

Same-sex couples and heteronormativity

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Paper presented at the PAA 2004 annual meeting, Boston, April 1-3, 2004

L'une des antinomies du mouvement réside dans le fait que le mouvement gay, qui a contribué à rappeler que, comme la famille, la nation ou toute autre entité collective, le statut de gay ou lesbienne n'est rien qu'une construction sociale, fondée dans une croyance collective, entend aussi opérer la révolution symbolique capable de rendre visible, connue et reconnue, cette construction, de lui conférer l'existence sociale pleine et entière d'une catégorie réalisée. Cela en inversant le signe du stigmaté pour en faire un emblème... ..et en demandant à l'État, banque de capital symbolique, de lui conférer la reconnaissance durable et ordinaire d'un statut public et publié, par un acte solennel d'état civil.- Pierre Bourdieu, 1998

Abstract:

Since the 1960s an original pattern of family formation has emerged in the Northern part of Europe. To parallel the demographic aspects we introduce legal consequences attached to marriage and informal cohabitation. We check if diversity in legal systems could explain (or result from) the present contrasts in family formation in Europe and be an obstacle to a future standardisation.

In the 1990s the Nordic countries enacted laws legalising same-sex unions. So are now doing some non-Nordic countries. Dispersion in registration and separation frequencies is much wider than among heterosexuals in Northern Europe. Out of it, registration rates in the Netherlands are higher than anywhere else. A parallel analysis is conducted on legal consequences attached to different-sex versus same-sex registration. There seems to be much less of a Northern behavioural pattern on same-sex unions, despite a larger uniformity in legislation. Reasons are to be searched out of the legal sphere.

Is the homosexual couple possible: Laws for whom and how?

Contrary to the heterosexual unions that had time to develop on a somewhat harmonised framework recognised by all as "marriage", the laws governing the homosexual unions are of different nature in the studied countries. Legal consequences attached to them are different.

In the current situation, three types of laws exist.

Two countries have opened the marriage law to same-sex couples provided some restrictions. Few in the Netherlands (2000), many more in Belgium (2003). In the Nordic countries, a concept of marriage-like laws called Registered Partnerships (Confirmed Partnerships in Iceland) has been developed. These laws derived from marriage laws providing some restrictions mainly affecting parenting and are considered as such and reserved to same-sex couples (Denmark, 1989, Finland, 2001, Iceland, 1996, Norway, 1993, Sweden, 1995). In other countries, laws elaborated are of completely different origin, more or less based on cohabitation principles. The Partnership law in Germany (2001) is with very restricted legal consequences, just like the Pacs (Pacte civil de solidarité) in France (1999) which is, like the Registered partnerships in The Netherlands (1998) accessible to different sex couples as well. The road to the homosexual couple access to legal recognition has been long and complicated. It took place at the crossroads of society preoccupations towards the recognition of homosexual behaviours, a will to establish equality treatment through antidiscrimination actions and laws.

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Aiming at a falling target

When these laws were passed, marriage had lost much of its popularity in the countries concerned. The proportion of women who get married at least once in their life had declined dramatically everywhere in northern and western Europe. At the same time, age at marriage show that people not only marry less frequently but that they do so later. The major part of this decline has been filled in by the development of informal cohabitation: proportions of women who choose it rather than marriage have hugely increased along birth cohorts, countries being ranked by order the same way they are on marriage decline intensity¹.

The various countries have unequally contributed to these changes and their diversity has considerably increased (figure 1)². There is now a 20-point gap between Belgium, which maintains the highest frequency of marriage (close to 85%), and Sweden, which has evidenced the deepest drop (below 65%). More generally, the four western countries (Belgium, France, Germany, The Netherlands) have experienced a slower decrease in nuptiality than the Nordic ones (Denmark, Finland, Iceland, Norway, Sweden), but in the latter group, Sweden stays quite apart, with very low frequencies of marriage, while the other four are much closer – though slightly lower, on average – than the western countries.

Historically, nuptiality decline was initiated in Sweden, soon followed by Denmark. From birth cohort 1940, trends in the two countries were first parallel - the proportion of ever married women declining by some 10 points (1 point per cohort), from 91% in Sweden and from 96% in Denmark - then divergent: in the fourteen cohorts born from 1951 to 1965, proportions of ever married have been cut by 20 points in Sweden to 60%, a notable acceleration, and only by 9 in Denmark to 77%, a marked slow down. Frequency of marriage is now 17 points higher in Denmark than in Sweden, a real gap.

In the other northern and the western countries, there was hardly any decline in the first ten or twelve birth cohorts, at a time when the movement was already well established in Sweden and Denmark. Reduction in marriage frequencies has gained momentum in more recent cohorts, but the paces have been unequal. In Norway, it has been as swift as in Sweden in the same interval, and hardly less in France; but it has been much slower in the other countries, especially Belgium and Germany.

In brief, the loss of marriage popularity is Europe-wide, but Sweden stays quite apart with the most dramatic decline. Among the others, the evidence is less clear: slower decline in the West than in the North, in general, but most rapid changes in France and Norway in the recent cohorts.

Analysis of marriage decline in western societies has already received much attention, including that given to comparative evidence. Harry Willekens puts it in a nutshell: "*Now marriage has lost the function of conferring legitimacy and controlling children's entry into the family, it is not surprising that it has (to some extent) been **deinstitutionalised**.*"³ Two factors are pinpointed:

"1. *the breakdown of the distinction between legitimate and illegitimate children;*

"2. *a considerable relaxation of the conditions for divorce.*"⁴

Regarding children born from unmarried parents, the main question is: can they benefit from the exercise of joint parental authority by their mother and father, like children born in wedlock? In a chapter devoted to the father in European laws, Marie-Thérèse Meulders-Klein draws the following picture:

"It is once more in the Nordic countries that changes emerged in the 70s, even if in principle mothers still have parental authority by right in case of non-marriage.

"In Sweden, since 1974, unmarried parents could ask the judge to have a joint authority, even if they did not live together. In 1983, the system was still simplified and it now only requires a declaration to the tax administration. It is almost similar in the rest of Scandinavia, with a mere declaration to the national population register (Norway) or the county governor (Denmark). (...)

In Finland, since 1983, joint parental authority has been by right."⁵

¹ See Macura, Miroslav; Mochizuki-Sternberg, Yumiko & Lara Garcia, Jose.- "Eastern and western Europe's fertility and partnership patterns: Selected developments from 1987 to 1999".- Macura, Miroslav & Beets, Gijss (eds.).- *Dynamics of fertility and partnership in Europe. Insights and lessons from comparative research.*- United Nations, New York & Geneva, 2002, figure 4.7, p. 38.

² *Recent demographic developments in Europe : 2002*, Council of Europe, Strasbourg 2002, 121 p. and a CDRom.

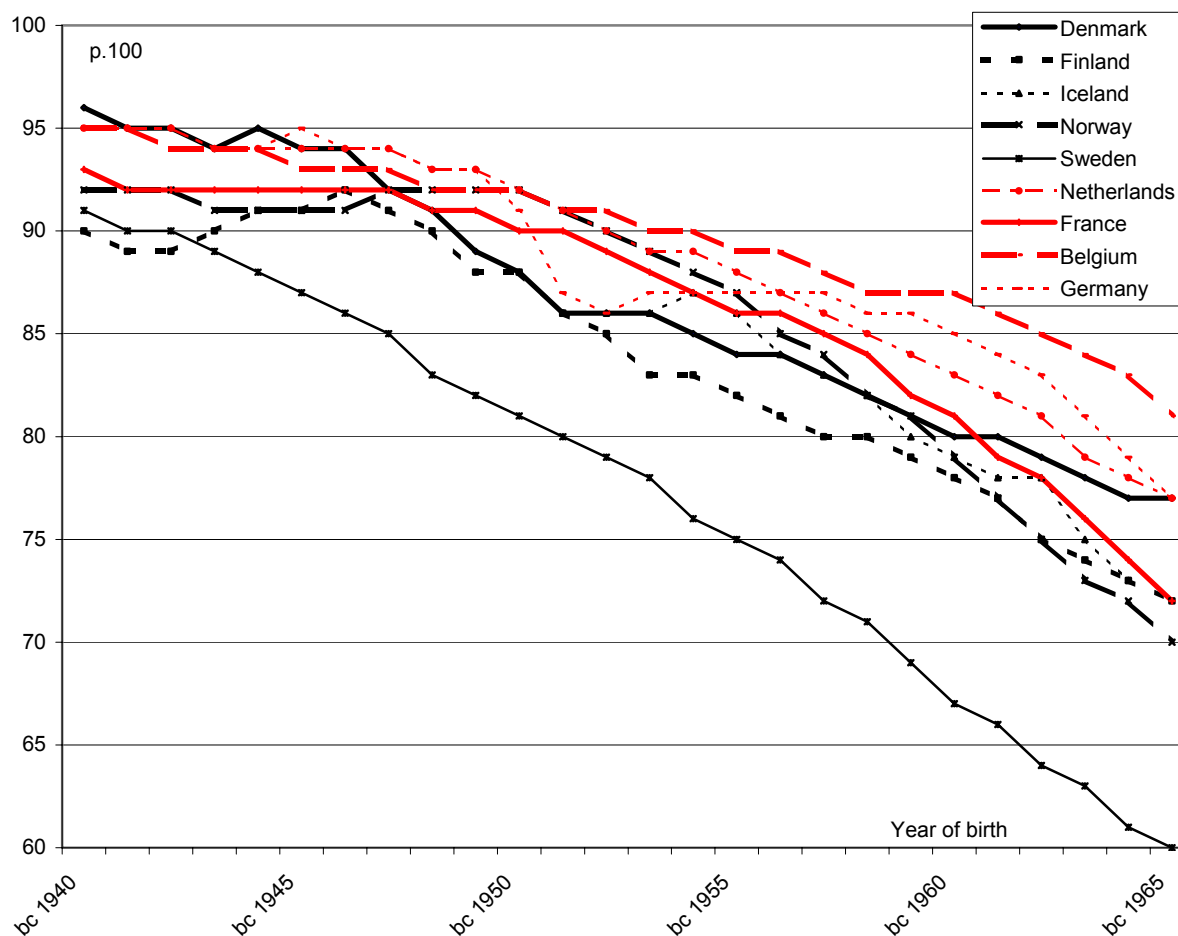
There is part of convenience in this choice: the same index for men tells approximately the same story, given the numerical balance between men and women in different-sex marriages, but it is not so well documented from the statistical point of view.

³ Willekens, Harry.- "Long-term developments in family law in Western Europe: an explanation".- Eekelaar, John & Nhlapo, Thandabantu (eds.).- *The Changing family. International perspectives on the family and family law.*- Oxford: Hart publishing, 1998, p. 55.

⁴ *Ibidem, ibidem*, p. 58.

⁵ Meulders-Klein, Marie-Thérèse.- *La personne, la famille et le droit. 1968-1998. Trois décennies de mutations en Occident*, Bruxelles /Paris : Bruylant/LGDJ, 1999, p. 267-268 (our translation).

Figure 1. Proportion of ever-married women at age 50, by birth cohort



Western countries have lagged behind by ten or fifteen years and some restrictions remain here and there that prevent unmarried parents to be rightfully recognised their joint authority:

- In France, since 1987, the parents still needed to make a declaration before the judge and only since 1993, has joint authority been by right (if the child has been recognised by both parents in his first year of life, which is almost systematically the case);
- In the Netherlands, only since 1995, a mere declaration to the guardianship register has made joint authority effective, and so has done in Germany since 1997 a declaration in the presence of a notary or to the Youth Office.

Laws on divorce have gone through a systematic wave of reforms in Europe in the 1970s, at the time when, in most countries, marriage was already on decline. The global movement was towards an easier access to divorce, if such was the will of both spouses, through the recognition of mutual consent as a major reason for divorce and a simplification of the procedures.

In the Nordic countries, the change was not very large since mutual consent was already the most common way to get into separation, then divorce. But the concentration on partners' will nevertheless appeared as a major leap forward, which was accompanied by a substantial increase in divorce rates. Moreover, Sweden was once more at the forefront, not only with the shortest delays between separation and divorce but especially through the introduction of a unilaterally-decided divorce, granted almost automatically if only one of the two spouses claimed for it (provided the absence of minor children born from the couple): "*each of the spouses shall thus have an unconditional right to a divorce*"⁶. This 1973 law has been extended to Finland only fourteen years later in 1987, then to Denmark (1989) and Iceland (1993), but not to Norway.

⁶ Official report series of Swedish legislative and investigation committee (SOU 1972:41) *Familj och äkenstap* ("Family and marriage"), Stockholm, 1972, p. 260.

Out of the northern region, more room was left for innovation, but up to now none has gone so far as the pioneering Nordic countries. Various forms of no-fault divorces were introduced, based on mutual consent or actual lasting separation; they became the exclusive cases for divorce in Germany (1976) and the Netherlands (1971) or they paralleled procedures still referred to fault in Belgium (1974, then 1994 with many simplifications in procedure) and in France (1975)⁷.

In summary, deinstitutionalisation of marriage has gone faster and deeper in the Nordic countries than in the rest of Europe: on the recognition of parental rights out of marriage, it has probably just been a difference in the tempo of reforms; on access to divorce, differences persist still now after putting Sweden in a position only challenged with long delays by some neighbouring countries.

One step further, Europe experiences not only a decline in marriage but an institutionalisation of unmarried cohabitation, even if "its positive recognition in family law (as opposed to welfare law) is, with the exception of the Scandinavian countries, still minimal."⁸ That accentuates radically the convergence of marriage and unmarried cohabitation.

Some statutory minimum protection for the financially more vulnerable party in a cohabiting different-sex couple has been in existence under Swedish law since the 1950s. A first grouping of them was made in 1987 in the *Cohabitees (Joint Home) Act*, a similar act for the homosexual cohabitees being taken the same year. In 2003, these two separate pieces were merged into a single Cohabitation Act.⁹ In a somewhat similar spirit, in Norway, there has been since 1991 an *Act Relating the Right to the Joint Residence and Household when the Household Community Ceases to Exist*.

We do not now of anything comparable in the other countries, whether Nordic or Western, if we except the case of Iceland, where even a registration has been proposed to different-sex couples since 1990.

Partnership registration is part of this institutionalisation process made possible by the global context of deep loss in marriage attraction. Each one throws light on the other. Changes in laws and trends in statistics refer to the same phenomenon that makes difficult the identification of causes and consequences. Consistencies can be pinpointed but discrepancies are equally interesting to underline. When family law reforms and marriage decline are concerned, the N-W gap and the leading position of Sweden are the striking consistencies. Rapid decrease in marriage frequencies gets along with swiftness in moving towards equal rights for all parents, promptness in opening the most radical accesses to divorce and pioneering position in making cohabitation a full status.

But why has nuptiality decline started so rapidly in Denmark and suddenly slowed down after a decade? Conversely, why has it accelerated brutally in Norway and, still more striking, why is France so "Nordic" on these numerical trends and so reluctant in adopting legal reforms? Obviously, changes in the popularity of marriage are strongly associated with changes in the legal sphere but not totally linked to them. Other changes in society still need to be scrutinised for a better understanding of cross-national diversity. That will be a major aspect of the present exercise.

Changes in marriage initiated in the 1960s leave room for other institutions that can compete with it or for marriage-like substitutes addressed to uncovered populations. Registered partnership or homosexual marriage are typical cases for the latter. It will be no surprise to observe that they have developed in Nordic countries before extending to Western Europe. It is much less clear about the rationale for dissemination in the northern group. Should we have expected an innovation starting from Sweden, which had so often led the way on legal reforms in connected fields, or should we give more weight to the specificity of homosexual matters, closer to anti-discrimination regulations than to family topics and highly responsive to societal acceptance of minorities?

To envisage the question in more details we are to limit our analysis to those countries in which the statistics on registration of partnerships has now available for long enough to authorise a first analysis of the frequency of union legalisation and confront the results with historical arguments on the process of law introduction and with the diversity of legal consequences attached to registration. That restricts coverage to four Nordic countries (Denmark, Iceland, Norway and Sweden) and the Netherlands.

⁷ Commaille, Jacques; Festy, Patrick; Guibentif, Pierre; Kellerhals, Jean; Perrin, Jean-François; Rousset, Louis.- *Le Divorce en Europe occidentale : la loi et le nombre*; Paris : INED, 1983.- 242 p.

Boele-Woelki, Katharina; Braat, Bente & Summer Ian (eds).- *European Family Law in Action. Vol. I: Grounds for Divorce*, European family laws series.- Antwerp: Intersentia, 2003.- 466 p.

⁸ Willekens, Harry.- "Long-term developments in family law in Western Europe"..., p. 59.

⁹ Ytterberg, Hans.- "Sweden", in Waaldijk, Kees et alii.- *Major legal consequences and procedures of civil marriage, registered partnership and informal cohabitation for different-sex and same sex partners in nine European countries*.- Leiden/Paris: E.M.Meijers Institute of Legal Studies/Institut national d'études démographiques, provisional document, September 17, 2003.- p. 118.

Relationship to the norm

In the beginning of the 80s, the European court of human rights, the Council of Europe and the European Parliament have been very active in reflecting on discrimination.

A recommendation from the European council in 1981¹⁰ and a resolution from the European Parliament in 1984¹¹ specifically condemned discrimination against homosexuals and called on member's states to report any provisions in their laws which discriminated against homosexuals

At the European level, problems encountered on the bases of sexual orientation started to be systematically raised and examined but remained at the level of recommendations in the field of equality treatment, family law being reserved to state members.

With the same preoccupation and the same position of a supranational body, in 1984, the Nordic council¹² issued a recommendation to collect information on the situation of homosexuals in each country (n°17/1984, March 1st, 1984)¹³. In another recommendation (n°18/1984) "*the council urged the government of the Nordic countries to cooperate within the United Nations and other international organisations on issues involving the human rights of homosexuals, with the objective to abolish discriminations*"¹⁴.

These supranational recommendations will give the introduction of the laws a very political dimension in most of the countries. Independently from the population opinion, the press debates or the claims from Gay and lesbians associations, a strong will from the political class will be determinant to pass the laws.

The Normative state

If Sweden experimented the first changes in heterosexual behaviours, Denmark was probably one of the most potential places to raise the question of same-sex partnerships. As Sweden, Denmark is a country with a very strong state interventionism in the social domain, the welfare of the individual acknowledged closely with the one of the State. But Erik Albæk underlines the tendency of Denmark to adopt a liberal ethics, an acknowledgement of the reality: "we are forced to live in society with others"¹⁵. Therefore, the society must accommodate everybody at best. Moreover, Copenhagen had always been the crossroads of homosexual experiences in the Scandinavian area, probably also favoured by its geographical situation.

We saw that during the 60s, cohabitation started a rise in the preferred modes of relationships between two people at the expense of marriage. This trend led the Danish government to wonder about the legal forms of protection to apply to the couples that were not protected by the Marriage Act, in case of death or dissolution, etc. While starting to reflect about the situation of different-sex couples, the question of same-sex couples appeared in the discussions on all kinds of relationships between individuals.

Preparation for the law adopted in 1989 in Denmark has been lasting for long. In 1984, at the time the Commission was settled, on what Birgitte Søland sees as part of the political game, the liberal opposition introduced a bill to the Parliament to "annoy" the Conservatives in charge¹⁶. In this first attempt, and though the text was based on full equality with heterosexual marriage, the term "partnership" was used instead. The idea to create a special framework only accessible to homosexuals was thus in mind when they returned to the question few years later.

Already in the 1984 proposal, all the major parties, even the Christian Party, pointed out that same-sex couples should receive a legal framework to protect them, discussions riding on how, and moreover if the legalisation of their union should be the best way¹⁷. Meanwhile, these discussions led the Parliament to add "sexual orientation" as a ground for discrimination in the antidiscrimination legislation.

¹⁰ Parliament assembly of the council of Europe.- *Recommendation 924/19811 October 1981 "on discrimination against homosexuals"*.

¹¹ European Parliament.- *Resolution on sexual discrimination at the work place*, 1-1356/83, PE 87.477.

¹² The Nordic council is a federation of states (Denmark, Finland, Iceland, Norway and Sweden and three autonomous territories The Faeroe Islands, Greenland and Åland) that aims to facilitate cooperation between them. It is widely acknowledged that it facilitates the exchange of persons between the member countries and that laws have been harmonised to do so.

¹³ Hrefna Friðriksdóttir.- *The Nordic gay and lesbian «marriage»: No children allowed.*- Harvard Law School LLM paper, 1996, mimeo, p. 9.

¹⁴ *Idem, ibidem*, p. 9-10.

¹⁵ Albæk, Erik.- "Political Ethics and Public Policy: Homosexuals between Moral Dilemmas and Political Considerations in Danish Parliamentary Debates".- *Scandinavian Political Studies*, vol. 26, n° 3, 1998, p. 248.

¹⁶ Søland, Birgitte.- "A queer nation? The passage of the Gay and Lesbian Partnership Legislation in Denmark, 1989".- *Social Politics*, Spring 1998, p. 54.

¹⁷ *Idem, ibidem*, p. 56.

So when in 1984, the Danes launched the *Commission for Elucidation of the Homosexuals' Situation in Society* in response to the Nordic council recommendation, they had a broader objective than focusing on a law for same-sex couples. Indeed, when the report was issued by 1988, no agreement had been reached regarding cohabitation and it failed to recommend any solution¹⁸. However, meanwhile, and maybe in the light of what was happening, a Partnership Bill was introduced in Parliament before the Commission published its final report by a coalition of Parties opposed to the Government¹⁹. Linda Nielsen presents the bill proposal as such: *"The assumptions underlying the reform can be summarized as follows:*

(a) The social acceptance of a relationship between two persons of the same sex manifested in specific legislation will give the parties to such a relationship the same rights and duties as married couples.

(b) The creation of a legal institution for homosexual partners will improve their opportunities for regulating their lives in accordance with their own wishes and choices. This is of particular importance for young people, for whom it may be a difficult and long process to make a choice which reflects their feelings and needs if they are forced to take the reactions of society into account.

(c) A formal recognition through express legislation will improve the chances of long-lasting and steady relationships developing between persons of the same sex. A hostile social response may impede such a development.

(d) A legal institution is the precondition for securing for two persons of the same sex who live in a permanent partnership the same legal rights as married couples, such as rights regarding housing, pensions, immigration and entitlement to work.

(e) The device of registration gives the partners the right to choose between formalization and non-formalization. They are thus given the same choice as heterosexual partners.

(f) Finally, it has been argued that a more positive attitude towards long-lasting partnerships between homosexuals may reduce the number of short-term relationships and thus contribute to reducing the risks of AIDS. It was emphasized in documents in support of the Bill, however, that this argument is of minor significance compared to the other purposes, which are of a more significant and long-term nature".²⁰

No doubt the results of the Commission were being very normative but indeed as it appeared, reflections on the legal situation of same-sex couples were merely advanced by that time from a governmental point of view. The Bill proposal argumentation is a very strong statement and intervention in expressing a view on a typical heterosexual lifestyle as a model. Aims "to secure" "long lasting relationships" and "reduce the number of short-term relationships" were basically the most controversial debates in the homosexuals' circles by the time the law was discussed. This is probably why it ended up with a preference for a "partnership" bill, but should have conducted the state to choose marriage instead. This compromise solution seemed rather ideal between the hesitations of the homosexuals' representatives and the political will in equilibrium between integration and novelty. In the political sphere, solve the social question was at stake but the weak opposition in the 88 discussions also conducted by the Christian Party was also clearly based on technical legal features more than a societal question. During the 1988 discussions, as it seemed that the Danes were ready to accept a law on partnerships, the main preoccupation and arguments against it were in relation with other countries, as partnership would only be recognised in Denmark (the harmonization with international law impossible) and would draw foreigners to register there, the Nordic legal unity being broken; full parenting rights would moreover put in danger international adoption from the countries strongly opposed to such legislation (at the time all).

Denmark being the first to pass the law in 1989 didn't mean that the other Nordic countries were not working on the topic, but the fact that Denmark went first signified that they had to consider the adopted framework in their own choices. It was made possible by the form the Danish law had taken by referring to the marriage law (instead of wording a new law) and that could apply to any other marriage law.

¹⁸ *Homoseksuelles Viikår - afgivet af kommissionen til belysning af homoseksuelles situation i samfundet*, Betænkning nr. 1127, 1988. Henning Bech and Karen Lützen were the gay researchers appointed by the Government and drew conclusions on the basis of interviews conducted with homosexuals.

¹⁹ Jensen, Steffen.- "Recognition of sexual orientation: the Scandinavian model".- www.steff.suite.dk/gaypol.htm consulted February 18, 2004, p. 3.

²⁰ *According to the Bill of registered Partnerships*" Nielsen, Linda.- "Family Rights and the Registered Partnership in Denmark".- *International Journal of Law and the Family*, n°4, 1990, p. 298.

By 1984, Norway wasn't ready as Denmark to carry out a big survey on homosexuality. But as similar societal preoccupation had emerged, due to marriage decline and cohabitation rise, the government appointed a Commission that included same sex-couples in its considerations²¹ and the Children and Family Affairs issued a report in 1992 together with a bill proposal for registered partnerships²². This report agreed that something was to be done to establish a legal framework for homosexual couples, the discussion moving then to what forms and the Danish choice of Registered partnerships appearing the most appropriate²³. Besides, the parliament members seemed to have been strongly supported by the Norwegian National Gay and Lesbian Association that were working on the Danish law basis²⁴. Path used by the Norwegian government was ideally adapted to the Norwegian situation though on a scheme inspired by the Danish way. From the political decision of the necessity of the law, it led the Norwegians to work underground as the Norwegian society seemed a bit lagging behind towards the acceptance of homosexuality as polls in the population have shown²⁵.

Sweden was in some way more advanced in its reflections towards the situation of homosexuals than Denmark but didn't reach the objective before 1995, maybe because it looked less like an emergency matter. In 1973, when working on a marriage reform, homosexual cohabitation had been acknowledged as a form of family life by the Parliament²⁶, and in 1978, the Parliament had created a committee to gather the documentation on homosexuals²⁷ in order to abolish discrimination which led in 1987 to extend to homosexuals, the rights granted in the cohabitation act that was applying to heterosexuals²⁸. The Danish law probably stroke the Swedes in this legal situation and a commission was appointed in 1990 to study a possibility of partnership law that gave its report in 1993²⁹. By then, Norwegian had passed the law and reflection started out of both Scandinavian laws already existing. The report committee seemed to focus more than the other on the equality treatment comparing in its conclusion heterosexuals and homosexuals.

The time between the passage of the laws in Denmark and in Norway and the bill proposal in Iceland made it possible to extend the reflections on another topic (parenting), the rest of the law having all the probabilities to look like those already passed in the neighbouring countries.

Icelanders were lagging behind in the field of equality treatment, mostly because the representativity of gay and lesbian took time to organise, Samtökin '78, founded in 1978 only. But Iceland as a small country had always been very reactive to proposals and original. It took only one year to issue a report from the constitution of the "Commission on homosexual issues" in 1993 to conclude that a law similar to those of their fellow Nordic partners was necessary and would be called "confirmed partnerships" instead "registered partnerships". Though Hrefna Friðriksdóttir believes it is to avoid confusion with the registered cohabitation possibility for heterosexuals to register their cohabitation in order to gain some material rights³⁰, one might point out that, from a symbolic point of view, the disappearance of the bureaucratic term of registration in the name of the law is more prone to accommodate Gays and Lesbians than in the other Nordic laws.

For Hrefna Friðriksdóttir, the Nordic countries have, from decriminalisation to registered partnerships, taken the defence of homosexuals further than any other European countries. However, twelve years after Denmark, The Netherlands stroke the world in opening their marriage to same-sex couples.

²¹ That led to the first law regulating cohabitation *The Joint household act* of 1991, *Lov nr.45/1991 om husstandsfelleskap*. The commission considered the diversity of relationships occurring, the law was applying on the minimum required, i.e. cohabitation, regulating the separation. Origin of the law was in order to protect "the weakest" cf. Noack, Turid.- "Cohabitation in Norway: An accepted and gradually more regulated way of living".- *International Journal of Law, Policy and the Family*, n° 15, 2001, p. 108.

²² Hrefna Friðriksdóttir.- *The Nordic gay and lesbian...*, p. 17.

²³ Other forms included: "law for homosexual partners having more limited effects, extension of the law on joint household, and a special law for unmarried heterosexual and homosexual partners" see for details The Ministry of Children and Family Affairs.- *The Norwegian Act of Registered Partnerships...*, p. 19-30.

²⁴ 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. 211.

²⁵ Halvorsen, Rune.- "The Ambiguity of Lesbian and Gay Marriages...", p. 213.

²⁶ Ytterberg, Hans.- ""From Society's Point of View, Cohabitation Between Two Persons of The Same Sex is a Perfectly Acceptable Form of Family Life": A Swedish Story of Love and Legislation"- Wintemute, Robert & Andenæs Mads (eds).- *Legal Recognition of Same-Sex Partnerships: A Study of National, European and International Law*.- Oxford: Hart Publishing, 2001, p. 428.

²⁷ *Statens offentliga utredningar (SOU 1984:63), homosexuella och samhället*.

²⁸ *Lag om homosexuella sambor SFS 1987:813*. Interesting to notice that Sweden enacted two different acts, the act applying to heterosexuals: *Lag 1987:232 om sambors gemensamma hem*. In 2003, both acts have been merged into one single *Sambolag 2003:376*.

²⁹ Hrefna Friðriksdóttir.- *The Nordic gay and lesbian...*, p. 21.

³⁰ *Idem, ibidem*, note 65.

The Inclusive State

Though strongly supported by the political will, one might see the start of the case awareness in the activism of gay community. Indeed, same-sex couples in the late 80s and beginning of 90s started claiming for marriage, when supported by a gay newspaper, *De Gay Krant*, a male couple applied for a marriage licence. One might see there the beginning of the story, the support of *De Gay Grant* foundation, including money, lawyers, political contacts at the higher levels, establishment of a think tank devoted to "the marriage objective", etc... being essential in the process.

Thus in the 80s, efforts towards the equating of cohabitation rights between heterosexuals and homosexuals through claiming for marriage drove the judges of the appeal court to call on the legislation to solve problems raised³¹. Popularisation of the case made especially through the media and the very active gay world, led the Ministry of Justice to report on the issue and to propose in 1992 the introduction of a registered partnerships law on the model of Denmark³².

By then, in 1992, explicit mention of sexual orientation passed in the antidiscrimination provisions of the Penal Code and, in 1994, the General Equal Treatment Act covered many grounds including sexual orientation.

The population seemed incredibly neutral compared to what had been seen in the Nordic countries, a society of great tolerance and a culture of accommodation³³. Homosexuality was accepted as a personal choice and numerous survey polls along the years of the discussion showed this progressive attitude, and opinion directly towards the legal proposals turned to be in favour of the opening of marriage³⁴.

Meanwhile, under the pressure of certain activists, certain localities recorded cohabiting couples on an alternative register so called the "marriage register" that localities were allowed to maintain (with no legal status) as authorized by the Dutch law on municipalities registers. This initiative was very popular and soon an incredible number of municipalities subscribed to the idea, but strangely enough, the Gay and Lesbian association (COC) didn't support the action before 1995³⁵.

In 1994, the government had a cabinet without Christian democrats which probably favoured the introduction of a proposal and would play a major role in the opening of the marriage law when renewed in 1998³⁶.

It took more than five years to agree on a law, and more than three years from the introduction of the bill proposal (1994) to its entry into force (1998). It started from a proposal to create a legislation including no restriction on the kind of couples (brothers and sisters, parent and child, etc...) to the Registered partnerships that was to allow different sex couples as well to register.

Faced to the same question than the Danes, the Dutch chose the way of equality in creating a law open to both heterosexuals and homosexuals, assimilating the claim for rights of those who didn't want to marry to those who couldn't. Arguments were that although the modalities of registered partnerships are quite close to those of marriage, it would have introduced a new discrimination if a somewhat light version of marriage was made only available to same-sex couples. In creating a brand new law open to everybody, it would only equate the situation of cohabitants to those of married in the field of private and public laws. Meanwhile, while discussing the last terms of the law, legislators were to consider the opening of marriage and the last was prohibited to a part of population. It created thus a new possibility to different-sex couples. And indeed, at everybody's surprise, an evaluation of the law after six months of application revealed that approximately one third of the users were different sex couples³⁷.

³¹ Boele-Woelki, Katharina.- *Le partenariat enregistré : législation des Pays-Bas*.- Strasbourg : Commission Internationale de l'Etat Civil, 1999, p. 44.

³² Waaldijk, Kees.- "Small Change: How the Road to Same-sex Marriage Got Paved in The Netherlands".- Wintemute, Robert & Andenæs Mads (eds).- *Legal Recognition of Same-Sex Partnerships: A Study of National, European and International Law*.- Oxford: Hart Publishing, 2001, p. 443.

³³ Bradley, David.- "Regulation of Unmarried Cohabitation in West-European Jurisdiction- Determinants of Legal Policy".- *International Journal of Law, Policy and the Family*, n°15, 2001, p. 32.

³⁴ Maxwell, Nancy.- "Opening Civil Marriage to Same-Gender Couples: A Netherlands-United States Comparison".- *Electronic Journal Of Comparative Law*, vol. 4-3, November, 2000 (<http://www.ejcl.org/ejcl/43/art43-1.html>).

³⁵ Van Velde, Hans.- "The Long Road to Civil Marriage".- *www.gaygrant.com*, consulted 24 December 2001.

³⁶ Waaldijk, Kees.- "Small Change...", p. 447.

³⁷ Scherf, Yvonne.- *Registered Partnership in the Netherlands: A quick Scan*.- Amsterdam: Van Dijk, Van Someren en Partners, 1999.- 43 p. Heterosexual preferring partnership to marriage advocated two main reasons, mostly "aversion to marriage as a traditional institution" and "a registered partnership is less binding than marriage"- *idem, ibidem*, p. 21.

From the government's manifesto of 1998³⁸ it appears that the principle of equal treatment of homosexual and heterosexual couples has been decisive in the debate about the opening up of marriage for persons of the same sex.

The main argument of the test case in the 80s was that nothing in the marriage act limited the act to different sex couples. Therefore, for Katharina Boele-Woelki, the case was more from the side of the politicians than from the legislators. Thus, quite quickly after the law on registered partnerships entered into force, the government presented a bill to open up marriage to same sex couples.

It was suggested by the release, in October 1997, of the proposals of the Kortmann Committee, appointed to study "the opening up of civil marriage to persons of the same-sex":

"The Committee was forced to make a choice: either introduce a partnership register alongside the present form of civil marriage, or opt for two different forms of marriage, i.e. the existing form and another form allowing for same-sex marriages without the legal consequences in terms of succession. The Committee was not unanimous in its choice. A majority of the Committee members favour the second option, while the rest support the first³⁹". And, despite "The majority of the Committee believe that same-sex couples can only be afforded equal treatment if they are allowed to enter into civil marriages. These members do not view the new type of marriage as a break with tradition; after all, marriage has always been a flexible institution which has kept pace with changes in society. They feel that their proposal represents a step towards recognizing homosexual relationships, and might in fact inspire other countries to extend proper recognition to homosexual couples.⁴⁰"

Though the government didn't react to this proposal immediately, the Parliament supported it and after a while, the renewed government introduced the bill.

The ground was well prepared: only minor parties reacted strictly against and even the Christian Democratic Party didn't show a strong opposition to it. Questions were raised and answered quite firmly by the government⁴¹.

Most of the oppositions were linked to religious beliefs and the government showed that the law would only regulate civil marriage.

The opening of the marriage Act⁴² was voted on December 19, 2000 with entry into force April 1, 2001.

To rule the marriage question would also mean that the question of children would be tackled. Thus, the Kortmann Committee strongly favoured legislation. Its understanding of the concept also largely advocated by the Nordic countries of "the best interest of the child" at the light of already existing children in same-sex home to be protected, the proposals turned out to be presented by the Government under the form of an adoption act, the only legal difference with different-sex couples being the international adoption prohibited on the ground of international problems it might cause⁴³.

The conditions for progress

When it appeared to the countries concerned that something was to be done to provide a legal framework to same-sex couples, they had a quite similar process. Legal commissions were established to study the case of homosexuals and bills proposals were supported by the majority of the political class. Discussions in the society were merely a reaction of surprise and the initial passionate debates quickly turned down.

However if the legislators reached the same conclusions, they chose different legal systems.

Hesitations in the Netherlands in which forms to give to the legal framework of same-sex relationships had thus driven to the establishment of two different types of legislation, which at term, profited to homosexuals as well as heterosexuals. Moreover, gradually but quickly, societal questions founded answers and nearly full equality has been reach with the opening up of the marriage.

Why in the Netherlands and not in the Nordic countries?

³⁸ *Parliamentary Papers II, 1997/1998, 26024, nr. 9, p. 68.*

³⁹ "Kortmann committee: unanimous when it comes to protecting children, divided over legal form for couples".- The Hague: Ministry of Justice Press release http://www.minjust.nl:8080/C_ACTUAL/PERSBER/PB0176.HTM consulted 3 December 2001.

⁴⁰ *Idem, ibidem.*

⁴¹ Forder, Caroline.- "To Marry or not to marry: that is the question".- Bainham, Andrew.- *The International Survey of Family Law: 2001 edition.*- Bristol: Family Law, 2001, p. 301-303.

⁴² *Wet van 21 december 2000 tot wijziging van Boek 1 van het Burgerlijk Wetboek in verband met de openstelling van het huwelijk voor personen van hetzelfde geslacht (Wet openstelling huwelijk),* Staatsblad 2001, nr. 9.

⁴³ *Wet van 21 december 2000 tot wijziging van Boek 1 van het Burgerlijk Wetboek (adoptie door personen van hetzelfde geslacht),* Staatsblad 2001, nr. 10.

We saw that they showed the same patterns of care for progress and equality. These countries aim to question of equality treatment seriously and didn't get rid of the grounds of sexual orientation as a discrimination. However, Nordic countries engaged a long process of examining carefully the situation of homosexuality through establishing committees that were to conduct a serious and deep examination of living conditions. From the question of equality treatment of the beginning, they really tackled the homosexuality question from a societal point of view.

Was it a necessary condition to undertake a complicated reform of the laws? The policies had to be based on evidences to impose their ways. The Dutch were acknowledged from survey polls to form a society favourable to homosexuality which is not as evident in the Nordic countries, though Denmark has been quite opened, but the society shows a strong individualism once supported by a strong social framework brought by the Welfare State. Anyway, the activism of gay world in the case of The Netherlands seemed to have been determinant. They tackled the topic straight into the marriage law and didn't stop until they reached their goal. During all the process in The Netherlands, the opening of marriage has never been withdrawn and has been finally supported by the Commission set to examine the question. The Danes were more prone by the time to find a human solution to a human problem. Did the Dutch find that their cohabiting arrangements were more acceptable than in Denmark? We saw that COC, the National gay and lesbian organisation didn't support the action first but other very inventive activists took over, set a think tank to feed up the actions and didn't give up until they obtain satisfaction. Was a little more "faith" from a part of the population concerned to be the decisive part of the process?

Daniel Borrillo raised the question of religion as the main reason of difference, the State church of the Nordic countries being an obstacle to the opening of marriage⁴⁴. Indeed main opponents to marriage question were the Church and the Christian parties in all the countries, the strength of the Lutheran Church in the Nordic countries being more important than the secularised pillarization of The Netherlands?

Also, why has it been possible to solve the parenting question in one case and not in the other? The Dutch choice is more pragmatic than the Nordic one. Considering the necessity of the law for the welfare of the individual in the Nordic countries led them to disentangle the child question, clearly leaving aside a pending question⁴⁵. Dutch considered that in the best interest of the child, i.e. especially those already born⁴⁶, the law had to include their destiny in its application. One might see here too, a position sustained by the gay and lesbian community that supported the passing of the law.

From another point of view, tackling straight the topic of opening up marriage proved to be a very good tactic. Pointing constantly that there was no legal evidence that marriage should be restricted to different sex couples was preventing the debate from many other considerations⁴⁷.

We won't forget the Netherlands benefited from the advantage to work out of the Danish experience which led to rely on something existing, though already in need for improvement. Thus, the registered partnerships law granted them already much more than the registered partnerships in the Nordic countries and this was just a symbolic step to cross.

Laws adopted in opening legal unions to same-sex couples occurred in a somewhat favourable context mixing the adoption of equality treatment considerations and laws, an activism of homosexuals, but also, and maybe especially because of the progressive adoption of laws to mitigate the effects of the marriage decline.

From political acceptance to popular adhesion?

Legalising homosexual unions is no exception to what has so often occurred since 1950 in fields connected with family matters: innovation disseminates from northern Europe southwards. There are likely links between this pioneer position of the Nordic countries and the social protection system they share, based on solidarity among individuals through the central state, the so-called socio-democrat welfare regime⁴⁸. The lowering of any obstacles towards universal access to social rights, e.g. because of differences in gender, marital status or sexual orientation, is a main objective of the Nordic states.

⁴⁴ Borrillo, Daniel.- "Pluralisme conjugal ou hiérarchie des sexualités : la reconnaissance juridique des couples homosexuels dans l'Union européenne".- *Revue de droit de McGill/McGill Law Journal*, vol. 46, 2001, p. 887 & 908.

⁴⁵ Indeed, the Danes again started to legalise the adoption of the child partner in 1999 and the Swedes opened the adoption in 2003.

⁴⁶ Children born from previous heterosexual relationships but also in the Netherlands, medically assisted insemination is not restricted and lesbians had taken the advantage of it.

⁴⁷ Waaldijk, Kees.- "Small Change...", p. 453.

⁴⁸ Esping-Andersen, Gosta.- *The three worlds of welfare capitalism*.- Princeton University Press, 1990.- 260 p.

Most often, not only was northern Europe at the forefront but Sweden was the pioneering leader of the group, the country taking first the initiatives, after a deep examination of possible legal alternatives and a careful weighing of consequences attached to each of them⁴⁹. The situation is quite different concerning registered partnership, where Sweden has lagged behind the neighbouring countries, Denmark and even Norway, most often considered as a more conservative society.

Similarly, the extension southwards exemplified by the Dutch case does not reveal the adoption of a legislation that mimics the northern model with delays and restrictions. On the contrary, The Netherlands have built on the pioneering experiences to move one step further towards a full recognition of equal rights between homosexuals and heterosexuals in the marital sphere.

These qualifications probably point to the explanation by the welfare regime as a very partial one, even maybe an ambiguous one. In countries where social protection is directed to the individuals, without consideration for their marital status, the creation of an *ad hoc* marriage-like institution for the homosexuals has something paradoxical, whereas marriage has logically lost most of its appeal for the heterosexuals. Can we imagine that, in front of increasing financial difficulties for the welfare states, an extension of marital solidarity to more couples could be an objective?

In order to test part of these assumptions, we confront the frequencies of actual partnership registration, since the laws were entered into force in the various countries, with possible arguments that could explain their cross-national diversity. We wonder why the homosexuals in the various countries could choose to register or not, and we put much emphasis among these reasons on these which are attached by law to their status of registrants, when compared to that of mere cohabitants.

Since registration is forbidden for the married, we will make the unmarried male and female populations aged 15+ the denominators for registration rates that will put the annual number of registered persons at numerator. At this stage of research, we will only analyse time trends and cross-country differentials in a synthetic indicator that eliminates the effect of cross-national differences in age structure, age-specific rates of registration for each year and each country being referred to a unique population of unmarried by sex and age (one million of Swedish persons on the 1st of January 1995). Changes through time and international diversity in age at registration will not be considered.

Rates of registration are much higher just after the introduction of the new law than later. It is clearer for men than for women in each country (Table 2 in appendix). The Swedish example is the simplest, since the new law entered into force on the 1st of January 1995. There were 63.9 male registrants (per 1 million unmarried aged 15+) this first year, but only 25.0 the year after and 19.4 in 1997. Further rates have been stable up to now around 21, a two-third cut by comparison to the initial figure.

The process has been broadly similar in the other countries⁵⁰. In Denmark, the period of decline before stabilisation was longer than in any other country: it took some three years, instead of two in Sweden and probably less than that in Iceland and Norway. In The Netherlands, the story is more complicated and the time trend is difficult to read. Three years and three months after the introduction of registered partnership (1st of January 1998), marriage being extended from different-sex to same-sex couples, a sharp decline has occurred in partnership registrations and figures since 2001 cannot be compared to the previous ones. Marriage partly took it over for the persons who directly took advantage of this new possibility, but it also attracted persons who had previously registered their partnership and who decided to change the status of their union, so that the total of partnerships + marriages overestimates what would have been the figure if no new law had been passed.

After this period of high rates, frequencies have stabilised at a much lower level. Everywhere, years of higher rates were rather few. They reveal the existence of persons who had been expecting the new law for some time in order to rush into it⁵¹, but the extinction of this fire in a couple of years suggests that the accumulated number of these persons was not very high.

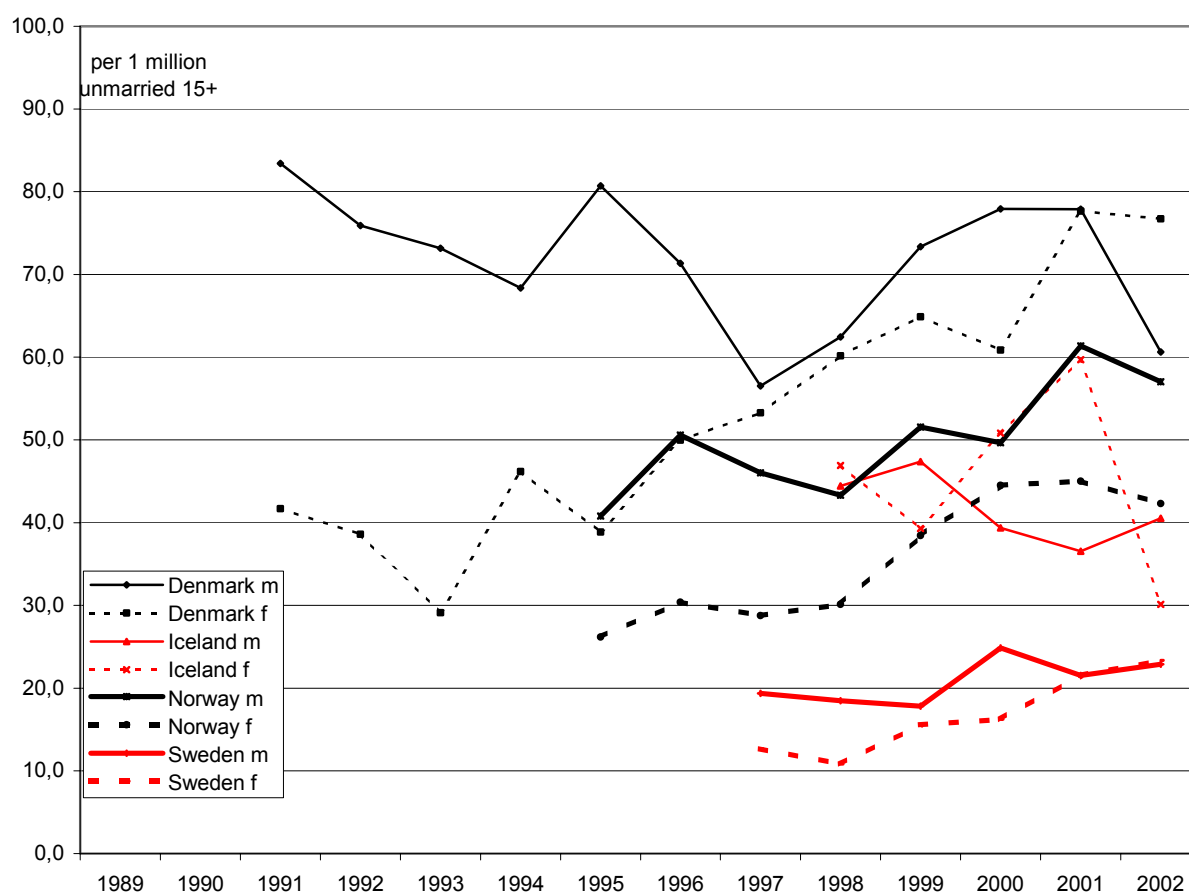
⁴⁹ Agell, Anders.- "Should and can family law influence social behaviour?" in Eekelaar, John & Nhlapo, Thandabantu (eds) – *The Changing family. International perspectives on the family and family law.*-Oxford: Hart publishing, 1998, p. 125-138.

⁵⁰ In Denmark, Iceland and Norway, the first year rates were not so high when compared to later ones, because the law was introduced during the year, so that the data refer only to three months in Denmark, six in Iceland and five in Norway. On a twelve month basis, the Danish first rate would reach nearly 480, the Icelandic and the Norwegian ones more than 200, but these figures are most probably an exaggeration of the number of registration in the first twelve months, due to a likely decline along the first year.

⁵¹ Higher ages at registration point in the same direction. In Norway, 48% of the male registrants in 1993-1994 were aged 35+ against 37% in 1994-2001; in Sweden, the percentages are 60% in 1995-1996 and 51% in 1997-2002. Rejuvenation is notable but not dramatic.

Noack *et alii* point to other differences in the composition of the pioneer group compared to later registrants in Norway, but also to similarities. The pioneers were more often resident in Oslo and they might have been more often previously married. But the age gap between partners and the proportion of cross-national unions were similar (Noack, Turid; Seierstad, Ane & Weedon-Fekjær, Harald.- "Registered partnerships: a new way of living together". Paper presented at the *European population conference*, Warsaw, August 2003, 16 p.)

Figure 2. Registration rates in years after the initial ones, by country and sex



In later years, it is easier to compare levels of male registration in the various countries (Figure 2). The range of values is impressive, with the Netherlands so far above all the Nordic countries (some 150 registrants per one million unmarried adults) that they are not evidenced on the figure. But even among the latter group, disparities are remarkable, from 70 in Denmark (half the Dutch data) to 3.5 times less in Sweden (21), while Iceland (50) and Norway (42) stay in-between. There is some rise in Norway more clearly than elsewhere.

Dispersion among the countries is the more so remarkable within the Nordic group where a common inspiration guided the legislators, on the basis of the Danish pioneering example. But when comparing Denmark, Norway and Sweden, the later the adoption of the law, the lower is the frequency of registration, as if popularity of registered partnership was correlated with the reluctance of the legislators to introduce the new law. Where the pressure in favour of the innovation was stronger, it probably reflected a greater desire for the homosexuals to take advantage of the law or a greater acceptance of homosexuality by society.

Trends in lesbian partnership registration are different from the gay experience. Rates were much lower in the first years, before a gradual convergence, through a continuous rise in frequencies. Here again, the Swedish example is illustrative. There were three times fewer registrations for women than men the initial year (1995), then a movement towards parity, reached after 2000. It implies (i) a very limited superiority of the initial female rates over the subsequent ones and (ii) an increase in the rates while the male ones were stabilised. The Danish case is quite similar, but in Norway the movement towards female to male parity remains uncompleted. Conversely, in Iceland and The Netherlands, the over-representation of men was restricted to 30 or 40% the initial year and fell very rapidly to zero; in Iceland, despite tiny figures, there are even more women than men registering in majority of years after the initial one; in The Netherlands, after the sex ratio had declined in registered partnership from 1.4 to 1.1, it has reproduced the same time pattern in marriage three years later.

Jens Rydström deals this way with these observations, starting from the Swedish experience⁵². *“One hypothesis is that registered partnership appealed more to men in a generation which was eagerly waiting for the possibility in 1995. Many women of that generation had a background in lesbian feminism, and would never consider even the idea of legalizing their relationship in that way. 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 actually lose money if you register your partnership. You get less money if your income is calculated together with your partner's. This is very different from for example Germany or France, where you pay less tax if you live in a registered partnership.”*

Alternative assumptions can be envisaged, in particular that lesbians are more responsive than gays to the crucial question of parenting, because they are more likely to get the custody of children from a previous heterosexual relationship or because of the possibility to have artificial insemination. That will lead us to a closer examination of the consequences of the laws for the registered partners.

From the law to the individual

Relation of the individual to the law is complex. The knowledge of the law is often a personal appropriation that sometimes has very little to do with what it really is. Laws often possess a vast range of unknown effects that mostly occur when needed. Time is also a matter of consideration to get to know the law better.

In creating the partnership law, the legislator was aiming to capture a trend in the society but with regard to the homosexuals and the life in couple, there were variables not under control: the acceptability of homosexuality by the society and the will of the individual to come out.

It is difficult to evaluate the impact of the laws in the homosexual community through its participation of the debates. The claim for equality treatment hid the real diversity among homosexuals' opinions; from those opposed to the marriage as an institution in itself to those considering it as a normative attempt to the homosexual behavioural inventiveness; there is a large range of points of view with a multiplicity of specific individually based opinions. Homosexual representatives are also the best armed to face the reality of coming out as exposed to the public sphere. What about the others?

The legislator, even if well documented on the population he enacted the law for, has no possibility to forecast how this completely new possibility is to be used by individuals. It's somewhat easier to respond to problems in amending an already existing law, as it is the case for cohabitation, than in creating a completely new framework to which people must adhere by a voluntary act. With a law dedicated to homosexuals, the legislator acknowledges a difference between them and heterosexuals, assuming that the general population will accept to consider soon (or later) that it is equal. But homosexuals, who doubt that it will be the case, consider that a special law for them adds stigmatisation to discrimination.

When stating in their reports that they also meant to increase acceptance of homosexuality among the population and help the homosexuals to come out, the countries acknowledged that their life had been forced by law to be different from the heterosexuals. Indeed, homosexuals had learned to live with discrimination and social opprobrium. During the discussions, Nordic countries evoked this legal framework as a protection against public opinion but also as a normative attempt to homosexual lifestyle. Will laws with somewhat restricted effects offer enough symbolic to those who had just been granted access, allowing a coming out in secure conditions?

What we know from various surveys on homosexual behaviours is that the gay couple is of a very complicated nature, we know nearly nothing about the lesbian couple. Most of the surveys we can draw conclusions on have been conducted among volunteer samples⁵³ and the notion of “steady relationship” has emerged instead of couple. The invisible by force homosexual couple has somewhat evolved to a new pattern. Would a steady relationship be a potential unit for a registered partnership or a marriage? Would homosexuals that are likely to “live apart together” be tempted by a legal framework? In any case, the laws are directed towards the stable monogamous life style.

Or, before or while enacting the laws, countries felt the necessity to consider the field of protecting cohabitants. This is clearly seen in the Dutch will to erase inequality, granting nearly all rights to

⁵² Rydström, Jens.- “From outlaw to in-law. On registered partnerships for homosexuals in Scandinavia, its history and cultural implications”. Paper given at the conference *Same-sex couples, same-sex partnerships and homosexual marriages*, Stockholm, September 2003.

⁵³ Various Press Gay surveys from France and Germany.

cohabitants at the same time as married and register partners, it is a tendency, to a lesser extent in the Nordic countries. This much discrete form of protection suits better for the present time.

Gay and Lesbian Associations

When Denmark governmental reflections started, discussions appeared in the gay and lesbian community. Denmark has been one of the first European countries to have a powerful and active gay and lesbian organisation in the field of lobbying for equality treatment and antidiscrimination laws.

The problems encountered by couples facing the difficulties that were solved by marriage in different-sex couples raised the will for equality treatment, in whatever form. The balance between claiming for marriage with full equality, somewhat then inaccessible or accepting a special framework that would be discharged of the heavy symbolic value of ancestral domination loaded the debates.

It seems by then that the National Danish Gay and Lesbian Association acting as the main representative body of homosexual community was more inclined to choose a strong cohabitation framework than marriage, introducing then, the term of partnership⁵⁴. However, while the discussions in the homosexual circles went on, the Association worked on a proposal presented in 1981, that proposed marriage on the bases of the report of the Marriage Committee conclusions but that failed to be examined by the Government.

Inside homosexual associations trends to either the right to equality, either a disinterest for laws that go far too close the heterosexual way of life are in presence. Most of the reflections of Danish Gay and Lesbian community will be taken over by the others in all the countries.

The main way to keep the community together was to stick to equality treatment argument. Calls on some other features as giving a social framework to help couples in distress were minor. The opposition didn't show up anyway, discussions having been done for long in the homosexual circles.

The proposals based on the heterosexual model of couple put in light that heterosexual marriage had become an empty institution and that's why it didn't cost a lot to grant some rights to same-sex couples⁵⁵.

Moreover, the fact that marriage-like law negates all the other forms of sexuality that homosexual community had developed as a contre-culture was raised in the debates. The governmental policies of assimilation and control were especially denied by lesbians that just fought against marriage as an institution alienating women.

In Norway, the Joint Council of Gay and Lesbian organizations in the public hearings of the committee clearly claimed for "*economic and legislative equality between homosexual/lesbian partnerships and heterosexual partnerships rather than access to marriage*".⁵⁶

The prohibition of adoption was also one of the strong grounds for opposition to the law. At the end, in denying of full equality by proposing a special law devoted to same-sex couples only, the Government disappointed the most favourable to the marriage institution.

From informal cohabitation to registration: legal grounds to enter into partnership or marriage⁵⁷

Parenting

Parenting has been at the pinpoint of the debates during the discussions of the laws in all the countries. Indeed, it is absent from all the original laws except a minor disposition in Iceland.

On the basis of what had been evoked in all the countries, the best interest of the child, discussions led to conclude that homosexuals couldn't be parents.

A lot of them are. These children can be born from a previous heterosexual relationship, can have been adopted individually, and from medically assisted insemination.

⁵⁴ Hansen, Bent & Jørgensen, Henning.- "The Danish Partnership Law: Political decision making in Denmark and the National Danish association for Gays and Lesbian".- *The Third ILGA Pink Book*.- New York: The Prometheus Books, 1993, p. 90.

⁵⁵ Lützen, Karin.- "Gay and Lesbian Politics: Assimilation or Subversion: A Danish Perspective".- *Journal of Homosexuality*, n°35, 3/4, 1998, p. 238.

⁵⁶ The Ministry of Children and Family Affairs.- *The Norwegian Act of Registered Partnerships...*, p. 26.

⁵⁷ This section derives from the first findings of a comparative law project initiated by Ined and conducted by Kees Waaldijk assisted by Daniel Borrillo and Hans Ytterberg and from its provisional publication: Waaldijk, Kees et alii.- *Major legal consequences and procedures of civil marriage, registered partnership and informal cohabitation for different-sex and same sex partners in nine European countries*.- Leiden/Paris: E.M.Meijers Institute of Legal Studies/Institut national d'études démographiques, provisional document, September 17, 2003.-130 p.

People living in a same sex relationship with children are probably the bigger percentage of those who would be more likely to register in order to protect their children legally.

Indeed, a child living with a same-sex household has only a legal link with its one legal parent (by birth or by adoption). Provided the child is living in their same-sex household, the other partner has legally no right on the child, nor parental authority, no right in case of emergency problems, sometimes some material obligation of taking care of the child (Denmark and Sweden) but no more, etc. In case of death of the partner, no legal action for custody can be made by the other partner, nor any right of visit can be granted in case of splitting up, even if the child has been bred by the partner, no inheritance right for the child, etc.

In case the partner is the sole parent (if the biological parent is dead, artificial insemination for lesbians, single adoption, etc.), the impossibility to have a legal right on the child is obviously nonsense. With no right of inheritance, the child is also deprived of some advantages. All this legally denied rights lead in practice to dramatic situations.

Medically assisted procreation is one of the main grounds of discrimination towards lesbians remaining in nearly all the countries studied. Since it is lawful in some countries (e.g. Belgium and The Netherlands) and not unlawful in others (Denmark, Sweden) where insemination can be performed outside the public medical system, one could expect that legislators, in the best interest of the child, would tackle the problems inevitably occurring.

In this field, the Nordic countries have a vast range of difference in their way to consider the rights to parenting.

The first country to introduce a right on the parental field was Iceland. The Icelanders tackle the parenting question in a very pragmatic manner. In the "best interest of the child", they concluded that joint-custody was possible. Since the custody of the child of the spouse is obvious for married couple, if the parent has the sole custody⁵⁸, the benefit was extended to the *Confirmed partnership act* in 1996 though a provision of article 3⁵⁹.

Joint custody grants the partner a right of custody or of visit in case of death of the legal parent, providing a court decision. It however has no further application.

In 1996, the situation regarding adoption was by then that in the name of the anti discrimination law one cannot refuse an adoption with an individual on the basis of his sexual orientation, so an individual alone can adopt in a primary adoption.

Not good enough to adopt jointly, the homosexual couple in confirmed partnership can be nevertheless a foster home as well as an heterosexual couple.

In 2000, an amendment to the original act (Act 52/2000) authorises the adoption of the partner's child providing the child has not been adopted from another country. The adoption is secondary, the spouse must have sole custody of the child so that its spouse can adopt.

None of these parenting rights is accessible to non-registered same-sex partners.

In Norway, on a pragmatic way also, the partner can have a parental right by court decision if the other parent of the child is dead. From an amendment of the law into force January 1, 2002, the law grants them to adopt the child partner if biological or adopted from a country that permits such adoption. These rights are provided as well for cohabitants, so the status of the partner doesn't seem to make any difference there.

Denmark and Sweden are more similar in their way to apprehend the question though have for now chose different solutions.

In both countries, the partner, though having no legal authorities on the child's partner, is obliged to support the child financially if needed. This provision applies also for different-sex couples.

Denmark went once more first in amending the original law by an act of June 2, 1999, one year before Iceland and three before Norway, to allow the adoption of stepchildren, as long as they are not adopted from foreign countries. Being the first of the Nordic countries, and also before The Netherlands, this provision seemed necessary by then and it explains why the others opened the restrictions to countries having such laws.

While the other countries were working on opening stepchildren adoption, Sweden went one step further. In the amendment which entered into force February 1, 2003, joint adoption has been allowed as well a stepchildren adoption. So in Sweden now, the only possibility to adopt jointly a child or to have any right on the child's partner is to be in a registered partnership. The law is opened to foreign

⁵⁸ Guðný Björk Eydal & Kolbeinn Stefánsson.- "Restrained reform – Securing equality for same sex couples in Iceland".- paper presented at the Conference *Same sex couples; same-sex partnerships, and homosexual marriages: A focus on cross-country differentials*, Stockholm University, September 25-26, 2003, p. 6.

⁵⁹ *Reglugerð um könnun hjónavígsluskilyrða 326/1996.*

countries adoption as well and the introduction of the law leaves to the countries the choice or not to grant this right to same-sex couples.

The case of the Netherlands is more tricky in a sense that the action towards the opening of parenting rights for same-sex registered and married couples have been in the meantime extended as well to informal cohabitants. Parental authority has been granted in 1998 to same-sex partners and cohabitants by court decision and adoption is allowed by the Adoption act entered into force April 1, 2001 provided the partners have been living together for 3 years whatever their civil status. International adoption is not possible however for same-sex couples of any status.

The ongoing process of the fight for antidiscrimination affects the laws in all the countries. Regarding parenting, since the first right to adopt stepchildren in Denmark in 1999, Iceland (2000), The Netherlands (2001), Norway (2002) and finally Sweden (2003), that have finally the most complete law, have gone the same way. This is a real progress towards the well-being of the couple with children and those who would like to adopt in The Netherlands and Sweden.

Love has no frontier but law

When introducing laws on same-sex partnerships, concern for other countries was a focal point in the debates. Two different questionings, though related in one sense, have been raised. Being pioneers in that way, how would such unions be recognized by the others? Being at the avant-garde of the world, wouldn't it drag people from everywhere to do what they can't in their countries?

This relation to the "other" introduced some discriminations in the qualification of people authorised to register. Nowadays, people are travelling a lot, especially the youngest. They are travelling for leisure, but also to work, European Union encourages the mobility of Europeans, not necessarily for a long period. How the laws are taking into account the diversity of situations?

Table 1. 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	NLD	ICE, NLD	ALL
	2. Non-resident national	ALL	NLD	NLD	DNK, NLD, NOR, SWE
	3. Resident foreigner	ALL	NLD	ICE, NLD	DNK, ICE, NLD, NOR, SWE
	4. Non-resident foreigner	DNK, NLD, SWE <i>ICE, NOR</i>	NLD	NLD	DNK, NLD, SWE, NOR
Non-resident national with:	5. Non-resident national	DNK, ICE, NLD, NOR, SWE	NLD	NLD	NLD
	6. Resident foreigner	ALL	NLD	NLD	NLD, NOR, SWE, (DNK)
	7. Non-resident foreigner	DNK, NLD, SWE <i>ICE, NOR</i>	NLD	NLD	NLD
Resident foreigner with:	8. Resident foreigner	ALL	NLD	ICE, NLD	NLD, DNK, NOR, SWE (ICE)
	9. Non-resident foreigner	DNK, NLD, SWE <i>ICE, NOR</i>	NLD	NLD	NLD <i>NOR, SWE</i>
Non-resident foreigner with:	10. Non-resident foreigner	DNK, SWE <i>ICE, NOR</i>			
	11. Sister or brother with sister or brother	<i>(SWE)</i>			<i>(SWE)</i>
	12. Parent with child	<i>(SWE)</i>			<i>(SWE)</i>

* In Iceland, the different sex registration is more a cohabitation registration

Source: Waaldijk, Kees et alii.- *Major legal consequences and procedures of civil marriage, registered partnership and informal cohabitation for different-sex and same sex partners in nine European countries.*- Leiden/Paris: E.M.Meijers Institute of Legal Studies/Institut national d'études démographiques, provisional document, September 17, 2003, p. 16.

DNK = Denmark Bold= Full rights
ICE = Iceland Normal = Conditional
NLD = Netherlands Italics = Exceptional
NOR = Norway
SWE = Sweden

To prevent aliens to come over just for that purpose, all the countries ban two non-resident foreigners to register or marry.

The Netherlands that had some restrictions when one partner was a non-resident foreigner concerning registered partnership of both kind, withdrew the condition of residence in 2001. All the conditions required in regard to obtain residence permit or citizenship are equal between all the legal statuses offered and cohabitation.

In the Nordic countries, the conditions are more restricted.

The original limitation to country nationals has been relaxed later by amendments when other countries belonging to the Nordic council have adopted a similar law. The benefit was then extended to "other countries having similar laws", leaving it open to the countries which would adopt such laws after.

The citizenship condition put on registration was also replaced by a condition on duration of stay in the country. The main required condition as it stands now is the residency. Two citizens of one country can't register in their own country if one of them at least doesn't live there. There is no provision for the moment, that for instance two Norwegians living in Sweden can't register in Norway. They can only do it in Sweden but their registration is recognized in their country. The Nordic council is working on an harmonization as to get similar conditions in all its countries, especially since Finland had adopted the law (entry into force 2002).

However, there are still some discrepancies between the qualifications required in the different countries. Iceland offered fewer possibilities than the others. A non-resident can't register, even with a country national resident. Also, the restriction to at least two years of residency is applying for both candidates. The citizenship requirement for one of the partner is enlarged to citizenship of the countries having enacted a same law. These strict requirements are not applicable to marriage.

In Denmark and Iceland, providing some restrictions, compared to cohabitation, registering can help to obtain the citizenship as marriage does and sometimes to be granted a resident permit. These rights towards residence permits are slightly more favourable in Sweden and Norway where cohabitants having a minimum number of years in relationship requested.

Overall, it seems that that though still discriminating compared to marriage on nationality requirement, the laws on register partnerships offers more advantages than informal cohabitation in the field of granting resident permits and citizenship, though Iceland is still a promised land difficult to reach.

Material consequences

In the Nordic countries, many of the benefits from taxes and social security are directed to individuals and not to the family. This is a logical application of the obligation of mutual support of the partners that relays the State in its support to individuals. As cohabitation among heterosexuals was coming more and more popular, trends have been to equate the rights to cohabitants and by the effect of antidiscrimination laws to extend them to same-sex cohabitants. This affects in particular the material consequences attached to a life in common, the basic unit of regulation being the household and not the individuals.

In Sweden, the existence of the *Cohabitees Act* ruling the domestic affairs of the couple is the best example of the intention to equate the rights with the married and registered partners. Legislation provides for equal division of jointly acquired property upon breakdown of the relationship. Though not really formalised in Norway – the *Act nr.45 relating to the right to the Joint Residence and Household when a Household Community Ceases to exist* of July 4, 1991 being the most evident one- several laws apply to cohabitation sharing the same trends. These areas of laws that take into account cohabitants are mainly in use when ending a relationship or related to the presence of child in the household, in any case in order to afford the weakest party a minimum of protection.

As already pointed out, the rights and duties granted to married people are applicable to same-sex partners being positive or negative depending on the case.

In the field of material consequences, Sweden has fewer positive extra rights attached to the status of registered partner than the other countries. Apart from the rights to alimony in case of splitting up and automatic inheritance of the partner, the legalisation of relationship can result as with married people in a higher property tax if the income of the couple is over a certain sum (fortune tax). It seems that the area covered by the *Cohabitees act* provides a satisfactory situation to the basic needs of couples, whatever their status.

In Denmark, Iceland and Norway, rules applying are more similar and benefits of partnerships more generous. Joint income tax is an advantage offered as well as lower property tax in Norway and Iceland but mainly depending of the level of income of both partners.

In case of splitting up, the redistribution statutory rules and alimony apply. Entitled as an automatic inheritor, inheritance tax are less or ineffective (Iceland) for legal partners.

In Iceland and Norway, negative consequences apply also, together with social security benefits and old-age pension (for the latter, in Denmark too but as well as for cohabitants); only in Norway, a survivor's pension is granted.

Road to equality

The laws that seemed to have been established by the will of the politics in the name of progress and equality, have been supported slightly lightly by the homosexual associations on the same grounds of equality. Once the access to the claimed rights granted, behaviours seemed to have continued just like before. Life in couple and rights attached to it are only enticing for the most normative part of the homosexual community.

The first decade or more of partnerships shows unequal levels of registration. This is difficult in such a short time to draw extended conclusions on the link between rights offered and partnership registration. The low level of female and Swedish registration is out of surprise.

Lesbianism has always been discrete and hidden and with the exclusion of parental rights, registration offers relatively little attraction. In Sweden, the registration offers so little difference with cohabitation that one can only retain its symbolic aspect.

Perhaps the society is not enough accessible and favourable so that the most normative homosexuals want to profit in mass from this access to more complete rights. The balance must be positive between the coming out and the advantages granted. Perhaps the full access to parental rights might soon show a new tendency. It seems reasonable to think that those who are likely to register, leaving in a steady relationships already, will be tempted by the possibilities offered by parenting, if not already. The slight raise of lesbian registration these last years when stepchildren adoption and adoption in Sweden (and soon in Norway) were discussed and granted might be a sign sustaining this trend.

Most of the Nordic European countries have adopted equal treatment laws that push forward the progress towards more rights and equality. Changes are somewhat slow but constant there, it will soon spread southward under the pressure of European Union and its directives.

Still, homosexuals need time to get use of the law, the same way society needs time to broadly accept them. This is clearly seen in the registration levels in Denmark, which, higher than anywhere else to some extent, correspond to the image of the pioneering country that Denmark is. Higher tolerance and acceptance of the society, then bigger visible homosexual community, longer accessibility of the law, this could be an explanation of a higher level. Also new generations of homosexuals will grow up with the knowledge of the law and their rights, will benefit from an education in a more tolerant society. But until now, in most of the situations, the variation is so small from one legal situation to the other that something more had to be granted. Indeed, laws that were to offer necessary rights to same-sex couples are not that generous compared to rights granted progressively or concomitantly to cohabitants. Cohabitation profits the same trends in willingness to equate rights of people living in society. Thus cohabitants and registered partners have been granted what the Nordic welfare states could in the limit of their social systems. Would we suggest that all the efforts of the legislators have only result in offering a symbolic access to a virtual equality, i.e. inequality now under the spotlight?

If the symbolic effect of marriage is one of the most unexplained but acknowledged reason to cross the step, then, it seems rather normal that a law called "registered partnership" doesn't not bear the same contents and effect. When it will be called "marriage", and that everyone will have access to it, the normative aspect will join the symbolic one and will be devoted to it those that feels at ease in the society no matter of which sex they are.

Acknowledgements:

The authors wish to thank Gunnar Andersson, Turid Noack, Ana Qvist, Ane Seierstad, Liesbeth Steenhof for providing the statistical data and, John Asland, Søren Baatrup, Daniel Borrillo, Hrefna Fridriksdóttir, Rainer Hiltunen, Olivier de Schutter, Dirk Siegfried and Hans Ytterberg for the law data.

References

- Agell, Anders.- "Should and can family law influence social behaviour?".- Eekelaar, John & Nhlapo, Thandabantu (eds) – *The Changing family. International perspectives on the family and family law.*- Oxford: Hart publishing, 1998, p. 125-138.
- Albæk, Erik.- "Political Ethics and Public Policy: Homosexuals between Moral Dilemmas and Political Considerations in Danish Parliamentary Debates".- *Scandinavian Political Studies*, vol. 26, n°3, 1998, p. 245-267.
- Bech, Henning.- "Report from a rotten state".- Plummer, Ken (ed).- *Modern Homosexualities.*- London: Routledge, 1992, p. 134-147.
- Boele-Woelki, Katharina.- *Le partenariat enregistré : législation des Pays-Bas.*- Strasbourg : Commission Internationale de l'Etat Civil, 1999, p. 43-52.
- Boele-Woelki, Katharina; Braat, Bente & Summer Ian (eds).- *European Family Law in Action. Vol. I: Grounds for Divorce*, European family laws series.- Antwerp: Intersentia, 2003.- 466 p.
- Borrillo, Daniel.- "Pluralisme conjugal ou hiérarchie des sexualités : la reconnaissance juridique des couples homosexuels dans l'Union européenne".- *Revue de droit de McGill/McGill Law Journal*, vol. 46, 2001, p. 875-922.
- Bourdieu, Pierre.- "Quelques questions sur la question gay et lesbienne".- Eribon, Didier (ed).- *Les études gay et lesbiennes.*- Paris : Editions du centre Georges Pompidou, 1998, p. 45-50.
- Bradley, David.- "Regulation of Unmarried Cohabitation in West-European Jurisdiction- Determinants of Legal Policy".- *International Journal of Law, Policy and the Family*, n°15, 2001, p. 22-50.
- Broberg, Morten.- "The registered partnership for same sex couples in Denmark".- *Child and Family Law Quarterly*, vol. 8, n°2, 1996, p. 149-156.
- Commaille, Jacques; Festy, Patrick; Guibentif, Pierre; Kellerhals, Jean; Perrin, Jean-François; Roussel, Louis.- *Le Divorce en Europe occidentale : la loi et le nombre.*- Paris : INED, 1983.- 242 p.
- Esping-Andersen, Gøsta.- *The three worlds of welfare capitalism.*- Princeton University Press, 1990.- 260 p.
- Forder, Caroline.- "To Marry or not to marry: that is the question".- Bainham, Andrew.- *The International Survey of Family Law: 2001 edition.*- Bristol: Family Law, 2001, p. 301-320.
- Guðný Björk Eydal & Kolbeinn Stefánsson.- "Restrained reform – Securing equality for same sex couples in Iceland".- Paper presented at the Conference *Same sex couples; same-sex partnerships, and homosexual marriages A focus on cross-country differentials*, Stockholm University, September 25-26, 2003.- 33 p.
- 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.
- Hansen, Bent & Jørgensen, Henning.- "The Danish Partnership Law: Political decision making in Denmark and the National Danish association for Gays and Lesbian".- *The Third ILGA Pink Book.*- New York: The Prometheus Books, 1993, p. 86-99.
- Hrefna Friðriksdóttir.- *The Nordic gay and lesbian «marriage»: No children allowed.*- Harvard Law School LLM paper, 1996, mimeo.- 144 p.
- Jensen, Steffen.- "Recognition of sexual orientation: the Scandinavian model".- www.steff.suite.dk/gaypol.htm consulted February 18, 2004.- 7 p.
- Lund-Andersen, Ingrid.- "Cohabitation and Registered Partnership in Scandinavia- The Legal Position of Homosexuals".- Eekelaar, John & Nhlapo Ronald Thandabantu.- *The changing family. international perspectives on the family and family law.*- Oxford: Hart Publishings, 1998, p. 397-404.
- Lund-Andersen, Ingrid.- "The Danish Registered Partnership Act, 1989: Has the Act Meant a Change in Attitudes".- Wintemute, Robert Andenæs Mads (eds).- *Legal Recognition of Same-Sex Partnerships: A Study of National, European and International Law.*- Oxford: Hart Publishing, 2001, p. 417-426.

Lützen, Karin.- "Gay and Lesbian Politics: Assimilation or Subversion: A Danish Perspective".- *Journal of Homosexuality*, n° 35, 3/4, 1998, p. 233-243.

Macura, Miroslav; Mochizuki-Sternberg, Yumiko & Lara Garcia, Jose.- "Eastern and western Europe's fertility and partnership patterns: Selected developments from 1987 to 1999".- Macura, Miroslav & Beets, Gijs (eds.).- *Dynamics of fertility and partnership in Europe. Insights and lessons from comparative research*.- United Nations, New York & Geneva, 2002, p. 27-56.

Maxwell, Nancy.- "Opening Civil Marriage to Same-Gender Couples: A Netherlands-United States Comparison".- *Electronic Journal Of Comparative Law*, vol. 4-3, November, 2000 (<http://www.ejcl.org/ejcl/43/art43-1.html>).

Meulders-Klein, Marie-Thérèse.- *La personne, la famille et le droit. 1968-1998. Trois décennies de mutations en Occident*.- Bruxelles/Paris : Bruylant/LGDJ, 1999.- 599 p.

The Ministry of Children and Family Affairs.- *The Norwegian Act of Registered Partnerships for homosexual couples*.- Oslo, August 1993, mimeo.- 59 p.

Nielsen, Linda.- "Family Rights and the Registered Partnership in Denmark".- *International Journal of Law and the Family*, n° 4, 1990, p. 297-307.

Noack, Turid.- "Cohabitation in Norway: An accepted and gradually more regulated way of living".- *International Journal of Law, Policy and the Family*, n° 15, 2001, p. 102-117.

Noack, Turid; Seierstad, Ane and Weedon-Fekjær, Harald.- "Registered partnerships: a new way of living together". Paper presented at the *European population conference*, Warsaw, August 2003, 16 p.

Official report series of Swedish legislative and investigation committee (SOU 1972:41) *Familj och äkenstap* ("Family and marriage"), Stockholm, 1972.

Recent demographic developments in Europe : 2002, Council of Europe, Strasbourg 2002.- 121 p. and a CD Rom.

Registreret partnerskab, samliv og velsignelse: rapport fra et af biskopperne nedsat udvalg vedrørende kirkelig velsignelse af registreret partnerskab, Århus, 1997, <http://www.folkekirken.dk/udvalg/partnerskab> consulted February 2004.

Rydström, Jens.- "From outlaw to in-law. On registered partnerships for homosexuals in Scandinavia, its history and cultural implications". Paper given at the conference *Same-sex couples, same-sex partnerships and homosexual marriages*, Stockholm, September 2003.

Scherf, Yvonne.- *Registered Partnership in the Netherlands: A quick Scan*.- Amsterdam: Van Dijk, Van Someren en Partners, 1999.- 43 p.

Søland, Birgitte.- "A queer nation? The passage of the Gay and Lesbian Partnership Legislation in Denmark, 1989".- *Social Politics*, Spring 1998, p. 48-69.

Van Velde, Hans.- "The Long Road to Civil Marriage".- www.gaygrant.com, consulted 24 December 2001.

Waldijk, Kees et alii.- *Major legal consequences and procedures of civil marriage, registered partnership and informal cohabitation for different-sex and same sex partners in nine European countries*.- Leiden/Paris: E.M.Meijers Institute of Legal Studies/Institut national d'études démographiques, provisional document, September 17, 2003.-130 p.

Waldijk, Kees.- "Small Change: How the Road to Same-sex Marriage Got Paved in The Netherlands".- Wintemute, Robert & Andenæs Mads (eds).- *Legal Recognition of Same-Sex Partnerships: A Study of National, European and International Law*.- Oxford: Hart Publishing, 2001, p. 437-464.

Willekens, Harry.- "Long-term developments in family law in Western Europe: an explanation", in Eekelaar, John & Nhlapo, Thandabantu (eds).- *The Changing family. International perspectives on the family and family law*.- Oxford: Hart publishing, 1998, p. 47-72.

Ytterberg, Hans.- "From Society's Point of View, Cohabitation Between Two Persons of The Same Sex is a Perfectly Acceptable Form of Family Life": A Swedish Story of Love and Legislation".- Wintemute, Robert & Andenæs Mads (eds).- *Legal Recognition of Same-Sex Partnerships: A Study of National, European and International Law*.- Oxford: Hart Publishing, 2001, p. 427-437.

APPENDIX 1

The registered partnership and marriage laws on their main aspects

1. Acts of registered partnerships

In the Nordic countries, the acts of registered partnership are mainly acts with contents by default. It carries the same consequences as marriage except stated otherwise in the act. Therefore, registered partners are concerned by all laws concerning marriage if no special provisions in the Registered partnership Act.

In practice, the partners must have attained the age of majority, not be married or in a registered partnership, and not be too closely related by blood.

Denmark

**Lov om registreret partnerskab nr. 372, June 7, 1989, entry into force, October 1st, 1989-
Greenland April 26, 1996**

Only two persons of the same sex can register.

A partnership may only be registered if one or both partner is Danish citizen and is living in Denmark.

In 1999, an amendment to the law opened the law to citizens from a country with similar legislation and living in Denmark, or if both foreign partners are living in Denmark at least for two years prior registration.

The adoption act doesn't apply to same sex partners in the original law. Joint custody of partner's child and adoption of partner's child have been granted in 1999 provided the child has not been adopted from a foreign country. Medically assisted insemination had been a topic of interest in Denmark. Since 1997, insemination by a doctor is only legal with a woman married or living in a similar relation with a man. It thus started to prejudice lesbians that had previously access to it. Literal interpretation of law lets nurse or personal insemination legal, provided that no medical assistance is needed.

No church wedding is allowed. In Nordic countries, the Church is a State Church. It can marry as well as the City Hall. However, in 1997, a Committee of Danish Bishops released a report (*Registered Partnerships, common life, and blessing*) leaving up to the pastors the choice to give or not a blessing at the occasion of the registration of partnerships⁶⁰. The report stressed that recognition of new family forms and homosexuality should be acknowledged. However, this very progressive statement didn't lead them to propose church wedding.

Otherwise, the partners enjoy the same rights of inheritance and have the same duty to support each other as married spouses. They are subject to the same provisions respecting, for example, the division of family property and taxation

Norway

Lov om registrert partnerskap nr. 40, April 30, 1993, entry into force, August 1, 1993

In Norway, the partners must be homosexuals.

Similar to Denmark regarding nationality (in 2001, amendment regarding the opening to citizens of Denmark, Iceland and Sweden and eventually, by King order, to citizens from countries with similar laws)

Regarding parenting, joint adoption is prohibited. In 2002, adoption of partner's child is lawful except if (s)he is adopted from a foreign country that doesn't permit such adoption. It is not illegal from a partner to adopt a child as individual if partner is mentally incapacitated or has disappeared.

Sweden

Lag om registrerat partnerskap, 1994:1117, June 23, 1994, entry into force, January 1st, 1995

Swedish act is on the same bases of the Danish one.

Citizenship conditions were initially more restricted, at least one of the partner had to be Swedish and domiciled in Sweden. From July 1st, 2000 the law has been changed so that it is sufficient that also one of the partner is a resident Swedish national or has been residing in Sweden for at least two years. Danish, Dutch, Icelandic and Norwegian citizens are considered the same as Swedish citizens.

Adoption law passed at Swedish Parliament (Riksdag) June 6, 2002, entry into force, February, 1st, 2003 with no restriction considering the country of origin of the adoptee.

⁶⁰ Registreret partnerskab, samliv og velsignelse: rapport fra et af biskopperne nedsat udvalg vedrørende kirkelig velsignelse af registreret partnerskab, Århus, 1997, <http://www.folkekirken.dk/udvalg/partnerskab> consulted February 2004.

On the 26th of November, 2003. Hans Ytterberg, Ombudsman against Discrimination on grounds of Sexual Orientation presented to the Minister for Justice a proposal to "Introduce a gender neutral Marriage Act".

Iceland

Lög um staðfesta samvist nr. 87 June 12, 1996, entry into force, June 27, 1996

the date was chosen to correspond to the Gay Pride

The law which governs the homosexual unions is called "confirmed partnership"

The Icelandic law is similar to the Norwegian law, but gives the possibility of joint custody of children for a registered couple.

It is based on the usual Icelandic matrimonial law, and gives confirmed partners the same rights and responsibilities as a heterosexual married couple except:

A couple in this partnership cannot adopt children

Women in the partnership cannot have artificial insemination

No possibility of church wedding

From May 2000 the law has been changed so that it is sufficient that also foreigners who have lived in Iceland for at least two years can be registered and that one partner can adopt the child of the other if the child's other parent is not claiming custody rights, if it is a biological child or Icelandic adoptee in Iceland.

The Netherlands

Act of 5 July 1997 amending Book 1 of the Civil Code and the Code of Civil Procedure, concerning the introduction therein of provisions relating to registered partnership (*geregistreerd partnerschap*), *Staatsblad* 1997, nr. 324 Entry into force January 1, 1998

The law is similar to the Scandinavian laws, but registered partnership is open also for two persons of different sex.

Rights and duties are similar to a heterosexual married couple except:

The maintenance duties that married spouse have towards their stepchildren do not apply to registered partners. Some dispositions regarding parenting are different.

December 21, 1999, into force January 11, 2000, amendment to allow partnership registration in situations where only one of the partners has Dutch citizenship or residency.

2. Act of marriage

Wet van 21 december 2000 tot wijziging van Boek 1 van het Burgerlijk Wetboek in verband met de openstelling van het huwelijk voor personen van hetzelfde geslacht (Wet openstelling huwelijk), entry into force, April 1ST, 2001

Wet van 21 december 2000 tot wijziging van Boek 1 van het Burgerlijk Wetboek (adoptie door personen van hetzelfde geslacht), entry into force, April 1ST, 2001

Both Laws of are from December 21, 2000 and were officially published on January 11, 2001.

Marriage law is similar to opposite-sex but adoption law specifies that an international adoption will only be possible by a different-sex married couple or by one individual.

APPENDIX 2

Table 2. Age-adjusted rates of registration for male and female partners (per one million unmarried persons aged 15+) and their sex ratios (male registrations per one female registration)

Country	Sex	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	Period	Mean
Denmark	m	120	150	83	76	73	68	81	71	57	63	73.4	77.9	77.9	60.6	93/02	70.2
	f	29	53	42	39	29	46	39	50	53	60	64.9	60.9	77.6	76.7		
	m/f	4.1	2.8	2.0	2.0	2.5	1.5	2.1	1.4	1.1	1.0	1.1	1.3	1.0	0.8		
Iceland	m								110	45	44	47	39	37	41	97/02	42
	f								83	58	47	39	51	60	30		
	m/f								1.3	0.8	0.9	1.2	0.8	0.6	0.3		
Norway	m					86.7	61.3	40.8	50.6	46.0	43.3	51.5	49.7	61.4	57	95/02	50.0
	f					39.0	36.4	26.2	30.4	28.8	30.1	38.4	44.5	45.0	42		
	m/f					2.2	1.7	1.6	1.7	1.6	1.4	1.3	1.1	1.4	1.3		
Sweden	m							63.9	25.0	19.4	18.5	17.8	24.8	21.5	22.9	97/02	20.8
	f							21.5	14.7	12.7	10.8	15.6	16.3	21.5	23.3		
	m/f							3.0	1.7	1.5	1.7	1.1	1.5	1.0	1.0		
Netherlands partnership	m										318.4	159.5	138.7	49	61	99/00	149.1
	f										235.5	146.5	128.9	40	63		
	m/f										1.4	1.1	1.1	1.2	1.0		
Netherlands marriage	m													228	154		
	f													177	144		
	m/f													1.3	1.1		
Standardisation results from the application of age specific rates of registration to the sex and age structure of the Swedish unmarried population on the 1 st of January 1995.																	
There are no decimal points when age specific details are missing (Denmark, Norway, The Netherlands) or when the absolute figures are too small (Iceland).																	