THE QUEER-FRIENDLY DANISH WELFARE STATE? ON HETERONORMATIVITY¹ AND INSTITUTIONALIZED, RESTRICTED RECOGNITION

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Presented at Gender and Power in the New Europe, the 5th European Feminist Research Conference
August 20-24, 2003 Lund University, Sweden

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Introduction

Some people are morally offended by the suggestion that they should treat someone who is not kin as if he were a brother, or a nigger as if he were white, or a queer as if he were normal (...). They are offended by the suggestion that they treat people whom they do not think of as human as if they were human.

- Richard Rorty, Human Rights, Rationality, and Sentimentality

Citizen and citizenship are powerful words. They speak of respect, of rights, of dignity.

- Nancy Fraser and Linda Gordon, Contract versus Charity

Denmark is often viewed as a progressive and liberal country in regard to sexual politics, especially in relation to the treatment of lesbians and gays² by scholars from the outside. However, "insiders" strongly disagree about the queer-friendliness of the Danish welfare state and hence about the citizenship status of lesbians and gays. These disagreements divide scholars into two broad trends.

The first trend, represented by Bech (2002), emphasises that socio-cultural differences in ways of living between lesbians and gays respectively heterosexuals are vanishing, and that lesbians and gay men have attained almost equality with heterosexuals concerning civil rights. The decriminalization of homosexuality has been succeeded by a legalization of same-sex relationships during the latest three decades. As the first country in the world, Denmark already passed a law on registered partnership in 1989. Ten years later registered partners were even allowed to adopt each other's children. Besides, opinion polls seem to indicate an increase in social acceptance of homosexuality during the latest 25 years (Bech 2002: 63). The particular broad-mindedness of the Danish population as well as the responsibility of the Danish welfare state vis-à-vis its citizens³ may explain the extensive legal equality of lesbians and gays. However, this rather rose-colored picture of the queer-friendly Danish welfare state seems but one half of the story.

Scholars, rooted within the second trend, among these Albæk (1998), Stormhøj (2002), Soland (1998) and Ussing (2002), paint a somewhat more gloomy and muddy picture, stressing the ambiguity of the welfare state vis-à-vis lesbians and gays. As a result, exclusions of lesbians and gays at certain points co-exist with inclusions at other sites. Scholars point to institutional, structural and cultural barriers for full inclusion and equality of lesbians and gays in society. They include unequal power relations between homosexuals and heterosexuals; the privileging of heterosexual ways of living, sustained by the state under the disguise of neutrality in regard to visions of the good life and by way of the distinction between private and public; and cultural norms based on gender fundamentalism, heterosexism and familiarism, that stigmatize and depreciate lesbians and gays. Due to these barriers homosexuals are marginalized and only assigned a second-class citizenship.
Since the mid 1980's, the main criterion of success when evaluating the integration of lesbians and gays in society has been formal equality with heterosexuals. However, the equation of citizenship status with formal equality seems profoundly problematic. The complexity and plurality of claims to citizenship, raised by lesbians and gays, are reduced to simple matters of equality and formal rights.

The main concern of this paper is to contribute to a theoretical turn, focusing upon the issues of recognition, participation and social justice in citizenship studies concerned with, in particular, the welfare state's regulation of citizens' sexualities. The paper enquires for the analytical gains of this turn for normative, social research on sexual citizenship.

The turn I am going to outline, although only provisionally and in an explorative way in this paper, is incited by a number of questions, emerging as a result of what I regard as fruitful traffics between theories of recognition, theories of citizenship, and finally theories of justice. The questions are:

- What is the role of recognition in citizenship?
- How are we to understand recognition analytically?
- How are we to characterize current sexual value patterns relayed through political institutions?
- And finally, do these sexual value patterns promote or prevent status equality between homosexuals and heterosexuals?

The aim of the paper is not to propose a 'grand synthesis' premised on an "Aufhebung" of undeniable differences concerning both the object domains of the theories and their particular conceptual genealogies and philosophical roots. Rather, the object is critically to promote reformulations of various theoretical discourses by exploring ways to link different questions and concepts.

Research on the Danish law, concerning family and reproduction issues, including the law on registered partnership (1989), the law on adoption of stepchildren (1999), law on assisted reproduction (1997), and the law on parental leave (2002), will be used as empirical illustrations. Studying the law represents one way of ascertaining the social status of a particular group of persons.

**Citizenship and recognition**

*Citizenship: Concepts, problems and revitalization*

'Citizenship' is an essentially contested term, used both as an empirical, analytical and normative concept. Analytically citizenship refers to membership and participation in a political community and to individual rights and duties (Marshall 1964; Phelan 2001; Siim 2000). Different interpretations of citizenship highlight the key elements of citizenship differently. Still, none of these are dispensable. Scholars in political science tend to underscore citizenship as a political practice and a legal status of state membership, whereas scholars, framing citizenship from a sociological perspective, emphasize, in particular, the institutionalization of civil and social rights (Phelan 2001: 11; Siim 2002: 13).

Cutting across these disciplinary borderlines, citizenship, articulated as a normative concept, points to the equal rights of all members of a society to be accepted and included in the community and to participate in social life and public affairs as equals (Marshall 1964: 84; Phelan 2001: 15; Weeks 1998: 39). The normative concept of citizenship is per se inclusionary and universalistic. The assignment with the status of citizenship implies not only the entitlement to rights, but also some sort of empowerment, as it enables citizens to influence politics and political institutions through participating in deliberation and decision making (Phelan 2001; Pocock 1998; Young 1990).

However, throughout the long history of citizenship in the European civilization, the empowerment of citizenship has always been connected with the exclusion of those regarded as outside the
polity or undeserving of membership, such as slaves, criminals, the lower classes, women, children etc. (Lister 1997: 66f. Phelan 2001: 11; Pocock 1998: 34f.). This dynamic of inclusion, membership and empowerment on the one hand and exclusion, degrees of non-membership and disempowerment on the other still constitutes a profound problem in modern, liberal democracies (Kymlicka and Norman 2000). Interwoven with this dynamic is the tension between the cohesion of political communities and the rights to socio-cultural difference and diversity (Kymlicka and Norman 1990). The stronger the assumed bond between citizens, the greater the need for exclusion or excommunication to maintain cohesion and unity (Phelan 2001: 12).

Scholars have highlighted the systematic, rather than accidental ways in which racial and ethnic groups as well as women historically have been excluded from the theory and practice of citizenship (Anthias and Yuval-Davis 1992; Jones 1997; Lister 1997; Stychin 1998). They have pointed to a deep 'epistemological deficit' harboring mainstream theories (Benhabib 1992: 13), through which the seemingly neutral and unmarked concept of citizenship was and is profoundly not only gendered, but also racialized and ethnicified (Lister 1997: 69; Stychin 1998: 15). Exposing what has been coined a 'false universalism' at the root of the concept of citizenship, scholars argue that the post-enlightenment, ideal citizen is a construct marked as male and white, and understood as a disembodied, abstract and rational being.

In recent years, citizenship is brought to the forefront of attention in theoretical discourses, especially in political and social theory. There are several reasons for this rebirth. In the first place, theoretical attempts to rethink the concept of citizenship on the basis of, among other things, continuous tensions between inclusion and exclusion, and the dilemma between unity and diversity. The rethinking of citizenship is guided by visions of an inclusionary and democratic citizenship, which match up to the universal conception of citizenship. Second, marginalized groups, which until now have been assigned to different degrees of non-citizenship, increasingly raise claims for inclusion by means of various sorts of identity- and recognition politics (Shafir 1998; Siim 2000; van Steenberger 1994; Young 1990).

**Sexual citizenship**

Scholars within sexual theory have also recently contributed to the new effort to develop a more comprehensive concept of citizenship (Beger 2001; Evans 1993; Phelan 2001; Richardson 1998, 2000a & 2000b; Seidman 1997; Stychin 1998; Weeks 1998).

The notion of 'sexual citizenship', referring to "an index of the political space that needs to be developed" (Weeks 1998: 48), and describing the relationships between states and sexualized citizens, has been a guiding principle for sexual theoretical studies examining the nature of citizenship. It is a sensitizing, analytical concept, intended to remedy the limitations of earlier, mainstream theories of citizenship. It requires the accommodation of different analytical categories: class, race, gender, sexuality etc. and their intersections. Furthermore, it demands conceptualizing the impact of the hetero/homosexual binary divide and the institutionalization of heterosexuality on the theories as well as on the practices of citizenship. In addition, it draws attention to the question of equity and justice for lesbians and gays (Weeks 1998:39).

The concept of sexual citizenship serves several analytical purposes. In the first place, to sexualize (and de(hetero-) sexualize) theoretical frameworks of citizenship, which often tend to ignore or make sexuality invisible, due to a heteronormative, epistemological hegemony⁷, by confronting them with sexual theoretical approaches. Secondly, to examine the political government of sexuality within different citizenship traditions, embedded in national histories, institutions and cultures, and to analyze the impact on sexual citizens of this government. Thirdly, to analyze the practices of sexual politics and claims to citizenship, raised by lesbian and gay movements and organizations, and to examine their effects on the citizenship status of lesbians and gays.

By applying the concept of sexual citizenship to theories of citizenship, sexual theory has extended the critique of the false universalism, which, in an epistemological sense, is constitutive of these. The ideal citizen is not only male and white, but also heterosexual. The identification of the active role played by the welfare state in institutionalizing heteronormativity in policies, law and administrative procedures has been another gain of applying a framework of sexual citizenship to analysis of citizenship practices in different national contexts. New research emphasises, in addition, that sexual citizens, resisting or being unable to align themselves with heterosexuality, do not enjoy full citizenship rights in any state.
Instead, they are assigned to a second-class citizenship.

The concept of sexual citizenship raises new questions about the relationships between (welfare) states and sexualized citizens. They include the question whether and to which extent heterosexuality is a prerequisite to full citizenship (Phelan 2001), whether 'normalization' and imitation of heterosexual norms in regard to ways of living and behaving in general is to be understood as a duty, a burden the citizen has to take on to be assigned to rights in return (Richardson 1998; 2000b; Smith 1989). It also raises questions about the comprehensiveness of citizenship as an identity, and hence about tensions between the interests and 'general will' of the national political community and the autonomy of sexual groups, which contest hegemonic sexual norms. Besides, whether equality with heterosexuals, implying parity on heteronormative terms, which seems the predominant politics of inclusion, per se precludes equity and justice for lesbians and gays. In addition, insofar homosexuality makes a difference, how is it possible to integrate it into the universal concept of citizenship.

Recognition as the subtext of citizenship

In her book, *Sexual Strangers*, the political scientist, Shane Phelan ventures the idea, that recognition constitutes the core of citizenship (Phelan 2001: 3 & 5). By this she suggests that recognition is the very precondition of, or as I would prefer to express it, the subtext of citizenship, understood as a two-dimensional concept, referring both to citizenship as a status and as a political practice.

Within the framework of Phelan, the term recognition is used as a commonsensical concept rather than as an analytical one (2001:13). It holds different layers of meaning in relation to citizenship, and refers to: a) being seen and paid attention to by other citizens and/or the state; b) having knowledge of and respect for other citizens' rights, claims, status or dignity, and c) being equal with other citizens, when emerging into publicity (2001: 14-15).

In regard to the status dimension of citizenship, Phelan states, unfolding her notion of recognition, that access to rights presupposes that one is recognized as a member, that is as a citizen, by the state. Recognition implies the establishment of a particular relation between the state and individuals, expressed in the shape of legal recognition (2001: 16). Being recognized as a citizen implies being accepted and endorsed of rights. Phelan argues that citizenship status is the basic indicator of membership, and that whereas the specific rights and duties vary from state to state, being recognized as a member is a prerequisite to laying claim on any configuration of rights and duties.

Concerning the participatory dimension of citizenship, Phelan holds that one's engagement with and participation in the political community presupposes recognition of one's membership by others. While one may force others to notice oneself, one cannot claim membership without recognition (2001: 17). In this case, recognition means the development of a relation of political recognition (2001: 15). Political membership implies that one has a claim to be heard and responded to on equal terms with others (2001: 13-4). Thus, political membership is not reducible to the specific kinds of rights and duties accruing to citizens. Rather, it points beyond these to inclusion in public culture, entailing the entitlement to participate fully in the decision process of how rights are formed and executed, including the question of whom is eligible for them.

Though not using the concept of recognition, the British scholar in jurisprudence, Nicholas Bamforth (1997), presents a set of arguments about the concept of right that encompasses parallels with Phelan's way of thinking. Instead of speaking about failing recognition, Bamforth speaks about hostility, disrespect and disparaging attitudes. Developing a theory of lesbian and gay rights law, Bamforth points to the different layers of meaning, which are embodied in the concept of right. A right refers to a protected entitlement of some variety (1997: 66). Bamforth distinguishes between three senses: a narrow legal sense as expressed as a right protected by the law; a wider social sense, understood as a right which is accepted in society at large; and finally right in a moral sense, referring to common convictions and intuitions about the equal moral worth of human beings (1997: 67). The point I want to stress along with Bamforth concerns the relationships between these three senses of the concept of right. Legally to be entitled to a right normally presupposes that the claimant in question is socially accepted. At the same time, it also presupposes that the claimant is regarded as morally entitled to it. In other words, moral entitlement to equal respect and concern, or simply moral recognition, is a precondition to legal and social inclusion. I will return to Bamforth's theory later on in the paper.
In case lesbians and gays are to attain full citizenship it requires, according to Phelan, that sexual differences are recognized and integrated into the universal concept of citizenship. It demands, she states, that lesbians and gays are 'recognized not in spite of their unusual or minority characteristics, but with those characteristics, understood as part of a valid possibility for the conduct of life' (2001: 16). Besides, participating on equal terms in public affairs means that lesbians and gays are given the opportunities to be active co-constructors of their own public appearances (2001: 16). Public autonomy of lesbians and gays is a sine qua non for their ability to take part in deliberations and to influence decision processes.

To sum up, recognition encompasses both legal inclusion and formal rights, and simultaneously, an active integration of individuals and groups into the polity. Phelan’s approach contains unsurpassable, analytical gains by expanding the understanding of citizenship to include the issues of recognition and inclusion in public culture. Without recognition, or only with a restricted form of recognition, individuals are not equally counted as members of society. This implies a denial of access to existing privileges provided by legislative institutions to individuals, and at the same time, and perhaps even more important, impediments to full participation in public affairs. The concept of recognition can be used as a measure, evaluating "whether and how particular polities incorporate diversities (...), and how far that incorporation leads those polities to transform their dominant self-understanding" (Phelan 2001: 140).

Whereas Phelan ventures a powerful idea of recognition as the core of citizenship, her concept of recognition is poorly theoretically founded. A stronger analytical foundation is called for. Another shortcoming of Phelan’s approach, which is crucial to the subject-matter and leitmotif of this paper, is that she fails to establish a solid and valid basis, that is some normative standards, for justifying critique of those patterns of cultural values, embedded in political institutions, which are to the disadvantage of lesbians and gays. This shortcoming is due to the absence of a theory of justice.

**Recognition as a matter of justice**

The concept of recognition is contested, and it encompasses several dimensions, psychological, political and moral philosophical, turning it into a multi-layered concept. Those theories of recognition, which are developed by Charles Taylor (1994) and Axel Honneth (1996), connect the issue of recognition with questions of personal identity and the subject's 'practical relations-to-self'. Philosophically they align recognition with ethics, concerning matters of self-realization and 'the good life'. Unlike this position, the theories of recognition of Iris Marion Young (1990) and of Nancy Fraser (1997; 2000; 2001; 2002; 2003) align the question of recognition, in terms of philosophy, with the issue of justice. This alignment is due to (and defensible in light of) the highly systematic form, which misrecognition assumes in modern, Western societies, as misrecognition (as well as recognition) is grounded and relayed through social institutions, such as laws, policies, administrative procedures and social practices (Fraser 2000: 110; 2001: 26; 2002: 23). Misrecognition is regarded as a violation of justice, as it is understood as a form of oppression or subordination (Fraser 2001: 26; Young 1990: 48ff.) Young's and Fraser's contributions to theories of justice are remarkable, as both of them, although by means of different conceptual strategies and tools, develop two-dimensional theories of justice, encompassing both economic and cultural dimensions. Both their theories are empirically informed by present-day struggles for recognition, articulated by social movements and political actors of various sorts and expressed as 'folk paradigms of justice' (Fraser 2002: 6).

The focus of the present paper will, however, exclusively be on the contribution of Fraser. Within her theory of justice, 'participatory parity' constitutes the normative standard for warranting claims for recognition (and redistribution), and according to the subject-matter of this paper, for justifying critique of current patterns of cultural value of any political institution (2002: 26; 2003: 32). Although this standard is not universally accepted empirically, it is defensible in terms of moral philosophy. Its binding force is established through appeals to moral universalism, stating the equal moral worth of every human being. It may also be supported by a historical argument, holding that liberal norms of equal autonomy develops in the direction of participatory parity in modern, Western societies.

**Between Justice Interruptus (1997) and Rethinking Recognition (2000), Fraser develops a new conceptual strategy, locating recognition within a status model, rather than within an identity model (2000: 110).**
This shift is due to, among other things, the realization of the institutional nature of misrecognition, as it flows from 'institutional patterns of cultural value' (2000: 113). From the perspective of the status model, recognition concerns "the relative standing of social actors" and refers to "the status of group members as full partners in social interaction" (2000: 113). 'Reciprocal recognition and status equality' emerge in case such patterns constitute actors as peers capable of participating on a par with others in social life (2002: 23). Likewise, misrecognition is understood as 'an institutional relation of social subordination' and a violation of justice. It implies that one is being prevented from participating as a peer in social life. Misrecognition assumes different forms and refers to the patterned constitution of actors as 'inferior, excluded, wholly other, or simply invisible', that is as less than full partners in social interaction (2002: 23). Remedying any kind of misrecognition is a matter of overcoming subordination by way of deinstitutionalizing patterns of cultural value that impede participatory parity and replacing them with patterns that foster it (2000: 115).

Discussing the crucial question, whether justice requires the recognition of a) what is distinctive about individuals or groups, or of b) what we have in common as human beings, Fraser states, referring both to the idea of moral universalism and to pragmatic considerations, that there can not be any a priori solution to this question. Rather, the forms of misrecognition to be redressed should inform us about the forms of recognition justice requires. In other words, the remedy should be tailored to the particular nature of the harm, the specific context in which it emerges, and the mode in which misrecognition is institutionalized (2000: 155; 2002: 38). Hypothetically speaking, five possibilities emerge: a) the misrecognized party needs to be released from ascribed or constructed distinctiveness, b) the misrecognized party needs to have hitherto underacknowledged distinctiveness taken into account, c) the misrecognized party needs to shift the focus onto advantaged groups, realizing the latter's distinctiveness, which has been falsely disguised as universal, d) the misrecognized party needs to deconstruct the very terms in which attributed differences are currently elaborated, and e) the misrecognized party may need all these possibilities, or several of them joined together, or in combination with redistribution (2002: 40).

When considering the case of lesbians and gays from this Fraserian perspective of recognition-related justice, the group-related forms of misrecognition they suffer from, heterosexism and homophobia, result in status subordination, preventing them from participating in social life on equal terms with others. The misrecognition of lesbians and gays is intertwined with distributive injustice, as the heteronormative language of law, for example, implies the denial of access to full partnership rights, parental leave and assisted reproduction.

**Other normative standards for justice**

Parity of participation, premised on moral universalism, is but one of several possible principles of justification, used to judge the rightness or wrongness of political institutions. Moral universalism, which often is defended by liberals, is contested in moral and political philosophy. It is opposed to a communitarian position, advocating a moral relativism instead. Hence, communitarianism would reject 'participatory parity' as a universal standard, arguing that political judgment can only be a matter based on interpreting the traditions, in which we already are embedded (Kymlicka 1990).

In his book, *Sexuality, Morals and Justice* (1997), Nicholas Bamforth is concerned with the question of principled justifications for law reforms measures as they affect the status of lesbians and gays. Bamforth defends a third position between liberalism and communitarianism, premised on ideas of autonomy, empowerment and an inherent moral good in sexuality. Though Bamforth explicitly is concerned with the question of justice in distributive terms, in this case 'the proper distribution of entitlements between individuals or groups in society' (1997: 5), the cultural aspects of justice are crucial, if not entirely constitutive of his argument, in spite that they remain undertheorized as such. It is obvious from his investigations of current laws (criminal laws, anti-discrimination laws and laws regulating partnership and family issues), that the causes of the unequal distribution of, for example partnership and family rights, are rooted in social hostility and demeaning social labeling of lesbians and gays, embedded in these laws (1997: 22ff.). This clearly indicates that the sexual moral grammar of the language of laws constitutes a subtext of distributive justice. In Fraserian terms and in this particular case, it would amount to saying that distributive injustices are caused by misrecognition.

Bamforth's empowerment-based justification combines moral philosophical arguments about
(sexual) autonomy, originating in theories of justice, with political philosophical argument about the right exercise of state power, encompassed within a theory of political morality. The justification encompasses three elements: a) a notion of an intrinsic moral good in consenting human sexual behavior, b) a presumption in favour of liberty that militates against hostile laws in the absence of evidence that lesbian and gay sexuality entails some clear harm, and c) a particular understanding of the role of the state, based on the idea that the state is obliged to empower its citizens (1997: 258-64).

The first element is the assertion that sexuality is of decisive importance to human beings universally. Sexual autonomy is essential both as a means and as an end. Sexual activity and desire deeply affect the self-understanding and relations-to-self of most people, and sexual behavior often entails human interdependence of a unique sort. The implications of these claims are, according to Bamforth, that each person's understanding of their sexual identity and taste as well as their sexual expressions deserves respect in case, and only in case that the autonomy of other persons are respected. Nonconsenting sexual acts violate the principle of sexual autonomy, why they cannot be justified. Bamforth's notion of sexual autonomy is supported by a general idea of a moral entitlement to autonomy.

The second element is the argument that legislative institutions that are hostile towards lesbians and gays violate this sexual autonomy-related moral good. Laws singling out particular groups for unfavorable treatment objectify members of the groups in question. Objectifications means that one is stigmatized and labeled as unworthy of full concern as a human being due to ascribable characteristics. To be objectified entails that one is dehumanized, implying disempowerment.

The third element concerns the idea of an empowering state, which, as a matter of justice and political morality, aims at enhancing the autonomy of its citizens and reducing the harms caused by objectification-related attacks upon it.

**Too weak normative standards for justice**

Other justifications for lesbian-gay-affirmative law reforms have been and still are in force, besides the ones suggested by Bamforth and Fraser. They include justifications based on respect for privacy and equality (Bamforth 1997: 197).

During the latest two decades, an equality-based justification has tended to be predominant in the Nordic countries. In Denmark both lesbian-gay-affirmative legislators and the mainstream lesbian-gay organization have used an equality-based justification for law reforms, seeking to redress those instances in which lesbians and gays are treated less favourably than heterosexuals (Stormhøj 2001 & 2002). In academic discourses and citizenship analyses, too, legal equality has been used as the main parameter when evaluating governmental friendliness or hostility towards lesbians and gays.

While the language of equality may be emotionally appealing, when used as a rhetorical devise, an equality-based argument for justice is hardly sustainable analytically, when used as a justification. In the first place, the very meaning of the concept of equality, when used as a qualitative measure, often is ambiguous, strongly weakening the concept as an analytical one. Second, it is often unclear what exactly an argument compares, and why it is assuming that the things being compared should be rated as morally equal (Bamforth 1997: 237ff.). If these two issues are left unclarified, the analytical inadequacies of the concept become even more striking. The first issue concerns the unit being compared in arguments for equality. It can either be the moral worth of the human beings in question, that is the status of homosexuals respectively of heterosexuals, or the moral worth of sexual conduct. The latter raises the question whether sexual activity between homosexuals is morally equal to sexual acts between heterosexuals (Bamforth 1997: 238-9). Both units of comparison are deeply problematic. The status-based argument is rooted in a notion of homogeneous and monolithic identities, which is highly contestable. The conduct-based interpretation has no solid group-related ground. As it is only concerned with sorts of behavior, it will not entail any comparison between distinct groups in itself. The second issue concerns the justification for assuming that the things being compared should be rated as morally equal. The ultimate values appealed to may be of various sorts, for example liberty, a common good, or the equal moral worth of human beings. This indicates that equality-based argument for social justice often are internally inconsistent, for they claim to be advancing one moral good while in fact advancing another, earlier, independent one that they happen to presuppose (Bamforth 1997: 257).

As compared with Bamforth's principles for justification, premised on independent moral goods,
the equality-based justification seems undeniably weakly grounded philosophically.

Remedying the status subordination of lesbians and gays by means of equality-based justification arguments will hardly be of any worth in regard to the question of social justice. From the perspective of recognition-related justice, the injuries lesbians and gays suffer from cannot be treated as a matter of equal treatment, that is parity on heterosexual terms in regard to rights. Rather, it needs to be addressed as a matter of treating people 'as equals', pointing to more abstract and fundamental notions of equal moral worth and equal autonomy.10 Treating people as equals means in regard to political morality that the state treats every citizen 'as free, or as independent, or with equal dignity' (Dworkin 1986: 191; Kymlicka 1990: 4f.). Equivalent concern may very well imply different treatment.

**Danish law and the citizenship status of lesbians and gays**

Studying the law provides access to institutionalized patterns of cultural value through which misrecognition is transmitted, and hence represents one way of ascertaining the social status of a particular group of people. In applying the Fraserian perspective of recognition-related justice and likewise the empowerment-based theory of justice of Bamforth to the case of homosexuals' citizenship, empirical results both from my own research and those from other researchers and students are used as illustrations (Bomholt et al. 2002; Stormhøj 2002; Soland 1998). The particular area of law in focus concerns family and reproduction, including the law on registered partnership (1989), the law on adoption of stepchildren (1999), law on assisted reproduction (1997), and the law on parental leave (2002).

Though lesbians and gays have attained legal equality at some points, all laws reveal restricted recognition, or misrecognition of lesbians and gays, implying status subordination. Homosexuals are subjected to sexually specific forms of misrecognition as a result of heteronormative value patterns. Misrecognition assumes various empirical forms and expressions, including being constructed as abnormal, as unfit for parenthood and child care, as irresponsible and unable to attend to the well-being of children, and as wholly invisible. Lesbians and gays are objectified, subjected not only to shaming and insults, but also to demeaning ascriptions and invisibility. Intertwined with these culturally rooted violations of justice are distributive injustices. The law on registered partnership denies lesbians and gays the right to adoption of children from abroad, and precludes access to religious marriage. Co-parents in same-sex partnerships are only allowed to adopt their partner’s child 3 month after its birth. The law on assisted reproduction denies lesbians and single women access to medically monitored, assisted reproduction (insemination and in vitro fertilization) at public and private hospitals. And finally, the law on parental leave simply ignores the special conditions of co-parenting mothers, implying that they are not entitled to leaves.

The restricted recognition of lesbians and gays entail in regard to citizenship understood as a legal status that they are disprivileged. They are only entitled to limited civil and social welfare rights. Concerning the active enactment of citizenship, the possibilities of lesbians and gays to participate on a full scale in public decisions, including decisions about the design and execution of rights, are limited.

Looked at from the perspective of Bamforth, it can be stated that the sexual autonomy of lesbians and gays are injured. They are not paid equal concern and respect by the law. Rather, this group of nominally equal citizens are treated as objects and subjected to the deliberations and decisions of others. As a result, homosexuals are disempowered.

**Concluding remarks**

The issues of recognition, participation and inclusion in public culture are crucial in order to understand the difficulties encountered by sexually stigmatized and marginalized groups trying to become citizens within various societies.

Laws intended to be inclusionary and lesbian-gay affirmative, and which are based on equality, as in the case of Denmark, often fail to consider the differences which homosexuality constitutes seriously enough. In general, they are not attuned to the difference between 'equal treatment' and 'treating people as equals'.

Looking at the citizenship status of lesbians and gays in Denmark from the perspective of
recognition-related justice, their status subordination is without doubt caused by heteronormative value patterns, embedded in laws.

Whereas recognition clearly constitutes an autonomous analytical dimension of justice, recognition too makes up the subtext of maldistribution. At the same time, recognition also constitutes the subtext of, what I would venture to call, although only tentatively at the moment, of 'political misrepresentation'. Let me clarify. It obvious that misrecognition is intertwined with maldistribution. The distributive injustices lesbians and gays suffer from, in this case the denial of welfare services and benefits, are caused by sexually related forms of status subordination. Their legal status, understood as an element of citizenship, is restricted. But it is likewise evident that misrecognition plays a decisive role in regard to political representation. Lesbians and gays do not have any (equal) share in hegemonic heteronormative value patterns, which deny them of equal respect and concern. Lesbians and gays are, so to speak, politically misrepresented by hegemonic value patterns, whose constructions they have not taken part in as co-constructers, that is on equal terms. Because of misrecognition, lesbians and gays are prevented from enacting citizenship, understood as a political practice, fully. The dependence of lesbians' and gays' citizenship status on the citizenship of the sexual majority indicates a profound lack of reciprocal recognition.

Remedying the injustices lesbians and gays suffer from heteronormativity requires profound changes of institutional structures, in this case reforming family laws. It requires not only de-institutionalizing the norm of heterosexuality in family law, decoupling entitlements to civil rights and to services and benefits from sexual orientation, but also the formation of a new hegemony that expresses equal respect for lesbians and gays.

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Notes

1. The term heteronormativity refers to the authoritative construction of norms favoring heterosexuality.
2. From a constructionist perspective, sexual identities are to be understood as discursively constituted within historically specific knowledge and practice regimes, through which they also are reproduced. The homosexual identity is a particular modern construct, emerging in the 1870's within the Western world. Sexual identities are flexible, heterogeneous and complex constructs. Socially, sexual identity is both enabling and self-limiting. While analytically acknowledging that homosexuals are internally differentiated and do not make up any homogeneous group, I use the terms lesbians and gays as designators of people objectively being identifiable as gays and lesbians.
3. Due to the Danish citizenship model, based on a participatory perception of citizenship, integrating social groups "from below", voluntary organizations and social movements have been able to advance their claims vis-à-vis the state (Andersen et al. 1993; Andersen and Torpe 1994; Kolstrup 1994; Slim 2000).
4. Marshall's model of citizenship (1964) figures as the main source of inspiration, shaping postwar theory and research about citizenship. The model introduces a comprehensive theory of democratic citizenship in modern societies based on the evolution of rights, civil, political and social, in the British society from the 18th to the 20th century (Lister 1997: 14; Slim 2000: 26).
6. The definitions of the term recognition originate in Webster's Third New International Dictionary. Besides, the terms recognition and acknowledgment are used interchangeable by Phelan.
7. However, Phelam does not consider the question about the kinds of sexual differences that should be integrated in any satisfactory way (cf. Phelan 2001: 16 & 141ff.).
9. The identity model of recognition requires that the distinctiveness of individuals be recognized in order for them to develop undistorted subjectivities.
10. The distinction between 'equal treatment' and 'treating people as equals' originates from Drowkin 1986.
11. The idea of political representation as constituting yet another analytically autonomous dimension of justice was ventured by Nancy Fraser at a lecture at Department of Social Sciences, Roskilde University.

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