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DISSERTATION

Titel der Dissertation

„Discursive Practices of Political Intersectionality.

On Recent German Intimate Citizenship Policies"

Verfasserin

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angestrebter akademischer Grad

Doktorin der Philosophie (Dr. Phil.)

Wien, 2011

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ABBREVIATIONS AND GLOSSARY

ABFP	Association of Binational Families and Partnerships (Verband binationaler Familien und Partnerschaften
Alliance 90/The Greens	Green Party (Bündnis 90/Die Grünen)
AMWG	Association of Migrant Women in Germany (Bundesverband der Migrantinnen Deutschland)
BL	Basic Law (Deutsches Grundgesetz)
CDU/CSU	Christian Democratic Union (Christlich Demokratische Union Deutschlands)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CFREU	Charter of Fundamental Rights of the European Union
CPAA	Contestation of Paternity Acknowledgement Act (Gesetz zur Ergänzung des Rechts zur Anfechtung der Vaterschaft)
CRC	Convention on the Rights of the Child
CSO	Civil society organisation
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms
EU	European Union
FC	Federal Council, First Chamber of Parliament (Bundesrat)
FCC	Federal Constitutional Court (Bundesverfassungsgerichtshof)
FDP	Free Party Germany (Freie Demokratische Partei)
GETA	General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IDPA	Model of Intersectional Discursive Policy Analysis
LPA	Life Partnership Act (Lebenspartnerschaftsgesetz)
LPRA	Lift Partnership Revision Act (Gesetz zur Überarbeitung des Lebenspartnerschaftsrechts)
LSVD	The Lesbian and Gay Association Germany (Lesben- und Schwulenverband in Deutschland)
MAGEEQ	"Policy frames and implementation problems: the case of gender mainstreaming", Research project, see www.mageeq.net
NGO	Non-governmental organisation
NIA	New Immigration Act (Neues Zuwanderungsgesetz)
PDS	Leftist Party, (Partei des Demokratischen Sozialismus), later merged into THE LEFT
QUING	"Quality in Gender+ Equality Policies", Research Project, see www.quing.eu
SPD	Social Democratic Party (Sozialdemokratische Partei Deutschlands)
SSP	Same sex partnership
THE LEFT	Leftist Party (DIE LINKE)
UCHR	Universal Declaration of Human Rights

ACKNOWLEDGEMENTS

0. INTRODUCTION

Equal pay, equal opportunities, equal treatment: equality is at the very heart of contemporary discussions about gender relations. Within the European Union and, likewise, within Germany – this study's focus – employment is an important policy field in which questions of gender and equality have been well-integrated. The traditional gender division of labour is not only being tackled by means of gender equality legislations and national action plans, but also by complementary strategies that seek to promote alternative job choices for both young women and men; promoting careers in technology and in the natural sciences[1] to young women and presenting child, sick and elderly care as attractive, secure professions to young men[2] are high on the political agenda. Moreover, "voluntary" quota regulations in the advisory boards of enterprises as well as qualification quotas in higher ranking jobs aim to break the gendered glass ceiling[3]. Women's networks and mentoring programmes have been set up in order to promote women's careers in a society characterised by dominant male bonds. Legislation against sexual harassment in the workplace (General Equal Treatment Act, Deutscher Bundestag 2006a) is also playing an important role in achieving gender equality in employment. Furthermore, reproductive work is increasingly being thought of as the equal responsibility of men and women, as is well-reflected in provisions such as the individual right to parental leave and "Daddy Months" in child care benefits (Parental Benefit Act, Deutscher Bundestag 2006b).

The move towards the promotion of greater gender equality has been highly influenced by European anti-discrimination directives, which not only combat gender discrimination but, since the 2000s, also combat discrimination on the grounds of race

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1 National Pact for Women into MINT Jobs, see http://www.bmbf.de/de/12563.php, accessed on 23 June 2011.)

2 For a federal initiative. http://www.bmfsfj.de/BMFSFJ/Presse/pressemitteilungen,did=166894.html, accessed on 23 June 2011

3 Action Plan for Equality between Women and Men in Leadership Positions, see (http://www.bmfsfj.de/BMFSFJ/gleichstellung,did=172756.html, accessed on 23 June 2011.)

and ethnicity, religion and belief, age, sexual orientation and disability[4].

Gender equality is not only an important policy objective in the area of employment, but also in the policy field of "intimate citizenship". Given that citizenship usually refers to the public, while intimacy refers to private social relations, at first glance the term "intimate citizenship", coined by Ken Plummer, sounds like an oxymoron (2003: 15). However, citizenship regimes have always governed intimate relations through marriage and family law as well as through provisions on abortion. In Germany, laws concerning the intimate spheres of life, such as partnership, family and reproduction, have steadily helped to diminish male dominance over the female person since the 1970s. Equal rights in marriage and divorce law, as well as access to abortion (since 1976) represent important stepping stones towards reaching gender equality. Paternity acknowledgement for unmarried couples has also been made egalitarian by abrogating the subordination of the mother under youth authorities (Children's Rights Reform Act, Deutscher Bundestag 1997/8). Furthermore, legislations introduced within the last 15 years have rendered violence in marriage and the domestic realm unacceptable. Today there are no exemptions in respect to marital rape (33rd Amendment of the Sexual Penal Code, Deutscher Bundestag 1997) and there are stricter provisions against perpetrators of domestic violence (Violence Protection Act, Deutscher Bundestag 2001).

While this might appear to be an overly optimistic account of gender relations in today's Germany, especially given the fact that gender equality has yet to be realised and existing legislations are often still gender-biased, what the above account illustrates is that gender equality has become an important social norm. Differential treatment on the grounds of gender is only accepted if "justified by a legitimate aim and the means of achieving that aim are appropriate and necessary" (EU Council Directive 2004/113/EC, Article 4 (5)). Furthermore, the concern for equality and anti-discrimination is no longer be reduced only to gender. The German Equal Treatment Act (Deutscher Bundestag 2006a) also includes race and ethnicity, religion and belief, age, sexual orientation and disability as other markers of unlawful discrimination. This act currently surpasses EU

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4   Directive on Race/Ethnicity 2000/43/EC, The Framework Directive 2000/78/EC, The Amendment of the Gender Equality Directive 2002/73/EC and the Directive on Access to Goods and Services 2004/113/EC.

laws[5] as it extends the protection from discrimination to the access and supply of goods and services to all six grounds; moreover, it acknowledges the issue of multiple discrimination.

Despite this overarching trend towards equality, important regulations in recent German intimate citizenship policies have departed from it. If we scrutinise recent policies from the vantage point of *sexual orientation* and *migration* we find a picture very different from the optimistic one presented above. Until recently sexual orientation has served as a legitimate marker of exclusion from partnership rights. Only since the Life Partnership Act passed in 2001 and the Life Partnership Revision Act passed in 2004[6] has equality figured as a norm in relation to sexual orientation. Despite equal rights being an explicit policy goal, these policies established a second class institute for same sex partners. Full equality with marriage has not yet been realised, even after important Federal Constitutional Court decisions on dependants' pension and inheritance tax law[7]. Important inequalities remain, for example, in regard to income tax law, co-partner adoption and assisted reproduction. These policy outcomes[8] are discriminatory, as they excluded same sex partners from substantive rights within a citizenship regime.

When attention is directed towards partnership policies in relation to migration the diagnosis shifts to an exclusionary policy outcome[9]. In this case, equality is no longer promoted as a policy goal. Policies, such as the New Immigration Act (2007) and the Contestation of Paternity Acknowledgement Act (2008), reduce rights for partnerships and family life. The New Immigration Act (2007) restricts the right to family reunification by introducing conditions such as a minimum age of 18 for both spouses, the basic command of German, stable finances and adequate accommodation, whereas the Contestation of Paternity Acknowledgement Act (2008) expands the rights of

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5   EU Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation as of 2 July 2008. COM(2008)0426. It is not yet binding law.

6   For references of the Life Partnership Act, the Life Partnership Revision Act, the New Immigration Act and the Contestation of Paternity Acknowledgement Act, see the ANNEX (Material for analysis).

7   See Federal Constitutional Court decisions (BVerfGE 124, 199), 7 July 2009 on dependants' pension and inheritance law (DStR 2010, 1721) 17 August 2010.

8   Policy outcome in the sense of policy decisions, see Sauer 2007b.

9   I distinguish between discriminatory and exclusionary policy outcomes. In/exclusion is usually not conceptualised as absolute, but as a continuum (Castles and Davidson 2000 in Lister 2003: 44).

immigration bodies to contest the paternity acknowledgements of binational unmarried couples. Contestation is indicated when no social-familial bonds between the father and the child exist and improvement in residence titles are attached to the paternity acknowledgement. What these policy examples show is that there is a sexual, national and marital bias in selected German intimate citizenship policies. Substantive partnership rights are reserved only for the national, heterosexual and married couple.

Reconsidering the above in a social theoretical perspective following Volker Schmidt (2010), the social divisions of gender, sexuality and nationality figure differently. Gender seems to have lost its status as an explicit and legitimate social division upon which justifications for discriminatory treatment lie. While equality for same sex partners has not yet been realised, discrimination based on the marking of sexuality is at least increasingly being challenged. Nationality (intersected with marital status), however, is still considered to be a significant social dividing line allowing for discriminate treatment.

These observations resonate with what Schmidt (2010) has said about "categorical inequalities". According to Schmidt, modern, liberal society's self-understanding rests upon a fundamental normative shift towards equality in comparison to pre-modern societies where the social order was considered to be god-given and where status was derived from decent. In modern societies, the norm of equality has challenged the idea of categorical inequalities and induced a transition towards equality. However, this process is far from complete and inequalities continue to exist[10]. In line with Schmidt's argument, gender, sexuality and nationality might be at different stages of becoming "illegitimate" social markers through which rights can be differentially bestowed. In order to confirm this observation, a comprehensive synchronic and diachronic analysis exploring how social categories have developed over time and across policy fields would be needed.

The main interest of this dissertation, however, is how unequal treatment in partnership policies can be justified at all given the normative foundation of equality. How does a

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10 Of course one could argue against such a modernist view that capitalism produces and is based on social inequalities (Aulenbacher/Riegraf 2009). Consequently, postfordist societies do not move away from inequalities, despite the normative ideal of equality.

society exclude someone or some group from a right? Thus, the guiding research question is: What are the discursive mechanisms that make discriminatory and exclusionary treatment in recent German intimate citizenship policies seem legitimate? This question is addressed through an analysis of selected policy debates; this approach aims to explore how substantive membership in Germany's ethno-cultural citizenship regime (Lister/ Williams/Anttonen et. al. 2007) is discursively restricted.

This dissertation uses feminist citizenship theories as its theoretical framework. Citizenship is presented as a contested concept that is characterised in ambivalent ways by its inclusionary potential and by its exclusionary practices, two dimensions that will be addressed in this project. What the *normative potential of citizenship* as a concept has to offer feminists aiming for equality and justice is discussed in Chapter 1. Also presented in this chapter is the model called "international multiple citizenship" and its fundamental element of issue-based rights lobbying. This model seeks to mitigate the "contradiction between citizenship's inclusionary claims and its exclusionary force" (Lister 2003: 43).

The *exclusionary practices of citizenship*, dealt with in part III, are analysed against this theoretical background. A discursive analysis of recent intimate citizenship policies in Germany will explore how unequal treatment in partnership rights is made justifiable in a polity that is otherwise characterised by liberal equality. In order to explain these discriminatory and exclusionary policy decisions, the analysis will scrutinise the meanings developed in policy debates.

In search of discursive mechanisms, the dissertation turns to the concept of *political intersectionality*. This term, coined by Kimberlé Crenshaw (1991), is used to describe the ways in which social categories are (discursively) constructed and mobilised in the polity for certain policy ends. Social categories are understood as tools of ordering and selecting (Staunaes 2003); these categories are not pre-existing, but invoked in order to create social hierarchies. Under the umbrella term "political intersectionality", the analysis explores how social categories are filled with meaning in the policy debates and mobilised against the provision of substantive partnership rights for same sex partners and migrant and binational families. While the analytical focus is on *sexual orientation* and *nationality* as "legitimate" social markers of discrimination and

exclusion, as will be illuminated, other (intersecting) categories are mobilised in this process. Or, to put it in other words, "The discursive practices of political intersectionality" – the title of this dissertation – will explain the discriminatory and exclusionary policy decisions of recent intimate citizenship policies in Germany.

German policy debates present an interesting field to study: Germany was relatively late in implementing general gender equality provisions; there are conflicting German visions regarding gender equality; and, Germany has had many infringement proceedings regarding EU law. Concerning sexuality and nationality, however, recent developments in Germany reflect wider European trends, for example, to legalise same sex partnerships and restrict immigration as part of the "Fortress Europe" consensus. But Germany is not only an important EU member state that has to implement EU law, it is also a crucial political actor helping to form the hegemonic discourses at the EU level, often trying to water down or block EU directives (Kabis 2004, Urbanek 2007). Exploring the meanings in national policies provides in-depth information about a distinctive discursive landscape and furthers an understanding of actual intimate citizenship conflicts in the European context (Plummer 2003).

The specific policy case studies comprise of the aforementioned Life Partnership Act (2001), Life Partnership Revision Act (2004), New Immigration Act (2007) and the Contestation of Paternity Acknowledgement Act (2008). The selection of policy cases followed the sampling guidelines of the QUING project (Quality in Gender+ Equality Policies[11]), for which I conducted the country study of Germany. The criteria for selecting policies were: timeframe (between 1995 and 2007/8), salience (hotly debated), milestone legislation (important legal chances) and relevance (regarded as important for gender equality concerns by an important political actor). In the QUING project the sampling of documents extended to the policy fields of general gender equality, non-employment, intimate citizenship and gender-based violence. For this dissertation, intimate citizenship policy debates were chosen for an in-depth intersectional discursive analysis. This dissertation draws from the QUING project not only in its selection of documents, but also in its method of analysis. Critical Frame Analysis, as developed in QUING and the predecessor project MAGEEQ (Verloo 2007), will provide the basis for

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11 For further information on the project, please visit www.quing.eu.

the model of analysis laid out in part II.

Structure and Content of the Dissertation

This project consists of three parts, a theoretical, a methodological and an empirical part. In the conclusion the empirical findings are discussed in relation to the theoretical considerations developed in part I on a normative citizenship model.

Part I, called "Theoretical and Methodological Challenges", starts off by connecting two bodies of literature – (feminist) citizenship theory and (political) intersectionality literature (Chapter 1): Intersectionality can be understood as an elaborated difference perspective that helps to fine tune the diagnosis of in/exclusion within a certain citizenship setting. The question of how to mitigate discrimination and exclusion (prognosis) is widely debated. In the quest for substantive citizenship and equality, how can we account for the intersectional social positionings of persons? In addressing this question, the first challenge is not to buy into separate identity politics, which essentialise identities and blur internal hierarchies. The second challenge is how to address existing inequalities without reproducing the very same social categories that led to inequalities in the first place. The third challenge is how to politically organise without pursuing highly segregated group politics that might erode any basis for solidarity.

In order to answer these questions, the first chapter engages in feminist debates on the strategies of equality, difference and the often discussed "Wollstonecraft's dilemma". I argue that the dilemma has been deconstructed by poststructural scholars, such as J.W. Scott (1988), who have convincingly argued that equality and difference is a false juxtaposition. However, what remains to be theorised is a politically-pragmatic strategy which avoids the reproduction of the (male) norm and the "particular". As a possible answer, the *model of international multiple citizenship* – formed by different, possibly contradicting, rights claims – is presented. This model draws from the conceptualisation of "multiple citizenship" (Isin/Wood 1999), contrasting group-based concepts such as differentiated universalism (Lister 2003, Siim/Squires 2007). Multiple conflicting claims are not attached to particular groups, but located within the individual, who is thought to be intersectionally positioned in social relations. The underlying normative

ideal is one of substantive equality, which seeks to account for differential social positionings without reproducing fixed (group) identities. As an alternative way of realising individual and collective political agency, the model suggests issue-based rights lobbying that is not based on a shared identity or group membership. In order to account for intersectional positionings in society, a substantive set of international human rights is needed. The bias or norm in existing human rights – male, heterosexual, nationalist – can be challenged by a human rights catalogue, which is conceptualised as dynamic, open for reinterpretation and extension. Finally, the international perspective counters the exclusionary tendencies of "nationalist" citizenship concepts.

Having laid out the theoretical framework within which the intersectional policy analysis is located, Chapter 2 presents the most salient debates that have revolved around the concept of intersectionality. Some researchers consider intersectionality to be a research paradigm, a reading device or an analytical perspective. Whatever use, it is exactly the theoretical and methodological openness of intersectionality that makes this concept successful (Davis 2008). This dissertation aims to operationalise intersectionality for policy analysis. Selected approaches to intersectionality are scrutinised regarding four key issues: What is the understanding and use of categories? What is the logic of intersectionality? What is the level of analysis? And, finally, is the approach to intersectionality suitable for a discursive policy analysis? These questions help guide a discussion on selected approaches, such as: intersectionality by Kimberlé Crenshaw (1991), structural approaches (Risman 2004, Weldon 2008, Klinger/Knapp 2007, Degele/Winker 2007, 2009), interactionist approaches of doing difference (West/Fenstermaker 1995), the concept of interdependency (Walgenbach et.al. 2007) and discursive approaches (Magnusson/Rönnblom/Silius 2008).

What is taken from these approaches? I draw the terminology of political intersectionality and the argument of intersectional invisibility from Crenshaw's concept (1991). The latter refers to how single-strand anti-discrimination laws and social movements make the intersectional positioning and experiences of certain groups, e.g. Afro-American women, invisible. Since policy analysis explores processes of structuration and is less concerned with social structures, a structural approach to intersectionality policy analysis proves to be less suitable. The input gained from the

interactionist, situational approach (West/Fenstermaker 1995) is that a strict distinction between levels of analysis, such as macro, meso and micro, is ultimately false. This coincides with my own observations that policies mediate between the macro and the micro level through creating and passing on social norms. Moving on to interdependency (Walgenbach et.al. 2007), at first sight this concept offers a stimulating new perspective, but in taking a closer look one finds that the conceptualisation of interdependent categories is logically inconsistent. Since the analytical benefit of this concept is not evident in comparison to the concept of intersectionality, the present analysis remains within Crenshaw's framework. Finally, the discursive approaches of Magnusson/Rönnblom/Silius (2008) express the constructivist understanding of categories in which this dissertation ascribes. Gender is conceptualised as one among many socio-cultural meaning-makers and producers of socio-cultural order (Staunaes/Sondergaard 2008). The focus is, therefore, on discursive processes that construct gender and other ordering principles.

In Chapter 3, the above considerations are synthesised into my own processual approach to intersectionality. This approach is informed by Myra Marx Ferree's dynamic conceptualisation of intersectionality (2009), the concept of configurations by Ilse Lenz (2007) and the concept of racing-gendering by Mary Hawkesworth (2006). The present processual approach has three crucial features. 1) The *understanding of categories* as processual, i.e. categories are considered to be constructed instead of pre-existing. More concretely, categories are considered to be discursively constructed in policy debates, i.e. rendered meaningful as social divisions by policy processes. 2) The *use of categories* is deconstructivist and constructivist at the same time. While using categories for analysis and, thus, playing a role in the construction of categories, the main objective of this approach is to deconstruct them. 3) The *logic of intersectionality* is intersectionality-only. Analytically, all subject positions are considered to be intersectionally constructed. In the policy process, however, categories are not necessarily explicitly dealt with as intersecting. Rather, often single categories are mobilised, e.g. in separate equality policies. Consequently and for analytical purposes I will work with separate categories that are explicitly intersected in policy debates or not.

In the above, at least three *paradoxes* have become visible. First, while this dissertation is critical of categories and seeks to deconstruct them it, nevertheless, uses categories for analysis and, therefore, plays a role in their construction. This paradox arises from the desire to diagnose inequalities and, therefore, identify who is discriminated against *and* to deconstruct these very same ascriptions at the same time. The way in which this paradox is dealt with, although not solved, is to work towards a self-reflexive use of categories (see Chapter 3.1). This leads me to the second paradox: I combine a focus on pre-chosen categories and on categories induced by the empirical material, an approach which expresses a circular-heuristic research process. While it is vital to be open to the empirical material and generate categories from it, it is necessary to have a catalogue of categories against which the empirical can be analysed. The third and last paradox is similar to the second; it refers to the normative concept of multiple citizenship. I refer to an already established catalogue of human rights *and* argue that it should be open to contestation and extension – yet, another paradox of a pre-existing list and openness. This dissertation does not solve, but rather works within, these paradoxes.

Part II "Building a Method" takes the intersectional processual approach developed in the previous chapter and combines it with discursive policy analysis. The *explanandum* of analysis is the discriminatory and exclusionary policy outcome; the meanings (discursive mechanisms) constructed in policy debates are the *explanans*. The ways in which sexuality and nationality are created and imbued with meaning, and intersected with other dimensions, such as gender, ethnicity, religion etc., is subject to discursive analysis. Thus, political intersectionality, i.e. the construction of categories by political actors, is part of the discursive mechanisms which render differential, in the sense of discriminatory and exclusionary, treatment "legitimate".

Methodologically speaking, the *Model of Intersectional Discursive Policy Analysis* (IDPA), presented in Chapter 5, consists of the following steps: 1) The meanings created in policy debates are captured in policy narratives consisting of smaller policy frames. 2) Subject positions are abstracted from these policy frames and their underlying norms. 3) Discursive mechanisms are identified. And, as a last analytical step, 4) a human

rights policy evaluation is offered.

In more detail, the policy frames and narratives are constructed from the empirical material. "Frame" – a way of "talking about an issue" (Bacchi 2005a: 202) – is a smaller concept than "discourse". Frames consist of cognitive and normative elements, which are singled out as underlying social norms. Several policy frames make up a policy narrative, which is a consistent policy story about an issue.

In the next step, subject positions are derived from the frames. Whereas frames answer the question "what are the problems and the solutions represented to be?" subject positions answer the question "how are the actors represented/depicted?" Subject positions describe the essential being and behaviour that is ascribed to certain groups of persons; these groups can be part of the majority or the minority population, the politically responsible or the politically "problematic". This step sharpens what policy frames are saying about actual persons and identifies more or less powerful positions in policy debates.

The third step, in which the *discursive mechanisms* are elaborated, is the most interpretive one. The discursive practices of political intersectionality – how intersecting social categories are discursively constructed and mobilised in debate are identified. Six different discursive mechanisms are found: (1) Constructing a Dichotomous Category, (2) Intersectional Hyper-Visibility, (3) Intersectional Invisibility, (4) Playing-off Categories, (5) Ranking Norms and (6) Individualising.

The last two discursive mechanisms are not explicitly categorical as they refer to a ranking of norms and individual responsibilities and duties (individualisation). A full description of the discursive mechanisms is given in part III, where the empirical findings are presented.

Having outlined the pillars of analysis, Chapter 6 presents the elements of discursive policy analysis in more detail. This chapter provides first and foremost a clarification of the terms. Conceptualising discourses as wider, underlying patterns of thought, this analysis works with the terms of policy narratives and policy frames. Frames themselves consist of cognitive and normative elements; for reasons of conceptual clarity I prefer these terms over ideas, paradigms and beliefs. In this chapter epistemological questions, such as the role of research and reflexivity, are addressed.

This dissertation utilises a (moderate) de/constructivist perspective. While assuming that research is not able to capture "objective reality", it is argued that research can shed light on discursive representations of the world and assess their effects (Bacchi 1999). Likewise, the analysis is guided by the question: "Given that policy problems and solutions are not self-evident, what are the consequences of different representations of the world?" This question sparks the idea of policy evaluation from a human rights perspective.

The conditions and benefits of such a human rights evaluation are laid out in Chapter 7. According to the overall theoretical framework, intersectional analysis can be used to diagnose inequalities that are manifested in the reduction of, or exclusion from, rights (among other forms). The intersectional policy analysis shows how discriminatory treatment is discursively justified, whereas the human rights evaluation demonstrates the final outcomes or "results". Such an evaluation raises the questions: "Which rights are at stake?" And, more generally, "Does the existing human rights catalogue offer substantive protection, regardless of ascriptions such as sexuality and nationality, in the various issues at stake?"

Given the overall constructivist epistemology, the question of whether or not such an approach can be reconciled with a (normative) human rights evaluation must be addressed. The first argument in favour of reconciliation is expressed by Bacchi (1999: 63). Bacchi argues that even if objective reality is not attainable, social constructions of the world can and should be studied. Thus, some social representations of the social world grant more rights and entitlements to certain people than others. The second argument revolves around issues of normativity and relativity. A constructivist perspective does not necessarily promote relativity; rather, postpositivist feminist epistemology argues that one's *normative ideals* should be expressly given. By laying out my normative perspective as a researcher, I am adhering to a postpositivist research framework.

Finally, a de/constructivist perspective on human rights means that they are not understood as "natural". Rights themselves are discourses, results of historical processes and power relations. Hence, human rights are not "universal" by means of a universal truth. Moreover, the very content of human rights is continuously challenged. What

human rights offer is a contestable normative frame of reference. Considering these arguments, a human rights perspective can be reconciled with constructivism.

Part III is dedicated to the actual discursive analysis of selected intimate citizenship policies in Germany. The analysis departs from the observation that the two Life Partnership Acts (LPA 2001 and LPRA 2004) on same sex partnership, the New Immigration Act (NIA 2007) on family reunification and the Contestation of Paternity Acknowledgement Act (CPAA 2008) have passed discriminatory and exclusionary citizenship regulations. In the case of same sex partnership, the promoters of the two Life Partnership Acts aimed for equal rights. However, instead of equality, the acts created a secondary family institute, one that is considered to be inferior to heterosexual marriage and bestowed fewer rights. While same sex policies can be described as discriminatory, migration related policies on family reunification and paternity acknowledgement, which seek to restrict access to German citizenship, are exclusionary. Indeed, realising equal rights has never been a declared policy objective of the promoters of the Contestation of Paternity Acknowledgement Act.

Moving on to the actual case studies, the guiding research question is: How is unequal treatment in intimate citizenship policies discursively justified? By means of which discursive mechanisms are inequalities rendered legitimate and represented as adequate treatment? These research questions are addressed through the six discursive mechanisms, already briefly presented above. In more detail, "Constructing a dichotomous category" (1) is the umbrella mechanism under which the other mechanisms are subsumed. The dichotomous, hierarchical construction of a category, be it sexuality or nationality, serves as a discursive mechanism to establish a group unworthy of equal treatment (i.e. a group that can be "justifiably" treated unequally). In the Life Partnership Acts (LPA and LPRA) *sexuality* is actively constructed via different subject positions, for example: promiscuous persons who are not able to commit to relationships are contrasted to the responsible and stable heterosexual couples that rebuilt Germany after World War II. Sexuality is constructed as a legitimate social division by the following policy frames: same sex partnerships are considered to have

special worth and dignity (aliud theory[12]) or, on the negative side, to be a threat to marriage and family, contradicting the norm of biological parenthood and child well-being.

In migration related matters (New Immigration Act (NIA) and the Contestation of Paternity Acknowledgement Act (CPAA)), it is *nationality* that becomes a meaningful marker of social division through policy frames on abuse and conditions, human rights violations, national resources, security concerns as well as immigration as selection. The subject positions developed in the policy debate on family reunification (NIA) construct a dichotomy between responsible German citizens and non-responsible, abusive foreigners, perpetrators and victims of forced marriage. The juxtaposition between citizens and foreigners is reproduced again through the issue of paternity acknowledgement in the case of unmarried binational partners (CPAA). The one exception is that not only non-citizens (i.e. foreign mothers without residence title), but also German citizens, especially those without stable finances (class), suspected of committing fake paternity acknowledgements for money, are considered to be abusing the law and the social security system.

"Intersectional Hyper-Visibility" (2) is a mechanism first and foremost practised in the migration related policies. This mechanism illustrates how intersecting social categories are mobilised in order to highlight a situation, usually with stigmatising effects. In a process of *ethno-national-gendering*, the practice of forced marriage, i.e. violence against (young) women and perpetrated by migrant men and families, is emphasized (NIA). By highlighting this issue as representative of migrants, the focus is on harmful practices. The diagnosis is attached to individualising solutions, i.e. conditions on family reunification (see below). In the case of the CPAA, a process of *class-national-gendering* presents foreign mothers and German citizens as perpetrators of fake paternity acknowledgements (CPAA), thus abusing residency laws and the social security system. The subject positions offered to binational couples are associated with criminal practices (fake paternity acknowledgement), which also endanger biological parenthood and child well-being.

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12 Same sex partnership is presented as different from marriage, because it affects a different target group (aliud theory).

"Intersectional Invisibility" (3) is a classical mechanism described by Kimberlé Crenshaw (1991), by which categories are mobilised separately and their intersectional character is ignored. In the case study on family reunification (NIA), *gender* is acknowledged (albeit in a problematic way in relation to forced marriage), while the intersection with *citizenship status* is ignored. The policy solution of issuing independent residence titles to married migrant women (i.e. not attached to the residence title of their spouses) is not considered to be a viable option. In the case studies on same sex partnership, especially during the first policy debate in 2001 (LPA), s*exuality* is constructed as a separate category, ignoring the intersection of *gender*. Depictions of same sex partners as financially stable double income earners neglect existing gendered dimensions of care responsibilities.

"Playing-off Categories" (4) is a mechanism applied by the opponents of same sex partnership laws (LPA). *Christian culture* and *religion* are discursively attached to heterosexuality or, put in other words, monotheistic religions and homosexuality are represented as mutually exclusive. Moreover, unmarried couples must not be disadvantaged in comparison to same sex partners, Here, marital status is played-off sexual orientation.

"Ranking Norms" (5) is a central mechanism in all four case studies. Regarding the issue of same sex partnerships, the opponents of the LPA strongly privilege heteronormativity, as is formally protected by the German Basic Law (Art.6). For them, heteronormativity ranks higher than personal rights, which are also protected under the Constitution (Art.2). In addition, the norm of biological parenthood is presented as a precondition for child well-being, which is said to rank higher than the personal rights of same sex partners to have children (LPRA).

Concerning the issue of family reunification (NIA), the highest ranking rights are dignity, sexual self-determination, personal freedom and bodily integrity. The NIA is promoted as protecting these rights (called into doubt by the opposition). In both migration related policies, crime and justice as well as safeguarding national resources are unquestioned ideals. That economic development is a high ranking norm is visible in the fact that entrepreneurs and migrants from other rich and highly industrialised

countries from the North and West face fewer conditions for family reunification. This means that geopolitical and class dimensions can, to some degree, off-set de-facto restrictive migration policies. Regarding paternity acknowledgement (CPAA), biological parenthood is presented as an important norm, as child well-being is seen to be contingent upon it (similar to the LPRA).

"Individualising" (6) is a mechanism present in all four policy debates. It ranges from statements declaring there to be no legal discrimination of same sex partners, to arguments that highlight same sex partners' abilities to make individual contracts between them (LPA). Maintenance duties for partners and children can also be assumed voluntarily and individually. Again, the NIA presents forced marriage in a simple perpetrator-victim framework. Individual perpetrators are said to cause problems; likewise, individual victims are responsible for solutions. The CPAA also presents the problem of fake paternity acknowledgement as a matter of individual crime with increasing tendency and capable of harming German society.

The final step "Policy Evaluation: Human Rights" relates these legislations to international human rights conventions. At the outset of the analysis, I assumed that human rights conventions would surpass national legislations and offer a normative frame of reference. However, the actual policy evaluation illuminates that same sex partnerships, migrant families and binational families are only partially protected by international conventions. These human rights documents provide national legislations room to manoeuvre and make exemptions. Claims for further reaching protection for same sex partnerships stem from international human rights experts, e.g. the Yogyakarta Principles, as well as from the European Court of Justice, whose decisions provide important challenges to national legislations.

With regard to migrant families, the fact that there is a human rights convention protecting migrant workers and their families (ICRMW) has not improved the level of protection migrant families have in many receiving Northern and Western states, as most of these states have neither signed nor ratified the Convention. Likewise, paternity acknowledgement is a black hole in human rights protection; it is only via the child that discrimination due to (the child's or the parents') national origin is forbidden

(Convention on the Rights of the Child). In summary, the human rights of those who are neither nationals or heterosexual married partnerships and families are weakly protected under existing conventions. The consultation of human rights conventions demonstrates that they themselves are part of social discourses and reflect rather than surpass the normative basis of society. Nevertheless, human rights conventions are being challenged by social movements.

Also within the policy debates, inequalities and exclusions from rights are tackled. As the analysis of frames and subject positions shows, parties such as the Alliance 90/The Greens and THE LEFT as well as selected CSOs, oppose the construction of dichotomous categories. They refrain from mobilising sexuality and nationality as markers of social division by telling different policy stories. They frame intimate citizenship issues in terms of anti-discrimination, equal rights, positive rights and social parenthood. Especially distinctive is the use of subject positions. These actors refrain from drafting essentialising subject positions. Instead of assigning essential being or behaviour to persons – and thereby creating heterosexual and homosexual persons, citizens or foreigners – *people are positioned in relation to rights*. Civil society organisations especially frame issues using a substantive catalogue of rights, which are claimed regardless of ascriptions of gender, sexuality, class, ethnicity and nationality.

These empirical findings feed back into the normative-theoretical conceptualisations outlined in Chapter 1. In order to avoid the construction of particular target groups that are meaningfully distinguished from others, it is important to return to issue-based rights, which should, in principle, be available to all. A wide-ranging, contestable and substantive catalogue of human rights, embedded in a concept of international multiple citizenship, offers a way to address social inequalities (and, thus, account for intersectionality) without identity or group politics.

This brings me back to what Carol Bacchi said about practical and ontological problems in 1996: How can we tackle existing inequalities without reifying and essentialising identities such as "women"? In the vein of Bacchi's citation, this dissertation is not interested in ontological dimensions; rather, it is about finding practical ways to deal with social inequalities, be it in policy analysis or normative political theory.

This project engages in both questions, aiming to develop new ways of thinking about intersectionality and inclusive citizenship. What the following study contributes to current debates on intersectionality is its operationalisation for *discursive policy analysis*. After scrutinising existing literature on intersectionality and dealing with various epistemological conundrums, it develops a processual, de/constructivist model whose elements can also be translated into other types of discursive analysis.

Apart from this methodological innovation, the theoretical contribution is to *connect intersectionality to citizenship theory* and to develop a rights-based, instead of a group/identity-based, conceptualisation of citizenship. Intersectionality is understood as a way of refining the diagnosis of complex webs of in/exclusion, privilege and discrimination. The prognosis, i.e. the question of how to tackle injustices and exclusions, refrains from dealing with intersectional target groups, but points to the inclusionary power of citizenship in the form of a substantive catalogue of international human rights and issue-based rights advocacy.

PART I.

THEORETICAL AND METHODOLIGAL CHALLENGES

1. SITUATING INTERSECTIONALITY[13]

1.1. Citizenship Meets Intersectionality

The aim of this chapter is to connect the analysis of political intersectionality to feminist citizenship studies which are the theoretical framework of this dissertation. The concept of citizenship is characterised by its e*xclusionary practices* and its *inclusionary potential.* Political intersectionality is presented as a way to study exclusionary citizenship regulations. Intersectionality can be understood as an elaborated version of a difference perspective, with serves to diagnose complex webs of exclusion. In the second part, the chapter turns to normative citizenship models and their inclusionary potential. A non-essentialist model of multiple international citizenship suggests a perspective of substantive equality, which comprises of a reworked human rights catalogue and the political strategy of issue-based rights lobbying.

Briefly, this chapter extends between the poles of difference and equality: exclusionary citizenship regulations are explained by the discursive practices of political intersectionality; the inclusionary potential of citizenship is developed against the normative background of wider feminist debates on substantive equality.

Citizenship: Inclusionary Potential, Exclusionary Practices

Citizenship is a "contested concept" (Plummer 2003: 51). As its easiest, citizenship defines the relation between the citizen and the state and between citizens (Lister 2003: 3). According to whether one adheres to a liberal, civic republican, communitarian or alternative model of citizenship, different ways to conceptualise these relations are pursued (Jones/Gaventa 2002, Isin/Turner 2002). While some strengthen rights and duties attached to individual citizenship, others stress the importance of the (political) community and participation as a civic obligation. Attempts to combine the liberal focus on rights with collective political action talk about "the right to have (new) rights" and "the right to participate in the decisions that impact on our lives" (Lister 2003: 36, Jones/Gaventa 2002: 5 and 11). Citizenship can be defined "as status and as practice"

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13 Earlier versions and parts of this chapter have been presented at a conference, see Urbanek 2010b.

(Lister 2003: 8), thus synthesising the formal legal level and the level of individual and collective agency. Whatever models we chose or elaborate upon: "The way we define citizenship is intimately linked to the kind of society and political community we want" (Mouffe 1992: 225).

Many feminist debates, however, revolved around the question whether citizenship in itself is a useful concept to address social in/exclusion[14]. On the one side, they diagnose the inclusionary potential of citizenship as it offers a formal legal status (membership in a state) and (more or less) substantive citizenship rights and duties (Lister 2003: 44). At the same time, it is exclusionary by definition as boundaries are drawn and non-citizens can neither easily access citizenship nor are fully eligible to citizenship rights (Morris 2002). Moreover, citizens themselves are often excluded within, as the enjoyment of citizenship rights is usually not available to all and substantive rights are generally lacking. Nevertheless, feminist citizenship theories seek to strengthen its inclusionary potential (e.g. Werbner/Yuval-Davis 1999, Lister 2003, Siim/Squires 2007, Squires 2007).

While substantive citizenship has proved hard to realise, the very emergence of the idea of equal rights is representative of a fundamental discursive-normative shift in European societies: contrary to the underlying rationale of pre-modern societies where one's status was derived from decent and social hierarchy was considered as a god-given, enlightenment and liberalism have promoted universal morals (Schmidt 2010). The conceptualisation of equal citizens with civil and political rights at the end of the 18th century is an expression of that the privileges of the clergy and the nobility were no longer perceived as justified. It is only through this normative shift towards equal rights and equal worth, that "inequalities" come into existence at all.

At the same time that rights have emerged, e.g. in the French *Declaration of the Rights of Man and The Citizen* (1789), social inequalities have been created through them[15]. Despite their formal commitment to equality women were excluded, as it was only (free) men who could be citizens (Ehrmann 2009). But these exclusionary practices did

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14 See e.g. Beyond Citizenship: Feminism and the transformation of Belonging. An international and interdisciplinary conference, 30th June – 2nd July 2010, Birkbeck, University of London (http: //www.bbk.ac.uk/bisr/activities/pastactivities/beyondcitizenship, accessed on 30 May 2011)

15 For a historical account of women's exclusion from citizenship in Western Europe see Chapter One "Historical perspectives" in Lister/Williams/Anttonen et. al. 2007.

not go unchallenged. Already early criticisms of this document, formulated by Olympe de Gouges in 1791 and Mary Wollstonecraft in 1790, claimed that rights should be extended to women (Ehrmann 2009: 86). What we see from this brief account is that rights have been contested from the very beginning, with gender equality being one of the central concerns.

Today's European and national gender equality policies as well as international human rights conventions reflect that *gender* is no longer a category, due to which explicit differential treatment is legitimate. With the exemption of positive measures to mitigate existing inequalities, discrimination on grounds of gender is to be combated (e.g. The Convention on the Elimination of All Forms of Discrimination against Women, CEDAW). In German national legislations, direct and indirect gender discrimination[16] – among other grounds – is forbidden by the General Equal Treatment Act (Deutscher Bundestag 2006a) and achieving de facto gender equality is an official state goal of the German Constitution (Basic Law). This is not to say that existing legislations are not gender-biased, but that there is the necessary normative backdrop against which claims against gender discrimination can be filed.

In a social theoretical perspective, the transition away from inequalities is an ongoing process, but it is nowhere complete (Schmidt 2010). Discrimination and exclusion due to gender and other grounds such as class, race[17], ethnicity, and religion have been and are being tackled, but the degree varies. While gender and race might be at the forefront of such a process[18], the other categories are still more often negotiated as markers of distinction. As this dissertation demonstrates, inequalities arising from sexual orientation and nationality are still justifiable: exclusionary policy decisions in recent

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16 In the EU Directive 2006/54/EC, gender discrimination is defined as direct, "where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation" (Article 2 (1) a). Indirect discrimination is the case "where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary" (Article 2 (1) b).

17 This dissertation uses race without inverted commas, as it is conceptualised as a social construction just like gender. For a debate on the analytical use of race see e.g. Münst 2008, Lutz/Herrera Vivar/Supik 2010 and Chebout 2011.

18 An indication for this is the higher degree of protection for race/ethnicity and gender in comparison to other markers of discrimination in respective EU anti-discrimination directives.

German intimate citizenship debates inscribe discriminatory treatment of same sex partnerships and exclusionary family policies in relation to migration into law. The ways in which theses policies are made justifiable in a discursive realm of equality is subject to the analysis in part III.

Intimate citizenship is the policy field under scrutiny, for which Ken Plummer diagnoses that new areas of debate are evolving: "The notion of intimate citizenship [hints] at worlds in the making, worlds in which a public language of intimate troubles is emerging around issues of intimacy in the private lives of individuals" (2003: 13). Arenas of debate are family wars, gender troubles, erotic wars, reproductive politics and politics of the body (2003: 35). Intimate citizenship policies evoke deeply moral debates. Contrary to ruling out conflict, Plummer argues that issues need to be contested in order to become visible, discussed and clearly argued. What happens in current debates is a struggle over dominant meaning (2003: 37). In these struggles, "citizenship is contingent on the construction of recognized identities around which rights and responsibilities develop" (2003: 65-66). Citizenship is closely connected to identity, because both concepts offer belonging to a community and serve as group markers (2003: 50). Negotiations over the boundaries of citizenship imply negotiations over identities and the norm citizen (Plummer 2003: 57, Verloo 2006: 218-219).

This dissertation engages in the very same process of meaning making and boundary drawing. It analyses the frames, norms and subject positions in selected intimate citizenship policy debates. Subject positions can be understood as "identity ascriptions" for target groups, crafted by policy debates. The analysis illuminates which kind of citizens and non-citizens are constructed: it analyses discursive representations of homosexual and heterosexual couples, migrant and binational families. Thereby, it deconstructs the process by which discrimination and exclusion from substantive intimate citizenship rights are thought to be rendered justifiable.

Studying Exclusions: Intersectionality
Patterns of exclusion, to which legislations and policy debates contribute, are defined by the intersections of race and gender, class, nationality, ethnicity, religion, sexual

orientation, age or disability and more. While it is an open point of debate which categories need analytical attention and how to generally deal with categories (see Chapter 2 and 3), there is at least a consensus that gender is "not enough".

The argument that social categories intersect in order to produce specific patterns of privilege and discrimination is not new in feminist theory and activism. It would exceed the scope of this project to deeply engage in the origins and travel of the concept of intersectionality, as there is already an extensive body of literature on this issue[19]. What is noteworthy is that there are diverging narratives on how the concept of intersectionality developed. Most of these narratives, however, share a look back to early US Black feminism and the critique of White, Western, bourgeois feminism. Already in the 1970s did the Combahee River Collective alert to the intersection of race, gender and sexuality and the lived experience, which cannot be reduced to either of those grounds. Rather, these categories are understood as mutually constitutive. Scholars such as bell hooks, Audre Lorde, Patricia Hill Collins, Hazel Carby, Chandra Talpade Mohanty, Avtar Brah, Floya Anthias, Nira Yuval-Davis elaborated on the intersection of gender and race in the 1980s and 1990s from different theoretical perspectives (Erel et.al. 2008: 273-4). Also class and the ways in which it made women's position different from each other were addressed. While "triple oppression theory" by Angela Davis mostly operated with an additive model of race, class and gender, it was only later that their intersections were addressed, e.g. in the work of Beverly Skeggs (Erel et.al. 2008: 276).

The term intersectionality itself has received intense attention since legal scholar Kimberlé Crenshaw used it to describe how the social positionings of African-American women were made invisible[20]: by ignoring their intersection, gender and race were separately addressed by social movements and the legal system in the USA (Crenshaw 1991). Other, more recent contributions stem from queer studies (Erel et.al. 2007, Dietze/Haschemi Yekani/Michaelis 2007, Haschemi Yekani/Michaelis/Dietze 2010), critical whiteness studies and critical occidentalism (e.g. Dietze 2006,

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19 See Erel/Haritaworn/Gutiérrez Rodríguez/Klesse (2008), Kathy Davis (2008), Katharina Walgenbach (2007), Nira Yuval-Davis (2006a), Leslie McCall (2005) and Brah/Phoenix 2004. The travelling of the concept of intersectionality is addressed by scholars such as Gudrun-Axeli Knapp (2005) and critically commented upon by Hashemi Yekani/Hrzán/Husmann-Kastein et.al. (2008) and Lucy Chebout (2011).

20 For a critical discussion on how Kimberlé Crenshaw's concept has travelled see Chebout 2011.

Dietze/Brunner/Wenzel 2009). What we see from this brief account is that feminist and scholarly attention for complex forms of in/exclusion, power and oppression has been constant, if not increasing throughout the last decades.

In the last years the concern with multiple discrimination, so the legal term for intersectionality, has gained importance on the political agenda [21]. The issuing of European anti-discrimination directives from 2000 onwards is part of a development, in which diverse strands of inequality, but also multiple discrimination are being tackled[22]. Protection from discrimination is extended from gender to race, ethnicity, religion and belief, sexuality, disability and age. While this is an overall process reflecting that inequalities are loosing their legitimacy, the level of protection differs between strands. Protection outside employment and the labour market has so far only been regulated for gender and race/ethnicity. Thus, different "categorical" inequalities are at different stages of becoming illegitimate, at least in European anti-discrimination directives.

These political developments have achieved critical feminist attention. Some scholars discuss the issue that an overall diversity-hype might sideline efforts to achieve gender equality (Kantola/Nousiainen 2009, Squires 2008, Lombardo/Verloo 2009a). Others discern that the dimension of class, in the sense of redistribution, is left out by EU anti-discrimination directives (Sauer 2007a, Sauer/Wöhl 2008, Kantola/Nousiainen 2009). Some raise the point that with a focus on individual discrimination structural inequalities will be lost out of sight (Squires 2008, Lombardo/Verloo 2009a). Another concern is that "category-based" anti-discrimination legislation will always may make it easier to file lawsuits on *one* ground than on multiple discrimination (Squires 2008). With regard to equality policies, scholars argue that inequality strands must not be treated by an "one-fits-all" approach to equality policies, because inequalities are produced in historically different ways (Verloo 2006). And a current focus on "institutionalising intersectionality" asks about the effects of integrated equality laws and equality bodies on gender+ equality[23].

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21 Note also the current interest in diversity policies and management (femina politica 2007, Andresen 2009) and diversity studies (Krell et.al. 2007).

22 Such as the Directive on Race/Ethnicity 2000/43/EC, The Framework Directive 2000/78/EC, The Amendment of the Gender Equality Directive 2002/73/EC and the Directive on Access to Goods and Services 2004/113/EC.

23 See the special issue "Institutionalising Intersectionality" of the *International Feminist Journal of Politics* 11 (4) 2009.

For all these matters, the concept of intersectionality offers a way to fine-tune the diagnosis of in/exclusion, privilege and disadvantage. On a political-pragmatic level, however, the question of how to deal with gender inequalities and inequalities among the genders is far from resolved. How to achieve equality while accounting for differential, i.e. intersectional social positionings? How to acknowledge "differences" without constructing and fixing identities? These normative questions will be discussed in the following.

The Critique of Difference and Group Politics

Intersectionality can be located within a concern for difference, which has a long history in feminist theory and activism. Nancy Fraser (1997: 173-188) gives an important account of how this concern developed and changed over time – at least within the Anglo-American context: feminist debates shifted from a focus on differences between men and women to differences among women. What seemed to be a narrowing in focus from wider social relations to relations between women widened again in a third step to multiple intersecting differences – the stage of contemporary feminism. While this might be an oversimplifying scheme, it might nevertheless grasp some important developments, but which are probably occurring in more parallel than chronological ways. The concept of intersectionality with strong roots in US anti-racist feminism and critical race studies (Crenshaw 1991) is representative of the third step which seeks to address multiple axes of oppression, a matrix or interlocking systems of domination (Collins 1998). Whatever term is used, the endeavour of an intersectional perspective is to deal with more than just one single dimension, be it gender, race, ethnicity, class, sexuality and others, but to look at them as mutually constitutive and leading to complex webs of power and oppression, relative privilege and disadvantage. In a realist epistemology the aim is to look at differences across and within groups.

This way of thinking has not gone without criticism. Concerns are voiced with regard to the impacts of such an intersectional view on politics. A differentiation into singular experiences of oppression might erode the basis for solidarity and political activism, so one argument. This leads to an "Oppression Olympics" (Martinez 1993 in Ferree 2009:86) and competing dynamics between identity politics. As a form of group

politics, the latter have historically evolved as single strands (e.g. ethnicity or sexual orientation) and are now competing for scarce resources (Hancock 2007). What comes under criticism is that groups become too small and too fragmented. Competition for political leverage and resources is deemed a problematic result.

There is also another, deconstructivist critique of identity politics in the sense of group politics: any kind of group formation is criticised for being exclusionary and essentialist. The problem of "groupism" is a recurring feminist topic. Since the feminist subject came under criticism from both, postmodern theory and political activism, feminist politics have struggled about how to form groups for political engagement without falling into the trap of essentialising some and excluding others. But isn't some form of "strategic essentialism" necessary in order to remain politically active and to account for the "real experiences" of groups (Lorey 1998, Collins 1998)? While these are important questions to be discussed, I will remain briefly with the diagnosed problem of groupism and essentialism. But what exactly is the problem with difference and categorisations of persons into groups?

In poststructural, deconstructivist critique, differences are the basis upon which inequalities unfold (Scott 1988). Put in the words of Catharine MacKinnon: "Differences are inequality's post hoc excuse, its conclusory artifact, its outcome presented as its origin" (MacKinnon 1989: 218). Transposed to the policy process this means: it is not "natural differences" that make unequal treatment necessary; rather, it is the policy process itself which constructs these differences in the first place. It depends on context and changes over time and space, what kind of differential treatment is deemed legitimate or not. What group politics or "category politics" (Bacchi 1996), however, have in common is that they all depend on a process of differentiation, in which one target group is "meaningfully" distinguished from another. A sneak preview into the empirical examples, presented in part III, shows: policies for same sex partners tend to create second class partnerships. This is legitimised by representing same sex partners as essentially different from heterosexual couples. Differential, i.e. unequal treatment in the form of fewer rights in comparison to marriage is constructed as a logic consequence. A similar discursive mechanism is applied in migration policies, where foreigners (third country nationals) are represented as different from citizens and

unworthy of equal treatment (i.e. a group that can be "justifiably" treated unequally). The argument here is that representations which differentiate people into groups prepare the ground for unequal treatment, be it discriminatory, exclusionary – or inclusionary.

The latter is also the case with traditional gender equality and other forms of equality policies which are based upon the same logic of differentiation. Again, these policies cannot escape the problem formulated above: they also re/construct a group and therefor cannot escape boundary-making, unifying and silencing mechanisms. In contrast to discriminatory or exclusionary intimate citizenship policies mentioned above, gender equality legislations explicitly aim at tackling existing discriminations. Despite the problem of groupism, such policies are needed in order to mitigate existing inequalities on grounds of gender or other ascribed categories. According to Bacchi (1996), positive discrimination, also called affirmative action, is compatible with a de/constructivist perspective: it is necessary that the ones who have been differently positioned by social categories in society are to able to mobilise on these grounds. This is what Bacchi calls a "strategy without essences" (1996: 164). These grounds are never thought of as "ontological" or "essential" to a person. It would be an effect of doing difference, if we actually dealt with social categories as if they were inherent to a person (West/Fenstermaker 1995). Or put differently: practices of doing difference make us think that we *are* in fact different. Poststructuralist scholarship alerts us to these processes through which the issues which we deem natural are produced in the first place.

As has become clear from the above, the topics of difference, categorisation and group politics are approached with scepticism in this dissertation. Nevertheless, I am in line with Bacchi (1996) that group or categorical politics in the form of equality policies and affirmative action are necessary in order to address existing inequalities[24]. These kinds of equality policies, however, are not the focus of my study. The purpose of this dissertation is to draft a model of intersectional analysis and to actually explore how *exclusionary* intimate citizenship regulations are made justifiable in a realm of "equality". This research endeavour is embedded in a normative political framework

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24 The alternative of issue-based rights lobbying will be presented in Chapter 1.3.

that seeks to address the following questions: Given that persons are intersectionally positioned in society and given that in/exclusions follow complex patterns, how can equality be achieved? How can one lobby for equality and justice, given the fact that "groupism" is problematic, but that (groups of) people still have different needs and interests?

1.2. The Equality/Difference Debate

This subchapter enrols in classical feminist debates of how to deal with the ambivalent issue of differences and how to achieve equality. From the point of view of normative political theory, intersectionality does not add a new perspective to the question of how to do so. What it does is to make the diagnosis of in/exclusions and power relations more complex.

As Nancy Fraser (1997: 173-188) argues, the current concern for multiple intersecting differences has not contributed anything theoretically new to feminist politics; it dwells on the basic question of how to achieve (gender) equality. Her basic claim is that contemporary feminisms have not yet resolved the Wollstonecraft's dilemma. The debate might have changed its outward appearance and now talks about multiple intersecting differences, but there is still a split into *anti-essentialism* on the one side and a concern for *multiculturalism*[25] on on the other side. According to Fraser, anti-essentialism is sceptical about differences, which is also a feature of an equality approach; multiculturalism addresses and celebrates multiple differences, which is similar to a difference approach. Hence, the equality/difference dichotomy is back.

Up to here, I am in line with Fraser's argument. Her distinction translates into what McCall (2005) calls anticategorical approaches to intersectionality, which have an de/constructivist drive, and intracategorical and intercategorical approaches, which operate within a categorical logic (although not necessarily "celebrating" differences). Anticategorical strands of intersectionality can be described as anti-essentialist, whereas the attention to multiple intersecting inequalities, as some strands of intersectionality represent, can be interpreted as an elaborated version of a difference perspective.

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25 By multiculturalism Nancy Fraser means various social movements, not only the ones rallying around culture and ethnicity, but also sexuality and disability and the like. This is a different understanding of multiculturalism as it is traditionally used in the European context, where it is more closely connected to ethnically diverse countries and the ways they deal with immigration and integration.

Fraser now states that anti-essentialism and multiculturalism neglect one insight, namely the importance of equal participation and redistribution. Basically, what she argues is that a recognition of cultural difference must be combined with equal participation and redistribution[26]. Her claim is that "cultural differences can only be freely elaborated and democratically mediated on the basis of social equality" (Fraser 1997: 107). While I agree that recognition and redistribution must be combined in struggles for equality, I do not consider this the major problem of feminist equality politics. In my view, these concerns are already intertwined. Consider recent German intimate citizenship debates: struggles for legal recognition of same sex partnerships, for example, cannot be attributed to cultural struggles only, as redistribution in the sense of entitlements to benefits, tax reductions and the like are central demands. Hence, if it is not the conflict between redistribution and recognition which is at stake, what is the problem? I think that there is a point to Fraser's argument, that the Wollstonecraft's dilemma has not yet been resolved. But I do so for different reasons than Fraser, as I will explain in the following.

The Wollstonecraft's dilemma

At first, feminist debates today appear to be too varied to be reduced to a simple dichotomy such as the Wollstonecraft's dilemma. Returning to this supposedly outdated feminist debate about equality and difference might shed light on the question of how to deal with "differences" and strategies for equality politics. Let's briefly recap the Wollstonecraft's dilemma and the ways in which it has been challenged (Fraser 1997, Squires 1999, Lister 2003).

As Carole Pateman (1989: 196-7) describes it, there are two mutually incompatible ways to address gender inequality which both reproduce a male norm. The *equality strategy* demands that women are included into whatever men do, have the same rights and opportunities[27]. Representatives of this strategy are sceptical of differences and argue that differences are the result of patriarchy, serving to legitimise inequalities "post hoc" (Catherine MacKinnon 1989: 218). Criticisms of the equality strategy claim that

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26 In a later text, Fraser (2006) argues for a third essential component which is representation alongside recognition and redistribution.

27 Equal treatment, positive measures and the organisational strategy of gender mainstreaming can be understood as instruments of an extended equality strategy (Squires 1999).

equality only serves to integrate women into a (male) norm, which is never as gender-neutral as claimed. By doing so, the male norm is maintained: women are supposed to be the same as men in order to be eligible to enter a "men's world". The *difference strategy*, represented by radical or cultural feminists, argues that women and men are actually different and that women's worlds (such as care and domestic work) need to be valued, recognised and celebrated. By challenging masculinity and by juxtaposing femininity also this strategy reaffirms the male as the norm and the female as the other.

According to Judith Squires (1999), there are three feminist strategies to achieve gender equality: inclusion, reversal and displacement. Equality theorists follow a logic of inclusion and seek gender-neutrality; difference theorists adhere to a logic of reversal and seek recognition for a specifically (female) gendered identity; deconstructivists follow the logic of displacement and seek to deconstruct the discursive regimes that engender the subject and the world (Squires 1999: 3). Representing the third strand, J.W. Scott (1988) has challenged the Wollstonecraft's dichotomy, whose both sides confirm the male norm. Scott argues that the dichotomy rests upon a false juxtaposition of equality and difference. Equality can only be the opposite of difference, if what is meant by it is sameness (Squires 1999:128). The logic opposite of equality is not difference, but inequality. To make things even more complex, equality in its proper sense does not rest on an assumption of sameness, but on on difference (Scott 1988: 44, Squires 1999: 127-130): features of persons, which "are different", are deemed irrelevant for the issue at stake, thus the claim for equality. Human rights and anti-discrimination legislations are based on the same logic: rights should be granted to persons "regardless of".

Scott has logically deconstructed the Wollstonecraft's dilemma; remains the question of how to challenge the (male) norm in practice. Feminist citizenship conceptualisations have tried to synthesise equality and difference perspectives. The concept of "differentiated universalism" by Ruth Lister (2003, taken up in Siim/Squires 2007) for example combines equal *and* differentiated rights, the latter attached to certain groups of persons. This means that certain groups of people need and claim special rights. What an intersectional perspective adds is that these groups are no longer women-only or

other single-strand groups, but they are further internally differentiated.

But is the (male) norm really challenged by particular rights for special (intersectional) target groups? My argument is that existing rights, which are seemingly neutral, but in fact partial, cannot be challenged through special rights. A simple difference or a more complex intersectional perspective does not change the fact that norm will be upheld, if particular rights are drafted. However complex and intersectional, "special groups" will just be added to the norm. Logically, the (male) norm cannot be tackled by a however differentiated focus on difference.

Challenging the (Male) Norm

In order to answer the question of how to deconstruct the (male) norm, I suggest to revisit the concept of equality in its substantive sense. Critiques might ask: is this not just a classical version of liberal citizenship and equal rights and doesn't it carry the same problems with it? Equality strategies are sceptically viewed by difference theorists because the claim for equal rights is understood as inclusion into the rights of a particular men's world, thus reproducing the (male) norm. Feminists trying to make use of equality and equal rights today are charged with the false universalism of liberal feminism, blamed to ignore diverse living situations and claims for recognition.

My argument is that such a view is an unduly shortcut of what a substantive concept of equality has to offer. Admittedly, a strategy of equality does not by itself require to challenge the (male) norm, as the problematic history of liberal citizenship and rights has shown. But its logic also does *not impede* to revisit the norm. Put briefly, what I argue is that equality has the potential to challenge the norm much more than difference. This is because with equality, two kinds of standards can be evoked: the relational and normative dimensions of equality.

The *relational dimension of equality* means that people should be equally able to enjoy of a full set of rights: to experience well-being, to decide over their bodies, sexualities and lives, to live financially independent, to form partnerships, to have children, to work, and to run for office and to participate politically, regardless of any attributed social categories, such as race, gender or age. Equality of persons thus does not mean that people are or should be equal or act equally (I am far from making any ontological

statements). Rather, equality means that such actions should be available to all persons as well as the freedom to choose among them. Put differently: what is available for the most privileged members of society should be available to all.

The *normative dimension of equality* means that the idea of equal rights, albeit powerful, is not enough. Also the conditions of rights claims need to be challenged (Brown 1995). Emancipation signifies to address the normative basis of society, to question the hegemonic discourses of the say-able and the doable: what is regarded as socially desirable and what are legitimate actions? This answers to Brown´s (1995) suggestion to reflect on the limits of political emancipation and the discourses in which rights claims are formulated. While one cannot move outside of discourse, there are still contradictions and alternatives within. Translated to the issue of equal rights, this means to ask: what kinds of rights are possible and which issues are made invisible? A concrete example is the gender pay gap. An emancipatory project should not only demand equal pay for equal work (relational dimension), but also challenge the logics of underlying remuneration schemes in general (normative dimension). This is important as relational equality carries the danger of levelling down, e.g. equal pay but on a low level, which does not guarantee freedom from poverty. In order to promote equal rights in the sense of levelling up, there should be no equality without a normative standard.

From my point of view, the relational and normative dimensions of equality challenge the (male) norm. On the contrary, I am not sure how to meaningfully establish normative standards, when the starting point is an assumption of *difference* and differential treatment. The idea of substantive equality might not be new, but the potentials of an equality perspective have not yet been realised. Equality strategies might get sidelined in the actual (political) focus on intersectionality, diversity and multiple discrimination. In order to present an alternative to these current developments, I will more fully operate on the concept of substantive equality and translate it into a model of international multiple citizenship in the following subchapter.

1.3. Substantive Equality and Multiple Citizenship

The concept of substantive equality, as promoted here, does neither imply that we are or

should be the same (often associated with equality), nor that we should be all treated equally (often associated with liberal feminism). As has been argued above, talking about equality does not mean that we are talking about sameness. Moreover, from a de/constructivist perspective, I am far from making any ontological statements about what we "are". Rather, it is about making visible what we enabled to do or not. A concept of substantive equality is neither advocating automatic equal nor differential treatment.

On the contrary, the concept does answer to the self-defined needs of differently situated persons. Given that persons start from different locations in society, they might need different rights and resources. Hence, a substantive idea of equality also accounts for social complexity, as persons recourse to different rights at different points in their lives. The societal aim is that people should be equally able to realise rights; the ways to achieve this societal goal will be different. This difference is not assumed to be inherent to the person's essence or identity, but it is due to differences in starting points[28].

As a strategy for action, "substantive equality" yields for politics which minimise differences in the sense of inequalities, but allow for variations in chosen lives. This appears to be a classical liberal idea – which waits to be realised. The argument is that people should have the chance to act and realise the same if they want, and not, if they do not. The political task is to provide for the existence of valuable and feasible alternatives to choose from.

For political organising this means: social life is complex due to differential positionings of subjects and due to their multiple loyalties. Individual and collective action are not confined to lobby around fixed identities (be they intersectional or not), negatively associated with group boundaries, essentialism and internal hierarchies. As an alternative, political agents can promote an issue-based catalogue of rights, covering a wide range of human activities and situations, which should in principle be available to all. Applied to the policy field of intimate citizenship this means to claim the right to (financially supported) artificial insemination regardless of sexuality and marital status. What I argue is that, in principle, one can claim this right *without identifying* as a lesbian, regardless of being in- or outside of a legally recognised partnership. This is not

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28 That persons want to be acknowledged as "different" in e.g. a cultural sense, is another issue not addressed here.

to say that lesbians might not want to identify as lesbians in private and in public, just that claiming for a right does not need to be limited to official group membership or a group identity. This is advantageous, considering the problem that group politics makes it easier to assign rights to certain groups and to deny them to others. Again, this is also not to say that injustices and injuries which have been committed to certain groups of persons should not be made visible to the public, quite the contrary. This is also not to say that a group identity cannot be used for resistance and empowerment. This is just to say that rallying for rights can also be put on a different, non-identity basis.

Multiple Citizenship

In the following, the arguments which have been outlined up to now are synthesised into a model of *international multiple citizenship.* In order to contribute to the inclusionary potential of citizenship, I am drawing from the work of E.F. Isin and P.K. Wood (1999), who build and extend the concept of "radical democracy" by Chantal Mouffe (1992, 1993, 1995). I am furthermore informed by the discussions of citizenship concepts in Jones/Gaventa 2002 and Lister 2003.

The *international* dimension means to include those, who have been previously excluded from substantive citizenship, i.e. non-citizens, through a focus on international human rights. Such a perspective challenges the exclusionary force of national membership by offering "international citizenship"[29]. I follow approaches which conceptualise citizenship and rights as transcending the boundaries of the nation state (Lister 2003: 59-60). In order for such an international citizenship to become real, nation states need to assume transnational responsibility. The factor of responsibility is also stressed by a feminist perspective on human rights, e.g. by M. Nussbaum's capabilities approach and G. Spivak's postcolonial perspective (discussed in Ehrmann 2009).

The term *multiple*, also used by Jones/Gaventa (2002: 18), signifies that citizenship is not a unified master identity. Rather, citizenship is made up by different claims to a wide range of citizenship rights (Isin/Wood 1999: 21). The citizen can – in a respective collective – lobby for different rights at different points in time. The model does not attach members of a certain group with certain rights, as e.g. lesbian or gay rights would

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29 Another related concept is that of "global citizenship ", see Jones/Gaventa 2002: 20.

do. This concept is based on the understanding that subjects are interwoven in complex social relations and have multiple loyalties to adhere to. The individual her/himself is not conceived as a unitary subject, but as characterised by multiple subject positions (Mouffe 1992: 237). Contradictory interests and rights claims emerge from them.

At the same time that the model seeks to avoid fixing identities, it aims at accounting for important questions group membership (Isin/Wood 1999). Rather than sidelining questions of belonging, the suggestions is to position them within the subject her/himself: a subject might feel loyalty towards different groups, e.g. a woman towards working young mothers and a religious community simultaneously. Conflicting requirements and rights claims might arise from membership in different groups, e.g. in questions of care, adequacy of jobs, working hours and the like[30]. The point is that conflict is an essential part of multiple citizenship.

Citizenship as a practice implies individual and collective citizen action. This model suggests issue-based rights lobbying as an alternative to identity groups and group politics. In order to account for the fact that persons are differently positioned in society and have different claims at different point in times, a wide-ranging, issue-based catalogue of rights is needed. The content of such a human rights catalogue is itself open for criticism and extension. The very argument of this model is that, in order to challenge the (male) norm, the partial character of existing international conventions needs to be addressed. Reworking human rights means to extend the field of reach by systematically applying the equality sentence of human rights conventions[31] and in addition, to include class and nationality. Reworking also means to extend the human rights catalogue to refer to issues which have been previously left out, e.g. sexual rights or reproductive rights. In general, rights can be at odds with each other, e.g. ecological vs. technological claims. These conflicts are not to be naturalised, but to addressed as conflicts (see also Chapter 7.2. and 7.3. for an elaboration on rights).

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30 Here, I distinguish between rights as a member of a group (which are still individual rights) and group rights (Isin/Wood 1999: 45). The issue of group rights will be discussed in Chapter 7.2. and 7.3.

31 As an example, the equality sentence of the ICCPR, Article 2 (1), rules: "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

This citizenship model also seeks to promote the *realisation of human rights*. In order to make them real, special measures for groups discriminated against are needed. Affirmative action can be reconciled with an overall de/constructivist perspective: contrary to "strategic essentialism", positive discrimination can be understood as a "strategy without essentialism" (Bacchi 1996: 164). Groups of people who have been "essentialised" and find themselves at a disadvantaged position in society, need to address their position in order to claim positive discrimination. In this sense, affirmative action is also what makes a human rights perspective substantive.

In summary, such a model follows the statement that "acknowledging the plurality of citizenship does not mean to abandon the core principles of liberty and equality" (Jones/Gaventa 2002: 19).

*Intersectionality plays a mediating role between
the yin of conspiracy-theory levels of structural research and
the yang of pathologizing individual-level microanalysis.*
Ange-Marie Hancock (2007)

2. CONCEPTUALISING INTERSECTIONALITY

2.1. Introduction to the Concept of Intersectionality

Intersectionality can be understood as an umbrella term for different approaches which elaborate on social complexity and interwoven processes of in/exclusion. Depending on epistemological starting points and research tradition, terms such as interdependency (Walgenbach 2007), axes of inequality (Klinger/Knapp/Sauer 2007), structures of inequality (Weldon 2008, Risman 2004) and in/equality strands (Squires 2007) co-inhabit this field of research. Moreover, if the focus is extended to politics and law, concepts such as diversity policies and multiple discrimination appear on the spectrum. The term intersectionality is sometimes used to describe a new research paradigm, a heuristic device or a reading strategy (Davis 2008). In other instances, intersectionality is connected to social theory which aims to capture the complexity of social relations and structures on a grand scale. Intersectionality is used from ethnography to sociological empirical case studies, from qualitative to quantitative analysis (McCall 2005).

Intersectionality has come to the arena of feminist theory and practice with a great promise: it seems to offer insights for both, more poststructural-philosophical as well as more political-activist feminists. Its desire to show how persons identify with and are positioned by multiple intersecting social categories answers to anti-essentialist considerations of both strands. But at the same time intersectionality has appeared as a buzzword in feminist theory (Davis 2008), it has become a contested concept. What should intersectionality be about? What should it enquire? And how should it deal with differences and social categories?

Theory building and methodology in feminist intersectionality debates are controversial. Ongoing debates revolve around the question of which social categories should be dealt

with and how to weigh them. Is there a definition of how many *categories* should be dealt with or does this depend on the research question and the context? Not only the *how* of categories is contested, but also the *if*. Should research talk about categories at all? Some scholars go as far as to challenge the process of categorisation as a whole (Lorey 2008, Keim 2009). Such a deconstruction of categories by postmodern and poststructural approaches is deemed problematic by those who claim that we need them for politics (Crenshaw 1991, Erel et.al. 2008). Those who accept the use of categories emphasise that intersectionality should not only depict the disadvantaged, but also focus on the privileged (Ferree 2009, Walgenbach 2007, Staunaes 2003). Hence, a relational approach might be fruitful (Staunaes 2003, Erel et.al. 2008). In a similar vein, some argue that intersectional analysis should not only focus on vulnerability, but also on empowerment (Lutz/Davis 2005).

The use of categories has not only been challenged from the side of deconstructivists. Scholars who do in principle work within a categorical logic have argued that an analysis should *not* start with categories, but with sites and explore the processes within (Ferree 2009, Lenz 2007). Others argue that research should not analyse abstract categories, but power relations: sceptics (Erel et.al. 2008) problematise the "depolitisation of intersectionality talk", arguing that the concern for interlocking systems of oppression and power has been lost due to an arbitrary listing of seemingly equal important differences and descriptions of intersectional locations. From a slightly different point of view, it is suggested that research should not focus on categories, but on subjects and the positions offered to or assumed by them (Staunaes 2003, Prins 2006). These scholars argue that a focus on abstract categories or structures is not helpful, if interested in the subject level.

Apart from the question of how to deal with categories, debates also revolve around *levels of analysis*. Increasingly, the exploration of subject positions and identity constructions has come under criticism for reaching too short. From the viewpoint of state and hegemonic theory, intersectionality should also encompass the question of how the construction of social categories in the form of intersectional policies re/produces power relations within states and supranational processes (Sauer/Wöhl 2008). Some argue for a multilevel analysis, comprising of social structures, processes of

identification and the level of symbolic representation (Degele/Winker 2007, 2009). Basically, what is argued is that a sole focus on subjects and points of intersection neglects social structures of domination (Klinger/Knapp 2007, Risman 2004, Weldon 2008). In turn, these structural analyses are challenged e.g. by interdependency theorists (Walgenbach et. al. 2007), who see categories as already constituted by each other and thus lacking some "genuine essence". On a slightly different note, other poststructural scholars (Staunaes 2003, Carbin and Tornhill 2004 cited in Honkanen 2008) criticise structural analyses for their realist epistemology and use of categories. They stress the constructed nature of categories and argue for a poststructural understanding of power; they prefer to study processes rather than structures.

The concept of intersectionality appears to offer a wide range of uses, which in turn trigger vidid debates about the "best way". From the point of view of sociology of science, this is one of the reasons why the concept of intersectionality has become so attractive during the last decade for a vast majority of researchers (Davis 2008). In any case, there are many competing ideas about how to deal with differences and categories, especially when the deconstructivist challenge to the very idea of differences and categories is included.

Methodologically, different ways in intersectional research have developed. As Leslie McCall (2005) classifies it, there are anti-, intra- and intercategorical approaches to intersectionality. According to my reading of this classification, the difference between these three approaches lies first and foremost in the question whether they deconstruct categories (anticategorical) or use them for analysis (intra- and intercategorical). The first of these approaches often remains on a meta-theoretical level, where the process of categorisation itself is the subject of analysis, whereas the last two use categories to analyse social complexity.

According to McCall, anticategorical approaches problematise the process of categorisation per se. This is an approach which primarily suits postmodern and poststructural feminists who tackle the idea of an unified subject and essentialism. Any process of categorisation is considered inclusionary and exclusionary at the same time – due to the logic of differentiation and thus boundary-making (McCall 2005: 1777). While this strand is an important one, intersectionality debates have an equally strong

foundation in political activism[32]. In such a tradition, the intracategorical approach to intersectionality makes groups at neglected points of intersection visible. This approach was highly influenced by Kimberlé Crenshaw's seminal work (1991). Crenshaw showed e.g. "how women of colour face structural obstacles making them particularly vulnerable to battery and rape and that both feminism and anti-racism have failed to address the ways that race and gender intersect to produce this vulnerability." (Davis 2008: 79, Footnote 1). Generally, this intracategorical approach is used to talk about subject positions or groups at intersections.

As debates developed, intercategorical approaches have increasingly gained attention. These approaches are meant to reflect on wider social relations. The emphasis is not on single points of intersection; rather, the relationship between intersectional groups is the subject of analysis. Initially drafted as a way to develop quantitative analysis between different intersectional groups (McCall 2005:), the focus on larger social patterns has been taken up by social theorists interested in intersectionality who seek to underpin intersectionality with a social theory of "axes of inequality" (Klinger 2003, Klinger/Knapp 2007).

These approaches can also be distinguished from an *epistemological point of view*. Deconstructivist, anticategorical perspectives are much more based in social constructivism and postpositivism than are intra- and intercategorical perspectives. Having said this, it is probably an oversimplification: both approaches will most likely operate with the state of the art of gender studies, which is an understanding of gender and other social categories as socially constructed. Despite this common ground, the two perspectives depart into different directions. The anticategorical perspective seeks to deconstruct. It makes use of poststructural insights in order to dismantle categorical thinking. Somewhat different from this approach, the intra- and intercategorical perspectives more often deal with the sedimentations and effects of constructions. Therefore, they tend to assume a stronger realist epistemology and empiricist approach, trying to grasp experiences, locations and structures. In this use, categories are taken seriously as lived experiences of privilege and discrimination. Gender and other categories are understood as being embodied by persons (Lorey 1998) and thus made

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32 The distinction between these two strands is more analytical than corresponding to actual feminist practices. I doubt that deconstructivist scholars e.g. would easily identify as a-political.

real. A further reaching step is to emphasise the potential of self-defined identity politics, which take (intersecting) categories as the basis for personal empowerment and political organising (Crenshaw 1991, Erel et.al. 2008).

2.2. Key Issues in Intersectionality Debates

The empirical goal of this dissertation is to analyse intimate citizenship policies in an intersectional, discursive analysis. For the purpose of a developing such a model of analysis, I will draw from existing literature and operationalise concepts for policy analysis. In order to do so, a systematic exploration of existing literature is necessary. Each approach, presented in the following, will be scrutinised regarding four key issues: 1) Understanding and use of categories, 2) Logic of intersectionality, 3) Levels of analysis and 4) Applicability to policy analysis. Before engaging in the selected approaches in detail, these four criteria will be presented.

Understanding and Use of Categories

The way an approach deals with social categories is crucial for assessing the usability for policy analysis. Epistemologically, there is a spectrum from poststructural deconstructivist over constructivist to structuralist, realist perspectives. Whereas deconstructivist scholars challenge the process of categorisation itself as a means to create power hierarchies and inclusions/exclusions (Lorey 2008, Keim 2009), a constructivist one emphasises the socially constructed character of social categories, but still works within a categorical logic. As a synthesis, a *de/constructivist approach* aims at deconstructing social processes of categorisations and differentiation, while at the same time using categories for analysis. This dissertation pursues such a de/constructivist approach.

The use of categories depends on epistemological starting points, research interests and levels of analysis. Within constructivist approaches, there is a variety of uses ranging from pre-categorical to a catalogue of possible categories. The content of categories does not need to be fixed and static, as Ange-Marie Hancock (2007) demonstrates by means of fuzzy-set logic. Other, more structurally oriented scholars prefer to work with a fixed set of limited categories, usually race, class, gender (and sometimes the body),

where each category seems to be rather closed. Let's look more closely into these different uses.

The strict null-hypothesis, as raised by Andrea Bührmann (2008), assumes that it is an open empirical question which categories are deemed important in a certain context, not only, but especially for subjects in their self-description. What follows from this is a *pre-categorical approach*, which induces categories from the empirical material. The so developed categories can be cross-checked with a theoretical catalogue of categories. Such a catalogue can be found in the work of Helma Lutz (2001). She speaks about lines of differentiation around the body, the social/spacial and the economical, whereby some categories can figure in more than one sphere. Bodily ascriptions include gender, sexuality, race/skin colour, ethnicity, health and age. The social/spacial dimensions are class/education, nation/sate, ethnicity, settledness/origin, culture/religion/language, North/South/East/West. Economical differentiation can be identified around class, property, North/South/East/West and development status. However, this catalogue is open for extension.

Agony about the *etc*. in lists of categories is an often found theme in intersectionality literature. Apart from deconstructivist scholarship which seeks to problematise the essentialism and exclusions inherent in such lists (Keim 2009, Lorey 2008), also more constructivist oriented scholars face the challenge of determining which categories they will deal with and how. One way to go about this is to generate categories out of the empirical material and to cross-check them with theoretical literature on the subject. In order to talk about absences in a text, the recourse to a possible "list of categories" is needed. Ange-Marie Hancock (2007) illuminates that it is possible to conceptualise categories even in quantitative analysis in a more open and complex way. Fuzzy set logic, applied in data collection, proves that the term category does not imply a stable and abstract entity. As Hancock convincingly shows, both individual and structural factors can be taken into a category: racial self-descriptions can feed into the category of race just as contextual factors such as racial composition of the neighbourhood and census data.

A rather fixed set of categories, such as the triad of race, class and gender is found in social theoretical approaches such as Klinger (2003), Klinger/Knapp (2007), Knapp

(2005, 2008) and Roß 2008. Degele/Winker (2007, 2009) conceptualise a multi-layered intersectional analysis, of which a part refers to the structural level (besides the identity and the representational level). Therefore, they determine class, race, gender and the body as a priori structural categories.

Logics of Intersectionality

Laurel S. Weldon (2008) distinguishes between two logics of intersectionality: the intersectionality-only and the intersectionality-plus one. *Intersectionality-only* assumes that there is no logic apart from intersectionality. In a realist epistemology, social positionings are intersectional. Subjects are positioned by gender, race, ethnicity, class, age, dis/ability etc. Methodologically, the intersectionality-only understanding is applied in the intracategorical approach (McCall 2005). According to this author, "authors working in this vein tend to focus on particular social groups at neglected points of intersection […] in order to reveal the complexity of lived experience within such groups." (McCall 2005: 1774). Of course, an intracategorical approach is not confined to look at the disadvantaged or marginalised, but it can look at the privileged sides as well (Ferree 2009).

The *intersectionality-plus* logic departs from the understanding that there are different structures of inequality, which can be separately attributed to gender, race and class (analytical separability). In this logic, it makes sense to talk about separate structures in a first step, to then identify some points at intersection for a more detailed analysis (Risman 2004, Weldon 2008). Some structuralist scholarship focuses only on the first, structural step (Klinger/Knapp 2007). These theorists depart from the understanding that "it makes no sense to hint at the superimposing and intersecting aspects of class, 'race' and gender in the worlds of individual experience without being able to specify how and by what means class, 'race' and gender are constituted as social categories" (Klinger 2003, cited in Knapp 2005). Here, the endeavour is to investigate the relationship between categories or, in their terminology, axes of inequality. Intersectional social theories seek rules or parameters of how inequality structures interact on a more general, abstract level. Intersecting structures are racism, sexism and capitalism, or also called imperialism, patriarchy and capitalism (Klinger 2003).

Usually, structural scholars refer to what McCall (2005) calls the *intercategorical*

approach. It seems to me that an in the course of interpreting and using McCall's (2005) distinction of anti-, intra- and intercategorical approaches, the term intercategorical has been used to describe different undertakings than McCall initially set out to do. As I understand McCall, she envisaged to explore the relationship between groups at certain points of intersection. She did so by accounting for wage inequality in differently industrialised areas between groups intersected along the lines of race, gender, class/education. She sought to conceptualise a quantitative intersectional analysis. However, the term intercategorical has been used by Klinger/Knapp (2007) to formulate social theory and theorise the intersection of social structures.

Levels of Analysis

Usually, scholars distinguish between locational and structural approaches in the study of intersectionality (Ferree 2009, Weldon 2008). The *locational approach* investigates a group at a certain intersection in society, thus, sociologically speaking, operating at the micro level. This approach is connected to what McCall terms the intracategorical approach (McCall 2005) and Weldon (2008) the intersectionality-only logic. The intracategorical approach is understood to give voice to previously unheard groups (Ferree 2009). Methodologically, there appears to be an assumption (Degele/Winker 2007, Knapp 2005, Knapp 2008) that it serves to talk about subjectivity and identities and thus, is (only) a suitable approach for ethnography and sociological empirical case studies (McCall 2005).

Table 1: Dichotomies in the Study of Intersectionality

Locational	Structural
Intracategorical approach	Intercategorical approach
Intersectionality-only logic	Intersectionality-plus logic
Micro level case studies, identity	Macro level analyses, institutions and structures
Subject positions/group at intersection	Axes of inequality, logics of oppression

On the contrary, *structural approaches* operate on a wider scale. The intercategorical one (McCall 2005) looks at the relationship between groups at different points of intersection. Structural analysis, usually conducted under an intersectionality-plus logic (Weldon 2008), aims at exploring the relationship between axes of inequality on a

macro level (Klinger/Knapp 2007, Knapp 2008). These approaches are criticised for their structural image of categories and the high level of abstraction (Walgenbach 2007). Furthermore, it is a relatively static model, as criticised by Prins (2006) and Ferree (2009), who both prefer more dynamic models of structuration.

Applicability to Policy Analysis

The fourth and last point is the summarising methodological question: what can be taken from a concept and used for policy analysis? In order to answer this question, we need to clarify what kind of features are necessary for an intersectional discursive policy analysis.

First, the conceptualisation of intersectionality needs to be in line with the overall epistemological perspective of discursive policy analysis. This is a de/constructivist perspective, as mentioned above. Second, a critical, categorical understanding is needed. Approaches which entirely reject the use of categories are not useful, as the analysis will work within a categorical logic. Nevertheless, the problematisation and a reflexive use of categories are important features. Third, as the policy analysis departs from a certain policy field, an intersectional approach needs sites as starting points. Fourth, within these sites, the focus lies on processes of doing difference and intersectionality. Consequently, the analysis needs an intersectional approach which has a rather dynamic than structural perspective, as the policy analysis is looking out for discursive processes. The analysis is not concerned with the observation of social structures.

2.3. Selected Approaches to Intersectionality

There is already a well-established body of literature on intersectionality in feminist research, which also holds true for political science. The term "political intersectionality" for instance describes the research interest in how categories are dealt with and mobilised in the polity.

As laid out before, this dissertation enrols in the study of political intersectionality. It aims at exploring how social categories are constructed and made meaningful as legitimate markers of discrimination. On a methodological level, however, the question

of how to systematically include an intersectional perspective into policy analysis is still underdeveloped. Therefor, existing intersectionality approaches and their possible impact on policy analysis are scrutinised. The approaches range from systemic over interactionist to poststructural, discursive ones (see Table 2). The criterion for taking a closer look at them is the presence in feminist intersectionality debates.

Table 2: Approaches to Intersectionality
- Systemic approaches
- Structural approaches
- Interactionist approach
- Interdependency
- Poststructural discursive approaches
- Processual approach (Chapter 3)

Deconstructivist perspectives (Lorey 2008, Keim 2009) and Ferree's (2009) dynamic approach to intersectionality are not given a separate section as they will be discussed at length in the processual approach (Chapter 3.), which this dissertation pursues.

SYSTEMIC[33] APPROACHES TO INTERSECTIONALITY

The first one discussed is the systemic approach, identified by Baukje Prins (2006)[34]. US scholars such as Angela Davis, Audre Lorde, Patricia Hill Collins, and Kimberlé Crenshaw are said to be part of such a tradition which seeks to conceptualise interlocking systems of oppression. Systems of domination impact on subjects in a subordinating and disempowering sense. In the following I will analyse Kimberlé Crenshaw's approach more closely, as her texts have had a, if not the most crucial impact on intersectionality debates in recent years.

US legal scholar Kimberlé Crenshaw (1991), highly influential even beyond critical race theory, has used the term intersectionality in order to talk about overlapping processes of racialisation and gendering. The way in which she uses intersectionality challenges the understanding of categories as separate, as mutually exclusive. By means

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33 Another type of systems theory is developed by Sylvia Walby (2007, 2009).

34 Prins distinguishes the US systemic approach from UK scholarship, represented by the work of Floya Anthias and Yuval-Davis, Stuart Hall and Beverly Skeggs, which emphasises "the dynamic and relational aspects of social identity" (Prins 2006: 279). Following a "constructionist interpretation" of intersectionality, these studies are said to have a Foucauldian, dynamic view of power, to conceptualise human agency in a less deterministic way and to deal with categories as narratives rather than named categories.

of exemplifying the experiences of African-American women in relation to domestic violence and rape crimes, she outlines the phenomenon of intersectional invisibility: African-American women get sidelined by both anti-racist and feminist movements and also have troubles in getting their claims of "dual" discrimination acknowledged in court. Crenshaw distinguishes different realms where intersectionality is produced and located: structural intersectionality describes "the ways in which the location of women of color at the intersection of race and gender makes our actual experience of domestic violence, rape, and remedial reform qualitatively different than that of white women" (Crenshaw 1991: 1245). Political intersectionality refers to the ways in which issues get processed in intersectional or non-intersectional terms in the polity, by policies and claims of social movements. Representational intersectionality refers to cultural re/productions. Empirically, these fields of intersectionality are interrelated.

The metaphor of intersectionality describes traffic along different lanes and points of intersection (Crenshaw 2009). Traffic can go both ways, from the disadvantaged to the privileged end and vice versa. Various encounters are possible, at different points of privilege and disadvantage. Consequently, within a relatively disadvantaged racialised group there are still gendered privileged positions; the same applies to disadvantaged gendered groups which have racial privilege within. The issue of intersectional invisibility is refined by dimensions of over- and under-inclusion. Over-inclusion describes the ways in which differentiation among women is lacking, e.g. in debates on trafficking. On the other hand there is under-inclusion when the concerns of a specified intersectional group of women, e.g. minority women who have suffered forced sterilisation, are perceived too marginal to be taken up into political campaigning or agenda setting.

Understanding and Use of Categories

Epistemologically, Crenshaw is best located in a moderate constructivist tradition. She adheres to a constructivist view in which categories are perceived as socially constructed. "But to say that a category such as race or gender is socially constructed is not to say that that a category has no significance in the world." (Crenshaw 1991: 1296). The focus of her analysis is not so much on the process of categorisation, but on the subordination which follows from categorisation. Identity groups are not rejected as

such, but the problems that arise with the privileges and exclusions caused by them.

From a strictly deconstructivist point of view, Crenshaw's approach only tackles half of problem. Power hierarchies are contingent upon "differences"; categories as tools create these differences. This process of differentiation is not theorised by Crenshaw. The author asserts that theories should primarily contribute to the practical and to a better understanding of the political. "Recognising that identity politics takes place at the site where categories intersect thus seems more fruitful than challenging the possibility of talking about categories at all." (Crenshaw 1991: 1299). To her, working with categories (showing privilege and disadvantage) is more powerful than problematising the mere use of categories.

Nash's article "Re-thinking Intersectionality" (2008) criticises American literature on intersectionality, and more specifically the work of Crenshaw (1991), for the reduction to gender and race, i.e. for its reduction to "black women" as the entity and unified objects of study (2008: 4). In her critique she stresses that neither women, nor black women are a unified group or social class. I do not fully agree with Nash's critique of Crenshaw (1991), as it seems to be a superficial reading. Crenshaw explicitly deals with dimensions of migration and citizenship in relation to domestic violence and also accounts for class dimensions. Throughout Crenshaw's article (1991) gender, race and class as well as nationality/citizenship status are used as analytical categories. Moreover, sexuality and age are mentioned as important categories to be considered; admittedly, Crenshaw does not elaborate on them.

Logic of Intersectionality

According to Prins (2006), systemic scholars adhere to an anti-essentialist view of identity, but deal with relatively rigid systems of domination. Prins' criticism refers to the under-theorising of human agency and the cumulative understanding of systems of oppression. While there is a point to the under-theorising of human agency, I am not convinced that Crenshaw has a cumulative view on systems of oppression. Rather the contrary: I think that Crenshaw represents an intersectionality-only understanding of social categories. Her main argument, intersectional invisibility, is about how processes of gendering and racialisation work in an intertwined way and produce invisible subject positions (e.g. African-American women). To illustrate this, Crenshaw uses the

metaphor of a street intersection.

The image of intersectionality has been often criticised (e.g. Walgenbach 2007) as it seems to imply that categories have different trajectories and logics and only meet in certain points of intersection. I would argue that this image can be interpreted in a different light, too: Crenshaw *does not* elaborate on separate logics of racism and sexism, but looks at the intersections where categories meet and produce disadvantaged (and invisible) subject positions. At this point I think that it is important to distinguish between race, class and gender as social *structural categories* and *analytical categories.* In my view, there is a difference between structural, separate logics of racism and sexism and separate analytical categories.

Levels of Analysis

Crenshaw (2009) seeks to deconstruct the dualism that has emerged from the concept of intersectionality. With regard to levels of analysis, she considers a strict distinction between identity and structure as problematic. Intersectionality, as she understands it, is suitable for pinning down the structures and dynamics of certain spheres, such as employment. At the same time, structures and dynamics produce and refer to imagined identities of women and men. Thus, structure and identity are interrelated.

Applicability to Policy Analysis

Crenshaw's considerations about intersectionality emerge from the political concern over identity politics along separate lines of gender, sexuality or race and their failure to account for intragroup differences. She sets out to "explore the race and gender dimension of violence against women of color" (Crenshaw 1991: 1242). Developed out of empirical analysis, her conceptualisations are suitable to be applied to policy analysis. What she seeks to explore is how race and gender dimensions are mobilised politically. This is compatible with a analytical focus on how policy debates construct target groups and allocate rights and duties to them.

STRUCTURAL APPROACHES TO INTERSECTIONALITY

A second influential strand is structural approaches to social complexity that is found in US-American and in European research. Examples within the US are the work of

sociologist Barbara Risman (2004) and political scientist Laurel S. Weldon (2008). These scholars are characterised by their intersectionality-plus logic and their interest in the macro level. This means that Weldon (2008) advocates looking at separate structures of inequality in a first step (the race structure, the gender structure and the like) and analysing certain groups at intersections in a second step.

The structural focus within German scholarship appears to be even stronger. Especially scholars interested in social theory (Klinger 2003, Knapp 2005, Klinger/Knapp 2007, Knapp 2008) or wider social analyses (Roß 2008, Degele/Winker 2007) pursue a structural perspective. Klinger's model (2003) explores how race/ethnicity, class, and gender are constituted by the regimes of imperialism, capitalism, and patriarchy in relation to productive and reproductive work. The model of a multi-layered intersectional analysis, developed by Degele/Winker (2007, 2009), aims at analysing the structural level – among others levels of identity and representation – in relation to re/production. Based on the *a priori* of four structural categories (class, gender, race and the body), which are deemed the structures of dominance in a capitalist society, the analysis addresses work related issues (Degele/Winker 2007). Structures of exploitation and discrimination are classism, sexism and heteronormativity, racism and body-ism.

Understanding and Use of Categories

In structural models, selected categories are set a priori to describe social structures. In the above approaches (Klinger 2003 and Degele/Winker 2007), it is usually a limited number of categories such as race, class, gender (and the body), which are systematically, but separately dealt with. A criticism of these models argues that categories other than race, ethnicity, class, and gender – of course depending on the context – are also be important. Moreover, critiques emphasise that patterns of dominance have to be understood in their geographic location, time period, and culturally specific setting (cf. Walgenbach 2007, Lenz 2007).

Logic of Intersectionality

A structural approach is based on an intersectionality-plus logic. The assumption is that there are separate structures or axes of inequality, which should be explored by means of structural categories such as gender, race and class (and the body) separately.

Following, social theory should analyse how separate structures intersect at a societal level.

Levels of Analysis

Models such as Klinger (2003) aim towards a social theory of late capitalist societies. Their focus is primarily on re/production. This is criticised for taking labour as the main organising field; a selection that neglects the complexities of other interconnected social institutions like the state and the family, where social relations are re/produced.

Applicability to Policy Analysis

A research interest in social theory building differs from policy analysis. A macro analysis aiming at identifying social structures has different goals than a discursive analysis of policy debates. Consequently, the application of this model to policy analysis is limited. Talking about axes or structures of inequality does not easily meet the needs of policy analysis, which looks at the processes of doing intersectionality. A policy analysis also has to deal with intersectional target groups, which are not conceptualised in a model of social structures. Last, the field of analysis, i.e. intimate citizenship policies vs. re/productive work is different, which further complicates the use of this model for policy analysis.

INTERACTIONIST APPROACHES TO INTERSECTIONALITY

In their ethno-methodologically informed, sociological conceptualisation of gender as a "routine, methodical, and ongoing accomplishment" (1995: 9), West/Fenstermaker underline the processual, interactionist character of social divisions. While gender, class and race are produced in interaction, the conceptualisation is not reduced to the individual level; rather, these categories are thought of as "emergent property of social situations" (1995: 9). According to a constructivist perspective, gender, race and class are understood as "mechanisms for producing social inequality" (1995: 9). The authors cite Ervin Goffman in order to underline the constructed character of differences: social situations "do not so much allow for the expression of natural differences as for the production of [those] difference[s themselves]" (Goffman 1977: 72 in West/Fenstermaker 1995: 31).

Understanding and Use of Categories

The authors address the categories of gender, race and class, without explaining why the lay a special emphasis on this triad. Gender is situated in social action (1995: 22) and contributes to social structure. Just like gender, race is also "omnirelevant" (1995: 23) in social interactions; at least this holds true for the the US context, where persons are held accountable for their "race performance". "Both race and gender [are understood] as situated accomplishments" (1995: 24), which individuals experience simultaneously. With regard to class, there is accountability of persons to class categories, too (1995: 26). In the US context, for example, persons answer to the illusion of a class-less society and "that everybody is endowed with equal opportunity" (1995: 28) This is the reason why differences in success and wealth are attributed to individual lack of character or intelligence. What is important to note is that the relevance of these ongoing accomplishments is context-specific and that the same activities have different meanings in different contexts, e.g. mothering and child care (1995: 32).

Logic of Intersectionality

The accomplishment of race, class and gender happens simultaneously (1995: 30), which points to an intersectionality-logic. West/Fenstermaker depict a situation of discrimination experienced by African-American law professor Patricia Williams, who is denied access to a shop. The objective of their analysis is : "[...] to show that one cannot isolate William's race category from her sex category or class category and fully understand this situation." (1995: 31).

Levels of Analysis

In their view, the accomplishment of gender is not something individual, but happens in interaction with others. Individuals are connected by the need to render one's actions accountable. Accountability is thus interactional and institutional. Gender (as well as race and class) is described as "a mechanism whereby situated social action contributes to the reproduction of social structure" (1995: 21). What becomes clear from the above is that West/Fenstermaker challenge separate views of macro versus micro analysis, which they claim is "ultimately a false distinction" (1995: 24).

Applicability to Policy Analysis

What is used from West/Fenstermaker's conceptualisation is their understanding of how gender at intersections is re/produced in order to support a specific social order. That gender, race and class are produced in interactions and rendered accountable is also transferable to the policy process, where gender at intersections is re/produced in parliamentary debates. The challenge of micro vs. macro levels of analysis seems particularly suitable for policy analysis (see Chapter 3.4.).

POSTSTRUCTURALIST DISCURSIVE APPROACHES

The volume "Critical Studies of Gender Equalities" edited by Eva Magnusson, Malin Rönnblom and Harriet Silius (2008) is taken as an example for a poststructuralist, discursive tradition[35]. These poststructural researchers emphasise dislocations, dilemmas and contradictions in hegemonic discourses. A focus on construction and processes is crucial to the perspective.

Contributors to this book are especially interested in social categories as meaning-makers. Discursive policy analysis is focusing on how constructions about the world create "limits and possibilities for thinking about and doing gender, especially as gender intersects with dimensions of ethnicity, nationality and sexuality" (Magnusson/Rönnblom/Silius 2008: 8). Exploring what kinds of subject positions are created by policy debates, is central. Focus of analysis is the production of normativities and subjectivities. Norms, however, are never fully taken up and embodied by subject (Staunaes/Sondergaard 2008: 147), but room for agency remains.

Understanding and Use of Categories

The contributors problematise gender and other categories insofar as "gender is the product of reiterative practices by which 'discourse produces the effects that it names'" (Butler 1993: 2 in Staunaes/Sondergaard 2008: 143). In contrast to a strong deconstructivist perspective which remains at the meta-level of categorisation, a "constructionist" approach, within which the authors of Magnusson/Rönnblom/Silius (2008) locate themselves, seeks to work with constructions of gender and other

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35 For more literature of Nordic scholars on intersectionality see Phoenix/Pattynama 2006, Prins 2006 and Magnusson/Rönnblom/Silius 2008.

categories in a discursive setting. Gender is conceptualised as one among many socio-cultural meaning-makers and producers of socio-cultural order (Staunaes/Sondergaard 2008). The focus is thus on discursive processes that construct gender and other ordering principles.

Deducing from these statements, it is an open empirical question which categories are mobilised in a certain policy debate. The volume's case studies have an analytic emphasis on dimensions of gender, class, ethnicity/race and sexuality in the described volume (Magnusson/Rönnblom/Silius 2008: 8).

Logic of Intersectionality

The authors work within an intersectionality-only logic. The focus is on how policy processes participate in meaning-making around intersections such as gender and ethnicity (Carbin 2008) or gender and nationality (Raevaara 2008). Carbin (2008) discusses meaning-making in relation to honour related violence and looks at how the subject position of immigrant girls is constructed via the policy process. Raevaara (2008) looks at how gender and nationality are mobilised together, when certain forms of gender equality are de/legitimised by reference to nationalistic discourses. Other scholars within the cited volume work with a gender rather than an intersectionality lens: they scrutinise meanings of gender equality at the level of political practices such as quota systems (Guldvik 2008), but also at the subject level (Magnusson 2008).

Levels of Analysis

The political science articles of this volume are less concerned with spelling out the different levels of analysis. According to a poststructural, constructivist epistemology and a focus on shifts, dislocations and dilemmas in policy discourse, their approach is processual. The research interest lies in change and contradicting developments.

Applicability to Policy Analysis

The book is an illustration of how policy analysis can deal with intersectionality in a discursive sense; it shows how political practices and subject positions are constituted in policy debates. My own processual approach draws widely from this constructionist, discursive perspective on policies.

INTERDEPENDENCY

The volume "Gender as an Interdependent Category", edited by Katharina Walgenbach, Gabriele Dietze, Antje Hornscheidt and Kerstin Palm (2007) gathers a multitude of disciplinary perspectives. What the contributors of the book share is the conceptualisation of gender as an interdependent category. Below I will discuss the text of Walgenbach (2007) that sets out the theoretical features of the interdependent approach.

Understanding and Use of Categories

Walgenbach (2007) reflects about the mutual dependency of social categories. This leads the author to no longer talk about interdependencies between categories, but about an interdependent category. As such, gender is internally structured in a heterogeneous way. The usual list of categories is transposed inside a category, which means that gender no longer has a "genuine essence". The same applies to all the other categories.

On a social level, there are interdependent relations of dominance. Gendered subjects are neither only exposed to privilege nor disadvantage; rather, they are differently positioned in a multidimensional matrix. What gender means can only be determined in a historical and geographic setting, any totalising answers are rejected. To explore the internal structure of a category means to look also at the privileged ends. The researcher's bias – given the own privileges and thus, blind spots – is important to consider, too.

The categories with which the authors of the book deal are gender, sexuality/queer, ethnicity, "race", nation/citizenship and disability (Walgenbach et.al. 2007: 15). They do not further justify their selection.

Logic of Intersectionality

Interdependency follows an intersectionality-only logic: it stresses that the construction of gender includes class, ethnic, racial and other dimensions. From my point of view, this approach uses a different term (interdependency) to express what the older term (intersectionality) has already tried to achieve: that gender is always intersecting with other dimensions and that "gender" alone is an unduly reduction. What is new is the image of interdependency that has different connotations than intersection. It sounds

more interwoven and stresses the contingency of gender from other (internal) categories. Gender is conceptualised as already constituted by race, ethnicity etc.

In a critical perspective, however, this concept has most of the same problems as intersectionality, because it needs to define which categories an category is dependent upon. Moreover, there is a logic inconsistency within the interdependent approach: if a category is always internally heterogeneous, then there is something like a "master category", in which all other social dimensions are embedded. Consequently, there is no need to pluralize the interdependent category. But this is what happens at the end of Walgenbach's text: "Subjects are positioned by multiple interdependent categories" (2007: 64). The logic inconsistency is that on the one hand, the interdependent approach translates the multidimensional perspective inside the category. On the other hand, the internally structured category is once again thought to be interwoven with other interdependent categories; thus the multidimensionality is located outside the category.

It seems that the interdependent approach aims at a complex concept of category as internally structured, but it does not succeed to translate this into a complex analysis[36]. Similarly to existing concepts, the interdependent approach needs multiple categories (plural!) that are somehow interwoven. What is the difference between multiple interdependent categories and multiple intersecting categories? It is not evident what interdependent categories can offer which is not be covered by intersecting categories.

Levels of Analysis

Walgenbach (2007) stresses the context specificity of social relations. Depending on the context, the levels and fields of analysis need to be identified for every case study. Levels are (1) social structures at the macro level; (2) social institutions and symbolic orders at the meso level and (3) social practices and subject formations at the micro level. The fields in which gender is constructed are economics, politics, law, culture and the body (Walgenbach 2007: 57). Referring to West/Fenstermaker (1995), Walgenbach stresses the importance of conceptualising the production of gender across levels, i.e. to show the mutual construction of categories from the macro to the micro level and back. What distinguishes the interdependent approach from West/Fenstermaker's concept, is a

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36 Moreover, there seem to be different uses of the term "interdependent category" among the authors of the very same book. Hornscheidt (2007) for example rather talks about interdependencies between categories, rather than an internally structured interdependent category.

stronger structural focus. West/Fenstermaker (1995) primarily engage in how interactions produce gender; these actions are embedded in institutions and lead to institutional practices. Walgenbach argues that this model should be extended by a conceptualisation of the dialectic between structures and interactions (2007: 51).

Applicability to Policy Analysis

Walgenbach's article lays out a theoretical conceptualisation of categories. What I find useful is the emphasis on context specificity. Problematically, there are some logical contradictions within the approach. It also lacks an elaboration of how to analytically use an interdependent category. For the purpose policy analysis, separate analytical categories, which are intersecting or not, appear more flexible to use than an internally differentiated category (or categories – internal inconsistency).

3. OPERATIONALISING INTERSETIONALITY

In this chapter, the project's conceptualisation of intersectionality is outlined. It is informed by scholarship that works with intersectionality as a *constitutive process* (Yuval-Davis 2006a). Constructions of gender, sexuality, race/ethnicity and class and other categories are interwoven. The production of intersecting categories has effects: inclusion, exclusion, privilege and disadvantage. In order to underline the processual aspect, poststructural scholars use the terms racing-gendering (Hawkesworth 2006) in order to describe active processes (instead of the race or the gender structure). The processual approach is located in the middle of the spectrum which reaches from interactionist notions of "doing intersectionality" (Staunæs 2003: 102) to structural notions of axes of inequality (Klinger/Knapp 2007).

This approach draws from Myra Marx Ferree (2009)'s dynamic account of intersectionality and Ilse Lenz's (2007) concept of "configurations". In more detail, it is a processual approach to intersectionality, based on a constructivist perspective and made up by three pillars: (1) sites, (2) processes and (3) subject positions.

The first two pillars of sites and processes are informed by Ferree's (2009) dynamic and discursive-institutional account of intersectionality. Ferree stresses that a dynamic approach has advantages vis-à-vis the locational and the structural approach. While the locational approach applies a matrix of known social categories[37] and points of intersection, the dynamic approach begins from each context (site) and explores the forces operating within to produce inequalities. The focus is on interactions between processes which produce configurations of social relations. According to Ferree, this approach widens the field and allows for multiple levels of analysis. It also draws unmarked groups, e.g. privileged groups, into the picture. At the same time, it problematises group formation. Therefor, it focuses to processes and sites (e.g. the nation state). Given this approach does not longer depart from fixed categories and groups, but from certain *sites and problems*, it is also called "problem definition processes". The advantage of such an approach is that it can detect more categories than

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37 This is not necessarily so. As Andrea Bührmann (2008) has shown, the locational approach can also work with a "pre-categorical" approach which has no pre-made matrix of known dimensions, but where the interviewed raise social categories important to their understanding of themselves.

an approach which starts off with predefined set of categories.

Ilse Lenz (2007) also works with the notion of configurations, understood as the intersectional structuring of social relations. What she seeks to develop is a method by which practices producing patterns of inequality can be explored. A constructivist perspective does not start by asking "how the social power axes such as gender, migration and class structure these practices, but rather the other way round, [it] shall first look at the social structures and practices of doing intersectionality or equalisation" (2007: 106). In summarising, a dynamic approach departs from the understanding that analysis should firstly look at practices and processes operating within a certain field, to then observe patterns and structures. As Ferree argues:

> This is what Prins (2006) defines as a "constructionist" rather than a "structural" understanding of intersectionality, but I prefer to call it "interactive" intersectionality to emphasize its "structuration" as an on-going multi-level process from which agency cannot be erased. (Ferree 2009: 2)

My third pillar of *subject positions* is an addition to Ferree's dynamic model. I do agree with Ferree and Lenz on the starting point of sites and the processes. However, attention to the "who" seems to be lacking. While the locational approach only works on the subject or group level, structurally oriented approaches entirely loose the subject. A synthesised approach, like this dissertation pursues, departs from sites and (discursive) processes and analyses how they construct subject positions in an intersectional way. The actual policy analysis will be developed in part II.

3.1. Epistemology and Reflexivity

This dissertation has a de/constructivist approach to categories, meaning that it addresses the problem of categorisation, but still uses categories as analytical tools in policy analysis. As outlined in the introduction, this dissertation is concerned with the deconstruction of "legitimate inequalities" in policy debates. It uses intersectionality as an analytical tool in order to show how differences are constructed and made justifiable in the policy debate. Hence, it subscribes to a critical, deconstructivist account of differences, but uses categories nonetheless. Speaking in categorical terms, this dissertation works with both, an anticategorical and a categorical perspective.

In more detail, the *anticategorical perspective* is the underlying rationale of this dissertation. It problematises the process of categorisation as inherently problematic. Categories are means of differentiation which lay the ground for inequalities. Applied to the policy process this means: a logic based on difference, i.e. the creation of different policies for different target groups, is the basis upon which inequalities can unfold. The *categorical perspective* is that I will demonstrate by means of an intersectional discursive policy analysis, how meaningful differences are produced in selected policy debates. For the purpose of such an analysis, I need to reflexively use categories as analytical tools in order to show how persons are ascribed categories and differently positioned by them into groups.

Admittedly, it is paradoxical to use categories in order to deconstruct them. I am not sure whether there is a way out of this paradox, since the analysis reproduces categories in the process of deconstruction. How do scholars deal with such a problem? Crenshaw, for example, distinguishes between two manifestations of power: "One is the power exercised simply through the process of categorization; the other, the power to cause that categorization to have social and material consequences." (Crenshaw 1991: 1297). In her work, she decides to focus on the second step.

My suggestion is to develop an integrated view and to conceptualise these two powers together, even though this might result in a paradox. It is important to tackle the processes in which differences are "established". It is important because "social categories are tools of selecting and ordering. They are tools of inclusion and exclusion and they are tools of positioning and making hierarchies" (Staunaes 2003: 104). As such, the creation of differences needs to be deconstructed, if we want to tackle social inequalities.

As has become clear, I am *not* adhering to a strict deconstructivist perspective that remains on a meta level and rejects the use of categories per se. This is because of two epistemological reasons. First, in a strict deconstructivist view scholars would argue against a realist epistemology, which sees "intersections of different axes of power as 'socio-cultural' and 'structural categories' awaiting representation." They would criticise that "diversity is not merely structural, something 'always there' to be used for

the researchers merely descriptive purposes" (Carbin and Tornhill 2004: 133 in Honkanen 2008:209). As a response, one could argue: while gender and other categories are socially constructed, they nevertheless become real in the sense that people who have been attributed certain categories are experiencing some kinds of privilege or disadvantage. Gender, race, ethnicity etc. can be understood as the effects of social meaning-making (Walgenbach et.al. 2007: 18)[38]. A limit to a deconstructivist perspective is needed, if our aim is to address social privileges and disadvantages. Therefore, research needs to maintain some kind of epistemological possibility of observation and assessment.

The second reason concerns reflexivity. In a deconstructivist perspective (Lorey 2008, Keim 2009), intersectional and interdependent analyses participate in the process of categorisation. From a linguistic-analytic point of view, any process of categorisation itself is exclusionary (Hornscheidt 2007: 100). Every categorisation, when applied to identities, leaves someone unheard; every categorisation is a form of symbolic violence to those classified. Who is speaking and representing and classifying whom is a crucial perspective to postcolonial scholarship (Spivak 2003). A possible solution is to lay open and reflect upon one's speaking position, to mark the "normal" that has been "unmarked" so far, such as white_fe/male_European persons (Hornscheidt 2007). Other deconstructivist scholarship, however, stresses that even attempts to subvert hegemonic signifying practices by marking the previously unmarked remain within a categorical logic (Lorey 2008). Lorey's subsequent move to question all categorisations is valid as a meta-theoretical input, but it is less helpful for policy analysis. Keim's (2009) solution is not to talk about intersectionality in the sense of analytical categories, but to conceptualise intersectionality as a research attitude. However, it is not clear to me how intersectionality as a research attitude would avoid processes of classification. What or who are we talking about, when we are not longer able to specify – to some extent – who we talking about?

The question of how to realise a self-reflexive stance in one's research remains, too. How are we going to reflect on our classifying practices if we are not meant to classify? This, obviously, is a non-option. Let's assume that some minimal categorisation is

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38 "Analog zu unserem Verständnis von Gender begreifen wir auch "Rasse" als Ergebnis gesellschaft-licher Bedeutungszuweisung und insofern eine soziale Konstruktion." (Walgenbach et.al. 2007: 18)

necessary. There seems to be the suggestion that marking one's speaking position has something to do with self-reflexivity (Hornscheidt 2007). This is explained by a perspective-pragmatic linguistic view, which underlines the construction of reality through language. A conventional use of categories establishes norms and has naturalising effects. To challenge these effects which reproduce "the other", the previously unmarked should be visible as well. In addition to making the conventional character of categories visible, this practice has the benefit of acknowledging privileged speaking positions. Where do, for example, scholars, cited by Hornscheidt in her article (2007), come from? Who is able to participate in the scientific discourse on interdependency and intersectionality? Consequently, all authors' speaking positions in the volume edited by Walgenbach et.al. (2007) are marked.

While this is an interesting perspective, we might encounter an epistemological problem on the way. If I mark my speaking position as female_white_middle class_heterosexual _ablebodied_of majority society, what information does this give to the reader? It reveals that a person with such characteristics is able to participate in the scientific field. But what does this have to say about the generated knowledge? Is there an implicit assumption, reminding of radical versions of feminist standpoint theory that establish a direct relation between the speaker's social positioning and the generated knowledge? Is my knowledge therefor fe/male_colour_working class_homosexual_disability_ migration-blind?

More recent strands of feminist standpoint theory reflect upon social positionings and how experience and imagination (Stoezler/Yuval-Davis 2002) transform into knowledge. They *reject* the shortcut between social positioning and knowledge which promises some "privileged access to truth" or how Patricia Hill Collins critically expressed it: "the more subordinated a group, the 'purer its vision' "(Collins 1990: 207 in Stoezler/Yuval-Davis 2002: 319). Stoezler/Yuval-Davis argue that while the social positioning influences one's standpoint, it does not fully determine it. If we assumed otherwise, we would negate human agency and self-reflexive intellectual capacity. Rather, we should think of social positionings as influential for our social practices; however, the latter are never reducible to the first. In this perspective, it is possible that differently situated persons meet in social practices and share the same standpoints[39].

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39 Such a conceptualisation brings about the possibilities of rooting and shifting, which are essential to "transversal politics" (Yuval-Davis 2006b)

Knowledge is then developed through dialogical relations between different standpoints. Accordingly, Hawkesworth (2006) suggests standpoint theory as a *methodology*.

For the above reasons and given my research interest in policy analysis, I am more inclined to operate within a categorical logic rather than staying on the meta-level of categorisation. I would like to stress that the very reason *why* I operate within a categorical logic is to tackle the constructions and privileges of some at the expense of others. Admittedly, talking within a categorical logic will re/produce the categories which the whole exercise is about to tackle. Nevertheless, it seems better to talk about categories (in a reflexive way) than not to talk about perceived inequalities at all.

Working within a categorical logic requires a self-reflexive use of categories. In my understanding, this implies to be open to the empirical material. Such openness can be achieved by a pre-categorical approach (Bührmann 2008), which induces the categories from the empirical material. While one cannot escape the constructivist character of research and the fact that research constructs data, one can answer the question whether and how many categories to deal with inductively according to one's case study.

Another feature for a reflexive use of categories is to be attentive to absences. In order to detect what is invisible in policy debates, one needs to have an idea of what could be there. Consequently, we need an understanding of possible categories, inspired by relevant literature or prior research findings. Within qualitative analysis, such an understanding of categories can be open and comprise of various forms of data, including self-descriptions, observations, statistical information, etc. Lastly, a reflexive use of categories means to acknowledge one's own biases in research. Tackling biases cannot be achieved by introspection only. Rather, it is necessary to take standpoint theory as a methodology (as suggested by Hawkesworth 2006).

3.2. Understanding and Use of Categories

Let's now turn to the concrete understanding and use of categories. Methodologically speaking, I work with gender, race, ethnicity etc. as separate analytical categories as distinct from gender, race, ethnicity as separate structural categories. As my overall research perspective is not structural, but de/constructivist and processual, such as

distinction is indicated. For reasons I have laid out in the discussion of the interdependent approach, I prefer to deal with gender as an intersecting category rather than an interdependent category. By doing so, we are able to see the ways in which categories are (separately) mobilised in the polity: they are applied jointly, against each other or made invisible. Separate analytical categories are more flexible in use for analysis than an internally differentiated, interdependent category.

Given my interest in how policy frames and therein subject positions are constructed, a pre-categorical approach (Bührmann 2008) is suitable. Such an approach develops categories out of the empirical material and explores what is actually said, i.e. made explicit in policy debates. However, this method needs to be accompanied by a cross-check with a catalogue of categories, if we want to detect absences. Before engaging in the catalogue of categories in more detail, it is noteworthy, that it is not thought of as fixed and closed. Rather, the catalogue of categories is open in the sense that categories can be filled with different content without relying on a prefixed definition of what it all includes. Just like Hancock (2007) demonstrates with fuzzy set logic, different elements can add up under a categorical heading such as gender or class. This means that even if gender and other categories are often conceptualised as *binaries* (Hornscheidt 2007, Dietze/Haschemi Yekani/Michaelis 2007[40]), this does *not* necessarily have to be that way. What follows is the description of how I understand categories.

What can a catalogue of categories look like? I find Helma Lutz's (2001) lines of differentiation around the body, the social/spacial and the economical to be relatively encompassing. What I would add to Lutz's lines of differentiation is marital status, as it is an important category in my empirical material on intimate citizenship. Another social divide which is of general importance is the distinction of rural/urban.

Gender, as I use it, comprises of all possible ascriptions and identity constructions in relation to gender, which reach from female, male over intersexual and the third sex (e.g. Indian Hijras) to transsexual and transgender. *Sexuality* refers to ascriptions of

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40 "*Eine Perspektive queerer Intersektionalität oder intersektionaler Queerness kann aber dazu beitragen, zwei epistemologische "Korrektive" als Schwellen zu postieren, die jeweils die Normalisierungsarbeit (queer) und die Machtasymmetrie von Binaritäten (Intersektionalität) im Auge behalten.*" (Dietze/Haschemi Yekani/Michaelis 2007: 138)

sexual practices and desires such as heterosexual, homosexual, bisexual and other possible desires. *Race*, as I use it, comprises of all possible ascriptions and identity constructions in relation to physical appearance and skin colour, ranging from black, white, people of colour and many more. *Ethnicity* refers to all ascriptions and identity constructions related to (regional) origin, cultural practices and (imaginary) communities. *Dis/ability* refers to all ascriptions and identifications related to mental and physical sickness or disability, as well as health and attractiveness. *Age* refers to all ascriptions and identifications related to age and ageing, young or old age, coming of age and the like. *Class*, as I use it, refers to all categorisations and identifications related to property, profession, wealth, social network, education but also language skills. Whether education and language skills should be a separate category is open for discussion. *Marital and family status* refer to ascriptions and identifications around partnership, family, living communities and children. *Nationality and citizenship* refer to all ascriptions and identifications related to national communities as well as constructions of national borders, entry requirements and residence rights. *Religion* refers to all ascriptions and identifications around religious believes and practices. It is often closely connected to culture. *Settledness and origin* refer to ascriptions and identifications around notions of sedentariness, travelling or nomadism. I see ascriptions of North/South/East/West closely related to economic dimensions, also expressed in the category of *development status*, so I take them as one analytical category. This is a list of categories – of which there could be many more – against which the material can be screened for absences.

3.3. Logic of Intersectionality

This dissertation follows a dynamic and processual understanding of structuration rather than (static) structures. Underlying is an intersectionality-only logic, which assumes that analytically, there are gender, class, race, ethnic, age and many more dimensions at work that situate subjects and groups. In the policy process, however, not all categories are always made explicit, even though they are at work implicitly. Let's take early gender equality policies in the field of employment as an example. While class dimensions are not made explicit, it is obviously only employed women (not

housewives, not self-employed or peasant's wives or retired women) that are targeted. So, while class is not made explicit, it is still there implicitly. By means of an intersectional analysis, the implicit dimensions can be explored, too.

The analysis developed in this dissertation looks mostly at what is made *explicit* in policy debates. For this reason, it works with separate analytical categories. The analysis looks at how (intersecting) categories are produced in frames and subject positions in selected policy debates – for certain policy ends. It explores the ways in which categories are constructed and mobilised in order to make unequal access to intimate citizenship rights justifiable. It looks at frames and subject positions constructed by policies and feeds them back to a wider picture of intimate citizenship in Germany.

The question is whether such an approach fits into the distinction between anti-, intra- and intercategorical by Leslie McCall (2005). That my underlying logic is intersectionality-only, points to an intracategorical approach. Despite the fact that the intracategorical approach has been used to explore how categories are experienced and enacted at the individual, locational level – and a consequence has been criticised for neglecting social structures and institutions (McCall 2005) – it does not have to be this way. From my point of view, applying the intracategorical approach only to micro-level studies of identity and experience is an unnecessary "reduction". Although the intracategorical approach is based on an intersectionality-only understanding, which focuses on subject positions as always intersectionally constructed, this logic does not demand that only one group is to be studied – even though this seems to be a commonly shared assumption (e.g. Weldon 2008). There is, at least for me, no reason why an intracategorical study should not investigate more subject positions at various intersections and thus paint a bigger picture.

My argument here is that a processual perspective based on an intracategorical approach can deliver both, a reflection on subject positions as well as on wider practices. The objective to say something about social relations and practices does not imply that research needs to succumb to structuralist notions and parallel systems of gender, race and class; neither does the aim to focus on subject positions require a study on individual experience and the level of identity. I argue that the intracategorical approach

can be used to analyse policy debates in the field of intimate citizenship and to explore the subject positions within.

3.4. Levels of Analysis

A processual perspective, as pursued in this analysis, tends to challenge a strict distinction between macro and micro levels of analysis. Contrary to this position, some feminist researchers see a methodological dilemma between locational and structural approaches to intersectionality[41]. Scholars across disciplines discuss whether an intersectional analysis should aim at the micro or the macro level, should explore identities at intersections or larger societal constellations. This debate is mostly, but not only, led by sociologists with different research interests. While some emphasise empirical work that seems to imply a locational approach, others stress the importance of social theory that addresses structural dimensions. Some theorists, however, consider locational and structural approaches as complementary.

Analysing policy processes leads to the acknowledgement that a strict distinction between macro and micro levels cannot easily be upheld. Policy texts tell something about target groups created through policies, but at the same time give a bigger picture about how a certain policy field, in this case intimate citizenship, is organised in the German context. What can be observed is a process of construction (macro), which has impacts and consequences on the locational level (micro); moreover, certain processes and subject positions established through policies might structuralise over time (macro). For this reasons, a strict juxtaposition of the locational and structural level is not meeting the needs of policy analysis, which is cutting across levels.

This is also what West/Fenstermaker (1995) and West/Zimmerman (2009) criticise for their field of research:

> Although the distinction between "macro" and "micro" levels of analysis is popular in the race relations literature too, we contend that it is ultimately a false distinction. Not only do these "levels" operate continually and reciprocally in "our lived experience, in politics, in culture [and] in economic life" (Omi and Winant 1986, 67), but distinguishing between them "places the individual outside the

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41 Impression gained at *Celebrating Intersectionality. Debates on a Multi-faceted Concept.* International Conference at the Goethe-University Frankfurt am Main, 22 – 23 January 2009. Of course my observations only capture some parts of the methodological debate and is not representative for the whole of the Conference. See http: //www.cgc.uni-frankfurt.de/intersectionality/

institutional, thereby severing rules, regulations and procedures from the people who make and enact them" (Essed 1991,36). (West/Fenstermaker 1995: 24)

I am citing this and another passage of their work below, in order to emphasise the importance I give to these considerations. Scholars reflecting on "Doing Gender"[42] (West/Zimmerman 1987) or "Doing Difference" (West/Fenstermaker 1995)[43] often criticise that the approach neglects structures and limits itself to an interactionist focus (e.g. Walgenbach 2007). By doing so, these critiques hardly ever mention that the authors challenge the micro/macro distinction. West/Zimmerman critically ask what it means for analysis if a strict distinction between the micro and the macro level is applied (2009). Accordingly, they spell out upcoming research tasks:

> (1) exploration of the theoretical and empirical consequences of continuing efforts to divide the social world into "micro" and "macro" levels of analysis; (2) analysis of how assignment and categorization practices mesh with the doing of gender and difference, and (3) advancement in our understanding of how historical and structural circumstances bear on the creation and reproduction of social structure in interaction, and how shifts in the former result in changes in the latter. (West/Zimmerman 2009: 119)

I find this challenge to micro/macro distinction an especially stimulating one as it mirrors the observations I made during my own empirical research. Such a distinction only makes limited sense in policy analysis. Having said this, there is of course a distinction between different levels of the polity. As the state and hegemonic theoretical approach to intersectionality by Birgit Sauer and Stefanie Wöhl (2008) argues, intersectionality is re/produced at every level of the polity: subjectivities and identities (micro), political actors and mobilisations (meso) and social institutions and structures such as policies and governments (macro).

It is at the same time possible to conceptualise policy processes as cutting across these levels. The deconstruction of the dichotomy encourages to think about the ways in which macro-structural dimensions get mediated to the micro-locational level via the policy process. Working with discursive policy analysis, I suggest that norms, articulated in policies, mediate between these levels. Norms inform both, the institutional set-up and individual interpretations and (inter)actions.

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42 See *Gender & Society* 2009 (23) 1: "Doing Gender" as Canon or Agenda: A Symposium on West and Zimmerman
43 See *Gender & Society* 1995 (9) 4: Symposium: On West and Fenstermaker's "Doing Difference"

4. SUMMARY

My approach to intersectionality is processual. The term "doing intersectionality" is drawn from Staunaes work and her depiction of "social categories [as] tools of selecting and ordering. They are tools of inclusion and exclusion, and they are tools of positioning and making hierarchies" (Staunaes 2003: 104). Whereas the idea of doing gender, difference and intersectionality has been promoted especially as an ethno-methodological perspective (e.g. West/Zimmerman 2009), I propose to apply it to the policy process and the ways in which meanings are created through it. The process of "doing" is not limited to the individual level; policy texts and laws and the ways they do intersectionality contribute to wider societal discourses. These texts also have real effects, in the sense of in/exclusion into/from rights.

Furthermore, my approach to intersectionality is informed by the dynamic conceptualisation by Myra Marx Ferree (2009), the concept configurations by Ilse Lenz (2007), and the concept of racing-gendering by Mary Hawkesworth (2006). The crucial features are: first, according to a de/constructivist epistemological viewpoint, the understanding of categories is processual. Categories are constructed instead of pre-existing. Second, the use of categories is deconstructivist and constructivist at the same time. While using categories for analysis, the main aim is to deconstruct them. Third, the logic of intersectionality is intersectionality-only. Analytically, all subject positions are intersectional in character, i.e. determined by ascriptions of gender, ethnic origin, class and many more. In the policy process, however, categories are not necessarily explicitly dealt with as intersecting; often, "single" categories are mobilised. For analytical purposes, I am working with separate categories, which may or may not be explicitly intersected in policy debates.

Working within a categorical logic requires a self-reflexive use of categories. In my understanding, this implies to be open to the empirical material. Such openness can be achieved by a pre-categorical approach (Bührmann 2008), which induces the categories from the empirical material. While one cannot escape the constructivist character of research, one can answer the question whether and how many categories to deal with, inductively according to one's case study. Another feature for a reflexive use of categories is to be attentive to absences. In order to detect what is invisible in policy

debates, one needs to have an idea of what could be there. Consequently, we need an understanding of possible categories, inspired by relevant literature or prior research findings. Lastly, a reflexive use of categories means to acknowledge one's own biases in research. Tackling biases cannot be achieved by introspection only. Rather, it is necessary to take standpoint theory as a methodology (as suggested by Hawkesworth 2006).

In the above paragraph, at least two paradoxes have become visible. First, my approach is critical of categories, but uses categories for analysis nevertheless. The paradox arises from the desire to diagnose who is made subject to inequalities, and to deconstruct these categories at the same time. This leads to the second paradox: on the one hand, it appears vital to be open to the empirical material and generate categories from there. On the other hand, an understanding of what could be there is required in order to detect categories. It seems that working on intersectionality implies a dual focus on pre-chosen categories (derived e.g. from relevant literature) and on categories induced by the empirical material. The dissertation works within these paradoxes.

PART II.

BUILDING A METHOD

5. MODEL OF INTERSECTIONAL DISCURSIVE POLICY ANALYSIS (IDPA)

5.1. Introduction[44]

This dissertation project has started with the observation that in intimate citizenship policies, it is no longer gender, which is the primary marker of discrimination, but other social divisions such as sexual orientation and nationality. While analysing respective policies in the frame of the QUING project, it became clear that same sex partnerships and families with migrant backgrounds did not enjoy equal rights. This is not to say that there is no more gender bias in existing policies and regulations; however, gender has increasingly been de-legitimised as an explicit and direct marker of discrimination. Manifold European and national anti-discrimination directives and legislations as well as gender equality policies reflect the extent to which inequalities due to gender are deemed unjust and illegitimate.

Intimate citizenship policies such as same sex partnership laws and family laws in relation to migration paint a somewhat different picture. Unequal treatment of other than national, heterosexual married partnerships is acceptable, although to a differing degree. While same sex partners have at least been addressed with the aim of creating legal recognition of their status – which has resulted in a discriminatory, second class family institute –, migrant and binational partners have not even been approached with the aim of equality. What is striking, is that gender dimensions are often left out of debates on same sex partnerships, whereas gender dimensions are vividly applied in relation to family reunification and the diagnosed problem of forced marriage. Moreover, dimensions of class matter in both issues, albeit in different ways. Same sex partners are presented as not harming the national budget, whereas the safeguarding of the social security system is one of the central arguments against families with migrant backgrounds, be it in cases of family reunification or (suspected) fake paternity acknowledgements.

These observations lead to two conclusions. First, an analysis of these policies should try to capture the meanings of policy debates, thus answering the question of how

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44 Earlier versions and parts of Chapter 5, 6 and 7 have been presented at conferences (Urbanek 2010a) and are published in Urbanek 2011 (forthcoming) and Urbanek 2012 (forthcoming).

unequal treatment is made justifiable. Second, an analysis should have an intersectional perspective on these policies debates in order to pin down how political actors apply (intersecting) categories for the purpose of legitimising unequal treatment.

What is the role of intersectionality in analysis? The status of intersectionality is twofold. First, an intersectional perspective was already present in the selection of policy debates, where partnership policies with a focus on sexual orientation and nationality were chosen. Here, intersectionality is used in a wider sense, as a research perspective, which includes more categories than gender. Second, an intersectional focus is present in the analysis itself: I am searching for discursive mechanisms that are applied in policy debates to justify unequal treatment. The mobilisation of (intersecting) social categories is conceptualised as part of such discursive mechanisms. According to an understanding of political intersectionality, (intersecting) social categories are discursively constructed in policy debates for specific purposes. Methodologically, the above considerations mean: within these discursive mechanisms, the ways in which (intersecting) social categories are filled with meaning are the *explanans* for a discriminatory or exclusionary policy decision (*explanandum*).

Having laid out the basics of analysis, the Model of Intersectional Discursive Policy Analysis (IDPA) will be explained in more detail in the next subchapters. To begin with, the whole model will be presented in a rough overview, followed by a detailed discussion of discursive policy analysis and policy evaluation from a human rights perspective.

5.2. Presenting the IDPA

The primary goal of the model is to analyse discursive constructions of citizenship. The analysis presented here is based upon Critical Frame and Voice Analysis, developed in the frame of the MAGEEQ and QUING project (Verloo 2007, Lombardo/Meier/Verloo 2009b). This approach is informed by the work of Carol Bacchi (1999) who emphasises the manifold and different ways in which social issues can be framed as policy problems.

The model proceeds in several steps. First, *policy frames and narratives* are built out of the empirical material. "Frame" in comparison to "discourse" is a smaller concept, as it is a way of "talking about an issue" (Bacchi 2005a: 202). Several policy frames make up a policy narrative, which is a consistent policy story about an issue. Take the debate on the New Immigration Act as an example, a policy narrative is that "family reunification is a problem" and one frame is the "abuse and condition frame". Frames also contain normative elements, i.e. underlying social *norms*. The underlying norm of the example is crime and justice. More frames and norms are described in the actual analysis of policy debates in part III.

In the second step, *subject positions* are derived from the frames. Whereas frames answer the question "what are the problems and the solutions represented to be?", subject positions answer "what are the actors represented to be?" Subject positions describe the essential being and behaviour ascribed to a certain group. This step sharpens what policy frames say about actual persons, and identifies more or less powerful positions in policy debates.

The third step, in which the *discursive mechanisms* are elaborated, is the most interpretive one. Here, the discursive practices of political intersectionality (see Table 3) are identified. In addition to four categorical mechanisms (1) Constructing a Dichotomous Category, (2) Intersectional Hyper-Visibility, (3) Intersectional Invisibility and (4) Playing-Off Categories, strategies such as (5) Ranking Norms and (6) Individualisation are described. These findings explain how substantive intimate citizenship can be successfully discursively safeguarded for the "norm population", whereas others are "legitimately" discriminated against or excluded.

The forth step of analysis is a *policy evaluation from a human rights perspective*. It scrutinises whether legal regulations are at odds with existing human rights conventions. The idea behind this step is that human rights forward normative ideals of society. They represent normative standards to which national legislations should ideally live up. Yet, in the course of evaluating national policies, also human rights come are under scrutiny. Do international human rights conventions provide substantive protection regarding partnership and family rights – also in relation to sexuality and nationality?

As I will lay out in the respective chapter (7.) , a normative human rights evaluation is in line with an overall (moderate) de/constructivist epistemology. Since postpositivism demands that the analyst's normativity is spelled-out openly and that that effects of policy problem representations are studied (Bacchi 1999), a human rights evaluation answers to both demands.

5.3. Potentials and Limits of Analysis

What are the potentials of such an analysis? First, by combining intersectionality and discursive policy analysis, this model presents a way to explain discriminatory and exclusionary citizenship regulations. Rather often, intersectionality research and its focus on categories is criticised for depoliticising the study of interlocking systems of oppression (Erel et.al. 2008). This model of analysis shows that "talking categories" is not necessarily depoliticising. On the contrary, categories can be used to describe social inequalities and exclusion. The analysis explores how power relations are discursively constructed in the policy process via the practices of political intersectionality.

Second, synthesising meanings under the heading of categories is a benefit that furthers comparability. By leaving the text level and acquiring an interpretive degree of abstraction, discursive processes, such as ethno-national-gendering or class-national-gendering, can be compared across policies and policy fields in different country case studies. Finally, the potential of intersectionality as a research paradigm lies in the sensitisation for complex mechanisms of privilege and disadvantage. This means that the analysis of gender relations becomes more complex in order to include other significant social divisions. The reconstruction of social complexity in research can only be achieved by putting a focus on intersecting categories.

What are the limitations of analysis? The analysis' processual conceptualisation of categories represents an intermediary level between the social structural level (Klinger/Knapp 2007, Risman 2004, Weldon 2008) and the individual level of social positioning and identity (Staunaes 2003, Prins 2006). Given the intermediary level, this analysis can only deliver stepping stones towards a macro analysis of discourse, and leaves out the micro level of individual identification and agency entirely.

What also remains an open point of critique is that the analysis works within a categorical logic, which is deemed problematic by deconstructivist scholars (e.g. Lorey 2008).

Having presented a rough overview of the IDPA model, the next chapter lays out in detail the understanding and elements of discursive policy analysis.

*The social meaning upon political discourses turn
are mainly derived from moral or ideological positions
that establish and govern competing views of the good society.*

Frank Fischer (2003)

6. DISCURSIVE POLICY ANALYSIS

The discursive turn in policy analysis has offered a way to study how social phenomena are interpreted and given meaning in the policy process (Bacchi 1999, Fischer 2003). The policy process itself is understood as a struggle over meaning. As Frank Fischer puts it, paraphrasing the influential work of Deborah Stone (1988): policy making is a "constant discursive struggle over the definitions of problems, the boundaries of categories used to describe them, the criteria for their classification and assessment, and the meanings of ideals that guide particular actions" (Fischer 2003: 60). Meanings are conceptualised as open to reconstruction and change, but at the same time durable, because of the discourses in which they are embedded. In any case, they are related to a particular time and place (Fischer 2003).

The turn to discourse in policy analysis since the late 1970s and 1980s has proved fruitful and thus, there is a variety of approaches to engage with. Within feminist policy analysis, an important strand of discourse analysis is the method of *Critical Frame and Voice Analysis*, developed by European scholars in the frame of the MAGEEQ and QUING project (Verloo 2005, 2007, Lombardo/Meier/Verloo 2009b)[45]. Apart from the work on frames by Goffman (1974) and Rein/Schön (1993, 1994), this strand also witnesses major influence from social movement theory and their understanding of frames and strategic framing (Benford/Snow 2000). The latter focuses on frames as intentional interventions of civil society actors "to shape reality in a 'conscious' and 'strategic' way" (McAdam et.al. 1996 in Lombardo/Meier/Verloo 2009b: 12). Critical Frame Analysis, as developed in these research projects, especially QUING, also looks at civil society framings, but not exclusively. It has a focus on authoritative policy texts such as laws, policy plans and parliamentary debates. The adjective critical is derived from the method's focus on voice: "Who has voice in defining problems and solutions

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45 But also the VEIL project uses the critical frame method. See Mazur (2009) for an overview of projects of feminist comparative policy analysis, many of which use discursive policy analysis of some sort.

in official policy documents?" (Lombardo/Meier/ Verloo 2009b: 10).

Apart from Critical Frame Analysis, this chapter refers to the work of Bacchi (1999) and Hajer (1993, 1995, 2002), policy and social learning literature (Sabatier/Jenkins-Smith 1993, Sabatier 1993, Hall 1993) as well as discursive institutionalism (Schmidt 2006, 2008 and Sauer 2005, 2007b). Moreover, I will reflect upon the epistemological foundations of discursive policy analysis.

6.1. Discourses, Frames and Narratives

Discourse can be understood as the "limits and the forms of the sayable" (Foucault 1968 in Bacchi 2009: 23), as the "a priori of talk" (Bacchi (2009: 23). In other words, "discourse [...] is defined as an ensemble of ideas, concepts and categories through which meaning is given to phenomena" (Hajer 1993: 45). There are various discourse analytical traditions.[46] Bacchi (2009) identifies two strands: the linguistic or social psychological work on patterns of speech ("discourse analysis") and scholarship on the "analysis of discourses". Whereas the first strand explores how subjects use discourses in the sense of language (Bacchi 2009: 22), the second strand identifies discourses as ways of interpreting the world. The second approach is usually undertaken in policy analysis and in general by critical discourse analysts[47]. For Bacchi the crucial difference between these traditions is their stance on intentionality and agency: do "we speak the discourse" or is it that the "discourse speaks us"? (Ball 1990: 17-18 in Bacchi 2009: 43). Or put differently: are subjects active co-producers of discourses or are subjects produced by discourses?

Frame analysis can be seen as at the crossroads of both traditions, as it can combine both dimensions. There needs to be cautious and accurate use of the terms discourse and frame, in order to keep these dimensions apart. Frame in comparison to discourse is a smaller concept, it is a way of "talking about an issue". According to the definition of Mieke Verloo, "a policy frame is an organising principle that transforms fragmentary or incidental information into a structured and meaningful policy problem, in which a

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46 Wetherell (2001) distinguishes between conversation analysis, Foucauldian research, critical discourse analysis and critical linguistics, discursive psychology, Bakhtinian research, interactional sociolinguistics, and the ethnology of speaking.

47 The distinction is not so clear cut in practice: in order to identify wider discourses, the texts of subjects need to be scrutinised regarding their employment of significant frames. Thus, "the analysis of talk" and the "identification of discourses" are interlinked.

solution is explicitly enclosed" (2005: 20). Concepts such as frame fit, stretching and bending (Verloo 2007, 2009) are based on the understanding that different meanings can be generated and mobilised and connected to other frames. This has been attractive especially for social movement theorists and policy analysts trying to define the parameters for successful agenda setting and policy formulation (Mazur 2002). This is a very "strategic" understanding, which needs to be put in relation to wider discourses.

Bacchi is critical of frame analysis which does not clearly keep the levels of frame and discourse apart. Such a conflation of levels is visible in that the terms discourse and frame are often used interchangeably (Bacchi 2005a). A dynamic conceptualisation of how discourses and speech acts (frames) interact is needed, so Bacchi's claim (2009). Otherwise, the term discourse tends to be deterministic, almost structural – discourse determining the sayable and producing speaking subjects –, whereas frames tend to be overly rational, intentional – the political agent strategically using or creating frames. Bacchi aims at a balanced conceptualisation of agency and subjectification and suggests a "dual research agenda":

> The first part of this agenda involves attending to discourses as meaning-systems within which we and others operate. The second part of the agenda directs attention to the clearly deliberate deployment of concepts and categories by those with greater and by those with lesser institutional power to advance specific political goals. (Bacchi 2009: 29).

For the purpose of this dissertation, the relation of discourses to frames also needs to be clarified. Frames and discourses are understood as different levels of analysis; frames are smaller units embedded in discourses. A (hegemonic) discourse is not a mere compilation or agglomeration of frames, but rather a result of conflict and negotiation, in which actors have participated with different access to power. Hajer speaks of "discourse structuration" which "occurs when a discourse starts to dominate the way a society conceptualises the world" (Hajer 1993: 46) and of "discourse institutionalisation", when it solidifies into an institution's practices and ways of reasoning. Frames can be understood as elements of either hegemonic or alternative discourses; at the same time they are contributing to their production and, possibly, change (Fischer 2003: 79f).

According to Bacchi's dual research agenda (2009), discourses need to be studied in a first step and speech acts (frames) in a second step. In my opinion, discourses and frames are not only different regarding levels, but also regarding the interpretive work invested by the researcher. Admittedly, a constructivist perspective implies that all research findings are the result of interpretation. Yet, while the identification of frames is interpretative, it is a step closer to the empirical material than is the identification of discourses. I understand discourses as rather abstract entities which one can never "observe out there as a whole" (Fischer 2003: 43)[48]; rather, one can analyse their elements, such as frames. Frames feed into discourses and are part of them. Methodologically, this indicates to interpret frames in a first step and to reflect on wider discourses in a second step.

Bacchi (2009) suggests to do it the other way round. On the one side, this poses the question whether we gain different results from analysis if we reflect on wider discourses in a first step and analyse frames in a second step or if we do it the other way round. On the other side, given that we are in a hermeneutic circle of understanding, it might not make a difference where we start from, as we never start from nowhere and our observations are always theoretically informed. According to Bacchi, it is important to reflect on wider discourses as the forces that influence, but never fully determine the way of thinking and acting. In summarising, it seems important that it is done at some point in analysis, while it might be less important in which order it happens. In this dissertation, the dual research agenda connects the empirical research findings at the policy level to existing literature on the German ethno-cultural citizenship regime, in which the policy debates are embedded.

Policy as a Narrative

Having discussed the relation between discourses and frames, one more unit of analysis is introduced. It is called "policy narrative" and is situated between the frame and the discourse level. As Hajer explains it, "in the actual discussion of specific problems different discursive elements are presented as a narrative, or a story line, in which

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48 *'[…] No one has ever seen a political system or economy, despite the fact that we talk about them as if we had. A political system, for example, is a linguistic concept discursively invented and employed to describe a set of relationships that we can only partly experience […] But no one never sees an entire political system."* (Fischer 2003: 43). What Fischer explains for abstract concepts such as the political system, can also be applied to discourses.

elements of the various discourses are combined into a more or less coherent whole and the discursive complexity is concealed" (Hajer 1993: 47). A narrative is representative of a discourse coalition, being "a group of actors who share a social construct" (Hajer 1993: 45). Contrary to Sabatier/Jenkins-Smith's advocacy coalitions (1993), members of discourse coalitions do not need to physically meet in a policy subsystem, but share and contribute to the same discursive constructions.

Now, let me more closely explain the relationship between frames, narratives and discourses (see Table 4). Regarding the levels and speaking agents, the table moves towards a more abstract level, the further it moves from left to right. The units of analysis encompass more information and involve more interpretation from the side of the researcher, the further right they are positioned. At the first level, policy frames are identified, which are then subsumed under a policy narrative (level two). At the third level, the analysis of policies might add up with other studies into an analysis of discourses.

Table 4: Frames, Narratives and Discourses: Policy as a Narrative

	Level 1: policy text	Level 2: policy issue	Level 3: polity
Unit of analysis	*Frame*(s) – consisting of cognitive and normative elements	Combination of frames: narrative(s) → *policy as a narrative*	Combination of narratives (and other forms of institutional practices): *discourse*(s)
Who speaks?	Actor(s)	Actors in discourse coalition(s)	Actors in hegemonic and alternative discourse(s)

An example from my case studies will clarify this. At the second, the policy level, there are two discourse coalitions surrounding the issue on family reunification. One can be grouped under the narrative "Family reunification is a problem", the other one under "Family reunification is a right". Within each of these narratives, there are various frames (level one). The third, discourse level includes different policy fields regarding migration, information on the general citizenship regime, legal and administrative practices regarding migration and possibly also asylum issues among others. As the third level is the most abstract one, there is a lot of information necessary in order to identify wider discourses. This dissertation addresses level one and two in the actual policy analysis; in the conclusion, the empirical findings are fed back to the wider

German intimate citizenship regime (level three).

To start with the smallest unit of analysis: how can policy frames be identified? Critical Frame Analysis (Verloo 2007, Lombardo/Meier/Verloo 2009b) takes certain elements and combines them into frames. Diagnostic frames refer to questions such as "What is the problem represented to be? Who is affected by the problem? Who is responsible for the problem, who has caused the problem? Why is the problem a problem? What is the underlying norm?" Prognostic frames refer to questions such as "What is the solution to the problem represented to be? Who is affected by the solution? Who is responsible for realising the solution? Why is the solution adequate? What is the underlying norm?" Thus, frames have both a cognitive ("What? Who? Where? For whom?") and normative elements ("Why? What purpose? What is ideal/bad?"). The challenge of interpretive analysis is to stay relatively close to the text with regard to terminology and line of argument, while at the same time assuming some interpretive distance. The interpretive work lies in the combination of elements into meaningful frames. In summary, frames give us information about what the problems and solutions are represented to be, who are the actors involved and which normativities underpin them. Frames then can be grouped under policy narratives.

6.2. Ideas, Beliefs or Paradigms?

With regards to terminology, different approaches to discursive analysis use a wide range of terms, from ideas (Schmidt 2006, 2008), beliefs (Sabatier 1993) to paradigms (Hall 1993). For the purpose of semantic and analytic accuracy, it seems necessary to clarify the relationship of my terminology with the most commonly used ones in these bodies of literature. In the below, I will explain why I prefer talking about cognitive and normative elements instead of ideas, beliefs or paradigms.

Ideas, according to Vivien A. Schmidt (2006, 2008), also have cognitive and normative elements, hence it might be a good term to use. Schmidt's discursive institutionalism takes ideas in order to explain institutional change. What remains unclear to the reader is what is to be understood exactly by ideas. At some point she talks about ideas as

"norms, frames and narratives" (Schmidt 2006: 8), to then speak about ideas as constituting "norms, narratives, discourses and frames of references" (Schmidt 2006: 9). In my understanding, different issues and levels are intertwined here. I distinguish between each of these terms: narratives, frames, norms and discourses. Also, the use of the term discourse is intermingled with the term idea. She seems to use these terms interchangeably by asking when discourses serve to re-conceptualise interests, chart new institutional paths and reframe cultural norms (Schmidt 2006: 13). Moreover, Schmidt is drawing less from a Foucauldian understanding of discourse than from an interactive account of discourse. She talks about the communicative and coordinative functions of discourse, which are about the act of communication itself, i.e. about communicating certain contents to people. Thus, Schmidt's conceptualisation seems to be about how "we speak the discourse", rather than "the discourse speaks us". But it is less due to this perspective than to the terminological vagueness that I am refraining from a use of ideas. In my view, the lack of terminological accuracy in Schmidt's text makes it difficult to clarify what ideas are compared to discourses, frames, norms and narratives and whether they are all reducible to each other.

Of course there are other authors which use the terminology of ideas, as Fischer (2003) shows. Ideas are, for example, central to literature on policy issue networks (e.g. Heclo 1978) and epistemic communities (Haas 1992). What distinguishes their use of ideas from other, more discourse oriented scholars, according to Fischer, is that ideas remain a relatively moderate and limited explanatory factor among others. Discursive policy analysis, at the contrary, "instead of seeing ideas as one of the many variables influencing policy and politics" (along with interests, institutions, culture), "sees language and discourse as having a more underlying role in structuring social action" (Fischer 2003: 41).

A second option for conceptualising policies is to understand them as constituted by beliefs. Beliefs correspond to the normative elements of frames. Literature on policy learning, e.g. in the work of Paul Sabatier and Jenkins-Smith (1993), has introduced the conceptualisation of *policy as a belief system*. Advocacy coalitions are grouped around certain policy beliefs or policy cores, which are informed by general core beliefs such as ultimate values and ontological assumptions (Sabatier 1993: 247). Actors of an

advocacy coalition share a belief system and want to achieve their policy goals. Sabatier distinguishes between belief systems and technical information. First and foremost, technical data is used to support a policy core; analysis is primarily used in an "advocacy fashion". Moreover, he stresses that political actors find it necessary to present technical substantiation for their positions, if they want to succeed in translating their belief into policy (1993: 46-47). Belief systems acknowledge similar bodies of knowledge more easily than others as they look for the same epistemological basis.

Table 5: Policy as a Belief System (Sabatier 1993)

	Level 1: policy text	Level 2: policy issue	Level 3: polity
Unit of analysis	-	Policy core (based on core beliefs) (policy as belief system)	-

Sabatier's conceptualisation is important for my project in at least two respects. First, it emphasises the normative side of policy debates and the relative stability of policy cores. Second, it argues that knowledge is presented in an advocacy fashion. Both resonates with what I found in my empirical material: first, that (policy) beliefs are the core of political debates. An analysis of policy texts reveals their underlying rationales, i.e. normativities, or what Sabatier calls the deep core and the policy core. Second, I observed that statistics, for example on the abuse of residence rights in the issue of contestation of paternity acknowledgements, are used in an advocacy fashion (and contested by opposing advocacy coalitions). With regards to the aspect of policy oriented learning, Fischer and Hajer (in Fischer 2003) criticise Sabatier and Jenkins-Smith (1993) for their positivist epistemology, the under-theorising of the relationship of knowledge and belief as well as their technical understanding of policy learning. As I am less postpositivist or less poststructural, I take less issue with it. Sabatier's approach resonates to some degree with my understanding of scientific knowledge and how it is used in an advocacy fashion for politics.

Overall, Sabatier is important for my project for its focus on beliefs. However, I see it more as a background theorisation on the nature of policies and less as a methodological device. Beliefs, or what I call the normative elements, are the result of analysis rather than its starting point. This is because beliefs are the basis of policies, which are not discussed per se. What policy analysis can explore are "stories" or more concretely

narratives. It is the interpretive-analytical work of the researcher to derive beliefs from the material. In summary, Sabatier illuminates one part of the "policy puzzle", the normative one, while leaving out the discursive-narrative part. Apart from this, Sabatier's approach is less suitable for my analysis as it is interested in policy change over a decade or more and uses an empiricist method of hypothesis-testing. Both aspects are not relevant for my discursive analysis which is primarily interested in a synchronous analysis of debates within a policy field.

Another author within the body of social learning literature, Peter A. Hall (1993) talks about *policy paradigms* and their shifts. There are similarities, but also differences between Hall's and Sabatier's conceptualisations. They share a conceptualisation of lower order changes – change in secondary aspects (Sabatier 1993) and first and second order change (Hall 1993) – in comparison to higher range changes. Higher order changes are the ones in the policy core in Sabatier (1993) or shifts in policy paradigms (third order change) in Hall (1993).

A policy paradigm (Hall 1993) includes scientific and technical as well as social and political dimensions. Referring to Kuhn's concept of paradigms, Hall shows that policies, which are undergoing third order change, are subject to powerful influences from society and the political system. Policy paradigms are likely to occur "where policymaking involves highly technical issues and a body of specialised knowledge" (Hall 1993: 291); but policy paradigms are "by definition never fully commensurable in scientific or technical terms" (Hall 1993: 280). Rather, shifts in paradigms are social and political in character as the choice between diverging paradigms can rarely be made on scientific grounds alone. Shifts in policy paradigms signify a change in the hierarchy of policy goals.

Table 6: Policy Paradigm (Hall 1993)

	Level 1: policy text	Level 2: policy issue	Level 3: polity
Unit of analysis	Ideas	Set of ideas: policy paradigm	Political discourse

The concept of a policy paradigm seems to be more condensed than the concept of a policy narrative. Moreover, the content of a policy paradigm is by definition internally consistent, e.g. the policy paradigms of Keynesianism or monetarism. On the contrary, a

policy narrative does not necessarily need to be scientific-sound and stringent; it is a policy story about a social issue. Ideas contribute to a paradigm. The term idea – while it might carry cognitive and normative elements – seems to be analytically-logically stronger than the term frame, which is a less theory-laden construction of meaning.

The policy fields I am working with are not based on a strong scientific paradigm or on a strong and specialised body of knowledge. It is probably for this reason that I regard the definition of a policy as a narrative as more suitable for my analysis than policy as a paradigm.

In summary, frames consist of cognitive and normative elements. Frames add up to a policy narrative, which is advocated by a discourse coalition. These policy narratives, produced by discourse coalitions are part of wider discourses. Hegemonic discourses are challenged by alternative discourses. The flow of "production" is neither one-way nor top-down: while discourses impact on policy narratives, policy debates contribute to and work on existing discourses.

6.3. Normative and Cognitive Elements

Normative Elements: Values and Norms

The move to values and normative elements is a recent development, but it is at the core of interpretive, discursive analysis (Fischer 2003). In this section, the understanding of *normative elements of frames* is explained, informed by the "What's the problem" approach by Carol Lee Bacchi (1999).

According to a social constructivist perspective, Bacchi emphasises the very political and value-laden nature of the policy process, in which the policy analyst plays an essential role. The policy analyst is thought of as participating in the same social discourses as political actors. This is what distinguishes Bacchi's work (1999) most significantly from Fischer (2003), who still has a special spot left for the analyst. But as we will see below in the section on "Epistemological Conundrums" (Chapter 6.4.), also Bacchi (2009) needs to make some room for policy analysis, in the form of reflection and critical observation. Thus, her focus on values and discourses is not as all-determining as it might seem at first glance.

First, and contrary to technical and political rationalists who aim at improving the policy process to achieve better policy solutions, Bacchi (1999) focuses on policy problems. A focus on solutions is usually based on a predefined or somehow miraculously defined consensual policy problem. Her core argument is that analysis has to start by scrutinising policy problems: which kind of social issues are developed into policy problems, which are closed off; how are policy problems formulated and what is left out when problems are represented one way and not the other? The approach stresses the need to make problem representation the subject of analysis, as problems are neither given nor self-evident, but normative investments.

An important feature which distinguishes Bacchi's approach from other, more positivist and rational approaches is the emphasis on *value conflicts* which are brought to the foreground of policy analysis. According to Bacchi, values[49] are at the heart of differing policy problems and solutions. Instead of putting values and conflicts outside the policy process, as traditional, positivist policy analysis does, Bacchi makes them issue of analysis. In her words: "Values become a key ingredient in discourse, marshalled to assign meaning and to designate roles." (Bacchi 1999: 49). The "What's the problem" approach brings social visions to the centre.

In my own work, I prefer the term *norms* as it it as wider term that can comprise more than values. "Norms" are used as an umbrella term to describe the underlying rationales, values or concepts which are considered ideal or detrimental, to pursue or to reject. It is a term which gathers norms ranging from democracy, tolerance, equality, peace, freedom over justice, cultural homogeneity, diversity to freedom of contract, freedom of speech, heteronormativity, economic growth and security, just to give a few examples.

Cognitive Elements

Frames, as we have seen above, not only have normative, but also cognitive elements which answer to the "what, who and where" of the policy. In this respect, scientific knowledge can be conceptualised as part of these cognitive elements. Especially social and policy learning literature seeks to include scientific knowledge as an element into their conceptualisation of policy making. In contrast, discursive approaches to policy analysis think differently about the nature of scientific knowledge (e.g. Fischer 2003).

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49 At one point, Bacchi (1999: 9) prefers to talk about presuppositions and assumptions instead of values, without giving an explanation.

They doubt the existence of scientific knowledge as such. This raises the question: is there scientific knowledge independent from the political process? Or is scientific knowledge reducible to political and everyday knowledge?

The status of scientific knowledge as some kind of objective truth is challenged by constructivist theories of knowledge, but the degree to which the creation of knowledge, conceptualised as a social activity, is reducible to other social activities like policy making remains contested. Poststructural scholars working with a strong notion of discourse reject the fact-value-distinction (Bacchi 1999, Fischer 2003). Fischer (2003), who situates himself in a such a postpositivist tradition, vehemently criticises Sabatier's work on policy learning and advocacy coalitions for upholding of the fact-value-distinction. Fischer argues that postpositivist scholars reject the fact-value-dichotomy and seek to hold facts and values closer together. What is missing from his account, though, is an image of how this is effectively done.

What emerges from the above are epistemological questions about the possibility of scientific knowledge in the light of the political nature of knowledge claims. It is not as important for my discursive analysis as it is for policy learning literature to clarify the role of scientific knowledge for policy making. While I take some elements from this kind of literature, it is not my primary aim to ask whether and how scientific knowledge is used for policy making. What has been raised by discursive policy analysts are challenges to scientific knowledge in general. Discursive analysts diverge in the degree to which they think of scientific knowledge as social and political. In the next section I will clarify my position as a researcher within these epistemological questions.

6.4. Epistemological Conundrums: Scientific Knowledge and Reflexivity

As I am conceptualising a method of analysis, I am obviously thinking that there is scientific knowledge which cannot be reduced to mere beliefs or values. But to what degree is this knowledge biased? There are at least two possible answers: one is that truth and claims to objectivity are socially constructed and that science is a social activity. This is a classical constructivist answer that can be taken further. A second, poststructural answer is that claims to truth and knowledge are inherently political.

These two answers diverge in the degree to which they see knowledge as socially and politically constituted. I am more in line with a constructivist view assuming that some kind of socially constructed knowledge, which is not reducible to beliefs and values, is possible. Let me briefly engage in this debate.

To start with the first answer, positivist notions of objectivity and truth have also been challenged by social constructionism within the sociology of knowledge[50]. According to constructivists, science grapples with interpretations of objects, rather than capturing the objects themselves. The empirical material does not speak for itself; there are always technical, but at the same time practical, social and political judgements involved in the selection and interpretation of data. Data and facts are thus theory-laden and full of assumptions. The application of scientific methods, which are themselves result of consensus among researchers, involves social and practical judgement. Consequently, science needs to be conceptualised as a social activity. Knowledge is understood as a "convention rooted in the practical judgements of a community of fallible inquirers who struggle to resolve theory-dependent problems under specific historical conditions" (Hawkesworth 2007: 48). Moreover, science is not value-free. Judgements are also value-laden and informed by interests. As Kuhn observed (1970 in Fischer 2003: 126), the scientific community functions more like a political than an impartial or disinterested body in the search of truth. Or as Bourdieu (1998) theorises it: in the scientific field, actors not only compete for pure scientific capital, but also institutional scientific capital such as the power associated with professorship, membership in commissions. Thus, competition in the scientific field is about scientific recognition *and* universitarian capital. Anyhow, there is something like scientific knowledge: it is thought of as relational, as something that emerges from discursive interaction of competing interpretations (Fischer 2003: 131), in which technical and social judgements are involved. Knowledge is dialogical by definition.

In contrast, the second poststructural answer rejects the fact-value-distinction and considers knowledge as inherently political. This has to do with an overarching concept

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50 For a (feminist) critique of positivism and empiricism see Hawkesworth (2006, 2007); more concretely for a critique of positivist in comparison to postpositivist policy analysis see Bacchi (1999) and Fischer (2003). In this current section, I am drawing primarily from these authors.

of discourse, which assumes that no speaking position, no truth or knowledge claim is situated outside of discourse (Bacchi 1999). This is also true for forms of expert knowledge which informs the policy making process. The policy analyst is also not situated outside of discourse. In this line of argument it is difficult to differentiate between different forms of knowledge, as all is political and serving power relations. However, poststructural scholarship is entangled in performative self-contradiction. In a self-reflexive view, these poststructural arguments are also rather political than scientific.

This dissertation is embedded in a constructivist rather than a strong poststructural position. This is due to my understanding that there is some form of scientific knowledge which differs qualitatively from political or everyday knowledge. This is not to say that there are no social and political dimensions to scientific knowledge; there are, not only in the appropriation, but also in the production of knowledge. While scientific knowledge is not free of the social and political, it is also not fully determined by it. Challenging "objective truth" of science does not make the scientific activity null and void. To explain this position, I am grounding my considerations partly in the concept of science as a relatively autonomous field (Bourdieu (1975, 1998).

In Bourdieu's theoretical construct, the scientific as well as the political field are relatively autonomous. They are only *relatively* autonomous as they are not closed off against each other, but they are also not reducible to each other[51]. As Bourdieu argues, fields have their own structures and their particular capital. In the scientific field, this is scientific capital or credibility of knowledge claims. This is not to say that fields do not influence each other, just think about political decisions on research funding and the like. Likewise, science might find access into policy making to some degree. However, there are limits in the degree to which a field-external logic can interfere with a field-internal logic. For example, the critique of a scientific article can only be formulated in scientific terms. Likewise, if one wants convince an audience politically, one better follows the rules of political interaction, instead of giving a scientific lecture which might rise more questions than answers. A field specific rationality is never fully

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51 It is helpful to think about the scientific field-society relationship as an analogy to the state- society relationship: the state, as a part of the political field, is not a mere function of society, but it is a product of social relations, with its own rules. It is fruitful to conceptualise the scientific field in a similar way: it is not a mere function of society, but it is a product of it.

compatible with another field's rationality, but will need to be appropriated in order to fit into the other logic. Fields are the more autonomous, the more differentiated they become. In a highly differentiated field, "doxa" (beliefs) about the social world have less validity. In the scientific field, scientific rules require to refer to existing knowledge and the contributors to the scientific field are at the same time their own assessors. What also makes a field distinct from other fields is the strategies of practical logic. Actors within a field follow a certain logic, which govern rules of interaction. Actors buy into the practical logic of the field and play by the same rules. For the scientific field this means that actors build up the belief in some form of truth and science as an aim in itself. Due to this practical logic and the strong rules of competition and assessment, a highly differentiated field is able to transcend particular interests and beliefs and produce some form of knowledge.

Admittedly, this sounds as if knowledge was not biased due to the relative autonomy of the scientific field. Given all the criticisms to objectivity and scientific knowledge, such a conceptualisation seems too simple. But also Bourdieu relativises scientific knowledge. It is conceptualised as biased due to the habitus of the actor, the actor's position in the field and the epistemologically unconscious of the scientific field (Bourdieu/Wacquant 1996: 66). The question then is: how is scientific knowledge, determined by these factors? Bourdieu seeks to offer an alternative to theories of knowledge in which social structures are deterministic and looks for a more circular concept. Apart from the question whether this is fully theorised in his work, this is probably not the right place to engage into this issue in too much detail. As this dissertation is not situated in the sociology of science, I do not attempt to deliver a full-fledged answer as to how the habitus of actors, their position within the field, the rules of a field (which themselves are biased) and the influences of external fields interact in order to produce scientific knowledge. This must be subject to a research project of its own. However, it is helpful to conceptualise the production of knowledge as influenced by various factors. While mediated and historically specific, a product of knowledge is never fully reducible neither to the habitus nor the field position of the actor. It is also mediated by the logic of the scientific field. However, this logic, being based on consensus among researchers, is also biased, as is the epistemological unconscious of

the field.

So, what remains of the idea of knowledge in such epistemological conundrums? Even postpositivists hold that knowledge, if defined as dialogical, is still a valid undertaking. According to coherence theory, science "seeks to capture and incorporate the multiplicity of theoretical perspectives and explanations that bear on a particular event or phenomenon" (Fischer 2003: 130-1). Knowledge is something that "emerges from discursive interaction – or dialectical clash – of competing interpretations" (Fischer 2003: 131). Objectivity, according to feminist philosopher of science Helen Longino, is about intersubjective testing, based on the inclusion of multiple perspectives (2002 in Hawkesworth 2007: 478).

At this point, one might also look at recent feminist standpoint theory for inspiration. Similarly to the above, Stoezler/Yuval-Davis (2002: 315) understand the "process of approximating the truth as part of a dialogical relationship among subjects who are differentially situated". Within standpoint theories it is emphasised that any social positioning does not automatically translate into a certain standpoint; rather it is our social practices, goals and values, which are never fully determined by our social location, that define our standpoint. What this theoretical concept lacks in comparison to Bourdieu, is the notion of different fields and their specific logics. Within the scientific field, standpoints need to conform to the logics of a field in order to participate. In other words: scholars do not only contribute to the production of knowledge as situated individuals (with a special habitus), but as members of the scientific field. As such they have to follow the specific logics of the scientific field. Only that the logics of a specific field are also the product of social consensus among situated researchers.

Taking all these arguments together, we end up in a very social field of science with very human actors. What follows from this? One of the most important contributions of postpositivist scholarship to epistemological questions is the claim to lay open the socially constructed nature of science and its value-laden, theoretical assumptions. It is about explaining more and assuming less: instead of trying to get rid of one's standpoint – which is impossible –, it is about making your own standpoint systematically visible. Furthermore, or even more importantly, it is about tackling the rules and the logics of

the scientific field in itself.

Such an undertaking requires reflexivity, which plays a major role in the work of scholars who aim at granting some room for scientific knowledge. Reflexivity is possible within a hermeneutic circle (Hawkesworth 2007: 481). By virtue of reflexivity, i.e. the openness to scrutinise foundations and assumptions, knowledge remains open to transformative criticism. Bacchi, who previously put the researcher within overarching discourses, opens up a reflexive window, too: there is the possibility to critically reflect upon the concepts we "unintentionally adopt" (2009:29). This is what Bacchi calls "reflexive framing", to "recognise and reflect upon the historical and conceptual legacies of the concepts we use" (2009: 31).

Questions for Discursive Analysis

The above also has implications for a postpositivist research agenda. Bacchi argues that if in social constructionism "objective information is unattainable, this produces the obligation to debate substantive social visions" (Bacchi 1999: 63). Her approach is related to an "affirmative" postmodern epistemology (Bacchi 1999: 38) or "contextual constructionism" (Bacchi 1999: 56). Contextual constructionism is located in the middle of the constructivist spectrum which ranges from "strict" to "debunking": while the strict version just looks at claims (language) and avoids making assumptions about objective reality, the other end of the spectrum talks about mistaken or distorted claims, thus assuming that some kind of objective reality can be approached (Best 1989: 245-6 in Bacchi 1999: 56). Contextual constructionism does not buy into full relativism which regards any problem representation or policy claim just as good as the other. Rather, it asks who controls powerful positions in discourses, who gets to make claims and whose claims get heard. From here, Bacchi develops questions for discursive analysis:

> What is the problem […] represented to be? What presuppositions or assumptions underlie this representation? What effects are produced by this representation? How are subjects constituted within it? What is likely to change? What is likely to stay the same? Who is likely to benefit from this representation? What is left unproblematic in this representation? How would "responses" differ if the "problem" were thought about or represented differently? (Bacchi 1999: 12-13)

Translated to this research project, questions for analysis are: which policy frames are represented in selected policy debates? What are the underlying norms? What kind of

subject positions are created? Which human rights are negotiated in this respect? The analytical attention to rights, more especially human rights, is a way of answering to "what are the effects of discourses?" In Bacchi's words: "What effects are produced by this representation?" (1999: 13). These considerations are based on the work of John Codd who emphasises that "discourse refers not only to the meaning of language, but also to the real effects of language-use, to the materiality of language" (Codd 1988: 240-2 in Bacchi 1999: 41). One way to deal with the effects of discourses is to ask about the rights negotiated in a policy debate. The human rights evaluation of intimate citizenship policies, explained in the following chapter, will illustrate whom is granted or denied partnership and family rights in recent German intimate citizenship policy debates.

*A society of multiple realities and
relative standards are all we ever achieve.*
(Murray Edelman 1988)

7. POLICY EVALUATION: HUMAN RIGHTS

7.1. A De/Constructivist Perspective on Human Rights

What have human rights got to do with policy analysis? As has been briefly outlined in the previous chapter, discursive constructions of the social world have real effects. Problem representations negotiate which kind of rights and duties will be granted to certain groups of persons by means of authoritative texts such as laws and policies. One aim of discursive policy analysis is to explore how restrictions and exclusions from rights are discursively justified. The guiding research question is: what kind of discursive mechanisms are applied in order to make unequal treatment justifiable in an otherwise discursive realm of equality?

The second aim of this dissertation is to present a human rights evaluation of these policy debates. According to a de/constructivist research agenda, the case studies will explore representations of the social world. However, some representations have more or less inclusive or exclusive effects than others. The idea of a human rights evaluation is to relate national legislations to existing human rights documents and to clarify how they relate to international normative standards. In order for this undertaking to be scientifically sound, three points need to be addressed: how does such a normative evaluation relate to the otherwise processual character of a de/constructivist policy analysis? What is an adequate understanding of human rights? And how to deal with the fact that "human rights" in general is a contested concept?

Let's start with the first concern. Can a de/constructivist analysis encompass a *normative dimension*? As has been shown in the preceding section on feminist epistemology, post-positivism is not necessarily about relativism, as sometimes assumed. Rather, it is about making bias visible; namely the one of the researcher and the one expressed in the research material (Hawkesworth 2006, 2007). "Moderate constructionism", also called "contextual constructionism" (Bacchi 1999:56), supports the idea of normative evaluation, too. This epistemological approach is based on the

assumption that, while one cannot objectively grasp the "objective" reality, there are better or worse representations of it; some are more inclusive or exclusive than others. According to Bacchi (1999:63), research should evaluate the consequences of representations.

Second, the concept of human rights used needs to be in line with the overall perspective of analysis. As I am working with a discursive policy analysis based on a constructivist epistemology, the understanding of rights needs to be developed correspondingly. The crucial point of a *de/constructivist view on human rights* is that they are not universal by means of an universal truth. Rather, they are conceptualised as valid for those who pursue the same values. Human rights, in a constructivist perspective, are not considered "natural", as natural law would claim. In contrast, they are conceptualised as a result of historical processes and power relations. A poststructural stance on human rights emphasises the conflictual character of rights. The conflict between different normative viewpoints, inscribed in *conflicting rights*, needs to remain politicised. This will be elaborated further down below.

The third point of concern refers to the contested concept of rights in general. Legal theories and debates on human rights, whether codified in national constitutions or international human rights conventions, are controversial. Conceptualised as anti-democratic, partly democratic or the completion of democracy, rights as well as their limits and potentials have been under scrutiny (Lacey 2004). Feminist criticisms among others have made the partial and exclusionary history of classical liberal rights of equality, liberty and property visible. Nevertheless, human rights activists on the political-pragmatic and scholars on the analytical-normative side aim at reconstructing rights to make their emancipatory potential work. Engaging in this perspective, this dissertation argues that the existing human rights catalogue is not moulded in stone. Rights are parts of wider social discourses and are challenged by civil society and scholars alike. The remaining part of this chapter will engage in a vision of what a reworked concept of human rights might look like.

7.2. Rights: Problems and Alternatives

To begin with, this project acknowledges that rights in general and human rights in particular are contested concepts. Answering to the most salient criticisms, it is the aim of this chapter to outline an reflexive understanding of human rights. There are three main identified problems which are usually raised: first, rights are criticised as representative of *hegemonic discourses* and power relations. Poststructural, discourse theoretical scholars alert to the dangers that rights produce the very subjects in the first place, who then need to claim these rights as a consequence.

Second, rights are challenged with regard to their alleged *universality* (I.M. Young 1989). Despite their formal character, "equal rights" have never been eligible for all. Moreover, rights have never addressed the concerns of all people. As a response, "universal rights" are complemented by particular rights for particular groups. These special rights, however, are also deemed problematic for essentialising identities and blurring internal hierarchies.

Third, with regard to international human rights, the claim for universality is usually challenged by *cultural relativism.* Given the development of human rights under the lead of Western authorities, cultural relativism claims that the field of application of human rights is limited. Human rights are claimed to be ethnocentric.

Given all these "problems", human rights seem to be in a conceptual impasse. Below, I address these important criticisms and present alternative conceptualisations. The way this will be done is by applying Bacchi's approach on problem representations (1999): framing rights "problems" differently might open up new ways of thinking about them. After describing the main arguments of these "problems", I present alternatives, which might shed a different light on (human) rights.

Problem I: Power and Rights Discourse

Poststructural scholarship alerts to the history of (human) rights and the hegemonic discourses in which they were created. Wendy Brown (1995) e.g. reflects on the historical use of liberal rights of liberty, property and equality[52] which have not fulfilled their idealistic potential, but rather encoded than emancipated people from social powers. First, in their abstractness they mask the inequalities that go unnoticed and

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52 I regard Brown's focus on these three civil rights as relatively narrow in focus, as there is a much wider body of already existing human rights.

unchallenged. Second, rights claims only answer to and work within processes of subjectification. Consequently, rights risk to produce the very same subjects and relations which they claim to tackle. Instead of having a "freeing potential", rights produce the subjects who need liberation as a consequence. Brown refers to Foucault´s study on sexuality and sexual liberation in order to support this argument.

> Indeed, post-Marxist theory […] permits us to grasp the way in which disciplinary productions of identity may become the site of rights struggles that naturalize and thus entrench the powers of which those identities are effects. (Brown 1995: 120)

Alternative I: The Emancipatory Potential of Equal Rights

Given the above understanding of rights as part of hegemonic discourses, can there be emancipatory rights? As there is "no outside of discourse", how can rights serve to tackle social relations of inequality? According to Brown (1995), emancipation – being aware of the hegemonic discourses within we all operate – is possible. An emancipatory radical democratic project reflects on the limits and conditions of political emancipation. i.e. on the conditions and contents of rights and rights claims. In this sense, rights can become emancipatory. What Brown suggests is to revive a special form of universalism. Equality is to be valid for all persons qua persons:

> If […] the democratizing force of rights discourse inheres in its capacity to figure an ideal of equality among persons qua persons, regardless of socially constructed and enforced particularities, then the political potency of rights lies not in their concreteness […], but in their idealism, in their ideal configuration of an egalitarian social, an ideal that is contradicted by substantive social inequalities. (Brown 1995: 134)

Brown argues that the potential of rights lies in their emptiness; void of content, they are empty signifiers without corresponding entitlements. The way I understand this: equal rights have an emancipatory potential as they stand for the vision of an "egalitarian social". Making rights concrete, however, is connected to "limitations". This can be seen in three instances. First, rights, e.g. the right to security of the person, the right to family life or the right to sexual reproduction, are usually interpreted in local contexts. In the process of *implementation*, the meaning of rights is negotiated. What is understood and comprised by a certain right varies and changes over time and place. In the context of negotiations, rights are made exclusive for certain groups or shrunk to a limited field of application:

> Although there is a strong consensus among many scholars that "rights" is an exceptionally powerful idea in the United States, it is also clear that what "rights" means is contested on an ongoing basis in the courts, legislature and executive branch and shifts over time in its application. For example "equal rights" claims made in the Civil Rights movement were "shrunk" over time to no longer imply any but the most formal legal rights, separated from the concept of "social justice" and tied instead to the idea of "diversity" which was in turn carefully restricted to imply that no "special rights" could be considered. (Edelman et.al. 2001 in Ferree 2009: 90)

Second, rights are often competing. In the course of negotiating rights, concessions need to be made on the one or the other right. A *conflict of rights*, for example, is between free speech and the right to non-discrimination in matters of hate speech. Third, as Brown (1995) argues, the practice of *particular rights*, i.e. rights for members of a certain group, is associated with inscribing identities into law which is always productive and limiting at the same time: it produces particular subjects and identities and bestows rights according to particular groups.

Given all the limitations attached to the implementation of rights, it is understandable that Brown locates the emancipatory potential in the idea of equal rights. Equal rights such as the right to family life, the right to reproduction, the right to the highest attainable standard of health are strong as idea(l)s. In my opinion, the fact that the realisation of rights is less perfect, however, does not nullify their normative potential. Any rights implementation cannot avoid the first two limitations mentioned above. The meanings and reach of rights will always be negotiated and rights are conflicting in nature. Remains the third limitation, but which can be mitigated: Rights do not need to be framed in identity terms. An alternative to group-based particular rights are issue-based rights; a concept that has already been presented in Chapter 1 and will be pursued throughout the remaining chapter.

Deconstructive Equality

As a counter-argument to Brown's criticism that rights produce the very subjects who need to claim these rights as a consequence, I want to point to the deconstructive potential of rights. Kate Nash (2002) argues that human rights have the poststructural potential of de-gendering and of "deconstructive equality":

> A poststructuralist version of equality would involve rather the continual disruption of gendered practices and identities without penalty or disadvantage to any person. In other words, it would mean the transformation of social practices such that any sex, gender or sexual orientation […] could be occupied by any individual, was always open to contestation and change and was not discriminated against. (Nash 2002: 421)

The deconstruction of processes of gendering (-racing-aging etc.) means the de-coupling of activities or attributes from notions of gender[53]. The term de-gendering does not assume that gender is naively "undone" (Risman 2009), but that the constructed character of gendered practices is made visible, that naturalising tendencies are challenged and alternatives are presented. As West/Fenstermaker rightly argue: "Gender might be redone, but hardly ever undone as the normative system involved in gender accountability [...] cannot be regarded as "free floating"(2009: 118).

As Nash convincingly illustrates, human rights conventions such as the CEDAW (Convention on the Elimination of All Forms of Discrimination against Women) explicitly tackle gendered stereotypes. This is a strategy of de-gendering:

> To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. (CEDAW, Art. 5 (a))

The practice of de-gendering means – in its utopian dimension[54] – to make gender not longer relevant for social interaction. Such an objective does not presuppose any kind of ontological sameness or difference. People should be free to design their circumstances according to their ideas of a good life without subscribing to a fixed identity. Thus, different actions should be open to persons. Some want to live as a family with children, some want to live as single or as a couple only. Some want to live as a man or as a woman or as a third gender or as shifting between them. De-gendering means that such actions and their evaluations will not longer be tied to a certain gender, but that rights are equally open to all.

Problem II: Universality vs. Particularity

As we have seen above, Brown (1995) criticises rights and the practices of inscribing

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53 While this passage refers to mostly to gendering, these processes are to be thought of as intersectional.
54 See Lacey (2004) for utopian elaborations in feminist legal theory.

identities into the law via particular rights. How has the problem of special vs. universal rights emerged? The idea of particular rights is partly rooted in feminist critique of liberal egalitarianism. These criticisms argue that liberalism is based on the exclusion of persons marked by gender and ethnicity, but also age and class, while formally upholding the ideal of equality and liberty "for all". This has led feminists to show who was and is effectively excluded from rights, to call for their inclusion and the general widening of the political agenda[55].

While criticism of liberal rights is still a powerful eye opener for the practice of false universalism (I.M.Young 1989), feminist citizenship conceptualisations have also proved to be problematic and sometimes close to essentialism (Baer 2004). Much feminist literature is struggling about universal equal rights vs. differentiated rights for certain identity groups that have previously been neglected. Even recent publications show that old dilemmas arising with conceptualisations of "differentiated citizenship" (Squires 2007 drawing from Lister 2003) are still at the heart of feminist debates. Since feminist concepts are aware of dangers of particularism which inscribes differences and identities into law, they aim at connecting the universality and particularity of rights: "[In] a differentiated universalism, the achievement of universality is contingent upon attention to difference" (Lister 2003: 91). While the tension between universalism and particularism cannot be erased, it can be regarded as creative, so Lister's conviction. The realisation of the concept, however, brings about some problems. Politics of difference are easily associated with essentialist notions of individuals and groups, a tendency which Squires is worried about:

> Concerned to distinguish their citizenship vision from more essentialist articulations, feminist citizenship theorists such as Lister and Yuval-Davis endorse a difference that encompasses rather than replaces equality, and focuses on participation rather than identification. But is this a feasible project? Or does the affirmation of a differentiated citizenship inevitably lead to a privileging of those voices claiming essentialist difference, coupled by the reaffirmation of universal citizenship in reaction to this? (Squires 2007: 542).

Alternative II: A Non-Identitarian Concept of Equal Rights and Substantive Equality

Finding different answers to old dilemmas presupposes asking different questions. My question therefor is: why insist on notions of particular rights (and the often attached

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55 See Squires 2007 and Lister 2003 for an overview of feminist critique on liberal citizenship.

identity politics) given this concept is problematic? As argued in Chapter 1, there is a way to frame rights not as particular rights attached to imagined identities, but as equal rights. In order not to reproduce the blind spots of liberalism, the catalogue of rights needs to be extended. However, and this is my main argument, the extension of the human rights catalogue does not need to be conceptualised in identitarian terms, but rather in issue-related terms and understood as an extension of the field of reach and application.

Some examples will illustrate this argument. The traditional human rights catalogue was interpreted mostly in relation to the lives of male, able-bodied members of society. In response, feminist and other social movements claimed human rights for women or other (identity) groups. Children´s right to family and parental care or the rights of women during pregnancy and birth were dealt with under the focus of "particular rights" for members of a special group. Similarly, rights for persons with disabilities or rights for same sex partnerships are often regarded as special rights.

It is possible to take a different turn on it: same sex couples usually do not claim some special rights, but equal rights as in marriage. Such an anti-discrimination claim does not challenge the existing human rights catalogue by means of a new right, as the right to marriage already exists. Rather, it is an extension in the field of reach (Holzleithner 2009) to same sex couples because marriage was historically defined as heterosexual. Introducing rights in relation to reproduction and care can also be understood as an extension of the human rights catalogue. These issues have been sidelined for the benefit of "classical" political and civil human rights, which count as the first generation of human rights. While the spheres covered by political and civil rights were considered of primary importance, other issues such as care or reproduction were neglected. Claims around these issues are thus an extension in the field of application of human rights. It is thus central to my approach to analyse new rights claims as an extension of the existing human rights catalogue rather than its particularisation.

In order to support this argument, a look at signifying practices (Bacchi 1996) is useful. It is the practice of non-signifying early human rights as partial (i.e. political and economic rights) which has forced all other claimants to identify themselves with the other or the partial (i.e. sexuality, reproduction), while the dominant, "the universal",

remained unmarked. Brown (1995) stresses that rights claims for special groups move within the dominant discourse of the universal and the partial: they re/produce the very same "othered" subjects. Caught in logical dilemmas about the universal and the partial, concepts of special rights and differentiated citizenship do not escape the dominant (non-)signifying practices. The alternative move which I advocate is to *frame rights claims in issue-related terms.* Undermining dominant signifying practices means to extend the catalogue of human rights and to not longer follow the logic of universality and particularity.

Accordingly, claiming rights is also not necessarily tied to lobbying as an identity group. Rather, it is possible to articulate rights claims based on certain issues, such as child/care rights, sexual and reproductive rights, economic and social rights. This means to lobby for childcare rights not as women's or men's rights, but to demand childcare rights regardless of gender.

Substantive Equality

How does this concept account for differences in living situations? Differently situated persons claim some rights or entitlements more urgently than others, e.g. economic or social rights. Let's take the example of persons with disabilities. Generally speaking, there is no need for differentiated rights, but more infrastructure and resources, such as means of mobility, assistance and accessibility, to enjoy the same and full set of rights and to participate in all matters of public life. Underlying is the idea of "substantive equality": there is a wide catalogue of human rights which people should be able to draw from, according to their self-identified needs and social positionings.

As an exemption, the instrument of *special measures* follows a group-based logic. In order to account for existing inequalities, a special group is addressed by positive measures, e.g. in the CEDAW. Bacchi (1996) argues that special measures can partly be reconciled with a constructivist perspective: to advocate affirmative action does not mean to buy into "strategic essentialism"[56], which suggests that some essence exist. Rather, "being aware of category politics produces strategies without essence" (Bacchi

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56 For a discursive, constructivist understanding of positive/affirmative action see Bacchi 1996. The research of Staunaes and Sondergaard (2008) is of a good example of how to talk about existing inequalities of differently marked genders in relation to diversity management in organisations, without reifying identities.

1996: 164). This means to actively engage in the processes where categories and subject positions are produced and rights and resources are allocated. In the words of Bacchi, it is about gaining "access to those places where discursive construction and dissemination take place" (Bacchi 1996: 164). It is the "access to" which should be enabled by affirmative action.

Problem III: Universalism vs. Cultural Relativism

Not only in relation to race, class and gender have human rights followed a dialectic of inclusion and exclusion. Geopolitical reasons for inclusion into and exclusion from rights can be documented from the very beginning. As post-colonial feminist scholars show (Ehrmann 2009), the first declaration of human rights coincides with the expansion of colonial regimes. French human and citizen's right were issued in 1789 and colonies were declared extra-juridical per decree in 1791 (Ehrmann 2009: 86). *The Universal Declaration of Human Rights* (UDHR) of 1948, issued in the aftermath of the Second World War, was still silent on the question of political self-determination. Not surprisingly, it was only in the mid 1960s at the time of de-colonialisation and national liberation wars that political self-determination of peoples was included in the *International Covenant on Civil and Political Rights* (ICCPR) in 1966 (entering into force in 1976).

As visible in the various generations of human rights declarations and covenants (see Table 7), there are ongoing struggles over what is defined as a human right; the scope of human rights is constantly expanded. Rights codified in international human rights conventions have to be understood as results of negotiations of political actors, contextualised by time, space and transnational power dimensions. They are as constructed in character as are religious or other codifications and are more or less open to contestation. If one departs from an understanding of historical contingency of human rights instead of notions of natural law, there is no absolute viewpoint from which these UN human rights documents can draw their ultimate legitimacy (Nash 2002). When there is no ultimate legitimacy, the question then is what kind of and "whose" normativity is expressed in human rights conventions.

Questions of normativity are at the heart of contemporary debates around universalism

of human rights and cultural relativism (Nash 2002). Cultural relativists claims that universalism is ethno- or better said Eurocentric and that the application of international human rights should be culturally limited. They argue that "other cultures" are essentially different and that the contractual nature and the rights based on the autonomous individual do not correspond to the relational set-up of other cultures. What is characteristic of this position is that it assumes the existence of a culture, which can and should be meaningfully distinguished from others.

With a *less unified concept of culture*, such as advocated by Anne Phillips (2007) and other scholars critical of multiculturalism (Yuval-Davis 1994, 1997, Werbner/Yuval-Davis 1999), these cultural relativist arguments loose their basis. Challenging cultural relativism from a de-constructivist viewpoint, one can argue that there is no such thing like a unified culture. On the contrary, the culture argument is usually applied in order to veil the conflicting nature of rights and the conflicts within "cultural groups". Playing the culture card can be interpreted as a powerful move, which aims at imposing an imagined culture as something standing outside of discourse. The aim of this strategy is to establish a hierarchy of rights without engaging in negotiations over it. What is promoted by a poststructural approach instead is that there is *no* natural hierarchy of rights and that *conflicts* and negotiations over rights are necessary.

Alternative III: The Conflicting Nature of Rights

Leaving the universalistic and cultural relativist arguments behind, it becomes possible to engage in the conflicting nature of rights. Often, conflicts between rights are located outside of the "West", such as debates over female genital mutilation or veiling. Contrary to this assumption, these (and other) conflicts also take place within European nation states. In debates on veiling or female genital mutilation, the problem is often framed as a conflict between human rights for women (gender equality/bodily integrity) vs. religious and cultural rights of minority populations[57]. This conflict can also be described as a conflict between individual and group rights. Intensive scholarly debate has revolved around the question whether and how to accommodate groups as rights-holders in a liberal system of rights, whose logic is based on the individual (see Taylor 1993, Kymlicka 1995 and 2007). The discussions about multiculturalism, feminism and

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57 Differently, the debate on veiling in Germany is predominately framed as a conflict between public neutrality and religious freedom (Saharso 2007).

minorities within minorities are still salient (Okin 1999, Eisenberg/Spinner-Halev 2005, Laden/Owen 2007).

Another classical conflict is the one between freedom of expression and restrictions of hate speech (McNamara 2007). Instead of asking how the problem of conflicting rights can be resolved generally, McNamara looks at how the free speech/hate speech conflict is balanced in four selected countries (UK, Canada, Australia and New Zealand). One of the findings in this study is that the social or at least judicial consensus over which right is more important is more decisive for the outcome than the legal forms in which the conflicting rights are codified. Following from this analysis, all comes down to the importance of norms, which are usually conflicting.

The conflict between rights is a logical consequence of the political nature of and conflicting interests inscribed in rights bills. In the eyes of poststructural scholars, it is crucial that the conflictual nature of the political remains visible and that social division such as gender are politicised (Rönnblom 2009). This claim is informed by the antagonistic concept of the political and the agonistic model of democracy by Mouffe (2000:101-103), who is critical of "pain-free politics" (Mouffe 2000: 112). In this view, the lack of articulation of conflict does not mean that there are no conflicting interests and values, but that that the weaker position of the conflicting parties is surrendered. Thus, in a conceptualisation of the political as conflictual rather than consensual, conflict is necessary.

In conclusion, looking for a legitimate position from which one's normative ideas can be justified is in vain. The many conflicts over rights are prove of ongoing normative debates. In any society, normative decisions regarding social life have to be taken. Perhaps the crucial point is to deal with these decisions as what they are, i.e. ethical questions. Instead of hiding their contested nature and claiming some universal truth, superior morals or untouchable culture, conflicts need to be fought over openly. If there is no ultimate justification for one's normative standpoint, this produces the obligation to make it available for discussion and negotiations. The issue then is how to organise the conditions one enters in negotiations, being attentive to social power relations. But this is another research question and needs to be addressed elsewhere.

7.3. Application: International Human Rights Documents

In the previous chapters, I have outlined some major criticisms regarding human rights and alternative ways of thinking about them. In the following, I will apply these considerations onto concrete debates around international human rights conventions. UN human rights conventions are taken as reference points, as they are of international importance. The time frame is from after the Second World War, as this event caused the last major geographic and political reorganisation on an international level, until the present.

Problem I: Power and Rights Discourse
Alternative I: The Emancipatory Potential of Equal Rights
My reading of Brown (1995) is that rights can be emancipatory provided a) it is possible to reflect on the conditions of rights claims, b) to challenge the content, i.e. the meaning of rights and c) to extend the human rights catalogue via new rights claims. Hence, the important point is to ask about the limits of our rights claims: what kind of rights are deemed legitimate and desirable and which ones are not even thought about? What are the limits of the thinkable and the sayable?

Generally speaking, human rights literature has identified negative rights (freedom from) and positive rights (right to) as the conditions and resources needed to realise actions and well-being (Isin/Wood 1999). Human rights literature usually talks about non-divisibility of human rights (Nyamu-Musembi 2005) which means that a wide range of rights is needed.

Table 7: International UN Human Rights Declarations and Conventions

- UDHR Universal Declaration of Human Rights 1948
- Convention on the Prevention and Punishment of the Crime of Genocide 1948/1951*
- Convention relating to the Status of Refugees 1954 (Genfer Flüchtlingskonvention)
- ICERD International Convention on the Elimination of All Forms of Racial Discrimination 1965
- ICCPR International Covenant on Civil and Political Rights 1966/1976*
- ICESCR International Covenant on Economic, Social and Cultural Rights 1966/1976*
- CEDAW Convention on the Elimination of All Forms of Discrimination against Women 1979/1981*
- CAT Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984
- Declaration on the Right to Development 1986

- CRC Convention on the Rights of the Child 1989
- ICRMW International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990
- Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime 2000
- CRPD Convention on the Rights of Persons with Disabilities 2006
- ICPD International Convention for the Protection of All Persons from Enforced Disappearance 2006
- Declaration on the Rights of Indigenous Peoples 2007
  *Note: Two dates signify the creation of the convention and the entering into force.

Existing international human rights conventions reflect a certain societal consensus of what is a substantive set of human rights. They are used by different actors, also civil society organisations. Continuously, new rights claims are drafted. This dissertation will refer to both, an existent set of rights, codified in international conventions, and new rights claims. Inspired by Hannah Arendt's conceptualisation of citizenship as the right to have rights, current literature drafts the the right to formulate *new rights* as inherent to citizenship (Jones/Gaventa 2002: 5).

Challenging the Meaning of Human Rights

The Universal Declaration of Human Rights (UCHR) is one of the central documents. Its provisions have been made binding international law via the ICCPR (1966/76) and ICESCR (1966/76). These conventions are called the first and second generation of rights. Its regulations cover first, non-discrimination[58], civil and political rights and second, economic, social and cultural rights.

Their meanings have been challenged from the very beginning. Traditionally, basic human rights such as civil and political rights were meant to regulate the relation between the citizen and the state, focusing on public arenas; individuals could assert these rights against the state. The right to life, for example, was interpreted as the right to a fair trial before capital punishment. As feminist rights interpretation show, it was not capital punishment, but the lack of access to basic obstetric care and contraceptives, which severely threatened women's right to life, security and liberty (Cook 1994a: 19). Another criticism addressed the problem that the right to liberty and security of persons

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58 *ICCPR Article 2: Non-Discrimination*   1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

was traditionally interpreted as securing citizens from state power. The state was only to be held accountable if an official person or a person in an official capacity committed a crime or an act of violence. Feminists argued that in the experiences of women it is not only the state, but also private actors in the family and the home which endanger women's right to liberty or security. Since the 1990s, feminist challenges to hegemonic understandings of rights have been successful especially with regard to issues of violence[59]. Increasingly, the rights to liberty and security are interpreted as the right to freedom from violence in the family and the home (Cook 1994a: 21) and states can be held accountable for the failure to protect women from violence e.g. through the CEDAW Optional Protocol[60]. The fact that the meaning of rights has been continuously challenged and widened points to the emancipatory potential of human rights.

Problem II: Universalism vs. Particularism
Alternative II: A Non-Identitarian Concept of Substantive Equality and Equal Rights

One of the main feminist criticism of rights is that legal systems tend to make certain groups of people and certain fields of life invisible. The political and the economical (the public) have been privileged in legal codes, whereas the private (family, reproduction and sexuality) has been neglected. The feminist demand to extend legal protection to private arenas is important especially with regard to domestic violence and other forms of gender-based violence.

The public/private distinction, however, needs to be carefully applied. Liberal states have always had an impact on family relations by regulations on employment, taxation, social security and crime (Charlesworth 1994). The public/private distinction is not applicable to traditional family law; just think about regulations on family names, head's of households and rights and duties within marriage. Thus, states have always

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59 Also the CEDAW changed considerably in relation to violence: Gender-based violence was not part of the convention's original text of 1979, but the General Recommendation No. 12 (1989) extended the reporting duties of state parties on violence. However, it was not until the General Recommendation No. 19 (1992) that violence against women was more closely defined as a human rights violation and discrimination. Moreover, states are held responsible "for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation." (Art. 9). (http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html)

60 The Optional Protocol to the CEDAW, which entered into forced in 2000 and has up to date 79 signatories and 98 state parties, provides for an instrument for individuals and groups to charge states of failure to transpose and realise the convention. (see http: //treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en, accessed on 9 September 2009.

intervened in some private matters, but abstained in others. It would be also simplifying to claim that early international human rights conventions do not address the private realm at all. One article e.g. of the UDHR addresses equal rights of women and men in marriage matters (Art. 16).

Generally, however, the first and second generation of human rights, the ICCPR and the ICESCR, usually do not spell out what its overall provisions could signify when applied to differently situated persons. The ICCPR only comprises of a gender equality regulation in Article 3 on the equal right of men and women to the enjoyment of all rights set forth in the convention. The ICESCR, which deals with economic, social and cultural rights, is a little bit more attentive and explicitly raises two issues not only, but relevant for women such as fair wages, equal pay (Article 7 (a)) and maternity leave (Article 10 (2))[61]. While the ICESCR transcends the public/private divide in this respect, its field of application, at least in relation to employment, only refers to work in the public sphere. The tremendous amount of economic activity, performed by women unpaid in the domestic sphere, such as subsistence farming, remains out of reach (Charlesworth 1994). Here, we see the limited area of reach and the very particular nature of early human rights.

In order to address previously neglected groups, the catalogue of civil and political, economic, social and cultural rights has been extended to also protect refugees, children, women, people with disabilities, migrant workers, disappeared persons etc. (see Table 7). Interestingly, however, these conventions for particular groups, e.g. women, persons with disabilities, do not grant "particular, new rights" – at least not analytically. These conventions mostly do not confer new rights, but spell out what would be needed for members of these social groups to equally enjoy full human rights. Some groups are deemed in need of special attention because of their disadvantageous status in society. In some instances, resources are claimed: it is the state duty to provide for special infrastructure for persons with disabilities to ensure their right to participation in all aspects of public life. The CEDAW also spells out what human rights for women mean in all spheres of society. Thus, this is not about "new rights", but about resources to

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61 "Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits." (ICESCR, Article 10 (2)). The UDHR also comprises of a sentence providing special care and assistance to motherhood and childhood (Article 25 (2)).

realise rights and about what rights mean for certain groups. In this vein, the Vienna Declaration and Programme of Action (1993)[62] states that human rights of women and the girl child are conceptualised as part of universal human rights (Art. 18).

Substantive Equality

An understanding of substantive equality, as outlined in Chapter 1, means that differently situated persons either receive additional resources or special measures, in order to account for their special self-identified needs and tackle existing inequalities. The CEDAW Article 4 also rules that women's full enjoyment of human rights is to be ensured by the state parties by *temporary special measures*. Special measures are considered necessary to mitigate existing inequalities and to enable persons to realise the general catalogue of human rights.

Apart from special measures, substantive equality means to extend the existing catalogue of human rights. The CEDAW did so by including joint responsibilities in reproduction (Article 5), trafficking and exploitation of prostitution, participation in public and political life, nationality, education, education on family planning, employment, health care, benefits and loans, participation in social and cultural life, equality before the law and in civil contracts, family and marriage. These rights are of particular concern for rural women who often face more difficulties in accessing and realising them.

Another important extension lies in the *right to participation*. From the ICCPR onwards, the right to participation has been confirmed in various conventions. Deducing from it follows the right to right claims. Isin/Wood (1999) document new rights claimed by social movements such as ecological, technical or urban rights. Ecological rights can be regarded as the rights of individuals to a collective good, such as a clean environment. These might conflict with aboriginal rights of land use. Technical rights refer to mostly civil rights such as protection from surveillance and data protection (privacy), censorship (freedom of expression), but also political rights. Public criticism, and the distribution of information, the formation of civic networks that transverse

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62 This document was adopted at the United Nations World Conference on Human Rights on 25 June 1993 in Vienna. (http: //www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/a.conf.157.23.en, accessed on 4 September 2009)

political boundaries are mentioned here; however, these phenomena might be rather fluid and ephemeral (Isin/Wood 1999: 109). Social rights, especially in relation to the internet, refer to the accessibility of means of telecommunication. Baer (2004: 107) also cites examples of newer rights, expressed in the European Charter of Fundamental Rights of the European Union (CFREU), such as rights against genetic engineering.

In 2007, the Yogyakarta Principles[63] were issued by international human rights experts. They spell out what human rights mean for persons of diverse sexual orientation and gender identity. As the below list indicates, the Principles interpret already existing rights such as civil, economic, social, cultural rights. They also lay out what the right to privacy means (Art. 6): the right to a private sphere and consensual sexual activity, which is dependant on the de-criminalisation of same sex activities. Furthermore, the Yogyakarta Principles refer to the right to found a family (Art. 27) including reproductive rights such as access to assisted procreation.

Table 8: The Yogyakarta Principles
• The right to the universal enjoyment of human rights • the rights to equality and non-discrimination • the right to recognition before the law • the right to life • the right to security of the person • the right to privacy • the right to freedom from arbitrary deprivation of liberty • the right to a fair trial the right to treatment with humanity while in detention • the right to freedom from torture and cruel, inhuman or degrading treatment or punishment • the right to protection from all forms of exploitation, sale and trafficking of human beings • the right to work • the right to social security and to other social protection measures • the right to an adequate standard of living • the right to adequate housing • the right to education • the right to the highest attainable standard of health • protection from medical abuses • the right to freedom of opinion and expression • the right to freedom of peaceful assembly and association • the right to freedom of thought, conscience and religion • the right to freedom of movement • the right to seek asylum • the right to found a family • the right to participate in public life • the right to participate in cultural life

63 The Yogyakarta Principles, available at http: //www.yogyakartaprinciples.org/ (accessed on 24 May 2011).

- the right to promote human rights
- the right to effective remedies and redress

Problem III: Universalism and Cultural Relativism

Alternative III: The Conflict of Rights

Another extension of the traditional human rights catalogue is the *Declaration on the Rights of Indigenous Peoples* (2007). It differs from others as it grants rights to a group as a group (group rights[64]) and only some to the members of the group (individual rights). The debate about conflicting rights (conflict between women's and cultural rights) can also be framed as a conflict between individual and groups rights.

The freedom of cultural expression and recognition of cultural practices of minority cultures is regarded as worthy of legal protection (Taylor 1993). Consequently, the *Declaration on the Rights of Indigenous Peoples* provides for the right of indigenous peoples to self-determination and to freely decide upon their economic, social and cultural development. More specifically, indigenous peoples have the right to practice their religious practices and customs as a group. These rights are granted to them as a group vis-à-vis the state.

> Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains. (Declaration on the Rights of Indigenous Peoples, Article 12 (1).

At the same time, the Declaration addresses individual rights such as the right to freedom from violence, and stresses that women and children need special protection.

> Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration. 2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination. (Article 22 (1).

Article 12 (1) and 22 (1 and 2) are conflicting when religious (or other) traditions violate the principle of protection against all forms of violence. The conflict of rights

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64 Group or collective rights, which are considered the third generation of human rights, are also considered in the *Declaration on the Right to Development*.

arises over the question which good, the individual (freedom from violence) or the collective (freedom of cultural expression), is deemed more important. Expressed differently, the conflict is triggered by different meanings and definitions of violence: it is crucial whether a tradition or custom is perceived as violent at all and if yes, whether this is considered detrimental to the individual or not.

In summary, human rights as a normative standards point to visions of the "good life" which should be available to all; at the same time, they are fiercely contested. A de/constructivist understanding of human rights implies that rights can have an emancipatory potential, given they grant the right to act equally and to reflect on the conditions of such actions. In this sense, taking universalism seriously means to uphold the ideal of equal rights for all persons qua persons (relational dimension) and to be alert to the content and conditions of rights claims (normative dimension).

Following these reflections, the conceptualisation of human rights in issue-related terms has been stressed. By deconstructing hegemonic signifying practices of the universal and the partial it has been shown that new rights claims are an extension of the human rights catalogue. Thereby, previously neglected spheres such as care, reproduction and migration are included. Furthermore, rights for persons with disabilities or temporary special measures need not be interpreted as "partial", but as resources needed to realise a full set of rights.

This chapter has also engaged in conflicts of rights such as freedom of expression vs. anti-discrimination rights; it has discussed the right to life and security vs. religious and cultural rights in issues of gender-based violence. The second conflict can also be considered a conflict between individual and group rights in liberal democracies.

Struggles are at the heart of the formulation of rights (Nash 2002, Otto 1999) and power relations are involved in the definition of what rights mean. Despite all limitations rights claims are, if not powerful, then at least challenging, because they urge for consequences and concrete entitlements.

8. SUMMARY

In part II, the Model of Intersectional Discursive Policy Analysis (IDPA) has been presented (Chapter 5), followed by a discussion of the elements of discursive analysis (Chapter 6) and human rights perspective in policy evaluation (Chapter 7).

The overall perspective of this type of *discursive analysis* is processual. A processual approach means to start with sites and to analyse the processes within. In discursive policy analysis, sites are specific policy fields, in this case intimate citizenship policy debates. Processes in a discursive policy analysis are framing processes, in which meanings are developed. Policy frames are representations of policy problems and solutions and they are informed by an underlying normativity: why is the problem a problem? What is ideal, what is to reject? Hence, frames consist of cognitive and normative elements. Moreover, frames are to be distinguished from wider social discourses. Frames are part of them; social discourses should always be reflected upon when conducting frame analysis. This is called a dual research agenda by Bacchi (2005a). If we are interested in the meanings constructed in policy debates, then it is also essential to ask: who is constructed in and effected by certain policy problem representations? Hence, the second analytical step derives subject positions from the frames.

Chapter 6.4. has laid out the *epistemological foundations of analysis*. This dissertation is situated within a (moderate) social constructivist perspective. Conceptualised as dialogical and as a result of multiple perspectives, academic knowledge can deliver findings which are neither reducible to mere beliefs nor everyday or political knowledge. However, in order to achieve sound (feminist) knowledge, a postpositivist epistemological demand is to lay open the socially constructed nature of science and its value-laden, theoretical assumptions. Research should be about explaining more and assuming less (Hawkesworth 2007): instead of trying to get rid of one's standpoint – which is impossible –, it is about making your own standpoint systematically visible. By virtue of reflexivity, i.e. the openness to scrutinise foundations and assumptions, knowledge remains open to transformative criticism.

The conclusions for a postpositivist research agenda are: due to a (moderate) constructivist view, objective truth about the social world is out of reach. What

postpositivist scholarship can analyse is representations of the social world. Consequently, a discursive policy analysis is about identifying different policy problems and solutions and the underlying normativity that drives them. A critical, intersectional perspective asks who is affected or created; it asks about powerful and powerless subject positions and the rights and duties that come attached.

The last step of analysis is that of a *human rights evaluation* (Chapter 7). Legally, national legislations do not only have to be line with the Constitution, but also with European and international conventions to which states are signatories. Behind the concept of human rights lies the idea of quality of life, a vision of the good life. While such visions are contested, there is nevertheless a body of existing human rights conventions around which there is a relative consensus. For a discursive analysis, which is interested in social norms negotiated in policy debates, it is a logical next step to evaluate how policy debates relate to norms expressed in existing human rights conventions.

From an epistemological point of view, working with a human rights focus indicates my normative position as a researcher. Informed by the idea of a wide-ranging (reworked) catalogue of human rights, substantive equality is the underlying normativity. This understanding of human rights needs to be in line with the overall moderate de/constructivist perspective of the dissertation. I have argued that these two elements can be meaningfully combined. A constructivist perspective does not necessarily, as sometimes suggested, advocate relativism; rather, it is about making normativities visible. An analysis can show that some social representations of the world have more or less inclusive effects than others. This opens up the way for a rights perspective: some representations of the social world grant more or less rights and entitlements to people. Human rights are not "universal", by means of an universal truth. Nevertheless, as a frame of reference for quality of life, they have a strong normative potential. The idea of equal rights for all, based on a wide range of human rights, is still a powerful tool.

Human rights are conceptualised as to deliver normative ideals, against which actual policy debates can be evaluated. Whether these assumptions of mine hold true, will be explored in the actual human rights evaluation.

PART III.

EMPIRICAL ENQUIRIES

9. LIFE PARTNERSHIP ACT (2001)

Since the beginning of the 1990s, the Alliance 90/The Greens have been active in issuing initiatives for same sex partnership rights. From 1999 onwards, a draft of the coalition partners SPD and the Alliance 90/The Greens was discussed in parliament. It received support from civil society as the key organisation, The Lesbian and Gay Association Germany (Lesben- und Schwulenverband Deutschland LSVD), actively lobbied for the bill. Eventually, the Life Partnership Act was passed in 2001, followed by the Life Partnership Revision Act in 2004, both under a red-green government coalition (1998 – 2002, 2002 – 2005)[65]. These Acts regulate the rights and duties during and after a same sex partnership as well as parenthood.

The policy process of the 2001 Life Partnership Act was full of contestations, with the SPD and the Alliance 90/The Greens as the only promoters of the act. Hot debates took place in the 2nd and 3rd parliamentary reading of the draft, after the coalition parties had split the draft into two parts. This was done in order to circumvent the approval of the Federal Council (FC), (Bundesrat, First Chamber of Parliament), which was needed for certain financial aspects of the bill. Immediately, the conservative Federal States of Bavaria, Saxony and Thuringia initiated a proceeding (Normenkontrollverfahren) at the Federal Constitutional Court (FCC) in order to prevent the act from become binding law. They argued that the legal provisions for same sex partners were unconstitutional because they supposedly threatened the protection of marriage and family as provided by Article 6, Basic Law (BL, Grundgesetz). Despite this claim, the FCC ruled that the Life Partnership Act should enter into force in August 2001[66]. The constitutionality of the act was confirmed by a FCC decision in July 2002, which also rejected any "distance commandment" (Abstandsgebot) between marriage and Life Partnership[67].

The 2001 Act regulates the registration of same sex partnership and the recognition of Life Partners are as family members, who have the obligation to care and support

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65 The Life Partnership Act (2001) was passed with the votes of the Red-Green Coalition parties (SPD and Alliance 90/The Greens) against the votes of the CDU/CSU, FDP and PDS (abstention from voting except for three dissenting votes) in 2001. The Life Partnership Revision Act of 2004 was passed with the votes of the SPD, Alliance 90/The Greens and FDP against the votes of the CDU/CSU in 2004.
66 BVerfG, 1 BvQ 23/01, issued on 18 July 2001.
67 BVerG 105, 313 issued on 17 July 2002.

another (maintenance obligations). Evaluations talk about wide-ranging equality of Life Partnership with marriage in certain respects, while other fields carry features of discriminatory regulations (Dethloff 2001). Positive provisions are that common household and sexual intercourse are no longer duties and that the lone power of disposition over common goods or assets is restricted. More problematically, the 2001Act only granted a small custody right to the other partner. The Life Partnership Revision Act of 2004 revised this shortcoming and extended the rights of same sex partners, especially in relation to family law.

The second part of the Life Partnership Act of 2001, referring to financial aspects such as tax law, social benefits and living allowance (Wohngeld), did not pass legislation. It had to be presented to the Federal Council (Bundesrat), which did not agree to the draft. Subsequently, the FDP criticised the unbalanced relation of duties and rights for same sex partners in the newly created family institute. The CDU/CSU vehemently opposed and still opposes an extension of the Life Partnership Act, when it comes to questions of the state budget in the form of tax reductions or inheritance laws.

9.1. Policy Narratives and Frames

The image of a spectrum is useful for describing the wide range of diverging discursive policy positions: five policy narratives (A – E) draft distinctive family institutes. Narrative A (CDU/CSU) constructs same sex partnership as a *threat* to marriage, whereas narrative B (FDP) stresses *difference* between these family institutes. Narrative C (law text and explanations, SPD) is the most contradictory policy story as it simultaneously talks about *sameness and difference*. Narrative D (Alliance 90/The Greens, CSO text LSVD) underlines the feature of *sameness* and equality, but it is only narrative E (PDS) that talks about full equality by *opening marriage* for same sex partnerships.

Narrative A: Threat

This narrative, represented by the speech of the CDU/CSU, constructs same sex partnership as a threat to marriage and therefor rejects any legislation. The most important frame is the **protect marriage frame**. The Life Partnership Act is said to

contradict Art. 6 BL on the special protection of marriage and family. The main concern of the CDU/CSU is that heterosexual marriage is in danger and "our culture" at risk (**Christian culture frame**). Same sex partnerships are deemed to threaten the moral values of the Christian occident. Homosexuality contradicts the principles of all monotheistic religions and presents an "attack against family and society".

The **anti-discrimination frame**, which the other narratives push forward, takes on a different turn here: for the CDU/CSU, there is no need for legislation as there is no legal discrimination (sic!). Moreover, the low number of homosexual partnerships does not justify a separate legislation. The **equality and equal rights frames** are also filled with different meanings than in the other narratives. The CDU/CSU invokes the equal treatment argument in order to reject the bill. More concretely, by referring to Art. 3 BL on equal treatment and Art. 14 BL on possessions and inheritance, narrative A argues that other forms of living communities (e.g. cohabiting heterosexual couples) would be disadvantaged, if same sex couples were able to register their partnership. Regarding a **personality rights frame**, this narrative argues that homosexual people are and should *not* be protected under Art. 2 (1) of the Basic Law, which is about the right to express one's personality, provided s/he does not violate the rights of others, the constitutional order or the moral law.

In summary, this narrative draws from the Basic Law (BL) in order to justify the rejection of the Life Partnership Act. The **underlying norm** is religiously informed heteronormativity, with liberal rights applying exclusively to heterosexual marriage.

Narrative B: Difference

Represented by the FDP, this narrative stresses difference of same sex partnership from marriage. Similarly to narrative A, it interprets registered homosexual partnerships as a threat to marriage and family (Art. 6 BL). Consequently, legislation for same sex partners needs to be clearly distinguishable from that of marriage **(protect marriage frame)**. Presented as an alternative to the Life Partnership Act, the FDP bill is less far reaching, a form of "marriage light". This is justified by arguing that same sex partners believe less in partnerships than "we do". Consequently, partnership regulations should demand less commitment from couples. Similarly to the speech of the SPD, same sex partnerships are said to be special "communities of responsibility" with their own

sovereignty and dignity. The language points to a strong "othering" discourse: it is an unmarked "us" (= heterosexual married couples) in opposition to the "them", "such people", "people living in this surrounding" and people with "a different disposition".

The heteronormative frames on marriage are contradicted by a **personality rights frame.** According to liberalism, every individual should have the same opportunities to realise her/his life perspectives, which should be tolerated and accepted by society. Same sex partners are protected under Art. 2 (1) BL (contrary to the view of narrative A). In summary, narrative B is guided by two conflicting underlying rationales.

Narrative C: Sameness/Difference

This narrative is represented by the Life Partnership Act and the parliamentary speech of the SPD. The tension is even stronger than in the previous narrative B, as frames circulate between sameness and difference. On the one side, statements about equal worth and equal dignity (**equality and equal rights frame**), the drive to end the discrimination of same sex partners and a direct (personal) comparison with marriage[68] reveal that long term same sex partnerships are regarded the *same* as marriage. Moreover, the bill of the Life Partnership Act uses **anti-discrimination frames,** influenced by decisions of the European Parliament (1994) and probably also by (then upcoming) EU anti-discrimination directives[69]. The **social responsibility frame** also points into the direction of sameness: the state should promote all relationships in which partners assume social responsibilities for each other. The understanding is to treat equally, what is the same.

On the other side, this narrative constructs Life Partnership as a separate family institute with its own sovereignty and dignity. By stressing that other living communities and their "being different" (Andersartigkeit) should be acknowledged (SPD), this narrative promotes, as almost all narratives except narrative E, a notion of "the other". Life Partnership is said to be essentially *different* from the family institute of marriage, because same sex partners cannot biologically have children of their own. On the contrary, family is defined as independent from the parents' sexual orientation at a later

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68 The speaker of the SPD (then Minister of Justice Herta Däubler-Gmelin) compares her own situation – being married for 31 years – with the one of same sex partners who are not legally allowed to officially assume the same kind of responsibility.

69 These are The Framework Directive 2000/78/EC, The Race/Ethnicity Directive 2000/43/EC, The Amendment of the Gender Equality Directive 2002/73/EC and the Directive on Access to Goods and Services 2004/113/EC.

point (**family frame**). Here, competing notions of family are at work: in the first case, an biological understanding of parenthood and family and in the second case, social parenthood.

In summary, this narrative is guided by conflicting underlying norms such as anti-discrimination, equal dignity and worth, liberal right to partnership and social responsibility on the one side and on the other side, the acknowledgement of the "other". A tension between assertions of sameness and difference characterises this narrative. If heteronormativity is challenged, then only in contradictory ways.

Narrative D: Sameness and Equality

This narrative, represented by the parliamentary speech of the Alliance 90/The Greens and the CSO text LSVD is less internally contradictory. It demands equal rights for same sex partnerships (**equality and equal rights frame**), but it does not take the final step of demanding *marriage* for same sex partners – probably a matter of strategic framing. The LSVD text even suggests to equalise regulations for Life Partnerships with the ones of marriage without calling it marriage. An example therefor is the wish of the LSVD that the registration of the Life Partnership by a registrar or a notary do not create "second class people" ("Menschen zweiter Klasse"). Generally, the LSVD text is much weaker in its explicit use of terms such as equality, equal rights, democracy and justice than is the speech of the Alliance 90/The Greens; it is cautious, if not to say humble, in its choice of words.

Both texts underline that the Life Partnership Act does not threaten marriage. Registered same sex partnerships neither reduce marriage provisions nor compete with marriage (argument also by narrative C). As has become clear, the family institute of marriage, which is protected by Art. 6 of the German Basic Law (BL), is central to intimate citizenship policies. Any debate about partnerships is always at the same time a debate about the constitutionality of the legislation.

The **social responsibility frame** is promoted by narrative D, arguing that committed relationships all perform the same task vis-à-vis the state due to the principle of subsidiarity: partners have to maintain each other before the state has to step in (Alliance 90/The Greens). Same sex partnerships are presented as equally "good citizens" as others and as equally committed to long-time partnerships. These arguments

are connected to a **national resources (budget) frame.** Given that same sex partners are usually double earners and due to the low expected number of registrations, social costs will be low (LSVD). Moreover, the social security system will be alleviated due to maintenance duties (Alliance 90/The Greens).

The **personality rights frame** and **the family frame** are used in narrative D like in narrative C; the difference lies in that narrative D does not construct any essential difference between heterosexual and homosexual partnerships. However, the opening of marriage for same sex couples is not touched upon.

Narrative E: Same Sex Marriage

The most transformative text of all is the speech of the PDS (narrative E). What distinguishes this discursive position from narrative D is that equality is demanded on a formal *and* symbolic level: marriage should be opened to same sex partnerships (**equality and equal rights frame, anti-discrimination frame**). The lack of any "othering" discourse is what makes this narrative special in comparison to the others. The PDS argues that one family institute should be valid for all and rejects the idea of a secondary class partnership with fewer rights for same sex couples. The Life Partnership Act is criticised for re-inscribing the discrimination of homosexual couples into family law. In the **family frame,** narrative E points to the social reality that there are already one Million homosexual parents.

In summary, narrative C and D support the Life Partnership Act, whereas narrative A, B and E reject it. They do so for different reasons: narrative A and B criticise the Life Partnership Act for going too far; narrative E for reaching short and prolonging discrimination. Narrative A rejects same sex partnership on a formal legal and symbolic level; narrative B is ambivalent in its support of same sex partnerships (SSP).

Table 9: Policy Narratives and Frames – Life Partnership Act (2001)

	Narrative A	**Narrative B**	**Narrative C**	**Narrative D**	**Narrative E**
Narrative	*Threat*	*Difference*	*Sameness/ Difference*	*Sameness and Equality*	*Same Sex Marriage*
Texts	CDU/CSU	FDP	Life Partnership Act + Exp. SPD (CSO: LSVD)	Alliance 90/The Greens CSO: LSVD	PDS

Frame	Frame Description	Frame Description	Frame Description	Frame Description	Frame Description
Anti-Discrimination	No legal discrimination Equality for other living communities	Legal discrimination exists Fair and adequate recognition of SSP	Legal discrimination is a problem End unequal treatment, end discrimination	Legal discrimination is a problem Equal rights as in marriage; no 2nd class citizen, LSVD	Legal discrimination is a problem Open marriage for SSP
Protect marriage	SSP contradicts Art. 6 BL Marriage and family	Respect marriage (Art. 6 BL) SSP: "community of responsibility with its own sovereignty and dignity"	SSP is no threat to Constitution SSP: "own sovereignty and dignity" (no biological children)	SSP is no threat to Constitution and marriage SSP: different family institute	Marriage for homosexual couples or civil partnership
Christian culture	SSP is threat to "our culture", against religion SSP is an attack against society				
Personality rights	Art.2 (1) BL does not apply to SSP	Respect right to realise individual life perspectives	Respect right to live partnership (Art. 2 (1) BL)	Respect personality rights (Alliance 90/The Greens)	
Social responsibility			State should support stable relationships and socially responsible persons	State should promote "Leitbild" marriage and Life Partnership, socially responsible persons	
National resources				Low social costs due to low number, double earners and maintenance duties	
Family	SSP is an attack against family		Family exists regardless of sexual orientation of parents	Family exists in many forms – responsibility	Family exists in SSP (social reality)

	Norms	Norms	Norms	Norms	
		(Anti-Discrimination)	Anti-Discrimination	Anti-Discrimination	Anti-Discrimination
	Heteronorma-tivity and marriage	Heteronorma-tivity and marriage	Dignity regardless of sexual orientation	Equal rights (and duties) Equal choice Justice Democracy	Equal rights, equal worth
	Liberal right of marriage and family	Liberal individual rights	Liberal right to partnership	Liberal individual rights	
	Religion: reject the "other"	Respect the "other"	Acknowledge the "other"	Tolerance and acknowledgement of minorities (Alliance 90/The Greens);	
			Social responsibility ("the good citizen")	Social responsibility ("the good citizen")	

9.2. Subject Positions

While the first step has identified what the policy problems and the solutions are represented to be, the second step looks more closely at the subject positions. As shown in the methodological part II, subject positions are defined as social and power relations in terms of a certain policy narrative. The guiding questions for analysis are: how are persons represented? What are they said to be and act like? These questions point to ascriptions of the "essential being" of persons. The spectrum starts off with a strong and explicitly negative othering discourse in narrative A and ends with narrative E rejecting any difference at all.

Narrative A: Subject Positions

At the one end of the spectrum, narrative A emphasises the needs of "our citizens" ("unsere Bevölkerung"), their understanding of rights and their contributions to the economic success after World War II. It is them, the heterosexually married and their families, who have rebuilt Germany and must be protected. At no point in the speech of the CDU/CSU the interests or rights of same sex partners are taken into account. What is more, "society will never accept this form of living community". What becomes clear

is that same sex partners are neither considered a part of the German citizenry nor the society.

Same sex partners are ascribed essential ways of being and behaving in two arguments. First, according to a not-named magazine "94 % of same sex partnerships do not last longer than half a year", so the speaker of the CDU/CSU. Second, same sex persons are promiscuous, according to the Enquete Commission "AIDS" of the German Parliament (1987-1990). The association of same sex partners as promiscuous in relation to an AIDS study, together with a depiction of same sex partners as not being able or not wanting relations for more than half a year does not construct their partnerships as worthy of any legal protection. Rather, they are represented as a threat to public health. The subject positions expressed in this narrative can be summarised as *"We must protect our citizens, families and society against the attacks of promiscuous same sex persons and prevent the unequal treatment of other living communities."*

Narrative B: Subject Positions

As indicated in the section on frames, narrative B follows two competing norms: the heteronormative norm of protection of marriage and family (Art. 6 BL) vs. the liberal, individual norm of personality rights (Art. 2 (1) BL). The second norm is visible in a critical statement on the majority society. It has taken "our enlightened society a long time before finding the strength to accept people with a different disposition", so the speaker of the FDP. The first, heteronormative norm is expressed in that marriage is depicted as the "culturally strongest community of responsibility". Same sex partners have "less faith in committed relationships than we do". So, while it is a duty for a liberal society to tolerate, respect and accept "the others beside and among us", the "others" are not quite as worthy as "we" are. The fact that a liberal society is urged to respect the lower other creates of position of superiority for the majority society. This othering discourse has a paternalistic dimension, too: that "the people affected" ("die Betroffenen") need help, is a recurring theme and can be found three times in the text. They should be helped by means of legislation, so the argument. Such constructions show who is in a powerful position to "help" and who is the one in need of help.

In summary, this subject position can be paraphrased as *"An enlightened, liberal society should respect and help people with a different (sexual) disposition, who are not quite*

as suitable for stable relationships as we are."

Narrative C: Subject Positions

Just like the frames of narrative C are contradictory, so are the subject positions. On the one side, same sex partners are different because of biological predisposition. The speaker of the SPD as well as the text of the LSVD (narrative D) explain homosexuality biologically: "Homosexuality is a biological fact, neither a criminal behaviour, nor a lack of taste nor something immoral", is one of the first sentences of the SPD speech. The LSVD similarly argues that it is a status that one cannot freely choose. On the other side, this difference does not seem to matter insofar as people's dignity must be respected, regardless of their sexual orientation, so the SPD speaker. Moreover, same sex partners are depicted as wanting the same as heterosexual married partners (despite their different sexual orientation). The SPD speaker takes her own marital status (being married for 31 years) as an example and criticises that is legally impossible for same sex partners, who might wish to commit to a long-term relationship, to do so. Furthermore, she also states that family exists regardless of the parents' sexual orientation. While same sex oriented persons are presented as alike heterosexuals, a formal distinction between marriage and Life Partnership remains.

In summary, the subject positions expressed by this narrative are rather same- than different-oriented; however, the institutional difference needs to be maintained: "*Same sex partners are principally alike heterosexuals, worthy of equal dignity and respect and a separate family institute does not endanger heterosexual marriage.*"

Narrative D: Subject Positions

In *narrative D,* there are two texts to consider. First, the parliamentary speech of the Alliance 90/The Greens and second, the CSO text of the LSVD. The former one addresses same sex partners as a minority who should be given rights. Discrimination against them should be ended. Same sex partners are depicted as equally responsible as heterosexuals, who assume the same duties and thus deserve the same rights. It is thus a discourse about "worthy citizens", into which homosexual couples are included. Analytically, while there is an overall sameness-oriented discourse, what remains is the term "minority" which depicts same sex partners as "different", as outside of the

majority society. Concerning power relations, it is evident that the majority society has the power to "rule" over the minority, also on a symbolic level. On a more positive note, not only the duties of the minority, but also the duties of the majority society are addressed: the state should support responsible relationships. For the society as a whole the introduction of the Life Partnership means a strengthening of social responsibility and of tolerance towards minorities. Eventually, tolerance should develop into acknowledgement. In summary, the speech of the Alliance 90/The Greens can be described as: *"The minority of same sex partners is equally responsible and their partnerships should be equally supported like heterosexual ones by the state and tolerated and acknowledged by society.*

The text of the LSVD is grouped under narrative D, as the subject positions are similar to the ones of Alliance 90/The Greens. Same sex partners equally want to assume responsibility in a partnership; they want their relationships to be equally supported and acknowledged by the state. The framing is one of "deserving citizens" like in the speech of the Alliance 90/The Greens. Regarding the actual ceremony, same sex partners want the same kind of celebration as a confirmation that their partnership is not second class. Moreover, parents of same sex partners would be alleviated if their "problem children" were able to marry like their siblings. What becomes clear from these examples is that the text of the LSVD is less focused on equal rights than is the speech of the Alliance 90/The Greens. Rather, the LSVD depicts same sex partners as needy and wanting: they need legislation because they cannot legally regulate relations with third persons nor with the state. Moreover, the reference to parents and the "problem children" might evoke notions of feeling sorry for them. In summary, the subject positions are somewhat ambiguous and problematic and can be paraphrased as: *"Same sex partners are equally responsible, need equal rights and do not want to be second class."*

Narrative E: Subject Positions

It is only Narrative E that refrains from an "othering discourse"; sexual difference is neither relevant nor a "legitimate" reason for unequal treatment. In the proper sense, there a no subject positions as the essential being of same sex persons is not touched upon. Rather, same sex couples are positioned in relation to rights: there is no single

reason why lesbians and gays should be prevented from rights which heterosexuals have. The complete eradication of all forms of discrimination against people due to their sexual orientation requires legal equality and rejects a separate legal status, so the main argument. A law which makes same sex partnerships second class is turned down. With regard to the power relations negotiated in the speech it is clear that legal equality for all living communities, no matter whether homo- or heterosexual, is overdue. In summary, the (subject) positions drafted in this narrative can be described as: *There is no single reason why lesbians and gays should be prevented rights which heterosexuals have.*

Table 10: Subject Positions – Life Partnership Act 2001

	Subject Positions
Narrative A	*We must protect our citizens, families and society against the attacks of promiscuous same sex persons and prevent the unequal treatment of other living communities. (CDU/CSU)*
Narrative B	*An enlightened, liberal society should respect and help people with a different (sexual) disposition, who are not quite as suitable for stable relationships as we are. (FDP)*
Narrative C	*Same sex partners are principally alike heterosexuals, worthy of equal dignity and respect and a separate family institute does not endanger heterosexual marriage. (SPD)*
Narrative D	*The minority of same sex partners are equally responsible and their partnerships should be equally supported like heterosexual ones by the state and tolerated and acknowledged by society. (Alliance 90/The Greens)* *Same sex partners are equally responsible, need equal rights and do not want to be second class. (LSVD)*
Narrative E	*There is no single reason why lesbians and gays should be prevented rights which heterosexuals have. (PDS)*

9.3. Discursive Mechanisms

The guiding question of this step of analysis is: how – by means of what kind of discursive mechanisms – is unequal treatment discursively constructed and justified? How is sexuality – possibly together with other (intersecting) categories – constructed and mobilised as a meaningful marker of unequal treatment in the policy process?

As we have seen in the above, it is predominantly narrative A and B which construct unequal treatment as legitimate. Differential treatment is accepted less by narrative C and D, but still to the extent that full symbolic equality is not claimed. Only narrative E

demands equality on the formal and symbolic level in the form of same sex marriage. How do narrative A and B, and to a lesser degree C and D, construct sexuality as a meaningful marker of discrimination? How is differential treatment in comparison to marriage regulations made justifiable? The following discursive mechanisms are developed from the policy narratives, frame, norms and subject positions: Constructing a Dichotomous Category; Playing-off Categories; Ranking Norms; Intersectional Invisibility and Individualisation.

Constructing a Dichotomous Category: Process of Sexualisation

In a de/constructivist perspective of analysis, the social category sexuality is re/produced in the policy process. The construction of a meaningful difference between sexualities is the basis upon which legitimate unequal treatment in narrative A (and partly narrative B) unfolds. These narratives construct sexuality as a dichotomous category with heterosexual marriage at the privileged and homosexuality at the disadvantaged end. Sexuality is mobilised at the expense of same sex partners, who are depicted as not suitable (promiscuous) or not willing to marry. Policy frames as well as subject positions connect same sex partners to low morals and to threats to public health (AIDS) – thus, the contrary of the good, responsible citizen – and contribute to same sex partners being perceived as *unworthy of equal treatment* (i.e. a group that can be "justifiably" treated unequally).

What remains is the the "normal" side of sexuality, worthy of special protection, for whom the marital status of marriage is preserved. Heterosexuality is deeply entrenched in the normative frame of reference, the Constitution. The privileging of heterosexual marriage in narrative A and B is primarily legitimised by drawing from Art. 6 BL. Moreover, frames that construct the heterosexual family as the most important unit of society that has rebuilt Germany after World War II contribute to the confirmation of heteronormativity.

While narrative A and B are the most obvious ones in constructing "us" and "the other", sexuality also remains a meaningful difference in narrative C, although in contradictory ways. The family institute of Life Partnership is said to have its "own sovereignty and dignity", while at the time arguing that sexual difference does not matter in relation to dignity, worth, relationship and family. The narrative is torn between making

differences less important on the individual level and the re-institutionalising difference in the form of a separate family institute. By doing so, heterosexual marriage is reinstated as the institutional norm, to which other forms of living communities are compared.

Even narrative D contributes to the construction of differences, although to a lesser degree. Talking about same sex couples as the "minority" evokes power relations; the heterosexual majority society remains the norm. While narrative D avoids to exacerbate an "othering discourse", it furthers a "normalising discourse". If same sex couples behave like heterosexual married couples in stable, responsible partnerships that alleviate the state from some of its burdens, the minority is deserving and should be given equal rights like the heterosexual norm. Rights are thus attached to a certain, normative behaviour of the good citizen.

In summary, although the degree to which differences are constructed varies, the "othering discourse" persists in almost all narratives and is supported by a "normalising discourse" of the good citizen. Sexuality is a meaningful marker of difference and the norm of heterosexuality is still in place.

Playing-off Categories

In order to legitimise unequal treatment of partnerships, narrative A explicitly alludes to the Christian occident, an imaginary "culture", which is said to be threatened by same sex partnerships. In terms of intersectionality, the categories of *culture and religion* are uniquely attached to heterosexuality. Religion and homosexuality are constructed as mutually exclusive.

A second play-off is applied by narrative A: according to the equality sentence (Art. 3 BL), "other living communities" (e.g. heterosexual unmarried partners) must not be disadvantaged, so the argument. What is striking is that marital status is often a legitimate criterion for discrimination in other legislations (e.g. tax law) – but not in this case. Unequal treatment of heterosexual unmarried couples is not legitimate, whereas that of same sex couples still is – an indicator of sexuality hierarchy.

A last, indirect play-off of categories is visible in statements on economic costs, which Life Partners apparently do *not* produce. Economic development as an important underlying norm (see below) means that class is a category which can come in

supportively or the contrary. But what if there were many Life Partnerships to register and what if this presented a burden on the social security system?

Ranking Norms

Narrative B is torn between two norms, heteronormativity and the liberal norm of personality rights (which are about respecting one's lives perspectives). However, the primacy of heterosexual marriage is not challenged, but ranked as the norm, under which the others are subordinated. This is also the case for narrative C and D, which accept that marriage is preserved for heterosexual couples, even if same sex couples qualify as equally "good citizens" in stable, responsible relationships. It is only narrative E which ranks equality and anti-discrimination the highest norm. That the preservation of marriage for heterosexual couples is a widely acknowledged norm in the policy debate is visible in the many arguments (narrative C and D) that stress that the new family institute of Life Partnership does *not* threaten marriage.

Intersectional Invisibility

Intersections of sexuality with gender, such as in questions of care and reproduction are made invisible almost throughout the entire policy debate. It is only narrative E (PDS) that raises the issue of artificial insemination for lesbian couples. (Gendered) caring duties are not touched upon. By sidelining the intersection of sexuality and gender, important dimensions of possible policy problems are ignored.

Individualising

Individualisation is a key discursive mechanism for narrative A. That same sex partners are not discriminated against is the main argument of the CDU/CSU in 2001. Even if there is punctual need for legislation, an entire family institute is not justified. These arguments render invisible that even if some issues can be legally decided between same sex partners, relations with third persons as well with the state (such as access to the social security system) cannot be regulated by same sex partners. The underlying logic of narrative A is that issues should be regulated by same sex partners individually, without the acknowledgement or the support of the state.

In summary, the question of how sexuality has been mobilised in this policy debate needs to be answered by diverging tendencies. First, there is the tendency to make the category of sexuality less relevant in society. This is visible in anti-discrimination frames and in the emphasis on equal rights for partnerships and equal dignity regardless of sexual orientation. The second tendency is to insist on the distinctiveness of persons and relationships due to sexual orientation. Difference-related frames reproduce a divide between marriage and same sex partnership, which is either based upon a strict heteronormative symbolic and legal order or less strongly, but still important, on the constitutional principle of the protection of marriage and family. The intermediary position intends to make sexuality less relevant on the symbolic level, but insists on maintaining sexuality as the dividing line on a formal legal level (equal rights, but separate family institute).

9.4. Policy Evaluation: Human Rights

The Life Partnership Act was passed due to the majority of the Red-Green government coalition and was partly seen as a success – despite bestowing less rights to same sex than to married partners. The fact that unequal rights are still deemed legitimate in the policy debate is grounded in representations of essential difference between same sex partnerships and marriage, as the above analysis has shown.

From a human rights perspective, differential treatment of persons of same sex oriented sexuality is problematic. Existing human rights conventions, notably the *International Covenant on Civil and Political Rights* (ICCPR, Art. 26) and the *Charter of Fundamental Rights of the European Union (*CFREU, Art. 21) and the *Convention for the Protection of Human Rights and Fundamental Freedoms* ECHR (Art. 14), provide of an equality sentence. "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (Art. 26, ICCPR). Article 21 of the CFREU explicitly mentions sexual orientation as an unlawful reason for discrimination. Moreover, what is at stake is the respect for one's

privacy, honour and reputation (Art. 17 ICCPR) and private life (Art. 7 CFREU).

Contrary to the initial equality sentence, anti-discrimination does not extend to issue of marriage. The right to marry and found a family is usually restricted in international conventions and attributed to the realm of national legislations. Even the CFREU, one of the most recent conventions (2000), provides that "the right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights" (Art. 9 CFREU). This is because the reach of EU law does not extend to family law matters.

Given the silence of existing human rights conventions on same sex partnership issues and considering the open catalogue of human rights, we need to draw from a newer document for further evaluation, the civil society document on LGBT and inter-sexual people's rights called The Yogyakarta Principles[70]. These "principles on the application of international human rights law in relation to sexual orientation and gender identity", so the subtitle, demand that "states shall take all necessary legislative, administrative and other measures to ensure that in states that recognise same-sex marriages or registered partnerships, any entitlement, privilege, obligation or benefit available to different-sex married or registered partners is equally available to same-sex married or registered partners" (Yogyakarta Principle 24 E).

So, while existing human rights conventions do not explicitly cover the field of same sex partnerships, homosexual persons are protected under general equality sentences and by the extended catalogue of human rights in the form of the Yogyakarta Principles.

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70 The Yogyakarta Principles, available at http: //www.yogyakartaprinciples.org/ (accessed on 24 May 2011).

10. LIFE PARTNERSHIP REVISION ACT (2004)

Just like in 2001, the policy process of the Life Partnership Revision Act, passed in 2004[71], was conflictual. After the ruling of the Federal Constitutional Court and the entering into force of the 2001 Life Partnership Act, the debate over amendments in tax and inheritance law re-emerged. As the 2001 Act had to leave out financial regulations due to the lack of confirmation of the Federal Council (Bundesrat), the coalition parties tried to push through respective legislation in the Life Partnership Completion Act (2001/2). All parties but the conservative CDU/CSU agreed on improvements for same sex couples in this matter. During the federal election campaign in 2002, the CDU/CSU announced that they vehemently rejected equality between same sex partnerships and marriage. One of the most prominent voices was Edmund Stoiber, then CSU leader and Prime Minister of Bavaria. Interestingly, at the same time he promised not to lobby for an abrogation of the Life Partnership Act, if elected chancellor of Germany. The LSVD pushed for a decision prior to the elections, but again the law was blocked by the Federal Council (Bundesrat).

It was in autumn 2004 that regulations for same sex partnerships reappeared on the political agenda, following intense pressure from the side of civil society, first and foremost the LSVD. Again, regulations on tax, inheritance and public service law were left out, in order to circumvent the blocking by the Federal Council, i.e. the CDU/CSU and FDP led Federal States. The law passed the Bundestag in October 2004 as the Life Partnership Revision Act. It adapted marriage regulations for same sex partnerships regarding issues of maintenance, engagement, community of acquisitions (Zugewinn-gemeinschaft), reasons for separation, dependants' payments (Hinterbliebenen-versorgung) and introduced the possibility of stepchild adoption. However, it did not allow for joint adoption.

10.1. Policy Narratives and Frames

The picture that arises in the debate on the Life Partnership Revision Act of 2004 differs

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71 The Life Partnership Revision Act of 2004 was passed with the votes of the SPD, Alliance 90/The Greens and FDP against the votes of the CDU/CSU in 2004. The draft is from the Red-Green coalition parties.

significantly from the one in 2001. The tone and line of argument reflect an increasing acceptance of same sex partnerships and the "othering discourse" has decreased. The lobby for same sex partnership rights has grown and supporters can be found in every party but the CDU/CSU. Two main narratives are identified. Narrative A "Equal Treatment" is formed by the texts of the Life Partnership Revision Act, the parliamentary speeches of the SPD, the Alliance 90/The Greens, the FDP and the civil society organisation text by the LSVD. Narrative B "Protect the Heterosexual Family", is represented by the CDU/CSU.

The most important discursive shift has happened within the FDP, which fully supports the expansion of family law regulations, including stepchild and joint adoption by same sex partners. This is a significant change in comparison to the 2001 debate, where the FDP was still torn between heteronormativity and individual liberal rights. Three years before, the FDP had rejected the Life Partnership Act; in 2004 it not only agreed on the coalition draft, but additionally presented a partly further reaching separate bill[72]. Explanatory factors for this discursive shift are the coming out of FDP chairman Guido Westerwelle in 2004 and a favourable climate created after the Federal Constitutional Court (FCC) had confirmed the Constitutionality of the Life Partnership Act in 2002. All parties mention this decision as a reference point in their parliamentary speech. Another shift is observable in the CSO text by the LSVD, whose position has received back-up not only by the FCC decision, but also by the coalition parties and the FDP. Its arguments are rights-based, straight forward and refrain from drafting subordinated subject positions for same sex partners (contrary to the text on the Life Partnership Act in 2001).

Narrative A: Equal Treatment

Key to this narrative is a **rights and duties frame.** All texts of narrative A criticise the unbalanced relation of rights and duties that the 2001 Life Partnership Act has allocated to same sex partners. Whereas the duties have been more or less equalised with marriage regulations, rights such as dependants' pension, engagement, marital property, maintenance, separation and stepchild adoption are diagnosed to be missing. The aim of this narrative is to close these regulatory gaps in order to achieve equal treatment of

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72 It promoted improvements in inheritance law, but rejected equal rights in income law and dependants' pension.

same sex partnerships and marriage (**equality/equal rights frame**). Informed by the 2002 FCC decision, unequal treatment is no longer deemed justifiable by the SPD and the Alliance 90/The Greens. For the CSO text LSVD, claiming equal rights and equal duties for same sex partners is now a matter of justice. To end all discrimination is an explicit policy goal and norm of the Alliance 90/The Greens (**anti-discrimination frame**). If it was for the SPD and the Alliance 90/The Greens, adaptations of tax law, civil service and inheritance law would follow soon – if not rejected by the Federal Council (Bundesrat). In this respect, the coalition parties' position differs from the FDP, who is willing to adapt inheritance law, but blocking amendments in income tax and dependants' pension.

Normative reference point for all texts of this narrative is the FCC decision and its explanations about the **aliud theory**, which distinguishes the family institutes of Life Partnership and marriage due to their different target groups. Consequently, registered same sex partnerships are not deemed a threat to marriage (Alliance 90/The Greens). Drawing from the FCC decision, the SPD and the Alliance 90/The Greens argue that the special protection of marriage and family as articulated in Art. 6 BL does not imply a "distance commandment" (Abstandsgebot) nor that other living communities should be granted fewer rights. In comparison to the 2001 policy debate, the othering discourse has decreased significantly, so that even the reference to the aliud theory is *not* accompanied by essentialising subject positions (see below). The aliud theory serves as a legitimising device for demanding equal rights. It is only the FDP that mentions that marriage must not be disadvantaged in comparison to Life Partnership, which is a reminiscence of a previously stronger heteronormative **protect marriage frame**.

Equally strong as in 2001 is the **social responsibility frame** that argues that the state should support stable relationships. Providing legal protection for those assuming responsibilities for a partner or their child is a goal for the SPD and the Alliance 90/The Greens, especially since this means less responsibility for the state. Due the principle of subsidiarity, the assumption of maintenance duties by Life Partners signifies fewer social costs for the state (**national resources (budget) frame**). Just like in the 2001 debate, the costs arising with dependants' pensions as a result of maintenance duties are diagnosed to be low due to the low number of Life Partnerships and the prevalence of double income households (CSO text LSVD, SPD). Furthermore, dependants' pension

payments arising from caring duties are more than justified, so the SPD.

The issue debated with most salience is the one on stepchild and joint adoption. All texts in narrative A lobby for stepchild adoption. This time, the SPD mentions artificial insemination as a practice, which requires the possibility of stepchild adoption in order for the child to have two equally responsible and caring mothers (gender dimension). The **child well-being frame** is the most important one, emphasising material, legal and emotional security for children that arise with stepchild and joint adoption. It is neither about the personality rights of same sex partners to have children (FDP) nor about the principle aptitude (Eignung) of same sex parents to raise children (CSO text LSVD), but about the social reality and security of children living in same sex families (FDP, LSVD). The FDP and LSVD demand stepchild *and* joint adoption outright, whereas the coalition parties do not mention joint adoption (Alliance 90/The Greens) or point to the fact that the European Convention on Adoption does not allow for it – however, they would lobby for an amendment of the convention (SPD). The fact that joint adoption is not open for same sex partners is deemed a discrimination of children, e.g. foster children by the CSO text of the LSVD.

Narrative B: Protect the Heterosexual Family

The discursive position of the CDU/CSU has not changed significantly in comparison to the 2001 debate. It continues to construct the heterosexual family as the ideal, especially in relation to children. On a formal legal level, the FCC ruling on Life Partnership as an aliud to marriage and denying the distance commandment between marriage and Life Partnership, is acknowledged (**aliud theory**). However, the fact that the CDU/CSU demands that rights and duties should only be balanced and granted *in moderate and sensible ways*[73] is evidence that the ruling has not been taken in entirely. It is not equal rights, but only "more rights", which should be granted, so the argument of the CDU/CSU. Analytically, there is **no equal treatment/equal rights frame** to be identified.

Moreover, this narrative argues that marriage regulations should not be translated to same sex partnerships, but a separate family institute should be drafted instead. This

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73 "Wir akzeptieren selbstverständlich das Urteil des Bundesverfassungsgerichts. […] Im Interesse der Betroffenen sind jetzt auch Rechte einzuräumen, allerdings in einem vertretbaren und sinnvollen Maß." (Ute Granold, CDU/CSU, p.12489C.

statement is based on the formal legal concern that marriage law is outdated and needs revision (**quality of legislation frame**). Remains the question to which degree this formal argument is implicitly driven by the objective to protect heterosexual marriage. However, the most important frame explicitly promoted by the CDU/CSU is **child well-being**, discursively connected to biological heterosexual parenthood. Children growing up in same sex families are said to be facing discrimination and exclusion. Moreover, children's basic rights to their (biological) father and mother need to be ensured and rank higher than rights of same sex partners to express their personality. In this respect, adoption is problematic even in heterosexual families, as biological ties are cut off.

Table 11: Policy Narratives and Frames – Life Partnership Revision Act (2004)

	Narrative A	Narrative B
	Equal Treatment	*Protect the Heterosexual Family*
Text	Life Partnership Revision Act, SPD, Alliance 90/The Greens, FDP, CSO text LSVD	CDU/CSU
Frame	***Frame description***	***Frame description***
Rights and duties (Citizenship)	Balance rights and duties Close regulatory gaps	Balance rights and duties, but in a moderate and sensible way
Equal treatment/Anti-Discrimination	Unequal treatment in comparison to marriage is not justified Equal rights	More rights (but not equal rights)
Aliud theory	Life Partnership different target group than marriage – no threat to marriage No "distance commandment" – no privileging of marriage	Separate regulations for same sex partnership
Social responsibility	State should support stable relationships that resume social responsibility	
National resources	No adversary budget effects No or low costs	
Child well-being	New families are good for children Support social parenthood Legalise and support parent-child-relationship	New families are detrimental to children Support biological parenthood Right of child to father and mother
Quality of law		Reject the translation of outdated marriage law regulations to same sex partnership
Protect marriage	Do not disadvantage marriage (FDP)	

	Norms	Norms
	Equality	
	Anti-discrimination	
	Social responsibility	
	Economic development	
	Social parenthood	Biological parenthood
	Week heteronormativity	Strong heteronormativity

10.2. Subject Positions

Child well-being is the most important frame in both narratives and also a recurrent theme in the subject positions. **Narrative A** constructs same sex parents as equally able to love and care for children. Even more than in the 2001 debate, same sex partners are depicted as responsible citizens, who assume caring and maintenance duties, for which the state would have to step in otherwise. The Alliance 90/The Greens additionally emphasises constitutional principles such as human dignity and equal rights that apply regardless of sexual orientation. The picture that arises in the 2004 debate is much more coherent among the supporters of same sex partnership regulations. The othering discourse has decreased, while the normalising discourse on the good, responsible citizen has increased. Overall, the focus of debate has shifted from same sex partnership to the family and the interest of the child. In this respect, the FDP and the CSO text LSVD stress that they do not advocate for the right of adults to have children, but for child well-being.

Contrary to this scenario, the CDU/CSU in **narrative B** sees child well-being severely threatened by same sex families. Even if it is the society that actually does the harm by discriminating, stigmatising and excluding children and *not* the actual parents, it is still the same sex couple which is allocated the problem. Children are diagnosed to suffer psychological damage in "such relationships".

Table 12: Subject Positions – Life Partnership Revision Act (2004)

	Subject Positions
Narrative A	*Same sex partners who resume responsibility for each other and caring duties over children need to be legally supported. They are equally able to*

	love and care for children. Children of same sex couples must not be disadvantaged in comparison to children of traditional families. Human dignity and equal rights apply regardless of sexual orientation.
Narrative B	*Children of same sex parents are at the mercy of adults, disadvantaged, stigmatised and discriminated against, they fear exclusion. They are likely to suffer psychological damage growing up in same sex families.*

10.3. Discursive Mechanisms

Constructing a Dichotomous Category: Process of Sexualisation

Sexuality as a dividing line in partnership legislation is constructed in contradictory ways. On a formal legal level, sexuality is accepted as a division in the **aliud theory**, which distinguishes Life Partnership from marriage on the basis of target groups. Hence, hetero- and homosexuality are re/produced by the very legislation that re-inscribes differences by means of separate family institutes. On a closer look, however, narrative A aims at legal equality between Life Partnership and marriage. So, while not opening up marriage for same sex partnerships on a terminological level, the policy goal is a de-facto equalisation. In the run up of the 2004 legislation, the othering discourse has decreased, despite the acceptance of Life Partnership as a separate family institute. Consequently, sexuality as a social division has lost legitimacy and significance on a symbolic level. The subject positions that are drafted are sameness-oriented, as same sex parents are presented as equally loving and caring. The othering discourse has decreased and anticategorical, quasi deconstructivist notions on the importance of parenting skills, irrespective of sexual orientation (CSO text LSVD), are made. In the texts of narrative A, sexuality has lost its status as an legitimate inequality, even if the formal distinction remains.

On the contrary, narrative B continues to construct differences between heterosexual and homosexual partners, especially in relation to family and children. Even if it is not same sex partners who are the actual perpetrators, children nevertheless suffer from their living situation.

Playing-off Categories

Playing-off categories is a mechanism applied less in the 2004 debate, as the constitutionality of the Life Partnership Act has been confirmed by the FCC in 2002.

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What remains is an indirect play-off, connected to the category of class. Same sex partners are constructed as financially independent, as double earners. Consequently, eligibility of same sex couples to dependants' pension is not deemed to have adversary budget effects (national resources). Implicitly, this is a play-off: what if class was an issue – would that have a delimiting impact?

The fact that it is especially financial rights that have been blocked for several years by the Federal Council (until FCC decisions in 2009 and 2010, see Outlook below), points to the fact that class and the norm of economic development play an important role. Implicitly, class has important inclusionary and exclusionary effects, respectively.

Ranking Norms

One of the key conflicts constructed by narrative B (CDU/CSU) is the one of personality rights of adults (to have children) vs. the right of the child to (biological) parents. The latter one is ranked higher than personality rights of same sex adults (to have children). Narrative A also engages in this issue, but avoids to construct a conflict of rights. Stepchild (and joint) adoption is said to promote child well-being and children's substantive security and not the personality of same sex adults, so the argument of narrative A. In the view of narrative B, children's security can be already regulated under existing legislation, which in turn is doubted by narrative A.

Intersectional Invisibility

The extent to which gender dimensions in intersection with sexuality are sidelined has decreased among the supporters of same sex legislation in comparison to 2001. Back then, it was only the politically marginalised leftist party PDS (its openly living lesbian spokesperson) who raised the issue of artificial insemination. In 2004 it is the Minister of Justice, Brigitte Zypries, who brings the topic into the political debate. Thus, the issue has gained prominent voice and standing. It is also Brigitte Zypries who talks about caring duties and therefor dependants' pension to which same sex partners should be eligible (implicit gender dimension). While gender-blindness has decreased among some of the advocates of same sex partnership legislations, the CSO text LSVD continues to construct Life Partners in a gender-biased way. Apparently, most same sex couples are double earners, so the LSVD in 2001 and 2004, ignoring caring duties.

The CDU/CSU in narrative B mostly talks about children in an de-gendered way. De facto gender dimensions, e.g. in the sense of caring duties, are not touched upon.

Individualising

Similarly to the 2001, the CDU/CSU (narrative B) argues that relations can be regulated individually already under existing laws. Maintenance duties for children can be assumed without introducing new policies. Hence, this narrative allocates individual responsibility, negating any social responsibility.

The main argument on child well-being is also presented from an individualising perspective. Whereas it is de facto the majority society "who will never accept such relationships" (CDU/CSU in the 2001 debate) and other children who cause discrimination and stigmatisation of children, it is not society that is allocated responsibility. Rather it is same sex partners themselves who should not have children in the first place.

Outlook

Soon after the coming into force of the Life Partnership Revision Act in 2004, the LSVD hoped to successfully push for equal rights in the remaining tax issues. However, such amendments were rejected by the SPD by arguing that the equal treatment of same sex partnership in tax law in comparison to marriage was not mandatory. This was because Life Partnership was an aliud to the traditional family institute of marriage. From this point of view, some tax benefits were already applicable to same sex couples and thus, no further legal action was necessary. The CDU/CSU still stressed the privilege of marriage granted by the Constitution, despite the FCC ruling.

In 2005, the government coalition changed to a grand coalition of CDU/CSU and SPD. Actors of the opposition parties continued to push for equal rights in tax and inheritance law. In early 2006, two motions by the Alliance 90/The Greens and the FDP were issued; the former one also demanded joint adoption. The parliamentary group THE LEFT also advocated full adoption rights. The Minister of Justice, Brigitte Zypries from the SPD, promoted to equalise tax and public servants laws, whereas the CDU/CSU continued to reject any improvements in these policy areas for registered same sex partnerships.

In June 2007 a campaign across parties and interest groups was launched under the lead of the LSVD. "No things by halves" (Keine halben Sachen) aimed at raising awareness for the fact that rights in same sex partnerships did not correspond to the duties. Eventually some, but not all open legislations were closed by FCC decisions in 2009 in 2010[74] regarding tax law (income tax, inheritance and donation tax), dependant's pension as well as civil service law. Open questions remain regarding the eligibility of the Spouse-Splitting-Model (income tax), some regulations in civil service law and joint adoption.

10.4. Policy Evaluation: Human Rights

As mentioned in the evaluation of the 2001 Life Partnership Act, marriage and family law is usually left to national legislations. For example, the CFREU provides that "the right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights" (Art. 9 CFREU).

Again, the Yogyakarta Principles show what a reworked catalogue of human rights has to offer. According to the view of international human rights experts, the right to found a family should be granted "regardless of sexual orientation or gender identity". Families exist in diverse forms. No family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members. Moreover, adoption and assisted reproduction including donor insemination should be available. Families should be recognised even if not defined by decent or marriage and have equal access to "family-related social welfare and other public benefits, employment, and immigration". The best interest of the child should be a primary concern, and "sexual orientation or gender identity of the child or any family member may not considered incompatible with such best interests" (all Yogyakarta Principle 24).

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74 Decision of the First Senate of the Federal Constitutional Court (BVerfGE 124, 199) on 7 July 2009 on dependants' pension: unequal treatment of same sex partners in comparison to married is contradicting the equality sentence in the Constitution (Art. 3 (1) BL). The same applies to unequal treatment in inheritance law, stated by a general decision of the FCC (DStR 2010, 1721), issued on 17 August 2010. Another important decision stems from the European Court of Justice regarding (civil servants') dependants' pension (01.04.2008, C-267/06 (Tadao Maruko).

11. THE NEW IMMIGRATION ACT (2007) – FAMILY REUNIFICATION[75]

The New Immigration Act was fiercely contested and it took over two years until the draft passed legislation[76]. The policy process had started in 2005 at the Conference of Ministers of Interior where restrictive criteria for family reunification were presented as mitigating the problem of forced marriages. At that time the criteria were the basic knowledge of the German language and the minimum age of 21, which was later reduced to the age of 18. The then Federal Minister of Interior Otto Schily (SPD) as well as the following Federal Minister of Interior Wolfgang Schäuble (CDU) backed these criteria, which were introduced into the draft of a New Immigration Act in January 2006. However, at point, the SPD did not longer agree with the regulations, but was nevertheless willing to trade off provisions on family reunification for improvements in the right to abode (Bleiberechtsregelung). A second trade off was discussed[77]: the CDU/CSU was willing to accept better regulations on the right to return to Germany after a stay abroad (e.g. young migrant women abducted for forced marriage), if the period to receive an independent resident permit from the spouse was prolonged from two to three years[78]. This issue was eventually left out of the policy process.

The age and language conditions for family reunification were heavily criticised by parliamentarians of the opposition. The FDP claimed that mandatory language skills as a criterion for eligibility of family reunification were unconstitutional. The Alliance 90/The Greens emphasised that independent residence permits and the right to return to Germany after a stay abroad would be more effective in cases of forced marriage. Opposing NGOs and organisations were (among others) the Turkish Community (Türkische Gemeinde), PRO ASYL and more human rights organisations, the German Women's Council (Deutscher Frauenrat), Terre des Femmes, the Federal Cooperation

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75 Earlier versions and parts of this chapter have been presented at international conferences (Urbanek 2010a) and will be published in Urbanek 2011 (forthcoming) and Urbanek 2012 (forthcoming).

76 The introduction to the New Immigration Act draws from Urbanek 2007.

77 This was reported by the news agency zwd (Women and Politics) on June 14, 2007. (www.zwd.info, accessed on J13 July 2007)

78 This demand is currently taken in up in a draft by the actual government coalition CDU/CSU and FDP. The draft provides for a separate offence for forced marriage in the penal code as well as harder sentences. The right to return is planned to be extended from six months to ten years. Yet, in order to combat fake marriages, the period to receive an independent permit from the spouse is extended from two to three years. There is a hardship clause for cases of domestic violence.
(Deutsche Bundesregierung. Entwurf eines Gesetzes zur Bekämpfung der Zwangsheirat und zum besseren Schutz der Opfer von Zwangsheirat sowie zur Änderung weiterer aufenthalts- und asylrechtlicher Vorschriften. BT -DRS 17/4401 vom 13. 01.2011).

Against Trafficking in Women and Violence against Women KOK[79], the Association of Binational Families and Partnerships (Verband binationaler Familien und Partnerschaften) and the Lesbian and Gay Association Germany (Lesben- und Schwulenverband in Deutschland, LSVD). The CSO text analysed in this case study is the comment on the bill by the Federal Association of Migrant Women in Germany (AMWG, Bundesverband der Migrantinnen in Deutschland,).

Eventually, the draft passed legislation in June 2007 with the support of, but also against many votes of the SPD. The Federal Council (Bundesrat) confirmed the law on July 6, 2007. The passing of the act provoked important Turkish Communities and Associations[80] to abstain from the Second Integration Summit on July 12, 2007, where the National Integration Plan, the prestige protect of the CSU/CSU and SPD coalition was presented.

11.1. Policy Narratives and Frames

Contrary to the issue of same sex partnership (Life Partnership Act 2001), where the narratives were grouped on a spectrum, the issue of family reunification (New Immigration Act 2007) is discussed from two opposing angles. What is surprising is that the frames of the SPD, the party which brokered the New Immigration Act together with the CDU/CSU, resemble those of an opposition party. So, while formally agreeing to the law, the SPD's discursive position rejects the regulations on family reunification.

The contentions around the issue of family reunification are characterised by two opposing discursive positions. The first one, narrative A, formed by the law text of the New Immigration Act, the explanatory remarks of the draft and the speech of the Minister of the Interior Wolfgang Schäuble (CDU/CSU), is challenged by narrative B, which is very much a reaction to the bill. Narrative B is represented by all the other parties in parliament such as the the Alliance 90/The Greens, THE LEFT and the CSO text by the Association of Migrant Women in Germany (AMWG). The SPD speech is also grouped under narrative B, as the speaker hopes that regulations for family

79 KOK Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e.V. (http://www.kok-potsdam.de/)
80 These were the Turkish Community in Germany (Türkische Gemeinde Deutschland), Federation of Turkish Parents (Föderation Türkischer Elternvereine in Deutschland), the Turkish-German Health Organisation (Türkisch-Deutsche Gesundheitsstiftung), the Turkish-Islamic Union for Religion (DITIB, Türkisch-Islamische Union der Anstalt für Religion).

reunification will be rejected by the Federal Constitutional Court. This is an example for political compromise, as the SPD still voted *for* the bill due to its improvements in the right to abode.

The policy story expressed in narrative A is summarised under the heading "Family reunification is a problem", whereas narrative B takes the opposite position and argues "Family reunification is a right". As these two narratives are reactive to each other, I will not describe the narratives one after the other, but compare the frames of narrative A and B directly.

Frame: Abuse and Conditions

As one of its important frames, narrative A constructs the abuse of family reunification as a problem and conditions as a solution. The diagnosis is developed in two ways: first, the abuse of family reunification, i.e. fake marriage for the purpose of residence rights, is said to be especially "attractive" if the sponsor has German citizenship. This is why regulations for family reunification also apply to reunification with German citizens. Discursively, the two issues are connecting, because the striving for residence permits is considered a trigger for forced marriage. Second, an abuse of family reunification is diagnosed in relation to the practices of second and third generation of persons with migrant backgrounds (especially Turkish) to marry spouses from abroad. This is considered detrimental to the integration process and thus, an abuse of family reunification (sic!). While this position is hard to follow from a logic point of view – the very regulation of family reunification is meant to enable the immigration of spouses and family from abroad –, it is argued twice in the speech of the CDU/CSU. According to this narrative, abuse must not only be prevented, but also *combated;* a term used quite regularly in this narrative. The migrant communities should contribute to a change of practices, so the CDU/CSU. The underlying norms are thus law and order and crime and justice. On the contrary, the opposing narrative B does not mention abuse and thus does not follow the normativity.

According to narrative A, restrictions to family reunification are legitimate according to the respective EU Directive[81] and highly necessary. Certain conditions for family

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81 COUNCIL DIRECTIVE 2003/86/EC of 22 September 2003 on the right to family reunification [http: //eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ: L: 2003: 251: 0012: 0018: EN: PDF, accessed on 11 May 2010]

reunification are said to prevent abuse, promote the integration process and prevent forced marriages. Conditions introduced by the bill are the minimum age of 18 for both spouses; the prove of basic German language skills for those migrants in need of integration as well as the prove of living space and self-maintenance (no payments from Social Code II and XII)[82]. Basic language skills can easily be expected from foreigners, so the explanatory remarks of the draft. Given the fact that people have taken the decisive step to leave their home country and migrate to Germany, they can also be expected to participate in German courses prior to immigration, even if it requires some effort.

On the contrary, narrative B rejects such conditions as they are understood to be discriminatory, detrimental for the integration process and not preventing forced marriages. The requirement that only people "in need of integration" have to prove basic German language skills is deemed discriminatory, since not all nations and professional groups have to prove the same language skills. What the Alliance 90/The Greens suggests is a hardship clause for people who have not been able to participate in German language courses. With regard to the conditions of self-maintenance, THE LEFT argues that such a policy is racist and classicist at the same time. Immigration policies would become policies of social selection and value persons due to their economic profitability. On the contrary, narrative A argues that this condition is a means to promote integration. The duty to prove self-maintenance will be an incentive for foreigners to integrate, so the explications of the draft.

Frame: Protect Marriage and Family

Basically, what narrative B argues is that conditions for family reunification violate civil, constitutional rights, especially the right to family reunification and family life, which is protected under Article 6 of the Basic Law (Grundgesetz, BL).

Narrative A answers to such criticisms with two arguments: first, reductions of family and marriage rights are justified because of higher ranking rights which are protected by the legislation's preventive effect against forced marriages. These higher ranking rights are said to be dignity, sexual self-determination, personal freedom and bodily integrity.

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82 There is a hardship clause ruling that the minimum age of 18 can be exempted as well as the requirement that the sponsor has had a residence title for two years before the spouses can unite (in case that the marriage has happened after the arrival of the sponsor in Germany). (§ 30 (2) Aufenthaltsgesetz).

Second, the right to marry is not affected because persons can still marry; just that they cannot live their marriage on German soil. This is justified by arguing that Art. 6. of the Basic Law, despite applying to all persons regardless of nationality, does not imply an automatic access to Germany and residence titles.

The opposing narrative B challenges this argument and states that the right to family life must not be restricted and that other measures to mitigate forced marriage are far more effective. Thus, narrative B claims that it is not restrictions and conditions, but positive rights which are needed to mitigate forced marriage.

Frame: Forced Marriage as a Human Rights Violation

Narrative A, just like narrative B, declares forced marriage to be a human rights violation. Despite this similar diagnosis ("What is the problem"?), the prognosis ("What is the solution?" varies. Narrative A suggests a preventive system to combat forced marriages, whereby it is the individual's responsibility to fulfil certain conditions for family reunification. The condition of basic German language skills, together with the age limit of 18, are considered to have a preventive effect against forced marriage. Persons who are older and more educated, are a) less "attractive" for forced marriage, b) can communicate outside of their family community once in Germany and c) can more easily get out of the family.

On the contrary, narrative B argues that what victims of the human rights violation of forced marriage need are rights such as an independent resident right from the spouse[83] as well as an extended right to return after staying abroad (e.g. being abducted for forced marriage). Generally, what would be needed is an improvement of their legal and social situation. Partly, this argumentation is gendered as it often depicts women as primarily affected by forced marriage (see subject positions).

Frame: Immigration as Selection

Apart from these specific frames on family reunification and forced marriage, we find frames about the immigration process in general. For narrative A, governing immigration means to combat illegal immigration and to govern legal immigration. Due

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83 Spouses have to have lived married to the sponsor in Germany for two years (Ehebestandszeit) before they can apply for an independent residence title. There is also a hardship clause ruling that this title can be given earlier in cases of hardship associated either with the return to the home country or that hardship arises with staying in the relationship. (§ 31 (2) Aufenthaltsgesetz).

to the national resources frame and the security frame (see below), it is legitimate to demand conditions for immigration, i.e. to select those migrants beneficial for Germany. But immigration policies must still enable to "help people in need" whose life is in danger (CDU/CSU). Narrative B, on the contrary, strictly rejects such restrictive immigration policies. It is the speech of THE LEFT which vehemently criticises racist and classicist tendencies and the social selection in migration policies.

Security Frame

According to narrative A, the security of German citizens, but also persons with migrant backgrounds must be ensured (CDU/CSU). However, what kind of security is meant, is not more closely defined. It is an important frame due to the standing of the voice (speech of the Minister of the Interior Wolfgang Schäuble, CDU/CSU). On the contrary, narrative B does not use this frame.

National Resources Frame

This is a frame developed by narrative A. According to the the explanatory remarks of the draft, there is already considerable immigration into the social security system. In order to mitigate this problem, conditions such as self-maintenance are sanctioned. Moreover, the CDU/CSU speech argues that governing immigration means to assume responsibility for the labour market and this is also why high qualified workers are more welcome to migrate. National resources must be protected.

Promotion of Integration Frame

Narrative A and B take issue with how the integration process has manifested itself so far. While both narratives diagnose integration deficits, the prognosis on how to promote integration varies significantly between them. Formally, both narratives put the promotion of integration as their objective. Narrative A suggests to do so by means of restrictions and sanctions; narrative B argues for rights and provisions from the side of the state.

In narrative A, the CDU/CSU speech demands that integration deficits, especially in relation to Muslim migrants, be combated. According to the the explanatory remarks of the draft, conditions for immigration are presented as enabling *participation* in the

"guest country" (Gastland).

These conditions are criticised by narrative B for not promoting integration, but restricting immigration. Even more, introducing conditions is said to be detrimental to the integration process. Narrative B complains about the lack of promotion of integration and the worsening of conditions for integration, caused by narrative A. Narrative B wants to promote integration, without specifying what this would look like. The CSO text of the AMWG is a bit more specific and demands the support of migrants in acquiring language skills and in participating in social life. All these statements about the promotion of integration remain relatively vague. The promotion of integration seems to have become something like an empty signifier, which is not even explicitly filled with meaning – at least in this parliamentary debate.

Consequently, it is less the content than the tone of the argument, which is crucial. Whereas narrative A states that integration *must* succeed and migrants *have to* fulfil certain requirements like language skills, narrative B suggests that it is desirable that migrants have the necessary requirements to integrate in a country. In contrast, demanding language skills in the case of family reunification is deemed unconstitutional by narrative B. Other "promoting" measures advocated by narrative A (such as integration courses) are criticised by narrative B as forms of sanction and coercion.

In summary, the policy frames are constructed in an opposing way. Narrative A identifies family reunification as a problem; for narrative B family reunification is a right that must not be restricted. Abuse of family reunification is not diagnosed a policy problem, let alone mentioned by narrative B.

Underlying Norms

Just like the problem diagnosis and the solutions are constructed in a dichotomous way, so are the norms. Narrative A starts off by declaring the norms of tolerance and openness, but neither comes back to these norms nor does it relate any policy actions to them. The law and order, crime and justice and security norms, which narrative A pushes forward, are not shared by narrative B. The norm economic development, which is very much present in narrative A, does not figure in narrative B.

The most prominent norms of narrative B are all kinds of rights (constitutional right,

European Law, human rights), which are presented as non-negotiable. Immigration should be guided by the anti-discrimination (anti-racism, anti-classicism) norms. On the contrary, rights do only marginally figure in narrative A, e.g. in the diagnosis of forced marriage as a human rights violation.

In the issue of forced marriage, again different norms are mobilised. Narrative A counts on the individual's capacity (liberal individualism) to make her/himself less vulnerable to forced marriage through education (German language skills); on the contrary, narrative B suggests that positive rights need to be in place.

Table 13: Policy Narratives and Frames of the New Immigration Act (2007)

	Narrative A	Narrative B
Narrative	*Family reunification is a problem*	*Family reunification is a right*
Texts	• New Immigration Act (law) • The explanatory remarks of the draft • CDU/CSU: parliamentary speech	• THE LEFT: parliamentary speech • Alliance 90/The Greens: parliamentary speech • SPD: parliamentary speech • AMWG: Civil society text
Frame	**Frame Description**	**Frame Description**
Abuse and condition	Combat abuse of and regulate family reunification Conditions for family reunification prevent abuse, promote integration and prevent forced marriages	Conditions for family reunification are discriminatory, detrimental for the integration process and do not prevent forced marriage
Protect marriage and family	Reductions of family and marriage rights are justified	Family reunification is a constitutional right, European Law Civil, constitutional rights are violated by draft
Forced marriage as a human rights violation	Prevent forced marriage as a human rights violation by conditions to family reunification	Victims of forced marriage are lacking rights, they need rights Improve their legal and social situation
Immigration as selection	Combat illegal immigration Demand conditions for immigration Help (deserving) people in need	Against restrictive immigration policies, racism and classicism in migration policies, Against social selection (THE LEFT)
Security	Ensure security of Germans and persons with migrant backgrounds	
National resources	Avoid immigration to social security system Assume responsibility for the labour market	

Promotion of integration	Promote integration Integration must succeed Combat integration deficits Demand conditions for immigration and integration	Lack of promotion of integration by the state Worsening conditions for integration for migrants are a problem Promote acquisition of language skills and participation in social life (AMWG)
	Norms	*Norms*
	Political responsibility	Political compromise (SPD)
	Law and order Crime and justice Security	Anti-Discrimination
	Tolerance Openness Caritas? (Help the people in need)	
	Economic development	Anti-Racism/Anti-Classicism
	Conditions for immigration	constitutional Rights
	Conditions for integration	Promotion of integration
	Human rights	Human rights, Women's rights
	Self-responsibility (Liberal individualism)	Positive rights

11.2. Subject Positions

There is a crucial difference between narrative A and B and their construction of subject positions. While narrative A engages in a detailed depiction of the essential being and behaviour of migrants, narrative B does *not* participate in it. Instead of emphasising essential ways of being, narrative B problematises the treatment and the conditions with which migrants are confronted when trying to immigrate to Germany. Below, the subject positions are described in more detail.

Narrative A

In narrative A, subject positions are created primarily in relation to the issue of forced marriage. These subject positions are gendered: migrants living in Germany force girls or young women from their home country into marriage. They abuse of a young woman's lack of language skills in order to keep her away from developing her own social contacts. As integration courses in Germany kick off only after a couple of

months after immigration, these victims remain under the control of their families-in-law. Consequently, according to the explanatory remarks of the draft, the requirement of language skills is a prevention of forced marriages, because educated men and women are less attractive victims to those "circles"[84]. Migrant men and their families are depicted as perpetrators of forced marriage, not necessarily but also for reasons of abusing family reunification for the purpose of residence rights. On the other side, girls and young women are presented as the victims (literally) of forced marriage, exposed to pressure, insecure, potentially uneducated and lacking power and agency. On the other hand, it is them who have to make themselves less vulnerable by attending language courses. There is a tension within this narrative with regard to agency. Migrant women seem to lack it, but should nevertheless prove it by means of language skills at entering Germany.

Interestingly, the explanations of the New Immigration Act also construct privileged migrants who are exempted from language command[85]. These privileged subject positions are informed by an economic rationale. Exemptions are permissible for persons for which Germany has an interest in a migration-political sense; second, persons with a tertiary education or business people and their spouses as well as people who can be assumed to integrate into the economic, social and cultural life of Germany without the help of the German state. Third, people from countries that have a close economic relation with Germany and thus have less stricter visa criteria, are exempted from proving language skills. Hence, narrative A does differentiate between groups of migrants.

Overall, there is an explicit process of "othering" between Germans and migrants in narrative A (CDU/CSU speech). It is "we", the politicians and probably a German imaginary, who need to be open and tolerant, considering the fact of global migration streams. "We" need to maintain the ability to help people whose life is in danger. At the same time, "we" need to combat illegal immigration and govern legal immigration. This is a hard and challenging task. By emphasising the enormous responsibility, the speech

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84 'Gebildete Männer und Frauen sind nach Familienbild der betreffenden Kreise unattraktiver, sie sind schwere "kontrollierbar", worauf es den Zwang ausübenden Personen aber maßgeblich ankommt. Auch einfache Sprachkenntnisse bedeuten eine solche Bildung." (p.173)

85 Sick and disabled parents are exempted from the condition to have a basic command of German.

constructs a heavy burden that German politicians have assumed. Thus, the subject positions drafted for a "German imaginary" are characterised by responsibility, tolerance and openness, contrary to the second and third generation of migrants, who are abusive, uneducated, not willing to integrate and forceful towards their own family members.

In summary, the subject positions created by this narrative are: *Young migrant women, the main victims of forced marriage, are pressured and forced, lack education and agency. They are less attractive for forced marriage when older and better educated (language skills), thus the conditions for family reunification. Migrant men and their families are abusive of family reunification in three respects: first, they are not willing to integrate by marrying people from their home country; second, they are potential perpetrators of forced marriage, which is connected to three, the abuse of residence rights. We are tolerant, open, helpful and responsible and regulate immigration for the benefit of the security of Germans and migrants and we combat all abusive and illegal practices.*

Narrative B

What distinguishes narrative B from narrative A is the lack of subject positions in their proper sense. Narrative B does not depict how Germans and migrants are or how they typically act; rather it deals with the question of how migrants should (not) be treated. Especially the text of the AMWG steps away from a depiction of essential being or behaviour of migrants and directs its focus on the discriminatory and restrictive regulations which the law brings with it.

In the speech of THE LEFT, the makers of the New Immigration Act are criticised for drafting a racist and classicist law, which categorises people according to their economic benefit. Naturalised migrants are also discriminated against in a racist and classicist way as there are stricter regulations for migrants for proving self-maintenance as a condition for family reunification than for Germans. Moreover, the speech problematises the construction of migrants as unwilling to integrate.

The Alliance 90/The Greens argues that Turkish migrants are discriminated against, in comparison to Japanese, American and Canadian, for whom the right to married life is still intact. Moreover, victims of forced marriage are not effectively supported by

introducing language conditions. The Alliance 90/The Greens demands wider hardship clauses in cases where the female spouse cannot participate in language courses or is pregnant. The act is deemed hostile to women, families, integration and contradicting the Constitution and human rights.

Similarly, the SPD states that it does not want migrants, who permanently live in Germany, to be treated as second class; instead, they should be invited to naturalise. Moreover, women abducted abroad for forced marriage and held captured by their family-in-law, need a right to return, if one takes the protection of women, victims of forced marriage seriously. Reuniting spouses are recommended to acquire the necessary means for integration such as language skills. The legal precondition of language skills, however, is deemed problematic and unconstitutional. Similarly to the Alliance 90/The Greens, the SPD claims that the act is discriminatory due to the fact that Japanese and Australian women will be allowed to reunite, whereas Indian and Turkish women will not. In summary, the subject positions by narrative B can be paraphrased as follows: *Migrants must not be treated in a discriminatory way, their rights need to be ensured and (women) migrants need to effectively protected against forced marriage.*

Table 14: Subject Positions in the Debate on Family reunification (New Immigration Act 2007)

	Subject Positions
Narrative A	*Young migrant women, the primarily victims of forced marriage, are pressured and forced, lack education and agency. They are less attractive for forced marriage when older and better educated (language skills), thus the conditions for family reunification.*
	Migrant men and their families are abusive of family reunification in three respects: first, they are not willing to integrate by marrying people from their home country; second, they are potential perpetrators of forced marriage which is connected to three, the abuse of residence rights.
	We are tolerant, open, helpful and responsible and regulate immigration for the benefit of the security of Germans and migrants. We have the duty and the right to chose migrants who are beneficial to Germany and who integrate on our terms (and combat the immigration of others by means of selection).
Narrative B	*Migrants must not be treated in a discriminatory (racist and classicist) way, their rights need to be ensured and (women) migrants need to effectively protected against forced marriage.*

11.3. Discursive Mechanisms

Constructing a Dichotomous Category: Process of Nationalisiation

In the frames and subject positions on family reunification we observe a process of group creation. A group is meaningfully distinguished from another by means of a social category, acting as a social division. The norm-group is associated with social worth, whereas "the other" is established as *unworthy of equal treatment*. Similarly to the process of gendering, where a person is identified with a gender and equipped with qualities and roles – and rights and duties as a result –, here we are dealing with a *process of nationalisation.* Nationality becomes a dichotomous category due to which meaningful groups are created. In this process, one side of the category is associated with the privileged norm (the responsible, tolerant and helpful German) and the other side with the unwanted and the socially undesirable (the abusive, violent migrant men and family-in-law and the helpless and uneducated migrant young women). It is a process in which hierarchical dichotomies are produced and migrants are associated with "the other".

Intersectional Hyper-Visibility: Process of Ethno-National-Gendering

Viewed up close, the above mechanism of nationalisation is intersected with a *process of ethnicisation.* Even if migrants have acquired German citizenship, their migrant background is documented[86]. The New Immigration Act also addresses German citizens with migrant background and allocates integration courses to those lacking sufficient language skills and integration into the economic, cultural and social life of Germany. As we have seen in the frames above, not all migrants are viewed with scepticism. Some are said to have less or no need for integration, i.e. migrants from rich, industrialised countries. These discursive constructions indicate an understanding integration as assimilation, where those, who are perceived similar to the majority population, already belong.

However, the policy debate highlights those migrants whose cultural-religious practices are perceived as different. Marriage practices and family reunification are discursively

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86 The social category "migrant backgrounds" is captured in statistics such as the micros-census and other studies (e.g. PISA). For further information see the website of the Federal Statistical Office: http: //www.destatis.de/jetspeed/portal/cms/Sites/destatis/Internet/DE/Navigation/Statistiken/Bevoelkerung/ MigrationIntegration/MigrationIntegration.psml

assigned to irresponsible second and third generation migrants who marry spouses from their home country; a practice deemed detrimental to the integration process. Moreover, this practice is explicitly connected to the Turkish (Muslim) community. In summary, some ethnically-religiously distinguished migrants and their practices are deemed problematic and thus constructed unworthy of equal treatment.

A mechanism is the mobilisation of gender, intersected with ethnicity and religion at the expense of citizenship status. Migrant young women are threatened by forced marriage by male migrants and their families. As a policy solution, the right to family reunification and thus access to residence/citizenship in Germany as well as the right to family life is made contingent upon language skills and age. To look at this discursive mechanism more closely: in the diagnosis, an intersection of ethnicity and gender is constructed in the subject positions on "the violent ethnic man and his family" and the "uneducated, submissive young migrant woman". This process of ethno-gendering is played off against citizenship status in prognosis: migrant (women) should only migrate under certain conditions (education, age).

Intersectional Invisibility

What has been described above can also be expressed as a discursive mechanism of making intersections invisible. Narrative A constructs the intersection gender and ethnicity in a stigmatised, discriminatory way and makes the intersection of gender and citizenship invisible. Or put differently: citizenship status is only mentioned in a negative, exclusionary sense in the form of restrictions to family reunification. As a counter-example, narrative B argues for citizenship status in a positive sense by demanding independent residence permits for reuniting spouses and the right to return for victims abducted for forced marriage. These rights-frames take the position of migrant women at the intersection of gender and citizenship status into account. In contrast, narrative A does not use these rights-frames in relation to citizenship. The inclusionary power of citizenship status is thus made invisible and the consequences for the intersectional status of migrant women is sidelined. This is a classical mechanism of political intersectionality, which Kimberlé Crenshaw (1991) described in her article in relation to race and gender, that can be translated to gender and citizenship in this case.

Ranking Norms

Another discursive mechanism is the ranking of norms, a process in which some norms are implicitly or explicitly constructed to weigh more than others. The first example is the norm of economic development, which is found frequently throughout the policy debate. The arguments on safeguarding the social security system and the labour market put economic development as the norm. It is also expressed in the law's class conditions for family reunification such as prove of living space and no payments from the Social Book II or XII. Class is also crucial for the privileging of migrants who are financially beneficial for Germany and thus exempted from proving language skills. With class being the crucial social dividing line among migrants[87], the right social position can offset discriminatory regulations due to nationality for wealthy migrants. Economic development as a norm is only challenged by the one opposition party (THE LEFT) as racist and classicist.

Another example for a ranking of norms is found in relation to forced marriage in the explanatory remarks of the government draft. Reductions of family and marriage rights (Art. 6 Basic Law) are claimed to be justified because of higher ranking rights which are protected by the legislation's preventive effect against forced marriage. These higher ranking rights are said to be dignity, sexual self-determination, personal freedom and bodily integrity. Moreover, the right to family life is restricted. The protection of family expressed in Article 6 of the German Basic Law is only valid on German soil. This signifies that the access to Germany is *not* automatically granted by this right, so the argument.

Individualising

The frames on forced marriage are crucial for legitimising stricter regulations on family reunification. If we look at these frames and their roles ("who is responsible") and mechanisms more closely, an individualising tendency becomes visible.

First, the way this phenomenon is presented is by highlighting the familial dynamics only. Structural dimensions such as societal push- and pull factors and residence

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87 Class is also a crucial social division among Germans (German men without income acknowledging fake paternity for money), constructed in the policy debate on the Contestation of Paternity Acknowledgement Act.

legislations in the "Fortress Europe" are not touched upon.

Second, in the prognosis of who should do something against forced marriage, responsibilities are assigned to migrants and migrant communities. It is migrants who need to integrate for the sake of a better integration process and therefore should not marry spouses from their home country who do not speak German. What German majority should contribute to the integration process is not touched upon. It is migrants, who need to prove an effort to integrate even before migration and prove language skills at entering Germany. What German majority society and politics should do to enable a more participatory way of living in Germany is ignored. It is also migrant women who need to make themselves less vulnerable to forced marriage by education (language skills) and age. What German politics could do in relation to victim protection, is left out[88].

Third, in relation to the abuse of residence rights through family reunification, the diagnosis points to the individual perpetrator only. There is no reflection on how German migration policies might contribute to it. As migrants are constructed as the problem holder (it is their forced marriage, it is their abuse), it is also them who should do something about it. Consequently, as a prognosis, the law sets up conditions for family reunification, which the individual migrant has to fulfil.

These discursive mechanisms are challenged by narrative B. These texts argue for anti-discrimination of migrants by means of rights-frames and abstain from drafting subject positions about the essential being of migrants and Germans. Rather, they focus on treatment and positive rights.

11.4. Policy Evaluation: Human Rights

As the above section has shown, migrants are represented as irresponsible and abusive by narrative A. These subject positions – among other discursive mechanisms – prepare and legitimise the regulation of family reunification in a restrictive way.

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88 This is not to say that there are no victim protection policies on forced marriage in the same period. In September 2007, the federal government issued the Second National Action Plan to Combat Violence against Women. It also contains measures to prevent forced marriages and protect victims. However, this action plan is not referred to in the policy process on family reunification. For further information please visit:
http: //www.bmfsfj.de/BMFSFJ/gleichstellung,did=73000.html

During the parliamentary reading of the bill as well as in the explanatory remarks of the draft the question whether the New Immigration Act is in line with the German Constitution is raised. Does the condition of German language skills contradict Art. 6. on the special protection of marriage and family of the *German Basic Law*? For narrative A, this condition is not unconstitutional. The age limit of 18 is also legitimate, so narrative A, because it is covered by the respective EU Directive. Narrative B challenges these conditions as unconstitutional. Eventually, the law is signed by the Federal President Horst Köhler, because constitutional concerns are not deemed severe enough[89]. Up until present, there have not been any judicial proceedings on the constitutionality of the Law before the Federal Constitutional Court.

Apart from the German Basic Law, human rights conventions at the European and international level can be referred to for evaluation. The *Charter of Fundamental Rights of the European Union (CFREU)*, to which all EU legislations, and therefor, all national legislation should comply with, addresses the right to family life. Art. 7 of the Charta says: "Respect for private and family life: Everyone has the right to respect for his or her private and family life, home and communications." The *Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)* as amended by Protocol No. 11/ Council of Europe states in Art. 8: "Right to respect for private and family life: Everyone has the right to respect for his private and family life, his home and his correspondence." At the international level, in the *International Covenant on Civil and Political Rights (ICCPR)*, the family is entitled to protection by the society and the state in Art. 23.

However, the right to family life is not unlimited. The ECHR allows for exemptions to this right "in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others" (Art. 8 ECHR). Such a sentence allows for all the regulations that the German NIA has introduced: the limitation of the right to family life due to nationality, ethnicity, age, education and class[90], for the purpose of preventing crime and abuse and economic well-being.

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89 Köhler unterschreibt geändertes Zuwanderungsgesetz, *Frankfurter Allgemeine Zeitung*, 21.08.2007.
90 Gender discrimination is indirect, as women are the majority of reuniting spouses.

Moreover, most of these human rights conventions concede that "the right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights" (Art. 9 CFREU, Art. 12 ECHR). This means that under European human rights conventions, states are given considerable freedom with regard to partnerships and family life.

On the international level, two important conventions are more specific as to how states should draft their marriage law. It is the CEDAW which regulates how states should design their marriage and family law in the spirit of gender equality and anti-discrimination. But also the ICCPR raises principles such as consent of both spouses, equality of rights, protection of children (Art. 23 ICCPR). However, both conventions are silent on issues of family reunification.

This topic is taken onboard by the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (ICRMW). This document argues that states shall take measures to "facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship..." (Art. 44 (2)). Moreover, an independent residence permit for the family members after dissolution of marriage should be considered, so Art. 50 (1). This is also what civil society organisations in Germany such as the German Women Lawyer's Association[91] and the Federal Association of Women Migrants in Germany (AMWG) demand. A general independent residence permit from the spouse, not only in cases of forced marriage[92]. But Germany, like all the other North or Western migration-receiving states, has not signed the ICPRMW. Only sending countries from Southern Europe and the global South have either signed or ratified the convention so far[93].

In summary, consulting human rights conventions for evaluation demonstrates that the right to family life is partially protected by the state. However, far reaching exemptions are made (ECHR) and responsibility is partly delegated to national legislations. This means that the right to family life is not unconditional in existing conventions.

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91 Deutscher Juristinnenbund. 2007. *Stellungnahme zum Entwurf eines Gesetzes zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union*, 18. Mai 2007.
92 Bundesverband der Migrantinnen Deutschland. 2006. *Stellungnahme zum aktuellen Stand der Debatte um Zwangsverheiratung und Gewalt gegen Frauen.* Frankfurt am Main, 17. Februar 2006. (http://www.migrantinnen.org/sayfalar/deutsch_text.htm#9, Zugriff am 13. September 2007)
93 View the UN treaty collection and the status of signatures and ratifications of the ICPRMW on http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en (accessed on 20 May 2011).

12. CONTESTATION OF PATERNITY ACKNOWLEDGEMENT ACT (2008)

In 2004 the CDU/CSU parliamentary group submitted a motion demanding the right for alien authorities to contest paternity acknowledgements in the case of bi-national unmarried partnerships. This motion was supported by the Conference of Ministers of the Interior, where questionable statistics on false paternity acknowledgements were presented. These data reported on the number of women who would have been due to leave the country (approx. 1700 women in the time period of a year), if it had not been for the paternity acknowledgement of their child by a German citizen. While these numbers actually did not prove "abuse", they were interpreted as the frame of reference, in which misuse of paternity acknowledgements might take place. Similarly to the issue of family reunification in the New Immigration Act (NIA), foreigners obtaining resident permits by fraud was diagnosed a policy problem. Authorities should have the right to more easily question the paternity of children of bi-national partners, so the draft issued by the Ministry of Justice in 2006. The first reading of the act took place in February 2007, followed by severe criticism from civil society, first and foremost the Association of Binational Families and Partnerships (ABFP, Verband binationaler Familien und Partnerschaften). Nonetheless, the Contestation of Paternity Acknowledgement Act (CPAA) passed the Bundestag in December 2007 with the votes of the CDU/CSU and SPD and entered into force in early 2008. Viewed from a wider perspective, this legislation on paternity in relation to citizenship and residence titles corresponds to a European trend: France introduced non-obligatory DNA-tests as a means to prove family membership in autumn 2007; a provision, which is negatively referred to in one of the parliamentary speeches (SPD) in the German policy debate. Here, the German law is presented as a milder, adequate solution to the problem of fake paternity acknowledgements[94].

Generally, the role of the SPD is more straight forward than in the NIA, where it discursively rejected the regulations on family reunification, but formally agreed on the NIA due to political compromise. In the case study on the CPAA, the SPD discursively

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94 In April 2009 the Genetic Diagnostic Act (Gendiagnostikgesetz) was passed under the CDU/CSU and SPD government coalition, allowing for genetic tests in cases of family reunification, where proper documents are missing.
(http: //www.proasyl.de/de/presse/detail/news/gendiagnostikgesetz_im_bundestag/, accessed on 23 May 2011.

and formally agrees on the act. This is somewhat surprising, given the outright criticism and concerns for non-discrimination of migrants in the NIA. The way that the SPD deals with this paradox is to frame the CPAA as non-discriminatory and as preventing further xenophobia.

In addition, it is interesting to relate the CPAA to another policy on paternity, which was discussed simultaneously. In 2005 the Federal Court of Justice (Bundesgerichtshof) had ruled that hidden paternity tests were not valid in the course of a paternity suit. In 2007, also the Federal Constitutional Court decided that hidden paternity test were illegal, but that the government had to introduce a legislation facilitating paternity determination. All parties welcomed the decision; the Alliance 90/The Greens was even in favour of pursuing laboratories that undertook illegal tests. In February 2008, under a grand government coalition CDU/CSU and SPD, the act on Permitting Paternity Tests Regardless of Paternity Suits became law. According to the policy goal (enable and alleviate the determination of paternity) the determination of paternity no longer has legal consequences. The father, the mother and the child have the right to demand a test for the purpose of knowing the true decent. Legally speaking, the parental status does not change, even if the test negates biological paternity. So, while the rights of fathers (and the rest of the family members) has been strengthened by the Law on Paternity Test Regardless Paternity Suits (Deutscher Bundestag 2008), the rights of the father (and the mother) to consensual paternity acknowledgements have been reduced in cases when a foreign nationality is involved, i.e. in binational partnerships.

12.1. Policy Narratives and Frames

Similarly to the case study on the New Immigration Act (NIA), the policy debate on the Contestation of Paternity Acknowledgement Act (CPAA) is characterised by two opposing discursive positions. Narrative A aims at combating **fake paternity acknowledgements**, whereas narrative B takes on the opposing position, arguing for **non-discrimination of migrants**. Narrative A is formed by the law text, the explanatory remarks of the bill and the parliamentary speeches of the coalition parties, the CDU/CSU and the SPD. The opposing discursive position in narrative B is assumed by

the parliamentary speeches of the FDP, the Alliance 90/The Greens and THE LEFT and the CSO text of the Association of Binational Families and Partnerships (ABFP).

Frame: Combat Abuse

The most important frame in narrative A is about preventing and combating misuse of German law for profit, such as access to citizenship, residence titles, social security or money. The Childship Rights Reform Act (Kinderrechtsreformgesetz, Deutscher Bundestag 1997/8) had strengthened the autonomy of parents by alleviating paternity acknowledgements for unmarried couples. This legislation, together with the reformed nationality law (1993), which grants automatic citizenship to a child of a German parent, is considered problematic since it invites the abuse by foreigners - according to narrative A. That fake paternity acknowledgements are existing and a problem is an underlying assumption, which is hard to prove, though. Even the CDU/CSU and the explanatory remarks of the bill recognise that there are no secure numbers. This, however, does not impede the SPD to talk about an increasing prevalence of fake paternity acknowledgements. All texts in this narrative share the conviction that public servants registering paternity acknowledgements know about these practices from their work experience. Moreover, the SPD and talks about cases "we all know about". An unemployed man from Saxony acknowledges the paternity of children of a Vietnamese mother, whose residence permit has terminated. He does so for money, the mother for a residence title and access to social benefits via the citizenship of her children. But also other constellations are possible: a foreign man acknowledging the paternity of a child born by a German woman. According to the CDU/CSU, proper business models have already developed. Consequently, the policy goal is to combat the abuse of residence rights and social security.

For narrative B, these arguments are not valid. Given the lack of reliable data, the legislation is neither necessary nor justified. Even if there is some abuse in the form of fake paternity acknowledgements – as it is the case with most laws –, the numbers are considered to be low, at least in the view of the Alliance 90/The Greens and the CSO text of the ABFP. The FDP also rejects the representation of fake paternity acknowledgement as a policy problem. For the CSO text of the Association of Binational Families and Partnerships (ABFP), the law is not indicated; more data would

be needed. If it was really about reducing social spendings, all parents, also German ones, should be tested for parenthood – not only binational ones, so the CSO text.

National Resources Frame

As has become visible in the above, national resources are a key concern for narrative A, especially the CDU/CSU and the explanatory remarks of the bill. The social security system is diagnosed to be under pressure due to two causes. First, social rights are attached to citizenship. By means of fake paternity acknowledgements and a child's German citizenship, adults gain access to the benefits of the Social Book XII. Otherwise, migrants such as asylum seekers only have access to social support as regulated by the Asylum Seekers Benefit Law (Asylbewerberleistungsgesetz), which is significantly lower than the one from Social Book XII. Second, the social security system is facing higher spendings due to maintenance duties, when the father is not able to assume them. According to the image painted by narrative A, this is often the case as it is unemployed German men or men with low income who commit fake paternity acknowledgements.

On the contrary, narrative B diagnoses high costs and more bureaucracy arising with the CPAA. The contestation of paternity acknowledgement will be costly for public agencies, so the Alliance 90/The Greens. Narrative A answers to this critique by arguing that costs will be off-set by savings in social security spendings: fewer paternity acknowledgements will also reduce the number of migrant parents being eligible to social payments, so the explanatory remarks of the bill. The CSO text of the ABFP (narrative B) shows that this statement rests upon the assumption that foreign mothers, who assume child caring duties for a German child are in need for social payments, which might actually not correspond to their real living situation. Hence, the reduction of social security spending is not for sure, whereas the costs for filing paternity contestations are expected to be high.

Social Parenthood Frame

All texts in narrative A emphasise that the achievements of the Childship Rights Reform Act (Deutscher Bundestag 1997/8) are respected and that the CPAA continues in the very same spirit. It is argued that the reality of social families and social parenthood is

accepted and only the lack thereof – together with advantages in residence titles – are a criterion for the contestation of paternity acknowledgements. According to narrative A (CDU/CSU and the explanatory remarks of the bill), this is why the CPAA is in line with the rulings of the Federal Constitutional Court, which have equalised social with biological parenthood.

Narrative B does not share this positive view about the continuity of the Childship Rights Reform Act (Deutscher Bundestag 1997/8). On the contrary, the FDP argues that the parents' autonomy has been weakened. The party THE LEFT goes even further in stating that paternity is being destroyed by this act. In general, the loss of the father, which the successful contestation brings with about, is overly detrimental to the child, so the CSO text of the ABFP.

Biological Parenthood Frame

While narrative A formally accepts social fatherhood, biological decent is still an important concern (CDU/CSU). The right of the child to know her/his decent as well as the right to be in contact with the biological father is deemed severely threatened by the practice of fake paternity acknowledgements. Advantages for the child which might arise by receiving German citizenship cannot outweigh the loss of the real father, so the CDU/CSU. Narrative B does not engage in constructions over biological parent- or fatherhood; rather, it emphasises social families.

Child Well-being Frame

According to the CDU/CSU in narrative A, the legislation seeks to promote child well-being, which is said to be closely connected to biological fatherhood. The CDU/CSU goes so far as to argue that child well-being is the most important argument for this legislation. This statement can be doubted given the intensity and space with which the CDU/CSU promotes the "combat abuse frame", whereas the child well-being frame only appears in the last third of the speech.

All the texts in narrative B question the policy goal of child well-being as presented by narrative A. The way they define child well-being is in sharp contrast to the CPAA whose primary policy objective appears to be the prevention of fake residence titles. If it was really about child well-being, so the CSO text of the ABFP, the act should provide

legal security for the child – which it does not. What is considered problematic by narrative B is that a successful paternity contestation not only signifies the loss of a father, but possibly also the loss of citizenship. It is primarily children who will suffer from such a situation.

Protect Family Frame

As has become visible in the previous case studies, the family is an important unit of society, worthy of special protection of the state. Art. 6 of the Basic Law on the protection of marriage and family has not only been defended by the CDU/CSU and the FDP in relation to same sex partnership, but also by the SPD, the Alliance 90/The Greens in the debate on family reunification: the protection of marriage and family should include migrant and binational families, so narrative B, which rejects restrictive intimate citizenship policies for migrants.

In the present case study on paternity acknowledgements, narrative A also talks about the protection of family. It does not consider the CPAA a problem for Art. 6 BL, because binational families are still protected, if real social-familial bonds do exists (SPD). This view is challenged by narrative B, which interprets the CPAA as enabling state intrusion into the realm of intimacy and family life (FDP, Alliance 90/The Greens). Both THE LEFT and the CSO text of the ABFP see a contradiction to Art. 6 BL, which is considered severely threatened by the act.

Quality of Legislation Frame

The CPAA grants public agencies the right to contest paternity acknowledgements in cases where an indication of fake paternity acknowledgement such as the lack of social-familial bonds exists. In order to answer to criticisms about the feasibility of implementation, narrative A argues that the term "social-familial bonds" has been clearly defined in jurisdictions by the FCC. Moreover, public servants are considered capable of identifying fake paternity acknowledgements due to their work experience. Practitioners can draw from the cases of fake marriage, so the CDU/CSU.

Apart from statements which question the necessity of the law, also the lack of quality is criticised by narrative B. The FDP considers amendments located in family law as problematic. If legislation prohibiting abuse in relation to migration was indicated, it

should only be integrated into alien law. Moreover, how to determine social-familial bonds, a term which is known for its vagueness (Alliance 90/The Greens, CSO text of the ABFP)?

The CSO text also refers to "fake marriages", but in a different sense than the CDU/CSU. The ABFP fears that the same discriminatory practices used to determine fake marriages, which binational partners have reported, will be applied to "detect" fake paternity acknowledgements. Moreover, the ABFP raises the question whether a de-facto shift in the burden of proof at the expense of binational partners will be introduced.

Frame: Non-Discrimination of Migrants

While promoting the draft, the SPD in narrative A is nevertheless concerned about the stigmatising and discriminating effects an discussion about fake paternity acknowledgements might have on migrants. In order to address this problem, the SPD claims that the CPAA does not establish a general suspicion against foreign single mothers, but rather prevents xenophobia (sic!). Furthermore, the SPD argues that the German law is a milder and more adequate version than a complete abrogation of paternity acknowledgement in alien law and in comparison to other European legislations which have introduced DNA-tests (e.g. France).

All texts in narrative B agree on that the CPAA establishes a general suspicion against binational unmarried couples and contributes to their stigmatisation (FDP). According to THE LEFT, the act discriminates on grounds of origin and contradicts the equality sentence in Art. 3 (1) BL. Binational partnerships are discriminated against by means of a law which is xenophobic. Especially salient is the discrimination of foreign unmarried mothers, so the CSO text of the ABFP. A specific version of this frame is found in the CSO text and THE LEFT, which both stress that the act presents a discrimination of children of migrant unmarried women in comparison to children of married foreign women or German mothers respectively.

Constitutional Rights Frame

It is especially THE LEFT and the CSO text of the ABFP which emphasise constitutional rights, expressed in Art. 3 (1) BL on equal treatment, Art. 6 BL on the

special protection of marriage and family and Art. 16 (1) on German citizenship (the withdrawal of German nationality is forbidden, if it results in statelessness).

Underlying Norms

A juxtaposition of norms makes clear that narrative A and B are based on different underlying rationales. Whereas crime and justice, law and order are the most important norms in narrative A, it is anti-discrimination and constitutional rights which guide the frames of narrative B. Narrative A follows the norm of economic development, which is a less important rationale for the opposing narrative B. The norms on biological parenthood (narrative A) and social families (narrative B) are juxtaposed.

Table 15: Policy Narratives and Frames in the Contestation of Paternity Acknowledgement Act

	Narrative A	Narrative B
Narrative	*Fake Paternity Acknowledgements*	*Non-discrimination of migrants*
Texts	• Contestation of Paternity Acknowledgement Act • Explanatory remarks of the bill • CDU/CSU parliamentary speech • SPD parliamentary speech	• THE LEFT parliamentary speech • Alliance 90/The Greens parliamentary speech • FDP parliamentary speech • Civil society text: Association of Binational Partnerships and Families
Frame	**Frame Description**	**Frame Description**
Combat abuse	Combat an increasing number of fake paternity acknowledgements: combat abuse of residence rights and social security	No data, no accepted policy problem → no legislation
National resources	Reduce social costs due to denied access to the social security system and less public maintenance duties for children	High bureaucracy, high costs. Reduction in social payments is only an assumption. Paternity tests for all parents.
Social parenthood	Social and biological parenthood is equalised; existence of social-familial bonds is respected	Paternity is destroyed; parent's autonomy is weakened
Biological fatherhood	Right of the child to know decent and be in contact with biological father	
Child well-being	Connected to biological father- and parenthood	Act is not about child well-being, but about state interest to prevent fake residence titles no legal security, loss of citizenship, loss of

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		father
Protect family	Art. 6 BL is not endangered, binational families are protected	Contradicts Art. 6 BL Intrusion into intimacy and family relations
Quality of legislation	FCC definitions of social-familial bonds experienced practitioners experiences with fake marriages	How to determine social-familial bonds? Problematic practices similar to fake marriage; burden of proof?
Non-discrimination of migrants + children	Act prevents xenophobia adequate legislation also in European comparison	General suspicion against binational unmarried couples, foreign unmarried mothers and their children
Constitutional Rights		Art. 3 (1) Art. 6, Art. 16 (1) of the Basic Law must be ensured
	Norms	***Norms***
	Crime and justice Law and order	
	Economic development	Weak economic development
	Biological parenthood	Legal security for children
	Weak social parenthood	Social parenthood
	Weak anti-discrimination	Anti-Discrimination Constitutional Rights

12.2. Subject Positions

Narrative A

The subject positions of narrative A resemble the respective ones in the debate on the New Immigration Act (NIA), with one crucial difference: the line between the those committing abuse and the "responsible ones" is no longer clearly drawn between nationalities. Whereas in the NIA it was migrants, especially Muslim Turkish migrants living in Germany for already two or three generations who abuse of family reunification, in the CPAA debate it is also *German men without income or assets* who are suspected to commit fake paternity acknowledgements for money. In this case, the abusive migrant (either a foreign unmarried woman or foreign man) pairs up either with a German citizen or a foreigner with a secure residence title in order to gain illegitimate access to residence permits and social rights in Germany. In the speech of the SPD, one of the cases is depicted in detail: A Vietnamese married couple with three kids is expecting their fourth one, while their residence permit is running out. The marriage is –

surprisingly – divorced, and a German, unemployed men from Saxony appears out of nowhere, acknowledging the paternity of the fourth child. Later on, the German man admits that he has received € 2600 for the fake paternity acknowledgement. Another example is about a man who has acknowledged paternity of seven children of different Vietnamese mothers from 1999 to 2004.

On the other side, there are responsible politicians and public servants who assume the duty to combat abuse. The public is interested in avoiding high social spendings. Event though there are no secured data, "we" trust and rely on the work experience and judgement of public servants, working in Aliens Authorities (Ausländerbehörden) and registries, who have developed a keen sense on abusive practices such as fake marriages and fake paternity acknowledgements.

Last, this narrative constructs subject positions of children: the well-being of children is made dependant upon knowing one's decent and being in touch with the biological father. Social parenthood is only formally acknowledged.

Narrative B

Narrative B refrains from drafting essentialising subject positions, as the overall consensus is that general suspicion against binational families is to be rejected. Binational parents must not be discriminated against nor stigmatised. Generally, binational families are positioned in relation to rights, as expressed in the German Constitution. This overall tendency is weakened by statements that concede that there might be single cases of abuse and free riders, but whose existence is only based on assumptions.

The way that public agencies will investigate into the nature of family relations is expected to be discriminatory, as experiences with suspected "fake marriages" have shown. Parents should be approached with respect and trust. Equally important as the non-discrimination of parents is legal security and protection of children, regardless of origin or marital status of their parents. Up to this point, narrative B is quite homogenous in its arguments.

As soon as the CSO text of the ABFP starts to engage more deeply into the situation of children, the integrity of binational parents is weakened. In a lively picture, children are presented as the victims, the ones who suffer from what (fake) acknowledgements bring

about: children might end up statelessness, they loose their father and have no more security. The untruthful behaviour of adults might impact the most on the lives of innocent children. This is why the state should refrain from investigating into family matters.

It seems to me that extensive representations of suffering kids and adults as possible perpetrators of fake paternity acknowledgements shifts the prior focus on non-discrimination to images of guilt and untruthfulness. By doing so, the main objective of narrative B to deconstruct the general suspicion against binational families is undermined. Nevertheless, the non-discriminatory normative rationale of narrative B prevails.

Table 16: Subject Positions in the Contestation of Paternity Acknowledgement Act

	Subject Positions
Narrative A	*German men without income or assets abuse paternity acknowledgement regulations for money, foreign mothers do so for residence rights titles and access to social security. Foreign men acknowledge fake paternity for the sake of their own or the residence titles of a foreign, unmarried women.*
	It is our duty to combat misuse of paternity acknowledgement. The public has an interest in avoiding the payment of resulting maintenance duties.
	We can trust and rely on the work experience and the judgement of public servants, who have developed a keen sense of fake paternity acknowledgements.
	Children have the right to and need to know their decent and their biological father.
Narrative B	*Binational families must not be discriminated, stigmatised nor approached with "general suspicion". Their constitutional rights need to be ensured.*
	There might be some free riders (Trittbrettfahrer), but lacking data and single cases of abuse do not justify regulations.
	Public agencies will sneak into the intimacy of family relations with discriminatory practices, expecting abuse. Instead, the state should approach mothers and fathers with trust.
	Children must be protected regardless of origin and marital status of the parents. It is them who suffer from the false statements of the adults (ABFP).

12.3. Discursive Mechanisms

Constructing a Dichotomous Category: Process of Nationalisation

Citizenship is an important good, because a wide range of rights (and duties) are

attached to it. As we have seen in narrative A in the above, the state seeks to limit access to citizenship by calling the legitimacy of foreigners as possible "worthy citizens" into doubt. The suspicion that foreigners might try to obtain a residence title by fraud makes them un(trust)worthy; this sits well with the debate on the New Immigration Act (NIA), where foreigners are suspected to obtain residence titles by fake (forced) marriages. According to an underlying crime and justice, law and order rationale, people – by virtue of holding the "other" nationality – must be controlled, also for the sake of national resources. Nationality is being constructed as a social dividing line and a legitimate reason for unequal treatment of partnerships.

Intersectional Hyper-Visibility: Process of Class-National-Gendering

While the construction of *nationality* as a legitimate dividing line in the NIA was straight forward, the situation in the CPAA is more complex. Nationality in itself does no longer guarantee a good citizen. Also Germans are presented as non-worthy citizens, when the intersection with *class* and *gender* comes in. Unemployed German men abuse paternity acknowledgement in conjunction with foreign mothers. The contestation of paternity acknowledgement is expected to cut social spendings. This implies that foreigners, first and foremost foreign mothers, are in need of social benefits. The reasoning of narrative A is based on the assumption that these mothers actually are.

Depictions of unemployed men from poorer regions of Germany (Saxony) and foreign mothers as "welfare queens" blend well into already existing class-gender stereotypes. German women or women with secure residence titles might also offer fake paternity to men with migration backgrounds. However, these variants are less elaborated upon. Mostly, it is foreign women who are suspected to need residence titles.

Apart from these constructions of unworthy citizens or non-citizens, German nationality is filled with meanings of the responsible (politicians) and homogenous public, whose interests need to be ensured. Public servants are painted as trustworthy, experienced and equipped with a good sense of people and situations. In summary, constructions of "us" and "them" are based on a discursive process, in which nationality is intersected with gender and class as a social dividing line and constructed as a legitimate reason for unequal treatment.

Ranking Norms

Apart from crime and justice, economic development is the most decisive norm in narrative A. The assumption that foreign mothers might gain access to social rights and thus, social payments, is reason enough to legitimate the contestation of paternity acknowledgements. In the explanatory remarks of the bill, economic development in the sense of protecting national resources represents the status of an unquestioned ideal, which does not need further justification. While this norm is ranked the highest in the draft, the CDU/CSU additionally introduces the norm of biological fatherhood as decisive. In their view, the objective of child well-being is closely connected to questions of decent and biological fatherhood. Even though the official version is to equally support social families, the majority of the statement of the CDU/CSU prove that biological fatherhood is ranking higher than social parenthood.

Individualising

What the debate on the NIA and the CPAA have in common is that the problem is presented as a matter of crime and justice by narrative A. Single perpetrators, be it migrant families or unmarried foreign mothers, behave in unlawful ways, at the expense of German law and order, national resources, women's human rights (NIA) and child well-being (CPAA). Underlying the depiction of misuse is the characterisation of individual moral failure, either driven by profit or residence titles and social benefits. Social structural causes or restrictive alien law as causal factor for such a behaviour – which is not proven after all – are ignored in both policy debates. Society comes in as the "victim". German majority society is the passive actor exposed to the threats and damages. However, it is the German public in the form of dutiful politicians and knowledgeable public servants who find adequate and socially responsibly policy solutions, i.e. restrictive legislations in relation to migration.

12.4. Policy Evaluation: Human Rights

The case study on the policy debate of the New Immigration Act (NIA) has shown that the constitutional protection of the family in Art. 6 is often referred to. Likewise in the debate on the Contestation of Paternity Acknowledgement Act (CPAA), the protection of

the family is deemed important. The opponents claim that both acts fail to protect intimacy and family relations.

As we have seen in the evaluation of the NIA, international human rights conventions are rather ambivalent in relation to marriage and family. On the one side, conventions such as the ICCPR define that the "family is the natural and fundamental group unit of society and is entitled to protection by society and the State" (Art. 23 (1) ICCPR) and that family life, privacy and the home are protected (Art. 7 CFREU and Art. 8 ECHR). On the other side, the right to family life is limited. The ECHR e.g. allows for exemptions to this right "in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others" (Art. 8 ECHR). European human rights conventions allow for the states to regulate the right to marry and found a family in national law (Art. 9 CFREU and Art. 12 ECHR).

Human rights conventions are also pretty much silent on the issue, which is at stake in this case study: paternity acknowledgement is not addressed, not even in the Convention on the Rights of the Child (CRC). What is regulated, though, is that "every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests" (Art. 24 (3) CFREU). The right to know one's parents is also enshrined in an international convention (Art. 7 (1) ICCPR), although there is room for state parties to implement this right together with the ones on registration after birth, right to a name and a nationality in accordance with national law (Art. 7 (2) ICCPR). Statelessness, however should be avoided. States also have the duty to respect "the right of the child to preserve his or her identity, including *nationality, name and family relation*s as recognized by law without unlawful interference" (Art. 8 ICCPR). Hence, parenthood in principle is worthy of protection.

The Convention on the Rights on the Child (CRC) provides of an anti-discrimination sentence regardless of the child's and the parents' "race, colour, sex, language, religion, political or other opinion, *national*, ethnic or social origin, property, disability, birth or other status" (Art. 2 (1) CRC). Moreover, the state should protect the child against all

discrimination "on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members" (Art. 2 (2) CRC). The latter sentence reminds of what the CSO text of the ABFP argues about children: that it should not be them to suffer from unlawful utterances of their (fake) parents. In summary, the issue of paternity acknowledgement is not protected under international human rights conventions. However, unequal treatment of children due to their or the parents' national origin is forbidden in the anti-discrimination sentence of the CRC.

13. SUMMARY

The case studies on intimate citizenship policies in Germany have been conducted with the aim of exploring how sexuality and nationality are constructed as legitimate social divisions. The analysis has departed from the observation that the two Life Partnership Acts (LPA 2001 and LPRA 2004) on same sex partnership, the New Immigration Act (NIA 2007) on family reunification and the Contestation of Paternity Acknowledgement Act (CPAA 2008) have passed discriminatory or exclusionary citizenship regulations. In the case of same sex partnership, equal rights have been a policy goal for the promoters of the acts; however, a secondary family institute in comparison to heterosexual marriage has been created. While these same sex policies can be described as discriminatory, the migration related policies on family reunification and paternity acknowledgement are exclusionary as the access to German citizenship in the form of residence titles is sought to be restricted. Realising equal rights has never been the declared policy objective of the promoters of the CPAA.

From there, the analysis has engaged in the discursive realms created by policy debates. Overall, six discursive mechanisms have been identified.

Constructing a Dichotomous Category

This mechanism can be identified in all four case studies and signifies that the category which serves as a social division needs to be produced in the first place. In the Life Partnership Acts, this a process of sexualisation. *Sexuality* is actively constructed and filled with meaning in the policy debate. In the 2001 Life Partnership Act (LPA), sexuality becomes a legitimate marker of distinction by representing heterosexuality as

the norm and homosexuality as the deviation. By connecting same sex partners to low morals, a threat to public health, as contrary to the good citizen, they are constructed as unworthy of equal treatment. On the other side of sexuality are the heterosexual couples, whose marriage and family are deemed worthy of the special protection of the state.

Even the promoters of the LPA (2001) represent same sex partnerships as different, with their own sovereignty and dignity. While this is the overarching trend in the 2001 debate, some actors already start to depict homosexuals as equally good and responsible citizens as heterosexual persons. In the 2004 policy debate on the Life Partnership Revision Act (LPRA), sexuality has lost its status as a meaningful marker of distinction, at least on the discursive level. Equal rights and duties in the sense of a balanced citizenship becomes the most important frame. Having said this, sexuality remains a social division at the *formal legal level*, as same sex partnerships are still not equalised with marriage and some regulations, such as joint adoption, are reserved for the heterosexual norm. While the "othering" discourse has decreased significantly over the years, the normalising discourse has gained importance: same sex partners are presented as equally caring parents and equally good and responsible citizens. However, the opponents of the acts continue to construct a sexual division, with heterosexual marriage as the only legitimate form of partnership, especially in relation to children.

In migration related matters, it is *nationality* that becomes a meaningful marker of social division. In the New Immigration Act (NIA), the process of nationalisation is achieved by attaching one nationality with the norm (the responsible, tolerant and helpful German) and the other side with the socially undesirable (the abusive, violent migrant man/family and the uneducated young migrant woman). It is a process in which hierarchical dichotomies are produced and migrants are being associated with frames on misuse, crime and human rights violations. Likewise, the promoters of the Contestation of Paternity Acknowledgement Act (CPAA) frame the issue in relation to abuse and depict migrants as unworthy and as the opposite of a good citizen.

Intersectional Hyper-Visibility

The mechanism of highlighting intersections is first and foremost practised in the

debates on immigration and integration (NIA and CPAA). What is it that these acts make visible? Basically, what both policies do is to connect migrants to abuse and crime, violence and adversary budget effects and to allow immigration only for a very small group.

In more detail, the promoters of the New Immigration Act argue that the behaviour of migrants does harm migrants themselves, i.e. migrant young women suffering from forced marriage. In a process of *ethno-national-gendering*, certain cultural or traditional practices are associated with violence against women. By constructing these practices and by highlighting them as representative of migrants, harmful "differences" are foregrounded.

Harmful practices represented in the CPAA are diagnosed to primarily harm German state resources, the public and innocent children. In a process of *class-national-gendering*, the subject position offered to binational couples is the one of perpetrators of fake paternity acknowledgement. Interestingly, this process does not remain with "unworthy" foreigners, but also drafts images of the non-worthy German citizen, i.e. the unemployed man faking paternity for profit. Nationality in intersection with class thus has become the social dividing line. Stigmatising gender dimensions are also made explicit in the debate.

Intersectional Invisibility

This is a classical mechanism, described by Kimberlé Crenshaw (1991): categories are mobilised separately and their intersectional character is ignored. The analysis has shown that this mechanism is applied at several occasions. In the issue of family reunification (NIA), *gender* is acknowledged (even tough in a problematic way in relation to forced marriage), while the intersection with *citizenship status* is ignored. The promoters of the New Immigration Act sideline that young migrant women affected by forced marriage are not only positioned in relation to gender, but also in relation to citizenship status, which is usually dependant on the spouse. The issue of an independent residence title is faded out.

More examples for this mechanism can be identified in the issue of same sex partnership, especially in the first policy debate in 2001 (LPA). *Sexuality* is constructed as a single category; the intersection with *gender* is ignored. Also depictions of same

sex partners as financially stable double income earners neglect existing gender dimensions of care responsibilities. Among other gendered issues, artificial insemination is only marginally touched upon. This picture changes slightly in the second policy debate in 2004 (LPRA), where at least one speaker, the Minister of Justice, refers to artificial insemination as a reason for why stepchild adoption is necessary. Moreover, caring duties (and thereby the implicit gender dimensions) are also mentioned by this speaker. However, all the other promoters of the act continue to construct same sex partnerships in a gender-biased way (double earners). While the opponents of both Life Partnership Acts do not explicitly spell out gender dimensions, they advocate the upholding of the traditional gender relations by promoting heterosexual marriage.

Playing-off Categories

For the opponents of the LPA, Christian *culture* and *religion* are discursively attached to heterosexuality; contrary, religion and homosexuality are represented as mutually exclusive. Homosexual lay members of the Churches would doubt this monopoly of Christianity for heterosexuals.

Moreover, the opponents of the LPA draw from the equality sentence of the German Basic Law in order to protect "other living communities" (e.g. heterosexual co-habiting unmarried couples), that must not be disadvantaged by regulations for same sex partners. That the equality sentence is applicable to same sex partners is not addressed. Thus, *marital status* is played-off of sexuality.

A minor, but nevertheless problematic play-off can be identified among the promoters of the LPA and the LPRA. Same sex partners are represented to be financially self-sufficient and independent from state resources, which is brought as a point in their favour. But what if *class* actually was an issue? What if more Life Partnerships were registered, needed social support and the low-cost argument was no longer valid? The opponents of the acts do not explicitly engage in any economic development norms, at least not in the selected policy debates. Nevertheless, the Federal Council, where the opponents of the LP Acts have held a majority, has blocked all regulations concerning financial benefits for same sex partners.

Ranking Norms

This is a central mechanism in all four case studies. In the issue on same sex partnership, the opponents of the LPA rank *heteronormativity* over personal rights and social responsibility (the good citizen). While the promoters of the LPA and LPRA stress that same sex partners are equally good and responsible citizens and parents, the opponents insist on ranking the protection of heterosexual marriage and family the highest. The norm of heteronormativity, however, is increasingly challenged by Federal Constitutional Court decisions and subsequent extensions in same sex partnership rights. In addition to heteronormativity, the opponents of the acts present the norm of *biological parenthood* as a precondition for child well-being. This norm is represented to stand way on top of possible personal rights of same sex partners to have children. On the contrary, the promoters of the LPRA stress the social reality of rainbow families, caring duties as well as the importance of social parenthood.

In the NIA, the highest ranking rights which are said to legitimate a restriction in the right to family life are *dignity, sexual self-determination, personal freedom and bodily integrity*. The NIA is presented as protecting these rights by a preventive effect on forced marriages. The opponents doubt that these higher ranking rights are de-facto protected by the act. While the NIA might de-facto not protect these goods, the social normativity requires that these norms are at least discursively mentioned.

Other important, high ranking norms are *crime and justice* and *economic development.* That abuse must prevented and combated is an unquestioned ideal for the promoters of both the NIA and the CPAA. The same is the case for safeguarding national resources in the form of the social security system and the labour market. That economic development is such a high ranking norm is visible in the fact that the "right" social class of foreigners can to some degree not only off-set images of suspicion and abuse, but also de-facto restrictive migration policies. Certain foreigners (e.g. entrepreneurs) and migrants from certain countries of the industrialised North and West face fewer restrictions for family reunification (NIA). In the CPAA, it is also economic development, which is ranking high on the normative agenda.

In addition, *biological parenthood* ranks high, as child well-being is represented a dependant on it. Fake paternity acknowledgements harm children and derive them of

their biological father. In summary, biological parenthood is a strong norm, both in the issue of same sex partnership and the one on paternity acknowledgement, at least for the conservative party CSU/CSU.

Individualising

Starting with the debate on the LPA, individualisation is one of the key mechanisms of the opponents. Arguing that there is no legal discrimination of same sex partners and that contracts can be made individually between the partners, the opponents reject any social responsibility. The same is said to apply to maintenance duties for children, who can be assumed voluntarily and individually.

Likewise, the NIA is legitimised by pointing to individual responsibility, in relation to both, the perpetrators and victims of forced marriage. This is not to say that this phenomenon is not constructed as a collective problem of migrants, but that the causes are attributed to individuals only. Just like individuals cause the problem, they are also responsible for the solution, at least according to the conditions for family reunification (age, education). Structural dimensions and social responsibility are not touched upon, neither in the diagnosis nor prognosis. The CPAA also presents the problem of fake paternity acknowledgement as matter of individual crime and justice, which is harmful for German society. The cause for the problem is attributed to individual perpetrators.

Human Rights Evaluation

What the analysis of selected intimate citizenship policies has demonstrated is that *different target groups* are discursively constructed, with the effect of discriminatory or exclusionary policy outcomes in relation to partnerships. On an equally problematic note, the human rights evaluation conducted in step four has revealed that human rights conventions circumvent their egalitarian foundation by making room for exemptions and exclusions from rights for some groups. De facto, same sex partnerships, migrant families and binational families are only partially included into international conventions.

Same sex partnerships are only weakly protected. In the case of the CFREU this is due to the fact that it falls out of the EU's legal field of reach to enact marriage laws. As existing human rights protection of same sex partnerships is weak, the evaluation has

drawn on the Yogyakarta Principles, which can be understood as a civil society challenge and extension of the existing catalogue of human rights. Art. 24 of the Yogyakarta Principles provides for a wide ranging protection of same sex partnerships and families. On a different level, European Court of Justice decisions, based on the EU Framework Directive 2000/78/EC, and a planned directive implementing equal treatment irrespective of four markers of discrimination outside the labour market[95], are important impulses for the extension of same sex partnership rights.

That marriage law is a contested policy field, over which national sovereignty is sought to be maintained, is reflected in human rights conventions, such as the CFREU and ECHR, where the right to marry is handed over to national legislations. The right to family and private life can furthermore quite easily be restricted. The ECHR acknowledges a wide range of reasons why this right can be limited. The claims of crime and abuse made against migrant and binational families might fall under these "legitimate restrictions". The fact that there is a human rights convention protecting migrant workers and their families (ICRMW), does not improve the level of protection as receiving Northern and Western states have neither signed nor ratified the Convention. Likewise, paternity acknowledgement is a black hole in human rights protection; it is only via the child, protected in the Convention on the Rights of the Child, that discrimination due to (the child's or the parents') national origin is forbidden. It seems, however, that the makers of the CPAA even do not respective this anti-discrimination provision.

In summary, the human rights of other than national, heterosexual married partnerships and families are weakly protected under existing conventions. But even heterosexual families are not substantively internationally protected (apart from the ICCPR), due to legitimate exemptions or due to the provision that national legislations are given priority over international law. At the outset of analysis, international human rights conventions were expected to represent normative ideals. Yet, the consultation of human rights conventions has shown that they themselves are part of social discourses and reflect, rather than surpass the normative basis of society.

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95 European Commission. Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation as of 2 July 2008. COM(2008)0426. Available at: http: //eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM: 2008: 0426: FIN: EN: PDF, accessed on 9 June 2009.

IV. CONCLUSION

Germany's citizenship regime is usually described as ethno-cultural (Lister/ Williams/Anttonen et al. 2007). In focusing on intimate citizenship, this analysis has shown that Germany's citizenship regime is also heteronormative and marriage-centred. The partnership rights of same sex couples and families with migrant backgrounds and binational partnerships are still not the same as those given to heterosexual German citizens. The claim that in/exclusions are hardly ever absolute but are, rather, situated on a spectrum (Castles and Davidson 2000 in Lister 2003: 44), can be confirmed by looking at the selected policy debates in more detail. While sexuality is increasingly challenged as a marker of discrimination, let alone by FCC decisions, nationality remains a meaningful and legitimate social division. Thus, while same sex couples are being addressed under the policy goal of equal rights, partnership rights in relation to migration do not benefit from the same framing. However, despite the frame of equality, same sex partnership policies can be described as discriminatory; they establish a second class family institute within the intimate citizenship regime. Migration policies, on the other hand, can be labelled exclusionary, since access to the German (intimate) citizenship regime is sought to be prevented in the first place.

While sexuality and nationality might be at different stages of becoming "illegitimate" markers of social division, the discursive mechanisms used to render unequal treatment "justifiable" are rather similar. The *construction of a dichotomous category* lies at the core of theses discursive processes. Homo- and heterosexual couples, citizens and foreigners are represented as target groups that can be meaningfully distinguished from one another[96]. This mechanism is not new. Unequal treatment has always been legitimised by constructing a group who supposedly does not have the same qualities as the majority group and, as a result of this "transgression", is not bestowed with equal rights. Considering the history of civil and political rights, discursive processes of gendering have constructed women as a group different from men with regard to their

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[96] In the case of the CPAA, German citizens are also differentiated by class and income. There is also a regional dimension to it: Unemployed men from poorer regions in Germany are suspected of committing fake paternity acknowledgements for money.

ability to reason and their supposed closeness to nature. These gendered constructions, along with others, have provided justification for women's lack of rights. In this regard, there is a notion of equality that is grounded in sameness – treat the same what is the same and treat differently what is different. De/constructivist scholarship, in which this dissertation enrols, shows that the construction of differences needs to be made explicit, as they are the basis upon which inequalities unfold. The aim has been to unveil the processes by which unequal treatment and differences are represented as given and natural.

While unequal treatment based on gender is no longer easily justifiable, we continue to see arguments for unequal treatment rooted in the social markers of sexuality and nationality. This is not to say that gender does not play a role in policy problem representations. As the analysis has shown, the process of representing sexuality and nationality as meaningful markers of distinction has relied upon constructions of gender, age and class, as well as ethnicity and religion. Methodologically speaking, this dissertation de/constructed representations of sexuality and nationality by conducting an intersectional discursive policy analysis. By combining frame analysis with an intersectional, categorical perspective, it has elaborated on six *discursive mechanisms*. Apart from (1) constructing a dichotomous category, the "categorical mechanisms" have unveiled that some intersections are highlighted ((2) intersectionality hypervisibility), some intersections are made invisible ((3) intersectional invisibility) and some are played-off of each other ((4) playing-off categories). Non-categorical mechanisms are identified in the ranking of norms (5) and individualisation (6).

Regarding the first mechanism, sexuality is constructed as a meaningful social division by representing same sex partnerships as essentially different from heterosexual partnerships (own sovereignty and dignity). Same sex partners are discursively connected with promiscuity, illness and low degrees of commitment. On the contrary, heterosexual partnerships are presented as stable, responsible and, as the smallest and most important "cell" of society that has been fundamental for the reconstruction and survival of Germany, worth the protection of the Constitution.
Nationality is rendered a meaningful distinction by representing foreigners as

undeserving of equal treatment; this has been achieved by highlighting certain intersections (2), leading to stigmatised depictions of the essential being and behaviour of migrants. Discursive processes of *ethno-national-gendering* and *class-national-gendering* promote frames such as abuse and conditions, human rights violations and threat to national resources, which all have the effect of representing persons with migrant backgrounds as unworthy of equal treatment. Responsible and tolerant Germans are juxtaposed to migrants as perpetrators and victims (young migrant women) of forced marriage (NIA). Apart from problematic representations of human rights violations and the abuse of residence titles, the threat which migrant (family reunification) and binational families present to the social security system and the labour market (national resources in general) is emphasised. The assumption behind this "threat" is that all migrant and binational families will need state support.

In addition to highlighting some intersections as supposedly "representative of migrants", the mechanism of making intersections invisible (3) was identified especially in relation to gender and citizenship status (NIA). While the prevention of forced marriage is represented as a key concern in the debates on family reunification, the question of issuing independent residence titles (i.e. titles that are not tied to a spouse) has been ignored. In relation to sexuality, while the first public debate on this topic in 2001 (LPA) was represented as being "gender-neutral", it was, in fact, gender-biased; it was assumed that same sex partners are double earners and financially independent, thus ignoring (usually gendered) caring duties. This means that the intersection of gender and sexuality in relation to reproduction and care were (and still are) sidelined.

Playing-off categories (4) is another mechanism identified in relation to sexuality (LPA), where religion (all monotheistic religions) and occidental culture is represented as incompatible with homosexuality. Furthermore, class is indirectly played-off of sexuality, as same sex partners are presented as double earners and, thus, not a problem to national resources.

Apart from these "categorical mechanisms", the ranking of norms and individualisation have been identified as important discursive strategies used to legitimise unequal treatment. The ranking of norms (5) was visible in constructions of parenthood, where biological parenthood was represented as contributing more to child well-being than social parenthood (LPRA, CPAA). Another important norm is economic development,

visible in frames on safeguarding national resources in both migration related policies (NIA, CPAA). Heteronormativity is a high ranking norm, formally supported by the fact that marriage and family is protected under the German Basic Law (LPA, LPRA). Individualisation (6) is a mechanism observable in all policy debates, ranging from policy solutions, such as individual contracts between same sex partners (LPA), to individual perpetrator-victim relations and measures to combat forced marriage (age and German language skills, NIA).

By comparing the 2001 and 2004 policy debates it has been observed that *sexuality* is increasingly losing its status as a meaningful and legitimate social division. Equal citizenship rights have increasingly gained leverage in debates on same sex partnerships. In 2001, the promoters of the LPA still engaged in an "othering discourse" that aimed to establish a meaningful difference between same sex and heterosexual partnerships, thereby justifying a second class family institute. Over the years the othering discourse has decreased[97], especially due to FCC decisions. The same sex family institute is now on track to become equal to marriage; whether this is a process of levelling down is an open question. Also, from 2001 to 2004 the degree in which debates on sexuality have been gender-blind has decreased. During the second debate, caring duties and questions of reproduction were taken into account.

On the contrary to the equalising tendency regarding sexual orientation, *nationality* remains a legitimate social category upon which rights inequalities can be "justifiably" built. As illuminated, a variety of intersecting social categories have come to represent migrant and binational families as unworthy of equal treatment. In processes of *ethno-national-gendering* and *class-national-gendering* a special type of "migrant imaginary" is developed that requires differential treatment. Class, gender and ethnicity are mobilised in such a way that nationality becomes a meaningful marker not only of distinction, but also of exclusion. Family reunification is restricted and paternity acknowledgements of binational families are controlled for the sake of integration, the combat of abuse and violence, and for the sake of social security and the German labour market. Even more so than in same sex partnership policies, is economic development

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97 At the same time, the normalising discourse of the good citizen has increased.

the explicit norm.

As noted throughout the frame analysis, these representations are challenged by the political opposition. Voices, especially from the Alliance 90/The Greens, THE LEFT and selected CSOs, do not engage in policy stories about otherness, biological parenthood, abuse, crime and human rights violations. On the contrary, they refrain from drafting essentialised subject positions. This is what makes these discursive positions different from the ones presented above. Instead of assigning essential being or behaviour to persons, and thus creating hetero-, homosexual, citizens or foreigners, people are positioned in relation to rights. The frames these actors employ are about equal rights and anti-discrimination. Civil society texts have been particularly good at framing issues in terms of a substantive catalogue of rights.

The *human rights evaluation* has shown that existing human rights conventions only provide weak protection to families on the international level. Indeed, marriage issues, for the most part, have remained the purview of national legislations. Given that the heteronormative family is only poorly protected, it is not surprising that same sex, migrant and binational couples and families are even less so. This means that existing human rights need to be challenged if substantive equality for all partnerships is to be obtained. With the aim of reworking the rights catalogue, the Yogyakarta Principles have been presented. Concerning the rights of migrant families (family reunification) a challenge is definitely needed. One important first step towards extending their rights would be the signing and ratification of the already existing International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) – something which, up until now, has yet to occur.

These empirical findings feed back into the theoretical considerations on equal rights and substantive equality as laid out in Chapter 1. In order to challenge the (male) norm, we need a concept based on substantive equality, not a concept based on difference. As we have seen, the construction of particular target groups carries the danger of naturalising differences and making rights available to only some. Moreover, it is hard to establish a normative standard for all once "different groups" have been constructed.

An alternative, and what is supported by the empirical findings of this study, is a focus on equal rights. The theoretical chapter on human rights evaluation (Chapter 7) has discussed the most salient criticisms regarding rights and has argued for a reworked catalogue of human rights. In order for equality to gain "substance" a full set of human rights is needed. The existing human rights catalogue needs to be systematically applied and extended to include issues that have been previously excluded; only then can the norm of human rights be challenged. This is already happening. In fact, human rights and rights more generally have been challenged from their very beginning.

The scepticism towards identity-based group politics expressed in the theoretical chapters and empirical analysis is grounded in their discriminatory and exclusionary effects. The empirical part of this dissertation has shown how inequalities are based upon a process of differentiation that makes distinctions meaningful and legitimate. The same scepticism informed the considerations on *intersectionality*. While intersectionality has been presented as an important tool in order to diagnose complex webs of discrimination and exclusion, privilege and inclusion, as a prognostic tool it should be applied with care. Actions against discrimination and exclusions should not reproduce the particular and specific identities which have been socially and politically constructed in the first place.

The concept of *international multiple citizenship* offers issue-based lobbying as a means to avoid the re/production of oppressed identities. Instead of gathering and lobbying on the grounds of identities, an alternative can be to lobby for issue-based rights. In this vein, lobbying for reproductive rights can be done regardless of whether one identifies as a heterosexual woman, married or unmarried, lesbian partners or single person. Multiple citizenship means that we as citizens have multiple, perhaps contradicting rights claims at various points in our lives. Rights claims always evoke negotiations over hierarchies of rights. It is crucial that conflicts are dealt with what they are, namely conflicts. The next question is how negotiations over conflicts should be set up, given intersectional complex power relations – a question that will have to be addressed by another research project.

In summary, the above study has pursued three ends: First, to address the impasse of

current feminist citizenship theories, which are caught between the aim of refining the diagnosis of in/exclusion, while at the same time accounting for the problem of reproducing group boundaries, essentialising identities and reproducing the (male) norm of the universal and the particular. As a way out of the Wollstonecraft's dilemma, this dissertation has suggested the inclusionary model of international multiple citizenship and issue-based rights lobbying as its tool.

This study's second aim was to contribute to the methodological question of how to operationalise intersectionality for discursive policy analysis, a desideratum in existing literature on intersectionality and policy studies. It has presented a processual, de/constructivist model, whose elements can also be translated to other types of discursive analysis. And, finally, by conducting an intersectional discursive policy analysis, this study has demonstrated the exclusionary group-politics of recent intimate citizenship in Germany and their bias regarding sexuality, gender, ethnicity, nationality, marital status and class.

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ANNEX

MATERIAL FOR ANALYSIS

Chapter 9: Life Partnership Act – Lebenspartnerschaftsgesetz (2001) (LPA)

(A.1) Law text: Life Partnership Act: Gesetz zur Beendigung der Diskriminierung gleichgeschlechtlicher Gemeinschaften: Lebenspartnerschaften (Lebenspartnerschaftsgesetz). 16.12.2001. Bundesgesetzblatt Teil I 2001 Nr.9 22.2.2002 S.266.

(A.2) Parliamentary debate: Deutscher Bundestag. 10.11.2000. 2. und 3. Lesung. Protokoll 14/131, S.12606-D12630A.

(A.3) Civil Society Organisation (CSO) text of the Lesbian and Gay Association in Germany: Lesben- und Schwulenverband in Deutschland. Stellungnahme zu den Gesetzentwürfen der Bundestagsfraktionen von SPD und Bündnis 90/Die Grünen – Drucksache Nr. 3751- und der F.D.P. – Drucksache 1411251. – September 2000.

Chapter 10: Life Partnership Revision Act – Überarbeitung des Lebenspartner-schaftsrechts (2004) (LPRA)

(B.1) Law text: Life Partnership Revision Act: Gesetz zur Überarbeitung des Lebenspartnerschaftsrechts. Gesetz vom 15.12.2004. Bundesgesetzblatt Teil I 2004 Nr.69 20.12.2004 S. 3396.

(B.2) Parliamentary debate: Deutscher Bundestag. 29.10.2004. 2. und 3. Lesung. Plenarprotokoll 15/136 S. 12482A-12491C, 12527D-12529A/Anl.

(B.3) Civil Society Organisation (CSO) text of Lesbian and Gay Association in Germany: Lesben- und Schwulenverband in Deutschland. Stellungnahme zum a) Gesetzesentwurf der Koalitionsfraktionen: Gesetz zur Überarbeitung des Lebenspartnerschaftsgesetzes [Life Partnership Revision Act] BT-Drucksache 1513445 und b) Entwurf der FDP-Fraktion: Gesetz zur Ergänzung des Lebenspartnerschaftsgesetzes – BT-Drucksache 1512477, 18. Oktober 2004.

Chapter 11: New Immigration Act – Neues Zuwanderungsgesetz, Familiennachzug (2007) (NIA)

(C.1) Law text: New Immigration Act. Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union (Neues Zuwanderungsgesetz). Gesetz vom 19.08.2007. Bundesgesetzblatt Teil I 2007 Nr.42 27.08.2007 S. 1970.

(C.2) Policy plan – Explanatory remarks on the New Immigration Act (bill): Entwurf eines Gesetzes zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union. Gesetzesentwurf der Bundesregierung. 23.04.2007 Drucksache 16/5065.

(C.3) Parliamentary debate: Deutscher Bundestag. 14.06. 2007. 2. und 3. Lesung. Plenarprotokoll 16/103, S. 10584D-10610D, 10639/C/Anl.

(C.4) Civil Society Organisation (CSO) text of Federal Migrant Women's Association in

Germany: Bundesverband der Migrantinnen in Deutschland. Verschärfungen des Zuwanderungs- und Einbürgerungsrechts. Juni 2007.

Chapter 12: Contestation of Paternity Acknowledgement Act – Anfechtung von Vaterschaftsanerkennung (2008) (CPAA)

(D.1) Law text: Contestation of Paternity Acknowledgement Act: Gesetz zur Ergänzung des Rechts zur Anfechtung der Vaterschaft. Gesetz vom 13.03.2008. Bundesgesetzblatt Teil I 2008 Nr. 9 18.03.2008 S. 313.

(D.2) Policy plan – Explanatory remarks on the Contestation of Paternity Acknowledgement Act: Entwurf eines Gesetzes zur Ergänzung des Rechts zur Anfechtung der Vaterschaft. Gesetzesentwurf der Bundesregierung. BT – Drucksache 16/3291 vom 8. 11. 2006.

(D.3) Parliamentary debate: Deutscher Bundestag. 13.12.2007. 2. und 3. Lesung. BT-Plenarprotokoll 16/133, S. 13985C – 13985D und 14023-14028 (Anl.6)

(D.4) Civil Society Organisation (CSO) text of the Association of Binational Partnerships and Families: Verband binationaler Partnerschaften und Familien. Anhörung im Rechtsausschuss des Deutschen Bundestages am 23. Mai 2007 zum Gesetzentwurf der Bundesregierung: Entwurf eines Gesetzes zur Ergänzung des Rechts zur Anfechtung der Vaterschaft vom 08.11.2006 BT-Drucksache 16/3291. Stellungnahme vom 15.5.2007.

ABSTRACT

The dissertation asks how the discrimination of same sex partnerships and the exclusion of families with migration backgrounds from substantive intimate citizenship rights are discursively justified in policy debates - despite the egalitarian foundation of the liberal German state. In order to answer the research question, an *Intersectional Discursive Policy Analysis* (IDPA) of the Life Partnership Act (2001), Life Partnership Revision Act (2004), New Immigration Act (2007) – Issue of Family Reunification (2007) and the Contestation of Paternity Acknowledgement Act (2008) is conducted. The central finding is that the social categories of sexuality and nationality, together with other intersecting social divisions such as gender, ethnicity, religion and class, are constructed in the policy process and mobilised for discriminatory and exclusionary policy outcomes. These discursive practices of political intersectionality are described in the discursive mechanisms of (1) Constructing a Dichotomous Category, (2) Intersectional Hyper-Visibility, (3) Intersectional Invisibility, (4) Playing-Off Categories, (5) Ranking Norms and (6) Individualisation.

What the study contributes to current debates on intersectionality is its operationalisation for discursive policy analysis. A processual, de/constructivist model whose elements can also be translated into other types of discursive analysis is developed. Apart from this methodological focus, the theoretical contribution is to connect intersectionality to citizenship theory. Intersectionality is used as a tool to refine the diagnosis of exclusion from citizenship. The prognosis – how to tackle exclusions? –, however, refrains from addressing intersectional target groups. In order to tackle intersectional inequalities without re/producing identities, the model of *International Multiple Citizenship* suggests a rights-based, instead of a group-based conceptualisation. Informed by the idea(l) of substantive equality and the tool of issue-based rights lobbying, the model seeks to strengthen the inclusionary, non-essentialist potential of citizenship.

ZUSAMMENFASSUNG

Das Forschungsziel dieser Dissertation ist es, diskriminierende und exkludierende „intimate citizenship" Politiken in Deutschland anhand einer diskursiven Policy-Analyse zu erklären. Unter dem Begriff „intimate citizenship" sind diejenigen Politiken zu verstehen, in denen die Bereiche Partnerschaft, Familienleben und Reproduktion staatlich reguliert werden. Am Beispiel Deutschland wird gezeigt, wie Partnerschaftsrechte in Bezug auf sexuelle Orientierung und Migration ausgestaltet und dabei eingeschränkt werden.

Die zentrale Forschungsfrage ist, wie angesichts einer bürgerlichen Gleichheitsordnung und einer universellen Moral diskriminierende und exkludierende Policy-Entscheidungen diskursiv gerechtfertigt werden. In Bezug auf die Kategorie sexuelle Orientierung wird gefragt, welche diskursiven Mechanismen die eingetragene Lebenspartnerschaft für gleichgeschlechtliche Paare (Lebenspartnerschaftsgesetz 2001 und Gesetz zur Überarbeitung des Lebenspartnerschaftsrechts 2004) legitimieren. Partnerschaftsrechte für Familien mit Migrationshintergrund werden in Politiken zum Familiennachzug (Neues Zuwanderungsgesetz 2007) und behördlichen Anfechtungsrecht von Vaterschaftsanerkennungen von binationalen Familien (Gesetz zur Ergänzung des Rechts zur Anfechtung der Vaterschaft 2008) restriktiv ausgestaltet.

Methodisch geht diese Arbeit so vor, dass im ersten Teil der theoretische und methodologische Bezugsrahmen für die Analyse entworfen werden. Danach wird im zweiten Teil das Analysemodell entwickelt; der dritte Teil ist der empirischen Analyse der ausgewählten Policy-Debatten gewidmet. Im Schlusskapitel werden die Ergebnisse der Analyse an die normativ-theoretischen Überlegungen im ersten Teil zurückgebunden.

Der theoretische Bezugsrahmen der Dissertation sind feministische Citizenship-Konzepte, deren Ziel es ist, den unterschiedlichen intersektionalen – d.h. durch sich überschneidende Ungleichheiten entstehenden – Positionierungen von Personen Rechnung zu tragen. Die Herausforderung dabei ist, die Re/Produktion von essentialistischen Identitäten bzw. (von Ausschlüssen innerhalb) von Gruppen zu vermeiden. Das Citizenship-Modell, das in dieser Arbeit vorgeschlagen wird, arbeitet

mit einer intersektionalen Analyse als Diagnosewerkzeug für Ungleichheiten; in der Prognose jedoch – Was kann dagegen getan werden? – wird von intersektionalen Gruppen Abstand genommen. Stattdessen werden die Konzepte „issue-based rights lobbying" und „substantive equality" präsentiert.

Im zweiten Teil der Arbeit wird das Analysemodell vorgestellt, das eine intersektionale Perspektive mit der Methode der „Critical Frame Analysis" verbindet. Die Analyse besteht aus drei Schritten und einer abschließenden Policy-Evaluation. Der erste Schritt ist das Erarbeiten von Frames, die sich aus den Antworten auf die Fragen „Was ist das Problem? Was ist die Lösung? Warum ist das Problem ein Problem und warum ist die Lösung passend?" bilden lassen. Im zweiten Schritt wird analysiert, welche Subjekt-Positionen in den Policy-Debatten entworfen werden. Leitende Frage ist: „Was sind die charakteristischen Seins- und Verhaltensweisen, die AkteurInnen zugewiesen werden?"
Der dritte, interpretative Schritt erarbeitet unter einer intersektionalen Perspektive die *diskursiven Mechanismen,* die das Policy-Ergebnis „rechtfertigen". Die Mechanismen, die identifiziert werden, sind theoretisch durch den Begriff der politischen Intersektionalität informiert. Dieser Begriff bezeichnet politische Prozesse, in denen Kategorien wie Geschlecht, Ethnizität, Nationalität, Sexualität usw. als „social divisions" bedeutsam gemacht werden. D.h. in einer konstruktivistischen Epistemologie werden Kategorien und damit entstehende Differenzen, Hierarchien und Ungleichheiten durch den Politikprozess erst hergestellt. Als Antwort auf die Forschungsfrage konnten folgende diskursive Mechanismen in der Analyse herausgearbeitet werden:

1. **Das Herstellen von dichotomen Kategorien**

Die Kategorien Sexualität und Nationalität werden anhand von Frames und Subjekt-Positionen als wichtige soziale Trennlinien erst hergestellt. In Bezug auf Sexualität dominieren Frames, die die Andersartigkeit von gleichgeschlechtlichen Partnerschaften im Vergleich zur Ehe betonen (Promiskuität, weniger Wille zur Verantwortung). In den Partnerschaftsgesetzen in Verbindung zu Migration wird Nationalität als signifikante Trennungslinie konstruiert, indem Frames über das Erschleichen von Aufenthaltstiteln, Missbrauch des Sozialsystems und Menschenrechtsverletzungen betont werden.

2. Intersektionale Hyper-Sichtbarkeit

Dieser Mechanismus beschreibt, wie die Aufmerksamkeit auf Situationen gelenkt wird, die stigmatisierende Effekte haben. Dies ist vor allem für die Policies zu Migration charakteristisch. Im Falle von Familiennachzug wird durch einen Prozess des *ethno-national-gendering* das Hauptaugenmerk auf die Menschenrechtsverletzung der Zwangsverheiratung gelenkt. In der Policy Debatte zu Vaterschaftsanerkennung werden in einem Prozess des *class-national-gendering* einkommenslose deutsche Männer, die für missbräuchliche Vaterschaftsanerkennung bezahlt werden und ausländische Mütter, die sich darüber einen Aufenthaltstitel erschleichen, konstruiert.

3. Intersektionale Unsichtbarkeit

bedeutet, dass bestimmte soziale Dimensionen im Politikprozess unsichtbar bleiben. Im Falle des Familiennachzugs wird beispielsweise die Möglichkeit eines vom Ehepartner unabhängigen Aufenthaltstitels als Maßnahme gegen Zwangsheirat (wovon hauptsächlich Frauen betroffen sind) ausgeblendet; d.h. die Intersektion von Geschlecht mit positivem „citizenship status" bleibt unsichtbar. Auch in den Debatten zu gleichgeschlechtlichen Paaren bleiben Gender-Dimensionen, wie z.B. Betreuungs-pflichten oder künstliche Befruchtung, oft ausgeblendet.

4. Gegeneinander-Ausspielen von Kategorien

Dieser Mechanismus findet sich in der Debatte zum Lebenspartnerschaftsgesetz, in der Religion (christlicher Glaube) als unvereinbar mit sexueller Orientierung gesetzt wird. Weiters wird argumentiert, dass andere Lebensgemeinschaften wie z.B. unverheiratete Paare (Kategorie Familienstand) nicht durch die Lebenspartnerschaft (sexuelle Orientierung) benachteiligt werden dürfen.

5. Hierarchien von Normen

Das Erstellen von „Ranglisten" von Rechten, Normen und Werten ist ein zentraler Mechanismus, der sich in der Privilegierung von Heteronormativität, biologischer Elternschaft, ökonomischer Entwicklung und dem Bewahren von nationalen Ressourcen (Sozialversicherungssystem, Arbeitsmarkt) ausdrückt.

6. Individualisierung

ist ein zentraler Mechanismus in allen Policy-Debatten, in denen die individuelle Verantwortung von gleichgeschlechtlichen Paaren, Eltern sowie Familien mit Migrationshintergrund betont wird. Gesellschaftliche Faktoren und Mechanismen werden bei Problemdefinitionen und Lösungen nicht berücksichtigt.

Die die Analyse abschließende Policy-Evaluation erfolgt – dem Citizenship-Modell, das im ersten Teil entwickelt wurde, entsprechend – in einer menschenrechtlichen Perspektive. Festzustellen ist, dass das Ehe- und Familienrecht in internationalen Konventionen oft an die nationale Ebene delegiert wird, wenn auch das Recht auf Privatleben als schützenswert gilt. Zahlreiche Ausnahmeregelungen erlauben jedoch den Eingriff des Staates. Daher ist es auch nicht verwunderlich, dass Partnerschaften und Familien, die sich durch sexuelle Orientierung und Migrationshintergrund von den Norm-BürgerInnen unterscheiden, ihre Belange erst durch neue Forderungen an das internationale Recht werden schützen können.

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