Queering the family

Critical reflections on state-regulated heteronormativity in the Scandinavian countries

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The Scandinavian countries, Denmark, Norway and Sweden, are often presented as forerunners in regard to social policies in comparative welfare research (e.g. Esping-Andersen 1990, 1996; Graubard 1986). The Scandinavian social citizenship model is regarded as based on the ideals of universalism (though combined with elements of selectivism) and egalitarianism. Social policies are extensive and universal, including more or less all citizens, who are guaranteed access to a broad set of benefits and social services on equal terms (Bergqvist 1999a; Goul Andersen 1999).

However, the very foundation of social citizenship is contested. Recent critiques raised by scholars within feminist (Lister 1997), ethnic/racial (Anthias and Yuval-Davis 1992) as well as sexual theory (Waites 1996; Weeks 1999) point out the false universalism, which forms the basis of the prevailing model of citizenship[1]. Usually the needs and biography of the white, male, heterosexual wageworkers are taken as the norms. As a result, a contradiction appears between the universal principle of the equality of men and the particularity of marginalized groups, i.e. women, ethnic/racial and sexual minorities (Siim 2000 p. 3). The welfare state only concedes relative and partial rights to these groups, or more precisely, assigns them to degrees of non-citizenship (Evans 1993 p. 5). This profoundly contests the Scandinavian universal citizenship model and hence the notion that it holds an avant-garde position as to equality issues.

The in-/exclusion of sexuality in welfare research

For the most part, research on social welfare distribution tends to ignore sexuality (Evans 1993; Warner 1993). Research on Scandinavian family policies and laws make no exception, for the implications of sexuality remain unexamined (Bak 1995; Christoffersen 1993; Dencik 1996; Greve 2000; Leira 1996)[2]. Whereas feminist scholars analyse how the Scandinavian welfare states contribute to cementing or subverting the sexed division of labour by promoting specific family ideals (Bergqvist 1999b; Ellingsæter 1998; Hirdman 1994), the question of the welfare states´ contribution to the formation and reproduction of regimes of sexuality is not discussed. As a result, the active role of the state in

promoting and sustaining the ideal of heterosexuality as well as the difference in access to citizenship rights generated by sexuality are left unnoticed.

The main concern of this article is with placing sexuality, and in particular the hetero-homo binary divide, at the heart of an analysis of family laws in the Scandinavian countries. The object is threefold: *in the first place*, to highlight the active role played by the welfare state in institutionalizing heteronormativity in family laws. *Second*, to elucidate the exclusionary effects of heteronormativity consisting in the denial of citizenship rights and services to non-heterosexual partners and/or parents, in particular lesbians and gays. *Third*, to suggest a political solution to the problem of the institutionalized misrecognition of non-heterosexuals in family laws inspired by recent theories of justice and queer theory.

For a case study illustrating the institutionalization of heteronormativity, I have chosen to study the political discourses[3] on assisted reproduction in the period 1996-2000 as they are reflected in the debates of the Danish Parliament on the issue. The law passed by the Parliament restricts access to medically monitored assisted reproduction to women living in stable, heterosexual relationships.

The article consists of four main parts. First I address the question of contemporary challenges to heteronormativity in family laws. Then I will outline a framework for theorizing the relationship between family legislation, gender and sexuality, succeeded by a presentation of methodological considerations. Subsequently, the analysis of the political discourses will follow. In conclusion, I will discuss the ambiguity of the Scandinavian welfare states vis á vis homosexuality as well as various political strategies aiming at ending the second-rate citizenship of lesbians and gays.

State-regulated heteronormativity on trial

In all European countries the welfare state takes on a leading role in sustaining heteronormativity (Bell 1998; Waaldijk and Clapham 1993). Legislation, usually characterized by inertia, tends to preserve the dominant notion of family and of the legitimate sexuality, which is heterosexual (Bourdieu 1999; Foucault 1976).

In the Scandinavian welfare states, the legal framework, regulating kinship and family ties, has been liberalized to legitimize some new family and cohabitation forms, including consensual unions and same-sex relationships, during the latest decades.[4] Striking gaps appear, however, between legal reforms and the emergence of new family forms and sexualized identities. The heterosexual norm becomes increasingly precarious, when challenged by transformative forces in- and outside the scientific field in the late modern period. The following dynamic forces seem crucial. First, a constitutive feature of late modernity is an increased proliferation and pluralization of family and cohabitation arrangements. Modernization processes give rise to a continuous differentiation of family

practices and imply a detraditionalization, tending to transform the norms, which regulate the formation of couples, sexuality, reproduction and parenthood (Beck 1986; Beck-Gernsheim 1999; Brandt and Moxnes 1996; Dencik 1996). Second, state-regulated heteronormativity has come under pressure from the new sexual movements of the 70s, especially the lesbian/gay movement (Evans 1993; Weeks 1995, 1999). Through the politicization of sexual identities, the lesbian/gay movement laid claim to the transformation of the prevailing regime of sexuality as well as to recognition and citizenship rights.

When considering the scientific field per se, the third challenge derived from the explosive development of reproductive technologies. These technologies have not only made possible a denaturalization of the sexual, but also an additional multiplicity of family relations by separating genetic, biological and social parenthood (Conradsen 1994). The growing body of family research, inspired by constructivist approaches, constitutes the fourth challenge. This vein of re-search questions the notion of the universality and naturalness of the heterosexual nuclear family by pointing to its historical and cultural specificity (Hunter 1995b; Shorter 1975). Put together, these forces tend to erode the normative foundation of the heterosexual nuclear family, still preserved within family laws.

Theorizing family legislation, sexuality and gender

My framework for understanding the relationship between sexuality, gender and family legislation is based on three theoretical perspectives. They are employed complementary to redress the shortcomings of one another. A poststructuralist gender and queer perspective helps in deconstructing discour-ses denaturalizing heterosexuality and the heterosexual nuclear family.[5] Paying little attention to the institutional embeddedness of norms and discourses, this perspective needs to be supplemented with an institutional approach à la Foucault's, highlighting the role of the welfare state as one of the main enforcers of normative heterosexuality. Whereas both approaches refuse, at least explicitly, to set up norms, distinguishing between legitimate and illegitimate forms of coercion and oppression, the third perspective, drawing on theories of justice, adds this normative dimension.

A Foucauldian perspective on the welfare state

My understanding of the welfare state is inspired by the French philosopher Michel Foucault, especially his notion of modern biopower and his arguments about the subtle connections between social rights and social control and discipline. Foucault claims that the way of governing society has changed dramatically since the seventeenth century, during which a new kind of power, "biopower", emerged (Foucault 1976 p. 174f; 1980 p. 104). Biopower is aimed

at increasing and optimizing the living forces of both the individual and the whole population. The state and later on the welfare state replaced the sovereign leader, when political power was democratized during the 18th and 19th centuries (Foucault 1982, 1991a). The welfare state governs through an expanding administrative apparatus combined with specific practices of knowledge, penetrating deeper and deeper into society and subjugating its citizens to discipline, aiming at normalisation by distinguishing between the normal and the abnormal (Foucault 1994).

With the development of the welfare state, the negative rights of liberty, guarding the citizens against the power of the state, are being supplemented with the positive ones, i.e. social rights. The ability of the welfare state to penetrate ever deeper into its citizens emerges simultaneously with the development of social citizenship (Foucault 1980 p. 106; 1991a p. 106ff). The entitlement of social rights contains more precisely a doubleness: Whereas the citizen through the assignment of social rights is guaranteed a minimum of social and economic welfare, it also implies a subjugation to social control and discipline. To be integrated into society, one has to fit into the categories and conform to the norms of the social-welfare system and hence fulfil certain criteria to be allocated services and benefits. Social policy implies both inclusion and exclusion, or both an element of entitlement and restriction in regard to citizenship rights (Gorham 1995 p. 27f). From this Foucauldian perspective, it may be argued, that the norms, in particular the norm of procreative heterosexuality (Foucault 1976 p. 104-5), institutionalized in family policies and laws, function as the welfare state's tools of social control and discipline in the service of normalisation.

A poststructuralist gender and queer perspective

Poststructuralist gender and queer theory, especially the works of the American philosopher Judith Butler (1990, 1993, 1997) and the American sociologist Steven Seidman (1996, 1997), provide the second perspective. Whereas poststructuralist gender theory focuses on the discursive constructions of sex and gender, queer theory takes heterosexuality as its subject matter. The notion of heterosexuality as being natural and universal is contested. Instead heterosexuality is regarded as a constructed category of knowledge, having emerged as a result of specific historical, social and cultural conditions, and being interdependent of (the category of) homosexuality (Butler 1997; Kulick 1996; Seidman 1997)[6].

Poststructuralist gender and queer theory advance a strong anti-essentialism, implying that sex, gender and sexual desire are not essential entities, but rather constructions, having been installed in the subjects through discourses. Notions of femininity and masculinity and likewise heterosexuality and homosexuality

as being natural identities are regarded as the (power-) effects of discourses, through which they are naturalized. Naturalization implies not only that the power in play in establishing and ordering social categories is rendered invisible, but also that what is assumed to be the order of things is represented as ahistorical. Taking this argument a step further, poststructuralist gender and queer theory claims that the articulation of gender, understood as a natural difference between women and men is only made intelligible within a discourse regulated by hetero-normativity (Butler 1990 p. 17). This discourse makes gender intelligible as two distinct categories and establishes compulsory lines of coherence between sex, gender and sexual desire. The basis of the opposition between the categories as well as their internal stability is found in the norm of heterosexuality.

The general aim of these approaches is to place into doubt those representations of gender and sexuality, which seem so evident, familiar or natural that they are not even considered (Stormhøj 2001, 2003). The "un-doing" of naturalized representations is performed through combining a constructivist perspective with a deconstructive one. The former is directed towards the denaturalization of evident categories (McIlvenny 2001 p. 1), whereas the latter, in particular, aims at challenging hierarchical oppositions, especially the man-woman and the hetero-homo ones. Deconstruction points out the ways that the former term is privileged by the negation of its constitutive dependence on the latter excluded as a treating "otherness" (Dyrberg et al. 2000 p. 322; Stormhøj 2001 p. 67). In this way, the arbitrary character of the hierarchy is stressed by turning it upside down.

Applying poststructuralist gender and queer theory to representations of family implies to make "queer" what appears to be givens (Seidman 1997 p. 1). "Un-doing" the so-called "natural" family entails denaturalizing it, implying dissolving its assumed biological coherence into its constitutive elements: heterosexual passion, procreative sex and care for children. It means to regard the formation of the heterosexual nuclear family as socially regulated through specific norms, prescribing the proper choice of partner, the proper way of being sexual, the proper way to procreate as well as the proper way of being a mother or a father. Employing deconstruction, the arbitrary hierarchy between the heterosexual nuclear family and all other family forms, supported by cross-references to other dichotomies, especially natural-unnatural and normal-abnormal, may be contested.

The injustice of heteronormativity

My third approach is informed by recent feminist theories of justice, in particular the theories of the American political scientists Nancy Fraser (1997, 2000) and Iris Marion Young (1990, 1996). Both emphasize that a comprehensive theory of justice should include both distributive and cultural/normative issues, because

neither of them are reducible to one another. Justice requires both redistribution and recognition (Fraser 1997 p. 13f; Young 1996 p. 257). The injuries some groups are affected by may be conceived exclusively in distributive terms. However, the injustices related to sexuality, family and reproduction, raised as public issues by feminist and sexual politics, cannot adequately be dealt with as matters of distributive inequalities (Young 1996 p. 255).[7] Rather they ought to be conceived in cultural terms as matters of symbolic domination, nonrecognition and disrespect (Fraser 1997 p. 18).

When considering the case of lesbians and gays, the origins of injustices they are affected by lie in regimes of gender and sexual practices and patterns of representations associated with these practices. While suffering from heterosexism and homophobia, these injuries do not only take on symbolic forms. Rather, because heteronormativity is institutionalized in, for example, family policies and laws, the effects are material as well (Fraser 2000 p. 110; Young 1996 p. 257ff). The misrecognition of non-heterosexuals is intertwined with distributive injustice. The privileging of normative heterosexuality generates and systematically sustains inequalities between heterosexuals and non-heterosexuals in regard to for instance access to parental leave, adoption, and assisted reproduction.

Remedying the injustices lesbians and gays suffer from heteronormativity requires changing institutional structures, in this case reforming family laws (Fraser 2000 p. 110ff; Young 1996 p. 261f). Fraser suggests de-institutionalizing the norm of heterosexuality in family laws, decoupling entitlements to services and benefits from sexual orientation. Young goes one step further and proposes a radical rearticulation of the notion of family, transcending the norm of marriage and uncoupling the presupposed links between family and sexual intimacy. Family should be defined as follows: people living together and/or sharing resources which are necessary to the means of life; who are committed to caring for each other; who regard their living together as a long-term commitment; and who define themselves as a family (Young 1996 p. 262). The purpose is to create a just family policy based on pluralism. Family justice requires laws and policies that uncouple family ties and roles from regimes of sexuality, especially the couple-single and the hetero-homo binary divides, extending the privileges, which currently are restricted to heterosexual couples, to other kinds of relationships (Young 1996 p. 253).

Methodological reflections

In all Scandinavian countries access to medically monitored assisted reproduction is restricted to women living in stable heterosexual relationships/marriages, implying the exclusion of lesbians and single women.[8] In this article I employ the

Danish law passed by the Parliament in 1997 as a case study illustrating the institutionalization and privileging of heterosexuality by the welfare state. [9] Originally, the purpose of the law was to regulate and control the employment of new reproductive technologies, monitored by the medical professions (L5, 2.10.1996; Comments to the bill, addendum A (5)).[10] The prohibition against treating lesbians and single women was absent from the first bill, permitting every group access to assisted reproduction on equal terms. During the parliamentary debates, however, the prohibition was introduced as a proposed amendment and passed. At the same time an ensuing amendment proposing a revocation was rejected. Renegotiating the law in 2000, the Parliament maintained the prohibition.

The material for my investigation consists in texts, including bills, official reports of parliamentary proceedings, the law and comments on the law. [11] Whereas the text of the law and the related comments expose the discourse, which the Parliament has agreed upon to refer to – what may be described as the hegemonic discourse – the debates from the Parliament manifest different and competing discourses, which the MP's refer to in less sanctioned ways (Sørensen 2000: 106)[12]. Accordingly, the debates give access to the struggles between discourses.

One established strategy for doing discourse analysis does not exist. My strategies are inspired by the approaches of the political scientists Niels Andersen (1995a), Carol Bacchi (1999), Ernesto Laclau and Chantal Mouffe (1985), the queer theorists Judith Butler (1993), Paul McIlvenny (2001) and Steven Seidman (1997) besides Michel Foucault's approach (1982, 1991b). Developing strategies of analysis from their guidelines implies focusing on:
– representations
– struggles, concerns and ideals
– contradictions
– practices of naturalization, and
– relations between the said and the unsaid.

In the first step of analysis, I attempt to identify the struggling discourses by looking at the ways the problem is represented. Whereas Bacchi (1999 p.4) suggests that problem-representations reflect concerns, Andersen (1995a p.258) advances the idea that they expose threatened ideals. However, I will argue that concerns and ideals constitute interrelated phenomena within a problem-re-presentation, insofar as concerns reflect threatened ideals at a deeper level. Moreover, Andersen proposes that ideals structure discourses, functioning as their evident points of self-referentiality (1995a p. 262-63). Ideals constitute the basis of discourses. Accordingly, the first step of analysis concerns identifying such concerns and structuring ideals.

In the next step, I will focus on representations of procreation and infertility, successively gender and sexuality. I employ a twofold strategy of analysis. The first strategy approaches categories as constructed categories of knowledge by employing a constructivist perspective. It concerns describing the ways objects and subjects are constituted in discourse by raising questions such as: What is defined as natural and unnatural procreation within competing discourses? How is infertility represented? How are women and men, and correspondingly hetero-sexuals and homosexuals represented in relation to parenthood? Which subjects are articulated as respectively normal and abnormal? Which subjects are articulated as legitimately and illegitimately childless/infertile? Who is represented as a proper and responsible parent? Subsequently, the analysis investigates the effects of representations, contradictions and relations between the said and the unsaid within discourses, by asking questions such as: Which norms are sustained or contested through processes of in- and exclusion, and likewise through relations between the said and the unsaid? Who is to benefit from these norms, and whom do they disadvantage?

The second strategy employs deconstruction. On the basis of hierarchical oppositions, being constructed through processes of in- and exclusion, the analysis attempts to denaturalize such asymmetries.

Concerns and structuring ideals

In examining the debates two main discourses may be identified, each structured around a specific political ideal. In the first discourse, employed by the adherents of the prohibition, the problem is represented as one of moral concern for children born and raised without a father. "The child's interest", it is argued, consists of having both a father and a mother (FT, 1996-97, column 6351; 1999-2000-L183, 1. reading 2.3.00, p. 4; 2. reading 18.5.00, p. 24).[13] The underlying ideal threatened by fatherless families (either the genetic and/or social father) is that of the heterosexual nuclear family. Moreover, hetero-normativity permeates this discourse and is sustained through practices of naturalization. "The couple" is always assumed to be heterosexual, and it is implied, when referring to women and men that they are heterosexual. Only deviations from the norm are articulated explicitly as in the case of "lesbians" and "gays" (FT 1996-97, column 6353).

As opposed to this discourse, the second one, advanced by those resisting the prohibition, defines the problem as one of concern for the rights of liberty of the individual citizen. The arguments stress to different degrees both the right to be different and the right to privacy. The negative as well as the positive rights of liberty are emphasized. The argument holds that the law should reflect the actual diversity of family forms, allowing every woman the access to assisted

reproduction (FT 1996-97, column 7807-08; 1999-2000-L183, 1. reading 2.3.00, p. 5-6). It would imply equality in regard to the positive rights of liberty. Another argument stresses the right to privacy, implying that the issue of procreation is not a legitimate area of state regulation (FT 1996-97, column 6367). Hence, the negative rights of liberty are being defended. The ideal, which structures this second discourse, is that of the autonomy of the individual citizen. Contrary to the discourse of the adherents, representations of "women", "men" and "couples" do not rest on the norm of heterosexuality. The taken-for-grantedness of heterosexuality is disrupted by employing terms like "partners" in describing relationships between women, men and between women and men (FT 1996-97, column 6381).

According to a study by the Danish political scientist Erik Aalbæk (1998), the legitimate way of arguing the pros and cons of the political sanction of homosexuality employs a liberal rhetoric of rights based on social justice. [14] Whereas it is impossible explicitly to express a disgust of homosexuality, Aalbæk suggests that the adherents of the prohibition succeed in sustaining the ideal of the heterosexual nuclear family by articulating "the right of the child" as that of having a father and a mother. Because the concern is a matter of the unborn child's rights, the state is responsible of defining those rights. Consequently, intervening into what is considered as a private matter within the logic of libe-ral discourse can be legitimized according to the adherents. Sustaining the ideal of the heterosexual nuclear family is also accomplished by reference to what is (represented to be) "natural" and "normal" with regard to procreation, and to the ways infertility are constructed.

Reproduction of children:
Sustaining or contesting heteronormativity

In defending restricting access to medically monitored assisted reproduction to heterosexual couples, the adherents employ a number of arguments nested within each other. Assisted reproduction, defined as "artificial insemination", is articulated as a substitution for intercourse, represented as "the natural outcome of love" or "the natural or normal way" of reproducing children (FT 1996-97, column 6371). Moreover, it is argued that "the natural order of things" is used for a model for social regulation of assisted reproduction: the social order is to reflect the natural one (FT 1996-97, column 6376). In addition, "artificial insemination" is represented as a remedy, aiming at compensating only for infertility caused by illnesses either of the man or the woman (1999-2000-L183, 2. reading, p. 10-11).

The effects of these representations are several. A hierarchical opposition between what is assumed to be "natural" and "artificial" is created, privileging

the former and discarding the latter as only the second best. However, what is left unsaid, is to whom this distinction between the "natural" and the "artificial" is relevant? Is it, for instance, as relevant to a lesbian woman as to a heterosexual one? Maybe, the opposite is the case in regard to lesbians? The very construction of the distinction indicates an underlying logic, structured by the norm of heterosexuality. In addition, a contradiction is produced: the adherents generate on the one hand the opposition between "natural" and "artificial" procreation, and on the other hand articulate the latter as a substitute for the former. The described "unnaturalness" of assisted reproduction is at odds with the represented "naturalness" of the institution of the heterosexual family, which these techniques are meant to perpetuate (Sourbut 1996). The contradiction is in itself unresolvable. A second consequence consists in installing heterosexuality as the norm, regulating access to assisted reproduction by way of naturalizing it. As a result, lesbian women are denied access to treatment. By "nature" they lack the prerequisites to procreate. Thirdly, articulating treatment with "artificial insemination" as a compensation for infertility caused by illness also results in the exclusion of lesbians (Aalbæk 1998). Because the childlessness of lesbians is not caused by illness, they are not in need of treatment. Rather, their childlessness is represented as a product of their own choice of life style (1999-2000-L183, 2. reading, p. 11). Accordingly, an opposition between undeserved and self-elected childlessness is constructed and employed in the service of justifying the designation of citizens in need of treatment. What, among other things, remains silent is that the childlessness of a heterosexual couple is not necessarily due to illnesses, resulting in infertility, but may be related to a incompatibility between their gametes (Sourbut 1996). While being fertile separately, they are unable to procreate together.

In the discourse of the adversaries of prohibiting lesbians (and single women) the access to assisted reproduction, the privilege of normative heterosexuality is contested. The very hierarchical opposition between heterosexual families and all other family forms is placed into doubt by re-articulating the latter as just as legitimate, normal, and healthy as the former (FT 1996-97, column 1117; 1997-98-L61; 1999-2000-L183, 2. reading, p. 9). In addition, the definition of the interest of the child as that of growing up with both a father and a mother is questioned. It rests on highly private morals, which, it is argued, have to be kept separate from the definition of what may be described as a "common good" (FT 1996-97, column 7820). Expressing a particular point of view, that of heterosexuality, being disguised as universal (*The* interest of the child), the definition is regarded as illegitimate. The re-articulation of the child's interest is based on a decoupling of parenthood from sexual orientation (1999-2000-L183, 1. reading, p. 7). Since it is based on the ideal of the rights of

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liberty of the individual citizen, the prohibition is represented as a violation of these rights. It discriminates against lesbians and single women by denying them equal access to the welfare service of assisted reproduction.

The threat of fatherless families
and the "do-it-yourself-child" discourse

The very articulation of the interest of the child as consisting in the presence of both a father and a mother presupposes that living in a family based on a heterosexual relationship by definition endows parenthood with unquestionable qualities. As opposed to this, both single and lesbian mothers are discarded in advance as proper parents owing especially to the lack of a father. The discourse, structured around the ideal of the heterosexual family, privileges the position of the father, implying that his absence renders a woman's desire to have a child illegitimate (Bryld and Lykke 2000). Consequently, a hierarchical opposition between families encompassing a father and fatherless families is constructed, privileging the former and subordinating the latter. Moreover, this binary divide generates other oppositions, primarily the opposition between responsible and irresponsible mothers (Bryld & Lykke 2000).

Women preferring anonymous sperm donors, because they do not want to engage in heterosexual sex to become pregnant, to have a father to the child or are unable to provide one, are articulated as irresponsible. Contrary, women choosing to have fathers are represented as responsible (FT 1996-97, column 6353, 7813). Sole mother(s) families are seen as a threat to the "natural" family. Hence, denying lesbians and single women access to medically monitored assisted reproduction is legitimatized pleading that it prevents the creation of a father-less society (1999-2000-L183, 3. reading, p. 3).

In accordance with the privileging of the position of the father, fathers are articulated as imagined well within the discourse of the adherents. Even when the father is reduced to "a stain of sperm" as in the case of anonymous dona-tion, his position is articulated as important. He is the imagined good, who should be the source of "longing and dreams" (FT 1996-97, column 248, 6353). The high value attached to the position of the father, regardless of his real contribution to the well-being of the child, is opposed to the low value, the rendering invisible or even devaluation of the care work, which mothers preferring no father to their children are the providers of. This opposition reflects and sustains the socially unequal valuation of the two sexes.

Being denied access to medically monitored assisted reproduction at private clinics and within the public health care-system, lesbians have found their own ways of having children. Within the lesbian/gay communities in Denmark (as well as in other Western countries), a counter-discourse has emerged during

the last 20 years. It may be coined as "do-it-yourself-child" discourse. By means of private arrangements within the communities a range of new family forms has arisen, including single parents, lesbian couples, and families including a known father. As part of the self-organized reproduction practices, a lesbian midwife has set up her own private clinic, offering every women, regardless of sexual orientation, access to assisted reproduction for money and using sperm from anonymous donors. These reproduction and family practices are known to the wider public.

Renegotiating the prohibition in 2000, part of the Political Right tried to tighten up the law to stop even these self-organized activities, especially the initiative of the midwife. Although the attempt failed, the issue of lesbian/gay families became a central concern during the debates. The distinction between fatherless and father encompassing families was once again employed in discriminating between acceptable and unacceptable families. While maintaining the prohibition, the most "liberal" among the adherents recognize that lesbians (and single women) have children by means of self-organized practices, insofar that they provide a father. Women, choosing what may be regarded as a copying or imitation of the ideal of the heterosexual family and providing the child with a known/social father, are articulated as acceptable, although not respectable mothers. They are opposed to those women, using anonymous sperm donation, who are represented as unfit (FT 1996-97, column 6380; 1999-2000-L183, 2. reading, p. 10). The latter are penalized and stigmatized for violating the ideal, while the former, iterating the logic of heteronormativity, may be tolerated. Correspondingly, gay men choosing to take up the position of social father within private arrangement with lesbians are represented as responsible (FT 1996-97, column 6380; 1999-2000-L183, 2. reading, p. 9).

Though the adherents of the prohibition are aware of being unable to prevent single women and lesbians from having children, the prohibition, nevertheless, limits the de-institutionalization of the norm of heterosexuality within family law, which seems to be the crucial point. Wrapped up in liberal rhetoric of the right of the child to have both a father and a mother, or articulated more directly as an attempt of slowing down the proliferation of new family forms, transcending the heterosexual norm (FT 1996-97, column 7808-09), legislative power seeks to sustain the ideal of the heterosexual family.

The ambiguity of the Scandinavian
welfare states vis-à-vis homosexuals

The Scandinavian welfare states are far from neutral towards sexuality. Compared with heterosexuals, homosexuals are denied legal rights to marriage, adoption and assisted reproduction.[15] The right to adoption of stepchildren as well as the

access to parental leave for both partners within a same-sex relationship are restricted or absent.

However, the relationship between the welfare state and homosexuals is ambiguous. A similar ambiguity is stressed by feminist research in regard to the relationship between the state and women (Siim 1998). Analyses illuminate two contradictory faces of the welfare state in relation to homosexuality. On the one hand an oppressive face, characterized by familiarism, paternalism and patriarchal power relations, and on the other hand a permissive face protecting homosexual ways of living, including a gradual decriminalization and likewise legalization of homosexuality (Aalbæk 1998; Holmberg 1993; Kristiansen and Moseng 1999; Søland 1998).

During the latest decade the adoption of the heterosexual norm in family laws may best be described as ripe with ambiguities and contradictions. The familiarism, gender fundamentalism and heterosexism of the Political Right is increasingly met with opposition especially from leftwing politicians stressing the need for reforms in accordance with late modern changes in everyday family practices. In all Scandinavian countries the Parliaments have sanctioned same-sex relationships. At the same time, a limit to the de-heterosexualization of the family has been fixed. The Parliament refuses to sanction lesbian/gay families created by medically monitored assisted reproduction at public hospitals and/or private clinics. Drawing the line at the family may indicate that the welfare state attempts to contain the transgressive potential implicit in the very existence of reproductive technologies as well as in the rise of single-parents and other family forms, which are not based on a heterosexual relationship (Sourbut 1996). A too extensive de-institutionalization of the norm of heterosexuality would threaten the basis of the notion of the heterosexual marriage as not only a natural institution, but also as the natural frame for having children (Holmberg 1993; Hunter 1995a). Recognizing any kind of queerness within family ties would destabilize the family as an essential order-maintaining institution, functioning as a main enforcer of sexual norms (Hunter 1995b).

Struggles for citizenship rights

For more than fifty years, citizenship rights claims have constituted a persistent battleground between lesbians/gays and the welfare state (Evans 1993). At present there is no agreement about how to reach a non-sexualized citizenship based on equality between heterosexuals and homosexuals neither within academic theory nor among political activists. Broadly speaking, one can distinguish between two kinds of remedies for heterosexism, each associated with a specific strategy and a specific kind of politics. Lesbian/gay organizations, understanding homosexuals as a minority group, suggest affirmative remedies

for heterosexism. They pursue identity-based politics, aiming at revaluing lesbian and gay identity. By treating homosexuality as a cultural positivity assumed to subsist in and of itself, they claim recognition. Heading for inclusion by means of assimilation, these organizations appeal to liberal tolerance and rights of privacy and formal equality (Duggan, 1995a p. 158; Fraser 1997 p. 23; Weeks 1999 p. 36). While the liberal assimilationism has been successful, as the Scandinavian welfare states have conceded lesbians and gays still more citizenship rights, this political approach has shortcomings too. The claims for recognition tends to cement group differentiation and reinforce the hetero-homo binary divide. However, the most serious disadvantage of assimilitionism is that it reconfirms the ways of living, structured by heteronormativity, through claims to equality.[16]

The second kind of remedy for heterosexism is transformative, aiming at changing the underlying normative structure of society. It is informed by deconstruction and associated with queer politics (Duggan 1995a p. 167; Fraser 1997 p. 24). Like the new visions of democratic citizenship based on a pluralist citizenship, aiming at, among other things, uncoupling social rights from the division in heterosexuals and non-heterosexuals (Mouffe 1992; Phillips 1992, 1993), queer politics tends to destabilize existing sexual groups through confrontations and challenges and by deconstructing the hetero-homo binary divide. The aim is not a monolithic human identity (a new false and totalitarian universalism), but rather a more fluid sexual field, in which plural, de-dichotomized and shifting differences may co-exist (Fraser 1997 p. 24). Concerning family law, the proposal put forward by Young (1996), having been outlined in a previous section of this article, would be in line with the spirit of queer politics. To create just family law based on family pluralism, the heterosexual conception of family has to be abolished and replaced by a new definition that is neutral towards sexual status.

When considering contemporary rhetoric, permeating political arenas from social movements to Parliaments in the Scandinavian countries, liberal discourse and the rhetoric of rights dominate even leftwing circles.[17] In such a situation lesbian/gay assimilationism makes the best progress in relation to citizenship rights claims, as claimed by Duggan (1995a). Queer politics, contesting the core concepts and strategies of lesbian/gay assimilationism, may at best function as a critical voice, pointing out the possibilities for radical change in a future yet unforeseeable.

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Notes

[1] The critiques also apply to citizenship models of other Western welfare regimes besides the Scandinavian one.

[2] Examining the social constructions of family, this research presupposes that sexuality is tantamount to heterosexuality insofar that no references are given to other sexualities. The hetero-homo opposition, structuring not only erotic desire, but also family arrangements and practices, is absent within these constructions. Women and men, represented as mothers and fathers within various family categories, seem by definition to be heterosexual. This implies that family forms, which might not be based on heterosexuality, are excluded and/or silenced by being rendered invisible.

[3] A discourse may be defined as a horizon of intelligibility, which delineates what is possible, what can be said and done and the reverse, what remains not only unsaid, but also unsayable and impossible to do (McIlvenny 2001: 1; Norval 1996: 4). By political discourse I understand a particular kind of discourse, that represents an issue as a political problem, and which defines its causes, its solutions and the legitimate ways of arguing (Bacchi 1999; Andersen 1995a, 1995b).

[4] Intra-European comparisons show that the Scandinavian states gave the lead in introducing more liberal laws and practices, focusing on equality issues and the rights of individuals rather than the family unit (cf. Hantrais and Letablier, 1996). At the latest, homosexuals have been allowed to adopt children from foreign countries in Sweden. This point to yet another step in promoting equality between hetero- and homosexuals. As I completed this paper before the law was passed, I have not taken it into further consideration.

[5] Poststructuralism does not constitute a coherent theoretical position, but rather a philosophical field of ideas, consisting in heterogeneous discourses and strategies of analysis. Having been developed mainly within philosophy, psychoanalysis and linguistics, these ideas are in particular connected with the French philosophers Michel Foucault and Jacques Derrida and likewise the French psychoanalyst Jacques Lacan. Broadly speaking, poststructuralism raises epistemological questions and investigates the coming into existence of "facts" within historical specific discourses. For a further elaboration cf. Stormhøj 2000, 2001 & 2003.

[6] For a fuller elaboration cf. Stormhøj 2003.

[7] See also Young (1990) for an extensive critique of the distributive paradigm.

[8] Lagen om insemination SFS 1984: 1140 (Swedish law); Lov om kunstig befrugtning, 1997: 460 (Danish law); Lov om medicinsk bruk av bioteknologi, 1994: 56 (Norwegian law).

[9] The same arguments for excluding single women and lesbians from treatment are in force in Sweden and Norway. Cf. also Tiby 1985.

[10] These treatments include genetic testing of fertilized eggs, treatment with donated eggs, storage of human eggs, and the implementation of human eggs outside the uterus.

[11] The source material of the debates from 1996-97 originates in "Folketingstidende" (FT), whereas the material from 1997-98 and 1999-2000 has been downloaded from the homepage of the Folketing (http://www.folketing.dk).

[12] As the issue of assisted reproduction was regarded as an ethical one, the MP's were detached from the authority of their parties. Accordingly, the traditional distinction between right and left wing was to some extent blurred. For analytical purposes here, however, the familiarism, paternalism and gender fundamentalism, articulated by the hard core of MP's supporting the prohibition, may ideal-typically be associated with right wing attitudes (the Political Right). Contrary to this, the MP's, opposing the prohibition, advocated values such as minority rights, anti-discrimination and

equity between sexual groups, which ideal-typically may be associated with left wing points of view.

[13] Throughout these arguments an interchange between "interest", "well-being" and "right" occurs. Apparently, they are employed synonymously.

[14] The study is concerned with both the law of same-sex relationship and assisted reproduction.

[15] Cf. Note 4 for the latest change in regard to adoption of children from abroad in Sweden.

[16] Cf. Brown (1995) for a similar critique.

[17] Cf. the liberal rhetorics of the leftwing MP's, opposing the prohibition against treating lesbians and single women.

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