

## Author interview: professor Pieter Cannoot

Recently, we published *The Right to Personal Autonomy Regarding Sex, Gender and Sexual Orientation. The Case of Belgium*. For the International Day against Homo-, Trans- and Biphobia on 17 May, we interviewed the author, professor Pieter Cannoot (Ghent University, Belgium) about his research.

*Hello Pieter, welcome and congratulations on your book in which you examine whether a legal framework based on the right to personal autonomy regarding sex), gender and sexual orientation could enhance the legal status of LGBTIQ+ persons.*

*➤ As the title of your book already indicates, you make a distinction between 'sex', 'gender' and 'sexual orientation'. Quite often these terms are amalgamated. Could you explain the difference and why this distinction is important?*

The concepts of 'sex', 'sexual orientation' and 'gender identity/expression' are often discussed together in the literature concerning LGBTIQ+ people. Taken together, they form a person's sexual identity. Although lawyers tend to prefer to work with clear-cut definitions when tackling a problem they are faced with, definitions are a vexing problem when dealing with the issues I discuss in my book.

It is important to differentiate between 'sex', 'sexual orientation' and 'gender identity/expression', since they are independent constructs. It is true that society and the law tend to conflate these concepts. But this leads to further misconceptions regarding binary, cis- and heteronormative standards. Distinguishing them from each

other and analysing how they interrelate is essential in order to tackle the human rights issues that LGBTIQ+ people are confronted with.

Throughout the book, I address how these constructs need to be conceptualised – while acknowledging that a 'true' definition cannot be given – and how societal stereotypes connected to them are reflected in law, leading to significant limitations of the individual's autonomy rights.

*➤ You have included a wide spectrum of groups in your research: LGB, trans persons, persons who define themselves as non-binary, etc. You say that these different 'minority' groups have different expectations or needs as regards the recognition of their personal autonomy. Did this perhaps require a balancing act between physical/psychological health and an individual's needs and rights?*

It is indeed important to recognise that people who are often brought together under the acronym 'LGBTIQ+' have different needs and expectations towards the law. Moreover, the subgroups you mentioned are of course also not homogenous.

**some stereotypes affect some groups more**

While gender stereotypes – taken in the broadest sense – affect *all* people, it is important to realise that these stereotypes affect some groups more. These groups do not

represent the societal 'norm' in terms of sexual identity, and therefore require special attention from a human rights perspective. Nevertheless, like all autonomy-based rights, autonomy regarding one's sexual identity is not an absolute right and a balancing exercise is inherent to fundamental rights.

➤ *Belgium recently implemented legislation penalising conversion therapy and has made tax declarations sex-neutral. These is undoubtedly an important step in the recognition of one's personal autonomy, but more steps have yet to be taken. Could you tell us what in your opinion still needs to be done?*

There's still a lot of work to be done in order to deconstruct heteronormativity – in the broad sense – in law. One of the main themes in the near future will be the heteronormativity in family law, especially in the law of filiation and the legal recognition of relationship forms. Taking into account the very different ways in which people 'do' family, it will for instance become increasingly untenable in the future to cling to *mater semper certa est* and the very strict system of relationship protection in law.

## “there is still a lot to be done

Moreover, much empirical research suggests that the well-being of LGBTIQ+ people in Belgium did not greatly improve, despite many legal reforms since the beginning of the 21<sup>st</sup> century. In other words, many societal challenges are outside the scope of technical legal regulations and will require cultural change.

That is why I also focused on the positive obligations of the State to realise such cultural change under the right to personal autonomy regarding sexual identity.

➤ *You plead for a new human right of autonomy. Why do you think there is need for such a right and isn't the human right of equality sufficient? What should such a human right of autonomy entail?*

The introduction of a fundamental right to personal autonomy regarding a person's sexual identity – for instance in a national constitution - would provide the State a mandate – or even compel – to adopt (positive) measures that improve the legal and social status of sexual minorities. In my book, I explain that this right needs to be seen as an 'emancipatory right', which requires the State to actively engage in policymaking that strives to deconstruct societal stereotypes that infringe on the human rights of people who do not meet normative standards, such as LGBTIQ+ people.



Moreover, the provision would also create a negative obligation for the State to refrain from expressing or acting on stereotypes and other

normative assumptions about a person's sex, gender identity/expression and/or sexual orientation, for instance in the context of birth registration or family law. Such a new constitutional right would give agency to all sexual minorities to challenge legislation and other official measures that are based on and perpetuate harmful stereotypes regarding sexual identity.

Although claims concerning equality have been of considerable strategic importance for sexual minorities, rhetoric of equality and tolerance is also considered to hide discourses of normalisation of difference, and an expectation to assimilate within the heteronormative, cis-normative and binary normative society. This focus on normalising and assimilating sexual minorities through equality creates the risk of continually excluding persons who fundamentally challenge the narrative and normative values on which society is created, such as the importance of stable and monogamous family life and the binary conceptualisation of sex and gender. The right to personal autonomy arguably better encapsulates the necessary 'queering' of the heteronormative, cis-normative and binary normative matrix that is inherent to the legal system, than a sole focus on equality/non-discrimination does.

Nevertheless, this focus on personal autonomy does not necessarily reduce the importance of the right to equality. Indeed, equality may be seen as the logical complement to autonomy: If the law is not entitled to simply adhere to a certain construction of sex, gender identity/expression and sexual orientation, then it is also not entitled to privilege one construction over the other.

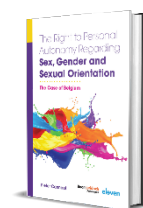
➤ *You state that that many forms of medical treatment of persons with variations of sex*

*characteristics are not based on evidenced medical necessity, but on considerations regarding the socio-psychological well-being of the person concerned and cultural norms and that research on the influence of cultural and social factors is still in its infancy. Do you believe that it is possible to delete the cultural and social factors from the equation all together? Will the psychological wellbeing of a person not always be (co-)determined by the specific culture and society they live in? In other words, do you think that a society with all its history and social fabric can truly break away from gender normativity?*

It is impossible to disconnect law from the societal context in which it exists. Indeed, law and society are in a relationship which is co-constitutive. In my book, I argue that a mere focus on removing stereotypes regarding sex, gender and sexual orientation from law will not suffice in order to truly respect, protect and fulfil the autonomy needs of LGBTIQ+ people. As I explained earlier, the State's positive obligations to realise cultural change that is respectful of all forms of sex, gender and sexual orientation are an instrumental part of the autonomy right I conceptualised.

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## The Right to Personal Autonomy Regarding Sex, Gender and Sexual Orientation



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Pieter Cannoot

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*With a foreword by Petra De Sutter, Belgian Deputy Prime Minister*