

Konrad Hilpert

Same-Sex Partnership and Marriage

1 Reconstructing the Socio-Ethical Issue

Two motivational strands intertwine around the issue of same-sex marriage, each with its own long, tumultuous history. One of these is the effort to gain access to marriage as an institutionalized way of life and model of responsibility; the other is the demand for public recognition of the practiced and socially observed behaviors and lifestyles of people oriented toward persons of the same sex as themselves.

Both historically and culturally, neither access to institutionalized marriage nor the free choice of a partner and the decision to have children together is as self-evident as it seems to most citizens of liberal constitutional states today. Indeed, for long periods of history, marriage bans existed with regard to criteria such as lineage, economics, or ethnicity. In addition, family associations and interests imposed severe restrictions, which individuals – with all of their wishes and feelings – only rarely managed to oppose with any prospect of success. In isolated cases along the present-day cultural spectrum, marriages may still be arranged by parents or guardians, or require the approval of an official government authority, and coercion may even be employed. Nevertheless, there is a broad consensus, partly based on human rights, that such restrictions can in no way be justified and therefore should not occur. The only legitimate, meaningful restriction is the age of majority, which is concretized in the respective legislation and recognized as the external criterion of marriageability.

The struggle for public recognition of same-sex sensibilities, behaviors, and lifestyles has primarily been a campaign against their disqualification as “unnatural,” and thus as a choice for which the subjects were culpable, or as “pathological” – views which had been firmly enculturated for centuries. The social consequences of these outdated perspectives included severe legal restrictions and prohibitions as well as *de facto* stigmatization. However, the threat of sanctions and the risk of social contempt also triggered strenuous efforts on the part of those affected to conceal their homosexual inclinations and practices from others and/or to move them into closed, secret spaces, which in turn often provoked intense mutual suspicion and gave rise to the idea that persons who frequented such milieus might be susceptible to blackmail. Since the 1960s, efforts to gain public recognition of same-sex orientation and its specific forms of expression have primarily focused on the right to a self-determined lifestyle,

which was essentially made possible by the expansion of medical and psychological knowledge about human sexuality and its development.

On the one hand, based on the logic of eliminating unjustified restrictions on access to the institution of marriage, the problem of same-sex civil partnership presents itself as the question of whether the right to marry can continue to be reserved for unions between a man and a woman, or whether it must be extended or opened up to other constellations of persons. On the other hand, based on the logic of a person's right to a self-determined lifestyle, the demand that marriage should also be opened up to partners of the same sex is seen as a potential consequence of equal treatment for same-sex and opposite-sex oriented citizens. At the present moment, when the two strands of this debate are coming together, the following questions need to be clarified: 1) the question of the concept underlying the institution of marriage; 2) the question of the reason(s) why certain domestic partnerships require special protection; and 3) the question of the relationship between church and state in terms of their power to define and their jurisdiction over "marriage."

This contribution will explore these questions. First, however, I will outline the developments that have taken place with regard to so-called "equal marriage" and analyze the normative guiding principles that underpin it.

2 Social Changes and Legal Developments in Germany

Since the German Parliament's decision in June 2017, the current legislative situation in Germany entails that marriage – as defined in Section 1353 (1) of the Civil Code – can be entered into as a life-long relationship not only by two persons of different sexes, but also by persons of the same sex. Those politicians who promoted this change, as well as a large segment of the German population – particularly the younger demographic – and the media, interpreted this change as a long-overdue legal confirmation of a social shift that had already taken place.¹ On the other hand, those who opposed the decision, along with a different segment of the population – particularly the older demographic – perceived (and still perceive) it as a decisive break in both cultural and legal history.

¹ See, among others, Anna Katharina Mangold, "Stationen der Ehe für alle in Deutschland," Bundeszentrale für politische Bildung, August 9, 2018, <https://www.bpb.de/gesellschaft/gender/homosexualitaet/274019/stationen-der-ehe-fuer-alle-in-deutschland> (accessed April 21, 2021).

These two interpretations of the situation are not necessarily mutually exclusive, although they each emphasize different points: while the second focuses primarily on the continuity of marriage as an institution as well as its normative character, the first presumes the need to legally recognize sociological findings on the forms of cohabitation that exist in practice. Precisely because the outcome of the 2017 decision stands in such sharp contrast to previous conventions, the change also seems justified and urgent as both the result and the endpoint of comprehensive, decades-long social, political, and juridical debates.

These social, political, and juridical debates took place in the German public sphere in three major phases. The first was entirely defined by the struggle against the infamous Paragraph 175 of the German Criminal Code. In 1957, the Federal Constitutional Court declared that the stricter version of this law, which had been passed during the National Socialist era, conformed to the constitution,² and it stipulated penalties for any sexual contact between men. Even before the Criminal Code was reformed in 1969 and the relevant aspects of this crime were clarified and curtailed, the reasons given to justify this paragraph had been problematized as prejudicial, and reference had been made to the ways in which the prohibition inevitably pressured the relevant minority to live in hiding.³ This battle against Paragraph 175 came to an end in 1994, when homosexuality was completely decriminalized in the course of legislative harmonization between the Federal Republic of Germany and the former German Democratic Republic.

The second phase of the debate is characterized by the so-called gay (and lesbian) movement. In the 1970s and 1980s, this movement – following the model of a civil rights movement – branded the unequal treatment of persons with a homosexual orientation in many existing legal provisions as scandalous and organized a series of initiatives and civil actions aimed at obtaining equal treatment for homosexual and heterosexual people in various legal spheres (such as housing, information, representation, insurance, naturalization, and emergency care),⁴ and at the same time fought to be recognized as a group within society. Adopting the previously pejorative classifications “gay” and (later also) “lesbian” as demonstratively self-confident self-designations, as a declara-

² Bundesverfassungsgericht, judgment from May 10, 1957, AZ 1 BvR 550/52, <https://dejure.org/dienste/vernetzung/rechtsprechung?Text=1%20BvR%20550/52> (accessed April 21, 2021).

³ See, among others, Fritz Bauer et al., eds., *Sexualität und Verbrechen: Beiträge zur Strafrechtsreform* (Frankfurt am Main: Fischer, 1963).

⁴ On this topic, see, for example, the chapter on “life as a minority group in the Federal Republic of Germany and the German Democratic Republic” in Hans-Georg Stümke, *Homosexuelle in Deutschland: Eine politische Geschichte* (Munich: Beck, 1989), 132–171.

tion of war on the deeply held, firmly anchored prejudices that permeated society, was important for this effort. Nevertheless, this combative self-confidence was strongly challenged by the appearance of the (at the time fatal) immunodeficiency disease HIV/AIDS in the 1980s. Although it soon became clear that the infection could also be transmitted to sexual partners via heterosexual activity and to infants via infected mothers, and that everyday social encounters with infected persons carried no risk, homosexuals – among whom the infection had first been observed – found themselves bearing the brunt of social fears around the issue, along with drug users. This triggered calls for those infected to be locked away and treated in isolation. Widespread debate on this issue succeeded in breaking down this constriction and exposing the associated dangers of legitimizing discrimination and stigmatization.⁵ At the same time, the political emphasis on education and prevention prevailed. As an alternative to promiscuity, the focus shifted to the question of cultivating sexuality and respectful behavior in partnership – which is a challenge for all people, regardless of whether they are homosexual or heterosexual, and which cannot be guaranteed by legal means or by any other externally imposed standards.

Finally, it is not only the emergence and proliferation of non-marital lifestyles (such as non-marital domestic partnerships of various kinds, as well as single life), but primarily the rapid tolerance these lifestyles came to enjoy across various regions, denominations, segments of the population that has made the possibility of same-sex partnerships a topic of public debate.⁶ This question is the characteristic feature of the third phase of the debate. However, the issue is no longer simply the demand for acceptance and the right to shape one's own life according to individual preferences and ideas, but particularly the right to determine one's own lifestyle, family structures, and forms of coexistence as well.

This is precisely the point at which the demand for recognition of same-sex oriented persons and the demand for unrestricted access to marriage and family intersect. However, the goal of equality is not achieved all at once – particularly in a social context in which institutionalized marriage is dominant and enjoys strong legal protection – but only in a series of steps. One of these steps is the legal recognition of same-sex couples' right to adopt children. Another is the es-

⁵ See, for example, Johannes Gründel, "Aids – Anlass zur Enttabuisierung ethischer Fragestellungen," in *AIDS – Herausforderung an Gesellschaft und Moral*, ed. idem (Düsseldorf: Patmos, 1987), 80–106, here 94–95.

⁶ On the population's attitude to this, see Beate Küpper, Ulrich Klocke, and Lena-Carlotta Hoffmann, *Einstellungen gegenüber lesbischen, schwulen und bisexuellen Menschen in Deutschland: Ergebnisse der bevölkerungsrepräsentativen Studie* (Baden-Baden: Nomos, 2017).

establishment of registered civil partnership in many nation-states as a separate option specifically for same-sex couples, by which they can enter into an institutionally regulated and publicly recognized form of domestic partnership. Yet another step is lesbian or (with somewhat more complex challenges) gay couples becoming parents, by means of either sperm donation or reproductive medicine. Here as well, *de facto* practice demands the development of legal regulations even in contexts in which the legislature has declared its intention to prevent such parental constellations for the sake of the child's presumed best interests.

3 From Criticism of Discrimination to Anti-Discrimination

In all the phases of the debate described above, the same goal was at stake – namely, the establishment of equal rights. However, the political thrust was different in each case and left its particular mark on the respective phase. Another feature is the role that moral arguments played in each of these debates.

One common thread running through these three phases is the allegation of discrimination, which is legitimized by nothing more than a reference to the other sexual orientation. According to this allegation, such “justified” discrimination severely restricts freedom and social participation. This realization leads to the demand for measures suited to eliminating such discrimination individually, institutionally, and also culturally.

Corresponding to the three phases of the debate outlined above, efforts to resist discrimination first concentrated on problematizing the outdated assessment of homosexuality as an act worthy of punishment, and thus also as immoral. If homosexual sensibility and perception is an element of certain individuals' identity and cannot be chosen or overridden by acts of volition, then homosexual practices cannot be classified as criminal offenses, nor can the threat of punishment be justified. As a consequence, the prohibition was gradually reversed and limited to certain asymmetric constellations, until the offense was completely abolished from the criminal code.

During the second phase, various activities aimed to make the diversity of gender orientations (homosexual and bisexual, in addition to the dominant heterosexual) visible throughout society, thus “normalizing” people with same-sex orientations who had previously been forced into dissimulation or driven underground. Both the self-image and the organizational appearance of homosexuals and bisexuals as groups or minorities were essential to this effort. Those affected by discrimination are visible and audible only as a group, and only in this way

do they secure a platform from which they can participate in shaping the rules of social coexistence. Here as well, the institutional return on these investments is not a single legal statute, but a whole series of explicit improvements in favor of persons with same-sex orientations in the areas of tenancy, inheritance, custody, insurance, naturalization law, and so on. This phase also entailed an important qualitative leap in the formal prohibition of discrimination, which came into force in Germany with the General Act on Equal Treatment in 2006.⁷ In forbidding discrimination with reference to the equal dignity of human beings, it specifically prohibits a person being reduced to a predetermined characteristic and consequently treated unequally on the basis of this characteristic. In the present context, this is primarily a question of the characteristic of sexual orientation, which has been added to the list of characteristics long recognized as potential grounds for discrimination, including “sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, [and] age.”⁸

The third phase is centrally and normatively concerned with a person’s freedom to choose their lifestyle and domestic partnership arrangements. Institutionally, this initially manifested in the highly controversial establishment of a separate form of legally regulated community of responsibility specifically for same-sex couples: the registered civil partnership. This new designation as well as the special modalities for entering into such an agreement were also intended to clarify the difference between this form of partnership and the existing institution of marriage. However, several high court rulings have eliminated the existing regulatory differences and harmonized the regulations, and the distance which the legislature originally intended to preserve has been deemed to constitute a disadvantage.⁹ In the long run, however, with no substantial differences in the respective rights associated with these two institutionalized communities of responsibility, it becomes difficult to justify why two such institutions should exist at all. Apart from the relatively minimal differences in (joint) adoption and access to reproductive medicine, which is solely subject to medical guidelines, only the difference in the sex of those who decide to marry and the corre-

7 See the text of the Allgemeines Gleichbehandlungsgesetz (AGG), available in English at: https://www.gesetze-im-internet.de/englisch_agg/index.html (accessed April 21, 2021).

8 Cf. Article 21 (1) of the Charter of Fundamental Rights of the European Union, https://www.europarl.europa.eu/charter/pdf/text_en.pdf (accessed April 21, 2021).

9 This is fully documented in Ferdinand Wollenschläger’s expert report on constitutional law, in Wollenschläger and Dagmar Coester-Waltjen, *Ehe für alle: Die Öffnung der Ehe für gleichgeschlechtliche Paare aus verfassungsrechtlicher und rechtsvergleichender Perspektive* (Tübingen: Mohr Siebeck, 2018), 21–44.

sponding designation linked to each arrangement remain as substantial differences. This could then plausibly be construed by a significant portion of the public as well as the majority of members of parliament, spanning the political leanings of the various parties, as a disadvantage for same-sex couples.¹⁰

This became possible because conventional marriage between a man and a woman – to put it bluntly – was presented as a union between two people, each with a heterosexual orientation. Only under these conditions can the accusation of discrimination apply, because discrimination exists only if and to the extent that a fundamental equality is violated.¹¹ As such, the debate presents us with a concept of our common humanity. The concept of marriage as a union between a man and a woman, on the other hand, assumes that “the” human being always exists concretely in one of two manifestations – either as a man or as a woman – and that this is an elemental, irrevocable difference (which nevertheless does not exclude the principle of equal dignity). This is why the EU Charter of Fundamental Rights mentions both gender and sexual orientation in the list of prohibited grounds for discrimination: rather than being redundant, this represents the identification of two entirely different violations.¹² The same principle applies when we consider Article 20, which states that “everyone is equal before the law,” alongside Article 23, which explicitly enshrines “equality between men and women.”¹³

Thus the demand for same-sex marriage,¹⁴ which until recently was quite controversial, has become superfluous due to the delegitimization of presumed heterosexuality as an unjustified privilege – a development which is described as an “opening.” The fact that the legal situation in many Western countries has recently changed (for example, the Netherlands, Belgium, Spain, Canada,

10 Symptomatic of this is the question posed in an opinion piece in the daily press in 2015 on the grounds for upholding the “marriage ban for same-sex couples”; see Robert Roßmann, “Fast gleiches Recht für alle,” *Süddeutsche Zeitung*, October 15, 2015, <https://www.sueddeutsche.de/politik/lebenspartnerschaften-fast-gleiches-recht-fuer-alle-1.2691970> (accessed April 21, 2021).

11 On the normative content of the prohibition of discrimination, see, for example, Susanne Baer, “Gleichheitsgebot und Diskriminierungsverbot,” in *Menschenrechte: Ein interdisziplinäres Handbuch*, ed. Arnd Pollmann and Georg Lohmann (Stuttgart/Weimar: J. B. Metzler, 2012), 261–264; Annette Hilscher et al., “Art. Diskriminierung,” in *StL* vol. 1, 8th ed. (Freiburg im Breisgau: Herder, 2018), 1424–1435; Andreas Foitzik, “Einführung in theoretische Grundlagen: Diskriminierung und Diskriminierungskritik,” in *Diskriminierungskritische Schule: Einführung in theoretische Grundlagen*, ed. idem and Lukas Hezel (Weinheim: Beltz, 2019), 12–39.

12 See, for example, Article 21 (1) of the Charter of Fundamental Rights of the European Union.

13 See *ibid.*, articles 20 and 23.

14 See the constitutional literature cited in Wollenschläger and Coester-Waltjen, *Ehe für alle*, 2–3.

the USA, and Ireland) has played a considerable role in the rapid shift in public opinion.

4 Same-Sex Domestic Partnership and the Church Magisterium

The Catholic Church's position on homosexuality is complicated and fraught. In parallel with the social problematization arising in numerous countries and international organizations, and with indirect or explicit reference to these developments, the Church has made a series of official statements.¹⁵ In retrospect, it must be said that these statements succeeded neither in connecting to current knowledge in the human sciences at the time nor in meeting pastoral needs and expectations. On the contrary, the Catholic Church's stance is widely regarded today as an example – or even the epitome – of a homophobic position. This may also be due to the thought patterns, argumentation, and language evident in these statements – such as the Church's way of talking about “the” meaning of sexuality, assuming that humankind has a fixed “nature,” or appealing to the wording of isolated biblical passages without considering their contextuality.

¹⁵ Congregation for the Doctrine of the Faith, *Persona Humana: Declaration on Certain Questions Concerning Sexual Ethics* (Rome: Vatican, 1975), https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19751229_persona-humana_en.html (accessed April 21, 2021); idem, *Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons* (Rome: Vatican, 1986), http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19861001_homosexual-persons_en.html (accessed April 21, 2021); idem, *Some Considerations Concerning the Response to Legislative Proposals on the Non-Discrimination of Homosexual Persons* (Rome: Vatican, 1992), http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19920724_homosexual-persons_en.html (accessed April 21, 2021); idem, *Considerations Regarding Proposals to Give Legal Recognition to Unions Between Homosexual Persons* (Rome: Vatican, 2003), http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20030731_homosexual-unions_en.html (accessed April 21, 2021); Catechism of the Catholic Church (Rome: Vatican 1993), nos. 2357–2359, http://www.vatican.va/archive/ENG0015/_INDEX.HTM (accessed April 21, 2021); Congregation for Catholic Education, *Instruction Concerning the Criteria for Discernment of Vocations with regard to Persons with Homosexual Tendencies in view of their Admission to the Seminary and to Holy Orders* (Rome: Vatican, 2005), http://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_20051104_istruzione_en.html (accessed April 21, 2021); Francis, *Post-Synodal Apostolic Exhortation: Amoris laetitia* (Rome: Vatican, 2016), nos. 250–251, https://www.vatican.va/content/dam/francesco/pdf/apost_exhortations/documents/papa-francesco_esortazione-ap_20160319_amoris-laetitia_en.pdf (accessed April 21, 2021).

Nevertheless, it is not correct to assert that these statements merely reiterate the old positions the Church has always held.

In fact, the Church's official position has undoubtedly shifted, at least in the following respects: For some time, the Church has recognized that homosexual people "do not choose their homosexual condition."¹⁶ In the revised 1997 edition of the Catechism, however, this statement was weakened when it was revised to speak of "deep-seated homosexual tendencies" and to qualify this as an "inclination," thus attributing it to an individual development instead of an innate predisposition.¹⁷ Furthermore, the text makes a distinction between sexual orientation and the person who has this orientation. And not only that – it also emphasizes that same-sex oriented people possess the same human dignity and are called to fulfill God's will in and through their lives, just like everyone else.¹⁸ Therefore sexual orientation – and this applies to homosexually as well as to heterosexually oriented people – is not constitutive of a person, but is only one of their characteristics. Finally, we should not overlook the prominent statements made in the context of the 2014 and 2015 family synods: these renounce the classification of homosexuality as sin and speak appreciatively of homosexual people's gifts and qualities.¹⁹ In another context, Pope Francis responded to a question about an individual's homosexuality by saying, "Who am I to judge him?"²⁰ Furthermore in October 2020, in quite an unusual situation – namely, in a documentary film – the pope spoke out in favor of the legal recognition of homosexual couples, asserting they were children of God and had a right to have a family.²¹ These elements do not yet constitute a coherent doctrine, but they are fragments of a perspective – or at least an appreciation – that may be developed.

16 Catechism, no. 2358.

17 Cf. also the reference to this change in Stephan Goertz's contribution in this volume.

18 Catechism, no. 2358.

19 See the interim report from October 2014 in Sekretariat der Deutschen Bischofskonferenz, ed., *Die pastoralen Herausforderungen der Familie im Kontext der Evangelisierung. Texte zur Bischofssynode 2014 und Dokumente der Deutschen Bischofskonferenz* (Bonn, 2014), 117–140, nos. 50–52; see also Synod of Bishops, *The Pastoral Challenges of the Family in the Context of Evangelization: Relatio Synodi* (Rome: Vatican, 2014), http://www.vatican.va/roman_curia/synod/documents/rc_synod_doc_20141018_relatio-synodi-familia_en.html (accessed April 21, 2021).

20 As stated in an interview in Antonio Spadaro, *Das Interview mit Papst Franziskus*, ed. Andreas R. Batlogg (Freiburg im Breisgau: Herder, 2013), 49–50; see also http://www.vatican.va/content/francesco/en/speeches/2013/july/documents/papa-francesco_20130728_gmg-conferenza-stampa.html (accessed March 22, 2021).

21 See the details in the report by Christoph Paul Hartmann, "Papst Franziskus befürwortet Lebenspartnerschaften Homosexueller," katholisch.de, October 21, 2020, <https://katholisch.de/>

Above all, Church documents that speak to the subject of homosexuality have been concerned with delegitimizing discrimination based on sexual orientation – and this, at least, they do unequivocally.²² They explicitly state that the effects of such discrimination include difficulty, trial, and injustice.²³

Nevertheless, the earlier statements – most prominently the 1992 and 2003 letters issued by the Congregation for the Doctrine of the Faith – strongly criticized the political and legislative initiatives that aimed to eliminate inequalities between the legal status of heterosexual marriage and family structures on the one hand, and same-sex unions on the other. The ostensible reason for this is that homosexual relationships do not “proceed from a genuine affective and sexual complementarity.”²⁴ The more recent of the aforementioned doctrinal letters raises logical, anthropological, social, and legal concerns.²⁵ More precisely, these concerns address a tense opposition to nation-states’ expressed commitment to the promotion of marriage, the belief that children’s successful development requires the experience of bipolar parenthood, the profound changes to the previous concept of marriage, and the public interest in the common-good function of opposite-sex married couples, insofar as they guarantee the existence of successive generations. While the first of the above-mentioned arguments cannot generally be said to cohere with the findings of sexual medicine and psychology, the other four objections definitely refer to the international debate and represent substantial points of discussion. However, we will not follow this discussion point by point, but will touch on these issues in the following three systematic or thematic sections.

artikel/27298-papst-franziskus-befuerwortet-lebenspartnerschaften-homosexueller (accessed October 22, 2020).

²² Catechism, no. 2358. On the avoidance or reduction of discrimination as a goal of internal efforts at Church reform, see Stephan Goertz, “Streitfall Diskriminierung: Die Kirche und die neue Politik der Menschenrechte,” *Herder Korrespondenz* 67 (2013): 78–83.

²³ Catechism, no. 2358.

²⁴ As also in Catechism, no. 2357.

²⁵ Congregation for the Doctrine of the Faith, *Considerations Regarding Proposals to Give Legal Recognition*, nos. 6–9.

5 Between Autonomous and Institutional “Forms of Life”²⁶

Like all other citizens, homosexuals have the right to a self-determined lifestyle. The fact that their equal rights and their claim to social respect are no longer subject to question, in contrast to the discrimination they faced in the past, is one of the achievements of liberal democracies today.

Romantic relationships and domestic partnerships are essential elements of self-determined lifestyles. Unlike communities of fate such as school classes, study groups, or workforces, the formation of such relationships is based on an act of free and mutual choice.

In contrast to the system that obtained until the late nineteenth century, today the decisive basis of such relationships is mutual affection. However, all romantic and domestic partnerships must be lived under the conditions set by immutable shifts in social processes and the inexorable march of time. Consequently, the existence and persistence of such relationships also depend on the partners’ willingness to support each other, not only in moments and phases of effortless agreement and happiness, but also in those characterized by antagonism, crisis, or strain due to illness, hardship, or stress. This also entails the ability to rely on one’s partner in the face of a future that remains unknown to either partner. Through informal or formal vows, partners can assure each other of their readiness to face such challenges by freely committing themselves to one another, demonstrating their desire to establish a relationship with the other, independent of mutable or momentary emotional states, interests and sensitivities.

According to all the knowledge we now have about forms of homosexuality and relationships between same-sex persons, we cannot and must not deny, either en masse or on the basis of speculation, that gay and lesbian couples are also capable of such committed romantic and domestic partnerships – if they desire to make such commitments, and if the necessary conditions obtain.

Almost every social and legal system recognizes the institution of solidarity and future-oriented domestic partnership in the form of marriage between a man and a woman (in the singular or also in the plural). The institutional character of this arrangement initially provides a framework for the union of certain people, with recognized structures which are familiar to all. It establishes a sphere of ex-

²⁶ For further details on the concept and analysis of “forms of life,” see Rahel Jaeggi, *Critique of Forms of Life*, trans. Ciaran Cronin (Cambridge, MA: Harvard University Press, 2018).

perience and action, defines claims and tasks, and specifies the modalities of the transition from one protected familial or self-determined status to a new status – one which nevertheless faces many uncertainties. The adoption and individual appropriation of this framework also admittedly has the effect of encouraging others to treat this concrete domestic partnership with acceptance, recognition, and a readiness to provide assistance. In the course of the modern era, the institution of marriage also developed into a bulwark against the claims of landlords, official authorities, and parents who wanted to harness marriageable but dependent young women and men to their own interests and plans. In principle, the fundamental right to marriage guaranteed young people the chance to defend themselves against such desires, but only together with their partner – as a couple. However, the institution as such could not protect them from the general risks of life, from bitter disappointments, or from their partner’s infidelity. At best, it could entitle them to partial relief or provision and, through precautionary arrangements in the event of separation, it could erect obstacles so that the vows made previously could not be withdrawn in private and without consequences.

In this context, there remains an open question: What genuine interest does the state have in domestic partnership? This question becomes all the more acute when such a partnership is based on mutual affection, as is generally the case today. The starting point for a conclusive answer to this question is the observation that some legal systems, including the German one, explicitly state that marriage (i.e., not only the family) “shall enjoy the special protection of the state” (see Article 6 [1] of the German Constitution, for example²⁷).

However, this special protection, which the state promises and to which it commits itself in the formulation of laws and in politics, does not primarily apply to a person’s self-determination of their lifestyle, because this would constitute a particularizing repetition of the general right to autonomy or self-determination. Nor does it apply solely to the consolidation of affection between the two persons who have decided to enter into such a partnership, because affection cannot be subject to legal obligation. It is therefore all the more astonishing that the justifications for the laws that have opened up marriage to same-sex couples in many countries explicitly mention – in addition to the goal of eliminating unequal treatment – the goal of strengthening reliability in same-sex re-

²⁷ An English translation is available on the German Federal Government’s website: <https://www.bundesregierung.de/breg-en/chancellor/basic-law-470510> (accessed April 21, 2021).

relationships.²⁸ According to the prevailing opinion, the state's protection of marriage (as conventionally understood) was primarily intended to safeguard (socially, economically, and legally) the possibility attributed to a man and a woman in their respective concrete domestic partnership that children would someday be born of their union and would then have to be cared for, supported, and brought up over many years. Thus the main reason why many state constitutions promise or guarantee special protection to the institution of marriage is the possibility that the man–woman constellation will become a family with joint children, and only then and for the sake of supporting this decades-long, demanding task does the guarantee of protection also extend to the stability of the parental unit. This guarantee of protection applies from the moment at which a couple is married – that is, even before a pregnancy has occurred or a joint child has been born – and it remains effective for couples who do not have children together, for those for whom such a possibility it excluded at the outset (due to age, for example), and even for those who choose not to exercise the option of having children.

Traditionally, state protection is also granted based on the prospect of society's continued existence in the distant future. It is true that a liberal state such as Germany is not supposed to pursue an active demographic policy, especially against the background of the politics experienced between 1933 and 1945. Nevertheless, marriage between a man and a woman remains the only location in liberal societies that has to do with the readiness for parenthood, procreation, pregnancy, birth, care, and upbringing, and thus with different generations caring for each other. In this respect, marriage and family remain closely tied together, even if in today's society they tend to develop into discrete phenomena, and transitions into marriage and from there to family are more difficult and more protracted, and the risks entailed in such a lifelong project are greater than ever before.

6 The Problem of the Appropriate Legal Form

State legislation in Germany, as in neighboring European countries and in the USA, has followed the path laid down by supreme court rulings to open up the legal institution of marriage between a man and a woman, which has existed

²⁸ On the corresponding legal situation in Europe and worldwide, see Dagmar Coester-Waltjen's comprehensive presentation of the issue in Wollenschläger and Coester-Waltjen, *Ehe für alle*, 133–252.

for thousands of years (and has certainly varied considerably within that period), to same-sex couples. This is a remarkable process in two respects. On the one hand, the protection of marriage, as an institution in which two partners unite, was thought to be so self-evident in its application to the constellation of a relationship between a man and a woman that it was simply unnecessary to explicitly address this issue. In this respect, the opening that has been achieved marks a caesura in the history of marriage law, even though some commentators would like to interpret this opening as a confirmation and a strengthening of this institution and the model of life it enshrines. On the other hand, at least since the introduction of registered civil partnerships in most countries, a second institution had emerged alongside marriage, guaranteeing same-sex partnerships – if they so wished – a recognized status under public law and rights similar to those already enjoyed by married couples. However, this alternative was abolished in most countries when marriage was opened up “for all”.²⁹

There were also alternatives to this development, although it was presented as an imperative in the media and by international interest groups and networks, while critical objections were reflexively classified as deep-seated resentment or as an anachronism. The majority of courts and parliaments adopted the logic of dismantling existing discrimination against same-sex persons as a minority group and providing recognition by permitting them to participate in the prestige associated with the established institution of marriage. However, this was only one of two possible paths.

Another option would have been to start with the differences between the two manifestations of the human being – man and woman – and from there to inquire into the potential unique features of opposite-sex and same-sex domestic partnerships, respectively. One such unique feature of opposite-sex domestic partnerships is the basic biological possibility that the couple will produce their own children. This is also the central object of protection.

Only a man and a woman, in mutual cooperation, are able to produce a child. This applies, of course, to so-called “normal” procreation by means of sexual union between a man and a woman. But even when reproductive assistance

²⁹ This was the case most recently in Switzerland, in the parliamentary decision of June 2020; see also Konrad Hilpert, “Ehe für alle wirft kulturelle Fragen auf,” *Schweizerische Kirchenzeitung* 188 (2020): 254–255. The explanatory statement that accompanied the German law establishing the right of same-sex persons to marry (Gesetzes zur Einführung des Rechts auf Eheschließung für Personen gleichen Geschlechts, Deutscher Bundestag, Drucksache 18/6665, November 11, 2015, 7 ff) expressly emphasized “marriage as a community of support and responsibility, independent of the family,” and stressed the distance between this concept and the understanding of marriage in the Weimar Constitution, which was aimed at establishing a family.

procedures are applied, this fundamental condition for human procreation still obtains, because such procedures also require gametes from both a woman and a man. Furthermore, these cells can only develop into a child if the living being created from these gametes is implanted in a woman's uterus, where it is then protected and cared for over many months and is able to mature. Finally, the pregnant woman must give birth to the child. The interaction of male and female elements, on the one hand, and the growth of the embryo and the mother's act of bearing and giving birth to the child, on the other, are so fundamental to life in the world and such an enduring feature of the whole of human existence that – without exception – every human being is the child of a very specific genetic pair of parents, as well as of a very specific biological mother, however the subsequent social aspects of parenthood may have been organized. The fact that genetic and biological parentage is anything but insignificant or negligible for a person's identity is also confirmed by the intensive efforts to find their biological parents made by people who grew up with non-genetic or non-biological parents, some of which extend over many years.

Any reference to the potential to produce children as a unique feature and a distinguishing characteristic is often criticized for its supposedly naturalistic and exclusive focus on biological relationships. From this perspective, these connections are no longer socially compelling for us today, because there have long been ways to have children other than sexual procreation – namely, legal adoption or procreation by means of reproductive assistance.

What is often ignored is that these two alternative paths are “merely” substitutive and will remain so for the foreseeable future. This means nothing more than that they are also dependent – directly or indirectly – on the fundamental man–woman constellation. Adoption can only take place at all if and insofar as a child exists who was once conceived in a “natural” way and then “given up” by their parents or their mother after birth, or if a child has lost their parents. The reasons for and circumstances surrounding such situations almost always involve difficult events or severe conflicts and crises that cannot be resolved in any other way, which can also place a strain on the child's further development, and indeed their entire biography. Therefore international consensus has established that the decisive factor in the decision of whether to entrust a child to adults who are willing to adopt is the well-being of the child concerned, not the adults' desire to obtain a child in this way.³⁰ In this sense adoption is, in both principle and intent, a form of substitute parenthood for the ben-

³⁰ See, for example, Article 20 (3) of the UN Convention on the Rights of the Child, <https://www.unicef.org/child-rights-convention/convention-text> (accessed April 21, 2021).

efit of children who would otherwise have to grow up without parents or under extremely stressful conditions, not a means of having children that one can choose from the outset.

Reproductive medical assistance, for its part, does not consist in the production and provision of children for couples with a desire to have children, but is limited to supporting and engendering a pregnancy, and to overcoming any obstacles that stand in the way of creating such a pregnancy. The basic biological conditions are not abolished, but rather optimized and supported. In the case of a same-sex couple wishing to have a child, procreation remains dependent on the cooperation of at least one person of a different sex, who is not a life partner. In the female–female constellation, this is a male sperm donor; in the male–male constellation, it is a surrogate mother who must make herself available for the desired child’s conception, gestation, and birth. Sperm donation and access to sperm banks are not prohibited in many countries because they also benefit opposite-sex couples and single people, but they cannot eliminate the need for the child conceived in this way to know about his or her biological origins. Surrogacy, on the other hand, is banned in many countries because it can foreseeably lead to profound parental conflicts and often only takes place in a context in which dependence is accepted and economic hardship is exploited. In both cases, the concern that procreation, pregnancy, and birth are qualitatively different than goods and services that can be exchanged for money must also be taken into account.

These considerations yield two reflections: First, both adoption and reproductive assistance procedures confirm the natural biological basis of childbearing, rather than invalidating or relativizing it. Second, childbearing in homosexual contexts is only possible by extending the chain of procreation and involving actors outside the domestic partnership who are used as “donors” or as “surrogates” for a successful pregnancy. In the interests of the child, this necessitates a number of additional regulations to secure the child’s right to know about their origins as an aspect of their identity, as well as to be cared for, educated, and nurtured; to establish parental responsibility; and to demarcate family relationships (for example, defining “mother” in lesbian partnerships). Once again, these considerations confirm the substitutive nature of these other means of having a child and could constitute an argument for special status, and thus for civil partnership as a distinct institution alongside marriage.

Of course, it would be utopian to wait or work for such considerations to lead to a revision of the legal situation that has just been achieved and enforced, namely “equal marriage.” Nevertheless, the expectations associated with this opening up are probably set too high. On the one hand, the old homophobic mindsets, prejudices, and disparaging terms are unlikely to evaporate simply

as a result of the practice of opening up marriage to same-sex couples. Rather, such a development will require efforts in education, training, and knowledge that go far beyond what can be legally regulated. On the other hand, there is a risk that the strong focus on stabilizing attachment and recognition could weaken the so-called institutional guarantee of marriage in legal doctrine, and one day even call it into question in favor of private legal agreements. Relationships and “forms of life” would then become primarily private affairs, and the state would only be called upon as a notary and a guarantor of that which individuals have contractually agreed.³¹

The alternative path of maintaining and strengthening a second institution of domestic partnership would at least have offered the further possibility of providing a reliable legal framework for other, hitherto unprotected cohabitation arrangements in which people care for and assume responsibility for one another (such as household communities, multigenerational households, residential communities for the inclusion of people with disabilities or for rehabilitation after serving a prison sentence, and also spiritual communities). After all, these also constitute specific minority groups of vulnerable persons.

Finally, one could also argue in favor of this duality of domestic partnership institutions that it keeps the concept of marriage concise. Even if more recent discussions about gender have led to greater ambiguity in place of oppositions that were previously taken for granted, and even if we must concede that the influence of social conventions in shaping gender roles is greater than we previously assumed, the tension and fateful burden (pregnancy, birth, and care, at least in infancy) granted or induced by the biological manifestations of man and woman is of fundamental anthropological, existential, social, and cultural significance.

³¹ The question of the meaning of and justification for the special protection of marriage has long been raised in legal literature. The driving force behind the depletion of such protection could be, of all things, the principle of equality, which enforces equal legal treatment of the various forms of domestic partnership and thus undermines the special standing of marriage. Constitutional imperatives such as the special protection of marriage can also change “silently.” On the general problem, see, for example, Jörg Benedict, “Die Ehe unter dem besonderen Schutz der Verfassung: Ein vorläufiges Fazit,” *Juristen-Zeitung* 68 (2013): 477–487. With regard to the debate on same-sex marriage, which was still under discussion at the time, Benedict comes to the dogmatic constitutional conclusion that “Article 6 (1) of the Basic Law [...] is obsolete with regard to the extraordinary protection of ‘marriage’” (p. 486). The two expert opinions commissioned by the Bavarian state government to examine the constitutionality of the adopted law also address not only the question of whether the different sexes of the spouses is one of the structural features that the constitution prescribes to the legislature, but also (and extensively) the question of the constitution’s stability and dynamics; see Wollenschläger and Coester-Waltjen, *Ehe für alle*.

A society that refuses to acknowledge this tends toward uniformity, artificiality, and in many places, structural carelessness. Last but not least, models of normality are also important from a socio-psychological point of view, because in a world that is becoming increasingly diverse and mobile, they offer people a basic point of orientation in their various developmental phases, and they also offer a perspective on life – one which they may have to differentiate later, but which can also motivate them. Heterosexual orientation and marriage-based family structures are the reality or the ideal for the vast majority of the population. The legitimate concern to protect minorities and their lifestyles should neither obscure nor attempt to problematize this.

7 Tasks for the Church

Traditionally, the Church and Christian theology have always maintained that the different sexes of the partners are an essential characteristic of marriage. So is exclusivity, the partners' mutual consent, the intention of maintaining the marital relationship until one of the partners dies, and the commitment to mutual love. This is why, in the liturgical celebration of the wedding, in the context of the marriage vows, the question of whether the couple was willing to have children and to care for them was asked quite explicitly. Even if one would like to formulate the readiness to reproduce somewhat more broadly today, it is still a matter of concern that the partnership should be open to generations to come, and that it demonstrates consideration for these potential lives.

In any case, the recent change in the civil legal situation regarding marriage is a challenge that the Church and Christian theology must face up to, because the term marriage is no longer understood in the same way in the different spheres of church and state. As I have said above, hoping that the state will revise these decisions would be just as futile as protesting against them – it would achieve nothing. On the contrary, at this point the Church and Christian theology are clearly discovering that the power to define and control social developments has slipped away from them, at least with regard to this question. In this respect, it is now up to them to position themselves in relation to the changes that have taken place.

The lack of congruence between these views on marriage will not simply even out on its own at some point, and if this incongruence remains unprocessed, sooner or later it will lead to tensions and misunderstandings among the faithful, in terms of awareness and expectations. These persons are both citizens and members of the Church, and in this dual role they must integrate the civil and the ecclesiastical perspective. If the Church does not wish to adopt the

view that now obtains in the state sphere, then it will come under increasing pressure to justify itself and to explain the “added value” of its perspective in concrete terms.

What is already clear, however, is that in responding to the changed legal situation in the state sphere, it is no longer an option for the Church to return to its earlier condemnation and exclusion of same-sex predisposition, same-sex expression, and same-sex relationships; both the level of knowledge that the human sciences have achieved in the meantime³² and respect for the people concerned prevents this. Consequently, the only remaining option is to recognize that, in addition to marriage – which is open to the possibility of procreation – there are other domestic partnerships that must not only be accepted, but also respected, because they are also undertaken with the serious intention of taking responsibility for the other partner and working to ensure that the relationship has a future.

In principle, the Church has already recognized some of the tasks that arise from this realization and has repeatedly declared its commitment to these issues over many years. This is certainly true of the necessity to offer pastoral care to homosexual persons, as well as of the struggle against existing prejudices and social disadvantages.³³

In addition, there is a clear need for theological clarification. In particular, there is a need to systematically reflect anew on what it is that actually constitutes the sacramentality of marriage and how much weight is given to enabling new human life to be created, as well as the readiness to support and accompany such lives over a long period of time. Points which can be clarified theologically include the act of creating new life together as well as unconditional acceptance. Ethically, the findings of the human sciences with regard to homosexuality, the diversity of relationships, and the variability of gender roles, as well as the reasons why relationships might fail must be accepted, even if this creates tensions with established tradition. In theological ethics, this revision is currently in full swing,³⁴ but it must also be quickly followed by a clear correction of the official statements – in the Catechism, for example – precisely because a large portion of

³² Cf. Hartmut Bosinski’s contribution in this volume.

³³ See Congregation for the Doctrine of the Faith, *Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons*; see also Francis, *Amoris laetitia*, no. 250.

³⁴ See my own attempts to address the issue: “Partnerschaftliche Lebensformen im Plural? Fundamentelethische Überlegungen,” *Kerygma und Dogma* 61 (2015): 181–194; “Art. Homosexualität: Sozialethische Überlegungen,” in *StL*, vol. 3, 8th ed., 76–80; “Homosexuality from the Perspective of Theological Ethics: An Analysis of the Problem,” *Marriage, Families and Spirituality* 25 (2019): 136–147.

the public identifies the Catholic Church with its earlier, entirely negative position.

An important aspect of pastoral care is blessing cohabiting couples when they begin their domestic partnership, or when those who are already living together in this way explicitly promise to commit to each other and to their future together. Some same-sex couples explicitly desire such a blessing. The desire for recognition, also on the part of the Church as an institution – and perhaps also after and in contrast to numerous negative and hurtful experiences – may be at play here. But the wish can also be an expression of the need to integrate their particular partnership into their individual biographical context and their own religious self-understanding. In this case, a blessing could help them to accept their same-sex orientation.

A liturgical blessing always has two aspects – the individual one, which offers solace in the form of God’s support for this very specific relationship between two particular individuals, and the public one, which entails the act of blessing as an official act on the part of the ecclesial community. In other words, the blessing occurs with and on behalf of the community.³⁵ All of this seems to be “theologically responsible and pastorally appropriate,”³⁶ even at the present stage of reflection – that is, before the question of whether such a blessing constitutes a sacrament or is “merely” a symbolic sacramental and in-

35 Therefore the practice of blessing such unions should be preceded by a meaningful correction of the official Church statements on homosexuality in practice. Several volumes have recently been published on the issues involved in offering such blessings in the Church sphere, two of which have come out of academic conferences, namely: Stephan Loos and Georg Trettin, eds., *Mit dem Segen der Kirche? Gleichgeschlechtliche Partnerschaft im Fokus der Pastoral* (Freiburg im Breisgau: Herder, 2019); Ewald Volgger and Florian Wegscheider, eds., *Benediktion von gleichgeschlechtlichen Partnerschaften* (Regensburg: Friedrich Pustet, 2020); Julia Knop and Benedikt Kranemann, eds., *Segensfeiern in der offenen Kirche: Neue Gottesdienstformen in theologischer Reflexion* (Quaestiones disputatae 305; Freiburg im Breisgau: Herder, 2020). A good overview of the debate in a broader context can be found in Julia Knop, *Beziehungsweise: Theologie der Ehe, Partnerschaft und Familie* (Regensburg: Friedrich Pustet, 2019), 280–291. Also worthy of attention is the volume on the state of this discussion in Old Catholic theology by Andreas Krebs and Matthias Ring, eds., *Mit dem Segen der Kirche: Die Segnung gleichgeschlechtlicher Partnerschaften in der Diskussion* (Bonn: Alt-Katholischer Bistumsverlag, 2018), including a contribution by Jochen Sautermeister on the central types of argumentation from a theological-ethical perspective (pp. 111–122).

36 These are the “common” assessment criteria based on the reflections of the German bishops in *Die pastoralen Herausforderungen der Familie im Kontext der Evangelisierung* (2014) in the run-up to the two synods of bishops on the topic of the family; see Sekretariat der Deutschen Bischofskonferenz, *Die pastoralen Herausforderungen*, 42–76.

tercessional act has been theologically clarified.³⁷ Such a blessing would be for the success of the partnership, for mutual fidelity, and for a solidarity in which each partner is willing to share the other's burdens and problems. Actions that hurt one's partner, including infidelity, violence, exploitation, repudiation when another opportunity presents itself, breaking the mutual vow, or failing to provide attention and care – all of which can occur in same-sex relationships just as in heterosexual ones – are by no means approved. Thus blessing in no way entails neutralizing guilt.³⁸

Realistically, we can assume that efforts to introduce such a practice of blessing same-sex unions in the Catholic Church (as many Protestant churches have done) will encounter difficulties, and that some of the faithful will reject such a move. Much will depend on explaining this practice beforehand and on proceeding with tact when introducing it.

8 A Contextual Note to Conclude

Part of the peculiarity of the debate on opening up marriage is that it is conducted neither as merely theoretical – for instance, in the sense of improving the coherence and consistency of the legal system – nor as primarily pragmatic, in the sense of seeking to provide a viable, acceptable path for a relatively small minority. Instead, this debate takes place in a social and political environment in which strong forces (such as lobbyists and solidarity organizations) operate, strong emotions (such as fear, hatred, questions of identity, or a sense of victimhood) are present, and strong accusations that invite generalizations (such as homophobia, archaic moral standards, racism, or gender ideology) co-determine arguments, perceptions, and decisions.

Outrage and “active counter-perspectives” are certainly suitable if the goal is to put a debate on the agenda or to speed up a pending decision. But they can also contaminate arguments and perspectives, creating a climate in which political correctness or an unequivocal commitment to one of two “camps” seems to be more important than careful reflection and weighing the pros and cons. One would hope that this situation will not be repeated in the forthcoming continuation of the debate in the Church sphere.

³⁷ On this topic explicitly, see Knop, *Beziehungsweise*, 211–221.

³⁸ On this topic, see also Jochen Sautermeister, “Angebotene Wirklichkeit: Theologisch-ethische Skizzen zum Verhältnis von Segen und Moral,” in *Segensfeiern in der offenen Kirche: Neue Gottesdienstformen in theologischer Reflexion*, ed. Julia Knop and Benedikt Kranemann (Quaestiones disputatae 305; Freiburg im Breisgau: Herder, 2020), 320–339.

Bibliography

- Baer, Susanne. "Gleichheitsgebot und Diskriminierungsverbot." In *Menschenrechte: Ein interdisziplinäres Handbuch*, ed. Arnd Pollmann and Georg Lohmann, 261–264. Stuttgart/Weimar: J. B. Metzler, 2012.
- Bauer, Fritz, et al., eds. *Sexualität und Verbrechen: Beiträge zur Strafrechtsreform*. Frankfurt am Main: Fischer, 1963.
- Benedict, Jörg. "Die Ehe unter dem besonderen Schutz der Verfassung: Ein vorläufiges Fazit." *Juristen-Zeitung* 68 (2013): 477–487.
- Catechism of the Catholic Church. Rome: Vatican 1993. http://www.vatican.va/archive/ENG0015/_INDEX.HTM. Accessed April 21, 2021.
- Congregation for the Doctrine of the Faith. *Persona Humana: Declaration on Certain Questions Concerning Sexual Ethics*. Rome: Vatican, 1975. https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19751229_persona-humana_en.html. Accessed April 21, 2021.
- Congregation for the Doctrine of the Faith. *Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons*. Rome: Vatican, 1986. http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19861001_homosexual-persons_en.html. Accessed April 21, 2021.
- Congregation for the Doctrine of the Faith. *Some Considerations Concerning the Response to Legislative Proposals on the Non-Discrimination of Homosexual Persons*. Rome: Vatican, 1992. http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19920724_homosexual-persons_en.html. Accessed April 21, 2021.
- Congregation for the Doctrine of the Faith. *Considerations Regarding Proposals to Give Legal Recognition to Unions Between Homosexual Persons*. Rome: Vatican, 2003. http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20030731_homosexual-unions_en.html. Accessed April 21, 2021.
- Congregation for Catholic Education. *Instruction Concerning the Criteria for Discernment of Vocations with regard to Persons with Homosexual Tendencies in view of their Admission to the Seminary and to Holy Orders*. Rome: Vatican, 2005. http://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_20051104_istruzione_en.html. Accessed April 21, 2021.
- Foitzik, Andreas. "Einführung in theoretische Grundlagen: Diskriminierung und Diskriminierungskritik." In *Diskriminierungskritische Schule: Einführung in theoretische Grundlagen*, ed. idem and Lukas Hezel, 12–39. Weinheim: Beltz, 2019.
- Francis. *Post-Synodal Apostolic Exhortation: Amoris laetitia*. Rome: Vatican, 2016. https://www.vatican.va/content/dam/francesco/pdf/apost_exhortations/documents/papa-francesco_esortazione-ap_20160319_amoris-laetitia_en.pdf. Accessed April 21, 2021.
- Goertz, Stephan. "Streitfall Diskriminierung: Die Kirche und die neue Politik der Menschenrechte." *Herder Korrespondenz* 67 (2013): 78–83.
- Gründel, Johannes. "Aids – Anlass zur Enttabuisierung ethischer Fragestellungen." In *AIDS – Herausforderung an Gesellschaft und Moral*, ed. idem, 80–106. Düsseldorf: Patmos, 1987.
- Hartmann, Christoph Paul. "Papst Franziskus befürwortet Lebenspartnerschaften Homosexueller." *Katholisch.de*, October 21, 2020. <https://katholisch.de/artikel/27298->

- papst-franziskus-befuerwortet-lebenspartnerschaften-homosexueller. Accessed October 22, 2020.
- Hilpert, Konrad. "Partnerschaftliche Lebensformen im Plural? Fundamentaethische Überlegungen." *Kerygma und Dogma* 61 (2015): 181–194.
- Hilpert, Konrad. "Art. Homosexualität: Sozialethische Überlegungen." In *StL*, vol. 3, 8th ed., 76–80. Freiburg im Breisgau: Herder 2019.
- Hilpert, Konrad. "Homosexuality from the Perspective of Theological Ethics: An Analysis of the Problem." *Marriage, Families and Spirituality* 25 (2019): 136–147.
- Hilpert, Konrad. "Ehe für alle wirft kulturelle Fragen auf." *Schweizerische Kirchenzeitung* 188 (2020): 254–255.
- Hilscher, Annette, et al. "Art. Diskriminierung." In *StL*, vol. 1, 8th ed., 1424–1435. Freiburg im Breisgau: Herder 2017.
- Jaeggi, Rahel. *Kritik von Lebensformen*. Berlin: Suhrkamp, 2014.
- Knop, Julia. *Beziehungsweise: Theologie der Ehe, Partnerschaft und Familie*. Regensburg: Friedrich Pustet, 2019.
- Knop, Julia, and Benedikt Kranemann, eds. *Segensfeiern in der offenen Kirche: Neue Gottesdienstformen in theologischer Reflexion*. Quaestiones disputatae 305. Freiburg im Breisgau: Herder, 2020.
- Krebs, Andreas, and Matthias Ring, eds. *Mit dem Segen der Kirche: Die Segnung gleichgeschlechtlicher Partnerschaften in der Diskussion*. Bonn: Alt-Katholischer Bistumsverlag, 2018.
- Küpper, Beate, Ulrich Klocke, and Lena-Carlotta Hoffmann. *Einstellungen gegenüber lesbischen, schwulen und bisexuellen Menschen in Deutschland: Ergebnisse der bevölkerungsrepräsentativen Studie*. Baden-Baden: Nomos, 2017.
- Loos, Stephan, and Georg Trettin, eds. *Mit dem Segen der Kirche? Gleichgeschlechtliche Partnerschaft im Fokus der Pastoral*. Freiburg im Breisgau: Herder, 2019.
- Mangold, Anna Katharina. "Stationen der Ehe für alle in Deutschland." *Bundeszentrale für politische Bildung*, August 9, 2018. <https://www.bpb.de/gesellschaft/gender/homosexualitaet/274019/stationen-der-ehe-fuer-alle-in-deutschland>. Accessed October 22, 2020.
- Roßmann, Robert. "Fast gleiches Recht für alle." *Süddeutsche Zeitung*, October 15, 2015. <https://www.sueddeutsche.de/politik/lebenspartnerschaften-fast-gleiches-recht-fuer-alle-1.2691970>. Accessed November 26, 2020.
- Sautermeister, Jochen. "Segnung gleichgeschlechtlicher Paare: Strukturanalytische Beobachtungen zentraler Argumentationstypen aus theologisch-ethischer Sicht." In *Mit dem Segen der Kirche: Die Segnung gleichgeschlechtlicher Partnerschaften in der theologischen Diskussion*, ed. Andreas Krebs and Matthias Ring, 111–122. Bonn: Alt-Katholischer Bistumsverlag, 2018.
- Sautermeister, Jochen. "Angebotene Wirklichkeit: Theologisch-ethische Skizzen zum Verhältnis von Segen und Moral." In *Segensfeiern in der offenen Kirche: Neue Gottesdienstformen in theologischer Reflexion*, ed. Julia Knop and Benedikt Kranemann, 320–339. Quaestiones disputatae 305. Freiburg im Breisgau: Herder, 2020.
- Sekretariat der Deutschen Bischofskonferenz, ed. *Die pastoralen Herausforderungen der Familie im Kontext der Evangelisierung. Texte zur Bischofssynode 2014 und Dokumente der Deutschen Bischofskonferenz*. Bonn, 2014.

- Spadaro, Antonio. *Das Interview mit Papst Franziskus*. Edited by Andreas R. Batlogg. Freiburg im Breisgau: Herder, 2013.
- Stümke, Hans-Georg. *Homosexuelle in Deutschland: Eine politische Geschichte*. Munich: Beck, 1989.
- Volgger, Ewald, and Florian Wegscheider, eds. *Benediktion von gleichgeschlechtlichen Partnerschaften*. Regensburg: Friedrich Pustet, 2020.
- Wollenschläger, Ferdinand, and Dagmar Coester-Waltjen. *Ehe für alle: Die Öffnung der Ehe für gleichgeschlechtliche Paare aus verfassungsrechtlicher und rechtsvergleichender Perspektive*. Tübingen: Mohr Siebeck, 2018.