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

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CHAPTER EIGHT
Framing the Debate: Kinship

A constitutional right for the care of the community is granted to mothers in our constitution, the importation of catamites, for example, is not mentioned.

(Catholic Bishop Johannes Dyba about the plans of the German government to introduce registered partnership, July 2000)

...to the extent that norms operate as psychic phenomena, restricting and producing desire, they also govern the formation of the subject and circumscribe the domain of a livable sociality.

(Butler 1997b:21)

The demand for equal citizenship is commonly assessed against the legal and social recognition gay and lesbian partnerships receive. In fact, marriage and the right to adoption, custody, or artificial insemination—in short the right to be recognised as a family—are the central rallying point of European gay and lesbian rights struggles and also the greatest stumbling block. In this chapter I will focus on the conditions of the political debate on kinship in Europe.

The possibility of legal partnership recognition for gays and lesbians comes at a time when capitalism can quite happily accommodate a group of independent producers and consumers operating outside the constraints of the traditional nuclear family, while historically the development of capitalism has depended upon the nuclear family as principal unit. (Pateman 1988; Strychin 2000) At a time when the ideal of the nuclear family is being eroded, gay men and lesbians have adopted kinship ideologies that use uncommon categories of friendship, networking, and community to generate common meanings of love, endurance and commitment. (Weston 1991 & 1998) What was hardly a political goal in the 1970s and early 1980s, namely access to marriage, gained an overarching dominance among gay and lesbian rights advocates and in the general political debate in the 1990s. (Warner 1999:122-123) A number of European countries now have partnership laws that either recognise homosexual couples as equivalent to non-married heterosexual couples or give them some, or most, of the same rights as granted in marriage through a registered partnership.194

However, throughout all European countries—with the exception of the Netherlands, where adoption is allowed—the relation of homosexuals to children is portrayed as a political and a social threat. Debates over same-sex marriage are

194 Countries that grant forms of registered partnership in Europe include Denmark, Sweden, Norway, Iceland, France, and soon Germany. The Netherlands are the only country in the world that allow access to marriage proper. Countries that grant some rights include Hungary, the Czech Republic, Belgium, Spain, the UK, and Switzerland.
always connected to parenting. So while most opinion polls in Western Europe show a great deal of support for limited partnership rights, two elements are always strongly emphasised in the political debates: the maintenance of a certain privileged status for heterosexuals as part of the founding unit of society and the strict exclusion of parenting rights for homosexuals. Both elements retain the discursive exclusion of lesbians and gay men from what counts as authentic kinship.

Lesbians and gay men face extensive discrimination in relation to parenting. They are commonly denied custody and access. They are refused the ability to adopt as a second parent or as a couple, as well as the right to artificial insemination.\textsuperscript{195} Such discrimination is usually based on the view that to be brought up by lesbian or gay parents is in some way damaging for a child. It is assumed that gay and lesbian parenting may lead to confusion over gender roles, or sexual identity, or to mal-adjustment in social relationships. Another concern frequently expressed is that children brought up by lesbian and gay parents are themselves likely to develop a homosexual orientation. Polemically speaking all tolerance ends when it comes to the care for children.

Consequently, on the one hand, the language of partnership and family is employed to establish that gay men and lesbians are just like heterosexuals—loving and caring partners and parents—while, on the other hand, the same language serves the opponents of rights for sexual minorities. The reason why the definitions of kinship relations are at the heart of almost all political debates about human rights, anti-discrimination, citizenship, or legal recognition, rests in the establishment of kinship as the politically, socially, historically and psychologically most basic human need and condition.

Gay and lesbian theorists themselves often re-assert kinship’s role as a basic human need. Morris B. Kaplan, for example, states that:

> By turning to marriage, partnership, and family rights, the movement for lesbian and gay rights and liberation affirms deeply felt human needs to establish intimate relationships as part of the ongoing conduct of life, culminating for many in the desire to bear and raise children of their own or otherwise to share in the care of others. (Kaplan 1997b:206)

Kaplan’s argument asserts, furthermore, that the existence of different sexualities with their own modes of intimacy is itself a contribution to human flourishing (1997b:218) and that to claim a right to marry justifiably derives its ethical and political force from appealing to ideals of equal citizenship. (1997b:221) Kaplan precisely formulates what is at stake in the political practices around kinship: kinship is seen as a basic human need, something all people want to establish, because it is part of their human nature. Taking this as a given, kinship occupies an important

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\textsuperscript{195} In June 2001, the European Court of Human Rights unanimously declared admissible a case (\textit{Frette vs France}) that concerns adoption rights of a gay man. The hearing will take place in early October 2001. ILGA-Europe officially acts as \textit{amicus curiae} to this case.
political position: it forms a continuous pre-sphere to the political, it is its playground and, in turn, its outcome.

In the following I argue that kinship is the frame upon and in which the social being that forms the basis for the political sphere in European culture is created, shaped and enacted. Full participation in the political sphere presumes an adult citizen who, in principle, moves among equals that—en masse as the general public—can exert authority through their free will. Citizenship is, thus, distinguished from the kinship relations that are meant to produce, harbour and educate such adult citizens. The participation of an adult in the formation of political will in a democratic society is a result of enlightened developments in European culture, while kinship is regarded as the primitive natural realm deriving from our natural biological condition. Tamed and civilised, but still representing the authentic human nature, the family remains the natural unit that produces sociability.

Kinship regulates not only partnership and procreation, but also the fundamental meanings of gender and sex as well as the move from childhood to adulthood. To evaluate policy questions of partnership laws and access to children is therefore to evaluate what sex is—what counts as human sexual acts—whether states can and should regulate it, and how the intimate life of pleasure and of parenting does or does not matter publicly. In fact, it is to evaluate how, when, and where the future citizen and the rules of social and civic participation are decided upon.

Yet, kinship is not as value free a condition of human nature as it seems. Kinship has a context, or better a frame, outside of which it cannot exist and enjoy its claim to authenticity. This frame is heteronormative. Using two specific examples, this chapter begins with an analysis of what kinship is presumed to be when discussed in the institutional political sphere. This analysis leads to the conclusion that heteronormativity frames the kinship debate which, in turn, led to vehement critiques of activism aimed at registered partnership or marriage. A second section will summarise those important critiques before proceeding to my own contribution towards a critical analysis of the conditions of European political kinship debates, which are the focus of section three. I will argue that the theoretical concept of framing can increase our understanding of the relationship between political kinship debates and heteronormativity without ever reducing the one to the other. This understanding is achieved through the introduction of a web of interrelating frames that surround kinship, but are not reducible to the supra-frame heteronormativity: love, authenticity, desire, and subjection.

196 The examples are, a speech made by a conservative member of the Council of Europe's Parliamentary Assembly on the situation of lesbians and gay men in Europe (June 2000) and excerpts of ILGA-Europe's address to the drafting committee for the Charter of Fundamental Rights for the EU as an example of the language of kinship rights employed by NGOs. In the future the *Fedde vs France* case at the European Court of Human Rights—to be heard in October 2001—will offer further interesting material for analysis.
Kinship in Official Political Discourse

At first glance kinship is one of the most innocent descriptive terms imaginable. Yet, as anthropology has shown over decades, kinship is fraught with temporal connotations. (Weston 1991; Fabian 1991) Kinship connotes something like primordial ties and origins and, thus, has a persistent strength and meaning attributed to it. The meaning of kinship, in principle, is actually rarely debated or questioned in political practices, while most other categories associated with it do receive revision and debate. It is as if kinship—particularly the dimension of parenting—somehow remains authentic, no matter what changes time has brought about.

Thus, when advocacy organisations such as ILGA-Europe call for partnership and parenting recognition, this demand has to be seen in the context of the primordial functioning of kinship in the political sphere in Europe. The statements and claims of the rights activists are made in a very factual manner, similar to the human rights debate and discrimination reports. However, since acknowledgement of kinship is the most contentious issue in rights struggles, the apparent factuality has a distinct quality: it consistently refers to what is portrayed to be a truism—namely that kinship ties are formed by every human being as a matter of biological need, just as everybody has a sexuality and a gender identity. In spite of the strangeness generally attached to the image of homosexual families, the rights claims with regard to marriage and parenting re-enforce kinship's primordial character.

The way kinship is re-played as pre-political sphere, as a basic unit of society, and as biological necessity can be traced in the official debates on gay and lesbian rights at the European institutions. I will quote two longer excerpts as examples to argue this point. One example is taken from the address by ILGA-Europe to the Drafting Convention on the Charter of Fundamental Rights of the European Union on the 27th of April 2000. This excerpt exemplifies well the kind of rhetoric commonly employed throughout Europe either towards the European institutions or towards national governments. The second example is a speech made by a conservative Norwegian MP, Ms Annelise Høegh, delivered in the debate on 30th June 20000 in the Parliamentary Assembly of the Council of Europe about the situation of lesbians and gay men throughout Europe.

This debate is particularly interesting, because it was overwhelmingly positive as far as legalisation, equal age of consent, hate crimes, employment discrimination and, to some extent, partnership rights were concerned. Only one Polish contribution placed homosexuality into the context of paedophilia and portrayed it as a threat to Christianity and the Enlightenment. Yet, as I explained in Chapter One, the reference to adoption in the report of the Subcommittee of Human Rights and Legal Affairs created debate and eventual rejection. This PACE debate is a good example of the overall character of European kinship debates which attract different national opinions on the topic, yet also display the commonality of the rhetoric. The Høegh speech displays an exemplary connection of conservatism with homosexual rights.
that calls upon a sense of European values. It is a supportive speech, whereas explicit support from conservative parties is very rare in the European institutions. Høegh, therefore, made an extraordinary contribution that highlights astutely what is at stake in the European debate on kinship.

Address by II.GA-Europe to the Drafting Convention on the Charter of Fundamental Rights of the European Union on 27th April 2000:

...Turning now to the question of partnerships and family life: some of the realities of life in Europe today are:

- that millions of people are living together as same-sex partners;
- that in many cases children are being brought up by these couples, or indeed by single people who are lesbian, gay, bisexual or transgendered.

To repeat: these are realities. They cannot be wished away or ignored.
The qualities which go to make up a good partnership and a good family—for example, love, mutual respect, commitment, equality,—are in no sense dependent on the sex of the members. The desire to be a parent, and the qualities that make a good parent, are also unrelated to the sexual orientation or gender identity of the individual.

These partners, these children, these parents, these families, deserve the protection and support of society just as much as any others. This protection and support can come only with proper and full legal recognition. We urge therefore that the articles of the Charter dealing with these issues be drafted in a manner that is inclusive rather than exclusive, acknowledging that a variety of forms of family exists in today's society.

We have emphasised the need for the new Charter both to signal the unacceptability of discrimination based on sexual orientation or gender identity, and to foster a vision of family life which is humane, inclusive, and grounded in reality. We have highlighted the progress made in recent years, but also shown how far there is still to go. Europe will be a better, freer, and more accepting place for all its citizens when those who are lesbian, gay, bisexual and transgendered can be themselves, openly and without fear. We believe that if our suggestions are taken up in the Charter, that Europe will be one step closer to becoming a reality.

The Høegh speech:

....THE PRESIDENT.— Thank you, Mrs Faldet. I call Ms Høegh. I hope that I have pronounced your name correctly.
Ms HØEGH (Norway).- No, that was not the right pronunciation, but I understood who you meant.
As a conservative, I feel that it is natural to support this excellent report. I concur entirely with all the recommendations in the report on the situation of lesbians and gays in Council of Europe member states, apart from the section in paragraph 9 of the draft recommendation about the right to adopt children, because in my view no adult has the right to adopt. Children have certain
rights, and I am glad that the Committee accept the revised Amendment No. 7.197

I should like to comment on paragraph 11.iii.h, which deals with a registered partnership.

In my country, Norway, we have had such legislation since 1993. I was my party's spokesman on the subject, although my positive view represented a minority position. However, I hasten to add that, seven years later, the overwhelming majority of the Norwegian Conservative Party supports registered partnership.

As politicians, we have an obligation to make it possible for all citizens to take responsibility for themselves and for their families. People should enjoy equal rights, but also equal duties. Unfortunately, that is not the case as most European countries deny homosexuals the right to register their partnerships. Consequently, they are left to live without the security and the confidence that legal recognition of partnership would provide. How, then, can we be surprised that many lesbians and gays find it difficult to be self-reliant and proud citizens who try to be true to one partner? That is difficult enough for the rest of us; how much more difficult must it be for them?

Registered partnership is the tool that homosexuals need to be (sic) enable them to live in stable and binding relationships. That is all the more important from the AIDS perspective. Registered partnership is modelled on the institution of marriage, and instead of seeing it as a threat to marriage, which it is not, we should regard it as a token of the strength of matrimony, which is what it really is. It should be considered to be a model.

I remind possible sceptics of some examples from history. Some of our forefathers opposed universal suffrage, not only for men, but for women. Others opposed equal rights for children born out of wedlock. None of us is very proud of those examples today, but I have mentioned them because once in a while I have found it useful to think about whether some of my own hesitations about granting someone a right or supporting new legislation are perhaps founded on old habits, or even prejudice, rather than on true reflection. We should not retain old habits if they stand in the way of enlarging the scope of human rights.

As a conservative, I want to emphasise that conservatism is not about keeping everything as it always has been. Such an attitude is reactionary—nothing more, nothing less. True conservatism is about creating a society that acknowledges and respects the individual and the individual's right to be different. Fortunately, most homosexuals today do not hide their sexual orientation, so would it not be sensible and responsible to create institutions whereby they can take responsibility not only for themselves but for their partners?

As I have said, my view was not shared by the majority of my party, but it is today. The legislation has had no negative effects in Norway—indeed, the contrary is true—and it has functioned positively in the homosexual community. That is why I urge the few sceptics in the Assembly to think about the

197 Hoegh here refers to the amendment that restricts access to adoption, which I discussed in Chapter One.
reports and to accept them so that tomorrow they do not have to regret rejecting them.

THE PRESIDENT.— Thank you, dear lady. I call Mr Jaskiernia from Poland, of the Socialist Group....

Overall Høegh’s speech clearly indicates the direction of the debate about kinship and sexual orientation in Europe: partnership yes, but parenting no. The adopted amendment No. 7 she welcomes in the beginning of her speech is an amendment that sought to cut the reference to adoption and artificial insemination originally part of the draft recommendations of the PACE report. For Høegh amendment 7 is a question of children’s rights, which implies that the question remains open whether gay fathers or lesbian mothers are detrimental to children’s rights. That lesbian and gay parents are at least potentially negative for children is so obvious to Høegh that she offers no elaboration on this point, but simple states the disparity between gay and lesbian parenting rights and children’s rights before elaborating at length on partnership rights. While partnership rights are arguable from a conservative view, gay and lesbian parenting is so far removed from any reasonable consideration that the denial of such a right needs no further explanation.

Both excerpts clarify once more from different perspectives that any analysis of sexual minorities always requires to be thought of in relation to an analysis of kinship. Gay men and lesbians are often not considered human or worthy of protection because they are regarded as estranged from what counts as the kinship figuration through which the human becomes recognisable. (Butler 1994:15) Sexuality in this context need not even be thought of in terms of reproduction only for the conclusion to be drawn that it obviously cannot be thought of outside of kinship. Although gay men and lesbians are not born into their identities by virtue of their parents’ identities, kinship matters distinctively.

It is kinship—even if not their kinship to their original families—that configures the identities of sexual minority groups: their gender performance and their sexual practices define their forms of partnerships and their efforts at parenting as illegal, as pretended or at best as tolerable, but always as an imitation of the real thing.¹⁹⁸ This principle is substantiated through at least four aspects of argumentation that can be identified in the excerpts quoted: first, the definition of marriage or partnership as simultaneously a contract and a status; second, the prolongation of the split between the private and public sphere, politically distinct, but mutually dependent; third, the link between partnership regulations and questions of gender and of gender identity; and fourth, the naturalness of kinship and its connection to biological parenting.

¹⁹⁸ “Pretended families” is the infamous sentence of Margaret Thatcher about homosexual partnerships and families given in support of Section 28. Section 28 is a 10-year-old U.K. law that prohibits cities among other things from “intentionally promot[ing] homosexuality” or teaching “the acceptability of homosexuality as a pretended family relationship” in schools. Scandan and repealed this law on 21 June 2000, the Labour government in London has so far not shown sufficient interest to revoke the law for Wales and England.
which re-asserts the claim to human authenticity in partnership and parenting. I will trace and analyse these four aspects in the excerpts cited.

Status and contract are rhetorically entangled in both texts, simultaneously invoked and equally valorised. ILGA-Europe’s claim for recognition of all families already existent in Europe portrays partnerships as involving a contract between equals. Those elements which define the good family—namely love, mutual respect, commitment, and equality—are elements that point to possibilities of contractual relations between partners and between parents and children. The discourse of contract implies that the rational will of the individual makes it possible to take on social obligations and responsibility within autonomous intentional arrangements made between equal people. However, the right to live a publicly and legally recognised family life, claimed by ILGA-Europe in the same breath, is not a question of contract but of status. Status can be defined as denoting “persons bound into a social order, their obligations and legal duties constricted by their position within familial, occupational, and religious institutions”. (Goldberg-Hiller 2000:7)

Høegh’s speech also displays a modernist assumption about the ability to form contractual relationships. She propagates registered partnership as an arrangement based upon mutual understanding and as a tool that enables homosexuals to live in stable and binding relationships. A concept of free choice underlies both her argument as well as that of ILGA-Europe. Yet, she simultaneously plays on status. The status of marriage is maintained in that registered partnership is a token of the strength of matrimony, marriage remains the model, its status is neither threatened nor questioned. The reference to historical change in conservative attitudes, for example with regard to suffrage, retains marriage as an important status signal with the capacity for change. Høegh seems to appreciate the advanced forms of marriage existent in Europe today in comparison to their earlier incarnations. However while deeply supportive, Høegh also exhibits a growing anxiety about the maintenance of that status as is evident in most debates about homosexual marriage. This anxiety stems from the inevitable need to assert some authority and legitimacy over who is what amid the rapid social change in Europe.

The entanglement of status and contract is not only evident in supportive statements, but in virtually all contributions to the kinship debate. This fact makes “the very categories of the legal form discursively unstable and increasingly mutually interdependent.” (Goldberg-Hiller 2000:10) The reference to a contractual relationship features an abstract identity of each person involved in the partnership, no matter what gendered or racial self, for example, is involved. Any identity either one of the partners might have beyond sexual orientation is imagined to be in parity with the identities of the other. Legal recognition of these partnerships is intended to encourage negotiated and egalitarian family relations. The status implied in claiming the right to legal recognition and equality, in contrast, interpellates the society as a whole: the status of registered partnership will make possible for them what is already difficult for us—the us being the heterosexual majority in Høegh’s terms.
According to ILGA-Europe, the contracts gay men, lesbians, bisexuals and transgendered people, together with their children, have already entered into provide the democratic legitimacy for legal recognition. The status of marriage and its imitation registered partnership can, then, be interpreted as finally turning gay men and lesbians—bisexuals and transgender people are not mentioned in any European extra-marital partnership laws—into respectable citizens imbued with human values above simple legal rights. Thus, when registered partnership is argued to be a fair source of protection for those who lack the benefit of marriage, the language of contract depicts the material consequences of social obligations and claims political space to constitute an authentic kinship contract. Simultaneously, when registered partnership is argued for as a stepping-stone to full participation in citizenship for gays and lesbians and as a final recognition of their status as equal contributors, the new status is depicted as cost free to society as a whole. Nothing changes in the principal social web.

Jonathan Goldberg-Hiller (2000:26) has summarised the effect of this mixture astutely:

That domestic partnership can be portrayed as a compromise, one able to preserve the status of traditional marriage while providing 'equal rights for everyone' suggests the cultural interplay of contract and status will continue to define a political space in which the denial of citizenship for a few can be made in the name of citizenship for all.

In consequence, the diffuse mixture of both arguments leaves kinship regulations within the domain of a pre-set norm that is deeply heterosexual and that presumes, in principle, the gender of the two contractors to be opposite. While kinship offers a rhetoric of rights, it also continues to offer an argument for the legitimacy to deny those rights for the sake of all.

Second, a similar effect can be witnessed in the maintenance of the distinction between public and private in the language of kinship recognition. Høegh provides a particularly clear example of this distinction in which mutual dependency is asserted through kinship ties. For Høegh the opportunity to achieve private happiness through the security and confidence that legal recognition of partnership provides, creates self-reliant citizens capable of taking on responsibilities for themselves and their partners. Private stability, or better the opportunity to create that stability through being granted legal recognition, leads to the possibility of becoming or being recognised as a good public citizen. This connection is also evident in the rights rhetoric of ILGA-Europe: partners, children, parents, families deserve protection and support for their private lives and that can only come about with proper and full legal and public recognition. Both excerpts imply a duty of the public to protect the private. The private is portrayed to some extent as pre-condition of the public. Only a functioning private realm makes the democratic public realm a possibility, secures its functioning and secures the reproduction of public and private future players.
The maintenance of the distinction between public and private spheres in which kinship is traditionally relegated to the private and citizenship to the public has a historical tradition from Aristotle to Hegel. (Phelan 2000:2) That both are mutually dependent for the (re)creation of the originally male citizen who can participate in the public sphere, is another of kinship’s historical features. As a haven in a heartless world, the family, according to Wendy Brown,

functions discursively as the background of the socially male individual. While the individual is understood to be made possible through the family—harbored, grounded, and nourished there—all cannot be individuals or there would be no family, no ‘it’ that harbors, grounds and nourishes. (1995:161)

Brown takes this as a historical fact from Hegel and Rousseau, who relegated the substantial vocation of women to the family and asserted that it takes two—a man and a woman—to make one—a new male citizen.

It is crucial to note here how Høegh works with the pre-condition of private happiness for the creation of responsible public citizens, while simultaneously asserting a decisive heterosexual privilege with respect to parenting a young citizen. Høegh concurs

entirely with all the recommendations in the report on the situation of lesbians and gays in Council of Europe member states, apart from the section in paragraph 9 of the draft recommendation about the right to adopt children, because in my view no adult has the right to adopt. Children have certain rights, and I am glad that the Committee accept the revised Amendment No. 7.

While she is correct in asserting that children have rights to good parenting, her juxtaposition of gay and lesbian parenting rights with children’s rights indicate that these rights are somehow in opposition to each other. Behind her formulation stands the opinion that the responsibilities she refers to shall not cover parenting since children have the right to heterosexual parents and should, thus, not be raised by homosexuals. Apart from suggesting that Høegh’s speech could be read as homophobic in this respect, I rather want to suggest that it is the ideological tradition of the split between the public and the private which makes the exclusion of gay and lesbian parenting rights necessary and justifiable. Two aspects of this tradition are relevant in this respect.

Firstly, through the split between public and private the family retains a symbolic opposition to work and business, in other words to the domain of capitalism. (Lehr 1999:19) In consequence, as Shane Phelan asserts, kinship and citizenship cannot be thought of independently of each other in discourses on rights. (2000:12-13) Any play on the dualism of public and private invokes meanings of both kinship and citizenship and their relationship to the functioning of democratic and capitalist European societies. The dualist split evident in the texts blurs the fact that the so-called public sphere of responsibility in partnership actually conflates three things: the relation of the individual to the state, the relationship of marriage to the official
economy of paid employment and the relationship of sexuality to the arenas of public discourse. For the politically significant meanings of kinship, all of these relations are important. Secondly, the role of these relations is made invisible by the gender-neutrality displayed in arguments for partnership and family legislation that retain a strict separation of public and private.

This seeming gender-neutrality is itself the third of the four problematic aspects of the political kinship debate I want to identify. To define the qualities which make up a good partnership and a good family as including love, mutual respect, commitment and equality is certainly a legitimate political argument. As argumentational strategy it tries to go beyond the normativity of family definitions that relate only to heterosexuals and make heterosexuality the only defining element of family. ILGA-Europe’s argument, therefore, aims at dislodging a certain historical condition of kinship regulations. What this argument misses, however, is that families have never only been about love, mutual respect, commitment and equality as long as gender has had any meaning in social relations.

Partnership and the desire to parent cannot be thought of independently of gender and gender identity, while sexual orientation might possibly be regarded as sometimes irrelevant, although even this is questionable. As political practice this claimed irrelevancy makes sense, but the implications are potentially dangerous. Høegh’s speech illustrates some of these dangers. Her sense of contractual choice and responsibility appears to be gender neutral. Yet, through distinguishing marriage proper as the status model and through the exclusion of rights to adoption her conception becomes highly gendered. While she tries to disconnect partnership from procreation, the intrinsic, natural connection of both in marriage is re-asserted. Gender and gender identity are the most relevant markers of how human relations are defined by either marriage or registered partnership. One is allowed to procreate, the other is not. Høegh’s argument centres around responsibility for oneself and for one’s family. Whereas that should be made accessible to lesbians and gay men, the true model—heterosexual marriage—has a historical legacy with respect to responsibility: the male breadwinner is historically the legal and public body of both man and woman.199

The contractual ideas of a gender-blind partnership legislation will continue to be problematic for women in heterosexual relationships and for men and women in gay and lesbian relationships who, for one reason or another, are placed in roles or aspects of roles traditionally assigned to the female domain. Carole Pateman’s well-known analysis of the sexual contract shows that what appears as a free partnership contract actually centres around the regulation of sexual intercourse. (1988:231) This means that marriage is less a contract between equals and more a means of defining the status of men and women in a non-equal relation to each other, particularly with respect to parenting and childcare. The fact that the overarching majority of nuclear

family units throughout Europe today re-create and maintain certain forms of
gender relations and gendered work is uncritically continued in the family rhetoric
employed for rights. This reality is not only a heterosexual one, for gender structures
and their unequal consequences are also at work just as readily in many gay and
lesbian parenting relationships.200

Gender roles and their ways of organising social relations such as work,
citizenship, reproduction, ownership, pleasure, and identity have a persistent effect
on structures of dominance in all forms of families. As Shane Phelan puts it, lesbian
and gay families are “not created from a cultural vacuum, but are bricolages of
existing elements from both sexual subcultures and heterosexual family cultures.”
(2000:5) At the same time, these cultures and gendered structures vary and are sites
of social struggle in both heterosexual relationships and homosexual ones. The
failure to address the deeply gendered realities and ideological conditions of kinship
masks one of the very conditions that have historically made possible the exclusion
of gay men, lesbians, and transgender people from certain forms of recognised
kinship.

Fourth and finally, the central factor in the justification of this exclusion rests on
the seeming naturalness of heterosexual marriage as the starting point for parenting
relations. This naturalness is rooted in an ideology of human need for sexual
relations that are stable and enduring and provide a context for the role of sexuality
as procreation. While advocacy of gay and lesbian partnership recognition usually
questions the natural need for heterosexual sexual relations, the principal need is
commonly asserted. This naturalness of sexual relations is connected to a claim of
authenticity. Love and the free choice of a sexual partner as an authentic expression
of one’s essential self is a prominent part of kinship arguments.

The vision of a Europe that is humane and acknowledges the human realities of
homosexual families expressed by ILGA-Europe connects the definition of a true
family as encompassing love, mutual respect, commitment and equality to a sense of
basic humanity and of human rights. Categories such as love are employed to assert
a claim to authenticity. According to the advocates, the reality is that lesbians, gay
men, bisexuals and transgender people are human, they love and live in partnerships
and they raise children according to their natural desire. While Høegh excludes the
last mentioned aspect as inappropriate, the first one—love—is nevertheless the
marker of authenticity for her as well. It is the category that renders everyone human
and that must be acknowledged through equality and respect even according to a
conservative world view.

200 The studies of Renate Reimann (1997) and Maureen Sullivan (1996), provide very interesting results
with regard to gender and lesbian parenting. Through extensive research they have found that where
couples divide housework and childcare according to a traditional breadwinner model, the same
inequalities and lack of self-worth on the part of the care givers occur as in heterosexual families
structured similarly. The decisive factor was unequal work divisions according to gender traditions not
the biological difference of the partners. See also Fiona Tasker & Susan Golombok (1998).
Yet, Høegh also points to the need to civilise and tame nature; stable, binding relationships are for her the answer to problems such as AIDS. Traditionally, this aspect of taming was assigned to male sexuality which could only be controlled when confronted with the social responsibility of fatherhood. (Lehr 1999:115-118) This discourse of “wild male sexuality” is one of the reasons why gay male sexuality is often portrayed as threatening; gay men are said to be obsessed with sexual pleasure only and not capable of the responsibility needed for procreation. It is reasonable to assume that Høegh—as usual—was visualising gay male couples rather than lesbian couples while speaking. Høegh’s argument is highly conservative—which she explicitly intends it to be—and, therefore, depends on the need to order kinship to promote responsible citizenship in a functioning sociality and market economy.

Thus, one important aspect of the debates about the cultural and legal status of homosexual partnerships is that the social advantages which accrue to heterosexual married couples are portrayed as doing so because heterosexuality represents an authentic form of true human need and sexual desire. Claiming equal rights to form kinship ties according to one’s sexual desire plugs into the same discourse of authenticity while trying to disconnect this authenticity from heterosexuality. It is the very idea of status relationships as true and biologically authentic expressions of human nature which provides the basis for the official political debate about gay and lesbian partnership laws on both sides. All alternative suggestions in this debate remain limited by the need to adhere to the norms of kinship as natural and authentic biological expressions of human nature.

In summary, similar to citizenship claims, advocacy of kinship rights presents a rhetorical inversion in reference to the discursive construction of partnership rights. This inversion is invoked when the law is called upon to substantiate a claim for equal status, while this status itself is fetishised as already existent and as the central proof for rights of equality. The rhetoric of kinship evident in both ILGA-Europe’s approach and Høegh’s speech involves the same contradictory process of recognition I have analysed with regard to citizenship. The claim for kinship recognition crosses out its own process since it implies a recurrent inversion of the before and the after.

Høegh’s speech exemplifies this circularity. It proclaims a form of equality that is not only gender- and race-blind, but also very explicit about its active reconstruction of a norm. While being supportive of registered partnership Høegh categorises some forms of kinship as model and others as imitation. The conservative rejection usually goes one step further in declaring this imitation fictive kinship. Yet, whether it is fictive or imitative is a matter of terminology, since the presumption is that blood relations formed by procreative heterosexuality constitute actual true kinship and provide the only model for all derivative forms of families. Therefore, ILGA-Europe’s insistence that what makes a true family is love, mutual respect, commitment and equality maybe directed against heterosexuality as the only valid marker, but it, too, models itself according to values that are said to underlie the definition of
family. It sounds like a truism, then, to state that all kinship regulations and almost all public political discourse about them are involved in a ‘catch 22’ situation: either way they cannot escape the heteronormative structure of kinship. The right to liberation and recognition in and of itself re-affirms the normative frame that is the source of the state of rightlessness. It is this insight which for many years has fuelled a vehement and vocal opposition among many gay, lesbian, bisexual, and transgender activists and academics against partnership laws or gay marriage.

_Families of Our Own Making: Critiquing Partnership Laws_

Those countries that have introduced partnership legislation are faced with an interesting trend: together with marriage, registered partnership is generally on the decline, but in proportion to the assumed gay and lesbian population and the number of marriages, partnership regulations are rarely used. In Denmark, less than one percent of all ceremonies are registered partnerships. 1999 figures show that 0.8% of all ceremonies in Sweden and 0.7% in Norway were registered partnerships. 2000 figures show that 0.8% of all ceremonies in Iceland were registered partnerships and only in the Netherlands—where both mixed-sex couples and same-sex couples could enter registered partnership since before marriage proper was opened on 1st April 2001—were the figures as high as 1.9%. (Hinzpeter 2000:13)

Why is this form of marriage, which was so heavily fought for, not used more?

Many critics would ascribe this to the fact that marriage is in decline as an antiquated institution in most western European countries and, more importantly, it is also in opposition to gay, lesbian, and bisexual cultures and, thus, not actually wanted by the majority of the sexual minority population. This view has been elaborated on from many angles: from the perspective of critical law, from a case study perspective, from a political (science) perspective and from a philosophical critique.

Heather Brook explains the historically problematic transformation in the marriage ceremony from individuals to a complex conjugal body: husband and wife become one person in law, not only through the state act, but more importantly through consummation, which is defined as proper heterosexual intercourse and the only real sexual act. (1998:10-11) For Brook the “notion of consummation, then, is a corporeal yoke linking law and marriage.” (1998:11) Tracing the conjugal performance in the now more advanced partnership laws of Australia, Brook comes to the conclusion that:

If same-sex marriage were to be recognised as marriage, the heterosexual logic of the conjugal body politic might be shaken, but perhaps only as it risks reinforcing sex—or certain sorts of sex—as performatives inscribing the governmental regulation of bodies. Whether the potential benefits render the risk worthwhile must remain, at least for the time being, something of a moot point. (Brook 1998:20)
Brook’s conclusion is comparatively careful, whereas much of queer literature is more radical in concluding that gay marriage not only consolidates the primacy of heterosexual monogamy but also the interrelated systems of power of gender, race and class.

Valerie Lehr, for example, explains with respect to the US American context how the rise of companionate marriage and the institutionalisation of the nuclear family required a re-definition of femininity and masculinity that provided altered but clearly gendered hierarchies. (1999:62) At the same time, the racial binarism—white versus black—and the class binarism—poor versus middle class—were constructed in relation to a particular understanding of family life. (1999:63) According to her, gay and lesbian marriage cannot escape these historical legacies. This radical queer critique is countered by Morris Kaplan as both understating and exaggerating the importance of formal legal rights. To him this critique underestimates the practical and material consequences of partnership laws as form of empowerment. Yet, it also exaggerates the extent to which individuals are deprived of the capacity to shape and revise the institutions they voluntarily create. He taps into the hope that the opening of marriage to lesbians and gay men will actually change the deeply oppressive history of marriage as an institution. (1997b:221)

Kaplan finds himself in good critical company with this argument. Kaplan’s defence of gay marriage gave new fuel to an already heated debate. Rune Halverson’s examination of the Norwegian Registered Partnership Act as a case study, for example, answers to Kaplan’s claim that even the symbolic effect of the Act has been less than either opponents or proponents expected. Nothing has changed the institution itself; heterosexual marriage remains at the peak of kinship hierarchies. Mainstream political discourse in Norway still draws contrast between couples and families. The selfish sexuality of those who do not raise children—lesbians or gays are not allowed to adopt or receive artificial insemination—is contrasted with those who are heads of families. (1998:210-211)

Michael Warner (1999:147) and Shane Phelan (2000:9) address Kaplan’s argument directly on a political level. They argue against the split between citizenship and kinship by means of which individuals are disconnected from the heteronormative working of the law that regulates all forms of belonging from citizenship to kinship. Yet, the problem lies not in married lesbians and gay men imitating heterosexuals. According to Michael Warner, this would be a naïve understanding of how norms work. What the individual does or does not do, in fact, has little to do with the ramifications of the act of marriage. It is this act which always needs the recognition of a third party, the state with its interest in maintaining the naturalness and the biological essentialism of heterosexual procreation. (1999:142)

Hence, the sudden change in the focus of gay, lesbian politics away from the system critique of the 70s to the emphasis on marriage and families in the 90s presents, on the one hand, a hierarchical exclusion of certain more radical forms of

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201 See, for example, Nan Hunter (1991a, 1991b).
On the other hand this move presents a new kind of coming out that is different from coming out in the 70s. Whereas, at the time, coming out implied impropriety because it broke the rules of what should go without saying, marriage embraces this saying as propriety, promising not to say too much and live in a regulated order. (Warner 1999:148; Weston 1998:90) In more polemical writings, registered partnership is called a placebo, while the real thing, marriage, remains a privilege of real people. Lobby activists are accused of not realising that they are not accepted as serious political players by politicians but are, at the best of times, pink clowns in the corridors of high power who will be satisfied with little pieces of the cake. They apparently do not realise that what they are aiming at is much worse than the status quo.202 (Stedefeldt 2000:68)

Another approach takes up the critique from a philosophical point of view by criticising liberalism as the dominant ideology of kinship. Linda Nicholson's feminist analysis was one of the first to assert that liberal theory naturalises a particular version of the family and reifies a distinctly modern and ideological division between family, civil society and state. (1986) Wendy Brown, consequently, offered an elaborate critique of the common dualisms of liberalism and their impact on family values.203 (1995:152-165) This analysis forms the background to her conclusion that when rights are articulated as material necessities, "when they are 'brought into discourse', rights are more likely to become sites of the production and regulation of identity as injury than vehicles of emancipation." (1995:134) Marriage does not deliver equality and liberty, but inscribes certain identities for those who need protection. Marriage continuously excludes certain relations from what counts as real families.

Generally, queer critique maintains that—despite some restricted potential to destabilise the traditional notion of the family through gay marriage—uncoupled lesbians and gay men, or those whose manifold relationships do not fulfil the norm of monogamous coupledom, are excluded from the group seeking inclusion. As long as heterosexuals marry, the state will disregard the sexual lives of those who do not or cannot marry. The eventual validation of gay marriage will invalidate, delegitimise, and stigmatise other relations, needs, and desires. (Warner 1999:133) The need to prove that homosexual relationships are familial in a heteronormative sense again and again gives power to judges to issue authoritative definitions of what constitutes the family. Politically speaking, the entitlement to social benefits should, therefore,

202 Occasionally the harsh words used against gay and lesbian partnership laws from a queer perspective—as they were voiced, for example, in Germany during 2000—go as far as stating that no discrimination on the grounds of sexual orientation exists at all and that any political claim that refers to this discrimination is ridiculous. (Klauda 2000:54) I find this line of argument the only one in the queer perspective on kinship that is entirely unconvincing and ridiculous itself.

203 Brown analyses dualisms such as equality/difference, liberty/necessity, autonomy/dependence, rights/needs or duties, individual/family, self-interest/selflessness, public/private, and contract/consent for their deeply masculinist nature.
not be based on the degree of intimacy attained with only one partner. Rights need to be de-familialised.204

In fact, according to Valerie Lehr, the political kinship strategy needs to change fundamentally:

The goal of articulation of a new narrative means that each of the separate groups currently harmed needs to move away from trying to gain resources and power by proving that they can enact current norms. It also requires that these groups move beyond fixed understanding of identity and group, recognizing instead that the identity itself only exists through exclusion, generally of those who are least able or willing to conform to the dominant constructions of society that in other ways oppress the group as a whole. (1999:138)

Lehr’s conclusion is based on some additional claims about l/g/b/t subcultures. Gay, lesbian, bisexual, and transgender cultures are said to have strong links with non-monogamous sex. This image appears in homophobic and transphobic discourses, but also in proud self-depictions of the l/g/b/t scene. The slogan “We are your worst nightmare. We are your best fantasy” plays with the double-bind of sex as definitional marker of a minority identity and of what apparently constitutes a biologically essential and natural need to form stable partnership attachments. The liberty of sex without procreation remains an underlying threat to the responsibility the good citizen has to take according to Høegh and that, according to ILGA-Europe, gay men, lesbians, bisexuals, and transgender people throughout Europe are already taking.

However, in spite of all the critique, there is a disposition towards romance in many gay, lesbian, bisexual, and transgender cultures. This disposition is a powerful temptation with regard to marriage. According to Kath Weston, even if friendships are constructed as the most reliable and enduring form of kinship—a discourse common for l/g/b/t scenes—this alternative discourse can be radically innovative and thoroughly assimilationist at the same time. (1998:64) Weston shows that gay and lesbian kinship ties are described according to standardised categories such as shared experience, love, and closeness and “there are reasons other than caprice to explain why, when it comes time to enumerate family relationships, Einstein the cat is in, but Angela the goldfish is out.” (1998:84) Weston concludes, therefore, that in practice chosen families do not disrupt the type of family mostly referenced in political debate. According to her, something is changing, but it is nothing so monolithic as the family. (1998:87)

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204 To some extent the French law, PACS (Pacte Civiles de Solidarité), is seen by many as a move in the right direction. Since the 9th November 1999 it provides for different forms of contracts that are not bound to the existence of a sexual relationship between the signatories. The German Socialist Party PDS has also suggested a bill that follows a non-sexual principle, where different degrees of kinship can be assigned to different people. Despite the advantages, there is a catch to these measures: these ideas to do not deal with the necessary protection of heterosexual women who live their lives in unpaid domestic labour. Their security from abandonment after years of labour outside the wage market has to be assured through extra laws once marriage is entirely de-privileged.
The evident desire to marry or live in publicly acknowledged long-term relationships, clearly says nothing about whether pursuing legal marriage is a good political strategy. The existence of this desire in the everyday life of many also says nothing about what partnership rights do to the normativity of marriage and public control of sexual acts. Yet, this desire is a present and crucial feature in all alternative kinship designs and cannot be disregarded in any analysis of the political kinship debate. In fact, desire is an important means through which heteronormativity frames kinship and asserts authentic definitions. However, desire is not the only element in this intricate process. For all its obviousness and its long tradition in feminist and queer theory, the term heteronormativity should not be taken as self-explanatory in relation to kinship. In what follows, I want to suggest that the concept of framing as an analytical tool can advance our understanding of the interrelated workings of specific political kinship debates in Europe. Kinship debates are interrelated both with heteronormativity and with other central ideological concepts such as love, authenticity, desire and subjection, concepts which support but also exceed the system of heteronormativity.

**Framing Kinship**

Jürgen Habermas—who can scarcely be described as a queer thinker with feminist affiliations—admits that through the democratic procedures of political decision making, mainstream morality asserts a place for itself in the justification of norms. (1999:236) This mainstream morality has been identified by many feminist writers as gendered and sexualised. Consequently, queer theory has made heteronormativity the central concept in analysing the workings of such mainstream morality. In a nutshell, queer theory asserts that heterosexuality is functionalised in a heteronormative way to occupy the centre of human sexuality, gender relations and indeed the political order and the conditions of social existence itself. Corinna Genschel summarises queer theory’s stake in the term heteronormativity as follows:

In that heteronormativity is thematised, and not only heterosexuality, the institutional power of certain sets of discourses becomes visible. Heteronormativity organises more than just the sexual. It organises what is described as sexuality and many of the societal norms, values, and structures, that seem so natural. To question heterosexuality as given by nature makes it possible to uncover different seemingly ‘sexuality-free’ ideologies and institutions. (Genschel 1996:528—translation mine)

According to Genschel, queer analysis is directed against those systems of thought and those institutions which insist on the naturalness, the binding nature, and the pre-condition of heterosexuality, just as feminists have shown how gendered terms such as morality, rationality or the public sphere are deeply dependent on gender. (Genschel 1996:529)
The power of heteronormativity is secured by material consequences which are accorded to those who by virtue of their heterosexual relations are considered kin. In fact, the regulation of kinship relations is probably the most powerful arm of any heteronormative order. Within kinship, it is not necessarily the genitals of certain bodies which define acts as heterosexual and consequently wield definitional power over what counts as a true, authentic relationship. It is rather the relationship between these activities and the heterosexual drama of clearly gendered roles that receives public recognition through a third witness to the marriage ceremony—the state and public interest. Gender and heteronormativity provide the historical context for all intimate interactions and this has different consequences when those interacting are two women or two men, or indeed two or more people whose gender identity cannot so easily be determined.

However, having asserted the centrality of heteronormativity, there is no precise answer to the question of how different political practices around kinship claims interact with concrete legal regulations of everyday life or with the desire for official recognition. Nor can heteronormativity alone sufficiently explain the political and legal centrality of certain sexual acts and how that centrality interacts with concepts such as desire, authenticity, or love. I want to suggest that the working of kinship norms in the context of political practices can only be understood when heteronormativity is not left on its own as the ‘big dark and horrible coat’ that eventually smothers all attempts of finding alternative means of political kinship recognition. Understood as a frame, however, the powerful workings of heteronormativity can be analysed more forcefully.

The political practices around kinship can be thought of as a text on which many different parties work fighting about which word fits where. Yet, nobody argues about the need for a context, whereas all parts of the text reference this context. As my examples of the political debate on marriage and families in Europe show, the only narrative context which makes kinship politically intelligible is based on heterosexuality as norm. Yet, heteronormativity is more than just a context. The confining nature of such a force is better understood as a frame. This is more than a simple matter of terminology. According to Jonathan Culler, context creates an opposition between an act—in this case a political practice in which kinship recognition is demanded—and its context, which presumes that the context is given and determines the meaning of the act. (1988:xiv) Not every meaning that can be read into the excerpts I analysed above is entirely or only determined by heteronormativity. This would oversimplify the workings of heteronormativity and other thought structures in the passages I quoted.

Framing, on the contrary, in Culler’s words, is something we do. According to Mieke Bal, the concept of framing is crucial to understanding any process of reading, in fact, “framing is a constant semiotic activity, without which no cultural life can function”. (1996:32-33). There exists an intrinsic need to read, i.e. interpret, what one sees, experiences or does. This need implicates a necessary designation of a
frame—consciously or unconsciously. To talk, for example, about our alternative families which already exist all over Europe, one needs a narrative frame in which this form of talk makes sense, in this case the frame of arguing against heterosexuality as the only existent form of family ties. In fact, as Ernst van Alphen argues, without a frame no narrative makes sense. To him, no experience is experiencable outside a narrative frame to which its narrative refers and which grants a subjectivity capable of speech.205 (1999:34)

Centralising framing in cultural intelligibility in this way—as Bal and van Alphen do in the context of art and history respectively—is a move to substitute a problematic concept of context by the concept of frame, or better framing. (Bryson 1994) The current interest in framing has emerged with Jacques Derrida’s reading of Kant in The Truth in Painting. (1982) Just as the frame of a painting had to protect the purity of art and connect it to the world outside the picture, framing as an analytical concept produces meaning, but, more importantly, has a capacity to limit meaning while making the limitations visible, hence, open for scrutiny.206 Conceptualising heteronormativity as a frame to the political debate on kinship allows one to go beyond the queer conclusion that heteronormativity produces meaning about seemingly real kinship ties.

The concept of framing allows one to see the limitations of meaning heteronormativity is capable of producing through its intersection with other frames, as well as making those limitations open for scrutiny. No political debate can occur outside of a frame, “trying to eliminate the activity of framing is futile”. (Bal 1996:33) Yet, it makes sense to hold participants in that debate accountable for their active reference to a frame. (1996:33) Not in the sense of autonomous choice, but in the sense of creating a need for justification that allows questions about the constant re-applicability of a certain frame. Participants in the official European kinship debate feel the need to present their evidence up and against a frame they perceive as decisive, which, in turn, actively frames the debate and gives the frame authority of meaning. This circular process is crucial and it is the only entry point for a possible future accountability.

It is obvious that Høegh creates—probably quite consciously—a liberal setting for what counts as partnership, namely endurance, responsibility for the other partner, and monogamy. She refers to these ideologies actively. After all, she expresses an explicitly conservative view in terms of which she understandably defends the naturalness of heterosexuality. Her heteronormative frame is a conscious act of framing her political argument about kinship. In the case of ILGA-Europe’s claim the same active framing is not as explicit. The address insists: “To repeat: these are realities. They cannot be wished away or ignored”. This rhetoric of repetition and insistence alludes to the idea that same-sex or transgender headed

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205 Van Alphen exemplifies this convincingly with reference to the testimonies about the Holocaust.
206 This line of thought was suggested by Mieke Bal in her Theory Seminar at ASCA.
households are commonly seen as strange, outside the norm, but since they are an existing reality ILGA-Europe re-iterates their existence.

This is a semiotic functioning of heteronormativity, which firmly determines the object—marriage and family—separating it off as different from the frame itself as if it could exist without it. Yet, through this separation, the frame as the only authoritative frame is asserted once again. This is a metaleptic substitution of cause and effect on a rhetorical level. Whether the heteronormative was there before the political argument—pro or contra—or whether the political argument creates the frame through its reference to it remains a moot point. For such circularity is characteristic of the concept of frame.

Heteronormativity as a frame for the political kinship debate passes on its norms to the debate in a transfer that has elements of substitution: the terms of the debate articulated in political practices need to reference the frame, thus supporting it, while picturing themselves as a strategy that aims to become a new frame. However, not only the legal and moral institution of marriage and the nuclear family are framed by heteronormativity, but, more interestingly, so too are categories such as love, desire, or intimacy as well as the wish to care for children. Hence, attempts to redefine the family in terms of love and not heterosexual procreation implies the wish to replace a heteronormative frame with another frame, namely love. Yet, actively framing the debate with love is, in fact, also a reference to kinship discourses which are bound to heteronormativity. Thus, ILGA-Europe’s re-framing cannot escape the fact that no political meaning of kinship can be established outside of its heteronormative frame. In other words, there is a certain pre-determination of meaning at work.

Gay and lesbian rights claims necessarily argue with the real. In this case the real or original is said to be a family comprised of mother, father—at best married and monogamous—with one or two children. However much activists and parliamentary supporters are personally convinced of the propriety of homosexual partnership and parenting, their words always reflect the impropriety of their claim. “Homosexual families” is an improper name for the proper thing, even if gay men and lesbians love the same way and their parenting is proven to be just as good as heterosexual parenting. The question of pre-determination is not how the heteronormative frame became so overwhelmingly powerful that it can maintain the power of the ultimate referent. While no political practice employed in kinship debates at the European institutions can exist outside the circumstances of the historically heteronormative framing of kinship, there is nothing heteronormativity can do to fix all outcomes of the debate in all future settings. It is, thus, more important to ask after the political conditions that make it necessary to always refer to a frame. Judith Butler’s concept of performative reiterability can be of help here.

As I argued in Chapter Two, all political practices must be understood as meaning-producing in a performative manner. A performative manner is not understood “as a singular or deliberate ‘act’, but, rather, as the reiterative and citational practice by which discourse produces the effects that it names.” (Butler 1993:2)
Hence, the fixing of the referent in claims to rights is always “a 'citation' of an original fixing, a reiteration of the divine process of naming”, something like the “primal baptism”. (1993:212) For Butler, hierarchical gender orders and normative heterosexuality are an intrinsic part of any “primal baptism”. However, the referent is only secured on condition that a differentiation is made between proper and improper definitions of family, which means, in Butler’s argument, that the referent is produced in consequence of that distinction.

The term referent here is not used in its proper Saussurean linguistic sense as the thing that is referred to. It is used in Butler’s sense as a frame of reference that emphasises the process of how dominant discourses establish definitional power. In this sense, frame and referent are similar concepts, in the context here even exchangeable. This referent or frame depends essentially on precisely those acts of speech that fail to refer, or that refer in the wrong way. (1993:217) Homosexual parenting, for example, necessarily fails for reasons of an apparent biological misfit, the lack of procreation. Hence, the performative aspect of ILGA-Europe’s political practices—their claim to authentic speech about rights and equality—only works insofar as it “draws on and covers over the constitutive conventions by which it is mobilized”. (1993:227, emphasis in the original)

As I argued above, kinship ties as family relations are generally portrayed as a basic and biological human need. Kinship as basic human need is the implicit mobilising force of the political kinship debate. This mobilising force remains strong through kinship’s implication of basic human traits, such as love and desire. Heteronormativity as the frame is not made explicit in the political debate. Yet, it appears under the name of substitutes, of categories that are intrinsically bound to it. There are many important sub-frames involved in the exhibition of kinship as the seemingly most natural human art. These sub-frames are, however, not simply subordinate to or dependent on the overarching frame of heteronormativity. They assert a discursive power on their own terms which, at times, utilises heteronormative arguments to support their own authority. The sub-frames relevant in the mainstream political debate on kinship are love, authenticity, desire and subjectivity/subjection.

The sentence “love makes a family—nothing more and nothing less” is a well-known political assertion employed in kinship debates by activists in Europe. Love in this sentence functions as self-validating; it seems to be beyond ideology, beyond mediation, beyond contestation. It seems to dissolve contradiction and dissent about what constitutes a real family into a basic, but also higher truth. Love is much more tricky to theorise than sexuality. Despite love’s large role in human culture, and subsequently in the political culture of rights, it is often relegated so far into the intimate sphere that it becomes virtually untouchable, too mysterious to be
theorisable in social and political science. Love validates human beings as human morally and emotionally. For many love is incompatible with those considered sexual perverts, homosexuals or, more recently, S/M practitioners. In that sense the image of two leather men gently kissing is much more troubling than the image of them engaged in rough sex.

The recourse to love in political practices around kinship is an attempt at treating the wounds of discrimination with the same discourses that insist on a proper and an improper meaning of love. The fact that gay and lesbian families are loving families is constantly set up to be proven in and through political statements or through the appeal to allegedly objective research, in which sexual orientation is deemed to have no influence on the child’s development. Through this need of proof, love’s higher truth is re-connected to one proper setting where it does not need to prove itself. Heterosexuality frames proper love, while love, as a category in rights claims, mobilises the political attempt to overcome that frame. The circularity of framing is at play within the frame of love, and it connects love to the frame of heteronormativity again. The mobilising force of circularity in love, in turn, rests partly in the claim to authenticity.

Political kinship debates in the European institutions are fundamentally aiming at separating the genuine from the imitative by linking authenticity not only to the biology of procreation, but also to the duration of partnership commitment. Høegh’s speech—with its exclusion of adoption and its insistence on long-term commitment—provides an excellent example of this link. Similar to other normative categories such as nationality and ethnicity, kinship is naturalised through an attribution acquired at birth and then fixed as referring to biological ties conceived of as immutable. The two most inevitable events in human life, birth and death, are the elements that grant certain forms of kinship an authentic and authoritative status.

Kath Weston proclaims birth and death to be the two foundational episodes that establish kinship. (1998:78) For her, birth is the focal point of alliance and blood, and only a biological process—death—as opposed to a social process—rejection or neglect—is capable of sundering blood ties. Death, then, is the terminus that marks the attainment of forever in a relationship. (Weston 1998:79) This attainment of forever is expressed in the traditional sentence “till death does us part” and reflected in the ideology of endurance and responsibility. Birth and death establish a permanence presumed to grant a form of authenticity which confers the authority to act, speak, order, and control in relation to those linked through birth and death to oneself. Birth and death as fixed designators turn kinship debates into a quest for an origin and an original, which are miraculously found again and again in biology’s authenticity. Hence, if authenticity were to be removed as a frame from the political debate about kinship, the question of the true origin of kinship might become

207 One of the very few sociologists who has thoroughly covered love is Anthony Giddens (1992). However, there exists a substantial body of literature on love in feminist psychoanalytic thought. See, for example, Teresa de Lauretis (1994) and Kay Silverman (1996).
meaningless. Kinship retains its centrality because it orders and institutionalises a fundamental human sentiment in an apparently authentic way: desire.

If “love makes a family, nothing more and nothing less”, then true families are implicitly loving, mutually respectful, and equal, in short there is a cohesiveness and peacefulness that is presented as natural to families. While this claim makes sense in the political climate of the European institutions, it is also potentially preposterous in the face of the abuse that happens in families throughout Europe. The family functions as the haven in a heartless world, the private harbour in which true nurturing and support are possible. This familial rhetoric depends on a liberal conception according to which everybody involved in this private unit desires it equally and is equally able to enact her or his desire. Love and desire are close together in the political practices of debating kinship rights. It is inappropriate sexual desire that places gay men, lesbians, and bisexuals outside of normative kinship rules. Yet, their desire for public recognition—or for what I have previously termed the desire for rights—is just another side of the same coin that declared their sexual desire an improper form of love. The desire to marry is itself, therefore, an aspect of the normativity of marriage.208

While homosexual desire can be said to transform the definition of legitimate marriage to some extent, sexual desire and the desire for public acknowledgement is only intelligible with reference to a norm that precedes kinship definitions. In principle, this says nothing about how transformable marriage is. What it does indicate, however, is that although heterosexual, monogamous, and procreative coupledom does not smother all attempts at forming significantly different families, it remains the frame thereof. It remains a definite referent for all the desire that is at work in speaking about homosexual families, and for the right to have that desire publicly acknowledged through a performativ legal act with substantial material consequences.

To some extent this also means that certain social norms about appropriate desire have become internalised, not only as a psychic process in the individual, but as something like a psychic process underlying the political debate. In the process of incorporation or internalisation into a framework of political struggle, a norm becomes part and parcel of that political struggle. Judith Butler describes norms as operating as psychic phenomena, restricting and producing desire, while also governing the formation of the subject and circumscribing the domain of liveable sociality. (1997b:21) She is clearly speaking about the psychic realities of individuals. However, her conclusions make this process transferable to processes of political struggle.

For Butler, there is no normativity that can be internalised prior to the social: “Just as the subject is derived from conditions of power that precede it, so is the psychic operation of the norm derived, though not mechanically or predictably, from

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208 See the section on hybridity in Chapter Three for a detailed explanation of the links between sexual desire and the desire for rights.
prior social operations.” (1997b:21) Applied to ILGA-Europe’s rhetoric of rights, this means that whatever language is employed will, on the one hand, reference a normative frame of kinship, since this frame precedes the formation of any political kinship debate on the matter of sexual rights. On the other hand, the difference in sexual desire, which sparks the desire for rights in the first place, is itself derived from normative processes in the same political struggles that seem to be their expression. When ILGA-Europe fights the discrimination and subjection of its constituency, it needs to assert that discrimination as subjection in the first place in order to re-iterate those realities that “cannot be wished away or ignored”. Subjection therefore becomes another sub-frame that frames the European kinship debate.

Butler defines subjection as the process of becoming subordinated by power as well as the process of becoming a subject. (1997b:2) If there is no formation of the subject without a passionate attachment to those by whom she or he is subordinated—in the first instance the parents—then subordination proves central to the becoming of the subject. (1997b:7) This means that one is dependent on power for one’s very formation and that the story by which subjection is told is inevitably circular. (1997b:9-11) Power acts on the subject in at least two ways: first, as what makes the subject possible, and second, as what is taken up and reiterated in the subject’s own acting, but power is both external to the subject and the very venue of the subject. (1997b:14) According to Butler, the subject cannot be reduced to power nor power to the subject’s formation. She concludes that

In this understanding, subjection is the paradoxical effect of a regime of power in which the very ‘conditions of existence’, the possibility of continuing as a recognizable social being, requires the formation and maintenance of the subject in subordination. (Butler 1997b:27)

Transferring Butler’s argument to issues of the kinship debate involves a leap Butler does not make herself: a leap from individual subject formation to the processes of political struggle analysed within a concept of framing. (1997b:21) Explicitly distances herself from the Lacanian concept of a pre-existing and fixed symbolic order here.

209 Michael Warner has argued against the possibility of transferring Butler’s thought to the politics of gay marriage by arguing that her explanation of normalisation is similar to her theory of performativity. He interprets her argument as implying that queerness is an inevitable principle of heteronormativity and successful normalisation an impossibility. To him this makes judgement on the political usefulness of gay marriage impossible. (1999:154-157) While Warner’s argument is logical, I do not agree with his conclusion and still see usefulness in the appropriation of Butler’s theory of subjection for the question of kinship politics.
I would suggest that the link between subjection and the political struggle for minority rights is the attachment to subjugation that kinship relations produce. Love and family—and their intrinsic connection to parenting or the much proclaimed rights of children—can to some extent only be thought of as a reference to the necessary protection of those most vulnerable in so far as they are dependent in a subordinated manner for their own survival. The relationship of parents and children is, discursively and legally, a relationship of subordination expressed in care, love, and protection. Kinship as fundamentally connected to parenting, therefore, is also fundamentally connected to subjugation as the means through which a child becomes a subject and, later, a responsible citizen capable of taking on heterosexual procreative responsibilities. This is one of the hidden reasons why parenting, adoption, custody, or artificial insemination are still perceived as threatening in relation to homosexuality and transgenderism.

To permit an identity excluded and subjugated by heteronormativity to procreate or significantly relate to children could unfix the naturalness of the heteronormative referent. It is feared that children who grow up with lesbian, gay, bisexual, or transgender parents might in the course of time not be psychologically subjugated to the naturalness of binary genders and heterosexuality. In fact, the consequence of this connection between subjugation, heteronormativity, and parenting is particularly violent for transgender people. Most European countries do not allow full legal gender re-assignment without proof of the permanent and irreversible infertility of the person. This policy can only be described as procreative euthanasia, a fascistoid and violent form of control over who is allowed to biologically procreate and in what gender role. The thought of a father, who enjoys all social privileges of masculinity, actually giving birth obviously severely unhinges the frame of the heteronormative painting.

In conclusion, although kinship laws and regulations are contested within the political domain, kinship is actually set up as the pre-political domain, the domain which, in fact, enables the political. As shown above, for Butler children come to their subjectivities through the workings of power which subjugate them to the rules of gender, sexuality, class, and race in their attachment to those that subjugate them—in the first instance the parents. Thus, kinship enables speech as the precondition for social intelligibility or subjecthood which is, in turn, never entirely separated from the social and the political. Within a heteronormative frame, it is the rhetoric of kinship as heterosexual parenting that assures the continuous reference to the frame and maintains its definitional power. In order to also maintain heteronormativity's self-evident naturalness as frame, the choice and the desire for heterosexual parenting is understood as an authentic expression of love for another adult and for children based on the biological meanings of two distinct genders.

All the frames involved in the political kinship debate form an intricate web that secures citizenship as the expression of participation in the political at the price of keeping kinship out of the political. Kinship is the realm women dominate prior to
the male order of citizenship, morality, and public political participation, a conclusion much feminist analysis has drawn. The state therefore needs to presume kinship and kinship presumes the state. Citizenship and the state need to control kinship to produce male citizens capable of political and economical action. (Brown 1995:150) The performative acts enacted in the name of one are enacted within the framework of the other.

Love as authentic biological expression should not need a performative act of marriage that incorporates the condition of a state and the law. Marriage, therefore, veils the difference between state and kinship on a rhetorical level while at the same time it secures the stability of the terminological difference between the two in a moment of crisis. The demands on parenting made by lesbians, bisexuals, gay men, and transgender people are such a crisis that conflates kinship and citizenship in their claim for citizenship rights that enable kinship relations. Within a heteronormative frame kinship relations are the place that make politics possible without ever entering the political stage as such; this is originally a Hegelian thought. Thus, political intelligibility is to a large extent based on the pre-political nature of kinship relations as an authentic expression of human biology superseding culture and civilisation. The challenge of political practices to do with kinship rights, then, lies precisely in their effort to drag kinship out of the pre-political into the political frame. And drag, here, is best framed as a pun.

Conclusion

Through my act of framing kinship heteronormatively, I have once again asserted the analytical importance of heteronormativity. The issue I could not analyse here concerns how theorists, in turn, have to question the role of heteronormativity as supra-frame in the future: is this concept an almost physical object, an idea that already exists prior to political debates on kinship and that just awaits reference there? Or is it only the political debate that by a performative act of speech “enacts or produces that which it names”? (Butler 1993:13) In fact, it is both, in an interrelated process. Theorists ought to consider heteronormativity, over all, as a rhetorical strategy of signification that can be subverted and displaced through counter strategies and simultaneously as a near-inescapable and permanent consequence of European histories. Without critically addressing the active framing theorists undertake, heteronormativity as a master category of queer and feminist theory might run the danger of becoming a fetish rather than a precise concept of analysis.

The nature of heteronormativity needs to remain closely scrutinised wherever it is employed as an analytical concept, carefully delineating the difference between the liberal and strictly gendered tales of Rousseau, Hobbes, and Hegel and the processes of referentiality in political practices in Europe today. In the effort to problematise what seems so unproblematic and in the effort to re-evaluate the potentials of what
many queer critiques discard as hopelessly normative lobby politics, I have deployed heteronormativity as frame for political debates at several points in this book.

When I nevertheless urge to consider the meanings of this act of framing carefully in every particular analysis, this move stems from the worry that queer theory and heteronormativity have been sleeping together a lot lately and that with all intercourse too much closeness in everyday life destroys the exciting edge. One of the exciting edges of rights politics is the agency that activists assert for themselves in the achievement of change, of whatever quality that change might be in relation to the dominance of heteronormative thinking within Europe. Therefore, I will in the last part turn away from the structural level of political practices to the individual agents of change and agency as a re-visited political concept.