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Published in:
Legitimacy: The Treasure of Politics

Published: 01/01/2011

Document Version
Accepted author manuscript

[Link to publication](#)

Please cite the original version:

Kanckos, L., & Björkgren, M. (2011). Legitimacy Challenges in Gender Politics: Challenges to Political Legitimacy in Parliamentary Debates concerning LGTB Rights, Assisted Reproduction and Domestic Violence. In T. Kurten, & L. Hertzberg (Eds.), *Legitimacy: The Treasure of Politics* (pp. 185–207). Peter Lang.

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LEGITIMACY CHALLENGES IN GENDER POLITICS – CHALLENGES TO POLITICAL LEGITIMACY IN PARLIAMENTARY DEBATES CONCERNING LGBT RIGHTS, ASSISTED REPRODUCTION AND DOMESTIC VIOLENCE

In this article we examine the concept of political legitimacy in relation to issues concerning gender and sexuality. We focus on how the legitimacy of political authorities or particular laws is challenged in political discourse concerning sexuality, gender, violence and reproduction. For reasons of practicality and the purposes of this article the concept *gender politics* is used as an umbrella concept to encompass these types of political issues even though the concept gender politics is wider than the cases examined here. We examine a number of cases where the legitimacy of particular laws is questioned and where, consequently, the legitimacy of standing political authorities is also questioned. The material we analyse consists of government bills and minutes from commissions and sessions in the Finnish parliament. The laws we in particular focus on relate to various issues that have been on the political agenda in Finland during the last two decades: 1) registered partnership and other issues concerning LGBT rights, 2) domestic violence and 3) assisted reproduction.¹ The examples we present are relevant for many reasons, not least as regards the facilitation of a discussion on transitions between the private and the public spheres but also to demonstrate how the rise of human rights and feminist perspectives has changed political discourse in Finland.

This article specifically seeks to answer the following question: if a law is considered essential by the public, in the sense that something crucial would be missing if this law did not exist, what form might the challenge to the legitimacy of political authorities take? In the case studies presented here the questioning of legitimacy often originates in common arguments concerning issues such as discrimination, gender neutrality, equality and the transition of private concerns to public matters.

¹ Lise Kanckos has authored those sections concerning the empirical examples of assisted reproduction and registered partnership and, to a large degree, the theoretical portions of this article while Malena Björkgren has authored the section concerning the examples of domestic violence.

What happens, though, when a group in society views a particular law as illegitimate with reference to religious, ideological or identity-based reasons? Legitimacy may be challenged in gender politics through judgements rooted in either liberal ideas on how legislation should be developed so that discrimination is prevented or conservative claims regarding, for example, how the development of LGBT rights in society ‘threatens’ the basic values of society. At the same time that differences between the opinions of individual policy-makers and politicians may exist, a discrepancy between what policy-makers and politicians value and what the public or groups in society value may also exist. In the cases presented here legitimacy judgements mainly concern political authorities or specific laws rather than the state or entire political system.

1. The legitimacy concept

Political scientists and philosophers hold different views on how the concept of legitimacy should be defined and how it should be discussed in relation to the rule of law or particular laws. In this article we do not primarily consider legitimacy to be a moral evaluation of particular laws, which is a common interpretation of the concept, but rather view legitimacy judgements as an expression of the commitment of individuals to political authorities. It is also important to note that accepting a political system or a particular law as legitimate can be an expression of what an individual values in life. In this sense the acceptance of the individual is not free from moral dimensions. We consider legitimacy to possess a self-evident character until something happens that calls attention to the question of the legitimacy of political bodies. Interpreted so the concept is similar to the concept of trust.² In this article we primarily study legitimacy judgements that are made internally by those who live under the purview of a political system. In other words, we focus on legitimacy judgements that are expressions of the allegiance of citizens to political authorities, not an external justification of the authority of the state.³

We endeavour to include both the content of debates and performative or communicative aspects of the production of laws and their connection to legitimacy in this article, and as such the production of law is focused on in the form of government bills and minutes of commissions and parliamentary debates. For Jürgen Habermas the connection between legitimacy and communication is essential. According to Habermas, the production of law is a matter of

² See the article by Tage Kurtén and Ville Päivänsalo in this volume.

³ See the article by Lars Hertzberg in this volume.

communication and communication produces legitimacy.⁴ We use Habermas' discussion on legitimation crisis as a starting point for this article. Habermas combines theories concerning legitimacy with crisis theory when he talks about legitimation crisis and perceives legitimation crisis to be a failure of institutions in society to legitimate their position and maintain a requisite level of mass loyalty, thus leading to a general crisis in society.⁵ Habermas explains that one can speak of crisis 'only when members of a society experience structural alterations as critical for continued existence and feel their social identity threatened.'⁶ He also uses Durkheim's concept anomie to describe a crisis condition. Anomie refers to a state of normlessness and a social condition in which individuals have been disintegrated from society.⁷ Habermas maintains that a legitimation crisis may, for example, appear as a consequence of an economic crisis if the crisis management of a government fails to repair the damage.⁸ Nevertheless, Habermas does not discuss legitimation exclusively as an administrative activity by political authorities. He also uses the concept legitimacy to describe a combination of validity claims formulated in discourse between policy-makers and the public.

Habermas argues that in order to be considered legitimate a law must pass the discursive tests of different so-named validity claims. Habermas distinguishes between four validity claims: truth, related here to the likely consequences of different legal options; rightness, related here to the moral rightness or justness of different legal options; truthfulness, concerning the authenticity of different options in relation to shared values and history; and comprehensibility, pragmatic claims about which option would be feasible or more efficient.⁹ Habermas maintains that if an ideal speech situation is to be realised all four validity claims should be tested. In this article we do not present a detailed discussion of what these validity claims would imply in practice. However, in practical situations relating to lawmaking processes, many conflicts of interest arise that cannot always be solved through rational political discourse. Many laws are the result of political compromises. Habermas' validity claims and his emphasis on communication illuminate

⁴ Guibentif 1996, 56–61; Habermas 1996, 103–104.

⁵ Barker 1990; Habermas 1989 [1973], 46–48.

⁶ Habermas 1989, 3.

⁷ Durkheim 1951 [1897].

⁸ Habermas 1989, 68–69.

⁹ Bohman & Rehg 2008; Habermas 1979. The terminology used varies somewhat in discussions on Habermas' validity claims. Cukier et al. 2004, 239. The terminology used in this article (truth, rightness, truthfulness and comprehensibility) follows *Communication and the Evolution of Society* (Habermas 1979).

what might happen when trust-based legitimacy is questioned and when attempts to regain that legitimacy are introduced.

According to Rodney Barker legitimation is a central characteristic of government, and a state of unstable legitimacy is a normal feature of transitions.¹⁰ Habermas, who has a more crisis-theoretical approach to legitimacy, maintains that the politicisation of certain issues that used to belong to a private sphere may contest the legitimacy of political authorities. These issues used to be culturally presumed but have become the object of administrative planning: educational planning, regional and city planning, planning of the health system, family planning, marriage laws and child-rearing, for example. When such issues were culturally presumed they existed in a sphere of self-legitimation but are nowadays the object of public regulation and legitimation.¹¹ Habermas' argument is summed up in the following quotation:

At every level, administrative planning produces unintended unsettling and publicizing effects. These effects weaken the justification potential of traditions that have been flushed out of their nature-like course of development. Once their unquestionable character has been destroyed, the stabilization of validity claims can succeed only through discourse. The stirring up of cultural affairs that are taken for granted thus furthers the politicization of areas of life previously assigned to the private sphere.¹²

Barker criticises Habermas for a lack of historical perspective because, according to Barker, issues such as marriage law or birth control have also in the past been politically contested. Barker's main point is that, if a line is drawn between normal times and occasions of legitimacy crisis, viewing something contemporary as being novel is problematic when discussing legitimacy.¹³ We nonetheless agree with Habermas that the process of the politicisation of some previously 'private matters' is a transition that may challenge the legitimacy of government authorities, even though we believe that the descriptions of these transitions should be nuanced and described in a longer historical perspective. These transitions are often better described as an oscillation rather than a shift, and different social groups or political parties usually hold conflicting views on the private or public character of these matters. Still, our approach to

¹⁰ Barker 1990, 40–41.

¹¹ Habermas 1989, 71–73.

¹² Habermas 1989, 72.

¹³ Barker 1990, 40–41.

legitimacy differs from Habermas' on some essential points. First, unlike Habermas we do not intend to develop the theoretical or moral grounds for legitimacy¹⁴ but instead investigate selected empirical examples of how the legitimacy of authorities is challenged in gender politics. Second, we prefer not to use the term 'crisis' but instead employ the terms 'challenge' or 'questioning'. We primarily examine the debates related to laws that rarely cause a general societal crisis. The legitimacy claims expressed by Members of Parliament (MPs) during such debates may, when seen from a historical perspective, remain quite marginal. Calling such examples instances of a legitimacy crisis might therefore be slightly excessive.¹⁵

It follows our understanding of legitimacy judgements as expressions of the commitment of individuals to political authorities that we have chosen to study claims in Finnish society relating to the legitimacy or illegitimacy of particular laws and, consequently, political authorities. One separate claim made by a single individual rarely entails a real challenge to the legitimacy of political bodies. Thus the arguments we distinguish between and the quotations we provide are considered examples that illustrate discourses rather than separate claims made by individual MPs.

2. When legitimacy is challenged

The legitimacy of political authorities may be challenged or questioned when a particular law or proposed law results in strong disagreement in a society, during which conflicting views appear to be impossible to overcome. Debate is nonetheless an essential part of a democratic and legitimate system. This is also emphasised by Habermas, who describes the discursive process of lawmaking as a democratic principle for legitimacy¹⁶. Our use of the term 'questioning' does not necessarily imply that the concept legitimacy occurs in the debate itself. Rather, legitimacy is often questioned indirectly, through the use of moral arguments for example, and in a subtler manner. We therefore seek to understand what form this questioning takes in political discourse and, more specifically, in political debates on sexuality, gender, violence and reproduction.

¹⁴ Barker 1990, 88–89.

¹⁵ However, on one occasion Habermas mentions that 'legitimation needs *do not have to* culminate in a crisis.' Habermas 1989, 74; italics in original.

¹⁶ Habermas 1996, 110.

Legitimacy judgements may transpire either explicitly or implicitly in a debate on a proposed law and may also have various objects.¹⁷ The object of the legitimacy judgement may be the government or other politicians but can also be comprised of other institutions that represent the authority of the state, for example the police. The object can moreover be somewhat diffuse.

In a plural society the legitimacy of political authorities is sometimes challenged when particular laws are perceived to lack the support or confidence of the citizens in that society. Legitimacy is especially sensitive to political issues that are in some manner connected to individuals' worldviews and issues that elicit moral reactions. The public can at times perceive that policy-makers and politicians place value on the wrong issues. Bureaucracy and instrumental approaches to issues that people encounter in their daily lives may alienate the public from political authorities whose legitimacy can thereby be challenged. The best solutions in a policy-making process are often created by the individuals closest either professionally or personally to these issues and not through external commentators.¹⁸ This is especially true regarding issues where the line between the public and private is blurred.

In the cases discussed here, a renewed desire to regulate issues politically is seen. The rise of human rights and feminist perspectives have increased awareness that groups of people or specific issues have been excluded from or neglected in legislation. LGTB rights, violence against women and assisted reproduction comprise such political issues. The regulation process concerning these issues has also led to discussions in the media, the church and society in general.

3. LGTB rights and discrimination

A legitimacy problem is clearly evident if we look at the development of LGTB rights as a process in Finnish society. In 2001 Finland became the last Nordic country to pass a law on registered partnerships. In comparison to the other Nordic countries Finland was also late in instituting a law on assisted reproduction, with a central and contested issue in this particular discussion being whether lesbian couples and single women should be allowed access to assisted reproduction.

¹⁷ See the article by Lars Hertzberg in this volume.

¹⁸ Holden 2006, 29–30, 56.

In society and public discourse in general, the view on homosexuality has gradually changed during the 20th century. Discourse changed from a description of homosexuality as a moral question, disease or crime to include the perspective of basic or human rights.¹⁹ LGTB rights have during the last few decades been acknowledged in international law, and laws discriminating against homosexuals have in some countries been altered. A pattern in the order of the development of LGTB rights is discernable in various countries, beginning with decriminalisation and continuing on to registered partnership, gender-neutral marriage and adoption rights. Each step seems to induce the following step.²⁰ One change, in other words, tends to lead to the perception that other laws are discriminatory, thereby weakening the legitimacy of such laws.

In Finland homosexual relations were first decriminalised in 1971. That same year, however, the public encouragement of homosexual acts became a criminal offence. A decade later in 1981 homosexuality was demedicalised and removed from the Finnish disease list. In 1995 the Criminal Code was renewed so that the discrimination of homosexuals became a criminal offence. It was first in 1999, through the renewal of chapter 20 of the Finnish Criminal Code, which legislates sex crimes, that the encouragement of homosexual acts was removed as a criminal offence. Yet the last ruling on this chapter and relevant specific paragraph occurred in the early 1990s when members of the Finnish LGTB rights organisation SETA (*Seksuaalinen Tasavertaisuus*, 'Sexual Equality') chose to ridicule this paragraph by encouraging individuals on a public square to engage in homosexual acts. SETA then duly reported these actions to the police.²¹ This event was clearly meant to awaken public discussion regarding the (il)legitimacy of the paragraph. It also illustrates how the gradual development of LGTB rights could not continue by itself; changing the paragraph first required both grass root level political actions and then political will in the Finnish Parliament, with the latter obviously not being found before 1999.

Gradual improvements in LGTB rights continued with the renewal of Finnish constitutional law in 2000, including the prohibition of discrimination in 6 §, interpreted in the bill on registered partnership (HE 200/2000) as relevant to sexual orientation and accordingly used as an argument for passing the Act on Registered Partnership, also known as the Partnership act. However, as we will see later in this article, some conservative MPs perceived the

¹⁹ Hiltunen 1996, 1.

²⁰ Waaldijk 2001, 439–440.

²¹ Hiltunen 1999, 45.

Partnership act, which took effect in 2002, to be illegitimate. The Act on Assisted Reproduction followed in 2007 and has further improved the legal situation for those seeking reproductive help, especially lesbian couples. As a result of the Partnership act, official discussions on the blessing of same-sex unions were initiated in the Evangelical Lutheran Church of Finland. The next step in the development of LGTB rights in Finland was a bill that allowed same-sex couples living in registered partnerships to adopt each other's biological children (HE 198/2008), ratified by parliament on 15 May 2009. In Finland gay and lesbian individuals may petition to adopt a non-biological child but same-sex couples cannot jointly apply for non-biological adoption. As such the 2009 legislative change concerns only the rights of those living in a registered partnership to adopt the offspring of their registered partner. All of these examples can be viewed as the gradual development of change, where one change gave rise to the following change.

The development of LGTB rights in society exemplifies a process where matters formerly considered private gradually became public through a process of politicisation. When homosexuality was criminalised and medicalised, the hegemonic view on homosexuality in society was based on a perspective of discipline and punishment. More precisely, the criminalisation and medicalisation of homosexuality were processes through which homosexual actions were made a public concern; at the time it was felt that such 'deviant' actions had to be disciplined. Yet in more recent legal changes sexuality has been emphasised as being a private matter while at the same time same-sex family relationships have increasingly become a public concern. As Habermas points out, such transitions between the private and public spheres may challenge the legitimacy of political authorities²², and it is essential to discuss these transitions in a longer historical perspective. The social problem that is men's violence against women is another case where a distinction has occurred between private and public matters.

4. Demands for change - private becomes public

The development of laws concerning violence against women and other forms of domestic violence has been slow in Finland compared to many other Western European countries. It was not until 1994 in Finland that spousal or marital rape was criminalised.²³ Since 1995 assault in intimate relationships has been publicly prosecuted while laws pertaining to restraining orders

²² Habermas 1989, 71–73.

²³ A similar law was legislated in Sweden in 1962 and in France in 1980, for example.

came into effect in 1999. Researchers have attempted to discern the reasons underlying such slow development, both regarding legislation and other public measures relevant to the issue. Suvi Ronkainen maintains that there is a lack of responsibility in the actions of the state in regards to domestic violence in that a great deal of the service offered in Finland (for example shelters for abused women) is organised outside the public sector and must therefore often rely on insecure sources of funding. Ronkainen argues that this is not an issue of a lack of knowledge about the problem; surveys on domestic violence have been conducted in Finland since the 1970s.²⁴ Instead Ronkainen attempts to explain the distant interest of the government in dealing with and recognising victims of domestic violence as being the actions (or non-actions) taken by a traumatised nation. During the decades following the Second World War, Finnish society was characterised by a post war ‘culture of silence’ and the nearly insurmountable struggle to rebuild the nation. During this period neither the time nor the interest to acknowledge problems such as domestic violence existed.²⁵

Even in the 1990s, when the issue finally came to the attention of the Finnish government, the attitude towards the matter was ambivalent despite the many changes taking place in legislation. The prevalent attitude of the time is best characterised as a lack of commitment to the problem of domestic violence and a lack of engagement for victims of domestic violence, but exceptions do exist. The Council for Gender Equality, Finland’s Ministry of Social Affairs and Health, undertook a massive project when it sought to criminalise spousal rape.²⁶ To a great extent UN treaties and declarations from the Council of Europe were used to motivate the demands for legislative change.²⁷ Through reference to the international treaties that Finland had signed, the government attempted to stress the seriousness of such crimes and the importance of realising the agreements that the Finnish state had entered into. As several MPs claimed during the parliamentary debates on the issue, Finland’s international reputation was at stake.²⁸

‘Reputation discourse’ can be interpreted as a manner whereby pressure to change a law can be exerted. In this respect signed treaties play an important and instrumental role. Treaties help indicate the types of arguments that can be effective when lobbying. Nevertheless, when the reputation of a state and treaties are wielded as tools in political discourse a risk exists that the

²⁴ Ronkainen 2008, 391–392.

²⁵ Ronkainen 2008, 393–394.

²⁶ Pehkonen 2003, 61–65; 89–90.

²⁷ LA 25/1991, LA 28/1991, HE 365/1992.

²⁸ PTK 16/1994: Hassi (The Greens); PTK 4/1993: Ojala (Left Alliance).

focus of the discourse will be lost, resulting in a situation where the seriousness of the situation being discussed and the central meaning of the law being formulated are obscured. If the main focus merely lies on reputation and signed treaties, the real problem is not highlighted: that rape in marriage, for example, should and must be condemned. However, as Pamela Slotte demonstrates, invoking human rights discourse (which treaties can be said to represent) can highlight the occurrence or potential occurrence of something morally objectionable.²⁹ Still, even when supporting the same bill, MPs base their decisions on different grounds.

The situation becomes even more complex when we look at a statement made by a Finnish MP. The MP recounts how embarrassed she and other women have felt when, representing Finland at international conferences, attention has been called to the insufficiency of the country's laws on rape.³⁰ This recollection reveals the connection of these delegates to the nation and suggests that there could be more to reputation discourse than previously discussed in this article: this particular state and its legislation matter to these citizens. Olli Lagerspetz maintains that feelings of shame indicate a sense of allegiance and that loyalty towards a nation can be shown through the condemnation of a state or laws that a citizen perceives as being illegitimate.³¹ Reputation discourse can consequently also be interpreted as an indication of a feeling of shame, which in turn demonstrates a connectedness to the state and the legitimacy that the state enjoys.

Human rights discourse opens up new perspectives in relation to legitimacy. In this article we study legitimacy judgements in the form of statements made by Finnish citizens in relation to the political authorities of the Finnish state. In human rights discourse, global and international demands play an important role. Finland has entered into treaties and, as legislative bills and parliamentary discussions demonstrate, many MPs wish to realise these agreements: not only because it is important to 'follow the rule-book' but also because the agreements reflect their own views, for instance that violence against women should be prevented. It would, however, be an over-simplification to describe the development of such laws as a process whereby a clear 'no' to violence against women is always expressed and continuously supported by all members of the government. Domestic violence is still partially considered to be a private matter, and legislation in Finland has also reflected this sentiment. Between 1995 and 2004, for example, plaintiffs

²⁹ Slotte 2005, 114.

³⁰ PTK 16/1994: Hassi (The Greens).

³¹ Lagerspetz 1998, 128.

could request that a public prosecutor not prosecute an assault. The paragraph that apportioned plaintiffs this right was eventually removed as women experiencing violence in a partnership requested non-prosecution in almost all cases.³² However, the paragraph allowing victims of sexual violence (rape) to request non-prosecution still exists as it is considered best to allow rape victims the right to avoid court proceedings given that these can be very trying for victims of sexual violence.³³ Yet even among the MPs themselves this argument in regards to legitimacy shows a lack of confidence in court procedure as an adequate and appropriate manner with which to express a governmental and legislatively based ‘no’ in relation to violence against women. Instead of focusing on victim support or how court procedure could be improved, the solution up until 2004 was (and still is in rape cases) to renounce some of the responsibility of the state for prosecution. This contributes to retaining the problem of violence in the private sphere, in other words as a private concern.³⁴ According to Johanna Niemi-Kiesiläinen, criminal policy in Finland has scarcely played any role in countering domestic violence, which makes the situation in Finland different from the other Nordic countries.³⁵ Furthermore, in Finland, mediation is still possible in cases of domestic violence, albeit with some special regulations.³⁶

The examples discussed in this section demonstrate that the development of laws pertaining to violence against women in Finnish society has been an ambivalent process. Even though violence against women has to a greater extent become a public matter, the transition of the issue from the private to the public sphere is in reality an oscillation that reveals ambivalence. This ambivalence in turn affects the commitment of individuals to the state and, consequently, the legitimacy of government and political authorities. We understand that the demands for new laws indicate a challenge to the legitimacy of the state, but how wholly does Finnish society support this challenge and, moreover, what support is there for tackling violence against women among politicians or the public? In Finland only 12 percent of the women experiencing violence contact the police.³⁷ The reasons why this may be are numerous, but the low figure nevertheless clearly indicates that victims of domestic violence do not yet completely trust the police and

³² Valtakunnansyyttäjänvirasto 2000; HE 144/2003. As of 2011 the public prosecutor may also bring charges for petty assault if the victim is a partner or former partner of the perpetrator. HE 78/2010.

³³ LaVM 3/1998.

³⁴ For a discussion of responsibility and the right to institute criminal proceedings, see Niemi-Kiesiläinen 2004, 281–282.

³⁵ Niemi-Kiesiläinen 2001, 297.

³⁶ See the article by Heidi Jokinen in this volume.

³⁷ Kääriäinen 2006, 112.

thereby the state. This therefore constitutes a challenge for a state that wishes to take responsibility for the welfare of its citizens.

5. Gender neutrality

Political discussions on domestic violence in Finland have been characterised by gender neutrality—a fact that is seen in the widely used concept ‘family violence’. Such a gender neutral approach is apparent for example in the late 1990s when restraining orders were discussed in the political realm and any reference to gender became an obstacle in parliamentary debate. The restraining order law (1999) in Finland was originally primarily intended to prevent violence in close relationships (HE 41/1998), yet it was first with the addition of a further paragraph in 2005 that individuals were given the right to obtain a restraining order against another individual living in the same household (HE 144/2003). In plenary sessions many MPs expressed their satisfaction with the law: finally an instrument existed to counteract violence against women. However, for each individual that emphasised the gender specific usefulness of the law and the gender specific character of violence against women, an equal number of individuals opposed and even questioned the inclusion of the aspect of gender:

[To terrorize another person] has nothing to do with gender. Anyone can do it.³⁸

Violence and violent behaviour are not incarnate in men or women.³⁹

It was not sufficient to merely present the restraining order law as an instrument with which to support abused women, it was also imperative to emphasise that the law did not solely apply to women. In a study of how male violence against women has been addressed in politics in Sweden, Maria Wendt Höjer finds gender neutrality to be an important legitimacy-supporting element:

In order to implement measures against violence, the problem had to be defined as general, as “universally human”; measures to protect only women lack legitimacy in the liberal schema.⁴⁰

³⁸ PTK 61/1998: Partanen (Social Democratic Party). Translation authors’ own.

³⁹ PTK 61/1998: Puisto (Social Democratic Party). Translation authors’ own.

⁴⁰ Wendt Höjer 2002, 212.

If gender neutrality characterised Swedish political discourse on domestic violence during the 1970s and 1980s in Finland a decade later it still played a strong role in discourse. In Finnish society, gender in relation to domestic violence became an issue of interest fairly late. Yet surveys show that in close relationships it is women who are the principal objects of violence and that it is men who are the main perpetrators.⁴¹ This cannot have lain outside of MPs' field of knowledge; rather this demonstrates their disregard for the facts of the situation and also how difficult it is to address violence in connection to gender and power.⁴²

New laws have emerged through a feminist and gender sensitive analysis of existing legislation, or as Wendt Höjer writes, 'Bit by bit the naturalness and banality of violence is eroded, and the question finds a place on the political agenda.'⁴³ Yet there concurrently seems to exist limitations to the capacity for a feminist perspective to gain consideration. Instead, arguments that embrace a gender neutral perspective are preferred. However, as many feminist scholars have observed, the abstract individual that a law presupposes is not (gender) neutral. Instead this abstract individual, that is to say the norm as presumed in legislation, closely mirrors a free, autonomous, heterosexual middle class male.⁴⁴ A strict gender neutral perspective does not discern a gendered subject but is instead sceptical to measures and laws that are supported by arguments couched in gender specific terms. Arguments based on gender specific terms are felt to threaten the objectivity and fairness required by the abstract individual and the legal system as a whole. So while arguments exist that political rhetoric should be gender neutral, Suvi Ronkainen reminds us that everyday social and cultural life is very much gendered, a fact she maintains is evident in working life, education, hobbies and in relation to parenthood.⁴⁵

Gender neutral language relates to the issue of legitimacy by highlighting the following questions: 1) Whose problems are considered important enough for a society to address? 2) Are policy-makers willing to take action in regard to issues that might 'only' concern half of society, understanding here that 'concern' means 'suffer from' and that it is women who constitute the half of the population being affected? Legislative documents in Finland reveal an attitude where violence against women in and of itself is not considered to sufficiently constitute an issue that

⁴¹ Statistikcentralen 2005.

⁴² Marianne Notko understands this gender neutral stance as an example of an equality discourse that fears imposing guilt on men. Notko 2000, 21–22.

⁴³ Wendt Höjer 2002, 214.

⁴⁴ See Davies 1997.

⁴⁵ Ronkainen 2008, 396.

should be addressed but that instead ‘broader’ argumentation is needed if the issue is to be considered important. Consequently, a danger exists that victims of violence (again, shown to be predominately female) will lose their trust in political bodies and the work of such bodies if meanings of gender and power are not taken seriously in work against violence.

6. Equality arguments

Reproductive technology can still be considered a new social phenomenon and before a law on assisted reproduction came into force on 1 September 2007 Finland lacked a uniform law on the issue. A need existed to regulate both the techniques used at fertility clinics and the availability of treatments. Both bioethical and family norms were first discussed and then created through laws. In Finland the discussion concerning assisted reproduction is, in a broad sense, an example of conflicting views on how or if social norms should be regulated through law. Some individuals maintain that assisted reproduction legislation should be as minimal as possible so that the autonomous procreative choices of citizens are protected and the legitimization of any specific moral or religious view does not occur.⁴⁶ It is maintained that such a perspective respects the plurality of family forms in society, including the families of lesbian couples and single parents. When preparing the law on assisted reproduction, the Finnish government obviously preferred this point of view, arguing that all women should have equal access to fertility treatments. However, it was emphasised that women’s equal right to assisted reproduction was contingent on the condition that any children resulting from such treatment must be guaranteed a secure childhood. In other words, the principle of the best interests of the child was emphasised.⁴⁷

In the political discourse a strong emphasis was placed on equality in the sense of equal rights for women regardless of marital status or sexual orientation. The Finnish government bills on assisted reproduction (HE 76/2002 and HE 3/2006) include a rhetorical argument of equality between women, including the right for lesbian couples and single women to seek treatment. Previously, lesbian couples and single women could seek reproductive treatments at private infertility clinics.⁴⁸ Earlier government proposals (1988, 1990 and 1997⁴⁹) had denied lesbian couples and single women the possibility of receiving treatments in that it was felt that fertility

⁴⁶ Neri 1996, 154.

⁴⁷ HE 3/2006.

⁴⁸ Malin & Burrell 2004, 74.

⁴⁹ Oikeusministeriön työryhmä 1988; Oikeusministeriön työryhmä 1990; Oikeusministeriön työryhmä 1997.

care should be allocated on purely on medical grounds. The 1997 proposal gave rise to a public discussion of the issue, that is to say whether lesbian couples and single women should have the right to assisted reproduction. In 1998 another proposal⁵⁰ was put forth which included lesbian and single women in the category of women allowed to receive treatments with the stipulation that treatments could be provided only if the sperm donor had provided consent.⁵¹

Tangential to this discussion is the argument that each child has the right to a father, a view voiced frequently in Finland during parliamentary discussion of the two most recent government bills on assisted reproduction, HE 76/2002 and HE 3/2006. Upon revision of the first bill in 2002, the standing committee on laws suggested that access to fertility treatments should only be provided to heterosexual couples⁵². The committee explained its standpoint by saying that a child must always have the right to two parents, a mother and a father. The committee further supported its argument by stating that the other Nordic countries had not yet provided lesbian couples and single women access to assisted reproduction. After the committee's revision of the law proposal, the government decided to withdraw the bill. In February 2006 the government again presented a bill on assisted reproduction (HE 3/2006) that included the right to assisted reproduction for lesbian couples and single women. The standing committee on laws once more reached the same conclusion as in 2002, but this time the government did not withdraw the bill and the discourse continued in parliament. In 2006, during plenary voting, the government bill on assisted reproduction was passed despite the reservations of the standing committee on laws.

These examples demonstrate how equality arguments challenged the legitimacy of the government. In Finland it is unusual for a government to withdraw a bill following initial debate and the committee stage. The government appears to have been apprehensive that it would face a legitimacy problem unless the law on assisted reproduction provided all women an equal right to assisted reproduction. Such an interpretation is consistent with the manner in which legislation pertaining to LGBT rights in Finland has gradually been altered once earlier laws are perceived by citizens and/or policy-makers as being discriminatory.

⁵⁰ Oikeusministeriön työryhmä 1998.

⁵¹ Malin & Burrell 2004.

⁵² LaVM 29/2002.

7. Conservative criticism as legitimacy claims

For those issues in political discourse that are considered to be moral issues, the various Finnish political parties do not demand party discipline from MPs. This allows MPs to individually decide how they wish to respond to political issues. Such issues often possess a symbolic character or are easily relatable to on a personal level. LGTB rights, for example, represents such an issue as does assisted reproduction. Such political issues in Finnish political discourse appear to be susceptible to conservative criticism, criticism that often is religiously legitimated.

Individual citizens may view a particular law as being illegitimate based on religious, ideological or identity-based reasons and legislation on the issue of LGBT rights is a good example of this. During preparation of the law on registered partnership in Finland, many MPs and citizens were of the opinion that the existing law was discriminatory against homosexuals. However, other conservative MPs and citizens were of the opinion that both general societal changes concerning attitudes towards homosexuality and changes in the legal situation of homosexuals were problematic. In the Finnish parliamentary debate on registered partnership, several opponents of the bill expressed dissatisfaction with the Partnership act and maintained that the purpose of the act was ambiguous. Conservative MPs described the bill as a seemingly superficial effort to improve the legal status of homosexuals that in actuality concealed a different, latent symbolic significance.⁵³ The conservative MPs consequently interpreted the legislation as an attempt to ‘normalise homosexuality’.

Conservative critics argued that the Partnership act sought to deem same-sex relationships normative. During parliamentary debate many Partnership act opponents stated that instead of supporting registered partnership they would like to provide homosexuals certain rights so that the inequities existing in same-sex relationships and other shared household models might be eliminated. The critics often referred to the Evangelical Lutheran Church Council's statement on 5 October 1999, which emphasised the importance of marriage as the basic relationship model while maintaining that same-sex relationships should be considered comparable to other shared household models. In this statement the Church Council furthermore suggested that, rather than creating a new social institution (registered partnership), the legal conditions for shared households should instead be improved: for example for siblings sharing a household. During parliamentary debate, critics of the act suggested a change in the existing inheritance laws as an

⁵³ Kanckos 2003.

alternative manner whereby to address inequalities in relation to same-sex relationships.⁵⁴ A particularly illustrating metaphor used during this discussion was when an MP stated that the Partnership act was a Trojan horse: the implication was that the elimination of inequalities for homosexuals concealed the so-named ‘normalisation’ of homosexuality in society.

The gay law is a Trojan horse, by which Finland’s traditional family and community values are being attacked. This battering ram must now be destroyed. If through the gay law this Trojan horse is now let into camp, there will be a continuation of this procedure every year.⁵⁵

The MP here believes that, if the Partnership act is passed, other laws will be enacted in the same spirit (with the aim of improving LGBT rights in Finnish society). The MP mentions later in this same discourse that he believes that the real aim of the Partnership act is to equate registered partnership with marriage, and that, subsequently, the following step will be the right for same-sex couples to adopt children. This MP perceives these changes as an attack on traditional Christian values. This quote thus exemplifies a legitimacy claim: a particular law is presented as a challenge to the legitimacy of political authorities. The conservative MPs not only expressed their dissatisfaction with the Partnership act through their criticism, they also expressed their dissatisfaction with the state or legal system as a whole; for them the state lost its legitimacy and their confidence in those individuals holding power diminished. For conservative MPs, the perceived ‘normalisation’ of homosexuality in society through changes in attitudes and laws threatened values that conservative MPs and their constituents consider sacred. The Trojan horse metaphor can also be described as an example of one of Habermas’ four validity claims; a rightness claim, related to the moral rightness or justness of legal options. We remember that Habermas maintains that if an ideal speech situation is to be realised, all four validity claims (truth, rightness, truthfulness and comprehensibility) should be tested. Yet unlike Habermas we do not argue for the necessity of consensus through rational political discourse. We do, nevertheless, believe that an isolated validity claim about moral rightness is usually not sufficient to constitute a judgement on the illegitimacy of political authorities.⁵⁶ Another relevant aspect is *how* arguments are represented. Legitimacy judgements can only be taken seriously if opponents

⁵⁴ PTK 101/2001: This was, for example, suggested by Kari Kärkkäinen (Christian Democrats).

⁵⁵ PTK 96/2001: Vistbacka (True Finns). Translation authors’ own.

⁵⁶ Habermas 1979; Cukier et al. 2004, 239.

to a proposed law express their reasoning in a thoughtful, open and sincere way and manage to communicate the reasons why a proposed law should not be implemented.

8. Concluding remarks

In regards to gender politics, the human rights and feminist perspectives have to a large extent influenced the process whereby laws are re-evaluated. This article has sought to discuss those laws that certain groups in society have considered indispensable: for these groups if these laws did not exist something crucial would be missing from society. The contesting of rights in gender politics has largely meant the contesting of universalism, or as Kate Nash expresses it, ‘challenging the exclusion of social groups who would not conform to the norm of white, heterosexual, male head of household.’⁵⁷ Many social movements have sought to challenge universalism during the last few decades and the women’s movement and the LGBT rights movement have been the most prominent of these groups.⁵⁸ The application of human rights have also in many cases resulted in the re-evaluation of laws in regards to gender politics and, as such, a challenge to the legitimacy of laws that have been considered discriminatory. While Finnish MPs have customarily expressed their own human rights arguments in Finnish parliamentary debates on LGBT rights, domestic violence and assisted reproduction, these legitimacy claims are also relevant in an international context. By referring to the international treaties that Finland has entered into, Finnish MPs have called attention to the seriousness of crimes such as rape and the discriminatory element of existing laws while emphasising the importance of living up to human rights agreements. Yet the question remains: are political authorities in reality challenged from internal sources (citizens for example) or are they in some sense challenged externally? As seen here, the difference between internal and external legitimacy claims is not that distinct. In this article we have demonstrated that human rights discourse contributes a further dimension to the concept of political legitimacy. At the same time, however, we must still question the meanings of and reasons for the use of human rights arguments. Are human rights arguments used instrumentally, rhetorically or do they instead express a moral stance whereby a specific issue can be highlighted?

⁵⁷ Nash 2000, 157.

⁵⁸ Nash 2000, 156–157, 165.

Through our discussion of LGBT rights, domestic violence and assisted reproduction we have distinguished between different claims regarding the political legitimacy or illegitimacy of political authorities. The arguments presented here concerning discrimination, gender neutrality, equality and the distinction between private and public issues overlap extensively. Legitimacy claims related to discriminatory laws and the need to develop laws on LGBT rights, domestic violence and assisted reproduction may also be described as claims that indicate that these issues should be moved from the private to the public sphere. Claims pertaining to equality and gender neutrality are often connected to the issue of discrimination. Still, equality and gender neutrality discourse embodies two contradictory views on how gender politics should be developed, the so-called ‘sameness-difference’ dilemma. Should men and women have identical rights or should rights be gender-specific?⁵⁹ Gender neutrality also reveals its shortcomings in relation to gendered violence, seen in this article in the example of gender neutral discourse as related to domestic violence. How this will affect the legitimacy of the laws on and actions taken against violence against women still remains unknown, yet it is worth remembering the low number of women in Finland seeking help for such problems from public authorities.

Throughout history the political issues discussed in this article have many times oscillated between the private and public spheres. This oscillation can have an unsettling effect when traditions and social norms no longer are self-legitimizing.⁶⁰ In a plural society different opinions tend to exist on whether laws concerning gender, sexuality, domestic violence and reproduction should be as minimal as possible or whether such legislation should be developed further so that the rights of the individuals and groups affected by this legislation are protected. It is obvious that certain laws affect some individuals more than others and, for those individuals, whether a law exists or not makes an immense difference. Extended rights for homosexuals, for example, do not affect opponents in the same way as those being given the extended rights. The dominating view in Finnish politics would appear to be that legislation should not legitimate a specific moral value or a religious community’s values, particularly if the implementation of religious values results in the discrimination of minority groups, such as same-sex couples.

⁵⁹ Nash 2000, 165–167.

⁶⁰ Habermas 1989, 72.

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⁶¹ The legislative documents we reference here are only available in either the Finnish language (predominantly) or, to a certain extent, the Swedish language. As such the translations of the document titles are the authors' own. We have referenced FINLEX, the database of Finnish acts and decrees, to aid us in the translation process. (Lainsäädäntösanasto 2010).

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