

(IN)APPROPRIATE MOTHERS:  
POLICY DISCOURSES ON FERTILITY  
TREATMENT FOR LESBIANS IN DENMARK,  
FINLAND AND SWEDEN<sup>1</sup>

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INTRODUCTION

The Nordic countries were among the first to legally recognise and regulate intimate relations between people of same sex.<sup>2</sup> In 1989, the Danish parliament was the first in the world to pass an Act that gave same sex partners the right to register their relationship. Norway followed with a similar Act on registered partnership in 1993, Sweden in 1995, Iceland in 1996, and Finland in 2001 in what has been called “the Danish domino effect” (Rydström 2008, 199). With the registered partnership acts, a separate and very exclusive category of civil status was introduced (Rydström 2005). Though, despite state intentions to liberalise and legitimise other family forms and cohabiting forms than the heterosexual marriage, striking gaps have appeared in relation to the registered partnership acts leaving many family forms unprotected by law.<sup>3</sup> In essence, it

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<sup>1</sup> This chapter is based on the work done and materials collected for the European Union-funded research project “Quality in Gender+ Equality Policies” (QUING). Twenty-seven EU countries as well as two applicant countries participated in the project, which aimed at producing comparative analyses of gender+ equality policies. This article examines policies in the three Nordic EU member states Denmark, Finland and Sweden. **The reason for making a comparison with these three Nordic countries (and not Norway and Iceland) is that they abolished the bans on assisted insemination for lesbians at about the same time, although the arguments behind these decisions were slightly different, as will be shown in the analysis.**

<sup>2</sup> The term “Scandinavia” refers to the region that consists of Denmark, Sweden and Norway. However, in common usage in English language, “Scandinavia” is sometimes used interchangeably with the term “the Nordic countries”. The term Nordic refers to Denmark, Norway and Sweden as well as Finland and Iceland, and associated islands. In this article we are not using the term “Scandinavia”, but talking about the “Nordic countries” in general when we are discussing the similarities in welfare regimes. The article is devoted to the three Nordic countries that are part of the EU. Thus, debates in Norway and Iceland are not included in this chapter.

<sup>3</sup> In Denmark the Registered Partnership Act includes the right to step-child adoption. A proposal to allow international adoption was passed recently (B 36/2009 Proposal to

could be said that by excluding registered partners from rights relating to reproduction and parenthood, Nordic countries deemed certain type of parents unfit and some families unsuitable, and simultaneously enforced the heteronormative family model as the norm. Danish Scholar Christel Stormhøj goes as far as calling this restricted form of citizenship “second rate” citizenship (Stormhøj 2002). One of these obvious restrictions in citizenship status concerned the access to fertility treatment for lesbian couples. In Sweden and Denmark access to fertility treatment was prohibited up until recently for lesbians, whereas for quite a long time Finland was the only Nordic country to grant non-heterosexual women access to fertility treatment (only due to the lack of regulation). Thus, for a long time, in the three Nordic countries Denmark, Sweden and Finland, ‘the lesbian’ was either non-existing in policy discourses on fertility treatment or articulated as an inappropriate or unthinkable mother (Bryld 2001). Today, in all three countries, fertility treatment for lesbian couples is allowed as part of the free healthcare system.<sup>4</sup> The respective laws were passed in 2005 in Sweden and a year later in 2006 in Denmark and Finland.

In this chapter we examine the political struggles and the arguments leading to the introduction of new rights for lesbian couples and single women in Denmark, Sweden and Finland. The laws were passed after heated parliamentary debates that in some cases, as for example in Denmark, divided both the Liberal-Conservative government as well as some of the political parties. Our intention is to analyse the arguments and discursive struggles behind the laws and the debates leading to the passing of these laws. However, the aim is not only to point out the possibilities of the newly won rights to access to fertility treatment for lesbians and women who do not live in heterosexual relationships. We are interested in the ambiguity of the policies – how the policies both recognise lesbian families, but at the same time restrict the appropriate ways to become pregnant for lesbians. The laws and debates on fertility treat-

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access to the right to apply for international adoption for couples in registered partnerships/Forslag til folketingsbeslutning om adgang til at ansøge om fremmedadoption for par i registreret partnerskab). In Sweden both step-child- and international adoption is possible. In Finland, same-sex partners do not yet have right to international adoption. However, so-called “internal adoption” became possible in the autumn of 2009. (Government Bill HE 198/2008 vp).

<sup>4</sup> In Denmark, however, as part of a general financial reduction plan by the liberal-conservative government together with the right-wing party, the free access to assisted reproduction technology is abolished for all groups and from 2011 childless people have to pay for treatment.

ment exclude gay couples as well as four-parent constellations, which are seen as even less legitimate as parents. The newly won rights can thus be seen as both enabling and restricting; How do political debates on fertility treatment in the three Nordic countries both contest and re-inforce norms regarding the relationship of sexuality, gender and parenthood? How are “appropriate” and “inappropriate mothers” constructed? Thus, the analysis highlights how norms regarding sexuality and gender are both contested and confirmed in policy debates in the respective countries.

Over the past twenty years equal access to fertility treatment for lesbian couples and single women has been a greatly debated issue in Denmark, Finland and Sweden. In Denmark, in 1996, a Government Bill on fertility treatment caused major controversy and raised moral concerns regarding the prospect that children would be born and raised without a father (Stormhøj 2002, 45). Originally the bill would have allowed fertility treatment regardless of sexuality and marital status, 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 for doctors was lifted after an intense parliamentary debate, and both single women and lesbian couples were given equal access to the treatment.

Fertility treatment has also caused controversy in Sweden and it has been a highly debated issue in the parliament. The Swedish Insemination Act that entered into force in 1985 only allowed women living in marriage-like circumstances with a man to be treated.<sup>5</sup> Debated at the time was the unique provision in the Act that gave a donor-conceived child the right to obtain identifying information on the donor. The possibility of identifying the donor would emphasise the legal protection of the child, but also give the child the right to know his or her origin. The abolishment of donor anonymity caused intense debate; many, infertility doctors in particular, feared an imminent and irreversible decline in the number of sperm donors. After the Act was introduced there was a decrease in sperm donations, but that might partly have been due to infertility doctors recommending that their patients travel to Denmark for treatment in order to avoid known donors (Burrell 2006).

<sup>5</sup> Governmental Bill 1984/85:2 On artificial inseminations/Om artificiella inseminationer.

In Finland, contrary to the examples of Denmark and Sweden, fertility treatment for lesbians or single women was never prohibited. This was due to the lack of legislation: until 2006 there was no regulative legislation concerning fertility treatment in Finland. This lack of regulation meant that doctors and healthcare personnel providing the treatment were responsible for the decisions involved, and in effect, self-regulated the availability of treatment. The unregulated situation however gave rise to some problems: the legal position and rights of children born via fertility treatment was unclear. In a sense, the lack of legislation meant that lesbian mothers did not exist either. The first proposal for legislation on fertility treatment was made already in 1984, but the proposed bill was not passed at that time. Since the mid 1980s, the issue emerged every few years. The possibility of legislation for fertility treatment was also examined in the late 1980s and early 90s, but the legislation process did not proceed further at the time due to lack of support.

There are also clear differences in how policies concerning fertility treatment have been constructed in the three countries: in Sweden only lesbian *couples* are allowed to get treatment, which means that all single women whether they are homo- or heterosexual are excluded,<sup>6</sup> whereas in Denmark and Finland single women have equal access to treatment. The *age* of the woman to be treated is yet another issue that has been of concern in policy debates on fertility treatment. In Denmark and Sweden the age limit is not regulated in law, but is left for physicians and other healthcare workers to decide upon. This means that, for example, in Sweden in some counties the maximum age for a woman to be treated is 37, whereas in other counties it is 40. In Finland, after the woman has turned 39, the state does not subsidise the cost of the treatment any longer, women over 39 thus have to pay for subsequent treatment themselves. In debates concerning fertility treatment the issue of surrogacy has been mostly absent up until recently.<sup>7</sup>

<sup>6</sup> In later years this issue has been debated in the Swedish parliament on many occasions, the argument against allowing fertility treatment for single women has been “that children have the right to have two parents”.

<sup>7</sup> During 2009–2010 several of the political parties and MPs in the Swedish parliament (MPs from the Green Party; Gunvor G Ericson, Helena Leander, Ulf Holm, Mats Perftoft, Thomas Nihlén, Jan Lindholm, MPs from the Left party Birgitta Ohlsson and Barbro Westerholm, MP social democrats Carina Hägg, MP Centre party Fredrick Federley, MP Left party Tasso Stafilidis) have urged that a governmental report should be commissioned to investigate the issue of surrogacy but so far these proposals have been rejected by the Parliament. In Finland surrogacy was allowed for heterosexual couples until the new legislation concerning fertility treatments came into effect in 2007. In the spring of 2011 the Minister of Justice Tuija Brax announced that the Minis-

Another important issue in debates on fertility treatment for lesbians concerns how to regulate and recognise the status of the donor. As mentioned above, the Swedish law stipulates that a child who is conceived through assisted insemination has the right as a young adult to find out the identity of the donor. In Denmark, as opposed to Sweden, 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. In Finland, the anonymity of the donor was lifted by the Act on Fertility treatments.<sup>8</sup>

There is also significant variation in the legislation that regulates the position of the lesbian social mother in the fertility treatment process and after it. In Sweden the legislation of 2005 allows lesbian couples to be inseminated and recognises social mothers as legal parents if insemination takes place at a state clinic. The provision of the Act was put into place to satisfy and safeguard the needs and interests of the child (Burrell 2005). In Denmark and Finland the position of the social mother is more ambivalent. In Finland, registered lesbian partners still do not automatically become parents of the child *as a couple*. In Denmark, the legal position of the social mother in a lesbian relationship, and the interest of the child was not included in the first amendment of the law, which led to new parliamentary debates. These debates regarding the position of the social mother are analysed and described further below.

#### METHODOLOGICAL POINTS OF DEPARTURE

The question we want to broach in this chapter concerns how meaning is negotiated within debates on fertility treatments.<sup>9</sup> We conduct a discourse analysis of the processes by which the acts regulating fertility treatments were passed in Denmark, Finland and Sweden. The intent is to pinpoint problem representations and discursive strategies underlying the policy arguments. In order to conduct the analysis we have used the so-called “what’s the problem approach” (Bacchi 1999). In other words, it is an inquiry into the articulation processes of significations

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try of Justice is looking into the possibility of allowing surrogacy again. Whether surrogacy will be allowed for both heterosexual and same-sex couples remains an issue for debate.

<sup>8</sup> The Act on fertility treatments (1237/2006).

<sup>9</sup> There is variation in terminology that is used to refer to fertility treatment among the three national discourses. In Sweden and Denmark the term ‘assisted insemination’ is used. In Denmark the concept of *artificial* fertilisation ‘kunstig befrugtning’ is also used. In this article, we speak generally of fertility treatment, but in cases when we refer to a specific national law, national terminology is used.

such as: how the problem of- as well as the solution to fertility treatment are represented; how different identity categories are constructed in policies on fertility treatment; what norms or discourses can be found underneath the problem representations and what the effects of these representations are.

The concept of policy discourse is similar to that of “policy frame” that derives from Critical Frame Analysis (Verloo and Lombardo 2007). The concept of policy frame is defined by Mieke Verloo as an “organizing principle that transforms fragmentary or incidental information into a structured and meaningful problem, in which a solution is implicitly or explicitly included” (Verloo 2005, 20). In this chapter however, the concept “policy discourse” is used since we want to indicate that policies contribute to *constitute subjects* in particular ways. 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). Given this approach, we intend to analyse how (in)appropriate mothers are constructed within debates on fertility treatment in Denmark, Finland and Sweden. Contrasting the three policy debates can shed light on the problems and loopholes 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 another (Kantola 2006).

This article has sprung out of the European project Quing (Quality in gender+ equality policies) and draws from material collected and analysed in the project. The material sampled consists of 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. Added to these documents we have also included more recent debates regarding the lack of legal recognition of social mothers.<sup>10</sup>

<sup>10</sup> 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 befruktning och föräldraskap. and corresponding

In the Quing project a particular textual analysis was developed with the help of a software program developed within the project. Documents were entered into an online database containing full texts of the documents as well as codes describing various aspects of the document. The content of the documents was recorded through the help of qualitative coding following a coding scheme. The coding scheme included questions regarding how the problem is defined as well as what type of solutions are offered. Furthermore, the software allowed for answering questions regarding the argumentation used in the document such as the list of objectives and policy actions, the way problem descriptions refer to social groups creating and suffering from the given problem.<sup>11</sup> From the codes we could find some major ways of representing the problem, which we have called policy discourses.<sup>12</sup> In the following the main policy discourses that are found in debates leading to passing the laws on equal access to fertility treatment for lesbians are described and analysed.

#### MAIN POLICY DISCOURSES

In examining the political debates, two major policy discourses have been identified that are important in relation to constructions of problems with fertility treatments. These are, “*the well-being of the child*” and “*the rights of the individual*”. “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 for and against fertility treatment for lesbians in the polarised debates. It is frequently emphasised that children’s interests must come before the rights of adults. The well-being of the child is however defined in very different ways, and can be seen as an empty concept the content of which is open to political debate. For example, some of those opposed to allowing equal access to fertility treatment to all women (regardless of marital status or sexuality) use “the well-being of the child” to argue that children need “parents of both sexes”, whereas others use “the well-being of the child” to argue that already existing family forms (such as lesbian couples with children) need to be recognised and protected by law. Another problem representation that is relatively

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comments and parliamentary debates, Riksdagens protokoll 2004/05:133, are analysed.

<sup>11</sup> See [www.quing.eu](http://www.quing.eu) for more information on the exact methodologies used in the project.

<sup>12</sup> We want to thank Tamás Dombos, Martin Jaígma and Roman Kuhar for their work on developing frames from the codes in the software.

common is the “lacking father”. This representation of the “lacking father” is here seen as part of a larger discourse named as “the importance of the father” and it is linked both to the discourse of the well-being of the child, as well as to the individual rights of biological fathers to their offspring. In the following we are going to discuss how these three policy discourses – *the well-being of the child*, *the rights of the individual*, as well as the *importance of the father* are drawn upon and filled with meaning in the three countries respectively. The focus is on how these discourses were used in order to argue for and against the right to fertility treatment for women who do not live in heterosexual relationships.

### THE WELL-BEING OF THE CHILD

Over the past 20 years the argument of the well-being of the child has been strong and it has primarily been used to exclude lesbians and single women from equal access to fertility treatment in medical clinics. In all three countries adversaries have proclaimed heterosexual family ideals and at the same time constructing the lesbian as an “unnatural mother” (Bryld 2001, 301). The opponents, mainly from the conservative, right-winged and the Christian democrat parties argued along these lines.<sup>13</sup> The argument of the well-being of the child has however proved to be relatively strong also in the debates that lead to the new laws allowing for lesbians access to fertility treatments, especially in Sweden and Finland.

In Finland, opponents of the bill that passed in 2006 stated that fertility treatments should be limited to heterosexual couples, because children’s best interests require an 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 studied the previous government bill of 2002, which has not been passed yet, notes that the argument of the best interest of the child was primarily used to support biologist and heteronormative values to the point of idealisation of the heterosexual family unit. Hirvonen concludes that this did not ultimately promote children’s best interests in the sense that it

<sup>13</sup> In Nordic countries there are many small parties represented in parliaments, which means that there are several different bourgeois parties. Conservative parties include in Denmark “Det konservative folkeparti”, in Sweden “Moderaterna” and in Finland “Kokoomus”. The Christian Democrats include in Denmark “Kristendemokraterne”, in Sweden “Kristdemokraterna” and in Finland “Kristillisdemokraatit”. Added to this, Denmark has a populist right-wing party called “Dansk Folkeparti”.



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, primarily the Christian Democrats, constructed the problem to be that children will be denied their “natural right” to a father:<sup>14</sup>

The most natural right in the world to a little child is to grow up with both their parents, with their father and mother, to have a male and a female role model to identify with. This natural right will be denied to some children, those children conceived through artificial insemination of lesbian women. (Ingemar Vänerlöv (Christian Democratic Party)).<sup>15</sup>

In this quote from a Christian Democrat MP, “the natural right” of children is said to be two parents of different sexes. Thus, in all three countries, those who *opposed* granting access to fertility treatment to lesbian couples and single women interpreted the best interest of the child as the heterosexual nuclear family. It is however 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 what 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.

The goal of the left party is a legislation that gives all children equal rights independently of whether their parents are homo-, bi-, or heterosexual. (Tasso Stafillidis (Left party)).<sup>16</sup>

This discourse of the well-being of the child proved to be especially strong in Sweden. The best interest of the child proved to be a strategic argument leading to legal changes; the problem was claimed to be that existing family laws did not reflect the actual diversity of family forms, and this leaves already existing children without legal protection. One Swedish MP from the Conservative party argued in the debate:

<sup>14</sup> Parliamentary debate on Governmental Bill 2004/05:137 Assisted insemination and parenthood.

<sup>15</sup> Parliamentary debate on assisted insemination and parenthood, 2004/05:133, 20050603.

<sup>16</sup> Parliamentary debate on assisted insemination and parenthood, 2004/05:133; 20050603.

Through the laws we are about to legislate we give these children (children born in homosexual relationships) a juridical safety with the focus on the best interest of the child. The child is entitled to information about their biological origin, as I said before. The child has the right to two parents, and the conception of the child is performed under medical and psychological control (Inger René (the Moderate party)).<sup>17</sup>

As is evident in the quote above, one of the reasons for the Bill to pass in the Swedish parliament was that it was constructed as a matter of “the best interest of the child” as opposed to a matter of rights for lesbian and single women. In the Finnish discussion, proponents of the passing of the 2006 bill in the parliament and particularly NGOs promoting GLBT rights also brought up the question of security of those children who already live in so-called “rainbow families”. In the Finnish context the term “rainbow families” refers to families with same-sex parents.<sup>18</sup> 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.<sup>19</sup> It proved to be strategic to show that the well-being of children can be safeguarded in same-sex families, despite the fact that this could be seen as a relatively defensive argument.

#### THE RIGHTS OF THE INDIVIDUAL

In all three countries *rights* for lesbians and single women to equal access to medical treatment are articulated by the proponents (primarily the National GLBT organisations, the left parties, the Social Democrats and the Social Liberals) in the debates. In the Danish parliamentary debate in 2006 when the parliament voted for equal access to fertility treatment *equality between groups of women and individual rights* was a major argument. The argument of rights was put forward by the parliamentary opposition – the Social Democrats, the left parties and the Social Liberals. One of the Social Democrat MPs argued:

No one should doubt that the Social Democrat group finds that there should be equality among women, no matter marital status or sexual orientation ... (Karen J. Klint (S), First debate on Proposal L 151/Forste behandling af lovforslag L 151).

<sup>17</sup> Parliamentary debate on assisted insemination and parenthood, 2004/05:133; 20050603.

<sup>18</sup> Statement of Finnish NGO Sateenkaariperheet-Regnbågnfamiljer ry on the Committee on special issues related to registered relationships Report. 20.11.2003. See also the chapter by Elke Jensen in this collection.

<sup>19</sup> E.g. Swedish government **Governmental Bill 2004/2005:137 and the Danish National Association of Gays & Lesbians comments on the proposal L151/2006 in LBL: Vedr. 2005–2006 – L151.**

The discourse of rights not only involves norms of anti-discrimination, as in the quote above, but is also combined with a narrative of modernisation and progressiveness. In this case arguments of individual rights are linked with Danish self-perception: the Danish national identity is said to be built upon an idea of being progressive and tolerant towards sexual minorities (Lüttichau 2004; Stormhøj 2007).<sup>20</sup> The participant from the Liberal Party Jørgen Winter puts it like this:

There are many different opinions in Venstre – Denmark’s Liberal Party – on the issue of artificial fertilisation. In such an apparently ethical area, we don’t want to press one another. That is our tradition in Venstre. Let me now try to explain the current situation in Venstre. Some members are *still* of the opinion that only couples consisting of a man and a woman should be allowed to get medical treatment. But it is also my firm conviction that a large majority in the parliamentary group is supportive of my idea that a doctor in a private hospital is welcome to assist lesbians and single women. The Danish liberal party is namely a *modern party*. We don’t need to have the same opinion in a hundred years.<sup>21</sup>

Those who wanted to keep the ban on assisted fertilisation were indirectly understood as being backwards and not modern individuals. In the Danish parliamentary debates in 2006 this discourse of individual rights and modernisation thus appeared as essential and had effect in the sense that several members of the Liberal Party voted for lifting the ban on assisted insemination for single women and lesbians (see also Nebeling Petersen 2009). The Swedish minister for Justice also claimed in the parliamentary debate that “times have changed” and that: “We have got a more open, more liberal and more modern view of homosexuals.” (Parliamentary debate/Lagutskottets betänkande 2004/05: LU25). Since the Nordic welfare states usually aim at providing universal rights for their citizens, the argument is a forceful one. However, the significance of the rights discourse varies and seems to be most important in Denmark and less significant in Sweden.

In the Swedish debate access to fertility treatment for lesbians was as already pointed out primarily discussed within a discourse of the best interests of the child. In the government bill On Assisted Insemination and Parenthood the right to fertility treatment was proposed for lesbian women, but single women’s right to fertility treatment was denied with

<sup>20</sup> 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.**

<sup>21</sup> See the liberal participant Jørgen Winther in the second debate on L 151/2006.

reference to the argument that children need two parents.<sup>22</sup> 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 fertility treatment for single women was on the agenda in the Swedish parliament. However, it was decided that single women's fertility treatment needed further investigation. This decision compels single Swedish women who want to become pregnant through fertility treatment to travel to Finland or Denmark or to other countries where fertility treatment for single women is allowed.

In Finland especially those who wanted to allow fertility treatment for lesbian couples and single women referred to equal rights and to 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).

#### THE IMPORTANCE OF THE FATHER

In the policy debates analysed concerning fertility treatment the position of the father – whether biological or social – is emphasised in all three countries. This is here named as the *importance of the father* discourse. The importance of the father is closely related to the discourse of the best interest of the child since it is argued that the well-being of the child is dependent on the child having a father. Especially Conservatives, right-wing parties and Christian Democrats, who opposed giving access to fertility treatment to lesbians and single women, considered fatherless families as a “threat” to the heterosexual nuclear family (See also Stormhøj 2002). One Swedish Christian Democrat articulated the threat in the following way:

I feel deeply concerned over the decision that will be made today which will force even more children to grow up without their biological father. We just have to take a look at all our prisons in this country. We can do interviews. We can talk to the staff and psychologist and others. Many times it becomes clear that a lack of a father figure during childhood have caused these wrong behaviours. I don't say that it is the only reason, but it is an important reason. Experiences show that it will have negative effects if a child doesn't grow up with their biological parents. As a Christian democrat I don't want to experience that. (Chatrine Pålsson (Christian Democratic Party)).<sup>23</sup>

<sup>22</sup> Government Bill 2004/05: 137 Assisted Insemination and Parenthood.

<sup>23</sup> Parliamentary debate on assisted insemination and parenthood, 2004/05:133, 20050603.

The importance of the father is articulated both in debates on equal access to fertility treatment, but also in the following debates on the recognition of the social mother. With the new laws, the issue of how to legally recognise the non-biological mother emerged both in Finland and in Denmark since the already existing laws proved to be insufficient. In Denmark a lesbian social mother was not automatically recognised as parent, and thus, could not take the two weeks “paternal” leave together with the mother giving birth. This is due to the fact that the two weeks paternal leave are earmarked for fathers and can only be used within the first three months of the child’s life. As it happened non-biological mothers could only apply for adoption *three months after* the birth. In 2008 it was proposed that the “co-mother”, as she is called in Denmark, would be legally recognised as a parent directly at birth.<sup>24</sup> The only party against recognising co-mothers in 2008 when the issue was taken up in the parliament was the right-wing Danish People’s party. The Liberal-Conservative government admitted that the legal situation for newborn babies in lesbian relationships had to be regulated better. Nevertheless, the Minister of Justice argued that if there was *a known* biological father, he should have a chance to acknowledge the child. The minister of justice argued in parliament that:

I am still certain that as a starting point, the best for the child is to have both a mother and a father. If it happens that there is a biological father to the child, who knows that he has contributed to create a new life, then I think that it is reasonable, that this father has the opportunity to say: I actually wish to acknowledge that the child is mine.  
(Minister for Justice Lene Espersen. 1. behandling af lovforslag nr. L 67: Forslag til lov om ændring af lov om ægteskabs indgåelse og opløsning af forskellige andre love samt ophævelse af lov om registreret partnerskab. (1. Debate on Law Proposal L67))

The government then put forward a proposal that promised to give the non-biological mother a possibility to adopt the child directly at birth, if the child was conceived via assisted fertilisation with an *anonymous* donor. This formulation guaranteed that the rights of the biological father were not threatened.<sup>25</sup> The underlying idea being that there can only be two legally recognised parents. However, lesbian social mothers still have

<sup>24</sup> 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).

<sup>25</sup> 2008-09 - L 105 (overview): Proposal to amend the Adoption Act/Forslag til lov om ændring af adoptionsloven og forskellige andre love.

to adopt the child, which means that parenthood is not automatically established as is the case for heterosexual couples. If the donor is known, the legal situation of confirmation of parenthood is still unclear. Several MPs were uneasy about the legal recognition of social mothers. This is reflected in another comment in the parliamentary debate by the Liberal chair:

The law proposal has the consequence that a child who is born to a woman married to another woman will get a co-mother instead of a father, despite the fact that the fertilisation was the result of a sexual relationship. This means that the right of the biological father disappears like magic. From my point of view, that is a very far-reaching change. (Karen Elleman (V): 1. behandling af lovforslag nr. L 67: Forslag til lov om ændring af lov om ægteskabs indgåelse og opløsning og forskellige andre love samt ophævelse af lov om registreret partnerskab. p.6)

In the quote above it is evident that the importance of the father is also connected to the discourse of individual rights and the norm of two parents of different sex is indirectly expressed.

The Finnish law on fertility treatment also provides an example of how the importance of a biological father sometimes overrides that of the social mother. In Finland lesbian registered partners (and single women) had the right to get fertility treatment before the co-mother had legal rights to the child she was having together with the birth mother. The rights of parents have on a number of occasions been understood differently in the cases of heterosexual and lesbian couples and single women. Firstly, 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 the paternity even if donor cells were used. In the case of co-habiting heterosexual couples, the father has to officially recognise his paternity. However, in the eyes of the law, registered lesbian partners still do not automatically become parents of the child *as a couple*. Only the biological parent of the child is considered a legal parent. Up until 2009 all forms of adoption were prohibited, which meant that the co-mother did not have the possibility to adopt her partner's (and in effect her own) child. Problems arising from this complex situation were recognised<sup>26</sup> and raised in the Parliament on a number of occasions,<sup>27</sup> but the

<sup>26</sup> Committee on special issues related to registered relationships 2003:10/Lapset ja rekisteröity parisuhde. Rekisteröityihin parisuhteisiin liittyviä erityiskysymyksiä selvittäneen toimikunnan mietintö. Sosiaalija terveysministeriön 2003:10.

<sup>27</sup> For example: Written Question KK 253/2004 vp - Rosa Meriläinen/Green party and others. Inter-family adoption in same-sex families. Kirjallinen kysymys 253/2004 vp Siinäkin adoptio-oikeus samaa sukupuolta olevien parien perheissä.

social mothers' legal right to the child remained for a long time unrecognised. The situation improved after the amendment of the Finnish Adoption Act that took place in September 2009. According to the amended Adoption Act, the co-mother can now adopt her registered partner's biological child. This is referred to in the Finnish debate as "internal adoption". Adoption of a child who is not already part of the family remains prohibited. This includes both domestic and international adoption.

In Finland, the debate concerning legislation on fertility treatment, included extensive discussion of the rights of the donor. Before the Act on fertility treatments of 2006, it was possible to use anonymous donors. This is not the case any longer. The Act on fertility treatments stipulates that the anonymity of the donor can be lifted and the donor's identity revealed upon request of the child when s/he has turned eighteen. The Finnish GLBT organisation SETA ry. was against the lifting of the anonymity of the donor, since it would have put the co-mother's and the donor's rights into opposition.<sup>28</sup> Especially before the Adoption Act was amended, the lifting of the anonymity of the donor could have meant that the co-mother's rights were less than those of the donor's, i.e. the so-called biological father. In a sense, the backdoor was left open for a hypothetical biological father, even when the child already had two parents.

In Sweden, the position of the social mother was determined in the law on fertility treatment of 2005. If the birth mother is a registered partner, her partner will automatically be regarded as the mother of the child and in the case of cohabiting partners, the cohabiting partner will be given the possibility to confirm parenthood. But this legislation only applies to children that are conceived through Swedish fertility clinics, not if the child is conceived in another country or at home. Even though there is a legislative acceptance of two mother families the regulations on known donors puts an interesting twist on the parenthood discussion. As pointed out above Swedish law stipulates that every "donor-conceived child" has the 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 extensive emphasis on the social father's role and participatory fatherhood in Sweden has come to influence and permeate most Swedish speech about family, children and parenthood and is re-

<sup>28</sup> See: Seta ry. statement 22.2.2006. Government Bill on fertility treatments and changing the paternity Law/Hallituksen esitys hedelmöityshoidoista ja isyyslain muuttamisesta.

flected even on lesbian couples (Ryan-Flood 2005). One reason behind the decision to allow giving fertility treatment to lesbian women was that it was feared that they otherwise would go to Denmark for instance to get treated and the donor would then be anonymous and the conceived child would be denied its right to know its biological heritage.<sup>29</sup> With the current legislation the donor will be known and the state has a “better control” of lesbian women’s reproduction.<sup>30</sup> But even after the latest changes in the regulations on assisted fertilisation, some women still choose to go to other countries that have anonymous donors for assisted fertilisation to avoid known donors (Eriksson 2008).

### CONCLUSIONS: (IN)APPROPRIATE MOTHERS

Policy discourses concerning fertility treatments have recently shifted in Denmark, Sweden and Finland. New policies that allow fertility treatment for lesbians mark a discursive change that recognises and approves lesbians as mothers and parents. However, there is a certain duality present in Nordic policies on fertility treatment and parenthood; these newly-won rights were not accompanied by changes in overall family policies. Added to this, in order to be recognised politically, the subject has to transform and adapt to demands from authorities. In this case the lesbian biological mother, who used to be defined as an abject woman or a monstrosity (Bryld 2001), is now seen as a potentially good and caring mother. At the same time she is also re-inscribed into heteronormative discourses: instead of being deemed as inappropriate or being nonexistent, lesbians today have to conform to the particular state approved type of motherhood. Thus, policy discourses on fertility treatment in Denmark, Finland and Sweden can be interpreted as attempts to weed out the “non-normative mothers”.

However, in debates on equal access to fertility treatment, the lesbian social mother is particularly in danger of being constructed as an “unthinkable parent” to the point that she was not recognised as a parent in the Danish and the Finnish first amendments to the laws. In the case of Sweden, the single woman is clearly constructed as an unwanted parent since she is not entitled equal access to fertility treatment. Thus, in Sweden

<sup>29</sup> Governmental Bill 2004/2005:137 Assisted insemination and parenthood.

<sup>30</sup> 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).



there is no discrimination on the basis of sexual orientation, but instead the law clearly discriminates against single women.

When contrasting Swedish policies with Finnish and Danish, it is evident that the dominant discourse of the well-being of the child with its corresponding arguments of “recognising existing family forms” has led to a legal situation where children born to 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 in Sweden. The proper family in Swedish policy debates on fertility treatment for lesbians is thus constructed as a unit of *two* parents. Paradoxically the well-being of *all* children is not guaranteed with this legal situation since the legal status of children born to lesbians who chose to have children outside of state approved fertility clinics is unclear.

If one contrasts Danish policy debates with Finnish and Swedish ones, it is apparent that the discourse of individual rights is more 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 on giving fertility treatment 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 so-called step-child adoption. Furthermore, if a lesbian couple chooses a known donor (and do not follow the legal prescriptions with an anonymous donor) it is not yet decided whether the social mother has the possibility of step-child adoption or not. These cases are falling in-between, which means that social mothers are thereby denied legal rights to parental leave. Queer identities that do not conform to normative family ideals are excluded in a discourse of rights (Nebeling Petersen 2009).

The importance of the father and the threat of the fatherless family were perhaps most clearly articulated in the Finnish policy debates – and are reflected in legislation that differentiates between lesbian and heterosexual couples. Also, the meaning of fatherhood is understood differently in the case of heterosexual as opposed to lesbian couples. Heterosexual couples can be trusted in that the social father is considered the father, even if donated sperm is used. In the 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 the precariousness of the position of the social mother in Finnish policy discourses.

The position of the lesbian social mother remains ambiguous. The position of the social mother is negotiated within and in between the discourses on the importance of the father and the well-being of the child. In Denmark and Sweden if there is a known father (who has contributed to the birth outside of the state regulated system) the status of the social mother is unclear. It seems that the acknowledgement of the social mother is possible only when her rights do not clash with the rights of a biological father. In Finland, the social mother has been only recently legally recognised and internal adoption within the family has become possible. There is thus a risk that the rights of the lesbian co-mother are overridden by those of the “hypothetical” fathers. In addition, the focus on the “couple”, which is at present especially strong in Sweden, leads to marginalisation of single-parent families and same-sex families with more than one set of parents.

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 (Rydström 2008). This also proved to be the case with the right to access to fertility treatment for lesbians in Denmark, Finland and Sweden. Since there is no overall policy approach in any of the three countries to same-sex families, gaps and loopholes appear in the legislation, leaving some children unprotected by family laws and some parents without official recognition of their parenthood and therefore with limited access to family policies. Thus, in general, in policy discourses in all three countries, and despite new legislation, parenthood of heterosexual couples is unquestioned whereas parenthood of lesbians is still under negotiation.

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