From Outlaw to In-Law
On Registered Partnerships for Homosexuals in Scandinavia, its History and Cultural Implications

Jens Rydström

In 1989, Denmark was the first country in the world to introduce legislation on registered partnerships, thus creating a special demographic category for its homosexual citizens living in steady relationships. Since then, similar laws have been successfully introduced in all five Scandinavian countries and two of its autonomous areas. Only in the Faroe Islands has the parliament viciously opposed any attempt to legalise about gay and lesbian rights.

An interesting question then is: Why Scandinavia? Why were the Scandinavian countries first in the world to introduce a special law regulating homosexual relations? Why did these countries and no others create a special marital status for their homosexual citizens? An equally interesting question is: What does it mean? In what way can we interpret these laws? Are they the wedge that will destabilise the institution of marriage as we know it? Will they lead to the most radical redefinition of the family since late antiquity? Or is it merely a way of annihilating a homosexual counterculture that was too centred on sex and filth - to purify it, as it were?

In order to understand why the Scandinavian countries chose to introduce legislation regulating the marital status of homosexual couples, we must see to the strong traditions of consensus and to the construction of the Scandinavian welfare states with their comprehensive and universal welfare systems. In Scandinavia, everybody should be included in society, but everybody should also adhere to quite specific norms of behaviour.

We must beware, of course to treat Scandinavia as a monolithic entity. In welfare research, Scandinavia has been called "a model with five exceptions" and historically and politically there are definitely very important differences between our countries. Compare for instance the peaceful - some would say shameful - development in Sweden during the 20th century, with the violent and conflict-ridden history of Finland during the same time. Or compare the massive social democratic domination in Sweden and Denmark with the broad coalitions in Finland and Iceland. But still, I think that there are common traits that can explain much of the present day situation, and not least the extraordinary conformity in our laws on registered partnership.

If we go back to the 1930's, we can discern a Scandinavian exceptional development in the area of gay and lesbian rights. In the 1930s and 40s, homosexuality was persecuted in nazi Germany and recriminalised in France. And in the Soviet Union, Stalinism wiped out the last remnants of sexual liberalism. In the United States, alcohol regulations and the Motion Picture Production Code contributed to making homosexuality invisible, and in Britain the Public Morality Council targeted homosexuality as a matter of priority. Thus,

Stockholm University


as homosexuals were ruthlessly persecuted in the totalitarian states, and marginalised in the liberal democracies, same-sex sexual acts were legalised in Denmark and Sweden. And as the sex reform movement died out in Britain, in Sweden the RFSU, the National Association for Sex Education, became a regular partner in dialogue with the social democratic government. However, the Scandinavian development is contradictory. In my dissertation I have shown how Swedish politics on homosexuality in the 1930s were characterised by both a more liberal view on the theoretical level, and an increasingly intense policing of unwanted homosexual activities.³

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of prosecutions</th>
<th>Number deemed insane</th>
<th>Percent deemed insane</th>
<th>Number sentenced to hard labour</th>
<th>Average length of sentence (in months)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1920-1924</td>
<td>64</td>
<td>0</td>
<td>0</td>
<td>51</td>
<td>9.1</td>
</tr>
<tr>
<td>1925-1929</td>
<td>102</td>
<td>5</td>
<td>5</td>
<td>52</td>
<td>8.2</td>
</tr>
<tr>
<td>1930-1934</td>
<td>182</td>
<td>20</td>
<td>11</td>
<td>112</td>
<td>7.6</td>
</tr>
<tr>
<td>1935-1939</td>
<td>340</td>
<td>73</td>
<td>21</td>
<td>145</td>
<td>3.9</td>
</tr>
<tr>
<td>1940-1944</td>
<td>526</td>
<td>96</td>
<td>18</td>
<td>260</td>
<td>4.0</td>
</tr>
</tbody>
</table>

Source: Criminal court records

In this table, we see the change in punitive measures taken against those who were prosecuted for same-sex sexuality during the 1930s. To begin with, we notice the sharp increase in the numbers of prosecutions. Then we see that the average length of punishment suddenly is lowered from around eight months of hard labour to about four months of hard labour in the middle of the 1930s. And, finally, we see how the number of people who were declared insane and committed to asylums also increased, both in absolute numbers and as a percentage of the totality of prosecuted persons. More and more men - and some women - were locked up in asylums after having been caught having intercourse with a person of their own sex. In the mental hospital, they were not really given any treatment, but they were regularly recommended to apply for castration, which would facilitate their speedy discharge. The Swedish law on castrations, in force from 1944, was one tool of controlling the homosexuals, or the sexually perverted, as they were generally called. The law didn't allow castrations against a person's own free will, and it was often seen as a matter of priority for the psychiatrist in charge to persuade such patients to apply for castration. And many people did in fact ask for permission to be castrated. The Swedish model did indeed rely on docile bodies, who voluntarily applied to be neutralised by the state. It has been said that it was not a coincidence that Foucault wrote *The History of Madness* when he was a visiting scholar in Sweden. In an interview he

explained that it was partly the experience of Swedish society that had inspired him to write his book. And he characterized Sweden as "an 'over-medicalized,' protected society where all social perils were in some ways attenuated by subtle and studied mechanisms." I would argue that the partnership laws in some ways represent a continuation of the theoretical liberalism and pragmatic normatism which was so obvious in the 1930s. Nowadays, gay men and lesbians who want to legalize their union, are locked into a new category. The demographic category of "Registered partner" now exists as a fifth marital status, alongside the traditional "unmarried", "married", "widow", and "divorced". How come then, that the Scandinavian states, in order to integrate their homosexual citizens, have created a new and highly exclusive category for them? Is it to put them away in a category easier to handle than the amorphous gay and lesbian subcultures of which so little is known? I will return to that question shortly. But first I want to ask what effects do the partnership laws have, in reality, for the lives of individuals?

Table 2. Persons who have registered or dissolved partnerships 1995–2001

<table>
<thead>
<tr>
<th>Year</th>
<th>Registered partnerships</th>
<th>Dissolved partnerships</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Men</td>
<td>Women</td>
</tr>
<tr>
<td>1995</td>
<td>498</td>
<td>167</td>
</tr>
<tr>
<td>1996</td>
<td>201</td>
<td>118</td>
</tr>
<tr>
<td>1997</td>
<td>158</td>
<td>104</td>
</tr>
<tr>
<td>1998</td>
<td>158</td>
<td>92</td>
</tr>
<tr>
<td>1999</td>
<td>154</td>
<td>133</td>
</tr>
<tr>
<td>2000</td>
<td>218</td>
<td>139</td>
</tr>
<tr>
<td>2001</td>
<td>195</td>
<td>186</td>
</tr>
<tr>
<td>2002</td>
<td>212</td>
<td>210</td>
</tr>
</tbody>
</table>

Note: The table shows only persons with permanent residency in Sweden.

If we look at the statistics of registered partnerships in Sweden, we can discern two interesting trends which may help us to think about the different meanings it may have for women and men. We see that by far the highest number of partnerships were registered during the first year the law was in force. It seems that there was an accumulated demand, which could now be satisfied, a demand that was felt more by men than by women. Then the frequency dropped steadily until 1999, after which year it has increased. The uneven distribution between men and women has also evened out so now almost as many women as men choose to register their partnership.

One hypothesis is that registered partnership appealed more to men in the generation that was eagerly waiting for the possibility in 1995. Many women of that generation had a background in lesbian feminism, and would never even consider the idea of seeking the state’s recognition of their relationship. Now that a new generation of dykes is getting old enough to contemplate marriage, this tendency seems to have become less important. Another hypothesis is that women have less money than men and can’t really afford to get married. Since the Scandinavian welfare model is based on individual support, you may actually loose money if you register your partnership. For instant, you can get a lower pension and higher taxes if your income is calculated together with your partner's. And for a lesbian mother it might be economically advantageous to be registered as a single mother than as living with her spouse. This is very different from for example Germany or France, where apparently you get a tax reduction if you live in a registered partnership. In Scandinavia, on the other hand, welfare is more connected to the custody of children than to the legal status of your relationship, and it is not always good business to get

---

Michel Foucault Remarks on Marx: Conversations with Duccio Trombadori, New York: Semiotext(e) 1991, p 75.
married. Two old men I interviewed told me how they registered partnership after 48 years of companionship. They didn’t insist on it - they both told me that they felt silly registering their relationship after so many years. It was their heterosexual neighbours and close friends, who arranged the ceremony for them. The 16-year-old son of the neighbours had learned how to play Mendelssohn’s wedding march on the guitar, and the family had built a sort of altar in their living room. The old men were really touched by their gesture, but when the pension came next month, they realised that they each lost the equivalence of 20 Euro a month on the deal. Well, they told me it was worth it, because they really appreciated the loving initiative from their neighbours. Here we find ourselves on the borderline between the symbolic and the economic, and we must ask ourselves how much the acceptance of the state and our neighbours is worth to us? Because the acceptance is not only economically disadvantageous for us, it is also an acceptance which is conditional. Let us compare the texts of the ceremony of civil marriage with that of partnership, as it is formulated in Sweden:

**Marriage**

*The purpose of marriage is the wellbeing of the individual and the survival of society*

You have declared that you will enter the state of matrimony with each other

Do you, N. N. take this N. N. to your wife, to love her for better and for worse? (Answer: I do.)

And do you, N. N. take this N. N. to your husband, to love him for better and for worse? (Answer: I do.)

Give each other your hand to confirm this

(Before the handshake, the man may give the woman a ring.)

*I hereby declare you lawfully wedded man and wife.*

I hereby declare you lawfully wedded man and wife.

Never forget the vow of fidelity that you now have taken Live with each other in mutual respect, love, and confidence, and remember your responsibility unto coming generations.

May peace and happiness prevail in your marriage and in your home.

**Partnership**

*The registered partnership means that the partners show their union to each other and to the world*

You have declared that you will have your partnership registered

This registration gives you rights and obligations to each other and to society

Do you, N. N. take this N. N. to your partner, to love her/him for better and for worse? (Answer: I do.)

And do you, N. N. take this N. N. to your partner, to love her/him for better and for worse? (Answer: I do.)

Give each other your hand to confirm this

(Before the handshake, the partners may give each other a ring.)

*You are now registered partners.*

Never forget the vow of fidelity that you now have taken Live with each other in mutual respect, love, and confidence.

May peace and happiness prevail in your partnership and in your home.

---

5 Interview with Anders C. and Folke C. March 1997.

What strikes you first is of course how similar they are. The wordings of the partnership ceremony are largely identical to those of the marriage ceremony, which shows that the legislators have striven as much as possible to give the same symbolic value to both institutions. But the differences are significant. One nice detail is the built-in equality between the same-sex partners, in that they give each other a ring. A man’s claim to his wife’s fidelity is symbolised by the ring that he gives to the woman, but that has been replaced with a mutual sign of belonging in the partnership ceremony. A second, perhaps less appealing difference is the form of the performative. The civil servant performing the wedding declares the man and woman as a lawfully wedded entity, whereas the partnership registrar merely informs that the same-sex partners are now registered. The first case is a speech act in its purest form, the second a proposition about a fact which is open to verify or falsify. This gives the partnership more the character of a business agreement, whereas the matrimony transforms the two into one flesh with an almost magic formula.

The third, most important, difference, is of course the explicit denial of the reproductive function of a partnership, as compared to the marriage. It is stated already in the first sentence, that the purpose of marriage is to get children, whereas the meaning of the partnership is a manifestation of togetherness. It gives you rights and obligations to each other and to society, the text goes on, but it is not clear what that would be.

Here we come to the core of the problematics of partnerships. It is clear that the symbolic meaning of the legitimisation by the state is not to be underestimated, but the price for that is a higher degree of regulation when it comes to kinship. As Judith Butler has pointed out, “the topic of gay marriage is not the same as that of gay kinship,” and it is not a good deal to give one up in order to get the other. But still - it seems that the changes in marriage law mirror a development on a deeper level, a new way of thinking about marriage and family. To try to understand that development it is necessary to think about the social and cultural structures which determine our understanding of kinship and marriage.

Claude Lévi-Strauss’ theories about kinship presupposes and reproduces a heterosexually structured system, based on men’s traffic in women. The incest taboo and the prohibition against endogamy are, according to Lévi-Strauss the basis itself for society as it is possible for us to picture it. Yes, the intelligibility of culture itself is built on these structures of kinship. In one of her recent books, Judith Butler draws on that idea and uses the Greek tragedy Antigone to comment on gay marriage and kinship. Traditionally, Sophocles’ play has been read as a symbol for the defiance to power, of the last remnant of kinship-based society, resisting in vain the abstract state with its absolute demands on its citizens. But the new reading that Butler proposes might help us to understand transformations we witness in our lifetime.

Butler asks what would happen if Antigone instead of Oedipus had been the basis of modern psychoanalytic theory. The catastrophic kinship position of Antigone as the offspring of the incestuous relation between Oedipus and Jokaste detaches her from the beginning from a heterosexual and reproductive normative structure. She shuns marriage and even life, when she seeks death in an incestuous symbolic act, as she insists on mourning and burying her dead brother who is at the same time her nephew. According to Butler, Antigone positions herself outside the normative structure that enables us to understand culture. And she goes on to talk about the catharsis that emerges out of this situation. Catharsis is a term used by scholars of literature studies meaning to use a word in a different way than its original meaning:  

"What emerges is a melancholia that attends living and loving outside the liveable and outside the field of love, where the lack of institutional sanction forces language into perpetual catachresis, showing not only how a term can continue to signify outside its conventional constraints but also how that shadowy form of signification takes its toll on a life by depriving it of its sense of ontological certainty and durability within a publicly constituted political sphere."

Almost poetically, Butler here describes the situation for those who choose unconventional ways of constructing their close relationships. The lack of institutional confirmation forces those who defy the norm to live a life in ontological uncertainty, since no officially endorsed terms can design their way of living. The gap between what language can designate and the lived everyday reality that escapes simple descriptions forces us to live in an eternal catachresis. Catachresis, or the usage of a word in a sense contrary to its original meaning, is typical for how people outside the norms of society use language to designate themselves and their lives. To speak about "my husband," "my wife," or "my family" when the norms of society deny their very existence, is to expose oneself to the disciplining mechanisms of society, but also to challenge it and to propose new meanings to new lives. As Judith Butler puts it:

"Do we say that families that do not approximate the norm but mirror the norm in some apparently derivative way are poor copies, or do we accept that the ideality of the norm is undone precisely through the complexity of the instantiation?"

I think the fifth marital status does just that - it undoes the ideality of the norm just by presenting not one alternative but many. However, there is a problem in applying Butler’s analysis to Scandinavian circumstances. Many researchers have pointed out the extraordinarily strong loyalty with the state that is displayed by the peoples of Scandinavia. Finnish sociologist Pauli Kettunen has even claimed that there is no conceptual difference between state and society in our languages. The two words exist, it is true, but are generally perceived as synonymous. How can we then interpret the politics of kinship in countries where the public and the private converge to such a disturbing degree? Butler’s distinction between state and kinship, between Oedipus and Antigone, collapses and leaves us bewildered. As usual, the concepts and ideas imported from overseas fit poorly into our reality, and we need to develop our own analyses.

I promised that I would come back to the question whether the registered partnership is an instrument for control, or if it is a tool for liberation. I think that we must listen carefully to the critics of gay marriage who warn for the consequences of making the homosexual decent. Especially important is then the question whether the institution of gay marriage further stigmatises those who remain outside it. Single people, bisexuals, polyamorous men and women, promiscuous gays, lesbians at the bar, etc.

But on the other hand: the fact that the holy matrimony now has been challenged by something which many morally conservative regard as an abomination, gives us hope. For this concerns much more than only the gay and lesbian part of the population. Perhaps the mere existence of an alternative to heterosexual marriage will open up for new ways to reflect around the civil unions that we make, around the ways that children are raised and around the ways that the clients of the welfare systems qualify for help. At the same time as the individual choice to register a partnership may reflect a rather dull wish to emulate heterosexual matrimony, the institution of registered partnership as such may destabilise...
the institution of marriage and challenge the stale structures of monogamous family life, thus acting as a liberating force for all of us, homosexual, transsexual, bisexual, and heterosexual men and women.

References:
Jens Rydström

Same-sex couples, same-sex partnerships, and homosexual marriages
A Focus on cross-national differentials