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Fertility treatment for lesbian couples has recently been allowed in Denmark, Finland and Sweden. This marks a discursive shift that constructs the lesbian as a mother. However, these newly won rights can be seen as both enabling and restricting; How do political debates on fertility treatment in the three Nordic countries both contest and reinforce norms regarding the relationship of sexuality, gender and parenthood?

Access to fertility treatment has been a greatly debated issue in Denmark, Finland and Sweden over the past twenty years. Especially lesbian couples' and single women's right to get treated has been in focus and created political controversy. Today, in all three countries lesbian couples have access to fertility treatment. The respective laws were passed in 2005 in Sweden and a year later in Denmark and Finland. The debates did not just lead into legislative and policy changes, but they brought along a shift in the discourses concerning parenthood and motherhood. As Mette Bryld (2001) has noted, up until recently, 'the lesbian' was either non-existing in policy discourse or articulated as an inappropriate or unthinkable mother.

Nordic countries are generally considered to be very similar politically and they enforced similar type of legislation when deciding on same-sex relationships (Rydström 2005; Rydström 2008). However, their paths have parted slightly in respect to legislation and policies concerning parental rights of homosexuals. There are for example clear differences in how policies concerning fertility treatment have been constructed: in Sweden only lesbian *couples* are allowed to get treatment, which means that all single women whether they are homo- or heterosexual are excluded, whereas in Denmark and Finland single women have equal access to treatment. There is also significant variation in the legislation that regulates the position of the lesbian co-mother in the fertility treatment process and after it. In general, it seems that parental rights of homosexuals and those who do not live in heterosexual partnerships remain an issue in all three countries. The case of fertility treatment is but one example of this tendency.¹

In this article we present a discourse theoretical reading of the processes by which the acts regulating fertility treatments² were passed in Denmark, Finland and Sweden. The analysis highlights how norms regarding sexuality and gender are both contested and confirmed in policy debates in respective countries. Our intention is to

contrast policy discourses between the three countries in order to deconstruct what is taken for granted in each national debate. Our material consists of the most recent parliamentary debates leading to the passing of the laws in 2005 and 2006 respectively, government bills, laws, and texts produced by civil society actors concerning fertility treatment for lesbians and single heterosexual women, as well as the following debates on recognition of co-mothers.³

THEORETICAL POINTS OF DEPARTURE

Although there is variation in the legal regulation of fertility treatments in Denmark, Finland and Sweden, so far, comparative analysis that would examine policies of all three countries from a discourse theoretical point of view has not been done.⁴ Currently, research in each country has primarily focused on and reflected the national legislative and policy developments. For example in Denmark, debates in relation to the 1990s ban of fertility treatments for lesbians and single women have been explored (Bryld, 2001; Stormhøj, 2002; Lüttichau 2004) and in Finland, the legislation on fertility treatment as well as the different stages of the long legislative process have been studied (e.g. Hirvonen 2006; Moring 2007; Vaahtera 2007). In addition, Finnish legislation has been analyzed comparatively with the Swedish one (Moring 2007). Intriguingly, as for now, Swedish debates have not been thoroughly examined, apart from Liljestränd (1995).

The article draws upon discourse theoretical writings in order to contrast political debates in three countries (see e.g. Howarth and Stravrakakis 2000). Our purpose is to pinpoint problem representations and discursive strategies underlying the policy arguments (Bacchi 1999). We use the concept “policy discourse” since discourse is “larger than language, more than words” (Bacchi 1999, 40). A discourse can be defined as a network of utterances which provide a language for talking about or a way of representing a topic that at the same time forms the objects of which it speaks (Hall 1992). Policy discourses thus constitute subjects in particular ways.

The aim is not only to point out the possibilities of the newly won rights for lesbians and women who do not live in heterosexual relationship. We are interested in the ambiguity of the policies – how they both enable non-heterosexuals to live another life

and at the same time create new, or reinforce restrictive norms (Butler 2004). Contrasting the three policy debates can shed light on the problems and loop holes of both current and preceding legislation in the three countries. This kind of comparative approach furthermore enables us to trace out what is absent in specific policy processes and consider discourses that are dominant in one context and not in the other (Kantola 2006, 39).

DIFFERENT PATHS, DIVERSE POLICIES

Processes by which legislation concerning fertility treatments has been installed in Denmark, Finland and Sweden vary, and this is reflected in the content of national laws.

In Denmark, fertility treatment for lesbians and single women has been discussed several times in the parliament. In 1996 a government bill on fertility treatment caused major controversy (Stormhøj 2002). Originally the bill would have allowed fertility treatment for *all* women, but an amendment to prohibit treatment of lesbians and single women was submitted and passed. The law from 1996 therefore stated that fertility treatment by doctors would only be allowed for married women or women living in a “marriage – like” situation. Due to a loophole in the legislation midwives could still provide treatment for lesbians and single women. Ten years later, in 2006 the ban was lifted after an intense parliamentary debate that divided both the Liberal-Conservative government as well as some of the political parties.⁵ The law that was in place before the debates in 2006 stipulated full anonymity of the donor and this was not amended in the new legislation.

Fertility treatment has also caused controversy in Sweden and it was a highly debated issue from 1983 until 2005 when the new law on fertility treatment finally came into force. According to government Bill from 1984 on “artificial insemination”⁶, only women living in marriage-like circumstances were allowed to be treated. The legislation of 2005 allows lesbian couples to be inseminated and recognises co-mothers as legal parents if insemination took place at a state clinic. In contrast with Denmark, the Swedish law only concerns couples, lesbian or heterosexual, single women have no access to fertility treatment. The Swedish law furthermore stipulates that a child that is conceived

through assisted insemination has a right as a young adult to find out the identity of the donor. The provision of the Act was unique when it was introduced, and was put in place to satisfy and safeguard the needs and interests of the child (Burrell 2005).

In Finland, contrary to the examples of Denmark and Sweden, giving fertility treatment to lesbians or single women was never prohibited. However, there was no regulative legislation either. Lack of legislation meant that doctors and health care personnel providing the treatment were responsible for decisions involved, and in effect, self-regulated the availability of treatments. The unregulated situation also gave rise to other problems: the legal position and rights of children born via fertility treatment was unclear. In a sense, lack of legislation meant that the lesbian mother did not exist either. The need for legal framework was first taken up in the Parliament already in the 1980s, but it took over twenty years before the bill was finally passed in 2006.

THE WELL-BEING OF THE CHILD

We have found three major policy discourses that are drawn upon in the debates and are important in relation to constructions of problems with fertility treatments. These are, “*the well-being of the child*”, “*the importance of the father,*” and “*the rights of the individual*” Some policy discourses bear more strength in some countries than others which we intend to show in the following.

“The best interest of the child” or “the well-being of the child” is a central discourse drawn upon in all three countries –and by both sides in the debates. It is frequently emphasized that children’s interest must come before the rights of adults.

In Finland, opponents of the 2006 bill stated that fertility treatments should be limited to heterosexual couples, because children's best requires involvement of a father. The opponents argued that fatherlessness as well as two-mother families create problems for the psychological development of the child. Helena Hirvonen (2006), who has studied the government bill of 2002, which did not yet pass, notes that the argument of the best interest of the child was primarily used to support biologist and heteronormative values to the point of idealization of heterosexual family unit. Hirvonen concludes that this did not ultimately promote children’s best in the sense that it failed to

promote equal rights for all children. In the Danish debates likewise some MPs argued in the interest of the child within a discourse claiming that children need a mother and a father. This discourse was especially strong during the parliamentary debate of 1996 when the ban on assisted insemination was introduced (Stormhøj 2002). In Sweden opponents of the bill constructed the problem to be that children will be denied their “natural right” to a father.⁷ Thus, in all three countries, those who *opposed* granting access to fertility treatments to lesbian couples and single women interpreted the best interest of the child as the heterosexual nuclear family.

It is noteworthy that the discourse of the well-being of the child is also drawn upon by the proponents of these bills. The best interest of the child is then understood to be achieved through granting all children equal legal rights independently of how their family looks like. Within this discourse it is also argued that the state should recognise the already existing diversity of family forms, and that the laws should follow this reality.

In Sweden the discourse of the well being of the child proved to be especially strong; the problem is claimed to be that the existing family laws do not reflect the actual diversity of family forms, and this leaves already existing children without legal protection. In the Finnish discussion, proponents of the passing of the 2006 bill in the parliament and particularly NGO’s promoting GLBT rights brought up the question of security of those children that already live in so-called rainbow families.⁸ All in all, the proponents – both the governmental and civil society actors - drew from research that shows that children in same-sex families are not harmed by it.⁹

THE RIGHTS OF THE INDIVIDUAL

In all three countries *rights* for lesbians and single women are articulated by the proponents in the debates. The discourse of rights involves norms of anti-discrimination and is sometimes combined with a narrative of modernization and progressiveness. Since the Nordic welfare states usually aim at providing for universal rights for its citizens, the argument is a forceful one. However, the significance of the rights discourse varies. In the Danish debate, the discourse of individual rights as well as equal rights for groups of

women has proven to be especially powerful.¹⁰ In this case arguments of individual rights are linked with the Danish self-perception. The Danish national identity is built upon (amongst others) an idea of being tolerant and progressive towards sexual minorities and an international leader concerning the rights of non-heterosexuals (Lüttichau 2004; Stormhøj 2007).¹¹ In the Danish parliamentary debates in 2006 this discourse of individual rights and modernization appeared as essential and had effect in the sense that several members of the Liberal Party voted for lifting the ban.¹²

In the Swedish debate the discourse of individual rights is relatively marginal. Access to fertility treatment for lesbians is mostly discussed within a discourse of the best interests of the child. In the government bill the right to fertility treatment was proposed for lesbian women, but single women's right to fertility treatment was denied with reference to that children need two parents.¹³ After the bill was passed single women's right to fertility treatment was articulated as a matter of equal rights also in Swedish debates. As late as in February 2009 the question was on the agenda in the Swedish parliament. However, it was decided that the question needed further investigation. This decision compels single Swedish women who want to become pregnant through fertility treatment to travel to Finland or Denmark.

In Finland especially those who wanted to allow for fertility treatments for lesbian couples and single women referred to equal rights and to the non-discrimination legislation. Added to this, in Finland it has been a long-standing practice to refer to the example of other Nordic countries when arguing for legislative reforms or changes. Sweden in particular is often used as a normative example in Finnish policy- and law-making, especially in the fields of social and family law (Bradley 1998). This can perhaps be seen as one variation of the modernity discourse present in Denmark and Sweden.

CO-MOTHER VS. THE DONOR

In the debates concerning fertility treatment the position of the father - whether biological or social- is emphasised in all three countries. We have named this as the *importance of the father* discourse. Especially those who opposed giving access to fertility treatments to lesbians and single women considered fatherless families as a "threat" to the heterosexual nuclear family (Stormhøj 2002). One effect of the discourse of the importance of the

father is that the legal position of the donor or biological father is articulated as being in conflict with the position of the co-mother.

With the new laws, the issue of how to legally recognise the “co-mother” emerged. Generally, the laws by-passed or insufficiently addressed the rights of the co-mother. One example of this is that in Denmark a lesbian co-mother is not automatically recognised as parent, and thus, can not take the two weeks parental (father’s) leave together with the mother giving birth. This is due to the fact that the two weeks parental leave can only be used within the first three months of the child’s life and co-mothers can only apply for adoption *three months after* the birth. In 2008 the issue was taken up in the Danish parliament. It was proposed that the “co-mothers” would to be legally recognized as parents directly at birth.¹⁴ Nevertheless, the Minister of Justice argued that if there was *a known* biological father, he should have a chance to acknowledge the child.¹⁵ The government then put forward a proposal that promised to give the co-mother a possibility to adopt the child directly at birth, if the child was conceived via assisted fertilization with an anonymous donor. This formulation guaranteed that the rights of the biological father were not threatened.¹⁶ However, lesbian co-mothers still have to adopt the child, which means that parenthood is not automatically established.

In Sweden, the position of the lesbian co-mother is determined in the law on fertility treatment from 2005. If the birth mother is a registered partner, her partner will automatically be regarded as the mother of the child and in case of cohabiting partners, the cohabiting partner will be given the possibility to confirm parenthood. However, the Swedish law stipulates that every “donor conceived child” has a right to know his/her biological origin. Even if a child already has two legally confirmed parents, the day the child turns eighteen, if the child so chooses, a father can re-enter the scene (Zetterqvist Nelson 2007). The Swedish discourse emphasises the social father’s role and participatory fatherhood. This discourse is dominating and has come to influence and permeate most Swedish speech about family, children and parenthood and reflected even on lesbian couples (Ryan-Flood 2005). One reason behind the decision to allow giving fertility treatment to lesbians was that it was feared that lesbians would otherwise go to Denmark to get treated.¹⁷ With this legislation the donor will be known and the state has a better control of lesbian women’s reproduction.¹⁸ One could also argue that the Swedish

state falls back on its long (and significant) tradition to secure each child a father (Liljestrand 1995).

The Finnish law on fertility treatment is probably the most obvious example of how the importance of a biological father sometimes overrides the co-mother. Lesbian registered partners and single women now have a right to get fertility treatment, however, the question of paternity is clearly understood differently in case of heterosexual and lesbian couples and single women. If a child is born via fertility treatment to a married heterosexual couple, s/he automatically becomes the child of the couple and there is no question about paternity. In case of co-habiting heterosexual couples, the father has to officially recognize his fatherhood. However, in the eyes of the law, registered lesbian partners do not become parents of the child *as a couple*. Only the biological parent of the child is considered as a legal parent. Since the Finnish Adoption Act does not recognize homosexual adoption; neither internal nor external adoption is currently allowed, the co-mother can not adopt the child either. The situation was further complicated by the lifting of the anonymity of the donor when the child has turned eighteen.¹⁹ Now the backdoor is left open for a hypothetical biological father, even when the child already has got two parents.

Problems arising from this complex situation have been recognised²⁰ and have been raised up in the parliament on a number of occasions,²¹ but currently, co-mothers have no legal right to their own child, even though the couple had together decided to have children via assisted fertilization. Amendment of the adoption act is currently under way, and the internal adoption right for registered couples is included in the forthcoming government bill, but whether the bill will pass is uncertain.

CONCLUSIONS: CHILDREN AND FATHERS FIRST?

Policy discourses concerning parenthood have recently shifted in Denmark, Sweden and Finland. New policies that allow fertility treatment for lesbians mark a discursive change that recognises lesbians as mothers and parents. However, there are only some families and some subjects, under specific circumstances, that are recognised. Despite that

homosexuality has become socially more accepted and that policy makers argue that a diversity of family forms should be recognised, legislation and policies still reflect a will to normalization. Policy discourses on fertility treatments in Denmark, Finland and Sweden can be interpreted as attempts to weed out the “non-normative parents”. The lesbian co-mother is particularly in danger of being constructed as an “unthinkable parent”.

When contrasting Swedish policies with Finnish and Danish, it is evident that the dominant discourse of the wellbeing of the child with its corresponding arguments of “recognising existing family forms” has led to a legal situation where children born by lesbian couples with the state approved fertility treatments is now regulated. At the same time single women are excluded from the right to fertility treatment and children born *outside* the state approved fertility treatment are denied their legal rights. The proper family is thus constructed as a unit of *two* parents and paradoxically the well-being of all children is not guaranteed.

If one contrasts Danish policy debates with Finnish and Swedish ones, it is apparent that the discourse of individual rights is relatively dominant in Denmark. Arguing for equal access to fertility treatment proved to be strategically wise since this articulation led to the lifting of the ban of giving fertility treatments to lesbians and single women. Now the same rules (with anonymous donor) apply for lesbians, single women and heterosexual women in a relationship. However, even though lesbian couples can now get treated, the lesbian partner is not automatically acknowledged as a mother (as is the case for heterosexual couples) but has to apply for adoption.

The threat of the father-less family was perhaps most clearly articulated in the Finnish policy debates – and is reflected in legislation that differentiates between lesbian- and heterosexual couples. Also, the meaning of fatherhood is understood differently in case of heterosexual and lesbian couples. Heterosexual couples can trust that the social father is considered the father, even if donated sperm is used. In case of lesbian couples, the identity of the biological father can be revealed later on, even when the child has got two parents already. This clearly reveals the norm of the heterosexual family and precariousness of the position of the co-mother in Finnish policy discourses.

We have found that in general parenthood of heterosexual couples is unquestioned in the policy discourses whereas parenthood of lesbians is still under negotiation. The position of the lesbian co-mother is ambiguous. In Denmark and Sweden if there is a known father (who has contributed to the birth outside of the state regulated system) there cannot be a co-mother. It seems that the acknowledgement of the co-mother is possible only when her rights do not clash with the rights of a father. In Finland, the co-mother is not yet legally recognized. Thus her position remains unclear in the policy discourse. The position of the co-mother is negotiated within and in between the discourses of the importance of the father and the well-being of the child. There is a risk that the rights of the lesbian co-mother are overridden by those of “hypothetical” fathers. In addition, the focus on the “couple”, which is present especially strongly in Sweden, leads to marginalization of single parent families and rainbow families with more than one set of parents.

Interestingly, and despite of the great emphasis laid on the role of the father, two fathers are not yet seen as a legitimate set of parents in policy discourses. On the contrary, in debates concerning fertility treatment the issue of surrogacy has been mostly absent or categorically forbidden by legislation as in Finland and Sweden. It would appear that legislative solutions concerning parental rights of people that do not conform to the norm of the heterosexual nuclear family are often somewhat *ad-hoc* in nature. As Jens Rydström (2008) has pointed out, the Registered partnership Acts were “exceptional laws for exceptional people” and so are laws on fertility treatments. Since there is no overall policy approach to rainbow families, gaps and loopholes appear in the legislation, leaving some children unprotected by the family laws and some parents without official recognition of their parenthood and therefore limited access to family policies.

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¹ In Denmark the Registered Partnership Act includes right to step-child adoption. A proposal to allow for international adoption was passed recently (B 36/2009). In Sweden both step-child- and international adoption is possible. In Finland, same-sex partners do not yet have right to adopt. However, so-called “internal adoption” is included in the forthcoming reform of the Adoption Act (Kaarto 2007).

² There is variation in terminology that is used to refer to fertility treatments between the three national discourses. In Sweden and Denmark the term ‘assisted insemination’ is used. In Denmark the concept of *artificial* insemination ‘kunstig befrugtning’ is also used. In this article, we speak generally of fertility treatments, but in cases when we refer to a specific national law, national terminology is used.

³ In the Danish case, we have analysed parliamentary debates and civil society comments in relation to Government Bill L 151/2006 Proposal to amendments of law on artificial reproduction/ Forslag til lov om ændring af lov om kunstig befrugtning i forbindelse med lægelig behandling, diagnostic og forskning and Parliamentary proposal L 67/2008 Proposal to amend Marriage Act and abolish Act on registered partnership/Forslag til lov om ændring af lov om ægteskabs indgåelse og opløsning of forskellige andre love samt ophævelse af lov om registreret partnerskab. In Finland the material consists of parliamentary debates related to the passing of the bill (HE 3/2006) on Act on Fertility treatment. In Sweden the government bill 2004/05:137 Assisted fertilisation and parenthood/Assisterad befrugtning och föräldraskap. and corresponding Comments and parliamentary debates, Riksdagens protokoll 2004/05:133, are analysed.

⁴ There is a comparative study on assisted insemination with a historical background to the different policies in the Nordic countries (Burrell 2005).

⁵ The government did not take stance on the issue. See L 151/2005-2006 (as proposed).

⁶ Governmental Bill 1984/85:2.

⁷ Parliamentary debate on Governmental Bill 2004/05:137 assisted insemination and parenthood.

⁸ Statement of Finnish NGO Sateenkaariperheet-Regnbågnfamiljer ry on the Committee on special issues related to registered relationships Report. 20.11.2003.¶

⁹ E.g. Swedish government and the Danish National Association of Gays & Lesbians Governmental Bill 2004/2005:137 and LBL: Vedr. 2005-2006 – L151.

¹⁰ The opposition argues for equal rights in more collectivist way. See Karen J. Klint, First parliamentary debate of Proposal L 151/2005-2006.

¹¹ For example, Social Liberals argue that Denmark has to regain its position as international leader in B 76/2007 (as proposed): Proposal to introduce Marriage for homosexuals/ Forslag til folketingsbeslutning om at indføre en ægteskabslovgivning, som ligestiller homoseksuelle med heteroseksuelle.

¹² See the liberal participant Jorgen Winther in the second debate on L 151/2006.

¹³ Government Bill 2004/05: 137 Assisted Insemination and Parenthood.

¹⁴ It was a proposal to abolish the registered partnership act and introduce same sex marriage. Same sex couples would then also be granted the right to international adoption. The Government did not support the proposal as a whole (First debate on Proposal L 67/2008).

¹⁵ Minister of Justice, First debate of Proposal L 67/2008.

¹⁶ 2008-09 - L 105 (overview): Proposal to amend the Adoption Act/Forslag til lov om ændring af adoptionsloven og forskellige andre love.

¹⁷ Governmental Bill 2004/2005:137 assisted insemination and parenthood.

¹⁸ Swedish lesbian couples have continued to go to Denmark for treatment. This is due to long queues caused by shortage of donated sperm after anonymity of the donor was lifted (Eriksson 2008).

¹⁹ The GLBT organisations were against lifting of the anonymity of the donor Seta ry. statement 22.2.2006. Hallituksen esitys hedelmöityshoidoista ja isyyslain muuttamisesta (Government Bill on fertility treatments and changing the paternity Law).

²⁰ Committee on special issues related to registered relationships 2003.

²¹ e.g. Written Question KK 253/2004 vp - [Rosa Meriläinen](#) /Green party and others. Inter-family adoption in same-sex families. Kirjallinen kysymys 253/2004 vp Sisäinen adoptio-oikeus samaa sukupuolta olevien parien perheissä.