Que(e)rying political practices in Europe: Tensions in the struggle for sexual minority rights

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Chapter Four
European Strategies: Human Rights

Indeed human rights, viewed at the universal level, bring us face-to-face with the most challenging dialectical conflict ever: between 'identity' and 'otherness', between 'myself' and 'others'. They teach us in a direct, straightforward manner that we are at the same time identical and different.
(Boutros Boutros-Ghali 1994:7)

The human rights activist, therefore, (...) cannot help but represent the actuality of the human condition and respond in a language that posits unity (interconnectedness) in diversity (pluralism).
(Baden Offord 1999a:64)

On November 18th, 1998, Queer Planet—an international l/g/b/t e-mail network—published the following report, which has since then been repeated in newspapers around the world:

During a talk at an US American university, Desmond Tutu, the famous South African Anglican Bishop, talked about what his priorities are now that South Africans are beginning to heal from apartheid. When a student asked Tutu what injustice he would most want to reverse, he gave a surprising answer. "Will you give me two?" he said with a grin. First, Tutu called on world leaders to forgive the mounting debts owed by developing nations. Then he said the persecution of homosexuals is as unjust as apartheid. "Sexual orientation is just like race", Tutu said. "People do not decide to be gay any more than they decide to be black or white", he said. Tutu condemned the killing of Matthew Shepard in Wyoming in October 1998. "For me it's a matter of human rights and a deeply theological issue," Tutu said. "I believe they are as much God's children as anyone... I can't be part of a scheme for clobbering them." (Desmond Tutu 17th November 1998, quoted in Queer Planet 17th November 1998).

In choosing homosexuals' right not to be persecuted as a primary human right, Desmond Tutu rocked the international lesbian and gay community. His comment was astonishing, unexpected, and impressive and it was celebrated extensively in much of the gay and lesbian national and international press. Hearing one of the most prominent human rights advocates in the world cite sexual orientation as a human right on par with race, seems to corroborate the long deployment of human rights in arguments for justice, equality, and freedom for gay men and lesbians.

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65 A shortened version of some parts of this chapter has been published as Beger (2000b).
Within the transnational European context in particular, human rights are the argumentational strategy most central to lesbian and gay lobby politics. Human rights are a pivotal discourse of the European institutions—the European Union and the Council of Europe—which draw much of their identity from building Europe as a peaceful post-war unity that secures the protection of fundamental rights. In fact, the human rights discourse may be the most dominant discourse of rights in Europe. Therefore, it warrants close investigation as a political practice. The aim of this chapter is to present such an investigation through a critical reading of ILGA-Europe’s EU Action Plan, ILGA-world’s Human Rights Manifesto, interview material, and the 1997 *Euan Sutherland v United Kingdom* case (European Commission of Human Rights).

The first section of this chapter will examine the arguments and obstacles of homosexual rights as human rights. Traditional human rights discourse places emphasis on the individual as bearer of rights qua her or his human status. Freedom, equality, recognition, and integrity are the features through which human rights are argued and that fuel the belief in human progress with regard to the respect for fundamental rights. Human rights literature that considers sexual orientation tends to name several steps necessary for the successful inclusion of lesbians and gay men into the dominant human rights discourse. Section two will consider these steps, which include: declaring homosexuals as fully human, presenting sexual orientation as central to human identity, arguing for the universality of human rights, and ensuring equality before the law for each individual. However, since none of these steps is easily argued or accepted within court rooms and at intergovernmental meetings—where decisions on human rights instruments are made—none of them may be assumed to be already in place. From a critical queer perspective, the fact that human rights violations on the grounds of sexuality continue to occur, and are rarely named or accepted as such, begs for a more fundamental interrogation of human rights discourse and why human rights have historically not been applied to people with non-normative sexualities.

Section three will undertake such interrogation of the problematic history of human rights. Through its reference to a humanist concept of personhood, the widely argued exclusion of women in the conceptualisation of rights has implications for human rights relating to sexual orientation. Human rights are individuated rights. This potentially precludes an examination of those structures that produce and maintain human rights violation in the first place. I will argue that human rights grant a freedom and an equality deeply dependent on notions of humanness that exclude homosexuality; the respectability and recognition they promise are paradoxical to homosexuality. Finally, I will show that behind the seemingly universal human identity and rights that apply to individuals, sexual identity as a marker of political group formation is legally and politically re-introduced. I conclude that the only territory truly negotiated in human rights discourse is the territory of humanity. As long as the stakes of humanity are not openly designated as
the territory of negotiation, human rights will continue to burden those they actually seek to liberate with an identity of injury and suffering.

**Homosexual Rights as Human Rights**

Rights argumentation in lesbian and gay political practice is primarily based—either explicitly or implicitly—on the discourse of human rights. The focus rests on sexual rights as intrinsic rights asserted for gays and lesbians by virtue of fully acknowledging their humanity. The discourses on European unity in general draw heavily on human rights discourses. The connection between unity and similarity, cultural difference, and human rights is also not rare in academic thought on citizenship and the European Union. Jürgen Habermas gives a prominent example of this:

In a future Federal Republic of European States, the same legal principles would also have to be interpreted from the vantage point of different national traditions and histories. One’s own national tradition will, in each case, have to be appropriated in such a manner that it is related to and relativized by the vantage points of other national cultures. It must be connected with the overlapping consensus of a common supranationally shared political culture of the European Community. Particularist anchoring of this sort would in no way impair the universalist meaning of popular sovereignty and human rights. (Habermas 1992:7)

For Habermas, the common denominator for Europeanness is the universalist meaning of human rights which stands above and beyond national traditions as the supranationally shared political culture. The dominant human rights discourse Habermas refers to does not defy nationalism, nor does it question Europe as a project comprised out of national virtues, which are joint by European cultural heritage. In fact, Habermas’ vision of human rights is profoundly connected to the official rights rhetoric of the European institutions.

Both the Council of Europe and the European Union were, among other things, built on the idea of uniting former enemies in Europe and protecting human rights in perpetuity. Building Europe as a peaceful unity that secures the protection of fundamental rights—of which human rights are the most decisive—is part of the mission statement of all European institutions. The EU as an international body has not signed the European Convention of Human Rights, but has designed its own human rights charter—the Charter of Fundamental Rights—which it declared in December 2000. The rhetoric of the EU is heavily influenced by human rights discourse. Since 1994, the annual Human Rights Reports of the European

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66 See Hans Helmut Bischof (1994), Francis Jacobs et.al. (1992), and Werner Weidenfeld & Christian Jung (1994) for further elaboration on this history.

67 See for this the web pages of the EU on citizens’ rights (http://europa.eu.int/abc/cit1-en.htm) and the Council of Europe (http://www.coe.fr/eng/present/index.htm).
Parliament—concerning member states of the EU—mentions homosexuality or sexual orientation discrimination as a violation of human rights.\(^6\)

The European Parliament refers to unequal ages of consent, non-provision of partnership rights, social, economic, and legal insecurity, equal treatment of EU employees by the European institutions, the treatment of lesbian and gay prisoners, and homophobic violence. The violation of human rights within the EU is a contentious item in the EU Parliament, but human rights rhetoric appears on a very regular basis and is considered pivotal to all MEPs and parties.\(^6\) Considering the dominance of human rights in much of the official political and ideological rhetoric on Europe, the predictable recourse to human rights strategies in European gay and lesbian political practice is not astonishing. The argumentation for rights when approaching the EU—and obviously the Council of Europe—necessarily draws on human rights as the remedy to that which has been denied to lesbians and gay men in Europe.

The political stance of ILGA-world is put most succinctly in the phrase “Lesbian and gay rights are human rights”. In this phrase, ILGA draws upon human rights language inscribed in the UDHR—Universal Declaration of Human Rights—and Boutros Boutros-Ghali’s exhortation of “all human rights for all people”. (ILGA, 1998: 3-4) ILGA-Europe, in turn, mentions human rights specifically in almost all political argumentation and in its activity reports. The interviews I conducted with ILGA-Europe activists bring to the forefront the predominance of human rights argumentation in European gay and lesbian political practices as well.\(^7\) The human rights issue is the grand narrative of activists on the European stage.\(^7\)

During 1998, ILGA-world carried out a great deal of human rights activism. This activity included a human rights manifesto called “The Rights of Lesbians and Gays are Human Rights” and culminated in an official meeting with Mary Robinson—the

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\(^6\) One could surely prove this via an analysis of all EP debates over a certain period of time. Similar assertions have been made in academic literature on human rights discourse, for example, by Sam Garkawe (1997), Eric Heinze (1995), Baden Offord (1999a), and Robert Wintemute (1995).

\(^7\) In the response to the question which areas of discrimination are of most concern, legal equality was nearly always at the top of the list and that equality was—with very few exceptions—connected to basic issue of human rights.

\(^7\) ILGA is not alone in its emphasis on human rights, nor are human rights only central in European political discourse. Human rights instruments have traditionally been called upon by many activists of social movements throughout the world. The impacts of human rights instruments and argumentation for sexual orientation—or rather the limited success of these instruments—has been widely analysed in different cultural, national, and global contexts. See, for example, Paul Fenam Park Hagland (1997), Eric Heinze (1995), Baden Offord (1997, 1999a, 1999b), Baden Offord & Leon Cantrell (1999), Wayne Morgan (1995), David Richards 1988, Nicole LaViolette & Sandra Whitworth (1994), Nicole LaViolette (1997), Robert Wintemute (1996).
UN High Commissioner on human rights. The ILGA 98 Manifesto—celebrating ILGA’s 20th anniversary and the 50th anniversary of the Universal Declaration of Human Rights—states:

Mankind has been able to abolish slavery and establish certain basic rights of women in almost all parts of the world. We have developed democratic institutions and civil societies. Respect for human rights and fundamental freedoms is the condition for successful social and political life in all societies. We must recognize equality and respect diversity. On the 50th anniversary of the Universal Declaration of Human Rights, we bear witness to the strengthening concern of peoples and societies for human rights. A fundamental part of human rights in our time is the recognition of the right of individuals to develop their personalities, identities and sexuality, free from coercion or discrimination. We condemn the discrimination and oppression that continues in many States, including criminal sanctions and even the death penalty. In solidarity with ILGA, we demand full equality before the law for gay men, lesbians, bisexuals and transgendered persons. We demand the end of criminal penalties. We seek laws prohibiting discrimination. We demand the full and equal recognition of relationships. We look forward to the inclusion of equality rights, irrespective of sexual orientation, in national laws and international human rights instruments. Together we can all make a better life for each other and for future generations. Gay and lesbian rights are human rights!

Similarly, the European Action plan of ILGA-Europe, which has been presented personally to each commissioner by ILGA-Europe and EGALITE between 1997 and 1998, takes its starting point from a human rights argument:

The basic aim of the International Lesbian and Gay Association (ILGA) and of its 400 member associations is to work for the liberation of lesbians and gays from legal, social, cultural and economic discrimination. This aim was reconfirmed in the ILGA-Europe constitution adopted at the December 1996 Madrid Conference. The assumptions underlying this aim are the equality of all citizens, one of the fundamental principles of Community law, and the right not to be discriminated against on the basis of sexual orientation, a basic right of all human beings. (ILGA-Europe Action Plan 1997—emphasis mine)

The EU Action Plan clearly declares that the right not to be discriminated against and the right to live one’s sexual orientation freely is a basic right of all human beings. Given the confidence with which just statements are asserted and the centrality of the human rights discourse in the official rhetoric of European institutions, it is reasonable to ask questions about the precise historical conditions and concepts upon which the claim “Homosexual Rights are Human Rights” is

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73 The latter formulation was also used by Kurt Krickler in Eurolette 65, November 1998 and in ILGA-Europe’s submission towards the EU Human Rights Agenda in the year 2000.
based. The excerpts quoted above shed light onto the dominant human rights discourse in Europe and show how that discourse is brought to bear on sexual orientation.

The first aspect evident is a strong belief in human progress. Boutros Boutros-Ghali (1994:8-9) once suggested that the 1990s signal that human rights have become core considerations for the international community and all peoples of this world. He considers this to be a major success in the consciousness of humanity. The ILGA Manifesto taps into this belief in progress in its first four lines: after human kind has finally abolished slavery, the world will now realise that progress demands the recognition of sexual rights as human rights as well. Evidence for this progress is located in the development of democratic institutions, of civil societies, and of respect for diversity. In short, there is no future successful social and political life without respect for human rights and fundamental freedoms according to the Manifesto.

The belief in progress and development is part of the history of human rights and of their intrinsic reference to morality, hope, and authority. (Evans 1998:4) Tony Evans argues in this respect that “human rights are the outcome of power relations” and “in the current era all issues must be subordinated to the imperatives of globalization”. (1998:12) Through the extinction of the socialist human rights project, the US approach of extending freedoms only to those who do not challenge the free market principles or resist the imperative of liberal processes for economic growth and development has become dominant in global human rights discourse. (1998:12) International human rights discourse increasingly turns to the language of democracy rather than individual freedoms, following the logic if capitalist democracies are installed, human rights will automatically follow. (1998:13) ILGA’s Manifesto—drawing on this historical context in which human rights are situated in the 1990s—turns to using the language of democracy. In its first three lines, the Manifesto praises progress in social and political life of capitalist democracies as bench marks for human rights.

Academically speaking human rights are said to “imply the amelioration of human life, that is, its improvement and its protection.” (Offord 1999a:50) A. Belden Fields and Wolf-Dieter Narr identify four values that ensure and promote the amelioration of human life: the longing for freedom, social recognition, equality relative to the social context in which people live, and integrity. (1992:5-6) Freedom in this sense needs to be understood in terms of what is felt to be lacking in the given social and historical context. This includes all forms of marginalisation and social exclusion as well as physical freedom from torture and coercion. It includes freedom to engage in free choices and freedom from discrimination, the latter being the principle claim upon which ILGA(-Europe) rests its human rights position. The Manifesto asserts freedom of discrimination with the words “a fundamental part of human rights in

74 He did this in the face of several Asian countries expressing their rejection of Western human rights that place preference on the individual above the community.
our time is the recognition of the right of individuals to develop their personalities, identities and sexuality, free from coercion or discrimination” (line 7-9). The Action Plan calls freedom from discrimination a basic human right that is connected to the principle of equality, which the Manifesto features as well in line 11.

According to Fields and Narr, the claim to equality is a strategy of opening up space in which previously accepted historical structures of inequality become the focus of a struggle for social reconstruction. (1992:6) Putting sexual orientation assertively on the agenda of what matters in rights of choice manifested in human rights (Manifesto line 8-9) is an act of struggling for a new social order in which previously accepted inequalities—such as homosexuality as unnatural illness—are now considered unjust. The recognition of this injustice is expressed in the demand for legal recognition which both quotations include. The need for recognition stems from the insight that any sense of self-worth depends upon recognition and respect from others. (1992:6) When the Manifesto claims that “a fundamental part of human rights in our time is the recognition of the right of individuals to develop their personalities, identities and sexuality, free from coercion or discrimination” (line 7-9), then recognition of personal choice and of existing injustice is clearly made a social process that depends on the willingness of others to acknowledge sexual orientation as a diverse feature of human nature.

Equality will only be achieved when discrimination on the grounds of sexual orientation is commonly considered a clear violation of human rights and when gay men and lesbians are liberated “from legal, social, cultural and economical discrimination” (Action Plan line 2-3). Yet, freedom from coercion and discrimination grants more than only recognition. It grants integrity of one’s body and social relations. Integrity, relates to the belief that personal lives “constitute something true, something whole, something valid for themselves and for others with whom they interact.” (Fields & Narr 1992:6) Human rights language is fundamentally built on the notion of integrity, which is affirmed in Article 1 of the Universal Declaration of Human Rights:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood (sic).

These features of human rights language—the belief in progress, freedom, equality, recognition and integrity—are not only presented in written and official political statements, but are also a strong part of why and how activists centralise human rights discourse in their work. Additionally, the emphasis on individuals rather than groups and the accrediting of rights to people by virtue of their humanness in human rights discourse frames the approaches activists take to these features of human rights argumentation. To my initial question in the interview guideline “What are the most successful strategies and arguments in your work?” Outi Ojala—MEP and president of the intergroup “Equality for Lesbians and Gay Men” at the time—immediately responded with the human rights issue. Ojala not
only centralises the human rights discourse as an important political strategy, but also as her personal motivation for her courageous involvement in the issue over years transnationally and nationally in Finland, while she, herself, does not identify as lesbian:

It is very easy to say: it is the question of human rights. The whole idea why I am working for lesbian and gay rights is that they must have human rights.... It is a question of every person having the same right to decide on her or his sexuality and sexual behaviour. It is a private question, but the right for equal treatment has to be the same independent of what is your sexual orientation... people have to face the question of what it means to be gay or lesbian, what the discriminatory elements are in daily life.... I got a lot of telephone calls and letters of people who said that it is not my concern everyone has the right to do what they want, it is not my concern, but during the discussion they noticed of course it is a human rights question, it is a question of everyone... the reason I struggle for gay and lesbian rights is the human rights question, and I am also very involved in other minority rights questions.... for the same reason. (Outi Ojala March 1998)

Implicit in her saying “it is a question of every person having the same right to decide on her or his sexuality, sexual behaviour. It is a private question, but the right for equal treatment has to be the same independent of what your sexual orientation is” is an emphasis on individuality. She speaks of rights for gay men and lesbians, not emphasising their group status as such, but rather their individual right to choice. Choice is portrayed as a right that heterosexual people exercise in the same way and a right that every human person should have access to. This individualisation of rights is a strong feature of the classical human rights discourse. Jack Donnelly asserts in this respect: “Human rights are inherently ‘individualistic’; they are rights held by individuals in relation to, even against, the state and society.” (1984:410) According to Donnelly, human rights are held equally by all against the state, which limits the state’s legitimate range of actions and requires positive protections against predictable economic, social, and political contingencies. (1984:416) Individualised rights are “a seemingly natural and necessary response to typically modern threats to human dignity, to basic human values, traditional and modern alike”. (1984:416) Human rights are, thus, rights that every person has by virtue of being human.

Adrian Coman—executive director of ACCEPT in Romania and member of ILGA-Europe’s executive board—concludes that sexual rights as human rights are best argued “by underlining the need for sexual rights that also apply to straight people.” (Adrian Coman, e-mail interview June 1999) He marks rights of sexual orientation as rights of all individuals by virtue of their humanness. Coman implicitly refers to sexual orientation in the human rights context as the assertion of an immutable status and a choice at the same time. It is, therefore, applicable to all human beings who have a right to respect in relation to the pursuit of their happiness and health. Tatjana Greif—Slovenian lesbian activist and member of
ILGA-Europe’s executive board—also formulates the applicability to the whole of society:

The crucial thing is the concept of individual civil and human rights. Instead of talking about different minorities, the struggle for any socially marginalised group and individual rights is the wise strategy, I think. Women are certainly no minority, but they are, similarly as g/l, socially marginalised and discriminated against. The struggle for legal equality, individual rights, and free choice, also the freedom of sexuality, can benefit all people and the society in general.

(Tatjana Greif, e-mail interview January 2000)

For Greif individual rights are a way out of the problem of minority politics she identifies as problematic at another point, mainly because the principle of freedom of sexuality as a human right will benefit the whole of society. Sexual freedom is a choice to which heterosexuals also need to have access, as a human right this applies beyond sexual minorities. Ojala, additionally, emphasises that the realisation of the existence of discrimination will lead to an understanding of sexual rights as human rights and she also insists on the right of decision for every person in terms of sexuality. Both her and Greif’s points imply a concept of consciousness raising about sexuality as a marker of humanness.

A significant part of any consciousness raising is the belief in progress: once people have been made aware of human rights violations, progress towards securing human rights can be made. This approach also carries the hope of abolishing the prejudiced belief that non-heterosexual behaviour is either sinful, sick, or a perverse crime. As Adrian Coman said: “On the long term, gay and lesbian people will achieve equality, respect and even the protection of public authorities in a world that becomes every day more and more politically correct.” (Adrian Coman, e-mail interview June 1999) Coman and Ojala vividly present the belief in progress as an important aspect of human rights argumentation. This belief proclaims that if human rights are taken seriously in just the way they already exist, equality, freedom, recognition and integrity will be a logical consequence. However, this equality, and the progress towards it, are built on human rights as rights of individuals who have a concept of humanness conferred on them. This concept of humanness is far from being natural, objective and universal: it is a historical product that heavily relies on binary and normative structures. It is this history, I argue, that forms a substantial obstacle to the inclusion of non-normative sexualities and gender identities in concepts of human rights, and, therefore, its conditions need to be critically examined.

75 She says in this respect:

If a certain human praxis is not transparent, it doesn’t mean it does not exist or that it exists as a minority. I’m not trying to say, that g/l are a majority, I simply think that the self-definition of a minority is not always productive or positive (it might be understand as victimisation etc.), but in some case it may be. Depends on the situation. (Tatjana Greif, e-mail interview January 2000)
The features of human rights language and their socio-historical contexts are relevant when approaching sexual orientation as an aspect of human rights. There is no doubt that human rights discourse has become entrenched in the consciousness of people all over the world. There is also no doubt that human rights conventions and political rhetoric have been an important response to the immense violence and suffering inflicted along lines of race, religion, gender, sexual orientation, and disability in the 20th century. In fact, human rights still form the dominant humanist response to the Holocaust, which is often interpreted as humanism's utter demise. Humanism as well as the French and the American Revolutions are the denominators of the historical background against which the human rights discourse is pitched. (Evans 1998:4)

The sovereignty of the individual—historically only ascribed to white men—to exercise power and rule is a significant base concept of humanism. Humanism invented a set of sovereignties: the soul—ruling the body, but subjected to God—consciousness—sovereign to judge, but bound to truth—the individual—titular control of personal rights, subjected to the laws of nature and society—and basic freedom. (Foucault 1977:221) ILGA's Manifesto asserts individuals against society claiming recognition and equality in individual free choices. Human rights are shaped by the history of humanism as the philosophical foundation of Western civilisation and "by the impact of the modern state—social isolation, order, identity, and the unending and insatiable lust for individualized profit which is the central motive of modern capitalism." (Field & Narr 1992:52) In fact, the right to property and the exercise of power over this property is not only the base principle of capitalism, but also of the concept of citizens' participation rights after the French Revolution.76 This history links human rights to a deeply gendered tradition of thought in which women are only secondarily granted the status of humans and citizens worthy of protection. (Peterson & Parisi 1998:143) In the course of time, human rights discourse has become deeply implicated by liberal, Western democratic and capitalist ideology, and it adheres to a language of morality that has its roots in a gendered and racialised European epistemology. This gives rise to tensions within the human rights discourse itself.

_Tensions in Human Rights_

Tensions arise out of the fact that the moral language of European culture has become the dominant frame of human rights discourse internationally. These tensions are manifold in human rights through human rights' embeddedness in liberalist nature, their patriarchal foundations, their claims to universality, and their European origin as well as the US dominance in deciding what human rights are in

76 This is a point originally emphasised by Karl Marx (1843/1969) in his essay “On the Jewish Question”. He (1843/1969:366) called human rights the rights of the bourgeois private property owners. Civil rights are to him the means of the political state to maintain human rights within the bourgeois society.
international politics. A problematic tension always exists between claims of humanity versus claims of culture—such as the Asian values debate—and sexuality is caught up in all these ongoing tensions. In summary, human rights discourse is an historical phenomenon that has developed in an environment of Humanism, the French Revolution, the World Wars—and particularly the Holocaust—, the Cold War, and the victory of capitalism over the communist system. (Offord 1999a:56) Thus

... the concept of human rights is complex due to its historical (and therefore contextual) basis, cross-cultural concerns and sensitivities, and the role of the modern state with its moral and economic imperatives. The confluence of all these things together with the forces of global capital and the development of an international information society (Castells, 1997), problematises such rich and profound concepts as human dignity and the value of human life. (1999a:56)

Gay and lesbian human rights literature often does not analyse the historical dimension of human rights discourse and its complexities to a full extent. Yet, it identifies four primary obstacles for the recognition of homosexual rights internationally. Firstly, it mentions the crisis of sexuality in the 20th century including the development of Western concepts of sexual identity and the fact that gay liberation has started to perturb notions of one true fixed human sexuality. Secondly, it names the widespread criminal laws against homosexual acts. Third, there is the lack of international gay and lesbian co-ordination that is focused and coherent. (Sanders 1996) And, finally, it mentions the fact that so many states would block any move to acknowledge the human rights of homosexuals. Most writers argue that all those obstacles can be tackled within traditional human rights discourse one way or the other.

77 In the course of the 1990s an increasing number of the so-called Asian tiger states—those with growing economic power—voiced their distance from international human rights invoking the fundamental difference of Asian culture that values the need of the community above the need of the individual. For further elaboration on a quite extensive academic debate on cultural relativism in gay and lesbian studies, see Dennis Altman (1997), Eric Heinze (1995), Sam Garkawe (1997), and Baden Offord (1999a). In the more general human rights field see the edited collection of Tony Evans (1998).

78 This line of thought was suggested to me by Baden Offord in a conversation on human rights.

79 These complexities have recently been successfully argued by Baden Offord. Offord has written the most comprehensive recent work on human rights and sexual orientation from an Australian cultural studies point of view. He problematises human rights discourse for gay activism in Australia, Singapore, and Indonesia. His analysis offers a critical review of academic and activist human rights argumentation, mainly of those in the legal field. Offord draws attention to the steps needed for a full acknowledgement of sexual orientation as a human right and to the cultural context of human rights discourses in Asian countries. He remains critical of any unreflected human rights claim that locks itself so easily into a debate of universalism versus cultural relativism and he uses some aspects of queer theory to further his approach.


81 See the comprehensive country overview on ILGA world’s webpage (http:\\www.ilga.org).

Beyond those four obstacles, several steps are needed, according to the literature, to ensure homosexual rights intrinsic to the traditional human rights discourse. These steps are argued within a logic that does not problematise the historical principles and contexts of human rights discourse, but puts existing human rights laws and argumentation to work. First, gay men and lesbians have to be rendered human, the traditional “process of de-humanisation”—as Offord (1997, 1999a/b) calls it—has to be stopped. Second, sexual orientation needs to be presented as a central part of human identity similar to ethnicity and gender. In this respect, the choice to live what is a clear and unchangeable part of one’s human identity is declared a human right. Unchangeable status and choice become the central turning point of maintaining integrity. (Wintemute 1995:17)

Third, sexual rights are declared universal. Cultural relativism—such as denying the relevance of human rights in certain cultural traditions—is considered a homophobic instrument of denying the existence of people who—across cultures and eras—transgress gender or have sexual relations with people of their own sex. Fourth, equality before the law is paramount to the concept of freedom, a freedom to choose one’s association freely. Equality and protection by the law cannot wait for the majority to accept homosexuals as worthy of protection, it is a fundamental right that needs to be enforced by human rights instruments, such as courts, human rights conventions, and governments. Fifth, the way forward in lobbying and filing cases would be either by arguing that sexual orientation is already part of existing human rights instruments or by explicitly including sexual orientation in all new amendments.

None of these steps is easily argued or given credibility within court rooms and at intergovernmental meetings that decide on human rights instruments, nor can they be considered already achieved or very successful anywhere in the world. As Amnesty International (1997), the International Lesbian and Gay Human Rights Commission (1995), and ILGA have shown extensively, homosexuals throughout the world are more often than not demonised, killed, violated, socially excluded and

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81 Offord refers to the fact that homosexuality is mostly declared an unacceptable dimension of humanity as a process of de-humanisation. He argues comprehensively that human rights discourse reveals a stark omission of and silence on homosexuality. Homosexuals are deviant to the degree that their homosexuality is not considered properly human but a perverse diversion. (1999a:72-77) Charlotte Bunch (1995:12) develops a similar argument in relation to lesbians. She maintains that any exclusion of any group on whatever grounds, always involves cultural definitions of that group as less than fully human.

84 See Baden Offord (1999a) and Dennis Altman (1997).

85 This fact was established in the 31st of March 1994 decision of the United Nations Human Rights Committee in *Tomen v Australia* (UNHR Committee Doc. No. CCPR/C/50/D/488/1992) para. 8.1., when it decided that sexual orientation discrimination was included in the meaning of discrimination on grounds of sex in Article 26 of that Convenant.

86 See Robert Wintemute (1995) and Eric Heinz (1995). Both arguments have their merits. I will argue in Chapter Six, however, that the inclusion of sexual orientation discrimination under sex discrimination is preferable from a queer point of view. ILGA-Europe has decided to move forward via arguing for a specific mentioning of sexual orientation and gender identity in all upcoming treaties and laws.
forced to lead closeted lives. Human rights statutes from America to Africa do not apply to lesbians and gay men.\textsuperscript{87} Northern and Western Europe is perhaps the territory with the least explicit brutality against homosexuals besides New Zealand, Australia, Canada, and South Africa. Homosexuality continues to be an internationally contentious issue to the extent that no internationally enforceable human rights covenant includes sexual orientation and any attempt to include comprehensive rights at international assemblies has at the utmost been partially successful.\textsuperscript{88} The international community has not recognised homosexual rights as a valid dimension in international human rights law. (Hagland 1997:357) However, overall, activists continue to present human rights rhetoric as probably the most important instrument of political change, political mobilisation, change of public opinion and increase of self-worth among lesbian and gay people.\textsuperscript{89} Hence, both, the dominance of human rights discourse in European activism and the reality of terrible human rights violations of sexually or gender deviant people all over the world, indicate the need for a more critical examination of the staging of human rights discourses.

There are more fundamental obstacles to the inclusion of gay men and lesbians into human rights discourse than activists and most gay and lesbian human rights literature appear to see. The main argumentative features of gay and lesbian human rights activism—the belief in progress, freedom, equality, self-worth and respectability implied in the concept of integrity, and choice in relation to sexual identity—warrant a closer critique. Above all, the discursive historical construction of the concept of humanness that implies an individualisation of rights, presents an important field where interrogation is paramount. Human rights are more complex than they might appear and some of their conditions are critical at the best of times. It makes little sense to continue employing human rights argumentation without a more complex analysis, when the tensions of the dominant human rights discourse are already clear to those who frame their arguments within the European human

\textsuperscript{87} ILGA offers a comprehensive overview over the situation of lesbians and gay men in relation to human rights on its webpage [http://www.ilga.org]. In 1998, Ignacio Saiz of Amnesty International’s International Secretariat wrote:

While some governments attempt to disguise persecution, others blatantly boast about it, justifying killings, torture and imprisonment of sexual minorities in the name of religion, ideology, public morality or national sovereignty. Far from denying responsibility they deny that such practices are even human rights violations. Governments from America to Zimbabwe have claimed—implicitly or explicitly—that human rights statutes do not apply to gay men and lesbians. (Amnesty International 1998:23)

\textsuperscript{88} There exists, however, the European Charter of Fundamental Rights of the EU now, which includes sexual orientation in Article 21 and explicitly forbids all forms of discrimination. This Charter is, though, only proclaimed and has no legal significance so far. The difficulty of debating issues of rights internationally was vividly shown at the Beijing world women’s conference. That conference, and its follow-up conferences, saw absolute blocks put in place—by the Vatican and by Islamic countries—over the inclusion of rights for women over their bodies. See Charlotte Bunch and Susan Fried (1996) for an assessment of the Beijing process.

\textsuperscript{89} Nigel Warner also emphasised this aspect through his 20 years of experience in working for ILGA in his interview with me (February 1998).
rights logic. Therefore, I use a central conclusion of Baden Offord as a springboard into further in-depth analysis:

From all this it can be seen that the concept of human rights is paradoxical even—at once dynamic and changing as well as monolithic and derivative. It challenges the role and meaning of the individual, community and state, what defines the human being. It is a concept that is constantly contested, deployed and utilised as much under its universalist umbrella as it is galvanised and re-interpreted by local terrain. A crucial reason why the concept of human rights is difficult is that while it brings up many important theoretical and abstract issues it also involves immediate problems demanding concrete responses that are faced by people every day in all parts of the world. The dilemma between theory and practice, therefore, is foregrounded in human rights discourse. (Offord 1999a:57)

Interrogating Human Rights

To state the problem briefly: the central obstacle to homosexual rights as human rights rests on the Eurocentric, masculinist, heteronormative and racialised base upon which human rights have developed. What matters in this context is that human rights imply a sexualised conceptualisation of personhood connected to desire as primary motor for identification and for rights. Political human rights discourse is strongly rooted in a liberal humanist framework of the individual endowed with intrinsic rights and coherent personhood. (Peterson & Parisi 1998:138)

Mary Poovey (1992) has convincingly argued that women were not included in the construction of the liberal humanist person endowed with rights in the first place. According to her, the basic assumption of a liberal humanist metaphysics is that every subject has a core that precedes social or linguistic coding. This core is the ground for a personhood that rests in the capacity to reason, the capacity to moral judgement, and agency. (1992:241) Moreover, this core precedes the endowment of human rights to every human being thus constituted. However, considering, after Lacan, the constitutive character of language itself, this core of human personhood does not, in fact, precede language, but is created and institutionalised by it. (Salecl 1993:463) According to feminist and queer poststructuralist thought, the continuity and coherence of the person is actually created and maintained by “regulatory practices of gender formation” (Butler 1990:16). As Poovey notes:

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90 This has been argued by Charlotte Bunch (1995), Leo Flynn (1996), Baden Offord & Leon Cantrell (1999), Baden Offord (1999a/b), Spike Peterson & Laura Parisi (1998), Mary Poovey (1992), and Carl Stychin (1998). The issue of Eurocentrism and racial foundations of rights concepts will be part of Chapter Seven’s discussion of citizenship. Carl Stychin (1998) gives a convincing account of both issues in relation to nationalism, rights, and homosexuality.
the appearance of a coherent ‘core’ within the ‘person’ is not the reflection of something essential that is really there, but merely the effect of a set of social institutions that differentiate between people on the basis of a binary system of coherent genders. (1992:242)

According to Judith Butler, all rules that are connected to the ability to assert an intelligible ‘I’ in liberal humanist discourse are fundamentally connected to gender hierarchies and compulsory heterosexuality. (1990:145) In addition, the concept of liberal humanist personhood—built on a differential structure of coherent gender—can only be granted to women in relation to the personhood of man. (Salecl 1993:450, Peterson & Parisi 1998:132) In the course of the late nineteenth and the first half of the twentieth century, western women gained political access to personhood only on their claims to equality and sameness to men, who were the norm in the creation of liberal humanist discourses.91 In terms of human rights discourse, women are only able to have humanness conferred on them when they are positioned as autonomous, coherent, unified persons, in their sameness to men. “Human rights are in actuality men’s rights”. (Peterson & Parisi 1998:132)

Following on from this feminist insight, it can be argued that homosexuals and bisexuals face a dilemma similar to that of women. Sexuality is deeply entrenched in the binary gender structure, which remains central to why and how heterosexuality is set up as the only natural, desirable, and morally promotable form of human sexuality. Spike Peterson and Laura Parisi argue that human rights discourse is predicated upon both gender hierarchies and exclusion of abnormal sexualities. (1998:141) To them, human rights are based on what they call heterosexism. (1998:133) The normalisation and reproduction of binary gender identities is inextricable from the normalisation of heterosexism, which is inextricable from western state making and its concomitant ideological productions, of which human rights are a significant part. (1998:137)

To Peterson and Parisi rights concerning sexuality and gender are mostly privatised and, thus, remain outside the space of human rights protection in all three existing generations of rights: civil and political liberties are based on public male citizenship; economic, social and cultural rights disregard unpaid work and cultural oppression; and collective group rights discussed for the future often inscribe hierarchies as cultural rights. (1998:142-155) They also argue the narrow construction of the family as successful means of excluding homosexuals from imperatives of love and affection. (1998:145) Thus, kinship rules which negate homosexuality demonstrate “a process of dehumanisation in relation to non-normative sexualities.” (Offord 1999a:76) The binary gender structure marks out the borders and limits of what is considered natural and truly human. The invention of

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91 There exists an extensive body of feminist literature on this statement. See, for an overview over the feminist reasoning behind this statement, Charlotte Bunch (1995), Spike Peterson & Laura Parisi (1998), and Renata Salecl (1993).
the idea of the human is also strongly connected to the history of rights as a process of capitalist individuation.

To reiterate, human rights are strongly rooted in a liberal humanist framework of the individual endowed with intrinsic rights and coherent personhood. They draw on a history of humanist sovereignty of the individual set against the state, which means they emerged both as protection against arbitrary abuse and as a mode of securing and naturalising dominant forms of power, such as property or the family. (Foucault 1977:221-230) Rights functioned as a modality of what Foucault termed biopower. Through that double manoeuvre rights discourses in the 19th century were also an instrument of masking the social power of institutions by depoliticising those structures that maintain inequalities and particular possibilities to violation. The process of depoliticising is a process achieved through individualisation. Wendy Brown—drawing on a close reading of Karl Marx’s essay “On the Jewish Question”—convincingly problematises an individualisation of rights within a universalist idiom that masks precisely those structures that are maintained to exclude and negate rights, thus, re-inventing an identity that is continuously presented as injured. (1995)

To Brown, liberal rights guarantee that we will be equally abstracted from the social powers that constitute our existence and equally decontextualised from the unequal conditions of our lives. (1995:110) Yet, not only do rights equally abstract, and, thus, mask, unequal relations, they also take part in forming the political individual said to precede the claiming of rights:

Marx is again underscoring how certain modalities of social and economic domination are less eliminated than depoliticized by the political revolutions heralding formal equality, although these modalities are transformed in the process, losing their formal representation in the state as estates. At the same time, Marx is seeking to articulate the extent to which the modern individual is produced by and through, indeed as, this depoliticization and in the image of it. He is proffering a political genealogy of the sovereign individual, whose crucial site of production is the depoliticization of social relations. (1995:112)

The historical emergence of rights of man, therefore, naturalises and entrenches specific social powers, which set up difference or exclusion and socially stratify individuals as members of a group. (1995:113) Given that human rights claims are made to protect historically and contextually marginalised and violated identities, one needs to ask whether the universalist idiom of human rights that focuses on the individual’s rights is not part and parcel of re-subordinating through re-naturalising precisely those identities it seeks to emancipate by allowing their expression.

Homosexual rights as human rights proclaim the expression of an injured identity and promise to defend individuals. They promise to give homosexuals a sphere of bodily integrity and privacy, and to announce personhood and membership in human communities. However, human rights as political practice and strategy only ask for rights without assessing how human rights operate politically in the wider
culture they take part in re-creating. This would suggest that, in effect, activists who deploy human rights potentially walk into their battle unarmed since they are fighting at the wrong front. They are subjugated to the crippling effects of those forces that designate humanity and deem non-normative sexualities as unworthy of that very humanity.

Human rights as the dominant political practice in Europe need to ask after the relationship between the promise of progress and the functioning of individualisation processes that mask—via depoliticising—the historical power relations and definitions of humanness, which ensure the workings of gender, sexuality, class, and racial hierarchies. The precise working of heteronormative structures—whose abolition should, after all, be the explicit focus of lesbian and gay political practices—cannot be tackled through the emphasis on the individual’s humanity. Rather the opposite is the case: claiming human rights without questioning its recourse to individualisation, masks the very structures that ensure the workings of heteronormativity. This process is not only visible in the individualist predicament and the implication of historically problematic concepts of humanness, but also in the other features upon which human rights draw which are mentioned above: freedom, equality, recognition, and integrity. Let me demonstrate this through some interview excerpts and the decision of the European Commission on Human Rights in the Euan Sutherland case, as an example of the dominant legal human rights discourse.

In Euan Sutherland a 17 year old British male claimed discrimination within the ECHR on grounds of the unequal age of consent for gay sex—namely 18—in comparison to heterosexual and lesbian consensual sex, which is set at 16 in the UK. His case was declared admissible by the European Commission of Human Rights on 1st of July 1997 under Article 8—the right to privacy—and Article 14—the rights to freedom from discrimination. Article 8 of the ECHR reads:

Everyone has the right to respect for his (sic) private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interest of national security, public safety, or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 14 of the ECHR is no prohibition of discrimination per se, but simply refers to discrimination with regard to the enjoyments of other rights guaranteed in the ECHR. It reads:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
Lords for years. The unequal age of consent was finally repealed in December 2000. What the judgement in Sutherland illustrates vividly is the difficult double bind the concept of freedom—as a human rights strategy and measurement—produces:

The Commission recalls that Article 14 of the Convention affords protection against discrimination that is, treating differently persons in relevantly similar situations without due justification... In particular, "a difference of treatment is discriminatory, for the purposes of Article 14, if it 'has no objective and reasonable justification', that is if it does not pursue a 'legitimate' aim or if there is no 'reasonable relationship of proportionality between the means employed and the aim sought to be realised'. Moreover the Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify different treatment." (para. 48)...

The Commission notes that it is not contested that the applicant, as a young man of 17 years of age who wished to enter into and maintain sexual relations with a male friend of the same age, was in a "relevantly similar situation" to a young man of the same age who wished to enter into and maintain sexual relations with a female friend of the same age. (para. 52)

...the Commission is unable to accept that it is a proportionate response to the need for protection to expose to criminal sanctions not only the older man who engages in homosexual acts with a person under the age of 18 but the young man himself who is claimed to be in need of such protection. (para. 64)

As to the second ground relied on - society's claimed entitlement to indicate disapproval of homosexual conduct and its preference for a heterosexual lifestyle - the Commission cannot constitute an objective or reasonable justification for inequality of treatment under the criminal law. (para. 65)

Freedom figures most centrally in human rights language. The ECHR's proper name is "Convention for the Protection of Human Rights and Fundamental Freedoms". Wherever human rights are argued by ILGA-Europe, freedom—usually freedom from discrimination—is the issue around which the argument revolves. Freedom, in this respect, may take one of two forms: a) a positive freedom to do something, for example, freedom to marry or pursue one's own happiness, and b) a negative freedom as freedom from something, most prominently from discrimination on various grounds. Both forms of freedom are debated in the excerpts quoted above: the freedom to engage in homosexual acts at the age of 17 and the freedom from criminal persecution. The right to freedom is granted in principle, yet not actually conferred onto the identity that is violated. Homosexual identity is not mentioned as worthy of protection per se.

Three questions bind themselves to both parts of freedom. First, the court considers whether enough similarity to heterosexuals can be established that defies the need for protection against harmful sexual acts. Second, the court discusses whether there exists a justification for punishing those who are said to be in need of
protection. And third, the court reflects on whether society’s view on homosexuality can, in the 1990s, still justify discrimination in the name of protecting morals. However, Euan Sutherland’s freedom to act and his freedom from criminal persecution remain two different issues. Criminal persecution is regarded as against human rights, i.e. the right to privacy is now considered higher than the state’s right to protect morals. Yet, that does not imply the freedom to sexual choice as a fundamental aspect of what makes Euan Sutherland a human, a person endowed with rights. His right to act homosexually is not directly affirmed, only the similarity to heterosexual acts at age 17.

Homosexuality is not a central marker of Euan Sutherland’s humanness. The court defines it only as an aspect of his right to private life and no longer regards homosexuality a justification of inequality in criminal law. Yet, homosexuality is not considered an intrinsic marker of the personhood that precedes personal freedom. It is not his sexual humanness that is protected. In fact, sexual freedom remains disconnected from personal freedom. This means that what constitutes a person in principle is above (or beneath?) her of his sexuality. Sex, or better the rights to engage in sexual relations of one’s choice, is not a fundamental aspect of personhood, of that which renders us human, it is a secondary aspect to be respected, but not centralised.

This split between sexual freedom and personal freedom is an important aspect of the way in which human rights strategies mask and depoliticise the centrality of sexuality and gender. Activists who utilise human rights discourse surely do not deny the importance of sexuality as a marker of whether or not a person is allowed to have rights or make equal choices. Yet, to make sense in court rooms, the personal freedom of the individual is often stressed more since it fits into the concept of personhood which underpins human rights discourse. Marion Opref—co-president of EGALITE—formulates this succinctly: “I fully agree that sexual rights are human rights... Personally I vote for personal freedom as a strategy... Individual freedom is higher on my list of priorities than sexual freedom.” (Marion Opref, February 1998)

One could interpret Opref’s move as a strategy to render sexuality unimportant for the definition of humanness that would imply sameness and equality between heterosexuals and homosexuals.

However, even interpreted as such, this strategy perpetuates an illusion. It perpetuates the illusion that equality of all humans can be achieved irrespective of gender and sexuality all the while ignoring the centrality gender and sexuality play in the historical development of human rights discourses. It is this illusion that continues to deny freedom and equality to those who are considered outside the norm, whose choices and acts are not accepted as a human right even if they are protected from harsh discrimination. The concept of freedom in dominant European human rights discourse remains a freedom fraught with inequality and with a hierarchised norm that precedes the formation of any human status. In
consequence, the concept of equality that is linked to that kind of freedom remains at the most an equality in spite of difference.

Freedom from discrimination is predominantly considered an issue of equality. In fact, equality ranges on the same level as freedom. Kurt Krickler—co-chair of ILGA-Europe—combines equality with discrimination in talking about human rights: “For me human rights are a question of equality, they are central in anti-discrimination…” (Kurt Krickler, February 1998). In this logic, equality needs anti-discrimination measures to be achieved as more or less simple strategies to counter the actual lived inequality produced by normative structures in societies. Thus, equality in human rights emphasises inclusion into legal rights and privileges. Hannele Lehtikuusi—Finnish ILGA-Europe activist—for example, combines equality with freedom and with the relationship of the individual to the state and citizenship in society:

The question is in the field of ethics. Equal treatment of citizens is a human right—as I understand the responsibilities of a modern state. If all citizen are equal, sexual orientation is not a character that should make a person unequal—the state has to take care of its citizens’ rights and protect this principle as firmly as any other human right issue. (Hannele Lehtikuusi, e-mail interview July 1998)

Here the language of democracy and citizenship gains entry into human rights discourse. Civil rights are simply declared human rights, a matter of participation in a modern state. The concept of equality in human rights connects states’ responsibilities towards their citizens with the transnational idiom “all human rights for all human people”. Equality in human rights rhetoric calls on the history of the human subject in relation to the state and on citizens’ rights. This history is a history of comparisons.

As stated above, it has been widely argued by feminists that women only gained the right to vote by proving their sameness to men. In the claim to equality in human rights such history of comparison continues to take effect as a comparison of the homosexual minority to the assumed heterosexual majority that grants rights of inclusion. The European Human Rights Commission in Euan Sutherland did not consider the right of society to hold negative views against homosexuals a justifiable reason for unequal legal treatment. Yet, the justifiability of those views in principle is not tackled. “Society” in the excerpt of the judgement above remains an assumed heterosexual formation that can grant equality to those who are different if—and only if—they can prove enough human sameness.

The call for equality participates in an historical circle of substituting actual lived inequalities with abstract representative identities, abstract conceptual subjects said

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93 The concept of anti-discrimination will be discussed in detail in Chapter Five.

94 The problematic implications of the history of citizenship in Europe will be addressed extensively in Chapter Seven.
to be formally free and equal human beings. In fact, calling for equality is a process of abstraction. It declares the subject equal—a free human being—and abstracts that formal equality from the power structures that create the inequality and the subject in the first place. In the process of abstraction, the concept of equality re-subordinates precisely those it is said to liberate through an idealist disavowal of the discursive structures and material constituents of humanness that constrain freedom and equality. (Brown 1995:106) Without breaking the circle of individualisation that solicits a depoliticisation of hierarchised structures—which, in turn, ground the raison d'être of powerful exclusionary institutions such as the family and of the right of states to govern, legislate and deploy force—equality in human rights discourse remains ambiguous for 1/g/b/t politics. The universality of the modern state, heralded as the guarantor of equality in Lehtikuusi's ideal of human rights, is premised upon that which it pretends to transcend and requires the maintenance of that which human rights strategies seek to abolish. Equality granted by the modern state is blinded by what much of post-Marxist and feminist research on the state has identified as problematic: the state is invested in maintaining and stratifying—via naturalising—social and economic powers. Modern states legitimise themselves as neutral and universal representative of people, thereby disguising the actual powers that are constitutive of civil society and the state.95

Granting human rights was—among other things—a historical process of legitimising the sovereignty of states after the natural order of kings was rejected in favour of a new order in which people are sovereign through democratic citizenship. The authority of civil governments from then on depended on the moral claims to securing human rights. (Evans 1998:4) Therefore, the human rights discourse ranges among the most respectable political strategies available in European political culture. Human rights discourse presents a recognition that seemingly not only assures rights, but will also help to support self-worth and respect for individuals. Recognition and self-worth features in political practices around human rights besides equality and freedom. Peter Ashman—founder member of ILGA, lawyer, and director of the European Human Rights Foundation—connects human rights to recognition by society as well as to equality and integrity:

... there is this perspective that people are basically behaving in a criminal way, leading illegal as well as immoral lifestyles. And this has all sorts of knock on effects on the way of life, culture, work. And, therefore for me, it was important that one should work towards ensuring that inequality in law was abolished. Once that had gone, once there was equality then people would have the confidence to express themselves to live their lives not to worry about losing their jobs.... Society's attitude would, hm, I don't say would change, from negative to positive or something, but the institutional negativity would go.... Law influences the way people see their lives... there was this strange

95 See Nicola Armstrong (1992), Rosemary DuPlessis (1992), and Rosemary Pringle & Sophie Watson (1992) for a more elaborated explanation of this thought.
thing, how could homosexuals have rights... once you conceive that people have rights, of course then rights are, well human rights in particular they are indivisible, so if you are entitled to one lot of rights as a human being then you are entitled to the lot. And that includes not being discriminated against. There is sort of a relentless logic about that which people loathe to accept, but which you then have to keep pushing for. (Peter Ashman, May 1998)

Peter Ashman emphasises a common human rights logic, which seems to be supported by historical development. For example, he explains that while police forces all over Europe used to raid gay bars, nowadays most of them offer protection schemes for lesbians and gay men. The right to bodily integrity is seen as the factor that changed the attitude of police forces. Human rights—or legal rights in general—do not radically change society according to Ashman, but they influence the sense of self-worth individuals can develop. Society is changed as a consequence of more proud self-assertion of gay men and lesbians. Yet again, rights are accrued by virtue of being human, if one is granted one set of rights one should gain the lot since they are indivisible. The rise in recognition and self-worth does not imply that sexual choices are considered any more natural than they were before. What changes is the broadening of the circle of those that can be argued into the category human, including their allegedly abnormal sexual preference. The definition of the category human itself, however, remains intact in principle. Yet, human rights discourse not only promotes self-worth, it also grants respectability and acceptance which belong to the process of recognition.

Hein Verkerk—Dutch activist and employee of the European Parliament—centralises the human rights rhetoric as a rhetoric of respectability:

Raising it as a human rights issue is part of that demand for respect and respectability of people, human rights is almost a world wide consensus and raising the gay lesbian issue as a human rights issue—which I think it is—has to do with the fact that the gay/lesbian community wants to be, wants to have some respectability. In that sense it is useful to raise it as human rights. (Hein Verkerk May 1998)96

Verkerk's mention of respectability in the context of political practices based on human rights brings an important aspect into sight. Human rights are respectable, they are accepted by most politicians as valid and they confer respectability upon those who are officially acknowledged to have suffered from human rights violations. Respectability serves as a focal point of what is deemed successful in lobby politics. What is respectable in political culture is pivotal in the selection of strategies. The more closely a political association is connected to the impartiality of human rights, the higher becomes its clout of political influence and public respect.

96 Asked what the most successful strategies are, though, Verkerk contended that human rights are not the most central argumentation. To him simple everyday matters of administration, employment laws etc. matter and go beyond the more principled argument of human rights. He, thus, decentralised human rights discourse again after centralising it in the context of how basic rights are argued.
Yet, the connection of respectability and homosexuality is—even at the best of times—unstable.

Organisations such as Amnesty International (AI) enjoy a reputation for impartiality. They refer to human rights as a focus on the principle of protection from fundamental violations of human dignity above political partiality. How important a sense of respectability is in AI’s understanding of itself is mirrored in the endless internal debate on whether homosexuality can be properly included in AI’s mandate. After a public campaign that lasted over a decade and a half, AI’s mandate was interpreted to include sexual orientation; the mandate itself, however, was not changed.97 Until 1997 sexual orientation retained its low-priority status in AI’s Action Plan.98 Due to extensive lobby campaigns by gay and lesbian rights organisations—such as ILGA—and by its own gay and lesbian workgroups, AI decided to integrate sexual orientation issues into its research, campaigns, actions, and publications.99 Again, however, the statutes were not changed. (IGLHRC press release 18th December 1997) International lesbian and gay organisations resumed lobbying in 1998, after it was leaked to them that homosexuality was considered too contentious internationally and, thus, potentially threatening AI’s respectability and integrity and, therefore, its livelihood.100

The internal debate of Amnesty International highlights two aspects of respectability. On the one hand it emphasises how respectability is a pivotal measure for what political arguments are acceptable. On the other hand the AI debate highlights that homosexuality is fundamentally at odds with respectability. The focus on human rights is strongly linked to its high respectability in mainstream society in Europe. In short, it seems if one can argue sexual orientation a fundamental human right, that argument raises the hope of “no defeat possible”, since who can defy human rights in Europe? Yet the sense of moral respectability that the official recognition of human rights violations entails also perpetuates norms of respectability. While homosexuality might be protected from discrimination, it will surely never enter the pantheon of those sexual choices which are considered be on a moral high ground and a part of European culture.

Human rights are bound to European historical conditions in which gender and sexuality function in a heteronormative way. Since every norm needs to exclude its opposite in order to set up and maintain itself as the norm, homosexuality will have to remain non-normative. Thus, the respectability of human rights creates a paradox in relation to homosexuality. While human rights assure a sense of self-worth and integrity for the gay and lesbian subject and communities, they are also part and parcel of the political culture that continues to stigmatise homosexuality. The

98 Ljubljana ICM. See IGLHRC’s (International Gay and Lesbian Human Rights Commission) lobby campaign and press release on 17th November 1997.
respectability of homosexual rights as human rights—emphasised by Hein Verkerk—is bought at the price of gaining inclusion without challenging the structures that produce and maintain exclusion. What is considered truly human will never truly include homosexuality, although sexual orientation might indeed one day be protected by all human rights treaties.

Beyond this paradox, the issue of respectability complicates human rights even further. Self-respect, respectability and integrity through human rights rest on the assumption that a sense of self can only be acquired via recognition by others. If human rights are quite centrally about the means of survival, then it is the recognition of one’s rights by others that makes survival possible. In the human rights discourse social survival is guaranteed by the access to choices in the pursuit of happiness and by the access to self-worth and integrity. Peter Ashman formulates this pointedly: “It [human rights] includes the idea to express, to seek happiness and that includes sexual happiness in love... this argument was bought by the European Court of Human Rights.” (Peter Ashman, May 1998) Yet the pursuit of happiness presumes a certain subjectivity and the capability and permission to speak a coherent ‘I’. In relation to sexuality, this subjectivity has in the past hundred years been channelled by sexual identity, i.e. the possibility of appellation into being a homosexual and expressing a sense of self in the label gay or lesbian. Respectability is gained through yet another affirmation of fixed identity.

European human rights lobbying entails the fight for recognition of discrimination based on sexual orientation, as Outi Ojala emphasises, and for recognition as the means of creating and maintaining a sense of self and self-worth, as Peter Ashman and Hein Verkerk elaborate. This entails two assumptions: on the one hand sexual orientation and lesbian and gay identities are equated. Sexual orientation—basically a description of sexual object choice and sexual act—thus, becomes the sign of an identity immediately followed by a shared legal, social, and economic discrimination. Identity is once more rooted in the seemingly natural body and its desires. In consequence, human rights are more often than not based on who we are rather than on what we do. On the other hand, human rights rhetoric claims that difference should not matter, equal rights for all. Human rights are a strategy that not only respect diversity, but potentially declares it a human principle (Offord 1999a).

At first, it seems that diversity as human principle refutes stable identity markers; identity politics seem less prominent in transnational human rights centred contexts than in national civil rights centred contexts. Human rights discourses do not seem to need concepts of stable gay identity, since they offer humanness as the base upon which rights are claimed. Adrian Coman, for example, answers to a question about the importance of identity in politics that it is not the political sphere which creates a necessity for identity, but the quest for community and subculture. The ultimate aim

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101 The process of recognition is an interesting aspect that could be analysed further here. I will, however, pick up the concept of recognition in relation to citizenship in Chapter Seven.
in politics would be to render identity unnecessary, because a general human identity is accepted to apply to homosexuals too. Specific mention of homosexual identity in politics is a necessary evil with an expiry date imprinted on it:

The quest for a gay and lesbian culture/subculture, therefore for a gay and lesbian identity, is incredibly increasing. It has almost become an aim in itself. I think that the concept of a ‘human identity’ should first be brought into both politics and in our lives with less hypocrisy. If that works, we may NOT need to refer to particular groups. (Adrian Coman, e-mail interview June 1999)

In Adrian Coman’s human rights argumentation one would, thus, presumably find humanness as the decisive factor that qualifies access to rights. Gay identity is not considered stable and the belief “that most of the minorities have diversity and multiplicity inside of them”—as Hannele Lehtikuusi (e-mail interview July 1998) formulates it—is clearly a part of human rights argumentation launched by European gay and lesbian activists. Yet, to reach the political aim of equality it seems necessary and unavoidable to present homosexual identity as an aspect of humanness. A “human identity without hypocrisy” is an identity upon which fundamental rights of survival can be based. These fundamental rights include rights of sexual choice and then homosexuals will eventually cease to be a specific group since their personal and community integrity is secured. There will clearly be no freedom, equality, or recognition without first ensuring the personal, physical, and psychological integrity of lesbians and gay men.

Integrity in human rights, consequently, demands that homosexuality is respected as a true, whole, and valid form of human sexuality for every individual and in all social relations in which people interact. The principle of integrity affirms the possibility of finding one’s true sexual identity behind one’s human identity. Gaining integrity burdens people with identity in granting the chance to demarcate personal and community spaces as part of the legitimate human territory. Humanness, thus, becomes in itself an identity category, something comprised of diverse human choices and relations, which are bounded by the territory of humanity. In human rights rhetoric, humanness forms the basis for any recognition of an ‘I’, it presents the psychic and social possibility of relations with others, and it describes commonalities in species, character, and value among all humans. Any rights that have historically been built upon shared human identity are a consequence of designating the definitional category humanity. Yet, humanity is a composite territory, fecund in meaning, and contestable vis-à-vis history and context.

Conclusion

Through its firm connection to the concept of individuated humanness, the dominant European human rights discourse is based on and maintains an historical

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102 To describe gay identity in human rights as a necessary burden is an idea of Baden Offord (1999a).
exclusions of gay men and lesbians. Human rights discourse presents major stumbling stones on the way to establishing fundamental rights for non-normative sexualities. This conclusion would seem to suggest that human rights strategies are only a problematic form of identity politics yet again, too paradoxical to promise significant change. That is, however, not the point at which my critical analysis of human rights discourse is aiming. Rather, I want to suggest an active deployment of the composite, fecund, and contestable character of any politically invoked concept of humanity. This would imply to consciously burden non-normative sexualities with a human identity, i.e. letting go of the idea of sexual identity as liberation and recognising human identity as a very temporary political strategy. A strategy that is intelligible in institutional political discourse, but that needs to be positioned as a means to an end.

Political practices that deploy human rights in that sense make explicit rather than implicit the reliance on the problematic history of humanity, freedom, equality, recognition, respectability, and integrity. That history is interpreted as something that does not liberate but burdens those who suffer most under human rights violation in the world: women, l/g/b/t people, and ethnically or racially persecuted groups. The equality and the freedom European human rights statutes hopefully grant in the near future can be a positive change in the daily living conditions of millions of people in Europe. Yet, the only territory truly negotiated in human rights discourse is the territory of humanity. The way activists position themselves in relation to this territory is already differentiated, but ought to be made more explicit. For as long as the stakes of humanity are not openly designated as the territory of negotiation, human rights will continue to burden those they actually seek to liberate.