

**BEYOND EQUALITY AND NON-DISCRIMINATION:  
ESCAPING NARROW HUMAN RIGHTS FRAMINGS IN THE  
CONTEXT OF SEXUAL ORIENTATION AND GENDER  
IDENTITY**

by

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This study is dedicated to the Bulgarian LGBT community, still struggling with deep social prejudice and rejection, and to the brave activists working to bring about change.

## **Abstract**

This study focuses on two concepts in regard to the gay, lesbian, bisexual and transgender (LGBT) movement: Nancy Fraser's conceptual framework of recognition, redistribution and representation as conditions for social justice and Ronald Holzacker's three modes of interaction of LGBT civil society organisations (CSOs) with their respective political environment. Human rights framings are the link between these two differing approaches, in explaining the shift in interpretations and the development of the framing of the rights of LGBT persons in terms of human rights framings to accommodate LGBT rights claims as a legitimate human rights concern. This study aims to come to an informative conceptual model of evaluation which can serve to further the understanding of the LGBT movement's interaction and work in differing political environments in the European context. It can also be used to outline the goals and demands deemed reasonable to be pursued in each of the three outlined social settings, firmly grounded into a human rights paradigm. An attempt will be made to offer some alternatives regarding the LGBT movement in relation to human rights framings that have become somewhat traditional and rather narrow. This study aims to provide an alternative model of combining two very different fields of study in order to propose a fresh insight into a much contested subject with the view of expanding LGBT concerns into related fields of study which can prove enriching.

## **Introduction**

At the beginning, a number of issues should be clarified concerning the varying approaches to the subject at hand employed in the producing of this thesis. First and foremost, the choice of a multidisciplinary approach for the purposes of this research leads to drawing from a number of related fields in the social sciences range. In the hope of producing a mostly theoretical analysis, which aims to combine several theories in order to come to specific recommendations in the chosen field, it should be noted that it is by no means intended to trespass on fields of study that might seem competing or non-related. Rather, the purpose is to provide an innovative and informative view to the question of the LGBT<sup>1</sup> social movement in the European context and its interaction with the respective environments through the experiences of LGBT civil society organisations (CSOs). To this end, this research will not dwell into the legal matters of discrimination of LGBT citizens, nor into the specific legal provisions in the European Union that concern the protection of LGBT citizens, since this was neither intended to be a legal account nor to engage into the discussion of legal protection. Indeed, as much as the importance of legal matters is beyond doubt, the author chose to engage with the social interaction of LGBT groups with their respective political environments, in order to explore what circumstances determine these interactions and how human rights framings in the LGBT context can be employed to the utmost efficiency in order to provide for maximum impact in differing environments.

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<sup>1</sup> LGBT is the internationally recognised abbreviation for lesbian, gay, bisexual and transgender. However, a clarification needs to be made as to the usage of this term throughout this study. It has been a major concern in the course of the research at hand whether or not the use of the abbreviation LGBT leads to undue generalisation and merging of notions. However, after careful consideration the author decided to keep this term for a couple of reasons. First, engaging with other authors' work requires caution as to what notions and abbreviations they are using on the subject. The abbreviation LGBT is the one most widely used and most universally accepted. Second, the subject of this research is the LGBT movement on a whole rather than its individual elements. Indeed, the purpose of the study is not to fragment and address the four specific groups contained in the term LGBT, but rather to explore the implications for the movement on a whole. For these reasons the abbreviation LGBT is used throughout the course of the research, and it should be understood in the terms as set above.

## Structure

This thesis is structured in three chapters.

The first chapter provides the conceptual framework in which the research will be placed further on – critical theorist and political and social scientist Nancy Fraser’s theory of recognition and redistribution in the context of new social movements in their struggle for social justice. Fraser’s theory informs the research in a normative way, giving it the required theoretical grounding in order to place the LGBT social movement in a frame of needs, as to what it needs from a theoretical perspective in order to achieve social justice. Fraser’s theory was chosen to this end, for it provides a fresh and challenging point of view of much contested theories, including but not limited to identity politics and redistributive justice. Fraser’s three types of obstacles to participatory parity (an interpretative ideal of social justice in societal relations), the obstacles related to recognition, redistribution, and representation, are presented and discussed at some length in their own right before being coupled together with other concepts deemed relevant and compatible. A brief outline is made of some critique to Fraser’s concepts, which proves useful as it elaborates the framework and situates it in the analytical domain.

The second chapter takes a human rights approach on the LGBT social movement and discusses the lengthy process of framing LGBT grievances in human rights terms and the implications deriving thereof. It engages into the prominent discussion of the 1990s, amidst the „proliferation of rights claims”<sup>2</sup> among new social movements, as to whether framing LGBT grievances in human rights terms should be regarded as progress or hindrance to achieving their goals, and whether they are unduly restrictive. Along with the obstacles and challenges to adopting this approach over the years, it is shown why „LGBT rights are human rights”, and how academics and theorists alike came to this conclusion. This achievement is significant since it took a considerably longer time for both governmental and non-governmental organisations engaged in the discourse of human rights protection to come to recognise LGBT rights as a legitimate concern of

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<sup>2</sup> Holzhaecker, 2011, p. 4.



official human rights mechanisms worldwide. This process of recognition is still ongoing and lacking consensus in the international sphere.

In order to explain how LGBT rights came to be framed into human rights terms, the example of the women's movement is explored, and the many similarities to the LGBT movement outlined. Charlotte Bunch's four approaches to framing women's rights in human rights terms are deemed appropriate here, as Holz hacker also points out, and are discussed at some length. The author goes on to discuss the predominant lack of explicit references to sexuality in most internationally recognised human rights documents, evaluating whether this lack is appropriate and how it has been overcome in LGBT human rights advocacy. Chapter two ends with a brief presentation of the Yogyakarta Principles, an exemplary document which goes on to illustrate assumptions previously made concerning the intersection between LGBT rights and human rights, and the merging of the two on an expert level, albeit in a non-binding international document.

The third chapter brings the first two together in order to engage into a discussion of the three modes of interaction of LGBT civil society organisations (CSOs) with their respective environments as outlined by Holz hacker, grounded and informed theoretically through Fraser's three sets of conditions for achieving social justice, namely recognition, redistribution and representation. In analysing the two, the aim is to trace a sustainable pattern of social interaction following from the theoretical givens as outlined by Fraser and Holz hacker, in order to explore how human rights framings should be employed in each of the three modes. It is essential to stress that a merging of theories is not intended here. Instead, in fully realising the specificity of both theories in their respective domains (critical theory and sociology, political science and international relations), the aim is to show how the two can nevertheless complement each other if brought together on an analytical level. A different approach is taken to human rights norms as well. Instead of choosing to engage into the narrative of the legal framework of international human rights law, which would have indeed filled many a page but has been infinitely done before human rights interpretations in the LGBT context are explored instead through a prism of analytical tools. Their development and progress in differing contexts since the 1990s is outlined together with the emergence of

new social movements which find themselves operating in a mode far beyond some restrictive interpretations of identity politics.<sup>3</sup>

### **A note on sources**

A wide range of sources have been employed in the making of this thesis. These range from Nancy Fraser's publications on recognition, redistribution, representation and the concept of participatory parity to critique engaging with related parts of her work touched upon by the issues discussed in this research. Articles of various related authors have been touched upon, in order to further clarify and inform Fraser's theoretical concepts. On the issue of human rights framings in the context of sexuality, sources range from classic works that formed the field of sexuality and human rights as we know it today<sup>4</sup> to innovative and creative works exploring new possibilities and interpretations of framing sexual rights in general and LGBT rights in particular in the well familiar framework of international human rights.<sup>5</sup> A most structured and informative insight was provided by numerous brochures and educational materials, compiled and published by international LGBT rights organisations, such as ILGA (International Lesbian & Gay Association)<sup>6</sup>, the European FRA (Fundamental Rights Agency)<sup>7</sup>. These documents inform this research in a more empirical manner, allowing it to escape the strict framings of international human rights norms and engage into lived experiences and grievances, more suitable in the social context of the research.

The author is well aware of some significant limitations concerning the chosen approach. While it is true that the aim at hand is to propose a theoretical framework of evaluation, nevertheless the research is confined into European terms. That said, and

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<sup>3</sup> See Holzacker, 2012, pp. 43 – 44: “The modern LGBT movement in Europe has moved well beyond identity politics to demand equal rights...”

<sup>4</sup> See the works of Waldijk & Clapham (1993), Heinze (1995), Wintermute (1995), Thomas & Levin (1999), Graupner & Tahmindjis (2005) and O’Flaherty & Fisher (2008).

<sup>5</sup> See the work of Graupner (2005), Mertus (2007), Reeves (2009), Holzacker (2011), (a), (b).

<sup>6</sup> See Loudes, Christine, ‘Handbook on Observations of Pride Marches’, 2006; ILGA-Europe, ‘Prides against Prejudice: A toolkit for pride organising in a hostile environment’, 2006; Carroll, Aengus, ‘Make it work: 6 steps to effective LGBT human rights advocacy’, 2010; Quinn, Sheila, ‘Activist’s Guide to the Yogyakarta Principles’, 2010.

<sup>7</sup> “Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in the EU Member States: Summary of findings, trends, challenges and promising practices” and “Lesbian, Gay, Bisexual and Transgender (LGBT) rights in the European Union”, FRA Official Reports (European Union Agency for Fundamental Rights), available at fra.europa.eu.

similarities notwithstanding, certain issues seem to be of concern, regarding generalisation that might spring from this notion, seemingly addressing Europe as a homogeneous entity with similar problems. This is of course far from the truth. Rather, the suggested model aims at providing a valid framework for theoretical analysis of circumstances LGBT CSOs find themselves into, and the ways to approach human rights advocacy from a theoretical perspective in each given case. It is the author's hope that this theoretical perspective may serve to further clarify and inform human rights advocacy for LGBT rights on the ground, and prove useful in reality. In an attempt to further illustrate the model and ground it into specific European circumstances, three countries are briefly examined in each of the three modes of interaction of LGBT CSOs with their respective political environments. These countries are neither exhaustive nor representative; they are suggested in order to provide an illustration of how the model is to be applied in real life situations. Furthermore, the information regarding these countries has been obtained through the literature, and is not a result of empirical research; it serves to inform and illustrate. Neither the choice of countries nor their political systems or any other specific characteristics should be taken into account. The aim is to outline the overall political environment that local LGBT CSOs work in, and see how the proposed theoretical model can be employed to inform and further the goals of these CSOs.

## CHAPTER I

### **The application of Nancy Fraser's theoretical framework of redistribution, recognition and representation to the LGBT social movement.**

#### **1. New social movements and Nancy Fraser: Introduction.**

The emergence of the so called “new social movements” has been a major topic for heated discussion resulting in an ever-increasing amount of related research among social scientists ever since the 1970s. This is the time-frame characterised by the increased merging between the political and non-political spheres of social life, between civil society and politics, gradually leading to the term new social movements.<sup>8</sup> Regardless of the critique that some more or less specific aspects of the new social movements (NSM) theory has received (among which the most prominent ones are made by Nelson Pichardo and Paul Bagguley<sup>9</sup>), the core argument as outlined by Jurgen Habermas sets clear boundaries between “old politics” and “new politics”, where the former focuses primarily on economic, military and political security, whereas the latter is concerned with the improvement of the quality of life, the politics of identity and individual realisation and, last but not least, human rights. “New politics”, as expressed in the agendas of new social movements, are also specific in that they are increasingly out of reach for traditional institutional frameworks and boundaries, meaning that they do not necessarily require “official” organisation or support.<sup>10</sup>

However, the fact that the term new social movements tends to describe a gathering point of “new politics” where the economic is not the primary concern anymore does not mean that the economic aspects have been completely put aside. The challenge of

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<sup>8</sup> Offe, 1985, p. 817.

<sup>9</sup> For detailed critique of the new social movements theory, see Pichardo, Nelson A., ‘New Social Movements: A Critical Review’, pp. 411-430 in *Annual Review of Sociology*, vol. 23, 1997, and Bagguley, Paul, ‘Social Change, the Middle Class and the emergence of “New Social Movements”: A critical analysis’, pp. 26-48 in *The Sociological Review*, vol. 40, issue 1, February 1992.

<sup>10</sup> Habermas, 1981.

Nancy Fraser's theory addresses exactly this gap: her core argument is that new social movements should always be viewed from two aspects – that of recognition and that of redistribution. The third aspect, that of representation, does not appear in her work until its later developments, and will be addressed after the previous two are presented and explained.

What is more, Fraser considers that in order for social justice to be achieved, neither recognition nor redistribution alone is sufficient; both need to be addressed, and the way to achieve this is to “concentrate [...] on searching for an alternative framework that can accommodate both types of demands.”<sup>11</sup> As soon as this differentiation is set, however, the next challenge immediately becomes the question of how to combine the two. In theory and in practice, this requires an approach aimed at, theoretically, the devising of a “bivalent conception of justice that can accommodate both defensible claims for social equality and defensible claims for the recognition of difference.”<sup>12</sup> Practically, a “programmatically political orientation” is to be devised, one that integrates “the best of the politics of redistribution with the best of the politics of recognition.”<sup>13</sup> The main task at hand is to design a framework that treats redistribution and recognition as “dimensions of justice that can cut across all social movements”<sup>14</sup>, as well as a “domain across which different social movements can be ordered.”<sup>15</sup>

## **2. From communities through forging identities to social movements. Explanatory notes on the emergence of the contemporary LGBT movement.**

Today more than ever social scientists are focusing on the emergence and particularities of NSMs. Although all of these share some similar features, the LGBT social movement is the focus of this research. Hence, some explanatory notes are much needed in order to trace its theoretical origins and the factors that determine and explain it.

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<sup>11</sup> Robeyns, 2003, pp. 538 – 539.

<sup>12</sup> Fraser, 1996, p. 4.

<sup>13</sup> Idem.

<sup>14</sup> Idem.

<sup>15</sup> Blunden, 2004, p. 2.

It is worth mentioning that although gay, lesbian and queer studies in general are gaining more and more prominence in the academic sphere, these are still more mainstreamed in the United States and Western Europe, and this is especially true as far as gay communities in different contexts around the world are concerned.<sup>16</sup> As a result, in order to establish the parameters of LGBT social movements' emergence in a wider European context, including the context of Eastern Europe, this research will adopt a more universal overview. What is more, the subject of ex-communist countries' attitudes towards LGBT citizens and the changes to have taken place after the fall of the Iron curtain is a rich and dubious field of enquiry, but there is still much research to be done on this matter. It seems that narratives and highly particular personal and national accounts dominate the scene, as opposed to a more wholesome and descriptive, even comparative approach from within ex-communist countries and the region on a whole, from which LGBT scholarship can only benefit.<sup>17</sup> <sup>18</sup> Fraser addresses this change in circumstances in her *Justice Interruptus: Dilemmas of Justice in a Postsocialist Age*.<sup>19</sup>

This said, the threefold structuring of LGBT movements, which embodies community forming identity leading to movement, has been the subject of research by, among others, V. Taylor, E. Kaminski and K. Dugan.<sup>20</sup> They argue that in the LGBT context, communities construct solidarity and shared identity without which ultimately no gay and lesbian movement would exist, and they are significant both as social outlets and political entities "because they lay claim to public space and foster collective identities that challenge and redefine societal expectations and cultural norms of gender and sexuality."<sup>21</sup> The relationship between gay and lesbian communities and the gay, lesbian, bisexual and transgender movement can be a complicated one. Communities are "important antecedents of social movements".<sup>22</sup> However, as much as collective identities formed in the environment of lesbian and gay communities are crucial to the

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<sup>16</sup> Taylor, Kaminski & Dugan, 2002, p. 111.

<sup>17</sup> Roman & Takacs, 2007, pp. 8-9.

<sup>18</sup> Kulpa & Mizielińska, 2011.

<sup>19</sup> Fraser, 1997 (a).

<sup>20</sup> Taylor, Kaminski & Dugan, 2002.

<sup>21</sup> Idem, p. 99.

<sup>22</sup> Idem, p. 100.

mobilisation toward political activism, at the same time political activism itself can be the cause of fragmentation within the community, wherein not all members are willing to engage in political activity or for other reasons stray from adopting a common identity.<sup>23</sup>

As many definitions as may exist to define community (while some focus on physical space and boundaries, others assert the importance of inter-personal relationships and connections), some common elements are to be identified. These include shared identities based on same sex love and desire, albeit these are constantly shifting; distinct physical space; common cultural ideas and practices; and social networks, institutions and events.<sup>24</sup> The political and cultural environment naturally has a profound shaping role to the growth of communities and the subsequent emergence of social movements from within them.<sup>25</sup>

As much as it is beyond doubt that the movement originally emerged from among social networks, it is nevertheless a source of contested identities. Herein emerges the concept of new social movements. Whereas in the past (until the late 1970s) agenda-setting was a matter of local and community-based networks, new social and political movements are nowadays themselves becoming "the major sources of community, meaning and identity that are replacing earlier more traditional sources such as nationality and class."<sup>26</sup> What is more, the restricting nature of the model of identity politics should not be overlooked; it has been argued that the time of identity politics is over, and demands for equal rights are the cornerstone which will be shaping the LGBT movement in the future.<sup>27</sup>

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<sup>23</sup> Taylor, Kaminski & Dugan, 2002, pp. 99-100.

<sup>24</sup> Idem, p. 100.

<sup>25</sup> Idem, p. 101.

<sup>26</sup> Idem, p. 110.

<sup>27</sup> Holzacker, 2012, p. 43-44.

### **3. Scope and limitations of Nancy Fraser's conceptual framework for the purposes of the study.**

Having clarified to an extent the emergence and development of new social movements, the next step is to engage in the concept of Fraser's recognition/redistribution theory in explaining the LGBT movement. To this end some clarifications should be made and kept firmly in mind.

First and foremost, the recognition/redistribution conceptual framework will not be examined in its own right, but as far as it can be employed as a theoretical framework based on which the LGBT movement will be examined through the universal validity of human rights claims.

The model in itself is vast, as indeed it aims to accommodate an "alternative framework"<sup>28</sup> for engaging in any given situation where issues of recognition and/or redistribution arise. Hence, this research will limit the scope of the model to the case of sexual orientation and the LGBT new social movement, which means that it does not intend to engage into a critical discussion with various other theories such as the theory of redistributive justice, the political dimensions of justice and especially the concept of bivalent justice, which will require tracing the roots and origins of identity politics, together with the relation between misrecognition, capitalism and critical theory, among others pursued in Fraser's extensive research. What is more, in the second chapter the framework will expand in the attempt to accommodate human rights claims through the prism of redistribution and recognition as a form of universal justice and its implications in the LGBT movement. The related implications, possible limitations and certain benefits to be gained for the LGBT movement through human rights advocacy shall be defining in the way that Fraser's theory is to be employed.

Wherever it is deemed necessary in the course of this research, it will infringe upon other disciplines among the range of connected social sciences, as indeed it will engage on a later stage with the human rights dimension of the LGBT social movement

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<sup>28</sup> Robeyns, 2003, pp. 538-539.



discourse and its implications through Fraser's model, within the already set limitations. For the purpose of elaborated illustration, before turning to validating human rights claims in the LGBT movement through Holzacker's three modes of interaction of LGBT civil society organisations (CSOs) in chapter three, chapter two will at length engage with the very concept of framing LGBT rights in human rights terms and employing already existing and universally recognised human rights framings.

Second, Fraser's model in itself is complex, and unfolds in various layers and levels, more often than not interlinked. However, where some of the related secondary concepts fall into the scope of some of the issues described above but are deemed too far-reaching and removed, they will not be critically engaged with.

In the scope of this research Fraser's concept of "participatory parity" will be stressed on through the two necessary conditions for parity of participation, namely the objective condition and the intersubjective condition.<sup>29</sup>

Third, as far as critical engagement with Fraser's theory is concerned, a review of the literature considered to be of relevance for the study at hand will be provided, albeit in a limited manner. However, exhausting all the critical engagements with Fraser's theory or these aimed at the notions of recognition and redistribution is not intended. Indeed, critique has been made to various specific points and arguably identified weaknesses of the model that fall beyond the scope of the research at hand. As was already mentioned above, the model will be restricted in some of its representations. This does not by any means indicate that the author disagrees with any of the proposed critique and development.

Fourth, it is important to remember that Fraser's theory has been in development since the 1980s. It is impossible to trace all the stages of its development, and indeed it will be futile and counterproductive to attempt to do so in the scope of this research. The focus will be on her later works, especially but not limited to the first chapter of her

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<sup>29</sup> Blunden, 2004, p. 8.

*Justice Interruptus*<sup>30</sup>, *From Redistribution to Recognition? Dilemmas of Justice in a "Postsocialist" Age*, her *Social Justice in the Age of Identity Politics: Redistribution, Recognition and Participation*, in The Tanner Lectures on Human Values, delivered at Stanford University<sup>31</sup>, her more recent article from 2000, *Rethinking Recognition*<sup>32</sup>, and a number of interviews, such as *Recognition, Redistribution and Representation in Capitalist Global Society: An Interview with Nancy Fraser* (2004).<sup>33</sup> These works will neither be regarded nor represented in a consecutive order, but instead they will be discussed as the framework develops, regardless of their time-frame. A number of critical engagements with different aspects of Fraser's theory represent a valuable insight of her works, such as these by Ingrid Robeyns, Judith Butler, Leonard C. Feldman, Andy Blunden.

Fifth and last, more than once critique has been voiced, addressing the perceived limitations of LGBT academic studies to Western Europe and the USA. Indeed, more than once has the "East" been divided from the "West" when it comes to LGBT studies,<sup>34</sup> the purpose of this study is not to evaluate this suggestion, but further on a brief point will be made on significant gaps in the literature as far as LGBT movements in Eastern Europe are concerned.

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<sup>30</sup> Fraser, Nancy, *Justice Interruptus: Critical Reflections on the „Postsocialist” Condition*, New York: Routledge, 1997, Part One, Redistribution and Recognition, Chapter One, *From Redistribution to Recognition? Dilemmas of Justice in a "Postsocialist" Age*, pp. 11 - 41; see also *Social Justice in the Age of Identity Politics: Redistribution, Recognition and Participation*, in The Tanner Lectures on Human Values, delivered at Stanford University, April 30-May 2, 1996.

<sup>31</sup> Fraser, Nancy, *Social Justice in the Age of Identity Politics: Redistribution, Recognition and Participation*, in The Tanner Lectures on Human Values, delivered at Stanford University, April 30-May 2, 1996.

<sup>32</sup> Fraser, Nancy, 'Rethinking Recognition', in *New Left Review*, May – June 2000.

<sup>33</sup> Dahl, Stoltz & Willig, 'Recognition, Redistribution and Representation in Capitalist Global Society: An Interview with Nancy Fraser', pp. 374 – 382 in *Acta Sociologica*, vol. 47, no. 4, Dec. 2004.

<sup>34</sup> This idea has been widely discussed by Kuhar & Takacs (eds.), *Beyond the Pink Curtain: Everyday life of LGBT people in Eastern Europe*. Ljubljana: Mirovni Institut (Peace Institute), 2007.

#### **4. Misrecognition and the construction of participatory parity in Fraser's theory.**

##### **4.1. Claims for redistribution and claims for recognition: taking misrecognition out of the private sphere.**

Redistributive claims of resources and goods are by far familiar throughout history. Most major struggles in a historical aspect have taken place because of perceived social maldistribution – from rich to poor, from the North to the South, from owners to workers.<sup>35</sup> Indeed, redistributive claims once dominated the sphere of social justice. With the emergence of new social movements, however, claims for recognition became more and more widespread, up to a point that nowadays it is safe to say that both redistribution and recognition have the same place in the sphere of claims for justice, not to mention that claims for recognition are central as far as the LGBT movement is concerned.

It is impossible to proceed to one of the most important components of Fraser's theory, namely the concept of parity of participation (participatory parity), without first addressing the material construction of misrecognition in her work. Indeed, as argued by others engaging with Fraser's theory (namely Judith Butler)<sup>36</sup>, misrecognition is largely perceived through the identity model as a cultural matter and a psychological state, thus removing it promptly from the public and placing it into the private sphere.<sup>37</sup> Fraser, in contrast, argues that misrecognition does not occupy an imaginary or private space; it is "an institutionalised social relation"<sup>38</sup>, not a personal matter of self-perception of the individual. In Fraser's view, misrecognition could be reduced to a psychological state if it only meant for a person to be thought ill of or devalued in others' conscious attitudes or mental beliefs.<sup>39</sup> Instead, misrecognition is constructed in a very real, material way – it means "to be denied the status of a full partner in social

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<sup>35</sup> Fraser, 1996, p. 3.

<sup>36</sup> Fraser, 1997 (b).

<sup>37</sup> Dahl, Stoltz & Willig, 2004, p. 377.

<sup>38</sup> Fraser, 1997 (b), p. 280.

<sup>39</sup> Idem.

interaction and prevented from participating as a peer in social life – not as a consequence of a distributive inequity, but [...] of institutionalised patterns of interpretation and evaluation that constitute one as comparatively unworthy of respect and esteem.”<sup>40</sup>

What is more, the institutionalisation of such patterns in, to mention a few, law, social welfare and popular culture presents an overwhelming impediment to participating in social interaction on a par with others. Therefore Fraser convincingly argues that misrecognition always constitutes a fundamental injustice, whether or not accompanied by maldistribution, because the consequences of it have a very real dimension: the redress for it constitutes “a genuine claim for social justice.”<sup>41</sup>

It follows that as much as it could be tempting for an injustice to be labelled an “individual problem” and thus classify it as inherently out of reach to formal institutionalised mechanisms of social protection, in order to conclude whether it falls in the scope of a matter of justice it only has to be established if and when these “individual problems” accumulate into “a pattern that can be traced to a systemic cause.”<sup>42</sup> This constitutes an overwhelming criterion for identifying deeply rooted societal injustices.<sup>43</sup>

What is more, Fraser argues that maldistribution should not necessarily be present together with claims for recognition in order for the latter to constitute a genuine social injustice. The recognition paradigm targets injustices which are understood as cultural, and are rooted in “social patterns of representation, interpretation and communication.”<sup>44</sup>

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<sup>40</sup> Fraser, 1997 (b), p. 280.

<sup>41</sup> Idem, p. 281.

<sup>42</sup> Dahl, Stoltz & Willig, 2004, p. 378.

<sup>43</sup> Idem.

<sup>44</sup> Blunden, 2004, p. 3.

#### **4.2. Recognition: a matter of justice or self-realisation?**

Contrary to Butler's critique which views misrecognition as a matter of private character, it has also been argued that recognition in itself represents a necessity for the mere sake of individuals' self-realisation. Fraser points out that this cannot be valid for two reasons. The first engages a specific theory of psychology which is too far removed and dependant on too many variables. The second argument suggests that viewing misrecognition as a condition of self-realisation pre-supposes a very distinctive ethical conception of "the good life" which may or may not necessarily be shared by others.<sup>45</sup>

The point made here is doubly important. It means that the above mentioned paradox, if adopted, will make the struggle for recognition for the sake of self-realisation sectarian. It also sheds light on the possible justification of social movements' aims, which can only be achieved if their terms of argumentation are also accepted by others who do not necessarily share the same conception of "the good life", and this should be done exclusively on the basis of justice.<sup>46</sup>

#### **4.3. Parity of participation: conditions, actions and impediments.**

In themselves the notions of recognition and redistribution as already discussed above have their own connotations to be considered. Certainly, for the sake of theory each one can exist independently, and it will still be able to serve its purpose. In further chapters, the two will be artificially separated for the sake of discussing each in its own right, in relation to the respective modes of interaction of LGBT CSOs with their environments. This simplification shall be made for the purpose of contributing to the human rights discourse. Be that as it may, in order for a framework that encompasses both recognition and redistribution to be constructed, there is naturally a need for a valid model, which brings the two together and provides for a space where the two can be simultaneously evaluated and discussed.

Such a concept is Fraser's "parity of participation", or "participatory parity". As previously discussed, any factors that can be attributed either to misrecognition or

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<sup>45</sup> Blunden, 2004, p. 7.

<sup>46</sup> Idem.

maldistribution, together or separately, where the existence of neither is a prerogative for that of the other, consist an injustice.<sup>47</sup> Therefore, parity of participation is constructed as a model of evaluation – in an ideal sense, it is achieved when every individual, regardless of any discriminatory factors (such as race, sex, religion, sexual orientation etc.), can participate as a full member in social interaction, without any impeding factors springing from institutionalised relations of social subordination.<sup>48</sup>

However, it should be noted that the model of participatory parity needs not be taken as a model of society. It is a normative model, a critical ideal to be strived for, a framework showing deficits in society. Parity of participation is an inexistent “interpretative ideal of social justice”<sup>49</sup>, enabling the recognition of existing deficiencies in social participation together with the identification of impediments rooted in social relations.<sup>50</sup> It is “a measure across all claims of injustice”, creating a language in which social movements’ claims can be critically assessed in their appeal to justice.<sup>51</sup>

If parity of participation in Fraser's terms exists in the form of a normative criterion of evaluation of the validity of claims,<sup>52</sup> it follows that some conditions should exist to measure them. Fraser establishes two conditions of participatory parity which help distinguish warranted from unwarranted claims: the objective and the intersubjective condition, whereas a claim for parity of participation may be directed at the lack of one or both of these conditions. The objective condition states that the distribution of material resources should be such as to ensure equal opportunity for all for achieving participatory parity. On the other hand, the intersubjective condition requires that institutionalised patterns of cultural evaluation guarantee equal respect for all partners in social interaction, therefore ensuring equal opportunity for social participation.<sup>53</sup>

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<sup>47</sup> Fraser, 1997 (b), p. 281.

<sup>48</sup> Fraser, 2000, p. 113.

<sup>49</sup> Avendano, 2009, p. 3.

<sup>50</sup> Idem, p. 4.

<sup>51</sup> Blunden, 2004, p. 8.

<sup>52</sup> Idem, p. 7.

<sup>53</sup> Idem, p. 8.

While the conditions for parity of participation are thus clarified, the actions to be taken to secure it also take two forms. Through the paradigms of recognition and redistribution, two courses of action emerge – affirmative action and transformative action. Each offers a different approach in the attempt for remedying injustice, and they can both infringe on each other, i.e. how affirmative action for recognition can negatively affect struggles for redistribution, and vice versa, in the case of the LGBT movement in general and LGBT SCOs in particular.<sup>54</sup> Affirmative action seeks to validate, preserve and reinforce group relationships, to prevent the assimilation of minority groups from majority culture and hinder deconstruction. On the other hand, transformative strategies aim to transform and deconstruct existing power relations, to eliminate the underlying causes of differentiation.<sup>55</sup>

A note of caution: it is a fundamental misinterpretation for the cultural and the economical societal dimension to be treated as two separate spheres – each interpenetrates, modifies and instrumentalises the other. The two dimensions of justice are both required to achieve the normative model of participatory parity; they do not operate in differing domains of social life.<sup>56</sup>

#### **4.4. Structural conditions preventing equal participation: Fraser's approach to the politics of recognition in the context of the LGBT movement.**

Being an “interpretative ideal of social justice”<sup>57</sup>, parity of participation, as already stated, need not and cannot be regarded as anything more than a “critical ideal”, which enables for the revealing of existing disparities in societal participation, and most importantly, of identifying obstacles firmly rooted in social relations.<sup>58</sup> Furthermore, it is essential for the concept of participatory parity to be used as a diagnostic tool, rather than a tool of legitimisation.<sup>59</sup>

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<sup>54</sup> Blunden, 2004, p. 11.

<sup>55</sup> Idem, pp. 11-13.

<sup>56</sup> Idem, p. 10.

<sup>57</sup> Avendano, 2009, pp. 3-4.

<sup>58</sup> Idem.

<sup>59</sup> Idem.

This said, the paramount question in the context of the LGBT movement for the purposes of this research will be what exactly is needed in this case in order for status equality to be established? Apparently, this is a manifold question, closely related to affirmative and transformative policies in striving towards the participatory parity ideal. Diverging understandings of what it means to overcome misrecognition is the main reason why approaches vary. Some deem it necessary to re-affirm devalued aspects of identity (affirmative politics); in yet other cases the need may be for a social group to be unburdened of their excessive "difference" and to stress on their common humanity as a means of entitlement to certain societal recognition (transformative politics, where the thread of human rights framings can be a significant step forward); and finally, the most extreme approach would be to attempt in deconstructing the very underlying power relations of society that determine and define social relations.<sup>60</sup> The theoretical and practical implications of determining and suggesting an affirmative or a transformative course of action will be discussed in Chapter three, in the context of LGBT SCOs and their three modes of interaction with their respective political environments. Suggestions will be made in the aim to establish a valid model of application of these two types of policies in the way of making progress towards the participatory parity ideal, in the strive for social justice.

#### **4.5. Recognition, redistribution and representation: Introducing the third, political dimension of justice.**

In her later work, and especially in her article *Rethinking Recognition* in *New Left Review* from the year 2000<sup>61</sup> Fraser expands her recognition/redistribution framework to accommodate a third class of possible obstacles to participatory parity that can be called "political", as opposed to economic and cultural.<sup>62</sup> Indeed, this notion of Fraser's has been expanded and criticised in 2002 by L. C. Feldman, who argued that the incorporation of this third, political dimension of injustice into the recognition/redistribution framework is of crucial importance to the validity and

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<sup>60</sup> Dahl, Stoltz & Willig, 2004, p. 377.

<sup>61</sup> Fraser, 2000.

<sup>62</sup> Fraser, 2000, pp. 113-114.



applicability of the model and as such cannot be set aside for the sake of the previous dualist framework.<sup>63</sup> This “third dimension of justice” is only going to be considered in the research at hand so long as it applies to new social movements in general and the LGBT movement in particular and it is not going to be explained from a political science perspective. However, whereas the applicability of human rights framings in LGBT advocacy will be discussed further on, it is essential to outline the “third dimension of justice” for the reason that it will be later drawn upon for explaining and complimenting Holzacker's three modes of interaction of LGBT movements with their respective strategic environments.<sup>64</sup> Fraser's theoretical concept of representation and its derivatives, placed alongside her concepts of recognition and redistribution, will provide for the analytical background of the “three modes of interaction” model, which seems rather structural and analytical in its own right.

A note on compatibility: it is true that whereas the recognition and redistribution paradigm is applicable in the 1990s, the wide emergence of new social movements and most of all their expansion into national and transnational advocacy groups in a global context should not be thought of lightly. For this reason Holzacker's modes of interaction are situated in the environment of transnational organising. It seems only fitting that Fraser's political representation should compliment and inform this approach through a theoretical background.

That said, it is important to note that Fraser, in an interview of 2009<sup>65</sup>, almost two decades since the emergence of her dualist theory of justice, seems to renounce her early concepts: “I no longer use the dualist perspective but rather that of the „three dimensions.” This alteration to the bivalent theory was first introduced in 2000<sup>66</sup> - a possible third class of obstacles to participatory parity that derive from the political domain. As early as 2004, this approach has already been clearly outlined. Fraser justifies this shift in her thinking with the acceleration of globalisation which has

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<sup>63</sup> Feldman, 2002, p. 419.

<sup>64</sup> Holzacker, 2012.

<sup>65</sup> Avendano, 2009.

<sup>66</sup> Fraser, 2000,

fundamentally transformed the circumstances of justice, to the extent where in today's world, "national framing of political claims-making no longer goes without saying."<sup>67</sup> Indeed, as also claimed by Holzacker, albeit in the context of strategic transnational LGBT organising, social policies seem no longer to be confinable to the national context, instead surpassing boundaries and leading to transnational networking and advocacy, fuelled by a notion of social justice beyond borders. What is more, human rights seem to be the very essence of universal social justice that is being strived towards, on the transnational level.

Back to the notion of representation, it needs to be clarified where it can be accommodated, how it can be framed and where it stands in relation to the early notions of recognition and redistribution. In its core, the concept of representation provides for the problematising of governance structures and decision-making procedures; it outlines the political obstacles to justice, in contrast to the already outlined ones of cultural and economic origin.<sup>68</sup> The leading notion of the concept of representation in Fraser's theory is the question of frame, as opposed to the question about the rules of decision - making within the political community.<sup>69</sup> This falls in the realm of a "metapolitical level", in Fraser's terms.<sup>70</sup> In order to evaluate whether relations of representation, as opposed to those of redistribution and recognition, are fair, Fraser argues that not only the scale of social interaction in the "Westphalian territorial state frame"<sup>71</sup>, which is today by far exceeded, should be considered. She asserts that it is of bigger importance to engage with the social relations positioned on the transnational or global level of modern social and political interaction.<sup>72</sup> Related struggles for social justice require decision - making in a different frame; Fraser argues that in this case, the using of "the wrong frame" brings about the political element of injustice, where the issue at hand is

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<sup>67</sup> Dahl, Stoltz & Willig, 2004, p. 380.

<sup>68</sup> Idem.

<sup>69</sup> Liakova, 2007, p. 4.

<sup>70</sup> Idem.

<sup>71</sup> Dahl, Stoltz & Willig, 2004, p. 380.

<sup>72</sup> Liakova, 2007, p. 4.

who is represented.<sup>73</sup> In relation to her status groups, defined by the relations of recognition and redistribution, representation comes as the supranational frame, one that encompasses claims for social justice on a transnational, global level, making them interact and inform one another in the strive towards social justice.

Therefore, for the purpose of the research at hand, the author shall engage with Fraser's notion of representation in its own right, within its overarching frame of political issues, together with Holzacker's third, and last mode of interaction of LGBT CSOs with their respective social and political environments – the mode of high-profile politics, where the issue of transnational activism acquires a whole new set of perspectives for advocacy and coalition – building. The informative, theoretical value of representation is deemed to be of importance for the enrichment of this model.

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<sup>73</sup> Liakova, 2007, p. 4.

## CHAPTER II

### **Human rights framings, sexual rights and suspect classifications.**

#### **1. Human rights framings in the LGBT context – progress or hindrance?**

Before attempting to address and discuss human rights framings in the context of the LGBT movement in general and LGBT civil society organisations in particular, it is essential to outline what opposition there has been to the inclusion of human rights framings in LGBT advocacy and why this is so. Furthermore, varying approaches and human rights interpretations should be presented, on account of how LGBT rights claims can find and have found their emanation in human rights framings.

As was already suggested, this research is hindered by the fact that as far as generalising and establishing variables and norms in the context of the LGBT movement is concerned, academic publications from the United States still largely prevail in literature. With the suggestion that theories considered valid in the US context are by far questionable in Europe, but nevertheless provide valuable insights, this short introduction will engage with Julie Mertus' argument for the rejection of human rights framings in LGBT advocacy (in the US).<sup>74</sup>

According to Mertus, "framing a cause in human rights terms can be an effective way of claiming the moral high ground and of asserting affinity with others throughout the world who seek to condemn human wrongs and promote human dignity."<sup>75</sup> The argument continues by claiming that such framings can be viewed as "unduly restrictive and even detrimental"<sup>76</sup>, derived from a detailed historical review of LGBT organising in the US and the reducing of LGBT rights claims to a civil rights frame. Speaking in historical terms, it is clear that as far back as the 1960s and the 1970s with the transformation from "old" to "new" social movements the difference between these in the US and in (Western) Europe became apparent. In the US, it triggered the emergence

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<sup>74</sup> Mertus, 2007.

<sup>75</sup> Mertus, 2007, p. 1036.

<sup>76</sup> Idem.

of the “resource-mobilization paradigm”; in Western Europe, the “identity-oriented paradigm became the dominant approach.”<sup>77</sup>

It seems helpful to attempt placing Mertus’ concerns in the framework of Fraser’s two courses of action towards participatory parity – the affirmative and the transformative politics.<sup>78</sup> In this aspect, Mertus is concerned that human rights framings in the context of the LGBT movement present an account of affirmative politics, seeking inclusion in existing policies framed in other, differing contexts (most notably, this of the civil rights movement in the US). Even though this approach might apply to the vast centre of the LGBT movement, it does not appeal to more radical elements, seeking to establish equality through a model of deconstructive policies in order to press for “new priorities in re-imagined political and social landscapes.”<sup>79</sup> The benefits and hindrance in using affirmative and transformative politics can be contested by various groups, but this can by no means be the reason why human rights framings should be rejected altogether as useful in LGBT rights advocacy, albeit adopting a sometimes generalising approach.

Furthermore, Mertus’ main argument lies in identity being recognised as the principal organising factor in the LGBT context, where human rights framings can prove restrictive in that a shared identity is by far not common among the LGBT movement. This will be so, if we consider that the LGBT movement is organised solely around a shared identity. This argument should come with some doubt, though. “The attempt to frame LGBT concerns in human rights terms has largely been centred on sexual identity categories, without reflecting the self-critique of identity within LGBT communities that reveal LGBT categories as socially constructed and contested.”<sup>80</sup> Certainly the problem of reification, as identified by Fraser, which consists of over-simplifying group identities in order to present them as a core concept, is not to be neglected.<sup>81</sup> But if we stick to Fraser’s framings and concepts, we need not accept Mertus’ claims of the need to ground human rights framings into sexual identity categories; rather, we could

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<sup>77</sup> Cohen, 1985, p. 673.

<sup>78</sup> Blunden, 2004, p. 10.

<sup>79</sup> Mertus, 2007, p. 1064.

<sup>80</sup> Mertus, 2007, p. 1063.

<sup>81</sup> Blunden, 2004, p. 15.

ground them in status groups, defined by the relations of recognition.<sup>82</sup> If the collective mode is rooted in the “status order of society”, any injustice suffered automatically becomes a matter of recognition, subject to an authoritative construction of social norms.<sup>83</sup> Therefore, identity should not necessarily be the main organising factor; social justice, striving to eliminate wrongs caused by the artificial diminishment of social groups, or status order groups, should be. Fraser is firm on the assertion that in her work, the “model of status” is an alternative to the “identity model”; in its origins, the status model was developed precisely in order to avoid “the authoritarian reification and conformist logic of the identity model.”<sup>84</sup>

The true matter of concern, according to Fraser, should not be the “demand for recognition of a group’s specific identity, but the demand for recognition of people’s standing as full partners in social interaction, able to participate as peers with others in social life.”<sup>85</sup>

In the context of Europe, where such strict historical progress and structure of LGBT organising as in the US can hardly be traced, the LGBT movement can only benefit from the employment of advocacy in human rights terms. What is more, the European Convention on Human Rights (the ECHR, formally the Convention for the Protection of Human Rights and Fundamental Freedoms), an instrument of the Council of Europe, and, more recently, the European Charter of Fundamental Rights (CFR), which became legally binding after the entering into force of the Treaty of Lisbon in 2009, are more than prominent and most importantly legally enforceable documents through which human rights claims in the LGBT context can be pursued employing more than mere “moral high ground”<sup>86</sup> claims.

The far more pressing questions at hand, however, are in what manner should the “gay rights are human rights” claim be pursued; how should human rights norms be interpreted where sexual orientation is not specifically stated as a suspect classification;

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<sup>82</sup> Fraser, 1996, p. 6.

<sup>83</sup> *Idem*, p. 13.

<sup>84</sup> Avendano, 2009, pp. 4-5.

<sup>85</sup> Dahl, Stoltz & Willig, 2004, pp. 376-377.

<sup>86</sup> Mertus, 2007, p. 1036.

how far the emergence of new human rights interpretations relevant to LGBT has come, and what is yet to be achieved; what are the general modes of interaction of LGBT organisations with society; and how can goals be defined by LGBT activists, with the employment of human rights norms. This chapter hopes to shed light on these questions through the already discussed and set theories, interpretations and terminology, so as to be able to proceed in the third chapter with establishing a model of interpretation using Holz hacker's three modes of interaction of LGBT CSOs with their political environments together with Fraser's conditions of social justice. It will conclude with a brief engagement with the Yogyakarta Principles in order to further illustrate the way LGBT concerns are being framed into a working framework in accordance with international human rights.

## **2. „Gay rights are human rights”.**

It is all good and well to claim that gay rights are human rights in their nature, but one should be careful to give this claim more substantial support than some “contested” human rights norms receive by their opponents.

### **2.1. Framing LGBT grievances in human rights terms.**

It was concluded above that human rights framings certainly do have a place in the LGBT rights discourse. The next step is to explain how human rights grievances are traditionally framed in human rights terms in the context of new social movements. To this end, a parallel will be made with the women's movement, as suggested by Charlotte Bunch in her work “Women's Rights as Human Rights: Toward a Re-Vision of Human Rights”.<sup>87</sup>

Indeed, framing a grievance of a kind that affects a specific social status group in the terms of human rights gives it legitimacy and visibility. A very distinctive example in this case is the women's movement. In the 1990s, Bunch argues that human rights mechanisms still widely fail to recognise women's rights as a legitimate human rights concern. She outlines and explores a number of arguments produced in various contexts in an attempt to justify why women's concerns do not have a place in human rights

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<sup>87</sup> Bunch, 1990.

framings. Trivialising sex discrimination and diminishing its importance, claiming that it should be addressed after “more serious” issues of human survival are given attention first is one of the predominant justifications. Another one places abuse of women into the private sphere, individualising it and most of all, categorising it as a distinct “cultural phenomenon”. Some express concern that including women’s rights on the human rights agenda can overwhelm other, “more important” human rights issues. And finally, claiming that “women’s rights are not human rights per se”<sup>88</sup> comes as an argument devoid of any deep substance but nevertheless rather prominent in the early 1990s.

Such an approach is even more unacceptable and ill-founded today than it was back in the 1990s. Bunch’s primary claim is the argument against the restricting and narrowing of the definition of human rights so as to exclusively accommodate claims viewed as a “matter of state violation of civil and political liberties”<sup>89</sup>, leading to the issue of human rights definitions not as a merely semantic problem, but to its very real “practical policy consequences.”<sup>90</sup> What is more, she gives a reminder that in its nature, the concept of human rights is not “static or the property of any given group; rather, its meaning expands as people re-conceive of their needs and hopes in relation to it.”<sup>91</sup>

Bunch proposes four basic practical approaches to linking women’s rights to human rights, which Ronald Holzhaacker in turn explores as a basis to illustrate how this same approach applies in a similar fashion to LGBT rights. Indeed, the parallel here is evident: as diminished status groups, both female citizens and LGBT citizens seek to dress their claims in human rights terms in order to achieve wider visibility, lobby for legal change and strive towards favorable social transformation through “one of the few moral visions ascribed to internationally.”<sup>92</sup>

As her four basic approaches, Bunch outlines: 1.) Placing women’s rights in the first generation of rights – civil and political rights; 2.) Viewing women’s rights as socio-

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<sup>88</sup> Bunch, 1990, p. 488.

<sup>89</sup> Idem, p. 489.

<sup>90</sup> Idem, p. 492.

<sup>91</sup> Idem, p. 487.

<sup>92</sup> Bunch, 1990, p. 486.



economic rights; 3.) Placing women's rights in light of the law – making existing legal and political institutions focus on women; and 4.) Transforming human rights concepts from a feminist view.<sup>93</sup>

Employing these same four basic approaches to the LGBT movement is more than appropriate and justified, as Holzacker convincingly shows. It is beyond doubt that the first one, focusing on civil and political rights is important in terms of organising an LGBT rights movement and claiming the right to assembly and free speech, and the second one, with its focus on social and economic rights may be useful together with the previous one, claiming access to goods provided by the state in terms of marriage, insurance benefits and child-rearing and adoption, just as in non-discrimination in employment.<sup>94</sup>

The third approach is the most significant one to the purpose of this chapter, as indeed it is directly related to re-defining traditional human rights concepts to include LGBT rights. It is one of great interest among LGBT activists, and continuous lobbying is taking place around the world for inclusion of LGBT concerns in human rights documents, both on the political and the non-political level. The third and fourth approaches are linked closely together, since both are concerned with “using existing institutions to expand the interpretation of human rights treaties.”<sup>95</sup> One may even go as far as suggesting that the proposed “feminist transformation of human rights” can find its parallel in the concepts of Queer theory, aiming at re-structuring existing patterns of social subordination and deconstructing and re-viewing them through a “queer” perspective. That to this end a transformative approach to societal relations, as outlined by Fraser, need be adopted, is a notion not to be thought of lightly.

## **2.2. The question of applicability – European human rights documents and suspect classifications. Contested categories, contested rights?**

Before advancing on to address the question of how human rights framings have shifted in their proper interpretations in order to gradually accommodate LGBT-related human

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<sup>93</sup> Idem, p. 493; see also Holzacker, 2011, p. 7.

<sup>94</sup> Holzacker, 2011, p. 7.

<sup>95</sup> Idem, p. 7.

rights claims, it is important to understand whether, and where, LGBT rights claims are grounded in official human rights documents. This question has been the subject of much extensive research, both in Europe and in the United States; some authors claim that LGBT rights should fall into all general anti-discrimination clauses, such as, for example, is provided for in Article 14 of the ECHR. There it is stated that “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, *or other status*.”<sup>96</sup> The mention here of “other status”, it is argued, is well-suited to accommodate LGBT rights claims.

Other authors, like Eric Heinze,<sup>97</sup> claim that sexual orientation should be contained in the mere mentioning of “sex” as a suspect classification, where “sex” should not be interpreted as only referring to male or female: “[...] “sex” need not be reduced to “gender” ... [or] to differences between men and women, ... or to discrimination by men against women. Rather, it could include any kind of discrimination arising from sexuality, sexual behaviour or sexual norms.”<sup>98</sup>

Still others argue for the explicit inclusion of “sexual orientation” as a suspect classification in official human rights documents. Specific documents have been created to this end, but mainstreaming explicit references to LGBT rights in human rights documents still has a lot of opponents. In this context, the European Union Agency for Fundamental Rights (FRA) has achieved definite progress since its establishment in 2007 as an advisory body of the European Union, by preparing detailed factsheets on homophobia in the EU and designing toolkits to be specifically used by EU institutions and officials in their daily proceedings, concerning the rights of LGBT citizens.<sup>99</sup>

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<sup>96</sup> ECHR, Article 14.

<sup>97</sup> Heinze, 1995.

<sup>98</sup> Heinze, 1995, p. 217, quoted in Reeves, 2009, p. 237.

<sup>99</sup> See “Toolkit to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual and Transgender (LGBT) People”, Brussels, 17 June 2010, 11179/10, COHOM 162, PESC 804, and “Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in the EU Member States: Summary of findings, trends, challenges and promising practices”, FRA (European Union Agency for Fundamental Rights), 2010, report available online at fra.europa.eu (consulted on 6 November 2011).

For the purposes and in the scope of this research, the suggestions set forth by Helmut Graupner in his article *Sexuality and Human Rights in Europe*<sup>100</sup> are regarded as most insightful and enriching. Conceding that “high-level protection” does generally exist in Europe as far as LGBT rights are concerned, Graupner still claims that this protection remains limited, and “seems to be granted only in areas where it corresponds with public attitudes and social developments.”<sup>101</sup> What is more, he states that it is usually not on the national level where this protection can be found – it is granted nearly exclusively by the Strasbourg Court (the European Court of Human Rights in Strasbourg), whose case-law is ever so often weakened by inconsistency.<sup>102</sup>

Without suggesting that LGBT rights protection can be found exclusively in the case-law of the Court, it is still nonetheless apparent that that is where this protection is first and foremost enforced. “Written human rights law is scanty when it comes to sexuality,”<sup>103</sup> and indeed “new references to sexuality” can be seen as rather narrow and limited, as will be shown in the following part of this chapter.

### **2.3. Sexuality and the framing of “new human rights interpretations”.**

In the context of European human rights documents, the term “sexual orientation” or “sexual identity” is usually “intended to refer to [a dual frame of] homo – and heterosexual orientation only.”<sup>104</sup> Regarding terminology, a short note is in order here, to avoid unintended mistaking of notions. According to A. R. Reeves, sexual orientation refers to “an enduring pattern of emotional, romantic and/or sexual attractions to men, women or both sexes.”<sup>105</sup> Gender identity, on the other hand, is described as “[...] the psychological sense of being male or female”<sup>106</sup>, which is different from “sex” - a person’s “biological status as male or female.”<sup>107</sup> Therefore, according to the terminology provided by A. R. Reeves, the term “sexual identity” is a construct

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<sup>100</sup> Graupner, 2005.

<sup>101</sup> Idem, p. 108.

<sup>102</sup> Idem.

<sup>103</sup> Graupner, 2005, p. 109.

<sup>104</sup> Graupner, 2005, p. 109.

<sup>105</sup> Reeves, 2009, p. 218.

<sup>106</sup> Idem.

<sup>107</sup> Idem.

comprised of all three – sexual orientation, gender identity and a person’s physical sex.<sup>108</sup>

Bearing this construction in mind, the limitations of current (European) human rights mechanisms become apparent. Graupner argues that one of the gravest errors is that, references to “sexual identity” are usually made almost exclusively in the context of equality rights.<sup>109</sup> As we have already seen, defining LGBT rights in terms of first-generation civil and political rights in Charlotte Bunch’s framework of the four basic approaches provides the means and context to achieve primary LGBT organising through freedom of speech, assembly and association.<sup>110</sup> That also means that such constitutional provisions do in fact guarantee equal treatment of homo- and heterosexual persons and behaviour, but mention nothing of the regulation of sexuality and sexual behaviour “that can legitimately be made in general.”<sup>111</sup> Therefore, rights constructed in this way do not protect against any form of undue interference with sexual life per se, they merely prescribe the same level of eventual burden that homo- and heterosexual citizens might experience due to such interference.<sup>112</sup> However, this conclusion does not imply that the sexual sphere is in fact excluded from written human rights law; “as a matter of course fundamental rights do cover sexual life.”<sup>113</sup> The lack of an express emphasis is the true issue.

Having discussed the scope and issues that sexual rights face in being formulated and accepted on a par with other human rights, the question how far the emergence of new human rights interpretations relevant to LGBT issues has come and what is yet to be achieved becomes paramount.

The emergence of new human rights interpretations followed together with the “proliferation of rights claims in the 1990s.”<sup>114</sup> The benefit of reframing a specific issue

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<sup>108</sup> *Idem*, pp. 218-219.

<sup>109</sup> Graupner, 2005, pp. 109-110.

<sup>110</sup> See Bunch, 1990, p. 493, and Holzacker, 2011, p. 7.

<sup>111</sup> Graupner, 2005, pp. 109-110.

<sup>112</sup> *Idem*.

<sup>113</sup> *Idem*, p. 110.

<sup>114</sup> Holzacker, 2011, p. 4.

within the “broader rubric of existing human rights norms”<sup>115</sup> is the granting of access to an already pre-existing framework that the United Nations and other international actors are used to working within, like gender and racial discrimination.<sup>116</sup> As was already mentioned, the four approaches and the historic article of Charlotte Bunch in 1990, framing women’s rights in the wider frame of shifting human rights interpretations set forth an overwhelming example of how to use the “living documents”<sup>117</sup> that human rights documents represent, instead of confining rights to an exclusive group of people subject to specific characteristics.

The development of new human rights interpretations has greatly benefited from academic writing. In fact, in the 1990s academics led the way to theorising about gay and lesbian rights in terms of human rights, instead of employing earlier concepts of gay liberation and the civil rights movement in explaining the emergence and development of LGBT rights claims and relevant movements that embrace them.<sup>118</sup> The development of the LGBT human rights frame was coined by, among others, Eric Heinze, with his essay on sexual orientation as a human right in international human rights law.<sup>119</sup> The focus was on defining certain rights that can be seen as particularly useful to be employed in condemning discrimination on the basis of sexual orientation, such as the rights to privacy, speech, expression, equality and association.<sup>120</sup> Robert Wintermute took a comparative constitutional approach in 1995, discussing human rights and sexual orientation in the context of the US Constitution, the European Convention and the Canadian Charter.<sup>121</sup> Kees Waaldijk and Andrew Clapham produced one of the first extensive accounts of LGBT citizens’ situation in member states of the European Union in their *Homosexuality: An European Community Issue – Essays on Lesbian and Gay*

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<sup>115</sup> Idem, p. 5.

<sup>116</sup> Idem.

<sup>117</sup> The term “living document” was first used by United Nations High Commissioner for Human Rights Mary Robinson regarding the Universal Declaration of Human Rights and has since been largely quoted, as indeed it captures the very essence of human rights documents. See Robinson, Mary, ‘The Universal Declaration: a living document’, pp. 117-120 in *Australian Journal of International Affairs*, vol. 52, issue 2, 1998.

<sup>118</sup> Holzacker, 2011, p. 2 and p. 8.

<sup>119</sup> See Heinze, 1995.

<sup>120</sup> See Heinze, 1995, quoted in Holzacker, 2011, p. 8.

<sup>121</sup> See Wintermute, 1995, quoted in Holzacker, 2011, p. 8.

*Rights in European Law and Policy* in 1993.<sup>122</sup> In 1999, Laurence Thomas and Michael Levin viewed the issue of homosexuality in state policy from the philosophical perspective<sup>123</sup>, and as recently as 2005, Helmut Graupner and Phillip Tahmindjis' *Sexuality & Human Rights*<sup>124</sup> comes as a well-overdue account on how the two interact and intertwine in the context of current human rights interpretations. From this short overview it is clear how progress has been made from the general to the specific, from cautious framings to urgent demands for equal rights and finally, social justice.

However, these advances have only scratched the surface. The containment of explicit prohibitions of discrimination on the ground of sexual orientation in human rights documents is the change that is still expected. Michael Goodheart argues as recently as 2009 that such progress will still be hard to come by for some time to come, "because [...] prejudices against people with different sexual identities are deeply culturally embedded and reinforced by fundamentalist strains of traditional religions."<sup>125</sup> It is still to be seen how effective the human rights framework will prove to be in the long term for LGBT advocacy. However, the idea that framing LGBT citizens' grievances in human rights terms is a winning strategy and a immense leap forward from the times of the gay liberation and civil rights movements, albeit under certain conditions, is a leading notion throughout this work.

Briefly returning to Fraser's argument in favor of adopting a social justice approach for status order groups as an alternative to the rather restrictive "identity model"<sup>126</sup> is the key to explaining why such a shift is beneficial. Earlier pre-new social movements organising as seen in the gay liberation movement and the civil rights movement is always grouped around a shared identity. Adopting the human rights approach to LGBT rights, however, is a genuine claim for social justice on account of a shared notion of humanity rather than putting a stress on difference through the restrictive notions of a necessarily shared identity. The benefits from this shift for LGBT political organising have been numerous.

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<sup>122</sup> See Waaldijk & Clapham, 1993, quoted in Holzacker, 2011, p. 8.

<sup>123</sup> See Thomas & Levin, 1999, quoted in Holzacker, 2011, p. 9.

<sup>124</sup> See Graupner & Tahmindjis, 2005, quoted in Holzacker, 2011, p. 9.

<sup>125</sup> See Goodheart, 2009, p. 375, quoted in Holzacker, 2011, p. 9.

<sup>126</sup> Avendano, 2009, pp. 4-5.

### **3. The Yogyakarta Principles: an exemplary document in bringing together International Human Rights Law and LGBT rights on an expert level.**

It seems appropriate to illustrate the theories and concepts presented above with a short overview of the Yogyakarta Principles on the Application of Human Rights Law in Relation to Sexual Orientation and Gender Identity (hereafter referred to as “the Yogyakarta Principles” or “the Principles”), launched by an international panel of experts on human rights law, sexual orientation and gender identity in 2007. The inclusion of a short discussion on the Principles is deemed to be informative in the context of what progress has been achieved regarding LGBT rights and human rights interpretations, an issue still frowned upon even at the highest levels of international policy-making. Indeed, the numerous attempts to diminish or “disqualify” LGBT rights as an “appropriate” and, more importantly, legitimate human rights concern due to the lack of consent among the international community is a sad notion, and it has given much strain to the panel of international experts charged with the task of drafting the Principles.

The Principles are intended as a “coherent and comprehensive identification of the obligation of States to respect, protect and fulfil the human rights of all persons regardless of their sexual orientation or gender identity.”<sup>127</sup> They have a tri-partite function; first, they should constitute a “mapping” of relevant human rights violations, experienced by individuals due to their real or perceived sexual orientation or gender identity; second, the attempt to clarify and articulate in a clear and precise manner the application of international human rights law in such instances; and third, to further clarify and spell out the nature of states’ obligations as to the implementation of relevant human rights norms.<sup>128</sup> It goes without saying that in their nature, the Yogyakarta Principles do not constitute an invention of new human rights norms under international law; rather, they represent a contextual document, wherein already existing human rights norms are explained and elaborated with relation to people of diverse sexual orientations or gender identities.

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<sup>127</sup> O’Flaherty & Fisher, 2008, p. 233.

<sup>128</sup> *Idem.*

Since their launch, the Principles have been subjected to considerable international attention, on the part of States, UN bodies and civil society alike.<sup>129</sup> In 29 principles, where each one represents a statement of international human rights law together with its further elaboration, the document represents by far the most contextual and precise approach to the issue at hand.<sup>130</sup>

Without intending to go into further deliberation of the Yogyakarta Principles, as indeed presenting them was intended in order to illustrate a point, a few notions as previously discussed become apparent. First of all, it should be kept in mind that the Principles are not legally binding, which means that they are intended to serve as guidelines for further development of policies and norms at the national and the international level. Second, they are the most precise and elaborate document of its kind as yet, showing clear development and improvement in attitudes towards LGBT citizens and their rights. Third, by re-establishing already existing rights and putting them in the LGBT context, the Principles provide much-needed guidelines for advocacy and lobbying, being more and more employed by activists and policy-makers alike around the world.

The framing of the Yogyakarta Principles illustrates the ever-shifting nature and the very essence of human rights interpretations. As indeed existing human rights documents can be contextualised in such a way as to encompass exclusively the rights of LGBT people through long-existing norms of international law, the Principles seem to be the emanation of the fourth, and last, of Charlotte Bunch's four basic approaches as seen in the context of LGBT rights by Holzacker – the continued use of “existing institutions to expand the interpretation of human rights treaties.”<sup>131</sup>

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<sup>129</sup> *Idem*, p. 207.

<sup>130</sup> *Idem*, pp. 234-235.

<sup>131</sup> Holzacker, 2011, p. 7.



## **CHAPTER III**

### **Modes of interaction, participatory parity and human rights framings.**

#### **How Nancy Fraser's theory of social justice can inform and enrich Ronald Holz hacker's three modes of interaction of LGBT CSOs with their political environment?**

While exploring in some depth Nancy Fraser's theory and the conditions and impediments to human rights framings in the LGBT context, it might seem to be doubtful as to how these two concepts can come together in order to present some clarifications on LGBT advocacy in human rights terms. The third chapter aims to engage with the previous two chapters through the prism of three differing approaches. First, the context of Pride parade as a focal point will be shortly outlined, in order to place CSOs as well as social movements on a common ground where they can be addressed and explored. Second, Holz hacker's three modes of interaction between civil society organisations (CSOs) and their political environment will be presented. Third, a resume will be offered of Fraser's three dimensions of social justice – recognition, redistribution and representation, and a parallel will be drawn as to how the author perceives the three modes of interaction of CSOs to correspond to the three dimensions of social justice. It is important to note that this by no means represents a merging of these two approaches, as will be duly explained and limitations will be outlined. Fourth, an example of national CSOs in three European countries which find themselves in each of the three distinctive modes of interaction will be outlined in order to illustrate in a realistic way the implications of the suggested theoretical model. Fifth, a number of suggestions shall be made as to how to more efficiently employ human rights advocacy in the LGBT context in their respective differing political and social environments.

### **1. The Pride event – creating and uniting social capital.**

The context of the Pride parade is where social movements, CSOs and other social actors concerned with LGBT rights find their emanation. In itself, the Pride can range from a full-out celebration in Western European cities to small-scale events, often banned by local authorities and threatened by anti-LGBT groups in some Central and East European countries. Be that as it may, in its core the Pride event is important “for broad social movements to create “social capital”;<sup>132</sup> the vast importance of this “social capital” for a movement comes both in terms of creating “individual identity and “bonding” within the community, as well as reaching out and “bridging” to the broader society.<sup>133</sup> Pride events have long become an integral part of the Western European movement for equality for LGBT citizens and is rapidly spreading across the continent in recent years, taking place nowadays even in countries where high resistance and opposition has been observed in the very recent past. “Groups want to show their strength, show that they are visible and proud, and proclaim their demands of equality toward state and society.”<sup>134</sup> Ever increasing transnational cooperation and support is not to be regarded lightly when it comes to the proliferation of Pride events all over Europe in recent years.

Holzacker proceeds to outline the goals that these groups stand for and defend together with the demands they are putting forth. These naturally vary from country to country and depend widely on the political environment CSOs find themselves into, but Holzacker outlines them as follows: “social acceptance, new laws to ensure equality and non-discrimination, action against hate crimes, and increasingly for state recognised same-sex partnerships or the right to marriage.”<sup>135</sup> These demands also correspond to the three modes of interaction, as they indicate the level of development and the growth in demands as basic goals are reached, thus clearing the way for more advanced development.

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<sup>132</sup> Putnam, 2000, quoted in Holzacker, 2012, p. 24.

<sup>133</sup> Holzacker, 2012, p. 24.

<sup>134</sup> Idem.

<sup>135</sup> Holzacker, 2012, p. 24.

Large public manifestations are a crucial part of LGBT visibility and demands for social attention, but they are by far not the only strategies pursued by LGBT CSOs across Europe “as the institutional embodiment of a broader social movement.”<sup>136</sup> Other possible strategies pursued by these groups may include communication with the broader public through campaigns, artistic displays etc., the formations of domestic unions with other CSOs or labour unions, lobbying of government officials and transnational reach-out to similar groups in other countries, both at the EU level and beyond.<sup>137</sup> In the case of LGBT CSOs across Europe, they face “various degrees of conflict and opposition to their claims for equality”, and their sought type of interest is more one of universal nature, “a public good based on moral claims of equality.”<sup>138</sup> Holz hacker goes on to frame three distinctive modes of interaction of CSOs according to the specific political environments in which they operate, an approach that is infinitely useful in outlining achievements, structuring future goals and ways to act towards them, and forming useful coalitions with other concerned actors on the national and transnational scale.

## **2. The three modes of interaction between CSOs and their respective political environment.**

In his research Holz hacker outlines three very distinctive modes of interaction between CSOs and their respective political environment. These are termed morality politics, incremental change and high-profile politics. The three groups have been identified through a number of criteria, the most general one being the nature of the environment in which CSOs make their claims for equality for LGBT citizens. This environment includes all social levels of interaction, from civil society to high-level politics and religious groups and the overall prevailing moods in a given society towards LGBT rights claims. The concepts of morality politics and incremental change as modes of interaction of CSOs have been outlined earlier in the literature, in the work of Haider-Markel and Meier in 1996.<sup>139</sup> Holz hacker expands and enriches the two existing models

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<sup>136</sup> Idem.

<sup>137</sup> Idem.

<sup>138</sup> Idem, p. 25.

<sup>139</sup> See Haider-Markel & Meier, 1996.

in order to accommodate current realities and outline the emergence of his own contribution – the concept of high-profile politics, the circumstances for which have been inexistent in the context of the mid 1990s when the other two were coined. Indeed, as will be shown later on, high-profile politics mode has been made possible only in recent years, with the important advances made in the LGBT rights context in Europe.

Together with the outlining of the respective characteristics of each of the three modes of interaction of LGBT CSOs with their political environments, a major concern was whether or not specific, by-country examples will or will not serve to further enable to comprehend and underline the suggestions made by the adopted theoretical approach. It is the author's opinion that in order to better illustrate the suggestions made previously, such an approach might be useful. This is why this research shall engage with country-specific examples together with each of the three modes, and the countries chosen for this are Romania, Austria and Norway. These are seen as corresponding to the three modes respectively: morality politics, incremental change and high-profile politics. Indeed, a few clarifications need to be made first as to the limitations of this approach.

First, the data and information that will be presented is not the result of the author's own empirical work. Rather, these are taken from *The Greenwood Encyclopedia of LGBT Issues Worldwide*<sup>140</sup>. As such, the data need not be explained or discussed in its own right. The purpose is to apply the conclusions made above and test the application of the suggested model of evaluation for the appropriateness of human rights framings in each of the three modes of interaction. To this end, the data on the sample countries will be presented only as much as it is relative to the issues at hand (issues such as health, violence, religion and education, among others, will not be discussed, since the focus here is on community interaction and political environment).

Second, the three countries were chosen for a number of reasons, none of which need be regarded as selective over others. The reason for this choice is the fact that these three countries find themselves in a clear-cut way in the three modes of interaction according to Holzacker. It was the author's intent to illustrate the dynamics of LGBT CSOs and

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<sup>140</sup> Stewart, 2010.

their political environments, not to engage into the discussion of progress or the lack thereof in European countries as far as LGBT issues are concerned. Two of the countries, Romania and Austria, are members of the European Union; Norway is not, but is nevertheless considered a relevant and appropriate example. It must be admitted that an attempt was made at a relatively fair geographical representation, with Norway one of the Scandinavian countries, Austria lying in the centre of Europe and Romania belonging to the Balkans. Nevertheless, none of the connotations attached to any of these regions will be taken into consideration. The stress will be put on the country's CSO dynamics and the challenges they face in the terms set by the respective modes of interaction as were described above.

### **2.1. Morality politics.**

What Holzacker labels morality politics<sup>141</sup> in the context of the LGBT CSOs, the first of his three modes of interaction, has been previously defined by Haider-Markel and Meier as a process very much resembling that of redistributive politics, although the good at hand here is values, not income or other material goods.<sup>142</sup> Morality politics mode has at its core a highly opposing and even hostile society and involves “highly salient issues with two competing coalitions often formed around religious beliefs or partisanship.”<sup>143</sup> Here both political elites and public opinion tend to be disapproving or hostile towards LGBT rights claims. As the name already shows, much of this mode revolves around claims of “morality”, be it through religious rhetoric or overall societal claims of “traditional morals”, often coupled with the notions of “traditional family values.”

This mode is also characterised by few inside coalitions coupled with large external support on the European and global levels. Events held in these circumstances will often be low-key, widely if not exclusively externally sponsored and more often than not framing LGBT rights concerns together with other, more “acceptable” demands in the respective social context (such as women's rights or the rights of disabled persons). Any full-out events, such as the Pride parade, will be more of a protest in nature, where

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<sup>141</sup> See also Schattschneider, 1960, and Haider-Markel & Meier, 1996.

<sup>142</sup> Haider-Markel & Meier, 1996, p. 332.

<sup>143</sup> Idem.

confrontations with government officials and local authorities are also likely. As far as transnational activities in morality politics mode are concerned, those tend to focus on the domestic struggle, while both ideas for action and advocacy together with resources are widely imported. Reaching out to similar groups on the European and global level is particularly important for the boost of confidence in domestic actions. Change in legislation is often the most pressing goal of CSOs operating in the context of morality politics.

### **2.1.1. Romanian LGBT CSO “Accept” in morality politics mode of interaction.**

Romania is one of the two youngest member states of the European Union together with Bulgaria (since 2007). Romania is placed firmly into morality politics mode, since official sources claim it to be “one of the most homophobic countries in Europe”<sup>144</sup>. This imminently leads to “an adverse social climate translating into a weak LGBT subculture and a poor mobilisation around LGBT rights”<sup>145</sup>, and, on the whole, represents “one of the well-known examples of institutionalised discrimination and violence against homosexuals.”<sup>146</sup>

Albeit being a secular state, the Romanian Orthodox Church still retains a special place in domestic affairs and actively defines itself as a moral guideline of society, which, together with deeply routed prejudices in society and political elites alike<sup>147</sup>, form the prerequisites for placing Romania in the morality politics mode of interaction – coalitions are mainly formed around religious beliefs or partisanship.<sup>148</sup> As a result, official statistics regarding the general characteristics of the LGBT population of Romania are lacking.<sup>149</sup>

The major organisation operating in Romania on LGBT issues is called “Accept”, founded in 1996; it is registered as an NGO defending human rights.<sup>150</sup> The author of

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<sup>144</sup> Carstocea, 2010, p. 348.

<sup>145</sup> Idem.

<sup>146</sup> Tsinonis, 2003, p. 60.

<sup>147</sup> Carstocea, 2010, p. 348.

<sup>148</sup> Holzacker, 2012, p. 25.

<sup>149</sup> Carstocea, 2010, p. 348.

<sup>150</sup> Idem, p. 351.

the input on Romania in the Greenwood Encyclopedia argues that there seems to be a persistent lack of a sense of community in Romanian society on all levels, so the poor organisation of LGBT citizens is very probably a result of this same widespread pattern.<sup>151</sup> The work of “Accept” has made it the major Romanian organisation promoting LGBT rights and has gained influence at the international level as well as credibility at the national one. However, the structure of “Accept” is deemed to be too restrictive and official and is not thought to be representative as far as everyday lives of Romanian gays and lesbians are concerned, and even more so regarding the implications for a sustainable LGBT movement on the ground to begin with. The achieved legal accomplishments notwithstanding, there is still a persistent lack of a sense of LGBT community to speak of in the context of Romania.<sup>152</sup>

## **2.2. Incremental change.**

In the context of what Holzacker calls the incremental change mode of interaction, certain achievements concerning LGBT rights have already been made, and the tendency is for policies to reflect “interest group resources, elite values and past policy actions”.<sup>153</sup> As far as events are concerned, those are no longer presented in the form of protest but of small-scale events, meant for safeguarding achievements already made. Discreet cooperation exists in coalitions with other CSOs; on the governmental level, the tendency is for discreet lobbying in order to further secure achievements and ascertain sound implementation. This mode tends to be more reactive than proactive, in the way of “supporting and advising official policymakers instead of actively pushing for developments.”<sup>154</sup>

Confrontation is absent in the context of incremental change; most of the achievements have been gained through close cooperation with the government, and close cooperation is still prevalent in the aftermath of these achievements, in order to secure their further implementation. Experience and good practices may be exported, while external

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<sup>151</sup> Idem.

<sup>152</sup> Carstocea, 2010, pp. 351-352.

<sup>153</sup> Haider-Markel & Meier, 1996, quoted in Holzacker, 2012, p. 25.

<sup>154</sup> Holzacker, 2012, p. 37.

cooperation varies, and in any case tend to avoid such that might lead to internal confrontation.

### **2.2.1. Austrian LGBT SCO “Homosexuelle Initiative (HOSI) Wien” in incremental change mode of interaction.**

Situated in central Europe, Austria seems to reflect its position in the centre of Europe also in terms of the social and political status of LGBT citizens – not as advanced as some of the Scandinavian countries or Spain, but neither as conservative as some of the Balkan or central European states, for instance.<sup>155</sup> Krickler puts a strong emphasis on the historical factors and influences on Austria and its treatment of LGBT people. The two main factors that he underlines are the country’s relatively short democratic tradition, combined with the strong influence of the Roman Catholic Church on both politics and society.<sup>156</sup> Even so, in the last 30 years change has been consistent, together with the rest of the Western world: the change in public opinion was largely influenced by positive portraying in the media, up to today when the topic of homosexuality “is covered and mainstreamed in its many aspects and facets by the mass media.”<sup>157</sup>

The first informal gay groups to appear in Austria date as far back as the 1970s. The first gay organisation, Homosexuelle Initiative (HOSI) Wien, was founded in 1979, registered in 1980 and continues to be Austria’s largest and leading LGBT organisation.<sup>158</sup> Today, Austria boasts a fairly rich LGBT scene, both in the capital Vienna and in other cities, including informal groups and associations organised around specific issues and interests (religion and belief, leisure activities, party politics, profession, cultural activities etc.).<sup>159</sup> A number of annual events, including the Rainbow Parade organised by HOSI Wien and various charity and cultural events spark up the LGBT scene in Austria.<sup>160</sup>

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<sup>155</sup> Krickler, 2010, p. 24.

<sup>156</sup> Idem.

<sup>157</sup> Idem.

<sup>158</sup> Idem, pp. 25-26.

<sup>159</sup> Idem, p. 26

<sup>160</sup> Idem.



The remaining legal challenge that the LGBT movement faces in Austria is the lack of provisions on same-sex registered partnerships or marriage, an issue largely dependent on the political power structures of the day.

### **2.3. High-profile politics.**

The third mode of interaction involving CSOs and their political environment is labelled high-profile politics. This mode tends to rely on external strategies in order to reach out to the broader public, together with insider strategies for building broad coalitions and lobby government in the national arena, and wide transnational action at both the European and global levels to bring about change.<sup>161</sup> The high-profile politics mode of interaction lies beyond the previous two; in order for it to operate in a given society, certain attitudes should be firmly in place. The most important one is wide social acceptance of LGBT rights both in the broader society and within political elites, together with the avoiding of complacency and backtracking.<sup>162</sup>

The wide societal acceptance enjoyed by LGBT CSOs in the mode of high-profile politics allows for addressing issues in new and creative ways, as much as it provides for advanced governmental lobbying or direct policy implementation on the official level. Both internal and external cooperation is very productive, and CSOs in this mode tend to export good practices, ideas and resources and show wide support to CSOs still operating in the modes of morality politics and incremental change.

#### **2.3.1. Norwegian CSO “LLH” in high-profile politics mode of interaction.**

From Hellesund’s input on LGBT people’s situation in Norway it seems that an overwhelming conclusion becomes predominant: homosexuality was never a particularly hot issue in Norwegian society. This might be surprising, since roughly 82 percent of the population belongs to the state Protestant Church of Norway<sup>163</sup> (it has previously been demonstrated what such big numbers of people belonging to the state religious institution leads to in the context of Romania). In the Norwegian context, the modern LGBT movement is dated to have appeared as early on as the 1950s, with the

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<sup>161</sup> Holzacker, 2012, p. 26.

<sup>162</sup> Idem.

<sup>163</sup> Hellesund, 2010, p. 306.

first lesbian/gay organisation DNF-48 (Norwegian Association of 1948), formalized in 1952 since it first appeared in 1948 as a branch of the Danish homophile organisation Forbundet af 1948.<sup>164</sup> An interesting point made by Hellesund is the relevance of language in social concepts of LGBT people: since “the Norwegian language differs from English on important points in terms of intimate life”<sup>165</sup>, public language concerning intimacy and intimate life and related policies “seem quite inclusive of same-sex relationships and same-sex families”<sup>166</sup> to begin with.

Being the only national lesbian/gay rights organisation in Norway today, LLH (Norwegian National Association of Lesbian and Gay Liberation), “focuses public and government attention on cases of discrimination against LGBT people by asserting political/diplomatic pressure, providing information, and working with other organisations and national media.”<sup>167</sup> These three modes of advocacy employed by the LLH are exemplary for a CSO operating in the conditions of high-profile politics. In the early 1990s, the LLH adopted and conducted a very successful identity politics, developing strong and enduring ties with powerful political allies.<sup>168</sup> “The Norwegian lesbian and gay organisations have a strong tradition of lobbying authorities as the main strategy for gaining support and influence.”<sup>169</sup> The state consistently provides funding for lesbian and gay organisations and their activities.<sup>170</sup>

The Act on Registered Partnership was passed in parliament in 1993, making Norway the second nation in the world (after Denmark) to grant some sort of marriage rights to same-sex couples.<sup>171</sup> In 2008 a new Marriage Act was passed in parliament, which made marriages gender neutral, thus making the Act on Registered Partnership redundant. The important changes consist of the ability of same-sex couples under the new Marriage Act to apply for adoption and receive assisted fertilization. It is curious to

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<sup>164</sup> Hellesund, 2010, p. 306.

<sup>165</sup> *Idem*, p. 307.

<sup>166</sup> *Idem*, p. 307, quoted from Anderssen & Hellesund, 2008.

<sup>167</sup> Hellesund, 2010, p. 311.

<sup>168</sup> *Idem*.

<sup>169</sup> *Idem*.

<sup>170</sup> *Idem*.

<sup>171</sup> *Idem*, p. 313.

note that the debate on the new Marriage Act has been a lot less heated than the one on Registered Partnership in 1993.<sup>172</sup>

A general conclusion can be made that there need not be a general fear of backlashes for the LGBT population in Norway on the civil rights they have gained. According to Hellesund, the next question to be of interest is whether the LGBT movement in Norway “can continue as a civil rights-focused identity movement, or whether it has to open up for alternative frameworks[...].”<sup>173</sup>

### **3. The scope of conflict.**

Upon outlying the basics of each of the three modes of interaction of LGBT CSOs with their respective political environments, a clarification is needed before proceeding to discuss the three modes of interaction in light of Fraser’s framework of social justice. All three modes are deeply engaged in their core with the scope of conflict concept, first raised and debated in the public sphere by Schattschneider in 1960 concerning the approaches that interest groups adopt in order to formulate and forward their demands.<sup>174</sup> The core argument is that the most effective strategy of interests can be adopted in terms of either limiting or expanding the scope of the conflict in order for one’s interests to gain an advantage.<sup>175</sup> For the purpose of the first two modes of interaction, morality politics and incremental change, the eventual narrowing the scope of conflict is argued to be a winning approach, since it allows for firmer coalitions to be established and for discreet lobbying to be achieved, without relying too much on common values in order to gain support. Furthermore, narrowing the scope of conflict presents the possibility of further defining specific goals and expectations in order to present them to the actors concerned, which makes them all the more achievable and realistic. In the context of the third mode of interaction, however, expanding the scope of conflict might be in order, or even a complementing approach of combining the two as different issues emerge. It is also valid to assume that in the high – profile politics

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<sup>172</sup> Hellesund, 2010, p. 314.

<sup>173</sup> Idem, pp. 315-316, quoted from Bolso, 2008.

<sup>174</sup> See Schattschneider, 1960.

<sup>175</sup> Holzacker, 2012, p. 25.

mode, an expansion of the scope of conflict might be appropriate on the transnational level, while on the national one circumstances will determine which one is best.

The scope of conflict concept as far as it refers to the three modes of interaction is valuable for the adopted approach of this research for a number of reasons. First, as far as the morality politics mode of interaction as outlined by Holzacker is concerned, the scope of conflict concept comes handy here to explain the resemblance morality politics bears to redistributive politics. However, it shall be argued that whereas redistributive politics might have been the necessary approach back in the 1960s when the term was coined, that was before the emergence of new social movements. As it has already been shown in the first chapter, Fraser argues that in the “post socialist” age redistributive politics are being rapidly replaced by demands of recognition, and this is where morality politics in the case of the LGBT movement shall be intercepted by claims for recognition. What is more, since the redistributed good here is values, they can be a matter of redistribution as well as one of recognition, depending on the perspective. In the hope of establishing a common ground between morality politics and demands for recognition through the scope of conflict concept this claim will be pursued further on.

Second, as far as the incremental change mode is concerned, the scope of conflict prescribes the limits of this approach. Given that the aim here is to safeguard and soundly implement achievements already made, the scope of conflict should be conscientiously narrowed so as to reflect past achievements and accommodate them in a way that is both sustainable and pursuable. Here it shall be argued that Fraser’s concept of redistribution seems appropriate to compliment the limitation of the scope of conflict, since the redistribution of values as well as that of resources is narrowing in itself. Furthermore, given that progress has already been made in some aspects, it is natural to envelop the efforts of safeguarding this progress in terms of redistribution of a certain kind of “good”.

Third, the high – profile politics mode, the one that goes beyond the previous two in its scope as well as in its performance, seems not to be needing narrowing in the scope of conflict dimension insofar as it sets its own agenda based on a wide social acceptance

and support, both among the political elite and the general public. Nevertheless, it can be argued that even in this case narrowing can be necessary, where naturally goals will be highly specific and advanced compared to these in the previous two modes. These can include equal marriage rights and their related inheritance and adoption rights for LGBT citizens, advanced issues to be addressed at this third, “high” level. An attempt at explaining the dynamics of this mode through Fraser’s third dimension of social justice – representation – shall be made. As was already hinted above, expansion of the scope of conflict in the context of the third mode of interaction may be appropriate on the global/transnational level, in order to better connect and reach out to LGBT CSOs with more or less compatible goals to the ones defined in the national context as well as to those still operating in the previous two modes of interaction.

Fourth, and final, the scope of conflict concept shall be related to human rights framings in LGBT advocacy, where these will be regarded as a major cornerstone in defining, defending and achieving goals through a human rights framework. Human rights framings can prove both an enriching and a uniting part wherein claims for social justice are concerned, through the “universal morality” they have come to represent, to the point where, as was noted in previous chapters, more and more social movements since the 1990s have come to employ their framings and rhetoric in their quest for social justice. So it seems only appropriate to attempt at designing a framework of employing human rights framings in LGBT rights advocacy in the three types of environment, as defined by Holzacker, in the framework of social justice claims as explained in Fraser’s theory of the conditions for social justice – recognition, redistribution and representation.

#### **4. Three dimensions of social justice, three modes of interaction: informing and enriching one another.**

The three modes of interaction of LGBT CSOs with their political environment as defined by Holzacker have been briefly presented above, together with respective examples from three distinctive European countries. Before we can proceed to explain how they complement and interact with Fraser’s three dimensions of social justice and

beyond – what implications this link has concerning human rights framings in the LGBT context, it will be only fitting to briefly return to Fraser’s concepts and outline the main points which are to be employed in this theoretical model.

First, it is essential to explain what makes this attempted interconnection valid and worthwhile, since it is also the author’s understanding that two very different theories are at hand here, with very differing connotations and fields of study.

The attempt to combine these seemingly far removed theories lies in the concept of narrowing the scope of conflict. As was already explained in Holzacker’s three modes of interaction of LGBT CSOs with their political environment, it is essential to define which claims of rights are worthwhile and consistent in any given environment. The scope of conflict concept suggests that even though LGBT CSOs might be entitled to nothing less than the full “package” of rights readily available to citizens, it is nevertheless more productive to attempt putting specific emphasis on certain areas of protection afforded by international human rights given the differing environments they find themselves working into. This is the aim of this chapter – to distinguish between rights claims deemed “suitable” and achievable in each of the three given environments, to inform them from a theoretical perspective through Fraser’s three conditions of social justice and dress them in human rights framings.

What is more, Fraser stresses in her work that whereas participatory parity exists as a “normative criterion of evaluation of the validity of claims”, it follows that some conditions should exist to measure them.<sup>176</sup> To this end, Fraser establishes two conditions which help distinguish “warranted from unwarranted claims”<sup>177</sup>: the objective condition and the intersubjective condition. The objective condition focuses on the fair distribution of material resources; the intersubjective condition, on the other hand, addresses institutionalised patterns of cultural evaluation.<sup>178</sup> The fulfilment of both should ensure, in Fraser’s terms, equal opportunities for all to participate on a par with others in social interaction, which is the major goal of social justice as outlined in

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<sup>176</sup> Blunden, 2004, pp. 7-8.

<sup>177</sup> Dahl, Stoltz & Willig, 2004, p. 381.

<sup>178</sup> Blunden, 2004, p. 8.

Fraser's work. The action to be taken towards fulfilling these two conditions can be labelled affirmative and transformative, where affirmative action aims to validate, preserve and reinforce group relations in order to prevent a minority from being assimilated into the majority, and transformative actions means to transform and deconstruct the very existing power relations and eliminate any underlying causes of differentiation.<sup>179</sup>

That said, re-visiting Fraser's concepts of social justice might be in order here. It is important to underline that this research does not mean to question in any way nor scrutinize the validity of all three dimensions of social justice in Fraser's theory and the necessity for their simultaneous existence. Indeed, Fraser has stated more than once that in order to achieve participatory parity – the inexistent interpretative ideal of social justice<sup>180</sup> that lies in the basis of her theory – all the conditions to this end must be met, namely conditions of recognition, redistribution and representation. Fraser also argues in her earlier works, before she expands the dualist theory to include representation, that even though the two paradigms (recognition and redistribution) “propose different sorts of remedies for injustice”<sup>181</sup>, it is always the case that “from one extreme to the other, all groups are affected by combinations of both kinds of injustice and have both kinds of remedy open to them, though in differing degrees.”<sup>182</sup> As for the third dimension – representation, it “allows [for the] problematising of governance structures and decision – making procedures” while constituting “a third, political dimension of social justice, alongside the (economic) dimension of redistribution and the (cultural) dimension of recognition.”<sup>183</sup> This is exactly the notion here – recognition, redistribution and representation are taken apart on the analytical level, in order to inform each of Holzhaecker's three modes of interaction towards narrowing down the scope of conflict in each given specific situation that LGBT SCOs find themselves into, according to their respective political environments.

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<sup>179</sup> Idem, pp. 10-11.

<sup>180</sup> Avendano, 2009, pp. 3-4.

<sup>181</sup> Blunden, 2004, p. 3.

<sup>182</sup> Idem, p. 2.

<sup>183</sup> Dahl, Stoltz & Willig, 2004, p. 380.

It should be underlined that by assigning each of Fraser's three concepts towards social justice to each of Holzacker's three modes of interaction the author does not mean to imply that Fraser's concepts are separated. Rather, this is done on a conceptual and informative level and means to clarify the aims of human rights framings in LGBT advocacy in the three modes at hand. All three of Fraser's concepts are needed in order to strive for the interpretative ideal of participatory parity.

The current approach of over-simplifying issues is intended to be valid on a theoretical, analytical level. The author is well aware of its limitations and instead of presenting and arguing for simplistic merging models with universal validity, the aim is to contribute to and expand the human rights discourse in the context of the LGBT social movement in general and LGBT CSOs in particular. It is worth underlining that once more, this research will refrain from citing and outlining specific human rights provisions contained in international human rights documents. Instead it aims at adopting a broader view on the matter and hopes to provide a frame for evaluation rather than issue-specific solutions that are impossible to prescribe while lacking a precise and definite context of issues arising on the ground. Again, the theoretical-analytical level of the research needs to be pointed out.

#### **4.1. Recognition in morality politics mode of interaction.**

LGBT CSOs existing in the difficult circumstances that represent the morality politics mode of interaction with their respective political environment face the opposition of society and political elites alike, more often than not fuelled by religious beliefs and partisanship.<sup>184</sup> Collective hostility is often framed in terms of "morality" claims, wherefrom the name of the mode of interaction is derived. With few inside coalitions and large external support, events tend to be low-key, confrontational and framed in terms of protest. As to the goals of these groups as earlier outlined by Holzacker, it seems that demands in morality politics mode correspond to the first, basic level of demands – "arguing for social acceptance."<sup>185</sup>

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<sup>184</sup> Holzacker, 2012, p. 25.

<sup>185</sup> Holzacker, 2012, p. 24.



The material construction of misrecognition in Nancy Fraser's theory explains these symptoms of rejection as denying a certain group of individuals their right to participate on a par with others in social interaction. What is more, this is not the result of distributive inequity, but of "institutionalised patterns of interpretation and evaluation that constitute one as comparatively unworthy of respect and esteem"<sup>186</sup>, an injustice understood as cultural and deeply rooted in "social patterns of representation, interpretation and communication."<sup>187</sup> A pattern is established, one that can be traced to a systemic cause.<sup>188</sup> Fraser also points out that in order to justify their aims, the LGBT social movement's terms of argumentation should be equally accepted by others who „do not necessarily share the same conception of “the good life”, and this should be done “exclusively on the basis of justice.”<sup>189</sup>

For the sake of providing an alternative approach towards the interceptions between the morality politics mode and Fraser's recognition, the essential point which proves valuable in enriching the LGBT human rights discourse is how claims of morality go both ways in the process of recognition (or misrecognition, for that matter). When operating in the morality politics mode of interaction with society, LGBT SCOs find themselves increasingly seeking to address the most basic one of the goals before them as identified by Holzacker – they argue for social acceptance.<sup>190</sup> In her work on recognition, Fraser has persistently refused to ground social intolerance and rejection of difference as a merely “cultural matter”<sup>191</sup>, theorising the “conceptual irreducibility of heterosexist oppression and the moral legitimacy of gay and lesbian claims.”<sup>192</sup> What is more, she also states that “misrecognition is an institutionalised social relation, not a psychological state.”<sup>193</sup> To reinforce her argument, Fraser uses a particular example in illustrating why, where issues of “morality” are concerned, recognition claims are in order: the main opponents of LGBT rights nowadays are not transnational corporations

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<sup>186</sup> Fraser, 1997 (b), p. 280.

<sup>187</sup> Fraser, 1996, p. 7.

<sup>188</sup> Dahl, Stoltz & Willig, 2004, p. 378.

<sup>189</sup> Blunden, 2004, p. 7.

<sup>190</sup> Holzacker, 2012, p. 24.

<sup>191</sup> Fraser, 1997 (b), p. 280.

<sup>192</sup> Fraser, 1997 (b), p. 280.

<sup>193</sup> Idem, p. 281.

or business elites, but “religious and cultural conservatives, whose obsession is status, not profits.”<sup>194</sup> This view highly compliments Holzacker’s assumption that in morality politics mode, the main opponents are formed around “religious beliefs or partisanship.”<sup>195</sup>

In any case, by outlining both the goals of LGBT CSOs and their state of interaction with society on a three-scale level, Holzacker’s approach can be creatively informed by Fraser’s take on demands for recognition, sought by status order groups concerned with social justice, not issues of identity.

In order to address misrecognition as it is outlined in the context of Holzacker’s morality politics mode of interaction, where the goal is achieving social acceptance,<sup>196</sup> legal change and implementing safeguards protecting the LGBT citizens of a country and giving them equal rights with other citizens becomes the obvious priority. Legal change will not bring about “cultural” change in societal perceptions; but legal protection is much needed in order to address issues such as hate crimes, violence based on sexual orientation, both by state and non-state actors, harassment and homophobia and social prejudice on the whole.<sup>197</sup>; the construction of “sexual orientation” as a suspect classification, as outlined in the second chapter, is a major step towards bringing about change for LGBT citizens.

In order to address the situation in morality politics mode of interaction, the human rights framework has certain very significant advantages. Whereas in the morality politics mode LGBT CSOs face a highly disapproving and hostile society, the most important advocacy tactic that is applicable in this mode is namely the reminder that even though societal moods may be hostile, the State itself has recognised and assumed certain obligations under human rights treaties, be they regional or international.<sup>198</sup>

The key point in morality politics mode of interaction of LGBT CSOs to be argued for is the reminder of already existing human rights obligations. Indeed, “for LGBT human

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<sup>194</sup> Fraser, 1997 (b), p. 285.

<sup>195</sup> Holzacker, 2012, p. 25.

<sup>196</sup> Idem, p. 24.

<sup>197</sup> Tsionis, 2003, p. 79.

<sup>198</sup> Carroll, 2010, p. 14.

rights advocates the challenge is to establish understanding and acceptance at the national level that the protection and promotion being advocated do not relate to new rights – the rights are already enshrined in existing treaties, conventions, declarations and other agreements – but their universal application.”<sup>199</sup>

As mentioned in the previous chapter, various social movements as well as academics have already done much in terms of influencing and expanding the human rights discourse,<sup>200</sup> in order to provide nowadays for a legitimate niche where LGBT rights claims can be firmly accommodated. They have been confirmed as a “universal framework for [...] social justice.”<sup>201</sup>

Thus, on the level of morality politics we shall not engage with specific human rights; the overall aim in this mode is to ensure that pre-existing human rights obligations are being equally applied, and here lies the major strength towards achieving the first of Holzacker’s goals – social acceptance.

Furthermore, engaging with Fraser’s conditions of social justice (the objective condition and the intersubjective condition), in order to achieve social acceptance for LGBT citizens and stress the universal application of human rights treaties in morality politics mode, it is the intersubjective condition which needs to be fulfilled first and foremost. “Institutionalised patterns of cultural evaluation”<sup>202</sup> are the ones that need changing, and promoting visibility and universality in rights framings represent consistent transformative action towards change, aiming at deconstructing existing power relations perceived in the cultural social sphere, “cultural value”<sup>203</sup> being the key resource to be sought here. Transformative action in Fraser’s terms is deemed to be of utmost importance on the way to uniting LGBT citizens around a common goal, not for the sake of a shared identity which brings along restrictive interpretations, but for the sake of social justice and equal participation for all citizens in the social discourse. What is

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<sup>199</sup> Carroll, 2010, p.12.

<sup>200</sup> Idem.

<sup>201</sup> Idem.

<sup>202</sup> Fraser, 1996, p. 12.

<sup>203</sup> Blunden, 2004, p. 8.

more, “seeking to abolish the underlying cause of the differentiation”<sup>204</sup> leads to a firm understanding of asserting pre-existing human rights obligations which are valid for all citizens per se.

#### **4.2. Redistribution in incremental change mode of interaction.**

In the incremental change mode of interaction of LGBT CSOs and the political environment they find themselves into, the societal background is characterised by achievements already made that are to be safeguarded and firmly implemented. The approaches to advocacy in this mode are essentially the reflection of interest group resources, together with elite values and past policy actions.<sup>205</sup> Confrontation and large protests do not constitute a characteristic of incremental change.

It is important to stress the perceived key role of interest groups in this second mode of interaction. Whereas in the morality politics mode the focus is mainly on societal hostility directed towards real or perceived LGBT people and CSOs, in the incremental change mode the focus is on group interactions and relations, between CSOs and mainly political elites. “Discreet elite level lobbying”<sup>206</sup> is the major characteristic of the incremental change mode of interaction, where coalitions have already been established and progress has been made.

Concerning redistribution, Fraser’s extensive research does not make it its focus and indeed does not provide an innovative explanation for it. She rather aims to accommodate it as it has been infinitely outlined and explained before. Indeed, struggles for redistribution have largely dominated every period of human history, be it redistribution from rich to poor, from north to south, or from west to east.<sup>207</sup> What makes her theory of conditions for social justice innovative is the way she combines redistribution and recognition, claiming that “neither alone is sufficient”<sup>208</sup>, where

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<sup>204</sup> Blunden, 2004, p. 10.

<sup>205</sup> Haider-Markel & Meier, 1996, and Holzacker, 2012, p. 25.

<sup>206</sup> Holzacker, 2012, p. 25.

<sup>207</sup> Fraser, 1996, p. 3.

<sup>208</sup> Idem, p. 5.

indeed in the context of new social movements claims for recognition tend to replace claims for redistribution.<sup>209</sup>

Indeed, Fraser underlines in her dual theory of social justice that claims for recognition and claims for redistribution should be addressed together, for they always intertwine. As was already stated above, for the purpose of this research the two are (artificially) divided, justifying the need for this over-simplification with the attempt to provide insight in the human rights discourse on an analytical level through the tools set forth by Fraser and Holzacker, rather than question the applicability of the two types of claims in the domain of reality.

The key point here is to remember that we are no longer addressing a wide societal situation; the key here is fragmentation. The actors in the „incremental change” mode of interaction of LGBT CSOs with their political environments are interest groups, employing discreet elite level lobbying to achieve their goals.<sup>210</sup> These interest groups hold a certain “good” – in this case, it is apparent that the elite groups that are being lobbied are policy-makers who need to be persuaded by relevant LGBT CSOs to implement certain policies, refrain from implementing others and ensure sound implementation for progress that has already been made.

In the incremental change mode, CSOs are characterised by starting off as relatively small organisations with a specific purpose at hand (to repeal a law, to argue a cause in a case involving LGBT people etc.)<sup>211</sup> The continued work of CSOs in this mode of interaction always includes in its core specific issues, on which group members work through a “very close interaction with the government and elites, in discreet, behind the scenes lobbying.”<sup>212</sup> In this context, incremental change is also prominent for

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<sup>209</sup> Fraser, 1996, p. 5.

<sup>210</sup> Holzacker, 2012, p. 25.

<sup>211</sup> Idem, p. 36.

<sup>212</sup> Holzacker, 2012, p. 36. Holzacker analyses the work of UK CSO “Stonewall”, founded in 1989. As his research of the three modes of interaction is informed by practical and real-life examples of two organisations in each mode working in the so identified situations, it is important to stress that the research at hand does not intend to engage with CSOs and analyse their work in order to reach conclusions, but aims instead to create a broad model of interaction, stressing the need for advocacy in human rights terms and outlining how these can be employed in different modes of interaction. However,

negotiating compromises, on the principle that it is preferable to achieve some progress on a given issue, even though it might not be the ultimately desired outcome, than to refuse compromise and achieve no progress whatsoever, for example agreeing on civil partnerships for the time being, even though the ultimate goal would be equal marriage rights for all citizens.<sup>213</sup> This is a prominent example of how redistribution is applied to incremental change mode: through negotiation and compromise, accepting smaller allowances and firmly implementing them on the way to achieving the full set of rights argued for in the first place.

Whereas compromise, negotiation and discreet level lobbying are the dominating tactics of incremental change mode, the evident result would be slower to come by, but arguably change would be firmer and more consistent. This mode is very much result – oriented, triggered by specific issues at hand rather than by situation viewed as unacceptable on the whole. This means that the overall, more general approach adopted in morality politics mode is no longer applicable in this case. What is needed, instead, is highly profiled and specific lobbying on specific issues, which might also include collecting data, conducting empirical research and working closely with other groups abroad.<sup>214</sup>

As to Fraser's conditions of social justice, the objective condition is the one to be stressed upon in this specific mode, whereas the goal-per-goal achievements represent a kind of "redistribution of resources" which in the long run will lead to full social participation for LGBT citizens. The course of action here is the affirmative approach<sup>215</sup>, as far as progress made needs to be firmly implemented and preserved, thereby validating and enforcing group relationships and keeping claims and demands on a very distinct field through specific lobbying, as opposed to their assimilation by majority views and approaches.

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some examples will be provided from a wider social perspective in order to illustrate the conclusions that this study comes to.

<sup>213</sup> *Idem*, p. 36.

<sup>214</sup> Holzacker, 2012, p. 36.

<sup>215</sup> Blunden, 2004, p. 13.

Considering appropriate human rights framings and advocacy, a return to the Yogyakarta Principles might be in order here. A word of caution, though – the author is far from suggesting that the Yogyakarta Principles are the only existing, albeit non-legally binding document, concerning sexuality and human rights. Rather, the Principles represent a “universal guide to human rights which affirm binding international legal standards with which all States must comply.”<sup>216</sup> They are an extensive clarification on the application of international human rights law in relation to sexual orientation and gender identity, as described in the document itself. What is more, the Principles reflect not only the law, but the “actual lived experience”<sup>217</sup> of LGBT people. As such, they represent a concise and elaborate framework and might provide the research at hand with the means necessary to classify and inform, without generalising, the related human rights without going into too much detail, as the purpose at hand is to propose a theoretical framework of interaction between societal modes of interaction, LGBT CSOs, Fraser’s theory and human rights.

As was already stated, the incremental change mode of interaction is one of specification and fragmentation. Issues are addressed as they emerge, through focus groups lobbying and without engaging into open confrontation and conflict. The difference with the morality politics mode is contained in this specification – in morality politics, issues are viewed in their wholeness, and social acceptance is sought rather than per-issue solutions. Taking into account the relation to Fraser’s objective condition and the mean to achieve it – the course of affirmative action, it is apparent that in order to address specific issues, specific rights should be employed. This is the reason for returning to the Yogyakarta Principles – the way the document elaborates on already existing international human rights norms, placing them in the LGBT context, is a sound source of specified provisions for per-issue lobbying in the incremental change mode. Again, no specific human rights will be mentioned, as indeed it is impossible to prescribe solutions without reviewing a well-defined problem at hand.

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<sup>216</sup> Quinn, 2010, p. 2.

<sup>217</sup> Idem, p. 19.

### 4.3. Representation in high-profile politics mode of interaction.

The high-profile politics mode of interaction of LGBT CSOs is the most recently formulated and the most dynamic one, combining in itself both internal and external strategies.<sup>218</sup> This third mode of interaction is Holz hacker's own contribution to the two other modes already present in the literature – morality politics and incremental change. Arguably the most advanced one, high-profile politics mode is characterised by highly visible public events, constant seeking of coalitions, close cooperation with the government and ever-increasing transnational activity, both on the EU and global levels.<sup>219</sup> This strategy is possible in the context of high support for equality, provided by the wide public as well as by political elites, together with “minimal partisan or religious opposition to the movement.”<sup>220</sup> A key point in this mode of interaction is the use of prominent public visibility events in order to maintain and expand the scope of conflict, which in turn compliments respective inside lobbying strategies for achieving objectives both in the national context and abroad.<sup>221</sup>

In expanding her dualist framework to accommodate a third, political dimension of justice<sup>222</sup>, Fraser aims to address the injustices springing from the increased globalisation in the context of new social movements.<sup>223</sup> In her notion of representation, Fraser is concerned above all with the question of frame, one that is transnational and global as opposed to grounded within the traditional territorial community of the State.<sup>224</sup> Thus misframing is understood as a specific kind of political injustice, emerging from the notion of who is represented at the global level, where “the wrong frame” stands for a context where some people are excluded altogether.

Claiming that representation is needed alongside the obstacles to justice that are misrecognition and maldistribution, Fraser conveniently asserts the importance of the political space on a transnational level, where demands for social justice are made by

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<sup>218</sup> Holz hacker, 2012, p. 39.

<sup>219</sup> *Idem*, p. 43.

<sup>220</sup> *Idem*.

<sup>221</sup> *Idem*.

<sup>222</sup> Dahl, Stoltz & Willig, 2004.

<sup>223</sup> *Idem*, p. 380.

<sup>224</sup> Liakova, 2007, p. 4.



new social movements reaching out to status groups with similar demands around the world. Transnational advocacy is closely related to the issue of political representation.

In order to prove theoretically informative to the high-profile politics mode of interaction, Fraser's notion of representation viewed as a particular transnational frame in which social movements interact with their respective political environments is highly important. As was already stated, the high-profile politics mode exists in an environment of wide elite and public support for LGBT rights, which enables CSOs to be highly visible, to seek coalitions, to cooperate closely with the government and to engage in transnational activities.<sup>225</sup> From these circumstances it is immediately evident that LGBT CSOs are no longer confined on the local level with a need of narrowing the scope of conflict, as was demonstrated in the discussion of the previous two modes of interaction - morality politics and incremental change. In this "advanced" mode of interaction, issues are liable to be taken to the "next level", the transnational or global one. The expansion of the scope of conflict also provides for the means to reach out and interact with similar groups on the global level, as issues are no longer confined to the national reality of any given State.

Even though in the context of high-profile politics significant achievements have been made, it is incorrect to assert that nothing more is left to be achieved. On the contrary, whereas LGBT rights are widely supported on the national level, by both the wide public and political elites, it is only natural for LGBT CSOs operating in this mode of interaction to turn to transnational and global cooperation, both on the European level and beyond.

The expansion of the scope of conflict is one of the first signs that an LGBT CSO finds itself in an environment of high-profile politics; defining the scope of the conflict "determines what resources are important [as well as the] advantages some coalitions have over others."<sup>226</sup> Therefore, its expansion automatically reflects a certain level of stability of the movement at home, a pattern of consistent social and political support,

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<sup>225</sup> Holzacker, 2012, p. 43.

<sup>226</sup> Haider-Markel & Meier, 1996, p. 346.

all of which on the other hand enable CSOs to look beyond national framings and to transnational and global contexts.

It might be wise then to also expand human rights interpretations, in the sense that pressing national problems no longer need addressing, and a broader frame can be devised by an LGBT CSO in order to ideally accommodate as much external fellow organisations as possible. An LGBT CSO that is firmly established and strong on the national level, one that enjoys governmental as well as social support, is more likely to be a liable authority for CSOs still operating in the previous two modes of interaction.

This reality has been demonstrated in the case of Norway, where “few formal boundaries [are left] between heterosexuals and homosexuals”<sup>227</sup>, and the next question is whether the LGBT movement should keep its civil rights-focused identity or a shift should be made towards alternative approaches. It is highly probable that in time, a fourth mode of interaction might emerge, one moving beyond the interpretation of high-profile politics as described in this research. The suggestion here is that this possible fourth mode of interaction may occupy exclusively the transnational sphere, and be made possible through the ever growing importance of social networking, transnational advocacy and the elimination of borders we are yet to witness.

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<sup>227</sup> Hellesund, 2010, pp. 315-316.

## Conclusion

Reviewing the ideas and concepts that were presented in this study, the following conclusions can be drawn.

The intention of this research was to come to a sustainable and valid model for evaluation, aiming to further inform LGBT CSOs operating in the respective political environments they find themselves into. This is to be achieved through Nancy Fraser's conceptual framework of conditions for social justice, together with Ronald Holzacker's three modes of interaction of LGBT CSOs pressing for equality and non-discrimination.

The first chapter engages with critical and social theorist Nancy Fraser's conceptual framework of recognition, redistribution and representation as prerequisites for realising social justice. The innovative way in which she presses beyond the confines of identity politics and the politics of redistribution to address the newly emerging social movements of the 1970s termed "new social movements" provides the conceptual framework for this research. It later on serves as a theoretical basis in informing and evaluating the LGBT movement's rights claims through international human rights frameworks, in the context of new social movements and amidst the proliferation of rights claims in the 1990s. Her conditions and approaches towards achieving participatory parity, the interpretative ideal of social justice as defined in her work, prove to have a most valuable informative impact. What she labels "affirmative" and "transformative" politics lies at the core of the employment of her framework to Holzacker's three modes of interaction of LGBT SCOs with their political environment.

The second chapter aims to give this study the grounding it needs into the development of human rights interpretations regarding sexuality, or what some call "sexual rights". In order to provide some insight into the gradual shifting of human rights interpretations, this study uses the example of the women's rights movement and their gaining of legitimacy on the international human rights agenda after much struggle

through the 1990s. The parallel with LGBT people's struggles is significant, moving from "gay liberation" and the civil rights movement to surpass identity politics and beyond. The approaches serving to accomplish this in the case of the women's movement are deemed relevant to the case of the LGBT movement as well. Academic work has proven valuable for the shifting of human rights interpretations in the last twenty years, including in the case of sexuality and human rights and the rights of LGBT people in particular. It is discussed why framing LGBT rights in human rights terms represent progress rather than hindrance in the case of the LGBT movement in Europe.

The third chapter aims at bringing together the concepts and suggestions made by the previous two, i.e. Fraser's theory of social justice and the means for it to inform Ronald Holzhaacker's three modes of interaction of LGBT civil society organisations (CSOs) with their respective political environments. It has been underlined that this is not intended as a merging of theories. Rather, it is an attempt to design a threefold model of evaluation of how LGBT CSOs interact with their respective political environment, and how best to employ the human rights discourse in order to further their goals and reach their objectives. The model has not been tested on the ground, but remains in the theoretical domain where nevertheless it is seen as informative and enriching of the LGBT movement discourse in connection to human rights.

In order to prevent the over-expansion and over-generalisation of the theoretical evaluative model proposed in this research, it is perceived as a distinct analytical tool. Its application on the ground depends on many variables, and it is not intended to be used as a tool for LGBT human rights advocacy. Rather, the threefold theoretical model can serve to further clarify the aims and demands to be pursued by LGBT CSOs in different political and social settings, ones that would be reasonable and achievable in the given social and political environment they operate into. It can also prove useful as an analytical tool in the context of governmental as well as non-governmental agencies working on the subject of the interaction of the LGBT movement with the political environment. It can inform and facilitate the analyses produced on account of LGBT rights in varying contexts.

Fraser's concept is firmly placed in the theoretical domain, whereas Holzacker's three modes of interaction are illustrated in his work by empirical analysis of various CSOs working in differing environments. The proposed model aims to find common ground between the two, to prove valuable on a conceptual and theoretical level while at the same time to be applicable in a practical context, albeit with some restrictions.

Last, this study is an attempt to look beyond the restrictions of equality and non-discrimination terms, where all too often LGBT claims for equal rights are still grounded. While extensive empirical research has been conducted and much data has been acquired in order to present an account of LGBT grievances throughout Europe, a significant gap in the literature nevertheless still exists, as few authors tend to move beyond these informative, but all the same basic interpretations to suggest working models for tackling the issue on a new level. These are often limited to vague and general recommendations firmly grounded into existing human rights mechanisms, seeking to accommodate instead of to deconstruct and reframe in the hope of achieving a better understanding. Or else, these accounts represent deeply personal and emotional claims for justice, relying on an inner sense of right and wrong more than on legitimate academic research and social theories that can be employed to a valuable result in LGBT studies.

It is the author's modest hope that the thus presented view on the subject might trigger a larger response, in the effect of moving beyond looking at the LGBT movement through the prism of victimisation and start viewing it instead as a legitimate branch of new social movements, with a unique complexity and implications for the social and political environment. Doing so will further LGBT studies and enrich the field of intersection between LGBT rights and human rights, enabling it to expand the framework beyond the basic package of human rights that are the possession of every human being on account of their humanity.

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