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# Regulating intimate relationships in the European polity: same-sex unions and policy convergence

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Since 1989, twenty-three European countries have implemented same-sex union (SSU) laws. We argue that the political processes leading to the adoption of these policies have been shaped by international influences such as policy harmonization, elite lesson-drawing and most importantly by social learning fostered within transnational networks. We examine SSU policies in four West European countries—Germany, Austria, Belgium, and Spain—to illustrate how these international influences and transnational networks have shaped SSU policy outcomes, and argue that the workings of these networks resemble those of the “velvet triangle” policy communities identified by gender scholars.

## Introduction

In 1989, when Denmark became the first country to implement a national same-sex union (SSU) policy that recognizes lesbian and gay couples in law, no one would have predicted that twenty years later the vast majority of West European states would offer same-sex couples some kind of legal recognition. Within just two decades, twenty-three European countries, including a growing number in Central and Eastern Europe, have passed national legislation to recognize gay and lesbian couples, putting Europe at the vanguard of lesbian, gay, bisexual, and transgender (LGBT) rights (Table 1).

Although European countries have adopted different forms of recognition—registered partnerships (RPs) vs. unregistered domestic partnerships vs. opening civil marriage—the legal content of these policies are all modeled on marriage laws, and are remarkably similar in nature (Waldijk 2005). Nordic, British, and Slovenian RPs largely mirror civil marriage laws

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**Table 1.** National Same-sex Unions Legislation in Europe

Marriage	RP	Unregistered Partnership
Netherlands (2001)	Denmark (1989)	Hungary (1996)
Belgium (2003)	Norway (1993–2009)	Portugal (2001)
Spain (2005)	Sweden (1995–2009)	Austria (2003)
Norway (2009)	Iceland (1996)	Croatia (2003)
Sweden (2009)	Greenland (1996)	
Portugal (2010)	Netherlands (1998)	
Iceland (2010)	France (1999)	
Denmark (2011)	Belgium (2000)	
	Germany (2001)	
	Finland (2002)	
	Luxembourg (2004)	
	UK (2004)	
	Andorra (2005)	
	Switzerland (2005)	
	Czech Republic (2006)	
	Slovenia (2006)	
	Austria (2010)	
	Hungary (2010)	
	Ireland (2010)	

Source: ILGA-Europe: [http://ilgaeurope.org/home/issues/families/recognition\\_of\\_relationships/legislation\\_and\\_case\\_law/marriage\\_and\\_partnership\\_rights\\_for\\_same\\_sex\\_partners\\_country\\_by\\_country](http://ilgaeurope.org/home/issues/families/recognition_of_relationships/legislation_and_case_law/marriage_and_partnership_rights_for_same_sex_partners_country_by_country). Accessed 24/8/2010.

while being reserved for same-sex couples. Moreover, since 2000, many European governments have expanded the rights, benefits, and duties associated with their RP laws, making these partnerships even more similar to national marriage laws. Indeed an increasing number have opened civil marriage itself.<sup>1</sup> Further, the discourses underlying the adoption of SSU laws also have had a great deal in common. SSU proponents in almost all European countries have sought to frame state relationship recognition as a human right that should not be denied to same-sex couples because of their sexual orientation.

Given the diverse legal history of regulating homosexuality in Europe and the high degree of similarity among SSU laws, this trend can be described as a clear and dramatic case of policy convergence, both in terms of general policy outcomes and, increasingly, in terms of the specific instruments used to recognize same-sex couples. Despite these cross-border similarities, most scholars have sought to explain the expansion of LGBT rights by focusing on the domestic politics of single countries or through limited country

comparisons (Søland 1998; Calvo 2007; Smith 2008, 2010; Rydström 2011). Although important, we argue that domestic factors alone cannot explain SSU policy outcomes. To understand this policy change fully, we have to examine the regional and international context in which this change has occurred. More specifically, we argue that SSU policy adoption in Europe has been influenced and accelerated by processes of international learning via transnational networks, elite lesson-drawing, as well as—albeit to a much lesser extent—more formal processes of policy harmonization.

We use four cases of SSU policy adoption to make this argument and to tease out the causal mechanisms that have induced states to adopt broadly similar SSU policies. First, we examine the adoption of RP schemes in Germany and Austria to illustrate the ways in which these international influences have affected general SSU policy discourses and outcomes. Second, we examine the Belgian and Spanish governments' decisions to implement a more specific and politically controversial instrument of relationship recognition, namely opening marriage to same-sex couples. In this case, we also find that European networks of activists and policy elites played an important role in shaping SSU outcomes, but in addition policy debates in the two countries were influenced by a common epistemic community of lawyers that marshaled legal arguments and strategies to promote marriage equality.

We have chosen to examine the SSU policy in Western Europe where cross-border influences have been at their strongest to tease out the mechanisms of convergence at work. Within Western Europe, we selected Austria, Germany, Spain, and Belgium precisely because SSU outcomes in these countries do not conform well to the expectations of current LGBT politics literatures. These countries vary considerably on many of the domestic factors often associated with LGBT rights expansion (Badgett 2009; Banens 2011; Rydström 2011). These factors include levels of religiosity (moderate in Germany and Belgium; higher in Spain and Austria), levels of homophobia (moderate in Austria and lower in Spain, Germany, and Belgium), the history and strength of LGBT movements (well established in Germany; more recent and historically weaker in Austria, Belgium, and Spain), as well as past policy legacies (early de-criminalization of homosexuality in Belgium and Spain; late de-criminalization in Germany and Austria). Despite these differences, all four countries adopted a national SSU policy between 2000 and 2005. By tracing the processes that led each country to implement similar policies of relationship recognition, we illustrate the important role that international factors have played in fostering this policy convergence.

As such we employ the method of agreement in combination with process tracing to support our argument. Although the method of agreement has been criticized for selecting on and failing to vary the dependent variable, we believe that it is appropriate for several reasons. First, the method of agreement is useful for examining cases in which unexpected regularities occur across societies; in our case the rapid adoption of SSU policies

(Rogowski 1995). Convergence research after all seeks to explain the process of becoming more alike rather than continued variance. Indeed in Western Europe very little variation exists in SSU policy as the vast majority of countries in the region now have a law that recognizes same-sex couples. Further, as recommended in the literature on case study research, we supplement our comparative analysis and address some of the weaknesses of the method of agreement by utilizing process tracing within our four cases to tease out the role that international learning, lesson-drawing and harmonization have played in SSU policy debates over time (George and Bennett 2005). We use government and organizational documents, interviews with over fifty policy-makers and activists in the four countries as well as participant observation of activist meetings and policy debates in these countries and European institutions to carry out this analysis.

In making these arguments, we engage with literatures on policy convergence, transnational advocacy networks and Europeanization. Although helpful, these literatures have a tendency to concentrate on either a single mechanism of convergence or a single set of actors. Our research reveals the importance of a combination of mechanisms as well as the key role played by learning within multi-actor, transnational networks. The nature of the networks we identify also differs from those commonly described by scholars of transnational politics and policy convergence. The former tends to focus on activists, while the latter emphasizes the role of policy elites. We identify a configuration that resembles the velvet triangle framework, one of the “feminist triangles” used by gender scholars to explain how gender equality policy has been promoted within national states as well as the multi-level governance structures of the European polity. The key insight of this under-used concept is that policy networks in Europe are incredibly porous and the lines between NGOs, domestic policymakers, transnational activists, European Union (EU) officials, and legal experts are often blurred. Single actors wear multiple hats and operate, often simultaneously, in multiple arenas. Their blurred nature makes such networks and their effects difficult to identify. But as the SSU case makes clear neither domestic policy elites, nor international bureaucrats on transnational activists alone can explain how twenty-three European states over the span of just twenty years became convinced that legally recognizing same-sex couples was the right thing to do.

## The Spread of Same-Sex Unions Policy in Europe

Family policy and the legal rights of same-sex couples have been fundamentally transformed over the past two decades in European countries. After 1989, the Danish RP example spread to other Nordic countries: Norway in 1993, Sweden in 1995, and Iceland in 1996 (Rydström 2011). In the late 1990s, other West European countries began following suit, adopting similar

but often less generous legal provisions: The Netherlands (1998), France (1999), Belgium (2000), Germany (2001), Finland (2002), Portugal (2001, 2010), Austria (2003, 2010), Luxembourg (2004), the UK (2004), Andorra (2005), Switzerland (2005), and Ireland (2010). Initially the SSU policies adopted by Portugal and Austria only offered lesbian and gay couples the possibility of becoming unregistered cohabitants. But, since 2009, the governments of both countries have sought to implement more comprehensive forms of recognition. Austria adopted an RP law in December 2009 and Portugal opened marriage to same-sex couples in 2010. Throughout the latter part of the 1990s and early 2000s, a number of Central and East European countries, such as Hungary (1996, 2009), Slovenia (2006), and the Czech Republic (2006), also implemented SSU policies; Hungary began by recognizing unregistered cohabitants before adopting an RP law.

A new trend emerged in 2000, with the Dutch decision to open marriage to same-sex couples. The Netherlands was followed by Belgium in 2003, Spain in 2005, Norway and Sweden in 2009, Iceland and Portugal in 2010, and Denmark in 2011. The opening of marriage in these countries has created an alternative discourse that competes with other RP and domestic cohabitants' options. Many activists and legal experts argue that until same-sex couples are allowed to enter the same institution as different-sex couples, under the same name and the same rules, society will not recognize their equal moral legitimacy. They further claim that the opening of marriage would smooth the progress of other family rights. This discourse now dominates the rhetoric of most national LGBT rights groups. Thus, there has not only been a convergence in general policy outcomes since 1989. Over the past five years, there has also been convergence towards the use of particular instruments of recognition. Of the twenty-three European countries that have adopted an SSU law, only one currently uses an unregistered cohabitation law as the sole means by which to recognize gay and lesbian couples at the national level, and an increasing number have opened civil marriage.

As this brief overview makes clear, the regional and temporal clustering of SSU adoptions has been dramatic. Since 1989, thirty countries worldwide have adopted an SSU law; twenty-three have been enacted since 2000. Eleven of the post-2000 adopter countries are located in Western Europe and fifteen are located in greater Europe. This pattern of SSU adoption in Europe has followed what scholars of policy diffusion refer to as a classic "S" curve distribution (see Figure 1), in which slow rates of adoption in the early years are followed by greatly increased numbers of adoption in the middle years before rates eventually begin to slow after "saturation" in the region begins to occur (Gray 1973). The clustering of policy adoptions illustrated by an S curve indicates that the implementations of the policies under scrutiny most likely are not independent events. Taken together, this evidence strongly suggests that the spread of SSU laws across Europe has been shaped by common international and/or cross-border influences.

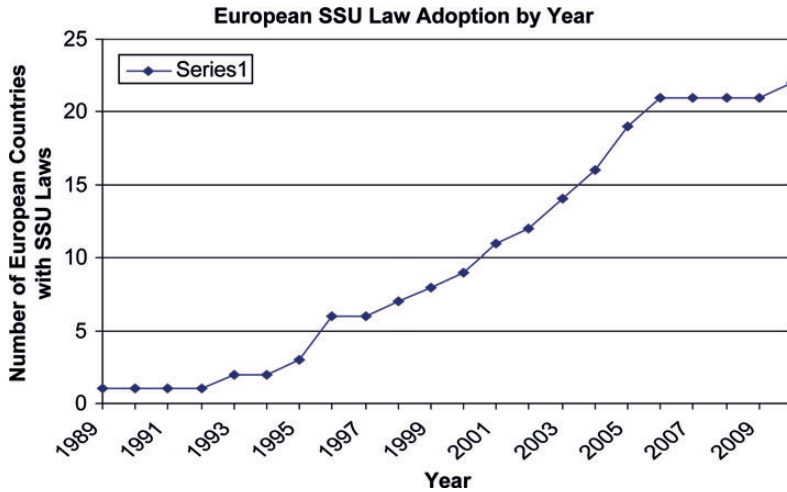


Figure 1. SSU Adoptions in Europe by Year

Yet despite this evidence most scholars who study SSU policies or the expansion of LGBT rights, including those writing on our four countries, largely have focused on domestic factors to explain these developments (Schimmel and Heun 2001; Herzog 2005; Borghs and Eeckhout 2010; Calvo 2010, 2011; Krickler 2010). These scholars have emphasized the importance of socio-legal change related to family structure and law, a decline of homophobia, the legacy of the human immunodeficiency virus- acquired immunodeficiency syndrome (HIV-AIDS) crisis as well as the impact of religion (Chauncey 2004; Weeks 2007; Rayside 2008; Badgett 2009; Banens 2011). Other researchers have stressed the influence of political factors such as strong LGBT movements (Badgett 2009; Rydström 2011), elite allies (Calvo 2011), and favorable political opportunity structures and policy legacies (Smith 2008). Although these factors are significant, most studies overlook the importance of the catalyzing and legitimating effects that international developments have had on national policy discourses about same-sex relationship recognition. As a result, these scholars are unable to explain why many of the domestic factors that allowed countries such as Denmark and the Netherlands to be SSU pioneers have not been present in the second wave of SSU adopting countries, or at least not to the same degree. These domestic factors have begun to lose their explanatory power as the wave of SSU adoptions has spread across Europe, suggesting that other, non-domestic factors are at work. We seek to add to recent work by scholars such as Adriana Piatti-Crocker (2010) as well as our own earlier research (Kollman 2007; Paternotte 2011b) that examines, but does not fully flesh out, the role

that international society and influences have played in the expansion of LGBT rights in western countries. In the next section, we turn to scholarship on policy convergence and transnational activism to help conceptualize the mechanisms by which this policy convergence has occurred.

## Explaining Policy Convergence

In his seminal work, Colin Bennett defines policy convergence as processes that cause states' policy goals, content, instruments, outcomes, or styles to become more alike over time (1991, 217–218). Utilizing public policy research on “lesson-drawing” (Rose 1993) and work by international relations scholars on regimes (Krasner 1982), Bennett identifies four distinct convergence mechanisms. First, policy convergence may result from lesson-drawing<sup>2</sup> in which domestic policymakers “look abroad, to see how other states have responded to similar pressures, to share ideas, to draw lessons and to bring foreign evidence to bear within domestic policy-making processes” (1991, 220). Second, convergence may occur through elite networking, which implies sustained contacts between actors and the emergence of transnational policy communities. These exchanges may lead to common ideas being created within the network, and implemented domestically. Third, Bennett considers harmonization through international regimes, which is based on “authoritative action by responsible intergovernmental organizations” (225). Fourth, penetration by foreign actors and interests can induce convergence when states are forced to adopt policies by more powerful actors.

Several authors have amended Bennett's list and added new convergence mechanisms. Christoph Knill emphasizes the importance of common but independent national answers to similar pressures—something we consider in the SSU case but ultimately find inadequate—in addition to the more familiar mechanisms of policy imposition, harmonization, transnational communication, and regulatory competition (Knill 2005). More recent work has also highlighted the need for including Europeanization among policy convergence factors, often as a type of harmonization process. Given the European nature of our story, it is potentially an important mechanism of SSU convergence. Europeanization, however, cannot be restricted to harmonization, as it can also result from horizontal dynamics at the EU level, such as bargaining or learning. More generally, it refers to “processes of (a) construction, (b) diffusion, and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, “ways of doing things”, and shared beliefs and norms which are first defined . . . in the EU policy process and then incorporated in the logic of domestic . . . public policies” (Radaelli 2003, 30). The “softer” forms of Europeanization resemble many of the mechanisms highlighted by the policy convergence scholars, namely learning



through networks and lesson-drawing. The literature as a whole, however, has focused on the extent to which the main policymaking bodies of the EU promote convergent policy change through formal harmonization. Very little research examines the influence of the many informal policy networks that have grown up around the EU and the independent Council of Europe, which include transnational NGOs, legal activists as well as international and national policy elites. This reflects a broader weakness of policy convergence literatures. Scholars working in this tradition often have neglected the crucial role that non-state actors and the informal norms and ideas they promote play in processes of policy convergence (Stone 2004).

Constructivist scholars in international relations have addressed this gap by describing how networks of non-state actors—what Margaret Keck and Kathryn Sikkink (1998) call transnational advocacy networks—can induce policy learning within international organizations and domestic political settings. These networks exert influence by creating and disseminating common norms, identities, and knowledge claims. International norms, defined as “a standard of appropriate behavior for actors with a given identity” (Finnemore and Sikkink 1998, 891), can lead policy actors within states to alter their behavior as a result of international pressure, or out of fear of being excluded from the international community. After time, however, states may comply because they think it is appropriate to do so (Risse and Sikkink 1999). This argument, which has been used by a number of scholars studying international civil society movements (Price 2003), resembles Bennett’s learning through elite networks, but expands the notion of who counts as “policy elites”. These authors also emphasize that domestic policy change can occur when transnational activists empower domestic societal actors and is not always the result of learning by policy elites alone.

Using a similar logic of social learning, constructivist scholars argue that knowledge professionals also can promote policy convergence, as exemplified by the concept of epistemic communities. According to Peter Haas, who coined the term, an epistemic community is “a network of professionals with recognized expertise and competence in a particular domain, and an authoritative claim to policy-relevant knowledge within that domain” (Haas 1992, 3). Epistemic communities contribute to the cross-national diffusion of policy ideas by linking domestic and transnational arenas. These expert networks can be a source of policy convergence when they are influential in different countries at the same time, that is to say when they are heard simultaneously by several governments and/or supranational organizations (Adler and Haas 1992, 379).

Although constructivists and policy convergence scholars do not always agree on which actors or structures are the main promoters of new policy ideas, they have identified a similar set of mechanisms by which policy convergence can occur: learning—both social and cognitive—via networks, lesson-drawing from afar, harmonization, and coercion. A great deal of the

research in both camps, however, treats these mechanisms as alternatives or simply focuses on one set of actors. What these approaches frequently miss is that policy convergence in a single sector often results from multiple mechanisms that are driven by different types of structures and actors. As we illustrate below, SSU policies have been influenced by a number of convergence mechanisms, with learning via multi-actor transnational networks playing a particularly important role.

We draw on the concept of “velvet triangles” to describe the nature and workings of the transnational policy community that has promoted SSUs in Europe. The concept, drawn from the “feminist triangles” literature (Holli 2008), is used by gender scholars to describe a mixed policy network made up of activists, academics, and policy elites who work together to promote gender equality policies (Woodward 2004). Unlike in more formal policy communities or “iron triangles” on which the concept was originally based, the participants do not belong to the network as representatives of their organizations, but because of their expertise and commitment to the issue. Velvet triangles emphasize the importance of personal and informal ties rather than the structural relationships between members. The word “velvet” evokes a soft and hidden kind of policymaking, which relies on fluid and often personal relationship. This fluidity results partly from its members’ remoteness from the main centers of decision-making, especially in poorly institutionalized policy domains, the nature of friendships, and evolving identity ties such as gender or sexuality. These network connections are characterized by the porousness of their political, social, and academic spheres, as well as by the multipositionality of actors.

By linking the notion of “velvet triangle” to current debates on transnational activism, we are able to describe the multi-actor and multi-mechanism nature of the regional policy community that has promoted SSUs in Europe. The framework helps explain how a diffuse policy network has been able to exert substantial influence on national decision-making processes through several different avenues. Although the policy community/networks (Rhodes 1990; Sabatier and Jenkins-Smith 1993) and feminist triangle approaches have been used widely to explain policymaking processes in domestic settings and within the EU, they have only rarely been utilized to describe processes of policy convergence.

In the case studies presented below, we illustrate how this diverse policy community has shaped, albeit to different degrees, domestic SSU debates, outcomes and, in the cases of Spain and Belgium, the specific instrument used to recognize same-sex couples. We do not claim that domestic factors are unimportant for explaining either SSU policy developments in these countries or how European pressure for change is mediated within them. But we do demonstrate that these domestic factors alone cannot fully account for SSU policy change and convergence in Europe.

## Registered Partnership Laws in Germany and Austria

Neither Germany nor Austria was at the forefront of LGBT rights expansion in Europe in the 1980s or 1990s. Nevertheless in 2001, Germany became the eighth country to recognize same-sex couples by adopting an RP law. In 2003, Austria followed by implementing an unregistered cohabitants' scheme as a result of a European Court of Human Rights mandate. In their initial incarnations, both SSU policies were circumscribed in the benefits and rights that attached to them. This changed by the end of the decade, however, as the German government and courts slowly expanded its RP law throughout the 2000s. Similarly in 2010, Austria implemented a more comprehensive RP law of its own. In both countries these rather dramatic, if somewhat drawn-out, policy developments to a significant degree were the result of international social learning that led elites and the German and Austrian publics to internalize the idea that recognizing same-sex couples is the right thing for democratic governments and societies to do.

In Germany, international influences affected four separate, but related aspects of the policy process (Kollman 2011). First, the growth and increasing clout of a European LGBT rights movement empowered German domestic groups to utilize a human rights frame and to highlight relationship recognition as a core movement goal in the 1990s. Although West Germany had vibrant lesbian and gay communities and organizations in its metropolitan areas in the 1980s, these groups were neither nationally unified nor organized around a human rights framework (Herzog 2005). Indeed, the latter had been rejected by many activists as being too assimilationist and premised on bourgeoisie and patriarchal values. Several attempts to form a national gay rights organization ended in acrimonious disagreements over strategy and movement goals (Bruns 2006).

It was not until the formation of the Gay Man's Federation (SVD) in Leipzig in 1990 during East Germany's transition to democracy that the newly reunified Germany gained a permanent, national gay rights organization; it became the Lesbian and Gay Man's Federation (LSVD) in 1999 (Joergens 2010). The new organization quickly built up its European connections and became an active member of the regional International Lesbian and Gay Association-Europe (ILGA-Europe), which was created in 1996 to promote LGBT rights within the European human rights regime (Interview ILGA-Europe 28 October 2005). ILGA-Europe's early successes using human rights language to lobby the EU, and in particular the European Parliament (EP), helped LSVD to legitimize the organization's new focus on human rights. In addition, interacting with activists from countries such as Denmark and the Netherlands during the 1990s helped LSVD to highlight relationship recognition as a key movement goal and to put the issue on the broader political agenda (Interview LSVD 21 November 2005). As Manfred Bruns, one of the leading advocates of same-sex marriage within LSVD, later

recalled, “[o]nly after seeing the pictures of male and female couples registering in the Marriage Hall of the City Chambers in Copenhagen did it [homosexual-marriage] gain attention and begin to occupy people’s imaginations (Bruns 1994,51; translation by author).” The rise and success of LSVD is essential for understanding why Germany implemented an SSU law as early as 2001, but the effectiveness of this organization cannot be understood without taking its European connections and experiences into account (Kollman 2011).

Second, European norms and examples helped embolden members of the Alliance 90/Green Party (hereafter the Green party) to champion an RP law after they became the junior partner in the first Social democratic party–Green party (red-green) coalition government in 1998. Like LSVD, the Green party has strong ties to European policy networks, and these connections have shaped the party’s positions on LGBT rights and relationship recognition. One such influence was the high-profile, but non-binding 1994 EP report written by Claudia Roth—a Green party Member of the EP—that called on EU member states to open marriage to same-sex couples (European Parliament 1994). When the red-green government came to power, the coalition agreement noted that their plans to implement an RP law followed longstanding recommendations of the EP (SPD/Buendnis 90/Die Gruenen 1998). In addition to recognizing Roth’s work on the issue—by 1998, Roth was a member of the German parliament—this mention of the EP recommendations was likely included to help convince the more skeptical members of the social democratic party (SPD), which included high-ranking government officials, of the merits of such a law. Because of this skepticism within the government, the passage of the bill relied heavily on the efforts of backbenchers in the parliament such as the Green party’s Volker Beck (Interview CDU Party Official 18 November 2005). Beck is a human rights lawyer, who had served as the LSVD spokesperson before being elected to parliament. This overlapping network of German parliamentarians, LGBT activists, and European officials was able to use European examples and norms to help put relationship recognition on the political agenda as a rights issue in the early 1990s and to legitimize arguments for legal recognition during the contentious cabinet and parliamentary debates over the RP law that occurred in the early 2000s.

Third, although less decisive, the German RP law also has been influenced by elite lesson-drawing. The law that was implemented in 2001 was explicitly modeled on the Nordic RP schemes. Originally, the German law was a much weaker version of its Nordic forerunners as a result of the opposition the bill faced in the upper house of the German legislature from the Christian democratic parties. But the existence of this model was seen as critical by legal analysts in Germany in the 1990s (Interview Green party Official 18 November 2005; Interview LSVD 20 March 2008). Many activists feared that a clause in the German constitution that calls for the “special protection of

marriage” would give the Courts enough ammunition to quash attempts to open civil marriage to same-sex couples. RPs, which had been implemented successfully in the Nordic countries, were seen as a legitimate alternative that would not incur the wrath of the Constitutional Court. Indeed, the Court has been reasonably supportive of the RP legislation. Its ruling in 2002 that upheld the RP law allowed the red-green government to pass legislation in 2004 (*Gesetz zur Überarbeitung des Lebenspartnerschaftsrechts*) that expanded the benefits granted to same-sex registered partners.

Most recently, direct policy harmonization by the EU’s European Court of Justice (ECJ) has led to the further expansion of the German RP law. In the 2008 *Maruko v. Versorgungsanstalt der deutschen Bühnen* case, the ECJ ruled that German employers must give the same-sex registered partners of their employees the same pension benefits that married spouses enjoy. Although not mandated by the decision, German courts subsequently have extended almost all of the rights and duties associated with marriage to same-sex registered partners (Prantl, *Sueddeutsche Zeitung* 2009). The more narrow ECJ decision about work place benefits applies to all member states that have an SSU in place, but it does not force member states to implement an SSU policy. Direct policy harmonization is still quite weak.

The European polity thus has influenced German SSU policy in profound and complex ways. Most importantly, the mixed transnational policy community that has sprung up in Europe around LGBT rights issues helped key German political activists and policy elites such as Manfred Bruns, Volker Beck, and Claudia Roth to frame relationship recognition as a human rights issue. These actors used their connections to European and German policy circles to push for reform at the right time and to use victories in one political arena to spur reform in others. Their source of power, as the velvet triangle approach suggests, was rooted in informal connections and exploiting the access that their multiple memberships in activist, party, and European policy networks allowed. The rise of the Green party and LSVD as well as the advent of the red-green coalition government in the late 1990s were necessary for the passage of Germany’s RP law, but the source of their influence was anchored in these actors’ ties to European policy networks and the legitimacy these connections lent their arguments. Without these ties, it is simply not conceivable that the red-green government would have been able to implement an SSU policy as early as it did (Kollman 2009, 2011).

The same processes of international influence have played a crucial, and perhaps even more significant, role in SSU policy debates in Austria. As in Germany, European norms and examples have been incorporated into Austrian policy debates about LGBT rights expansion via transnationally linked activists and left parties (Kollman 2009). Advocacy groups such as HOSI Wien and Rechtskomitte Lambda are active participants in European LGBT rights networks. Kurt Krickler, the former, long-serving director of HOSI Wien, joined ILGA in 1981 and was among the founders as well as the

first co-chair of ILGA-Europe in 1996. Austrian groups have used EP reports, developments in other European countries, and rulings by the ECtHR that expand lesbian and gay rights to bolster their campaigns for same-sex relationship recognition and to frame it as a human rights issue (Interviews Austrian LGBT Activist 28 October 2005; Austrian Green Party Official 5 December 2005). In 1989, for example, HOSI Wien drew on the example of the new Danish RP law to launch the *Aktion Standesamt* (Marriage Registry Campaign), in which gay and lesbian couples marched through Vienna dressed in wedding garb and performed mock marriage ceremonies. Using the slogan, “What the Danes have, we want too” this action garnered a great deal of publicity and relatively positive media coverage (HOSI Wien 2009; translation by author).

Although these groups have been able to use European norms and examples to help put relationship recognition on the agenda, the nature of party politics and governing coalitions in Austria have not been favorable to the LGBT movement. The Social democratic (SPOe) and Green parties have never won a large enough percentage of the vote to form a red-green government. As a result, the People’s Party (Christian democrats; OeVP) has been in office continuously for over twenty years. From 1999 to 2005, the OeVP governed in coalition with the far-right Freedom Party. It was partially this domestic blockage of their agenda that led LGBT rights groups, such as HOSI Wien and Rechtskomitee Lambda, to pursue a relationship recognition case in the ECtHR in the late 1990s (Krickler 2010). When the Court handed down the *Karner v. Austria* decision in 2003, which mandated that the government extend its legal recognition of domestic cohabitants to same-sex couples, Austria became the first country to have an SSU law imposed on it by an international organization.

Although a landmark case in international law, this mild act of legal harmonization only had a minor effect on the legal status of gay and lesbian couples in the short term. The conservative government implemented the ruling using the narrowest interpretation possible and the leadership of the OeVP continued to ignore the equality claims contained in it (Interview Austrian MP 4 September 2006). The *Karner* ruling did, however, influence the Austrian judiciary. In 2005, the Constitutional Court, which had ruled against *Karner* in the late 1990s, compelled the government to grant same-sex domestic cohabitants all the rights different-sex cohabitants enjoy as the logic of the decision necessitated (Krickler 2010, 28–31). These developments also appear to have led to a deeper internalization of the SSU norm among Austrian political elites in the left parties. In 2004 and 2005, the SPOe and the Green party, respectively, introduced opposition bills for SSU legislation. Even more surprisingly, the following year the Justice Minister, Karin Gastinger, a member of Joerg Haider’s far-right party grouping, initiated a family policy reform package that included an RP law. These initiatives, however, failed to overcome the resistance of the OeVP

leadership in government. Despite these setbacks, LGBT activists continued to use European examples and the growing prohibition against sexual orientation discrimination within the European human rights regime to keep same-sex relationship recognition high on the political agenda and to persuade the public and policy elites of its appropriateness (HOSI Wien 2005, 2009).

It was not possible to implement a broader RP law in Austria until two things changed. First, after the 2006 parliamentary election, the SPOe became the senior partner in a grand coalition government with the OeVP. Second, a new generation of leadership came to power in the OeVP that was more open to the equality arguments that LGBT groups, the Green party, and the SPOe have used to legitimize their calls for same-sex relationship recognition. In 2007, the OeVP released a new policy programme entitled *Perspectives 2010*, which endorsed the idea of adopting an RP law (Oesterreichische Volkspartei 2007). Like members of the Green and Social democratic parties, the OeVP leadership used European examples to promote the legitimacy of this dramatic change of party policy. They turned to what they called the Swiss model of a more limited RP, which does not allow couples to adopt children or to use a common last name, to gain support for the initiative within the party and among conservative voters in Austria (Oesterreichische Volkspartei 2007).<sup>3</sup>

As in Germany, an RP law only became possible in Austria after policy elites came to power who had internalized the claim that relationship recognition is a human right. The arguments made by LGBT groups and center-left parties to support this claim throughout the 1990s and early 2000s drew on European norms, EU soft law, and the growing number of SSU laws in the region. Eventually this process of social learning began to have an effect on the leadership within the conservative OeVP. They too had a European model on which to draw. In the end, participation in mixed-actor European networks, social learning, and processes of elite lesson-drawing had a greater influence on the policy processes that led to the adoption of Austria's RP law than the ECtHR's *Karner* decision and direct policy harmonization

## Same-Sex Marriage: Belgium and Spain

Belgium and Spain were unlikely countries to implement same-sex marriage. Both were historically Catholic and often considered socially conservative. Abortion, for instance, was partially decriminalized less than thirty years ago after difficult debates (Eeckhout and Paternotte 2011; Pichardo Galán 2009). Furthermore, the two countries' lesbian and gay movements historically have been divided and until recently were not particularly strong or influential (Trujillo 2009; Calvo 2011; Paternotte 2011a).

In both countries, the political campaigns that led to the opening of same-sex marriage followed two steps. Gay and lesbian activists started

lobbying for same-sex partnerships in the late 1980s. These campaigns culminated with the adoption of the *contrat de cohabitation légale* in 1998 in Belgium and with the implementation of several regional partnership laws in Spain from 1998 onwards. These statuses are open to both the same-sex and different-sex couples and offer fewer rights than marriage. In 1996–1997, activists decided to advocate for marriage equality as an alternative to more comprehensive RPs. Once a legalistic definition of equality had been adopted, first by the movement and then by supportive policy elites, marriage quickly emerged as the simplest and only viable way to achieve equality. Thanks to favorable electoral results, which opened windows of opportunity in each country, this right was granted in 2003 in Belgium, and two years later in Spain. As Kerman Calvo has argued in the Spanish case, it appeared as the result of “reciprocal relations”, in which both the LGBT movement and the main incumbent parties understood they would benefit from legal reform and adapted their strategies to achieve it (2011).

The unexpected adoption of the same-sex marriage laws in Belgium and Spain could, therefore, appear to be the result of similar but independent responses to common challenges. Indeed, a cursory look at the political process reveals a rather classic and linear story in which the national social movements campaign for reform before an unexpected political configuration allows them to be heard by incumbent political rulers (Borghs and Eeckhout 2010; Calvo 2010, 2011). In such accounts, same-sex marriage in Belgium and Spain is argued to be the result of both the legal vacuum faced by the same-sex couples, who had been exposed by the HIV-AIDS pandemic, and the influence of universalistic citizenship and legal traditions that do not distinguish between different groups of citizens.

This linear account allows us to trace timely exchanges and learning processes between officials and MPs from Belgium, Spain, and other countries, either through direct contacts or through the media. Indeed, as in Germany and Austria, references to foreign debates were manifold in Belgian and Spanish parliamentary debates (Paternotte 2011b, 140). In addition, MPs, civil servants, and political parties have consulted foreign reports, laws, parliamentary minutes, and legal studies in order to draft their own bills. Some activists were also inspired by foreign experiments, particularly during the first phase of mobilization. Belgian debates, for instance, started in the early 1990s both as a response to the passage of the Danish RP law and French debates about the *Contrat d’Union civile* (Interview two former Tels Quels activists 9 September 2003).

Nonetheless, such contacts hardly explain why Belgium and Spain converged towards the idea of marriage equality in the mid-1990s. The influence of lesson-drawing was more evident and decisive during the first phase of the debate, when both the countries discussed the introduction of an RP law, as they could rely on the experiences of other countries. In contrast, they were marginal in the discussion of same-sex marriage, due to the pioneering



nature of the Belgian and Spanish decisions. Belgium and Spain neither have copied each other nor have they been decisively inspired by a third country, for instance the Dutch decision. We have to bear in mind that drawing lessons from the experience of foreign countries requires the anteriority of the transmitter over the adopter (McAdam and Rucht 1993, 66), and at that time, only one country was in the process of passing such a law: the Netherlands.

Alternative convergence factors, such as formal Europeanization through policy harmonization, hardly seem more convincing. Indeed, family policy remains a member state competence, and the EU has limited ability to influence it (Bonini-Baraldi and Paradis 2010). Further, unlike Austria, no European court has condemned Belgium or Spain over LGBT rights matters. However, if we cannot speak of institutional compliance, the EU has probably shaped national debates in various softer ways, particularly in Spain where it has modified national frames and empowered LGBT activists. Non-binding declarations from the EP, such as the 1994 Roth Report, after which Claudia Roth received invitations from LGBT organizations from both countries, bolstered activists' claims, and garnered them greater attention (Interview Fundación Triángulo activist 12 July 2007). In addition, the EU's increased emphasis on equal opportunities and the inclusion of sexual orientation as a potential discrimination ground in the Treaty of Amsterdam (1997), the Employment Equality Directive (2000), and the Charter of Fundamental Rights (2009) have promoted a specific discourse, which defines equality in the same terms as those underlying the marriage claim. These developments have been particularly influential in Spain where, during parliamentary debates, numerous MPs presented the reform as a way for Spain finally to catch up with European standards (Paternotte 2011b, 37).

In order to truly understand how Belgium and Spain converged on the issue of same-sex marriage, we need to change the way we look at the political process. We should adopt a circular account, and accept a blurred line between national and transnational politicians and activists. Such an approach allows us to see that some politicians work closely with activists and, more interestingly, that politicians may also be or have been activists at one time in their lives. This view unpacks two kinds of networks, domestic and transnational ones, and their combination allows us to explain policy convergence.

Domestic networks account for the circulation of ideas at the national level. More precisely they account for how ideas elaborated by civil society groups gained access to the political arena. In both Belgium and Spain, same-sex marriage was passed after a significant electoral realignment, which brought new parties and politicians to power who had close—often personal—connections with gay and lesbian groups. For instance, the Spanish Prime Minister Zapatero's main advisor on the same-sex marriage was Pedro Zerolo, a human rights lawyer who became a local socialist representative

and a key member of the ruling organ of his party after serving as the president of COGAM, the Madrid LGBT group, and of the FELGTB, the Spanish LGBT federation (Interview PSOE official 11 July 2007). Zerolo's closest advisor was himself a former LGBT activist and the FELGTB chair's husband (Interview senior PSOE official 12 December 2007). In Belgium, the main assistant of the Socialist Minister of Justice, Michel Pasteel, was a long-term gay activist who had worked on the first proposals for SSU laws in the 1990s and was known as an openly gay lawyer (Interview PS official 4 December 2007). Similarly, the advisor of the Green deputy minister who co-sponsored the bill was closely related to the Flemish LGBT federation and regularly attended its meetings despite her governmental office (Interview former Green minister 5 December 2007). Therefore, the work of a mixed policy network similar to Woodward's velvet triangle was crucial for getting SSU policy on the political agenda and framing it as a human rights issue. The mixed composition and the multiple roles played by the members of this network—elected politicians, civil servants, and activists—made it easier for these claims to find their way to people in power.

However, domestic policy networks do not account for the early transformation of the demand for a universal RP into the same-sex marriage claim. Whereas the German and Austrian debates largely have been shaped by a transnational community of activists and policy elites, the debates in Belgium and Spain have been shaped by a transnational community of legal experts. Indeed, if domestic political circumstances such as strategic reasoning by gay and lesbian activists and a temporary blockage of the political system must be taken into account, the ideas and arguments underpinning the same-sex marriage claim owe a great deal to a transnationally linked group of legal scholars (Paternotte 2011b). This network, which includes experts like Kees Waaldijk, Robert Wintemute, or Daniel Borrillo, has developed its arguments for marriage equality by linking this claim to the legal theory of non-discrimination, and by promoting this theory as one of the major grammars of contemporary LGBT struggles (e.g. Waaldijk 2000, 2005; Wintemute and Andenaes 2001; Borrillo 2007). One member of the network, Stefano Fabeni, described this legal strategy in the following way:

In countries where the legal debate is not developed, and the legislative reforms are weak or non existent, the circulation of legal information, the promotion of legal events and the exchange of experiences among experts on an international scale are central points for combating discrimination based on sexual orientation and gender identity, and promoting the legal recognition of same-sex couples (Fabeni 2005: 4).

Formalized through timely European initiatives such as the European Group of Experts on Combating Sexual Orientation Discrimination, this legal network is connected to the transnational policy community described in the German and the Austrian cases. Wintemute, for instance, is ILGA-Europe's

main advisor on the Council of Europe. More decisively, the arguments of this legal network have been connected to national arenas through personal contacts; many of its members are also key national activists. As a result, these ideas have influenced domestic policy reform. Indeed, most Belgian and Spanish activists acknowledge that they have been inspired by the publications of the members of this epistemic community, and have based their claims on the legal theory of equality as well as framed the denial of civil marriage as formal discrimination (Interview former Gehitu activists 8 March 2011). In addition, several key national actors, such as Michel Pasteel and Paul Borghs in Belgium and Pedro Zerolo and Beatriz Gimeno in Spain, were in frequent contact with these legal scholars, fostering more interpersonal channels of influence. In Belgium and Spain, the main connections occurred through the work and activism of a Paris law professor, Daniel Borrillo, who is also one of the most prominent same-sex marriage campaigners in France as well as an influential voice in Latin America. Borrillo's work is regularly quoted in both countries. He has made regular visits to Belgium and Spain as a guest of both academic and more activist meetings (*Paternotte forthcoming*). In Spain, Borrillo even became a public media figure and the unofficial advisor of the national LGBT federation. Pedro Zerolo, who has known him since the mid-1990s, considers him one of his intellectual "masters" (Interview PSOE official 11 July 2007). Thus, transnational networking, which relies on sustained and regular contacts between actors, contributes not only to the exchange of ideas, but also to the collective elaboration of new claims and strategies. These networks operate as bridges between different countries, but also as laboratories where new ideas and strategies may emerge and can be discussed before being used in national arenas. In the case of same-sex marriage, the legal scholars' network has, therefore, functioned as an epistemic community.

## Conclusions

Our four cases illustrate the important and complex ways in which international influences have shaped domestic SSU policy debates, outcomes, and increasingly, the instruments governments use to recognize same-sex couples in Europe. Although domestic factors such as socio-cultural change, the HIV-AIDS crisis, LGBT movements, and the nature of party politics have played an important role in the adoption of SSU policies, our case studies demonstrate that these factors alone cannot explain the rapid and widespread implementation of these policies in Europe over the past two decades. Nor can domestic factors explain why an increasing number of governments are choosing to recognize same-sex couples through the instrument of marriage. SSU convergence in Europe is, in part, also the result of transnational

learning, elite lesson-drawing, and to a limited extent formal policy harmonization.

In Germany and Austria, transnationally linked LGBT activists and policy elites were able to use the example of early SSU adopter states, calls from the EP to open marriage to same-sex couples and the partial incorporation of sexual orientation into the European human rights regime to put relationship recognition onto their national political agendas and legitimately to frame it as a human rights issue. Once on the agenda, German and Austrian government officials turned to neighboring countries for ideas about how to recognize same-sex couples. Thus, while policy convergence scholars often treat learning through networks and non-interactive lesson-drawing by domestic actors as distinct mechanisms of convergence, in the SSU case these two processes have been mutually reinforcing and somewhat blurred.

In Spain and Belgium, international influence, although prominent, has taken a slightly different form. In these countries, the soft law norm for relationship recognition created and disseminated by the European LGBT rights policy community also helped to put relationship recognition onto the political agenda. In both the countries, the debate quickly focused not just on state recognition but more specifically on the opening of marriage to gay and lesbian couples. Because very few countries had taken this controversial step, neither learning through transnational policy networks nor elite borrowing from foreign policy models played an important role in these outcomes. However, the decision to focus on the instrument of marriage, in part, resulted from the influence of transnationally linked legal activists who used an expert discourse to argue that full equality for same-sex couples could not be achieved by creating a “separate but equal” institution in the form of RPs. Unlike in Germany and Austria where constitutional and party politics largely blocked the efficacy of such arguments, this epistemic community of legal scholars found fertile ground in both Spain and Belgium.

Formal policy harmonization, while relevant, did not play a role as large as learning through networks or elite lesson-drawing in any of the four countries. Although Austria is the only country to have had an SSU imposed on it by an international tribunal, more far-reaching legal change did not occur until policy elites, who had internalized the international norm for relationship recognition, came to power. In Germany, an ECJ decision extended the workplace benefits of employees’ registered partners, but did not seek to impose RP laws on member states that do not already have them in place. These court cases and mild acts of legal harmonization may be a harbinger of things to come, however.

SSU policy convergence thus is the result of multiple mechanisms of cross-border and international influences with certain processes playing a more prominent role in some countries than in others. To date, the softer mechanisms of policy learning via networks and elite lesson-drawing have played a far more important role in this convergence than other mechanisms.

The European network that has fostered this process of social learning is made up of a diverse policy community of EU officials, transnationally linked domestic elites, LGBT rights groups, and an epistemic community of legal scholar activists. This LGBT “triangle” has been able to use informal ties, overlapping memberships and a common vision to gain access to European and national institutions and to exert influence when domestic windows of opportunity have presented themselves.

The SSU case contains several important lessons for scholars of European public policy and LGBT politics alike. It demonstrates that LGBT politics in Europe, and we suspect beyond, is no longer solely a domestic affair. The LGBT rights movement is a transnational one that, with the help of supportive elites and legal advocates, has had a great deal of success in embedding its norms of anti-discrimination into the European human rights regime. The transnational normative pressure exerted by this growing policy community is mediated by domestic socio-political structures and processes. But arguments about the expansion of LGBT rights no longer take place in national political vacuums. In Europe, it has become an issue of interest to the wider regional polity (Kuhar 2011). The current literature’s focus on discreet country studies appears to be increasingly out of step with current developments in LGBT politics.

The four cases also illustrate that the velvet triangle concept is useful for explaining policy outcomes outside the gender equality area. SSU activism has not relied on the influence of LGBT social movement organizations alone as many social movement and transnational activism literatures imply. Rather the latter have been able to gain both legitimacy for their cause and access to halls of power because of their collaboration with sympathetic policy elites—both European and national—and legal activists. Unlike in more formal policy communities, this access and legitimacy are not dependent on the resources associated with formal structures but rather on the porousness and personal connections that often characterize networks in marginalized policy fields. These types of loose policy communities thus are likely to be influential in any field that is poorly institutionalized or neglected. This may happen when an issue is new as environmental policy was in the 1980s or in areas such as minority rights or religio-cultural policy where the subject matter fails to touch on the core concerns of states or entrenched economic interests.

More broadly, the SSU case demonstrates the need for using a broader, multi-actor policy community approach to explain cross-national convergence in the European polity. While scholars have long noted the usefulness of this approach for explaining policymaking processes within European states and the EU, it has only rarely been used to explain how policy ideas, outcomes, and instruments diffuse across borders. Both the policy convergence and IR constructivist literatures have tended to focus on one set of actors or structures when identifying the carriers or promoters of convergence, thus disaggregating

in analysis what empirically relies on the collaborative efforts of diverse sets of actors. LGBT rights expansion in Europe can only be understood by tracing the synergies that are created through the collaboration of activists, legal advocates, and policy elites at the European and national levels.

## Notes

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1. Many countries, even some that have opened marriage, still do not offer same-sex couples full adoption or kinship rights.

2. In the article, Bennett refers to this mechanism as "emulation" rather than the term we are using here, lesson drawing. We use the latter term because emulation has come to take on a slightly different meaning in many recent studies of policy diffusion. Many world polity and policy diffusion scholars use emulation to refer to rote copying or mimicry rather than the conscious type of active "distance learning" that Bennett describes.

3. The original RP law that Austria adopted in 2010 was limited in these ways but has been expanded since.

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