symbolic value (Agulhon, 1984).

Firstly, it locally represents the whole French Republic. Many symbols can be systematically found in town halls. The bust of Marianne, the personification of the French Republic stands in every French Town hall. The French motto "Liberté, Egalité, Fraternité", emphasising the equality between citizens in the eyes of the Law, is usually inscribed on the main entrance door of the Town hall.

This institution is also popular because it is frequently perceived as the cradle of citizenship and maintains a closeness between politics and citizens. The fact that the institution is sometimes called the "Maison Commune", the "common house" is actually very significant.

B- The Representative of the State:

For civil marriages, the mayor or a deputy mayor is the representative of the State, and has been elected democratically. The mayor is supposed to represent the French Republic too and for that reason wears the red, white and blue sash. The Representative is therefore a very symbolic character who significantly, has been generally spared by what some political scientists have called "the crisis of representation".

C- Concerning the third aspect, the civil marriage is institutionally ritualised. The civil code underlines several stages which contribute to solemnise this ceremony¹:

- the Representative formally gives the identities of the parties involved;
- he/she reads a few articles from the civil code related to marriage;
- the whole ceremony requires the presence of at least two witnesses;
- the consents have to be publicly exchanged in the presence of the Representative and the attendees;
- the whole ceremony usually takes place in a room specially designed called the "salle des mariages", the weddings room.

These modalities of the civil wedding offer a contrast with the mode of registration of the *PaCS*. The French legal structure maintains and even institutionalises a difference of treatment between people according to their sexual orientation. This characteristic is all the more surprising as it was rather unexpected. Before the *Pacte Civil de Solidarité* was debated at the French assembly, several projects had been submitted to the assembly by left-wing MPs. None of them were put on the agenda of the *Assemblée Nationale*,

¹ - Articles 74 and 76, French Civil Code.

whatever the political colour of the Assembly was. Those propositions had one element in common: they all wanted the registered partnerships to be recorded at the town hall, in presence of the mayor or a deputy mayor. Concerning the ritual, the bills were much more evasive. So, why did all these propositions have this aspect in common? Probably because the choice of the town hall was perceived as the only relevant one and this for a simple reason: everything that is related to the civil status (in other words births, deaths, marriages) are registered in town halls. For these reasons, the defenders of the law considered that a complete recognition of same-sex couples required the choice of this institution and the inscription of the "pacsé-e-s" on the civil status register. In these conditions, why is the pact registered in such an atypical institution?

2 - The political legitimisation of the choice of the tribunal and its political signification

The choice of the town hall had been deliberately kept out of the debate. The prime minister himself had led the debate in such a way that the question of choosing the town hall was deliberately excluded, in spite of the *Pacs*-promoters wish. Politically speaking, it was a way to reach a compromise between the defenders of the law, the majority of left-wing MP's, who approved the *Pacs* but not the town hall and a co-ordination of mayors (essentially rural ones) refusing to give their backing to what they considered as a "fag's wedding". The latter threatened to refuse to register same-sex couples, although the proposals did not mention any formal ceremony. The socialist MPs justified their hostility to the proposal for electoral reasons estimating that their electors would disapprove of this symbolic choice.

Besides, the parliamentary proceedings and the commissions' reports have never justified the choice of the court except that it could preserve people's anonymity. According to the proponents of this idea, the choice of the Town Hall could have impinged upon same-sex couples' privacy in little villages...

In fact, the priority of the ruling party was to exclude the town hall as the symbolic institution more than to promote a very adequate mode of registration towards the recognition of same-sex couples. In order to justify this choice the government had developed what might be called a "differentialist" rhetoric. Officially, the Civil Solidarity Pact was grounded on two initiatives, or rather two "referentials" as some political scientists say about public policies. A "referential" can be defined as a picture of the reality that politicians are willing to change by modifying the existing legislation or by setting up a new public policy (Muller, 1993). For the *PaCS*, an early "referential" corresponded to the fact that same-sex couples were not legally recognised. The other one lay in the fact that there was no alternative solution to marriage for couples unwilling to marry.

Although several differences existed between these two referentials, the pact has always been presented as a satisfactory solution in both cases. Yet the pact can be viewed as an adequate answer to the second issue mainly. The articles of the law express the political wish to make the *Pacs* as different as possible from marriage. To this end, the legislator had received explicit instructions from the Ministry of Justice to promote a systematic differentiation in order to prevent a supposedly disturbing confusion between the two laws.

Eventually, the legislator explained tautologically that the Civil Solidarity Pact was different from marriage because of these modalities, and that these modalities had been chosen because the *pacs* was different from marriage.

Thus, the majority legitimised the court of first instance and to a large extent the mode of registration itself. In no way has the legislator clearly justified why this mode of registration deprived of institutional symbols and ritual sequences was particularly appropriate to same-sex couples.

3 - The social meaning of this mode of registration

Finally, these modalities have consequences on the significance of the pacs: they weaken the impact of the pacs as a fundamental element in the social recognition of same-sex couples.

From the partners' point of view, these modalities foster a symbolic violence towards same-sex couples². Whatever their expectations, they have to cope with practical modalities reminding them of their "stigmatised condition". They often regard these modalities as illustrative of a second-class citizenship. Instead of going to the most famous local institution, they have to go to an unfamiliar court³. Instead of being greeted by a representative, an indifferent clerk registers their partnership. In the accounts of the registration, interviewees often draw a parallel between the very act of registration and things they do in their daily life such as, for example, buying stamps at the post office.

They have many opportunities to experience a difference of treatment. Moreover, most lesbians and gays also remember the public debate and perceived acutely that the possibility of going to the town hall had been deliberately avoided. For these reasons, one can speak of symbolic violence.

Furthermore, this feeling increases considerably as the gap between the expectations and the actual course of the registration widens, particularly when couples are willing to publicise their union. In this case, the choice of the court of first instance takes on specific consequences:

The regulation of the court must be observed for the registrations. Hence photographs are strictly forbidden. Registrations are held during office hours only and in some courts, they can even be performed on one single working day.

This choice has other consequences on the material conditions in which people are welcomed. The clerk's office is usually so small that the partners are prevented from being accompanied by relatives and people they would like to choose as witnesses if they could. And the fact that the registration requires so little time makes it hard for partners to find opportunities to insert a personal touch. All these aspects contribute to create a bureaucratic atmosphere that dissuades people from giving symbolic connotations to the registration act. All the more so as the clerk's office is sometimes located within removable partitions that do not reach the ceiling.

Under these conditions, same-sex couples eager to publicise the institutional recognition of their partnership are deterred from doing so. They can hardly add any emotional touch to the registration either. *(Here is the reason why this presentation has been entitled: the best way to court. It was a way to make a play on words in order to express the paradox lying in the fact that lovers, in other terms "courting couples" have to go to a court, a place devoid of positive feelings and more related to trials and verdicts).*

This generates a feeling of frustration lying in the fact that the will to "stage", to celebrate the pacs in an institutional context is part of a process of coming-out. More precisely, in this situation the pacs represents an effective tool in an ultimate coming-out process, in other terms a real opportunity to express a wider and more legitimate visibility. Through its modalities, the act of registration is supposed to contribute to the normalisation of gay relationships. Thus, gay men and lesbians often hope that the registration will have a profound impact on the views people adopt towards them and their own self esteem too by integrating them into the mainstream on a juridical and symbolic level. This corresponds to the situation described by Goffman in *Stigma*; after insisting on the fact that the normal and the stigmatised are perspectives and not individuals. *"The stigmatised individual can come to feel that he should be above passing,*

² - This aspect is also frequently mentioned by heterosexual partners. They often allude to the fact that if they were homosexuals, they would not appreciate this compulsory mode of registration.

³ - The fact that the vast majority of people interviewed for this research did not even know where this court was before registering clearly illustrates this "unfamiliarity". Conversely, everybody knows where the townhall is located. It is also significant that during the interviews, people speak about other institutions like the *mairie* or the *préfecture* or even the *tribunal administratif* to refer to the tribunal d'instance. It shows how remote this kind of court can be from their everyday reality.

that if he accepts himself and respects himself he will feel no need to conceal his "failing". After laboriously learning to conceal, then, the individual may go on to unlearn this concealment. It is here that voluntary disclosure fits into the moral career, a sign of one of its phases. It should be added that in the published autobiographies of stigmatised individuals, this phase in the moral career is typically described as the final, mature, well-adjusted one - a state of grace."

But in reality, this "state of grace" cannot be reached because these modalities foster the stigma that social recognition was supposed to eradicate. The pacs can not become the tool of socialisation lesbians and gay men wanted it to be because they can not easily communicate their legitimacy to an audience and likely attendees and to the whole society at large⁴.

On the contrary, these modalities sometimes maintain gay relationships in a private sphere: partners are ready to conceal the registration because it institutionally emphasises a line of demarcation between two types of relationships. In order to conceal these humiliating conditions of registrations, they do not inform their relatives in advance to prevent them from attending the registration.

Interviewees often mention the fact that in such an atmosphere, the presence of friends and more especially relatives would have considerably increased their feeling of shame and frustration. In this configuration, the effects of the civil solidarity pacs are opposite to the expectations.

The apprehension is often stronger towards relatives than friends. It can be explained by the fact that what is at stake in the registration is perceived differently by the two categories. Friendship is mainly based on an elective link and for these reasons homosexuality is usually accepted by friends. The registration does not have an impact on the way people view their homosexual friends but rather on the way they regard the institutionalised treatment of their friends. The situation can be different with relatives who have difficulties to accept homosexuality. The pacs can be used by partners as a tool of normalisation to convince relatives of the legitimacy of their homosexuality. But with such distinct modalities, the "ceremony" can have the opposite effects and strengthen the feeling of marginality among relatives.

In fact, the Civil Solidarity Pact rests on a paradox: on the one hand, it is supposed to provide a recognition of same-sex couples, and on the other one, it prevents all visibility from an institutional point of view because it assigns couples to discretion⁵. This injunction to discretion clearly expresses a long standing social disapproval of homosexuality.

For these reasons, the French mode of registration can be considered as what Pierre Bourdieu calls *un rite d'institution*, an institution rite, because it gathers its two essential features (Bourdieu, 1982):

- its social function consists in inscribing a mere social difference (here between heterosexuals who can also get married and homosexuals who can not) into a social hierarchy by providing different treatments.
- it contributes to remind someone of their second-class condition and how they have to behave according to this condition (here in a discreet way);

⁴ - This idea is also often expressed by interviewees who are hostile to the idea of the solemnisation of a pacs because they regard these second-class modalities of registration as an echo of their positions as lesbians and gay men in society, in other terms as a form of rejection they feel as homosexuals. The vast majority of lesbians and gay men interviewed for this research support the right to marry even if they would not marry if they could. They just think that they should have the same rights as the other members of the society.

⁵ - A parallel can be drawn between these modalities and the fact that "pacsé-e" is not considered as a civil status. The pacs aims to legitimate institutionally same-sex couples but on the other side it is excluded from the civil status register which publicly and officially institutionalises the individuals' identity (Lenoir, 2003)

More widely, the Civil solidarity pact as a whole marks a transition from an institutional homophobia, homosexuals being kept out of the law, towards an euphemised institutional heterosexism which can be defined as an institutionalised hierarchy between sexualities.

To conclude

As a conclusion, it is important to mention that the parties involved in the registration are not the passive spectators of this symbolic and institutional violence.

Aware of these administrative aspects of the registration, couples try to minimise them according to their expectations. They set up strategies in order to compensate this lack of public and emotional dimension.

Without going into details, three types of strategies can be mentioned:

1 - They have recourse to other public institutions like the press in which they can publicise their union ; Pacs registrations are published along with births, marriages and deaths, as if getting *pacsé-e* was officially considered as a civil status;

2- They try to partially counterbalance this invisibility by organising private ceremonies and parties. This way, they try to claim that their unions are equivalent to heterosexual ones. It is a way to turn the pacs into a tool of socialisation because it contributes to "normalise" gay relationships.

3- They also "stage" the registration in their own personal way by using their own freedom of manoeuvre. This consists in several approaches as wearing distinctive clothes, imposing the presence of many relatives to the court. When the court located inside the town hall building - that is pretty rare- people sometimes use some symbolic parts of the building to solemnise their union and make it more visible.

These strategies are not merely part and parcel of classical ritual but also ways to voice the partners protest to a continuing lack of recognition.

Such manners to weaken this "institution rite" can also be spotted on the institutional side. On their own initiative, some court-clerks do not hesitate to solemnise the registration by adding some ritual sequences like reading some extracts of the law and others wear an official insignia to signify that they also want to represent the Republic, or try to welcome the relatives in a warmer way. They can even infringe the rules by accepting photos.

This symbolic violence has even been implicitly acknowledged by some city councils which have decided to offer an official celebration held in the town hall to couples willing to publicise and solemnise their union. They officially justified their decision by saying they wished to fight against discriminations.

Protagonists have therefore the possibility to curb this injunction to discretion specific to the French mode of registration. They can even try to emphasise the injustice done by a system that recognised same-sex couples very partially. Nonetheless this possibility to appropriate these conditions of registration remains limited. In any case one can describe them as a form of subversion.

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Happy ever after? The problems of terminating registered partnerships

Ian Sumner*

1. Introduction

The past few decades have been witness to a gradual turn in the tide in the fortunes of same-sex couples in Europe. At this moment in time, seven European Union member states (namely Belgium, Denmark, Finland, France, Germany, The Netherlands and Sweden) offer national, domestic forms of same-sex partnership regulation.¹ Some autonomous regions in Spain also offer limited protection (Aragon, Asturias, Balearic Islands, Catalonia, Madrid, Navarra and Valencia) and two other E.U. countries have proposals in preparation (United Kingdom and Luxembourg). Outside the E.U. the same trend can also be seen. Proposals (with varying degrees of success) have been or are being prepared in Switzerland, Liechtenstein, the Czech Republic and Latvia, thus following the development already made in Norway and Iceland.

Although, this mammoth achievement should never be underestimated, it is unfortunately not true to say that these registration schemes are the panacea to the problems of same-sex couples. Once registered, same-sex couples do not necessarily live "happily ever after". In the same way that relationships between opposite-sex couples break down, so too do those between couples of the same-sex. This paper will deal with the various termination procedures available in five European jurisdictions, namely Belgium, England and Wales, France, The Netherlands and Switzerland. The countries chosen differ in numerous features. Some are member states of the European Union whilst others are not; some countries have schemes which are already in force while in others the discussion is still ongoing; in some nations the registration scheme is open to couples of the opposite-sex as well as the same-sex and in others it is restricted to couples of the same-sex; in some jurisdictions the rights and responsibilities are almost identical to marriage and in others the schism between marriage and registration is vast. These differences and similarities will hopefully provide colour to the discussion and depth to the analysis.

2. Domestic legislation

2.1 Belgium

On the 23rd November 1998 the Belgian Government, amidst great discussion, introduced a new form of legal partnership recognition: the so-called "statutory cohabitation" (*wettelijke samenwoning* or *cohabitation légale*). The law entered into force on the 1st January 2000.² Although this form of non-marital registered relationship is much weaker in form and content than its Dutch, Swiss or English counterparts, one of the aims of the institution is to protect stable relationships and thus it deserves attention here when one discusses the consequences of non-marital registered relationships. The four methods of

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¹ In some countries, namely Belgium, France and The Netherlands, this is also extended to opposite-sex couples.

² Royal Decree, 14th December 1999, *Belgisch Staatsblad* 23rd December 1999.

termination enumerated in Article 1476(2) of the Belgian Civil Code will be discussed in this section.

2.1.1 *Entry into marriage*

According to Article 1476(2), a statutory cohabitation is brought to an end when either one or both of the parties enters into a marriage, whether with the other party to the statutory cohabitation or with a third party. The statutory cohabitation is terminated by operation of law and occurs at the moment of celebration of the marriage.³ As such the statutory cohabitation poses no obstacle to enter into marriage. It was seen to be unnecessary and superfluous for a couple already in a statutory cohabitation, to first end their statutory cohabitation before celebrating a marriage.

2.1.2 *Death or Presumed Death*

Article 1476(2) also provides for the termination of a statutory cohabitation by the death of a statutory cohabitee, along similar lines to the dissolution of a marriage.⁴ The date of death is thus recorded as the date the statutory cohabitation is terminated.⁵ It should be noted that according to Belgian law, the absence of one of the spouses never leads to the termination of the marriage.⁶ This rule has consequently been maintained for statutory cohabitees. Such a rule prevents a spouse or statutory cohabitee from remarrying or entering into another statutory cohabitation. However, if this nonetheless happens and a bigamous relationship is entered into, then only the absent spouse or statutory cohabitee is allowed to ask for an annulment of the second marriage or statutory cohabitation.⁷

2.1.3 *Joint Agreement to Terminate*

If the statutory cohabitation is terminated by joint declaration, this joint declaration must be handed to the Registrar of Births, Deaths and Marriages in the municipality where both parties have their common residence, or if the parties do not have a common domicile then with the Registrar of the municipality where one of them has their domicile.⁸ If the latter occurs, then the Registrar to whom the declaration is handed must send a signed letter of notification to the Registrar of the municipality of the other party within eight days.

The joint declaration must comply with certain conditions: the document must state the date of the declaration; the first name, surname, as well as the place and date of birth of both parties; the signature of both parties; the residence of both parties; a statement that the parties wish to end their statutory cohabitation. No reason need be given on the declaration as to the need to terminate the partnership.

2.1.4 *Unilateral declaration to terminate*

Either one of the parties is entitled to end the statutory cohabitation unilaterally.⁹ This declaration must be delivered to the Registrar of Births, Deaths and Marriages of the common domicile of parties or if the parties do not have a common domicile, to the Registrar of one of their domiciles. The Registrar must give notice by means of a bailiff's instrument to the other party within eight days. He or she must also inform the Registrar of the domicile of the other party. The formal requirements are the same as those for the

³ P. Senaevé, "De weetelijke samenwoning en het geregistreerd partnerschap in het Belgisch recht" (1998) 11 *Tijdschrift voor Familie- en Jeugdrecht* 254 at 257.

⁴ Article 227, Belgian Civil Code elucidates the same rule for the ending of a marriage.

⁵ P. Senaevé, *Compendium van het Personen- en Familierecht. Deel 3* (2003, Acco, Leuven, 6th edition) p.218.

⁶ P. Senaevé, *Compendium van het Personen- en Familierecht. Deel 1* (2003, Acco, Leuven, 6th edition) p.44.

⁷ By analogy from P. Senaevé, *Compendium van het Personen- en Familierecht. Deel 1* (2003, Acco, Leuven, 6th Edition) p.44.

⁸ Article 1476(2)(3), Belgian Civil Code.

⁹ P. Senaevé, "De wettelijke samenwoning en het geregistreerd partnerschap in het Belgisch recht" (1998) 11 *Tijdschrift voor Familie- en Jeugdrecht* 254 at 257.

joint declaration, as stated above. After the termination of statutory cohabitation either by means of a joint or unilateral declaration, there is no provision for maintenance to be paid by one cohabitant to the other, even if this is necessary and irrespective of the length of the statutory cohabitation.¹⁰

2.2 England and Wales¹¹

The new civil partnership registration scheme in England and Wales proposes to introduce dissolution arrangements for registered partnerships broadly similar to those required to bring a marriage to an end by decree of divorce.¹² The English Government believes that the procedure for dissolution of a registered partnership should be court based and that partners should have to make a formal application to the court to commence proceedings.¹³ The partner applying for dissolution of the partnership will have to show that the registered partnership has irretrievably broken down before the court will make an order for the dissolution of the partnership.¹⁴

In fact, according to the Government proposal, the grounds for dissolution would be exactly the same as those currently available in the divorce procedure, namely: unreasonable behaviour, *i.e.* behaviour of any kind that the applicant could not reasonably be expected to continue living with their partner,¹⁵ or the fact that the parties had been separated for a period of either two years (with the consent of the other party)¹⁶ or five years (without such consent).¹⁷ An interesting point is the absence of reference to sections 2(1)(a) and 2(1)(c) of the Matrimonial Causes Act 1973. These sections deal with the grounds of adultery and desertion. Adultery may not be relied upon by itself; it must be supported with evidence that the petitioner finds it intolerable to live with the respondent.¹⁸ The absence of such a ground is questionable since it gives one the impression that adultery within registered partnerships is acceptable, thereby undermining the significance of the relationship, in stark contradiction to the proposed aims of the legislator.¹⁹ "In the response to the consultation procedure, the Government has now decided to retract its decision to exclude desertion as a ground for termination of the registered partnership. A decision, which this author welcomes in terms of the equality that this provides with respect to married couples.

The absence of a ground for desertion is also somewhat perplexing. In the context of divorce, the petitioner may show that the respondent has deserted him or her for a continuous period of at least two years immediately preceding the presentation of the petition. Desertion is understood as the unjustifiable withdrawal from cohabitation without the consent of the other spouse and with the intention of remaining separated permanently. Perhaps the absence of this ground stems from the fact that the ground is rarely used nowadays since petitioners normally opt for a divorce on the ground of two

¹⁰ P. Senaeve, *Compendium van het Personen- en Familierecht. Deel 3* (2003, Acco, Leuven, 6th edition) p.218.

¹¹ Reference in this paper will only be made to the jurisdiction of England and Wales. Scotland has recently published a consultation paper entitled "Civil Partnership Registration. A Legal Status for Committed Same-Sex Couples in Scotland" (2003, Edinburgh, Scottish Executive).

¹² One must here talk of England and Wales as the jurisdiction to be discussed, since the British Government has no competency to decide for Scotland and Northern Ireland on issues in this field.

¹³ Women and Equality Unit, "Civil Partnership. A framework for the legal recognition of same-sex couples" (June 2003), §5.2, p.27

¹⁴ This is already the case for divorces: section 1(1) Matrimonial Causes Act 1973.

¹⁵ Section 1(2)(b) Matrimonial Causes Act 1973.

¹⁶ Section 1(2)(d) Matrimonial Causes Act 1973.

¹⁷ Section 1(2)(e) Matrimonial Causes Act 1973.

¹⁸ N. Lowe and G. Douglas, "Bromley's Family Law" (1998, Butterworths, London, 9th Edition) p.228.

¹⁹ "It [the registration scheme] would provide for the legal recognition of same-sex partners and give legitimacy to those in, or wishing to enter into, independent, same-sex couple relationships that are intended to be permanent." §1.2, p.13, Women and Equality Unit, "Civil Partnership. A framework for the legal recognition of same-sex couples" (June 2003).

years separation.²⁰ In the responses to the consultation process, the Government has maintained its decision to exclude adultery from the grounds of termination open to registered partners. In response to the question why this has been done, the Department of Trade and Industry replied,

*Adultery has a specific meaning within the context of heterosexual relationships and it would not be possible nor desirable to read this across to same-sex civil partnerships. The conduct of a civil partner who is sexually unfaithful is as much a form of behaviour as any other. Whether it amounted to unreasonable behaviour on which dissolution proceedings could be grounded would be a matter for individual dissolution proceedings.*²¹

Although the current author is not in favour of adultery as a ground for the termination of a marriage, it is argued that if this is *still* a ground for the dissolution of marriage, then this should also be a ground for the dissolution of a civil partnership. The absence of such a ground gives an incorrect message to the general population, that such behaviour is acceptable in a civil partnership and not in a marriage. If such behaviour can be deemed to fall within the boundaries of unreasonable behaviour, then why has this also not been done in the field of divorce?

Other similarities are also evident if one compares and contrasts the dissolution procedure for marriage and the proposed registered partnership scheme.²² It is stated that, in accordance with the Government's intention of "supporting stable relationships", no application for an order for dissolution of a partnership would be allowed until at least one year had passed since the partnership was originally registered.²³ A judicial separation procedure would also be available. Judicial separation was intended to relieve the petitioner of the duty to cohabit with the respondent, even though the parties remained husband and wife. A similar scheme is proposed for registered partnership, whereby if the parties have fulfilled the requirements for an order for dissolution of a partnership, they would be allowed to apply for an order for separation.²⁴ This is in stark contrast to the absence of such a scheme in The Netherlands.²⁵

2.3 France

In 1999, France joined the ever-increasing list of countries to legislate for non-married cohabitants. The *pacte civil de solidarité* was the result of more than a decade of parliamentary debate and political activity. One of the principal objectives of the legislation was to provide a legislative instrument for the recognition of same-sex relations. Even though, the PACS has been opened to couples of opposite-sex, it has been remarked that this was only permitted to ease passage of the legislation through the French parliament.²⁶

One of the founding principles of the PACS is that of contractual liberty, namely the ability for the parties to end the contract at any time.²⁷ Although in principle this is true, the law does, nonetheless, prescribe time periods that must first be satisfied before the partnership can be dissolved.²⁸ In all cases of dissolution, the clerk of the district court

²⁰ N. Lowe and G. Douglas, "Bromley's Family Law" (1998, Butterworths, London, 9th Edition) p.229.

²¹ "Responses to the Civil Partnership. A framework for the legal recognition of same-sex couples" (2003, London, Department of Trade and Industry), p.36.

²² Similarities are also evident in the grounds for void and voidable marriages.

²³ See section 3(1) Matrimonial Causes Act 1973.

²⁴ §5.13, p.29, Women and Equality Unit, "Civil Partnership. A framework for the legal recognition of same-sex couples" (June 2003).

²⁵ See section 2.4.

²⁶ E. Steiner, "The spirit of the new French registered partnership law - promoting autonomy and pluralism or weakening marriage?" (2002) *Child and Family Law Quarterly* 1-14 at 1.

²⁷ J-L. Vivier, *Le pacte civil de solidarité. Un nouveau contrat* (2001, Paris, L'Harmattan) p.109.

²⁸ See Article 515(7)(3), French Civil Code.

registers the dissolution, but does not register the reason for the dissolution unless the PACS is ended by reason of the death of one or both of the partners.²⁹

2.3.1 *Death and presumption of death*

Upon the death of one of the partners, Article 515(7)(4) states that the PACS will be deemed to be ended. The surviving partner or any other interested party must provide the district court with a copy of the death certificate. Once the death certificate has been received and verified, the PACS will be deemed to have ended as of the date of death.³⁰ Articles 88-92, French Civil Code lay down general rules concerning the date upon which a person's death may be presumed or declared where the body cannot be found.³¹ In cases where death is certain but the body of the deceased cannot be found, or where a person has disappeared in or outside French territory in circumstances that were likely to imperil his or her life, then the *Procureur de la République* may judicially declare the death.³² Since these rules apply to the date upon which death is presumed to have taken place, they are equally applicable to those people joined by virtue of a PACS.

2.3.2 *Joint declaration to terminate*

Dissolution of the PACS can also be effected by means of a joint declaration. In this case, the joint declaration is deposited with the clerk of the district court of their common domicile.³³ If the partners live abroad then the declaration should be deposited with the French Embassy or French Consult of the county in which they are domiciled.³⁴ It is important to note that the competent district court clerk is *not* the one who receives the declaration, as is the case if the parties wish to modify their PACS, but the clerk of the district court of their common domicile. The district court clerk who receives the declaration must send the declaration without delay to the competent district court clerk. If in fact he or she is the competent district court clerk, then the clerk should register the joint declaration immediately. As soon as the declaration is registered then the PACS is declared to be at an end.³⁵

2.3.3 *Unilateral declaration to terminate*

The end of the PACS can also be declared by one of the parties alone, without consultation with the other.³⁶ At first sight, this form of dissolution is a simple formality. The person who wishes to end the partnership simply informs the other of his or her intention to end the PACS. This declaration is made by means of a bailiff's instrument.³⁷ The PACS will then be deemed dissolved three months after the declaration has been received.³⁸

In justifying the constitutionality of this provision, the French Constitutional Court referred to Article 4 of the Declaration of the Rights of Man 1789. It stated that a private law contract for an undetermined period of time can be ended unilaterally by one or other of the contracting parties.³⁹ The court also considered that informing the co-contractor of this termination and the possibility of damages arising from a breach of the conditions of the termination should be guarantees of the principle of the immutability of a contract.⁴⁰

²⁹ Advice from the *Commission Nationale d'Informatique et des Libertés*, 25 November 1999.

³⁰ Article 515(7)(7)(3), French Civil Code.

³¹ This is extended by Article L-142(3), French Civil Aviation Code.

³² Article 88, French Civil Code.

³³ Article 515(7)(1), French Civil Code.

³⁴ J-F. Pillebout, *Le PACS. Pacte civil de solidarité* (2001, Pairs, Litec) p.79.

³⁵ Article 515(7)(7)(1), French Civil Code.

³⁶ Article 515(7)(2), French Civil Code.

³⁷ J-F. Pillebout, *Le PACS. Pacte civil de solidarité* (2000, Paris, Litec) p.82.

³⁸ Article 515(7)(7)(2), French Civil Code.

³⁹ French Constitutional Court, 9 November 1999, Decision N° 99-149, published in the Official Journal of 16 November 1999, §61.

⁴⁰ French Constitutional Court, 9 November 1999, Decision N° 99-149, published in the Official Journal of 16 November 1999, §§62 and 63.

2.3.4 Entry into marriage

The PACS may also be ended by marriage, by one or both of the parties to each other or third persons, in keeping with the principle of freedom of marriage.⁴¹ Accordingly, Article 515(7)(7)(3) states that the PACS will come to an immediate end, by operation of law, upon the solemnisation of the marriage. As was the case for Belgian law, this form of dissolution causes certain technical problems in the field of private international law.

2.3.5 Placement under guardianship

If one of the partners is placed under the permanent care of a guardian (*tutelle-guardianship*), the PACS can be brought to an end if the guardian, with the consent of the family court, makes a joint declaration with the other partner to such end.⁴² In the case where the guardian is absent, the guardianship judge may also declare the PACS to be at an end.

2.4 The Netherlands

The Dutch Civil Code is divided into eight books each dealing with a different area of private law. Book 1 deals with all issues related to family law, therefore including the conditions for entry into marriage, civil status, the statutory community of property, divorce and so forth. The Act of 5 July 1997 created the institution of registered partnership under a new Title 5^A in Book 1. The positioning of the institution of registered partnership in this book illustrates Parliament's intention to regard this as an institution akin to that of marriage; affecting family life and having consequences for one's civil status. This can also be seen if one examines the parliamentary history in relation to this proposal.⁴³

The termination of a registered partnership is governed by Articles 80c-80e, Book 1, Dutch Civil Code. Article 80c deals with the different ways a registered partnership can be ended. For the most part, these methods can be compared to those available to married couples.⁴⁴ The ending of a registered partnership also by operation of law ends the community of property existing between the parties.⁴⁵ Judicial separation, which is available to married couples who wish to draw their marriage to a close, is not available to registered partners.⁴⁶ This procedure is, generally speaking, only used by spouses who for religious reasons do not wish to divorce. Due to the fact that these reasons are not present in the case of registered partnerships, the legislature saw no reason to open up the possibility of such a judicial separation.⁴⁷

2.4.1 Death and presumption of death

Article 80c(a) and (b), Book 1, Dutch Civil Code provides for the termination of a registered partnership by the death or presumed death of a registered partner, along similar lines as the dissolution of a marriage.⁴⁸

2.4.2 Agreement to terminate

This form of dissolution does not require the parties to attend court. In such an agreement, Article 80c(c), Book 1, Dutch Civil Code requires that the parties declare that

⁴¹ Article 515(7)(3), French Civil Code.

⁴² Article 517(7)(2), French Civil Code.

⁴³ The following sections have kindly been reproduced with permission of Family Law from I. Sumner, "Transformers - Marriages in Disguise?" (2003) 1 *International Family Law* 15 at 18 *et seq.*

⁴⁴ Article 149, Book 1, Dutch Civil Code.

⁴⁵ Article 99, Book 1, Dutch Civil Code.

⁴⁶ For more detailed information on judicial separation see K. Boele-Woelki, O. Cherednychenko, L. Coenraad, "National report of the Netherlands" in K. Boele-Woelki, B. Braat, I. Sumner (eds.), *European family law in action. Volume I: Grounds for divorce* (2003, Antwerp, Intersentia) p.121-126.

⁴⁷ A. Heida, *Gids geregistreerd partnerschap* (2000, Deventer, Kluwer) p.41.

⁴⁸ Articles 412-425, Book 1, Dutch Civil Code are therefore applicable to missing persons and Articles 426-430, Book 1, Dutch Civil Code are applicable to presumed dead persons.

their relationship has irretrievably broken down and that they wish to terminate it. The declaration must be delivered to the Registrar for Births, Deaths, Marriages and Registered Partnerships. It must be dated and signed by both parties and one or more lawyers or notaries. According to Article 80d(3), Book 1, Dutch Civil Code, the declaration referred to in Article 80c must be registered in the Registry of Births, Deaths, Marriages and Registered Partnerships within three months of the agreement being entered into.

Article 80(d) provides the necessary framework and explanation to accompany this separation procedure. This article stipulates that both partners must have agreed that the relationship has irretrievably broken down and that they wish to terminate the relationship. Furthermore, it is stated that the declaration *may* but not *must* deal with the following matters:⁴⁹

- a) maintenance payment for the support of the registered partner who lacks sufficient means to support himself, and cannot reasonably be expected to do so;
- b) which of the partners is to be the tenant of their main residence hitherto, or which of the partners shall be entitled to use the dwelling and its contents belonging to one or both of the partners, or which one or both of the partners enjoys use-rights, and for how long such entitlement is to continue;
- c) the division of any community entered into by the partners on the registration of partnership or the compensation agreed pursuant to the conditions in Title 8, Book 1 of the Dutch Civil Code.
- d) the equalisation or compensation of superannuation rights.

Several provisions that apply on the dissolution of a marriage are expressly provided to apply in the case of this form of dissolution.⁵⁰ However, a more noteworthy point of interest is those provisions that are not extended, which include:

- a) the power to refuse termination in the event that the entitlement of one partner to death benefits (in respect of the death of the other partner) would be lost or significantly reduced;⁵¹
- b) the power of the court to order maintenance of one partner by the other;⁵²
- c) the power of the parties to agree regarding maintenance, notably a number of protective provisions regarding termination;⁵³
- d) the power of the court to regulate the use of the former dwelling of the partners.⁵⁴

There has been very little, if any, research conducted in this area. Since a marriage cannot be terminated by agreement, there can be no comparison made to marriage. The legislature believed that since the parties are attempting to regulate their partnership termination themselves, the State should remain outside the negotiations. Therefore, it falls for the notary or lawyer to advise the parties as to the underlying problems.

Firstly, even though the above-mentioned provisions are not expressly stated to be applicable in the case of termination by agreement, can they still be used? Article 80c(3), Book 1 ensures that legal advice is a requirement for the validity of the declaration, which therefore indirectly guarantees the parties will have been advised of the legal consequences of including, as well as excluding, certain information in the declaration. If details such as those provided for in the above mentioned Articles are not regulated, then the parties must pay the consequences. It has been suggested that although Article 80d(2) does not expressly declare these provisions applicable, they may still be applicable.⁵⁵ However, it is the author's opinion that the Dutch judiciary would consider this

⁴⁹ Article 80d(1), Book 1, Dutch Civil Code.

⁵⁰ Article 80d(2), Book 1 which states that Articles 155, 159(1) and (3), 159a, 160 and 164, Book 1, Dutch Civil Code are all applicable.

⁵¹ Article 153, Book 1, Dutch Civil Code.

⁵² Article 157, Book 1, Dutch Civil Code.

⁵³ Article 158, Book 1, Dutch Civil Code.

⁵⁴ Article 165, Book 1, Dutch Civil Code.

⁵⁵ C. Forder, "National report on the Netherlands" (15 March 1999, Den Haag, Fifth European Conference on Family Law) p. 22.

interpretation to be a step too far, especially since Article 80d(2) expressly states that some provisions and not others are applicable; even more so when one analyses Article 80e(1), which expressly states these provisions are to be extended to the dissolution upon request of a registered partnership.

Secondly, can these provisions be used after the conclusion of a termination agreement in a subsequent case before the court? It is proposed here to take the issue of maintenance as an example. There are three possible problematic scenarios.

(a) *The parties draft no maintenance provision*: Can one of the parties at a later date request that maintenance be paid even though it was not one of the provisions laid down in the agreement? Some authors believe there nothing would prevent a future incorporation of a maintenance provision that is not initially drafted into a termination agreement.⁵⁶ However, it is the current author's opinion that the application of Article 157, Book 1, Dutch Civil Code cannot be used *at all* in relation to the agreement to terminate since Article 80d(3) does not extend its applicable scope to these agreements.

(b) *The parties agree a provision on maintenance but without stipulating a time period*: According to Article 157, Book 1, Dutch Civil Code, maintenance obligations are limited to a period of twelve years from the date of the registration of the termination. However, once again, it is submitted that this provision is not applicable and therefore if no time period is stipulated, the parties are unable to rely on Article 157 in enforcing a twelve-year limitation clause.

(c) *The parties agree that no maintenance will be paid*: If this is the case, it seems that all commentators, including the present author, are in agreement that this cannot be changed subsequently at a later date.⁵⁷

2.4.3 Dissolution on request

A dissolution order can be requested by either one or both of the partners and is effective when the court's judgment is recorded in the Register of Births, Deaths, Marriages and Registered Partnerships.⁵⁸ Unlike the problems stated above with the application of Article 80d, Article 80e declares that all the provisions related to a separation by divorce are applicable to a separation by means of court order.⁵⁹ If one or both of the parties do not request that the judgment be recorded within six months of the final judgment, then the judgment will from that date onwards be of no effect.⁶⁰

According to Article 80f, Book 1, Dutch Civil Code special provision is made for subsequent registrations between the same parties. This form of "reparation-registration" revives all the consequences of the registration and treats the partnership as if there had been no termination of the registered partnership.⁶¹ This was to be found in Article 80e(3), but by virtue of a statutory change this has now been moved to form a new Article 80f.⁶² This article provides that if parties whose registered partnership has been terminated enter into a registered partnership or a marriage with one another, then all the consequences are revived. All transactions entered into between the termination of the old registered partnership and the entry into the new registered partnership/marriage, are considered to have taken place at the time of the transaction (right word?).

Prior to 2002, a problem arose with such a presumption in relation to children. As already stated one major difference between marriage and registered partnership lay in the

⁵⁶ S.F.W. Wortmann, "Rechtsontwikkelingen in het personen- en familierecht: flitsscheidingen en verrekenbedingen" (2002) 6477 *Weekblad voor Privaatrecht, Notariaat en Registratie* 165-172.

⁵⁷ I. Sumner, "Transformers: Marriages in disguise?" (2003) 1 *International Family Law* 15 at 18.

⁵⁸ Article 80e(2), Book 1, Dutch Civil Code.

⁵⁹ Article 80e(1), Book 1 states that Articles 151, 153, 155, 157-160, 164, 165, Book 1, Dutch Civil Code are all applicable.

⁶⁰ Article 163(3), Book 1, Dutch Civil Code.

⁶¹ Article 80f, Book 1, Dutch Civil Code.

⁶² Wet van 13 december 2000 tot wijziging van de regeling in Boek 1 van het Burgerlijk Wetboek met betrekking tot het naamrecht, de voorkoming van schijnhuwelijken en het tijdstip van de totstandkoming van de scheiding van tafel en bed alsmede van enige andere wetten. *Staatsblad*, 2001, No. 11.

relationship imposed between parties and children. Prior to 2002, if a couple married, had children, divorced and then remarried, Article 253, Book 1 stated that the parental authority rights were automatically revived. If the couple registered, had children, separated and then married, parental authority rights were not imposed. Since the passing of the Shared Custody and Guardianship Act 2002,⁶³ this situation has been rectified and is the couple marry having entered a registered partnership (or they get reregistered), the duties and responsibilities which they had towards the child(ren) before the dissolution are reinstated. As stated by Forder, this is entirely logical and stems from the fact that a registered partnership does not grant such parental authority rights in the first place.

2.4.4 Conversion into a marriage

The passing of the same-sex marriage legislation created a difficult question for the Dutch Government: How should one regulate for those same-sex couples who have already registered their relationship but wish to convert their partnership into a marriage, since the opportunity was not available when they registered? The Dutch Government thought that it was unwise to force same-sex registered partners to first terminate their registered partnership before they entered into a same-sex marriage and consequently introduced a conversion procedure. However, numerous questions were raised by political factions in the Second Chamber during the discussion surrounding the Bill. The *Partij voor Vrijheid en Democratie* (VVD) questioned whether it would not be easier if all registered partnerships were simply transferred to the marriage register. The *Gereformeerd Politiek Verbond* (GPV) and the *Reformatorische Politieke Federatie* (RPF) questioned whether the Government had devoted enough time to the question of those couples who would wish to convert their marriage into a registered partnership, and felt that the ability to convert a marriage into a registered partnership would undermine and avoid the legal provisions of divorce.⁶⁴

In response to the question posed by the VVD, the Government believed that the introduction of an automatic conversion system would necessarily include costs, which are avoided by a voluntarily system.⁶⁵ In response to the RPF and GPV questions, the Government gave extended and detailed responses. It was reiterated that the Government had chosen a simple method for parties to convert their relationships from one institution to the other. Without such a system, registered partners would have to first terminate their partnership before entering into a marriage. The Government admitted that the system of conversion was equally open to couples of the same-sex and opposite-sex and also open in both directions.⁶⁶ It was also admitted that the dissolution procedure associated with the registered partnership is easier under the provisions of Article 80d. However, the termination of a registered partnership using this method requires that both partners are in agreement.

The procedure itself, as laid down in Article 80g, states that if two people have notified the Registrar of Births, Deaths, Marriages and Registered Partnerships that they wish their registered partnership to be converted into a marriage, the Registrar of the residency of one of the parties may draw up an instrument of conversion. It would seem that this provides the Registrar with a discretionary competence to refuse to draw up such a document. However that is not the case. The Registrar is only allowed to refuse to draw up such an instrument on the grounds listed in Article 18b.⁶⁷ The future spouses must live in the Netherlands, although not necessarily together or one of them must possess Dutch

⁶³ Act of 4 October 2001, *Staatsblad*, 2001, No. 468.

⁶⁴ *Parliamentary proceedings, Second Chamber*, 1999-2000, 26672, No. 4 §5.

⁶⁵ *Parliamentary proceedings, Second Chamber*, 1999-2000, 26672, No. 4 §5.

⁶⁶ The conversion of a registered partnership into a marriage and vice-versa.

⁶⁷ If the Registrar considers the documents inadequate, the party fails to submit the documents or it is contrary to Dutch public policy, for the precise wording of Article 18b see I. Sumner and H. Warendorf, *Family Law Legislation of The Netherlands. A translation including Book 1 of the Dutch Civil Code, procedural and transitional statutory provisions and private international law legislation* (2003, Antwerp, Intersentia).

nationality.⁶⁸ In the latter case, the conversion must take place at the Registry in The Hague. It is also stated that the conversion shall constitute a termination of the registered partnership and cause the marriage to commence on the date of drawing up the deed of transformation in the register of marriages. Importantly, the provision also states that the conversion does not change any pre-existing parentage relationship with children born prior to the conversion.⁶⁹ The mirror procedure to convert a marriage into a registered partnership is elucidated in Article 77, Book 1, Dutch Civil Code.

One would imagine that the issue of conversion would have been heavily discussed in both academic and legislative circles. However, it appears that the issues surrounding the conversion procedure were not thoroughly thought through and many consequential problems now need to be addressed.⁷⁰ For example, imagine that a woman in a heterosexual marriage becomes pregnant. The couple decide they would like to convert their marriage into a registered partnership. After the conversion is complete, the child is born. This has the consequence that, assuming the biological father has not recognised the child before the birth, the male partner (and biological father of the child) does not acquire automatic parental authority over the child, even though the child was conceived during a marriage and the same parties are still connected in a state-regulated institution which is equated in all but a few respects to that of marriage. Is it really justifiable that the father must then seek parental authority under the Article 252 procedure?⁷¹ These issues have rarely been addressed in Dutch literature, and it is the author's opinion that this legal loophole needs to be tightened, or at the very least addressed, by the legislature.⁷²

2.5 Switzerland

On the 1st January 2000, new legislation relating to marriage and divorce came into force in Switzerland.⁷³ The legislation overhauled the existing provisions of the Swiss Civil Code, which dated from the Swiss Civil Code of 1907 as amended by subsequent Federal Statutes.⁷⁴ Extensive reference will be made to the new legislation, since it provides an excellent example of how reference has been made to existing marriage legislation in a "pick 'n' mix" fashion.

⁶⁸ S.F.W. Wortmann, "Rechtsontwikkelingen in het personen- en familierecht: flitsscheidingen en verrekenbedigen" (2002) 6477 *Weekblad voor Privaatrecht, Notariaat en Registratie* 165-172.

⁶⁹ Article 80g(3), Book 1, Dutch Civil Code.

⁷⁰ See C. Forder, "Spiegelmatrimonial" (1999) 32 *Nederlandse Juristenblad* 1559-1560 and S.F.M. Wortmann, "Rechtsontwikkelingen in het personen- en familierecht: flitsscheidingen en verrekenbedigen" (2002) 6477 *Weekblad voor Privaatrecht, Notariaat en Registratie* 165-172; B.E. Reinhartz, "Flitsscheidingen in Nederlands-Duits verhoudingen" in H.F.G. Lemarie and P. Vlas (eds.), *Liber Amicorum I.S. Joppe* (2002, Deventer, Kluwer) p.155-166.

⁷¹ Before being able to use the Article 252 procedure, the male partner and biological father must first recognise the child in accordance with Article 204, Book 1, Dutch Civil Code. He must apply under Article 253c, Book 1, Dutch Civil Code but is not regarded as the legal father until he has recognised the child. The Article 252 procedure requires both the legal parents of the child to register together with a county court registrar. It requires no court intervention and the Registrar has only limited competency and cannot determine whether the parental authority order is in the best interests of the child. For more information see W. Schrama, "Reforms in Dutch family law during the course of 2001: Increased pluriformity and complexity" in A. Bainham (ed), *The international survey of family law 2002 edition* (2002, London, Family Law) p.278-282.

⁷² See recently, K. Boele-Woelki, "De administratieve echtscheiding is een feit:" (2003) 6 *Tijdschrift voor Familie- en Jeugdrecht* 121.

⁷³ Federal Statute of 26 June 1998 (*Federal Gazette*, 1996, I, 1).

⁷⁴ Federal Statute of 30 June 1972 (*Federal Gazette*, 1971, I, 1200); Federal Statute of 25 June 1976 (*Federal Gazette*, 1974, II, 1); Federal Statute of 29 September 1952 (*Systematic Collection of Swiss Law*, No. 141.0); Federal Statute of 5 October 1984 (*Federal Gazette*, 1989, II, 1191). For further history see K. Boele-Woelki, B. Braat and I. Sumner (eds.) *European family law in action. Volume I: Grounds for divorce* (2003, Antwerp, Intersentia) p.53.

2.5.1 Consensual dissolution

Although the possibility of consensual dissolution is offered to registered partners as well as married couples, the provisions differ remarkably in their wording, scope and legal effect. Articles 111 and 112, Swiss Civil Code regulate the joint application for divorce under Swiss law. If the spouses jointly request a divorce and agree on all the effects that the divorce will have, the court must hear them separately and jointly.⁷⁵ If the court is satisfied that the agreement is exhaustive, clear and neither contrary to the law nor manifestly unreasonable,⁷⁶ then upon a end of two month period of reflection, if the parties still wish to divorce, the court pronounces the divorce and approves the agreement.⁷⁷

Registered partners who wish to dissolve their partnership by means of a common request must likewise go before a judge.⁷⁸ The Code is absent on whether they are to heard separately or jointly. Article 29(1) also differs from Article 111(1) in that it is not only applicable for those couples who wish to dissolve their partnership and have agreed upon the legal effects of the termination, but also to those couples who have no such agreement.⁷⁹ The equivalent provision to Article 112 is provided for in Article 29(3), Swiss Civil Code, which states,

Les partenaires peuvent demander au juge par requête commune qu'il règle, dans le jugement qui prononce la dissolution, les effets de la dissolution sur lesquels subsiste un désaccord.

No period of reflection is imposed on the partners and nothing is mentioned in relation to a second hearing.⁸⁰ If one considers the recent introduction of the new marriage and divorce legislation, it is disappointing that the provisions on the same topic with respect to registered partnership are so poorly phrased and leave doubt as to the intentions of Parliament.

2.5.2 Non-consensual dissolution

Article 30 allows for the unilateral demand by one of the partners to dissolve the registered partnership. Such a unilateral demand may only be made if at the time when the demand is made, the partners had been in reality separated for a period of at least one year. A number of issues deserve discussion. If one of the spouses to a marriage wishes to make a unilateral demand, they have been separated for a minimum period of four years,⁸¹ or due to grounds that are not the responsibility of the petitioning spouse, the continuation of the marriage can no longer be expected.⁸² Since Article 30 is silent on the question of the criteria required for the submission of such a request, can one assume that no ground of unreasonableness is necessary? Or since the period of separation is less than that proposed for marriage, must one assume that in all cases, the petitioning party must prove unreasonable behaviour? It is the author's believe that a simple one-year period of separation is sufficient to allow a unilateral non-consensual dissolution of the registered partnership. A position, which it is argued, draws away from the original intentions of Parliament in emphasising the seriousness of the established bond.

⁷⁵ Article 111(1), Swiss Civil Code.

⁷⁶ Article 140(2), Swiss Civil Code.

⁷⁷ Article 111(2), Swiss Civil Code.

⁷⁸ Article 29(1), Swiss Civil Code.

⁷⁹ With respect to marriage, this is separately regulated in Article 112, Swiss Civil Code.

⁸⁰ See Article 111(3), Swiss Civil Code in relation to marriage.

⁸¹ Article 114, Swiss Civil Code.

⁸² Article 115, Swiss Civil Code. This is akin to a ground of unreasonable behaviour: H. Hausheer, "Swiss National Report" in K. Boele-Woelki, B. Braat and I. Sumner (eds.), *European family law in action. Volume I: Grounds for divorce* (2003, Antwerp, Intersentia).

Levels of legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners:

Comparative overview & Comparative analysis

Kees Waaldijk¹

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The nine national chapters plus a short introduction to this study can be found (together with this Comparative overview and the Comparative analysis) in Waaldijk et alii.- *More or less together: Levels of legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners: a comparative study of nine European countries*.- Documents de travail n° 125, Ined, 2004.

Any corrections and suggestions are welcome at c.waaldijk@law.leidenuniv.nl.

Digoix Marie & Festy, Patrick (eds).- *Same-sex couples, same-sex partnerships, and homosexual marriages: A Focus on cross-national differentials*.- Documents de travail n° 124, Ined, 2004, p. 47-92.

Comparative overview

Introduction

This study introduces the concept of ‘levels of legal consequences’ (LLC) as a tool for a comparative analysis of civil marriage, registered partnership, and informal cohabitation (of different-sex or same-sex partners) in different countries. For nine countries (Belgium, Denmark, Finland, France, Germany, Iceland, Netherlands, Norway and Sweden) 33 possible major legal consequences of these three types of relationship status were investigated.

This comparative overview is based on nine sets of *national tables*, one set for each country.² Each national table consisted of a list of questions, to be answered for six types of relationships (as far as applicable in the country): different-sex and same-sex civil marriage, different-sex and same-sex registered partnership, and different-sex and same-sex informal cohabitation. Each set of tables consists of seven tables. All tables aim to reflect the law as it stood early in 2004, but it is still an imperfect work in progress.

This comparative overview contains two types of tables: *comparative tables*, with the same questions as the corresponding national tables; and (only for the tables O, A, B and C) *levels tables*. The latter bring together the *levels of legal consequences* (LLC) per country; these levels are based on the numbers of points calculated in the corresponding national tables. The figures in the levels tables are also visualised as *pie charts*, in which the whole circle represents the LLC of different-sex marriage (set at 100%), while the dark grey segment represents the LLC of informal cohabitation, the white segment the additional LLC of registered partnership, the light grey segment the additional LLC of marriage and the black segment the percentage of legal consequences not available to any same-sex couple.

In the *levels tables* the countries are listed in an order that facilitates easy comparisons: first the two countries that have opened up marriage to same-sex couples (Netherlands and Belgium), then the third country (France) that has introduced registered partnership both for same-sex and for different-sex couples, then the other countries that have introduced registered partnership, with Germany being placed between France and the five Nordic countries (because the level of legal consequences of German registered partnership lies between the French and Nordic levels). The Nordic countries are put in the order in which they have introduced registered partnership, Denmark first and Finland last.

The country codes (iso 3166) used in the comparative tables are the following:

BEL	= Belgium
DEU	= Germany
DNK	= Denmark
FIN	= Finland
FRA	= France
ICE	= Iceland
NLD	= Netherlands
NOR	= Norway
SWE	= Sweden
(ALL)	= all nine countries)

² See previous note.

Codes used in the tables

Applicable answer	Answer code in national tables	Points given for calculation of LLC (= level of legal consequences)	Type used for country code in comparative tables
The legal consequence applies.	Yes	3 pt	BOLD
The legal consequence applies in a limited way or not in all circumstances, or it can be contracted out of, or courts can set it aside using some general legal principle, etc.	Yes, but	2 pt	ORDINARY
The legal consequence only applies in a very limited way or in very few circumstances, or it can be established by contract, or by courts using some general legal principle, etc.	No, but	1 pt	<i>(ITALICS IN BRACKETS)</i>
The legal consequence does not apply.	No	0 pt	Country is not mentioned
No information was available on this point, or the legal position is unclear.	Doubt	1 pt	<i>(ITALICS WITH QUESTION MARK IN BRACKETS)</i>
The column is not applicable in the country, because this type of relationship is not legally recognised (yet).	X	0 pt	Country is not mentioned

Below you will find the following tables and pie charts:

Table O (Levels)	Parenting, material and other consequences together ('overall levels')
Pie charts O	Idem
Table A (Comparative)	Parenting consequences
Table A (Levels)	Idem
Pie charts A	Idem
Table B part one (Comparative)	Material consequences in public law
Table B part one (Levels)	Idem
Pie charts B part one	Idem
Table B part two (Comparative)	Positive material consequences in public law
Table B part two (Levels)	Idem
Pie charts B part two	Idem
Table B part three (Comparative)	Negative material consequences in public law
Table B part three (Levels)	Idem
Pie charts B part three	Idem

Table C (Comparative)	Other legal consequences
Table C (Levels)	Idem
Pie charts C	Idem
Table D (Comparative)	Types of discrimination by employers or service providers that are prohibited in anti-discrimination legislation
Table E (Comparative)	Types of couples that qualify for starting a civil marriage or registered partnership in the country itself
Table F (Comparative)	Authority for starting a civil marriage or registered partnership
Table G (Comparative)	Means of ending a civil marriage or registered partnership

Table O (Levels): Parenting, material and other consequences together





This table adds up the totals of points given in the the levels tables on legal consequences (A – parenting consequences, B – material consequences, C – other consequences). Because of their specific nature, tables D, E, F and G have not been used in the adding up in this table.

Because a total of 33 legal consequences have been considered in these three tables, the maximum number of points in each cell of this table is 99. For each country the total number of points for legal consequences of different-sex marriage is equated with 100%.

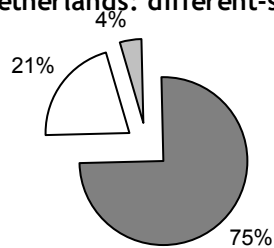
	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex
Netherlands	70 pt = 100%	67 pt = 96%	67 pt = 96%	67 pt = 96%	52 pt = 75%	51 pt = 73%
Belgium	76 pt = 100%	67 pt = 88%	38 pt = 50%	36 pt = 48%	31 pt = 41%	27 pt = 36%
France	76 pt = 100%	0 pt = 0%	48 pt = 63%	42 pt = 55%	32 pt = 42%	26 pt = 34%
Germany	65 pt = 100%	0 pt = 0%	0 pt = 0%	44 pt = 68%	15 pt = 23%	11 pt = 17%
Denmark	61 pt = 100%	0 pt = 0%	0 pt = 0%	51 pt = 84%	32 pt = 52%	27 pt = 45%
Norway	71 pt = 100%	0 pt = 0%	0 pt = 0%	61 pt = 86%	41 pt = 58%	34 pt = 48%
Sweden	64 pt = 100%	0 pt = 0%	0 pt = 0%	58 pt = 91%	48 pt = 75%	43 pt = 68%
Iceland	71 pt = 100%	0 pt = 0%	0 pt = 0%	60 pt = 85%	45 pt = 63%	16 pt = 23%
Finland	64 pt = 100%	0 pt = 0%	0 pt = 0%	56 pt = 87%	36 pt = 56%	27 pt = 42%

Pie charts based on Table O: Parenting, material and other consequences together

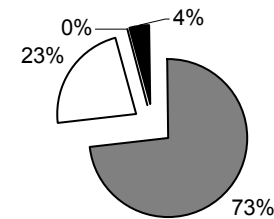
Used colour codes (LLC = level of legal consequences)

- 1  LLC of *informal cohabitation*
- 2  additional LLC of *registered partnership* (1 + 2 = LLC of registered partnership)
- 3  additional LLC of *civil marriage* (1 + 2 + 3 = LLC of civil marriage)
- 4  LLC *not available* to same-sex partners of any status

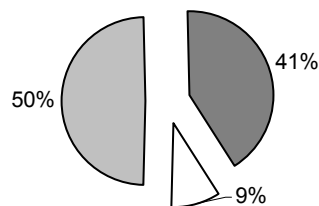
Netherlands: different-sex



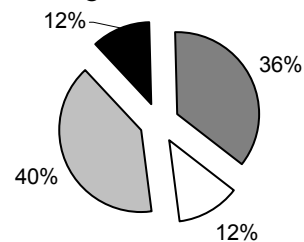
Netherlands: same-sex



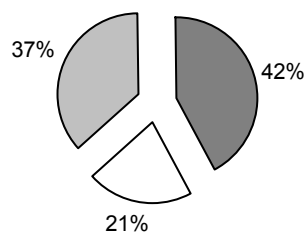
Belgium: different-sex



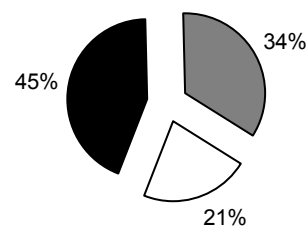
Belgium: same-sex



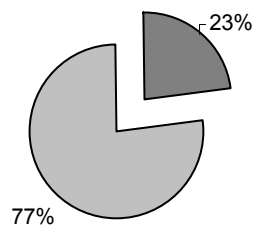
France: different-sex



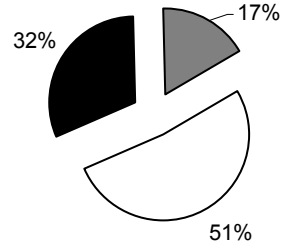
France: same-sex



Germany: different-sex

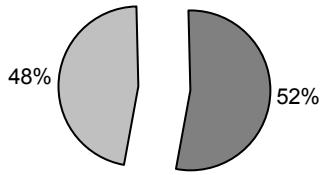


Germany: same-sex

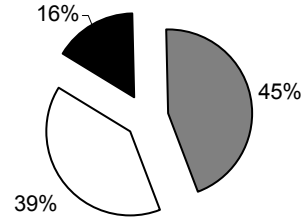


Levels of legal consequences...: Comparative overview

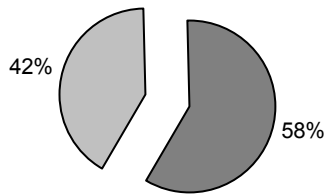
Denmark: different-sex



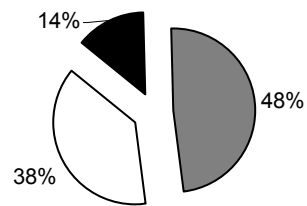
Denmark: same-sex



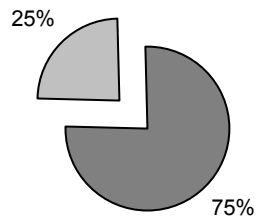
Norway: different-sex



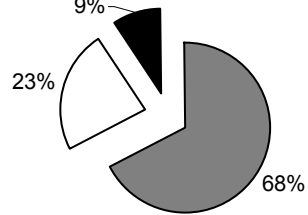
Norway: same-sex



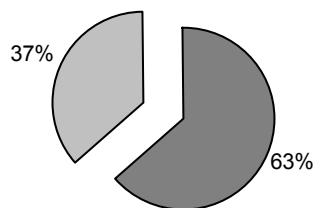
Sweden: different-sex



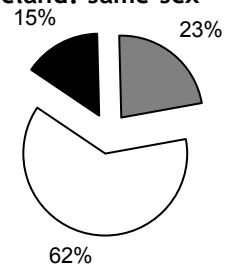
Sweden: same-sex



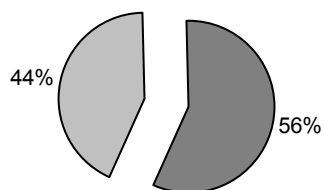
Iceland: different-sex



Iceland: same-sex



Finland: different-sex



Finland: same-sex

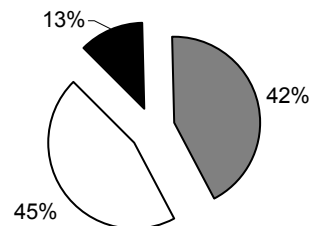


Table A (Comparative): Parenting consequences

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex
1. When female partner gives birth, both partners automatically become legal parents	ALL	(NLD)	(BEL), (FRA), (NLD)	(NLD)	DNK (BEL), (DEU), (FIN), (FRA), (ICE), (NLD), (NOR), (SWE)	
2. Medically assisted insemination is lawful for women in such a relationship	ALL	BEL, NLD	BEL, NLD FRA	BEL, FIN, NLD SWE (DEU?)	BEL, DNK, FIN, NLD, SWE FRA, ICE, NOR (DEU?)	BEL, FIN, NLD SWE (DEU?)
3. When only one partner is the parent of a child, both partners can have parental authority or responsibilities during their relationship	DEU, FIN, ICE, NLD NOR (DNK), (SWE)	NLD	NLD	DEU, FIN, ICE, NLD NOR (DNK), (SWE)	FIN, ICE, NLD NOR (DNK), (SWE)	FIN, NLD NOR (DNK), (SWE)
4. When only one partner is the parent of a child, the other partner can adopt it and thus become its second parent	ALL	NLD	NLD (BEL)	NLD, SWE ICE, DNK, NOR	NLD ICE (BEL)	NLD
5. Partners can jointly adopt a child	ALL	NLD	NLD	SWE NLD	ICE, NLD	NLD
6. One partner can individually adopt a child	BEL, FRA, NLD (DEU), (ICE), (NOR), (SWE)	BEL, NLD	BEL, FRA, NLD	BEL, FIN, NLD DEU, FRA (NOR), (SWE)	BEL, DNK, FIN, FRA, NLD DEU, SWE (ICE), (NOR)	BEL, DNK, FIN, NLD DEU, FRA, ICE, SWE (NOR)
7. Partners can jointly foster a child	ALL	BEL, NLD	BEL, FRA, NLD	BEL, DNK, FIN, ICE, NLD, NOR, SWE (DEU) (FRA?)	BEL, DNK, FIN, FRA, ICE, NLD, NOR, SWE (DEU)	BEL, DNK, FIN, ICE, NLD, NOR, SWE (DEU) (FRA?)





Table A (Levels): Parenting consequences

The maximum number of points in each cell of this table (covering 7 legal consequences) is 21. For each country the total number of points for legal consequences of different-sex marriage is equated with 100%.

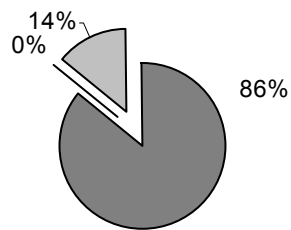
	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex
Netherlands	21 pt = 100%	18 pt = 86%	18 pt = 86%	18 pt = 86%	18 pt = 86%	17 pt = 81%
Belgium	18 pt = 100%	9 pt = 50%	11 pt = 61%	9 pt = 50%	11 pt = 61%	9 pt = 50%
France	18 pt = 100%	0 pt = 0%	9 pt = 50%	3 pt = 17%	9 pt = 50%	3 pt = 17%
Germany	19 pt = 100%	0 pt = 0%	0 pt = 0%	7 pt = 37%	5 pt = 26%	4 pt = 21%
Denmark	16 pt = 100%	0 pt = 0%	0 pt = 0%	6 pt = 37%	12 pt = 75%	7 pt = 44%
Norway	18 pt = 100%	0 pt = 0%	0 pt = 0%	8 pt = 44%	9 pt = 50%	6 pt = 33%
Sweden	17 pt = 100%	0 pt = 0%	0 pt = 0%	13 pt = 76%	10 pt = 59%	8 pt = 47%
Iceland	19 pt = 100%	0 pt = 0%	0 pt = 0%	8 pt = 42%	14 pt = 74%	5 pt = 26%
Finland	18 pt = 100%	0 pt = 0%	0 pt = 0%	12 pt = 67%	13 pt = 72%	12 pt = 67%

Pie charts based on Table A: Parenting consequences

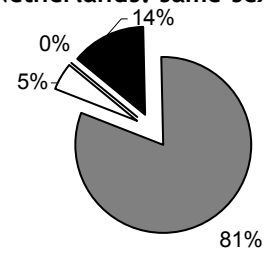
Used colour codes (LLC = level of legal consequences)

- 1  LLC of *informal cohabitation*
- 2  additional LLC of *registered partnership* (1 + 2 = LLC of registered partnership)
- 3  additional LLC of *civil marriage* (1 + 2 + 3 = LLC of civil marriage)
- 4  LLC *not* available to same-sex partners of any status

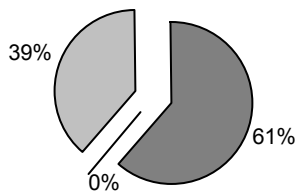
Netherlands: different-sex



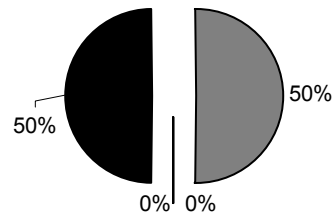
Netherlands: same-sex



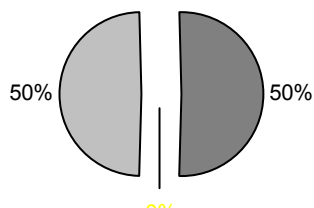
Belgium: different-sex



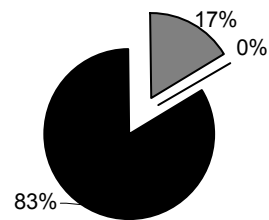
Belgium: same-sex



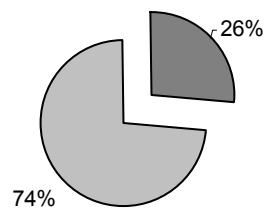
France: different-sex



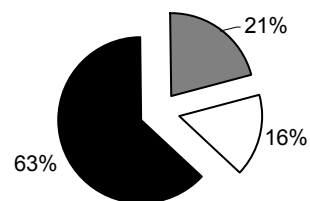
France: same-sex



Germany: different-sex

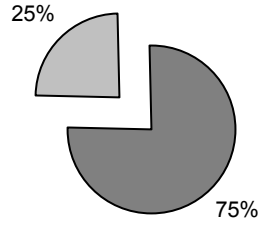


Germany: same-sex

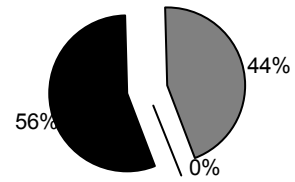


Levels of legal consequences...: Comparative overview

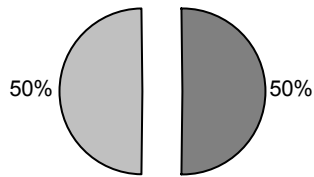
Denmark: different-sex



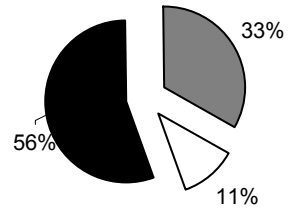
Denmark: same-sex



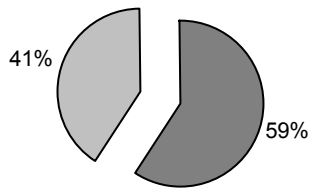
Norway: different-sex



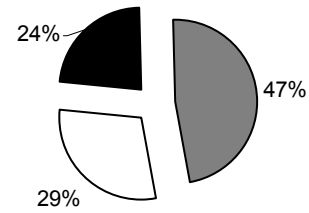
Norway: same-sex



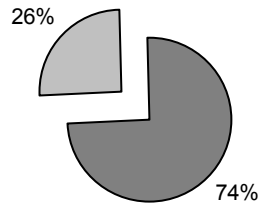
Sweden: different-sex



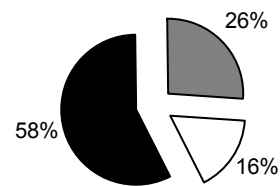
Sweden: same-sex



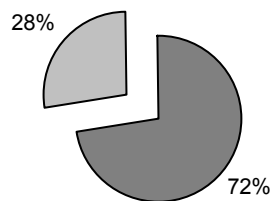
Iceland: different-sex



Iceland: same-sex



Finland: different-sex



Finland: same-sex

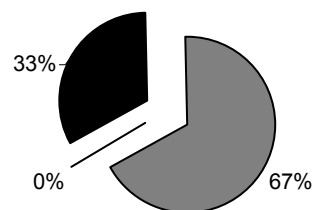


Table B – part one (Comparative): Material consequences in private law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex
1. Properties of each partner are considered joint property	BEL, DNK, FRA, NLD (DEU)	BEL, NLD	FRA, NLD (BEL)	DNK, FRA, NLD (BEL)	(FRA), (NLD)	(FRA), (NLD)
2. Debts of each partner are considered joint debt	BEL, FRA, NLD (DEU), (FIN), (NOR), (SWE)	BEL, NLD	FRA, NLD (BEL)	FRA, NLD (BEL), (FIN), (NOR), (SWE)	(FRA), (NLD), (SWE)	(FRA), (NLD), (SWE)
3. In case of splitting up, statutory rules on alimony apply	BEL, FIN, FRA, ICE, NLD, NOR, SWE DNK, DEU	BEL, NLD	FRA, NLD (BEL)	FIN, FRA, ICE, NLD, NOR, SWE DNK, DEU (BEL)	(BEL), (NLD)	(BEL), (NLD)
4. In case of splitting up, statutory rules on redistribution of properties apply	FIN, FRA, ICE, NOR DNK, DEU, SWE		FRA	FIN, FRA, ICE, NOR DNK, DEU, SWE	NOR, SWE (DEU), (FRA)	NOR, SWE (DEU), (FRA)
5. In case of wrongful death of one partner, the other is entitled to compensation	BEL, DEU, FIN, FRA, ICE, NLD, SWE DNK, NOR	BEL, NLD	BEL, FRA, NLD	BEL, DEU, FIN, FRA, ICE, NLD, SWE DNK, NOR	BEL, FIN, FRA, NLD, SWE DNK, ICE, NOR	FIN, FRA, NLD, SWE DNK, NOR (ICE) (BEL?)
6. When one partner dies without testament, the other is an inheritor	BEL, DNK, DEU, FIN, FRA, ICE, NLD, NOR SWE	BEL, NLD	NLD	DNK, DEU, FIN, ICE, NLD, NOR SWE	(SWE)	(SWE)





Table B – part one (Levels): Material consequences in private law

The maximum number of points in each cell of this table (covering the 6 legal consequences of table B – part one) is 18. For each country the total number of points for legal consequences of different-sex marriage is equated with 100%.

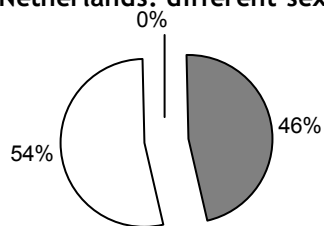
	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex
Netherlands	13 pt = 100%	13 pt = 100%	13 pt = 100%	13 pt = 100%	6 pt = 46%	6 pt = 46%
Belgium	13 pt = 100%	13 pt = 100%	6 pt = 46%	6 pt = 46%	4 pt = 31%	2 pt = 15%
France	16 pt = 100%	0 pt = 0%	13 pt = 81%	13 pt = 81%	6 pt = 38%	6 pt = 38%
Germany	12 pt = 100%	0 pt = 0%	0 pt = 0%	10 pt = 83%	1 pt = 8%	1 pt = 8%
Denmark	11 pt = 100%	0 pt = 0%	0 pt = 0%	11 pt = 100%	2 pt = 18%	2 pt = 18%
Norway	12 pt = 100%	0 pt = 0%	0 pt = 0%	12 pt = 100%	4 pt = 33%	4 pt = 33%
Sweden	11 pt = 100%	0 pt = 0%	0 pt = 0%	11 pt = 100%	7 pt = 64%	7 pt = 64%
Iceland	12 pt = 100%	0 pt = 0%	0 pt = 0%	12 pt = 100%	2 pt = 17%	1 pt = 8%
Finland	13 pt = 100%	0 pt = 0%	0 pt = 0%	13 pt = 100%	3 pt = 23%	3 pt = 23%

Pie charts based on Table B – part one: Material consequences in private law

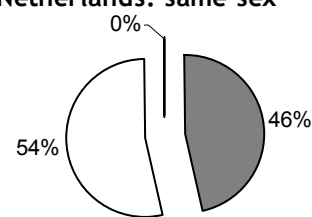
Used colour codes (LLC = level of legal consequences)

- 1  LLC of *informal cohabitation*
- 2  additional LLC of *registered partnership* (1 + 2 = LLC of registered partnership)
- 3  additional LLC of *civil marriage* (1 + 2 + 3 = LLC of civil marriage)
- 4  LLC *not available to same-sex partners of any status*

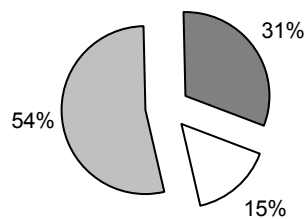
Netherlands: different-sex



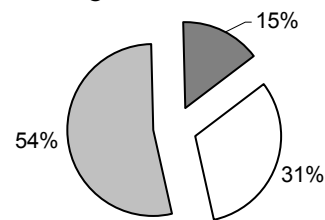
Netherlands: same-sex



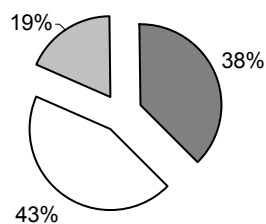
Belgium: different-sex



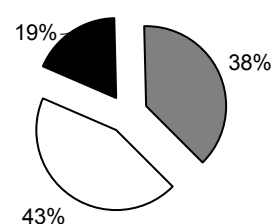
Belgium: same-sex



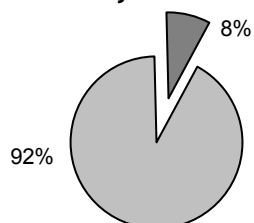
France: different-sex



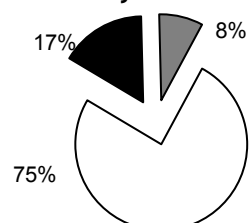
France: same-sex



Germany: different-sex

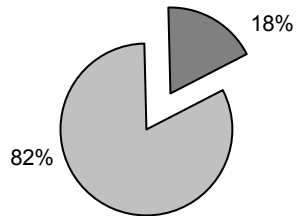


Germany: same-sex

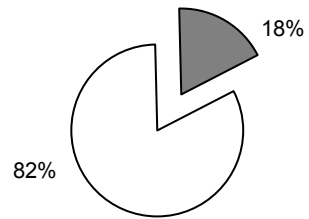


Levels of legal consequences...: Comparative overview

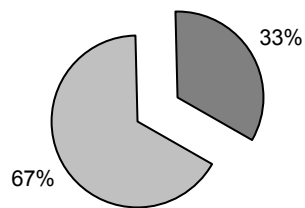
Denmark: different-sex



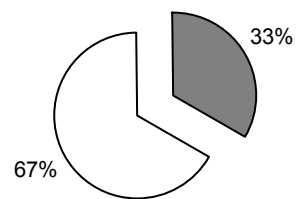
Denmark: same-sex



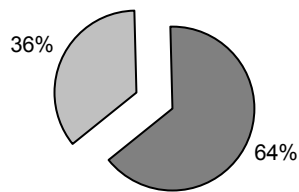
Norway: different-sex



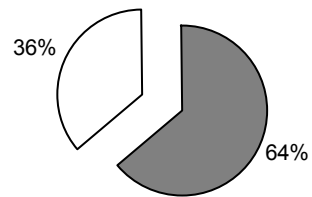
Norway: same-sex



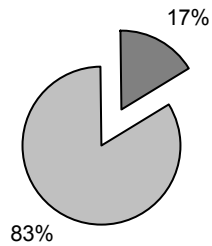
Sweden: different-sex



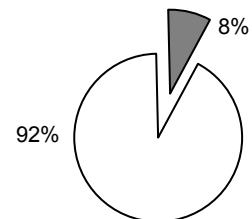
Sweden: same-sex



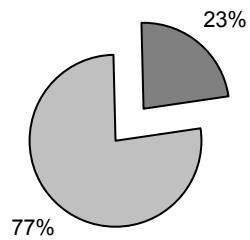
Iceland: different-sex



Iceland: same-sex



Finland: different-sex



Finland: same-sex

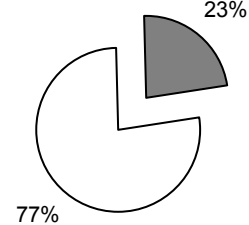


Table B – part two (Comparative): Positive material consequences in public law

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex
1. Relationship can result in lower property tax	ICE, NOR (NLD)	(NLD)	(NLD)	ICE, NOR (NLD)	ICE (NLD)	(NLD)
2. Relationship can result in lower income tax	DEU, DNK, FRA, ICE, NOR BEL (FIN), (NLD)	BEL (NLD)	FRA (NLD)	DNK, FRA, ICE, NOR DEU (FIN), (NLD)	ICE (DEU), (NLD)	(DEU), (NLD)
3. Public health insurance of one partner covers medical costs of other partner	DEU, FRA, NOR BEL, NLD (ICE)	BEL, NLD	BEL, FRA, NLD	DEU, NOR BEL, FRA, NLD (ICE)	BEL, FRA, NLD, NOR (ICE)	BEL, FRA, NLD (NOR)
4. Relationship can have positive impact on basic social security payment in case of no income	(NOR)			(NOR)	(NOR)	(NOR)
5. Relationship can have positive impact on statutory old age pension	BEL, ICE (NLD)	BEL (NLD)	(NLD)	ICE (NLD)	(ICE), (NLD)	(NLD)
6. When one partner dies, the other can get a statutory survivor's pension	DEU, FIN, FRA, NOR BEL, SWE (ICE), (NLD)	BEL (NLD)	(NLD)	FIN, NOR SWE (ICE), (NLD)	NOR, SWE (ICE), (NLD)	SWE (NLD), (NOR)
7. Surviving partner pays no inheritance tax (or less than a mere friend would)	ALL	BEL, NLD	NLD BEL, FRA	DNK, FIN, ICE, NLD, NOR, SWE BEL, FRA	DNK, SWE ICE, NLD, NOR (BEL), (FIN), (FRA)	DNK, SWE NLD (BEL), (FRA), (ICE), (NOR)





Table B – part two (Levels): Positive material consequences in public law

The maximum number of points in each cell of this table (covering the 7 legal consequences of table B – part two) is 21. For each country the total number of points for legal consequences of different-sex marriage is equated with 100%.

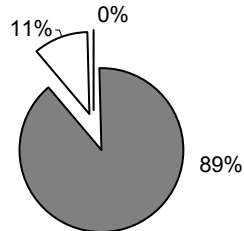
	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex
Netherlands	9 pt = 100%	9 pt = 100%	9 pt = 100%	9 pt = 100%	8 pt = 89%	8 pt = 89%
Belgium	12 pt = 100%	12 pt = 100%	4 pt = 33%	4 pt = 33%	3 pt = 25%	3 pt = 25%
France	12 pt = 100%	0 pt = 0%	7 pt = 58%	7 pt = 58%	3 pt = 25%	3 pt = 25%
Germany	12 pt = 100%	0 pt = 0%	0 pt = 0%	5 pt = 41%	1 pt = 8%	1 pt = 8%
Denmark	6 pt = 100%	0 pt = 0%	0 pt = 0%	6 pt = 100%	3 pt = 50%	3 pt = 50%
Norway	16 pt = 100%	0 pt = 0%	0 pt = 0%	16 pt = 100%	7 pt = 44%	4 pt = 25%
Sweden	5 pt = 100%	0 pt = 0%	0 pt = 0%	5 pt = 100%	5 pt = 100%	5 pt = 100%
Iceland	14 pt = 100%	0 pt = 0%	0 pt = 0%	14 pt = 100%	9 pt = 64%	1 pt = 7%
Finland	7 pt = 100%	0 pt = 0%	0 pt = 0%	7 pt = 100%	1 pt = 14%	0 pt = 0%

Pie charts based on Table B – part two: Positive material consequences in public law

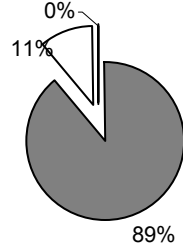
Used colour codes (LLC = level of legal consequences)

- 1  LLC of *informal cohabitation*
- 2  additional LLC of *registered partnership* (1 + 2 = LLC of registered partnership)
- 3  additional LLC of *civil marriage* (1 + 2 + 3 = LLC of civil marriage)
- 4  LLC *not available* to same-sex partners of any status

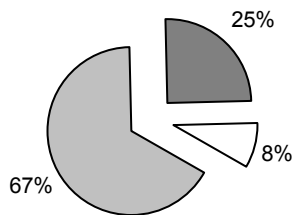
Netherlands: different-sex



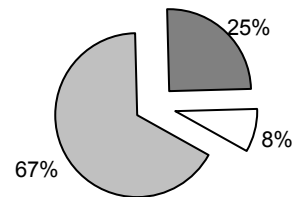
Netherlands: same-sex



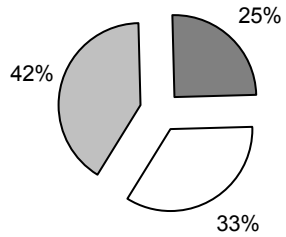
Belgium: different-sex



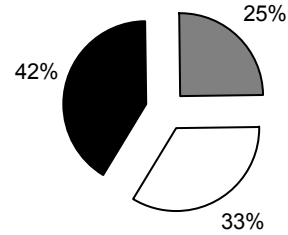
Belgium: same-sex



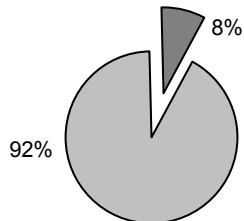
France: different-sex



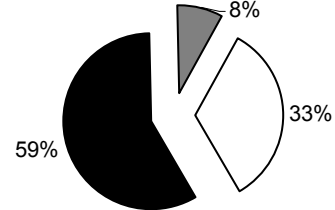
France: same-sex



Germany: different-sex

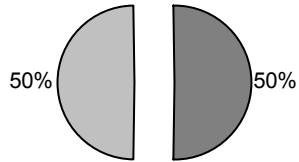


Germany: same-sex

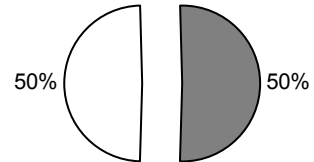


Levels of legal consequences...: Comparative overview

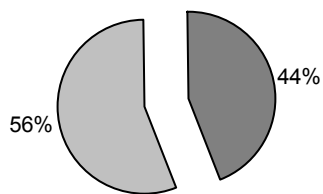
Denmark: different-sex



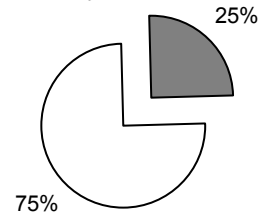
Denmark: same-sex



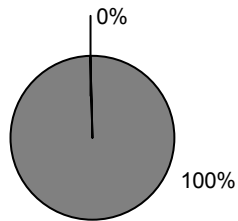
Norway: different-sex



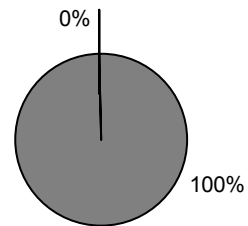
Norway: same-sex



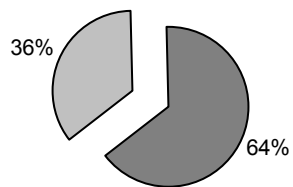
Sweden: different-sex



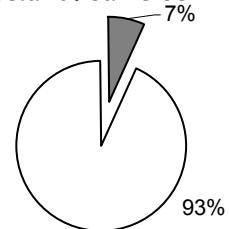
Sweden: same-sex



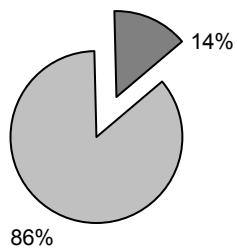
Iceland: different-sex



Iceland: same-sex



Finland: different-sex



Finland: same-sex

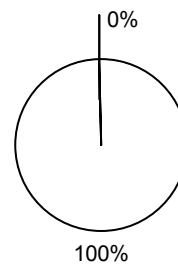


Table B – part three (Comparative): Negative material consequences in public law





	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex
8. Relationship can result in higher property tax	SWE			SWE	SWE	(SWE)
9. Relationship can result in higher income tax	BEL, FRA (NLD)	BEL (NLD)	FRA (NLD)	FRA (NLD)		
10. Relationship can have negative impact on basic social security payment in case of no income	BEL, DEU, DNK, FIN, FRA, ICE, NLD, SWE (NOR)	BEL, NLD	FRA, NLD BEL	DEU, DNK, FIN, FRA, ICE, NLD, SWE BEL (NOR)	DEU, DNK, FIN, FRA, ICE, NLD, SWE BEL (NOR)	DNK, FRA, NLD, SWE BEL (NOR) (DEU?)
11. Relationship can have negative impact on statutory old age pension	DNK, FIN, ICE, NLD, NOR (SWE)	NLD	NLD	DNK, FIN, ICE, NLD, NOR (SWE)	DNK, FIN, ICE, NLD, NOR	DNK, NLD (NOR)

Table B – part three (Levels): Negative material consequences in public law

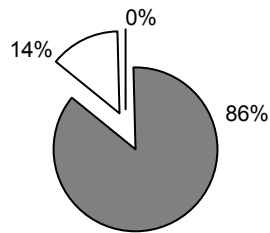
The maximum number of points in each cell of this table (covering the 4 legal consequences of table B – part two) is 12. For each country the total number of points for legal consequences of different-sex marriage is equated with 100%.

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex
Netherlands	7 pt = 100%	7 pt = 100%	7 pt = 100%	7 pt = 100%	6 pt = 86%	6 pt = 86%
Belgium	6 pt = 100%	6 pt = 100%	2 pt = 33%	2 pt = 33%	2 pt = 33%	2 pt = 33%
France	6 pt = 100%	0 pt = 0%	6 pt = 100%	6 pt = 100%	3 pt = 50%	3 pt = 50%
Germany	3 pt = 100%	0 pt = 0%	0 pt = 0%	3 pt = 100%	3 pt = 100%	1 pt = 33%
Denmark	6 pt = 100%	0 pt = 0%	0 pt = 0%	6 pt = 100%	6 pt = 100%	6 pt = 100%
Norway	4 pt = 100%	0 pt = 0%	0 pt = 0%	4 pt = 100%	3 pt = 75%	2 pt = 50%
Sweden	7 pt = 100%	0 pt = 0%	0 pt = 0%	7 pt = 100%	5 pt = 71%	4 pt = 57%
Iceland	6 pt = 100%	0 pt = 0%	0 pt = 0%	6 pt = 100%	6 pt = 100%	0 pt = 0%
Finland	6 pt = 100%	0 pt = 0%	0 pt = 0%	6 pt = 100%	6 pt = 100%	0 pt = 0%

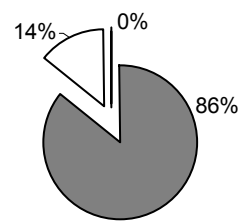
Pie charts based on Table B – part three: Negative material consequences in public law

- 1  LLC of *informal cohabitation*
- 2  additional LLC of *registered partnership* (1 + 2 = LLC of registered partnership)
- 3  additional LLC of *civil marriage* (1 + 2 + 3 = LLC of civil marriage)
- 4  LLC *not* available to same-sex partners of any status

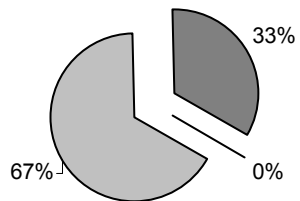
Netherlands: different-sex



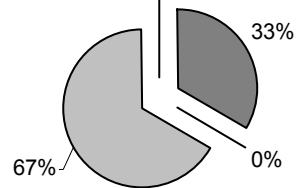
Netherlands: same-sex



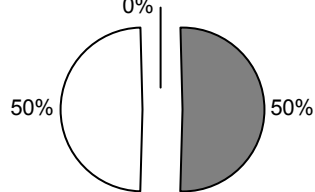
Belgium: different-sex



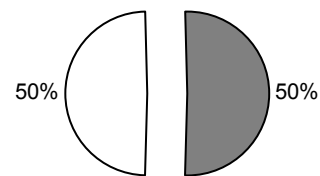
Belgium: same-sex



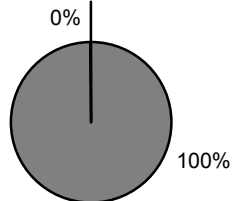
France: different-sex



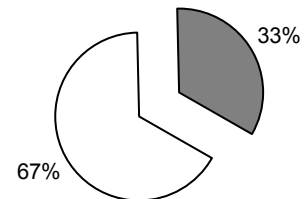
France: same-sex



Germany: different-sex

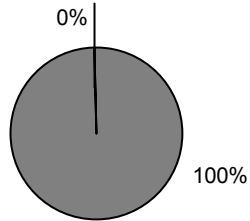


Germany: same-sex

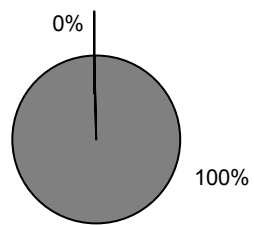


Levels of legal consequences...: Comparative overview

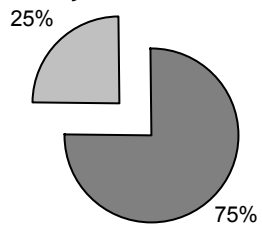
Denmark: different-sex



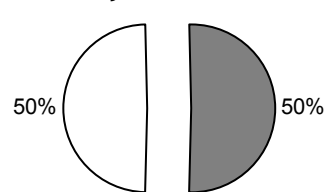
Denmark: same-sex



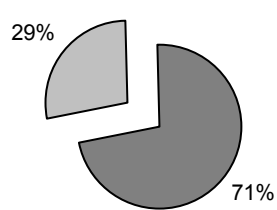
Norway: different-sex



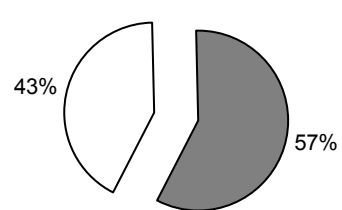
Norway: same-sex



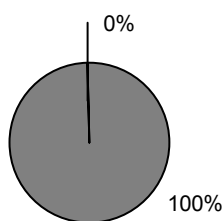
Sweden: different-sex



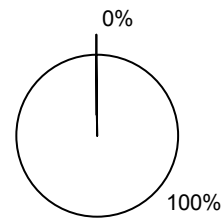
Sweden: same-sex



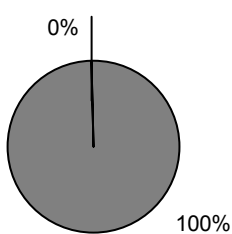
Iceland: different-sex



Iceland: same-sex



Finland: different-sex



Finland: same-sex

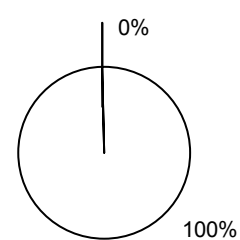


Table C (Comparative): Other legal consequences

	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex
1. One partner can have or use surname of the other	BEL, DEU, DNK, FIN, FRA, NLD, NOR, SWE (ICE)	BEL, NLD	NLD	DEU, DNK, NLD, NOR, SWE (FIN), (ICE)	NOR (NLD)	NOR (NLD)
2. Foreign partner of resident national is entitled to a residence permit	BEL, DEU, FRA, ICE, NOR, SWE DNK, FIN, NLD	BEL NLD	BEL FRA, NLD	BEL, DEU, ICE, NOR, SWE DNK, FIN, FRA, NLD	BEL, ICE, NOR, SWE FIN, NLD (FRA)	BEL, NOR, SWE FIN, NLD (FRA)
3. Relationship makes it easier for foreign partner to obtain citizenship	BEL, DEU, DNK, FIN, FRA, ICE, NLD, SWE	BEL, NLD	NLD (FRA)	DEU, DNK, FIN, ICE, NLD, SWE (FRA)	SWE ICE, NLD (FRA)	SWE NLD (FRA)
4. In case of criminal prosecution, one partner can refuse to testify against the other	BEL, DEU, DNK, FIN, ICE, NLD, NOR, SWE (FRA)	BEL, NLD	NLD	DEU, DNK, FIN, ICE, NLD, NOR, SWE	DNK, SWE FIN, ICE, NOR (DEU)	DNK, SWE FIN, ICE, NOR
5. When one partner uses violence against other partner, specific statutory protection applies	BEL, FRA, NOR, SWE (DNK), (ICE)	BEL	BEL, FRA	BEL, FRA, NOR, SWE (DNK), (ICE)	FRA, NOR, SWE BEL (ICE)	FRA, NOR, SWE BEL (ICE)
6. In case of accident or illness of one partner, the other is considered as next of kin for medical purposes (even without power of attorney)	BEL, DNK, FIN, FRA, ICE, NLD, NOR, SWE (DEU?)	BEL, NLD	BEL, NLD (FRA)	BEL, DNK, FIN, ICE, NLD, NOR, SWE (FRA) (DEU?)	BEL, FIN, NLD, NOR, SWE (FRA), (ICE) (DEU?)	BEL, FIN, NLD, NOR, SWE (FRA) (DEU?)
7. Organ donation from one living partner to the other is lawful	BEL, DEU, DNK, FIN, ICE, NLD, NOR, SWE FRA	BEL, NLD	BEL, NLD	BEL, DEU, DNK, FIN, ICE, NLD, NOR (SWE?)	BEL, DNK, FIN, ICE, NLD, NOR, SWE	BEL, DNK, FIN, ICE, NLD, NOR (SWE?)
8. When one partner dies, the other can continue to rent the home	ALL	BEL, NLD	BEL, FRA, NLD	ALL	DEU, DNK, FIN, FRA, NLD, SWE ICE, NOR	DEU, DNK, FRA, ICE, NLD, SWE FIN, NOR
9. Partners have a duty to have sexual contact	BEL, FRA	BEL	FRA	FRA	FRA	FRA





Table C (Levels): Other legal consequences

The maximum number of points in each cell of this table (covering 9 legal consequences) is 27. For each country the total number of points for legal consequences of different-sex marriage is equated with 100%.

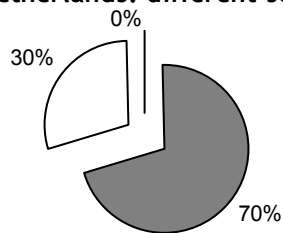
	Civil marriage		Registered partnership		Informal cohabitation	
	Different-sex	Same-sex	Different-sex	Same-sex	Different-sex	Same-sex
Netherlands	20 pt = 100%	20 pt = 100%	20 pt = 100%	20 pt = 100%	14 pt = 70%	14 pt = 70%
Belgium	27 pt = 100%	27 pt = 100%	15 pt = 56%	15 pt = 56%	11 pt = 41%	11 pt = 41%
France	24 pt = 100%	0 pt = 0%	13 pt = 54%	13 pt = 54%	11 pt = 46%	11 pt = 46%
Germany	19 pt = 100%	0 pt = 0%	0 pt = 0%	19 pt = 100%	5 pt = 26%	4 pt = 21%
Denmark	21 pt = 100%	0 pt = 0%	0 pt = 0%	21 pt = 100%	9 pt = 43%	9 pt = 43%
Norway	21 pt = 100%	0 pt = 0%	0 pt = 0%	21 pt = 100%	18 pt = 86%	18 pt = 86%
Sweden	24 pt = 100%	0 pt = 0%	0 pt = 0%	22 pt = 92%	21 pt = 87%	19 pt = 79%
Iceland	20 pt = 100%	0 pt = 0%	0 pt = 0%	20 pt = 100%	14 pt = 70%	9 pt = 45%
Finland	20 pt = 100%	0 pt = 0%	0 pt = 0%	18 pt = 90%	13 pt = 65%	12 pt = 60%

Pie charts based on Table C: Other legal consequences

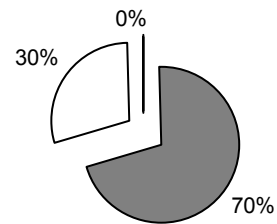
Used colour codes (LLC = level of legal consequences)

- 1  LLC of *informal cohabitation*
- 2  additional LLC of *registered partnership* (1 + 2 = LLC of registered partnership)
- 3  additional LLC of *civil marriage* (1 + 2 + 3 = LLC of civil marriage)
- 4  LLC *not available* to same-sex partners of any status

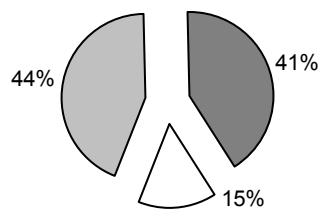
Netherlands: different-sex



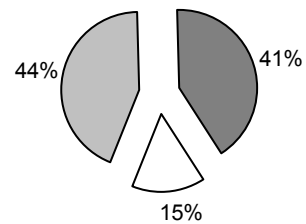
Netherlands: same-sex



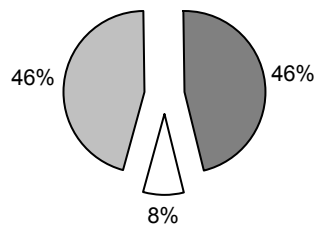
Belgium: different-sex



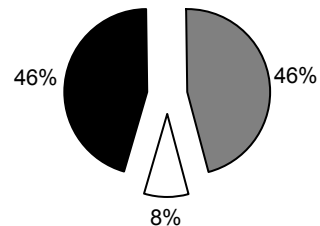
Belgium: same-sex



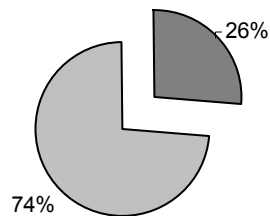
France: different-sex



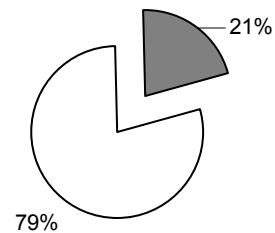
France: same-sex



Germany: different-sex

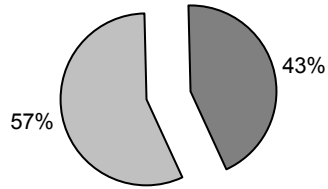


Germany: same-sex

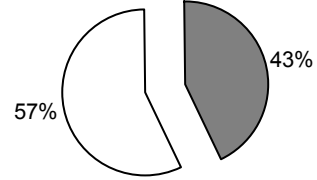


Levels of legal consequences...: Comparative overview

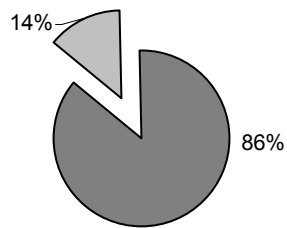
Denmark: different-sex



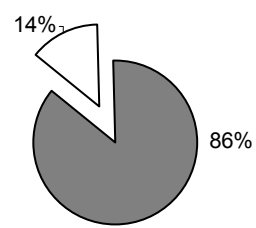
Denmark: same-sex



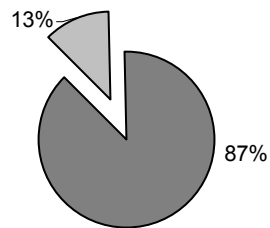
Norway: different-sex



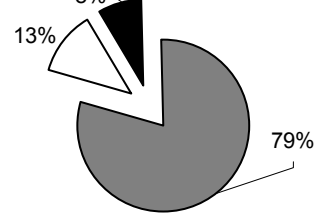
Norway: same-sex



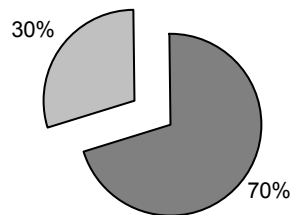
Sweden: different-sex



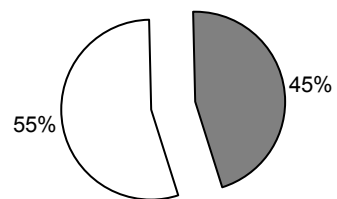
Sweden: same-sex



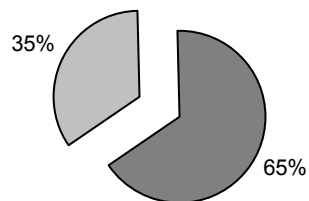
Iceland: different-sex



Iceland: same-sex



Finland: different-sex



Finland: same-sex

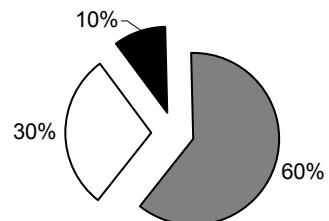


Table D (Comparative): Types of discrimination by employers or service providers that are prohibited in anti-discrimination legislation

	Between married spouses and registered partners	Between married spouses and informal cohabitants	Between registered partners and informal cohabitants	Between same-sex and different-sex partners (with same status)
1. With respect to housing	BEL, DNK, ICE, FIN, FRA, NLD, NOR, SWE	BEL, FIN, FRA, NLD	BEL, FIN, FRA, NLD	BEL, DNK, FIN, FRA, ICE, NLD, NOR, SWE
2. With respect to life insurance	BEL, DNK, FIN, FRA, ICE, NLD, NOR, SWE	BEL, FIN, FRA, NLD	BEL, FIN, FRA, NLD	BEL, DNK, FIN, FRA, ICE, NLD, NOR, SWE
3. With respect to health insurance	BEL, DNK, FIN, FRA, ICE, NLD, NOR, SWE	BEL, FIN, FRA, NLD	BEL, FIN, FRA, NLD	BEL, DNK, FIN, FRA, ICE, NLD, NOR, SWE
4. With respect to medically assisted insemination	BEL, NLD FIN, FRA	BEL, NLD FIN, FRA	BEL, NLD FIN, FRA	BEL, NLD FIN
5. With respect to other services	BEL, DNK, FIN, FRA, ICE, NLD, NOR, SWE	BEL, FIN, FRA, NLD	BEL, FIN, FRA, NLD	BEL, DNK, FIN, FRA, ICE, NLD, NOR, SWE
6. With respect to an occupational survivor's pension	BEL, DNK, FIN, ICE, NOR, SWE NLD (FRA?)	BEL (SWE) (FRA?)	BEL (SWE) (FRA?)	BEL, DNK, ICE, NLD, NOR, SWE (FIN) (DEU?), (FRA?)
7. With respect to other spousal benefits in employment	BEL, DNK, FRA, ICE, NLD, NOR, SWE FIN (DEU)	BEL, FRA, NLD (FIN), (SWE)	BEL, FRA, NLD (FIN), (SWE)	BEL, DNK, FRA, ICE, NLD, NOR, SWE FIN (FRA) (DEU?)

Table E (Comparative): Types of couples that qualify for starting a civil marriage or registered partnership in the country itself

		Civil marriage		Registered partnership	
		Different-sex	Same-sex	Different-sex	Same-sex
Resident national with:	1. Resident national	ALL	BEL, NLD	BEL, FRA, NLD	ALL
	2. Non-resident national	ALL	BEL, NLD	NLD FRA (BEL?)	DEU, DNK, FIN, NLD, NOR, SWE FRA (BEL?)
	3. Resident foreigner	ALL	BEL, NLD	FRA, NLD (BEL?)	DEU, DNK, FIN, FRA, ICE, NLD, NOR, SWE (BEL?)
	4. Non-resident foreigner	BEL, DEU, DNK, FIN, FRA, NLD, SWE ICE, NOR	BEL, NLD	NLD FRA (BEL?)	DEU, DNK, FIN, NLD, SWE FRA, NOR (BEL?)
Non-resident national with:	5. Non-resident national	BEL, DEU, DNK, FIN, ICE, NLD, NOR, SWE	BEL, NLD	NLD (BEL?)	DEU, NLD (BEL?)
	6. Resident foreigner	ALL	BEL, NLD	NLD FRA (BEL?)	DEU, NLD FRA, NOR, SWE (DNK), (FIN) (BEL?)
	7. Non-resident foreigner	BEL, DEU, DNK, FIN, NLD, SWE ICE, NOR	BEL, NLD	NLD (BEL?)	DEU, NLD (BEL?)
Resident foreigner with:	8. Resident foreigner	ALL	BEL, NLD	FRA, NLD (BEL?)	DEU, FRA, NLD DNK, FIN, NOR, SWE (ICE) (BEL?)
	9. Non-resident foreigner	BEL, DEU, DNK, FIN, FRA, NLD, SWE ICE, NOR	BEL, NLD	NLD FRA (BEL?)	DEU, NLD FRA, NOR, SWE (FIN) (BEL?)
Non-resident foreigner with:	10. Non-resident foreigner	BEL, DEU, DNK, SWE FIN, ICE, NOR	(BEL)	(BEL?)	DEU (BEL)
11. Sister or brother with sister or brother		(SWE)		BEL	BEL (SWE)
12. Parent with child		(SWE)		BEL	BEL (SWE)

Table F (Comparative): Authority for starting a civil marriage or registered partnership

	Civil marriage		Registered partnership	
	Different-sex	Same-sex	Different-sex	Same-sex
1. Registry of births, marriages and deaths	BEL, DEU, FIN, FRA, NLD	BEL, NLD	BEL, NLD	BEL, FIN, NLD DEU
2. Local population administration	DNK			DNK DEU
3. Church	DNK, FIN, ICE, NOR, SWE			
4. Court	FIN, SWE		FRA	FIN, FRA, SWE
5. Private individual with special authorisation	SWE (NOR)			SWE (NOR)
6. Public notary	NOR			NOR DEU
7. Administrative magistrate	ICE			ICE DEU

Table G (Comparative): Means of ending a civil marriage or registered partnership

	Civil marriage		Registered partnership	
	Different-sex	Same-sex	Different-sex	Same-sex
1. By court decision (after joint or individual petition)	BEL, DEU, DNK, FIN, FRA, ICE, NLD, SWE NOR	BEL, NLD	NLD	DEU, DNK, FIN, ICE, NLD, SWE NOR
2. By mutually agreed contract (outside court)	(BEL), (NLD)	(BEL), (NLD)	BEL, FRA, NLD	BEL, FRA, NLD
3. Unilaterally by one partner (outside court)			BEL, FRA	BEL, FRA
4. By conversion of marriage into registered partnership, or vice versa (outside court)	NLD (FIN)	NLD	NLD	NLD (FIN)
5. By one registered partner marrying a third person (or by one married partner starting a registered partner with a third person)			BEL, FRA	BEL, FRA (DEU?)
6. By the registered partners marrying each other (or by the married partners starting a registered partnership together)			BEL, FRA,	BEL, FRA
7. By administrative decision (after joint or individual petition)	DNK, NOR ICE			DNK, NOR ICE

Comparative analysis

Introduction

This study introduces the concept of 'levels of legal consequences' (LLC) as a tool for a comparative analysis of civil marriage, registered partnership, and informal cohabitation (of different-sex or same-sex partners) in different countries.¹ For nine countries (Belgium, Denmark, Finland, France, Germany, Iceland, Netherlands, Norway and Sweden) 33 possible major legal consequences of these three types of relationship status were investigated.²

On the basis of the national chapters about the nine countries, and on the basis of the Comparative overview of the national information found, this chapter aims to provide a first tentative comparative analysis of the data.³ First, the legal character of civil marriage, of registered partnership and of informal cohabitation will be discussed.⁴ That discussion is largely based on the data that can be found in the *comparative tables* in the Comparative overview. Secondly, the attention will focus on the levels of legal consequences found for each type of relationship status. This will largely be based on the data as represented in the *levels tables* and *pie charts* in the Comparative overview. Thirdly the question will be addressed what this tells us about the legal exclusion (and inclusion) of same-sex couples. Finally some hypotheses will be formulated on how the different levels of legal consequences might explain differences in the frequency of partnership registration between the nine different countries.

The legal character of civil marriage

This study looks at civil marriage (and registered partnership and informal cohabitation) as a legal institution. This focus on the legal character of marriage means that other aspects (such as the social, the psychological, the religious, the economic, etc.) are left aside. As a legal institution marriage can be characterised as a form of partnership between two persons that is created by a formal act of registration, and that results in a number of legal rights and obligations (both between the partners, and between the partners and others including the state). The law sets *conditions* that must be met by the two persons who want to marry, gives rules for the *procedures* that need to be followed for starting or ending a marriage, and provides which legal *consequences* result from a marriage.

These characteristics of law and marriage can be found in each of the nine countries surveyed. In fact, the survey shows a great similarity between these nine countries, with

¹ For a discussion of the different approaches in the legal literature on how to categorise and name different types of relationship status, see: Kees Waaldijk, 'Others may follow: the introduction of marriage (and quasi-marriage or semi-marriage) for same-sex couples in European countries', 38 *New England Law Review* 2004, p.569-589 (online available via www.emmeijers.nl/waaldijk).

² The nine national chapters plus a short introduction to this study can be found (together with the Comparative overview and this Comparative analysis) in Waaldijk et alii.- *More or less together: Levels of legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners: a comparative study of nine European countries*.- Documents de travail n° 125, Ined, 2004.

³ The Comparative overview can be found on the pages before this Comparative analysis.

⁴ It should be noted that, for the sake of clarity, the distinctions made in the national chapters and in the Comparative overview, between 'yes' and 'yes, but', and between 'no' and 'no, but' are largely ignored in this chapter in the paragraphs on the legal character of marriage, registered partnership, and cohabitation.

respect to conditions and procedures as well as with respect to legal consequences of marriage.

In all countries but Belgium and the Netherlands, one of the conditions for marriage is that the partners are of different-sex. Only recently that condition has been dropped in Belgium (2003) and the Netherlands (2001). In all nine countries the condition applies that neither partner should be a sister, brother, parent or child of the other partner (see E11 and E12).⁵ This condition also applies to same-sex marriage in Belgium and the Netherlands. As far as non-residents and foreigners are concerned, the nine countries are quite liberal. Only France requires that at least one of the partners is a resident (see E5, E7 and E10). In the Netherlands (and in Belgium for same-sex marriages) the requirement is that at least one of the partners is either a national or a resident (see E10). In all other countries (and in Belgium for different-sex marriages) citizenship or residency is not required.

Between the nine countries, the similarities with respect to procedures are also considerable. In each country a marriage can be started before a public authority (see F1, F2, F4, F6 and F7). However, in the five Nordic countries a different-sex civil marriage can also start in church (see F5), a possibility that is not available in Belgium, Germany, France and the Netherlands. In all nine countries a marriage can be ended in court (see G1). However, in Denmark, Iceland, the Netherlands and Norway a marriage can also end outside court (if certain conditions are met; see G4 and G7).

There are great similarities between the countries as regards the legal consequences that are attached to marriage.⁶ Yet, of the 33 legal consequences taken into account in this survey, only twelve consequences apply to different-sex marriage in all countries,⁷ and only one in no country at all (B10, positive impact of relationship on basic social security). One consequence applies in one country only, Sweden (B14, higher property tax); five other consequences apply in all but one of the countries.⁸ As regards the applicability of legal consequences, the variation between the countries mostly relates to parental authority and individual adoption (A3 and A6), joint property and debts (B1, B2 and B4), tax (B7, B8 and B15), public health insurance and pensions (B9, B11, B12 and B17), protection against domestic violence (C5), and the duty to have sex (C9).

Both in Belgium and the Netherlands the consequences of same-sex marriage are almost the same as those of different-sex marriage; the main difference between the two countries is that joint and second-parent adoptions (A4 and A5) are not possible for same-sex spouses in Belgium. In neither of the two countries the female spouse of a mother automatically becomes a legal parent of the new born child (A1).

The legal character of registered partnership

Forms of registered partnership have been introduced in all nine countries.⁹ In all countries registered partnership is conceived as a legal institution *more or less analogous* to marriage.¹⁰ Therefore it can also be characterised as a form of partnership between two persons that is created by a formal act of registration, and that results in a number of legal rights and obligations (both between the partners, and between the partners and

⁵ All references like 'E11' here and below both refer to the corresponding items in the relevant national chapter(s), and to the corresponding items in the *comparative tables* in the Comparative overview.

⁶ It should be remembered that for the purposes of this study it is assumed that married or registered partners are always living together, even when that is not required by law.

⁷ The twelve items are: A1, A2, A4, A5, A7, B3, B5, B6, B13, C2, C7 and C8.

⁸ The five items are: B16 and C3 not in Norway, C1 not in Iceland, C4 not in France, and C6 possibly not in Germany.

⁹ That is in fact why these nine countries have been included in this study.

¹⁰ More about that at the end of this paragraph.

others including the state).¹¹ It would be interesting to see to what degree non-legal aspects of registered partnership (such as the social, the psychological, the economic, the religious, etc.) are also analogous to marriage, but that falls outside the scope of this study.

Like marriage law, the legal rules on registered partnership focus on the *conditions* that must be met by two persons who want to register their partnership, on the *procedures* that need to be followed for starting or ending a registered partnership, and on the legal *consequences* that result from registered partnership. With respect to all three the survey shows large similarities between the nine countries, but less so than as regards marriage.

In all countries but France, Belgium and the Netherlands, one of the conditions for partnership registration is that the partners must be of the same sex. From the beginning (Denmark, 1989; Norway, 1993; Sweden, 1995; Iceland, 1996) registered partnership was aimed at couples who were not *allowed* to get married because of the different-sex requirement of marriage laws. The more recent legislation on registered partnership in the Netherlands (1998), France (1999) and Belgium (2000) was not only aimed at such same-sex couples, but also at different-sex couples who did not *want* to get married. Nevertheless, the two most recent registered partnership laws (Germany, 2001; Finland, 2002) again include the same-sex requirement. Like for marriage, in most countries also the condition applies that neither partner should be a sister, brother, parent or child of the other partner. The only exception is Belgium, where inter-generational and inter-sibling partnerships can also be registered (see E11 and E12).

As far as non-residents and foreigners are concerned, some countries are as liberal for registered partnership as for marriage (Germany and the Netherlands), but most countries (especially Iceland, Denmark, Finland and perhaps Belgium) are more restrictive (see E2 and E4 to E10). It should be noted that in several countries the conditions with respect to non-residents and/or foreigners have been made more liberal a few years after the introduction of registered partnership (Denmark, Norway, Sweden, the Netherlands, Iceland and perhaps Belgium).

In no country a registered partnership can be entered into in a church, not even in the five Nordic countries, where it is possible to marry in church (see F3). Registered partnerships can be started before a public authority (see F1, F2, F4, F6 and F7). In most countries partnership registration is done by the same public authorities as those competent to do marriages. However, in France partnership registration can only take place at a court (see F4), and in Germany it varies from *Land* to *Land* which authority is declared competent to do such registrations.

Similarly, in most countries the procedures for ending a marriage (see above) also apply to the ending of registered partnership. However, in Belgium and France different procedures apply (mutual contract, unilateral declaration, marriage between the registered partners, or marriage of one partner with someone else; see G2, G3, G5 and G6). In the Netherlands the ordinary procedures for a divorce in court also apply to registered partnership, but registered partners can also choose to dissolve their partnership by mutual contract (G2), or by converting it into a marriage (G4). It is interesting to note that the three countries with this wider range of non-judicial means of ending a registered partnership (Belgium, France and the Netherlands) are also the three that allow different-sex couples to register their partnership.

The legal consequences of registered partnership¹² are most like marriage in the Netherlands, where only the presumption of paternity (A1) does not apply, and in Sweden, where that presumption does not apply either, and where perhaps organ donation

¹¹ On the demarcation line between 'registered' partnership and 'informal' cohabitation, see also the introductions to the chapters on Belgium and Iceland.

¹² It should be remembered that for the purposes of this study it is assumed that registered partners are always living together, even when not legally required to do so. Therefore all the legal consequences of informal cohabitation are assumed to also apply to registered partnership.

between living registered partners (C7) is not allowed. The consequences are also very similar in Finland, where only the presumption of paternity (A1), second-parent and joint adoption (A4 and A5), and the use of each other's surname (C1) are excluded,¹³ and in Denmark, Iceland and Norway, where the presumption of paternity (A1), medically assisted insemination (A2), and joint adoption (A5) are excluded.¹⁴

The list of legal consequences of marriage that are not attached to registered partnership is a little longer in Germany: apart from paternity, insemination, and second-parent and joint adoption,¹⁵ also fostering (A7) is normally not possible for registered partners; neither are they entitled to any statutory survivor's pension (B12), nor to a substantial reduction of inheritance tax (B13).

The lists in France and Belgium are even longer. Apart from most of the exceptions mentioned for the other countries,¹⁶ registered partners in France are not entitled to intestate inheritance (B6), nor to citizenship (C3) and they are not automatically considered as next of kin for medical purposes (C6). In Belgium, apart from some of the above,¹⁷ the list of exceptions also contains joint property, joint debt and alimony (B1, B2 and B3), positive impact on old age pension (B11), the right to refuse to testify against each other (C4), and the duty to have sex (C9); until the end of 2004, the list also comprises some positive and negative impact on income tax (B8 and B15).

The three countries that have made registered partnership also available to different-sex couples, make very few differences between same-sex and different-sex partnerships. The main differences can be found in France, where medically assisted insemination (A2) and perhaps fostering (A7) are only available to different-sex registered partners.

Above it was claimed that in all nine countries registered partnership is conceived as *more or less analogous* to marriage. We have now seen that as far as the *conditions* for getting into it, registered partnership is most analogous to marriage in Germany and the Netherlands, and least analogous in Belgium, Denmark, Finland and Iceland. As regards *procedures* for getting into it, however, registered partnership is completely analogous to marriage in Belgium and the Netherlands, and least analogous in France. As regards procedures for getting out of it, the analogy is complete in Germany and the Nordic countries, and the smallest in Belgium and France. Finally, as regards legal *consequences*, the analogy between marriage and registered partnership is largest in the Netherlands and the Nordic countries, and smallest in Belgium and France.

In most countries the analogy between marriage and registered partnership is further strengthened by the prohibition of discrimination. In all countries but Germany discrimination between married and registered partners is unlawful, both with respect to housing, insurance and most other services (D1, D2, D3 and D5), and with respect to most spousal benefits in employment (D6 and D7).¹⁸ With respect to medically assisted insemination, discrimination between married and registered women is only unlawful in Finland, France, Belgium and the Netherlands (see D4).

The legal character of informal cohabitation

It can no longer be said that the law does not concern itself with informal cohabitants, certainly in the countries surveyed here. In all these countries the law provides that when

¹³ Please note that in Finland (and in Germany) individual adoption (A6) is available to registered partners, but not to married individuals.

¹⁴ All this, without taking into account nuances such as between 'yes' and 'yes, but' (see above).

¹⁵ See A1, A2, A4 and A5. See also the previous note.

¹⁶ Especially A1, A4, A5, C1 and C7, and as far as only same-sex registered partners are concerned: A2 and perhaps A7.

¹⁷ These are: A1, A4, A5, B6, C1 and C3.

¹⁸ In all countries but Germany and France this prohibition of discrimination in employment extends to survivor's pensions (D6).

certain *conditions* are met, a number of legal *consequences* follows from the fact that two persons are informally living together. In most countries there are no specific *procedures* that need to be followed before a cohabiting couple becomes legally recognised. The main exception is Iceland, where for the purposes of certain specific laws different-sex cohabiting partners have to register with the National Registry.¹⁹ However, for the purposes of this study, such a 'registered cohabitation' is still being considered as a form of informal cohabitation. One reason for that is that the partnership is not *created* by the act of registration, but simply recognised. In the previous paragraph, the term 'registered partnership' has been reserved for forms of partnership that are 'created by a formal act of registration'. It should be noted that in several other countries, too, cohabiting couples may be under a duty to officially declare that they are in fact cohabiting, sharing a household, having a joint address, or something like that. Such a declaration does not make their partnership fall into the category of 'registered partnership'. On the other hand, the relationship status known in Belgium as *cohabitation légale* ('legal cohabitation') is created by the act of registration, and therefore (for the purposes of this study) it is not considered as a form of informal cohabitation.

The absence of specific *procedures* for getting into informal cohabitation, is also reflected in the absence of specific legislative rules on how to get out of it. For that reason, tables F and G do not deal with informal cohabitation.

Within the context of this study, it would have been impossible to give a full overview of the *conditions* that need to be fulfilled before the informal cohabitation of a couple is recognised in law. The main reason for this is, that such conditions not only vary from country to country, but also from law to law. Furthermore, quite often the extension of certain legal consequences to informal cohabitation has been realised by administrative practice or by case law; in such circumstances it is not always exactly clear what the conditions are. In the national chapters it can be seen that only rarely a written contract, or sexual contact, between the cohabitants is required, and only occasionally their having a child together. More frequent conditions are a certain length of the duration of the cohabitation, and obviously a joint address or household. For more details, see the national chapters.

The most fruitful angle under which to study the legal recognition of informal cohabitation is that of its legal consequences. In all nine countries some of the legal consequences of marriage have been attached to informal cohabitation, both of different-sex and of same-sex couples. With respect to these legal consequences, the differences between the countries are rather larger than with respect to the legal consequences of marriage or registered partnership.

The country with the least legal consequences attached to informal cohabitation, is Germany, where it can have a negative impact on basic social security (B16) and where the surviving cohabitant can continue to rent the home (C8), and where cohabitants are perhaps entitled to assisted insemination (A2) and are perhaps considered as next of kin for medical purposes (C6).²⁰ In Belgium and France the list of legal consequences of informal cohabitation is somewhat longer, and also includes, in both countries: fostering (A7), compensation for wrongful death (B5), partner cover in public health insurance (B9), and domestic violence protection (C5); and in Belgium also a residence permit for the foreign partner (C2), and in France also a duty to have sex (C9). The list is much longer in the five Nordic countries; of these Sweden, like the Netherlands, attaches the most consequences to informal cohabitation. In the latter two countries the main remaining differences between marriage and cohabitation relate to paternity (A1), alimony (B3), intestate inheritance (B6), and surname (C1); and in Sweden also to second-parent and joint adoption (A4 and A5), and in the Netherlands also to property and debts (B1 and B2) and to the right to refuse to testify against each other (C4).

¹⁹ See the introduction in the chapter on Iceland.

²⁰ Apart from the obvious possibility of individual adoption (A6).

In most countries informal cohabitation carries only slightly less legal consequences for same-sex cohabitants than for different-sex cohabitants, with most differences being in the parenting field. The exception is Iceland, where same-sex cohabitants are only entitled to fostering (A7), to organ donation (C7), and to continuation of the rent after the death of one partner (C8),²¹ and different-sex cohabitants to much more.²²

In general it is not unlawful for employers or service providers to distinguish between cohabitants on the one hand, and married or registered partners on the other. With respect to housing, insurance and other services, such discrimination is only prohibited in Finland, France, Belgium and the Netherlands (D1 to D5). And with respect to most spousal benefits in employment, only France, Belgium and the Netherlands prohibit such discrimination (D6 and D7).²³

The levels of legal consequences of civil marriage

Within the limitations of this study (only 33 of the hundreds of possible legal consequences of marriage have been taken into account; and for each only five different answer-codes were available), an effort was made to quantify the level of legal consequences of each type of relationship status. This quantification of course introduces a further limitation: all 33 legal consequences carry the same weight in the calculation, and the five answer-codes were crudely translated in zero points for the answer 'no', one point for the answer 'no, but' or 'doubt', two points for 'yes, but', and three points for 'yes'. With that in mind, some general conclusions may be drawn from the levels of legal consequences (LLC) as represented in the levels tables and pie charts in the Comparative overview.

The first striking result is that in no country the level of legal consequences of different-sex marriage comes near the possible maximum of $3 \times 33 = 99$ points. It would seem that in Belgium and France different-sex marriage has the highest level of consequences, but in both it is only a level of 76 points (see comparative table O). In the other countries the level is even lower, with the lowest level for different-sex marriage in Denmark (61 points), Finland and Sweden (both 64 points) and Germany (65 points).²⁴ Clearly there is no European consensus as to the precise (level of) consequences that the law should attach to marriage. The differences between the countries are not so great with respect to parenting consequences and material consequences in private law (see tables A and B part one), but quite substantial with respect to material consequences in public law (table B parts two and three) and with respect to other consequences (table C).

To enable a good comparison between countries, the level of legal consequences in points have been translated into percentages, with the total number of points for different-sex marriage in each country being defined as 100%. This allows for the conclusion that in the Netherlands the level of legal consequences (hereafter: LLC) of same-sex marriage is 96%, while in Belgium it is only 88%.²⁵ In other words: 4% of the LLC of different-sex marriage in the Netherlands does not apply to same-sex marriage. This 4% is represented by a red segment in the pie chart for the Netherlands (see the *pie charts* based on table O).²⁶ For

²¹ Apart from the obvious possibility of individual adoption (A6).

²² See A2, A3, A4, A5, B5, B7, B8, B13, B16, B17, C2 and C3.

²³ Only in Belgium this prohibition of discrimination in employment extends to survivor's pensions (D6).

²⁴ It can be observed that the number of points for marriage in these four countries is even lower than the number of points (67) for registered partnership in the Netherlands.

²⁵ This means that in Belgium the LLC of same-sex marriage is even lower than the LLC of registered partnership in the Netherlands and Sweden (see below).

²⁶ The few consequences of different-sex marriage in the Netherlands that do not or not fully apply to same-sex marriage are: paternity and joint (intercountry) adoption (see A1 and A5 in the chapter on the Netherlands).

Belgium 12% of the LLC of different-sex marriage does not apply to same-sex marriage; therefore the red segment in the pie chart for Belgium is bigger.²⁷

A look at the pie charts based on table A shows much bigger red segments, both for the Netherlands and for Belgium: this illustrates that the LLC not applicable to same-sex marriage is much larger with respect to parenting consequences, than with respect to material and other consequences. In fact, both in the Netherlands and in Belgium the LLC for same-sex marriage is 100% as far as material and other consequences are concerned (see the levels tables B and C).

Because same-sex marriage is not available in the other seven countries, there is no LLC for same-sex marriage in these countries (represented as an LLC of '0%' in the tables).

The levels of legal consequences of informal cohabitation

The pie charts in the Comparative overview can best be read clockwise, that is starting with the green segment. The green segment represents the LLC of informal cohabitation.

In all pie charts there is a green segment, because in all nine countries informal cohabitation (by same-sex or different-sex partners) carries at least some legal consequences, and this not only in the field of material consequences (see the pie charts based on the three parts of table B) but also in the field of parenting (A) and in the field of 'other' consequences (C). This is an important finding. The nine countries for this study were selected because of their having introduced a form of registered partnership, not because they attach legal consequences to informal cohabitation, but they happen to do that, too. This will not be a mere coincidence: it seems reasonable to assume that countries that already recognise (same-sex) informal cohabitation are more likely to then also introduce (same-sex) registered partnership.

Nevertheless, the LLC for informal cohabitation varies very much from country to country, and from field to field (and, only in Iceland, also between same-sex and different-sex cohabitation, see above). For different-sex cohabitation the overall LLC (see the pie charts based on table O) is highest in the Netherlands and Sweden (75%),²⁸ followed by Iceland (63%), Norway, Finland and Denmark (around 55%), and then by Belgium and France (around 40%), and is lowest in Germany (23%). For same-sex cohabitation the overall LLC is generally only a little lower, except in Iceland, where the LLC for same-sex cohabitation (23%) is just over a third of the LLC for different-sex cohabitation. Only in Germany the LLC for same-sex cohabitation is even lower (17%).

As far as the LLC for informal cohabitation is concerned, the countries are especially dissimilar with respect to material consequences in public law (tax and social security): see the great variation among the pie charts based on parts two and three of table B. In some countries all, or almost all tax and social security consequences of marriage are also attached to cohabitation (the Netherlands, Denmark, Sweden), or at least to *different-sex* cohabitation (Iceland, Finland). The same is true for Germany and Norway, but only with respect to *negative* tax and social security consequences of different-sex cohabitation (see pie charts based on table B part three). In Belgium and France, in the field of tax and social security, the LLC of cohabitation is much smaller; which is also true for the LLC for same-sex cohabitation in Germany, Norway, Iceland and Finland.

All countries except Germany are quite generous in attaching parenting consequences to different-sex cohabitation (see the pie charts based on table A). In the Netherlands the LLC for this is as high as 86%, and for Belgium, France and the Nordic countries it is at

²⁷ In Belgium the consequences that do not apply to same-sex marriage are: paternity, parental authority, second-parent adoption and joint adoption (see A1, A3, A4 and A5 in the chapter on Belgium).

²⁸ This means that in the Netherlands and Sweden the LLC of informal cohabitation is even higher than the LLC of registered partnership in Belgium, France and Germany (see below).

least 50% (in Germany it is 26%). This reflects the development that the law of many European countries has undergone in response to the social fact that an increasing number of children is born outside marriage. With respect to parenting, the LLC for *same-sex* cohabitation is only a little lower in the Netherlands, Belgium, Sweden, Finland and Germany, while in other countries it is substantially lower (especially in France and Iceland). As far as same-sex cohabitation is concerned, the LLC for parenting is lowest in France, Germany and Iceland (around 20%), and highest in the Netherlands (81%) and Finland (67%).

In all nine countries, the level of legal consequences of informal cohabitation has been growing over time. In none of them there is one general law specifying the legal consequences of cohabitation. Even the general cohabitation laws in force in Sweden (since 2003, merging several earlier laws) and in Norway (since 1991), primarily only deal with redistribution of property after splitting up (B4) and with continuing the rent after the death of one partner (C8).

In the tables of some of the national chapters it is specified when legislation or courts have started to consider certain consequences of marriage also applicable to (different-sex and/or same-sex) cohabitation. So far it has not been possible to fully document this historical step-by-step process for all countries. The earliest given examples for same-sex cohabitation date back to the 1970s: partner immigration rights (C2) in Sweden and the Netherlands, and rent law rights (C8) in the Netherlands. Even earlier examples relate to different-sex cohabitation only: since 1965 such cohabitation could negatively impact basic social security payments in the Netherlands (B16), a disadvantage that was extended to same-sex cohabitation in 1987; and since 1970 the courts in France have started to award compensation to the surviving different-sex partner in cases of wrongful death (B5), an advantage that was extended to same-sex cohabitants in 1995. It should be noted that in France most legal consequences of cohabitation at first only applied to different-sex cohabitation. Only the law introducing registered partnership in 1999 extended most of these consequences to same-sex cohabitation. The earliest given examples from Belgium relate to compensation in case of wrongful death (B5, since 1989 for different-sex cohabitants), to partner cover in public health insurance (B9, since 1996), and to immigration (C2, since 1997). The earliest given example from Norway also relates to immigration (C2, since 1990). In Germany rent law rights (C8) were recognised for different-sex cohabitants in 1993, and for same-sex cohabitants in 2001 (simultaneously with the introduction of same-sex registered partnership).

After the first legal recognition of informal cohabitation, the LLC of cohabitation has gradually risen in most of the nine countries; it could be expected to rise further, even after the introduction of registered partnership.

The levels of legal consequences of registered partnership

In the pie charts in the Comparative overview, the LLC of registered partnership is represented by the green and yellow segments together.²⁹ This LLC is highest in the Netherlands (96%) and Sweden (91%), followed by Finland, Norway, Iceland and Denmark (around 85%), and least for Germany (68%), France (around 60%) and Belgium (around 50%); see table O. The LLC of registered partnership in the Netherlands and Sweden is even higher than the LLC of same-sex marriage in Belgium (88%). And the LLC of registered partnership in Germany, France and Belgium is even lower than the LLC of informal cohabitation in the Netherlands (around 75%) and Sweden (around 70%).

The LLC of registered partnership in the Netherlands and in the five Nordic countries is so high because registered partnership results in almost all the consequences of marriage;

²⁹ It should be remembered that for the purposes of this study it is assumed that registered partners are always living together, even when not legally required to do so. Therefore all the legal consequences of informal cohabitation are assumed to also apply to registered partnership.

therefore, registered partnership in these countries can be characterised as '*quasi-marriage*'.³⁰ The lower LLC of registered partnership in Germany, France and Belgium signals that in these countries registered partnership only has a limited selection of the consequences of marriage; therefore registered partnership in these three countries can be characterised as '*semi-marriage*'.³¹ It should be noted however, that in Germany and France there are proposals and plans to increase the LLC of registered partnership. Similarly, in several other countries at first the LLC of registered partnership was a little lower than it is now. In these countries adoption by same-sex registered partners (A4 and/or A5) only became possible after the enactment of subsequent legislation (Denmark in 1999, Iceland in 2000, the Netherlands in 2001, Norway in 2002, Sweden in 2003); in the Netherlands further subsequent legislation in 2002 provided that registered partners automatically acquire joint authority over children born during their registered partnership (A1 and A3). Quite possibly, the LLC of registered partnership could still rise further in most countries, even after the opening up of marriage to same-sex couples.

The '*quasi-marriage*' character of registered partnership in the Nordic countries and the Netherlands becomes even more apparent in the LLC of their registered partnership in the field of *material* consequences (see tables B). With respect to these material consequences the LLC of registered partnership is the same as the LLC of marriage: 100%. In Belgium, France and Germany, on the other hand, the LLC of registered partnership in the field of material consequences is lower; this is in particular the case with respect to *positive* material consequences in *public* law (see table B - part two): 33% in Belgium, 41% in Germany, and 58% in France. Only with respect to the *negative* material consequences in public law, in Germany and France, is the LLC of registered partnership the same as that of marriage (100%).

As seen above, the main differences between registered partnership and marriage tend to relate to *parenting* consequences. This can also be seen in the LLC in the field of parenting (see table A). In this field the LLC of registered partnership is a little lower in the Netherlands (86%), Sweden (76%) and Finland (67%), and much lower in Belgium (around 55%), in Norway, Iceland, Germany and Denmark (around 40%),³² and in France (17% for same-sex, 50% for different-sex).

In the field of *other* legal consequences (see table C), the LLC of registered partnership is 100% in the Netherlands, Denmark, Norway, Iceland, and also in Germany (an indication that in Germany registered partnership is already almost a '*quasi-marriage*'). The LLC in this field is a little lower (around 90%) in Finland, because registered partners are not allowed to use each other's surname (C1), and in Sweden, because it is not certain that organ donation between male same-sex partners is allowed (C7). In Belgium and France the LLC in this field is much lower (around 55%).

Only in Belgium, France and the Netherlands registered partnership is open to different-sex couples. Of these countries, the Netherlands has the same LLC (96%) for different-sex and same-sex registered partnership. In Belgium and France the LLC is a little higher for different-sex registered partnership than for same-sex registered partnership (see table O); this is completely due to differences in the field of parenting (see table A).

The exclusion (and gradual inclusion) of same-sex couples

Traditionally, same-sex couples have been excluded from marriage, and from the rights and obligations that result from marriage. This study illustrates that as yet this exclusion has not been completely abolished in any European country, although all nine countries

³⁰ See note 2, above.

³¹ *Idem*.

³² In Denmark the parenting LLC of registered partnership, exceptionally, is lower than that of informal cohabitation. This is so because an informal cohabitant can individually adopt a child, while a registered partner cannot (see A6).

have attached a gradually growing number of the legal consequences of marriage to the informal cohabitation of same-sex partners, and all have introduced a form of registered partnership more or less analogous to marriage, while two countries (the Netherlands and Belgium) have also lifted the heterosexual exclusivity of marriage.

The continuing exclusion of same-sex partners from the legal consequences of marriage is represented by the red segments in the pie charts of the Comparative overview. The overall level of legal consequences from which same-sex couples are still excluded (see pie charts based on table O) is highest in France (45%), followed by Germany (32%), much lower in Denmark, Iceland, Norway, Finland and Belgium (around 15%), and lowest in Sweden (9%) and the Netherlands (4%). In the field of *parenting* (see pie charts based on table A) the ranking is similar, but the exclusion considerably higher, ranging from 83% in France and 63% in Germany, via around 55% in Iceland, Denmark, Norway and Belgium, to 33% in Finland, 24% in Sweden and 14% in the Netherlands. Even in the field of *material* consequences, same-sex partners are still excluded, but only in Germany and France (see pie charts based on table B, parts one and two). Same-sex partners are also still excluded in the field of *other legal consequences*, but only in France, and a little in Finland and Sweden (see pie charts based on table C).

What are the main rights that (married) different-sex couples have but from which same-sex couples are excluded (whether they are married, registered as partners, or just cohabiting)?

In all countries same-sex partners are excluded from automatically both becoming the legal parents of the child born to one of them (A1, a situation that only applies to lesbian couples). In France, Denmark, Iceland, Norway and perhaps Germany women in lesbian relationships are also excluded from medically assisted insemination (A2). In all countries but Sweden and the Netherlands, same-sex partners are excluded from joint adoption (A5), and in all but Sweden from inter-country joint adoption (in theory one of the easiest ways for gay men to get children). In Belgium, France, Germany and Finland same-sex partners are also excluded from second-parent adoption (A4), and in Belgium and France also from any possibility of acquiring joint authority/responsibility for a child of one of them (A3 and A4). Individual adoption by a person in a same-sex relationship (at least in theory, and only when certain strict conditions are met) is not excluded in any of the nine countries (A6); the same probably applies to the possibility of same-sex couples becoming foster-parents (A7).

In France and Germany same-sex partners are excluded from statutory survivor's pensions (B12), and they have to pay a far higher inheritance tax than married different-sex partners (B13). In Finland and France same-sex partners cannot use each other's surnames (C1). In France the same-sex partner of a French citizen is not entitled to French citizenship (C3), for medical purposes same-sex partners are not considered as each other's next of kin (C6), they are not allowed to donate organs to each other (C7), and without a testament one same-sex partner cannot inherit from the other (B6).

The exclusion of same-sex couples does not only relate to the legal consequences of marriage, but also to *status*, and to procedural/ceremonial aspects of status. The status of being married is not (yet) available to same-sex couples in France, Germany and the five Nordic countries. The lower ranking of the status of being registered as partners is not only underlined by the lesser level of legal consequences attached to registered partnership, but also by the fact that in France, and in several *Länder* of Germany, the Registry of births, marriage and deaths has not been made competent to perform a partnership registration (see table F).³³ It could be argued that the same follows from the fact that in the Nordic countries churches have not been made competent to perform

³³ See Daniel Borrillo, 'Pluralisme conjugal ou hiérarchie des sexualités: la reconnaissance juridique des couples homosexuels dans l'Union Européenne', *McGill Law Journal*, vol. 46, 2001, p. 877-922.

partnership registrations,³⁴ and from the fact that in France (and Belgium) a registered partnership can be dissolved unilaterally by one of the partners (G3).

Furthermore, it is not only through legislation that same-sex partners have been excluded; employers and service providers also discriminate against them. Such social discrimination between same-sex and different-sex partners of identical status, and between married and registered partners, is now prohibited in all countries with the exception of Germany (see table D). For the time being this underlines the lower ranking in the law of Germany of the status of being registered as partners, and indeed of same-sex partners in general. In the other eight countries the enactment of anti-discrimination legislation covering sexual orientation (and civil status) can be seen as one of the necessary steps in the process of abolishing the exclusion of same-sex partners. The first country to do so was Norway (1981), followed by France (1985, but explicitly only since 2002), Denmark and Sweden (both in 1987), the Netherlands (1992), Finland (1995), Iceland (1996) and Belgium (2003). Most countries have elaborated their anti-discrimination further in subsequent legislation. An earlier step in the same development in all nine countries has been the elimination of different age limits and other anti-homosexual discrimination from their criminal law. The first country to complete those changes in its Penal Code was the Netherlands (1971), followed by Norway (1972), Denmark (1976), Sweden (1978), France (1982), Belgium (1985), Iceland (1992), Germany (1994) and Finland (1998).³⁵

This study documents the stages by which the nine European countries have taken steps to reduce the exclusion of same-sex couples in family law and in legal fields related to family law (such as social security, tax law, immigration, etc.). For three countries the first given example of a legal consequence of marriage being made available to (cohabiting) same-sex partners relates to residence permits (C2): the Netherlands (1975), Sweden (1970s) and Norway (1990), which also is among the first examples in Belgium (1997). The earliest example from Denmark (1986) relates to inheritance tax (B13), which also is among the first examples in the Netherlands (1981). The earliest examples from France (1993) and Belgium (1996) relate to health insurance (B9). The first given example from Germany (2001) concerns rent law (C8), which is also among the first examples in the Netherlands (1979), Sweden (1988) and Norway (1991). See the national chapters for more information about these first steps on the road to recognising cohabiting same-sex partners. As was pointed out above, in several countries many more steps have been taken on that road.

From 1989 several countries have also taken another road to reduce the exclusion of same-sex partners: the introduction of some form of registered partnership. Denmark was the first to do so in 1989, Norway followed in 1993, Sweden in 1995, Iceland in 1996, the Netherlands in 1998, France in 1999, Belgium in 2000, Germany in 2001 and Finland in 2002.

And from 2001 a third road was taken: the opening up of marriage to same-sex couples, first in the Netherlands (2001) and then in Belgium (2003). And while the introduction of registered partnership did not mean the abandonment of the instrument of attaching legal consequences to informal cohabitation, the opening up of marriage has not meant that the new institution of registered partnership was abandoned.

It seems likely that other countries will follow the Netherlands and Belgium in opening up marriage (in fact, Sweden and Spain are already preparing to do so, as is Canada), that more countries will introduce registered partnership (in fact, it has already been introduced in most autonomous regions of Spain, while in Luxembourg registered partnership becomes possible in November 2004, and in Switzerland and the United Kingdom the legislation is almost ready; and more countries are preparing to legislate),

³⁴ In the five Nordic countries (but not in France, Belgium, the Netherlands and Germany) it is still possible to start a civil marriage in church (F3).

³⁵ See the appendix to Kees Waaldijk, 'Taking same-sex partnerships seriously: European experiences as British perspectives', *International Family Law*, 2003, p. 84-95 (online available at www.emmeijers.nl/waaldijk).

and that many countries will start or continue to attach (more) legal consequences to the informal cohabitation of same-sex couples (as Portugal and Hungary have already done).

The developments in the nine countries so far have been summarised in the following table.

Overview of stages of legal recognition of same-sex partners

	1970-1974	1975-1979	1980-1984	1985-1989	1990-1994	1995-1999	2000-2004
Completion of decriminalisation of homosexuality	Netherlands Norway	Denmark Sweden	France	Belgium	Iceland Germany	Finland	
Legislation against sexual orientation discrimination			Norway	France Denmark Sweden	Netherlands	Finland Iceland	Belgium
First recognition of same-sex cohabitation		Netherlands Sweden		Denmark	Norway France	Belgium (Finland?) (Iceland?)	Germany
Introduction of registered partnership				Denmark	Norway	Sweden Iceland Netherlands France	Belgium Germany Finland
Opening up of marriage							Netherlands Belgium

Explaining the frequency of partnership registration

One of the aims of this study has been to make it possible to assess whether the different frequencies of partnership registration in the different countries can be explained by the different levels of legal consequences of registered partnership. It is not (yet) the intention to make that assessment; for that purpose reliable statistical data about registration frequencies from all countries would be necessary, plus the close cooperation of statisticians, demographers, sociologists and lawyers. That will have to wait until a later stage. For now, this study tries to provide a reliable and quantified indication of the levels of legal consequences attached to marriage, cohabitation and registered partnership.

There are various problems that make it difficult to use the calculated levels of legal consequences as explanations for different frequencies of partnership registration. In the first place, it seems probable that legal consequences are at most *one* of the factors influencing people in their decisions whether or not to register their partnership. Other factors (social, psychological, religious, etc.) will also play a role, perhaps a bigger role.³⁶ It also seems probable that many people are not fully and accurately aware of the legal consequences that are attached to registered partnership (and to other relationship

³⁶ A first, small survey of people who registered as partners in the Netherlands during the first year after the introduction of registered partnership, suggests that for most interviewees 'emotional considerations' do indeed play a role, but generally not a bigger role than 'financial/practical' considerations. See Yvonne Scherf, 'Registered partnership in the Netherlands. A quick scan', Commissioned by the Ministry of Justice, published in Amsterdam: by Van Dijk Van Soomeren en Partners BV, 1999, p. 23-24.

statuses).³⁷ Their decisions may thus be guided by misconceptions about what the legal consequences are. And apart from the legal consequences there may well be other legal factors influencing the frequency of partnership registration. For example, certain couples (foreigners, non-residents) may be excluded from partnership registration in a particular country (see table E); and the availability of easy ways to end a registered partnership (outside court as in the Netherlands, or even unilaterally as in Belgium and France, see table G) may make partnership registration more (or for some people: less) popular. It is also possible that some people choose to register as partners, not to obtain particular legal consequences, but simply to make it easier to prove that they are a couple; this could for example be the case with couples that do not (permanently) live together and therefore have difficulty in qualifying as cohabitants.

Let's assume, however, that at least some people base their decision whether or not to register as partners on the legal consequences of doing so. Their decision would then not be influenced by the total LLC of registered partnership, but by the *additional LLC* of registered partnership as compared to the LLC of informal cohabitation. If people are looking rationally at the law, they would look what legal consequences they would obtain in addition to what they already enjoy as informal cohabitants. In the pie charts in the Comparative overview the *additional LLC of registered partnership* is represented as yellow segments. Their size could perhaps (partly) explain the different frequencies of partnership registration in the different countries. A complication in this context in the Netherlands and Belgium is the availability of marriage to same-sex couples. Some of the cohabitants who would be attracted by the additional LLC of registered partnership could also choose to get married.³⁸

Another complication is that while some legal consequences are clearly advantageous to registered partners (increased parenting rights, compensation for wrongful death, inheritance, lower taxes, higher social security, pension rights, immigration and citizenship, etc.),³⁹ other consequences are clearly disadvantageous (higher taxes, lower social security).⁴⁰ And there are also legal consequences where it depends on the circumstances, and from whose perspective you look at it, whether they are advantageous or disadvantageous. This is true for joint property (B1), joint debts (B2), alimony (B3), redistribution of property at splitting up (B4), domestic violence protection (C5), and the duty to have sex (C9). And even if a certain legal consequence is clearly advantageous, it will depend on the circumstances whether the advantage will or could actually apply. For example, a male couple will not benefit from the possibility of medically assisted insemination (A2) nor from a presumption of 'paternity' (A1); and more generally, the parenting consequences will only be relevant for partners who have or would like to have children. Several consequences can only be advantageous for the partner who outlives the other.⁴¹ And finally, for certain legal consequences it seems unlikely that they would influence more than a few people in their decisions whether or not to get registered as partners; examples are the right to refuse to testify against each other (C4), the right to donate organs to each other (C7) and the duty to have sex (C9).⁴²

³⁷ The same study found that one third of the interviewed registered partners could not name any legal consequences of registered partnership (Scherf, 1999, p. 25).

³⁸ Yet another complication relates to the passage of time. The levels of legal consequences calculated in this study reflect the legal situation as it was sometime early in 2004. By that time in several countries the level of legal consequences of registered partnership (or of marriage or of informal cohabitation) was already higher than a few years before. To really accurately correlate frequencies of partnership registration to levels of legal consequences, one would need to calculate the levels reflecting the period around (or just before?) the counted partnership registrations.

³⁹ See A1 to A7, B5 to B13, C1 to C4, C6, C7 and C8.

⁴⁰ See B14 to B17.

⁴¹ See B5, B6, B12, B13 and C8.

⁴² Similarly, some people could be influenced by other legal consequences than the 33 included in this study. However, because the 33 consequences were selected (among other reasons) because of their

The conclusion could be that it is unlikely that the additional levels of legal consequences of registered partnership (as represented by the yellow segments in the pie charts of table O) would provide a *precise* explanation of the different frequencies of same-sex partnership registrations in the different countries. A more accurate explanation could perhaps be given, by attaching a weighing factor to each legal consequence (e.g. a weighing factor of 0 for consequences that are unlikely to influence people in their decision whether or not to register; a weighing factor of -1 for negative legal consequences; and a weighing factor of 2 for legal consequences that are most often mentioned in interviews as being decisive) and then recalculating the additional LLC of registered partnership for each country. Such an exercise, however, will have to wait until a later stage.

However, for a *rough* explanation of the different frequencies of same-sex partnership registrations, the data in the pie charts may be good enough. The additional LLC of registered partnership for same-sex couples (see the yellow segments in the pie charts of table O) is *highest* in Iceland (62%) and Germany (51%),⁴³ so in these two countries a higher frequency of partnership registrations could be expected than in the other seven countries. This would be largely due to the very limited LLC of informal cohabitation in these two countries. Same-sex cohabitants in Iceland and Germany have more to gain from partnership registration than same-sex cohabitants in the other countries. The additional LLC of registered partnership for same-sex couples is *lowest* in Belgium (12%), followed by France, Sweden and the Netherlands (around 20%). Therefore in these four countries the frequency of partnership registration could be expected to be lower than in the other four countries. In Belgium and France this would be largely due to the rather limited LLC of registered partnership, and in Sweden and the Netherlands this would be due to the rather high LLC of informal cohabitation. In these four countries same-sex cohabitants have less to gain from partnership registration than elsewhere. In Belgium and the Netherlands the frequency of partnership registration would also be lower because of the availability of marriage to same-sex couples.

In an earlier study I found that over the years up to 1999/2000 the frequency of partnership registration was lowest in Sweden, followed by Norway, then by Iceland and Denmark, and highest in the Netherlands (no figures available for Belgium, France, Germany and Finland).⁴⁴ For Sweden that finding corresponds to the expectation I formulated above, but not for Iceland and the Netherlands. These discrepancies between expectations and findings may be attributable to non-legal factors (see above), or to other legal factors than legal consequences. In the Netherlands, for example, the popularity of partnership registration may be partly due to the possibility to end such a partnership by mutual contract (an option not available in the five Nordic countries and not in Germany, but also existing in Belgium and France).

Statistical data for more years, and for more countries, might give further indications whether or not levels of legal consequences, in general, do indeed partly explain differences in the frequency of partnership registration.

great practical importance for many people, it would be unlikely that many people would be influenced by other consequences than those 33.

⁴³ If you were to correct the figures of table O by not adding but subtracting the points given for negative material consequences in public law (table B part three), the additional LLC of registered partnership would still be highest in Iceland and Germany (and still be lowest in Belgium, France, Sweden and the Netherlands).

⁴⁴ Kees Waaldijk, 'Small Change: How the Road to Same-Sex Marriage Got Paved in the Netherlands', in: Robert Wintemute & Mads Andenaes (eds.), *Legal Recognition of Same-Sex Partnerships*, Oxford: Hart Publishing, 2001, p. 462-464. See also: Patrick Festy, 'The "Civil Solidarity Pact" (PACS) in France: an impossible evaluation', *Population & Sociétés - Bulletin Mensuel d'Information de l'Institut National d'Etudes Démographiques*, no. 369, June 2001.

Conclusions

The concept of 'levels of legal consequences' (LLC) developed and applied in this study, has helped to clarify certain aspects of marriage, cohabitation and registered partnership. There appear to be great similarities between the nine European countries that by early 2004 had introduced some form of registered partnership. Their similarities with respect to marriage are greater than with respect to registered partnership, and yet somewhat smaller with respect to informal cohabitation. And even with respect to marriage there are important differences between the countries, for example as to the precise consequences that are attached to it.

Some misconceptions have been cleared up in this study. For example the idea that registered partnership in Belgium does not carry many legal consequences: the Belgian form of registered partnership is indeed lighter than anywhere else, but because registered partners also profit from the growing number of legal consequences attached to informal cohabitation, the LLC of Belgian registered partnership is not much lower than the LLC of French registered partnership. Another misconception is that registered partnership always has a higher LLC than informal cohabitation; not so, because the LLC of informal cohabitation in Sweden and the Netherlands is actually higher than the LLC of registered partnership in Belgium, France and Germany. And as to same-sex marriage: it can be noted that in the Netherlands same-sex marriage has exactly the same LLC as registered partnership, and that a Belgian same-sex marriage happens to have a lower LLC than a Swedish or Dutch registered partnership.

The LLC concept may help to partly explain the differences between countries in the frequency of partnership registration. In as far as couples actually base their decision, whether or not to register as partners, on the amount of extra legal consequences that would be the result of their partnership registration, the levels of legal consequences calculated in this study suggest the expectation that there will be a more than average number of partnership registrations in Iceland and Germany, and a less than average number in Sweden, Belgium, France and the Netherlands. It may be necessary to adjust this expectation because of the possibility in the latter three countries to end a registered partnership by mutual contract (which may make partnership registration more popular). Perhaps a recalculation of the additional LLC of registered partnership, with a weighing factor for each legal consequence, may provide a more precise explanation of the frequency differences.

Furthermore, the concept of levels of legal consequences may also be useful in dealing with questions of private international law. Could or should a certain national form of registered partnership (or of same-sex marriage) be recognised in other countries, either in general or for the application of specific legal consequences? For this it is important to note that different-sex marriage is almost always recognised by other European countries, although, as we have seen, the actual legal consequences of different-sex marriage (and therefore also its LLC) differ from country to country. The data of this study may thus help courts and other officials to overcome their possible hesitation in recognising foreign relationship statuses. The LLC of a Belgian or Dutch same-sex marriage (or of a Dutch registered partnership) is actually higher than the LLC of a – universally recognised – different-sex marriage from Germany, Finland, Sweden or Denmark.⁴⁵ And the LLC of a registered partnership from one of the Nordic countries is hardly lower. Therefore, in countries with lighter forms of registered partnership (Belgium, France and German), Dutch and Nordic registered partnerships *could* mostly be treated on the same basis as marriage. A more difficult question is whether in the Netherlands and in the Nordic countries a Belgian, French or German registered partnership should be treated on the same basis as a Dutch or Nordic registered partnership.

Finally, the study has also demonstrated that in all nine countries same-sex couples do not yet have access to all of the legal consequences that are attached to different-sex

⁴⁵ See the points (rather than the percentages) in table O.

marriage. However, an increasing number of these consequences has been made available to same-sex couples, through the incremental legal recognition of informal cohabitation and/or through the introduction (and subsequent extension) of registered partnership, and also, in two countries so far, through the opening up of marriage.

**The adoption of the laws:
Contextual and historical factors**

Variations on an Equitable Theme: Explaining International Same-Sex Partner Recognition Laws

M. V. Lee Badgett*

Introduction

As an historic political and policy innovation, the formal legal recognition of same-sex couples has spread rapidly throughout Western Europe since 1989. The Netherlands and Belgium now allow same-sex partners to marry, and Denmark, Norway, Sweden, Iceland, France, Germany, and Finland have created a new partner recognition status alongside marriage for same-sex couples and sometimes for different-sex couples (see Table 1). Other countries in Europe have recognized same-sex partnerships for particular purposes, such as for immigration rights, or in geographically limited jurisdictions. Much more limited change has occurred outside Europe. In North America, Canada is expected to soon expand marriage for same-sex couples from Ontario, British Columbia, and Quebec to the entire country. Massachusetts will soon become the only one of the United States to allow same-sex couples to wed. But decentralization in family policy and powerful political opposition have made the rest of the United States much slower to take action, with only a few other states providing even a limited form of recognition of same-sex couples.¹

Outside of legal scholarship, few social scientists have systematically studied these policy innovations across countries, despite their clear political, social, cultural, and economic implications. This article draws on conceptual frameworks of institutional change from several social sciences to explain why nine (or perhaps soon, eleven) countries recognize same-sex partnerships, while other countries with similar economic statuses, social histories, and religious traditions do not. One strand of theory focuses on the efficiency-enhancing potential of institutions. Legal recognition for same-sex couples certainly has the potential to strengthen the economic positions of lesbian, gay, and bisexual people and their families, without any obvious negative impact on other kinds of families. However, a second strand of theory focuses on the conflict over institutional change. That theoretical tradition focuses on political and cultural barriers to mobilizing support for SSPR laws, particularly the existence of powerful opponents to change.

This paper uses both quantitative and qualitative comparisons of efficiency-related and conflict-related variables, including social norms, religiosity, political resources, and economic incentives, to explain the pattern of SSPR adoption. The findings suggest that

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¹ The state of Vermont has created "civil unions" that give same-sex couples the same rights as married couples within the state's borders. California and Hawaii also offer a less expansive form of recognition to same-sex couples.

tolerant attitudes toward homosexuality, low religiosity, and high levels of cohabitation are the primary predictors of a country's legal recognition of same-sex partners.

Literature Review

Analytical writing on this topic has come primarily from legal scholars, with most of their attention going to the mechanics of the laws and relatively little to the reasons for the adoption of such laws. In one notable departure from that tradition, Kees Waaldijk posits a useful "law of small change" to account for the passage of same-sex partner recognition laws in Europe (Waaldijk, 2001). Over time, he points out, European countries have gradually, steadily, and mostly sequentially liberalized laws that place gay men and lesbians in a second-class position. The standard path outlined by Waaldijk involves decriminalizing sodomy, equalizing the age of consent for same-sex sexual relationships, enacting anti-discrimination legislation, and finally addressing partnership and parenting rights. The most recent step for nine countries was to create a relationship status with at least some of the rights and responsibilities of marriage (or access to actual marriage in the Netherlands and Belgium) for same-sex couples. Table 1 summarizes the countries with such laws and the rights and responsibilities that go with the laws.

Eskridge offers a similarly optimistic path for change (Eskridge, 2002). He argues that cohort replacement and intra-cohort shifts in homophobic attitudes create a more liberal social environment for gay and lesbian people. These environmental changes then encourage gay people to be more open about their existence and to mobilize politically. Openness and mobilization provide more information that falsifies the stereotypes and misinformation that perpetuate homophobia, thus contributing to less homophobia and more progressive legal changes that favor equality for gay people and same-sex couples. These new progressive laws then perpetuate the cycle of change.

Waaldijk, Eskridge, and others also note the importance of thinking about broader social characteristics that might contribute to some nations' more progressive policies for gay couples. Henning Bech ascribes Denmark's innovative 1989 registration law for same-sex partners to a Danish tradition of "frisind" or broad-mindedness combined with a sense of social obligation to be an innovator in matters of equality (Bech, 1992, p. 142; see also Wintemute, 2001). More generally, as various authors argue, same-sex partner recognition laws may have emerged in countries with a weaker Christian or other fundamentalist political presence, strong gay and lesbian social and political mobilization, strong traditions of tolerance for minorities that include liberal attitudes toward gender nonconformity and sexuality, less religiosity, less direct democratic decision-making institutions (i.e. fewer opportunities to put the issue before voters), and a declining importance of marriage as an institution (Bech; Eskridge; Waaldijk; Wintemute).

But the small steps taken by any given country actually constitute a set of outcomes of larger political processes set in a particular political, economic, social, and cultural context. Seeing change as incremental and perhaps even as inevitable does not answer why some countries have started down the incremental path but others have not, nor why some countries have progressed faster than others. One country's path to change may be another country's bloody ideological battlefield. As Klawitter and Hammer suggest in their study of the spread of sexual orientation antidiscrimination laws in the United States, a half-way position might be a final consolation prize rather than a clear step in the direction of continued change (Klawitter and Hammer, 1999). Each step toward passage of laws might require increasing political mobilization and might inspire increasing symbolic opposition, thus slowing or stopping the process of change in some countries. The current effort to amend the United States Constitution to forbid marriage by same-sex couples is an example of an outcome that might limit, rather than expand, the options possible over the short to medium run.

Rather than assuming the inevitability of change, this study attempts to understand change by drawing on the traditions of comparative research on social policy in various social sciences. Many somewhat related topics have attracted the attention of

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comparative scholars, such as international variation in welfare state benefit provision or in the representation of women in Parliament. Perhaps the most relevant literature to the topic at hand, however, is a set of studies of differences in the provision of sexual orientation antidiscrimination laws, same-sex domestic partnership, and marriage-related laws across the fifty United States.² The political debates and conflicts that surround those statewide legislative decisions are quite similar in time frame and substance to the national debates on same-sex marriage and partner registration laws. In addition, studies explaining differences across states call on empirical methods and theoretical frameworks that are similar to those used in international comparative studies of, for instance, the characteristics of welfare state institutions or representation of women in parliaments. The theoretical frameworks used in the studies of gay rights laws in the United States highlight variables that reflect the power of interest groups and social movements along with measures reflecting cultural variables, such as educational levels, religiosity, or attitudes toward gay people. Recent studies show that several of these factors explain variation in the existence of gay-positive laws in the United States:

- *Attitudes:* Proxies for attitudes toward lesbian and gay people, such as the proportion of college-educated people or urbanization, which are also individual characteristics that are associated with greater support for gay rights, tend to increase the likelihood of pro-gay civil rights legislation and decrease the likelihood of anti-gay actions related to marriage laws (Barclay and Fisher, 2003; Haider-Markel and Meier, 1996; Haider-Markel, Joslyn, and Kniss, 2000). More direct measures of attitudes toward gay civil rights and/or gay sexual activity appear to explain statistical variation in passage of antidiscrimination but are not significant predictors of anti-gay marriage laws (Lewis, 2003).
- *Power of gay social movements:* Measures of the power of interest groups or social movements also influence passage of gay-related laws. Places with more members of gay rights organizations have a higher likelihood of rejecting anti-gay laws (Barclay and Fisher, 2003), and passing antidiscrimination laws (Haider-Markel and Meier, 1996), although in one recent study the size of interest group membership had no significant effect (Lewis, 2003). Haider-Markel, et al., (but not Wald, et al.) also find that openly gay elected officials have an independent positive and statistically significant effect on the likelihood of passing gay rights laws.
- *Power of opponents:* The strength of opposing groups, measured as the proportion of people in Fundamentalist Protestant religious groups and other religious adherents who are likely to oppose gay rights, has a less consistent effect. In some cases higher measures of religiosity reduce the likelihood of pro-gay positions (Wald, et al., 1996; Lewis's regressions on laws against same-sex marriage; Haider-Markel and Meier's regressions on votes in Colorado and Oregon), but in other studies potential religious opponents do not appear to matter, at least in terms of statistical significance (Haider-Markel and Meier's cross-state regressions; Haider-Markel, Joslyn, and Kniss; Lewis's regressions on statewide gay civil rights laws; Barclay and Fisher). These differences in findings might be related to variation in the measures used by the authors.
- *Ideology:* Broader ideological measures also explain variation in statewide gay-related laws. Measures of liberalism (Lewis) and the proportion of votes for Bush in 1992 (Haider-Markel, Joslyn, and Kniss; Haider-Markel and Meier in Colorado and Oregon regressions) affect gay rights law passage in the expected way, although other studies find that similar ideological measures are not statistically significant (Wald et al.).

² The laws related to marriage generally specify that a state will not allow same-sex marriages within the state and that the state will not recognize a marriage contracted in another state by a same-sex couple. Most of these laws were passed in the wake of a 1993 ruling by the Supreme Court of Hawaii that seemed to be the first step toward allowing same-sex couples to wed in Hawaii (Barclay and Fisher, 2003).

Although these studies of differences in gay-related laws within the United States provide a useful starting point for studying international variation in partnership laws, the nature of the institution that is at the heart of the controversy—marriage—may require a different approach. The implications of expanding the access to marital rights and responsibilities on the behavior and well-being of families suggests that we must consider economic as well as political influences on change.

Conceptualizing Institutional Change

An alternative way of approaching the question that brings in new and potentially important influences draws on social science theories of institutional change. This theoretical context allows supplementing and reordering the influences suggested earlier by either legal scholars or political scientists, all within a discussion of institutional change. We can think of SSPR laws as institutions in the sense that they are a “set of rules that structure social interactions in particular ways” (Knight, 1992, p. 2). Rules about who is recognized as a significant other will influence the legal and economic relationships of members of the family to each other as well as the relationship of family members to non-family members and the state.

Before thinking about how the two broad perspectives outlined below might shed light on the development of SSPR laws, we might well first question how to characterize these laws. Do the SSPR laws represent the sort of significant change that most discussions of institutions entail, or are they simply a technical correction to existing marriage laws, changing only one of the conditions for entering a marriage? Some lesbian, gay, bisexual, and transgender advocates clearly view the fight for marriage as assimilationist—that is, reflecting an acceptance of mainstream values and institutions—and at best a relatively minor change in the legal landscape that shapes the quality of human life.³ However, I would argue that the issues discussed in the debate—the nature of family, the purpose of marriage, the relationship of religion and the state—as well as the tenacity of many gay and lesbian people and their allies who advocate for the right to marry and the equal ferocity of the right-wing (and even more moderate) efforts to prevent same-sex marriage, suggest that we are talking about a change of historic proportions.

Viewing SSPRs as examples of new institutions or significantly changed old institutions allows us to apply two different understandings of institutional change—one rooted in efficiency and the other in social conflict—to the adoption of SSPR laws. To the extent that different countries experience different economic and political contexts, we can use that variation to understand the differential emergence of SSPRs and shed light on the debate over institutional change.

Pressure for change—Efficiency: Neoclassical economists tend to see formal (e.g. laws) and informal (e.g. cultural norms) institutions as simultaneously being constraints shaping human behavior and constructs fulfilling important social functions.⁴ Institutions evolve to make societies more productive, perhaps in a Darwinian process of survival of the institutions that make for the fittest economies (e.g. North, 1991). In the context of family law, economists and other scholars have suggested several ways that marriage may enhance efficiency for couples and, therefore, for society as a whole:

- *Promoting specialization of labor:* Becker argues that the marriage contract allows for increasing household efficiency through a sexual division of labor that promotes higher productivity through lifelong specialization (Becker, 1991). Without the

³ See, for instance, Paula Ettelbrick, 1989.

⁴ In earlier work, I outline the many ways that lack of access to marriage may influence the behavior and economic status of same-sex couples in the United States (Badgett, 2001), although the behavioral effects are not my interest in this paper.

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presumed permanence of the household that the marriage bond implies, specialization by either party would not necessarily be efficient in the long-term.

- *Reducing transaction costs*: Pollak (1985) argues that marriage promotes efficiency through reducing transaction costs for couples, removing the need to renegotiate the terms of the legal relationship as couples experience changed circumstances.⁵
- *Providing social insurance*: Pollak also notes that wealth and income pooling across individuals and families provides insurance against bad times, such as the failure of a harvest or the loss of a job.
- *Signaling commitment*: Eskridge (1996) argues that the willingness to marry is an important signal of commitment to a relationship. The commitment to a long-term relationship underlies the specialization, transaction costs, and social insurance functions of marriage.
- *Taking advantage of economies of scale*: By encouraging larger household sizes (more than one adult), marriage promotes situations in which economies of scale might be achieved, that is, where doubling the inputs of time and other resources results in more than double the output of family-related goods and services, such as meals or child development (Nelson, 1988).

According to these theorists, the legal institution of marriage promotes efficiency at a social level and at the family level.⁶ Both individual couples and societies have an incentive to seek out and utilize this relatively efficient institution. Individual same-sex couples, especially those with property or children, would have the same economic incentives as different-sex couples to desire access to the legal framework created by marriage, in addition to any other customary benefits of being married.⁷ From a broader social perspective, if marriage improves a couple's economic well-being, then happier and healthier same-sex couples and their children would contribute more to the economic performance of a society. Furthermore, giving same-sex couples access to marriage makes them better off but takes nothing away from other married couples, so the enlightened, efficiency-facilitating policymaker's job is simply to adopt a Pareto-improving modification to existing law.⁸

Existing marriage laws may become viewed as inefficient and, therefore, vulnerable to change for many reasons. First, the emergence of a new family form—or at least a newly visible family form—such as gay or lesbian couples might promote change in existing norms (informal institutions) and laws (formal institutions) to accommodate the “newcomers.” Highly visible gay and lesbian populations would attract the attention of policymakers concerned with providing institutions that contribute to individual well-being and economic productivity.

Second, policymakers might believe that the failure to legally recognize same-sex couples will put their country at a competitive disadvantage. A source for evolutionary pressure on the laws limiting access to marriage is more difficult to identify, however. One possible source of competitive pressure could emerge from the work of Florida and Gates (2001), who find a positive correlation between the proportion of same-sex couples in a metropolitan area and that area's concentration and growth of high-technology industries

⁵ See a related argument for allowing same-sex couples to marry in Badgett (2001).

⁶ Some may argue that marriage is neither necessary nor sufficient to achieve the efficiencies outlined here. The possibility of multiple “equilibria,” i.e. a variety of equally efficient social institutions, would certainly affect our judgment about the efficiency impact of the creation or destruction of an institution. But for a given institution, the efficiency impact of changing access to those institutions would always remain.

⁷ For instance, in many countries married couples receive survivor rights in public pensions or spousal coverage in private health care benefit provision, just to note two examples of well-known and common financial benefits of marriage.

⁸ Several studies in the United States suggest that even the fiscal impact of marriage or marriage-like rights and responsibilities tips in the state's favor (Badgett, 1996; Badgett and Sears, 2003a; Badgett and Sears, 2003b).

in the United States. They interpret the finding as evidence that social diversity and tolerance attract talented workers, and talented workers in a diverse environment attract economic development. If partnership recognition laws both create and reflect national values promoting sexual or family diversity, then having those laws might disproportionately attract more highly-educated migrants who value diversity. However, when Florida and Tinagli (2004) extend this argument to the international context, they do not appear to find a correlation between their "Euro-Tolerance Index" and the size of the crucial economic growth factor in their model, the "creative class."⁹ Finally, efficiency considerations might reduce the likelihood of passing an SSPR law if marriage becomes less efficiency-enhancing, as when certain European welfare states have taken over some traditional responsibilities of the family. Esping-Andersen uses the term "de-familialization" to describe state provision of social insurance, child care, and other such policies (Esping-Andersen, 1999). The impact of de-familialization on SSPR laws is ambiguous, however. On one hand, if marriage has less functional value for creating economically efficient family outcomes, then the demand for change by same-sex couples would likely be reduced. Similarly, from the state's perspective, de-familializing policies would reduce the need to provide an SSPR law in order to reap the efficiency gains associated with improving the well-being of couples and their children. On the other hand, marriage will still enhance well-being as long as the state continues to favor married couples in some ways (e.g. for waiving inheritance taxes) and as long as other contractual elements of marriage have meaning for the couple (e.g. rules for the division of property when a marriage ends).

Pressure for change—Social conflict: Other social scientists propose that institutions are less the outcome of an efficient struggle for survival than an outcome of social and political bargaining in which the more powerful are able to shape institutions that serve their own political and economic interests (e.g. Knight, 1992; Acemoglu, 2003; Acemoglu and Robinson, 2000; Acemoglu, Johnson, and Robinson, 2002). From this perspective, any larger collective value of the institutions is incidental rather than intentional. Much feminist economic analysis shares this emphasis on power, conflict, and redistribution in the structuring of formal and informal institutions related to gender (e.g. Folbre, 1994; Agarwal, 1997; Badgett, Davidson, and Folbre, 2000). In this view, both the structure of institutions and the rules of access to institutions that confer public benefits will be shaped by political competition at least as much as by economic competition.

As argued above, it is difficult to identify an economic interest at stake, since giving same-sex couples access to marriage appears to be a classic example of Pareto-improvement: no one loses economically by opening up marriage to same-sex couples, while some will gain economically.¹⁰ However, some groups might gain in a cultural or political sense by forbidding same-sex couples from marrying. For instance, the Catholic Church has taken a strong stand worldwide against extending any recognition to same-sex couples (Vatican, 2003).¹¹ In the United States, conservative interest groups have long used political battles on gay rights issues as fundraising opportunities, including the battle

⁹ Since they do not have a measure of the size of the gay population, they use a measure of attitudes to create three separate indices, but none of the three appears to be significantly correlated with their dependent variable, the "creative class." See Florida and Tinagli, pp. 29-30.

¹⁰ This Pareto efficiency argument focuses on the possible material gains or losses. Some observers, such as Posner (1992), point out that *utility*, if not resources, might be lessened by the revulsion that some people may feel toward the idea of allowing gay couples to marry.

¹¹ Some selections from the Vatican (2003) document on same-sex marriage and partnership laws: "Those who would move from tolerance to the legitimization of specific rights for cohabiting homosexual persons need to be reminded that the approval or legalization of evil is something far different from the toleration of evil. In those situations where homosexual unions have been legally recognized or have been given the legal status and rights belonging to marriage, clear and emphatic opposition is a duty." "When legislation in favour of the recognition of homosexual unions is proposed for the first time in a legislative assembly, the Catholic law-maker has a moral duty to express his opposition clearly and publicly and to vote against it."

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over same-sex marriage (e.g. Kirkpatrick, 2004). On an individual level, people subscribing to traditional religious beliefs about the sinfulness of homosexuality may be uncomfortable with states' sanctioning of those relationships and would therefore oppose attempts to give same-sex couples marital rights.

We would expect to see governments open up the rights and responsibilities of marriage to same-sex couples under two different kinds of shift in social conflict. First, groups that favor allowing same-sex couples to marry might gain in political strength or social bargaining power. The rising power of left political parties, increasing influence of gay social movement organizations, or declining influence of religious organizations would all make laws recognizing same-sex couples more likely. Second, the defined interests and goals of those who maintain political power might change. If social norms regarding homosexuality or marriage became less restrictive over time, both among elites and the larger public, then laws affirming same-sex relationships would be more likely to emerge.

While the adaptations of efficiency and conflict models outlined here focus on predicting change within a country—whether and why it adopts an SSPR or not—the model should also help explain the pattern of SSPR laws at a point in time. The same hypotheses would apply to asking why some countries have an SSPR in 2003 while others do not. In the next sections, I propose and carry out some tests using two different methodologies, quantitative regression analysis and qualitative comparative analysis, to compare the ability of efficiency and conflict variables to explain the existence of a same-sex marriage or partnership law.

Data and Explanatory Variables

Using the country as the unit of analysis, I collected data on efficiency and conflict related variables for OECD countries, a sample that includes all countries with nation-wide SSPR laws, plus other countries at a similar stage of economic development. With the exception of Denmark, all of the countries with SSPR laws enacted those policies after 1990, and Denmark's law was passed in 1989. In order to make an argument about the causal relationship between a variable and passage of an SSPR, I will mainly use measures from 1990 or the early 1990s. Since the passage of an SSPR law could influence norms and attitudes about homosexuality in a country, using the earlier year is particularly important for those measures. The OECD collects data from different national sources on its member states, providing some variables used below. Variables measuring the visibility and political strength of the gay community come from the same time period. Calculations from the World Values Survey (Inglehart, et al., 2000) provide several variables. The WVS is an ambitious project that collects cross-sectional, individual level data on values and norms about many different topics, including sexuality, gender, and homosexuality, in fifty different countries. So far data from three separate surveys is available, but this study uses only data from the second, conducted in 43 countries from 1990-93. Survey language and concepts were translated for each country and were administered by professional survey organizations in Western countries and elsewhere mostly by local survey researchers (Inglehart, 1997). Not all questions were asked in each country's survey. Sample sizes ranged generally from 1,000 to almost 3,000 in the twenty-seven countries used in this paper. All but a few countries have representative national samples of adults over 18 years old, selected through stratified multistage random sampling. Some countries over-sampled particular subpopulations, such as younger age groups or racial groups, and the WVS provides individual sampling weights used here to account for over-sampling within countries. Because the unit of analysis here is the country, I aggregate individual responses up to the country level.

(1) *Efficiency: The emergence of visible same-sex couples.* Visibility of a community is likely to be related to the degree to which the commercial side of community activities are visible. From the *Spartacus Guide for Gay Men* in 1990, a travel

guide published annually, I counted the number of commercial establishments that were listed for each country and calculated the number of businesses per million inhabitants of a country to get the G/L Business Index.¹² Not all establishments listed were gay-owned or catered to a 100% gay clientele. Nevertheless, the fact that gay men considered such places as meeting places suggests that even non-gay owned commercial establishments contribute to gay visibility. The more physical locations that exist, the more likely are non-gay people to be aware of the existence of gay people.¹³

(2) *Efficiency: Declining social and economic value of marriage.* The lower the value of marriage in a country, the less the existing legal institution contributes to efficiency. A strict efficiency perspective, therefore, generates the hypothesis that countries where marriage is less efficient should be less likely to adopt an SSPR, i.e. measures of efficiency should be negatively related to SSPR adoption. Several variables could capture the economic value of marriage to couples:

- *State provision of necessary social insurance benefits:* To capture the economic need for marriage, I use the percentage of public social expenditure as a percentage of GDP, which captures the extent of state support for individuals and, to some extent, the degree of de-familialization in a country.¹⁴
- *Actual choices related to marriage by heterosexual couples:* I use OECD data on divorce rates and calculations from the WVS measures of the percentage of couples that are cohabiting but unmarried.
- *Attitudes toward marriage:* The WVS asks each respondent, "Do you agree or disagree with the following statement? 'Marriage is an out-dated institution.'" The measure is the percentage of a country's respondents who agree and may reflect whether respondents believe that legal marriage still serves important social, economic, or cultural functions.

In each case, the conceptual framework implies a negative correlation between the explanatory factor and the existence of an SSPR—the less couples need marriage, the less interest the state has in expanding access to marriage.

(3) *Conflict: Shifts in political power and collective resources.* The particular factors that are likely to reshape the political landscape to favor SSPRs are the mobilization of a lesbian and gay political movement, the existence of allies among left-wing political parties, the feminist movement, and labor movements, and the salience of religiously motivated political opposition.

- *Religiosity:* The WVS asked each respondent: "Apart from weddings, christenings, and funerals, about how often do you attend religious services these days?" The answer options were: More than once a week, once a week, once a month, only on special holy days, once a year, less often, never. The summary statistic used here is the percentage of respondents in a country who say they attend at least once a month. The more religious the country by this measure, the less likely the country is to have an SSPR.
- *Union membership:* To the extent that union members are allied with left-oriented political parties, and to the extent that those parties' power is enhanced by greater union membership, I expect the proportion of workers who are union members to be positively related to the existence of an SSPR. The data on the percentage of non-agricultural workers who are union members ("union density") comes from the International Labor Organization for 1993-95.
- *Left government in power:* Traditionally right-wing parties have been unreceptive to calls for equality for lesbian, gay, and bisexual people. Among

¹² Categories included were bars, clubs, coffeeshops, discos, restaurants, hotels, book shops, sex shops, saunas/gay baths, leather clubs, and publications.

¹³ An attempt to create a similar count from the Gaia's guide for lesbians was less successful. Many of the commercial establishments listed primarily catered to gay men, and even including those establishments resulted in counts of businesses that were generally one-tenth of those for men.

¹⁴ Esping-Andersen's defamilialization index offers a more family-specific measure, but he calculates it for only a small subset of the countries of interest here.

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the countries with SSPRs, all but two (Denmark and Iceland) were led by a left government party at the time of SSPR passage. To capture the existence of such an opportunity, I use a dichotomous measure: did the country have at least two years of left/social democratic leadership in parliament, defined by the party of the prime minister, from 1990-2003?¹⁵ Those with left leadership should be more likely to have an SSPR. Data come from a variety of sources, including the European Journal of Political Research *Political Data Yearbook*, the Election World website (www.electionworld.org), and Parties and Elections in Europe, (www.parties-and-elections.de).

- *Lesbian/gay social movement strength*: According to the conflict perspective, a strong and persistent gay social movement would be necessary in order to successfully lobby for change. Here two measures attempt to capture this influence. The first, an organizations index, uses counts of national and local organizations in the Spartacus Guide per million inhabitants.¹⁶ This variable captures the size and density of organized gay civil society. The second variable captures the presence of an early and stable national level gay political organization. Using the Pink Book summaries of the state of the worldwide gay social movement published by the International Gay and Lesbian Association (ILGA) in 1985, 1988, and 1993 (IGA, 1985; ILGA, 1988; Tielman and Hammelburg, 1993), I coded the gay organization variable as one if a country had a national organization listed in all three years, zero if otherwise.¹⁷

(4) *Conflict: Shifts in political interests and social norms about sexuality, gender, and homosexuality*. More tolerant social norms and public opinion about homosexuality, might make institutional change more likely by reducing opposition to change at an individual level for political decision-makers and for voters. The WVS asks many questions about attitudes that could predict more liberal social norms and, therefore, greater political support from voters and legislators for the concept of recognizing same-sex partnerships. The WVS has two ways of measuring attitudes about "homosexuality":

- "On this list are various groups of people. Could you please sort out any that you would not like to have as neighbors?" The measure is the percentage of respondents in a country mentioning "Homosexuals."
- "Please tell me for each of the following statements whether you think it can ever be justified, never be justified, or something in between, using this card." (Scale from 1—never-- to 10-always) The measure is the country's average score for the statement, "Homosexuality".

Methods

Debate continues about the most desirable empirical method for making comparisons across countries. In this article, I use two different methods, one quantitative comparison and one more qualitative comparison. In both cases, the dependent variable to be explained is the existence of a same-sex marriage or partnership registration law (SSPR law). The quantitative method moves from simple comparisons of means to a multivariate regression. With such a small number of countries, however, the regression model will not have much power to distinguish the various factors. Therefore, in addition to presenting various parsimonious regression model specifications, I use Qualitative

¹⁵ For the United States, there was one two-year period in which the President and majorities in both houses of Congress were Democratic.

¹⁶ The categories counted are gay centers, gay liberation, religious groups, social clubs (of various kinds), health service, help, gay radio station, switchboards, and help lines.

¹⁷ In Canada, a national organization was formed in 1986.

Comparative Analysis for corroboration of the regression findings and for additional insights into the determinants of SSPR laws.

Quantitative comparisons: Table 2 compares the average values of the variables listed above for three groups of countries: those without SSPR laws, a subset of European countries without SSPR laws, and those with SSPR laws.¹⁸ Comparing either the first and third rows (all OECD countries) or the second and third row (for a within-Europe comparison) shows that countries with SSPR policies often have different values in the predicted directions from OECD countries without SSPRs.

Most of the efficiency and conflict variables tend to differ between country types in the predicted direction.¹⁹ Countries with SSPR laws have more gay businesses and organizations per million inhabitants, are more tolerant of homosexuality, are less religious, and have higher union densities. Countries recognizing same-sex partners are also more likely to have had a national-level gay political organization consistently since the mid-1980s and to have had a left/liberal government for at least two years since 1990. These comparisons mainly support the conflict hypothesis that where conservative religious opposition is less powerful, and gay and lesbian political organizations and left-oriented parties are more powerful, we are more likely to observe an SSPR. But higher levels of gay and lesbian community visibility are also associated with having an SSPR, providing support for the efficiency framework.

The large group of variables designed to capture the value of marriage diverge from the predictions, however. The hypothesis generated by the efficiency framework suggests that SSPR laws should be more likely where the value of marriage is high. But the means in Table 2 show that the value of marriage appears to be lower in countries with SSPR laws. Compared with countries that do not recognize same-sex couples, in SSPR countries cohabitation and divorce rates are higher, the state spends more on social programs, and more people believe that marriage is an outdated institution. (But note that the vast majority of individuals in both sets of countries believe that marriage is *not* an outdated institution.) In other words, the value of marriage to couples appears to be lower in the countries that legally recognize same-sex couples.

The multivariate regressions reported in Table 3 allow several factors to vary at once. The dependent variable is one if a country has an SSPR law, and zero if it does not. Each column in Table 3 is a separate regression using just the variables with reported coefficients. Each coefficient shows the impact of a change in the independent variable on the probability of a country's having an SSPR, holding the other variables in the equation constant. For instance, in the second column, the coefficient of -0.013 means that a country with 40% of its respondents saying that they would not like a homosexual neighbor is 13% less likely to have an SSPR than a country where 30% of respondents do not want a homosexual neighbor. Rather than using a stepwise regression method, which is sensitive to the order in which variables are entered, I experimented with different specifications to retain variables that seemed to be important in different combinations. The small sample size limits the power of these tests, but the regressions demonstrate, first, that some explanatory factors are correlated with each other, and second, that some explanatory factors appear to be closely related to having an SSPR.²⁰

The regressions in Table 3 test first for the importance of tolerant attitudes about homosexuality. The coefficients on the two attitudes toward homosexuality variables in the first four specifications (i.e. columns) show that tolerance of homosexuality is

¹⁸ Because the country is the unit of analysis, these averages are not weighted by population or sample size.

¹⁹ The differences in means between SSPR and non-SSPR countries are significantly different for the variables from the WVS. In an individual level regression of country dummies and a constant on the WVS variable, the average coefficient was statistically significantly different between the two groups of countries.

²⁰ Some variables in Table 2, such as the divorce rate, Catholic background, and national gay organization, were never statistically significant, so they are left out of the regressions reported in Table 2.

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positively related to having an SSPR. A country's respondents' greater willingness to have a homosexual neighbor and stronger belief that homosexuality can be justified are significantly and positively associated with an SSPR. Notably, however, that effect diminishes and becomes statistically insignificant when other variables are entered into the equation.²¹ Countries with more cohabitators are more likely to have an SSPR. Cohabitation continues to have a statistically significant and positive impact no matter what other variables are included in the regression, as revealed by reading along the row for the cohabitation variable.

Most other variables are not statistically significant in the bulk of the regressions, with a few exceptions. The business index is positively correlated with SSPRs, as predicted, but the value is small and never statistically significant except where it appears as the sole variable (not shown here). The public social expenditures variable is positively related and significant in many specifications. When the cohabitation rate and social expenditures are left out, the degree of agreement that marriage is an outdated institution is positively and significantly related to an SSPR. In some regressions, the church attendance measure of religiosity is negatively related to having an SSPR, and a left government is sometimes positively related to an SSPR, both effects as expected.²² But neither of those political power variables are statistically significant, however. The one political power variable that is significant in some specifications is the organization index (columns 3 and 6).

In summary, the differences between SSPR and non-SSPR countries are consistent between the univariate and multivariate comparisons, although the multivariate comparisons suggest that the main distinction between the kinds of countries is that cohabitation rates, social expenditures, and gay organizational density are higher in SSPR countries.

Qualitative Comparisons: A healthy debate has taken place for decades about the most appropriate empirical methods for conducting cross-national comparative research (e.g. Lijphart, 1971; essays in Janoski and Hicks, 1994). While quantitative methods have the advantage of allowing for finer distinctions in variables, for handling large numbers of cases, and for simulating experimental conditions, such methods come with disadvantages, as well. The level of aggregation is high, obscuring important subtleties in similarities or differences between countries. Furthermore, as Charles Ragin points out, without a large N to provide wide variation in the values of variables or to allow variables to interact - as they undoubtedly do - quantitative methods miss important insights (Ragin, 1987). Qualitative methods come with their own advantages and disadvantages. While the qualitative case study method allows for depth and detail, comparing more than a small number of cases quickly becomes intractable.

Ragin and others have developed a method, Qualitative Comparative Analysis (QCA), that is designed to allow for studies with a "medium-N" to capture parsimoniously the important qualitative details of a case, as well as the ideas that causal conditions tend to occur together in groups and that more than one set of conditions can be causal. Those features suggest that QCA might be a useful complement to regression analysis, which may be flawed or incomplete. For instance, if conditions (or independent variable values) are correlated, then simple regression coefficients might be biased and therefore mismeasure the impact of a variable. Furthermore, the small sample size in this study means that it is impossible to use interaction terms to capture conditions that occur together.

QCA seems well-suited to the analysis of this paper. The outcome variable, the presence of a law allowing formal registration or marriage of same-sex partners, is obviously qualitative. The explanatory variables are often thought of as having a qualitative element. For instance, "tolerant" is a word often applied to societies such as those of the

²¹ Cohabitation is positively correlated with positive attitudes about homosexuality: the correlation coefficient is 0.63 and statistically significant with "homosexuality justified."

²² Church attendance and union density are strongly negatively correlated, with a statistically significant negative correlation coefficient of -0.64. Union membership and church membership are not significantly correlated.

Netherlands or Sweden. Differences in national histories and culture within the countries with SSPR laws suggest that more than one causal path might exist.

QCA takes a set of dichotomous qualitative features of countries, including both outcomes and causal factors, and uses Boolean logic to identify more parsimonious sets of factors that characterize all countries with SSPRs. The first step is to characterize the possible causal factors and to assign values to those factors for each country. Here I use the quantitative values of the independent variables discussed earlier to define the presence or absence of a characteristic. For each variable, I calculate the mean for all countries (excluding Australia, since it is not included in the 1990 WVS). Countries whose values are above the mean are assigned a value of one; those below the mean get a value of zero. For instance, for all countries the average percentage of inhabitants who report that they would not like to have a homosexual neighbor is 36%.²³ Countries below that average are coded as one for tolerant; countries above the average receive a zero. Table 4, a "Boolean truth table," shows the main variables and their codes for the twenty-five countries with sufficient data.²⁴

First consider a set of the basic variables from all four theory categories. For comparison with the regressions, the baseline model considers cohabitation, tolerance of homosexuality, state social expenditures, religiosity, gay business visibility, and gay organizational density. Those six variables define 64 (2^6) possible combinations of factors. From the truth table in Table 4 we see that in fact we only observe countries in 17 different combinations.

The next step is to minimize the truth table to reduce the conditions describing the countries with an SSPR to the smallest combinations that are logically possible. Ragin describes the simple rule for reducing the conditions: "...[C]ombine rows that differ on only one causal condition but produce the same outcome." In Table 4, for example, the first two lines of the truth table differ only in that the first line has a 1 value for a high G/L Business Index value, but the second has a 0 value. Therefore, one combination of the five other characteristics is sufficient to describe those seven countries more simply than the two separate combinations of six characteristics: Low religiosity, high tolerance, high cohabitation, high social expenditure, and a high G/L organization index. In this initial step of the reduction process, the G/L Business Index value does not aid in describing countries with SSPR laws, since countries with those five characteristics have an SSPR law regardless of the G/L Business Index value.

Continuing this process of simplification for the first four rows of Table 4 results in three somewhat overlapping but simplified combinations of characteristics that describe countries with SSPR laws.²⁵ As might be apparent from inspection of the values for the SSPR countries, a necessary condition emerges: All countries with SSPR laws have low religiosity, high levels of tolerance for homosexuality, and high levels of cohabitation. In addition to those three characteristics, all SSPR countries also have either

1. High social expenditures and a high G/L business index; OR
2. High social expenditures and a high G/L organization index; OR
3. A high G/L business index and a high G/L organization index.

Distinct routes to adopting SSPRs do not appear in this model, given the overlap in the three groups. The group of five in the first row of Table 4 (Belgium, Finland, Germany, Netherlands, and Norway) appears in all three groupings of conditions. France goes with the first set of conditions above, Denmark and Sweden with the second, and Iceland in the third.

²³ This question was not asked in Switzerland and Poland, so in Table 4, I substituted the value derived from the question about whether homosexuality is ever justified. The values of the two tolerance measures are quite different for South Korea, which could be due to a translation problem. Given the paucity of gay businesses and organizations in South Korea, I have used the low score on beliefs about the justifiability of homosexuality to code South Korea as a 0 for tolerance.

²⁴ Note that there are no contradictory terms, that is, no combination of values has both countries with and without SSPR laws. This is also true in the model with more variables discussed below.

²⁵ In this analysis I use the fs/QCA software by Ragin, Drass, and Davey, 2003.

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Nevertheless, the QCA method yields the insight about necessary conditions obscured by the small sample size and statistically insignificant coefficients in the regression analysis. In the qualitative comparative analysis, two variables reflect conflict concerns and suggest that countries with SSPRs may have less religious opposition (or less influential religious opposition) and fewer cultural barriers in the form of negative attitudes about homosexuals. The importance of the G/L organizational index in two of the three configurations adds to the importance of conflict factors. Oddly, from the perspective of the efficiency hypothesis, countries with SSPRs also have high levels of heterosexual cohabitation and social expenditure, suggesting a low value of marriage.

A more complex model involving ten different variables (not presented here) resulted in a more complex set of configurations, not surprisingly. None of the other variables, including having a national gay organization, a left government, a high union density, or a Catholic tradition, proved necessary for an SSPR law. Iceland and Denmark passed such laws without a left government (although the left in Denmark later controlled Parliament), and France and Belgium are Catholic countries that passed SSPR laws (and marriage, in the case of Belgium).

An interesting extension asks what happens to the QCA results if two other countries that have been seriously considering SSPRS, Canada and Britain, were to enact them. The Canadian Parliament is likely to make its marriage laws consistent with three provinces' court decisions requiring same-sex marriage, and Great Britain is likely to enact a registered partnership in the near future (Moore, 2003). Changing the outcome value adds two configurations. Britain shares low religiosity and high values of tolerance, social expenditure, G/L businesses and organizations with Belgium, Finland, Germany, Netherlands, and Norway. Canada, however, stands alone as the only country with a high religiosity value.

Conclusions

The regression and qualitative comparative analysis procedures are helpful in identifying factors associated with SSPRs. Evidence emerges to support hypotheses about institutional change from both the efficiency and conflict frameworks. But the efficiency-related variables are not strongly related to change, and their role is unclear. The visibility of gay and lesbian people through the commercial side of the economy, captured by the business index, is positively related to the existence of an SSPR, but the effect is not statistically significant in the regressions and is not a necessary factor in the truth table analysis.

More confusing is the relationship between SSPR laws and the variables capturing the perceived economic and social value of marriage. The efficiency framework suggests that SSPRs should be more likely where marriage is highly valued, i.e. where cohabitation is low and social expenditures that substitute for family responsibilities are low. But we find the opposite in both the quantitative and qualitative analyses. Unless the remaining impact of marriage, such as the value of having a "standard marital contract," employment-related spousal benefits, or inheritance tax exemptions, is stronger in the SSPR countries, the correlations are simply puzzling from an efficiency standpoint. Perhaps the impact of these characteristics works through the political conflict model, instead. Legislators and voters in countries where marriage is seen as less valuable might be more willing to change the law to allow same-sex couples access to some or all rights and responsibilities of marriage. An alternative explanation may be that cohabitators have achieved access to certain marital rights through a different legal status, perhaps making it easier to extend that more limited status to same-sex couples than in other countries. Or perhaps cohabitators have more political power in countries where they are numerous, giving them the ability to enact their more liberal beliefs in the context of institutional change.

The more explicitly conflict-oriented variables tell a fairly straightforward and consistent story in the quantitative and qualitative analyses. Countries with SSPR laws have fewer

highly religious people, more union members, more gay and lesbian organizations, and more left governments, suggesting a stronger liberal presence and a smaller conservative religious base for opponents of same-sex partner recognition. The explicit normative measures also support the conflict hypothesis. People in SSPR countries have more liberal attitudes toward homosexuality, as predicted.

Overall, a comparison of same-sex partnership recognition laws across countries reveals the importance of considering a wider range of influences than in past studies of civil rights laws or more limited partnership protections in the United States. While theoretical understandings of institutions that highlight efficiency did not fare well in this empirical analysis, some economic aspects of marriage clearly seem to matter, although perhaps more as those economic influences interact with the political debate and cultural attitudes toward marriage rights and their extension to same-sex couples.

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Table 1: Countries with national recognition of same-sex partnerships

Country (year enacted)	Marital rights and responsibilities	Marital rights not included
MARRIAGE Netherlands Belgium	All	Presumption about legal status of second parent to a child born to a married woman in same-sex couple.
REGISTERED PARTNERS—QUASI-MARITAL Denmark (1989) Norway (1993) Sweden (1994) Iceland (1996) Finland (2001)	Almost all	Right to church wedding (some countries); adoption rights; residence and/or nationality requirements; access to artificial insemination; not portable to other countries
REGISTERED COHAB-ITATION France (1999) Germany (2001)	Liability for debts; common property; joint taxation; housing; insurance (France) Support obligation; Joint tenancy; inheritance; pension and health insurance; immigration (Germany)	Inheritance rights; child-related rights; alimony (France) State-supported financial benefits (Germany)
UNREGIS. PARTNERS Hungary (1996)	Some inheritance and common property rights; pension rights; housing rights	Joint adoption, artificial insemination

Sources: Eskridge (2001); Wintemute (2001)

Table 2: Comparisons of measures across country types

Country Type	EFFICIENCY-RELATED VARIABLES					CONFLICT-RELATED VARIABLES							
	Business Index	% Cohab. Couples	Public social expenditures (% GDP)	Divorce Rate	Marriage outdated inst.	No homo-sexual neighbor	Homo-sexuality justified	Attend relig serv	Gay Org Index	National gay org	Left Govt	Nat'l Catholic history	Union density
	1990	1990	1995	1995	1990	1990	1990	1990	1990	1985-1995	1990-2003		1995
Non SSPR	7.9	4.4%	17.9	30.6	12.7	46.1	3.1	46.2	3.2	29.4%	82.4%	52.9%	26.4
Europe	8.5	3.9%	21.0	30.6	13.3	49.4	3.3	45.5	3.4	36.4%	81.8%	72.7%	28.9
With SSPR	16.8	15.9%	28.4	49.4	16.3	20.5	4.7	17.9	10.0	88.9%	88.9%	22.2%	47.0

Table 3: Regression Coefficients, Dependent Variable is Having an SSPR Law

Variable	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Constant	-0.439* (0.02)	0.870** (0.17)	-0.025 (0.14)	-0.32 (0.24)	-0.432* (0.22)	-0.72** (0.30)	-0.204 (0.33)	-0.569** (0.24)
Business Index			0.016 (0.014)	0.007 (0.01)	0.012 (0.011)	-0.01 (0.02)	0.013 (0.01)	0.012 (0.02)
Public social expend (% GDP)					0.017* (0.01)		0.016 (0.010)	0.010 (0.01)
Marriage outdated						0.036** (0.02)		
Cohabitation rate					0.044** (0.015)		0.037** (0.02)	0.043** (0.01)
Union density								
Church attendance							-0.003 (0.004)	
Organization Index			0.035* (0.02)	0.030 (0.02)	-0.006 (0.019)	0.05** (0.02)	-0.005 (0.02)	
Left government								0.264 (0.20)
Catholic background								
Homosexual neighbor not OK		-0.013** (0.004)						
Homosexuality justified	0.215** (0.06)			0.115 (0.08)	-0.011 (0.07)	0.107 (0.04)	-0.027 (0.07)	-0.011 (0.06)
Adjusted R2	0.32	0.31	0.33	0.39	0.65	0.47	0.64	0.66
N	25	23	26	25	24	24	24	24

Notes:

** stat signif at 5% level * stat signif at 10% level

Table 4: Truth Table of Combinations of Variables

Countries	Number of cases	Has SSPR	Religiosity	Tolerant	High Cohab	High Soc Exp	G/L Bus Index	G/L Org Index	
Belgium, Finland, Germany, Netherlands, Norway	5	1	0	1	1	1	1	1	1
Denmark, Sweden	2	1	0	1	1	1	1	0	1
France	1	1	0	1	1	1	1	1	0
Iceland	1	1	0	1	1	1	0	1	1
Czech Republic	1	0	0	1	0	0	0	0	0
Hungary, Japan	2	0	0	0	0	0	0	0	0
UK	1	0	0	0	0	1	1	1	1
Austria	1	0	1	0	0	1	0	0	0
Ireland	1	0	1	0	0	0	0	0	1
Italy	1	0	1	1	0	1	0	0	0
S Korea, Mexico	2	0	1	0	0	0	0	0	0
Poland	1	0	1	0	0	1	0	0	0
U.S, Portugal	2	0	1	0	0	0	0	1	0
Spain	1	0	1	1	0	1	1	1	0
Turkey	1	0	1	0	0	0	0	0	0
Canada	1	0	1	1	1	1	0	0	1
Switzerland	1	0	1	1	1	1	0	1	1

Research on homosexual partners and parents in Flanders (Belgium)

Martine Corijn*

1. Introduction

A selection of titles of recent Flemish publications on issues related to homosexuality illustrates well the different aspects of the context of the topic in this part of Belgium.

A first series of books paved the way to the legislative work on registered partnership, marriage of same-sex partners and still has to pave the way to homosexual parenthood:

- ◆ Naar de invoering van het homohuwelijk = Towards a homo-marriage (Colloquium 1997);
- ◆ Geregistreerd partnerschap = Registered partnership (Senaeve and Coene, 1998);
- ◆ Wettelijke aspecten van homoseksueel ouderschap = Legal aspects of homosexual parenthood (Borghs, 1998).

A second, more recent series puts the issue on the social welfare agenda. In this context the acronym Holebi (homosexuals, lesbians and bisexuals) is used in Flemish. Holebi-issues are in Flanders dealt with in the context of the Equal Opportunities Policy, a regional matter.

- ◆ Holebi's en gelijkemans(beleid) = Holebi's and equal opportunities (policy) (Baert and Cockx, 2002);
- ◆ Hulpvragen van holebi's = Requests for help from holebi's (Baert, Cockx and Seghers, 2001).
- ◆ Structurele en culturele belemmeringen en succesfactoren in het leven van holebi's: een verkenning = Structural and cultural restraints and success factors in the life of holebi's: an exploration (Dewaele and Michielsens, 2003).

The issue got well on the popular scene by the work of a journalist.

- ◆ Heren dubbel - Dames dubbel = Men's doubles - Ladies' doubles (Vlaeminck, 2001).

In this contribution, we first want to mention only very shortly some legislative issues related to homosexual matters (§2). Afterwards we have to mention the absence of relevant demographic data on persons with a homosexual orientation and/or same-sex couples (§3). In a next section, we bring into the picture some elements of the societal context of matters related to homosexuality. (§4). In the main section, we present and discuss the empirical research available focusing on same-sex couples (§5). In a closing section, we reflect on what we know and don't know about same-sex partners (§6).

2. Legal situation

Borghs (1998) identifies for Belgium the following milestones over the last 20 years in the legal situation related to homosexual issues:

1984: depenalisation of homosexual behaviour;

1984: change of the age of consent for sexual behaviour among same-sex persons;

1996: registration of cohabitation;

(1998-)2000: legal cohabitation;

(1985-)2002: long way to the anti-discrimination law;

(2000-)2003: marriage of same-sex partners.

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Let us just observe that since 1999, Belgium had for the first time in the post-war period no more Christian-Democrats in the Government. Adoption of children by homosexual partners and social parenthood for the partner of a homosexual parent are on the political agenda for the next months.

Dewaele and Motmans (2003) point out the remaining legal discriminations after the recent introduction of the anti-discrimination law and marriage law in Belgium: these concern parenthood, inheritance, foreign partners and political asylum.

- homosexual couples have no possibility for adoption of children; a homosexual, non-biological co-parent has no rights or duties toward the children he/she raises;
- a child can not inherit automatically from his/her homosexual non-biological co-parent;
- the foreign partner of a homosexual person can not get easily a residence permit in Belgium; a homosexual person can only marry with a partner from a country where same-sex marriage exists i.e. only from the Netherlands;
- persecution because of the homosexual orientation is a legal ground for political asylum; however, requests on the ground of violence or repression because of the homosexual orientation are very often rejected in Belgium.

3. A demographic subpopulation?

The increase of legal interest and social policy interest for persons with a homosexual orientation and for same-sex couples did not go along in Belgium with a request for a better description of the size and characteristics of the subpopulation at stake.

With regard to relevant demographic data, we first have to reflect on who we want to be counted and why. With regard to marriage - legally possible for same-sex partners since January 2003 and practically possible since June 2003 - the National Statistical Office had in September 2003 not yet provided new marriage-count-form and divorce-count-forms (the existing ones contain information about the husband and the wife). Moreover, it was not decided yet how the same-sex marriages and divorces will be dealt with in the marriage and divorce statistics. According to a newspaper article, there have been up to 30 September 2003, 139 same-sex marriage in the six largest Belgian cities. Two thirds of these marriages concerned male couples. The largest number of homo-marriages could be found in Antwerp. We will be eager to analyse the age composition of the partners involved, their previous civil status, the duration of these marriage and the grounds for divorce. But unfortunately as for the heterosexual cases, incomplete information will be available on the involvement of children at the time of the marriage and the divorce. We will for sure be interested in comparing the male versus female same-sex marriages and compare them with the different-sex marriages, but this information will be difficult to interpret as long as we have no information on the populations at risk. If we calculate marriages rates based on the non-married population, we may have to make a distinction between the non-married population with a heterosexual orientation and the one with a homosexual orientation.

But how to define these populations at risk? Information on homosexual partnerships is difficult to grasp. Persons of the same sex that registered their partnership contract or that adopted a legal cohabitation can not for 100% be identified as homosexual couples. Legal (unmarried) cohabitation was from its beginnings much more popular in Flanders (9 out of 10) than in Wallonia and much more popular among different-sex couples (9 out of 10). In 2000 there were in Belgium about 4.000 case of legal cohabitation; in 2001 about 25.000. Population data on legal cohabitation are not (yet) made available because of reasons related to the protection of privacy. Official statistics have not yet been published.

The identification of same-sex partnerships is even more uncertain when we use the household statistics of the Population Register. Households in which the reference person

is living together with a non-related person of the same sex can be selected. However, this living together of two non-related same-sex persons does not reveal anything on their partnership status. Similar exercises could be done for all households of a larger size but in these cases even more speculation is needed about the kind of non-relatedness with the reference person. In the household statistics, same-sex partners without living-in children belong to the non-family households with more than 1 person.

In the Belgian Census one can in principle look at couples of the same-sex, but this was never done. We made a request to cover this in the census data (Socio-economic Survey) of 2001.

In section 5 we will see what surveys can tell us about the partnership status of individuals with a homosexual orientation and about same-sex couples.

Information on the sexual orientation of individuals in the population is not available. Moreover, measurement of this orientation is not an easy task. For Flanders estimations about the prevalence of homosexuals are at about 5% (Vincke & Stevens, 1999) or closer to 10% (Vlaeminck, 2001). A population survey in 1991 among 5.000 respondents aged 20-49 identified 5 respondents who in the interview admitted that their steady partner was of the same sex (non-published CBGS-data). In a recent survey via internet among about 1.000 students, only 6 out of 500 having a partner revealed their partner was of the same sex (0.6% or 1.2%). In the Belgian context numbers or serious efforts to make estimates, do not seem to matter much.

4. The societal context

Individuals with a homosexual orientation and same-sex couples live and operate in a particular political, social and cultural context.

4.1 Opinions and attitudes

To sketch part of the normative context of issues related to homosexuality, we present a selection of opinions on homosexual issues.

Over the last 20 years, *the European Value Study* treated the issue of homosexuality in terms of how often (from never to always) one considers homosexuality as justified. Researchers considered this context free question as a measure of acceptance; a point which is questionable. The acceptance of homosexuality increased in the 1980s in almost all Western countries. However, this does not imply that homosexual behaviour is accepted as normal. On a 10-point justification scale, the mean score in most countries remained below 5. In Belgium it increased in the 1980s from 3.02 to 3.87. Belgium kept its middle position in the list of 15 countries involved (Ester, Halman and De Moor, 1994). The opinions on homosexuality further changed towards more acceptance in the 1990s (Elchardus et al., 2000). The Belgians that considered homosexuality as never justified decreased from 64% in 1981 over 54% in 1990 to 35% in 1999. The proportion that considered homosexuality always justified increased over these years from 9% over 15% to 31%. This trend belongs to a broader trend of increasing self-determination with regard to the body (as is the case for suicide, abortion, euthanasia). This period trend goes along with an age trend. All this results in the observation that the oldest persons in 1999 have in this respect the same opinion as the youngest persons in 1981. Across these two decades, opinions related to self-determination with regard to the body remained strongly related to religion. Analysing period and cohort trends, one can observe that tolerance for homosexuality (but also for divorce, suicide, abortion and euthanasia) increased for all cohorts between 1981 and 1990, but afterwards a stagnation was observed (Lesthaeghe and Moors, 2000). But even in 1999, one can observe a strong polarisation between the group that considers homosexuality as always unacceptable (20%) and the group that considers homosexuality as never unacceptable (26%); a phenomenon not observed with regard to abortion and divorce (Waeye and Heinderickx, 2000).

From the 1990s on, opinions on legal same-sex partnership and same-sex parenthood were put on the opinion agenda. In 2001 a survey among *Young Europeans* treated the issue in terms of the right of homosexuals to get married and on what young people think that the opinions of their age-mates are. Just under six young Europeans out of ten think that young people of their age tend to be in favour of the right of homosexuals to get married, an increase of 7 points compared to 1997. On the other hand, adoption of children by homosexuals remains a controversial topic, even though opposition has decreased: 41% think that young people of their age are in favour of it versus 36% in 1997. No differentials by nationality, sex or age were available for this group of young people.

A population survey on *Fertility and Family* in Flanders in 1991 asked male and female Belgians aged 20 to 40 (N=5.000) their opinion on whether 'A homosexual couple can as good as a man and a woman take care of a child'; strong disagreement among the respondents prevailed (non-published CBGS-data). A population survey in Flanders *Vlaanderen Gepeild (Flanders Measured)* in 1998 among male and female Belgians aged 16 to 84 (N=1.500) revealed that 74% considers the legal recognition of other living arrangements than marriage acceptable (Waegel and Agneessens, 2001).

Only in 1999 a first survey among *homosexual men and women* of all ages was organised in Flanders (N=1.557). They were asked about their perception of the attitude of heterosexuals towards *holebi's*. Males and females with a homosexual orientation thought that this perception was rather positive (mean score of 65 on a 100-point scale). This perception was unrelated to gender, age or educational level. This homosexual sample considered the homosexual man as most discriminated, followed by the lesbian woman, and then by the bisexual man. The bisexual woman was considered least discriminated (Vincke and Stevens, 1999).

Early 2003 - at the time the marriage of same-sex partners was approved in Belgium - a *Marketing Bureau* organised a survey in Flanders among respondents aged 15-55 (N=565) on homosexuality, same-sex marriage and same-sex parenthood. The results revealed that 49% of the Flemish men are against the same-sex marriage. Moreover, according to 53% of the men same-sex couples have no right to have children. More in general, 1 out of 6 Flemish men considers homosexuality as 'condemnable'. Flemish women seemed to be more tolerant: 26% are against the same-sex marriage; 67% think same-sex couples can have children. Only 7% of the women considers homosexuality as 'condemnable' (newspaper)

A population survey on *Population Policy Acceptance* among respondents aged 20 to 65 (N=4.000) fielded in September-October 2003 in Flanders asked for opinions on same-sex marriage and homosexual parenthood. Flemish people disagree on these matters. Only 6% is very much in favour of the gay-marriage; only 8% accepts fully parenthood of two men. The group that is very much against these issues amounts to 20%.

As the topics dealing with homosexuality have changed over time and as the samples are of varying quality, it is hard to come up with firm conclusions. However, we observe a trend towards more acceptance/tolerance, however disagreement still prevails.

4.2 Policies at different levels and in different domains

Policy issues related to homosexuality, individuals with a homosexual orientation and same-sex partners and marriages are treated in Belgium at different levels. At the European level, the European Parliament approved in 1994 a resolution on the equal rights of homosexuals. At the Belgian national level, the anti-discrimination law (2002) and the same-sex marriage (2003) were recently major milestones taking away many legal discriminations.

At the regional Flemish level, the Flemish Government introduced in 1995 a Minister for Equal Opportunities Policy. Besides her equal opportunities policy for women, the Minister developed one for target groups, being minority groups having a degree of self-organisation, namely migrants, homosexuals and disabled persons. In 1999 the new Minister for Equal Opportunities Policy explicitly identified five target groups for an equal opportunities policy: women, migrants, homosexuals, poor people and disabled persons. In 2001 a Focal Point for Equal Opportunities Policy was set up. Since 2000, equal opportunities policies for holebi's become more and more mainstreamed in Flanders. The topic was dealt with in the policy domains of education, welfare, culture and youth. All these domains collaborated e.g. to organize a first Week of Diversity, focusing in 2003 on holebi's.

4.3 Regional level: Focal Point Equal Opportunities Policy

In 2001 the Flemish Government set up a focal point for Equal Opportunities Policy that supports through research and advice the equal opportunities policy. The global goals of this focal point are: to contribute to structural and long-term research with regard to equal opportunities; to support and promote the global development and the execution of the equal opportunities policy and of the integration of this policy in other policy domains and other societal structures; and to sensitive target groups and the broader population for the equal opportunities issues. Four research units are distinguished within this focal point: one on women, migrants, age, holebi's. Within the research unit on holebi's - active since May 2002 - research is oriented towards sociological research about the structural and cultural constraints and success factors for equal opportunities of holebi's, the experience of (un)equal chances by holebi's and the representation of homo- and bisexuality in media and school materials. This focal point set up last year a network of experts and has made an overview of all holebi-relevant research in Flanders (see section 5).

4.4 Organisations, working groups and services

A full description of the societal context must include the role of the organisations and services related to issues on homosexuality, but this is beyond the scope of this contribution. In brief: in 1953, the first Flemish holebi-organisation was founded in Brussels. In 1977, two Flemish holebi organisations merged into one Federation of Working Group Homophily (FWH), bringing together several organisations and working groups. In 2002 this federation changed its name into Holebi-federation. In 1987 a first Flemish holebi-youth organisation (Verkeerd Geparkeerd - Wrongly Parked) was set up. In 1995 three Flemish holebi youth organisations merged into one (Wel Jong Niet Hetero - Young yes, but not straight) bringing together many smaller local units. The Brussels and Walloon region also have their organisation (respectively Holebi Overleg Brussel, HOB, since 2000 and Fédération des Associations Gays et lesbiennes, FAGL, since 1999). The International Lesbians and Gays Association (ILGA) and European ILGA (founded in 1996) have currently their main quarters in Brussels. The Holebifabriek is a Flemish volunteer organisation working on youth and sexuality. Archives and documents on matters related to homosexuality are collected since 1966 by the Fonds Suzan Daniel. A Flemish magazine on issues related to homosexuality is called Zizo. A phone service for matters related to issues on homosexuality (Holebi-foon) is supported by the Flemish Government. Information on matters related to issues on homosexuality is posted on special pages of teletext of the public television channel: the Holebitext. At the municipal level, emancipation officers have the possibility to integrate issues on holebi's in their policies. The Flemish Minister also supports the 'Pink Houses' in major Flemish cities that can negotiate with the local authorities.

In the next paragraph we will see how this societal context is reflected or not in the available empirical research and/or how the available empirical research reflects part of the societal context.

5. Research on same-sex partners and parents

In this contribution, we want to focus on the available empirical research in Flanders on same-sex partners and same-sex parents. But even a recent Special issue on 'Social Psychological Perspectives on Lesbian and Gay issues in Europe: the state of the art' (Coyle and Wilkinson, 2002) did not reveal much on same-sex partners and parents. First of all, this state of the art in Europe was given by mainly British scholars. A comparative study between the US and Britain was written up by an American (Hegarty, 2002). Two Belgian - Flemish - authors reported on the confidant support and the mental wellbeing of lesbian and gay young adults in a longitudinal analysis (Vincke and Van Heeringen, 2002). Secondly, how do we have to interpret the selected substantive themes that are dealt with in this state of the art? They concern: symbolic beliefs about sexual orientation, arguments against lowering the age of consent for sex between men, the mental wellbeing of young homosexuals, planned lesbian parenting, sexual decision making and systemic therapy with homosexual clients. The main point of the editors of this special issue is that debates about essentialist versus social constructionists approaches are a feature of lesbian and gay psychology in Europe and that epistemological differences map into methodological differences with the positivist work relying mostly on quantitative data and the social constructionist work mostly on qualitative data.

5.1 Publications on homosexuality in Flanders

In Flanders, empirical research on same-sex couples is scarce, but not in-existent. On demand of the Focal Point on Equal Opportunities Policy a overview has been made in 2002 of research on holebi's in Flanders. The overview includes all research that was carried out at research or education institutes and policy or field-organisations in Flanders or was done outside Belgium but on the situation in Flanders, and resulted in a written report. The search resulted in 287 publications that were organised by kind of publication and by content (Baert and Cockx, 2002). The results are quite informative about the selective approach of the topic in Flanders. Almost all reports/publications date from the 1990s or later. According to the kind of publication 5 categories were distinguished: policy oriented scientific research; theory oriented scientific research; training research by students; popularized publications (polls, survey among readers, popular work) and educational material, besides a category of ongoing research. The most informative, but anyhow surprising, result is that about 40% of the reports/publications concerns the work of higher education students. This reflects not only who is interested in the topic, but also indirectly reveals something about the quality and the scope of the research. According to the 21 content categories (publications could be at most in two categories), a quarter belongs to the category of 'social climate' treating issues such as public visibility and acceptance of homosexuality, discriminations of homosexual persons and the policy concerning homosexuality. One out of six publications were on sexual identity (identity formation, coming out) and 1 out of 7 on health issues (well-being and aids/hiv). Topics such as family of origin, leisure time, marriage, income and labour, training and education, housing, age, death, religion were almost completely absent. The authors conclude that most theory- and policy-oriented research is focused on requests for help and welfare problems and counseling, containing the risk of making the group a 'problem group'. The work from students covers a much broader range of topics and provides a much more diversified image, considering the homosexuals as a group being part of a broader network and participating in the social life. It is also more focused on the comparison with heterosexual persons (Baert and Cockx, 2002).

5.2 Research on same-sex couples and parents

5.2.1 *Partnership status of individuals with a homosexual orientation*

Already in 1971, Ross mentioned in 'Modes of adjustment of married homosexuals', his study with 11 Belgian homosexuals that were married at the time of the interview. This study is referred to in a Dutch literature overview (Gijs et al., 1989) on homosexual men in marriage.

Even if the sampling method of surveys with individuals with a homosexual orientation is quite well described in some studies, the studies are quite vague on their criterion, even if it is self-identification, to include a person in their sample.

In a small survey sample (N=115) in Flanders in 1999 86% participants identified as homosexual and 14% as bisexual (Baert, Cockx and Seghers, 2001). Besides, 77% belonged to the age group of 26-50 and 48% had a higher educational level. In this study, no information is available on how many respondents had a (steady) partner. We only learn that half of the participants cohabited with the same-sex partner and that this was more the case for women. 32% lived alone; this was more the case for men. The others still lived with a hetero-partner or with their parents. Males had had significantly more sexual partners over their life course and over the last 12 months.

Based on what is called a 'Policy oriented general survey of Flemish homosexual men and women', Vincke and Stevens (1999) provide some information on the partnership status of the respondents (Brussels was not included in this study). Using a quota-sample design (sex, age, educational attainment, place of residence), the researchers could reach 60% of the required quota. Homosexuals without any educational degree or with only a primary school degree and homosexuals of the age 55 and over were heavily underrepresented. More precisely, 127 homosexuals of the age 65 and over with at most a primary school degree were required according to the quota-schema: there was none in the sample. Interviewers actively searched at meeting places for homosexuals the respondents required according to the quota-scheme. Several respondents contacted the interviewers spontaneously at these places and volunteered to participate. Besides, the survey was posted in a Holebi-magazine and through a Holebi-organisation. However, it is hard to find out which precise criterion was used to invite persons to participate or to participate. The final sample consisted of 54% men and 46% women; 26% were younger than 25, 7% were older than 50. Some partnership related characteristics were collected. Across cohorts (born after 1955), the group having experienced a first attraction to a same-sex person by age 19 has increased (from 44% to 76% for women and from 62% to 81% for men) as well as the proportion that self-identified as homosexual by age 19 (from 39% to 79% for women and from 54% to 86% for men). Along the same line, the group that had the coming out by age 19 increased (from 28% to 73% for women and from 28% to 77% for men). Among these homosexuals, the age at which they experienced a first sexual contact with a same sex partner has decreased. The proportion having had this experience by age 19 increased (from 20% to 40% for women and from 13% to 36% for men). To compare: a general population survey from 1991 revealed that across the cohorts 1955-71 the proportion having experienced a first sexual intercourse by age 19 remained at about 50%, both for men and for women (Corijn, 1995).

In the sample of homosexuals, 90% men and 84% women were never married; 2% were still married. About half of the men had a partner; two thirds of the women had a partner. Mean duration of this partnership was 3.4 years for men and 5.2 years for women. 80% of the group thought that their partnership was visible enough. About 90% were happy or more than happy in their partnership. There were minor differences in the appreciation of the degree of happiness: 50% men called themselves very happy; 41% women called themselves perfectly happy. However, the criteria for a partnership were not specified in the report. Nor was information available on how many persons lived together with their partner or on the frequency they met each other. However, some specific aspects of commonality were measured: 27% men and 35% women had a common account; 24% shared home-ownership; 25% had a life insurance for the partner. No comparisons with other groups or evaluations can be made as we don't know the size of the cohabiting group. The report says that the responsibility for the household income is shared by 60% and that legal arrangements in case of death or divorce are more rare than oral arrangements. However, again the report is not precise about the reference group. One in

10 persons had children from a heterosexual relationship (8% men and 11% women). Unfortunately, no information is available on where these children lived and on the frequency of contacts with them. 4% of the women had children from a homosexual relationship. About half of the persons expressed the wish to have children.

5.2.2 *Research on homosexual versus heterosexual couples*

Being interested in research on same-sex couples, we would like to find plenty examples such as the work of Kurdek (1998) 'Relationship outcomes and their predictors: longitudinal evidence from heterosexual married, gay cohabiting, and lesbian cohabiting couples'. Based on his study, Kurdek can e.g. conclude that relative to married partners, gay partners reported more autonomy, fewer barriers to leaving the partnership and more frequent relationship dissolution and lesbian partners reported more intimacy, more autonomy, more equality, fewer barriers to leave the partnership and more frequent relationship dissolution. Moreover, he could conclude that the strength with which the dimensions of the relationship quality were linked to each relationship outcome for married partners was equivalent to that for both gay and lesbian partners. Even more, we would like to see more studies in which the type of couple (gay, lesbian, heterosexual) is just one of the independent variables as in Kurdek's (1997) study on the dimensions of relationship commitment. But European research is far away from that.

At the University of Ghent, students of the Faculty of Sociology worked on 'Homosexuality and relationships' (Coolen, 1987) and on 'Intimacy and sexuality in male homosexual relationships' (Deenen, 1992). At the Faculty of Psychology (Unit of experimental-clinical and health psychology), students are involved in a research programme on homosexual versus heterosexual couples.

Dewaele (2001) in his study on 'Relationship characteristics of homosexual couples' e.g. analysed the relationship between destructive and constructive communication and relationship satisfaction among heterosexual and homosexual couples. Among the homosexual couples that had expressed interest to participate in the research, only 33% sent back the materials. As such 15 homosexuals couples with a relationship of minimum 6 months participated and were matched (age of both partners, duration of relationship) with heterosexual couples from an existing couple database. Data from the oldest and the youngest partner in the same-sex couple were respectively compared with those of the man and the women in the different-sex couple. Relationships between aspects of the satisfaction with the partnership among the partners were compared for both the same-sex and different-sex group as were relationships between aspects of the communication patterns within the relationship and relationships between the satisfaction with the partnership and the communication patterns. Similarities prevailed, differences were minor. Reynaert (2001) focused in her work on 'Communication and empathic accuracy among lesbians couples' and Struyver (2001) on 'Individual characteristics and satisfaction with the partnership among homo- and heterosexual couples'.

At the University of Leuven students worked on 'Partnership among homosexual men' (Mostinckx, 1970); 'Patterns and issues of partnership formation among homosexual men' (Meers, 1986) at the Faculty of Psychology and Educational Sciences and on 'Towards the homo-marriage. Theological-ethical reflections' (Vanhees, 1998) at the Faculty of Theology.

5.2.3 *Research on lesbian mother families*

Allen and Demo (1995) present the families of lesbians and gay men as a new frontier in family research. On the basis of a review of over 8.000 articles published between 1980 and 1993 - which is ten years ago - in nine journals that publish family research, they concluded that research on lesbian and gay families is quite limited, and that where these families have been studied, they have been problematized and their diversity has been overlooked. Laird (1993) also observed that only three areas comprise the core of our

knowledge base (until that time): same-sex partnerships and romantic relationships; lesbian mothers and to a lesser degree gay fathers and the psychological development and social adjustment of children of lesbian and gay parents. Allen and Demo conclude that a reorientation of the researcher's attention is needed towards a model that incorporates the dynamics of family relationships and the multiple contexts in which sexual orientation is relevant.

At the University of Leuven a student made 'Reflections from the sociology of the family on homosexual parenthood and homosexual families' (Dirkx, 1999). Others reviewed the literature on 'The wish for children among gays and lesbians' (Smets, 1986), 'Lesbian motherhood' (Martens, 1998) and on 'The psychosexual identity formation of children of homosexual parents' (Moors, 1999).

At the University of Ghent, students have similar interests 'Homosexual parenthood: between wanting and being able' (Peeraer, 1997); 'Homosexual parenthood in view of the concerns of the child' (Panesi, 2000) and 'The psychosocial development of children from an alternative family form' (Devos, 2001).

At the department of Developmental and Life Span Psychology of the Dutch speaking Free University of Brussels there is a longitudinal investigation on children who were born in a lesbian household. All lesbian couples who entered the donor insemination programme at the Centre of Reproductive Medicine (University Hospital Brussels) between 1986 and 1991 were asked to take part in a longitudinal study of lesbian families. Data were collected several times: at the start of the inseminations; between the child's first and second year of age (50 couples); between the child's fourth and sixth year of age (30 couples) and when the children were between 7 and 17 (24 couples).

Major publications cover the following issues:

- ◆ The donor concept (Children from anonymous donors: an inquiry into homosexual and heterosexual parents' attitudes, Brewaeys et al., 1993; An attempt to reconstruct children's donor concept: a comparison between children's and lesbian parents' attitudes towards donor anonymity, Vanfraussen et al., 2001; Why do children want to know more about the donor? The experience of youngsters raised in lesbian mother families, Vanfraussen et al., 2003);
- ◆ The child development and family functioning (Donor insemination: child development and family functioning in lesbian mother families with children of 4-8 years old, Brewaeys, 1997; What does it mean for youngsters to grow up in a lesbian family created by means of donor insemination, Vanfraussen et al., 2002; Family functioning in lesbian families created by donor insemination, Vanfraussen et al., 2003).

Part of this work was also published in French in 'Homoparentalités. Etat des lieux (Gross, 2000).

We select some results from this study of 50 lesbian couples at the time their children were between 1 and 2 years (Brewaeys et al., 1995): 85% of the women involved reported to have an exclusive homosexual orientation and 15% were bisexual. 8% allocated themselves a sex role with mainly masculine characteristics. More than half of the lesbian mothers had a higher education; two thirds called themselves Catholic. The mean duration of the partnership at the time of the birth of the first child was eight years, but with a range from 2 to 13 years. The age of the biological mother at the time of the birth of the first child was on average 32 years, varying from 24 to 37. 40% of the couples made no distinction at all between the biological and social mother i.e. the parental roles were identical. 60% of the couples thought that a child could only have one mother, the mother's partner had a different role but educational responsibilities were equal and shared. Other issues that were analysed concerned the lesbian mother's view on donor anonymity at two points in time; the disclosure about the use of a donor, the two-mother

family, the lesbian identity towards the children, family/friends and colleagues; the name-giving to the biological and the social mother; the division of childcare tasks.

At the time the children were between 4 and 8 years there were still 30 lesbian mother families involved in the study and they were compared with 38 heterosexual families with a donor insemination child and with 30 heterosexual families who had a naturally conceived child (Brewaeys et al., 1997). We select some results: the quality of the couples' relationship and the quality of the mother-child interaction did not differ between lesbian mother families and either of the heterosexual family groups. The quality of the interaction between the social mother and the child in lesbian families was superior to that between the father and the child in both groups of heterosexual families. Children's own perception of their parents was similar in all family types: the social mother in lesbian families was regarded by the child to be as much a 'parent' as the father in both types of heterosexual families. With regard to their emotional/behavioural development, boys and girls raised in lesbian mother families were well adjusted and their gender role development did not differ from that of child raised in heterosexual families.

Some years later a total of 41 children aged between 7 and 17 years, and 45 parents, took part in another follow-up study, mainly on the concept of the donor. (Vanfraussen et al, 2001). 54% of these children preferred donor anonymity at this point in their life, whereas 46% wanted to know more about the donor. The majority of the mothers preferred the donor to remain anonymous. At the time of this follow-up study, 6 of the 24 couples were separated. In all but one family, these parents had established a kind of co-parenthood or had arranged contact between the children and both mothers on a regular basis.

Obviously also students worked on this topic: 'The development of insight in family relationships among children that grew up in alternative living arrangements: a study among KID children of lesbian couples' (Verbelen, 1989), 'Impact of lesbian parenthood on 'the interpersonal relations within the household, the family and the broader social context' (Vandenoetelaer, 1998); 'The family concept of children born to lesbian mothers by donor insemination: a comparative study with children of heterosexual parents (Nekkebroek, 1999); 'Homosexuality and the wish for children (Santacruz, 2001).

6. Conclusion and discussion

What do we know and what do we don't know about issues related to homosexuality in Flanders? Since same-sex marriage is possible in Belgium, homo-related organisations admitted several times in the newspapers that now it does not matter (anymore) how many persons (will) opt for a same-sex marriage. Apparently, to abolish a discrimination was the issue, not marriage itself. We will have to wait a long time to see the first official data on homo-marriages. What is very well documented from research on same-sex parents in Flanders is how well children in lesbian families are doing.

In the current Flemish literature on issues related to homosexuality, one can read much from a perspective of discrimination (at school, at work, experience with, anticipation of,...). However, this perspective and the related information could be more informative, if comparisons with other groups - that can be or are discriminated - were made. If we read that 8% of the homosexuals is teased several times a week, we miss any context to evaluate this number. Moreover, one can read a lot on contacts of persons with a homosexual orientation with health and welfare organisations (evaluation of attitudes, knowledge of the personnel on homosexuality, preference for personnel). But again the information collected is given without any reference to any other group that can have or has difficulties in their contacts with health and welfare organisations. If we read that 20% of the homosexuals thinks the physician has not the appropriate knowledge, we miss any reference to evaluate this number.

Both the qualitative and quantitative studies on persons with a homosexual orientation in Flanders take very much an insider's perspective and any broader framework or any comparative stand is missing. Moreover, negative issues and shortcomings get priority. Opportunities and strengths of this subgroup of people is seldom touched upon.

In a overview of materials for an equal opportunities policy related to homosexuality issues, authors come up for all kinds of domains (from education, welfare, health, over youth, culture and sports, labour, housing to media and tourism) with lists of objectives that are needed to create the appropriate conditions and lists of objectives that must be realised to obtain an equal opportunities policy (Sergeant and Backx, 2002). Here again, one gets the impression that the perspective of holebi's is over-emphasized and that persons with a homo- or bisexual orientation are treated as a very specific target group without putting the issues in a comparative and broader context. According to our view, the word 'holebi's' could be replaced in these lists of objectives by the name of many other 'minority' groups of different kinds.

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Restrained reform - Securing equality for same sex couples in Iceland[†]

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Introduction

During the last decade of the twentieth century the Icelandic legislature took a number of steps granting same-sex couples legal status and protection, including enabling people of the same sex to enter into registered partnerships and criminalizing certain forms of discrimination.

This paper aims at analyzing the reforms and to what extent same sex couples have been guaranteed the same legal status as heterosexual couples. It is questioned whether the reforms have been coherent or if the policies have provided fragmented rights. Furthermore, the policy making process: the role and the motives of the policy makers are analyzed. In particular it will be emphasized to what extent the legal reforms is part of proactive policies and to what extent it is a reaction on behalf of the legislature towards external pressures, such as legislative developments in other countries.

The data consists primarily of parliamentary documents, including bills, proposals and laws, and the documentations of speeches and discussions in the parliament.

The paper is divided into three sections. The first section chronicles the reform process during the 1990s. The second section examines the extent of the reform, analyzing how it affects different policy areas. An analysis of the content of the law reveals that it is the marriage law that creates the framework for same sex couples to gain legal recognition of their relationship called registered partnerships. However the rights are mainly oriented towards the economic aspects of relationships while drawing a distinct line between parental rights of registered partnerships and marriage, a line reinforced by laws on adoption and assisted fertilization.

In the third section the process of the policy making is examined. It is questioned to what extent that the process is continuous and comprehensive. The voting of members of parliament regarding proposals regarding same-sex orientation is examined in order to gain information on how extensive the support has been and if it has differed according to party lines. By examining the parliamentary debates around the bills and the proposed amendments to laws that affect same sex couples it is possible to find the source of and arguments for restraint rights regarding parenthood.

1. Restrained Reform?

The latter half of the '90s saw significant steps taken by the Icelandic legislature towards legal equality for same-sex couples compared to heterosexual couples. These changes took place against the backdrop of international pressure and a growing visibility of homosexuality in Iceland in the 1980s. Even though Iceland is, comparatively, quite progressive regarding the issue of same-sex relationships, having at one time taken the rights of registered partners a step further than the Scandinavian countries, the pace of reform has generally lagged somewhat behind developments in those same countries which suggests that the Icelandic legislature has tackled the issue reactively rather than proactively.

[†] First version - paper in progress

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An Early Decriminalization of Same-Sex Intercourse

Same-sex intercourse was decriminalized in 1940 when the Icelandic legislature adopted new General Penal Code (no. 19/1940) in accordance with legislative developments in Denmark. Previous Penal Code, which had been in effect since 1869 had defined homosexuality as an aberration of nature akin to bestiality and a number of people were incarcerated on grounds of "indecent conduct" defined by these laws, especially between 1869 and 1900 (Kristinsson 2003).

The decriminalization of same-sex intercourse was not accompanied by a legal recognition of homosexuality. In fact the legislation continued to regard homosexuality as inherently different from heterosexuality. This is apparent in the provisions defining the age of consent which was set at 16 for heterosexual intercourse but at 18 for same-sex intercourse with a further provision that should it be proven that an individual had used the advantage of age and experience to persuade an individual of the same sex, aged 18 to 21, to engage in intercourse the former could be sentenced to prison for up to two years. It is not clear how often this provision was invoked while it was in effect, but it is clear that it was often enough to deter homosexuals to engage in intimate relations with others (Kristinsson 2003).

Whether the decriminalization of same-sex intercourse was a significant concern with the adoption of the new Penal Laws is unclear. The adoption of the law has to be considered in the context of the Danish rule over Iceland at the time, which suggests the actual content of the law was decided by policy concerns in Denmark. It is interesting that this same legislation decriminalized the cohabitation of unmarried heterosexual couples (Einarsson 1970). This indicates a recognition that surveillance in this area was neither effective nor feasible as the enforcement of such provisions might have adverse effects on individuals who appeared to be in breach of the law, even if they weren't. The fact that homosexuality was still defined by law as different suggests that the primary concern was to protect those people who might suffer unjustified persecution under the law, rather than extending rights to homosexuals. Nevertheless, Iceland was second only to Denmark of the Nordic countries to decriminalize same-sex intercourse.

1980s

The issues of homosexuals and same-sex relationships remained absent from the legislatures agenda until 1985 when a group of MPs¹ proposed a parliamentary resolution to the effect that the government should appoint a committee to investigate the situation of homosexuals in Iceland and propose legislative amendments based on their findings (*Alþingistiðindi 1985A: 138*). This group included members of various political parties, but since it was the initiative of these particular MPs rather than their parties, the party-political composition of the group is of limited relevance. For the record, however, it should be noted that two parties were not represented in the group, the center-right Independence Party (*Sjálfstæðisflokkur*) and the social democratic People's Party (*Alþýðuflokkur*).

The timing of the proposal coincided with the growing visibility of homosexuals in Iceland following the founding of an official lesbian and gay movement called *Samtökin 78*, on May 2nd 1978 and resolutions from the European Council in 1981 and the Nordic Council in 1984 urging the governments of their member states to abolish discrimination against their homosexual citizens².

The proposal was referred to the parliament's General Committee (Alsherjarnefnd) from where it failed to remerge for a the second round of parliamentary debate necessary for passing such a resolution. The fact that the General Committee buried the resolution suggests that there was not sufficient political will to engage this issue at the time.

¹ Kristín S. Kvaran, Guðrún Agnarsdóttir, Helgi Seljan and Ólafur Þ. Þórðarson

² European Council resolution 924/1981 and Nordic Council resolution 17/1984

1990s

After the proposal of the 1985 resolution the rights of homosexuals remained absent from the legislative agenda until 1992 when a group of MPs, lead by a member of the Women's Alliance³ and comprised of members of all the parties represented in parliament at the time, proposed a resolution similar to that of 1985 (*Alþingistiðindi* 1991-2A: 213). This time the resolution was passed by the parliament (*Alþingistiðindi* 1991-2A: 1050). The same year the parliament passed an amendment to the General Penal Code of 1940, fixing the age of consent for both homosexual and heterosexual intercourse at the age of fourteen (General Penal Code no. 19/1940 with subsequent amendments).

In 1993 the Prime Minister appointed a committee in accordance with the resolution from 1992. The committee was made up of representatives from the ministries of Justice, Education and Social Affairs, as well as a representative of *Samtökin '78*. The committee gave its report in 1994. The report was based on a thorough investigation into the legal, the social and the cultural situation of homosexuals in Iceland. The report suggested that information about homosexuality should be incorporated into the curriculum at all levels of the education system in order to combat ignorance as a source of prejudice. The committee also emphasized that the legislature should play a part in fighting prejudice by abolishing legal discrimination, and that such reform should reflect the legislatures unequivocal will to extend equal rights to homosexuals. Furthermore, the report urged that legal reform should correspond to similar reforms in the other Nordic countries (Friðriksdóttir 2003)

It is important to note that there is a historical tradition of formal Nordic co-operation in the field of family law. Family law committees were appointed in 1909, in Denmark, Norway and Sweden, and their role was to revise and to co-ordinate the Scandinavian marital legislation. (Snævarr 1983). Iceland was not formal participant in the co-operation at that time, but revised its family law in accordance with the Nordic proposals. Today the Icelandic family law committee⁴ is a full member of the Nordic co-operation (Friðriksdóttir 1994). Historically the Nordic countries have been forerunners regarding liberalization of family law; in the 1920s all the countries revised the marital law and equality between husband and wife was gained and no-fault divorce became possible (Melby, Pylkkänen and Rosenbeck 1999; Millar and Warman, 1996). The Nordic nations have also been forerunners in regards to increased legal rights of children (Björgvinsson 1997; Therborn 1993). The issue here is not that these legislative developments occurred in a Nordic cooperative context but rather that Iceland's approach to Nordic cooperation on same-sex relationships has had an effect on how the reform has developed.

When addressing the rights of homosexuals the parliament places a considerable emphasis on unity and consensus, which corresponds with the committee's recommendation that the parliaments stand, should be clear in these matters. Yet, Nordic cooperation and the consensus approach have to some extent de-politicized this issue, allowing for a more reactive stance on the rights of homosexuals which is to be decided through Nordic cooperation and limited by the possibility of consensus at any given time.

Registered Partnerships become Law

In 1996 the parliament acted on the recommendations of the committee and in June that year it passed the Act on Registered Partnerships (*no. 87/1996*), thus becoming the fourth country in the world to grant a form of legal recognition to same-sex relationships. This legislation was similar in content to such laws in Denmark, Norway and Sweden, though it was introduced in Iceland some time after these Nordic countries had legalized registered partnerships. Nevertheless, the Icelandic Registered Partnerships Law went one step further than similar laws in the Nordic countries by allowing for the sharing of custody

³ Ingibjörg Sólrún Gísladóttir, later mayor of the capital city Reykjavik. Other members of the group were Össur Skarphéðinsson, now chairman of the Social Democratic Alliance, Ólafur Þ. Þórðarson the Progressive Party, Guðrún Helgadóttir from the Peoples Alliance and Einar K. Guðfinsson from the Independence Party.

⁴ Appointed by the Ministry of Justice.

should either of the partners have custody of a child. This is the same arrangement as with heterosexual couples. There is a strong historical tradition for providing a heterosexual stepparent with custody when entering marriage (from 1981 also heterosexual cohabitation) with a lone parent that holds custody and is living with his/her child. (Laws on the obligations of parents towards legitimate children no. 57/1921 and Laws on the obligations of parents towards illegitimate children 46/1921; Law in Respect of Children no. 15/1981; no. 20/1992 and 76/2003). Thus the legal tradition of providing custody to heterosexual stepparent was also applied to same sex stepparent.

The Act on Registered Partnership (no. 87/1996) was by any standard an important step towards granting legal equality to same-sex couples and yet it fell short of equality in some significant ways:

- Registered partnership was only available if one or both partners were Icelandic and had a permanent residence in Iceland.
- Whereas marriage could be ratified both by the state and recognized religious institutions, only the state was empowered to ratify registered partnerships.
- Same-sex couples were barred from adoption and assisted fertilization.
- Same-sex stepparents in registered partnership did share custody over the children of their spouse. But, they could not, however, adopt their partners child. This effected the economic relations between the child and the stepparent, for example when it came to inheritance. Furthermore, should the partnership end in a divorce the stepparent did have no legal claim to maintain contact with the child?
- Same-sex couples could not engage in registered cohabitation, as can heterosexual couples that are not married. Same-sex couples thus have fewer options of legal recognition than do heterosexual couples (*Alþingistiðindi* 1995-6A: 564; Friðriksdóttir 2003).

Later that same year provisions were added to the Icelandic penal law making it a criminal offence to slander or discriminate against a person on ground of their sexual orientation. There is an agreement that this provision is largely unenforceable as the burden of proof lies with the victim (Friðriksdóttir 2003; Gíslason 2003). Nevertheless this amendment is of symbolic value as it signals the legislatures commitment to extending equal rights to homosexuals.

Coming to a Halt?

After having engaged in unprecedented levels of reform in this policy area in 1996 the legislature lapsed into inactivity. An MP from the Progressive Party⁵ made two attempts to introduce a bill of amendments to the Act on Registered Partnership during the period from 1996- 1999 (*Alþingistiðindi* 1996-7A: 835; 1997-8A: 177). Furthermore a MP from the People's Alliance made a single attempt to introduce a similar bill of amendments (*Alþingistiðindi* 1998-9A: 234). The bills proposed that a same sex stepparent in a registered partnership should have access to secondary adoption.⁶ These amendments were referred to the General Committee in Alþingi where they suffered a fate similar to that of the aforementioned parliamentary resolution from 1985, and were not returned from the committee.

However, in the year 2000 the minister of justice spoke for a governmental bill on amendments to the Act on Registered Partnership allowing a same sex stepparent to adopt his/hers partner's biological child. Furthermore the bill suggested somewhat less requirements on nationality for entering into registered partnerships (*Alþingistiðindi* 1999-

⁵ The bill was signed by MPs from all parties: Ólafur Örn Haraldsson, Einar K. Guðfinnsson, Svavar Gestsson, Össur Skarphéðinsson, Guðný Guðbjörnsdóttir.

⁶ A primary adoption is when a couple adopts a child from a third party. Secondary adoption is when stepparents adopt a child which their spouse has custody over. In the case of the former all legal ties with the non-custodial parent are severed. This is not necessarily so in the case of secondary adoption. Furthermore, secondary adoption requires the consent of the non-custodial biological parent.

2000A: 860). The bill was accepted and the law was changed accordingly (*op cit.* A: 1240). The provisions for secondary adoption were added to the amendment after a heated debate in parliament in 1999 about the lack of provisions for same-sex couples in the bill on Adoption, which was passed that year.

To date there have been no further reform, but in 2002 the parliament passed a resolution establishing another special committee to investigate possible discriminations that may exist within current legislation and to propose amendments based on the its findings (*Alþingistiðindi* 2001-2002A: 132). The committee's report was expected sometime in 2004, though it has not been published, as of yet.

2. Unequal Recognition

Even though the Act on Registered Partnership of 1996 with its amendments in the year 2000 is an unequivocal recognition of same-sex relationships in the law, it falls short of granting equal status to such relationships relative to heterosexual relationships. This is clear enough in the language of the registered partnerships legislation that is largely referential, made up of clauses such as: "Articles 21. -26. of the marital law apply to the effectuation of the registration." In fact the entire legislation could be viewed as a statement that registered partnership is equal to heterosexual marriage if it wasn't for the well-defined exceptions that separate these two legislations. Here we will examine the current legal differentiation between heterosexual and same-sex relationships, both in the context of marriage vs. registered partnerships as well as other relationship patterns recognized by the Icelandic legislation.

Comparing registered partnerships to marriage

The primary distinction between marriage and registered partnership can be found in article 1 of their respective laws. Marriage is the union of two people of different gender; registered partnership is the union of two people of a same gender (Law in Respect of Marriage no. 31/1993; Act on Registered Partnership no. 87/1996). These definitions are mutually exclusive and serve to preserve the integrity of one vis-à-vis the other. As was stated above the Act on Registered Partnership marks the legal recognition of same-sex relationships while falling short of granting them equal status. What the law in fact does is to grant same-sex couples the possibility of conforming to the institutional arrangements of heterosexual matrimony while effectively excluding them from it.

This being said it must nevertheless be kept in mind that the Registered Partnerships Act is not merely a token of recognition for it does grant rights and responsibilities associated with marriage. It is important to note, however, that these rights are mostly defined in the Law in Respect of Marriage rather than in the Registered Partnerships act itself. Currently a registered partnership is equal to a marriage when it comes to financial responsibilities, insurance entitlements, pension entitlements, property rights and inheritance. This list is not exhaustive but we can conclude that the financial aspects of registered partnerships are the same as those of marriage (*op cit.*). We therefore turn our attention to those aspects that differentiate registered partnerships from marriage.

Nationality

All the conditions set for people to enter into marriage apply to registered partnerships. In addition to the requirements defined by the Act in Respect of Marriage (no. 31/1993) there are further requirements defined in the registered partnerships act which relate to nationality and country of residence (Act on Registered Partnership no 87/1996, 2. art.).⁷ For a same-sex couple to enter into a registered partnership in Iceland, one or both partners must be Icelandic nationals and have a permanent residence in Iceland. Foreign nationals can register a partnership if both have had permanent residence in Iceland during the 2 years prior to the registration. Citizens of Denmark, Sweden and Norway are regarded as Icelandic citizens for these purposes and the Minister of Justice can also grant

⁷ There are no such provisions in the Law in Respect of Marriage.

such status for citizens of countries where registered partnership acts are in effect. Another provision is that articles in international treaties and agreements to which Iceland is a signatory do not apply to registered partnerships (*Alþingistiðindi* 1999-00A: 860).

These provisions were added to the Act on Registered Partnership in recognition that the legislative developments in this policy area are highly uneven on the international level (*Alþingistiðindi* 1996A: 564) and their application supposedly minimizes any potential friction between rights recognized in Iceland and elsewhere. As a result a same-sex couple from a country that offers no legal recognition of their relationship cannot come to Iceland to gain such recognition. This is interesting in the light of there being no provisions in the Law in Respect of Marriage (no. 31/1993) that prevents a heterosexual couple of a foreign nationality that cannot gain legal recognition of their relationship in their country of origin or residence from gaining such recognition from the Icelandic state. Another side to this is that Icelandic citizens who have a permanent residence in other countries cannot gain legal recognition of a same-sex relationship from their home country unless their country of residence also offers such recognition.

The absence of any restrictions on nationality and residence in the Law in Respect of Marriage signals that the legislature regards the heterosexual marriage as a universal institution and something of a fundamental right, while the presence of such restriction in the Registered Partnerships Act mark it as a special, particular provision. This is a fundamental difference of status between these two types of relationships, which has both concrete and symbolic consequences that lead to discrimination.

A Civil Arrangement

In Iceland marriage is regarded as both a civil and a religious institution, and as such it can be ratified by ministers of the official State Church⁸, by leaders of recognized religious organizations, as well as by certain state officials so empowered. Only state officials, however, can ratify registered partnerships.

Technically it would have been possible for the legislature to use the State Church's institutional ties to the state to force it to accept same-sex relationships. In the same way it would have been possible to make the legal recognition of other religious organizations dependent on them doing the same. Nevertheless, it is unrealistic to assume that the state would attempt to achieve the consent of the religious community by coercion as the autonomy of religious organizations in relation to the state is held to be an important constitutional principle. The curiosity here is that the legislature did not leave it up to each religious organizations to decide for itself (*Alþingistiðindi* 1995-6A: 564). This was largely due to pressure from the State Church (*Alþingistiðindi* 1995-6A: 564), for by being barred from ratifying registered partnerships the religious community was relieved of having to resolve this internally divisive issue.

Parenting

The Act on Registered Partnerships (no. 87/1996) went a step further than comparable laws in the other Nordic countries in that it granted registered partners shared custody in cases where either party had custody over a child upon entering into the partnership. Thus the other partner becomes the stepparent of that child with same rights and duties as stepparents in married and cohabiting heterosexual families (Law in Respect of Children no. 76/2003). A stepparent shares parental responsibility with the parent, which is defined in law as the authority to determine and act on the child's interest and represent the child in pursuit of these interests.

The 1996 Act on Registered Partnership prevented registered partners from all forms of legal adoption of children. The 2000 amendments to the Act on Registered Partnership

⁸ . Note that ninety percent of the Icelandic population is registered members of the State Lutheran Church (Landshagir, 1999).

enabled registered partners to adopt their stepchildren, a practice here referred to as "secondary adoption". In the original proposal secondary adoption was extended to include all stepchildren, but the Parliament's General Committee proposed an amendment to the bill further limiting the right to secondary adoption to that of stepchildren who were either born to the custody holding partner or had been adopted from within Iceland. Thus, the amendment did not enable registered partners to adopt stepchildren that had been previously adopted from abroad nor were they allowed primary adoption, that is the joint adoption of a child which has no prior legal relationship to either partner (*Alþingistiðindi* 2000-2001A: 860; 1032; 1240). When the parliament's General Committee added this provision the bill of amendment proposed by the Minister of Justice it emphasized that this article should always be exercised according to the child's best interest and that children's consent should be regarded of high relevance which is in line with the law in Respect of Children (no. 23/1995) and the Adoption Act (no.130/1999) (op. cit; 1032).

The legal difference between parents and stepparents is important. Though a stepparent shares full parental responsibility the stepparent has neither legal rights nor obligations to maintain a relationship with the child should the marriage/cohabitation/registered partnership end in divorce. This is contradictory for should a biological parent that holds custody of the child die, custody is as a rule transferred to the stepparent rather than the non-custodial biological parent. If the question arises who shall hold the custody the decision shall always be made with the child's best interest in mind (Law in Respect of Children no. 23/1995). Another important difference between the relationship of stepparents and biological/adoptive parents is that a stepchild is not entitled to inheritance should the stepparent die (Inheritance Act no.48/1989).

In addition to being barred from primary adoption, registered partners are not eligible for assisted fertilization. One would be tempted to conclude that the provision against granting registered partners access to primary adoption or secondary adoption of a spouse's foreign-adopted child was grounded in fear that this would cause some countries to disallow adoptions to Icelandic parents. Yet this makes no sense for in the latter case the child would still be living in a same-sex household, albeit with limited legal relationship with their stepparent. Furthermore, such concerns should not bar women in a same-sex relationship from receiving assisted fertilization. The fact is that by limiting the access of same-sex couples to adoption and assisted fertilization the legislature has created a number of contradictions.

For example: By granting a homosexual stepparent the right to adopt the other partner's child signals the recognition that this is in the child's best interest. At the same time same-sex couples are barred from primary adoption, which indicates ambivalence towards whether it would be in that child's best interest to be raised in a same-sex household. Furthermore the laws on adoption make special provisions that an individual can, in special circumstances, adopt a child. It must be recognized that this is a very limited provision, yet it opens up the possibility that an unmarried homosexual could adopt a child as denying such an adoption to an individual on the grounds of his or her sexual orientation would be in breach of article 65 of the Icelandic Constitution. Seeing that one of the concerns about adoption is that the child must be provided with a stable two-parent home, it seems contradictory that unmarried homosexuals have greater chance of adopting a child than do same-sex couples that have signalled their commitment by registering their partnership. Lastly, same-sex couples are considered as eligible as heterosexual couples as foster parents when children are placed in either temporary or permanent foster care (Friðriksdóttir 2003). In light of that such children often come from troubled backgrounds it seems contradictory that same-sex couples are seen as equally capable as heterosexual couples of providing nurture and support in such difficult circumstances but at the same time are not considered as capable of parenting in other less demanding contexts.

Cohabitation

It should be noted that there exists no single law defining forms of heterosexual cohabitation as recognized by the state. The Icelandic legislature has chosen to recognize legal rights of heterosexual cohabiting couples through provisions in different laws (Eydal and Ólafsson 2003). The result has been a fragmented recognition of rights⁹ dependent on preconditions that vary between different areas of the law. As a result conditions, such as length of cohabitation, differ somewhat depending on the particular context and the very definition of cohabitation varies considerably between different acts of law (op cit; Eydal, forthcoming). The most common measure used to determine cohabitation is whether it has been registered with Statistics Iceland (*Act on Legal Resident no. 21/1990*). As a result there exists a distinction between registered and unregistered cohabitation where registered cohabitation entails certain rights and responsibilities whereas unregistered cohabitation does not.

Though registered cohabitation is largely seen as a step between informal relationships and marriage, or an informal alternative to marriage should a couple choose to make it a permanent arrangement, the distinction between registered and unregistered cohabitation is by no means clear and decisive as various areas of law potentially recognize unregistered cohabitation if it satisfies certain preconditions concerning the length of cohabitation, a shared responsibility for a child, or a demonstrable mutual financial commitment or dependency (*Alþingistiðindi 2000-2001A: 935*). Nevertheless this distinction has considerable implications for the recognition of same sex couples as all legal situations where unregistered cohabitation is recognized it is defined as heterosexual.

The legal fragmentation of cohabitation causes a double discrimination against same-sex couples that do not chose to enter into a registered partnership. Firstly, they have no informal alternative to "matrimony" as heterosexual couples do; secondly, unregistered same-sex couples do not enjoy the same recognition as many unregistered heterosexual couples who may satisfy some of the conditions for entitlements set down in different laws.

It is curious that the law recognizes the necessity for an informal alternative to marriage for heterosexual couples but denies such an informal alternative to registered partnerships for same-sex couples. This brings to mind the notion of the 'good homosexual' and his/her reconstruction, from being "a law-abiding, disease-free, self-closeting homosexual figure who knew her or his proper place on the secret fringes of mainstream society" (Smith 1994: 18) to being rearticulated according to his/her conformity to established institution (Ibid).

Though this may be something of an overstatement, the fact that registered cohabitation remains closed to same-sex couples indicates that legal recognition of same-sex relationships is granted, albeit in a limited way, on the condition that the same-sex couple attempts to mimic the ideal of the heterosexual marriage. Furthermore, as cohabitation is legally fragmented this discrimination is not as apparent and as easily assailable as it would be should a single article of law define cohabitation, as is with both marriage and registered partnerships.

⁹ Married couples and couples in registered partnership are ensured with greater legal rights than heterosexual cohabiting couples in particular in cases of divorces or death of a spouse (Friðriksdóttir, 1994; Eydal and Ólafsson, 2003).

Table 1: *Alþingi*: types of proposals, subject and results from 1985-2003

Year and type of proposal	Subject of the proposals	Result
1985 Resolution	<i>That the government should appoint a committee to investigate the situation of homosexuals in Iceland and propose legislative amendments</i>	<i>Not fully discussed</i>
1992 Resolution	Same as in 1985	Accepted
1993 An inquiry	Asks the Prime Minister if the committee has been appointed- He explains why there has been some delays in appointing the committee	--
1995-1996 Bill	Laws on Registered Partnership	Accepted
1996-1997 Bill	<i>That stepparents in registered partnership shall have the right to adopt their stepchild</i>	<i>Not fully discussed</i>
1997-1998 Bill	<i>That stepparents in registered partnership shall have the right to adopt their stepchild</i>	<i>Not fully discussed</i>
1998-1999 Bill	<i>That stepparents in registered partnership shall have the right to adopt their stepchild</i>	<i>Not fully discussed</i>
1999-2000 Bill	Revision on the Adoption Act- rights of same sex couples not addressed in the Bill Debated- but an agreement is reached: the issue is to be addressed when the Act on Registered Partnership is revised	Accepted
1999-2000 Bill	Same sex couples in registered partnership gain right to adopt their stepchildren. Restrictions on nationality and residence are somewhat reduced.	Accepted
2003-2003 Resolution	A committee shall investigate the situation of same sex families and suggest amendments of the law-	<i>Accepted</i>

Summary

It is apparent that the legal recognition of same-sex couples does not grant their relationships equal status relative to that of heterosexual couples as differentiation exists in various aspects of the law.

An analysis of the content of the Registered Partnerships act (87/1996) and its subsequent amendment (52/2000) reveals that the Law in Respect of Marriage (31/1993) creates the framework for the legal recognition of same-sex relationships. The rights and obligations granted are fragmented, as registered partnerships do not warrant full rights relating to family formation such as primary adoption and assisted fertilization. Furthermore, the restrictions on nationality and residence found in the Registered Partnerships act suggests that the legislatures does not regard registered partnerships as a universally legitimate institution, at least not in the same way it regards heterosexual marriage to be such. It is also important that same-sex couples do not have access to an informal recognition of their relationship, such as registered cohabitations. Finally, same-sex couples cannot have their relationship confirmed by whichever religious organization they may belong to, even when such an organization is willing to do so.

3. The Political Dimension

So far we have focused on the actual legislation and the pace of legal reform during the 90s. This has given us an indication of how the legal situation of same-sex couples has developed during this time but very little indication of why it did so. We now turn our attention to the political aspect of these legislative developments in order to determine the values and motives underlying the process. But before we do so a brief introduction to the peculiarities of the Icelandic party-political system is in order as that very system underwent considerable changes during the time-period with which we are concerned.

Throughout most of the post- WW2 period, there have been four major political parties in Iceland; the People's Party (*Alþýðuflokkur*); a socialist left party, which has had different names for simplification referred to here as the People's Alliance; the Progressive Party (*Framsóknarflokkur*) a center party and on the right wing the Independence Party (*Sjálfstæðisflokkur*). Even though the Independence Party is on the right wing, it has not been as far to the right as many conservative parties in Europe (Ólafsson 1993). In the 1980s, a new party, the Women's Alliance (*Kvennalistinn*), entered onto the political scene and was represented in parliament until 1999 when it united with the People's Party and a fraction of the left party to form a new party called the Social Democratic Alliance (*Samfylkingin*). The minority of the People's Alliance established a new party The Left-Green Movement (*Vinstrihreyfingin - Grænt framboð*). In addition, there is the fifth party in Parliament since 1999, a small Liberal Party (*Frjálslyndi flokkurinn*). Since 1991 the Independence Party has been the senior partner in all governments. From 1991 to 1995 the junior partner was the People's Party but since then the Progressive Party has been the Independence Party's junior partner, though earlier this year it became the senior partner.

An Apparent Consensus

All the parties represented in parliament during the period in question officially support ending discrimination against homosexuals, though overall politicians leaning to the left have been slightly more vocal in their support. An example of that is that female left-wing politicians¹⁰ presented the resolutions passed by parliament in 1992 and 2002. Yet, regardless of who actually presented the resolutions, both resolutions were proposed by groups of MPs from all the parties represented in parliament at the time and both enjoyed the overwhelming support from all the parliamentary groups.

At the same time individual MPs from the Independence Party have expressed their doubts about granting equal rights to homosexuals and, noticeably, the only MP to actually oppose the bill on the Act on Registered Partnership of 1996 and its subsequent amendments in 2000 was a high profile member of the Independence Party.¹¹ His arguments were that legally recognizing same-sex relationships went against the interests of the majority of the Icelandic people, that it went against the moral fabric of society, as well as some all too familiar arguments based on dogmatic religious interpretations (*Alþingistiðindi* B1995-96: Árni Johnsen col. 3718-3721). In addition another MP of the Independence Party chose to abstain in the vote on the original Act on Registered Partnership in 1996 and further three MPs of that same party abstained when parliament passed the amendments in the year 2000 (*Alþingistiðindi* 1995-6B: col. 7521 -7523; 1999-2000B: col. 6204-6205). Unfortunately none of these MPs chose to explain their position during the parliamentary debate so their reasons remain unclear. Those abstentions do not necessarily mean that these MPs opposed the legal recognition of same-sex relationships, possible they chose to abstain because they felt the bills fell short of full recognition of the validity of same-sex relationships. The fact that the MP that abstained

¹⁰ Ingibjörg Sólrún Gísladóttir 1992 and Guðrún Ögmundsdóttir 2002. Both were members of the Women's Party until 1999 and are currently members of the Social Democratic Alliance.

¹¹ In fairness to the Independence Party it must be noted that this MP is something of an oddity in Icelandic politics and later served time in a state penitentiary for embezzlement and abuse of public trust.

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in the vote on the Registered Partnerships law in 1996 voted for the 2000 amendments that broadened the rights of Registered Partners may suggest this.

Table II: Bills and proposals in Alþingi from 1985-2003

Year; who proposed and what government was ruling	Subject of the proposals	Result
1985 G. The Independence Party and the Progressive Party Resolution proposed by Members from parties left of the center and the Progressive Party	<i>That the government should appoint a committee to investigate the situation of homosexuals in Iceland and propose legislative amendments</i>	<i>Not fully discussed</i>
1992 G. The Independence Party and the Social Democratic Party Resolution proposed by Members from all parties	Same as in 1985	Accepted
1993 G. The Independence Party and the Social Democratic Party An fyrirspurn Form Member of the Women's Alliance	Asks the Prime Minister if the committee has been appointed- He explains why there has been some delays in appointing the committee	--
1995-1996 G. Independence Party and the Progressive Party Governmental Bill	Laws on Registered Partnership	Accepted
1996-1997 G. Independence Party and the Progressive Party Member bill -MP's from all parties	<i>That stepparents in registered partnership shall have the right to adopt their stepchild</i>	<i>Not resolved</i>
1997-1998 G. Independence Party and the Progressive Party Member bill -MP from all parties	<i>That stepparents in registered partnership shall have the right to adopt their stepchild</i>	<i>Not resolved</i>
1998-1999 G. Independence Party and the Progressive Party Member bill -MP from all parties	<i>That stepparents in registered partnership shall have the right to adopt their stepchild</i>	<i>Not resolved</i>
1999-2000 G. Independence Party and the Progressive Party Governmental bill	Revision on the Adoption Act- rights of same sex couples not addressed in the Bill Debated- but an agreement is reached: the issue is to be addressed when the Act on Registered Partnership is revised	Accepted
1999-2000 G. Independence Party and the Progressive Party Governmental bill	Same sex couples in registered partnership gain right to adopt their stepchildren. Restrictions on nationality and residence are somewhat reduced.	Accepted
2003-2003 G. Independence Party and the Progressive Party Resolution proposed by Members from all parties	A committee shall investigate the situation of same sex families and suggest amendments of the law-	Accepted

Cultural Conservatives tend to fall on the right side of the political spectrum in most western countries, and as the Independence Party has monopoly of the entire right wing of Icelandic politics, there being no real right wing alternative, it is not surprising that the Independence Party has become a home to such views. Yet, even though such elements exist within the party, they are in no way dominant and cannot be taken to represent the

party policy or ideology. As a matter of fact the reforms have enjoyed a near unanimous support among the Independence Party's MPs, some of who have been among their most vocal supporters. It should also be noted that the current chairman of the Independence Party appears to be a strong supporter of equal rights for homosexuals. It was during his time as the mayor of Reykjavik that the city government began to provide financial support to Samtökin '78 and, in stark contrast to the center-left government of 1988-1991 that did not address this issue at all, it was during his 13 years in office as Prime Minister that same-sex relationships gained a form of legal recognition, discrimination against homosexuals was criminalized, and the rights entailed in Registered Partnerships were expanded (*Act on Registered Partnership no. 87/1996*).

The Progressive Party, the Independence Party's junior partner in government since 1995, has given no indication that its stand on this issue is in any way different from that of the other parties. Its legacy as a rural party might be taken to indicate that it housed its share of cultural conservative-ism. Yet the most vocal supporter in parliament of rights of individuals in registered partnership to adopt their stepchildren for was an MP for the Progressive Party between 1999 and 2003.¹² His stand, like the stand of the aforementioned Independence Party MP, cannot, however, be taken as representative of the his party policy or ideology as his amendments were not passed in spite of his party being in government at the time.

The bottom line is that judging from the voting patterns of MPs, the official party policy, and participation in policy debate, there appear to be no significant differences between the parties. A center-right government was in power during the legal reforms, the left wing opposition, not being burdened with the implementation of its policies, has been more vocal on this issue. Should the tables have been turned the results would most likely have remained the same.

Discursive Tactics

The Act on Registered Partnership (*no. 87/1996*) and its subsequent amendment (*no. 52/2000*) enjoyed an overwhelming support from MPs from all the parties represented in parliament. Apart from that single member of the Independence Party, everyone who took part in the parliamentary debates about these two bills had a similar position, reflecting the emphasis on consensus and the perceived significance of unity when addressing this issue. In fact, it wasn't so much a debate as representatives of all parties stating their support for these legislative steps. The actual debate about the rights of same-sex couples took place in a different context. When parliament passed new Act on Adoption (*no. 1999/130*) in 1999 most of the parliamentary debate revolved around adoption rights not being extended in any way to include same-sex couples. The dividing line was drawn along party lines, with the government parties on one side and the opposition parties on the other.¹³

Previous attempts to introduce amendments to the Act on Registered Partnership, aimed at enabling registered partners to adopt their stepchildren, were not processed by the parliament's General Committee on the grounds that the law on adoption was undergoing a revision, suggesting that the issue would be dealt with in that context (www.samtokin78.is/val-loggjof.php3). Thus it was not surprising that the absence of registered partnerships from the new adoption bill would spark a debate in the parliament.

As it turned out the debate did not revolve around the issue of same-sex parenting as such. The Minister of Justice, who spoke for the bill on behalf of the government, stated that adding provisions for registered partnerships to the Adoption bill wouldn't amount to anything as the Act on Registered Partnership (*no. 87/1996*) explicitly stated that provisions in the law about adoption did not apply to registered partnerships. She pointed out that Iceland had been a forerunner amongst the nations regarding the

¹² Ólafur Örn Haraldsson

¹³ There were exceptions such as the Progressive Party's Ólafur Örn Haraldsson who expressed his disappointment with the absence of registered partnerships during the second round of debate.

provision of legal rights of same sex step parents and that only in the case of Denmark same sex step-parents had been granted the right to adopt their step children. She emphasized that it would be prudent for the Icelandic government to use the same method as the Danish parliament, to make such changes to the Act on Registered Partnership, and pointed out that it was already under revision (*Alþingistiðindi* 1999-2000:B Sólveig Pétursdóttir). The following debate revolved mainly around the legislative technicality of whether the issue of same-sex couples adopting children called for an amendment of the law covering adoption or the law covering registered partnerships.

The MPs from the oppositional parties made clear their opinion during the first round of debate that the Adoption Act should be changed in order to provide step parents in registered partnership the rights to adopt their stepchildren. Only MPs from the Left-Green Party made such demands regarding primary adoptions. Members from the governmental parties did not oppose the idea of such changes per se, but made clear on several occasions that they had not made up their mind if they would support such change. However all except one MP from the parties in government supported the view of the Minister that such changes should be made by amendments to the Act on Registered Partnership.

That this debate revolved around this a legislative technicality suggests that there were not significant differences in opinion about the need to address the issue of same-sex couples and parenthood, though MPs from the Independence Party seemed more undecided on the issue. During this debate the government parties emphasized the importance of consensus and unity on this issue, urging that these concerns would be addressed when the government would propose a bill of amendment to the Act on Registered Partnerships (no. 87/1996), which was undergoing a revision at the time. This also signaled that there would be no consensus on addressing this issue in relations to the adoption bill being presented. It is also important to note that the largest opposition party, the Social Democratic Alliance emphasized unity and consensus. They criticized the Left-Green Party for trying to politicize the issue, but urged that the parliament's unity should be expressed by adding provisions for same-sex couples to the adoption bill. Yet the Alliance disarmed itself by stating that even though this bill on adoption was flawed in regards to the rights of same-sex couples, it considered passing this bill to be of great importance to interfere or hinder it in any way.

The General Committee settled this conflict between the first and the second round of debate. During the second round of debate it was revealed that the revision of the registered partnerships law was primarily concerned with reducing restriction on nationality and residence but the committee settled the matter by agreeing to add provisions to the amendment allowing secondary adoption to registered partners (*Alþingistiðindi* 1999-2000A: 392).

Even though there was a consensus about the issue as such later in the same parliamentary session, the fact that a legislative technicality sparked such a debate should not be overlooked. The fact that a group of MP's from all parties had proposed such changes three times during the period from 1996-1999 is also of importance when trying to understand the decision not to make changes to the Adoption Act on the issue. It seems as if the governmental parties were not ready to take this step. Even though the amendments (L52/2000) on the Act on Registered Partnership which were passed in 2000 granted the restricted rights to adoption of step children to registered partners, it was done in such a way that it left registered partnerships outside the Adoption Act (no. 130/1999) and contained these limited adoption rights of registered partners within the Act on Registered Partnership. This clear separation has a number of implications.

Firstly, attempts to introduce amendments to either act might be forestalled on the legislative technical grounds that the issue should be dealt with by amending the other. Secondly, it is possible that for an amendment to either law to be effective a corresponding amendment would have to be introduced to the other. This is not entirely clear, though, for during the second round of debate about the Adoption bill one MP claimed to have received a legal opinion from an expert within the Ministry of Justice that the term "married couple" found in the adoption laws could be taken to apply to

registered partners as well as married heterosexual couples (*Alþingistiðindi* 1999-2000B: Guðrún Ögmundsdóttir). This means that it may be sufficient to abolish the provision in the Act on Registered Partnership that bars registered partners from adopting. On the other hand, this would not put same-sex couples who cohabit on equal footing with heterosexual registered cohabitants when it came to adoption, as the latter have since 1999 been able to adopt, had their cohabitation lasted 5 years or more, because cohabiting same-sex couples can not register their cohabitation.

Thus the Act on Adoption has during the period from 1952-1999 favored married couples. Cohabiting couples and individuals gained right to adoption by law from 1999 (*Alþingistiðindi* 1952A: 32) Having in mind that heterosexual cohabitation has had a relatively high recognition (in law and in society) it is interesting that as late as 1999 cohabiting parents are put on equal foot with married parents in regards to adoption. Besides providing regulations regarding the process of adoption the law also provides information on what family form the state assumes to meet the standards that an adoption requires. When the state is responsible for authorizing parenthood, married couples have been favored. It can also be interpreted as a sign of the special demands to the Act on Adoption since it has to be in line international agreements and the various family values in the countries giving children up for an adoption.

There is obviously a structural inertia in the legislation that complicates legislative reforms towards granting equal recognition to same-sex couples. This inertia is largely the bi-product to keeping "marriage" for same-sex couples legally separated from heterosexual marriage. This separation is further reflected in the separation of registered partnerships from other laws concerned with family formation, such as the limited adoption rights of same-sex couples are placed in the Act on Registered Partnerships rather than in the body of the adoption laws, which generally defines adoption rights. Same-sex relationships are absent from the law on assisted fertilization while the Act on Registered Partnerships explicitly states that provisions of the laws on assisted fertilization do not apply to registered partners. Lastly, as was mentioned above, the restrictions placed on nationality and residence in the law indicates considerably different perceptions of marriage and registered partnerships. In this context the debate about the legislative technicalities of granting adoption rights to same-sex couples can be understood as a debate about whether to maintain this separation or not.

Considering the referential nature of the registered partnerships law, the fact that the rights and responsibilities of registered partners are defined in a different body of law, combined with the weight of the negative references that state that certain provisions of other laws do not apply to registered partnerships, indicates that registered partnerships are defined in law, not so much by what they are but by what they aren't. That is to say, in the context of Icelandic legislation, registered partnerships aren't marriage, no matter how close the resemblance may be.

Accounting for Differentiation

Given that there exists a political consensus in the legislature about gradually equalizing the rights between heterosexual marriage and registered partnership, the legal distinction between heterosexual and same-sex relationships calls for a further exploration. It may be helpful to distinguish between the instrumental and prescriptive aspects of the legislation; that is, between expanding the rights of same-sex couples, on one hand, and defining these couples, on the other. "Law can communicate certain normative standards to society, and it can provide a substantive and procedural framework in which communication can take place on these standards and on the way in which responsible citizens or organizations should interpret them and live up to them" (van der Burg 2001, 40). This distinction is important because by placing same-sex relationships within a separate legal framework the legislature has created a space in which progress can be made towards equalizing the legal status of same-sex couples without threatening the integrity of heterosexual matrimony. That is to say, we can legally incorporate same-sex relationships into the legislation without having to rethink our understanding of heterosexual relationships, families and intimacy. It is possible that this approach will

eventually lead to absolute equality between heterosexual and same-sex relationships but the problem is that it overlooks the expressive function of legislation and the fact that the symbolic separation of same-sex and heterosexual relationships in the legislation may be as harmful as actual palpable discrimination (van der Burg 2001).

By progressing towards equality while carefully maintaining the separation between the discursive spaces of marriage and registered partnerships suggests that the issue is not so much the legislatures understanding of homosexuality as its understanding of marriage. Through laws relating to family formation (Act in Respect of Marriage no. 31/1993; Act in Respect of Children no. 76/2003; Adoption Act no. 130/1999 and Assisted Fertilization Act no. 55/1996) there emerges a distinct image of the family, which carries with it implicit values which may assist an understanding of the legal separation of registered partnerships. This image is grounded in the perceived and actual functions of the family in relation to social and economic structures.

The views implicit in laws relating to family formation have been expressed explicitly in a parliamentary resolution on family policy, which was passed in 1997 (*Alþingistiðindi* 1997A: 177). The first chapter of the resolution states the premises upon which a family policy should be formulated. One of these premises is that the well being of the family rests on equality between men and women, and the mutual responsibility for the domestic division of labor. While this reflects the legislatures sensitiveness to issues of gender equality it also places the family within a heterosexual context. The second chapter of the resolution moves on to define what the objectives of the states family policy should be. Included among the objectives is the equal responsibility of both parents for the household, indicating that the ideal family model is headed by a couple rather than a single parent. This is further emphasized in article 2 of the same chapter where it says that methods must be developed to halt the dissolution of the nuclear family. Article four of the same chapter emphasizes marriage as the foundation of family life, that as such it must be preserved. Though article 10 of this resolution does pay lip service to the families of homosexuals the tone of the overall resolution suggests a more traditional understanding of the concept of family.

The question is, how do we relate the supposed dissolution of the nuclear family to the introduction of registered partnerships into the legislation as a method of recognizing the rights of same-sex couples. Some have argued that the supposed dissolution of the nuclear family should rather be regarded as a change in the structure of family relation responding to, among other things, the growing demand for worker's independence and flexibility by the economy (Beck and Beck-Gernsheim 2001).

Other writers, however, note a contrary trend in public policy towards what they describe as the privatization of the family (Diduck 2001; Stychin 2000). This trend is understood to be a part of welfare retrenchment in the face of restrictions placed on welfare spending by the globalization of capital and entails moving a larger share of the costs of labor force reproduction from the welfare system and onto individual family units. In this context the Act on Registered Partnership can be seen as a measure to strengthen the traditional family by neutralizing the disruptive possibilities inherent in "deviant" relationship forms. The separation of registered partnerships from marriage can be seen as an incorporation of same-sex relationships into the Law without disrupting the integrity of the heterosexual family model deemed preferable by the legislature and the state (*Alþingistiðindi* 2001A: 935).

This interpretation is supported by the fact that the rights most fully granted are economic in nature while rights relating to family formation remain restricted. Furthermore, the fact that same-sex couples have no informal alternatives to registered partnerships, such as registered cohabitation is for heterosexual couples, also supports this. The trade-off for legal recognition of same-sex relationships is that they must conform as closely as possible to a preferred family model based on heterosexual marriage. Though such an interpretation may reflect to some extent the structural forces at work it is highly implausible that Privatization of the Family thesis holds much explanatory power in the Icelandic context as the state has been increasing both regulation and expenditure when it comes to family policy.

If we take into account the fact that the legal recognition of same-sex relationships and the expansion of rights afforded by that recognition largely coincide with the expansion of rights for heterosexual couples in registered cohabitations, the introduction of registered partnerships into the legislation can be seen as a part of an ongoing process of legally consolidating a greater variety of relationships. The demands of the labor markets have little relevance in this context. It is more plausible that this process is determined by the changes that have been affecting family formation in Iceland. This overall development can therefore be understood as a method of preserving the family by gradually expanding the definition of family to include a more diverse range of relationships.

By approaching the issue from this angle the emphasis placed on marriage as the foundation of family life can be understood as a cultural residue, which is important in the light of the perceived moral dimension of granting equal rights to same-sex couples. Legislatures tend to approach issues that are considered to have a moral dimension differently than they do issues that are seen as purely economical or instrumental:

These issues seem to have more in common than merely the fact that their moral dimension is more explicit than in other issues. They arouse much public attention, often accompanied by strong emotional feelings, and they are highly controversial. The controversies usually cut across party lines and are regarded as 'free' questions, on which every member of parliament is free to vote according to his or her own conscience. Moreover, it is often quite difficult to make good and adequate laws which really cover all relevant aspects of the issue and which are effectively supported by a majority in parliament, in society at large, and in the professional fields or practices involved. Consequently, these legislative processes often take substantially longer than those concerning issues with a financial or economic character (van der Burg 2001, 32).

Here the emphasis on parliamentary consensus and unity emerges as an obstacle to a more proactive approach to the issue. Even though most members of parliament agree that more rights should be extended to same-sex couples, they may disagree on the extent of these rights and how intensive the pace of reform should be. Political consensus thus calls for a compromise where legislative steps are determined by which measures command the broadest support. As the most enthusiastic proponents of reform are likely to support any step in the right direction, now matter how small, the extent of reform is effectively limited to measures that skeptics and moderate opponents of reform are willing to support.

The visibility of issues and them being a subject of public debate is a prerequisite for the emergence new attitudes and values concerning the issue. Viewing skepticism among MPs as a cultural residue is based on the fact that the rights of homosexuals surfaced only recently in public debate. Recently is here understood as the late 70s and the early 80s as there are many indications that changes in society's values are not so much the result of people changing their established values than the emergence of new values among younger generations. These new values then gain momentum as younger generations grow in influence (Ingelhart 1991). If this is the case we have cause for optimism. Considering that during the 2003 general election a significant number of new MPs were elected to the parliament, many of who are in their early thirties or younger, the next steps towards equality for same-sex couples may not be that far off.

Conclusion

It is clear that the Act on Registered Partnership in Iceland has provided same-sex couples with fragmented rights. The economic aspect of registered partnerships is undeniable equal to that of heterosexual marriage but when it comes to personal aspects, such as the religious dimension of the relationship or the rights to have and raise children, the rights remain limited as registered partners can neither adopt nor receive assisted fertilization.

Furthermore the restrictions placed on nationality and residence brings about a significant symbolic discrimination.

The emphasis on political consensus and Nordic cooperation has in a sense de-politicized this issue. As a result the legislature has been able to approach the issue reactively rather than proactively. This emphasis does not necessitate such an approach. The fact that it did result in a reactive stance is more likely the result of a residue of cultural values that may eventually be phased out of the legislature. Indeed, legislative developments seem to be heading toward a further expansion of rights for same-sex couples. The decisive factor on how such reform will proceed, however, will be whether it is pursued within the current framework of legal separation of same-sex and heterosexual relationships or whether the next steps will involve an opening up these legislative borders.

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Denial of equal marriage rights for lesbians and gay men in the Netherlands

Bas van de Meerendonk* & Peer Scheepers**

Same-sex marriages are very controversial. Recently, the Vatican (Congregation for the Doctrine of the Faith 2003) and US President Bush (CNN 2003) both spoke out against same-sex marriages. On the other hand, Canada, Taiwan and several countries in Europe have prepared or introduced legislation to make same-sex marriage legal. The public opinion is divided into opponents and advocates of legalising same-sex marriages. In a recent CNN poll (CNN Quick Vote, 2003) 52 percent out of 22.7 million votes agrees that marriage should be legally defined as only a union between a man and a woman; 48 percent disagrees. Results from a recent European survey (EOS Gallup Europe 2003) also reveal large differences in acceptance of same-sex marriages between European countries (see appendix 1). In this paper we will focus on the Netherlands. In 2001, the Netherlands was the first country to open regular marriage for same-sex couples (Waalwijk 2003). The process that led to this legislation has been described as the long road to civil marriage (Van Velde 2003). Also, in the Netherlands the attitudes toward homosexuality are more permissive than in all or most other countries in the world (Inglehart 1997; Widmer, Treas and Newcomb 1998; Kelley 2001). In other publications we have paid attention to the denial of equal rights (concerning adoption, inheriting and housing) of lesbians and gay men in the Netherlands (Van de Meerendonk & Scheepers 2004) and other attitudes towards homosexuals (Van de Meerendonk, Eisinga & Felling 2003). However, the attitudes of the Dutch toward equal marriage rights have hardly been studied.

The main question we will address in this article is: (1) which specific individual characteristics contribute directly to explain the denial of equal marriage rights to lesbians and gay men, i.e., which specific social categories have strongly denied these equal rights?

THEORIES AND HYPOTHESES

There are no research reports on Dutch attitudes towards equal marriage rights for lesbians and gay men. So, we are faced with a lack of empirical clues to answer our research questions. However, we may derive hypotheses from more general theories. One crucial idea is that exposure to particular 'socialising agents' may affect compliance with social norms, a rather general thesis put forward by Durkheim (1897/1951). Considering a number of 'socialising agents' like religious communities and schools, to which people are differentially exposed after family socialisation, implies a number of testable hypotheses. However, if one takes this argument one step further, one could also state that the 'Zeitgeist' may be considered to be a 'socialising agent', or more precisely a 'socialising circumstance'; a general thesis put forward by Mannheim (1936/1972), and more recently by Inglehart (1990). In the next section we will propose testable hypotheses on the relationship between individual characteristics and the attitudes towards equal marriage rights for lesbians and gay men, building on these general propositions.

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Effects of Individual Characteristics: Hypotheses

The three main Dutch religions, Roman Catholicism, Reformed, and Rereformed, are based upon Christianity. Christianity in general has a rather negative view towards lesbians and gay men. The Old Testament speaks of an abomination. The official Roman Catholic doctrine teaches that it is not wrong to be a homosexual, but that it is morally wrong (a sin) to engage in homosexual conduct (sex). The advice is to "not to do it, if one unfortunately is one." It concerns the difference between the pastoral and the moral view. The churches' attitudes towards homosexual behaviour are very negative.¹ There has hardly been any change in this official position. Concerning equal rights of lesbians and gay men, the churches, Catholic and Protestant (Reformed and Rereformed) alike, have actively tried to influence politicians and the public debate.² The churches viewpoint focuses either on denying lesbians and gay men equal marriage rights directly or, more indirectly, on the right or liberty to discriminate against lesbians and gay men. Both strategies seem to result in unequal treatment of or rights for lesbians and gay men. Churches in general have been denying lesbians' and gay men's equal rights and have shown negative attitudes towards lesbians and gay men.³ Church members, irrespective of which religion they adhere to, therefore are expected to deny equal rights for lesbians and gay men more often than people who are no church members. Now, we propose in conformity with Durkheims general thesis, that people who have been exposed to these socialising agencies in religious communities will deny equal marriage rights for lesbians and gay men. Hypothesis 1: members of denominations deny equal marriage rights for lesbians and gay men more strongly than unchurched do.

If people attend church more often, they are exposed more severely to the official doctrine. The official doctrine teaches that lesbians and gay men are not allowed to have equal marriage rights. So the frequent church attendees will have a greater tendency to deny lesbians' and gay men's equal rights than less frequent attendees or people who (almost) never go to church. Tygart (2000, p.267; see also Johnson, 1997) found for the USA that "the less religious involvement, the greater the support for homosexual rights". Hypothesis 2: the more often people attend church, the stronger they deny equal marriage rights for lesbians and gay men.

Vogt (1997; see also Bobo & Licari, 1989; Gibson & Tedin, 1988) shows that education fosters support for equal rights for lesbians and gay men. He considers attitudes towards equal rights to be a part of tolerance against lesbians and gay men. "For attitudes toward homosexuality (...) education's place in most lists of predictors remains firm" (Vogt, 1997, p.91). The question is how education increases support for equal rights? Greater cognitive

¹ Amongst others the Pope, Dutch Roman Catholic bishop dr. Eijk and also Calvinist MP Van Dijke have spoken out about homosexuality. In 2000 the Pope called homosexuality "a deviation, not natural, an objective disorder that goes against the law of nature" (Rooms-Katholiek Kerkgenootschap in Nederland, 2000a). In his lectures to theology students, Eijk taught that homosexuality is a 'neurotic development disorder', homosexual relations are not 'intrinsically ordered' and lesbians and gay men are not able to love one another. It is only a matter of 'mutual masturbation' (Van Schaik, 1999).

² Examples from the denial of lesbians' and gay men's equal rights are the religious opposition against equal treatment (Equal Treatment Act), opposition to the right to marry (civil marriage), opposition to the right to adopt. In 1987 Roman Catholic Cardinal Simonis said he would respect landlords if they refused homosexual tenants in their houses (Rooms-Katholiek Kerkgenootschap in Nederland, 1987; see also Waaldijk, 1989). The Vatican opposed the recent Dutch marriage and adoption bills (Pontifical Council for the Family, 2000; see also Rooms-Katholiek Kerkgenootschap in Nederland, 1998). Also most of the Calvinist and Dutch Reformed churches have been opposing equal rights ("Kerken doen," 2000). Most religions do not allow a homosexual couple to have their partnership/marriage solemnized (Rooms-Katholiek Kerkgenootschap in Nederland, 2000b).

³ Most churches (Roman Catholic, Protestants) have played and still play a double role. On the one side there is consideration with lesbians and gay men (and pastoral care for lesbians and gay men; in many Dutch cities Roman Catholic clergymen even initiated the homosexual movement by organizing social gatherings for lesbians and gay men), on the other side there is condemnation of homosexual behavior.

sophistication by more years of schooling might lead to more support of equal rights for lesbians and gay men. Educational systems may inherently teach or reinforce liberal attitudes such as equal rights for lesbians and gay men. Theories of intergroup contact and personality development stress the importance of the processes of socialisation. "These often unintentional processes may occur in ways that nourish tolerant beliefs and behaviours" (Vogt, 1997, p.104). The higher educated are more likely to be exposed to, and socialised into, accepting norms promoting equal rights for lesbians and gay men. The lower educated may not have dissociated themselves from traditional norms, because they had less opportunities to get acquainted with other norms prevailing in other (sub-)cultures of society. However, we propose that the longer people have been exposed to educational system, the less they will deny equal marriage rights for lesbians and gay men. Hypothesis 3: The lower educated people deny equal marriage rights for lesbians and gay men more than higher educated people.

Older cohorts have been socialised in times in which homosexuality was considered a sin, disease or crime. Following Mannheim and Inglehart, we propose that they were exposed to socialising circumstances with traditional norms on homosexuality and restrictions of individual freedom. The denial of equal rights for lesbians and gay men was dominant in society and in legislation. Older cohorts have been exposed more strongly to this denial, and hence subscribe more strongly to it than younger cohorts. At the end of the 1960s the icy moral climate melted in the Netherlands as in many other countries, the so-called 'sexual revolution' (Duyvendak, 1994, p.33). Homosexuality was gradually decriminalised and demedicalised and homosexuality was no longer considered a sin. Generations that have grown up during and since these changes in the sexual moral will be more supportive of equal rights. Strand (1998, p.114) concluded that "massive generational differences in socialisation environments" had led to more support for equal rights for lesbians and gay men among younger cohorts. Hypothesis 4: Older cohorts deny equal marriage rights for lesbians and gay men more strongly than younger cohorts do.

In the parliamentary debate on opening civil marriage to same-sex couples the only parties to vote against the bill were the Christian political parties ("Ruime kamermeerderheid," 2000). In a 1996 magazine interview, Calvinist MP Van Dijke, leader of the fundamentalistic Christian party Reformatorische Politieke Federatie, said: "One cannot divide sins into serious and less serious. Why is cheating the state out of money less serious than breaking the seventh commandment [against adultery]? Why should a practising homosexual be better than a thief?" (Van der Linden & Webeling, 1996; see also Rosier, 2000). In the most recent election campaign, the largest Christian party, the Christian Democrats have said they did not want to abolish the legally created possibility of same-sex marriages. Two smaller, more fundamentalist Christian parties still strive for this abolition. Hypothesis 5: People with a political preference for Christian political parties deny equal marriage rights for lesbians and gay men more strongly than supporters of non-Christian parties.

DATA AND MEASUREMENTS

To answer the questions above and to test the hypotheses, we use the data that have been gathered within a longitudinal research project, titled: Social and cultural developments in the Netherlands (*Sociaal-culturele ontwikkelingen in Nederland 2000* (Eisinga et al., 2002)). This large-scale field research is the successor of earlier data collections which took place in 1979 (Felling et al., 1986), 1985 (Felling et al., 1987), 1990 (Eisinga et al., 1992), and 1995 (Eisinga et al., 1997). In this project social and cultural developments relevant for the Dutch society are being recorded through face-to-face interviews with relatively large samples of the Dutch (Felling, Peters en Scheepers, 2000). The sample is (always) put together through a two-step random procedure. In the first step municipalities were selected from 4 country parts (North, East, South, West) whereby the large (self-weighting) municipalities were drawn in the selection. In the second step, within these municipalities, a random sample of people between the ages of 18 and 70 was drawn from the register of the registry office. These people received an

introduction letter and were subsequently approached for an interview by previously trained interviewers, 70 in total. These interviews took place between September 1 2000 and February 1 2001. In total 2896 people were approached of whom 1008 participated in the interviews, a response rate of 43.7%. These people were also asked to send in a written questionnaire, to which 91.4% was willing. We have tested if and to what extent these 1008 respondents form a valid representation of the Dutch population. We found small but significant anomalies in comparison with the age composition, but not with the distributions of sex and marital status. No significant differences were found between people who did and who did not send in the written questionnaire.

DENIAL OF EQUAL RIGHTS FOR LESBIANS AND GAY MEN

Our dependent variable, the denial of equal marriage rights for lesbians and gay men, was measured by asking respondents whether "homosexual couples should have the same rights to marry as heterosexual couples." Table 1 reports the frequency distribution of those who deny lesbians and gay men equal rights to marriage.

Table 1 Homosexual couples should have the same right to marry as heterosexual couples (in percentages)

I agree entirely	38,8
I agree	30,0
I don't agree, don't disagree	13,5
I don't agree	9,1
I don't agree at all	8,6
Total (valid N)	996
No answer (N)	12
Total (N)	1008

Source: SOCON 2000; author's calculations.

INDEPENDENT VARIABLES

We employed two measures of religiosity. The first question addressed the respondents' present religious affiliation, measured as none, Roman Catholic, Reformed, Rereformed, and other. Second, respondents were asked how often they had attended church during the last six months, measured as once or more a week, every two weeks, every month, fewer than once a month, and never. We asked the respondents' age at the time of the survey. We constructed six birth cohorts by subtracting this age from the year in which the survey was held. We employed as the measure of education the highest level attained by the respondent, ranging from vocational training to university degrees. Political preference was measured by asking respondents what party they would vote for if national elections were held today. Our control variable was gender.

ANALYSES AND RESULTS

We used multiple regression. The results of our regression analysis are presented in Table 2. The first column contains the characteristics used in the analyses. We present the unstandardized (B) and standardized (β) coefficients of the parameters, and the standard error (SE). Also the significance ($Sig.$) of the effects is presented in Table 2.

Denial of equal marriage rights for lesbians and gay men in the Netherlands

Table 2 Multiple Regression. Denial of equal marriage rights for lesbians and gay men

	<i>B</i>	<i>SE</i>	β	<i>Sig.</i>
<u>Religious Affiliation</u>				
Not religious (ref.)				
Catholic	.336	.109	.109	.002
Reformed	.255	.144	.054	.076
Rereformed	.338	.165	.065	.041
Other	.878	.159	.160	.000
<u>Church attendance</u>				
Never (ref.)				
Less than once a month	.133	.091	.047	.146
Once a month / Once every fortnight	.091	.153	.019	.552
Once or more a week	.757	.150	.199	.000
<u>Education</u>				
LO/LBO	.220	.105	.078	.036
MAVO/MBO	.139	.106	.050	.189
HAVO/VWO	-.086	.106	-.029	.421
HBO/WO (ref.)				
<u>Cohort/age</u>				
1930-1938	.759	.159	.143	.000
1939-1947	.598	.117	.173	.000
1948-1956	.322	.103	.110	.002
1957-1965	.038	.102	.013	.707
1965-1974 (ref.)				
1975-1982	.136	.136	.031	.316
<u>Political preference</u>				
Social Democrats (PvdA)	-.594	.149	-.184	.000
Christian Democrats (CDA)	-.330	.161	-.092	.041
Rightwing liberals (VVD)	-.389	.150	-.119	.009
Leftwing liberals (D66)	-.534	.176	-.112	.003
Christian fundamentalists (ChristenUnie / SGP)	.949	.226	.153	.000
Leftwing ecologists (GroenLinks)	-.808	.165	-.195	.000
Socialists (SP)	-.473	.199	-.079	.018
Other party	-.383	.317	-.034	.227
Don't know	-.510	.161	-.126	.002
Don't vote (ref.)				
<u>Sex (men)</u>	.226	.068	.088	.001
Intercept	1.847	.172		.000
adjusted <i>R</i> ²	.34			

Notes: ref. = reference category

Education categories: LO: primary education; LBO: lower secondary vocational training; MAVO: middle-level secondary education; MBO: middle-level vocational training; HAVO: higher level secondary education; VWO: secondary scientific training; HBO: higher level vocational training; WO: university.

Source: SOCON 2000; author's calculations.

First, we consider the effects of religiosity. According to our first hypothesis, denial of equal rights for lesbians and gay men was more widespread among members of denominations than among unchurched. As can be seen in Table 2, the effect of membership of a denomination was positive: members of denominations were more likely to deny equal rights for lesbians and gay men. The effect was strongest for members of other churches. Those members were much more likely to deny equal marriage rights for lesbians and gay men than unchurched. These findings support hypothesis 1.

According to our second hypothesis, denial of equal marriage rights for lesbians and gay men was stronger among frequent churchgoers than among people who (almost) never went to church. Indeed, the effects were in the direction we expected them to be. Those who most frequently attended church were significantly more likely to deny equal marriage rights for lesbians and gay men as compared to those who never went.

Our third hypothesis concerned educational effects. We expected the lower educated to be more likely to deny equal marriage rights for lesbians and gay men than higher educated people. We found that denial of these equal marriage rights was more widespread among those in the lowest category of education than among those in the highest category. This implies that hypothesis 3 is not refuted.

Next, we turn to the estimated effects of the societal circumstances during the respondents' formative years. In our fourth hypothesis we hypothesized that denial of equal marriage rights of lesbians and gay men was more widespread among older cohorts that were exposed to circumstances with traditional norms on homosexuality and restrictions of individual freedom during their formative years. Older birth cohorts denied significantly more strongly equal marriage rights for lesbians and gay men than younger cohorts. There are no significant differences between the three youngest birth cohorts (born after 1957; formative years during the 1970s, 1980s, and 1990s) with respect to the denial of equal marriage rights of lesbians and gay men. Our findings firmly support our fourth hypothesis. The older cohorts were more likely to deny equal marriage rights to lesbians and gay men as compared to the reference category (1965-1974). The effects of the cohorts tended to get stronger with the years. This might suggest an ageing effect. The youngest cohort is not the most permissive. This finding might indicate that the younger generations are less supportive of equal marriage rights for lesbians and gay men than the generations that came of age during the seventies and early eighties.

Compared with those who did not vote, the supporters of the Christian fundamentalist parties were much more likely to deny equal marriage rights for lesbians and gay men.

The variable sex was included as control variable in the analysis. It turned out that women were significantly less likely to deny equal marriage rights for lesbians and gay men than men.

CONCLUSION AND DISCUSSION

In this paper we have examined which specific social categories have strongly denied equal marriage rights. We found that denial of equal marriage rights for lesbians and gay men is rather consistently subscribed to by social categories that have been exposed to traditional socialising agents and socialising circumstances in which traditional norms prevailed: members of denominations (hypothesis 1), people who frequently attend church (hypothesis 2), and older cohorts, especially the ones born before 1948 (hypothesis 4), as well as by those who have presumably not dissociated themselves from these traditional norms, i.e., the lower educated (hypothesis 3).

The present study also found that men deny equal marriage rights for lesbians and gay men more strongly than women. This sex difference was also found in American studies of denial of equal rights for lesbians and gay men (Kite & Whitley, 1998), and of unfavourable attitudes towards homosexuality or gay men and lesbian women (Herek 1984; Kite & Whitley, 1996; Herek & Capitanio, 1999). Different explanations have been proposed for this difference. One of these explanations is that the term 'homosexuals', which is also used in our question format, is not gender neutral, but is often interpreted

with reference to gay men (Kite & Whitley, 1998), and men tend to deny equal rights for gay men more strongly than equal rights for lesbians (Herek & Capitanio, 1999). Replacing 'homosexuals' by 'lesbians and gay men' or asking the questions separately for lesbians and gay men might solve this problem. Kite & Whitley (1998) and Herek & Capitanio (1999) provide an overview of different explanations for the sources of this difference, but we will not discuss these here.

The overall results suggest that the theories of socialising agents (Durkheim, 1897/1951) and socialising circumstances (Mannheim, 1936/1972) provide us with rather good explanations of which social categories deny lesbians and gay men equal marriage rights more strongly than other categories.

Limitations and Future Research

We need to further explore the relationships between personal inner aversion to homosexuality, the expression of tolerance with homosexuality, support for equal rights for lesbians and gay men, and actual behaviour towards homosexuality, and lesbians and gay men. For the Netherlands, Wafelbakker (1975) found that fairly considerable personal inner aversion to homosexuality and fairly considerable tolerance with regard to homosexual conduct by others exist side by side, and Tielman (1982) found that expressed tolerance and actual behaviour of people not always correspond.⁴ Public opinion data for the Netherlands show less opposition against same-sex marriages than in other countries under research. These data also show decreasing opposition against same-sex marriages over time. This however does not mean that Dutch homosexual couples (or single homosexuals) are completely socially accepted (Van de Meerendonk 2003).

In our data, we found some clues that the youngest cohort denies equal marriage rights for lesbians and gay men more strongly than the other post war cohorts. Recent newspaper publications also suggested that in certain areas, such as schools, the acceptance of homosexuality is decreasing. Research on ethnic discrimination also found more support among the youngest cohort (Coenders & Scheepers, 1998). According to the Dutch cabinet (Ministry of Health, Welfare and Sport, 2001) the full acceptance of a gay or lesbian lifestyle is not a stable condition, the increase towards more acceptance is not a fact, and regression remains possible. In the future, we need to examine whether there really is an increase in denial equal marriage rights for lesbians and gay men among the youngest cohorts.

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⁴ See also footnote 3.

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Data

The national Dutch survey Social and Cultural Developments in the Netherlands 2000 - SOCON 2000 (Steinmetz Archive Studynumber P1556).

Denial of equal marriage rights for lesbians and gay men in the Netherlands

Appendix 1

For each of the following propositions, tell me if you absolutely agree, rather agree, rather disagree or absolutely disagree? The authorisation of homosexual marriages throughout Europe

	(++/+) AGREE	(--/-) DISAGREE
Belgique	67%	31%
Danmark	82%	17%
Deutschland	65%	34%
Ellas	16%	80%
Espana	68%	24%
Ireland	46%	48%
Italia	47%	52%
Luxembourg	71%	24%
Nederland	80%	18%
Osterreich	48%	41%
Portugal	43%	53%
Finland	56%	39%
France	58%	40%
Sweden	70%	26%
United Kingdom	47%	45%
EU 15	57%	39%
Bulgaria	20%	69%
Cyprius	9%	81%
Czech Republic	50%	48%
Estonia	35%	56%
Hungary	37%	55%
Latvia	19%	74%
Lithuania	26%	62%
Malta	23%	69%
Poland	19%	70%
Romania	17%	77%
Slovakia	30%	70%
Slovenia	40%	55%
Turkey	16%	79%
CC 13	23%	70%
EU 2004	53%	43%
Swiss	65%	31%
Norway	66%	31%

Source: EOS Gallup Europe (2003: p4)

Same-sex couples in Spain. Historical, contextual and symbolic factors

José Ignacio Pichardo Galán*

INTRODUCTION

In Spain a social and political debate is taking place in response to the vindication of diverse Lesbian, Gay, Bisexual and Transsexual (LGBT) organizations to give same-sex couples access to marriage. It focuses on the recognition of the relations of same-sex couples, while giving legal cover to the so called "de facto" couples (which is also open to the heterosexual couples) without recognizing all the inherent rights within marriage.

In this article I initially review the historical and social circumstances in Spain that have allowed the transition from the persecution of homosexuals to the recognition of certain rights and duties for couples formed by two people of the same sex. I will give special attention to the existence of a consciousness of inequality in comparison to the heterosexual couples that is now the source of a fight to obtain total equality.

My next point is an analysis of the symbolic and cultural elements that are being discussed and used when allowing the recognition of this type of homosexual relationships. Although an analysis of this type would have to include social actors' discourses and their practices, we will limit ourselves to the specifics that are being addressed in the Spanish legal system.

I conclude with a brief review of the criticisms, the challenges and possibilities that are being generated by the legalization of this type of sexual relations between people of the same sex.

1. HISTORICAL AND CONTEXTUAL FACTORS

1.1 Looking back

During the diverse stages of the dictatorship of Franco (1939-1975) homosexuality in Spain was synonymous with persecution, exile and even murder. The *Crooks and Vagrants Act* was modified in 1954 to include the category of homosexuals (next to gypsies, drug addicts and vagabonds) and to allow repression and punishment of homosexual practices during the first part of this period.

In 1971 the *Law of Dangerousness and Social Rehabilitation* took effect. This statute considered homosexuals dangerous people and caused their separation from the society in an attempt to rehabilitate them. During the period in which this law was enforced (1971-1979) approximately 1,000 homosexual men were locked up. They were taken to jail or to special disciplinary centers for homosexual men. At the same time lesbians, once again at the cost of their invisibility, escaped repression during the dictatorship (Calvo, 2002).

In 1975 the dictator died and the transition towards democracy took place in Spain. Guasch (1995) shows us a process that took place during the late years of Franco's dictatorship. This process was marked by a detachment between the real country and the official country. Thus, while the dictatorial regime tried to maintain a morality of the postwar period based on National-Catholicism (a political ideology based on the moral

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values of the Catholicism of the time), Spanish society showed an important tolerance and openness to sexuality and sexual behaviors. This tolerance is restricted solely to heterosexual behaviors, since the homosexual remained strongly stigmatized for about two more decades.

The first Gay Pride demonstration in Spain took place in 1977 in Barcelona. The event was strongly repressed by the police. Five thousand people participated in the gathering.¹ During these first years of political transition the primary target of the homosexual movement was the abolition of the previously mentioned *Law of Dangerousness and Social Rehabilitation*.

By the 1980s the lesbigay movement's primary goals were achieved (through the abolishment of the *Law of Dangerousness and Social Rehabilitation* and the legalization of homosexuality) and it suffered a decline in activism. The participation in the Gay Pride demonstrations in Madrid hardly reached 100 people in 1988.²

As it had occurred in other countries in the region, the epidemic of AIDS brought the Gay and Lesbian movement back to life in Spain, largely because the epidemic placed homosexuality in the center of social and mass media attention and made the needs of same-sex couples visible. For homosexuals, it meant the confirmation of all the offenses they were suffering because of their sexuality: not being able to visit their couples in cases of illness if the biological family did not allow it, not having access to inheritance, losing the common home if the person who passed away was the holder of the house or the rent contract, common necessities of prevention programs and attention. During these years (end of the 1980s and early 1990s) activism and participation in organizations increased. This is most likely the foundation on which the later Spanish gay movement "boom" since 1995 was erected.³

Soon the need to regulate and protect same-sex couples was realized by the couples themselves and society. In 1993 two of the main Spanish gay and lesbian organizations (CGL from Catalonia and COGAM from Madrid) began a campaign demanding the regulation of de facto couples, a campaign to which they incorporated strategic allies, including heterosexual de facto couples that did not marry.⁴

During the 1990s, equality for homosexual people surfaced as a question in the political debate. The Spanish Workers Socialist Party (Partido Socialista Obrero Español, PSOE), in power since 1982, began to establish relations with the lesbigay movement. In the final years of their term of office they acceded to some of its demands (1994-1996) with the recognition of rights for de facto couples in certain laws, especially in the *Law of Urban Leasing* (1994), which recognizes the right to subrogate a contract in a de facto couple regardless of sexual orientation.⁵

The Socialist Party lost the national elections of March 1996 without fulfilling one of its main promises towards gays and lesbians: the approval of a de-facto couples law that would give them certain protections in different legal situations. The conservative Popular Party (PP), in government since then, has always restrained numerous initiatives presented by diverse progressive and nationalistic groups in the Spanish Parliament. First it was for the regulation of de facto couples and, later, for reforming the *Civil Code* in order to recognize the right of homosexual people to contract marriage (Pérez Cánovas, 2001:500-501). They have not fulfilled the intentions expressed by some of the members

¹ Herrero Brasas, 2001:313

² Herrero Brasas, 2001:315

³ Since then participation in the Madrid gay pride demonstrations has not stopped growing. In 1995 there were 5,000 people (the same as at the end of the 70s); in 1999 there were 30,000; in 2000, 70,000; in 2001, 150,000 people participated; the total reached more than 350,000 people in 2002 and exceeded half a million people in 2003. (Herrero Brasas, 2001:315; Odisea, nº 59. Page. 10; El País, 01/07/2001, cover; www.elmundo.es 29/06/02 y 28/06/03).

⁴ El País, 17.02.02 Pages. D1-3

⁵ Pérez Cánovas, 2001, 497-498

of the Government or the Popular Party to approve a national law of civil unions that would include same-sex couples.⁶

In the last municipal and regional elections of May of 2003, gay marriage happened to occupy the center of the political debate as one of the more controversial issues during the election campaign. Almost all candidates had to make clear their position on the matter. The controversies over gay marriage and the acceptability of child adoption by same-sex couples has reached such levels that even a new political party has been created (*Familia y vida*: "family and life") to make the rejection of these two issues as its main political banner. With 3,793 votes the Family and Life Party was the eighth most voted party out of 20 in the Madrid Regional Parliament Elections⁷.

1.2 From dangerous to citizen

It is interesting to analyze the process by which the homosexual people in Spain have gone from suffering from laws that jailed and discriminated them to becoming social actors who also demand their right to equal citizenship. From the first demands of rights for same-sex de-facto couples they progressed (in 1997) to demanding access to marriage with the same rights as heterosexual couples, including the right of joint adoption⁸.

There is little doubt that the transformation of Spain from a dictatorial society into a democratic one has been a key element in this change. The Spanish Constitution, enforced since the end of 1978, promotes the values of freedom, dignity, free development of personality, equality in the eyes of the law and participation⁹. It is the recognition of these values in Spanish society that has created the possibility for homosexual couples to claim equality in the eyes of the law.

The Spanish Constitution specifically compels public authorities to ensure the social, economic and legal protection of the family (Art. 39,1), ensuring that family is one of the foundations on which the social organization of Spanish society is sustained¹⁰. As Jaurena i Salas (2001, 515) points out, although in the Spanish legal system any marriage constitutes a family, marriage is not an indispensable requirement for creating a family. Both elements (marriage and family) appear in different articles of the Constitution (32 and 39 respectively) and are not necessarily connected.

The access of homosexuals to both institutions (marriage and family) would not require constitutional reform because the Spanish Constitution never defines what a family is. This allows the extension of this concept to nontraditional families, that is to say, non-nuclear ones. When speaking about marriage the Constitution indicates the right of man and woman to get married, but it does not specify that it must be between a man and a woman¹¹.

Because of all these reasons, the Spanish Constitution constitutes as a legal reference for political parties, lesbian organizations and homosexual citizens who demand legal equality for their sex-affective relationships by gaining access to these two institutions that are protected constitutionally and are accepted socially and legally: marriage and the family.

In spite of this, when same-sex couples have addressed civil registries or the highest courts to be recognized as married, the answer has been to assume that marriage must take place between a man and a woman (Herrero Brasas, 2001:137-142, Perez Cánovas,

⁶ El País, 17.02.02 Page. D3

⁷ <http://www.elmundo.es/especiales/2003/05/espana/25m/resultados/autonomicas/12/0.html>

⁸ The Asturian group Xega proposed this demand which was adopted immediately by the National Federation of Lesbians and Gays (Herrero Brasas, 2001:142). Homosexual marriage became the main demand of the demonstration that took place in Madrid on June 30 2001 with the attendance of more than 150,000 people.

⁹ Art. 10.1, 14, 17.1 y 23.1

¹⁰ The concept of spouses and relatives appears in much of Spanish legislation: from labor legislation to social security, tributary or civil code legislation (inheritance, parenting, etc.). An analysis of all these laws goes beyond the purpose of this article.

¹¹ "Man and woman have the right to get married with total legal equality". (Art. 32.1)

2001:496). This occurs despite the fact that this it is not specifically expressed that way in either the Constitution or the *Civil Code* ("Código Civil").

At the same time an evolution is taking place in the Spanish public opinion with regard to the acceptance of the extension of the rights assigned to marriage to homosexual couples. In 1997, according to the official *Centro de Investigaciones Sociológicas* (CIS, Sociological Research Center), most Spaniards (57%) accepted that homosexual couples living together in a stable way deserve the same rights and duties as married couples (Alberdi, 1999:41). In the recent years, Spanish public opinion is becoming the European vanguard in this sense, being the fifth country of Europe with the greatest acceptance (68%) of homosexual marriage and the third most favorable country with regard to joint adoption by same-sex couples (57%).¹²

It is also important to acknowledge the influence of the international context in this process that is turning homosexuals into political subjects who demand complete citizenship and equality of rights. This influence comes, on one hand, from the resolutions and recommendations of the Council of Europe and the European Parliament¹³ and, on the other, from the international Human Rights and LGBT movement. In the previous decade all of these have exerted important pressure on the states for the recognition of rights for gays and lesbians.

1.3 National Government, 0; Regional Governments, 11

With the Spanish Constitution of 1978 Spain is defined as a plurinational country committed to respecting and protecting cultural variety. The state became decentralized with the recognition of the diverse nationalities and regions that, in the form of independent communities or regions, make up Spain. Some issues stay exclusively in the hands of the national government (among others, the regulation of marriage, registries, nationality and migration, labor and social security). The autonomous regions (Comunidades Autónomas), on the other hand, have their own parliament, laws, president, etc. Among the ample jurisdictional areas assumed by these autonomous regions are those relative to health, education and social assistance.

Six, out of the 17 autonomous regions and two autonomous cities into which Spain is divided, have a series of their own "*fueros*" (jurisdiction) that allow them¹⁴ to have their own legislation regarding matters of civil rights, especially those related to family law, inheritances and successions; and, in some cases (as in Navarre and the Basque Country), these rights include the tributary system¹⁵. I will illustrate further how important this will be to explain the diverse level of capacities between the different autonomous regions to regulate same-sex couples.

As we have seen previously, in spite of public opinion pressure, the diverse demonstrations and the different law proposals presented in the Spanish parliament, the Spanish national government has rejected offering recognition and legal coverage to

¹² "Homosexual Marriage, child adoption by homosexual couples: is the public ready?". Survey made in January 2003 with more than 15,000 interviews in 30 European countries by EOS Gallup Europe: www.eosgallupeurope.com/homo/index.html

¹³ Especially the recommendations of the European Parliament in 1984 to abandon policies repressive of homosexuality, the Resolution on Equal Rights for homosexuals and lesbians in the European Community (A-0028/94 Resolution, D.O.C. 28.02.94) and, recently, the approval by the European Parliament of a report in which it is requested that states grant same-sex couples the same rights as married couples (www.elmundo.es, 05/09/03).

¹⁴ Aragon, Balearic Islands, Catalonia, Galicia, Navarre, Basque Country.

¹⁵ In 17th century, Spain was composed of a group of kingdoms (Aragon, Castile, Leon, Navarre, Majorca...) with their own law codes called "*fueros*". After the Succession War (1713) king Felipe V eliminated a good part of these "*fueros*" in the territories that opposed him during the war (Aragon, Valencia, Catalonia, Balearic Islands) and maintained them in the ones that were on his side (Navarre and Basque provinces). These regional law codes were kept or disappeared in these regions and kingdoms with diverse consequences at different moments in history. Eliminated by the centralizing spirit of Franco the dictator, they were later recognized again for six autonomous regions in the 1978 Constitution.

same-sex couples. There exists, nevertheless, the possibility for many of these couples to register their unions with a representative of the state. This is possible thanks to the different laws approved in most of the regional parliaments recognizing this type of unions. Thus, 11 of the 17 autonomous regions have passed a law giving same-sex couples the possibility of contracting legal rights and duties¹⁶. 77.82 % of the Spanish population live in one of these autonomous regions¹⁷.

Some of these regional laws discuss the necessity of regulating what they define as a "new social reality"¹⁸ in order to avoid "unfavorable treatment," "important injustices," "legislative marginalization" and "legal discrimination" against non-married couples regardless of their sexual orientation¹⁹. The approval of these laws by autonomous regions elevates same-sex couples to a legal category; in other words, it certifies its recognition by an institution of the state. In a sense, this fact constitutes another element pushing the national government to establish legislation on the issues concerning same-sex couples.

The chart below is a panorama of the 11 laws that have been approved in the Spanish state to protect same-sex couples. Although it is not the main aim of this article, it provides a summary of the main aspects of each regional law:

Those autonomous regions with recognized "fueros" can legislate on inheritance issues and, in some cases, on family matters. This means that couples registered in these territories can gain access to inheritance rights or to joint adoption (in the case of Navarre and the Basque Country) that will never be allowed to same-sex couples in the rest of Spain until the National Government enacts the necessary legislation.

Here we can see how, because of historical and cultural factors, there are different degrees of access to rights in Spain. If a homosexual couple lives in the Basque Country, they will have the right (for historical reasons) to adopt jointly, to inherit from his or her partner or to register their relation without cohabitation, whereas if they live in another region they may not have any of these rights.

Looking to the political tendency of the regional governments approving these laws, mainly progressive and nationalist parties are the ones that promote and sponsor the different projects. Only three of these laws (those of Valencia, Madrid and the Canary Islands) have been promoted or supported by the conservative party (PP). These three laws are indeed the most criticized by the LGBT community. I will discuss how these three laws share common characteristics in relation to the symbolic aspects they reflect (not considering these couples as a family, not mentioning sexuality, etc).

In Navarre (1) all the opposition parties were united in the Navarrese Parliament in passing a De-Facto Couples Law against the wishes of the local Partido Popular coalition (Union of the Navarrese People, Unión del Pueblo Navarro, UPN) which governed without an overall majority. In the Basque Country (2), the party that is composed of reformed communists (Left United, Izquierda Unida, IU) established, as a condition to joining a governmental coalition with nationalists, the approval of a same-sex couples law. This law, which was approved after dialogue and negotiation with Basque LGBT associations, is one of most progressive in Spain. It is progressive not only in its symbolic aspects -

¹⁶ Cataluña: Ley 10/1998 de 15 de julio de Uniones Estables de Pareja; Aragón: Ley 6/1999 de 26 de marzo relativa a Parejas Estables No Casadas; Navarra: Ley Foral 6/2000 de 3 de julio para la Igualdad Jurídica de las Parejas Estables; Valencia: Ley 1/2001 de 6 de abril por la que se regulan las Uniones de hecho; Baleares: Ley 18/2001 de 19 de diciembre de Parejas Estables; Madrid: Ley 11/2001 de 19 de diciembre de Uniones de Hecho de la Comunidad de Madrid; Asturias: Ley 4/2002 de Parejas Estables del Principado de Asturias; Andalucía: Ley 5/2002 de 28 de diciembre de Parejas de Hecho de Andalucía; Extremadura: Ley 5/2003, de 20 de marzo, de Parejas de Hecho de la Comunidad Autónoma de Extremadura ; Canarias: Ley 5/2003 de las Parejas de Hecho de la Comunidad Autónoma de Canarias; País Vasco: Ley 2/2003, de 7 de mayo, reguladora de las parejas de hecho.

¹⁷ 31.787.106 people, out of a total of 40.847.371 inhabitants, according to the Official Census of 2001 (www.ine.es)

¹⁸ Preamble in Valencia, Canary Islands and Madrid laws.

¹⁹ Exhibition of reasons in the law of Navarre, introduction of the one of Aragon, and exhibition of reasons for the laws of Extremadura and Basque Country, respectively.

conceiving a familiar relation with no need for cohabitation, but simply on the existence of a sexual-affective relation- but because it includes inheritance and adoption rights too.

Autonomous Region	YEAR	Political Tendency	Previous cohabitation requirement	Adoption	Fostering	Inheritance	Separation demanding rights
CATALONIA *	1998	Nationalists	Registering, NOT previously	NO	NO	YES, but limited	YES
ARAGÓN*	1999	Progressives + nationalists	Registering, NOT previously	NO ²⁰	NO	YES, but limited	YES
NAVARRRE*	2000	Progressives + nationalists (1)	1 year, although previous cohabitation can be demonstrated	YES	YES	YES, but limited	YES
VALENCIA	2001	Conservatives	Registering, 1 year	NO	NO	NO	Through a private contract
BALEARIC ISLANDS *	2001	Progressives + nationalists	NOT previously	NO	NO	YES, but limited	YES
MADRID	2001	Conservatives	1 year, previous cohabitation can be demonstrated with witnesses	NO	NO	NO	Through a private contract
ASTURIAS	2002	Progressives	1 year, previous cohabitation can be demonstrated with witnesses	NO	YES	NO	Through a private contract
ANDALUSIA	2002	Progressives	Registering, 1 year	NO	YES	NO	Through a private contract
EXTREMADURA	2003	Progressives	1 year, previous cohabitation can be demonstrated with witnesses	NO	YES	NO	Through a private contract
CANARY ISLANDS	2003	Nationalists + Conservatives	1 year if there are no common children	NO	NO	NO	Through a private contract
BASQUE COUNTRY *	2003	Progressives + nationalists (2)	NO, even after registering	YES	YES	Identical to marriage	Through a private contract

* Communities with “*fueros*” and capacity to legislate on family law and successions.

Five out of six of the autonomous regions that have not yet presented legislation on same-sex couples have been in recent years ruled by the conservative PP (Cantabria, Castile-Leon, Galicia, Murcia and Rioja); and 1 (Castile-La Mancha), by socialist PSOE. Therefore, in Spain progressive and nationalist parties are those that seem more prone to respond to the demands of the LGBT movement.

2. CULTURAL AND SYMBOLIC FACTORS

What are the cultural and contextual factors that have allowed same-sex couples to think of themselves in terms of marriage, family or kinship? I will try to answer this question in the second part of my paper by making a brief overview of some of the elements considered in Western societies (2.1) and Spanish legal ordering when regulating marriage and the family (2.2 and 2.3). Afterwards, I will examine the way these elements are

²⁰ In December 2003, the Aragon Parliament modified the regional *Stable Couples Law* to allow same-sex couples adopt jointly.

reflected or not, in the set of laws that offer same-sex couples the possibility of achieving legal protection (2.4).

2.1 The cultural model of kinship

Western societies understand kinship as a mediator between nature and culture: kinship becomes biological facts, socially understood²¹. Schneider, when analyzing western kinship as a cultural system of symbols, says that sexual intercourse between a man and a woman is the symbol upon which marriage, parenthood, family and kinship are constructed²². Thus, heterosexual intercourse provides the link between husband and wife and between each one of them and their children, making all of them share a common biogenetic link. By naturalizing this social relationship it becomes unchangeable.

Heterosexual intercourse then appears as the ultimate expression of conjugal love (in fact it is called "making love") and as the element that differentiates love between the spouses from the one they share with their children and with people who do not belong to the family.

Gender theory and the women's movement have challenged the biological basis of kinship, gender roles and the maternal instinct. Feminism, sexual reform, contraception and new reproductive techniques have broken the link between sexuality and procreation, opening the way to overcoming the social construct that puts heterosexual intercourse at the center of sexuality, reproduction, marriage and kinship²³.

When the biological base of kinship blurs, what is then left to ground marriage family and kinship? Maybe cohabitation; perhaps love; maybe sex -understood now in a way that goes beyond heterosexual intercourse- or perhaps a mixture of all or some of these elements. These institutions (marriage, family and kinship) organize the socioeconomic reproduction as well as the biological reproduction of the human groups in western cultures.

Non-reproductive and non-coitus-centered sex -taking the symbolic place that heterosexual intercourse can no longer occupy- constitutes the last element able to give specificity to the relations of marriage (and, by extension, to family and kinship). Couples formed by two persons of the same sex, who share that non-reproductive and non-coitus-centered sexuality, can now demand the recognition of its affective relations in terms of marriage (and, by extension, of family and kinship) making it a social, legal and political demand. Questioning the heteronormative this way takes a step further in the challenge to the biological conception of kinship and to the place heterosexual intercourse occupied as the central symbol of kinship.

Without trying to analyze too deeply these elements, I will next make an investigation of which elements of them are symbolically grounding the concept of marriage, family or kinship in some of the main laws in Spain. I will do the same thing later with the laws approved by regional governments to give legal protection to same-sex couples.

Before going on, I would like to point out, as Schneider does (1980: 5,122), that the kinship model that appears here does not have to correspond necessarily to the social practices of people, not even to a majority of them²⁴. What each person thinks of

²¹ "...each element which is culturally defined as natural is at the same time augmented and elaborated, built upon and informed by the rule of human reason, embodied in law and morality" (Schneider, 1980:40)

²² "the fact of nature which serves as the symbol in terms of which member of the family are defined and differentiated and in terms of which each member of the family's proper mode of conduct is defined is that of sexual intercourse" (Schneider, 1980:33)

²³ "If reproduction is assisted, it seems as if kinship is also assisted, and its system of social representations loses coherence This intervention in a kinship system, based on the symbol of sexual intercourse and on the interdependence of nature and law, seems to cause a deep separation between what we considered to be cultural and natural respectively: law no longer recognizes nature and nature no longer grounds law." (Bestard, 1998:212)

²⁴ "The traditional familial archetype, integrated by mother, father and children, is still deep-rooted among most North Americans, but today it represents less than 25% of the families". La Nación, 09.08.03. Page 6

marriage, family and kinship is also affected by the context in which the social agents live, as well as by their ethnicity, social class, gender, age, etc.

This model becomes normative through particular institutions (laws, residential patterns, religion, norms, traditions, prohibitions, etc.) that have a direct influence on people's everyday life. According to Fassin (2000:404) family is a concept of order and organization; it is a fiction or social category that becomes real through the state and other social institutions. The state and social agents reproduce the thought that is part of the functioning of the family, an institution that receives from the state the means to be, to exist and to subsist.

2.2 The Catholic Church

Before examining the Spanish National law, I want to begin by analyzing what the Catholic Church says in its norms in reference to marriage and the family. When studying Spanish society, the influence of this institution cannot be left aside: during more than 45 years of Franco's dictatorship, National-Catholicism (which involves identification of the Spanish national identity with Catholicism) was the dominant ideology. As a result, catholic religious morality penetrated the country's legislation (Roca, 1996:336).

Although the Constitution (Art. 16,3) indicates that Spain is a secular state, the influence of the Catholic Church goes beyond the historical questions or the fact that most of the Spanish population defines itself mainly as catholic²⁵. The Spanish *Civil Code* (Art. 60) recognizes that "marriage celebrated according to norms of the canonical law [...] has civil effects". What does the *Roman Catholic Church's Canon Law* say in relation to marriage?

First, it makes it clear that marriage is contracted between a man and a woman, and asserts the natural and indissoluble character of this institution and its reproductive purpose²⁶. In addition, these canonical norms are very explicit when talking about sex, since the consummation of the catholic marriage happens when the "conjugal act" takes place²⁷. Through this act (sexual intercourse) the spouses become the same flesh. The conjugal act is so important that sexual impotence can nullify a marriage since, according to the understanding of the Catholic Church, if there is no possibility of having sex, there is no real marriage²⁸.

The Catholic Church establishes a relation between cohabitation and sexuality when understanding that the first implies the consummation (by means of sex) of marriage (Canon 1061,2). Cohabitation is a right for both spouses (Canon 1151). This cohabitation can be broken by unfaithfulness between the spouses, but, if this happens, it is recommended, by charity, to pardon an adulterous partner²⁹. Anyway, separation doesn't break the matrimonial bond, which is considered to last for life. Love or affection between the spouses does not appear in Title VII of the *Roman Catholic Church's Canon Law*, the title that addresses marriage.

²⁵The great majority of Spaniards, 83.6%, defines itself as Catholic, nevertheless the percentage of people who consider themselves practicing Catholics is 56.3%. (El País, 13 abril 2000)

²⁶ Canon 1055 § 1 - "The marriage covenant by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized".

²⁷ Canon 1061 §1 - "A valid marriage between baptized persons is said to be merely ratified, if it is not consummated; ratified and consummated, if the spouses have in a human manner engaged together in a conjugal act in itself apt for the generation of offspring. To this act marriage is by its nature ordered and by it the spouses become one flesh".

²⁸ Canon 1084 §1 - "Antecedent and perpetual impotence to have sexual intercourse, whether on the part of the man or on that of the woman, whether absolute or relative, by its very nature invalidates marriage".

²⁹ Canon 1152 §1 - "It is earnestly recommended that a spouse, motivated by Christian charity and solicitous for the good of the family, should not refuse to pardon an adulterous partner and should not sunder the conjugal life".

2.3 The Civil Code

The Spanish *Civil Code* never explicitly states that marriage is formed by a man and a woman: Art. 44 states "man and woman have a right to contract marriage". In Art. 66 and 67, it speaks of husband and wife.

The *Civil Code* explicitly requires a conjugal common address (Art. 70), indicating that the spouses are supposed to live together, to be faithful and to help each other (Art. 68). The effective cease of cohabitation is a fundamental cause of separation or divorce (Art. 82,1, 86, 87). Marriage appears then to be tied to cohabitation, a requirement that seems to have a central place in the Spanish body of laws, in the Mediterranean tradition (Bestard, 1980:180-182) and in the anthropological and sociological tradition in Spain³⁰.

Cohabitation is understood to begin when marriage takes place, but it is not a requirement for marriage. However, the Spanish *Civil Code* speaks about neither feelings, nor affection, nor love, nor sexuality. The only sexual feature displayed in this law is the obligation to remain faithful: unfaithfulness can constitute cause for separation and, later, divorce (Art. 82,1).

Although love appears in the symbolic model as one of the main components of marriage, love or affection are not presented explicitly in the civil legislation nor in the canonical law as a requirement for a marriage. The most important thing for a marriage to exist, from the perspective of the Catholic Church, is the possibility of having sexual intercourse and, for civil law, is that the couple should have a common residence.

Any marriage constitutes a family and generates kinship relationships (when you get married in Spain, the state gives you the "*libro de familia*" [Family Book]). However, family is a wide concept and includes marriage and other social realities³¹. The Spanish Constitution does not define what a family is, and the concept is left open. This fact is very important because if the family is considered as the cornerstone of our society, an institution to promote and protect, any relationship included under this family concept must then be protected by the State.

The definition of family and kinship is in dispute, creating a tension between law and social reality. Legislation (as a result of certain political changes) has great importance, as far as it has the chance to promote, protect or make possible certain behaviors (or to sanction them)³². Lawmakers are sometimes reluctant to recognize social change and become absorbed in their own thought and limitations. When this happens, the law is stuck in the past without being able to respond nimbly and suitably to new societal situations and challenges (Nieto, 1989:139,152). The result of this symbolic fight ends up being transferred to the laws, which implies legal consequences and, by extension, material consequences for the people.

Looking at legislation on same-sex couples, we can see that while most regional same-sex couple laws recognize the necessity of regulating and giving legal protection to a new reality in Spain, the national government refuses to recognize this social change.

³⁰ "Family is formed by two or more people tied by affection, marriage or paternity, that live together, have their economic resources in common and jointly consume a series of goods in their daily life" (Alberdi, 1999:60-61) "The different types of family are created from the combination of two elements: norms of residence and type of marriage" (González Echevarría, 1986:12)

³¹ Many people do not follow the traditional model of the nuclear family for life formed by a marriage and its children: divorces, new marriages, reconstituted families, unmarried parents, single mothers, families without children, homosexual families, couples without a formal bond, several generations coexisting in the same house, grandmothers raising grandsons, women not staying home, people who live alone, people sharing residence with other people... It seems that the traditional nuclear family model is in crisis or, at least, must be reviewed (Viñuales, 2000: 129-136; Weston, 1991; Donoso, 2002, 171; Guasch, 2002:14-17).

³² To see the influence that law has on the definition of social models we can look to Alberdi's work (1999) in which she explains the decisive contribution of the legal transformations that took place during the democratic transition in Spain. These transformations led to the creation of a new structure of familial relations based on equality between man and woman, equality between all the children, the possibility of ending a marriage through divorce, the State as the guarantor of childhood rights...

2.4 Laws recognizing same-sex couples

The diversity between the different laws that recognize same-sex couples in Spain is so big that it begins with the way these types of relationships are named in each law:

- Stable Unions of Couples (Catalonia).
- Stable Couples (Aragon, Navarre, Asturias, Balearic Islands).
- De Facto Couples (Andalusia, Extremadura, Canary Islands and Basque Country).
- De Facto Unions (Valencia, Madrid).

Four elements are combined to name these types of relationships: union, couple, stability and de facto. The laws that do not indicate that they are talking about couples in their title (Valencia and Madrid) make it clear in their following articles that they are talking about relationships established by two people.

The first problems arise with the "de facto" concept, since a couple, homosexual or heterosexual, is going to have different rights regardless of being registered or not in the registries created by these laws. For example, they have the right to subrogate, which is recognized by the *Law of Urban Renting* of 1994. According to the *Adoption Law* of 1987, if they are a heterosexual couple, they will have the right to adopt children jointly, even if they are not married or registered as a de facto couple.

Some laws specifically state the obligation to register in the de facto couples registries created in the different autonomous regions (all the laws create one). However, some of these regions³³ recognize rights for all de facto couples, registered or not, offering the possibility of claiming their rights whenever they can demonstrate cohabitation with legally admitted means.

The Catalan law is the only one that establishes a clear difference between homosexual and heterosexual de facto couples. Sometimes it offers similar rights for both kinds of couples. Other times, the rights acknowledged are different: joint adoption for heterosexual couples and inheritance for homosexuals. This tendency, which clearly marks the differences between different types of couples in the first of these laws, is not consistent with the rest of the regional laws.

Cohabitation

In order to be able to be covered by such legal regulations, same-sex couples must be "stable"³⁴; stability must be demonstrated by "cohabitation"³⁵; cohabitation, for many of these laws, must be "marital cohabitation"³⁶.

Although some of these laws do not require the existence of previous cohabitation, almost all of them require it after registering. The Basque law is the only one that requires cohabitation neither before nor after the inscription, since people bound together only by a sexual-affective relation can be considered de facto couples (Art.2.1). Requiring previous cohabitation in the case of de facto couples creates discrimination in contrast to marriage: people who get married do not have to prove the existence of an affective relation through previous cohabitation.

The possibility of obtaining legal protection with no need of cohabitation means an important symbolic rupture in relation to the previous model. Now it is possible for new types of sexual-affective relationships and agreements to find a place within the law. Once again, the fact that this law was one of the priorities of the coalition of the left party Izquierda Unida (IU) as member of the Basque Government has allowed taking into account this demand from LGBT organizations from the Basque Country and recognizing that a family does not necessarily have to live in the same home.

³³ (Navarre, Art. 3.2; Asturias, Art.3.2; Canary Islands, Art.6.1)

³⁴ Catalonia (Art. 19), Navarre (Art. 2), Aragon (Art. 1), Valencia (Art. 1), Madrid (Art. 1), Asturias (Art. 2 y 3), Balearic Islands (Art. 1.1), Andalusia (Art. 1), Extremadura (Art. 2.1) and Canary Islands(Art. 1).

³⁵ Valencia (Art. 1), Madrid (Art. 1), Asturias (Art. 1, 2 y 3.1), Baleares (Art. 1.1), Andalucía (Art. 1 y 3.1), Extremadura (2.2) y Canarias (Art. 1).

³⁶ Cataluña (Art. 19), Navarra (Art. 2.2), Asturias (Art. 3.2) y Aragón (Art. 3.1).

Cohabitation by itself is not a sufficient element for a stable couple or union in the eyes of the law. It must go accompanied by marital or conjugal affection, which leads us to the issue of sexuality.

Love and sexuality

Speaking of marital cohabitation seems to refer to affective and sexual aspects. Some laws prefer to speak merely of "affection" between the members of the couple (Valencia, Madrid, Canary Islands). They do not make clear what type of affection they are talking about. In a broad sense, it can be understood that friends have affective relations too, and, if they cohabit, perhaps they can be included in these types of law. This question is not trivial, since the laws approved by regional governments of the conservative Partido Popular (Valencia and Madrid) or of its allies, the Canarian Coalition (Canary Islands), are the ones that do not make explicit or implicit reference to sexuality. Perhaps this is an attempt to point out the symbolic distance of same-sex couples from heterosexual couples and, of course, from marriage.

Most of the laws, on the contrary, talk about relationships with "affection analogous to the conjugal one"³⁷. However, only the Basque law requires the existence of a sexual-affective relationship. None of these laws refers to faithfulness; and this makes sexual monogamy not an indispensable requirement for inclusion under the protection of these norms.

Family

Throughout the debate on the regulation of same sex sexual-affective relationships, "family" as a concept has become a symbolic battlefield. One of the reasons is that, as noted, the family appears in the Spanish body of laws as one of the pillars of our society, protected by the Constitution (Art. 39,1). Many of these laws consider any kind of de facto couple as a new kind of family, regardless of its sexual orientation³⁸.

From the very moment that gays and lesbians change their ways of life and adopt, with or without paternity, the family notion for themselves, a new concept is created and extended: the concept of "homosexual, lesbian or gay families", which refers to those families formed by two people of the same sex, who may or may not have biological or non-biological children. When this concept is created and used socially, it seems contradictory to say that these "lesbigay families" are not families. If we are talking about "lesbigay families", then such kinds of families exist in people's minds. To legally recognize them or not is a mere political question (Fassin, 2000).

Fassin also indicates (2000:406) that in the search for a universal definition of family by social scientists, the difference of sexes seemed to be the last common denominator that remained. Now, with the demands of gays and lesbians, this denominator is on the verge of disappearing. The simple existence of the lesbigay families touches a raw nerve when forcing (the rest of the society and the social scientists) to rethink what until that moment was unthinkable: heterosexuality and the difference of sexes as one of the main conditions for defining the family.

It does not seem that we are going to witness the disappearance of the concept of the family, but we will probably see the redefinition of it through the modification of the symbolic elements on which it is sustained. The element that, in most of the approved same-sex couple laws in Spain, seems to constitute the specificity of certain types of relationships as family is sexuality accompanied by love (in the form of "marital cohabitation", "affection analogous to the conjugal one" or simply "a sexual-affective relationship"). This remains the only differentiating element for these relationships in comparison to any other type of relationships.

We are in a context in which kinship seems to be losing its specificity in contrast to another types of communitarian organization of solidarity. These kinds of organizations

³⁷ Navarra (Art. 2.1), Aragón (Art. 1), Asturias (Art. 1 y 3.1), Andalucía (Art. 1 y 3.1), Extremadura (Art. 2.1), Baleares (Art. 1.1).

³⁸ Navarre, Asturias, Andalusia, Extremadura, Basque Country, Canary Islands.

are necessary to cover certain material necessities plus physical and social reproduction. The symbolic order supposedly based on nature is probably broken if kinship relations become an intensification of the bonds of solidarity between a group of social agents not on the basis of a series of biogenetic substances but on the basis of a more or less lasting and exclusive sexuality (or maybe is not broken).

Making sexuality (instead of heterosexual sex) the specific key element of kinship faces criticisms like those coming from Butler (2002:37), who thinks kinship should not even be based on enduring and exclusive sexual relations. If kinship loses any link with sexuality and biology, it will fade into the rest of communitarian social relations that create commitment and endure solidarity³⁹. This would also mean that sexual practices would acquire autonomy from marriage, the family and kinship.

Paternity and adoption

Same-sex couple laws regulate adoption to make clear whether homosexual people may or may not have access to joint adoption. The national *Adoption Law* of 1987, which is of a higher level than the regional laws, allows any person, whether homosexual or not, to adopt a baby individually. It allows any heterosexual couple (whether married or not and registered or not in the registries of de facto couples) to adopt jointly.

Two of these laws, those of Navarre and Basque Country, recognize the right of same-sex or not de facto couples to joint adoption⁴⁰. However, both laws have been appealed against in front of the Constitutional Court by the Popular Party and the National Cabinet respectively. The Constitutional Court has still not come to a decision on the matter⁴¹.

The idea of thinking about reproduction exclusively through sexuality has already been questioned by the possibilities that new reproductive technologies have to offer. Thanks to them⁴², to adoption and to the creation of reconstituted families, gays and lesbians have gained access to paternity and maternity, while avoiding the need for hetero-sexual intercourse. This event is questioning again the assumption that the difference of sexes is inevitable within kinship. The assumption that a man and a woman are needed for reproduction has been previously challenged by single mothers and artificial insemination as well.

Opposition to the recognition of gay marriage is looking for arguments between psychologists and social scientists in order to be able to say that gay or lesbian joint adoption would put in danger the symbolic order on which our society relies and that it can put the children adopted by same-sex couples in danger. Detractors of legal recognition for joint adoption by gay and lesbian families have espoused the argument of the child's superior interest and the protection of children, saying that it is necessary for these kids to have a masculine and feminine referent.

Extensive research has been conducted in different countries on this matter. It reached the conclusion that living with same-sex couples does not negatively affect the development of children⁴³. Despite this, Madrid's Child Ombudsman sponsored research on children raised by lesbian families by the Seville University Faculty of Psychology and the

³⁹ "Kinship loses its specificity as an object once it becomes characterized loosely as models of enduring relationship" (Butler, 2002:37).

⁴⁰ (Navarre, Art. 8, Basque Country, Art. 8)

⁴¹ El Mundo, 04.10.00 y Gara 02.08.03

⁴² The Law on Techniques of Asisted Reproduction (1988) allows any woman older than 18, whether married or not, to use any of the assisted reproductive techniques covered by this law (Art. 6.1).

⁴³ A good review of the numerous studies made in the United States on the subject can be found in Charlotte J. Patterson (www.apa.org/pi/parent.html) who concludes: "In summary, there is no evidence to suggest that lesbians and gay men are unfit to be parents or that psychosocial development among children of gay men or lesbians is compromised in any respect relative to that among offspring of heterosexual parents. Not a single study has found children of gay or lesbian parents to be disadvantaged in any significant respect relative to children of heterosexual parents. Indeed, the evidence to date suggests that home environments provided by gay and lesbian parents are as likely as those provided by heterosexual parents to support and enable children's psychosocial growth."

Madrid Official School of Psychologists. This research has concluded that these children show the same degree of development as others, and the only difference found was greater tolerance towards homosexuality and more flexibility with gender roles (González, 2002:37-38).

However, numerous conservative politicians⁴⁴ continue to appeal to the supposed disagreement among scientists on the subject, and for this reason, they refuse to acknowledge joint adoption of children by same-sex couples, including children who, nowadays, are in fact already being raised by gay and lesbian couples.

They are trying to transfer to social scientists the responsibility of making decisions that are not scientific but political. If we are conscious of the social and constructed character of kinship relations, it will be much easier for us to avoid naturalizations and, in the case of the recognition of same-sex couples, to realize that, as Fassin says (2000:392-393), opening up marriage and joint adoption to same-sex couples is a question of political choice and does not respond to scientific motivation. The responsibility of that decision belongs to the citizenry, not science.

3. CRITICS TO LESBIGAY MARRIAGE

"These transformations do not come without resistance and this resistance reveals fears of a new order [...]. Approaching something unknown and uncertainty about the future produces much mistrust. Fear of things changing too much and the confusion about what can come are expressed in very varied ways. One of them is foretelling the world will crumble, beginning with the family. Fear of losing prerogatives and privileges is almost never openly acknowledged; what is used instead are more valuable and undisputed arguments, mainly children's well-being." Alberdi (1999:289-290) makes this statement when talking about resistance to the symbolic rupture of the link between woman-maternity-care. Such resistance is easily extended to the symbolic breakdown caused by same-sex couple recognition (which is indeed related to the symbolic rupture of the woman-maternity-care axis).

But resistance does not come only from conservative groups. There are also some activists and groups from the LGBT movement who oppose gay marriage. They fear the threat for those non-monogamous gays and lesbians of being excluded from this type of social legitimation. Other groups simply do not want to imitate those institutions: they consider marriage and the family to be heterosexual and hierarchic.

The Grup de Lesbianes Feministes of Barcelona, for example, demand that we go beyond marriage and the family, giving social validity to other types of sex-affective relationships, solidarity, cohabitation and children rearing. That means going to other models of familial organization that would include different proposals or just overcoming the concept of family as the only way towards respectability for gays and lesbians.

Perhaps the route is also to incorporate new arrangements into the concept of "family" (taking into account that sexuality, solidarity, affection and child rearing are important aspects of a human group or society). If the family is limited to the nuclear family (which is not the tendency: lesbigay families, reconstituted families, etc.), another possibility is for society to organize itself with different models outside the family. Without a doubt, this last proposal would require a series of profound reforms, since, as we have seen, a good part of the Spanish body of laws, beginning with the Constitution, is based on the familial institution.

Are LGBT organizations fighting for the regulation of other forms of social and familial organization other than marriage with a search for legal recognition of other types of familial or community ties? Fundación Triángulo, for example, takes the fight for *de facto* couple laws (in addition to lesbigay marriage) to still be one of its main political objectives.

⁴⁴ Not only conservative politicians show reluctance to recognize joint adoption for same-sex couples, the general secretary of the Spanish socialists talking about the demands of LGBT movement said: "Marriage, yes. Adoption, we will see..." (Zero Magazine, num. 46, cover)

However, it seems that for most LGBT organizations in Spain, the fight at this moment is not for getting recognition for de facto couples but for opening the marriage institution to same-sex couples, which is something that can only be done by the national government.

CONCLUSIONS

Among the historical and contextual elements that have led to the approval of laws giving legal validation to same-sex couples in Spain is the transition from a dictatorial society to a democratic one whose constitution makes equity and non-discrimination one of its main values.

Pressure coming from the LGBT movement and European institutions and the existence of a very decentralized country have allowed same-sex couples laws to be passed in most Spanish autonomous regions. Some of these regions have had the possibility, because of historical and cultural reasons, of passing legislation on the family, adoption and inheritance. This has brought about differing amounts of access to rights for same-sex couples living in different parts of the country.

Progressive parties (i.e., the socialists and the reformed communists) and nationalists are the main promoters of this type of legislation, whereas the conservative party is an impediment to same-sex couple demands.

As for symbolic aspects, most de facto couple laws in Spain conceive cohabitation accompanied by a sexual-affective relationship as the key element for allowing a same-sex couple to register.

The Basque Country law carries with it an important symbolic rupture in that it recognizes a familial model that goes beyond cohabitation and places sexuality (which is not necessarily procreative, coitus-centered or heterosexual) in the symbolic center that was occupied by heterosexual intercourse before.

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From Outlaw to In-Law On Registered Partnerships for Homosexuals in Scandinavia, its History and Cultural Implications

Jens Rydström *

In 1989, Denmark was the first country in the world to introduce legislation on registered partnerships, thus creating a special demographic category for its homosexual citizens living in steady relationships. Since then, similar laws have been successfully introduced in all five Scandinavian countries and two of its autonomous areas. Only in the Faroe Islands has the parliament viciously opposed any attempt to legalise about gay and lesbian rights.¹

An interesting question then is: Why Scandinavia? Why were the Scandinavian countries first in the world to introduce a special law regulating homosexual relations? Why did these countries and no others create a special marital status for their homosexual citizens? An equally interesting question is: What does it mean? In what way can we interpret these laws? Are they the wedge that will destabilise the institution of marriage as we know it? Will they lead to the most radical redefinition of the family since late antiquity? Or is it merely a way of annihilating a homosexual counterculture that was too centred on sex and filth - to purify it, as it were?

In order to understand why the Scandinavian countries chose to introduce legislation regulating the marital status of homosexual couples, we must see to the strong traditions of consensus and to the construction of the Scandinavian welfare states with their comprehensive and universal welfare systems. In Scandinavia, everybody should be included in society, but everybody should also adhere to quite specific norms of behaviour.

We must beware, of course to treat Scandinavia as a monolithic entity. In welfare research, Scandinavia has been called "a model with five exceptions" and historically and politically there are definitely very important differences between our countries. Compare for instance the peaceful - some would say shameful - development in Sweden during the 20th century, with the violent and conflict-ridden history of Finland during the same time. Or compare the massive social democratic domination in Sweden and Denmark with the broad coalitions in Finland and Iceland. But still, I think that there are common traits that can explain much of the present day situation, and not least the extraordinary conformity in our laws on registered partnership.²

If we go back to the 1930's, we can discern a Scandinavian exceptional development in the area of gay and lesbian rights. In the 1930s and 40s, homosexuality was persecuted in nazi Germany and recriminalised in France. And in the Soviet Union, Stalinism wiped out the last remnants of sexual liberalism. In the United States, alcohol regulations and the *Motion Picture Production Code* contributed to making homosexuality invisible, and in Britain the *Public Morality Council* targeted homosexuality as a matter of priority. Thus,

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¹ Denmark: Lov nr 372 af 7. juni 1989 om registreret partnerskab. Norway: Lov 30 april 1993 nr 40 om registrert partnerskap. Sweden: Lag (1994:1117) om registrerat partnerskap. Iceland: Lög um stadfesta samvist nr 87 12. juni 1996; Greenland: Anordning nr. 320 af 26. april 1996 om ikrafttræden for Grønland af lov om registreret partnerskab; Finland: Laki rekisteröidystä parisuhteesta 9.11.2001/950 / Lag om registrerat partnerskap 9.11.2001/950 (automatically in force in Åland).

² Niels Finn Christiansen & Claus Petersen, "The Nordic Welfare States: A Historical Reappraisal" *Scandinavian Journal of History* 26 (2001) 133-136.

as homosexuals were ruthlessly persecuted in the totalitarian states, and marginalised in the liberal democracies, same-sex sexual acts were legalised in Denmark and Sweden. And as the sex reform movement died out in Britain, in Sweden the RFSU, the National Association for Sex Education, became a regular partner in dialogue with the social democratic government. However, the Scandinavian development is contradictory. In my dissertation I have shown how Swedish politics on homosexuality in the 1930s were characterised by both a more liberal view on the theoretical level, and an increasingly intense policing of unwanted homosexual activities.³

Number of prosecutions for same-sex sexual acts in Swedish courts 1920-1944

Year	Number of prosecutions	Number deemed insane	Percent deemed insane	Number sentenced to hard labour	Average length of sentence (in months)
1920-1924	64	0	0	51	9.1
1925-1929	102	5	5	52	8.2
1930-1934	182	20	11	112	7.6
1935-1939	340	73	21	145	3.9
1940-1944	526	96	18	260	4.0

Source: Criminal court records

In this table, we see the change in punitive measures taken against those who were prosecuted for same-sex sexuality during the 1930s. To begin with, we notice the sharp increase in the numbers of prosecutions. Then we see that the average length of punishment suddenly is lowered from around eight months of hard labour to about four months of hard labour in the middle of the 1930s. And, finally, we see how the number of people who were declared insane and committed to asylums also increased, both in absolute numbers and as a percentage of the totality of prosecuted persons. More and more men - and some women - were locked up in asylums after having been caught having intercourse with a person of their own sex. In the mental hospital, they were not really given any treatment, but they were regularly recommended to apply for castration, which would facilitate their speedy discharge. The Swedish law on castrations, in force from 1944, was one tool of controlling the homosexuals, or the sexually perverted, as they were generally called. The law didn't allow castrations against a person's own free will, and it was often seen as a matter of priority for the psychiatrist in charge to persuade such patients to apply for castration. And many people did in fact ask for permission to be castrated. The Swedish model did indeed rely on docile bodies, who voluntarily applied to be neutralised by the state. It has been said that it was not a coincidence that Foucault wrote *The History of Madness* when he was a visiting scholar in Sweden. In an interview he

³ Andreas Pretzel & Gabriele Roßbach, *Wegen der zu erwartenden hohen Strafe: Homosexuellenverfolgung in Berlin 1933-1945*, Berlin: Verlag rosa Winkel 2000; Kozlovskiy, Vladimir (1986) *Argo russkoy gomoseksual'noy subkultury. Materialy k izutcheniyu*, Benson, Vermont: Chalidze Publications 1986, p. 155; Masha Gessen, *Prava gomoseksualov i lesbijanok v Rossijskoj Federatsii*, San Francisco: IGLHRC.1994, pp. 7-10; Laura Engelstein, "Soviet Policy Toward Male Homosexuality: Its Origins and Historical Roots" in Hekma, Oosterhuis & Steakley (eds.), *Gay Men and the Sexual History of the Political Left*, Binghamton: Haworth Press 1995, p. 169; Jacques Girard, *Le mouvement homosexuel en France 1945-1980*, Paris: Syros 1981, p. 14; Florence Tamagne, *Histoire de l'homosexualité en Europe: Berlin, Londres, Paris 1919-1939*, Paris: Seuil. 2000, p. 503-31; Jeffrey Weeks, *Sex, Politics and Society. The regulation of sexuality since 1800*, 2nd ed., London: Longman 1989, p. 220, 1990, pp. 142, 151; Vito Russo, *The Celluloid Closet: Homosexuality in the Movies*, 2nd ed., New York: Harper and Row 1987, p. 31; George Chauncey, *Gay New York. Gender, Urban Culture, and the Makings of the Gay Male World, 1890-1940*, New York: Basic Books 1994, p. 331-54; Jens Rydström "Panoptikon. Övervakning och kontroll av manlig homosexualitet i Sverige på 1930- och 1940-talet" in Åsa Bergenheim & Lena Lennerhed (eds.), *Seklernas sex. Några bidrag till sexualitetens historia*, Stockholm: Carlssons 1997, pp. 235-37; idem, *Sinners and Citizens: Bestiality and Homosexuality in Sweden, 1880-1950*, Chicago: Chicago University Press 2003, pp. 265-277.

explained that it was partly the experience of Swedish society that had inspired him to write his book. And he characterized Sweden as “an ‘over-medicalized,’ protected society where all social perils were in some ways attenuated by subtle and studied mechanisms.”⁴ I would argue that the partnership laws in some ways represent a continuation of the theoretical liberalism and pragmatic normatism which was so obvious in the 1930s. Nowadays, gay men and lesbians who want to legalise their union, are locked into a new category. The demographic category of “Registered partner” now exists as a fifth marital status, alongside the traditional “unmarried”, “married”, “widow”, and “divorced”. How come then, that the Scandinavian states, in order to integrate their homosexual citizens, have created a new and highly exclusive category for them? Is it to put them away in a category easier to handle than the amorphous gay and lesbian subcultures of which so little is known? I will return to that question shortly. But first I want to ask what effects do the partnership laws have, in reality, for the lives of individuals?

Table 2. Persons who have registered or dissolved partnerships 1995-2001

Year	Registered partnerships		Dissolved partnerships	
	Men	Women	Men	Women
1995	498	167
1996	201	118
1997	158	104
1998	158	92	45	16
1999	154	133	42	38
2000	218	139	53	48
2001	195	186	43	62
2002	212	210	54	48

Note: The table shows only persons with permanent residency in Sweden.

Source: 1995-2001, Statistics Sweden: SCB Befolkningsstatistik. Del 4. 2001

2002, Gunnar Andersson, “Swedish Data” presented to the Conference Registered partnerships and same-sex marriages in Europe, Stockholm 2003.

If we look at the statistics of registered partnerships in Sweden, we can discern two interesting trends which may help us to think about the different meanings it may have for women and men. We see that by far the highest number of partnerships were registered during the first year the law was in force. It seems that there was an accumulated demand, which could now be satisfied, a demand that was felt more by men than by women. Then the frequency dropped steadily until 1999, after which year it has increased. The uneven distribution between men and women has also evened out so now almost as many women as men choose to register their partnership.

One hypothesis is that registered partnership appealed more to men in the generation that was eagerly waiting for the possibility in 1995. Many women of that generation had a background in lesbian feminism, and would never even consider the idea of seeking the state’s recognition of their relationship. Now that a new generation of dykes is getting old enough to contemplate marriage, this tendency seems to have become less important. Another hypothesis is that women have less money than men and can’t really afford to get married. Since the Scandinavian welfare model is based on individual support, you may actually lose money if you register your partnership. For instance, you can get a lower pension and higher taxes if your income is calculated together with your partner’s. And for a lesbian mother it might be economically advantageous to be registered as a single mother than as living with her spouse. This is very different from for example Germany or France, where apparently you get a tax reduction if you live in a registered partnership. In Scandinavia, on the other hand, welfare is more connected to the custody of children than to the legal status of your relationship, and it is not always good business to get

⁴ Michel Foucault *Remarks on Marx: Conversations with Duccio Trombadori*, New York: Semiotext(e) 1991, p 75.

married. Two old men I interviewed told me how they registered partnership after 48 years of companionship. They didn't insist on it - they both told me that they felt silly registering their relationship after so many years. It was their heterosexual neighbours and close friends, who arranged the ceremony for them. The 16-year-old son of the neighbours had learned how to play Mendelssohn's wedding march on the guitar, and the family had built a sort of altar in their living room. The old men were really touched by their gesture, but when the pension came next month, they realised that they each lost the equivalence of 20 Euro a month on the deal. Well, they told me it was worth it, because they really appreciated the loving initiative from their neighbours. Here we find ourselves on the borderline between the symbolic and the economic, and we must ask ourselves how much the acceptance of the state and our neighbours is worth to us?⁵

Because the acceptance is not only economically disadvantageous for us, it is also an acceptance which is conditional. Let us compare the texts of the ceremony of civil marriage with that of partnership, as it is formulated in Sweden:⁶

Marriage

The purpose of marriage is the wellbeing of the individual and the survival of society

You have declared that you will enter the state of matrimony with each other

Do you, N. N. take this N.N. to your wife, to love her for better and for worse?

(Answer: I do.)

And do you, N.N. take this N.N. to your husband, to love him for better and for worse?

(Answer: I do.)

Give each other your hand to confirm this

(Before the handshake, *the man may give the woman a ring.*)

I hereby declare you lawfully wedded man and wife.

[*Jag förklarar er nu för äkta makar*]

Never forget the vow of fidelity that you now have taken
Live with each other in mutual respect, love, and confidence,
and remember your responsibility unto coming generations.
May peace and happiness prevail in your marriage and in your home

Partnership

The registered partnership means that the partners show their union to each other and to the world

You have declared that you will have your partnership registered
This registration gives you rights and obligations to each other and to society

Do you, N.N. take this N.N. to your partner, to love her/him for better and for worse?

(Answer: I do.)

And do you, N.N. take this N.N. to your partner, to love her/him for better and for worse?

(Answer: I do.)

Give each other your hand to confirm this

(Before the handshake, *the partners may give each other a ring.*)

You are now registered partners.

[*Ni är nu registrerade partner.*]

Never forget the vow of fidelity that you now have taken
Live with each other in mutual respect, love, and confidence.

May peace and happiness prevail in your partnership and in your home.

⁵ Interview with Anders C. and Folke C. March 1997.

⁶ Förordning (1987:1019) med närmare föreskrifter om vigsel som förrättas av domare eller särskilt förordnad vigselförrättare and Förordning (1994:1341) om registrerat partnerskap.

What strikes you first is of course how similar they are. The wordings of the partnership ceremony are largely identical to those of the marriage ceremony, which shows that the legislators have striven as much as possible to give the same symbolic value to both institutions. But the differences are significant. One nice detail is the built-in equality between the same-sex partners, in that they give *each other* a ring. A man's claim to his wife's fidelity is symbolised by the ring that he gives to the woman, but that has been replaced with a mutual sign of belonging in the partnership ceremony. A second, perhaps less appealing difference is the form of the performative. The civil servant performing the wedding *declares* the man and woman as a lawfully wedded entity, whereas the partnership registrar merely *informs* that the same-sex partners are now registered. The first case is a speech act in its purest form, the second a proposition about a fact which is open to verify or falsify. This gives the partnership more the character of a business agreement, whereas the matrimony transforms the two into one flesh with an almost magic formula.

The third, most important, difference, is of course the explicit denial of the reproductive function of a partnership, as compared to the marriage. It is stated already in the first sentence, that the purpose of marriage is to get children, whereas the meaning of the partnership is a manifestation of togetherness. It gives you rights and obligations to each other and to society, the text goes on, but it is not clear what that would be.

Here we come to the core of the problematics of partnerships. It is clear that the symbolic meaning of the legitimisation by the state is not to be underestimated, but the price for that is a higher degree of regulation when it comes to kinship. As Judith Butler has pointed out, "the topic of gay marriage is not the same as that of gay kinship," and it is not a good deal to give one up in order to get the other.⁷

But still - it seems that the changes in marriage law mirror a development on a deeper level, a new way of thinking about marriage and family. To try to understand that development it is necessary to think about the social and cultural structures which determine our understanding of kinship and marriage.

Claude Lévi-Strauss' theories about kinship presupposes and reproduces a heterosexually structured system, based on men's traffic in women. The incest taboo and the prohibition against endogamy are, according to Lévi-Strauss the basis itself for society as it is possible for us to picture it. Yes, the intelligibility of culture itself is built on these structures of kinship. In one of her recent books, Judith Butler draws on that idea and uses the Greek tragedy *Antigone* to comment on gay marriage and kinship. Traditionally, Sophocles' play has been read as a symbol for the defiance to power, of the last remnant of kinship-based society, resisting in vain the abstract state with its absolute demands on its citizens. But the new reading that Butler proposes might help us to understand transformations we witness in our lifetime.⁸

Butler asks what would happen if *Antigone* instead of *Oedipus* had been the basis of modern psychoanalytic theory. The catastrophic kinship position of *Antigone* as the offspring of the incestuous relation between *Oedipus* and *Jokaste* detaches her from the beginning from a heterosexual and reproductive normative structure. She shuns marriage and even life, when she seeks death in an incestuous symbolic act, as she insists on mourning and burying her dead brother who is at the same time her nephew. According to Butler, *Antigone* positions herself outside the normative structure that enables us to understand culture. And she goes on to talk about the *catathresis* that emerges out of this situation. *Cathacresis* is a term used by scholars of literature studies meaning to use a word in a different way than its original meaning:

⁷ Judith Butler, "Is Kinship Always Already Heterosexual?" *differences: A Journal of Feminist Cultural Studies* 13.1 (2002), pp. 14-44.

⁸ Claude Lévi-Strauss, *Les structures élémentaires de la parenté*, Paris: Presses universitaires de France 1949; Gayle Rubin, "The Traffic in Women" in R Reiter (ed), *Toward an Anthropology of Women*, New York: Monthly Review Press 1975, pp. 157-210; Judith Butler, *Antigone's Claim: Kinship between Life and Death*, New York: Columbia University Press 2000.

*"What emerges is a melancholia that attends living and loving outside the liveable and outside the field of love, where the lack of institutional sanction forces language into perpetual catachresis, showing not only how a term can continue to signify outside its conventional constraints but also how that shadowy form of signification takes its toll on a life by depriving it of its sense of ontological certainty and durability within a publicly constituted political sphere."*⁹

Almost poetically, Butler here describes the situation for those who choose unconventional ways of constructing their close relationships. The lack of institutional confirmation forces those who defy the norm to live a life in ontological uncertainty, since no officially endorsed terms can design their way of living. The gap between what language can designate and the lived everyday reality that escapes simple descriptions forces us to live in an eternal catachresis. Catachresis, or the usage of a word in a sense contrary to its original meaning, is typical for how people outside the norms of society use language to designate themselves and their lives. To speak about "my husband," "my wife," or "my family" when the norms of society deny their very existence, is to expose oneself to the disciplining mechanisms of society, but also to challenge it and to propose new meanings to new lives. As Judith Butler puts it:

*"Do we say that families that do not approximate the norm but mirror the norm in some apparently derivative way are poor copies, or do we accept that the ideality of the norm is undone precisely through the complexity of the instantiation?"*¹⁰

I think the fifth marital status does just that - it undoes the ideality of the norm just by presenting not *one* alternative but many. However, there is a problem in applying Butler's analysis to Scandinavian circumstances. Many researchers have pointed out the extraordinarily strong loyalty with the state that is displayed by the peoples of Scandinavia. Finnish sociologist Pauli Kettunen has even claimed that there is no conceptual difference between state and society in our languages. The two words exist, it is true, but are generally perceived as synonymous.¹¹ How can we then interpret the politics of kinship in countries where the public and the private converge to such a disturbing degree? Butler's distinction between state and kinship, between Oedipus and Antigone, collapses and leaves us bewildered. As usual, the concepts and ideas imported from overseas fit poorly into our reality, and we need to develop our own analyses.

I promised that I would come back to the question whether the registered partnership is an instrument for control, or if it is a tool for liberation. I think that we must listen carefully to the critics of gay marriage who warn for the consequences of making the homosexual decent. Especially important is then the question whether the institution of gay marriage further stigmatises those who remain outside it. Single people, bisexuals, polyamorous men and women, promiscuous gays, lesbians at the bar, etc.

But on the other hand: the fact that the holy matrimony now has been challenged by something which many morally conservative regard as an abomination, gives us hope. For this concerns much more than only the gay and lesbian part of the population. Perhaps the mere existence of an alternative to heterosexual marriage will open up for new ways to reflect around the civil unions that we make, around the ways that children are raised and around the ways that the clients of the welfare systems qualify for help. At the same time as the individual choice to register a partnership may reflect a rather dull wish to emulate heterosexual matrimony, the *institution* of registered partnership as such may destabilise

⁹ Butler 2000, p. 78.

¹⁰ Butler 2000, p. 79.

¹¹ Pauli Kettunen, "The Society of Virtuous Circles" in Pauli Kettunen (ed) *Models, Modernity and the Myrdals*, Helsinki: Renvall Institute Publications 1997.

the institution of marriage and challenge the stale structures of monogamous family life, thus acting as a liberating force for all of us, homosexual, transsexual, bisexual, and heterosexual men and women.

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**What sexual identity?:
The number and its construction**

Steady Partnerships Among Gay Men in Germany: Findings from the National Gay Press Survey

Michael Bochow*

Since 1987 a national survey of gay men has been conducted in Germany, with a focus on HIV/AIDS and other lifestyle issues. The survey was conducted seven times between 1987 and 2003. The questionnaire is distributed through gay magazines. In 2003 the questionnaire could also be completed online; banner links to the project server were placed on leading German language web sites for gay men.

The survey provides the only source of national data concerning steady partnerships among gay men in Germany. Over the years, the patterns related to partnership have remained stable. Here data from the last survey in 2003 (n = 4,750) will be presented. At the time of the survey, approximately half of the men (49.5%) were in steady partnerships. About half of the men in steady partnerships (53.5%) reported living monogamously, the other half in "open" relationships (46.5%).

The mean age of the respondents was 30.5 (median: 33) (Tables 1 and 2). Two-thirds (67%) were self-identified as gay, one-fifth (19%) as homosexual and 8% as bisexual (Table 3).

Two-thirds of the respondents expressed a positive attitude toward domestic partnerships; a total of 16% would enter a domestic partnership with their current partner and 44% would not rule out a domestic partnership at some point in the future. In contrast, one-fourth of the men sampled (27%) responded that they would not likely enter a partnership of this kind; 9% strictly reject a domestic partnership for themselves. A total of 6.2% of men in steady relationships had legally registered their partnership (3.1% of the entire sample). The registering of same sex partnerships has been possible under German law since 2001 (Table 4). Older men are somewhat more likely to be in a domestic partnership. One percent of the men under 30 years of age and 5% of the men 30 years or older have registered their partnerships (Table 5).

Fifty-eight percent of the men under 30, 50% of the men 30-44, and 42% of those over 44 would prefer to be in a steady relationship in which they live with their partner. The desire to have a live-in partner decreases, however, with age. Whereas 21% of the men under 30 would prefer having their own residence ("living apart together"), this is the case for 29% of the men over 44. Not only the desire to live together, but also to be in a steady relationship decreases with age, three percent of those under 30 report not wanting a steady partner as compared to 8% of the men over 44 (Table 6). Although the ideal of romantic love is most pronounced in the group of men under 30, there are many men over 44 for whom this is also important - a finding which has been confirmed in all surveys since 1993.

The lifestyles of gay men attest, however, to a variety of creative ways of putting the romantic ideal into practice. There is a notable decrease in monogamy, the longer the relationship continues. A total of 80% of the relationships with a duration of six months or less are monogamous, as compared to 47% of the relationships lasting 2-4 years and 28% of relationships four years or longer (Table 7). Nearly half (48%) of all reported relationships lasted longer than two years. The large percentage of "open" relationships indicates that although dependability and emotional faithfulness are important, sexual contacts to other

* Goettingen and Berlin- (translated from the German by Michael T. Wright)

men are not necessarily seen as a violation of the partnership. Contrary to traditional sexual norms, "extramarital" sex seems to be a positive rather than a negative factor in long-term gay relationships.

The longer the relationship, the more likely are the partners to be living together. Two-thirds of the men in relationships with a duration of four years or longer were living with their partners. This was the case for half of the men (46%) who had been with their partners 2-4 years. For the men whose partnerships had lasted for less than six months, only 9% were living with their partners (Table 8). All totalled 41% of the men in steady partnerships were living with their partners. This implies that estimates of same-sex relationships based on census data in Germany would lead to an underestimate of the total number. Using data from the 1999 census Eggen (2002, pp. 225-227) estimated the total number of same-sex households as ranging from 41,400-250,000 (including both gays and lesbians). Based on a conservative estimate of one million homosexual men in Germany (3.2% of men over 19 years old) and assuming that 40% of these men are in a steady partnership, we would arrive at a total of 400,000 men or 200,000 steady partnerships.

Non-Germans were more likely to be in a domestic partnership. This is presumably due to the fact that entering a domestic partnership with a German national results in obtaining a permanent residency status. Less than 5% of the men surveyed in 2003 were not German nationals. These men can be divided into two groups. In the first group are men from countries in which the situation of gay men is comparable to that in Germany (Western European countries, US, Canada). In the second group are men from countries in which homosexuality is not lived as openly as in Germany (Middle Eastern countries and Latin America) (Table 9). A higher percentage of the men in the latter group (13%) were in a domestic partnership as compared with the Europeans and the North Americans (6%). As mentioned above, 3% of the German nationals were in a relationship of this sort. Entering a domestic partnership may also express a desire for a greater level of social integration in Germany on the part of non-nationals. This is evident in the group composed of Europeans and North Americans; the Europeans come predominantly from EU countries and therefore do not require a residency permit in Germany and North Americans are more likely to be granted such a permit than are men from the Middle East or Latin America.

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Table 1: Age By Survey Year (in percent)

Age Group	Survey Year					online	magazine
	1991	1993	1996	1999	2003		
< 30	46	45	33	26	42	62	20
30 - 44	40	43	51	57	43	29	57
> 44	13	11	16	17	15	9	23
no response	1	1	-	-	-	-	-

Table 2: Mean and Median Age By Survey Year

	Survey Year					online	magazine
	1991	1993	1996	1999	2003		
Mean	32.7	32.6	34.9	36.1	33.5	29.2	38.2
Median	30	30	33	34	33	26	37
n	3,285	2,868	3,048	2,995	4,700	2,442	2,258

Table 3: Self-Identified Sexual Orientation (in percent)

Orientation	2003 online	2003 magazine	2003 total	1999
homosexual	20.3	18.5	19.4	17.4
gay	62.7	72.6	67.4	73.9
bisexual	11.2	4.2	7.9	3.9
heterosexual	0.3	0.1	0.2	0.2
homophile	0.1	0.6	0.3	0.6
pedophile	5.5	0.5	3.1	0.4
reject such categories	0	3.4	1.6	3.5
n	2,483	2,215	4,698	2,995

Table 4: Domestic Partnership
Would you consider entering a domestic partnership?

	2003		1999
already in a domestic partnership	147	3 %	--
perhaps with current partner	780	16 %	22 %
maybe, if the situation is right	2.052	44 %	49 %
probably not	1,301	27 %	23 %
by no means	444	9 %	6 %
no response	26	1 %	--
Total	4,750	100 %	100 %

More than two thirds of the German respondents have a positive attitude towards domestic partnerships.

Table 5: Domestic Partnership by Age (in percent)

Age groups	already in domestic partnership	perhaps with a current partner	maybe	probably not	by no means	no response	Total
14 - 29	1	16	50	26	7	0.5	n=1976 (42%)
30 - 44	5	18	41	28	8	0.4	n=2000 (42%)
45 - 83	5	12	32	33	17	1	n=724 (15%)
Total	3	16	43	27	9	0.5	100
n	147	782	2052	1301	444	26	4750

Older men are somewhat more likely to be in a domestic partnership.

Table 6: Partnership Orientation by Age (in percent)
What would be your preferred lifestyle?

Age groups	living together	living apart	no partner different sex partners	undecided	no partner	no response	Total
14 - 29	58	21	3	14	3	1	n=1976 (42%)
30 - 44	50	20	5	18	4	2	n=2000 (42%)
45 - 83	42	29	6	12	8	3	n=724 (15%)
Total	52	22	5	16	4	2	100
n	2484	1034	212	735	190	95	4750

The desire to be in a relationship decreases with age.

Table 7: Partnership Status and Duration of Partnership (in percent)

Partnership	< 6 months	6 - 12 months	13 - 24 months	25 - 48 months	> 48 months
mono-gamous	80	69	63	47	28
not mono-gamous	20	31	37	53	72
Total	22	12	16	16	32
n	520	291	382	382	760

There is a notable decrease in monogamy the longer the relationship continues.

Table 8: Living Arrangements and Duration of Partnerships (in percent)

Living Arrangements	no partner	< 6 months	6 - 12 months	13 - 24 months	25 - 48 months	> 48 months	Total
alone	63	48	47	43	41	27	51 (n=2424)
with male partner	--	9	18	33	46	67	19 (n=923)
with female p./wife	5	3	1	2	1	1	3 (n=152)
with friends (homo and hetero)	10	12	8	8	4	3	6 (n=260)
with parents/relatives	22	29	25	13	7	1	18 (n=837)
Total n	50 2379	11 520	6 292	8 382	8 384	16 762	100 4719

There is a greater probability of living together when the relationship lasts longer.

Table 9: Domestic Partnership by Countries of Origin (in percent)

Countries of origin	already in domestic partnership	perhaps with a current partner	maybe	probably not	by no means	no response	Total
Germany	3	17	44	28	9	0.5	n=4518 (95%)
Western Europe* USA / Can.	6	15	40	26	11	2	n=104 (2.2%)
Other countries**	13	13	37	21	13	2	n=99 (2.1%)
Total	3	16	43	27	9	0.5	100
n	147	782	2052	1301	444	26	4750

* Western Europe = Austria, France, Denmark, Finland, Ireland, Luxemburg, The Netherlands, Sweden, Switzerland, UK

** Other countries = Italy, Spain, Greece, Turkey, Eastern Europe, Near East, Latin America Countries were grouped according to social attitudes towards gay men.

Non-Germans are more likely to be in a domestic partnership. This is likely due to the fact that entering a domestic partnership with a German national results in obtaining a permanent residency status. It may also express a desire for a greater level of social integration in Germany.

What if same-sex couples exist in France after all?

Marie Digoix, Patrick Festy & Bénédicte Garnier*

« En mettant en oeuvre sans examen une pensée d'État, c'est-à-dire les catégories de pensée du sens commun, inculquée par l'action de l'État, les statisticiens d'État contribuent à reproduire la pensée étatisée qui fait partie des conditions du fonctionnement de la famille, cette réalité dite privée d'origine publique. »

Pierre Bourdieu

Population censuses are meant to give a clear representation of the population of a country. They are carried out on more or less regular periods to seize permanencies and evolutions in society on policy purposes.

In France, for the most recent times, the census has been carried out at least once per decade and the last wave took place in 1999.

The census consists on asking persons to fill different forms related to their personal information (Individual form) and the place they live (Dwelling form). Some other data collections are organised around the census but we won't deal with them.

The basic idea of this study is to see whether it's possible or not to identify same-sex cohabitants as same-sex couples from the French census data¹, and specifically from the dwelling form, where people declare themselves to live at the same address.

Collecting information on sexual orientation has never been a problem when nobody ever noticed it was. For years, civil status has been asked for in the censuses and nobody ever wonder that being married for example was to reveal an heterosexual orientation. Since homosexuality has been decriminalised in most of the countries of modern world, sexual orientation is a sensible statistical data since it deals with low figures when it concerns homosexuality.

Statistical institutes, as enforcers of the law, are the best warrants of the confidentiality of sensible data.

¹ Institut national d'études démographiques, France

¹ There has been a previous attempt to make an estimation of same-sex cohabitants and couples from the survey "Etude de l'Histoire Familiale" (The Study of family history) which is linked with the census. The survey had questions on partner that hasn't been recoded (main questions were: do you live in couple? and date of birth of your partner). However, many biases (such as the sex orientation of the wording of questionnaire that doesn't not open the partner to be identify as of same-sex) make the result very uncertain as referred to the authors of the study. (Toulemon, Laurent ; Vitrac, Julie and Cassan, Francine.- *Tentative d'évaluation du nombre de couples homosexuels co-résidents d'après l'enquête EHF*.- Presentation at Ined, groupe EHF, 30 avril 2002.)The Family Survey has been coupled with the population census since 1954, making it one of Insee's oldest sample surveys. It is mainly intended to track the emergence of *new family forms*, through a *retrospective and biographical* questionnaire that reconstructs the demographic history of generations. In the March 1999 population census, 380,000 men and women over 18 (145 000 males and 235 000 females) living in private dwellings filled out an additional schedule on the subject of their "family history," including questions on their origins, children, partnerships, and social history, as well as the languages (both national and regional) customarily spoken in their families.

These data can be gathered through different statistical ways. In the censuses, it can appear in the civil status or in the cohabitation information collected at the dwelling level, for instance.

The case of marriage is irrelevant here since only two countries yet have opened it to same-sex couples. It's different for same-sex couples that chose to live together. This data should be gathered at the dwelling level.

In Canada, partners are explicitly offers the option to identify themselves as "same-sex partners" or "different-sex partners". This choice results from a detailed survey about the topics that prove it to be feasible and even more, needed, from a statistical point of view, as well as from a societal one.

In Australia, New Zealand or in the USA, the partner category is opened to both same-sex and different-sex partners, and the questions on the sex of the individuals make the distinction between the two. The quality of data depends thus from the quality of the sex variable and the will of the people to self-declare their relationship.

In France, the situation is much more ambiguous: the people are not given predefined items to put their answers, but are left free to briefly describe their situation (open-ended question). One could imagine that this intends to seize all the possible cohabiting configurations, leaving to the data-processing phase the need to code and to interpret their say. No. In the final release of the census results, there is no homosexual couples! Having some suspicions about this strange fact (France would have no same-sex couples?), especially confronted with the results of the aforementioned Family history survey conducted at the same time (see note 1), our study tries to track the process of this disappearance and to redefine a possible population from an evaluation of cohabitants.

The dwelling form

The main source of information is the A list of the dwelling form (see Annexe 1) recording all the persons living permanently in the dwelling. The bulletin is self-administered; the answers to the questions are not pre-coded, but the form gives suggestive examples to help the respondents.

The questionnaire presents itself under the form of a table. Entries are:

Family name (*Write in capitals, example: Allard, married name Maurin*)

First name

Family tie or relationship (*with the person named on the first line. Indicate for example: spouse, partner in consensual union (note here that Insee English translation of the bulletin quote "cohabitation partner"), son, daughter, father, mother, grandson, granddaughter, nephew, niece, friend, subtenant, etc.*)

Part reserved for students that are only living in the dwelling on study purposes and having another family dwelling elsewhere.

-If you lodge a student during school year, indicate (on the line referring to her/him) her/his family dwelling address

-If you are yourself a student living here for your studies, indicate below (on the line referring to you) the address of your family dwelling

Eleven lines are offered to fill in. Persons above should only be numbered in a special space. Some other details are mentioned to help the person to fill it.

The filling of the form is left to the person who will take the time to do it.

It is specified under this entry line: "*Write on the first line one of the partner of a couple (and on the second line, the other) or, by default, one of the adults living in the place*".

Thus every person in the dwelling will be related in the form to that first person, that has if possible to be a member of a couple. So, the couple will be at the heart of the coding.

The Individual form

The individual form contains regular information of the respondent. Variables sex, marital status, place, year, month, day of birth, nationality, address, level of education, last

What if same-sex couples exist in France after all?

graduation, situation towards labour, profession, detail information on activities, etc. will be used in this analysis.

I. How Insee deals with sex in census data

We have used the "exploitation au 20e" which corresponds to 5% of the census forms and consists of all the questions ("heavy version").

The sampled data are added to those already captured in the "light version" on a selection of questions and pass through different steps of data capture, coding and rectifications. Different programs are used on all the data to eliminate as much as possible the complex cases at each step. The classification and selection are progressively less and less restrictive so that from a basic file centred exclusively on the married couple and family, one can add more and more individuals to the final base.

Sex variable

Few words on the files already captured in the "light" version are needed to understand the different aspects of the process.

The variable sex is a problem in itself in the census which is very important to be aware of as a lot of corrections made by Insee on other variables are based on the sex variable.

The first data capture from the forms is optically done. When the sex doesn't show on the file, Insee is coding the opposite sex of the previous form. Then it is "redressed" when possible (when married partner is of same sex by example). It is however acknowledged that a percentage of errors remains even after all "rectifications".

From the dwelling form to LPRM (link to the reference person)

From the dwelling form as such that lists all the persons living at the same address to the variables that will identify the links between these persons or more exactly to a person of reference, Insee intervenes few times.

Indications given to the household to rank the persons in the A list do not fulfil all the conditions Insee will put later on the designation of the reference person (PRM) that will be used in the census procedures. Moreover all persons do not actually do what they are prescribed. Thus, Insee will have to modify and interpret list A to define households such as they want to.

What does Insee want? To elaborate a variable that corresponds to the traditional vision of the household such as analysed in the past versions of the census, for the sake of "statistical continuity". It must meet clear and well-known criteria.

Traditionally, the self-declared "head of the household" was the man of the couple but it changed with woman emancipation, participation in labour force, etc. and in 1982, Insee chose to replace the self-declared "head" by "the reference person", chosen by Insee itself out of all the persons in the form, mainly on "comparison purposes"². The so called necessity of change was that characteristics of the reference person are thereafter used to qualify the socio-economics levels of the household, and that it was too important for further analyses to let it choose by the persons themselves.

The composition of the Household: In what case Insee interpret what is written?

The reference person of the dwelling (PRM)

Our analysis will be performed from the relationship in between the dwelling. As previously mentioned, Insee is relating all the persons in the dwelling to a reference person which is not necessarily? the first person self-declared in the list A of the dwelling form. To identify this person is one of the first selection phases of the codification.

² Courson, Jean-Pierre.- "Les ménages n'auront plus de chef".- *Economie et statistiques*, n° 149, novembre 1982, p.47-55.

The household is the whole of individual forms of the same dwelling. The reference person is the oldest active man in a couple (The couple is deducted if the two partners are of different sex and their age gap under 15 years), or in lack of, the oldest active man, the oldest man, and so on.

The first codification from optic capture leads to some Insee interpretations of the dwelling form filled by the respondent, directly from the first treatment. This first step of the dwelling treatment is called the household-family analysis.

In the righting that is performed thereafter, the definitive profile of the reference person is defined as such: *"The reference person is chosen among the whole of men in couples in the household; if there is none, among the adults of single parent family, if there is none, among the persons who are not sub-tenant or accommodated employee. The criteria is to choose the oldest active or, if no active in the dwelling, the oldest."*³

This choice is made out of a codification called L1 and L2.

Household-Family analysis

To choose the reference person, one needs to already know the links between the persons in the dwelling.

The household is the whole of the people who share the same dwelling. They are not necessarily family related.

Three codes (ICM, L1 and L2) are necessary to do the Household-Family analysis which will transform information from the optic data capture (IMAGE) to a data file which will meet the criteria defined by Insee to become a household from the rough self definition from the person in the List A.

To find out where to intervene, Insee has created an ICM code (Indicator of household complexity) similar to the ICME coded in the whole of the census⁴.

Indicator of complexity of the households ICM

Six categories are used. The first five are out of problems. Insee evaluates the dwelling left for coding at this step to 30 %. At the end of the codification, only 5% will remain complex household (code 5). This 5 % should be coded 5 and the links L1 and L2 must be coded.

ICM Codification

0	Empty dwelling
1	Single person
2	Couple without children
3	Couple with children
4	Single parent family
5	Other (more complex dwelling)

A single individual form present in the dwelling is coded 1

The family has three item possibilities

- A couple without children
- A couple with one or more children
- An adult without partner with one or more children (single parent family)

³ Institut national de la statistique et des études économiques (France).- *Guide d'utilisation du recensement de la population de 1999. Tome 6, Description des traitements de l'exploitation lourde / Insee Description des traitements de l'exploitation lourde.*- Paris : Insee, p.137, our translation.

⁴ From the light version of the census, it already exists an index of complexity code (ICME) that only left complex cases to the new codification process, i.e. non-married families or families different than parent-child families *"Family for ICME is restricted to: A couple is 2 persons with married as marital status, man 18 or more than 18 and woman 15 or over, with a age gap strictly below 14 years The adult of a single-parent family should be 18 or over. A child has strictly less than 18, should be single or undeclared..."*

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"Here, the couples are de facto couples: the partners can be married or live in consensual union. The family tie indicated in the list can be husband, wife, partner but also friend. In this last case, if the context suggests a consensual union, one will retain the existence of a couple (and the L1 link, if must be coded, will be "partner" and not friend). The child of the family core should not have in the household of spouse or a child (it is with him then that it would form another family, of which he would be one of the adult or the adult). The child of a couple can be either the child of one or the other of the two partners. The household can have 0, 1 or more families. Members of the household that are not part of a family are the isolated of the household. When there are several families or at least one isolated in the household, it is necessary to code ICM=5 (complex household) and in this only case, it is also necessary to code L1 and L2 for each Individual form⁵".

The use of ICM is dealing only with complex households. Simple household is from now on composed of either single, either couple with or without child/children and are not concerned by this codification.

The complex household

L1 and L2 are used to identify the links between persons in the complex household (several non related persons, several families or a family and non related persons. Since cohabiting same-sex partners were not classified as a couple, they are rejected in the complex household category).

L1 Link to the first person of A list

*"The first person to be coded is the first person in list A. If no Individual form corresponds to this person, another person is chosen, a **person more than 15 years old and one should reinterpret** the ties of list A and B **at the best**, following this choice. If A list is not filled, one must chose an adult".*

The partner of the first person must be unique and of opposite sex. One should use this item also for obvious consensual union that haven't been declared, the second person on the bulletin having for example quoted "concubine", "marital life", "friend".

For the child (code 3) and grand child (code 4), take only into account the filiation tie with no care for the age, matrimonial status or family situation. The spouse, legal or not, of the child will also be coded child (son in law, daughter in law, stepdaughter, stepson of the first person or of her/his partner, concubine of the child). The partner of the grand child will be coded just the same.

Ascendant (code 5) can be father, mother, stepfather, stepmother, grandfather, grandmother, etc.

Other relative (code 6) can be brother and sister, nephew, niece, brother in law, sister in law, cousin, uncle, aunt, etc.

The child (3), the grand child (4), the ascendant (5) and the other relative (6) can have this tie with the first person or only with his partner.

The friend has no family tie with the first person. One must code 2 (partner). If the context suggests consensual union with the first person and take into account this couple in the ICM.

The lodger or subtenant (code 8) has no family tie with the first person. If it is the case, this tie is prevalent. For example, the nephew paying to live with his uncle will be coded 6.⁶

Here (as in the ICM), the coder must reinterpret "at best". It means that disconnected from the persons, the coder will have to look into the individual forms to establish

⁵ Institut national de la statistique et des études économiques (France).- *Guide d'utilisation du recensement de la population de 1999. Tome 6, Description des traitements de l'exploitation lourde / Insee Description des traitements de l'exploitation lourde.*- Paris : Insee, p.33, our translation.

⁶ Institut national de la statistique et des études économiques (France).- *Guide d'utilisation du recensement de la population de 1999. Tome 6...*, p 34-35, our translation.

family/relationship ties that are not anymore clearly referring to the person chosen to be the person who filled the original form.

Thus one should note that a couple is only heterosexual, same-sex couples are suppressed but different sex couples that are not declaring themselves as couple are automatically, if identified, coded as a couple. There is no mention of people declaring themselves as partners when of same-sex. If one would in a certainly perverse way point out that some partners, not aware that they couldn't exist as a couple, had filled the form according to their real situation of same-sex couples, what Insee has done? No instruction is given at this stage. We're currently in search of this information⁷. One will however see after, that at the last control before the final product, the remaining couples with the reference person still in this case are coded, "reference person" and "other relative". Nothing can be done at that point to identify the real same sex couples that disappeared in this first codification

L1 codification

1	Reference person of the household;
2	Partner of the reference person;
3	Son, daughter, son-in-law, daughter-in-law, stepdaughter, stepson of the reference person or his partner;
4	Grandson, grand-daughter of the reference person or his partner;
5	Ascendant of reference person or his partner;
6	Other relative of reference person or of his partner;
7	Friend;
8	Lodger or subtenant;
9	Accommodated employee

L2 Family tie

"Blank for isolated individuals in the household

First core family

- 1- *father*
- 2- *mother*
- 3- *child*

Second core family

- 4- *father*
- 5- *mother*
- 6- *child*

Persons coded L2=1 or 4 are not women

Persons coded L2=2 or 5 are not men

Family is couple, couple with child or single parent family

Only two families are coded, the others are blank"⁸.

The codification of family ties is trivial for our purpose as a family is strictly defined by Insee as heterosexual. However, one can observe the same homophobic spirit in the treatment of this variable.

Reference to the sex is strangely evoked when it's mentioned in the instructions for coding that the persons coded fathers should not be women, and that the persons coded mothers should not be men! One wonders exactly what it means? A way of control or just

⁷ It appeared that the only possibility to identify clearly the manipulations done should direct us towards the examination of the Image file in order to access to the non-coded files. This is highly difficult and probability that the authorization will be given very low.

⁸ Institut national de la statistique et des études économiques (France).- *Guide d'utilisation du recensement de la population de 1999. Tome 6...*, p .35.

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precautions? Probably a precaution because the couple without children is transformed into a mother and a father! There anyway, same-sex partners who already couldn't be a couple, have no access to filiation!

In the explanation books produced by Insee, a table designed to help the coding by models is describing the different situation and the codes to impute, among the 10 examples, the one of same-sex partners is not present⁹.

The righting and final control of LPRM (link to the reference person of the household)

A final control is done on variables L1 and L2 before issuing the final variable although already reinterpreted by Insee while coding for the first time.

Though it is particularly difficult to imagine who could have remained classified as same-sex partner of the reference after L1 codification, instructions lead to recode if the partner of reference person is of the same-sex, then the partner is coded "blank". The blank code previously "partner of the reference person" is coded 6, "other relative"¹⁰.

Thus, partners of same-sex are merged to relatives with no possibility to distinguish them. Strangely enough, same-sex partner is not indicated in the codification of L1 as a possible "other relative".

Thus everything is done to control the persons in the couple and makes disappear the self-declared couples of same-sex. Though it was easy to do as such, we assumed that is was not common and that people of the same-sex living as a couple in the same dwelling may have preferred not declaring their relationship. In the second part, we assume that they have declared themselves as friends and we check whether same-sex "friends" look like same-sex partners.

Table 1. Composition of the dwellings in our study

Type	Number of dwellings	Number of persons
1/20 ^e Census	1468748	3179274
People living in « ordinary household »	1445494	3105816
Different sex couple type (lprm=1,2 and 1,2,3+)		
Without students and up to 8 children	668886	1714368
Adults (lprm=1+ lprm=2)		1337772
Children (lprm=3)		376596
Same-sex cohabitation type (sase)		
Friend with or without children (lprm=1,7 and 1,7,3+)		
Sase=Males	2190	4380 (1,7) + 22(3)
Sase=Females	1598	3196 (1,7)+ 150(3)
Friends (lprm=1,7)		
Sase=Males	2172	4344 (1,7)
Sase=Females	1495	2990 (1,7)
Friends and children (lprm=1,7,3+)		
Sase=Males	18	36 (1,7)+ 22(3)
Sase=Females	103	206 (1,7) +150(3)

⁹ Institut national de la statistique et des études économiques (France).- *Guide d'utilisation du recensement de la population de 1999. Tome 6...*, p .36.

¹⁰ Institut national de la statistique et des études économiques (France).- *Guide d'utilisation du recensement de la population de 1999. Tome 6...*, p .135.

Treatments

We are only dealing with the "ordinary" dwellings (persons living in collective households have been withdrawn). The variable used is LPRM.

From both forms, we are working on households composed of the reference person of the household (coded 1) and friend (coded 7). Accessorily, we use child (coded 3) of the reference person.

7 can be either "friend" or "child's friend" if "friend" is present in the dwelling.

By comparison, we use households composed of a couple, "reference person" and "different-sex partner" of the reference person (coded 2), accessorily child(ren) of the couple (coded 3)

We eliminated: Households composed of 2 students, household of more than 10 persons.

The relationship links such as written by the person who filled the form are recoded to correspond to the reference person which becomes the main person of the dwelling for Insee. Everything is by then coded in function of this person. The reference person is the oldest man, active in the dwelling, etc.

II. Numbering and characterising same-sex cohabitants

In the previously cited Family History Survey (FHS) attached to the French 1999 population census, Francine Cassan, Laurent Toulemon and Julie Vitrac, have concluded after various strict controls that 62 respondents have declared they resided with a person of the same sex in a couple relationship. Given the sampling procedure, it is estimated that the number of same-sex co-resident couples in the total population is about 3000 for men and 2000 for women¹¹.

Such results are small compared to the best source directly dedicated to the topic, the 1992 survey on sexual behaviours in the French population (ACSF)¹². With large margins of uncertainty due to the small size of the sample, it was estimated that the number of co-resident male couples was probably included in the 20000-45000 bracket and that the number of co-resident female couples was between 0 and 9000. It was considered by the persons in charge of the survey that these were minimal estimates, especially for women, due to a likely under-declaration of this type of situation, whatever the precautions taken during fieldwork. Nevertheless, the FHS-based statistics are far below and same-sex couples need to be identified by other procedures.

In the census itself, a number of same-sex couples probably declared themselves as such but they were not retained by Insee. From the previous developments it seems that they were reclassified as duets associating a "reference person" and an "other relative" of the same sex. We are unable to trace them. We can only make an assumption: for instance, that their number and characteristics are close to those of couples who declared themselves as same-sex couples in FHS. That would mean small numbers, far below the ACSF estimate, at least for men.

It also makes likely that a number of same-sex couples dared not declare themselves as partners and preferred to term themselves differently. In Insee categories, it could have been "other relatives" (just like Insee decided for those who had chosen "partners") or "friends", or "owner-subtenant" or "employer-servant". We have various reasons to believe that "friends" was the most frequent choice:

- The last two categories are numerically very small and leave almost no room for hidden partners (there are only some 10,000 same-sex pairs of owners-subtenants in the total population and 2,000 same-sex pairs of employers-servants).

¹¹ Vitrac, Julie.- *Evaluation du nombre de couples homosexuels co-résidents dans EHF [: rapport de vacations]*.- Paris : Ined, janvier 2001, *mimeo.* p.1.

¹² see: Bajos, Nathalie ; Bozon, Michel ; Ferrand, Alexis ; Giami, Alain & Spira, Alfred (eds).- *La sexualité au temps du SIDA*.- Paris : Presses Universitaires de France (Sociologie d'aujourd'hui), 1998.- 494 p.

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- In two-“other relatives” households the proportion of different-sex (36%) is much higher than among two-“friends” households (13%), which looks reasonable if different-sex “other relatives” actually are for instance sister-brother while same-sex are sister-sister or brother-brother, i.e. equally acceptable types of cohabitation for the French society. The hidden same-sex partners should be searched in the excess of same-sex over different-sex households, besides those already reclassified there by Insee. Again, that would leave little room for them.
- By anticipation on the following paragraphs, same-sex “other relatives” are much less in line than same-sex “friends” with what we know on homosexual couples from other sources. That is the case for their over representation in Paris region or at University level of education, clearly evidenced for same-sex “friends” but totally absent for “other relatives”.

Identification of same-sex households

For the rest, we wonder whether adult co-residents of the same sex linked by “friendship” according to census terminology could be the undeclared same-sex couples. To avoid complex cases difficult to understand, we have concentrated on simple households, where two adults lived together, without any extra person other than their children, if any. We also have excluded from the group households where both members were students, as cases of unlikely same-sex couples.

In a first stage, we have identified two-person households including a reference person and a friend of the same sex. We have denominated them same-sex cohabitants without children. In a second stage, we have extended our numbering to adult same-sex cohabitants with children. It was easy to identify such households when the children were those of the reference person; we have numbered them. It was much more difficult to identify households where the children were those of the “friend”, because they were themselves denominated as friends of the reference person, with the same code as their postulated father or mother; we have preferred not to number them. Our guess is that the two types of households with children are approximately in equal numbers and that we have missed half of them.

Since we are not fully convinced that these adults are “couples”, we avoid the word and call them same-sex “cohabitants” (or “co-residents”) and their situation same-sex “co-residence” (or “cohabitation” or even “household”).

Enumeration of same-sex households

Same-sex cohabitations as previously defined in a 1/20 sample extracted from the 1999 French census are 3788. Inflated to the total population size, they would be some 76000. The number of households with male cohabitants is 44000; that of female cohabitants is 32000. These numbers exclude the self-declared same-sex couples, but we have assumed, right or wrong, that these couples were few at the census. The number of two-male-friends households is as high as the higher estimate of gay couples derived from ACSF; the number of two-female-friends households is much higher than any estimate of lesbian couples from the same source. In the rest of the text, we will refer to the 76000, giving some details on the characteristics of the household or those of the individuals. In most cases, we will contrast the results with those we can gain for the different-sex couples and their children. Basic results on the numbering of households and individuals in the 1/20 sample of the French 1999 results are in table 1.

The objective of the analysis is double: first, to offer a profile of the same-sex cohabitants and measure its specificity; second, to guess from these data whether the same-sex cohabitants fit the ideas or, better, the actual data we may have on same-sex couples, so that we can accept or reject the assumption that a majority of these households are same-sex couples living together in France in 1999.

Some results in a cross-national perspective

Dutch statisticians from Statistics Netherlands (CBS) have used the population registers to identify same-sex couples in the Netherlands. They have constituted a time-series of

estimated numbers and characteristics. We mostly refer to their 2002 results¹³. There are also results to be gained from large surveys: we rely here on the 2000 wave of the Socio-economic Dutch panel. Other countries have also used the census as a basis for the evaluation of the number of same-sex couples, like Canada and the US, but they have relied on much more direct and explicit questions than the attempt we are making for the French census¹⁴.

Compared to different-sex couples, the number of same-sex households in France is 0.6%. It is much higher in the Netherlands: 1.5% according to the registers and 1.2% in the panel survey. It is also higher in the US census (1.0%), but not in the Canadian one (0.5%), where the accuracy of the questionnaire used is probably the best. France is in the lower part of the range.

In France, 15% of the heterosexual couples live in Paris urban unit and 37% in all urban units above 200,000 inhabitants (including Paris); for the same sex households, the proportions are much higher, respectively 30% (Paris) and 57% (>200,000 inhab.) (Table 2). The latter proportions are 1.5 to twice higher than the former. In the Netherlands, 10% of all heterosexual couples live in one of the four biggest towns (Amsterdam, Rotterdam, the Hague and Utrecht), as against some 25% for same-sex couples: 2.5 times as much. In Canada, the proportion of same-sex couples was three times higher in the Census Metropolitan Areas than in the rest of the country. The higher concentration of same-sex cohabitants in the largest towns is marked in the three countries; it is a bit less so in France¹⁵, although the precise comparison is difficult to make.

Table 2. France 1999. Distribution of same-sex and different-sex households by size of urban unit

Size of urban unit	Same sex-households				Different-sex households
	Total	Men	Women	<i>Incl .with children</i>	
Rural commune	16.4	16.0	16.9	16.5	26.8
Urban unit <50,000	14.9	14.3	15.8	25.2	24.3
Urban unit 50,000<100,000	11.5	11.5	11.4	13.6	12.3
Urban unit 200,000<2,000,000	26.9	26.3	27.7	24.3	21.6
Urban unit, Paris	30.3	31.9	28.2	20.4	15.0
Total	100.0	100.0	100.0	100.0	100.0

In France, a majority of same-sex cohabitants are men (58%), a minority women (42%). The sex-ratio is 54 versus 46% in the Netherlands, 51 versus 49% in the US and 55 versus 45 in Canada. Men are always a majority, more clearly in France than elsewhere.

The proportion of households with children is 6% for women and less than 1% for men. If we admit, as suggested above, that we have missed half of the co-residences with

¹³ The sources differ since registers are used instead of census, but the method is not radically different: people living in same-sex households are considered after the persons associated by blood have been put aside (brother-brother, sister-sister, father-son, mother daughter) Steenhof, Liesbeth & Harmsen, Carel .- *Same-sex couples in the Netherlands?*- [Paris : Ined] *Paper presented at the workshop. "Milestones for a cross-national survey research on population, Rome June 30-July 2, 2003"*. 2003.- 11 p.

¹⁴ Turcotte, Pierre; Renaud, Viviane & Cunningham, Ron.- *Same-sex relationships and sexual orientation in Canada : Data, concepts and methodological issues- Paper presented at the 2003 PAA Meeting, Minneapolis, May 2003.*- 32 p.

¹⁵ Results from the very small sample of gay couples in ACSF (compared to different-sex couples) are in line with those of the census, though still less contrasted.

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children, the results are to be doubled, so reaching 12% for women¹⁶. It is below, but not radically so, when compared to the Dutch results (18 percent for the female couples and 1 percent for the male couples) and the Canadian ones (15% and 3%, respectively).

Compared to heterosexual couples, same-sex cohabitants have a higher level of education, which is well in line with other observations in France¹⁷. In heterosexual couples, men and women with university level are 21%; in same-sex households, 36 and 38% respectively (Table 3). In Canada, 19% of men and 16% of women in heterosexual couples had a University degree, as against 33% of men and 35% of women in same-sex couples. Results in the two countries are quite similar.

Table 3. France 1999. Distribution of same-sex cohabitants and different-sex couples by educational level

Educational level	Same sex-households				Different-sex households	
	Total	Men	Women	Incl. with children	Men	Women
Primary school	15.6	15.7	15.4	19.4	24.2	25.4
Secondary school (1 st cycle)	29.7	31.2	27.6	37.4	40.6	36.5
Secondary school (2 nd cycle)	17.6	16.9	18.6	20.4	14.1	17.6
University	37.1	36.2	38.4	22.8	21.1	20.6
Total	100.0	100.0	100.0	100.0	100.0	100.0

Some more results

People in same-sex cohabitation are notably younger than men or women in heterosexual couples. On figure 1, the age pyramids of same-sex cohabitants and different-sex couples are compared. Among men in same-sex co-residence, 27% are younger than 30 years and 43% are older than 40¹⁸; in different-sex couples, the youngest are much less (8%) and the oldest much more (70%). For women, 25% are below 30 years and 52% are above 40 in same-sex co-residence¹⁹, as against 12 and 65% in different-sex couples. Various reasons could be given for the difference: persons of the same sex get earlier in co-residence than heterosexual couples do, or they stay together for a shorter time than couples do, or they represent different forms of living together, which were not popular in the past among now older persons. None of these assumptions, specially the last two ones, sounds totally irrelevant.

¹⁶ Among the couples that declared themselves in the Family History Survey, 16% of the women have children and none of the men.

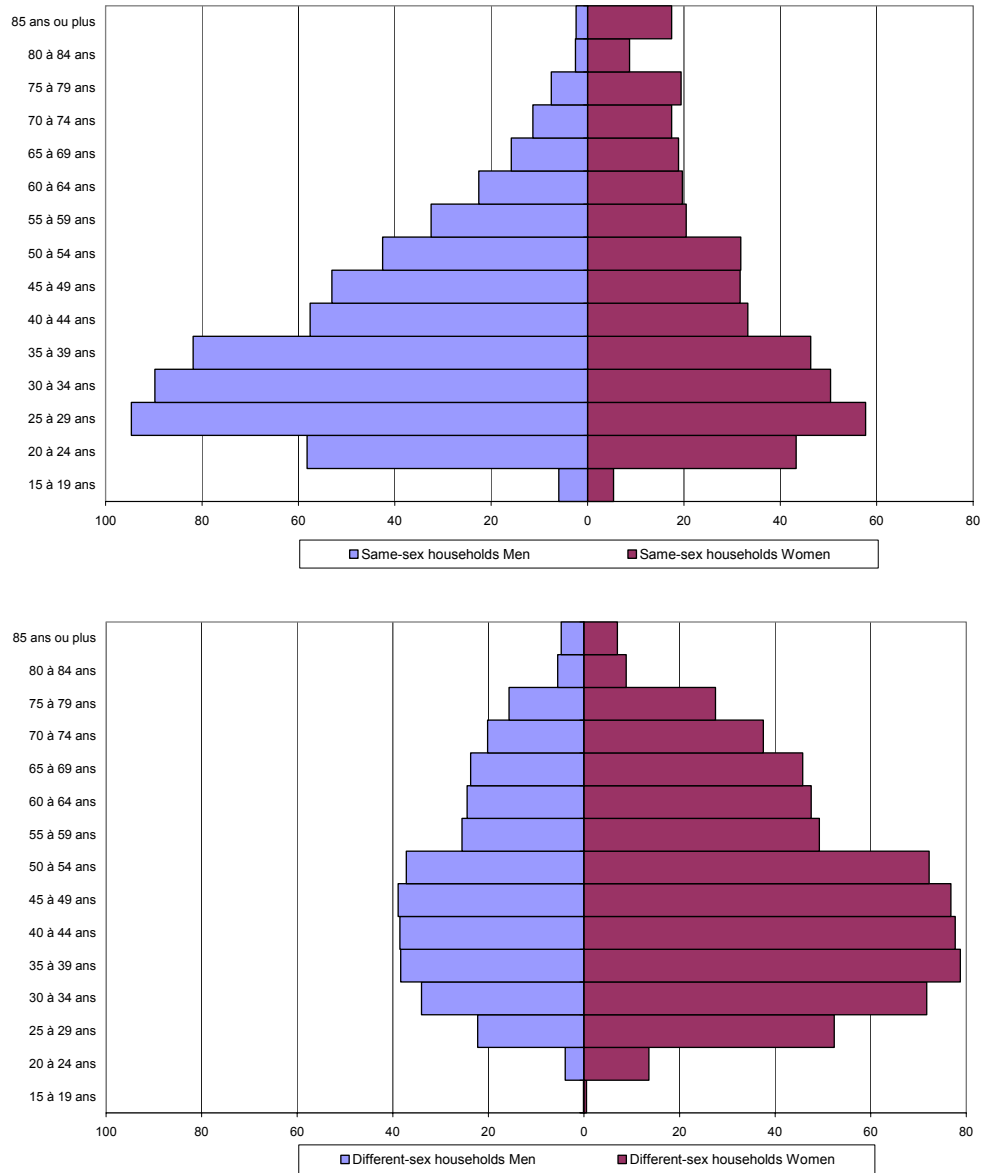
¹⁷ From Press gay surveys, see Pollak, Michael & Schiltz, Marie-Ange.- *Six années d'enquête sur les homo-et bisexuels masculins face au Sida 1985-1990 : livre des données*.- Paris : Groupe de sociologie morale et politique, 1991.- 74 p. ; Schiltz, Marie-Ange.- "Young homosexual itineraries in the context of HIV: Establishing lifestyles".- *Population: An English Selection* vol.10, n°2, 1988, p. 417-446. and Adam, Philippe ; Hauet, Eric & Caron, Caroline.- *Recrudescence des prises de risque et des MST parmi les gays: résultats de l'enquête Presse gay 2000*.- Paris : Ministère de l'emploi et de la solidarité, ANRS, INVS, 2001.- 56 p.

Results from the very small sample of gay couples in ACSF (compared to different-sex couples) are well in line with those of the census.

¹⁸ In the Family History Survey, 36% of men in same-sex couples are below 30 years and 32% above 40.

¹⁹ In the Family History Survey, 25% of women in same-sex couples are below 30 years and 32% above 40.

Figure 1. Age pyramids of same-sex cohabitants and different-sex couples for a total of 1000 persons



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Age gap between the partners in heterosexual couples is limited. In half of the cases, it is not higher than three years; couples with more than eleven years of age difference between them are only 5%. It is quite different between same-sex cohabitants: the median is five years instead of three, but still more spectacular is the fact that 25% of the co-residents have a gap over eleven years instead of 5%. More than a difference in central values - here the median - there is a strong contrast in dispersion, with many more large gaps in same-sex cohabitations than in heterosexual couples. One may question the reality of these large gaps: do they point to relationships between "friends" other than homosexual? Among couples who have registered in Norway and Sweden, substantial age differences are more common in same-sex partnerships than in opposite-sex marriages; in particular one third of male couples have an age gap of 10 years or more, which is well in line with the present French data (Table 4).

Table 4. France 1999. Distribution of age gaps between same-sex cohabitants and different-sex couples

Quantile*	Same sex-households				Different-sex households
	Total	Men	Women	<i>Incl. with children</i>	
95%	30 years	27 years	33 years	48 years	11 years
75% (3 rd quartile)	11 years	11 years	11 years	24 years	5 years
50% (median)	5 years	5 years	5 years	12 years	3 years
25% (1 st quartile)	2 years	2 years	2 years	4 years	1 year
5%	same age	same age	same age	1 year	same age

* Percentage of persons with an age gap below the indicated number of years

Other differences between male and female same-sex cohabitants

The heterosexual pattern, where women in couples are younger than men on average (here 35% of women in heterosexual couples are below 40 years, against only 30% of men) is so common, that we are stricken by the reversed situation among same-sex cohabitants (here 57% of men in same-sex co-residence are below 40, against only 48% of women). Questions similar to those previously raised can be put again: are women older than men when they enter a same-sex household, or do they stay longer in it, or have their co-residences experienced a lower increase in popularity than men's have?

In contrast with differences on age, there are none on age gaps; for men as well as women, the median age gap is relatively high (five years) and the cases of large age gaps are relatively frequent (over 11 years in a quarter of same-sex co-residences).

Table 5. France 1999. Distribution of same-sex cohabitants by marital status

Marital status	Same sex-households		
	Men	Women	<i>Incl. with children</i>
Single	81.0	74.4	51.9
Married	10.4	5.1	14.1
Widowed	1.3	9.6	11.7
Divorced	7.4	10.8	22.3
Total	100.0	100.0	100.0

A large majority of men and women in same-sex cohabitation have never been married, slightly more for men (81%) than women (74%)²⁰. Married persons are rare, though less among men (10%) than women (5%). When due consideration is taken of the age pyramid of the same-sex cohabitants (not evidenced here), a huge over-representation of the single (still more for women than men) and under-representation of the married (*idem*) is confirmed, by comparison with the total population. It is much less spectacular for the widowed and the divorced: only for the latter there is a clear over-representation (more for women than men), but not as important as among single. What we know of registered partnership in some Nordic countries confirms most of these observations, with a heavy weight given to single persons and, at a lesser degree, to the divorced²¹; in Norway and Sweden a fourth of registering lesbians had already been married (i.e. widowed or divorced) and slightly less of gays (Table 5)

Women with children are or have been married more frequently than childless women: 14% instead of 5% are presently married; 34% instead of 20% are widowed or divorced. Differences in age structure are not an explanation, since negligible. These women have been more tightly linked to the "heterosexual world" than women without children.

Conclusions

Data gathered from the census forms are considerably altered by the codification and righting when available to researchers. Traditional conception of the family oriented around the man, head of the family gives few possibility to express the reality of social life such as accepted and visible nowadays,

Insee for comparison purposes with previous census changed only the wording of the questionnaire but not the main idea behind. A lot of codifications and so-called rightings are made to force people to enter in a strictly defined scheme that doesn't include same-sex partnership. Insee even refused to add Pacs as a new category in the next version of the census under the claim that it doesn't alter the civil status that Insee records in its marital status category (this is not by chance it bears this name).

We will remark with Pierre Bourdieu that the State, here represented by Insee, in creating categories excludes people who don't fit to these categories. There is a strong contradiction between allowing same-sex partners to register their union with Pacs and prohibiting them to declare such relationship legally acknowledged in an administrative form. The State duty to at least integrate in the facts what it regulates by law isn't fulfilled and discrimination remains.

Households are complex units that can be described, numbered and characterised only if a meticulous account is taken of existing links between their members. The challenge is the more so difficult in censuses as forms are generally self-administered. Couple relationships are the most important of these links. In the last decades, efforts have been made in the French censuses to put on a par couple relationships whatever their legal status (marriage or *de facto* cohabitation), but restrictions have been maintained that limit the possibility for same-sex cohabiting couples to declare themselves or that reject them from the spouse status during data processing.

The procedures are still obscured by the fact that, for the sake of continuity with past practices, a primacy has been maintained on men as reference persons of the household and has to be restored during data processing, if declarations in the field have not followed this undisclosed rule.

Thus, it is very difficult to identify same-sex couples in the last French census (1999). Those who dared declare themselves as spouses were reclassified as "other relatives"; from the results of the study on French Family History survey, it seems that such couples were few. Others dared not and we have checked whether they could be supposed to have

²⁰ Results from the very small sample of gay couples in ACSF are in line with those of the census: 7 out of 10 are single.

²¹ Noack, Turid ; Fekjær, Harald & Seierstad, Ane.- "Skilsmisser blant lesbiske og homofile partnere - hvem er mest stabile?". *Samfunnspeilet*, n° 3, 2002, p. 19-27.

What if same-sex couples exist in France after all?

declared themselves and/or have been classified as "friends". Tests have been made on the composition of the group of same-sex cohabiting friends, through comparisons with data in other countries or with characteristics of different-sex couples and through internal analysis by sex and presence of children. Most of the results make sense: the profile of the group could well be that of same-sex couples.

It is much more difficult to firmly conclude that we have identified all the same-sex couples and only them. We have seen that some have been put in the group of "other relatives", while declaring themselves as couples. On the reverse, the fact that the group of same-sex cohabitants looks as if they were couples does not necessarily imply that all of them are so: a large majority is enough for their imprints to be on the group. Consequently, there is a major uncertainty on the true numbers. They could be a few thousands more or less and the hope is that, uncertainties having been guessed in both directions, they compensate for each other.

Whatever the robustness of the conclusion, the best way out of these guesses is the introduction, in census forms and in further data processing, of questions and procedures that open the definition of couples to non-heterosexuals, that respect the declaration of the enumerated persons and that offer them enough guarantees on the confidentiality of their answers for these to be reliable.

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Annexe 1

PERSONS LIVING IN THE DWELLING

Each person normally living in the dwelling, even if absent at the time of the census, must be written down either in List A or in List B (see example at the bottom of the page).

Do not forget young children

List A PERMANENT OCCUPANTS OF THE DWELLING	FAMILY NAME Block letters example: ALLARD, married name MAURIN	FIRST NAME	RELATIONSHIP with the person named in the first line. Indicate, for example: spouse, cohabitation partner, son, daughter, father, mother, grandson, daughter in law, nephew, friend, sub-tenant, etc	PART RESERVED FOR STUDENTS LIVING IN THE DWELLING ONLY FOR STUDY PURPOSES AND HAVING THEIR FAMILY RESIDENCE SOMEWHERE ELSE . If you take in a student during the academic year, note below (on the appropriate line), the address of his/her family residence. . If you are yourself a student living here for your studies, note below (on the line concerning you) the address of your family residence
<p>• Write in opposite the people living in the dwelling including yourself and the people absent at the census date</p> <p>(on business or for pleasure, patients on short stay in hospitals or clinics, etc), not including the people finding themselves in one of the situations described in List B below.</p> <p>• Special cases. Write in also: - employees, apprentices, au pair girls accommodated by you;</p> <p>- sub-tenants or paying guests occupying part of your dwelling, except if this is a completely separate part, therefore constituting a separate dwelling.</p> <p>• For each of the people in this list, complete an individual bulletin</p>	Write on the first line one of the members of a couple and on the second line the spouse or if there is no spouse, one of the adults living in the dwelling			
	1 _____			
	2 _____			
	3 _____			
	4 _____			
	5 _____			
	6 _____			
	7 _____			
	8 _____			
	9 _____			
	10 _____			
	11 _____			
				If there are more than 11 people, indicate the number of additional people. . <input type="checkbox"/> <input type="checkbox"/>

List B PERSONS FORMING PART OF YOUR HOUSEHOLD BUT CURRENTLY FINDING THEMSELVES IN ONE OF THE FOLLOWING SITUATIONS:	FAMILY NAME	FIRST NAME	RELATIONSHIP with the person on the first line in List A	DATE OF BIRTH	IS THE PERSON A STUDENT? (Higher education, post-baccalaureate)	NAME AND ADDRESS OF THE ESTABLISHMENT (OR ADDRESS OF THE DWELLING) where the person normally lives
<p>• Write in opposite the people finding themselves in the following situations:</p> <ul style="list-style-type: none"> - Children at boarding school; - Children being looked after by another parent (following a divorce, for example); - Students living elsewhere during the academic year (in a hall of residence, an independent dwelling or a room in town); - those doing compulsory military service - professional members of the Armed Forces serving outside Metropolitan France; - Workers living in a hostel; - Elderly people living in a retirement home or a hospice; - Long-stay hospital patients - People living in other types of "special quarters" but spending part of the year in your dwelling. <p>• Do not complete any individual bulletin for these people: their bulletins will be completed at their normal place of residence.</p>	1 _____				YES <input type="checkbox"/> NO <input type="checkbox"/>	
	2 _____				YES <input type="checkbox"/> NO <input type="checkbox"/>	
	3 _____				YES <input type="checkbox"/> NO <input type="checkbox"/>	

- E The Maurin family live in Saint-Malo, Mr Maurin and his wife
- X have four children only one of whom, Christophe, is present throughout the week.
- E The Maurins rent out a room in the dwelling to a student, Yves Couédec, whose family live in Roscoff.
- M One of the Maurin sons, Laurent, is performing his military service in central France.
- P One of the Maurin daughters, Sophie, lives in a student hall of residence in Paris.
- L The other daughter, Nathalie, is a student at Rennes University, where she rents a room in the town.
- E

Liste A

1 MAURIN	Michel		
2 ALLARD, married name MAURIN	Françoise	Wife	
3 MAURIN	Christophe	Son	
4 COUEDEC	Yves	Sub-tenant	18 rue du Port, ROSCOFF

Four individual bulletins

Liste B

1 MAURIN	Laurent	Son	Born 21/08/76	YES <input type="checkbox"/> NO <input type="checkbox"/>	...
2 MAURIN	Sophie	Daughter	Born 07/04/78	YES <input type="checkbox"/> NO <input type="checkbox"/>	...
3 MAURIN	Nathalie	Daughter	Born 11/12/80	YES <input type="checkbox"/> NO <input type="checkbox"/>	...

no individual bulletin

TEMPORARY INHABITANTS

People who are with you at the time of the census but who normally live elsewhere (family members, friends, etc) must not appear on either of the two lists.

Special case: if a person is absent from his/her domicile for the whole duration of the census operations and if no one can reply on his/her behalf at his/her home:

- draw up his/her individual bulletin (without writing it in one of the lists) mentioning his/her address in the box reserved for this purpose on the bulletin;
- return this bulletin separately to the census agent.

Bi- and Homosexuality in the National Surveys in Europe

Osmo Kontula*

Introduction

Although there were some local sex surveys in several European countries already in the early 1900s only the Kinsey report (1948) in the U.S. gave a real boost upon the national population sex surveys. It provided an international model how to conduct a sex survey and gave a list of model items to be included into the questionnaires. Kinsey studies have been called also the first wave of the national population sex surveys (Michaels & Giami, 1999). It created the statistical tradition that led to the dawn of the modern sexual science.

Kinsey and his colleagues applied an approach where marital sex, masturbation and homosexuality were emphasised. The focus seems to have been largely on numerous orgasms achieved in various ways. Kinsey's estimates on the prevalence of the homosexual experiences raised a lot of public discussion and were a surprise for the public audience. Later his figures have been criticised to be non-representatives.

In the first nationally representative sex survey in the U.S. Laumann et al (1994) argued: 'The major difference between Kinsey and recent (the U.S.) research is that Kinsey did not use probability sampling'. Kinsey purposely recruited subjects for his research from homosexual friendship and acquaintance networks in big cities. Kinsey combined fantasy, masturbation, and sexual activity with partners in some of his calculations. According Laumann et al 'there is no statistically sound way to generalize from his sample to a population'. However, Kinsey and his colleagues created useful scales to measure sexual orientation and provided courage to apply this scale to various sex surveys in other countries.

The second wave of national sex surveys was carried out in the late 1960s and in the early 1970s (Michaels & Giami, 1999). The interest of these surveys was laid mainly on family planning issues. The studied topics were concentrated on heterosexual activity and relationships, sexual positions, contraception, and abortion. Homosexual activities were not important from family planning perspective and this was why they were usually ignored. In some cases sexual orientation was measured (Kinsey scale) but it was not reported.

In the 1980s started the third wave of national population sex surveys. After the AIDS epidemic was recognized there was an increasing motivation and also specific resources available for these surveys. They have been often called 'AIDS-related sex surveys'. A new model for the study of sexual behaviour understood sexuality as an epidemiological problem. Practical implication was the reduction of interest in procreation, orgasm and masturbation but increased interest in homosexual sexual activity. Other special interest areas were number of sexual partners, anal sex, condom use and intravenous drug use.

The need for precise epidemiological data on sexual contacts involving potential risk of infection led to the formulation of more explicit questions concerning variety of sexual acts. This has been called 'Sexual acts approach' (Michaels & Giami, 1999). Another important point in the epidemiological model of sexual issues was 'Partner approach'. The notion of a 'type of partner' that allows for the possibilities of multiple partners and/or partners of either or both genders turned out to more important than previously dominant notion, marriage. Health concerns about gay men and anal sex reshaped the understanding of sexual activity.

* Population Research Institute, Finland

In Europe there were 16 AIDS-related population surveys conducted in 11 countries between 1989 and 1993. These surveys were funded from the specific AIDS-related national sources. The only exception was Finland where the study was funded from the academic social science resources. When these surveys were carried out there wasn't any European collaboration. This is why data collection techniques and the items and wordings in the questionnaires varied from country to country.

Later, there started a collaboration to present cross-national analyses based on the available data sets. This collaboration was called 'European Concerted Action on sexual behaviour and the risks of HIV infection'. The final outcome of this work was a book 'Sexual Behaviour and HIV/AIDS in Europe: Comparisons of National Surveys' (Hubert et al, 1998). It included also the chapter 'Homosexual and Bisexual Behaviour in European Countries' (Sandfort, 1998). Epidemiological model had brought homosexual activities back to the interest of the national sex surveys. In some cases these were also the first national sex survey that had ever conducted in those countries.

In the second part of the 1990s these AIDS-related sex surveys were followed by The New Encounter Module (NEM) Project that was funded by 'Europe against AIDS' EU programme. This project was coordinated by Michel Hubert in Facultes Universitaires Saint-Louis in Brussels. Now the coordination included also the creation of the common questionnaire and the recommendations for data collection. In line with the epidemiological sex research model some items related to homosexual patterns were included to the study form.

Up to date, most of the European national surveys that have had interest on sexual issues are HIV-focused. Not much has been published with intention to understand sexual expression outside more problem-focused areas. The main interest is usually to understand HIV transmission dynamics.

The aim of this article is to report some cross-national results of the before mentioned NEM surveys in relation to bi- and homosexuality in the studied countries. These results will be compared with some similar European surveys (Kontula & Haavio-Mannila, 1995; Lewin et al, 1998; Haavio-Mannila & Kontula, 2003) and with the survey in the U.S. (Laumann et al, 1994). In the U.S. the lack of data on the prevalence of men who have sex with other men was a major motivation for the original federally funded project.

The approach applied here includes discussion on some methodological aspects of the national sex surveys, considering the ways the surveys have measured sexual orientation and bi- and homosexual sexual activities. In the final discussion some proposals for the improvement of the validity of prevalence estimates will be presented.

Available data sets

An exercise of the differences in sexual initiation between Western (Nordic) and Eastern (two geographical areas of the former Soviet Union) European countries has been conducted in a study "FINSEX study and the related sex surveys in the Baltic sea area" that has been authored by Osmo Kontula and Elina Haavio-Mannila (Kontula & Haavio-Mannila, 1995; Haavio-Mannila & Kontula, 2003). The study covers six national sex surveys and one local sex survey (St. Petersburg) in the Baltic Sea area:

Finland 1971 (N=2188), 1992 (N=2250), and 1999 (N=1496);
Sweden 1996 (N=2810),
St. Petersburg 1996 (N=2085), and
Estonia 2000 (N=1031).

The studied age group varies from 18-54 years to 18-81 years.

The Swedish survey was originally conducted by Bo Lewin et al (1998).

The aim of the "The New Encounter Module (NEM) for following-up HIV/AIDS prevention in general population surveys" was to follow up (1) the way HIV/AIDS prevention is or is not taken into account in new relationships and (2) key indicators of sexual behaviour and

HIV/AIDS prevention. The approach was not centred on the individual exclusively but also on the characteristics of the relationship. Special interest was laid into last new encounters (last new partner) with sexual partner. Surveys were based on a common questionnaire: 'Sexual Behaviour and Risks of HIV Infection in Europe'. The target population was the general population in each country. It was strongly recommended to build probability samples.

The following national NEM surveys were conducted in the western Europe in the late 1990s (in Spain in the early 2000s) in the age group of 18-49 years (country, year of data collection, number of respondents, response rate):

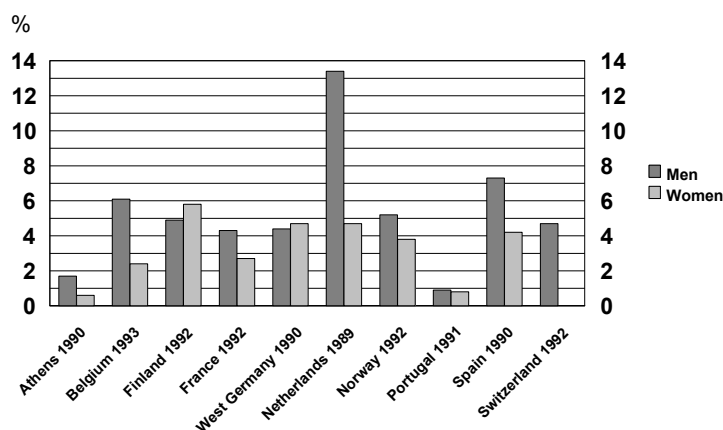
Norway	1997	(N=3723)	37.2%
England	1998	(N=2935)	77.9%
Germany	1998	(N=2583)	68.7%
France	1998	(N=1614)	75.9%
Portugal	1999	(N=1000)	86.0%
Switzerland	1997	(N=2777)	68.9%
Spain	2001	(N=2935)	69.9%
Italy	1998	(N=2603)	80.9%
Greece	1998	(N=2000)	84.1%

The lower response rate in Norway is due to mailed data collection technique. This technique was not applied in other concerned countries. They conducted either face-to-face surveys or telephone surveys. A copy of each survey data was centralized in Brussels. More information on data sets is available in <http://www.fusl.ac.be/Files/General/ces/rechsida.AC2.html>.

Prevalence of sexual experiences with same sex

In the first wave of AIDS-related sex surveys in Europe (Sandfort, 1998) 10 countries had measured proportions of bi- and homosexual behaviour during lifetime among their respondents (Figure 1). On the average, the prevalence was 5 percent for men and 4 percent for women. In most countries female rates were lower than male rates. Netherlands had an exceptionally high male rate - 13 percent. Dutch women did not make difference with women in other countries. Athens and Portugal had exceptionally low rates, only 1-2 percent.

Figure 1. Proportions of bi- and homosexual behaviour during lifetime



Some of these differences are due to different wording in the national questionnaires. In Portugal (1989) and Athens (1990) wording was: 'In terms of sexual activity which of the following statements best describes what you actually do (or did)?' 1. I have had only sex with women - 5. I have had sex with men only. In the Netherlands (1989) the wording was: 'Have you ever had sexual contact with a boy or a man? By sexual contact we mean at least masturbation or jacking off'. In Portugal and in Athens the wording could be understood very strictly only in the context of vaginal intercourse as in The Netherlands the wording opened much wider variation in sexual actions. It is self-evident that these differences in wording do have impact on the responses and on the cross-national results. NEM surveys have incorporated partner approach in studying bi- and homosexuality. There are no questions on sexual fantasies, emotional or physical attraction to same sex, and sexual self-definition or identity. The NEM items include questions: 'What was the sex of your first partner' and 'Over your life, did you have sex...' Both questions have the same scale:

1. With women only
2. Primarily with women, but with at least one man as well
3. With both women and men
4. Primarily with men, but with at least one woman as well
5. With men only

Of the previous and current sexual activities NEM surveys ask: 'With how many persons of your own sex have you had sex over the last 5 years, even only once?' 'With how many persons of your own sex have you had sex over the last 12 months, even only once?' 'What is the last new partner's sex?' Sex and/or partner are the main concept in all items. It was up to respondents how they understood these concepts and what kind of persons they understood to be included into partners or what kind of experiences they defined to be sex for them. Some of the respondents could perhaps understand sex to be something that can happen only between a man and a woman.

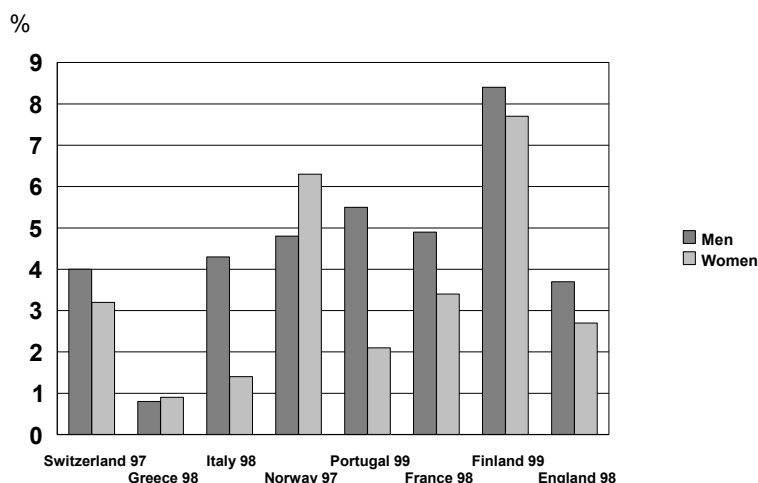
The proportion of respondents who's first sex partner was a person of same sex was quite low in the NEM surveys. It was 1,4 - 1,8 per cent for men in Spain, Norway and France and 3,5 percent in Italy. Among women this proportion varied from 0,4 to 0,9 per cent in these countries.

In NEM surveys the proportion of respondents who over their life had had sex with somebody of same sex (not men with women only or women with men only) was 4-5 percent for men and 1-6 percent for women (Figure 2). Variation among women was high and the rates were usually much lower among women than men. The only exception was Norway where female rate was higher than male rate. In Greece both rates were very low, obviously for some technical (data quality) reasons. In Finland the rates were much higher for both genders compared to all other countries, around 8 percent.

For follow-up reasons Finland could apply only some of the NEM items in their national sex survey in 1999. This was why they used different wording: 'Have you had sexual experiences (arousing fondling or intercourse) with a person of the same sex?' Sexual experiences are a broader category than sex and they were even defined to include arousing fondling. This can explain why rates were in Finland higher than elsewhere.

A substantial proportion of people who have homosexual experience do not continue to have them, as they grow older. Among men such experiences are more likely to occur before than after the age of 25. Contrary to this, some women become homosexually active first in their late 20s, 30s and 40s. First homosexual experiences seem to occur later in life if one lives in a country with less positive climate towards homosexuality.

Figure 2. In lifetime has had sex with somebody of same sex



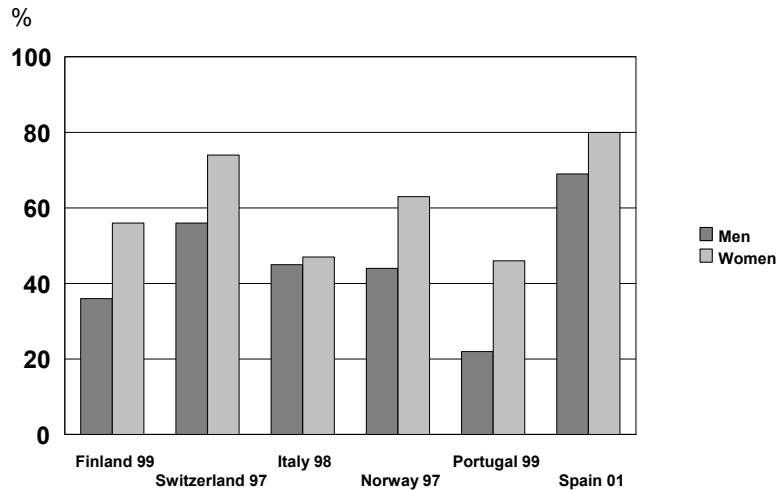
Over the last 12 months 1-3 percent of men and 0,5-1,5 percent of women had had sex with at least one person of same sex. In Italy and Greece these rates were exceptionally low. In Spain, Portugal, France and Finland this rate was around 3 percent for men. In this one year time period the different wording did not make difference to the same sex experience prevalence rate in Finland compared to other countries.

Public opinion and homosexual activities

Prevalence and incidence rates have been argued to be thwarted and delayed in countries where is less tolerant climate towards homosexuality. It could have impact to the process of homosexual identity formation. People might 'come out' at a later stage of life. This hypothesis can be partly tested by comparing public opinions towards homosexuals in the NEM countries to the actual prevalence of homosexual experience. Public opinion was studied with the five point scale measuring how acceptable respondents felt sexual relations between two adult men (Figure 3).

In their opinions about 40 percent of men and 50-60 of women found homosexual relations at least rather acceptable. In each country women were more tolerant than men. In Spain men were much more tolerant than men in other countries. Almost 70 percent of Spanish men accepted homosexual relations, among Spanish women this rate was even 80 percent. Interestingly, the highest and lowest figures were found in neighbouring countries, Spanish and Portugal. This can have implications into the willingness to report personal homosexual activities in these countries.

Figure 3. Sexual relations between two adult men rather acceptable



In each country men and women who had higher education were more tolerant on homosexual relations than respondents who were less educated. In several countries the proportion of approval was even 2-3 times higher in the highest educational group compared to the lowest group (four groups). This educational impact was more pronounced among men than women.

As one can expect, public opinion on homosexual experiences were highly correlated with the actual personal experiences. In the group of men who shared strongly approval attitudes on homosexual relationships (totally acceptable) the proportion of men with same sex sexual experiences in their lifetime were about ten times more prevalent compared to the group of the strongly disapproval men (totally unacceptable)(Figure 4). In Finland and Portugal every fourth of highly tolerant men had had a homosexual experience. In other countries this proportion was around 10 per cent.

Figure 4. Sexual experience with same sex in lifetime by attitude on sexual relations between two adult men
Men

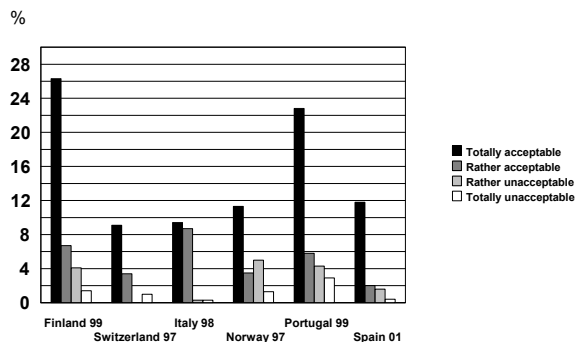
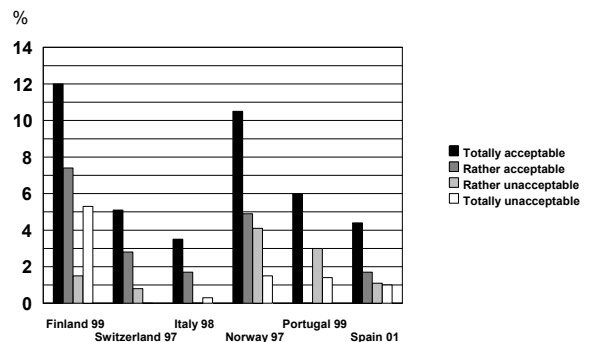


Figure 5. Sexual experience with same sex in lifetime by attitude on sexual relations between two adult men
Women

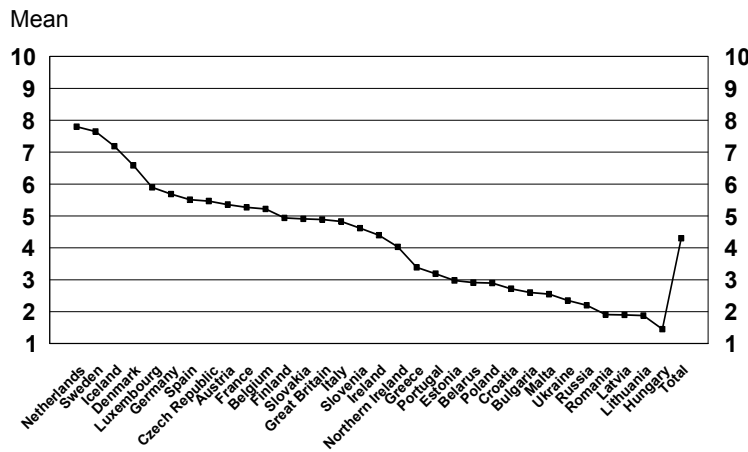


The correlation of homosexual experiences and public opinion was less pronounced for women, but still significant. On the average, the prevalence of homosexual experiences was five times higher among highly tolerant women compared to highly intolerant women.

As a whole, the prevalence of homosexual experiences was among strongly tolerant women about half of the rate that was found for men who had similar attitudes. On the other hand, the rates were higher among the most intolerant women compared to men with equal attitudes.

The prevalence of homosexual experiences has not yet been studied in most Central and Eastern European countries. Because the variation in the bi- and homosexual prevalence is rather limited in Western Europe, one could expect that the prevalence do not differ substantially from country to country. However, one can argue that strict public opinion can have some impact on the willingness to report homosexual experience as seems to be the case for example in Greece and Portugal. We can estimate some of these impacts by looking at public opinions measured in the European values surveys in 1999-2000 (Figure 6). These surveys applied a ten-point scale of the justification of homosexuality.

**Figure 6. Homosexuality can always - never be justified
Scale 1 - 10; European values surveys 1999-2000**



In the European values surveys the Netherlands and the Nordic countries had the most tolerant attitudes on homosexuality. The least approval was found in Russia, Baltic countries and in Hungary. In Greece and Portugal the attitudes were almost as intolerant as in Eastern Europe. In these countries one could expect that the respondents can find it exceptionally difficult to reveal their homosexual experiences.

Public opinion on homosexuality has been lately in progress toward more tolerant attitudes. In the U.S. approval of homosexuality increased in the 1990s (Loftus, 2001) after a long period of stagnation in the attitudes. In Finland there was also a major increase in tolerant attitudes towards homosexuals from the 1970s to the 1990s (Kontula & Haavio-Mannila, 1995).

Sexual identity and homosexual experiences

NEM surveys studied only the behavioural aspects of the same sex sexual approach. In order to study more closely the permanency of the homosexual actions the respondents reporting some lifetime homosexual experiences were divided into three subgroups:

Heteroscript = sexual experiences primarily with opposite sex, but at least with one same sex partner as well in the lifetime

Bisexual = sexual experiences with both several men and women in the lifetime

Homosexual = sexual experiences primarily with same sex partners, but at least one opposite sex partner in the life time + sexual experiences only with same sex partners in the lifetime

Heteroscript implies that these persons have applied heterosexual script for their sexual actions even though they have some sexual experiences with their own sex as well. These

persons can have some homosexual attractions but they are more interested to a number of sexual experiments, including some same sex experiments. Heteroscript persons don't have homosexual or even bisexual identity.

Over the last 5 years from one third (Norway and France) to a half (Spain and Italy) of Heteroscript men and women have had at least one same sex sexual partner. This means that most people who have had some same sex sexual experience in their lifetime have not had any same sex sexual partner over the last 5 years. The permanency of these experiences has been equally low among men and women.

Figure 7. Sexual relationship with same sex over the last 5 years by sexual orientation Men

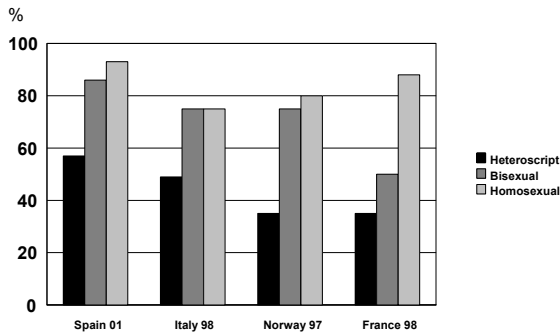
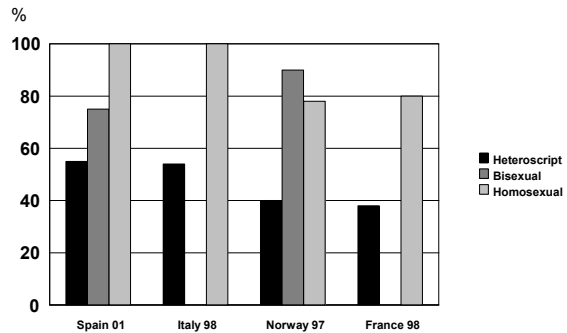


Figure 8. Sexual relationship with same sex over the last 5 years by sexual orientation Women

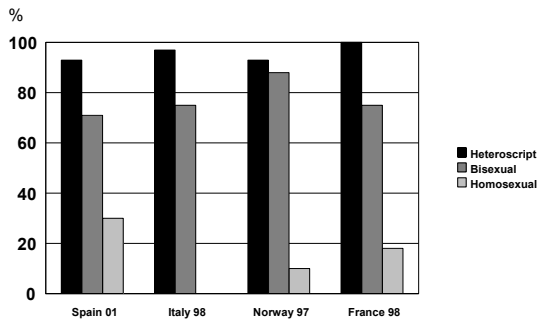


The permanency of same sex sexual experiences has been higher among Bisexuals and Homosexuals than among Heteroscript people. On the average, four fifths of men and women belonging to these two categories had had at least one same sex sexual partner over the last 5 years. The variation among countries and genders was not very big in this respect. In Italy and France these figures are not reported to Bisexual women due to their very low number of respondents in these categories. In Spain and Italy even 100 percent proportion of homosexual women with same sex sexual experiences over the 5-year period was based on very low figures and could be due to an accidental selection of these respondents.

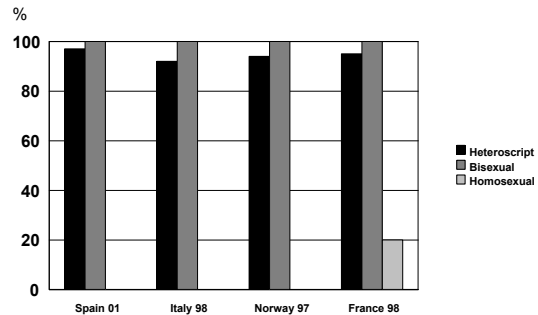
Most people in the categories of Heteroscript and Bisexual had had at least one opposite sex sexual partner over the last 5 years (Figures 9 and 10). Among Bisexual men and women this proportion was over 90 per cent. All Bisexual women in Spain, Italy, Norway and France had had over the last 5 years an opposite sex partner. Among men this proportion was significantly lower, around three fourths of Bisexual men. These men probably had more difficulties to acquire female partners than what Bisexual women had difficulties to find male partners. As a whole, a great majority of Heteroscript and Bisexual men and women had had an opposite sex partner. In this respect differences between countries were not great.

Bi- and Homosexuality in the National Surveys in Europe

**Figure 9. Sexual relationship with opposite sex over the last 5 years by sexual orientation
Men**



**Figure 10. Sexual relationship with opposite sex over the last 5 years by sexual orientation
Women**



In most cases Homosexual men and women had not had any opposite sex sexual partner over the last 5 years. The exceptions were men in Spain and both men and women in France. Around a fifth of these Homosexuals had had also an opposite sex partner.

In the National Health and Social Life Survey (NHSL) conducted in the U.S. (Laumann et al, 1994) the measurements of bi- and homosexual issues were more sophisticated than in the NEM surveys. Same-gender sexual desire was measured by:

Appeal: The appeal of sex with someone of the same gender

Attraction: The gender of the people to whom is sexually attracted

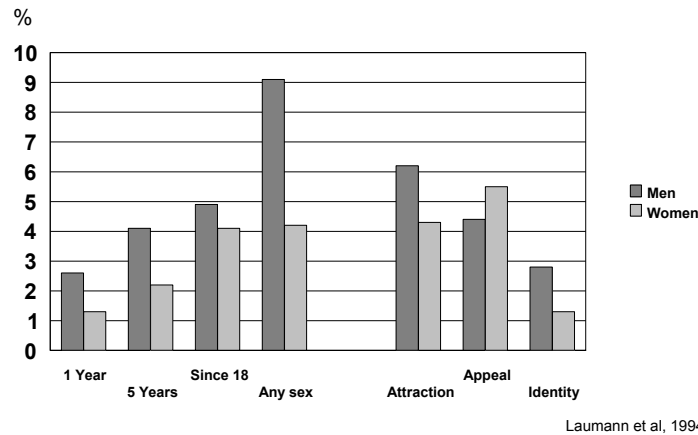
Identity: Do you think of yourself as heterosexual, homosexual, bisexual, or something else?

Sexual experiences with same sex were divided:

- any sexual experience with same sex in life time,
- these experiences since the age 18,
- same sex experiences over the last 5 years, and
- over the last year.

In the NHSL study the lifetime prevalence of same sex sexual experiences was higher than current attraction or appeal to same sex. Same sex sexual experiences, sexual attraction and homosexual identity were more prevalent among men than among women. Women had more same sex sexual appeal than men. Same sex sexual attraction was twice more common among males than homosexual identity. Among women same sex sexual appeal was four times more prevalent than homosexual identity.

Figure 11. Prevalence of various measures of same-gender sexuality, the U.S. adults



There wasn't much overlap between feelings of attraction (desire), actual behaviour and self-labelling (identity) (Laumann et al, 1994). In the population group that had same-sex desire, behaviour, or identity, this overlap was only 24 per cent for men and 15 per cent for women.

Respondents with same sex sexual desire, sexual experiences or homosexual identity grouped in the following way:

- only desire 50%
- only behaviour 20%
- desire + behaviour 10%
- only identity 1%
- desire + behaviour + identity 20%

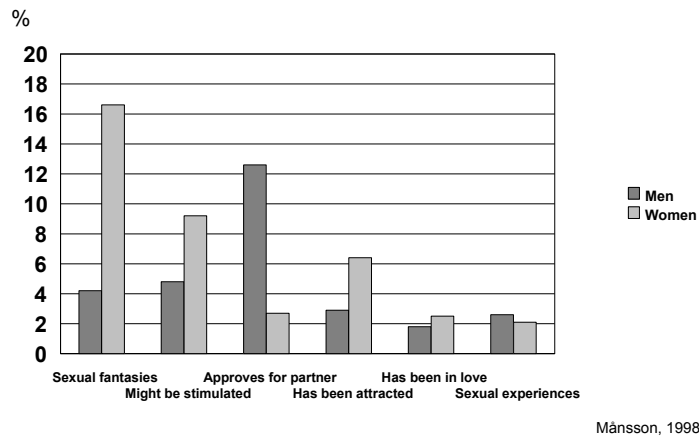
These results provide some evidence that same sex sexual interest can be for every second person something that they never act out. In most cases it does not have any impact on their sexual identity. Only for every fifth there is an integration of sexual desire, behaviour and identity. The high proportion of unreleased same sex sexual desires can be explained by the fact that social control of sexuality is less strict upon fantasies and attraction than upon behaviour.

There is another fifth who have same sex sexual experiences but who don't have same sex sexual desire or identity. This has been called 'situational' homosexuality that takes place especially in circumstances where the opposite sex is not available (Sandfort, 1998). Homosexual behaviour quite often seems to be of an incidental, transitional character. Some engage in sex with same gender partners without any erotic or psychological desire because they have been forced (prisons) or enticed into doing so. Some of these experience are also due to the compensation for missing opposite gender partner.

In the more comprehensive approach to bi- and homosexuality gender differences are even outstanding. This has been found for example in Sweden (Månsson, 1998)(Figure 12). Some similar information is available from Norway (Træen et al, 2002). There are two important gender differences. First, women have even four times more prevalent sexual fantasies on same sex than men do. This is a gender specific bisexual interest among sexually highly motivated women. Women fantasize also more often than men that they might be sexually stimulated by same sex and that they have been attracted to same sex.

However, they have not acted out these fantasies and attractions any more than men have. Most often they remain hidden. Women seem to have more inhibitions to speak and act out their desires than men do.

Figure 12. Sexual interest, emotions and experiences of same sex in Sweden



Contrary to other measurements of the same sex issues men are much more tolerant to approve same sex experiences to their partner. In Sweden this difference is even about five times (13%/3%) and in Norway six times (25%/4%). This is an important feature of Heteroscript. Ménage of trios, two women and a man watching, are an inevitable part of experimental sex (Træen et al, 2002). This kind of sex does not challenge male potency or faithfulness of the partner. That is something exciting of which men fantasize. This sexual approach doesn't seem to be as tempting to women. Their Heteroscript includes basically same sex sexual fantasies that they don't reveal to the others. They may use these fantasies for stimulation then they make love with their male partners.

In many studies (for example Træen et al, 2002) bisexuals have found to be sexually more active than the others. They have significantly higher number of lifetime sexual partners. They have lower age at orgasm and masturbation debut. Bisexuals have also a broader repertoire of sexual acts: higher frequency of oral and anal sex and masturbation. Most of them follow the Heteroscript and interpret their experiences more in the framework of experimental sex than in the framework of bisexuality.

Conclusions

National sex surveys have many limitations in looking for truly valid estimates for the prevalence of same sex experience. Homosexuality is a complex, multidimensional phenomenon. There is no single and easy answer to question about the prevalence of homosexuality. There are reports that there is little overlap between feelings of attraction, actual behaviour and self-labelling (Laumann et al, 1994). Another challenging point is that national sample cannot answer the kind of detailed questions, which are relevant to understanding homosexual lifestyle. To this purpose convenient samples are needed.

A major limitation of national sex surveys is that very large samples are needed to find enough people who have homosexual experiences to allow statistical analyses. If the intention is to study some lifestyle aspects of bi- and homosexual actions the number of respondents should be as high as 20.000. The only surveys in Europe that meet these

criteria are the first wave European sex surveys conducted in France and the U.K. Due to much lower numbers, the NEM survey data sets do allow only some prevalence estimates.

Another limitation in the national sex surveys is that the estimates derived from survey data on social stigmatised sexual behaviours and feelings are no doubt lower-bound estimates. These stigmatised sexual behaviours include homosexual relations, masturbation, prostitution, pornography, anal sex, extramarital affairs etc. The level of social stigmatisation varies from country to country. This may have implications on the prevalence rates. In homosexual issues this stigmatisation don't seem to vary so much because lifetime prevalence of homosexual experience varies only from 3 to 5 per cent in western European countries.

National sex surveys have applied different data collection techniques, including face-to-face interviews, self-administered booklets and telephone interviews. These different techniques don't seem to have any major impact on the estimates.

There are several options how to improve the validity of the prevalence estimates in Europe. The first step is to agree upon the definition of bisexuality. That would make comparisons across surveys more feasible. We need to agree what constitutes bisexuality and how to measure it. Otherwise we will lose a great number of bisexual desires and actions in the national surveys. The construct of bisexuality is frequently defined by very narrow behavioural feature without understanding the psychological and social contexts of the lives of these men and women. Sexual contact had even been defined as intercourse to the point of orgasm.

Surveys usually use filters that will drop out the respondents who don't have an interest or experience with the items that follow. These filters should be multidimensional and cover at the same time sexual desires, attractions and sexual experience with same sex. This way we could avoid dropping out respondents who may have limited definition on the concept of sexual activities. If we define sex to include all sorts of sexual touches on intimate body parts we are going to have much higher prevalence of the same sex experiences than if we leave this definition up to the respondents. They may limit sexual activities only to the vaginal intercourse. A broad definition of the term sex or sexual conduct is vitally important.

Another successful technique to improve the validity of prevalence estimates is to use so called enhanced items. An example of such an item is "In past surveys many men have reported that in some point in their life they have had some type of sexual experience with other male. This could have happened before adolescence, during adolescence, or as an adult." This sort of item helps the respondents to remember their experiences and it also gives them permission to report what actually has happened. Enhanced items together with same-gender interviewer have even tripled prevalence in a survey (Turner et al, 1996).

Prevalence estimates can be improved also by using a computer driven technology in data collection. So-called ACASI technique administers questionnaires in audio format and records respondents' answers. This technique has proven to give higher prevalence in male-male sex than what paper-and-pencil technique has given. (Turner et al, 1996.)

There are some obvious benefits and advantages in national sex surveys compared to the more risk oriented samples in the bi- and homosexual issues. First, nationally representative samples are the only way to find out how much there are men and women in the total population who have same sex sexual desires and experience. In representative samples there are a lot more homosexuality (feelings and experiences) than there are in urban convenience samples of homosexually identified men and women. This broadens the approach to homosexuality that has mostly been focused on men and women who are homosexually identified. We know very little of bi- and homosexually motivated men and women who are not linked to the gay world. One piece of finding has been that gay men in convenience samples are much more promiscuous than gay men in representative samples. These samples are often recruited from at-risk populations.

More generally there are two main options to study bi- and homosexuality. In large-cost projects we can study the issues that will help us to design more effective HIV-prevention

interventions. This has been the aim for example in the NEM surveys but they have used too small samples and too narrow filters to really meet this aim. Another option are small-cost projects that aim to increase understanding of the dynamics of desire and the meanings associated with sexual relations with both genders. This knowledge is very valuable in promoting sexual health and sexual well-being.

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Pacs: the chaotic emergence of the category in social surveys

Marie-Ange Schiltz*

This analysis examines how French social surveys carried out after the adoption of the law, at the end of 1999, of a new registered partnership both for heterosexual and same sex couple in France, known as "Pacs", integrate this item - as a part of the variable questioning the people on their "current legal matrimonial statute" - in the questionnaire and the analyses. This work is carried out starting from examples drawn from project of the 2004 census and various social surveys conducted after the date of adoption of the law. A special place will be devoted to the integration and the treatment of the category in the statistical activity of INSEE whose results are used as reference to the whole of the quantitative production of social knowledge.

With few exceptions, the survey questionnaire is less a theory of social action than it is a tool of social reflection; it reflects the state of researchers' knowledge and the questions about society that can be imagined at the time of its design. In practice, this scientific instrument is built on consensus and validates itself by continued use while being successively refined by integrating changes that reflect the evolution of social norms and societal problems. Its evolution is slow, its innovations are halting; although inappropriate to the study's original intent, some questions become routinized and are retained for comparison to the others precedent sources that are considered reliable. So, the questionnaire is often a curious mixture of well-founded questions, obsolete questions, well-tried questions and exploratory questions, that does not invalidate the entire procedure; when the questionnaire is itself questioned, it is for other reasons such as the concepts and techniques are standard, or because it prematurely establishes links between behaviours and social classifications.

In this observational study on the way in which the legal definition of Pacs ("Pacte civil de solidarité," or "Civil solidarity pact") is or isn't taken into account in social investigations, I consider the questionnaire as a document in which are crystallized the scientific representations of the time and the social issues which researchers must undertake, and dynamics and know-how internal to the discipline.

1. Legal marital status

Before examining how the Pacs has been integrated into the statutes regarding legal marital status¹, it is necessary to note that, at the present time, researchers focus more and more on *de facto* than *de jure* living arrangements (Schiltz, Jaspard, 2003). While in the past the "legal marital status" was an ubiquitous socio-demographic question, today it is possible to find examples of questionnaires where this question is not asked at all: for example, the study of non-French-speaking users of housing and food assistance that was conducted by Ined in 2002 contains only one "yes/no" question about existence of a living

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¹ In standard usage, it is a matter of knowing if the person is 'single', 'married', 'widowed', 'divorced', or 'separated' but the legal status of this last category is ambiguous; there exist a possible legal recognition of separation but not in case of an informal decision.

partner² while the preceding survey in 1998 on the French-speaking users of the same services asked the legal marital status.

The tendency is even more obvious at the level of analysis and in published results. It is now usual for *de facto* relationships in social investigations to have completely eclipsed the legal status. In actual practice, legal marital status tends to disappear from lists of the relevant variables used for analysis - that is, the list of the most explanatory variables of personal attitudes and behaviours. The single, couple, and family lifestyles - no matter what its legal status - obliterate the question of actual legal marital status.

This substitution has occurred in a progressive fashion. The current evolution of questionnaires - especially when deciding which variables to investigate - clearly selects for the importance of the presence or absence of affective bonds and organization of daily life to the detriment of its legal status. In actual practices of surveys' analyses, coexist, even within the same analysis, multiple examples of different composition of affective ties with or without shared daily life.

In an article on the influence of men's height on finding a partner, Nicolas Herpin (2003), using data from the Insée' survey EPCV ("Enquête permanente sur les conditions de vie des ménages": a continuous survey of household living conditions) carried out in May 2001, concluded that small men are less successful in living in a couple without even using the variable "legal marital status" in his analysis. Other variables have more explanatory power than legal condition, as: 1) presence or absence of a stable relationship; 2) people "living alone or not"; 3) isolated people "not in a relationship and living alone," "in a relationship," or "not in a relationship but living with one's family".

In this respect, from survey to survey, the extreme volatility of construction of different kind of relationship in connection with multiplication of possible interpretations of affective lifestyles reflects the non-stable customs of research in this field.

In a general presentation, demographic characteristics of the respondents of the 2000 Enveff survey were compared with those of the 1999 employment survey (Jaspard *et al.*, 2003). In this comparative work, the effect of the variable "legal marital status" is overshadowed by an other variable describing actual lifestyle, which contain the following categories: "married and living together", "single or widowed in a cohabiting union", "divorced or separated in a cohabiting union", "other divorced and separated", "living with parents", "other, including living alone." In the same study one finds other presentations, in addition to the official status, the *de facto* living arrangement is presented with the following categories: "married and living together", "single in a cohabiting union", "divorced, separated, or widowed in a cohabiting union", "single and never in a union", "single and not currently in a union", "divorced, separated, or widowed and not currently in a union."

It is possible that the evolution of quantitative research procedures is only a reflection of the weakening of the role of the legislation in the actual experience of affective links (de Singly, 1993). Consequently, there is a gap between the progressive lack of interest in research regarding "legal marital status" and a growing interest in the introduction of an addition of a new category for this variable. This shortfall is becoming more acute because it underlies a fight for legal recognition and equal rights of minority groups strongly in favour of a legal status of theirs affective bonds. Thus, it is not surprising that the assimilation of this new legal category in social investigations runs counter to the tendency of routine social science interpretation which more and more ignores "legal marital status" as the relevant explanatory variable.

Since the question remains open, it is now important to examine how the PaCS, despite all, is taking into account as a category of "legal marital status."

² "Do you share the same street address with a partner?: yes/no"

2. The origins of the PaCS: the role of the gay press surveys

Beside the data collection activities among the general public there also exists, in France, a series of quantitative surveys repeated since 1985 on the gay male population³. Since the second "gay press" survey in 1986, among a list of other items, the question of the legal recognition of gay unions was raised under the category "gay marriage or gay concubinage"⁴ (Pollak, Schiltz, 1991).

"Do you expect the government attach importance to the following issues concerning the social situation of homosexuals?" (Percentages below represent the responses only from those who assessed the goal as 'very important')

	1986	1987	1988	1989	1990	1991	1993	1995	1997
	1200	1225	1500	1500	2000	2000	3300	2616	3312
The fight against AIDS	93%	71%	89%	91%	89%	88%	88%	-	-
Job discrimination	-	65%	76%	76%	75%	75%	71%	77%	82%
Contract of civil union	52%	40%	57%	60%	60%	68%	66%	77%	76%
Inheritance	-	32%	62%	65%	65%	69%	67%	72%	72%
Child custody after divorce	49%	23%	41%	37%	42%	36%	34%	39%	-
Child adoption	49%	28%	35%	31%	32%	33%	31%	-	32%
Lowering age of consent ⁵	24%	15%	15%	17%	14%	17%	12%	-	-

In 1986, with the exception of nearly unanimous agreement with demands for policies to be enacted to battle AIDS and job discrimination, the gay community embraced the other legal rights goals with more hesitancy⁶. At that time, the respondents were split evenly in their acceptance of a contract of civil union; in 1987, only one-third looked favourably on the possibility of inheritance between partners. It is only at the start of the 90's that a majority began to form in favour of these two demands⁷ (Schiltz, 1998).

In 1997, while on the political front the fight for equality intensified, in the "gay press" survey, claim for same-sex partnership was only one of many goals and among survey respondents the proportion according high importance to this social agenda remained stable: three-quarters of respondents being favourable to it⁸. At that time, as the possibility of such recognition became clearer, a question investigating the living arrangements of respondents with their steady partner asking if they wished "to benefit from a partnership contract giving you some of the same rights accorded to married heterosexual couples"; 73% of men involved in a relationship at the time of the survey

³ It is in the context of the mobilization among the community and gay press against AIDS that M. Pollak began a series of surveys intended to determine how gay men adapted to the risk of HIV.

⁴ One can observe in this the evolution of wording from 1986 when the terms were "gay marriage" and "gay concubinage"; to 1987-1990, when the term "marriage" was dropped and the question only mentions "gay concubinage". After 1993, following ongoing legislative proposals, the questionnaire successively mentions "contracts of a civil union," and "legal recognition of homosexual couples." The law was ultimately passed under the name of PaCS ("Pacte Civil de Solidarité"), leading to the usage of "pacsé" or "pacsée" for the individuals in the union (for an history of the claim see Borrillo, 1998).

⁵ This question reflects the claim, at the time in the gay community for decriminalizing homosexual relations between an adult and a minor under the age of 18 (purpose of a demonstration in 1981) since at that time the age of consent had been set at 15 for heterosexuals (Borrillo, Lascoume, 2001).

⁶ Note that "adoption of children" remained, at least until 1997, a relatively unsupported goal.

⁷ These percentages were higher among those men who declared themselves to be in a stable relationship.

⁸ Alice Michel, who made these tabulations at my request, kindly provided the survey data for EPG 1997 and 2000 collected by L'Institut de Veille Sanitaire under the direction of Philippe Adam to me.

declared themselves ready to take advantage of such a contract with their current partner, while 13% said that they would not be interested in it.

After this long gestational period, the legal recognition of homosexual couples was achieved at the end of 1999 with the passage of the law that instituted the Civil solidarity pact between two different or same sex persons.

During the summer of 2000, one more "gay press" survey was conducted with 4753 gay men. Although the PaCS was by that point legalized, the category was not fully included as part of the variable "current legal status" that followed the classic divisions "single", "married", "divorced", "widowed"; because it was so recently authorized, it was premature only to count the current numbers of registrations. In order to evaluate the overall situation of gay men, the survey took into account in addition to "signed contracts", the intention of men involved in a stable relationship at the time of the survey regarding the new law: a specific question asked these men about their current situation as well as their intention regarding the PaCS.

Your situation regarding the PaCS:

1. You have signed a PaCS with your current partner:	12%
2. You seriously consider a PaCS with your current partner in the coming year:	15%
3. Your current partner does not intend to sign a PaCS with you:	4%
4. You do not intend to sign a PaCS with your current partner:	17%
5. You have not yet decided whether to sign a PaCS:	40%
More than one answer:	8%
No response:	4%

At this point, shortly after the PaCS law has been enacted, respondents are almost equally divided between the undecided, (i.e., those who have not decided, who have given more than one answer, or who have not answered at all) and those who expressed an opinion (52% vs. 48%); note that when we add those who have already signed a PaCS (12%) with those who intend to do so (15%), the proportion (21%) is not much more than those who for various reasons have no intention to legalize their union.

After this brief digression on the history of the goals and aims of the principal players of the plan, I will now examine the way in which this new legal category characterizing the situation of both heterosexual and same-sex couples has been integrated into practices of quantitative sociology based on the examples of some large surveys taken in France from 2000 until now.

3. The setting of the PaCS as a category

In the 1999 census, the "legal marital status" was recorded through the usual categories of the time (single, married, divorced, widowed) while the PaCS category was omitted since the census was conducted several months before the PaCS law was passed in November 1999⁹. Consequently, it is only for large social French surveys conducted since 2000 that we can investigate whether the PaCS category has been included.

3.1 The absence of the PaCS category in future census

In spite of repeated demands from social researchers, the project of questionnaire of reformed census, forecast to be operational in 2004, will not include the new category arguing that the Civil Solidarity Pact is an uncertain commitment; people dealing with such contract are *a priori* considered as "single" and as such recorded in this category. The "legal matrimonial status" in four categories will remain unchanged¹⁰. The only conceive opening concerns a new question on living in a couple (Héran *et al.*, 2001).

3.2 Chronicle of a disappearance in others surveys

The Enveff survey (a telephone survey conducted during March-July 2000 among a sample of 7000 women representative of the French female population aged 20-59 living in

⁹ Without any information about living arrangements of individuals.

¹⁰ For the new census; there exist a questionnaire scenario that include the category "legally separated" that may be accepted for the new census design questionnaire if tests show its relevance.

mainland France) includes, among its questions, the PaCS as a category of possible legal marital statuses for women. One finds that about six months after the law was passed, 1.5% of the respondents declared a union of this type (Jaspard *et al.*, 2003). An additional question on the affective situation of the women allows to test the consistency of the answers provided in response to the question on legal marital status¹¹. The comparison of both questions highlights the high-level of consistency of the answers by women who declared having legalized their relationship by the PaCS.

Among the 102 respondents who were in a PaCS, 97 answered that they were living with a boyfriend, 2 with a girlfriend, and 3 with a "husband," meaning the partner with whom they had entered into a PACS. All these women described themselves as being in a steady relationship.

However, in spite of the consistency of answers, interpreting this category is a problem since the behaviour of those people in a PaCS cannot be directly compared to those in more usual legal marital categories. In many respects, characteristics of the women in a PaCS are comparable to those of married women but in other respects, regarding in particular their degree of exposure to violence, the main topic of the survey, the situation of these women is closer to that of single women and women living in informal unions. Consequently, in the encoding, women in this category have been combined with single women, but this decision was never explained nor mentioned in the presentation of the results. Numerically too weak and too recent, in this survey, the PaCS category wasn't the subject of separate analysis. In the absence of standard procedures to process and analyse the data, this category, though legitimated by law, has simply disappeared from statistical analyses and published results.

As we will see below, such a procedure is consistent with common practices in the Insee Institution without the research team was informed of such decision.

3.3 The difficult linkage of the PaCS with results from the census and other large Insee surveys

The detailed description of how this category was included in the variable "legal marital status" and how it was analysed in the Vespa survey (a survey conducted in 2003 among a representative sample of 3000 HIV positive individuals living in metropolitan France who had been aware of their contamination for more than six months) is also illustrative.

The survey closely followed the standard procedures of data collection developed by Insee with the explicit goal of directly comparing the socio-demographic characteristics of a population highly stigmatised¹² with those of the general population. For reasons of comparability, the questionnaire, directly based on the census form, records information pertaining to every individual living with the person being interviewed rather than on existence of family or affective links with or without cohabitation. The following comments and recommendations helped the interviewer complete the household schedule: the interviewer was asked to ask information about the first cohabiting "spouse" or "partner in informal union" of the interviewee then, if needed, the second one¹³. Soon this choice proved to be a source of problems because of the very specific characteristics of the target population of the survey. Some situations which are very unusual in the general population are common in this sample: many members of these

¹¹ "Do you currently have a relationship whether or not you live with your partner? Yes, with husband; yes, with boyfriend; yes, with girlfriend; no, not currently but in the past; no, never."

¹² Because the epidemic was concentrated within very specific groups in the population, the survey sample mainly included individuals from the following risk groups: homosexuals, intravenous drug users, and immigrants from countries where HIV/AIDS is widespread, such as sub-Saharan Africa. These groups, often discriminated against, suffer from a grave and highly publicized disease.

¹³ "Use the first line for the first "spouse" or "partner in informal union" of a couple (and the second one for the other "spouse" or "partner") or if not one "spouse" or "partner" of the adults living in the housing unit." Note, by the way, that the table is designed to record a circumstance that is illegal in France since polygamy is illegal.

selected groups have affective and family ties with individuals who do not share the same living quarters¹⁴.

In addition to the conjugal and family ties partially documented through the question on household members and their relationship to the interviewee, another question records of the legal marital status of the interviewee into six categories: to the four standard categories are added, as in numerous surveys, the category "separated," which documents a transitional state, and last but not least the now legally recognized PaCS status. Also, given the specificities of the lifestyle of the groups included in the sample, the Insée table is supplemented by a series of questions specific to the survey regarding conjugal and family ties with non-cohabiting individuals. The analysis of the survey, which was conducted three years after the law was passed, showed that the total proportion of people in a PaCS is slightly higher than 3%, keeping in mind that the groups in the sample are as heterogeneous as they are unequal in their access to PaCS; behaviour varies widely depending on the population subgroup. When looking at sexual orientation declared by the interviewee or at the sexual composition of the current couple most of the PaCS documented in the survey are found among male homosexuals (6%), especially among those in a steady relationship (10%), and what is more among those in a steady relationship who are currently co-habiting with their partner (21%). By contrast, immigrants tend not to contract in a PaCS for cultural and legal reasons as most of them come from countries where this type of partnership does not exist: immigrants have less than half the rate of contracting a PaCS than French individuals (1.5% vs. 3.7%)¹⁵.

From the beginning explorations of the data, the comparison with the 1999 census results faced a problem due to the two additional categories added to the "legal marital status" variable ("separated," and "PaCS"). A message sent to a statistician at Insée who contributed to the design of the socio-demographic section of the questionnaire garnered the official following reply:

"The distribution of the marital status into the six categories is not available at Insée. Typically in its household surveys, Insée asks about legal marital status (single, married, widowed, divorced). A "pacsé" who lives with his partner is still considered single.¹⁶

Similarly to the processing of the data in the Enveff survey, and three years after the law was passed, the PaCS category is still not regarded as an independent category of analysis and is combined with "single" status demonstrating in this way how little importance is accorded to this contract by official statistical functions.

Conclusion

In his latest work, P. Bourdieu (2001) defends the idea that scientific procedures are not only built on logic and experimental method, but also on practical expertise that are fed at least as much by experience, the understanding of how to handle problems, and methods adapted to supplement explicit rules. Therefore, the competence of the researcher relies on the solidly based knowledge of usual patterns, of the routine procedures partly determined by the instruments being used.

Tacitly, each research questionnaire places itself into previous practices and available interpretations that are, in a way, a digest of the scientific concepts of the time. This

¹⁴ According to the results of a number of surveys conducted among homosexuals, half of those in a stable relationship do not co-habit with their partner, and the information is unclear for migrants, some of them have left children in their country of origin and those children are not included in the current household.

¹⁵ The homosexual proportion among immigrants remains significant: among the seven immigrant respondents in a PaCS, three described themselves as homosexual.

¹⁶ For information : if at the time of the survey a separated individual is still married, then his legal marital status is married (even if he live alone); otherwise, his legal marital status is single (whether or not he is in a "concubinage" or in a PaCS). Consequently, when a design survey ask for "separated" it is not possible to aggregate people in the category with people in any other category in order to compare results with data from census or others Insée surveys.

synthesis of formal knowledge, know-how, and accumulated experience heavily influences the practices of the researchers. In order to be comparable with other sources and because of the importance of the economic investment in these large operations of data collection, a social questionnaire is an instrument that is delicate to modify; its evolution can only be slow and partial and strongly depends on the general direction of the main state institutions in charge of the French statistical observations as Insee.

The reluctant integration of the PaCS category in the practice of social investigations in France can only be understood if one thinks of the questionnaire as an instrument in which is incorporated the social vision of the scientific community (Giami, Schiltz, 1996). This vision is constructed historically. It is built on observations, practices, and successive re-interpretations which cumulate and stabilize, for a time, in a list of socio-demographic variables sanctioned by use. This standard procedure is a composite of politically and socially instituted problems, of findings from analyses of previous data that were selected from among a list of customary variables, those that are the most explanatory for the subjects under study.

The time it takes for a social demand, recently legalized, to be assimilated into the practices of quantitative social science is reflective of the difficulty in changing a system of implicit rules shared by the scientific community. The internal dynamic of research which, since the 1970s, acknowledges that a person's family history is not only marked by the legal acts of marriage, widowhood, or divorce, but also by successive periods of solitary life and formal or informal partnerships, runs counter to take into account the new legal category. This latency period is reinforced by the chronology: the gold standard of statistics in France, Insee, in the 1999 census (reference for all other social surveys in France) was performed before the legal recognition of this new category of "legal marital status". Since that time the new category is generally included in the questionnaire but for various reasons, omitted from analysis - because of the constraint to be compared with data reputed as the most reliable and - because of the lack of common knowledge about this social group. This deficiency may continue¹⁷ until the time when enough specific knowledge has been accumulated around the category unless social, political or scientific circumstances accelerate it by imposing it as a possible or more as an inevitable category¹⁸.

In contrast to the rigid rules of statistical theory, the consistencies in conceptualisation and analysis of social questionnaires - instruments that are becoming more and more complex - cannot be transmitted by a set of formal rules. They are mainly based on knowledge built on experience and accumulation of collective and individual common practices. This way of doing things explains the slow assimilation of innovations and new categories into social surveys, which are often accused of following rather than leading social changes.

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¹⁷ For instance, "concubinage", a legal status that preceded PaCS in France, and was a cohabitational status that applied to a male-female couple but very rarely taken into account in the surveys as a possible "legal matrimonial status".

¹⁸ For instance, the difficult emergence of lesbian studies. B. Lhomond (Lhomond, Michaels, 2000) has been persistently gathering widely dispersed data on women who have had sexual relations with other women. This information is unanalysed because the sample sizes are small since this subpopulation is rare and has never been the subject of specific social campaigns, by contrast with gay men who have been affected by the HIV epidemic.

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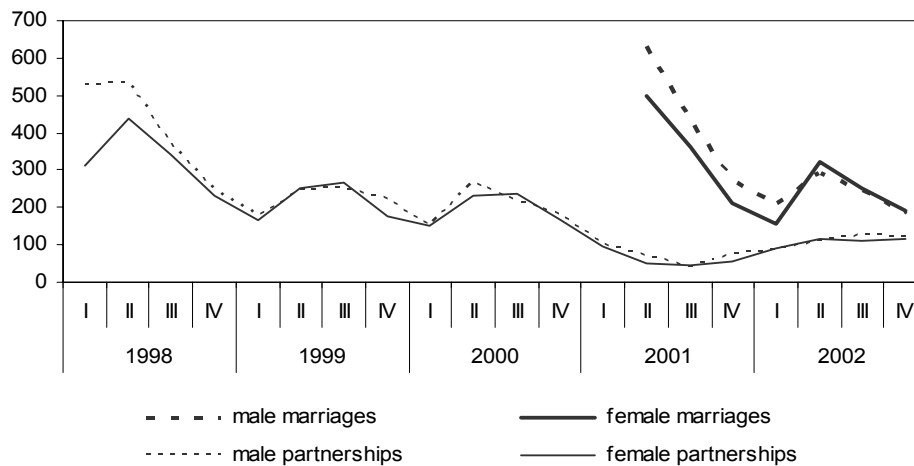
Same-sex couples in the Netherlands

Liesbeth Steenhof & Carel Harmsen*

1. Introduction

Since 1 January 1998 same-sex couples are allowed to register their relationship in a registered partnership under Dutch law. Since 1 April 2001 marriage is open to same-sex couples (*graph 1*). The Netherlands is the first country that officially allows same-sex marriages.

1. Same-sex marriages and registered partnerships per quarter



Although marriages and registered partnerships make the group of same-sex couples more visible in a statistical sense, the majority of this group, the consensual unions, do not show up in the population registers. As a consequence, few demographic facts have been published about them until now.

This study estimates the number of same-sex couples forming a household in the Netherlands, and describes their demographic characteristics. The household statistics of Statistics Netherlands were used to estimate the number of same-sex couples. These statistics are based on register data and contain the number of households divided into household types, and persons living in households divided into household positions, in the Netherlands on 1 January of the year. In the next two sections we explain more about register data and household statistics. In sections 4 and 5 we describe how the number of same-sex couples and their demographic characteristics are estimated.

2. Dutch population register data¹

The Dutch population and household statistics compiled by Statistics Netherlands are based on the automated municipal population registers. This registration system is known

* Statistics Netherlands

¹ This section is based on Prins, 2000.

as the GBA system, which stands for '*Gemeentelijke Basis Administratie persoonsgegevens*', the municipal basic registration of population data. 'Basic' refers to the fact that the GBA serves as the basic register of population data within a system of local registers. These registers include the local registers on social security, the local registers of water and electricity supply, the local registers of the police departments dealing with the foreign population in the Netherlands, and the (national) registers of the old age pension fund system.

2.1. The GBA-system in short

The GBA system was introduced on 1 October 1994². It is a fully decentralised, comprehensive and cohesive population registration system. Due to legal provisions there is no central counterpart of these municipal registers. In this respect the system is unique in the world. Every municipality in the Netherlands has its own population register containing information on all inhabitants of that municipality. This information is listed per individual inhabitant in a so-called personal list (PL). In the registration system each inhabitant has been given a unique personal identification number (PIN), which enables the municipal authorities to link his or her data to those on the spouse, parents and children. For this reason not only the inhabitant's PIN is stored on each PL, but also those of the parents, the spouse and the offspring.

The main features of the GBA system are:

- the municipalities have retained responsibility for storing and supplying data. There is no central database;
- central government has developed an electronic communications network which links all municipalities and users of population data;
- this network provides fully standardised communication between all municipalities and users of population data;
- the network is an electronic mail system, according to the EDI principle (Electronic Data Interchange). Interactive real-time data exchange is possible;
- central and local government maintain the network jointly.

2.2. Contents of the population registers

A personal list (PL) consists of, among other information the following categories:

1. personal data;
2. data about the mother;
3. data about the father;
4. data about marriage, partnership, widowhood and divorce;
5. data about the address;
6. data about the offspring;

As mentioned before, the population registers are a basic element in national and local government. This is why much attention was paid to the rules with respect to keeping the population register data up-to-date. The information needed to update these registers is provided by either the local registrar (births, deaths, marriages, partnerships), the judicial courts (divorces), the Ministry of Justice (changes of citizenship) or the persons concerned (house moves, immigration, emigration, births / marriages / other events that took place abroad).

In a number of situations the population register does not match reality:

- Among young people, students for instance, the proportion of misregistrations seems higher than among other groups. Those who move house should notify the municipality of new residence. This is not always done directly after the move.
- An unknown number of people live in the country without being registered in the population register.

² Until 1 October 1994 the population registers were a paper card system. Dutch population statistics were based on those registers, as described by Van den Brekel (1977).

- Emigrants should notify the local authorities of their departure. However, they often fail to do so. Some just forget, others just do not take the trouble of going to town hall.
- Events that have taken place abroad are usually registered with some delay. Marriages contracted abroad are the most striking example of delayed registration.

2.3. Statistics Netherlands authorisations

Statistics Netherlands has been authorised to obtain all data from the municipal population registers the statistical office needs to compile population statistics, given the national needs and the needs of international organisations such as the UN, Eurostat and the Council of Europe. Every year in January Statistics Netherlands obtains a fixed set of data about all inhabitants of the Netherlands. These data are primarily used to give a statistical overview of the population on 1 January. These data are also essential for the household statistics.

2.4. Combining electronic GBA-messages

The GBA-system is an individually oriented system of population data storage. The personal lists (PLs) display data per individual. Relations with spouse, children and parents are shown by means of Personal Identification Numbers (PINs).

The construction of data on the nuclear family and on households is an example of combining data about various persons. The minimum condition for people to be grouped in the same nuclear family is that they live at the same address. Relations between persons at the same address can be detected by means of the PINs. We assume that young children are in a nuclear family unless the data indicate otherwise. Starting with the youngest person at the address, this person's parents are detected through the mutual PINs. The same procedure is followed for the other persons at the address.

The Dutch population statistics are completely based on the municipal population register data. This means that Statistics Netherlands accepts the register data at face value. No further investigations are carried out on the data that are received from the population registers. Of course Statistics Netherlands is aware of the possibility that not all data are fully correct. As was indicated in section 2.2., some people may be registered at a different address than the one at which they actually live. Although this may affect the family and household statistics, no attempts are made to correct these data.

3. Household statistics

The household statistics of Statistics Netherlands are derived every year and contain the number of households divided into household types, and persons living in households divided into household positions, in the Netherlands on 1 January. Data on households refer to the population in private and institutional households.

Private households consist of one or more persons sharing the same address and providing for their own daily needs. A person in a one-person household is referred to as single. The members of multi-person households can be classified according to their position with respect to the so-called reference person³. The following positions for those members can be distinguished:

- child(ren) living at parental home;
- living together;
- other.

Children may be blood-related, stepchildren or adopted children living with (one of) the parent(s) and not having any children of their own living at home. If two persons are living together, it is assumed that they have a steady relationship. 'Other members' of the

³ The reference person is a statistical entity. The reference person in a heterosexual relationship is always the man. In homosexual and lesbian relationships, the reference person is the elder of the two.

household are for example boarders, foster children and parent(s) of the reference person or of the partner. Persons living with their children but without a partner at the same address are included in the category 'single parents' (*table 1*).

1. Persons in households, 1 January 2002*

	Age group	child	single	persons living together		single parent	other member	institutional	total
				not married	married				
		x							
		1000							
male	0-14	1520	-	-	-	-	10	4	1534
	15-64	966	911	674	2778	56	103	42	5529
	65+	-	163	28	656	9	22	31	909
	total	2487	1074	702	3433	65	134	77	7972
female	0-14	1452	-	-	-	-	10	3	1464
	15-64	676	711	658	2921	308	77	28	5379
	65+	-	569	30	511	38	37	104	1290
	total	2128	1280	689	3432	346	123	134	8133
total		4615	2354	1391	6866	411	257	211	16105

* provisional data

The population in institutional households consists of persons whose accommodation and daily needs are provided for by a third party on a professional basis. It includes persons living in homes for the elderly, nursing homes and mental hospitals.

The type of household depends on the relation of its members to the reference person, marital status and offspring. If the reference person is the only person at an address, it is clear that this is a one-person household. Households may also consist of unmarried couples with or without children, and of married couples with or without children. The presence of an 'other member' in these households does not effect the classification by type of household. A household consisting of more than one person, where the reference person neither has a partner nor children, is included in the category 'other household'. If the reference person is not cohabiting but has children living at home, the category 'single parent household' applies (*table 3*).

3.1. Directly derived households

The main input for household statistics are integral data on the Dutch population which Statistics Netherlands obtains from municipal population registers (GBA system, see section 2).

First, all persons living in an institutional household are classified as such based on address information. After this, persons in private households are derived. For every single identifiable address the persons living on that address are identified together with their (family) relationships. Register information gives information about family ties. Every personal record contains information on parent(s) and of all children born, irrespective of their present residence. There is also information about the partner of the person. Together with the detailed address information it is possible to identify all traditional nuclear families.

Obviously, persons living alone at an addresses form a one person household.

When more than one person lives at an address either:

1. all persons at the address are related to each other;
2. one or more persons are not related to other persons living at the address.

In the first case the household position and composition is derived directly from the family composition. These are married couples with and without children, single parent households, most other households and some non-married couples with children.

There are a number of specific cases in which the household composition is derived by taking certain decisions. The most important decisions are:

- Other persons related to the family nucleus, that is brothers/sisters or grandparent(s): if such a relationship can be identified such persons become part of the household. As a general rule these persons are classified as other members of the household. In the case of two related families the youngest couple is considered the family-nucleus. The other family members are classified as other members of the household.
- Addresses where two brothers/sisters live together are classified as other households. Linking these two persons is possible because the information on the parents is the same.
- Persons aged 15 or younger living at an addresses without an identifiable parent are classified as other household members in case there is one other family living at an addresses.
- When two non-related persons came to live at an address at the same day these two persons are classified as a two-person household.
- At addresses with more than one family unit which are unlike the type of addresses mentioned in paragraph 3.2, the household composition is the same as for the separate families living at the address. If a couple with children, grandmother and two non-family persons live at an addresses, the households at that address are the couple with children with one other household member, and two one-person households.

3.2. Imputation

Most of the household information is derived from the population registers. However, these registers do not contain all the information that is required to distinguish all the different types of households. The position in the household and the composition of the household can be established if the relationships between persons living at the same address is clear. This is the case for roughly 93 percent of the Dutch inhabitants. The remaining 7 percent of the population in households is imputed on the basis of a logistic regression model. For this purpose six groups of addresses are made:

1. Two 'unattached'⁴ persons living at an address;
2. Three 'unattached' persons living at an address;
3. Four to nine 'unattached' persons living at an address;
4. One single-parent family and a 'unattached' person living at an address;
5. One couple and one 'unattached' person living at an address;
6. Addresses as mentioned above with a postal classification identifying more than one separate postal unit (a kind of substitute for households) at the address.

3.3. Logistic regression

In order to impute household compositions based on logistic regression the Labour Force Survey (LFS) data are used to determine the relationship between background variables and the probability of forming one household. In this paper we only describe the imputation of households at addresses with two 'unattached' persons, because this is by far the largest group of addresses to be imputed. Besides, the method of imputation is roughly the same for all groups.

For this reason persons living at an address for which Labour Force Survey information is available are coupled with the address composition based on information from the municipal population registers on the date the labour force survey is sampled. Records of

⁴ 'Unattached' means that no identifiable family ties are present between the persons

the municipal addresses where two 'unattached' persons live are selected, including the household information from the labour force survey. This concerns about 4000 addresses observed in two successive years. These records form the basis for a logistic regression which is done to identify the variables that determine the probability that the persons living at an addresses are part of two households.

The model for 2002 consisted of the following variables (*table 2*):

- Age difference between the two persons (DIFAGE)
- Average age of the two persons (AVAGE)
- Degree of urbanization: 1 = highly urbanized, 5 = not urbanized (URBAN)
- Number of never married persons (NONMAR)
- Interaction of age difference by same-sex (DIFAGE by SAMESEX)
- Interaction of average age by same-sex (AVAGE by SAMESEX)
- Interaction of number of never married persons by same-sex (NONMAR by SAMESEX)
- Sex of the eldest combined with sex of the youngest person: male/female, female/male, same-sex (SEX)

2. Logistic regression for the probability that two 'unattached' persons are part of 2 households

	B	S.E.	Wald	df	Sig.	Exp(B)
DIFAGE	0,139	0,020	46,200	1	,000	1,149
AVAGET	0,078	0,022	13,178	1	,000	1,081
URBAN	-0,360	0,060	35,469	1	,000	0,697
NONMAR	1,924	0,373	26,560	1	,000	6,849
DIFAGE by SAMESEX	-0,049	0,013	15,121	1	,000	0,952
AVAGE by SAMESEX	-0,054	0,014	15,661	1	,000	0,948
NONMAR by SAMESEX	-1,209	0,243	24,674	1	,000	0,298
SEX			102,409	2	,000	
SEX(1)	-7,390	0,782	89,228	1	,000	0,001
SEX(2)	-6,533	0,799	66,872	1	,000	0,001
Constant	2,268	0,563	16,252	1	,000	9,662

The information derived from this coupled LFS/Municipal registers file is used to impute the household variables on all the addresses with two 'unattached' persons in the municipal registers.

The parameter estimates determine the probability of the two persons belonging to one household for every address with two 'unattached' persons. This probability varies with the parameter estimates.

In the production line the imputation is done by using a cumulative imputation probability. Every time this probability crosses an integer value, that specific address is imputed as two households. Every time the cumulative probability doesn't cross an integer value the household becomes one household.

In determining the household composition, the coupled addresses are also imputed ignoring the knowledge about the composition from the LFS.

3.4. Imputed households

Overall 10 percent of the households is determined by imputation. Table 3 shows that unmarried couples without children are the most difficult group to determine. About half of these couples are based on estimation rather than observation. About three quarters of the unmarried couples with children are based on observation. Most of the remaining quarter comes from addresses containing a single parent and an 'unattached' person.

Same-sex couples in The Netherlands

3. Private households, 1 January 2002*

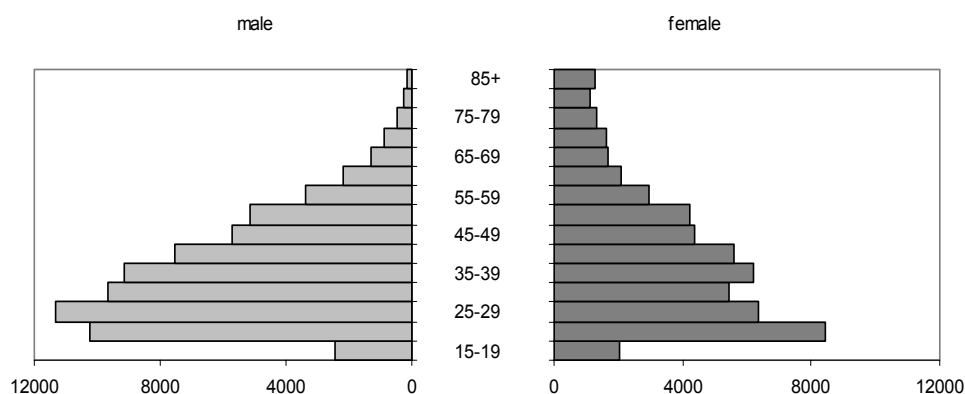
	Households (x 1000)	Not-imputed households (x 1000)	Not-imputed households (%)
married couples without children	1535	1535	100
married couples with children	1898	1898	100
unmarried couples without children	499	264	54
unmarried couples with children	197	152	77
single parent household	412	374	91
one person household	2345	1908	87
other household	49	33	70
total	6935	6164	89

* provisional data

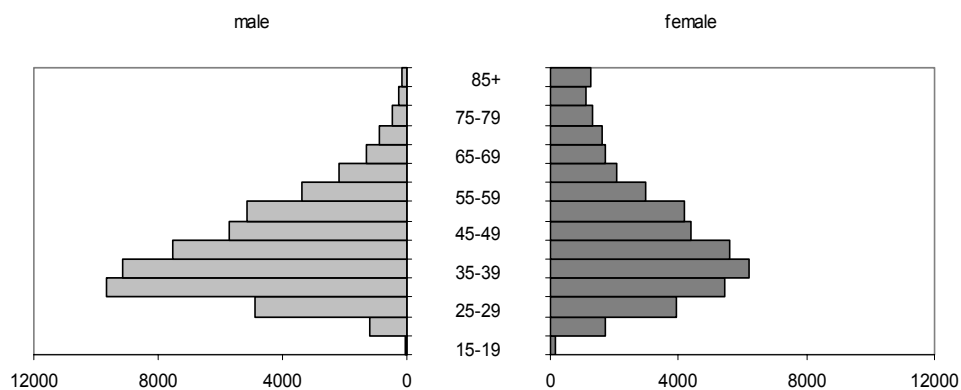
4. Estimating same-sex couples

An estimate of the total number of same-sex couples can be made on basis of the household statistics. The household statistics of Statistics Netherlands shows that there are about 60 thousand two-person households with two 'unattached' persons of the same sex.

2. Age distribution of persons in households with two persons of the same sex, 1 January 2002*



3. Age distribution of partners in same-sex couples, 1 January 2002*



* provisional data

Graph 2 shows the age distribution of this group. The number of persons per age group peaks in the age category 20-24 years for women and in the age category 25-29 for men. Among these age categories there are many students or young working people living with another person of the same sex as roommates. It is important to distinguish this group of two-person households from the group of couples (steady relationships), since we want to estimate the number of same-sex couples only. This distinction cannot be made directly from the household statistics.

To estimate the number of same-sex couples, we assume that households with two persons of the same sex without a steady relationship exist only among students and young working people. They are mostly aged under 30. We suppose that the number of people over 30 who live as same-sex couples can be derived directly from the household statistics. The number of persons living as same-sex couples under 30 is estimated in another way. For this estimate we use the same-sex to opposite-sex ratio for cohabitants aged between 30 and 39 living together. We assume that this ratio is the same for people under thirty. The opposite-sex cohabitants aged under 30 are derived directly from the household statistics. This is because we suppose that the number of students and young working people among these two-person households is very low. By combining this proportion with the number of heterosexual partners in the age groups under 30, we determined the total number of cohabitants. As a result we can derive the number of same-sex partners under 30. With this method we can show an age structure of partners in same-sex couples (*graph 3*). The number of persons aged below 30 is considerably lower than in *graph 2*. The number of same-sex cohabitants peaks between age 30 and 40, the same as for opposite-sex cohabitants.

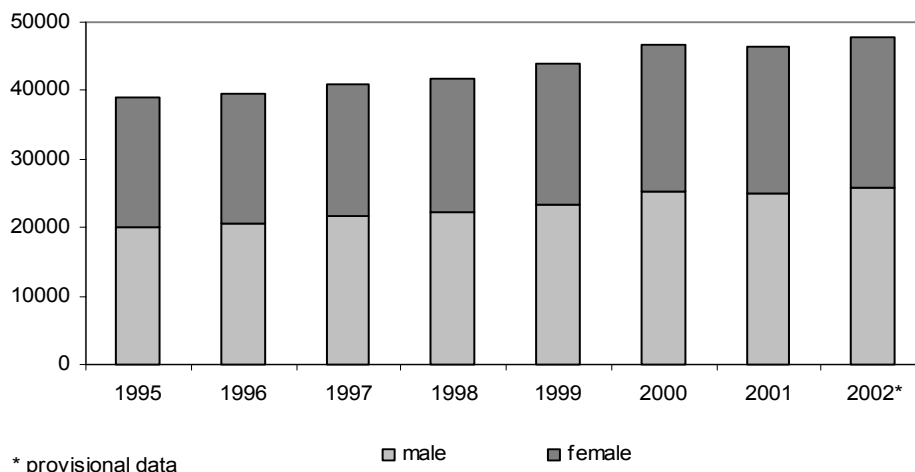
5. Demographic characteristics of same-sex couples

5.1. Total number

The estimation method described above leads to a total number of almost 48 thousand same-sex couples living in the Netherlands on 1 January 2002. This group has increased by about 9 thousand since 1 January 1995 (*graph 4*).

Same-sex couples in The Netherlands

4. Number of same-sex couples, 1 January



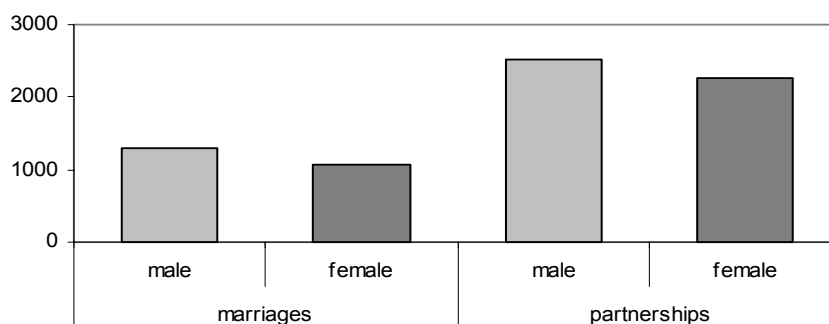
The number of male couples has increased, from about 20 thousand couples in 1995 to 26 thousand couples in 2002. The increase in female couples was less striking. This group developed with 3 thousand to almost 22 thousand. As a consequence the proportion of male couples in the group same-sex couples has risen. In 1995 the ratio of male to female couples was almost the same. In 2002 this ratio increased to 54 percent.

Although the number of same-sex couples has risen considerably over the last 7 years, their proportion in the total group of married and unmarried couples has remained unchanged, namely less than 1.5 percent.

5.2. Marriages and registered partnerships

Five percent of the male and female couples is married: about 1.3 thousand male and 1.1 thousand female couples. Ten percent of the couples has a registered partnership: 2.5 thousand male and 2.3 thousand female couples (*graph 5*). In total 15 percent of the male and female same-sex couples has registered their relationship through marriage or partnership.

5. Existing marriages and partnerships among same-sex couples, 1 January 2002*

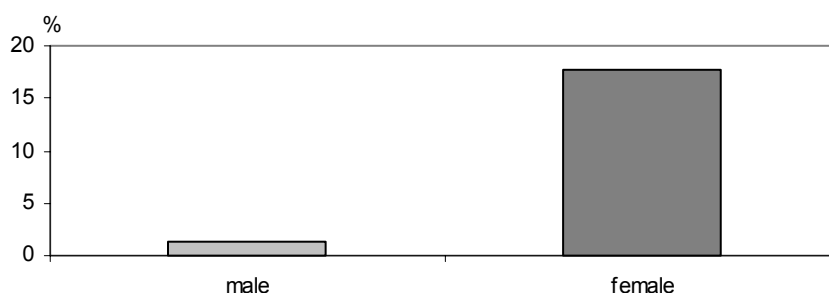


* provisional data

5.3. Children

In about 9 percent of the households of same-sex couples there is at least one child. However, there is a large difference between male and female couples. About 18 percent of the female couples has a child, as opposed to 1 percent of the male couples (*graph 6*). On 1 April 2001 it became possible for same-sex couples to adopt a child. Female couples can conceive children during their relationship. Many of the same-sex couples with children have their children from a previous heterosexual relationship. About a quarter of all partners in homosexual couples have been married before. These were almost all heterosexual marriages, given the small time period between the legalisation of gay marriages and the reference date of 1 January 2002.

6. Same-sex couples with children, 1 January 2002*

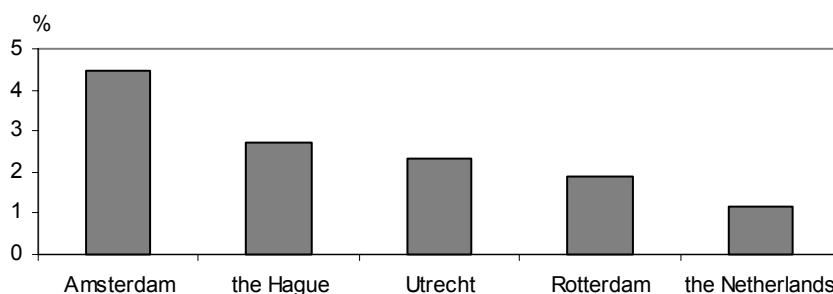


* provisional data

5.4. Residence

The four biggest towns in the Netherlands are Amsterdam (735 thousands inhabitants), Rotterdam (599 thousands inhabitants), the Hague (464 thousand inhabitants) and Utrecht (265 thousand inhabitants). 10 percent of all married and unmarried couples live in one of these four towns. This percentage is much higher in the group of same-sex couples, namely one in four. Amsterdam is especially popular. Here, same-sex couples represent 5 percent of all couples living there. In the Hague the share is less than 3 percent, in Utrecht just over 2 percent and in Rotterdam just under 2 percent. In the Netherlands as a whole this percentage is just over 1 percent (*graph 7*).

7. The ratio of same-sex couples to the total number of couples, 1 January 2002*



*provisional data

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They did it!

The Demographics of Same-Sex „Marriages“ in Norway and Sweden

Gunnar Andersson^{*}, Turid Noack^{**}, Ane Seierstad^{**}
& Harald Weedon-Fekjær^{***}

1. Registered partnerships: A new family type

At present, the issue of granting legal recognition to same-sex couples is high on the political agenda in a large number of countries. In places where such a family type is not recognized, the debate tends to be intensifying. In many countries in Europe, it is already well established, and the discussion then more often concerns various amendments to existing rules. The first country at all to introduce a legal recognition of same-sex unions was Denmark in 1989, and the term “registered partnership” was invented for that purpose. In all Nordic countries, same-sex couples today have the possibility to contract a registered partnership, a civil status that in practice is not much short of a marriage. Such a family type was in the second place introduced in Norway in 1993, subsequently in Sweden in 1995, Iceland in 1996, and, finally, in Finland in 2002. By 2003, same-sex unions had been given legal recognition in one form or another also in Germany, France, Hungary, Portugal, Belgium, and the Netherlands¹. In 2001, the latter country became the first in the world to amend its marriage act to give couples of the same sex admission to marry in the same manner as opposite-sex couples.

In terms of innovation in family-demographic behavior, the Scandinavian countries are often singled out as forerunners, which other countries subsequently tend to follow in behavior. It might be debatable whether this really is true in a more general sense, but in the case of same-sex partnerships this certainly seems to be a correct description. Consequently, it might be worthwhile to have a closer look at the Nordic experience of same-sex family life. Several studies deal with the various political and legal aspects of the introduction of same-sex partnerships in Europe². There is, however, still sparse knowledge about the demographic behavior that is related to this new family type. The purpose of our study is to provide some knowledge of that kind.

Our study provides an overview of demographic characteristics and patterns in divorce risks of couples in registered partnerships in Norway and Sweden. The analysis is based on information from Norwegian and Swedish population registers. For our purpose, we have managed to link information on various demographic and socio-economic characteristics of the same individuals from different other administrative registers. The study is an extension of previous work based on Norwegian data, where we, for example, found that the majority of partnerships were male and that the fraction of cross-national partnerships was fairly high (Noack 2000). A first analysis of divorce risk in same-sex partnerships showed that in Norway, lesbian couples had a considerable higher divorce risk than male

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¹ In some further countries, like the USA, Canada, and Spain, same-sex unions had sometimes been legalised at the level of states and regions.

² For a discussion of the passage of the partnership legislation in Denmark, see Søland (1998). Nielsen (1990) provides further evidence of legal aspects of the new family type. Noack (2000) discusses the introduction of registered partnerships in Norway, and Agell (1998) refers to the debate about the introduction of partnerships in Sweden. Martin and Théry (2001) discuss the introduction of another related family form, PACS, in France, which is open for same-sex and opposite-sex couples alike. For an overview of how the way to same-sex marriage got paved in the Netherlands, see Waaldijk (2001).

couples. Another group with a high propensity to divorce were cross-cultural couples, i.e., couples in which one of the two partners was non-Nordic (Noack, Fekjær and Seierstad 2002). In the present study, we provide an elaborate comparison including similar data on partnerships in neighboring Sweden. In addition, we incorporate data on divorce risks of heterosexual married people. Such a thorough comparison of divorce risk patterns in opposite and same-sex marriages has thus far never been performed. The reason is, of course, that the legalization of same-sex partnerships is a recent development, and that the time available for observation has been brief. In our study, we thus manage to compare patterns and demographic behavior of a clearly defined total population of "married" same-sex couples to an equally defined population of opposite-sex couples.

2. Family dynamics of gays and lesbians: Previous research

During the last decades family patterns of many countries have become more diverse. Although small in numbers and far from being accepted in most countries, legalization of same-sex marriages fits neatly into this development. The increasing diversity is often regarded as a part of a larger cultural change, implying an increase in freedom as well as an obligation for individuals to decide how to organize their lives in an individualized society (Beck and Beck-Gernsheim 1995).

Another factor that might have paved the way for same-sex marriages is the increasing separation between reproduction and sexuality, in favor of a more plastic sexuality in the terminology of Giddens (1992). Sexuality has naturally always been separated from reproduction in homosexual relations, and this separation is becoming increasingly dominant also in heterosexual relationships. Thus, the disparity between homo- and heterosexual relationships is being diminished. The increasing acceptance and legal legitimacy of homosexual practice may be the most important change regarding sexuality in the last decades, or as Giddens (1992:33) expressed it "... sexual diversity, although still regarded by many hostile groups as perversion, has moved out of Freud's case-history notebooks into the everyday social world".

Moxness (1993), a Norwegian sociologist, has argued that same-sex marriages have become legalized not so much because homosexuality has become more accepted, but because marriage has become an increasingly empty institution and no longer is seen as a mandatory entrance to adult life, sexual life, and parenthood.

New patterns of family life calls for new topics of research, and recent years have witnessed an increase in research on lesbian and gay lifestyles, and on same-sex families. Although the literature about same-sex relationships is abundant, most of it does not allow for the deduction of any firm demographic hypotheses. Many studies are based on small number of individuals. They have given interesting but often anecdotal information. Large-scale quantitative studies are rare. Many studies face serious problems related to sampling or representativity. In recent years, however, there has been an increasing recognition of the need to deal with these problems. As a result, more solid demographic studies have indeed appeared (Black et al. 2000).

2a. *General problems in studying gays and lesbians*

Lack of representative samples is the most fundamental problem in quantitative studies on gays and lesbians. Self-recruited samples from an unknown population have been and still are very common in studies of homosexuals. Respondents are, for example, recruited by snowball methods, from the readers of particular magazines, from members of organizations for gays and lesbians, or more recently using those who are willing to fill in questionnaires presented at the Internet. Critical voices have also pointed out that much of the research on family life of gays and lesbians is done by studying white, well-educated, American middle-class people (Patterson 2000).

In addition to such sampling problems, the question of how to identify homosexual people is increasingly debated. Should respondents be asked to self-identify themselves, or is it better to measure sexual practice, i.e., to ask about number of life-time same-sex partners, any such partner within a certain time period, the sex of the majority of partners, and so on?

(Black et al. 2000). According to large-scale population studies carried out in the US, the proportion of men having had a male sex partner in a last previous year is about 1-3 percent, as compared to 4-9 percent having had at least one male partner in the life time (Spira et al. 1993; Lauman et al. 1994; Black et al. 2000). The proportions of women having had a partner of the same sex are somewhat lower, well over 1 percent and about 4 percent, respectively. A different pattern is reported from a Norwegian study. In this survey, the proportions of respondents aged 19-26 were slightly higher for women than for men when it concerns same-sex experience during the last 12 months as well as during life time (Pedersen and Kristiansen 2003:11). All the estimates referred to above are well below the often mentioned 10 percent benchmark of the famous report of Alfred C. Kinsey. This estimate however seems to be a misinterpretation of what Kinsey in fact had said (Sandfort et al. 2000). Kinsey's study was based on information about life-time homosexual activity as well as homosexual desire, resulting in different levels of estimates. Notwithstanding, Kinsey's sampling procedure also had its weaknesses.

Not only the methodology, but also the view that individuals may be divided into gays, lesbians, bisexuals, and heterosexuals has met increasing criticism. The possibility that sexual identities may shift over time has attracted increasing attention (Patterson 2000). So far, little research may document such contentions. A recently published study of younger Norwegians finds, however, some signs of a confluent sexual culture, and more so among women than among men (Pedersen and Kristiansen 2003).

To give a statistical portrait of any gay and lesbian population using traditional population surveys has also been considered difficult because of the mere size of the target groups. Or put another way, in standard demographic data sources, it may seem like looking for the needle in the haystack. In addition, the underlying assumption of most demographic surveys is heterosexual, and respondents often have no possibility to report on other types of family behavior than those suggested by the survey designers (Hoem et al. 2000: 87). The seemingly sensitive character of the topic has probably also made it difficult to include it in questionnaires where it otherwise might have appeared natural. Nevertheless, a number of existing data sources today allow for research on same-sex couples as defined by any co-residence of two persons of the same sex.

2b. Same-sex couples and same-sex co-residence

For the United States, Black et al. (2000) have made a critical review and comparison of three sources available for systematic studies of the gay and lesbian populations: The General Social Survey, the National Health and Social Life Survey, and the 1990 U.S. Census. Although documenting a number of measurement-error problems in the surveys and a considerable underreporting of same-sex couples in the census they conclude that the data sets seem good enough to allow for credible analyses of gays and lesbians in the US. Based on these data, they compare partnered gays and lesbians with the general population. They find that lesbians as well as gays have attained more education than married and non-married heterosexual partnered women and men. Partnered gays earn, however, less than men living in opposite-sex marriages. For women, the opposite is the case, partnered lesbians earn more than married women. These results appear when the comparisons are made between persons within similar age and educational categories. They conform to a related study by Black et al. (2001) that also included non-partnered individuals. A related study for the Netherlands, however, shows only negligible effects of sexual orientation on earnings (Plug and Berkhout 2004). For further research on the economic lives of lesbians and gay men see Badgett (1997, 2001).

In addition, the US Census data indicates that 5 percent of male couples and nearly 22 percent of female couples live with children in the household. Although adoption and artificial insemination for lesbians and gays frequently are reported in the media, Black et al. (2000) conclude that most of the children of partnered gays and lesbians recorded in the census probably have been born while the parents lived in a previous opposite-sex marriage. 20 percent of partnered gays and 30 percent of partnered lesbians were previously married. The data also gives information on patterns in geographical settlement. Gay men seem to be concentrated to a selected number of urban areas, preferably big cities. Lesbian women are

less concentrated, and more often live in smaller metropolitan areas. For a further discussion on why patterns in geographical concentration of gay men arise, see Black et al. (2002).

Conventional demographic data have also been used to study the matching behavior of same-sex couples. Based on the US 1990 Census, Jepsen and Jepsen (2002) find positive assortative mating for four types of couples: married and cohabiting opposite-sex couples and male and female same-sex couples. Same-sex couples appeared more alike in their labor-market characteristics than did opposite-sex couples, while the opposite was the case for various non-labor-market traits.

Evidently, census data that include information on household characteristics of surveyed individuals allow for the study of co-residing couples of the same sex. However, such data are not non-problematic; same-sex co-residential individuals have not to be synonymous with gay and lesbian couples³ (Voon Chin Phua and Kaufman 1999). Such problems with ambiguity of data also appear when heterosexual cohabitation is studied. Co-residing persons of the opposite sex does not necessarily have to be sexual partners (Baughman et al. 2002).

2c. Family dynamics in same-sex marriages as compared to opposite-sex marriages

A main purpose of our study is to provide information on the family dynamics in same-sex marriages as it can be measured in the manner of partnership-dissolution risks. In this respect we have not much of previous research to rely on. An overview of recent research on the family relationships of gays and lesbians by Patterson (2000) gives moderate information on the stability of gay and lesbian relationships. The study of duration of relationships typically requires a panel design or highly reliable retrospective data. So far, such data have been hard to establish for an appropriate study of couple dynamics of gays and lesbians⁴. Patterson (2000) concludes, however, that it seems reasonable to believe that some of the problems in homosexual relationships will stem from the same roots as problems experienced by opposite-sex couples. By contrast, the literature on divorce of heterosexual married couples is abundant. Considering the impact of various demographic variables, studies of such couples indicate that pairing at a very young age, low socio-economic status, low education, a considerable age difference between the spouses as well as socio-cultural differences are important risk factors for divorce (Clarke and Berrington 1999; Sayer and Bianchi 2000). For some of these factors, however, like that of a high risk for spouses with little formal education and for those in manual-worker occupation, the elevated divorce risk might decrease with the duration of marriage (Jalovaara 2002).

3. Data and methods

The object of our study is registered partnerships in Norway and Sweden. Such a civil-status type has nearly the same legal consequences as a marriage. This means that registered partners have the same rights and duties as married heterosexual couples in relation to each other and to society. The acts are basically the same in all Nordic countries, but differ in the opportunity to adopt children, to have artificial insemination and to solemnize the partnership⁵. This being said, the legal rights and duties connected to marriage are less

³ A recent German large-scale data source that includes information on same-sex and opposite-sex couples alike seems to be more precise in these aspects. The German Mikrozensus includes information on co-residence and also asks respondents to specify if they consider themselves living in a "Gleichgeschlechtliche Lebensgemeinschaft" (same-sex union) or any other type of family. Such self-identified same-sex couples are much fewer than the total of co-residing same-sex couples. Eggen (2002) suspects that problems connected with self-identification results in underreporting, and assumes that any "true" level of same-sex cohabitation in Germany would lie somewhere in between the numbers arising from the two possible definitions.

⁴ Kurdeck (1992, 1995) provides a study on the stability of gay and lesbian couples in the US. However it is based on such tiny data that it hardly offers any possibility to make generalizations to a wider population of gays and lesbians.

⁵ Churches are not available for ceremonies of partnership formation. In Norway the actual registration is performed by a Notarius Publicus, in Sweden by a court or a private person with special authorization. Medical assisted insemination is not given to women living in registered partnership either in Norway or

critical in Scandinavia than in other countries. (For an overview on family law and the consequences of marriage in countries in Europe, see Hamilton and Perry, 2002). In the context of the Nordic welfare state, social rights are largely based on individuals, regardless of their family status. Economic motives that may be important for marriage in the US, like those of the possibility of a common health-insurance coverage, are virtually non-existent in the universalistic welfare state.

The data for our calculations on partnership dynamics are derived from the population-register systems of Norway and Sweden, which with a high degree of accuracy cover the populations of the two countries and their recordable vital events. Each change in civil status is recorded in the registers, and since each individual living in one of the two countries has a unique personal identity code we have been able to derive longitudinal histories of the family dynamics of each person who has ever registered a partnership formation in any of the two countries. Similar event histories can be collected for individuals who have married heterosexually, and we have managed to include such data for Sweden⁶. This allows for a proper comparison of our populations of same-sex partnerships with that of an equally defined population of opposite-sex marriages. The populations are defined by their civil status; there is no ambiguity in the categories we use. Individuals who have never lived in any of the two countries cannot be traced directly in the registers and some partnerships that involve persons living abroad cannot be incorporated properly into our analyses. In the case of Sweden, we had to exclude 100 same-sex couples from our analyses since we had no information at all on one of the two partners involved.

The first part of our analysis is descriptive, where we display various demographic characteristics of individuals who have formed a partnership in Norway or Sweden. These characteristics are derived from various administrative registers and are measured at the time of partnership formation. We have defined our variables so that they give the characteristics at the couple level. Our demographic description involve information on characteristics such as age, sex, geographical background, experience of previous opposite-sex marriage, biological parenthood, and educational attainment of the partners involved. Our variables are defined as follows.

We depict the *age composition* of persons registering a partnership by giving the mean age of the two partners at the time of registration. The distribution is given over the categories “mean age 30 or less”, “mean age 31-40”, and “mean age 41 or above”. In addition, we give the distribution over various categories of the *age difference* between the two partners involved.

For both countries, we describe what fraction of partnerships that involve at least one person *living in the capital area* at the time of partnership formation⁷. For Norway, this is the City of Oslo, while for Sweden, we use the greater Stockholm metropolitan area as our geographical demarcation. We further describe the geographical background of the partners by giving the distribution over various *national origins*. We distinguish between couples where both partners are locals, and couples where at least one of the partners comes from abroad. In Norway, national origin is measured by citizenship at the time of partnership formation. In Sweden, it is instead measured by country of birth. We report on couples where at least one partner comes from another Nordic country, another European country (including the overseas Anglo-Saxon countries), a non-European country, or where

Sweden. From 2003 registered partners in Sweden got the admission to jointly adopt children, including all types of international adoption. In Norway only admission to adopt the other partner's child is given (Waldijk 2003).

⁶ The data cover marriages contracted in 1993-1999, Swedish partnerships contracted in 1995-2002, and Norwegian partnerships contracted in 1993-2001. The minor discrepancy in the observation period of marriages as compared to that of registered partnerships in Sweden is due to data availability.

⁷ Most partners are likely to live together at the time of partnership formation, but need not necessarily be registered (yet) as living at the same address. In our data for Sweden, we found that about half of the partners involved had been registered as living together at the same address already for a period of at least two years prior to their partnership registration.

the national origin is not known. If both partners are foreigners and from different categories of countries, they are designed to the most "distant" category of our country scale.

We further describe the partners by their various previous experience of registered heterosexual family life. We give the percentage of unions where at least one of the two partners previously has been *heterosexually married*, and where at least one of the two is a *parent*. In the case of parenthood and previous marriage, we have to be aware that these figures only cover events that are registered in the local country. We have no information about possible previous marriages of immigrants contracted abroad or children to immigrants that have never lived in Sweden or Norway, as the case may be.

Finally, we provide a description of the educational characteristics of the partners. We report on the *highest educational level* at the time of partnership formation, as summarized at the couple level. In addition, we can provide information on the various fields of education that the partners had at that time. The data on *educational orientation* contain nine categories, and we provide them as summaries over individuals rather than over couples.

When examining patterns in divorce, we use the fixed characteristics described above as determinants of divorce. In addition, we add one further covariate in order to account for if a couple belonged to the *pioneers* of same-sex marriages of the first twelve months it was possible to register a partnership in the country considered. A relatively large number of partnerships were contracted in the first year and we might suspect that these pioneers differ somewhat in their behavior from those who registered in subsequent years.

Our study amounts to a longitudinal event-history analysis of divorce risks. We calculate relative risks of divorce by the various categories of our variables at hand. We follow each couple from the month of partnership formation to any registration of divorce or to censoring due to the death of one of the partners, emigration of both partners, or the end of the last year for which we have data, whichever comes first. The registration of partnership dissolution follows the same legal procedures as those of marriage dissolution in Norway and Sweden. The procedures differ between the two countries, however, which affects the timing of the registration of divorce. In Norway, partners and spouses have to register as being legally separated during a period of one year before being granted a divorce. In Sweden, there is no such prerequisite, but if one of the partners disagrees to the divorce he or she might ask for a six-month waiting period before the divorce is legalized and registered⁸.

Technically, we estimate proportional-hazards (intensity-regression) models of the divorce process. Such models are a standard tool for the analysis of time-dependent data like ours. In the Swedish analyses, we have incorporated the basic time variable "duration of partnership" as a piece-wise constant covariate. In the Norwegian case, we have estimated models that are based on a non-parametric time factor. These differences in modeling are due to differences in the softwares we have used: S-PLUS in the case of Norway, RocaNova in the case of the Swedish analyses. They have no impact on the relative risks that we present.

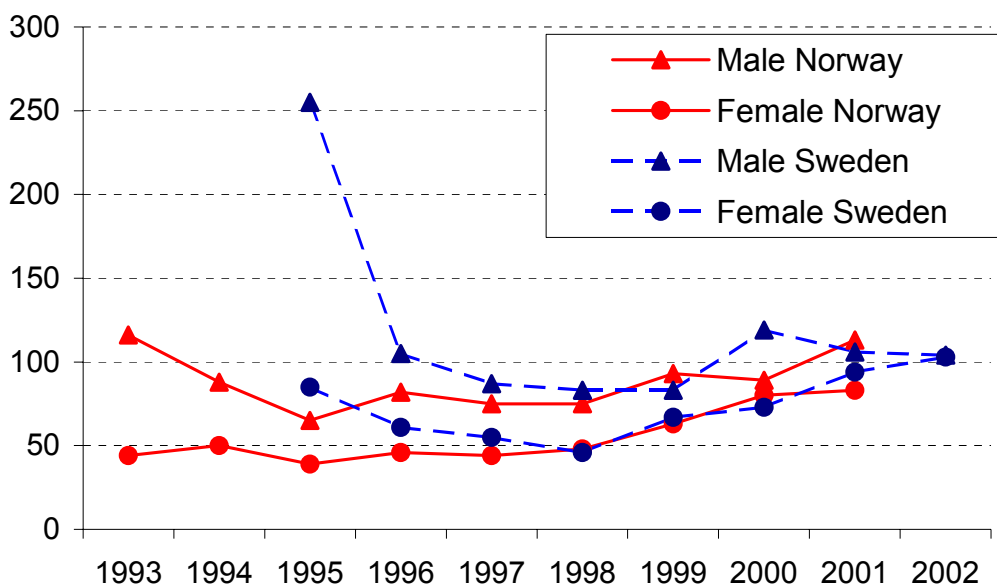
With data on couples in different types of unions, we are able to compare the characteristics and patterns of behavior in male partnerships with those in female partnerships. Similarly, we can compare patterns in unions in Norway with those in Sweden, and, finally, patterns in same-sex marriages with those in opposite-sex partnerships.

⁸ These legal differences in the timing of divorce in Norway and Sweden could have caused problems if we were about to estimate joint divorce models based on the combined data of the two countries. However in our case, we aimed at estimating separate models for Norway and Sweden, and have no problems in identifying the accurate divorce-risk patterns of each country considered.

4. The populations of registered partners in Norway and Sweden

Our first observation is that the incidence of same-sex marriage in Norway and Sweden is not particularly impressive in terms of numbers. Our data for Norway consist of 1,293 partnerships contracted in 1993-2001⁹. During the same calendar period, 190,000 heterosexual marriages were contracted, which gives a ratio of around 7 new same-sex marriages to every 1000 new opposite-sex marriages. For Sweden our data comprise 1,526 partnerships contracted in 1995-2002⁹. Related to the corresponding 280,000 heterosexual marriages registered during the same calendar period, we get a ratio of 5 new partnerships to every 1000 new opposite-sex marriages. The ratios of partnerships to marriages are thus considerably lower than the various estimates of fractions of homosexuals that we referred to in Section 2. The incidence of partnership formation in the two countries also appears relatively low when compared to levels of partnership formation in Denmark and the Netherlands (Waldijk 2001: 463; Noack et al. 2002: Figure 1; Eggen 2002: 229; Festy et al. 2004).

Figure 1: Partnerships contracted in Norway and Sweden, 1993-2002



Trends in partnership formation by country and sex (Figure 1) reveal that the developments in annual numbers of new partnerships have been quite similar in the two countries. Both countries exhibited a particularly high level of partnership formation immediately after the law on registered partnerships came into force. In both countries the number of partnerships of men has been about 60 percent higher than that of women: 62 percent of all partnerships have been male. The initial spurt in partnership formation was followed by a few years of stable trends at a lower level, and a subsequent increase

⁹ The number of partnerships included in our study is slightly larger than that found in official statistics on partnership formation in Norway and Sweden. The reason for such a discrepancy is that official statistics only report events of individuals living in the country (at the time of partnership formation). Norwegian statistics report new *partnerships* if the oldest partner lived in Norway, while Swedish statistics are entirely based on individuals and thus report new *registered partners* living in Sweden. In our research, we have managed to retrieve information also on partners who subsequently moved to the country of partnership registration.

in registration during the most recent years. The recent increase has been stronger for women than for men so that the sex gap in partnership formation has narrowed.

Table 1: Characteristics of partnerships contracted in Norway (1993-2001) and Sweden (1995-2002) and of marriages contracted in Sweden in 1993-1999

	Norway		Sweden		Opposite-sex marr. 222000
	Male	Female	Male	Female	
N=	796	497	942	584	
	%	%	%	%	%
Mean age of couple					
<31	21	21	12	24	52
31-40	46	49	38	47	34
41+	32	29	50	29	14
Age difference					
<3	24	38	24	38	50
3-5	23	28	21	24	27
6-9	18	21	22	22	14
10+	35	13	34	15	9
Region					
Oslo C/Stockholm	62	45	47	36	21
Nationality/origin					
Both native	57	81	55	70	78
One Nordic	5	6	11	11	5
One "European"	15	7	14	10	6
One non-European	19	3	21	9	7
One unknown	4	2	--	--	4
Previous heterosexual marriage					
At least one of partners	15	26	20	27	27
Parent(s) at registration					
At least one of partners	13	24	19	34	58
Educational level					
Both tertiary	19	34	20	32	17
One tertiary	37	33	36	25	27
Both secondary	16	20	14	19	29
One secondary	22	11	20	16	19
Both primary/unknown	6	1	9	8	8

Source: population-register data of Statistics Norway and Statistics Sweden, authors' own computations

Table 1 gives a more detailed description of the composition of partnerships. It also provides a comparison with couples of newly contracted opposite-sex marriages in Sweden. It shows that new same-sex partners on the average are considerably older than

corresponding opposite-sex spouses¹⁰. About one third of all partnerships were contracted by partners at ages 41 and above. In Sweden, half of all new male partnerships involved partners with a couple mean age above 40. By contrast, only 14 percent of heterosexual marriages involved such senior spouses. The relatively high ages also allow for a larger age gap between same-sex partners. Substantial age differences between partners are more common in same-sex partnerships than in opposite-sex marriages. They are more common in partnerships of men than in partnerships of women: Around one third of all male partnerships are formed by partners where the age difference amounts to ten years or more.

In both countries, same-sex couples tend to be concentrated to the metropolitan areas: Oslo and Stockholm. This tendency is stronger in Norway than in Sweden, and in both countries it is stronger for men than for women. In Norway, 62 percent of male partnerships and 45 percent of female partnerships involved a partner living in the city of Oslo. Only 11 percent of the total Norwegian population live in Oslo. In Sweden, 47 percent of male new partnerships and 36 percent of female partnerships involved a partner living in the Stockholm region, as compared to 21 percent of registered heterosexual marriages.

Same-sex partnerships also differ from opposite-sex marriages in that they more often involve a foreign-born partner. This is particularly the case for partnerships of men. In Norway, 43 percent of male partnerships involve a non-Norwegian citizen. In Sweden, 45 percent of the gay partnerships involve at least one foreign-born partner. In the latter country, 22 percent of newly contracted heterosexual marriages also involve at least one partner of foreign origin. This figure does not necessarily suggest that Swedes tend to marry foreigners: The 22 percent correspond rather well with the total share of foreign-born people living in Sweden at the ages when people marry.

It is not uncommon that partners in same-sex unions have the experience of previous heterosexual family life. In our summary, we find that a fourth of lesbian partnerships involve at least one partner who has been previously married to a man. This fraction happens to be exactly the same as that of newly contracted heterosexual marriages: one fourth of such unions involve at least one previously married spouse. Evidently, lesbian women are somewhat older at partnership formation and have had more time for previous marital life than their heterosexual counterparts. The corresponding numbers for male partnerships are somewhat lower.

The experience of previous heterosexual marital life corresponds quite well to the fractions of partnerships that involve a partner who is a parent. Parenthood is more common in female partnerships than in male unions. It is more common in partnerships in Sweden than in Norway. One third of lesbian partnerships in Sweden involve at least one parent. In the same country, 58 percent of all newly contracted heterosexual marriages also involved parents. In Scandinavia it is more common to marry after entry to parenthood than before having a first child, if at all.

When it comes to socio-economic characteristics, we find that same-sex partners have a relatively high educational attainment. Between 56 and 67 percent of homosexual partnerships involve at least one partner with a tertiary education. The corresponding fraction for new heterosexual marriages is 44 percent. The difference had been even larger if we would have accounted for the fact that the educational attainment typically is higher for persons of younger cohorts and that same-sex partners more often than others belong to somewhat older cohorts.

We conclude our description by providing an overview of the educational *orientation* of individuals in our study populations (Table 2). Since the educational registers of Sweden and Norway contain information also on the type of education a person has attained we are in a position to examine to what extent we can find any systematic differences in characteristics also along that dimension of individual educational capital. A comparison

¹⁰ The mean age of newly married heterosexual spouses was close to 30 years while the mean age of all newly registered homosexual partners was close to 40 years.

of the groups of married women reveals that the differences are not that dramatic, but that lesbian women to a larger extent than other women have an education with an aesthetic orientation. Married gay men have a similarly high, by around 10 percent, fraction of individuals with an aesthetic education, and do otherwise not differ very much from the populations of married women as it concerns their field of education. They differ from heterosexual married men in having a much lower fraction of individuals with a technically oriented education. Heterosexual married men instead have a very low fraction of individuals with an education oriented towards health care.

Table 2: Educational orientation of women and men in Sweden who registered a partnership in 1995-2002 or married heterosexually in 1993-1999, and of women and men in Norway who registered a partnership in 1993-2001 (percent)

Sweden:	<i>women</i>		<i>men</i>	
Ed. orientation	<u>reg. partners</u>	<u>married</u>	<u>reg. partners</u>	<u>married</u>
General	22	24	20	20
Aesthetic	12	3	9	2
Teaching	6	8	5	2
Administrative	17	25	20	15
Technical	9	7	8	40
Health care	19	21	16	3
Agriculture	1	1	1	2
Service	6	6	6	5
Unknown	8	6	16	9
	100	100	100	100

Norway: *registered partners*

Ed. orientation	<u>women</u>	<u>men</u>
General	14	15
Aesthetic	13	10
Teaching	11	5
Administrative	21	17
Technical	8	10
Health care	15	8
Agriculture	2	3
Service	2	2
Unknown	12	30
	100	100

The Demographics of Same-Sex “Marriages” in Norway and Sweden

Table 3: Relative risk of divorce in registered partnerships in Norway and Sweden, by various demographic covariates, with a comparison to divorce risks in marriages contracted in Sweden in 1993-1999

	Norway		Sweden		Opposite-sex marr.
	Male partnership	Female partnership	Male partnership	Female partnership	
Number of couples	796	497	942	584	222000
Number of divorces	62	56	135	117	17800
Partnership cohort					
First twelve months	1.06	0.70	1.11	0.95	
Subsequent cohorts	1	1	1	1	
Mean age of couple					
<31	3.82	1.33	1.51	1.33	1.39
31-35	1	1	1	1	1
36-40	0.65	0.69	0.70	0.38	0.93
41+	0.37	0.56	0.31	0.34	0.81
Age difference					
<3	1	1	1	1	1
3-5	1.66	0.50	1.38	1.23	1.08
6-9	2.40	0.77	1.39	1.23	1.17
10+	2.46	0.85	1.44	2.16	1.41
Region					
Oslo C/Stockholm	1	1	1	1	1
Other	1.00	1.02	0.78	1.07	0.94
Nationality/origin					
Both native	1	1	1	1	1
One Nordic	2.11	1.20	1.12	0.86	1.33
One “European”	1.73	2.28	1.63	1.09	1.28
One non-European	2.58	2.22	1.79	1.68	1.76
One unknown	1.95	4.36			
Previous heterosexual marriage					
None	1	1	1	1	1
At least one of partners	0.95	1.35	1.19	1.14	1.77
Parent(s) at registration					
None	1	1	1	1	1
At least one of partners	2.41	0.95	1.19	0.82	1.33
Educational level					
Both tertiary	1	1	1	1	1
One tertiary	1.13	1.38	5.36	1.80	1.58
Both secondary	1.89	2.45	8.05	2.07	2.03
One secondary	0.90	1.12	9.50	3.18	3.13
Both primary/unknown	0.86	0.02	10.37	3.71	3.69
Duration					
1 st year			[1]	[1]	[1]
2 nd year	Non-param	baseline	1.33	1.86	2.42
3 rd year			2.66	2.32	3.05
4-5 th years			3.58	3.15	3.43
6-8 th years			1.81	2.84	3.29

Source: population-register data of Statistics Norway and Statistics Sweden, authors’ own computations

Significant effects at the 5% level:

Male Norway: age, age difference. Female Norway: age.

Male and Female Sweden: age, education, duration. Opposite-sex: all variables.

5. Patterns of divorce in same-sex “marriages” in Norway and Sweden

In Table 3, we display the relative risks of divorce of couples in registered partnerships for each sex and country separately. As a comparison, we provide the corresponding risks for heterosexual marriages in Sweden. They are calculated for each of the variables described above, except for that of educational orientation. They give the effects of any level of a certain covariate relative to a baseline category of the same covariate. A risk of say 1.20 indicates that the risk of divorce is 20 percent higher for couples of the relevant category than for couples belonging to the reference category of the same variable. The risks are derived from a multivariate model, which means that the effects of any variable hold when we control, or standardize (Hoem 1993), for the simultaneous effects of the other variables included in the model.

The general impression of the results of our calculation is that patterns in divorce in partnerships and in marriages are remarkably similar when it comes to the effects of the covariates. The results can be summarized as follows¹¹. We find no systematic or important difference in divorce propensities between the pioneering partners of the first year of partnership registration and subsequently registered partners. For both heterosexual spouses and registered partners, we find a clear age gradient in divorce risks in that persons who contract a marriage or register a partnership at young ages have much higher divorce risks than persons who do this at more mature ages. In most cases, we find that a relatively large age difference between the two partners is related to an elevated propensity for divorce. Divorce risks do not differ very much between couples of the capital region and couples registered elsewhere in the two countries. In contrast, the stability of unions is negatively affected by the involvement of at least one foreign partner. The destabilizing effect of any previous experience of a heterosexual marriage is not at all as apparent for same-sex couples as it is for heterosexually married couples. The effect of premarital parenthood seems to differ somewhat between male and female couples, but patterns appear quite irregular and should not be given too much attention. When it concerns a couple's educational characteristics, we mainly find that a high educational attainment is related to lower divorce risks. For Sweden, we find a very clear gradient in the effects of partners' educational level. For Norway, it is more irregular. Finally, we find that the profile of divorce risks by time since marriage formation is practically the same for same-sex partnerships and opposite-sex marriages.

In the next step of our analysis, we examine to what extent the propensity to divorce differs by the sex of the partnership, and if it differs between registered partnerships and opposite-sex marriages. This is done by means of estimating common models for partnerships of women and men, and in the case of Sweden, for partnerships and marriages. A covariate for type of union gives information on divorce risks by the different family types. Table 4 contains the relative risks for Norway and Table 5 contains those of Sweden. For Norway, an introductory model that only includes type of union as a covariate (Raw model) first indicates that divorce risks are 77 percent higher in lesbian partnerships than in those of gay men. To some extent, this could have been the result of various differences in the composition of gay and lesbian partnerships over different demographic characteristics. However, a model that controls for the effect of such covariates (Extended model) instead reveals that the excess risk of divorce in female partnerships actually is more than twice that of the risk in male unions.

¹¹ A statistical testing reveals that not all variables appear significant at a 5-percent level. For Sweden, it is only “age”, “educational level”, and “duration of partnership” that turns out to have significant effects. For Norway, only “age” turns out to be significant in all models. In the case of heterosexual marriages, however, each single effect is significant at the 5-percent level. Note that most of the risk patterns we observe are very stable across the various sub-populations of married people. Regardless of significance, such a stability in patterns reassures us that we in general can trust our findings, but that we should not take every single deviation in divorce risk as an established fact.

The Demographics of Same-Sex “Marriages” in Norway and Sweden

Table 4: Relative risk of divorce in registered partnerships in Norway, by sex

	Raw model	Extended
Type of union		
Male partnership	1	1
Female partnership	1.77	2.32
Partnership cohort		
First twelve months		0.84
Subsequent cohorts		1
Mean age of couple		
<31		2.37
31-35		1
36-40		0.64
41+		0.45
Age difference		
<3		1
3-5		0.84
6-9		1.36
10+		1.43
Region		
Oslo		1
Other		0.95
Citizenship		
Both Norwegian		1
One Nordic		1.64
One “European”		2.20
One non-European		3.04
Unknown		3.56
Previous heterosexual marriage		
None		1
At least one of partners		1.10
Parent(s) at registration		
None		1.00
At least one of partners		1.57
Educational level		
Both tertiary		1
One tertiary		1.12
Both secondary		1.90
One secondary		0.93
Both primary/unknown		0.70
Duration	Non-param	baseline

Source: population-register data of Statistics Norway, authors’ own computations
Significant effects at the 5% level: sex of partnership, age, citizenship, parenthood

Table 5: Relative risk of divorce in registered partnerships and marriages in Sweden, by type of union

	<i>All couples</i>		<i>Childless couples</i>	
	Raw model	Extended	Raw model C	Extended C
Type of union				
Male partnership	1.50	1.35	1.04	1.49
Female partnership	2.67	3.03	1.96	3.00
Heterosexual marriage	1	1	1	1
Mean age of couple				
<31		1.15		1.31
31-35		1		1
36-40		1.08		0.69
41+		1.03		0.43
Age difference				
<3		1		1
3-5		1.11		1.10
6-9		1.23		1.16
10+		1.50		1.48
Region				
Stockholm		1		1
Other		0.95		0.85
Country of birth				
Both Swedish-born		1		1
One Nordic		1.35		1.01
One "European"		1.24		1.21
One non-European		1.96		1.71
Educational level				
Both tertiary		1		1
One tertiary		1.70		1.36
Both secondary		2.27		1.61
One secondary		3.71		2.31
Both primary/unknown		4.46		3.01
Duration				
1 st year	[1]	[1]	[1]	[1]
2 nd year	2.40	2.40	2.62	2.59
3 rd year	3.02	3.04	3.82	3.78
4-5 th years	3.32	3.40	4.91	4.94
6-8 th years	3.07	3.21	4.00	4.25

Source: population-register data of Statistics Sweden, authors' own computations
All variables are significant at the 5% level

For Sweden, we find the same relation between the divorce risks of lesbian and gay partnerships. In addition, we provide a comparison with the divorce-risk level of opposite-sex marriages (Table 5). An introductory model without further explanatory variables (Raw model) shows that the divorce risk in partnerships of men appears 50 percent higher than the corresponding risk in heterosexual marriages, and that the divorce risk in partnerships of women is about the double of that of men. Again, such differences in risk levels could

partly be the result of differences in the composition of the different groups we study. We know, for example, that same-sex partnerships relatively often involve a non-native partner and that such characteristics are related to higher divorce risk. On the other hand, registered same-sex partners are often older than corresponding opposite-sex spouses, which is a feature that is related to a lower propensity for divorce. It turns out that a control for the demographic characteristics at hand¹² (Extended model) does not alter the basic relation we found between divorce risks in different types of families.

One basic difference between same-sex partnerships and opposite-sex marriages is that most often the former family type does not produce children. It could therefore be the case that the relatively lower divorce risk of heterosexual marriages to some extent is related to their parenting. In order to examine such a hypothesis we have estimated two additional models that are based on childless couples only. We have thus excluded all partnerships and marriages where at least one of the two partners was a parent at the time of registration. In addition, we have censored each childless heterosexual marriage at the time of any first birth. A crude model without further demographic covariates (Raw model C) indicates that the excess risk of divorce of gay partnerships tends to disappear when the comparison is based on childless couples. Nevertheless, an appropriate control for relevant covariates (Extended model C) leaves patterns more or less as we first found them. Such a result does not preclude that there anyway is an effect of parenthood in reducing the divorce risks in heterosexual marriages. To some extent, the disruption risks of childless heterosexual spouses might be reduced in anticipation of childbearing, i.e., when spouses stay together in order to fulfill their plans of parenthood.

6. Reflections: The demographics of same-sex “marriages” in Norway and Sweden

In our study, we have provided an overview of the demographic characteristics and patterns in union dynamics of the first cohorts of registered partnerships in Norway and Sweden. The data on these pioneering cohorts of same-sex spouses provide information on a family type that at present is introduced in a wider circle of countries. Since this still is a recent family type, we are in no position to say much about any long-term patterns or developments. However, our cross-country comparison still allows us to draw at least some conclusions about the dynamics of registered partnerships.

One finding is that a majority of registered partnerships were formed by male partners. To some extent, such a relation could reflect a larger fraction of gays than of lesbians in the total population. Most studies indicate that this indeed is the case. However, we know nothing about differences in the motivation for partnership registration between women and men so we cannot readily translate it into an explanation to our finding. To some extent, however, it could reflect the relative importance of some instrumental motives that appear to be relevant for partnership registration. Two such motives are more often likely to be relevant for groups of gay men than for others. The first is the need for legal protection of common assets in the face of anticipated mortality of one of the two partners¹³. The second is related to the migration of a foreign partner. Our data show that a very large fraction of partnerships of men involve a foreign partner. In many such cases, a migration to Norway or Sweden and, consequently, coresidence might simply not be possible without the legal intervention of a partnership registration.

In many aspects, the different populations of partners and spouses differ in terms of their various demographic and socioeconomic characteristics. One interesting contrast appears in terms of educational achievement: Registered same-sex partners have achieved a

¹² In such a common model of registered partnerships and heterosexual marriages we exclude variables for partnership cohort, previous marriage, and parenthood. The meaning of these variables differ between the populations and the relative risks of Table 3 show that the effects on divorce differ as well.

¹³ Such a motive for partnership registration could also affect the structure of the divorce risks we estimate. However, an evaluation of patterns in mortality in the different study populations reassures us that differences in mortality are unlikely to affect divorce risks.

considerably higher level of such individual investment than have opposite-sex partners who marry. This might suggest that a high level of certain types of human capital often is needed in order to manifest a minority family status of the kind we study. It is interesting that such an effect appears so prominently even in an equality-oriented society like the Scandinavian one.

Our population of same-sex couples is defined by their change in civil status to that of a registered partnership. Such an unambiguously defined population of gay and lesbian couples has never been studied before. Nevertheless, we find that many of the various demographic characteristics of our Scandinavian couples resemble those found for other populations of same-sex couples, such as co-residing people of the same sex in the US (Black et al. 2000). Evidently, some aspects of gay and lesbian life styles seem to be of such a common nature that they appear regardless of the type of data at hand.

Finally, we provided a divorce-risk study. We found that divorce risks are higher in same-sex partnerships than in opposite-sex marriages, and that unions of lesbians are considerably less stable, or more dynamic, than unions of gay men. In Norway as well as in Sweden, the divorce risk in female partnerships is practically double that of the risk in partnerships of men. Our data is based on legal unions of short durations only, so we can say nothing about the fraction of unions that eventually will end in disruption. Nevertheless, a higher propensity for divorce in same-sex couples may not be too surprising given this group's relative non-involvement in joint parenthood and its lower exposure to normative pressure about the necessity of life-long unions. The difference in divorce behavior between women and men appears somewhat more puzzling. It cannot be explained by differences in the composition of couples over our explanatory factors at hand. Nevertheless, some of these differences give us some hints about possible unobservable characteristics that might be at play as well. We find that partnerships of women to a much larger extent are demographically homogamous than are partnerships of men: Lesbian partners often have relatively similar characteristics while gay spouses more often differ in terms of characteristics such as age, nationality, education, and income¹⁴. Such similarity in characteristics might also reflect a deeper feeling of sameness in lesbian couples. Such a sameness and a corresponding lack of clear power structures may be inductive to a high level of dynamism in the relationship, but perhaps not to the kind of inertia that is related to marital stability. Differences in divorce risks might also appear from differences in the motives of lesbians and gays for entering a registered partnership in the first hand. With our type of data, we are in no position to explore qualitative aspects of that kind, but have to leave such topics of research to colleagues in other scientific disciplines.

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¹⁴ For Sweden, we have also had access to data on the income of the partners. They reveal that on the average, the distribution of income between partners in gay couples is about as unequal as that of heterosexual spouses, while lesbian partners much more often earn similarly.

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**From the steady relationship to the couple:
The social and the symbolic**

The homonorm *versus* « the constructionist controversy » revival: The « gay identity » under crisis

Jean-Yves Le Talec*

Introduction

Whatever models and laws they are based on, same-sex partnerships or marriages are a new step further in the process of making homosexuals, or at least homosexual couples, more « normal ». In fact, lesbians and gays aim to incorporate in their social life values which used to be strictly heterosexual values : the legalized couple and, no doubt shortly, parenthood (at least in Northern European countries).

From a sociological point of view, this normalization process results more from the progressive and partial transformations of the deviant status of homosexuality, than from a radical shift in the normative organization of sexualities and gender in western societies. Focusing on gay men, my recent research on the « figure of the queen » illustrates these transformations but also points out to some resistance to the gay mainstream civil rights agenda, on the part of minority groups or individuals, self-identified as queers or radical queens and lesbians (Le Talec, 2003 a).

Not surprisingly, these marginal voices raise questions and critics which were the gist of the « constructionist controversy », some twenty years ago (Stein, 1992). At that time, the « Gay community model » was under attack for being organized by and for « white, middle class, gay men », i.e. for being based on cultural, class and gender domination. Today's queer activists and radical queens use a similar pattern of critics, like feminist lesbians did in the past, and still do (Bourcier, 2000 ; Chetcuti et Michard, 2003).

The « figure of the queen »

The « figure of the queen » used to be the enforced representation of male homosexuality within the normative organization of sexuality and gender in modern western societies. This figure associates homosexuality and effeminacy, producing a double deviance on sexuality and gender.

According to Michel Foucault, a link between social deviance and madness emerged in Europe as soon as the 17th century (Foucault, 1961). Throughout the 18th century, the police and the legal medicine produced a derogatory and effeminate representation of men involved in same-sex practices as criminals and social outlaws.

The birth of the concept of « homosexual », in 1870, emphasized this background and strengthened the « figure of the queen », especially through theories like Westphal's « opposite sexual feeling » or Hirschfeld's « third sex » (Foucault, 1976).

Psychiatrists took over the debate and when Charcot and Magnan described sexual inversion in 1882, they diagnosed a case of « masculine hysteria », still linking and blending sexuality and gender in their study (Rosario, 1996).

As psychiatry favoured a neurological disorder (innate, natural) mixed with social factors (acquired, cultural), Freud suggested an abnormal development of the personality, which should not be considered as a mental disorder. Nevertheless, most of the psychiatric and psychoanalytic discourses during the 20th century have strengthened the « figure of the queen », associating homosexuality with gender disorder as a global sociopathology,

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leading in 1952 to the inclusion of homosexuality as a mental illness in the first edition of the *Diagnostic and Statistical Manual*. This last step fully enforced the « figure of the queen » as a stigmatized stereotype (Bérubé, 1990 ; Éribon, 2001).

Queens and *camp*

Although homosexuality has been perceived and described as an abnormality and a mental and social disorder, gay men still had to manage to live their lives at the best. Most of them were closeted, and some possibly open, mostly within their peer networks of friends ; only a few privileged or marginal people could be notoriously out.

Against this social background of secrecy, *camp* has played a key role as the subculture of queens. On the one hand, *camp* performs the effeminate stereotype, meaning being flamboyant, using feminine nicknames, going out in full drag and so on. On the other hand, as Esther Newton and George Chauncey put it, *camp* is at the same time a mode of relation to society, a specific language and a way of life (Newton, 1979 ; Chauncey, 1994).

But *camp* is also a way to resist domination and many authors have also highlighted the cultural role of gay insiders, for example in Hollywood and the cinema industry, from the 30's : using *camp* as a style, they tried to fight back the absolute reign of normalcy and morality set up by the Hays Code (Bergman, 1993 ; Cleto, 1999 ; Tinkom, 2002).

Transformations

After World War II, the homophile movement, the Gay Liberation and the emergence of structured and visible gay communities triggered successive transformations in western societies.

Starting from the enforced « figure of the queen » as a baseline and a labelled or « spoiled » identity, it slowly moved on to a self-defined gay identity (Altman, 1993). Through this process of appropriation, the double stigma of sexuality and gender has been either hidden, or reclaimed, or normalized. Along with these transformations, *camp* has sometimes been used as a subversive strategy to overcome social norms and values.

Thus, for example, the homophile movement in the 50's moderately reclaimed the stigma of homosexuality, arguing in favour of a social role for homosexuals, but still hid the gender stigma (effeminacy, *camp* and queenness). In the French movement Arcadie, queenness was not at all welcomed and was still perceived as abnormal and harmful to an ideal of discretion and respectability (Sideris, 2000).

Emerging during the Sixties along with other social movements such as the feminist one, the Gay Liberation Movement reclaimed the sexual stigma altogether with the gender stigma. Using *camp* as a political happening, radical queens and other genderfuckers led the Gay Revolution in the early Seventies. But the following reformist movement set up a new standard, the Clone, based on a reclaimed homosexuality (and sexuality freedom) and the over-affirmation of virility, which might be seen somehow as campy as full drag... (Levine, 1992).

From the early Eighties, the AIDS fighting movement itself underwent such transformations, with a first wave which was moderately gay-identified (partly due to political reasons) followed by a much more affirmative one some years later and, for example, Act Up used *camp* as a strategy and a political weapon (Crimp and Rolston, 1990).

More recently, queer activists have stressed the importance of gender relations, still using *camp* subculture as a strategy. On the other hand, the queer theory has explored gender performativity and questioned the very concepts of categories, identities and norms (Butler, 1999).

But, during the 90's, despite this queer theoretical breakthrough, the mainstream gay and lesbian agenda stayed definitely focused on discriminations based on sexual identity, and on Civil Rights equality : marriage or same-sex partnership were, and still are, claim number one everywhere in western countries. Interestingly enough, AIDS has been the

main argument for partnership in France, even if some gay leaders declared that the epidemic was over, as Andrew Sullivan did in 1996¹ (Crimp, 2002 : 5).

What's happening today ?

The « figure of the queen » was historically enforced to ensure the supremacy of heterosexuality and the gender hierarchy in western societies. Based on a double stigma and the idea of abnormality (innate as well as aquired), this figure may also be used as a model to understand the sociological dynamic of gay identity and culture.

According to the results of recent researches, gay men are still influenced in many ways by this « figure of the queen » model, mostly because it remains the main basis for, and most visible effect of homophobia. The successive transformations of this figure are cumulative, by which I mean that different theoretical approaches can be mixed in order to produce an infinite number of self-defined gay identity patterns. One individual may refer to the « mental illness stigma », and/or to an « essential gay character », and/or to a pro-feminist position, and/or to a queer perspective, etc. (Le Talec, 2003 a).

Three modes of social relations can be identified for today's gay men :

- one based on mainstream hetero-normative standards, to be used in everyday life, work, etc. ; this mode is to be « closeted », or gender-normalized and asexual, according to the level of local « tolerance » to visible homosexuality ;
- one based on camp and queenness, as a subcultural language, to be used within peer networks, private situations, community based groups ;
- one based on the exhibition of virility, to be almost obligatorily used in the context of sexual encounters, within the « sexual network » (Bozon, 2001).

These last two modes function as a « gender switch » : gay men may well enjoy a chat together with campy mannerism in a bar, but as soon as they enter a *darkroom*, they must behave as « real men ». The long-lasting sexual stereotype of the queen, based on a « feminine » attitude and a (sexual) passivity, is still perceived negatively and avoided, whatever sexual practices the partners actually choose to engage in.

Nonetheless, research results also indicate that a strong majority of gay men are favourable to, or willing to engage in, couple life and parenthood (Le Talec, 2003 b). These mainly heterosexual values are now part of an emerging « homonorm ». This ongoing process has produced opposition from gay or lesbian individuals, possibly belonging to minority groups, such as radical queens, queer activists and even barebackers, who criticize the « normativity » of this new gay model, based on an imitation of heterosexuality and an ethnicity/class/gender supremacy - white middle class supposedly sero-negative gay male as a consumerist standard (Le Talec, 2003 a).

These current oppositions towards homo-normativity can be compared to a previous debate, known as « the constructionist controversy », which was opened in the early Eighties by « non-male non-white » gays and lesbians, but was interrupted by the emerging AIDS crisis. In the present so-called « post-AIDS era », this controversy could be revived through new arguments, inspired by queer theory and lead to the re-emergence of a radically transformed « figure of the queen » as a reclaimed identity and a subversive strategy.

What may be different today is the evolution of sexual and gender identities. Even if gender relations are still strongly rooted in western culture, masculinity is less strictly defined. Recently, advertising and marketing specialists have targeted a new category of young urban upper-middle-class straight men, defined as « metrosexuals », and very close to the homo-normative image of gay men. This convergence creates a new and trendy profile based on common social values, including marriage or partnership, in which sexual choice and practices become strictly private and in which lifestyle replaces sexual politics (Adam, 2001).

¹ Sullivan Andrew (1996) « When Plagues End : Notes on the Twilight of an Epidemic », *New York Times Magazine*, November 10, pp. 52-62, 76-77, 84 [quoted by Crimp, 2002 : 5].

Consequently, the « figure of the queen » could only remain a derogatory labelling of abnormality or social disorder only for those among gay people who do not share these common normative values, namely sexual outlaws, transgenders, and any other campy activists...

Conclusion

Whatever happens, from a sociological perspective, gay identity is under crisis (according the definition of Claude Dubar, 2001), and it is interesting to analyse the tensions about the alternative futures of « normalization » or « dissolution of identity » or the re-creation of various forms of « subversion ».

To conclude and summarize, the legalisation of same-sex partnership or marriage at least raises questions, which have been already debated some twenty years ago in the gay and lesbian community :

The first one is about *signification*:- What does homosexuality exactly mean, from a historical and sociological point of view ? What are the parts of essence and construction expressed through its understanding ?

The second one is about social *norms* : Does homosexual visibility - through marriage or legalized partnership - change heterosexual norms in any way at all ? Does it change gender relations ? Are we dealing with an emerging new model or just « extended heterosexual values » adapted to the inclusion of lesbians and gays ?

The third one is about *categories* : Through marriage or partnership, are gays and lesbians entering a new category or « profile », which would be more acceptable in western societies ? And what about those who do not fit in (culturally or economically) or do not want to fit in (politically or sexually) ? Are they going to be looked at as modern deviants, belonging to a new category of abnormality ?

On this last open question, I just want to mention the campaign against « public sex » (multi-partners sex, outdoor sex, commercial sex...) which took place in the US and was sustained within the gay and lesbian community by the very advocates of homosexual marriage (Warner, 2001). And I also want to mention, in France, the strong campaign against barebackers, accused by other gays of being either criminal, mentally disturbed, or irresponsible persons... Which they are not, or at least no more than any other person who would engage in risky sexual behavior (Le Talec, 2003 b).

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Rituals and same-sex unions

Ragnhild Schanke*

Rituals and homosexuality

10 years with partnerships the Church will not bless

On the third of April 1993, the Norwegian parliament passed the law that gave homosexual couples the legal right to form partnerships with the same obligations and rights as the homosexual marriage has, with two exceptions: The right to adopt children, and the right to have the partnership conducted in a church.

From Jan 1. 2002 it has however been possible to adopt the child of ones partner, which is particularly relevant when the biological fatherhood is anonymous.¹

In Norway we have had 10 years of official acceptance of homosexual partnerships. The government's Minister of Finance, Per Kristian Foss formalised his partnership in 2002 with his partner after 20 years of cohabitation. Byrådsleder Erling Lae of Oslo City formalised his partnership with Jens Torstein Olsen, a minister in the Lutheran Church at Majorstua parish, in Oslo, after 17 years of cohabitation.

In Norway, most marriages are conducted in churches or other religious institutions. The ministers or priests are granted authority to deal with the legal formalities of marriages. It is their duty to make sure that bigamy does not occur, and each minister has the freedom to make their own theological decisions about marrying divorced candidates. The fact that many people prefer to get married in a church, may have something to do with the recognition and approval associated with religious institutions. This recognition however, is granted heterosexuals only.

The public debate about homosexual relations, has been very different from the debate concerning divorce and remarriage. Many churches and ministers believe that marriage should be heterosexual, monogamous and undissolved. However, divorced people are treated with respect, and opinions have been expressed in a moderate language, with no social stigma attached to the new family. In spite the fact, that both discussions are derived from the same, so-called sacred texts, the aggression in public debates have been considerably higher when samesex unions have been the topic. Why do theologians become so angry? Does samesex struck an irrational cord, that triggers aggression?

Professor Scheff has argued that "males are particularly socialized to cover over feelings of shame: the sense of being weak, powerless, helpless, impotent, or incompetent. Rather than experience these painful feelings, men usually go blank or get enraged."²

I assume it may be true that the very idea of samesex unions provokes shame and anger in many priests and ministers, especially those who have vowed to live in celibacy. And the hypothesis I shall try to argue in this paper is as following: The biblical texts about sexual

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¹ Homofili.no

² Thomas J. Scheff, Prof. Emeritus UCSB, Journal of Mundane Behavior SEPT 2001: MALE EMOTIONS AND VIOLENCE

deviance come from a context of cultic impurity connected with shame. The biblical term is “adomination”. The translation history suggests that certain texts have felt so difficult to deal with, that sexual deviance has actually been hidden in the translations.

If the very idea of sexual deviance is so impossible to cope with, even linguistically, it seems logically that it would be very difficult to offer rituals to anyone who provokes the very feelings of impurity and shame and as a result, anger.

In spite of the fact, that homosexual partnerships today enjoy broad public acceptance, the churches in Norway are still unwilling to grant same-sex couples a ceremonial blessing when partnerships are initiated. I shall, in this article, argue that the reasons presented for withholding a wedding ceremony from homosexuals are theologically inconsistent, and probably rooted in emotions such as shame. I shall analyse the arguments from the Bishop’s Meetings by showing how the churches are arguing in a circle: First the Bible Societies let 53 cases of sexual deviance disappear by translating them away, then the Bishops’ Meeting points to the lack of Biblical acceptance for deviant sexuality, then the Bishops welcome homosexual couples, whose partnership they will not bless, to participating in the Eucharist ritual and to be integrated in the churches, since homosexual partnerships are not defined as “living in sin”.

Is the reason for churches denying blessing of homosexuals living in partnership, a surviving feeling of cultic impurity? Since homosexuality now is understood as an identity and not just an immoral act one can decide not to do, does that mean that the same-sex orientation is de facto, understood as cultic impurity? Is the reason why the churches deny the partners the partnership ritual that one cannot bless what is impure?

“I will not let you go unless you bless me!”

This is the heading of an article by Nils Jøran Riedl, where he explains why it is so important to Christian homosexuals to have a ceremonial blessing in church, when partnerships are formed.³ He offers two main reasons: The belief in the meaning of receiving a blessing and the fact that it means something to be able to live one’s family-life openly in public. The heading is taken from the biblical narrative, Jacob struggling with God.⁴ He refused to give up, and finally exclaimed; “I will not let you go unless you bless me!” The words could just as well have come from homosexuals and lesbians in their struggle to attain acceptance for their lives from the churches in which they are members, Riedl writes. And he should know, being a theologian, living in partnership, and having participated in the struggle for gay rights in The Norwegian Lutheran Church for many years. Saturday, August 2. 2003, he neglected the bishops by acting as liturgical priest when a homosexual couple formed their partnership in Tøyen Church in Oslo.

Linguistically, the meaning of the word “blessing” is: to speak well of, approve, to confer prosperity or happiness upon, protect, preserve, endow, favour, to invoke divine care. In a religious context it bears meaning from its etymology from old English *bletsian*, blood; from the use of blood in consecration. So in a church setting the blessing would be to hallow or consecrate by religious rites, symbols or words.

I believe this is the core of the problem. Protestant ministers may be willing to pronounce good wishes for a homosexual couple, but there is something with homosexuality that seems impossible to hallow. I believe it is something unsaid, it is what Riedl indirectly relates to, when he wants to change the focus from the theological obsession with

³ Riedl, Nils Jøran, *Nytt Norsk kirkeblad*, “Velsignelse av homofile par” Nr 8/96

⁴ (Gen 32: 26).

“homosexual practice” to the homosexual couple’s relation, built on mutual love and support. By focusing upon the relationship instead of sexuality he states that love has the same quality in a person’s life, regardless of sexual orientation. The ability to love someone means being serious about the general ethical commitment expressed by Løgstrup as “Holding each others lives in our hands”. It is this commitment homosexuals wish to bring into the church and acknowledge before God.

The liturgical blessing is usually pronounced at the end of the service, like it was phrased in the blessing Aaron was authorised by God to pronounce upon the Israelites: “The Lord bless you and keep you; the Lord make his face shine upon you and be gracious to you; the Lord turn his face toward you and give you peace.”⁵ These words from the Old Testament, which have become part of the Christian liturgy, express God’s acceptance of each individual person. God’s will is to bless, and those who wish to receive the blessing show it by standing up. The content of the blessing belongs in the continuity, in maintenance of the created world, in the everyday-life; to be kept from all evil, which means everything that threatens life and life quality, granted from a gracious God, who empowers and liberates. It means that one is seen by God as a person with nothing to hide, and finally, there is the prayer for peace, in a wide sense, soteriologically, psychologically and physically. It is also part of the picture that the Aaronitic blessing finalises the service and introduces thereby the everyday-life where the effect of the blessing shall be experienced. The blessing links the holy sphere of the sacred context with the profane sphere of lived life.⁶ A person is blessed, when “the Lord makes his face shine” upon one, as each interpersonal relationship starts in the blessing of seeing the other and being seen as the person one really is.⁷ Being blessed means that one is seen by God and in our case: When God sees the homosexual person his face shines with joy and excitement and kindness.

For pragmatic reasons, it may serve a purpose to do as Riedl does by stressing the point of the general characteristics of the blessing, as a prayer according to God’s will, for help and protection for all human beings, a theme clearly expressed in the New Testament; “Bless those who curse you, Do good to those who hate you, Bless those who persecute you”.⁸ But even if the Christian church is obliged to bless all humans, even those who do wrong, this should not be the main argument in the debate on homosexual marriages in church. Entering a committing and loving relationship should never be seen as a something less than perfect. The argument is valid only in order to demonstrate the absurdity in the fact that the churches are ready to bless everyone except homosexuals. Church tradition has honoured saints who blessed their perpetrators who tortured and killed them. So what is it with homosexuals, that is so un-blessable? Why is the following prayer, designed for heterosexuals who wish a church blessing after having contracted a public valid marriage, denied homosexual couples? It says: “...we pray: Let your blessing rest upon these two who are kneeling here, before your face. Fill them with your love and build their home in peace. Look upon them with grace, and strengthen them with your spirit, so that they for better and for worse, trust you, as they live together faithfully, helping each other to reach the everlasting life.”⁹

When the bishops, in 1997 refused to give homosexuals this blessing, they based their arguments upon the conclusions of the Hygen-committee from 1977: “There is no biblical justification for blessing a partnership of different sexual nature.”¹⁰

⁵ Num 6: 24

⁶ Riedl, Nils Jøran, *Nytt Norsk kirkeblad*, “Velsignelse av homofile par” Nr 8/96, 3

⁷ Herbsmeier, Eberhard, Velsignelse, i Lars Ole Gjesing “Nogle bemærkelsesværdige træk ved velsignelsens teologi og praksis” i *Kritisk Forum for praktisk teologi*, Nr. 64 s 9

⁸ Mat 5: 44, Luk 6: 28, Rom 12: 14

⁹ My translation from the Norwegian liturgy.

¹⁰ BM (Bishops’ meeting) 1997, 14-15, 11.Vi mangler bibelsk mandat. My translation.

The Bishops' Meeting seem to think that they are blessing a specific "sexual nature" in the marriage rites. This is not a necessary interpretation of the given prayer. When the "practicing heterosexual" couple is blessed, nothing is implied about the nature of their sexuality. The prayer is focused upon their relationship, personal and spiritual. So why do the bishops feel that the homosexual marriage is all about "different sexual nature"? There is not given any explanation why they feel they have a biblical justification for denying homosexuals their prayers, especially taking into consideration that we are dealing with members of the church, who are not excommunicated.

Public Life

However, homosexuals do not want to be seen by God, only. They want to be seen by the Church. Secrecy is demeaning and suppressive. The legislation on partnership has provided a public arena, to which the Church has to relate. At deaths, the Church cannot avoid recognising the "widowed" partner. When accidents happen, the clergy has to inform the relative next of kin, who according to the public register is the homosexual partner. The partnership is registered as identical to a heterosexual marriage, with the same privileges and obligations.

In society as such as well as in the context of the church, cohabitation is not considered a private matter. Each home is seen as a unit by which the larger society is constructed. There are public witnesses to a partnership as well as to a marriage. The public dimension was an important factor for the gay organisations, which were involved with the preparations for the partnership legislation. As Riedl says: "This concern is about openness and honesty before God and our fellow citizens. Our wanting a ceremonial blessing expresses the need for recognition for our partnerships by society as well as the church."¹¹

Words and Symbols

A ritual can be defined as a repetitive symbolic action, which is part of a social context. By being part of a social context, the ritual- in this case the partnership rite, is strengthened. The community, or the congregation, which acknowledge the rituals are directly or indirectly, giving legitimacy to the rite when the rite is used. Withholding the partnership blessing, is communicating that homosexual couples are excluded from the congregation, and by offering the church blessing one is including the homosexual couple in the Church. When the Norwegian bishops say that homosexual couples are welcome in church, but denies them the ritual blessing, they are giving a double message, and hurt their own credibility. Hans Raun Iversen points out, that rituals are, as means for human communication just as elementary and powerful as verbal conversation. Unlike habits, rituals are symbolic acts, that both comprise and exceed the reality of the participants, by offering a larger context, - a context where the symbols belong. As a conversation presupposes a common understanding of the metaphors employed, the rituals presuppose a common understanding of the symbols.¹²

This raises the following question? What is the message that is communicated by respectively the Eucharist ritual and the partnership ritual? What does the church want to communicate? Are these rituals for blessing of individuals or for giving legitimacy for certain lifestyles? In order to investigate this, I shall analyse the principles in the bishops' statements, saying that homosexual couples are welcome to participate in Eucharist and in the life of the church, but they are refused the blessing of the church when they form their partnerships.¹³

¹¹ Riedl s. 8-9.

¹² Iversen, Hans Raun, *Forkynd evangeliet for al skabning*.

¹³ BM 1995

Homosexual Cohabitation and Church Doctrine

The bishops in any church have a specific responsibility for the teaching of the church. The Bishops' Meeting have repeatedly discussed the question of homosexual's relationships as "a question of ethical principles, and as such a question about the teaching of the Church, which relate to important fundamental questions concerning church dogma. The Bishops' Meeting has, however, not wanted to define this question as a point upon which the Christian faith rests. It relates to crucial parts of church doctrine like biblical hermeneutics, creation theology and anthropology."¹⁴

This is an academic way of expressing a matter what causes a lot of disturbance to the people it directly concerns. When a Christian person realises that one is homosexual, there is one pressing question: Is a homosexual relationship sinful? The bishops do not define samesex partnerships as "living in sin", but as long as the church refuses to bless those who live in such relationship, the church is nevertheless communicating that there is something wrong with the situation or with the individuals involved. The bishops may, academically have a differentiated view on homosexuality, but for those it concerns it is a black/ white question. One cannot live together in a differentiated way, one is not a little married. In reality, in the life of the homosexual person, it is about sin and salvation, partnership or loneliness.

The bishops find, as theologians, that the question of homosexuality is a difficult one. While they solved the problem in 1977 by differentiating between orientation and practice, they could since 1995, no longer find this way of reasoning reasonable: "The homosexual orientation is more complicated than the term "orientation" expresses, and the boarder between homosexual orientation and homosexual acts are not easy to draw."¹⁵ This vital change in interpreting homosexuality is explained by insight into new research. They no longer say that homosexuals are living in sin, only that they "disregard the guidance of the church", which is not more serious than that they "ought to be integrated in the Church and Christian fellowship".¹⁶ The word used to describe same-sex relationships are considerably more moderate today than they were only a few years ago, but the use of symbols is exactly the same. Homosexual individuals will understand the rites as communicative acts (in Habermas' meaning), so even if the bishops and ministers talk friendly they are not easy to believe, as long as they refuse to offer a prayer of blessing when cohabitation is a fact. Symbols speak, loud and clear.

The Bishops' Meeting refers to so-called systematic reading of the creation myths, from which theologians have developed the concept of "created order",¹⁷ indicating that there is a natural order in the universe, which must not be defied. God said that it is not good for the man to be alone,¹⁸ which is understood as recognition of human need for and ability to intimacy and personal fellowship. This need was supposedly met when God created man gendered, fertile and heterosexual, and bid them procreate in life-lasting marriages away from the husband's parents.¹⁹ The bishops do admit that at least some people live under other conditions than Adam and Eve, but they are advised to solve their problems by neglecting fundamental human needs and choose a life-style as single, despite that God himself, according to the created order, said it was not good. The texts

¹⁴ BM 1997, 14-15, 3

¹⁵ BM 1995 "Homofile i Kirken", 1.

¹⁶ Bm 1995, 6.

¹⁷ Gagnon, Robert A.J., *The Bible and Homosexual Practice: Texts and Hermeneutics* (Abingdon Press 2001) p. 58

¹⁸ Gen 2: 18 The Lord God said, "It is not good for the man to be alone. I will make a helper suitable for him."

¹⁹ Gen 1: 28 "Be fruitful and increase in number; fill the earth and subdue it. Gen 2: 24 For this reason a man will leave his father and mother and be united to his wife, and they will become one flesh.

in the Bible do not offer a discussion about how “different” people should live, still, the bishops claim that it says: “To the extent marriage is not a possibility, the Biblical guidelines are, that one should live alone”.²⁰ In reality there are no such guidelines. On the contrary, there is scriptural foundation for bigamy: “If he marries another woman, he must not deprive the first one of her food, clothing and marital rights”.²¹ The bishops are of course fully aware of the fact that the Law of Moses gives the right to have a sex-life priority over monogamy. And they know that they constantly choose scriptures in hermeneutical interaction with the insight and the opinion they have themselves from time to time. It is hard to find a consistent reasoning between their reference to “created order”, Biblical texts, and ethical guidelines applied by the Christian Church, when they refuse offering a homosexual couple a prayer of blessing.

In protestant churches there is not much motivation to force heterosexuals to live according to the Biblical texts with regard to gender roles. The text says clearly that women should not teach, since the husband is the head of the wife, he has nothing to learn from her. Women are ordained as ministers even though Paul said “women should remain silent in the churches. They are not allowed to speak, but must be in submission, as the Law says”,²² and “..if he ignores this, he himself will be ignored”.²³ Heterosexuals have granted themselves birth-control, divorce, remarriage with a church ceremony, despite Jesus’ saying about remarriage being technically adultery. When heterosexuals do not want to live according to the Book, the protestant churches have been willing to construct new principles of interpretation, referring to love as a superior principle in ethics.

In the Catholic Church we find a different kind of logic predominant in sexual ethics. As I see it, it is based on questionable premises. But the Church is at least consequent, and equally strict and brutal with respect to homosexuals as well as heterosexuals. Experiencing sexual pleasure without the possibility of pregnancy is defined by tradition as one of the seven deadly sins: lust. So it is only consistent with Catholic ethics, that those who are living in sin are excommunicated and called to repent.

Legitimacy through Rituals

In the Norwegian Church there are three types of rituals that may be offered adult members; Eucharist, marriage (or prayer after a civil contract is signed) and ordination. Homosexuals in partnership are only offered Eucharist, which is the ritual for union with Christ. Homosexuals cannot be excommunicated in the Norwegian Lutheran Church. The Bishops’ meeting in 1997 decided unanimously that homosexuals living in partnerships should be welcomed to participate in the Eucharist celebration. If a minister feels that samesex cohabitation is against his conscience, he may warn the person before the service, but if the communicant does not agree, it shall be a matter between that individual and God. So it was made clear, that including homosexuals in the ritual, does not mean acceptance of a lifestyle and should not be interpreted as giving legitimacy to samesex marriage.²⁴ It is interesting to see how the different rituals are treated differently. Not only The Norwegian Lutheran Church, but also some Baptist churches and Methodist churches in Norway have the same practice; homosexuals in partnership are welcome to participate in Eucharist, but they are denied a liturgical prayer when entering the partnership. So, what is it about the marriage ritual that causes reservation in the Bishops’ meeting? In The Norwegian Church, marriage is not understood to be a sacrament. It is a civil arrangement. The Homosexual couple is not understood to be living

²⁰ BM 1995,7.

²¹ Ex 21: 10

²² 1Cor 14: 34

²³ 1Cor 14: 38

²⁴ BM 1997 sak 14-15, 6.

in sin, the church accept partnership as a civil arrangement. "The religious part of marriage consists of readings from scripture and prayer."²⁵

So why are homosexuals denied such reading and prayer? The argument is that it would give legitimacy to same-sex partnerships, which the majority of the bishops cannot accept.²⁶ What does this mean? The partnership is not a sin but it can still not be accepted. The fact is: It is understood as a compromise, as the least of two evils, expressing the homosexual's immaturity! The majority of the bishops say it like this: "There are situations in life, when one has to take one step at the time, gradually growing able to fulfilling the Biblical ideals."²⁷

The reason why the church is unwilling to offer the same prayer for homosexuals as for heterosexuals is that they do not have the same hopes for the two different unions. While the heterosexual union is ideal when it is lasting, the homosexual union is ideal when it breaks up! Heterosexuals live biblical correct when they are committed to each other for life, and decide to live faithfully together. The liturgist prays : "...strengthen them with your spirit, so that they for better and for worse, trust you, as they live together faithfully, helping each other to reach the everlasting life."²⁸ Homosexuals are considered to be living biblical correct when they consider their union a compromise and they plan to leave each other. So there is an inner theological logic in the practice of rituals: How shall a minister pray for a couple who is living together because of personal and spiritual immaturity? "Strengthen them with your spirit, so that they will leave each other, and thereby help each other to reach everlasting life"?

Church Unity, Ethical Pluralism and Rituals

The bishops do not want the question of homosexuality to divide the church. "The Bishops' Meeting is aware of the existence of arguments and reasoning in this case, that may be contradictory to fundamental church doctrine, but opinions on homosexual cohabitation is not, in itself of such nature, that it needs to jeopardise the unity of the church."²⁹

However, the bishops do not want each priest to follow his own conscience when asked to perform a partnership liturgy. There has been disagreements in the churches for decades, concerning practicing heterosexuals, but the unity of the church was secured by allowing each minister to choose whether he wanted to offer wedding rituals for divorced people or participate in the Eucharist together with a female liturgist. Many heterosexuals have been rejected as godfathers/mothers, simply because a specific minister disapproved of the person's lifestyle. Suddenly, the bishops view the value of this established policy differently and feel the need to "underline that the Church *cannot allow the principle of ethical pluralism*."³⁰ I find it sensational, that principles, which have been applied with great efficiency in theological controversies regarding heterosexuals' life-styles, are abandoned when they are applied to homosexuals. What is it about homosexuality that churches find so difficult to deal with?

²⁵ Introduction to the ritual "prayer for civil contracted marriage", in the Norwegian Church.

²⁶ BM 1995, 6.

²⁷ BM 1995, 6.

²⁸ My translation from the Norwegian liturgy.

²⁹ BM 1997 sak 14-15, 3.

³⁰ BM 1995, majority statement, 8.

Sexual Deviance in a Sacred Text

Deviance in Biblical Texts

The reason for The Bishops' Meeting in 1995 refusing homosexuals a partnership ritual, was founded in a so-called "absence of commission,"³¹ an argument from the Hygen-committee in 1977, concluding that "It lies safely within the commission of the church to bless the marriage between a man and a woman. There are solid biblical grounds for that. But there is no Biblical commission to bless any other way of living together, sexually."³² The logic is: What is not directly commissioned is prohibited.

When the bishops argue that they commissioned to deal with sexuality different from heterosexuality, it is grounded in the fact that 48 deviant men have disappeared from the Bible during the process of the translation history. First the Bible was made heterosexual, than heterosexuality was made Biblical.

In the biblical languages, there were no terms for homosexual or heterosexual identity or orientation. There is however, an incident in the City of Sodom, about men wanted to rape other men, and Lot trying to protect the men, by offering them his two virgin daughters to rape instead. This has resulted in the linguistic curiosity that sodomy has become the term denoting homosexuality.³³ A similar story is told from Gibeah, about men who wanted to rape a man, but were allowed to gang-rape the host's daughter and the visitor's concubine instead.³⁴ This has however not led to Gibeah denoting heterosexuality. And similarly, in the famous vice-list in 1 Cor 6: 9; the word *arsenokoitai* (male bed-ers) is translated homosexuals³⁵ but *pornoi* (promiscuous males) is not translated heterosexuals.

However, these texts are exceptions. Biblical texts do not usually deal with sexual deviance in a negative way. The greek term "*eunouchoi*" is found 53 times in Septuagint (Greek O.T.) and the New Testament. This is an overarching term denoting men, sexually deviant in different ways. In Mat 19: 12, Jesus deals with three categories of *eunouchoi*, and asks people to accept them:

eisin gar evnuchoi hoitines ek koilias mætros egennæthæsan hutås,
kai eisin evnuchoi hoitines evnuchisthæsan hypo tân anthrâpân,
kai eisin evnuchoi hoitines evnuchisan heavtus dia tæen basileian tân uranân.
ho dynamenos chàrein chàreitå.

King James translation

For there are some eunuchs, which were so born from [their] mother's womb:
and there are some eunuchs, which were made eunuchs of men:
and there be eunuchs, which have made themselves eunuchs for the kingdom of heaven's sake. He that is able to receive [it], let him receive [it].

³¹ Mangel på mandat, meaning, absence of commission, authorisation,

³² BM 1995, majority statement, 11.

³³ Gen 19: 5-8

³⁴ Jud 19: 22-24

³⁵ Revised Standard Version 1971 translates the concept "sexual perverts", New Living Translation 1996 say "Homosexuals", New King James 1982 say "Sodomites", English Standard Version 2001 say "Men who practice homosexuality"

My translation of Mat 19: 12:³⁶

For there are some men who are born unable to procreate in a heterosexual marriage
Some have been emasculated by other people
Some have sterilised themselves in order to serve the Kingdom of Heaven
Those who can accept this, accept it.

48 *eunouchoi* are made invisible because translators have chosen to call them officers. This translation is obviously absurd when the term occurs in a context, and not only in a list. Mat 19: 12 is one such important scripture, since it is impossible to translate *eunouchoi* as officers. It demonstrates that the Bible is not as straight and narrow as many want to believe. Mat 19: 12 is important because it demonstrates how Jesus wanted people to relate to deviance. The topic that was discussed in Mat 19: 3-12 was marriage, divorce and how one should live together. The term "born *eunouchi*" has undergone the following translations:

Vulgate (400): sunt enim *eunouchosi* qui de matris utero sic nati sunt

King James (1611): for there are some eunuchs, which were so born from their mother's womb

Basic English (1964): for there are men who, from birth, were without sex,

The New English Bible (1961, 1970): for while some are incapable of marriage because they were born so,

Die Gute Nachricht (1967, 1971): Manche Menschen sind von Geburt an zeugungsunfähig³⁷

Die Lutherbibel (1916, 1984): Denn es sind etliche verschnitten, die sind aus Mutterleibe also geboren³⁸

The Norwegian Bible Society (1978, 85): Noen er født uskikket til ekteskap³⁹

The Norwegian translation from 1930 offered the same ridiculous translation as the old Lutheran edition; that some were born castrated. So, in 1978, one year after the Bishop's Meeting had disintegrated homosexuality into orientation and practice, and thereby accepted homosexuality but not partnerships, a new translation was launched, saying that some people were born unfit for marriage. And suddenly, there was Biblical evidence for denying couples marriage rituals. Again: What is it about sexual deviance that churches find impossible to accept in a sacred context? Before I ponder that question further, I shall try to demonstrate that the term *ho eunouchos* as it was used in antiquity, indeed denoted a man who preferred a same-sex relation.

³⁶ My M.Phil. thesis 2003, is called "Were homosexuals included in the concept "born *eunouchoi*"" in Mat 19: 12. It is a linguistic analyses of the concept born "*eunouchoi*". My conclusion is that the concept reveals a consciousness of a third gender.

³⁷ "Some people are born sterile."

³⁸ "Some are born castrated"

³⁹ "Some are born unfit for marriage"

Linguistic Analyses from Ancient Sources

Roman Law

The terminology in Roman law texts reflects similar categories of sexual deviance that are mentioned in the Old Testament concerning ritual purity. Although the focus of interest is different, there were, in both languages and both cultures different categories that expressed different degrees of deviance. The main question was: is it visible? And if it was visible the next question was: has there been surgery? The overarching term in Greek is *eunouchos*, in Hebrew עֲבֻרָה and in Latin *evnuchus*.

In Roman law, we find the term "*Qui natura spadones sunt*", equivalent to the Greek "born *eunouchoi*", and the Hebrew "*Saris shammah*". *Shammah* means sun, indicating either that the baby was sexually different from the day he saw the sun, or it reflects an astrological belief, that the position of the gendered celestial body influenced the gender of the human body.

Another category in Roman law is *Thibiae*, one with pressed testicles. It could be done by tying a string around the testicles, in order to avoid pregnancy, as Elagabalus, emperor from 218-222 did, wanting sex but not children.⁴⁰ Or it could have happened due to an accident.

Thadiace was one with bruised testicles. Such a person is mentioned in the Law of Moses, as one who was not admitted into the sacred assembly.⁴¹

Castratus is one who has been surgically sterilised and emasculated, in more or less serious degree.⁴²

Evnuchi is a term that included both *castratus* and *spadones*. *Spadones* included both *thibiae* and *thadiace*. *Spadones* are, in family law dealt with as men "who had difficulties procreating", which was impossible for a *castratus*.⁴³ Only those who were surgically sterilised were denied the right to leave a will. Slaves, who were *spadones*, were sold as being physically in tact.⁴⁴

So the category "born *eunouchoi*" in the Gospel of Matthew, has it's parallel both in Roman Law, and in Talmudic literature.

Talmudic Sources

Even though the *saris* were excluded from the Temple, they were accepted in society and sometimes they even married. There was, according to Talmudic tradition, some discussion about how to deal with the legal rights of the different kinds of *saris*.⁴⁵ According to Deuteronomy 25: 5 -10, when a man died childless, it was his brother's duty to marry the widow.

"The first son she bears shall carry on the name of the dead brother so that his name will not be blotted out from Israel. However, if a man does not want to marry his brother's wife, she shall go to the elders at the town gate and say, "My husband's brother refuses to

⁴⁰ Rousselle, Aline, *Porneia On Desire and the Body in Antiquity* (Barnes & Noble Books 1996) 122 -5

⁴¹ Deut 23: 1

⁴² Digest of Justinian XXI 1.7.

⁴³ Digest of Justinian 28.2.6. in Walter Stevenson 1995, s 497

⁴⁴ Juristen Paulus (D 21.1.5)

⁴⁵ Strack und Billerbeck (1991) My translation from German.

carry on his brother's name in Israel. He will not fulfil the duty of a brother-in-law to me." Then the elders of his town shall summon him and talk to him. If he persists in saying, "I do not want to marry her," his brother's widow shall go up to him in the presence of the elders, take off one of his sandals, spit in his face and say, "This is what is done to the man who will not build up his brother's family line."

This ceremony was called "*calitsah*", and some confusion is recorded about the obligations of granting a *saris* this privilege.⁴⁶ Rabbi Joshua complains about the different opinions on the subject: "I have heard that a *saris* is granted *calitsah* and that *calitsah* is arranged for his wife, and also that a *saris* is not granted *calitsah* and that no *calitsah* is arranged for his wife, and I am unable to explain this."

The text continues with two conflicting explanations by the Tannaim. Rabbi Akibah said: "I will explain it: A *saris adam* is granted *calitsah* and *calitsah* is also arranged for his wife, because there was a time when he was in a state of fitness. A *saris shammah* is not granted *calitsah* nor is *calitsah* arranged for his wife, since there never was a time when he was fit."

The moral point was that a *saris shammah* had been made childless by God and should be left that way.⁴⁷ The *saris adam* was a victim of corruption by nature, and it was therefore the task of society to see to that the original plan of God was fulfilled by granting him an heir.

What does it mean, that Jesus asked his audience to accept the *eunouchoi*? Who were these people? I shall give some examples of how the concept was used in Greek, during the first and second century, showing from ancient literature that *eunouchoi* were men who were not attracted to women.

Litterature

Ovid (43 BC-18 AD) in *Amores*, doubt that the *eunouchos*'s "love had ever glowed warm for any female".⁴⁸

Terence (190 -158 BC)

In a Roman play entitled "The Eunuch", lets his main character say: "From this moment, I erase all women from my mind. These vulgar beauties make me sick."⁴⁹ Interesting here is the fact that Terence should have firsthand knowledge about *eunouchoi* as slaves. He was himself born in Carthage, but grew up as a slave to a Roman patrician. His enormous popularity finally gave him his freedom. So when he lets the *eunouchos* express resentment towards beautiful women, there is reason to believe him. The *eunouchos* is portrayed as one who preferred men.

Marital (40-103 AD)

In his third Epigram 81, Martial ridiculed the case of a straight man castrating himself in order to become a priest of Cybele:

What is a woman's chasm to you, Baeticus Gallus?

This tongue is supposed to lick undecided men.

For what reason was your dick cut off by Samia with a potsherd

⁴⁶ Yebamoth, ch.8 (folio 79b) cited in Faris Malik

⁴⁷ "Wie die unfruchtbare durch Gottes Hand, so auch der verschnittene durch Gottes Hand" Strack und Billerbeck (1991) My tr., p 806

⁴⁸ Ovid, *Amores*, II 3.5-6. Latin: "Mollis in obsequium facilisque rogantibus esses, si tuus in quamvis praetepuisset amor." cited in Faris Malek (1999).

⁴⁹ *Eunouchos*, II 3. 292-296 cited in Faris Malik (1999).

If the pussy was so satisfying to you, Baeticus?
Your head should be castrated, for though you are accepted for a priest because of your groin, You still deceive the sanctuary of Cybele: in the mouth you are a male.⁵⁰

Thus Martial confirms that being a real *eunouchos* entailed a lack of attraction to women, but that such a *eunouchos* could be available for sexual activity with "undecided men". Martial also tells a story about a *eunouchos* and an old man trying to have sex at the same time with a lusty young lady, but neither was able to follow it through:

"One was unable due to lack of male powers, the other due to having passed the age of potency." The frustrated woman was left "praying to you, Aphrodite, for help for herself and the two wretches, that you would make the one a youth, the other a male."⁵¹

A *eunouchos* is described as a person who is sexually active, but avoids women. How was that phenomenon understood in antiquity?

Astrology

Analyses of astrological texts have been made by Brooten (1996) and I shall quote from these extensively.⁵² Some texts are also referred to by Gleason (1995),⁵³ and in a thesis⁵⁴ by Faris Malik.⁵⁵ The importance of astrologers like Firmicus Maternus and Hephaestion of Thebes lies in their preserving earlier sources, often through lengthy quotations. From this, we can find a similar understanding of gender terms over a period of at least 500 years⁵⁶, a period the New Testament authors lived in the middle of. So what were the characteristics of those who were born as *eunouchoi*? Why were they inclined towards men rather than women? Were they de facto homosexuals?

Astrological texts offer several discussions on born *eunouchoi*. The reason for analysing these is, of course, not to ponder whether the content was factual, but to study the terminology. Astrology offered an etiology for different kinds of sexual deviance and would, in that context, mention those who were determined to be *eunouchoi*. 'Natural *eunouchos*' was not a technical term for one specific condition, but the belief was that the influence of feminine gendered stars would prevent the full development of masculinity in the male. The lack of masculinity struck body and soul in different degrees, and the deviance was innate, as the fate of the individual was programmed by the influence of the gendered stars.

Dorotheos of Sidon writes about the same-sex sexual desires of both men and women. "When Venus and the moon are in a particular location, the female "will be a lesbian, desirous of women, and the male will be desirous of males."⁵⁷ This is not a bisexual lust. He specifically creates a parallel between lesbians and males who "will not do to women as they ought to".⁵⁸ This is an important piece of information about a society often

⁵⁰ Marital VI 67 cited in Faris Malik (1999).

⁵¹ Martial XI 81 cited in Faris Malik (1999).

⁵² Brooten, Bernadette J., *Love Between Women. Early Christian Responses to Female Homoeroticism*. (The University of Chicago Press 1996) pp 115 -141.

⁵³ Gleason, Maud W., *Making Men. Sophists and self-Presentation in ancient Rome* (Princeton University Press 1995) p.65 -67.

⁵⁴ Faris Malik (1999), Born Eunuch home page on internet.

⁵⁵ Faris Malek (1999) n 102, 103,104.

⁵⁶ Brooten (1996) p.132, 139

⁵⁷ Carmen Astrologicum 2.7.6 Ed. and trans. Pingree 206.

⁵⁸ Carmen Astrologicum 2.7.12 Ed. and trans. Pingree 207.

considered as thoroughly bisexual.⁵⁹ Astrologers had observed that some people had no desire for the opposite sex, but only for their own. This correlates to some degree with my definition of homosexuality.

Ptolemy states that the position of the sun, the moon, Mars and Venus forms the newborn's sexual inclination for life. Women, called *tribad*, might lust after unnatural⁶⁰ relations. Some would have a secret desire, while others, more masculine, would live openly in lifelong cohabitations, calling their partners "lawful wives"⁶¹. The equivalent male sexual disease is *malakoi*.⁶² This makes a man feminine and unnatural. It may be a secret desire, but if both Venus and Mars become feminine, it will mean that he will live his life as a public *pathic*.⁶³ The couple will suffer abuse and assaults. A masculine woman becomes a public scandal just as a feminine man does. He is ridiculed; she is despised. This was all due to the order of the universe, according to Ptolemy. In his discussion of marriage, he places *tribas* in a group with *eunouchoi*.⁶⁴

Brooten has observed that Hephaiston of Thebes, like other astrologers, "parallels *tribades* with male castrati and males who couple with men. One particular configuration yields on the male side a male castrato or a male who couples with men, and on the female side, a woman who is a *tribas* and who couples with women and who performs the deeds of men".⁶⁵

One constellation of the stars results in people who manifest these diseases publicly. Another may result in hidden diseases and sterile women, and men with no aperture, or if Mars is present as well, castrati or *tribades*.⁶⁶ Again, we find many sorts of gender deviation, all resulting from the heavenly configurations. Nature itself had imposed a desire and behaviour that society did not accept.

According to Firmicus Maternus, *eunouchoi* were born when Mercury and Saturn were ascendant together in a feminine sign.⁶⁷ He obviously sees *eunouchoi* as a broader overarching term defined as follows:

1. Men without semen and
2. Those who are unable to have intercourse (*qui coire non possint*), obscene, disreputable, impure, lewd *cinaedos*

What is clear is that sterile men were called *eunouchoi*. The other group is not so specifically defined. The author describes a person who is sexually promiscuous with men, playing the passive role in these impure relations, because they are unable to have intercourse with women. This is further developed in the astrologer Firmicus Maternus. Here, impure denotes deviance, "unable to come to natural intercourse" but captured by the unnatural (*contra naturam*⁶⁸). So a man who was unable to have intercourse with women, but lived promiscuously with men, was considered to have been born a

⁵⁹ Dover (1978) p.1 The Greeks were aware that individuals differ in their sexual preferences, but their language has no nouns corresponding to the English nouns 'a homosexual' and 'a heterosexual', since they assumed that virtually everyone responds at different times both to homosexual and to heterosexual stimuli, and virtually no male both penetrates other males and submits to penetration by other males at the same stage of his life. For discussion on Greek bisexuality, see Mark D Smith pp. 223-256.

⁶⁰ Being active was considered unnatural, *para physin* (the expression Paul uses in Rom 1).

⁶¹ Tertrabiblos 3.14 §171f (Trans. Robbins p.370f), cited in Brooten (1996) p.124.

⁶² *Malakoi*, the term Paul uses in Tim. 1: 10.

⁶³ This seems close to the modern differentiation in most churches between orientation and praxis.

⁶⁴ Tertrabiblos 4.5 § 187-89 (trans Robbins p. 404f).

⁶⁵ Brooten (1996) p.138.

⁶⁶ Hepsaiton, Apotelesmatica 2.21.19.

⁶⁷ Firmicus Maternus Mathesis III 9.1 cited in Faris Malik (1999) n. 102.

⁶⁸ Firmicus Maternus 5.2.11 cited in Brooten (1996) p.137.

eunouchos. This reading is strengthened by the fact that Firmicus Maternus also called female same-sex sexual relations impure.⁶⁹

Physiognomy

People often felt the need for help in finding trustworthy people, and help was certainly at hand. Physiognomy was the art of knowledge of human nature. I shall in the following rely heavily on Maud W. Gleason's study, *Making Men*.⁷⁰ In her study, I have found no specific definition of the born *eunouchos*, although she does present the *eunouchos* who was born with defect testicles. However, the variety of deviant traits discussed gives an insight into the conceptual structures of the gender-based categories. Our question in this context is to what degree were born *eunouchoi* perceived as feminised deviants of indeterminate gender?

Polemo's task in life was to reveal deviance, which could be rather tricky to detect. So the physiognomists, astrologers, and popular moralists of antiquity had to think in terms of degrees of gender conformity and gender deviance.⁷¹ There were different kinds of *castrati*, *eunouchoi* and *pathici*. Moreover, even if a man tried to conceal such traits, the physiognomist had his way of detecting the true nature of the suspect. This was not an easy task, since they conceived of "male" and "female" as categories quite independent of anatomical sex⁷².

The work of Polemo is divided into three parts, according to the methodology of his investigation:

1. The study of the eyes, which were seen as the most important "mirror of the soul". For example, a drooping of the eyelid or a movement of the pupil would give away sexual deviance.
2. Zoological physiognomy. The animal kingdom consisted of masculine (leonine) and feminine (panther-like) kinds of animals.⁷³ This was reflected in human nature.
3. Ethnographic physiognomy. This started with skin and eye colour, moving on to body movements and voice, concluding with the dispositional physiognomy, listing signs that may detect different types, such as feminine men or brave men.

"Hence "masculine" and "feminine" (*arsenikos* and *thelukos*) function as physiognomic categories for both male and female subjects."⁷⁴

Philo of Alexandria

The relevance of Philo in this context is for language study. As a contemporary of the Greek author of *The Gospel of Matthew*, his use of terms denoting sexual deviance may throw some light upon the meaning of the term "born *eunouchoi*". The question is whether Philo would have seen a homosexual as a born *eunouchos*.

In commenting upon the fate of Joseph, Philo discusses the deviants at the court of Pharaoh. He reads the story as "figurative history".⁷⁵ As such, he comments on its factual content. Joseph worked in the house of a deviant. He recognises the possibility of this, even though "it seems the most unnatural thing" for a woman to be cohabiting with a

⁶⁹ Brooten (1996) p.137 who observes that this is the very same terminology we find in Rom 1: 24- 27; impure, unnatural and natural intercourse.

⁷⁰ Gleason (1995).

⁷¹ Gleason (1995) p.80.

⁷² Gleason (1995) pp 58, 60.

⁷³ This parallels Clement's description of the hyena as a gender deviant homosexual animal.

⁷⁴ Gleason (1995) p.59.

⁷⁵ On Joseph, XII.58.

eunouchos.⁷⁶ What is valuable for this study is what his allegorical interpretation of the *eunouchos* Potiphar reveals:

"...having in appearance, indeed, the organs of generation, but being deprived of all the powers requisite for generation; just as those persons who have a confused sight though they have eyes, are nevertheless deprived of the active use of them, inasmuch as they are not able to see clearly"⁷⁷.

First of all, he does not believe that the court *eunouchos*, Potiphar, was castrated. The organs of generation were apparently intact. He writes in the plural, which means there were no physical abnormalities, which in itself qualified Potiphar as a *eunouchos*. However, he was given away by his confused use of his organs. Just as a person with eyes can have confused sight, a *eunouchos* can have a confused sex life, contrary to nature. The result was, of course, the lack of offspring.

This *eunouchos* lived with his wife in some confused and unnatural way. Still, there is a remarkable difference between the description of the sodomite and the *eunouchos*. Sodomites were seen as

"men, being unable to bear discreetly a satiety of these things, get restive like cattle, and become stiff-necked, and discard the laws of nature, pursuing a great and intemperate indulgence of gluttony, and drinking, and unlawful connections; for not only do they go mad after women, and defile the marriage bed of others, but also those who were men lusted after one another, doing unseemly things, and not regarding and respecting their common nature,"⁷⁸

The sodomites are described as adulterous and promiscuous bisexuals. They are seen as men, being able to live in normal marriage. They were born as men, but they had developed habits which threatened their masculinity:

"and so, by degrees, the men became accustomed to be treated like women, and in this way engendered among themselves the disease of females, an intolerable evil, for they not only, as to effeminacy and delicacy, became like women in their persons, but they made also their souls most ignoble...."⁷⁹

The important difference between *eunouchoi* and sodomites is the etiology for their behaviour. While sodomites were stiff-necked and evil, and engendered their vice willingly, the *eunouchoi* were victims of confusion with regard to procreation. They are compared with "those persons who have confused sight though they have eyes". They are deprived people, not evil, because they "are not able to see clearly". It is a point that they were not victims lacking sexual powers, as would have been the case with impotence, for they were sexually active, but behaved like women because they were sexually confused. Philo describes the *eunouchoi* of the OT as natural homosexuals. Potiphar could therefore be a natural *eunouchos*.

Clement of Alexandria

Clement of Alexandria offers three different comments on *eunouchoi*. In The Paedagogus 3.4, he warns Christians against the vice of the *eunouchoi*, who are very much able to "indulge in lust", taking advantage of the reputation of being impotent. In Stromateis 3. 99, he gives a symbolic interpretation of Mat 19: 12 and, in Stromateis 3. 1-4, he discusses

⁷⁶ On Joseph XII. 60.

⁷⁷ On Joseph XII. 58.

⁷⁸ On Abraham XXVI 135

⁷⁹ On Abraham XXVI 136

the followers of Basilides and their false understanding of Mat 19: 12. They operate with two different categories of *eunouchoi*, “*eunouchoi* from birth” and “*eunouchoi* from necessity”.⁸⁰ He is critical of their understanding of themselves as “*eunouchoi* of necessity”, saying they are lacking “any rational cause”,⁸¹ as opposed to those who are “*eunouchoi* for the eternal kingdom, making a choice of reasoned principle in their view...”⁸²

So after having dwelled upon the fact that the *eunouchoi* did have a sexual drive, Clement advises them not to marry, but for different reasons to those who are *eunouchoi* for the sake of the Kingdom. I believe that his comment about this category actually gives us his definition of who the born *eunouchoi* were: “Some men, from their birth, have a natural aversion in relations to women. And those who are naturally so constituted do well not to marry.”⁸³

Difficult to accept?

After having mentioned the three categories of *eunouchoi*, Jesus said: *ho dynamenos kjorein, kjoreito*, - He who is able to accept this, accept it!

Why was it not taken for granted that everybody could accept deviant people? Jesus knew that it would be difficult for the Jews to do that, because both homosexuals (whatever they were called), sterilised men and emasculated men were declared impure in the Law of Moses.

Jews were used to discussing details in interpretation of the Law, but in this case they would nullify a basic structure in their religious understanding. *Eunouchoi* were not allowed into the temple, which meant that they could not participate in the ritual life, which again meant that they were cultic impure. Which again meant that they should be avoided, since impurity was understood as a destructive, contaminating power, leaving people infertile. It was certainly not easy for a Jew living in the first century to accept deviance.

It is more noteworthy that the Christian Church in the 21st century has a problem with allowing people perceived as deviant to participate in the holy rituals. Is it the old ghost of impurity that is haunting the cathedrals?

Homosexuality and ritual impurity

Homosexuals living in partnership may, according to the Bishops' Meeting 1995, receive Eucharist, but they may not be ordained to officiate Eucharist. The difference is that the one who officiates the rite act as an intermediary between God and the communicant while the communicant only receives the presence of Jesus.

The same Bishops' Meeting said that homosexuals living in partnerships should be respected for their opinion, since “They have reached their conviction through serious work with the Biblical material”. So why can homosexuals not officiate rituals?

⁸⁰ Stromateis III 3. 1

⁸¹ Stromateis III 3. 3

⁸² Stromateis III 3.4

⁸³ Stromateis III 1.2.

Holy Rituals and Impure People

I believe there is reason to suspect, that we are actually dealing with a subconscious legacy from the Law of Moses. Impurity was a dangerous force, antagonistic to holiness, so impure individuals had to be kept away from the sanctuary, or the whole country would be polluted.⁸⁴ Impurity was not necessarily a result of sinful behaviour. But it was mandatory that one be cleansed after having attracted impurity, for example after menstruation, child birth, sexual intercourse, taking care of the dead, etc. Cleansing rituals were performed in order to maintain fertility and growth in the population. The principle was: when life was at stake or in danger the forces of death were in play. Some people, however, could never be cleansed and thereby made cultic capable. These would not procreate, and were thereby chronic impure: like women with hormone disorder who were bleeding at any time, and sexual deviants. The cleansing rituals were available only after the person was procreative again. So there was no cleansing rituals for a *saris adam* who was sterilised or for a *saris shammah* who was born sexually different. His situation was much discussed amongst the old Rabbies: How should they detect a *saris shammah* who had no physical flaws, were there hidden signs of femininity that could be revealed? Should he get married? Could he be cured?⁸⁵

It may be more than coincidental, that the criteria for being worthy of church rituals are so consistent with the Mosaic purity thinking.⁸⁶ Menstruating women were impure,⁸⁷ women after giving birth,⁸⁸ divorced women were impure to the degree that they could not marry a priest without polluting the whole priesthood,⁸⁹ sexual deviants were impure, but they had to live with their fate. Others were in even bigger trouble: Those who attracted impurity by choice. Men who lies with men as one lies with a women, should be killed⁹⁰, and a man who laid with his wife during menstruation should also be killed⁹¹. Both actions involved the wasting of seed,⁹² a deed that would pollute the entire population if it were tolerated. Lesbians did not wasted seed, so they were still in a state of purity even eligible for marrying priests. The Rabbi Hillel, defined them as virgins, since there had been no penetration.⁹³

This was the religious system Jesus fought against, and was eventually killed for fighting against. It seems to me, that the Christian church has not fully appreciated this paradigm shift.

The terminology of impurity has been in active use through the entire church- history. As late as in 2000 there was a movie produced about, Bjørn Erik, a young man who committed suicide because he could not accept himself as a Christian and homosexual. Tellingly, the film is called "Pray - dirty sinful me!"

⁸⁴ Jacob Milgrom; The dynamics of purity in the priestly system, in Poorthuis and Schwartz eds, *Purity and Holyness* Brill Leiden 1999 p 29 - 32

⁸⁵ Strack und Billerbeck 1991

⁸⁶ Gerhard Rouhorst, Leviticus 12 - 15 in early Christianity, in Purity and Holyness ed Poorthuis and Schwartz, Brill Leiden 1999 p 182 -184

⁸⁷ Fonrobert, Charlotte Elisabeth, *Menstrual Purity, Rabbinic and Christian reconstructions of Gender*, Stanford University press 2000

⁸⁸ Charles Caspers, Leviticus 12, Mary and Wax: Purification and Churing in Late Medieval Christianity in Purity and Holyness ed Poorthuis and Schwartz, p Brill Leiden 1999 p 295 - 313

⁸⁹ Lev 21: 7 They must not marry women defiled by prostitution or divorced from their husbands, because priests are holy to their God. 21:14 He must not marry a widow, a divorced woman, or a woman defiled by prostitution, but only a virgin from his own people,

⁹⁰ Lev 20: 13 If a man lies with a man as one lies with a woman, both of them have done what is detestable. They must be put to death; their blood will be on their own heads.

⁹¹ Lev 20: 18 If a man lies with a woman during her monthly period and has sexual relations with her, he has exposed the source of her flow, and she has also uncovered it. Both of them must be cut off from their people.

⁹² Jacob Milgrom, Leviticus 17-22 The anchor Bible Doubleday 2000 p. 1787.

⁹³ Brooten p. 66.

The reason why impurity thinking has been so heavily in play in the Christian church is probably explained better in terms of cultural anthropology⁹⁴ than theology. The Book of Leviticus was actually not much read in the early church. It was regarded as a Jewish document about the Jewish cult. Never the less, the Christian church still seem to be practising Mosaic Law, going to great pain to prevent the sacred from being polluted by impurity. The Catholic liturgist Franz Kohlschein argues that the concept of women's cultic impurity is still extant in the Catholic Church. He points to striking contradictions in the regulations the church has adopted concerning the involvement of lay people in the liturgy.⁹⁵ At certain occasions, lay people may administer Holy Communion, but when a woman is participating, she may not step unto the altar, while there is no such restriction for men.⁹⁶ The Old Testament ideal that women contracted impurity from bearing children has more or less been in effect during the entire church- history. Origenes explains the phenomenon by referring to his belief of original sin; the woman had born a sinful being into this world.⁹⁷ The child could be cleansed from its inborn impurity by the baptism rite, and the mother by a rite specially designed for that purpose, today called "churching".

Cleansing Impurity by Fire

On May 14, 390,⁹⁸ an imperial decree was posted at the Roman hall of Minerva, a gathering place for actors, writers and artists,⁹⁹ which criminalized for the first time the sexual practice of those whom we call "homosexual" men -- this had never happened before in the history of law. The prescribed penalty was death by burning. This law was promulgated by an emperor who at the time was under a penance set by St. Ambrose, the bishop of Milan,¹⁰⁰ and the law was issued in the context of a persecution of heresies. Homosexual men at the imperial court had been powerful opponents of Catholic doctrine during the fourth-century conflicts over the nature of Jesus Christ, known as the Arian controversies.

This law targeted all men who were involved in a same-sex relationship. This indicates in itself a new categorising of gender. Eunuchs are disappearing from the scene. Prior to 390, both religious and secular laws had targeted only one particular form of homosexuality: when a free man or youth who otherwise exhibited a virile attraction toward women nonetheless agreed to or was forced to play a female role in intercourse with other men. Augustus Caesar's law against adultery likewise prohibited intercourse with "males,"¹⁰¹ and may well have provided the impetus for a widely-attested wave of

⁹⁴ Mary Douglas, *Purity and danger: An analysis of concepts of pollution and Taboo*. London 1966. *Natural Symbols*, London 1970.

⁹⁵ Franz Kohlschein, "Die Vorstellung von der kultische Unreinheit der Frau: Das Weiterwirkende Motiv für eine Zwiespältige Situation?" i Tessa Berger og Albert Gerhards (eds), *Liturgie und Frauenfrage: Ein Beitrag zur Frauenforschung aus Liturgiewissenschaftlicher Sicht*. Pietas Liturgica 7, (St Ottilien: EOS-Verlag Erzabtei St. Ottilien, 1990), s 269-288.

⁹⁶ Korte, Anne Marie, *Reclaiming Ritual*, in in Poorthuis and Schwartz eds, *Purity and Holyness* Brill Leiden 1999 p 186.

⁹⁷ Origenes Hom in Lev VIII, 3 in Gerard Rouwhorst, *Leviticus 12-15 in early christianity*, in Poorthuis and Schwartz eds, *Purity and Holyness* Brill Leiden 1999 p 186.

⁹⁸ Rev. M. Hyamson, ed. and tr., *Mosaicarum et romanarum legum collatio*, London, 1913 (reprint Buffalo, 1997), pp. 82-83. (Coll. leg. mos. et rom. 5.3.1-2) in Malik, "Born Eunuch Homepage".

⁹⁹ *Columbia Encyclopedia*, 5th edition, New York, 1993, s.v. Minerva, p. 1782. in Malik, "Born Eunuch Homepage".

¹⁰⁰ Wilhelm Ensslin, *Die Religionspolitik des Kaisers Theodosius des Grossen*, Munich, 1953. In: *Sitzungsberichte der Bayerischen Akademie der Wissenschaften, Philosophisch-historische Klasse*, Year 1953, No. 2. in Malik, "Born Eunuch Homepage"

¹⁰¹ *Institutes of Justinian* 4.18.4. in Malik, "Born Eunuch Homepage"

castrations in the early empire -- in order to supply sex partners who were not "males."¹⁰² As late as 342, Constantius II issued a decree imposing an "exquisite punishment" for the crime which occurs "when a male gives himself in marriage to an *effeminate* and what he wants is for the effeminate to play the male role in sex, thus for himself to play the female role."¹⁰³

The Christian world has eventually become straight and dichotomised. There is only one kind of eunuchs left: the symbolic eunuch who lives in celibacy. There is no more men perceived as androgynous, half-men, neither man nor woman, hybrid, manmade eunuchs and born eunuchs. Nature has been defined into conformity with the creation myths: there is only men and women. Shaun Tougher has observed this phenomenon, and offers an analyses in an article on the origin of the Byzantine *eunouchoi*. She agrees with Ringrose, that a discrepancy has developed between the secular and ecclesiastical perception of deviants. According to her, one consequence of this was that "the secular perception was that deviants did indeed form a distinct third sex, whilst the ecclesiastical view undermined the distinct gendering of deviants".¹⁰⁴ As Ringrose says: The term eunuch as used in late antiquity...its definition changed within Byzantine society between the third and the twelfth century.¹⁰⁵ By the twelfth century a eunuch was perceived as a singer in a church choir, castrated as a child in order to prohibit development of secondary gender traits, rendered as an asexual nature, appropriate for the Christian Church.

The Marriage Rite as Symbol

According to the Law of Moses, impurity and holiness could not be united. The Catholic Church sees the marriage rite as a holy sacrament, and even the protestant churches seem to see the marriage rite as a holy event since one is giving a promise "before God and witnesses". It is only logical that impure people cannot vow to be living together in impurity, without creating a sense of blasphemy. The marriage rite is so filled with symbolism, that it will probably not be offered to homosexuals until homosexuality is truly accepted and homosexual marriages are accepted as an honourable and ethical valuable state.

As long as even so-called progressive bishops say that homosexual partnership is the least of two evils, and therefore acceptable, there is work that needs to be done.

Marriage symbolises the unity between Christ and the Church.¹⁰⁶ The Church is the pure bride, dressed in white, engaged to be marriage to Christ.¹⁰⁷ The male is the head of the female, as Christ is the head of the Church.¹⁰⁸ A homosexual couple cannot possibly symbolise the gendered and hierarchical structure given in Paul's metaphor. And it goes on: The word, which is preached in the service is symbolised with the seed the male

¹⁰² Seneca, *De ira* 1.21; Juvenal 6.371-373, 10.306; Martial 6.2, 9.6.4, 9.8.5; Statius, *Silvae* 4.3.16; Suetonius, *Nero* 28, *Domitian* 7. in Malik, "Born Eunuch Homepage"

¹⁰³ *Code of Theodosius* 9.7.3. in Malik, "Born Eunuch Homepage"

¹⁰⁴ Tougher (1997) p.169.

¹⁰⁵ Ringrose (1996) p.86.

¹⁰⁶ Eph 5: 31 - 32 For this reason a man will leave his father and mother and be united to his wife, and the two will become one flesh. This is a profound mystery - but I am talking about Christ and the church.

¹⁰⁷ 2 Cor 11: 2 I I promised you to one husband, to Christ, so that I might present you as a pure virgin to him.

¹⁰⁸ Eph 5:23 For the husband is the head of the wife as Christ is the head of the church, his body, of which he is the Savior.

priest sows.¹⁰⁹ The Church, as woman, is the receiving part, as she herself is the quiet congregation.¹¹⁰ The apostle Paul sees himself as a Paterfamilias giving away his virgin daughter in an arranged marriage.¹¹¹

But something happens with the symbolism. The spiritual man raises above the limitations of the gendered body. Paul says that he is in labour, bearing children¹¹², and that he feeds them milk, because of their immaturity.¹¹³ Women are allowed to pray in public, and to speak, as a vain for the spirit.¹¹⁴ So, the androgynous church is the symbol of the body of Christ. The spiritual Christ is again incarnated into flesh, only this time, flesh is not a male individual, but the universal church, composed of all human beings, regardless of gender.

This was the very idea that Jesus was teaching according to Mat 19: 12. He informs both his disciples and the Pharisees that human nature is not always in conformity with the norms of the creation narrative: "For there are *eunouchoi*".

Matthew reported this incident, probably because he interpreted it as a fulfilment of Isaiah 56: 3-6.: The people had returned from captivity in Babylonia, and they wanted to re-establish their religious cultic life. They were aware of purity laws, and remembered that there were sexual deviant people who should not be allowed in the temple. But the prophet was looking into the future saying:

There shall be a day of salvation, when people shall "let no *Saris* complain; "I am only a dry tree". For this is what the Lord says: "To the *Saris* who keep my Sabbaths, who choose what pleases me and hold fast to my covenant - to them I will give within my temple and its walls a memorial and a name better than sons and daughters; I will give them an everlasting name that will not be cut off."

I believe that this means: Any gender variant person, who accepts the New Covenant rather than the old Mosaic Law, should be accepted into the Christian sanctuary, welcomed to the altar, and included in the rituals. Jesus acknowledged the *eunouchoi* and said nothing about celibacy.

So a relevant question to ask the next Bishops' Meeting would be: "How are you commissioned to force homosexuals to live in celibacy, as long as the "created order" says it is not good for men?" If this is not answered with the same willingness to find good solutions like heterosexual theologians have found for themselves, the credibility of the Church as an institution for ethical guidance is at stake. If purity is more relevant to the practice of rituals than ethics, the credibility of the Christian Church as such is endangered.

¹⁰⁹ 1Pet 1: 23 For you have been born again, not of perishable seed, but of imperishable, through the living and enduring word of God.

¹¹⁰ 1Cor 14: 34 ...women should remain silent in the churches. They are not allowed to speak, but must be in submission, as the Law says.

¹¹¹ 2Cor 11: 2 I promised you to one husband, to Christ, so that I might present you as a pure virgin to him.

¹¹² Gal 4: 19 My dear children, for whom I am again in the pains of childbirth until Christ is formed in you,

¹¹³ 1Cor 3: 2 I gave you milk, not solid food, for you were not yet ready for it. Indeed, you are still not ready.

¹¹⁴ 1Cor 11: 5 And every woman who prays or prophesies.....

Abstracts

A B S T R A C T S

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

• Daniel Borrillo (Paris X University, France) & Eric Fassin (ENS, France)

After ten years of political battles and two years of public debate, the pacs, civil solidarity pact (civil unions for both same-sex and opposite-sex couples) finally became law in 1999. Surprisingly, what had been a very contentious issue immediately became consensual. Should this be interpreted in a positive way, as French society came to accept the legal recognition of gay couples, or in a negative way, as pacs may turn out to be a dead-end leading to no further rights (in particular, in terms of nationality and family)? This paper presents an assessment of pacs, four years later - its legal consequences (and shortcomings), the social transformations it has initiated (and prolonged), and finally, its political impact (or lack thereof). Is pacs a glass half-full or half-empty thus translates as: is it a beginning or an end?

The best way to court. The French mode of registration and its impact on the social significance of partnerships

• Wilfried Rault (Paris V University, France)

Unlike the other European legislation on same-sex relationships, the French *Pacte Civil de Solidarité (PaCS)* takes on a specific characteristic : it is registered in a court called a *tribunal d'instance*. Surprisingly, this jurisdiction which deals with daily life conflicts bears little resemblance with the register office to be found in townhalls.

The aim of this paper is to show that this feature and, to a large extent, the French mode of registration affect the level of recognition towards same-sex couples the PaCS was supposed to provide.

After analysing how the legislator legitimised the choice of the *tribunal d'instance*, we will focus on the characteristics of such a registration and highlight its main aspects: first, the fact that the registration takes place within a court, second, the presence of a court clerk and not an elected Representative of State as it is the case for weddings, and, third, the quasi-absence of an institutionalised ritual.

Moreover, we will also aim to show the impact of this modalities have on the way partners regard the PaCS by studying the discrepancy between the partners' expectations and the registration itself.

In fact, all these elements contribute to weaken the symbolic significance of the PaCS, not only for couples who are willing to get married, were it possible, but also for couples who remain sceptical regarding marriage.

Actually, being registered at the *tribunal d'instance* might be similar to what Pierre Bourdieu calls a *rite d'institution*, an institution ritual. One of its social function consists in inscribing a simple social difference - here, between heterosexuals who can also get married and homosexuals who cannot- into a social hierarchy by providing different treatments. By trying to make the Pacs as different as possible from the marriage, the legislator has paradoxically fostered a symbolic violence towards same-sex couples, thus strengthening their wavering attitude and a propensity to privatise their partnership.

Happy ever after? The problems of terminating registered partnerships

• Ian Sumner (Molengraaff Instituut voor Privaatrecht, Utrecht, The Netherlands)

The past few decades have been witness to the gradual turn in the tide in the fortunes of same-sex couples in Europe. Seven European Union member states (namely Belgium, Denmark, Finland, France, Germany, the Netherlands and Sweden) now offer national domestic forms of same-sex partnership regulation (in some countries this is also extended

to opposite-sex couples too). Some autonomous regions in Spain also offer limited protection (Aragon, Asturias, Balearic Islands, Catalonia, Madrid, Navarra and Valencia) and two more have proposals in preparation (United Kingdom and Luxembourg). Although, this mammoth achievement should never be underestimated, it is unfortunately not true to say that these registrations schemes are the panacea to same-sex couples problem. Once registered same-sex couples do not necessarily live "happily ever after". In the same way that opposite-sex relationships break down, so too do same-sex partnerships.

This paper will be divided into two main sections. The first section will be devoted to domestic legislation. Legislation regarding the relevant termination procedures available to registered partners in four countries will be compared and contrasted. The countries, namely Belgium, France, the Netherlands and Switzerland, have been selected for their diverse termination procedures. Some of these countries offer the possibility for unilateral termination whilst others favour the possibility for a joint declaration. The ending of the partnership by operation of law, upon the celebration of a marriage is also seen as a possibility, as to is a period of separation. Although Switzerland is not a member of the European Union, and as yet has not enacted partnership legislation, the current proposal before Parliament will undoubtedly be passed in one form or another in the foreseeable future, therefore increasing the need for measures to be adopted in this field beyond the limited scope of EU institutions.

The second half of the presentation will be devoted to private international law. The various solutions proffered at domestic level obviously serve to accentuate the absence of rules of private international law. Attention will be paid to the various solutions already proposed by the Dutch Government Standing Committee on Private International Law and the Swiss Government. The problem of limping relationships will be highlighted. Reference to the possible applicability of the Brussels II regulation will also be made.

Whilst attention up until now has been focused on the inability for same-sex couples to benefit from those rights restricted to married couples, it must not be forgotten that once registered, circumstances might change and force the partners to reassess their commitment to one another. With the number of people entering into these new forms of non-marital regulated relationships increasing, problems at European Union level are only set to rise.

More or less together: levels of legal consequences of marriage, cohabitation and registered partnership in nine European countries

• Kees Waaldijk (Leiden University, The Netherlands)

The research made use of a questionnaire (in the form of tables) filled out by nine specialist lawyers, one from each country. Each question had to be answered with one out of seven codes; each answer could be specified in a note. Each of the codes in the tables was then given a numerical value. Finally a comparative analysis is being made of these values.

The laws on registered partnership in the nine European countries that so far have such a legal format for relationships, are not identical. They vary with respect to:

- access (for example including or excluding different-sex couples),
- procedures (for example the same or different rules on divorce as for marriage),
- legal consequences (for example including or excluding forms of parenting).

Also, these laws were not introduced in a vacuum. Already in existence were marriage laws, and various laws on informal cohabitation. These laws, too, vary with respect to access, procedures and legal consequences. Even lawyers rarely have a comprehensive understanding of the differences between the legal consequences of marriage, cohabitation and registered partnership in their own country, let alone in other countries.

The aim of the research is:

- to assess more accurately the levels of legal consequences (hereafter LLC) of existing forms of registered partnership in comparison with marriage and cohabitation;

- to discover similarities and differences between the nine countries;
 - to isolate differences in LLC between cohabitation and registered partnership (and between registered partnership or cohabitation and marriage), that might potentially explain differences in the frequencies of partnership registrations (or marriages).
- For this purpose 33 possible legal consequences were selected, divided over three broad fields: 'parenting', 'material' and 'other'. For each consequence it was established to what degree it applies to same-sex and/or different-sex cohabitants, to same-sex and/or different-sex registered partners, and to same-sex and/or different-sex married spouses.

Between the nine countries:

- there is more variation in the LLC of cohabitation, than in the LLC of registered partnership; the variation in the LLC of marriage is even less;
- there is more variation in the LLC of same-sex cohabitation, than in the LLC of different-sex cohabitation.

Between same-sex cohabitation and same-sex registered partnership in all nine countries:

- there is a greater difference in the LLC in the field of material consequences than in the fields of parenting and other consequences;
- the main differences tend to be with respect to: alimony after divorce, inheritance in the absence of a testament, and a reduction of income tax.

The difference in LLC between same-sex cohabitation and same-sex registered partnership is biggest in Germany and Iceland, and smallest in France and the Netherlands (Belgium and Denmark not yet counted).

Between same-sex registered partnership and different-sex marriage in all nine countries:

- there is a greater difference in the LLC in the field of parenting consequences than in the field of material consequences;
- the main differences tend to be with respect to: assumption of paternity, joint adoption, medically assisted insemination.

The difference in LLC between same-sex registered partnership and different-sex marriage is biggest in France and Germany, and smallest in Sweden and the Netherlands (Belgium and Denmark not yet counted).

Variations on an Equitable Theme: Explaining International Same-Sex Partner Recognition Laws

- **M. V. Lee Badgett (University of Massachusetts, USA)**

Formal legal recognition of same-sex couples that provides at least some rights and responsibilities of marriage has spread rapidly throughout Western Europe, beginning with Denmark in 1989 and now in eight other countries. This article draws on conceptual frameworks of institutional change from several social sciences to explain why the nine countries recognize same-sex partnerships, while other countries with similar economic statuses, social histories, and religious traditions do not. One strand of theory focuses on the efficiency-enhancing potential of institutions, and a second strand of theory focuses on the conflict over institutional change. This paper uses both quantitative regression analysis and Qualitative Comparative Analysis of efficiency-related and conflict-related variables, including social norms, religiosity, political resources, and economic incentives, to explain the pattern of SSPR adoption. The findings suggest that tolerant attitudes toward homosexuality, low religiosity, and high levels of cohabitation are the primary predictors of a country's legal recognition of same-sex partners.

Research on homosexual partners and parents in Flanders (Belgium)

- **Martine Corijn (CBGS, Belgium)**

In Belgium there exists a major gap between the progress made in the legislative work on same-sex individuals and same-sex couples - the first marriages between same-sex partners can take place as of June 2003 - and the availability of research on homosexuals.

The legislative work on partnership, marriage and parenthood of same-sex partners has been well-prepared since 1997 by some major publications.

Interest in the prevalence of homosexual persons and same-sex couples is almost non-existent, but we can point out some possible options for the future.

Policy issues relevant for homosexual persons are treated at different levels, from the European level to the municipal level. At the regional Flemish level, homo-issues became an important part of the Equal Opportunities policy. A focus on the 'need for care' and 'questions for help and care' is developing. The homo-federation has a very strong lobbying position in all this. We want to reflect on these specific policy perspectives.

Research on same-sex persons and couples at the academic level is spread over the faculties of sociology, history, developmental psychology and social pedagogy. A recent analysis of 287 publications on homosexuality in Flanders reveals that empirical studies are mainly done by students in the context of their training, which is reflected in the scope and quality of the research. A content analysis identifies the social climate, the sexual identity and health issues as the topics most frequently dealt with. Reflecting on the strengths and shortcomings of the available research, we want to open some new perspectives for future research.

Restrained reform - Securing equality for same sex couples in Iceland

• Kolbeinn Stefánsson & Guðný Björk Eydal (University of Iceland)

During the last decade of the twentieth century the Icelandic legislature took a number of steps granting same-sex couples legal status and protection, including enabling people of the same sex to enter into registered partnerships and criminalizing certain forms of discrimination.

The paper aims at analyzing the reforms and to what extent same sex couples have been guaranteed the same legal status as heterosexual couples. It is questioned whether the reforms have been coherent or if the policies have provided fragmented rights. Furthermore, the policy making process: the role and the motives of the policy makers are analyzed. In particular it will be emphasized to what extent the legal reforms is part of proactive policies and to what extent it is a reaction on behalf of the legislature towards external pressures from pressure groups and other countries.

The data consists primarily of parliamentary documents, including bills, proposals and laws, and the documentations of speeches and discussions in the parliament.

The paper is divided into two sections. The first section examines the extent of the reform, analyzing how it affects different policy areas. A discourse analysis of the law reveals that it is the marriage law that creates the framework for same sex couples to gain legal recognition of their relationship called registered partnerships. However the rights are mainly oriented towards the economic aspects of relationships while drawing a distinct line between parental rights of registered partnerships and marriage, a line reinforced by laws on adoption and assisted fertilization.

In the second section the process of the policy making is examined. It is questioned to what extent that the process is continuous and comprehensive. The voting of members of parliament regarding proposals regarding same-sex orientation is examined in order to gain information on how extensive the support has been and if it has differed according to party lines. By examining the parliamentarian debates around the bills and the proposed amendments to laws that affect same sex couples it is possible to find the source of and arguments for restraint rights regarding parenthood.

Denial of equal marriage rights for lesbians and gay men in the Netherlands

• Bas van de Meerendonk & Peer Scheepers (University of Nijmegen, The Netherlands)

A minority (18 percent) of the Dutch population, aged 18 and over, denied equal rights of marriage for lesbians and gay men, in a national sample (a total of 996 respondents). The

denial of equal rights for lesbians and gay men was subscribed to more strongly by social categories that have been exposed to traditional socialising agents and socialising circumstances in which traditional norms prevailed: members of denominations, people who frequently attend church, and older cohorts, especially the ones born before 1957, as well as by those who have presumably not dissociated themselves from these traditional norms, i.e., the lower educated.

Same-sex couples in Spain. Historical, contextual and symbolic factors

• José Ignacio Pichardo Galán (Universidad Autónoma de Madrid, Spain)

The Spanish Government, in spite of the pressure from the public opinion, demonstrations and different law proposals presented in the national parliament, has not accepted yet to regulate same-sex couples. There is, anyway, the chance for many of these couples to register their union in front of a representative of the State thanks to different laws approved in most of the regional parliaments to recognize these unions.

10 of the 17 autonomous communities (*comunidades autónomas*) -that is the name given to the different regions in which the Spanish State is decentralized- have passed a law that gives same-sex couples the possibility to contract legal rights and duties.

We can find here a diversity of rights and obligations recognized for same-sex unions: from those that make explicit the difference between heterosexual and homosexual couples to the different treatment in terms of access to inheritance rights or to filiation, which two of the "historical" autonomous communities recognize for same sex couples now.

In this case of these two laws, the historical and contextual factors are determinant because these two autonomous communities, due to tradition, are the only ones that have the jurisdiction to legislate about family.

The symbolic constructions of the requirements to register for same-sex couples rest, in most of these laws, in the cohabitation for at least one or two years and in the existence of an affection analogous to conjugal or marital affection. In one of these laws the only requirement is the existence of a sexual - affective relation.

For most of the Spanish Gay Lesbian Bisexual and Transsexual (GBLT) Movement the fight now is not to achieve same-sex couples recognition, but to open up the marriage institution for this couples with the same rights and duties, which can only be done by the National Government.

There are, anyway, some Gay and Lesbian activist groups and leaders against gay marriage, afraid of the threat it might create for non monogamous gays and lesbians to be excluded of legitimization from society or that just don't want to replicate an institution, marriage, which they consider heterosexual and hierarchical.

On the other hand, the opposition to the recognition of gay-marriage looks for arguments among psychologists and social scientists to say that this would go against the symbolic order in which our society lies and can put children adopted by these couples in danger.

From Outlaw to In-Law: On registered partnerships for homosexuals in Scandinavia, its history and cultural implications

• Jens Rydström (University of Stockholm, Sweden)

The Scandinavian countries have distinguished themselves by a far-reaching politics of integration of their homosexual citizens. Since Denmark, as the first country in the world, adopted a law on registered partnership in 1989, Norway, Sweden, Greenland, and Iceland followed suit within a few years, and since then other countries have passed similar laws. This development raises important questions with bearings on the general social and political development in Scandinavia, and my research initiative will cover three fields of interest: In what way is such a development linked to the specific structures and experiences of the Scandinavian welfare state?

How does it mirror the changing concepts of sexual identity, and the challenge that traditional politics face from identity-based demands of emancipation? And how is this linked to the development of the politics of equal opportunities for men and women? Each field can be studied from two different aspects, the aspect of government politics and the aspect of gay and lesbian activism. By studying these two aspects, I will hopefully provide a fuller picture of the actual development around legislation related to homosexuality.

Axel Honneth and Nancy Fraser argue that the civil rights movement and the student revolution on both sides of the Atlantic in the end of the 1960s marked the beginning of a new kind of politics. Political struggle since then was to become centred around a struggle for recognition based on categories of gender, ethnicity, race, and sexuality, a struggle that was radically different from the previous class based struggle for economic and political power. In a Scandinavian context, the emphasis on consensus and cultural assimilation can be understood as a powerful normalising force, and I also intend to discuss the possible effects of identity politics as a politics of heteronormativity.

Steady Partnerships Among Gay Men in Germany: Findings from the National Gay Press Survey

• Michael Bochow (Akademie Waldschlösschen Göttingen & Berlin, Germany)

Since 1987 a national survey of gay men has been conducted in Germany, with a focus on HIV/AIDS and other lifestyle issues.

The survey was conducted seven times between 1987 and 2003. The questionnaire is distributed through gay magazines and newspapers. In 2003 the questionnaire could also be completed online; banner links to the project server were placed on leading German language web sites for gay men.

The survey provides the only source of national data concerning steady partnerships among gay men in Germany. Over the years, the patterns related to partnership have remained stable. Here data from the last survey in 2003 (n = 4,750) will be presented. At the time of the survey, approximately half of the men (49.5%) were in steady partnerships. One third of the relationships (34.7%) had been in existence one year or less, one third (32.7%) one to four years, and one third (32.6%) more than four years. About half of the men (53.5%) reported living monogamously, the other half in "open" relationships (46.5%). Newer relationships were more likely to be monogamous than longer relationships; for example, 80.4% of men in relationships of one year or less as compared to 27.6% of men in relationships longer than four years. A total of 39.2% of men in steady partnerships were living with their partner. The longer the relationship, the more likely were the partners to be living together; for example, 11.9% of men in relationships of one year or less as compared to 67.4% of men in relationships longer than four years. A total of 6.2% of men in steady relationships had legally registered their partnership (3.1% of the entire sample). The registering of homosexual partnerships has been possible under German law since 2001.

A comprehensive interpretation of these findings will be presented at that conference.

What if same-sex couples exist in France after all?

• Marie Digoix, Patrick Festy & Bénédicte Garnier (Ined, France)

Organizers of the French census have deliberately considered that two persons of the same sex declaring their relation as a couple are mistaking and have recoded the information thus labelled to make it disappear. France that instituted Pacs at the end of 1999 (more than 6100 recorded from mid November to the end of December, still with no possibility to identify same-sex couples) had no same-sex couples from its March 1999 census!

The aim of this presentation is to explore the remaining possibilities offered by the 1999 edition of the census to number same-sex cohabitants from the household sheet that has a detailed question about the relationship of people living in the same household.

We will expose the choices to construct the targeted population from other type of ties and basic socio-demographic characteristics will be read compared to other French surveys (2000 Press gay survey, ACSF survey, etc).

The overall figures will be examined in order to determine whether it can be comparable to what has been found by foreign countries such as The Netherlands in same kind of attempts by different means.

We will draw some conclusions on the possibilities to move from same-sex cohabitants to same-sex couples in our discourse.

Bi and Homosexuality in the national surveys in Europe

• **Osmo Kontula (Population Research Institute, Finland)**

Measurements of homosexual identity and homosexual sexual behaviour patterns were important issues in Kinsey studies. In the tradition of sex surveys homosexual items became a second time important in the epidemiological model that guided most national sex surveys in Europe in the late 1980s and in the 1990s. There was an increasing need for so-called partner approach ('type of partner'), and data on sexual contacts involving potential risk of infection.

Some items of homosexual preference and/or homosexual behaviours were included to the European sex surveys that were coordinated in the European Concerted Action on sexual behaviour and the risks of HIV infection in the early 1990s. The results of these surveys were reported in "Sexual Behaviour and HIV/AIDS in Europe". This project was followed by The New Encounter Module (NEM) Project that is funded by "Europe against AIDS" EU programme. The project has been coordinated in Brussels by Michel Hubert. Most of the national results in this presentation related to bi- and homosexuality are based on the NEM surveys conducted in the late 1990s in England, Finland, France, Germany, Greece, Italy, Norway, Portugal, Switzerland and in the early 2000s in Spain.

Results will cover public opinions on homosexuality, sex of the first partner, and prevalence of same sex partners in lifetime, over the last five years, and also during the last year. The presentation will include information how sexual desire, identity and behaviour have been integrated in relation to issues of bi- and homosexuals. Limitations of national sex surveys will be discussed.

Pacs: the chaotic emergence of the category in social surveys

• **Marie-Ange Schiltz (CNRS, France)**

From some examples of the treatment of this category included from now on in the variable questioning the people on their "current legal matrimonial statute" in various social surveys that took place in Metropolitan France after the adoption of the law (1999).

This analysis is based on various social studies carried out with people in France, the date of integration of the response item, its place in the questionnaire and the analyses. This work will be carried out starting from examples drawn from various social surveys: *Press Gay* surveys (surveys conducted with male homosexuals), *Enveff survey* (telephone survey-realized March at July 2000 towards 7000 women - representative of the French female population residing in metropolis, age 20 to 59 years), *Vespa* survey (representative survey carried out in Hospitals in Metropolitan France with Hiv-positive individuals aware of their contamination since more than 6 months), *Baromètre Santé* survey (2000 survey)...

A special place will be devoted to the integration and the treatment of the category in the statistical activity of INSEE whose results are used as reference to the whole of the quantitative production of social knowledge.

Same-sex couples in the Netherlands

• **Liesbeth Steenhof & Carel Harmsen (CBS, The Netherlands)**

This study estimates the number of same-sex couples forming a household in the Netherlands and describes their demographic characteristics. The household statistics of Statistics Netherlands were used for this purpose. These statistics are based on register information.

They did it!

The demographics of same-sex “marriages” in Norway and Sweden

• **Gunnar Andersson (Max Planck Institute for Demographic Research, Germany), Turid Noack, Ane Seierstad & Harald Weedon-Fekjær (Statistics Norway)**

The present study provides a comparison of the dynamics of registered partnerships in Norway and Sweden: of patterns in partnership formation and in partnership dissolution. The registration of partnerships of persons of the same sex follows the passing of an Act of such partnerships (“partnerskap”) in 1993 in Norway and two years later in Sweden. There is still sparse knowledge about the demographic behavior that is related to this new kind of family form. In an earlier study of registered partnerships in Norway, we found that the majority of couples were male, and that the fraction of cross-national partnerships was fairly high. When analyzing patterns of registered divorce, we found that female couples seemed to have a higher risk of divorce than males, as did couples consisting of one Norwegian citizen and one citizen from a Third-World country. In the present investigation, we aim at comparing patterns of registered partnerships in Norway with those of partnerships in Sweden. We will demonstrate differences and similarities in the composition of partnerships in the two countries, and provide a comparative study of patterns in partnership dissolution. Our study is based on data derived from population registers administered at Statistics Norway and Statistics Sweden. Our demographic analyses involve information on characteristics such as age, sex, geographical background, experience of previous opposite-sex marriages, biological parenthood, and educational attainment of the partners involved. When examining patterns and determinants of divorce, we apply event-history analyses to our data.

From the steady relationship to the couple: The social and the symbolic

Homonorm versus “the constructionist controversy” revival: The “gay identity” under crisis

• **Jean-Yves Le Talec (Toulouse II University, France)**

The “figure of the queen” used to be the enforced representation of male homosexuals within the normative organization of sexuality and gender in modern western societies. The homophile movement, the *Gay Lib* and the emergence of structured and visible gay communities came with successive transformations of this “figure of the queen”. Depending on times, male homosexuals hide, reclaimed or normalized either their sexual orientation, or their gender identity, or both.

According to the results of a recent research, gay men are still influenced in many ways by this “figure of the queen” model, mostly because it remains the main base and effect of homophobia. The successive transformations of this figure are cumulative, meaning that different theoretical approaches can be mixed in order to produce infinity of self-defined gay-identity patterns. One individual may refer to the “mental illness stigma”, and/or to

an essential gay character, and/or to a pro-feminist position, and/or to a queer perspective, etc.

Three modes of social relations can be identified for today's gays:

- one based on the mainstream hetero-normative standards, to be used in everyday life, work, etc.; this mode is to be "closeted", or gender-normalized and asexual according to the usual social "tolerance" to visible homosexuality;
- one based on *camp* and queen-ness, as a subcultural language, to be used within the peer network;
- one based on the exhibition of virility, to be almost necessarily used in sexual context.

These last two modes function as a « gender switch ». Gay men may chat with every campy attitude, but as soon as they enter a *darkroom*, they must behave as "real men". The long-lasting sexual stereotype of the queen, meaning a "feminine" attitude and a (sexual) passivity, is still perceived negatively and avoided, whatever actual practices the partners choose to engage in.

Nonetheless, other research results indicate that a strong majority of gay men are favourable to, or willing themselves to engage in, same-sex partnership (PaCS) and parenthood. These mainly heterosexual values are from now part of a constructing "homonorm". This ongoing process stresses opposition from minority groups, such as queens, queers and even individual barebackers, who criticize "normativity" as the new gay model, based on an imitation of heterosexuality and an ethnicity/class/gender supremacy (white middle class supposedly seronegative gay male as a consumerist standard).

These raising voices against homonorm are reminding a passed debate, known as "the constructionist controversy", which was opened in the early eighties by "non-male non-white" gays and lesbians, but interrupted by the emerging AIDS crisis. In the present so-called "post-AIDS era", this controversy could revival with new arguments, relating to queer theory and the critic of the norms, and exhibiting the "figure of the queen" model as a subversive strategy. Whatever happens, gay identity is under crisis, according to sociological analysis, either being to be "normalized" or "dissolved", or to remain more or less "subversive".

Rituals and same-sex unions

• Ragnhild Schanke (Vinterbro, Norway)

I am a Baptist minister in Norway, who conduct ceremonies for same-sex partners in my church. I have developed a strategy, in order to keep my ordination, which was very much in danger. I can offer an analysis of how churches create the belief that the legal and committed cohabitation is not only immoral but actually "impure", through applying different standards to different people. Many churches today will not excommunicate same-sex couples, but they will not allow them any honourable position in the church organisation. Consequently, it is not considered a lifestyle in sin, but still it is stigmatised as something unworthy. The use of symbols is here obvious. The purity code of Leviticus is in effect, applied although it is never said directly. There were two categories of people: Those who were capable of approaching the alter and those that were impure. Denying homosexuals the right to a church wedding and ordination is Judaism, and should be irrelevant in Christian churches. I have, in this situation, developed a strategy, which provide the couple with a church blessing, since a full wedding ceremony is not accepted by my denomination.

I have done a thesis of Mat 19: 12a at the University of Manchester, showing how negative attitudes to same-sex couples have influenced the Bible translation history regarding the phrase

"eisin gar evnuchoi hoitines ek koilias mætros egennæthæsan hutås"

There has been a change in many modern versions from "Some are born eunuchs" to "Some are born unable to marry" implying that marriage is for procreative couples only.

A B S T R A C T S

There are 50 cases of sexual difference in the biblical texts, and they have all disappeared in the translations. Sexual deviance is translated with titles from the state administration, making gender issues invisible.

I have showed that individuals called *Saris*, were either sterilised men (*Saris Adam*) or homosexuals (*Saris Shammah*). We know from Talmudic literature that they married, but caused problems for the family when they died childless. If the brother in law refused to marry the widow there was a specific ceremony which dealt with that.

It was believed, according to Jewish sources that Potiphar was a married homosexual, and Joseph was praised for being able to resist both Potiphar and his wife. (Gen 39)

The intention of this research is to give people who want to promote same-sex justice within Christian churches some tools with which to argue with priests and church bureaucracy.

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