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Challenging hetero-normative governance – some social economic arguments

Heterosexuality has been utilized as a means of forcible achieving aims in micro-organizations (family, enterprise, ...) as well as macro-organizations (military, politics, etc.) of society (Gottlieb 1984). As same-sex orientation challenges the governance-prone position of heterosexuality as a basic principle of social organization, conservatives deem homosexual living to be particularly dangerous for the preservation of the societal status quo and its hetero-normative social regime. This is why conservative forces regulate sexuality as strictly as they can and oppress and suppress same-sex oriented people on the basis of economic, moral, and social concepts.

In surveying arguments, suggestions, problems, and prospects, the logic of conservative suppression is pictured, and some reasons and approaches for overcoming it are given in this paper. First the conservative effects produced by mainstream economics are accounted for. In the second section the discriminatory effects of religious "truths" and social concepts are dealt with. The main section contains arguments for, and raises problems of, anti-discrimination, shedding some light on the question of regulating sexuality and securing privacy, giving economic reasons for de-stigmatization, and laying some philosophical foundations for equal treatment of lesbian, gay, and bisexual (LGB) people. In the concluding section some remarks on requirements, strategies and prospects of social progress are made.

1. Mainstream economics and its conservative effects

At least in the U.S. economics has become an imperialistic science invading neighboring disciplines and dominating the field of social sciences (Frey 1993). On the other hand, it can be argued that the proper character of mainstream, that is, conservative, economics is modeling social reality in a fairly abstract manner. In arguing deductively from axiomatic principles, economics largely disregards

important structural features of real-world life in society. This very approach can be held mainly responsible for the fact that economics do not elaborate on LGB subject-matters to a noteworthy extent (Bartel 1999).

Looking more closely, mainstream economics is not only conservative by itself, but also purposeful with regard to preserving the status quo of the social system. Conservative economics hypothesize on the premise of natural-law-like axioms about the harmonious operation of the economy (Bartel 1997). In doing so, the underlying value judgment of quasi-natural laws operating a social economic system (e.g., the competitive market price mechanism) predetermines the range of analytical outcomes possible (Davidson 1996) and makes surveys tend to findings of the kind that the free market mechanism produces optimal solutions to nearly any economic and social problem. Such an analytical procedure leads to a far-reaching negligence of structural power (e.g., hetero-normative governance). Thus it serves the interest of those benefiting most from the structural status quo and creates a fairly high tolerance of social problems in the interest of economic efficiency and in the end those who benefit from unsocial solutions. Nobel Prize winner and economic dissenter John Kenneth Galbraith characterizes this situation by the terms "non-neutral economics" and "useful economists": "Economics, so long it is thus taught, becomes, however unconsciously, part of an arrangement by which the citizen or student is kept from seeing how he is, or will be, governed" (Galbraith 1973, 6), that is to say, by structural, hetero-normative power.

In their proper way of thinking, mainstream economists argue that LGB people are not a disadvantaged minority suffering from economic discrimination, but rather a privileged group because of their (seemingly) extraordinary education and high income; it must be added though that sample biases due to the taboo of same-sex orientation, grave enough to spoil surveys and doubt their results, could not even challenge this proposition substantially (Badgett 1997). The richness argument has been used (even abused) by conservatives to obstruct and make fail motions of respective anti-discrimination laws (Badgett 1997; Hardisty and Gluckman 1997). Aspects of LGB life other than income are mostly neglected. Apart from sample problems, pure income measures have turned out to be misleading even for grasping poverty (being a phenomenon even closer to economic matters than sexual

orientation is). This is why being poor is in fact a much broader concept which has to be properly recognized as a deprivation of choices and opportunities most basic to human life – a concept that is not confined to pecuniary aspects but also applies to losses of immaterial welfare that can, among other causes, be due to discrimination (taking mostly in the form of social despise and exclusion) on the ground of sexual orientation. To be more precise, social exclusion, a fate that happens to hit many LGB persons whether they are out or (ill-)closeted, does not depend significantly on income poverty. Conversely, social participation as an important nonmaterial factor of well-being cannot be purchased for money (Fukada-Parr 1999). In large parts, qualitative, hard to catch, and incommensurate factors are essential to life quality that is subjectively felt instead of being objectively calculated (O'Hara 1999). This is why the conservative, narrow-minded, economic perspective has to be enlarged and completed by approaches from neighboring social sciences (psychology, anthropology, etc.) in order to make economics truly a social science. Otherwise, economics cannot pave the way out of discrimination via opinion leading and political counseling.

Institutions do matter in that they constitute circumstances which provide incentives and thus guide socially relevant decisions (i.e., decisions that directly influence other people's utility). Being inevitably embedded in social structures, people have learnt to play roles according to incentives, as they are in a comprehensive sense rewarded by society for complying with norms. The problem is that the incentives provided by institutions that are in turn hetero-normatively characterized even guide social scientists rather effectively (Badgett and Hyman 1998). Being humans, scientists pursue quite personal goals (prestige, esteem, protection) and have sentiments (hope, fear, shame, etc.). This is what makes even scientists respond strongly to the incentives provided by society's institutions when choosing their research fields. For this reason, social scientists are very likely to choose not to touch research issues or not to deal with them in an alternative way, because such issues and procedures, respectively, have been tabooed by society and the elaboration on which will not be rewarded very much or even negatively by the social environment where those researchers seek integration, protection, and esteem. This stark type of motivation holds good for closeted homosexuals as well as heterosexuals both of them working as social scientists, and this accounts for the lack of economic research in LGB

issues relative to the scope of inquiries in other social economic topics. What is even more, if economic research is performed in LGB subject-matters, is undertaken in an orthodox way, missing narrow-mindedly the content of social and hence even economic reality.

Another way of explaining the unsatisfactory state of social economic research in LGB issues is to adopt the approach of implicit-contract and the bounded-rationality theory. In view of their status quo expressed by "social positioning" (Barth 1999), even heterosexual scientists make an "invisible handshake" not to touch upon the critical and hence tabooed issue of same-sex orientation, because they cannot foresee the consequences of a change in social structure for their own social situation and personal well-being. This is why they largely stick to the tacit contract implicitly formed in society, that is, better not to tackle certain neuralgic problems.

What is more, the mentioned disincentive for scientists caused the problem that data necessary for sound inquiries into LGB issues were not collected, at least not satisfactorily, and not until recently. The lack of timely collected data on sexual orientation has shifted LGB analyses into the domain of social and economic history (Escoffier 1997) where it is more difficult to achieve "hard results". Hence, the data situation has been fairly unapt for econometric analyses that would meet the formal standards of the state of the art and render sufficient explanatory power and professional acceptance to LGB studies to be coercive (Kauffman 1998). This is why propositions about the social economic situation of LGB people have not yet received the desirable scientific weight. Such weight, however, would be useful in terms of practical social improvements for LGB people.

From what has been said so far it appears necessary to try to achieve the critical mass for substantial and successful research, in terms of data as well as scientists. This is why Klawitter (1998) calls for institutional support of research in sexual orientation by public authorities, for instance through LGB research projects and institutes, job offers destined for LGB research purposes and LGB persons, enrichment of current official statistics by the categories of sexual orientation and identity, etc. The data deficiency obviously represents a case of market failure caused by socially distorted individual preferences for social research. Consequently,

the problem is to be overcome principally by political intervention, with government encouraging such research or providing it as a so-called merit good. In the absence of state intervention a solution can be envisaged, owing to technology, in the form of networking among geographically dispersed scientists from various social disciplines.

2. Religious "truths", social concepts, and their discriminatory effects

Despite the formal separation of churches and the state, the factual intertwining of large churches and society has been producing an impact of religious "truths" and related morals on secular regulations that privilege inter alia (heterosexual) marriage (Anderson 1997). This is achieved in spite of the fact that morals – similar to the philosophy of the "natural" law of market forces achieving the social optimum – are value judgments that cannot be proved or interpersonally communicated. Instead, they must be individually experienced because of their transcendental nature. This is why morals concerning privacy and even intimacy should not be imposed by the state. Moreover, privileging heterosexual marriage means trying to pursue a social aim through applying a moral rule as a tool which in scientific terms can be identified neither as a necessary nor a sufficient condition for optimal social organization.

It is crucial how same-sex relations are perceived by heterosexuals and how conservatives purposefully construct this very perception. To explain it, Cornwall (1998) applies a concept called "discursive structures" which means the mental structuring of notions, such as otherness and abjection. Commonly such notions are not interpreted per se in an objective way but in the particular social context through which the discursive structures have been formed and social institutions, such as opposite-sex marriage, have been determined. Discursive structures are introduced by reiteration: What has been repeated long enough is finally regarded as a "truth", and thus its further reiteration itself has been institutionalized. Value judgments and rules for a social language have been created in this way. The discursive-structure approach that is said to be characteristic for queer economics. On the one hand, discursive structures help explain the maintenance of even unfounded, discriminatory and homophobic norms. On the other hand, they also open up the chance of abolishing such unwarranted norms in the same way they have been created.

Imagine discursive structures such as "different is beautiful" or using "gay" instead of "pervert". Institutionalized by reiteration, they create socially advisable attitudes.

Quite contrary to that, conservative family economists and politicians overemphasize and even abuse the analogy of markets with personal relations, confining the analysis of social interactions in human relationships to an emotionless and purely economic calculus. On the premise of god-given comparative advantages of the male (female) gender for market (household) production (Matthaei 1998), they deduce a loss in productivity, income and utility for same-sex households.

Critical scientists, in particular Marxist-feminist economists, are oriented to history, societal institutions and power structures. Economic dissenters typically apply the social constructionist approach and contend that heterosexuality is the key to patriarchy which in turn determines the division of labor (Matthaei 1995). From such a viewpoint, adopted for instance by Rhonda Gottlieb (1984), women in a straight relationship are put at a twofold disadvantage: First, the conventional heterosexual intercourse has turned out to result in an extremely uneven distribution of sexual pleasure derived from it. Second, the traditional male governance forces women into unpaid or underpaid work. Hence, the "sexual division of labor" (Matthaei 1997, 1) creates the common notion of gender and gravely influences gender identity in society. Thus we end up with masculine men and feminine women. This is also the reason for LGB people's particular feeling to be urged by societal norms into the traditional social structures and institutions which they do not fit in.

After all, the sexual division of labor is predicted to decline, as women's labor market participation increases and undermines patriarchy (Matthaei 1995). This sort of undermining is what makes queer liberation and feminist emancipation (both of them are comparatively well aware of the disadvantages of conventional roles) go hand in hand, fostering one another. In the homosexual sphere, there are family networks, so-called family webs, representing families that are chosen deliberately on an individual basis. According to the research done by Rose and Bravewomom (1998), different household members may define their family even differently. A family network is also supposed to comprise persons of different sexual orientations. Finally, family webs are expected to intersect and overlap. As divorced persons and

singles are increasingly common, family webs are noticeably developing even in the heterosexual sphere. In this way, same-sex and opposite-sex relationships have been getting more and more similar in the course of social development.

Thoughtlessly internalized roles and rigid social structures are comparatively unapt for coping with novel societal developments, such as striving for more personal freedom and self-determination (Matthaei 1998, Lewis 2001). Sticking starkly to the traditional family concept based on conservative, religion-based concepts of social life and individual lifestyle bears much cost in a wide sense: Problems remain unsolved and are bottled in the individuals afflicted, breaking free in outbursts of mental cruelty, physical violence, sexual abuse of partners and children, verbal and written attacks on, and even hate crimes against, same-sex oriented people and their institutions. Such findings are extremely important to counter the notion that same-sex orientation, pathological deviation of sexual behavior, and asocial conduct in general just as child abuse in particular are closely interconnected or even tantamount (Cornwall 1997, 1998).

3. Combating discriminatory institutions and practices: arguments and problems

3.1. Private and public aspects of regulating sexuality

Political economy must not be defined merely as the political rationale and procedure of collective decision-taking, as it is typical for conservatives. Political economy also has to deal with its consequences: first, the consequences for the individual in terms of either being guaranteed rooms for free individual behavior and being restricted in one's freedom, respectively; second, the consequences for society as a whole, i.e., in terms of social welfare. Social welfare comprises the entirety of individual utility plus the total of common utility which, by its character, is derived for each collective member in an equal manner (but possibly to different degrees) from public goods, such as freedom, justice, protection, equality, integration, etc.

When suggesting a connection between a quite personal, intimate matter in the private sphere, such as sexuality, and the public sphere in the shape of the political

economy, one has to draw attention to both of these two different issues: on the one hand the societal (not the individual) functions of sexuality and their outcomes, that is, governance (mostly patriarchy), procreation (for reasons of power by numbers, productive capacity, potential income and financing of collective goods) and the distribution of social welfare among different groups; on the other hand the definition of rooms for personal freedom by drawing borderlines around the privacy of the individual and justifying the restriction of personal freedom in the interest of the community. These are crucial issues that have to be brought to the fore, particularly in the face of the New Right's law-and-order policies. In the following sections, we will deal with these aspects in greater detail.

Norms (implicit rules as well as explicit regulations) are necessary for managing freedom, as complete liberty (i.e., anarchy) is inefficient (e.g., "costs" of injustice). In terms of justifying regulations, principles are formulated on various hierarchical levels. These principles are expressed by ethical values, religious foundations, common notions of fairness, political morals, categorical imperatives, ideologies, the spirit of the Constitution, declarations of Human Rights, legal maxims and remedies provided by the constitutional state, common-sense, declarations of the political will through indirect and direct democratic means, manifestations, demonstrations and the like. Principles of justice are basically intended to legitimize collective decision-making procedures and hence their outcomes in a broadly accepted spirit, that is, to put societal institutions on a normative basis. Even in developed democracies, however, these principles are not created in a completely and truly democratic way: "The ideal of democracy rests on the belief that the view which will direct the government emerges from an independent and spontaneous process. It requires, therefore, the existence of a large sphere independent of majority control in which the opinions of the individuals are formed", as Hayek (1960, 109) put it. Hence the question of justification is a permanently challenging task. In order to make this task operable, one can rely on the concept of social consensus (Frey 1985) which is a widely shared basic agreement about the conduct of collective affairs.

Justification means containment of power in that in political terms power is regarded as the egoistic use of exclusive knowledge about the consequences for others that will be created by the rules that are currently being decided upon (Mueller 1989). It

can be concluded from these considerations that it is most important for minorities that are discriminated against to provide information in order to weaken the power of the oppressors and convince the opponents of queer emancipation with the help of arguments that are reconcilable with common-sense and apt for altering the social consensus in a progressive way. In doing so, one may overcome the inert character of conservative social norms.

3.2. Passing versus going public: the question of privacy

Though being a matter of privacy, sexual orientation has to be made a matter of public affairs – simply because of the economic and social consequences of its restrictive regulation by society through (explicit and implicit) norms that are based on subjective value judgments instead of divinely revealed "truths". Private, even intimate issues cannot be effectively and meaningfully concealed from the public, especially in the workplace (Weston and Rofel 1997), even if it was tried. In the longer run you just cannot efficiently apply the passing strategy (i.e., the trial of passing as a heterosexual), just because no human is an island, the "costs" of isolation eventually become unbearably high, and citizens want to be integrated in ordinary social life together with their partners, participating in the common interactions as a couple (Badgett and King 1997; Escoffier 1997). Moreover, the passing strategy is not conducive to individual and social welfare maximization (see section 3.3.). This is why LGB people's self-violation of their privacy also appears to be politically necessary. Otherwise would society violate their privacy either, namely through restrictive regulations based on value judgments that are neither divine nor fully democratic. This is not only the case in everyday life, say, the informal sphere of politics, where prejudice is omnipresent, but also in the formal sphere of politics wherever democratic procedures result in disregarding and overruling minorities.

Another reason for making one's own same-sex orientation a public issue is that argumentation in order to bring the message across is particularly convincing on the illustrative basis of personal examples, because debating sexuality on an impersonal meta-level is affected by the difficulty of effectively communicating the matter and the sentiments that are associated with it. The ultimate reason for this problem is that there is no satisfactory method of comparing individual utility interpersonally. Again,

in going public, the privacy of LGB people is basically not intruded on to a greater extent than by their being forced to pass as heterosexuals: Through its heteronormative governance, society violates the privacy of same-sex oriented citizens in the form of either forcing them into heterosexual roles or making their uncommon sexual orientation a negative factor of social positioning and achievement. This is why the queer liberation movement needs to be visible, authentic and convincing.

In fact, it is difficult to convince intolerant heterosexuals that homosexual behavior would not affect their (the heterosexuals') own well-being, even when at first they feel astonished, confused, and even disgusted by watching self-sex partners show their affection for each other (or even by the mere thought of it). To prevent such a feeling in future, heterosexual persons should be confronted with same-sex relationships in order to get accustomed to that. Note that this proposition is based on the analogy with discursive structures that finally construct personal attitudes. It has to be admitted, though, that it is questionable that mere tolerance will at last lead to acceptance and respect.

3.3. Improving social welfare through anti-discrimination: economic arguments

Argumentation on a theoretical basis is more likely successful if economic arguments are brought forward, because economic issues are immanently egoistic and thus strongly appealing: A central economic criterion is Pareto efficiency (named after Vilfredo Pareto). It requires that no-one's position can be improved without deteriorating the position of anyone else. In terms of sexual orientation Pareto efficiency can be reached when same-sex oriented people are relieved from suppressive laws and the oppressive social climate they basically face (Cornwall 1998). Lesbians' and gays' welfare will be certainly increased by such steps, because discrimination on the basis of sexual orientation produces negative externalities (external costs), i.e., disadvantages that directly affect LGB people's utility. Opposite-sex oriented people, however, need not be affected by anti-discrimination, neither objectively nor subjectively. As a result, one group is better off and the others are not worse off. This is exactly what Pareto-efficiency requires. After all, achieving Pareto-efficiency through anti-discrimination needs to be thoroughly argued.

Being sexually different is not harmful by itself, neither to oneself nor to others (though religious fundamentalists believe so). But even if homosexuality were harmful to the respective person, the individual should be given the right for choosing his or her proper way of living, as long as it does not directly affect other people's well-being. For there are no external costs that should be internalized by the state through regulating the intimate sphere. On this premise religious, moral, and social mission has to be reconsidered and perhaps judged afresh. The decision to deem a norm as absolutely true must be left to the individual, as it cannot be objectively tested and proved to be true. Even if an individual's lifestyle, judged by some moral principle, is considered far from being optimal, the individual should be conceded sovereignty and self-responsibility in this respect. Morals that concern the individual alone must be clearly considered to be a private matter, whereas morals are a matter of public affairs, if and only if externalities (i.e., direct effects on other people's utility) are produced through the individual's conduct.

Beyond that, it can be argued that, if social (i.e., the entire) welfare is raised by improving queer people's situation, not only the queers' but also the straights' welfare is increased. This is also achieved by abolishing the negative externalities on LGB people that had affected the efficiency of the economic system as a whole and diminished national income growth: Without being inhibited by stigmatization and exclusion, social and economic interactions operate more smoothly, efficiently, and less costly (Badgett 1996; Powers 1996; Spielman and Winfield 1996). Anti-discrimination measures achieving that heterosexuals do internalize the superiority of non-discrimination enhance the feeling of social togetherness. Moreover, in the final state of perfect social integration, a public good called social peace is produced. Social peace is based on the following intermediate targets (strategic factors): information, tolerance, understanding, acceptance, social equality and integration. Finally, social peace is a key factor of economic growth and the accumulation of wealth (Bartel 1999).

Therefore the economic content of externalities fundamentally counters the conservatives' paternalistic (moralizing) argument. In the end, however, this question still remains essentially one of political morality and social justice. For it has to be decided concretely on how far the room for free individual behavior reaches, because

only when entitlements are allocated (Bamforth 1998) and thereby borderlines are drawn between the individuals, one can define what external effects are and which type of behavior is commonly considered to affect others and which one does not. We shall return to this issue in the next section.

There is also a distributive argument that is apt for demonstrating that discrimination against LGB people also affects heterosexuals. Like other minorities, homosexuals may serve as a kind of scapegoats in society. Discrimination need not only be costly for the scapegoats, it can also bear cost for all those people who – unrelated to discrimination on sexual grounds – have been put at a disadvantage through public regulations and socially relevant acts that redistribute wealth in an unjustified way. Such evils, their causes, and causers are possibly covered up by fanning homophobia in order to divert attention from the deplorable state of affairs and those people who have been responsible for the mess. In other words, homophobia might disguise fault and thus perpetuate social injustice. This aspect has not yet been much considered.

Of course, material gains that accrue to heterosexuals due to anti-discrimination have to be weighed against potential immaterial (ideal, non-economic) losses suffered by some heterosexuals in the form of disutility resulting from ideological defeat, failures of religious mission, personal disgust, etc. In fact it is difficult to convince intolerant heterosexuals that homosexual behavior would not and should not affect their (the heterosexuals') own well-being, even when, at least in the beginning, they feel astonished, confused and even disgusted. This is where the fundamental importance of socialization, education and enculturation comes in and ascribes great responsibility to respective government policies.

Before we return to the question of defining privacy in drawing borderlines around the individual's free room of manoeuvre and identifying external effects that are to be internalized by social regulation, a basic economic problem has to be raised. Policymaking essentially depends on discrimination, because no political measure can be imagined that would produce exactly the same effect on the personal utility of each and every individual. Furthermore many policy measures are typically intended to have structural effects which change the breakdown of aggregates such as social

welfare. This means that if policies are to be performed at all – the alternative would be extreme liberalism (i.e., anarchy) that is declined because of its private and social inefficiencies – one has to accept discrimination. This is why discrimination is never good or bad by itself. Instead, it should be regarded to be good if it is convincingly justified and bad if it is unconvincingly or not at all justified. In this respect, striving for a just distributive outcome in terms of the allocation of personal rights and individual opportunities may require unequal treatment, that is, empowerment of the weak. For this reason we have to differentiate between equal treatment, equal opportunity, and equal outcome and should not confuse equal treatment in formal (procedural) and material (outcome-oriented) manner (Wickström 1992). Anti-discrimination clearly is not a straightforward case.

3.4. Philosophical foundations of anti-discrimination

Justifying normative statements (e.g., on anti-/discrimination) in a perfect way requires an objective proof which means that the argumentation is independent from underlying assumptions that contain value judgments. Such assumptions, however, are widely regarded to be inevitable in social scientific analyses and make us turn to humanities. Legal philosophy at least points to various principles on which to base the argumentation for non-discrimination: first, the principle of respect for privacy from which the right for privacy may be derived, second, the principle of equality from which the right for equal treatment (viewed as a procedure or a result) may be deduced and, third, the principle of personal autonomy and empowerment on the basis of which one may argue in favor of the right for self-determination (Bamforth 1998). Let us consider this more closely.

First, the concept of privacy can be interpreted differently, that is, either as a physical space like home (meeting one's same-sex partner in one's apartment with the curtains drawn, because the public holds that there was no moral value in same-sex relations) or as a certain type of actions which are defined as conceptually private wherever they take place, for instance, hugging and kissing one's partner in public (Bamforth 1998). This is why the distribution of basic rights (to be entitled to kiss one's same-sex partner publicly or to be protected from such a sight) is crucial for social outcomes (Wickström 1992).

Second, the principle of equality requires that queer persons and their relationships are defined to be of equal worth to straight persons and their relationships. Such an equivalence, however, is a moral category that cannot be proved, but once it is adopted, it is clearly violated not only by discrimination against, but also by preferential treatment of, either of the two basic types of persons and relationships in terms of sexual orientation (Bamforth 1998). Anyhow, the concept of moral equivalence can be challenged by the principle of responsibility for future generations which, as it is argued by "utilitarians", imposes the duty on living persons to beget additional human beings who are capable of getting satisfaction, adding thereby to (future) social welfare. From this perspective, same-sex relations can be rightfully discriminated against on the basis of their childlessness. Contrary to that, the Frankfurt School maintains that an existing human being has his or her sake in himself or herself and should not be regarded as a means (for procreation). Furthermore, the responsibility for future generations is a problematic concept, because a duty for begetting future human beings is not paralleled by a right of the future generations to be begotten. At best, only a conditioned duty is imposed by the begetting behavior itself, because everyone who has been born should be given the freedom to lead a self-determined life (Seel 1995).

Third, the right for personal autonomy can be based on the conviction that it does not suffice to be convinced oneself about what is true or not for justifying the persecution of people who do not share the same conviction as oneself does. This proposition cannot be proved either. The only meaningful method of arguing in favor of personal autonomy is to point out what would happen (to oneself) if society did not live up to the principle of personal self-determinedness (this apparently amounts to some kind of categorical imperative). As a consequence, if norms in the form of ethical imperatives should be introduced at all, they should be rather weak and unspecific, such as the principles of tolerance and sensibility.

Beyond that, the imperatives of personal autonomy and empowerment of the individual recognize that sexual expression is central to human well-being. Sexuality is both a means of expressing affection in a personal relationship and an end in its own right (in the shape of sexual stimulation); either type is fundamentally important

(Loewitt 1999). Emotional (also sexual) behavior is central to our autonomy as thinking and choosing human beings. This is why the law should allow for, protect, and support the widest possible range of sexual behavior between consenting adults, irrespective of whether it be same-sex partnerships or casual same-sex activities (Bamforth 1998).

Rawls (1995), at the time of his death last year perhaps the most prominent contemporary scientist elaborating on justice, endeavors not to base his work on philosophical and metaphysical premises, such as universal truth and the character and identity of people. It is essential that this makes the concept of justice independent from religious and philosophical paradigms; it becomes a democratic concept. For the process of finding a foundation for a political cooperation that should be able to grant justice, two principles of justice are suggested: First, each person has an equal right for a completely adequate system of equal basic rights and freedoms, a system that is reconcilable with the same system for all other persons. Second, social and economic inequalities need to satisfy two conditions for being justified: (a) They must be associated with functions and positions accessible for all on the premise of a fair equality of chances; (b) they must be of the greatest advantage to those members of society who are least favored ("maximin principle"). Together, these two principles should shape the institutions that are to realize those values which the principles are referring to, namely basic rights and freedoms, fair chances, and the claim for equality. Once the harmonization of political culture has been achieved in the form of a concept of political justice that is commonly agreed upon, a consensus will be reached on what laws are to be enacted (e.g., anti-discrimination laws) and how to amend existing laws through introducing anti-discriminatory terms.

Contrary to intolerance, fairness is expected to lead to social cooperation and lately justice: The democratic framework which is required for a fair process of social cooperation suggests that all citizens are free and equal persons. Persons are free because of their moral capability and, associated with it, their quality of reason, thought and power of judgment. From this Rawls (1995) concludes that persons are gifted with a sense of justice and the capability for perceiving what is good. The sense of justice allows to develop a concept of political justice that in turn determines

fair conditions for social cooperation. It is obvious that under such conditions people are able to decide on their private lives and must be free to do so.

Rawls (1995) also searches for the circumstance that is most conducive to a fair process of social cooperation and concludes that equality must be guaranteed in the cooperation process in order to secure fairness. For this sake, in his famous *Gedankenexperiment* Rawls introduces the concept of the "original state" – a fiction where the informational symmetry between the participants is given and allows equality and fairness. The essential characteristic of the original state is the "veil of ignorance" under which all participants are assumed to act. The original state is a model for getting a notion of the quality of fair conditions for a social cooperation that is to establish a basic structure of society. Under such conditions a concept of political justice is established which is actually chosen by each participant. The veil of ignorance prevents all the participants equally from exercising power in the sense that they would anticipate the future consequences of the present agreement for their own personal advantage (a conduct that would be regarded as unfair).

In terms of legal regulation and social valuation of homosexuality, the Rawlsian model would imply that decisions on these matters should be made as if decision-makers were in a state in which they do not yet know what their sexual orientation will be. This fiction may be helpful as a device for trying to consider one's viewpoint in an unprejudiced manner, free of any unreasonable influences and merely on the basis of one's own personal moral capability. If the application of the concept of Rawlsian justice to real-world opinion-forming and decision-making is considered to be unrealistic because it is based on the veil of ignorance in the original state, one may at least rely on the proxy that heterosexuals be not subjectively certain that their children are going to be opposite-sex oriented. Such uncertainty might be large enough to make them unprejudiced.

4. Concluding remarks on requirements, strategies, and prospects of making social progress

Legislation (which of course cannot be separated strictly from government) plays a prominent part in creating a certain social climate, as the spirit of the legal norms that

have been created fulfills a signaling function towards the public. In this sense the science of law (specifically the philosophy of law) constitutes a social science with political content, though it need not reflect the opinions held by legislators or the public. There is some indication that the case of lesbians and gays has been brought to the fore. Even the respective legal matters have started to develop in theory and practice. Various jurisdictions of the common law are facing demands for reconsideration of legal rules, as they are invoked by homosexual litigants and even other citizens who object to discrimination. To some extent the standards of change have been set by the European Court of Human Rights and the United Nations Human Rights Committee.

The feasibility and potential effectiveness of pressure for a change in the attitude of mind is theoretically supported also by the discursive-structure approach. What is more, homophobia is irrational: Apart from individual gains from an anti-queer exercise of power, it is inefficient in social and even economic terms for society as a whole.

The group of lesbians and gays still comprises a vast share of closeted people who may some day become outs, convincing their heterosexual fellow-citizens of their legitimate demands in giving a personal example. But beforehand these people have to be encouraged to come out and must be backed in their coming out, not only in the queer ghettos or big cities; outreach work is essential for a widely spread movement (Hussain 1997). For this sake appropriate circumstances must be created through lobbying. Minorities should incite policies for equal treatment through their self-empowerment, but they cannot easily put them through themselves in a "democracy of numbers". This is why minorities must seek to gain other minorities or discriminated majorities, such as women, as allies for strategic cooperation (as a kind of "log rolling") in order to achieve greater social impact. A circular relationship with affirmative feed-back information and incentives to cooperate must be reached: Alliances of the activists living out as homosexuals with other discriminated groups increase their political weight, improve the legal conditions, people's attitudes, and the social climate, encourage closeted LGB people to come out and participate in an ever more promising movement that becomes increasingly attractive as an ally for other groups striving for non-discrimination and so forth.

Most importantly, LGB people must try to gain allies in the commonly respected part of the heterosexual population though this is not an easy task to complete (see section 1). For this reason the cooperation between activists of the LGB liberation movement and progressive social scientists is essential. LGB emancipation needs sound arguments on the basis of which the message can be brought more effectively across. The authority of scientific knowledge may counter prejudice and base political decisions on a more rational foundation (Kirby 1999).

All these proposals, strategies, developments, and hopes, however, do not relieve politicians from their cardinal duty to perform policies in the direct interest of unrightfully discriminated minorities, as implied by the Rawlsian concept (section 3.3.4.), and thus in the mediate interest of the rest of society (section 3.3.3.). Nevertheless there might not be a majority in favor of such policy options when they would be voted upon in a referendum. After all, in the present era of (economic) liberalism considerable parts of society have apparently adopted a more progressive attitude than politicians surmise and dare to adopt (Kirby 1999). Moreover, there are examples that the population does accept public regulations that have been unpopular at the first sight rather soon after their coming into operation. Such cases provide some indication of the political feasibility of an equalizing legislation (ILGA Europe 1998, Lund-Andersen 1999).

Beyond the nervous political calculus of the incumbent parties in conservative countries, "we must decide what role religious institutions and religious tenets are going to play, especially when those tenets are in conflict with the Constitution and the Bill of Rights. If we are truly a society in which church and state are separate, then the prohibitions of church dogma cannot overrule the protections provided by the Constitution. And the Constitution ... is progressive and not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice" (Hardisty and Gluckman 1997, 221).

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