Chapter 1
Introduction – LGBT Questions and the Family

Marie Digoix

Abstract The past decades have seen significant changes in the way non heterosexual sexualities are regulated in European countries. In a moment of ongoing transitions, the interdisciplinary research presented focuses on aspects related to homosexuals rights and the way LGBT individuals deal and perceive the impact that the presence (or absence) of laws has on their intimate lives.

The evolutions in family rights in European laws and the balance towards equal rights, whether you are homosexual or heterosexual, are first detailed with an analysis of typical sequences found in a legal survey.

Demographic analyses enrich these aspects in dealing with registration and parenting. Statistical analyses of same-sex partnerships and same-sex marriages show frequencies of registration together with a focus on parenting linked to the partnership status.

In the next chapters, same-sex families are specifically studied in their daily life in France, Iceland and Italy through qualitative data. It investigates from a legal point of view and from a social perspective, what is at stake in the changing life of homosexuals in the field of parenting, what brings to everyday life the support of the law and what its absence implies.

The Postface opens towards the future of LGBT research.

Keywords Same-sex couples · Comparative family law · Same-sex parenting · Family policies · Demographic behaviours

M. Digoix (✉)
French Institute for Demographic Studies (INED), Paris, France
e-mail: mad@ined.fr

Research on homosexuality in Europe has started to diversify. Until very recently, LGBT populations were mostly studied from a psychological or medical perspective, sometimes in feminist research. The homosexual couple began to interest social sciences researchers after the beginning of AIDS epidemics. The importance of lifestyles people lived in and died in the time of AIDS raised public awareness on the lack of rights. The first researches of Michael Pollak (1985) and Marie-Ange Schiltz (1998) focused on the gay couple giving a new definition of what the term could mean (differentiating sexuality from sociability). Jurists have also been interested in situations of injustice in which individuals were regarding citizenship. The interest for sexual minority rights began to rise in the academic world when recognition of same-sex unions' legalisation started to be a universal claim in gay and lesbian struggles.

In 1989, Denmark became the first country in the world to create a legal framework, based on marriage, to offer same-sex couples the possibility to register officially their union.

Thereafter, the opening up of marriage and other legal arrangements to same-sex couples in a growing number of countries changed the visibility of homosexuality. However, this acknowledgement of homosexuality through the legal recognition of homosexual couple, reveals more the acceptance of a compliance to normative behaviour via the heterosexual model than of the sexual orientation of the individual per se (Rydström 2011). If discrimination on sexual grounds is generally prohibited by law in most of Western European countries (Waaldijk and Bonini-Baraldi 2006), the homosexual, because of his sexuality, is still stigmatised in society (Baiocco et al. 2012; Digoix 2013a). Marrying/registering a partnership implies coming out and coming out still relates to the individual in a rational choice between what law can bring to a personal situation (social recognition or legal consequences, for example) compared to what it might deteriorate (visibility and the 'endless' repetition of coming out) (Fassin 2005; Andersen 2011; Harding 2011). With regards to the opening up of marriage and parental status to same-sex couples, European countries have not reached the same level of rights (Waaldijk 2005, 2013). Nordic countries have pioneered a common trend in adopting laws (Digoix 2013b) while the timing of legalisation varies among Southern European countries. Studies have rarely been conducted in a comparative perspective but in most cases, they have shown that equal citizenship has been put forward as a political means to reach equality (Albæk 1988; Bauer 2006; Calvo 2010; Paternotte 2011).

Up until recently, homosexual couples have diversified their types of unions, balancing differently sexual and social relations and living arrangements because they were not allowed to marry like heterosexual couples (Schiltz 1998). They are now faced with marriage which used to be inaccessible. Marriage brings a legal visibility and support they don't have in the other configurations they used to invent (Pichardo Galan 2011). Yet, marriage has become more symbolic since countries have allowed same-sex couples to register civil contracts or other legal forms of union with economic and practical rights previously attached to marriage alone. However, the fact that nearly all the countries that first adopted a different legal

framework (registered partnership or contract) have opened up marriage to same-sex couples or are in the process of doing so (Digoix 2006; Pichardo Galan 2009, 2011; see Table 2.1) proves that marriage remains the target to reach equality.

In countries where the foundation of a family is not anymore mainly based on marriage, the legal focus on parenting is essential. Whereas the opening up of marriage has pulled same-sex couples towards the conjugal norm, same-sex parenting provides homosexuals with a means to assert their difference, which some perceived to have disappeared with the opening up of marriage, in compliance with heteronormativity.

In most countries, the laws about same-sex parenting have lagged behind behaviour, and homosexuals have found solutions to start families that are not covered by law, such as coparenting or surrogacy for example (SOU 2001; Traustadóttir and Kristinsson 2003; Descoutures 2010; Fine 2012).

This book aims to present researches that investigate the relationship between law and behaviours to see what is at stake in the changing life of homosexuals in the field of parenting, their perception of these changes, from a legal point of view, but also from a social perspective. The research was first undertaken in the FamiliesAndSocieties project and provided a wide covering of legal and social questions[1].

The book combines several disciplines, each of which can help to understand the importance of laws and how they evolve and are used by people. It begins with an analysis of the laws in force, and how they reached this state in a wide range of European countries and what can be understood from the different times rights have opened to same-sex couples. It continues with an analysis of demographic behaviour in a smaller number of countries. Finally, a sociological analysis of parenting behaviours is produced in three countries chosen for their different legal frameworks, for their geographical location determining diverse societal environments.

In Chap. 1, Kees Waaldijk uses the *LawsAndFamilies Database* (Waaldijk et al. 2017), which documents legal changes over a 50 year period, to draw a portrait of the legal consequences attached to different family formats (marriage, registered partnership, cohabitation) of same-sex partners and different-sex partners in 21 European countries. In each country, experts provided information on a survey of 60 different rights related to the family situation of couples. The rights gradually granted to same-sex couples are compared with those of different-sex couples who are taken as a reference. Then, the rights are compared internationally, providing information on the timescales of these changes in legislation and establishing country groups and trends towards more or less equalization of rights. In the last 50 years, there has been convergence towards a great improvement of the legal situation of same-sex couples in Western and Central Europe, while in Eastern Europe the landscape is more contrasted. The opening up of marriage comes most of the time after the introduction of registered partnerships in the legal system while rights come

before status. Public attitudes towards homosexuality seem as well correlated with the emergence of rights, whether it is prior to the legal dispositions or not. The study finds typical sequences in the changing of the laws that are discussed. Kees Waaldijk shows that the path to equal treatment is step by step, and is mostly due to social and political controversies that lead to grant more rights but rarely reaching full equality, and never in one step. One major finding about the timescale of laws' adoption is that "bad-times rights" typically come before "good–times rights" in the legal process, that is, countries are less reluctant to grant rights for "bad times" (such as sickness, death, or domestic violence) than extending them for better times in the lives of couples. A related finding is that responsibilities and duties often come before benefits.

Regarding the field of parenting which is discussed in the next chapters, Waaldijk shows that specific issues regarding lesbian couples (such as ART or second-parent adoption) are less advanced than others. Also rights regarding surrogacy and joint adoption, important for gay men, are still very controversial in Europe. This relative slowness of access to reproductive rights seems to corroborate the "bad times before good times" trend. All and all, a main conclusion of the chapter would be that attitudes come before rights and legal recognition before social legitimacy.

Kees Waaldijk's conclusion leads to further chapters of the book in opening the discussion to the social importance of the legal recognition. The laws shape the lives of individuals who are adopting strategies in everyday life according to the legal framework they live in. Laws are important to promote social changes and social acceptance.

Clara Cortina and Patrick Festy's chapter is at the junction of Kees Waaldijk's legal analysis and the sociological analyses presented in the three country specific chapters. It confronts the legal framework and people's behaviours. Laws are, in general, adopted to ensure the equality of citizens. In his chapter, Kees Waaldijk showed the gap between same-sex couples and different-sex couples, how this gap is narrowing, little by little, and the context for understanding the mechanisms of this trend. Beyond the principle of equality, Clara Cortina and Patrick Festy's demographical research focuses on how laws are used. As in the case of the previous legal analysis, the situation of same-sex couples is related to that of different-sex couples. Nine European countries are surveyed for the largest comparative analysis, while they focus on Spain as a case study for a more detailed analysis.

The analysis of the frequency of homosexual marriage or registered partnership is complicated by the fact that the number of same-sex couples, used as denominator in the calculation, is often overestimated in the available data (mostly survey data). Despite the data registration pitfalls, some interesting results can be found: For example, crude rates evidence that the decreasing nuptiality for different-sex couples is contrasted by the increasing level of nuptiality of same-sex couples.

On the field of parenting, one of the main objectives of Clara Cortina and Patrick Festy's study is also to associate the level of registration with the level of legal consequences attached to marriage or registration, using a "legal index" created from

25 legal questions of the *LawsAndFamilies Database*. When splitting the index in parenting and material consequences, the correlation shows that parenting items have an impact on lesbian marriage rates, while it is not the case for gay marriage rates.

In the Spanish case study, data from the Spanish Household survey has been used. Regarding the parenting field, the previous results are confirmed. It shows, in particular, that when the couple doesn't have children, heterosexuals marry more than homosexuals, while when they do have children, there is no difference between the two groups, and no difference either between gay and lesbian couples. Same-sex couples marry less because they have less children.

The study concludes that the law can have an influence and be an incentive on the marriage project, if it is the only way to establish kinship rights. As a result, the presence of children should be controlled for when analysing the partnership status. This finding is all the more interesting that as Kees Waaldijk showed in the previous chapter, parenting rights are often the last to be granted in the timeline of legal progresses while they are paramount to the life of individuals.

The child becomes a central point of the book in the following chapters, which are devoted to the study of parenting, in its practicalities. In the *FamiliesAndSocieties Project*, the aim of the research was to investigate individual and family practices as well as the symbolic meaning attached to them in different legal contexts. It specifically tackled the relationship to the laws. France, Iceland, and Italy were chosen according to their legal frameworks, which at the beginning of the research, were different. During the process of the qualitative survey (by semi-structured interviews), France originally chosen for the Pacs law, a private union contract, opened its marriage law to same-sex couples but with fewer rights concerning parenthood. It is only after the survey was conducted that Italy adopted a civil union contract. Iceland had already opened the marriage law. Parenting laws were also diverse in France and Iceland, absent in Italy.

In the three countries, all respondents were self-identified as LGBT and chosen to cover a similar diversity, by sex, age, couple status, parental status and geographical areas. The usual biases for this kind of surveys among voluntary samples and stigmatized populations apply (Schiltz 2005) but the project aimed to counterbalance it with a wide diversity of situation among the samples. The teams used a similar guideline for the interviews to allow a comparative perspective.

A comparative analysis (including Spain) yielded several results (Digoix et al. 2016) from the 120 interviews performed. The general conclusion was that laws were not a mere device of symbolic nature but a practical support needed in everyday life.

When the survey was conducted in 2014 and 2015, there was no legal provision regarding marriage, cohabitation, let alone parenting in Italy. The parenting question is so clearly out of context that even the minimum rights have been disregarded in the 2015 Cirinnà bill, which granted a legal status for same-sex couples. While in Iceland, the research focuses on how to organize parenthood in a legal context, France and Italy are confronted with situations where parenting is a challenge. In

Italy, however, the researchers found that at the regional level, mainly in the big cities, administrative actions were taken to diminish discrimination and grant some recognition to same-sex couples.

In this context, Marina Franchi and Giulia Selmi focus on the construction of the parental models and on the relation to heteronormativity. They show how informants relate to parenting by inhabiting norms differently, trying to redefine themselves without the traditional concepts of the family. This ranges from non-paternity relationships to the invention of words to define children or the "child-parent" relationship derived from existing terms.

Overall they found parenting choices are diverse. While some informants are in opposition to the norm, others are defining mothers' roles that reproduce the difference between the sexes. Similarly, an attachment to the biological link can be seen, when the same sperm donor is used in order to establish a blood connection between the children, or when two partners carry a child one after the other to create a relationship between the four people of a family. On the other hand, the absence of legal provisions for same-sex parenting can influence the choice of an anonymous sperm donor, so that the mothers are no likely to be exposed to a "paternity" claim, which takes precedence over social kinship in Italian law.

A final chapter is devoted to how informants give richness and meaning to their parenting by creating evidence of personal investment in child education that could be mobilized in the event of legal problem. In the Italian context, this model, which could be seen as a compliance to the heteronormative model, could rather be considered as a manipulation of norms and a challenge to heteronormativity.

One can see the different strategies, sometimes ambivalent from informants who evolve in an unfavourable environment.

In Chap. 5, Matthias Thibeaud chose a political sociological approach to study homosexual families in France and how they organize daily life in the existing legal system. Despite the opening up of marriage in 2013, the legal dispositions concerning same-sex couples parenting are few (joint adoption and adoption of partner's children). Matthias Thibeaud explores the families formed in this context, a set of social practices, norms and constraints. The laws are defining the familial order, which sets who and how a family can be recognized and controlled by the institutions (school, health care system, administration, etc.). All families are confronted to forms of legal and social control, since legal restrictions are supplemented by powerful social norms. Within this institutional framework, he describes how people are confronted to day-to-day structures and how they manage to bypass them since the dominant family model conveys a number of normative expectations that homosexuals do not meet. Having children in this context requires respondents to mobilize social and economic capital to succeed in their goal.

Investigating the daily lives of same-sex families, Matthias Thibeaud concludes that gender relations in parenting are reworked but not always innovative. Overall, among respondents, the distinction of parental roles is not part of a naturalized gendered norm and parents declare an equal investment towards children education,

even if some recognize a bipolarity in the achievement of daily tasks, which tends to confirm that a difference in status within the homosexual couple substitutes for a gender difference.

This study of behaviours regarding the way homosexuals are "creating family" and are rearing children reveals the social regulation which frames the family and whose rainbow families stand out. The relation to the heteronorm is very present as repulsive or constraining. Facing the legal and social constraints, rainbow families question the heterosexual model of the family.

In Chap. 6, Marie Digoix is drawing from a complete change of legal framework as parenting laws were nearly a decade old when the survey was conducted in Iceland.

Iceland is a feminist and familialist country with strong family policies. With high births out of wedlock rates, heterosexual parenting had already bypassed marriage constraints when laws on same-sex partnerships were implemented. Marie Digoix has been conducting interviews with homosexual populations since 2004. In contrast to previous surveys where the mention of parenting was more distant from the concerns of respondents, especially men, in 2015, nearly all respondents declared a desire to become parent or are already parent.

The research explores the hypothesis of a familialist society pushing respondents to feel parenting prone like heterosexuals. However procreation is not so easy for homosexuals, even if the laws and the access to ART in particular, facilitate the achievement of the parental project. Research shows a diversity of situations which tends to prove that the personal choices of the various informants take precedence over an activist ideal that would see homosexual parenting stand out. Each parental project carries its peculiarities: some are totally innovative, especially when they are not covered by the laws as coparenting, but also bear their degree of compliance to heteronormativity. Even if lesbians' couples chose with ART to disregard the biological existence of a male donor, it still seems difficult for others to move away from a male/female constituent even when respondents reject it in theory.

Homosexual parenting shows a clear gender gap between lesbians who have access to ART and gays who declare first the desire of joint adoption, which is nearly impossible and coparenting, which is still out of the laws and difficult to organize, especially since lesbians now prefer to realise their parental project in a lesbian couple (through ART).

The survey took place at a moment when the law securing the position of homosexuals also offered parenting opportunities that people seized. It is probably safe to wait some time before one can conclude that this desire for parenthood is an assimilation to heteronormativity.

The postface of the book is opening towards a theoretical analysis of the findings explored in the previous chapters. Wilfried Rault, a French sociologist who did not participate in the FamiliesAndSocieties project, takes into account the various results presented to understand their meaning in a broader context but also to highlight what is still pending in the LGBT questions.

References

Albæk, E. (1988). Political ethics and public policy: Homosexuals between moral dilemmas and political considerations in Danish parliamentary debates. *Scandinavian Political Studies, 26*(3), 245–267.

Andersen, A. J. (2011). Sexual citizenship in Norway. *International Journal of Law, Policy and the Family, 25*(1), 120–134.

Baiocco, R., Argalia, M., & Laghi, F. (2012). The desire to marry and attitudes toward same-sex family legalization in a sample of Italian lesbians and gay men. *Journal of Family Issues* 2014, *35*(2), 181–200.

Bauer, D. (2006). Homosexuality within the context of social institutionalisation and moral sense. *Ethical Perspectives, 13*(1), 63–91.

Calvo, K. (2010). Movimientos Sociales y Reconocimiento de Derechos Civiles: La legalización del Matrimonio entre Personas del Mismo Sexo en España. *Revista de Estudios Políticos, 147*, 103–133.

Descoutures, V. (2010). *Les mères lesbiennes*. Paris: PUF.

Digoix, M. (2006). They should go all the way!. To register or not: Law and behaviour in France and Iceland: The symbolic and the social. In M. Digoix, E. Fassin, P. Festy, S. Kolbeinn, & K. Waaldijk (Eds.), *Les couples homosexuels et l'enregistrement de leur union* (pp. 95–132). Paris: Ined.

Digoix, M. (2013a). *Coming out et ordre normatif en Islande* (Documents de travail 198). Paris: Ined.

Digoix, M. (2013b). Mariage pour tous: Expériences scandinaves. *P@ges Europe, 28 janvier 2013, La Documentation française* © DILA.

Digoix, M., Franchi, M., Pichardo Galán, J. I., Selmi, G., de Stéfano Barbero, M., Thibeaud, M., & Vela, J. A. M. (2016). *Sexual orientation, family and kinship in France, Iceland, Italy and Spain* (Working papers series 54). Stockholm: FamiliesAndSocieties.

Fassin, E. (2005). *L'inversion de la question homosexuelle*. Paris: Ed. Amsterdam.

Fine, A. (2012). La question de l'adoption par les couples homosexuels. *Cahiers Français, 371*, 59–66.

Harding, R. (2011). *Regulating sexuality: Legal consciousness in lesbian and gay lives*. Oxford: Routledge.

Paternotte, D. (2011). *Revendiquer le « mariage gay ». Belgique, France, Espagne*. Bruxelles: Editions de l'Université de Bruxelles.

Pichardo Galan, J. I. (2009). *Entender la diversidad familiar*. Barcelona: Edicions bellaterra.

Pichardo Galan, J. I. (2011). We are family (or not). Social and legal recognition of same-sex relationships and lesbian and gay families in Spain. *Sexualities, 14*(5), 503–622.

Pollak, M. (1985). Male homosexuality- or happiness in the ghetto? In P. Aries & A. Bejin (Eds.), *Western sexuality. Practice and precept in past and present times* (pp. 40–60). Oxford: Basil Blackwell.

Rydström, J. (2011). *Odd couples: A history of gay marriage in Scandinavia*. Amsterdam: Aksant/Amsterdam University Press.

Schiltz, M.-A. (1998). Un ordinaire insolite: le couple homosexuel. *Actes de la recherche en sciences sociales, 125, "Homosexualités", 125*, 30–43.

Schiltz, M.-A. (2005). Faire et défaire des groupes: l'information chiffrée sur les « populations difficiles à atteindre ». *Bulletin de méthodologie sociologique, 86*, 30–54.

SOU 2001: 10. (2001). *Barn i homosexuella familjer, Betänkande från Kommittén om barn i homosexuella familjer*. Stockholm: Justitiedepartementet.

Traustadóttir, R., & Kristinsson, Þ. (2003). *Samkynhneigðir og fjölskyldulíf*. Reykjavík: Háskólaútgáfan.

Waaldijk, K. (2005). *More or less together: Levels of legal consequences of marriage, cohabitation and registered partnership for different-sex and same-sex partners. A comparative study of nine European countries* (in cooperation with John Asland et al.). (Documents de travail 125) Paris: Ined.

Waaldijk, K. (2013). The right to relate: On the importance of « orientation » in comparative sexual orientation law. *Duke Journal of Comparative & International Law, 24*, 161–199, http://scholarship.law.duke.edu/djcil/vol24/iss1/4/

Waaldijk, K., & Bonini-Baraldi, M. (2006). *Sexual orientation discrimination in the European Union: National laws and the employment equality directive*. The Hague: Asser Press.

Waaldijk, K., Digoix, M., Nikolina, N., Zago, G., Damonzé, D., Caporali, A., & Nait Abdellah, K. (Eds.) (2017). *The LawsAndFamilies database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED. http://www.LawsAndFamilies.eu