

36.

Freedom and equality: Alternate goals in the gay rights movement.

Kees Waaldijk

The most obvious difference between the words "homosexual" and "homosocial" is the absence of the part "sexual" in the latter. This part of the word "homosexual" generally serves two functions: it indicates that it is a word about the gender of people and it indicates that it is a word about genital pleasure. This double function of "sexual" gives the show away of the social phenomenon that ideas about gender roles and genital pleasure are linked. More specifically: sex with people of the same sex is/was considered abnormal. This social norm is being challenged by lesbians and gays. Four ways of challenging are possible:

- This specific linkage of gender ideas with ideas about genital pleasure is disputed.
- Gender ideas in general are disputed.
- Ideas about genital pleasure in general are disputed.
- Both ideas about gender roles and ideas about genital pleasure are disputed.

All four ways leave open the choice of several pragmatic and academic approaches. In this paper I will focus on legal approaches.

According to my opinion, the organisers of this congress apparently have chosen the third way. They have replaced the word "homosexual" by the word "homosocial". The subtitle of the congress: "forms of recognition of female and male relationships" clearly indicates that the word "homosocial" is used to indicate relations between people of the same sex. The most essential difference between the words "homosexual" and "homosocial" thus is that the latter does not refer to genital pleasure. Thereby the concept of homosexuality is challenged on its genital side. Not on its gender side. This congress is supposed to stress that there are more same sex relations than sexual same sex relations. The notion of samesexness is taken for granted. This way of challenging hetero- and homosexual normality may be useful. In the lesbian/gay movement however, we have to choose between more ways, the four mentioned. We have to consider all of them. In this paper I will schematically describe the ways in which the anti-homosexuality norm is challenged in the legal section of the lesbian/gay movement.

The first two stages in the gay rights movement:
freedom and equality

In the beginning homosexuality (same-sex sex) was forbidden. This in general holds true, if we do not go back looking for "the beginning" more than 200 years. This caused the first goal of the gay rights movement to be: freedom, which was to be gained by the abolition of the legal prohibition of homosexuality. This stage of fighting for homosexual freedom can still be witnessed in countries like Ireland, Cyprus, Romania and the USSR where all (male) homosexuality still is forbidden. In some countries this stage ended recently. In Scotland till 1981, in Norway till 1972, in England till 1967 all (male) homosexuality was forbidden, and consequently the gay rights movements in those countries until these years focussed on the fight against this lack of freedom. In other countries this freedom oriented stage had ended already around the year 1800, when the Napoleonic criminal codes were introduced. This was the case in France and the Netherlands. Strictly speaking this first stage of the gay rights movement never occurred in the last mentioned countries, since freedom in the sense of abolition of the complete prohibition of homosexuality was gained before the first gay organising took place.

The general characteristic of this freedom-stage in several countries was the specific attention for homosexuality. The fight for gay rights was not explicitly linked to fights for more general gender freedom or for more genital freedom. This was different in countries like France and the Netherlands, where legal homosexual freedom was -- silently -- gained in a more general fight for fundamental freedoms.

Conclusion:

In most countries the first goal of the gay rights movement was freedom for homosexuality as such. This first stage of the gay rights movement took place on the homosexual crossroads of gender and genitals. It was (or still is) a species of the first of the four mentioned possible ways of challenging.

In many countries the general prohibition of (male) homosexuality was replaced by a partial prohibition. A distinction was made between homosexual and heterosexual legal ages of consent. This still is the case in England and Scotland, where homosexual acts with someone between 16 and 21 are forbidden, whereas heterosexual acts with someone of that age are legal. The same was the case in the Netherlands (till 1971) and France (till 1981). In these countries age limits had been introduced earlier in this century. The differences in ages of consent are/were felt as discrimination. Consequently equality became the main goal in the gay rights movement. Governments were asked to change the law, and have the same rules for homosexuality and heterosexuality. This quest was not re-

stricted to reform of criminal law only. Also the rights of gay households were a topic. To them the same facilities should be offered as were offered to married people.

Also this second stage, this equality-stage is characterised by specific attention for homosexuality. In the Netherlands it coincided with one variety of the integration-theory: it had to be stressed that homosexuality was "just the same" as heterosexuality.

Conclusion:

The second goal of the gay rights movement in many countries is/was equality for heterosexuality and homosexuality as such. This stage too is/was a species of the first of the four mentioned possible ways of challenging.

The following two stages in the gay rights movement: freedom and equality

The absence of a clearcut legal prohibition of homosexuality confuses the gay rights movement. Goals then are not longer obvious. This is one of the factors explaining the explosion of new gay/lesbian organisations in the last decades. The Netherlands may serve here as an example, because it was one of the first countries to end the second (equality) stage. The first tendency in the new phase was an increased attention for the notion of freedom. The gay movement was not longer seen as an organisation focused at the abolishing of legal prohibitions of homosexuality. The main goal was not the freedom to do certain genital acts with certain people. The goal became more general. Freedom to dress like someone of the other sex. Freedom to have sex with more than one person. Freedom to have sex with children. Freedom to have sex in public. There also was a quest for more free organising, for more free culture, for more free academic studies. In this third stage law was not so important. However, it played a role on some minor points. Some examples: bye-laws restricting the time one was allowed to use public toilets became a target of gay rights groups; in universities gays and lesbians fought for the right to follow courses in "homostudies". This widening freedom perspective also led to new solidarity with the causes of groups such as transvestites and paedophiles.

The general characteristic of this stage of freedom is the attention for a general right to behave differently. Before, the gay rights movement had restricted itself to one type of different behaviour: having sex with someone of the same sex. This specific goal was replaced by a wider goal.

Conclusion:

The third goal of the gay rights movement in the Netherlands is freedom in general. Confrontation became a key word: "Gays and lesbians are not just the same as anybody else, they are different and do so". In this stage the second and third of the possible ways of challenging the anti-homosexuality norms are employed: Ideas about gender or ideas about genitals are challenged.

In the second half of the seventies law became important again in the Dutch gay rights movement. Law was not longer considered something to be abolished, law was adopted as one possible instrument for the gay movement. Anti-discrimination laws were asked. The official law might be non-discriminatory in general, in practice discrimination still took place frequently. The revision of the Dutch constitution became a focal point. A new first article was to forbid discrimination. "Sexual orientation" was not named in the original draft. Parliament and government thereupon agreed that the words "or any other ground whatsoever" were to be added, so as to cover sexual orientation. Legally the constitution is not very important in the Netherlands. Normal parliamentary laws can be important. Such a law is being prepared to prohibit discrimination against women. The homosexual rights movement, helped by the feminist movement, succeeded in getting sexual orientation in the draft. Discrimination against women and discrimination against homosexuals are to be forbidden in the same law, because logically the latter is a type of this first. These governmental plans are not yet law. Nevertheless equality once again is a main goal in the gay rights movement.

In this fourth stage it is not just equality of homosexuality and heterosexuality. It is emphasized that the oppression of homosexuality is one of the forms in which society restricts people on basis of gender-roles. Those gender-roles are now under attack. And law is seen as one of the arms to be used by the gay movement when fighting them.

Conclusion:

The fourth goal of the gay rights movement in the Netherlands is equality of men and women in general. Anti-discrimination law is the key word. In this stage the second of the mentioned possible ways of challenging the concept of homosexuality is used: the challenging of the ideas about gender in general.

The next stage in the gay rights movement: freedom AND equality?

Until now the gay rights movement seems incapable of com-

binning the notions of freedom and equality. Most of the time just one of the two remains the goal of the movement. If freedom and equality are such a goal at the same time, as is the case in the Netherlands nowadays, they are not the goals of the same part of the movement. The relatively "unofficial" part of the gay rights movement now focusses on freedom. The more well established gay organisations (groups in political parties, parts of the COC) focus on equality.

I assume that a united, or at least communicating and understanding, gay rights movement will have more effect than a gay movement divided along the lines of freedom and equality. Therefore it should be tried to combine the two main abstract goals of the gay rights movement (freedom and equality). Two things should be clear to make such a combination possible and understandable.

In the first place the dual character of the concept of homosexuality should be understood. This concept concerns both gender and genitals. These two are to be distinguished. That they are often linked with each other, is one of the origins of the homosexual taboo. If we then are to put homosexuality in a wider perspective, we will have to put it in two wider perspectives: that of gender and that of genitals. In both perspectives we can fight for freedom and for equality: The freedom to behave independent from an ascribed gender role, and the freedom to do it different, with genitals and the rest. The equality of men and women and the equality between people having sex in this way and those having it in that way.

In the second place the different degrees of finality of freedom and equality should be distinguished. Equality never is an aim in itself. It serves a purpose, the purpose of freedom. If people are not treated equal, then some people have more possibilities to do things as they like (i.e. freedom) than other people. But also freedom is not an aim in itself. It serves a purpose. What purpose? That we are to know all for ourselves. Freedom and equality are abstract goals, but in the end they are only means. Means to help us to be equally free to do the things we want to do. For example: making love with someone of the same sex.

When we are fighting for equality or for freedom or for both, we should remember that freedom and equality are just phases we are going through.