

Same-sex Unions: The Globalization of an Idea

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Under what circumstances and to what extent are transnational NGO networks able to influence domestic policy outcomes? This paper addresses this question by examining the role that transnational gay, lesbian, bisexual and transgender (GLBT) organizations have played in the recent adoption of national same sex union (SSU) legislation by a number of western democracies over the past decade. In 1989, Denmark implemented the world's first same sex union law. Since that time eleven additional countries have adopted such legislation, seven of them in the past five years. In the summer of 2003, Jean Chrétien's government in Canada became the first non-European government to commit to proposing a same-sex union law at the national level.

These events coincided with the growth of a human-rights oriented, transnational network of GLBT advocacy organizations. There is considerable evidence to suggest that this network was instrumental in getting international organizations such as the European Union and the Council of Europe to include sexual orientation in the human rights regime. These groups, particularly in Europe, also supported the efforts of national GLBT organizations in their campaigns for the legal recognition of same-sex unions again based on the idea that SSUs represent a basic human right. The importance of these European norms and networks is reflected not only in the timing of the recent legislation but also in its regional clustering. The recent developments in Canada may suggest that this network is beginning to have an influence on countries outside of

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Europe. The influence of the transnational network, however, cannot explain everything. A variety of same-sex union models has been adopted by different countries and a number of western democracies do not recognize gay partnerships at all.

This paper seeks to explain this recent trend toward convergence of policy goals and continued divergence of policy content and outcomes by examining the interactive effects of transnational NGO activity and domestic political institutions and culture. I hypothesize that the general openness and willingness of political systems to learn from international society as well as differences in religious values and institutions are the two key domestic factors that affect governments' decisions to implement same-sex unions as well as the particular model that they adopt. The findings of the paper are based on a study of 11 countries and compares religious heritage, levels of religious participation, level of international engagement by domestic policymaking elites and NGOs, as well as an analysis of policy documents.

In making these arguments I join a more general debate about globalization-induced policy convergence and a more specific one about the influence of the transnational human rights network on domestic policies. I hope to add to both literatures by examining a rare case in which instrumental, cost-benefit decision making plays second fiddle to the power of ideas and the processes of persuasion. The study is also unusual in that it compares the redefinition of human rights in advanced industrial democracies. A great deal of the human rights research has concentrated on the effects that human rights norms and transnational advocacy network have on authoritarian regimes in developing countries. What the SSU case indicates is that these norms and

advocacy networks can also influence the policies of well established democracies, albeit by somewhat different and less instrumental processes.

The paper proceeds as follows. The next section examines policy convergence theory and lays out the key concepts of the paper. The section ends with a discussion of the human rights research in international relations to highlight the particular mechanisms by which policy convergence is hypothesized to be occurring in this paper. The third section will very briefly outline and compare the development and status of SSUs in the 11 countries under study. Section four traces the development of a mostly European transnational network of GLBT advocacy organizations and argues that this network has been instrumental in creating the wave of SSU legislation adopted by European governments that has occurred since the mid 1990s. The next section examines the extent to which the openness and willingness of different countries to participate in transnational society can explain why some AID countries have adopted SSU legislation and others have been reluctant to do so. Section six explores the effects of the second domestic level variable, religion. It argues that differences in levels of religiosity and confessional heritage can help us explain both why certain countries have not adopted SSU legislation as well as why certain countries have adopted the model of SSUs they have. Section six attempts to draw conclusions and suggests avenues for future research.

Policy Convergence and State Socialization via the Transnational Human Rights Network

This study's key question centers on the issue of policy convergence and what causes it. The notion of cross-societal convergence is at least as old as Hegel and Marx but has gained particular prominence in political science in the past decade as a result of globalization and political integration. Scholars have spent a great deal of time over the

past ten years trying to understand the extent to which market integration, the increasing porousness of borders and the creation of a nascent global civil society by NGOs and transnational corporations are making the structures, processes and policies of once disparate societies more alike. Despite this increased interest in convergence, it remains a poorly understood and poorly defined concept. As Colin Bennett points out in his excellent review article, the key--and often misunderstood--dimension of convergence is temporal rather than spatial (1991: 218). Thus convergence occurs when societies or a certain dimension of different societies become more alike over time. Comparing countries at one point in time, as a number of studies have done, will tell us very little about whether convergence is occurring. Another common mistake in the literature is to assume that if two countries fail to end up with exactly the same institutions or policies, convergence has not occurred. In fact, societies, institutions and policies converge when they become more similar over time.

Although seemingly much narrower than other types of convergence, policy convergence actually covers a wide range of phenomena. Again borrowing from Bennett, policy convergence can be thought of as occurring in one or all of the following policy aspects: goals, content, instruments, styles and outcomes (1991: 218-220). This study focuses primarily on the convergence of policy goals, outcomes and instruments. Bennett also identifies the multiple processes by which policy convergence can occur. These are emulation (diffusion), harmonization, learning through epistemic communities/elite networks, coercion and one which Bennett doesn't mention, market pressure for deregulation (race to the bottom arguments). In the case of SSU legislation, convergence has occurred almost exclusively through the dissemination of the idea that

marriage is a basic human right. Through emulation and pressure from a newly developed transnational advocacy network, governments in a number (but not all) advanced industrial democracies have changed their definition of marriage from a cultural institution to a basic right. While cross-border emulation played an important role in the early SSU adopter countries, the transnational network has become an increasingly important factor for later adopters.

Given the hypothesized importance of this transnational network, I turn to work carried out in international relations on the influence of the human rights regime that developed after World War Two. In a widely read study Thomas Risse, Kathryn Sikkink and Stephen Ropp lay out a framework that seeks to explain how this network and the human rights norms it promotes can change domestic policies as well as the conditions under which policy change is likely. Using insights from the constructivist approach in international relations they argue that policy change occurs as a result of a multi-stage “spiral model” of socialization. They argue that the extent to which human rights norms affect domestic political processes is determined by the interaction of transnational advocacy NGOs, intergovernmental organizations, domestic political structures and target governments. The interaction process leads to a socialization process that Risse and Sikkink argue occurs in five different steps: 1) state norm violation 2) denial of norm legitimacy 3) tactical concession 4) acknowledgment of the ‘prescriptive’ status or legitimacy of norms 5) institutionalization of norm consistent behavior (1998: 29-35). An instrumental logic of norm recognition dominates the early stages of the process as state actors are forced by pressure from NGOs and powerful states to pay homage to human rights norms without truly internalizing them. In the final two stages, should

states reach them, policymakers become committed to the core set of beliefs contained in the human rights regime. As the case studies in the book illustrate, states and other important actors do not always complete this cycle and indeed reversal is also possible. The extent to which the spiral is completed depends a great deal on the how much pressure transnational networks of advocacy NGOs can bring to bear on domestic groups and governments.

This framework does an excellent job of outlining how the interaction of transnational NGOs, domestic NGOs, norms and domestic state structures leads to certain policy outcomes. The model, however, was created to explain how the human rights regime has changed policy in developing countries, most of which are in the process of democratization. While the general causal mechanisms laid out in the model are useful for understanding the influence of the human rights regime and the transnational GLBT advocacy network on SSU legislation in western democracies, the application of the model to well established democracies is a bit clumsy and needs some refining.

All of the countries under study here are committed to upholding basic human rights and this commitment is central to these countries' identities as liberal democracies. The key task of the GLBT advocacy network is to convince policymakers that marriage is a human right and that all democratic states must uphold. The process entails redefining a cultural institution as a right rather than introducing individual rights per se into systems that historically have not recognized them.

Similarly, because this process has occurred between states that are relatively equal in terms of power, there are very few sticks that can be used against states that refuse to legalize SSUs. For both of these reasons the instrumental part of spiral model

plays a less significant role in the recognition of SSUS than is the case when western states and the transnational community seek to change the behavior of less powerful states that violate well established human rights. Thus, persuasion and the power of ideas are paramount to the process of SSU recognition. The middle stages of the spiral model—tactical concessions and non-institutional prescriptive status—are not as relevant as how states are persuaded that they are norm violators, the nature and strength of the denial to this charge and the circumstances and manner in which the norm becomes institutionalized.

Because the process of SSU legalization involves redefining a cultural institution, cultural values and institutions play a more significant role than the state structures that are often highlighted in the human rights literature. In the case of SSUs, I argue that religious values and structures are one of the key domestic variables that helps determine both whether a country has adopted SSU legislation and which particular model it chooses. Additionally, because I only examine rich western democracies, I am holding a number of institutional variables constant. I have also not found differences in institutional structures across democracies to be very helpful for explaining SSU outcomes. While powerful courts have been important in moving the issue onto the agenda in certain countries, most notably in the US and Canada, having a strong judiciary with the power of judicial review does not seem to be a necessary condition for the adoption of SSU legislation. In fact, the early adopters of SSU legislation in Scandinavia do not have particularly strong judicial systems; countries with strong judiciaries such as Germany, Canada and the US are either late or non-adopter countries.

For the purposes of this paper I will also assume, based on some anecdotal evidence, that the relative strength and nature of national GLBT groups does not vary enough to explain differences across countries in SSU policy outcomes. Part of the argument presented in this paper is that the similarity of national groups, particularly in Europe, is related to the increased influence of the transnational GLBT network. Thus while their presence and increasing strength throughout the 1990s is necessary for explaining SSU policy outcomes, because of the uniformity of this variable it cannot explain difference across countries. Before examining the role that this transnational GLBT advocacy network has played in these policy outcomes, I will briefly outline the development of SSU legislation in the 11 countries under study.

Same-sex Union Legislation in Western Democracies

Same-sex unions and registered partnerships are recognized in certain locales in almost all western democracies. This paper focuses solely on legislation that has been adopted by national governments and that applies to all citizens, and sometimes residents, in the country. In addition to simplifying the research question, I posit that unless SSUs apply to all citizens equally, there is a good argument to be made that the government and that society still view the recognition of gay relationships as a cultural choice rather than a basic civil right. Once the issue gets defined as a right, governments in liberal democracies find it difficult to justify withholding that right.

In 1989, Denmark became the first country to adopt a national SSU law by creating a new institution open only to homosexual couples. The registration partnership model adopted by Denmark was soon emulated by its Nordic neighbors. Norway adopted a similar registered partnership law in 1993, followed by Sweden and Finland in

1994 and 2001 respectively. Unlike some of the other same-sex registered partnership laws adopted by countries outside the region more recently, the Nordic countries have extended most rights and responsibilities that accrue to heterosexual marriage to this new institution. Couples are allowed to register publicly at the town hall as is the case with heterosexual couples who wish to marry. Same sex couples who register gain all the tax benefits, inheritance rights, pension rights and mutual liability responsibilities that are conferred upon heterosexual married couples. The only major rights that are denied to same-sex registered partners are the rights of adoption, the use of the term husband and wife and the right to a church wedding. Most of the Nordic countries have loosened adoption laws so that a member of a registered partner can now adopt their partner's biological child. (Merin 2003: 67-78).

The battle over the adoption of this legislation in the Nordic countries set the stage for how this debate has been carried out in most other European countries, although it was somewhat more muted than in the campaigns that later were waged in France, Germany and most recently in Canada. The proposals were first put forward and promoted by human rights oriented GLBT groups who looked to find support among left leaning parties. This movement was opposed by conservatives and in the Nordic countries by members of the established Lutheran Churches (Merin 2003). Small minority voices within the GLBT community, particularly lesbian organizations that view marriage as a patriarchal or outdated institution, also opposed the legal recognition of same-sex couples. In general this cultural-oriented protest within the GLBT community was fairly subdued. By the mid 1980s the human rights wing of most national GLBT movements had become firmly entrenched as the mainstream voice of the movement and

the call for civil rights for gays and lesbians far outweighed calls for a cultural revolution. The transnational GLBT network that formed in the early 1990s reflected this human rights orientation.

By the late 1990s the idea of legalizing SSUs moved out of the Nordic region and onto mainland Europe. Neither the norm of legalizing same-sex unions nor the particular model first developed in Denmark was uniformly accepted by the rest of Europe. A number of societies including Italy, Ireland, Austria and Greece have decided not to adopt such legislation.² Additionally a number of new models were also added to the registered partnership scheme. In 2001, Germany adopted legislation that was fairly similar to the Nordic registered partnership laws albeit with somewhat less comprehensive benefits. Both the Netherlands and Belgium adopted registered partnership laws in 1998 that were open to heterosexual as well as to homosexual couples. In addition both countries extended marriage rights to homosexual couples in 2001 although only in the Netherlands are couples allowed the same adoption rights that heterosexual couples have. France created a new institution called Civil Solidarity Pacts again open to both homosexual and heterosexual couples. Unlike in most other countries that have adopted SSU laws, the new PACs institution was created to be a form of ‘marriage lite’ which is easier to enter into and dissolve and which does not accord couples the full set of rights given to married heterosexuals.

The issue of same-sex partnerships came onto the national agendas in a very different way in North America. In the mid 1990s the state of Hawaii in the US appeared to be on the verge of adopting a very controversial gay marriage law. The national

² Spain, the UK, Luxembourg are all considering adopting SSU legislation. Portugal adopted a registered rights law in 2001. DTI, “Civil Partnership Consultation” London: DTI, 2003.

government led by Democratic President Bill Clinton reacted by proposing and adopting by overwhelming majorities in both the House and the Senate a Defense of Marriage Act which stipulated that neither the federal nor state governments would be required to recognize any legalized SSUs adopted by individual states. This law is the only national law of its kind in any advanced industrial democracy. Similar laws have been adopted by 39 states in the US and by Alberta in Canada. Despite the very obvious political opposition to SSUs in both countries, certain states have gone on to adopt registered partnership laws. Registered partnership or cohabitation laws exist in Vermont and Hawaii and US state of Massachusetts recently adopted a gay marriage law (DTI 2003: 16-17). In Canada several provinces including Ontario, British Columbia, Manitoba, Nova Scotia, Quebec and the Yukon recognize gay marriages (Equal Marriage 2004). In all of these states / provinces the legislation occurred after state courts ruled that denying homosexual couples the legal benefits of marriage was unconstitutional. In June of 2003 Jean Chrétien's government decided not to appeal an Ontario court's ruling that definition of marriage as an institution between a man and woman was unconstitutional. His government drafted legislation to implement a national gay marriage law which is currently being reviewed by Canada's Supreme Court (CBC 1/29/2004).

The issue of gay marriage has also become a prominent political issue in the United States over the past year. The controversy began with a Massachusetts Supreme Court ruling that declared current laws that deny gay couples the right to marry violate that state's constitution. The court gave the Massachusetts legislature six months to change its marriage laws. In reaction to this ruling Republican President George Bush has urged Congress to consider a federal constitutional amendment defining marriage as

an institution between a man and a woman. It is unclear whether such an amendment would also place a ban on a national registered partnership or civil union law. While Democratic Presidential candidate John Kerry has criticized the proposed amendment, he has not come out in favor of a national civil union's law and he has stated further that it is a matter for states to decide. Thus very few politicians have advocated the adoption of any national SSU legislation in the US, although it is a matter that very well may reach the Supreme Court in the next few years. Thus, while Canada has moved towards a position on SSUs that is more in keeping with the policies adopted in European countries, it remains a very divisive issue in the US.

To sum up over the past decade there has been a very visible sea change in the way western democracies address the issue of legalized SSUs. Since the mid 1990s eleven European states have adopted national SSU laws of one variety or another. Several other European governments and Canada have similar legislative proposals in the works. However, not all western democracies have been convinced that SSUs represent a basic human right that has to be upheld. Additionally several different models, each conferring different rights and symbols to gay couples, have been adopted. This paper

Table 1. Same-sex Union Legislation in Western Democracies

Marriage	Civil Union	No Recognition	NR/DOMA
Netherlands	France	Austria	United States
Belgium	Denmark	Ireland	
Canada*	Norway	Italy	
Spain*	Sweden	Greece	
	Germany		
	UK*		
	Portugal		
	Hungary		
	Luxembourg		
	Finland		

*Government proposal for gay marriage is under consideration

Source: Department of Trade and Industry. 2003. *Civil Partnership: A Framework for the Legal Recognition of Same-sex Couples*.

attempts to address three separate but closely related questions. How can we explain the wave of SSU legislation that has been adopted by western democracies since the mid 1990s? Why have some democracies adopted such legislation while others have not? Finally, what explains the different models of SSU legislation that have been adopted by certain countries? The dependent variable in all of these questions is the type of SSU legislation adopted by individual countries. The categories for the dependent variable are listed in Table 1. Although all of these laws differ in content from country to country, I have created four categories for analysis: 1) Marriage, 2) Civil Unions (registered partnerships) 3) No legal recognition of SSUs and 4) Legal definition of marriage as a union between a man and a woman. In the next section I trace the development of a transnational human rights-oriented, GLBT advocacy network and argue that its creation and growth are essential for understanding why the wave of SSU legislation occurred in the 1990s. In the final two sections of the paper I try explain policy variation across AID countries by examining different governments' and societies' openness to transnational influences and by exploring differences in religious culture and institutions across AID countries.

The Transnational GLBT Advocacy Network³ and Redefining Marriage as a Human Rights Issue

Although international GLBT organizations existed before the 1970s, these organizations did not have a great deal of contact with each other nor did they concentrate

³ I use the definition of transnational advocacy network developed by international relations scholars. Transnational networks are networks of actors that form across borders and include at least one non-governmental organization in its membership. Advocacy networks are networks that exist to promote certain principles, values or norms. For an in-depth examination of these actors and the role they play in international relations see T. Risse-Kappen, *Bringing Transnational Relations Back In*, Cambridge: Cambridge University Press, 1995 and/or M. Keck and K. Sikkink, *Activists Beyond Borders*, Ithaca: Cornell University Press, 1998.

on promoting the rights of homosexuals per se. With the advent of the gay liberation movement and the increased visibility of GLBT organizations in western democracies in the late 1970s the size and number of international GLBT organizations increased and a nascent transnational network made up of both international and national GLBT groups began to form. The most prominent of the international groups, and certainly the most important politically in Europe, is the International Lesbian and Gay Association (ILGA) which was created in 1978.

Today ILGA is an international umbrella group made up of over 400 mostly national organizations from over 70 countries. In the late 1990s, the organization split up into six regional organizations. ILGA-Europe was the first such regional group to form, a fact which reflects the importance of this INGO to the European GLBT movement. ILGA-World which has its office in Brussels, Belgium, acts as a coordinating body for all of the regions.

Although ILGA started out as loose-knit network advocating sexual liberation and radical politics, by the mid 1990s, it—and ILGA-Europe in particular—had transformed itself into humans rights oriented lobby organization. Today ILGA describes its mission as:

ILGA's aim is to work for the equality of lesbians, gay men, bisexuals and transgender people and their liberation from all forms of discrimination We seek to achieve this aim through the worldwide cooperation and mutual support of our members. We focus public and government attention on cases of discrimination against lesbians, gay men, bisexuals and transgendered people by supporting programs and protest actions, asserting diplomatic pressure, providing information and working with international organizations and international media. (ILGA 1999).

This statement illustrates both the organization's commitment to using human rights, anti-discrimination framework and its structure as an umbrella institution for a network of national GLBT groups. It is, in other words, a classic transnational advocacy network. Its transformation into a human rights oriented organization in the early 1990s was accompanied by an explicit effort to lobby prominent human rights NGOs such as Amnesty International in an effort to get them to recognize discrimination against sexual minorities as a human rights violation. After a decade long campaign organized by ILGA, Amnesty International did begin including homosexuals imprisoned because of their sexual orientation in their list of prisoners of conscious.

More generally, ILGA seeks to promote the rights of gays and lesbians by lobbying international organizations, organizing campaigns, holding conferences, disseminating information through publications and supporting the lobby work of national GLBT groups. Although this network is global in its reach, the strength of the network clearly varies regionally. ILGA-Europe and the transnational European, GLBT network that has formed around it is much stronger, more developed, more professional and as a result more influential than the network in other regions, including in North America. ILGA-North America is a much smaller and less ambitious organization than its European counterpart. The exchange of information between the two regional groups is also quite modest (Interview European GLBT Advocacy Group, 8/22/03). As will be outlined below, the difference in the regional strength of this network is one of the main explanations both for why European countries have been on the forefront of adopting SSU legislation and why they have done so before their North American counterparts.

The strength of the European GLBT network largely can be explained by the strength of the wider European political-economic regime which centers around but is not limited to the European Union. As Thomas Risse-Kappen has argued the ability of transnational networks to affect domestic policies is in part determined by the level of international institutionalization of that policy area (Risse-Kappen 1995: 3-6). Probably no other policy area in any region has been as structured by international institutions as human rights policies in Europe. In the wake of the atrocities of World War Two, European countries made a conscious decision to enmesh themselves in a strong European human rights regime that was supported by a number of international organizations including the United Nations, the Council of Europe, the European Union and after the signing of the Helsinki Accords in the late 1970s, the Organization for Security and Cooperation in Europe (OSCE). For the purposes of this paper I will concentrate on the former two organizations as they have been most directly involved in extending rights to gays and lesbians.

Since its founding as the European Economic Community in 1958, the EU has insisted that its members honor the rule of law as liberal democracies. The explicitness and extent of its commitment to human rights has grown with each new treaty. As will be outlined below, in the Amsterdam Treaty signed in 1997, the EU included sexual orientation as category for non-discrimination thus explicitly extending the Union's human rights protection to homosexuals for the first time. The Council of Europe established in 1949, not to be confused with the EU's Council of Ministers, was created more explicitly to guarantee European citizens basic human rights. The main purpose of the Council is to monitor and ensure the implementation of the European Charter of Human Rights which

establishes a set of fundamental human rights to which all of its 41 member state must subscribe. Individual citizens of these member states can bring suits to the European Court of Human Rights if they feel their rights have been violated (Beger 2001: 25-31). The Charter has been amended several times to extend rights to various groups, although it still does not explicitly mention sexual orientation as a category for non-discrimination. Despite this fact, cases involving the rights of homosexuals have been brought before the court and the court has issued decisions that have extended certain rights to gays and lesbians.

Thus, ILGA-Europe's and the wider European GLBT movement's task has been made infinitely easier by the fact that a human rights network capable of extending, monitoring and enforcing legally binding human rights treaties already exists in Europe. The organization simply had to integrate its demands into this rich, pre-existing set of institutions to reach its goals. Although this was by no means an easy task, ILGA-Europe has been quite successful at lobbying these European institutions and convincing them to redefine human rights to include sexual orientation as a category of non-discrimination. It should be noted, however, that no international regime recognizes gay marriage as a basic right.

The fight to include sexual orientation in the European human rights regime began in earnest in the mid 1980s. The European Parliament of the EU has been ILGA-Europe's greatest ally in this fight within the EU. As early as 1984, intensive lobby efforts by ILGA paid off with the publication of "Sexual Discrimination at the Workplace" by an EP committee which included sexual orientation in its call for more comprehensive anti-discriminatory protections. This was followed ten years later by another EP report entitled

“Equal Rights for Homosexuals and Lesbians in the EC” in 1994, which decried discrimination against European gays and lesbians in wide range of areas including: unequal age of consent laws, discrimination in the workplace and the military, exclusion from marriage laws, exclusion from adoption procedures and the exclusion of GLBT groups from EU funding. The EP has included sexual orientation in all of its annual reports about the state of human rights in Europe since the publication of this report (Beger 2001: 20-22). As with the 1984 report, ILGA had lobbied heavily for and contributed greatly to this publication (ILGA 1999).

Although these EP reports were non-binding, they did a great deal to help define discrimination against sexual minorities as a human rights issue both at the European level and within member states themselves. The rights of homosexuals were clearly now on the agenda of the European human rights regime. ILGA-Europe’s biggest victory came in 1997, again after years of lobbying, when the EU intergovernmental conference decided to include sexual orientation as a category of non-discrimination in the Amsterdam Treaty which came into force in 1999. The Amsterdam Treaty marks the first time that any binding international treaty has prohibited discrimination based on sexual orientation. In 2000, the EU adopted a follow-up directive that barred discrimination against gays, lesbians and bi-sexuals in the workplace. Once again ILGA-Europe played an important role in the passage of this legislation.

ILGA-Europe has also had successes at the Council of Europe, albeit somewhat less dramatic ones. It has helped a number of gay men and lesbians in bring suit against European governments and employers who they claim have violated their rights. Because the Council of Europe has not included sexual orientation in the European Charter of

Human Rights, these claims by gays and lesbians have been made under the guise of the right to privacy. These court decisions have among other things forced the UK government to include homosexuals in their military, forbidden the use of sexual orientation against parents in custody battles and forbidden the criminalization of homosexual behavior (Beger 2001: 25-27).

Through all of these actions, ILGA-Europe and national GLBT organizations have played a major role in the gradual inclusion of sexual orientation in the European human rights regime. European GLBT NGOs have connected this general extension of rights to their campaigns for the legal recognition of SSUs. ILGA-Europe has sought to facilitate this process by disseminating information to national NGOs and supporting these groups' national lobbying efforts. ILGA-Europe communicates with its national organizations through a series publications, including a monthly *Euro-Letter* and a quarterly *ILGA Newsletter* (Interview European GLBT Advocacy Group 8/22/04). Additionally the frequent conferences and forum organized by ILGA allow national policy activists to interact and learn from each other. In this way national GBLT organizations not only learn about developments at the European level, they also learn about developments and lobbying strategies employed by groups in other countries.

I argue that the creation of this European-centered transnational network of GLBT groups and their campaign to redefine sexual orientation as a human rights is essential for explaining why so many west European states have adopted SSU legislation over the past ten years. At the beginning of 1994, the year the EP's "Equal Rights for Homosexuals and Lesbians in the EC" report was published only two European countries, Norway and Denmark, had national SSU laws on the books. Over the course of the next decade nine

other European states would join them. Of these nine, seven have adopted SSU legislation after the signing of the Amsterdam Treaty.

The evidence of the importance of the network and the promotion of sexual orientation as a human rights issue at the European level lies not just in the timing of the legislation but also in anecdotal accounts offered by national GLBT groups. A member of a prominent German GLBT organization described the EP reports as particularly significant and felt they had helped gay and lesbian groups put same-sex unions on the agenda in Germany (Interview German GLBT Advocacy Group 7/27/03). In 2000, the German government passed a registered partnership law. In the UK the incorporation of the European Charter of Human Rights directly into British law in 1998 resulted in several law suits in which British gay and lesbian couples challenged the government for not offering same-sex couples the same benefits that are offered to heterosexual married couples. These law suits helped put the issue on the agenda in the UK, which has now resulted in a rather uncontroversial government proposal for a registered partnership law (BBC 10/2/2000).

While this transnational network has clearly been most influential in Europe itself, it appears as if the network and the international human rights regime that supports it are beginning to have an effect outside of Europe. In June of 2003, the Chrétien government in Canada decided not to appeal several provincial supreme court decisions that declared the limitation of marriage to heterosexual couples in Canadian law unconstitutional. At the same time the Chrétien government proposed legislation redefining civil marriage to include same-sex couples. The government then referred the proposal to Supreme Court for review, where it is still under review (Equal Marriage 2004). Like its European

counterparts the Chrétien government justified its redefinition of marriage as an attempt to address “fundamental concerns of equality and fairness” in Canadian society (National Liberal Caucus Research Bureau 2003: 1). In other words marriage had become a human rights issue. Also featured prominently in this same government policy paper is a reference to SSU legislation in European countries and the implementation of gay marriage in the Netherlands and Belgium (National Liberal Caucus Research Bureau 2003: 1). Thus, even though the transnational GLBT advocacy network is regionally concentrated in Europe where it is supported by numerous interlocking human rights institutions, it appears to be beginning to have some influence on political debates in North America. While it is difficult to measure the exact impact that this advocacy network and its promotion of gay marriage as a human right has had on national governments, it is clear that it has played a crucial role in the rather stunning amount of policy convergence that has occurred across western democracies over the past decade. Once policymakers are persuaded that withholding legal recognition of same-sex couples is a discriminatory act, it is difficult for them to find an argument that can justify such discrimination in a liberal democracy.

This strategy of redefining marriage as a basic right has proven enormously successful. It has, however, not been uniformly successful. There are still a number of countries in Europe and even in the EU that do not recognize SSUs. While the transnational network’s influence seems to be helping shape policy in Canada, its effect on the US, at least at present, seems much less dramatic. For all of the talk about gay marriage and the challenges coming from San Francisco and Massachusetts no mainstream politician from either party has advocated the adoption of a national SSU law. In the US, marriage is still largely defined as a cultural institution that is best regulated by regional authorities.

Thus, while the transnational network and the norms it promotes can help explain the wave of policy convergence that occurred in the 1990s, it can explain neither why some countries have decided not to adopt national SSU legislation, nor why different models of SSUs have been adopted in different countries. In the next two sections I examine two domestic level variables, willingness to participation in transnational society and religious practices and institutions, to see if we can gain better insight into explaining this divergence within convergence.

Participation in and Learning from Transnational Society

Most of the human rights literature focuses on the effects that the regime has on developing countries and the ability of transnational NGOs and powerful western states to use carrots and sticks to get these countries to incorporate basic human rights into their domestic policies. When looking at the human rights regime's effects on democracies the process is generally a more subtle one which emphasizes persuasion and learning across countries rather than coercion. Therefore one of the important domestic level variables that helps determine how much influence the regime will have on a country's policy choices is how willing a democratic government and its citizens are to learn from and participate in transnational society. I argue that regardless of the issue under consideration, some countries are simply less willing to learn from transnational networks and policymakers outside their own borders. This lack of willingness to learn from abroad is also reflected in the level of participation in global society.

To test this hypothesis I look at two different measures of transnational participation, the number of human rights and environmental treaties ratified by individual

Table 2. Same-sex Union Legislation and Transnational Influences—Elite Participation and INGO Membership

	Marriage	Civil Union	No Recog.	NR/DOMA
TransElite (# of HR and Env. Treaties Ratified. Out of 16)	Netherlands (16) Belgium (16) Canada* (15)	France (15) Denmark (16) Norway (16) Sweden (16) Germany (16)	Austria (16) Ireland (14)	United States (8)
TransCivil Society (INGO Membership per million pop.)	Netherlands (365.7) Belgium (558.5) Canada* (138.1)	France (110.4) Denmark (907.9) Norway (958.6) Sweden (588.2) Germany (78.5)	Austria (563.2) Ireland (944.5)	United States (17.6)

Sources: Glasius, Kaldor and Anheier. 2002. *Global Civil Society 2002*. Oxford: Oxford University Press.

Department of Trade and Industry. 2003. *Civil Partnerships: A Framework for the Legal Recognition of Same-sex Couples*.

western democracies and the level of citizen and national NGO participating in INGOs on a per capita basis (see table 2). The first indicator roughly measures the willingness of policymakers (elites) to participate in the types of international regimes that are influenced most by transnational advocacy networks. The second indicator again roughly measures the extent to which citizens and national advocacy groups participate in transnational networks. Not surprisingly, what becomes very clear when looking at the tables is that European countries are much more integrated into transnational society, not just the human rights network, than is true of their North American counterparts. Indeed there is almost no variation among the European countries in terms of treaty ratification, in part because a lot of these decisions are now made at the EU level. There is some variation among the European countries in INGO membership levels but these differences do not seem to explain either why some countries have decided not to adopt SSU legislation or differences in choice of model.

What the participation in transnational networks does seem to explain is why both Canada and the US have lagged behind Europe in adopting SSUs as well as why Canada has moved towards the European position while the US has moved in the opposite direction implementing DOMA legislation and considering the adoption of an amendment to the constitution forbidding gay marriage. While both Canada and the US lag behind the Europeans in elite and citizen transnational participation, the gulf between US and Canadian participation is also very telling. The US's participation rates in both categories are significantly below those found in Canada, in the case of elite participation in treaty regimes dramatically so. These data would seem to suggest that Canada's citizens and in particular their policymakers are better integrated into these transnational networks and are

more willing to let their domestic policy be influenced by them. These differences offer us some insight into the recent policy divergence between the two countries on the issue of SSU legislation. In the next section I examine the role that religion plays in determining what type of SSU a country will adopt, something that transnational participation does not seem to explain well.

Religious Cultural Practices, Institutions and SSU Legislation

As I argued in the introduction, I am assuming that national GLBT movements in western democracies are relatively similar in size, strength and nature. Thus while these groups play an essential role in putting SSUs on the political agenda and lobbying for their adoption, because of their similarity these movements cannot explain difference across countries. For this reason I concentrate on differences in the strength of the opposition rather than on national GLBT movements themselves. The main opposition to SSU laws in all western democracies has been conservative religious groups. Borrowing heavily from the work of Michael Minkenberg who has examined the impact of religion on abortion policies in western countries, I look at the impact of different aspects of religion on policy outcomes. I use two indicators of religious cultural values, religiosity and confessional heritage, and one measure of religious institutionalization, church-state relations. As Minkenberg also found with abortion policy, the cultural aspects of religion seem to have more influence on SSU outcomes, both the decision to recognize same-sex relationships and the particular model chosen, than the institutionalization of religion.

Religiosity as measured by the percentage of the population that attends church at least once a month, perhaps not surprisingly, seems to go some way in explaining both

Table 3. Same-sex Union Legislation and Religiosity

	Marriage	Civil Union	No Recog.	NR/DOMA
Low Religiosity		France Denmark Norway Sweden Finland		
Medium Religiosity	Netherlands Belgium Spain*	Germany Portugal United Kingdom*	Austria Italy	
High Religiosity	Canada*		Ireland Greece	United States

Sources (Tables 3-5): M. Minkenberg. 2002. "Religion and Public Policy: Institutional, Cultural and Political Impact on the Shaping of Abortion Policies in Western Democracies." *Comparative Political Studies*, Vol. 35 No.2.

Department of Trade and Industry. 2003. *Civil Partnerships: A Framework for the Legal Recognition of Same-sex Couples*.

Table 4. Same-sex Union Legislation and Confessional Heritage

	Marriage	Civil Union	No Recog.	NR/DOMA
Predominantly Protestant		Denmark Norway Sweden United Kingdom Finland		United States
Mixed	Netherlands Canada* Spain*	Germany		
Predominantly Catholic	Belgium	France	Austria Ireland Italy	

Sources (Tables 3-5): M. Minkenberg. 2002. "Religion and Public Policy: Institutional, Cultural and Political Impact on the Shaping of Abortion Policies in Western Democracies." *Comparative Political Studies*, Vol. 35 No.2.

Department of Trade and Industry. 2003. *Civil Partnerships: A Framework for the Legal Recognition of Same-sex Couples*.

Table 5. Same-sex Union Legislation and Church State Relations

	Marriage	Civil Union	No Recog.	NR/DOMA
Full Establishment		Denmark Norway Sweden		
Partial Establishment	Belgium	Germany	Austria	
Separation	Netherlands Canada*		Ireland	United States

Sources (Tables 3-5): M. Minkenberg. 2002. "Religion and Public Policy: Institutional, Cultural and Political Impact on the Shaping of Abortion Policies in Western Democracies." *Comparative Political Studies*, Vol. 35 No.2.

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whether a country has SSU legislation and which particular model is adopted (see table 2). Of the three countries in the study that do not legally recognize SSUs of any kind, two are highly religious societies and one scores medium on the religiosity scale. A somewhat more interesting pattern can also be seen with low religiosity countries all of which have adopted a registered partnership model of one form or another. Curiously not one of these countries has adopted gay marriage. The three countries that have adopted gay marriage (or in the case of Canada have proposed it) all score medium to high on the religiosity scale. This suggests that the enduring importance of religious values may lead countries to prefer a more traditional SSU than in countries where secularization processes have gone further. In these latter societies the idea of creating something akin to ‘marriage lite’ may simply not be viewed as a cultural threat. Where religion continues to be important society may be more inclined to bind same-sex couples to a relationship that symbolizes something more than a set of legal rights and obligations.

A somewhat similar pattern emerges when comparing the confessional heritage of these countries with SSU policy outcomes. It should be noted that the designation of a country as Catholic, Protestant or mixed heritage is based not on the society’s current composition but rather on its historic affiliation and corresponding set of values. Again we see that civil unions are associated, albeit not exclusively, with predominantly protestant societies while the countries that have adopted marriage as a model are either predominantly Catholic or mixed. This association lends additional support to the idea that gay marriage is more likely to be adopted in societies with more conservative views of marriage. Confessional heritage, somewhat surprisingly, tells us less about whether a country will adopt SSU legislation or not. Catholic countries, however, have tended to be

late adopters of SSU legislation (France 1999, Belgium 1998, Netherlands 1998). It is also worth noting that while a number of Catholic countries do have SSU legislation in place, two out of the three non-adopter countries, are predominantly Catholic.

Although the cultural aspects of religion seem to explain SSU outcomes better than its structural aspects, it is interesting to look at how Church-State relations affect SSU policies (see table 5). No patterns appear between either partial establishment or separation of church and state and SSU policy outcomes. Civil unions, however, do appear to be associated with Scandinavian countries that have fully established churches. This pattern confirms what other research has found. Namely that churches and religious movements are far more successful at influencing policy from outside state institutions than when they are incorporated into the state (see Minkenberg 2002). Thus there seems to be a very real religious impact on SSU policy adoption. While the cultural practice of religion seems to have a greater impact on policy outcomes than how religion is institutionalized in the political system, all three variables appear to have some influence. In the next concluding section I will try to evaluate the importance of these religious variables vis-à-vis transnational participation for explaining variation in SSU policy outcomes in advanced industrial democracies.

Conclusions

This paper has sought to address three questions: 1) What explains the wave of SSU legislation that occurred across advanced industrial democracies in the late 1990s? 2) What explains why some AIDs decided to adopt SSU laws while others remain opposed such legal recognition? 3) What explains the different types of SSU models that have been adopted? While the first question addresses the issue of policy convergence the second two

attempt to explain divergence. To explain this divergence within convergence, I argue that we have to examine both what has occurred within a growing transnational GLBT community as well as how this network interacts with domestic level variables. For the purposes of this study the domestic variables I focus on are participation in and willingness to learn from transnational networks as well as religious variables. While national GLBT groups have of course played an important role in getting the issue on national agendas, not least through their participation in the transnational advocacy network, I have largely worked on the assumption that the size, strength and nature of national GLBT movements are not different enough to explain the two questions of divergence.

While clearly not the only factor, the evidence presented in this paper suggests that the creation of a human rights oriented transnational network of GLBT advocacy groups has played an important role in the adoption of SSUs in Europe. While the network is global in scope, it has always been at its strongest and most influential in Europe where the EU and the Council of Europe have institutionalized a robust human rights regime into which GLBT organizations have sought to integrate. The network, which is embodied by but certainly not limited to ILGA-Europe, was crucial in two respects. First, it was able to lobby both the EU and the Council of Europe and encouraged both organizations to recognize sexual orientation as a category for non-discrimination. Although the incorporation of so called sexual minorities into binding human rights treaties is far from complete and has occurred in a piecemeal manner, the EU has included a prohibition against discrimination based on sexual orientation in its treaties. While this does not force member states to recognize SSUs, it does strengthen the case of national GLBT organizations who are calling for equal marriage rights at the national level. In addition to

lobbying international organizations to redefine human rights charters, the transnational network has also acted as a conduit between national GLBT groups and policymakers that has helped facilitate cross border learning. The existence of this European centered network helps explain both the timing and the regional clustering of SSU legislation. The fact that the North American network is much weaker helps sheds light on why the two North American cases are either late adopters, Canada, or non-adopters, the US.

To understand why there is continued policy divergence between the countries under study, I turn to two domestic level variables, participation in transnational society and the strength and nature of national religious practices. The first primarily helps us explain differences between European and North American countries. The Europeans are both far more willing to participate in international regimes and join international NGOs than is true of their North American counterparts. Additionally, however, this variable also seems to help explain differences between Canada and the US. While Canada generally is not as open to transnational influences as European societies, it is a more enthusiastic participant than the US. It is therefore not surprising that Canada has moved towards the now mainstream west European position on SSUs by proposing a gay marriage law, while the US has dug in its heels on the issue by beginning debate on a Constitutional amendment that would ban gay marriage.

Transnational participation cannot however explain differences across European countries as participation rates are uniformly high, nor does it give us much insight into why adopter countries have chosen different models. To address these questions I looked at the role that national religious practices and institutions play in determining SSU policy outcomes. Several interesting patterns emerged. Not surprisingly, high and medium levels

of religiosity are associated with non-adoption, although a number of countries with medium levels of religiosity have adopted SSU legislation. Again, not surprisingly all countries that scored low on the religiosity scale had SSU laws in place. What is more surprising is that not only were these latter countries adopters of SSUs, they also all had implemented the civil unions model and not marriage. Gay marriage is associated with countries that have high to medium levels of religiosity and also in countries with a Catholic heritage. Thus it seems that in more traditional countries governments are more willing to extend the traditional notion of marriage to gay couples rather than relying solely on the creation of new institution.

These findings about religion and SSU policy largely mirror what Minkenberg found about religion and abortion policies. Despite widespread trends towards secularization, religion does still have a noticeable impact on social policy outcomes. Most of this influence is felt through the cultural aspects of religion, however, rather than how it is institutionalized in the political system.

Perhaps the most interesting implications of this study, however, are related to the processes of transnational socialization that have been outlined in the constructivist and international human rights literature. Because this literature has tended to concentrate on the transnational regime's influence on developing countries, the instrumental part of the socialization process has been emphasized as much as the persuasive power of argumentation. In the case of SSUs this socialization process has occurred between advanced industrial democracies. Neither the threat of brute force nor economic carrots have played much of a role in the spread of the SSU policy idea across borders. Indeed cultural policies such as recognizing homosexual relationships represent a "hard test" for

the power of ideas because so few material interests are at stake. The fact that we have seen as much convergence as we have offers pretty strong evidence for the assertion that ideas and persuasive argumentation, in and of themselves, can be quite powerful.

Because the instrumental tactics used by transnational advocacy networks when dealing with developing countries are not available to them when the target states are advanced industrial industries, individual country's willingness to participate in transnational society and learn from policymakers outside of their borders becomes increasingly important. This study has tried to incorporate this idea of 'willingness' into its explanation in a concrete manner; in most studies it is mentioned in an impressionistic way. Indeed the findings here seem to confirm what these impressions convey. The US is simply not as willing to learn from other countries or adopt new norms being promoted by transnational NGOs or international organizations. This appears to be every bit as true for the recognition of the rights of sexual minorities as it does for security and defense policy. Some reasons for this such as the fact that the US is the lone surviving superpower are quite obvious. However, this reluctance on the part of US to participate in global society is longstanding and neither its origins nor its implications have been fully explored. Given its implications in this age of globalization, it probably should be.

Finally, I would like to end by pointing out that this study has really only given an overview of SSU legislation in advanced industrial democracies. Because it has attempted to find broad patterns across a fairly large number of countries, it glosses over a great deal of detail about each country. For example, while I have lumped France in with other registered partnership model countries, its PACS law is in many ways unique. Its model comes the closest to approximating what has come to be termed "marriage-lite"

which is open to both homosexual and heterosexual couples and is much easier to enter in and out of than traditional marriage. Similarly, although I use different measures of religion, these are still rather clumsy indicators that may not get at a lot of the subtle differences between religious practices in these countries. Nor does the nature of the study allow for much insight into one of its most interesting findings, namely why are countries with medium religiosity more likely to adopt the gay marriage model than countries with low religiosity, which all have adopted registered partnerships? These questions can probably only be addressed with smaller case studies of the individual countries.

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