MARRIAGE AND CIVIL PARTNERSHIP (SCOTLAND) BILL

SUBMISSION FROM DR KELLY KOLLMAN

I am an academic researcher, who has published widely on same-sex unions (SSU) policy in the established democracies of Western Europe and North America. My most recent publication on the topic, *The Same-sex Unions Revolution in Western Democracies: International Norms and Domestic Policy Change* (Manchester University Press, 2013), seeks to address two questions (1) Why have so many western democracies adopted a national SSU law since 1989? (2) Why have countries implemented different models of same-sex relationship recognition (opening marriage v. registered partnerships v. unregistered domestic cohabitants)? Below I outline the main findings from this research that I think are relevant for the Equal Opportunities Committee as it considers the Marriage and Civil Partnership (Scotland) Bill.

Rapid Policy Convergence

Since 1989, when Denmark adopted a registered partnership (RP) law, more than thirty countries, twenty-three of them in Europe, have implemented a comprehensive national policy that recognizes same-sex couples in law (see table). Before that date not one country had such a policy in place.[1] The activist and policy campaigns that led to this rather stunning convergent change in family policy have been very similar in content, at least in broad terms. Almost all have sought to define civil relationship recognition as a right that the state in a liberal democracy should not deny same-sex couples simply because of their sexual orientation. Until very recently the goals of family policy, and therefore marriage and partnership recognition, in many western democracies had been understood in terms of promoting a particular cultural institution, namely the nuclear family, rather than a right that accrues to individuals. Today in Western, and increasingly in Central and Eastern, Europe, state relationship recognition is largely accepted as a human right that should apply to lesbians, gay men, transgenders and bisexuals (LGBT). This represents a major change in our thinking about the purposes of family policy, although it is in keeping with the 20th century trend of erasing gender distinctions in marriage law and family policy. With a few exceptions, national SSU laws in western democracies have been well-received by a majority of the public and appear to have helped to increase already growing levels of tolerance towards LGBT-identified people (see Kollman 2013: 79-81)

The Role of 'Europe' and the International Community in SSU Convergence

I have argued in several publications (Kollman 2007; 2009; 2013) that the rapid adoption of SSU policies in Europe since the 1990s and the similarity of the arguments used by national SSU activists to promote relationship recognition are not mere coincidence, but rather the result of an increasingly powerful international norm. More specifically, a cross-border network of LGBT activist has been able to create an international norm for same-sex relationship recognition that explicitly defines such recognition as a human right. SSU supporters have drawn on the increasing number of states that have an SSU law in place as well as the partial incorporation of sexual orientation into international and European

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[1] Both the Netherlands and Sweden adopted legislation before 1989 that recognised same-sex domestic cohabitants for certain legal purposes. This legislation was piecemeal and limited in nature until well into the 1990s.

human rights law to add legitimacy to their claims. In the context of the current debate about opening marriage in Scotland and the United Kingdom and fears about religious bodies being forced by European courts to perform same-sex marriage ceremonies in the future, it is crucial to note that this norm for same-sex relationship recognition has been created largely without legally binding mandates being imposed on member states by European courts or international tribunals. Very few such mandates currently exist in European law or policy and the two premier courts in the region—the EU's European Court of Justice and the Council of Europe's European Court of Human Rights—to date have been relatively conservative in their jurisprudence on the issue. SSU activists have relied far more on the power of international examples and the international legitimacy of human rights arguments to foster policy change than on the formal legal mandates of European courts.

Models of Same-sex Relationship Recognition

Before the Netherlands became the first county to open marriage to same-sex couples in 2001, European countries experimented with different forms of SSU recognition. Many (Norway, Sweden, Ireland, Austria) followed Denmark's lead of implementing a registered partnership law that grants same-sex couples most of the rights, benefits and duties associated with civil marriage, although many of these laws at first did not allow same-sex couples jointly to adopt children. Others (Germany, France, Belgium) implemented less comprehensive registration schemes and still others (Portugal, Hungary) implemented unregistered domestic cohabitants law. These distinctions between non-marriage SSUs have become less pronounced over the years, however, as most countries have expanded the rights, including adoption rights, associated with their RP laws since the mid-2000s.

Intriguingly some countries (the Netherlands, Belgium and France) allow different-sex couples to enter their non-marriage unions. By contrast, the Nordic countries, Germany, Austria and Ireland—as well as the various jurisdictions in the United Kingdom—only allow same-sex couples to enter such schemes. Some have argued that RP laws that are open to different-sex couples fulfil the equality goals of SSU campaigns better than those laws that create a separate and exclusionary institution for same-sex couples. In addition these more open RP laws fulfil a second, less recognized, goal of SSU reform, namely to pluralise the institutions and ways that states use to recognize intimate relations to better reflect modern families. Demographic research in France shows that the RP law there, known as *pacte civil de solidarité*, has proven relatively popular with different-sex couples (Prioux and Mazuy 2009). This suggests that pluralizing family policy may well be beneficial to many in society and worth considering.

After implementing a registered partnership law in 1998, the Netherlands became the first country to allow same-sex couples to enter civil marriage in 2001. Belgium, Canada, Spain and South Africa followed their lead in 2003, 2005, 2005 and 2006 respectively. Interesting all five of these early marriage adopters had medium to high levels of religiosity. This suggests that the argument that withholding the symbolism of marriage from same-sex couples is discriminatory initially was easier to make in countries where marriage itself had greater symbolic value.

Since 2009 there has been a clear trend towards opening marriage to same-sex couples. Six European countries, and nine worldwide, have opened marriage to same-sex couples since that date. In that same period only three European countries implemented an RP law

and none has implemented a domestic cohabitants law for same-sex couples. The international norm for general relationship recognition is fast hardening into one in which marriage is seen, and certainly argued by most national LGBT rights organizations in Europe, to be the only way to guarantee same-sex couples full social, legal and cultural equality. Again this policy convergence has happened almost entirely in the absence of legally binding mandates from international sources.

Many of the countries that have opened marriage since 2009 did so after implementing another form of SSU. Governments have varied in their approach of how to deal with this non-marriage institution. The three Nordic countries (Norway, Sweden, Denmark) withdrew their RP laws with the passage of marriage.[2] The Netherlands, Belgium and France have all kept their non-marriage schemes in place. Interestingly all three allow different-sex couples to enter these RP unions.

Summary

- If the Scottish Parliament were to pass the Marriage and Civil Partnership (SCOTLAND) Bill, it would be following a recent, but increasingly well-established international trend of recognizing same-sex couples by allowing them to enter civil marriage.
- It is likely that the passage of this legislation would bring the country and parliament significant international recognition.
- This trend towards opening marriage to same-sex couples and implementing SSU policies more generally has been catalysed to a significant degree by international examples and normative influence. To date this influence predominantly has NOT occurred through the legal mandates of European courts or international tribunals.
- Countries that have opened marriage to same-sex couples after implementing another form of SSU have varied in their approach to dealing with the original SSU law. The Nordic countries have withdrawn their RP law and essentially replaced it with marriage. Many of the countries that allow different-sex couples to enter their RP law have retained the latter when opening marriage.
- Opening marriage while maintaining or even creating alternative recognition schemes open to same *and* different-sex couples fulfils the equality goals of same-sex relationship recognition. Such alternatives to marriage also help to pluralize family policy to better reflect the reality of modern families. The latter goal cannot be accomplished by either withdrawing registered partnerships or maintaining RP laws that are open to same-sex couples only.

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[2] These countries still recognize the partnerships that were entered into before the marriage law was implemented but they have not allowed any additional same-sex couples to register their relationships since that date.

Table 1: National Same-sex Unions Legislation since 1989

Marriage	Registered Partnership	Unregistered Partnership
Netherlands (2001)	Denmark (1989-2012)	Netherlands (1979)*
Belgium (2003)	Norway (1993-2009)	Sweden (1988)*
Canada (2005)	Sweden (1995-2009)	Israel (1994)
Spain (2005)	Iceland (1996-2010)	Hungary (1996)
South Africa (2006)	Greenland (1996)	Canada (200)
Norway (2009)	Netherlands (1998)	Portugal (2001)
Sweden (2009)	France (1999)	Austria (2003)
Portugal (2010)	Belgium (2000)	Croatia (2003)
Iceland (2010)	Germany (2001)	Brazil (2004)
Argentine (2010)	Finland (2002)	Australia (2008)
Denmark (2012)	Luxembourg (2004)	
France (2013)	United Kingdom (2005)	
Uruguay (2013)	Andorra (2005)	
New Zealand (2013)	Switzerland (2005)	
	New Zealand (2005)	
	Czech Republic (2006)	
	Slovenia (2006)	
	Colombia (2007)	
	Uruguay (2008)	
	Ecuador (2009)	
	Hungary (2009)	
	Austria (2010)	
	Ireland (2010)	
	Liechtenstein (2011)	

Source: International Gay and Lesbian Association 2013: http://ilga.org/ilga/en/article/1161.

*Both the Netherlands and Sweden adopted legislation before 1989 that recognised same-sex domestic cohabitants for certain legal purposes. This legislation was piecemeal and limited in nature until well into the 1990s.

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Same-Sex Unions:
The Globalization of an Idea

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What explains why a majority of western democracies have adopted same-sex union (SSU) laws in the past decade and a half? I argue that this startling trend toward policy convergence in part can be explained by the rise of a human rights oriented transnational network of lesbian, gay, bisexual, and transgender (LGBT) activists as well as the transnationally networked policy elites these activists influence. These networks, however, do not fully determine policy outcomes as is evidenced by the fact that not all western democracies legally recognize same-sex relationships and those that do have adopted different models of SSU laws. To explain these differences, I show how the nature of national religious practices and the perceived legitimacy of international norms by national elites and publics mediate the influence of the transnational networks and the norms they promote.

With the adoption of its registered partnership law in 1989, Denmark became the first country to implement a national same-sex unions (SSU) law. In the decade and a half that have followed, 15 additional West European countries have adopted similar legislation, eight of them in the past 5 years. In 2003, Jean Chrétien's government in Canada became one of the first non-European governments to propose an SSU law at the national level and in 2005 Canada became one of only five countries to allow gay and lesbian couples to marry. By the beginning of 2006, the only major western democracies without such laws in place were the United States, Italy,[1] Greece, and Ireland. In light of these rather dramatic policy developments, this paper seeks to address three questions: (1) What explains the wave of SSU legislation that occurred across advanced industrial democracies in the late 1990s and early 2000s? (2) What explains why a small minority of advanced industrial democracies has remained opposed to such legal recognition? (3) What explains why the adopter countries have implemented different models of SSU recognition (marriage vs. registered partnerships vs. domestic partnerships [DP])?

[1] Romano Prodi's center-left government in Italy recently submitted a civil unions bill to the parliament, where it will need majority support from both chambers if it is to become law. The bill, which would create a new institution for unmarried, different-sex and same-sex couples, has been highly controversial both within the governing coalition and across the political parties in Italy. When this article went to press, it was unclear whether the government had the votes in the parliament to ensure its passage. The debate over SSUs in Italy highlights both the growing acceptance of the relationship recognition norm in Western Europe as well as the controversy of introducing such legislation in comparatively religious societies that have a Catholic heritage.

To address the question of convergence I explore the role that a largely European transnational network of lesbian, gay, bisexual, and transgender (LGBT) advocacy organizations have played in influencing national debates about SSU adoption in 18 western democracies, the type of regimes in which most of this convergence has taken place. There is considerable evidence to suggest that this network was instrumental in persuading intergovernmental organizations such as the European Union (EU) and the Council of Europe as well as a more informal transnational network of policy elites that the relationship rights of gays and lesbians are human rights. The importance of these norms and networks is reflected not only in the timing of this legislation but also in its regional clustering. Recent developments in Canada suggest that this network's influence is becoming more international in scope. Based on interviews with policy activists as well as textual analysis of European and national documents, I argue that the transnational network of policy activists described above has been an important catalyst of SSU policy convergence. It has done so by helping national LGBT groups to put SSU recognition on national policy agendas, by bolstering the legitimacy of these groups' human rights claims and by pushing for the harmonization of policy within supranational institutions.

The influence of the transnational network, however, cannot explain everything. The adopter countries have implemented a variety of SSU models and a number of western democracies do not recognize gay and lesbian partnerships at all. To address these questions of continued divergence in both adoption and models adopted, I examine how domestic factors in the 18 countries under study mediate the influence of transnational networks and the norms they promote. I argue that the perceived legitimacy of international norms by a national public and its government determines how influential transnational networks can be in domestic policy debates. Additionally, differences in countries' religious values and practices dramatically affect how national debates over SSUs are framed and ultimately whether a country will chose to legally recognize such relationships. Interestingly, and perhaps less obviously, religious values and practices also seem to influence the particular SSU model that adopter countries implement.

In making these arguments I join a well-established debate about the influence of the international human rights regime on domestic policies. I seek to add to this literature and broader constructivist theory in two ways. First, I examine the redefinition of human rights policy in advanced industrial democracies. Much of the existing human rights research focuses on how human rights norms and transnational advocacy networks affect authoritarian regimes in developing or transitioning countries. What the SSU case suggests is that these norms and advocacy networks can also influence the domestic policies of well-established democracies, albeit by somewhat different and less instrumental processes. In Europe, this influence has been enhanced by the transgovernmental networks of policy elites that have grown up around the EU and the Council of Europe. These networks play at least as important a role in SSU outcomes as the networks of advocacy nongovernmental organizations (NGO) that so often are highlighted in the literature.

Second, the paper seeks to refine theories of how international norms affect domestic policies. Unlike most previous works in this area, which highlight how national institutions filter the influence of international norms, I focus on how wider cultural values, especially religious values, affect the manner in which norms are received domestically and the effects they have. Finally, I seek to refine the idea of "norm fit" prevalently used in constructivist accounts of state socialization by arguing that some countries find the use of all international and foreign norms problematic. Thus, the legitimacy of international norm use must be taken into account in addition to how well individual norms fit with domestic values and practices.

The paper proceeds as follows: the next section briefly outlines constructivist theories of state socialization and shows how this literature can be modified to explain SSU outcomes in advanced industrial democracies. The third section outlines methods and case selection. Sections four, five, and six examine the case material and develop an argument to address each of the three research questions in turn. The final section offers conclusions and highlights the implications of the study.

Transnational Networks, State Socialization and Policy Convergence

Although national debates over state recognition of same-sex relationships have occurred within unique political and cultural contexts, these debates in western democracies have all followed a broadly similar pattern. In every case LGBT groups have sought to persuade governments that the recognition of gay and lesbian relationships is a basic right that the state cannot withhold if it is committed to the nondiscriminatory practices that are the hallmark of liberal democracies. Where these groups have been able convincingly to frame the SSU question as a human rights issue, they generally have been successful in gaining relationship recognition. Where this framing has been challenged effectively by a cultural/traditional frame, LGBT groups' attempts at relationship recognition have been less successful.

The cross-national similarity of this debate is not merely coincidental; in fact, much of the debate in western democracies has been shaped by common international/transnational influences. LGBT groups, after all, did not create the human rights frames that they use to bolster their claims of recognition. Rather they attempt to tap into a well-established body of national and international law. What is novel about their claims is that sexual orientation should be recognized as a category of nondiscrimination and more recently that relationship rights are human rights. Like other human rights movements such as the women's and indigenous peoples movements before them, LGBT groups have found transnational organizing and lobbying international organizations to be a highly successful way of promoting their cause. This transnational strategy, however, is not a sure-fire one and the extent to which national policy change can be attributed to the influence of transnational networks is often disputed.

To help flesh out how transnational networks are thought to affect domestic policy outcomes, I turn to work by international relations (IR) scholars that examines the influence of the postwar human rights regime (see Klotz 1995; Keck and Sikkink 1998; Risse, Ropp, and Sikkink 1999; Brysk 2000; Checkel 2001; Joachim 2003; Hawkins 2004). Many of the core arguments of the literature are elaborated in *The Power of Human Rights* edited by Thomas Risse, Stephen Ropp, and Kathryn Sikkink (1999). Using insights from the constructivist scholarship Risse and Sikkink posit in the introduction that domestic policy change is the result of a multistage "spiral model" of socialization that occurs through the interaction of transnational human rights NGOs, intergovernmental organizations, domestic political actors, and target governments. This interaction leads to the following five-step process of socialization: (1) state norm violation, (2) denial of norm legitimacy, (3) tactical concession, (4) acknowledgment of the "prescriptive" status or legitimacy of norms, and (5) institutionalization of norm consistent behavior (1999:29–35).

Three very different logics of norm compliance are at work in this model. 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. The deeper norm compliance of the latter stages, by contrast, results from the more communicative processes of persuasion and social learning as domestic policy makers become convinced through argumentation that acting in accordance with human rights

norms is the right thing to do (for an elaboration of the logic of argumentation and persuasion, see Risse 2000). A rules-guided logic takes over in the final stages as human rights norms become institutionalized in the standard operating procedures of a state's bureaucracies. As the case studies in the book illustrate, states do not always complete this cycle and indeed reversal is also possible. The extent to which the spiral is completed, Risse and Sikkink argue, depends on how much pressure transnational networks of advocacy NGOs—usually in tandem with powerful states and/or international organizations—can bring to bear on domestic groups and governments, how domestic societies mediate these demands and the level of acceptance a particular human rights norm enjoys by international society at that point in history (1999).

Although this framework usefully describes the mechanisms by which the human rights regime influences domestic policy, it—and the literature as a whole—suffers from two weaknesses that I seek to address in this study. First, the framework is clearly based on studies of the effects that the human rights regime has on developing or transition countries. Few works have examined the extent or manner in which the regime influences policy in well-established democracies. As a result of this bias, the literature tends to overemphasize the instrumental logic of compliance with human rights norms and underemphasizes the social learning aspects of compliance. Although Risse and Sikkink explicitly incorporate social learning into their model, they assume that all countries will follow a similar pattern of moving from instrumental compliance to greater internalization of the norm over time. It is likely, however, that the type of compliance logic also depends on who the persuader and persuadees are. When a norm cascade occurs across well-established democracies that are relatively equal in terms of power and status, it would seem logical that social learning and persuasion would play a greater role in norm compliance than instrumental incentivising. The evidence presented in this paper shows that the wave of SSU legislation that occurred in the 1990s and early 2000s is largely the result of social learning by policy elites in western democracies.

The literature's focus on developing countries has also caused scholars to emphasize the role of international nongovernmental organizations (INGO) in international socialization processes and to leave the role of other actors underspecified. In the case of SSU recognition in western—especially European—democracies, transgovernmental networks of policy elites have played a crucial part in domestic policy change. Anne Marie Slaughter's recent work on these cross-border networks of governmental actors can help flesh out the role these actors play in transnational socialization processes. In her book, *A New World Order*, Slaughter argues that as the need for global rules has increased, so too has the amount of cross-border networking that goes on between the component parts of governments such as members of national regulatory agencies, judges, and legislatures (2004). These transgovernmental networks do not conform to the dictates of power politics but rather are involved in finding largely noncoercive solutions to common problems. They typically do not have the authority to sign binding treaties but instead engage in information exchange and the dissemination of best practices to new problems. Although Slaughter (2004:23–25) is usually associated with the rational, institutionalist approach in IRs, her account of how transgovernmental networks influence states resembles the cross-border learning arguments championed by constructivists.

Slaughter argues that these networks are largely nonhierarchical in nature; however, she distinguishes between horizontal and vertical transgovernmental networks. The former are largely information networks that have no enforcement power of common rules. The latter occur in those rare situations where governments agree to pool sovereignty in a supranational entity such as the EU or NAFTA. However, even here supranational judges rely on the power of persuasion to convince national actors to implement their decisions. This distinction between

horizontal and vertical networks is very useful for understanding how the SSU norm has been disseminated across western democracies. Although European courts have only just begun to rule favorably on SSU recognition claims, the fact that these vertical networks exist and that the human rights network is particularly vibrant helps to explain why European countries have converged more quickly around the idea of SSUs as a human right than their North American counterparts.

The second weakness of the human rights literature is the underdevelopment of theories that specify how domestic political systems filter the influence of international norms. Risse and Sikkink acknowledge the importance of these domestic intervening variables but largely bracket the question and concentrate on the ways in which the human rights regime socializes domestic policy elites and activists. The most prominent work in this area has been carried out by Jeffrey Checkel (1999, 2001) and Andrew Cortell and James Davis (1996). Both sets of authors posit that international norms can influence domestic political debates via two distinct processes. Either domestic NGOs use international norms to pressure governments to change their policy positions or government elites change policy as a result of social learning and the internalization of norms promulgated by international bodies and/ or transnational actors. Both sets of authors also agree that the impact these norms have on domestic political processes will vary from state to state depending on how domestic structures mediate their effects.

Although Cortell and Davis and Checkel highlight somewhat different domestic mediating agents both of their accounts draw heavily on structural and institutional variables. The former argue that the level of state centralization as well as how open domestic policy-making processes are to the influence of interest groups affects the extent to which international norms can be used in policy debates. If policy-making processes are open and an international norm is salient, interest groups and/or government officials can use norms successfully to support their policy positions. Similarly, international norms can have policy effects when government elites have internalized them and they possess relatively exclusive jurisdiction over a policy area (1996:452–458). Checkel makes a similar argument and posits that the level of state centralization will determine how norms "are empowered" in domestic settings while the "cultural match" of the international norm shapes the resonance it can have in policy debates (1999:87–91).

Neither of these works, however, considers the effects that broader societal values have on international norm reception. Although Checkel discusses the importance of "cultural match" between international norms and a domestic setting, he largely defines this concept institutionally as "a situation where . . . international norms are convergent with domestic norms as reflected in discourse, the legal system (constitutions, judicial codes, laws) and bureaucratic agencies (organizational ethos and administrative procedures)" (1999:87). Checkel, like many IR specialists, tends to conflate two concepts that are held quite distinct in the study of comparative politics, namely structure and culture. As a result concepts like "cultural match" or domestic salience of a norm become overly broad and amorphous terms that lack analytical bite. These accounts also tend to ignore how wider patterns of societal values, what comparativists refer to as culture, affect international norm reception.[2]

As will be argued below, in the case of SSUs in western democracies culture is a more important variable for explaining policy outcomes than the institutional variables highlighted in literature. In particular, two noninstitutional domestic variables

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[2] Some IR scholars such as Peter Katzenstein do examine the role that culture, usually defined as norms and identity, play in shaping the foreign policies of states. Although Katzenstein does look at domestic sources of culture and how domestic systems of meaning react with international norms, his use of such concepts as the "cultural-institutional context" do little to help distinguish between structure, ideas, and values or clarify the relative importance of culture versus institutions in policy outcomes or international norm reception. For important examples of this work see Peter Katzenstein (1996a, 1996b).

shape how the relationship recognition norm is received: domestic level of international norm legitimacy and societal religious beliefs. Where legitimacy is high and religiosity low SSU advocates have been able to successfully frame relationship recognition as a human rights issue and have gained relationship rights. Where legitimacy is low and religiosity high the human rights frame of SSU recognition has failed to gain traction and governments generally have not extended relationship rights.

Methods and Case Selection

I use a two-part methodology to address the paper's three research questions. In so doing I seek to combine the research strategies of two largely independent literatures on human rights compliance, the one developed in IR outlined above and the one developed in comparative politics that uses large-N statistical studies to determine how national characteristics affect levels of human rights violations (see Poe and Tate 1994; Poe, Tate, and Keith 1999; Bueno De Mesquita et al. 2005). In the next section, I use the standard process tracing techniques that have been employed in the empirical norms literature to make my argument about the influence of transnational networks and human rights norms on national SSU policy outcomes. This methodology, in which the researcher attempts to "investigate and explain the decision process by which various initial conditions are translated into outcomes," allows me to uncover the sequence of events that led to SSU policy adoption (and nonadoption) in the democracies under study (George and McKeown 1985 quoted in Checkel 2001).

I use two types of evidence to reconstruct this chain of events, qualitative textual analysis of documents and interviews with key policy activists at both the European and national levels. I interviewed 36 people for this project including members of the International Lesbian and Gay Association—Europe (ILGA-Europe) and the European Commission at the European level and policy activists and elites in the United States, Canada, Austria, and Germany. These interviews are essential for uncovering the motivations of the actors involved, the justifications they use for taking certain positions as well as judging how ingrained the norm of relationship rights as a human right has become for different actors. Given that the study somewhat unusually investigates a large number of countries, 18, it has not been possible for me to conduct interviews with policy activists in all countries. I use two strategies to deal with this problem. First, I analyze documents from a wider number of my country case studies to see if the same human rights norms and examples of policy change in other countries are used to justify the adoption of SSU policies. Second, I attended the 2005 annual meeting of ILGA-Europe and was able to conduct informal interviews with activists from over a dozen countries and to observe a number of panels on LGBT issues. Taken together this evidence allows me to establish the creation and growing acceptance of a relationship recognition norm within transnational networks and to trace the effect this norm has had on national SSU debates.

To address the two questions of policy divergence, that is, norm failure in certain democracies and the implementation of different SSU models, I employ more standard correlation analysis, albeit without using formal statistical techniques. More specifically, I use data on national religious practices and values and data on international participation rates from each of my 18 country cases to test hypotheses about the effects of religion and international norm legitimacy on SSU outcomes. Although my two arguments about policy divergence largely rely on the data outlined above, I do use evidence from interviews and textual analysis in two ways. First, both hypotheses about the domestic mediating variables have been derived inductively from preliminary interviews with policy activists and textual analysis of national policy documents, mostly in Germany and the United States. Additionally,

I make occasional use of my qualitative data to support the correlation analysis in the two sections on policy divergence.
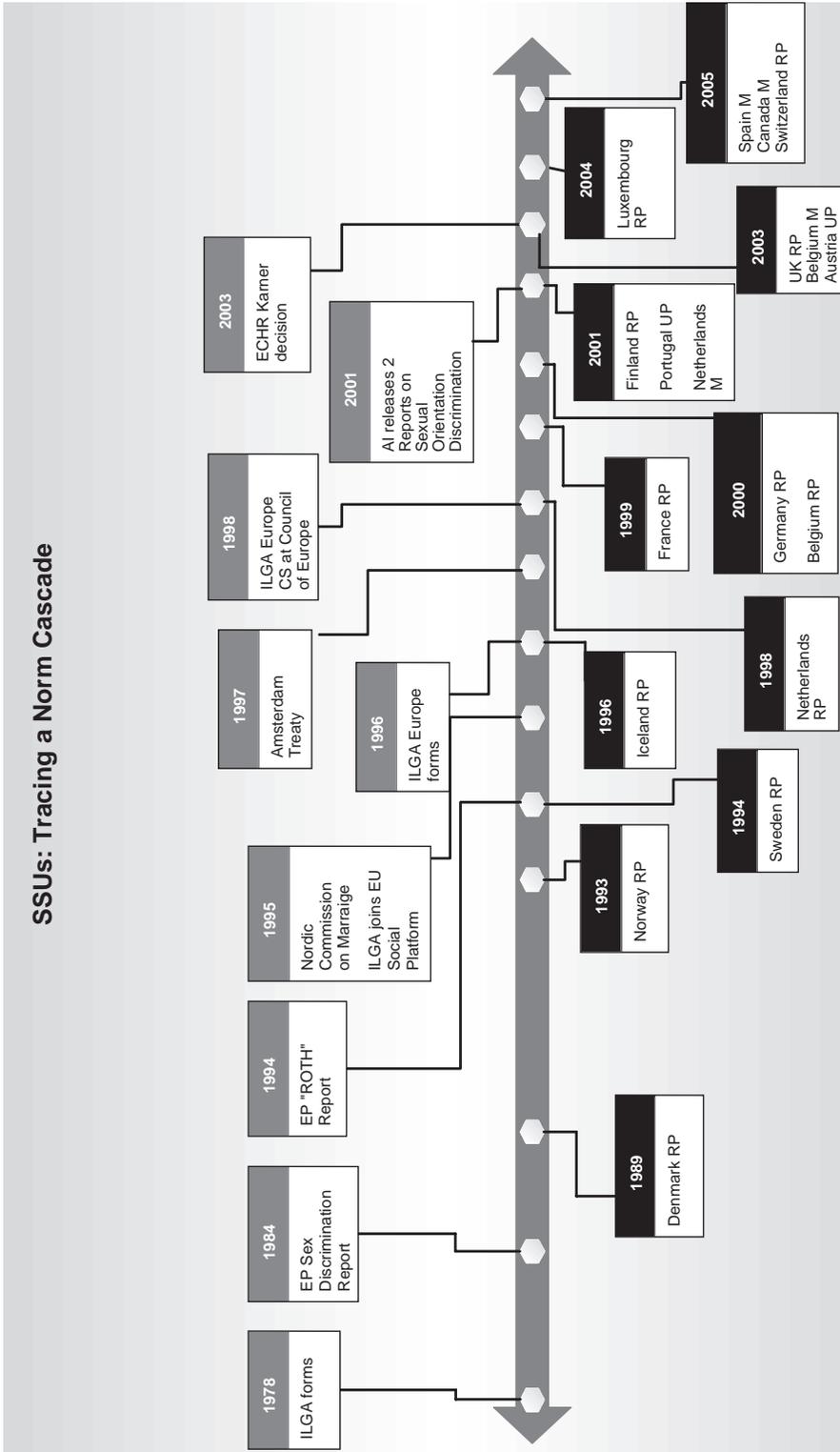
I have chosen to investigate western democracies with Christian heritages for several reasons. First, the core research puzzle in the SSU case centers on the rapid and widespread policy convergence that has occurred across western democracies and, with such notable exceptions as South Africa, the Czech Republic, and Hungary, nowhere else. Although, this research question focuses on convergence, that is, lack of variation, my case selection does allow me to vary both causal and dependent variables. Second, there is not enough research on the effects that international human rights norms have on established democracies. A more direct comparison of rich democracies with nondemocracies may appear desirable to tease out differences in socialization processes across regime type. I take seriously, however, the strictures about comparing what is comparable. Restricting my analysis to western democracies allows me to both introduce some control into my research design and to focus my efforts on developing mid-range theory. As such, I rely on implied comparisons with the work in the existing literature to highlight broad differences in socialization processes between established democracies and authoritarian/transitioning regimes. Finally, advanced industrial democracies represent a hard test for religious variables as secularization processes have gone the furthest in these societies. I have sought to include as many western democracies in this analysis as possible. Given resource limitations it has not been possible for me to conduct interviews with or attend the meetings of SSU policy activists in Australia or New Zealand and as such they have not been included in the analysis. Similarly I have not included certain small European countries such as Luxembourg and Iceland, both of which are SSU adopter countries, because of data limitations.

As with all research designs, both the methodology and evidence used in this study have limitations. My conclusions about how transnational socialization processes differ between nondemocracies and democracies, for example, are necessarily preliminary as I do not directly compare the two regime types. Instead, I use an implied comparison with studies that examine socialization processes in nondemocracies. More definitive results will have to wait for studies that make direct comparisons. My use of (fairly) large-N correlational analysis to explain the two questions of policy divergence has the advantage of establishing with some confidence that religious values play an important role in these policy outcomes. It is less well suited, however, for uncovering the causal mechanisms by which these outcomes occur. More in-depth case studies are needed to reveal these precise causal pathways. Qualitative case studies, for example, will be necessary to gain a better understanding of *how* opponents of SSUs have harnessed religious values in certain countries to get the policy outcomes they prefer and *why* the legitimacy of international norms is undermined in certain polities and engaged with by others. Finally, this research design does not allow me to explain fully why a small minority of countries have opened marriage to same-sex couples. As the evidence presented below reveals religiosity influences the decision to implement a marriage rather than a registered partnership law but it is not the sole factor involved. Once again case study research will be necessary to reveal what additional factors influence a government's decision to grant marriage rights.

Explaining Convergence: SSUs in Western Democracies

This section begins with a short description of the policy convergence that has occurred across western democracies in the area of relationship recognition since 1989 (see Timeline 1 and Table 1). It then develops an argument about the role transnational actors and human rights norms have played in this convergence.

The registered partnership model adopted by Denmark in 1989 was soon emulated by its Nordic neighbors. Norway adopted a similar registered partnership

SSUs: Tracing a Norm Cascade

Year	Event
1978	ILGA forms
1984	EP Sex Discrimination Report
1994	EP "ROTH" Report
1995	Nordic Commission on Marraige / ILGA joins EU Social Platform
1997	Amsterdam Treaty
1996	ILGA Europe forms
1998	ILGA Europe CS at Council of Europe
2001	AI releases 2 Reports on Sexual Orientation Discrimination
2003	ECHR Karner decision
2004	Luxembourg RP
2005	Spain M / Canada M / Switzerland RP
2003	UK RP / Belgium M / Austria UP
2001	Finland RP / Portugal UP / Netherlands M
2000	Germany RP / Belgium RP
1999	France RP
1998	Netherlands RP
1996	Iceland RP
1994	Sweden RP
1993	Norway RP
1989	Denmark RP

Timeline 1. Same-Sex Unions (SSU) Timeline

Note: Luxembourg and Iceland are not included in the 18 democracies under study for data reasons.

TABLE 1. Same-Sex Union Legislation in Western Democracies

Marriage	Registered Partnership	Unregistered Partnership	No Recognition/ Defense of Marriage
The Netherlands	France	Austria	Ireland
Belgium	Denmark	Portugal	Italy
Canada	Norway		Greece
Spain	Sweden		United States (DOMA)
	Germany		
	United Kingdom		
	Finland		
	Switzerland		

Source: Wintemute "From 'Sex Rights' to 'Love Rights': Partnership Rights as Human Rights," 2005.
DOMA, defense of marriage.

law in 1993, followed by Sweden and Finland in 1994 and 2001, respectively. Unlike some of the subsequent same-sex registered partnership laws adopted by countries outside the region, 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 granted to heterosexual married couples. The only major rights that were denied to same-sex registered partners were the rights of adoption, the use of the term husband and wife, and the right to a church wedding. Most Nordic countries subsequently have loosened adoption laws so that a member of a registered partnership can adopt their partner's biological child. Additionally, Sweden now allows same-sex couples to adopt a nonbiological child jointly (Merin 2002:67–78).

The deliberations over this legislation in the Nordic countries set the stage for how the debate has been carried out in most other western democracies, although it was more muted here than in the campaigns later waged in France, Germany, and most recently in Canada. Human rights oriented LGBT groups first promoted SSU proposals and then sought support among left leaning parties. These proposals were opposed by the conservative parties and, in the Nordic countries, by members of the established Lutheran Churches (Merin 2002). As a result, most of these SSU laws included assurances that religious institutions would not have to recognize or perform commitment ceremonies for same-sex couples.[3]

By the late 1990s the idea of legalizing SSUs moved out of the Nordic region and onto mainland Europe. The rest of Europe, however, has uniformly accepted neither the norm of legalizing SSUs nor the particular model first developed in Denmark. A number of societies including Italy, Ireland, and Greece have not yet adopted such legislation. Additionally, a number of new models have been added to the registered partnership scheme. In 2000, Germany adopted legislation that was similar to the Nordic registered partnership laws albeit with less comprehensive benefits. The United Kingdom followed with a proposal for same-sex registered partnerships at the end of 2003. The Netherlands and Belgium adopted registered partnership laws in 1998 and 2000, respectively, that are open to heterosexual as well as to homosexual couples. In addition both countries extended marriage rights to same-sex couples in 2001 and 2003, respectively. Spain became Europe's third country to grant marriage rights to gay and lesbian couples in 2005. France created

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[3] Minority voices within the LGBT community, particularly some lesbian organizations that view marriage as a patriarchal institution, also opposed the legal recognition of same-sex couples. By the mid 1980s the human rights wing of most national LGBT movements had become firmly entrenched as the mainstream voice of the movement.

a new institution called Civil Solidarity Pacts open to both homosexual and heterosexual couples, which is easier to enter into and dissolve and does not accord couples the full set of rights given to married heterosexuals. Finally, Portugal and Austria legally recognize SSUs through an unregistered cohabitants model that does not include a formal civil ceremony and which includes less than the full palette of rights and benefits that married couples enjoy (Wintemute 2005).

The recognition of same-sex couples has been a much more divisive issue in North America where 39 states and the national government in the United States and one provincial government in Canada adopted ''defense of marriage'' laws (DOMA) that define marriage as an institution between one man and one woman in their legal jurisdictions. Despite the political opposition to SSUs in both countries, certain states, and provinces have adopted registered partnership and marriage laws. By the end of 2004, registered partnership, cohabitation or same-sex marriage laws existed in Vermont, Massachusetts, Hawaii, and Connecticut in the United States and in Nova Scotia, Ontario, British Columbia, and Quebec in Canada (Department of Trade and Industry 2003:16–17).

Since 2003, the Canadian and U.S. governments have diverged sharply on the issue of SSU recognition. In the summer of that year Jean Chrétien's Liberal government decided not to appeal an Ontario court's ruling that the definition of marriage as an institution between a man and woman was unconstitutional. His government drafted legislation for a national law that would open marriage to gay and lesbian couples; the law was adopted in July 2005 under Paul Martin's Liberal government. In the United States, the Bush administration reacted to the 2004 Massachusetts Supreme Court ruling that the state must grant marriage rights to same-sex couples by urging Congress to consider a federal constitutional amendment defining marriage as an institution made up of one man and one woman. Thus, while Canada has moved toward a position on SSUs that resembles the policies adopted in Western Europe, it remains a very divisive issue in the United States where very few national politicians in either major party has called for federal SSU recognition. As this discussion illustrates, the unequivocal rejection of extending relationship rights to same-sex couples by the U.S. federal government stands in sharp contrast to the actions undertaken by most western democracies over the course of the last 20 years (see Timeline 1 for a progression of these events). The next section describes how the rise of a transnational network of LGBT advocacy NGOs and supportive policy elites influenced these policy outcomes.

The Rise of Transnational Networks and the Creation of a Relationship Recognition Norm

With the advent of the gay liberation movement in western societies in the 1970s, the size and number of international LGBT organizations increased and a nascent transnational network of both international and national LGBT groups began to form. It was not until the late 1980s, however, that many of these groups began to use an explicit human rights frame to promote their cause. At this time a number of LGBT organizations, especially the International Lesbian and Gay Association (ILGA), began to pressure more mainstream human rights groups such as Human Rights Watch and Amnesty International (AI) to recognize sexual orientation as a human rights issue. In 1998, after a great deal of internal debate AI agreed to give issues related to sexual orientation a higher priority within its Action Plans and also began including individuals imprisoned as a result of their sexual orientation in their rolls of ''prisoners of conscience.''[4] Since that time AI has published three major reports that outline the human rights abuses of sexual minorities and has become a key member of the LGBT human rights network (Beger 2001; Bamforth 2005).

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[4] I owe this point to one of the anonymous reviewers.

This transnational strategy has resulted in some successes at the UN level. The most influential transnational LGBT advocacy networks, however, have been formed at the regional level. The West European network is by far the most established and politically successful of these regional networks and is held together by the influential ILGA-Europe. Although ILGA is a global umbrella organization 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 and is much stronger, more developed, more professional, and as a result, more influential than the networks found in other regions. ILGA-North America, for example, 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 LGBT Organization, August 22, 2003).

The European LGBT network, of course, is not limited to ILGA but also includes organizations such as Amnesty International, Human Rights Watch and certain NGOs that make up the social platform of the EU. The network promotes the rights of LGBT people in two ways. First, it helps national groups network and exchange information about lobbying strategies and policy developments in other countries (Interview European LGBT Organization, August 22, 2003). The network also promotes its agenda by successfully lobbying intergovernmental organizations to incorporate sexual orientation and relationship recognition into the European human rights regime.

The success of the European network's lobbying efforts partially can be explained by the strength of the larger European political–economic regime, which is centered around but not limited to the EU. As Thomas Risse-Kappen (1995) has argued the ability of transnational networks to affect domestic policies is in part determined by the extent to which the policy field has become institutionalized at the international level. Probably no other noneconomic policy area in any region has been as structured by international institutions as human rights policy in Europe. In the wake of the atrocities of World War II, European countries made a conscious decision to enmesh themselves in a strong European human rights regime that is supported by a number of regional organizations, the two most important being the EU and the Council of Europe.

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 European Council, established in 1949, 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 Convention on Human Rights that contains a set of fundamental human rights to which all of its 41 member states must subscribe. Citizens of these member states can bring suits to the European Court of Human Rights (ECHR) if they feel their rights have been violated (Beger 2001:25–31). The Convention has been amended several times to extend rights to various groups, although it still does not explicitly include sexual orientation as a category for nondiscrimination.

The campaign to include sexual orientation in the European human rights regime began in earnest in the mid 1980s. In part because of the strong representation of Social Democratic and Green parties in its chambers, the European Parliament (EP) of the EU has been ILGA-Europe's greatest ally in this fight. As early as 1984, intensive lobby efforts by ILGA paid off with the publication of "Sexual Discrimination at the Workplace" by an EP committee that included sexual orientation in its call for more comprehensive antidiscriminatory protections. This was followed 10 years later by another EP report entitled "Equal Rights for Homosexuals and Lesbians in the EC" in 1994, which condemned discrimination against European gays and lesbians in a wide range of areas and for the first time criticized European governments for excluding same-sex couples from national

marriage laws. The EP has included a section on sexual orientation in all of its annual reports on the state of human rights in Europe since the publication of this report (Beger 2001:20–22). As with the 1984 report, ILGA lobbied heavily for and participated informally in the drafting of this publication (Interview European LGBT Organization August 22, 2003; Interview European Commission Official, August 23, 2003). Although these reports were nonbinding, 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.

Throughout the 1990s the European LGBT network increased its influence becoming a founding member of the EU's Social Platform of NGOs in 1995 and gaining official consultative status with the Council of Europe in 1998. ILGA-Europe's biggest victory came in 1997, again after years of lobbying, when the EU Intergovernmental Conference agreed to include sexual orientation as a category of nondiscrimination in the Amsterdam Treaty, which came into force in 1999. The Amsterdam Treaty was the first and remains the only legally binding international treaty that prohibits discrimination based on sexual orientation.

ILGA-Europe has also had successes at the Council of Europe's ECHR. It has helped a number of gay men and lesbians bring suits in the Court against European governments and employers that they claim have violated their rights. Because the Council of Europe has not included sexual orientation in the European Convention on 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 U.K. 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 across Europe (Beger 2001:25–27). More recently the ECHR has begun to grapple with the issue of relationship rights. In the 2003 *Karner versus Austria* ruling, the ECHR held that homosexual partners must be granted all the rights and benefits that nonmarried heterosexual couples receive. To do otherwise, the court ruled, is to engage in unlawful discrimination (ECHR 2003). While this ruling does not require signatory countries to adopt SSU laws, it does require governments to grant homosexual couples all the benefits granted to nonmarried heterosexual cohabitants and thus creates legal DP for homosexuals in countries that have such arrangements for heterosexuals.

The inclusion of sexual orientation in EU Treaties and the recognition of the rights of gays and lesbians by the ECHR have also led to the creation of a transgovernmental network of judges, legal scholars, and policy makers who have come to view sexual orientation-based discrimination and SSUs as a human rights issue. It was national executives and parliaments after all that had to sign and ratify the Amsterdam Treaty. National courts and legislatures have also had to implement the rulings of the ECHR. By the beginning of the 2000s a clear, if still controversial, norm against sexual orientation discrimination and for the recognition of gay and lesbian relationships had been established within key European institutions. Additionally a growing network of transnational actors has come together to promote this norm (see Timeline 1 for the progression of these events).

The Influence of the Transnational Network and Norms on National SSU Policies

How have the creation of a relationship recognition norm and the growth of a supportive transnational network influenced national debates about SSU recognition? Interviews with key policy activists and government documents reveal that the transnational network and European human rights regime have influenced domestic policy-making processes through three separate processes: national agenda setting, elite learning, and direct policy harmonization. As such, both the bottom-up mechanism of NGO promotion of an international norm and the top–down mechanism of elite learning highlighted by Checkel, Cortell, and Davis are at work. The

first of these mechanisms occurs when transnationally networked activists use developments in other countries or the international arena to help put SSU recognition on the agenda in their own country. They further use these examples to frame the issue as a human rights problem. Although transnational influence on agenda setting processes is often subtle, activists, and policy makers in Germany, the United States, and Austria mentioned events in other countries as one of the catalysts that helped put SSUs on the political agenda in their countries (Interview German LGBT Organization, July 27, 2003; Interview U.S. LGBT Organization, September 6, 2005; Interview Austrian LGBT Organization, December 6, 2005; Interview Austrian Policymaker, December 4, 2005). In the United States, the issue came onto the agenda in a negative way after it became clear that Canada would open marriage to same-sex couples. In Germany and Austria the advent of SSU laws in other West European countries helped LGBT organizations raise the issue with national policy makers and strengthen the legitimacy of their demands.

Additionally, evidence of the use of foreign examples can be found in the literature of almost all major LGBT groups in western countries. The websites of these groups very clearly announce the adoption of SSU laws in other countries and use these examples to bolster the human rights claims of their own arguments for relationship recognition. LSVD, a German LGBT organization, for example, issued a special press release in the summer of 2005 when Canada and Spain adopted their same-sex marriage laws. The headline of the press release read "Canada and Spain are in the Passing Lane: Equality in Germany Is Long Overdue" (LSVD, June 29, 2005; translation by author). In the United Kingdom the decisions of the ECHR have also been important for spurring debate in that country. The incorporation of the European Convention on Human Rights directly into British law in 1998 resulted in a number of lawsuits that challenged the British government in the ECHR to defend several discriminatory laws pertaining to homosexuals both as individuals and as couples. These lawsuits helped put the issue on the agenda in the United Kingdom, which resulted in an uncontroversial government proposal for a registered partnership law in 2003 (BBC 2000, 2002). These examples from other countries both show the timeliness of such reform and help frame SSUs as a human rights issue that an increasing number of liberal democracies are coming to recognize.

There is also evidence that elites do learn from both the international/foreign examples used by LGBT groups and directly from policy elites in other countries and European institutions via the transgovernmental networks they inhabit. In fact activists from several countries mentioned that national policy elites found the legal recognition of SSUs by other governments a far more persuasive argument in support of relationship recognition than the general public (Interview with German Policymaker, November 18, 2005; Interview French Policymaker, October 3, 2004). The influence of transgovernmental networks is most obvious and strongest in the Nordic countries. These countries historically have recognized marriages performed anywhere in the Nordic region and intermarriage across the region is common. Although the other Nordic countries at first refused to recognize Danish registered partnerships, the controversy over the issue soon died down. By 1995, after Norway and Sweden had adopted a registered partnership law that mimicked the one in Denmark, policy elites from the four countries formed a Nordic Commission on Marriage to discuss the recognition of SSUs. The governments quickly agreed to mutually recognize registered partnerships and such recognition has been in place since the mid 1990s (Merin 2002:77–79).

Although the influence of elite networking and learning has been subtler in other countries, it has played a role in almost all national SSU policy debates. In its coalition agreement of 1998, the Red–Green government in Germany justifies its proposal to enact a registered partnership law by quoting the decade-long recommendation of the EP for equal relationship recognition (SPD/Die

Gruenen-Buendnis 90 1998). In the White Paper that the Blair government distributed before introducing its own registered partnership law, the examples of other countries' SSU laws are outlined in great detail (Department of Trade and Industry 2003). Like its European counterparts, the Chrétien government in Canada justified its redefinition of marriage as an attempt to address "fundamental concerns of equality and fairness" (National Liberal Caucus Research Bureau 2003:1). Also featured prominently in this policy paper is a reference to SSU legislation in European countries and the opening of marriage to same-sex couples in the Netherlands and Belgium (National Liberal Caucus Research Bureau 2003:1). Policy elites in western democracies clearly draw on examples from other countries and developments within European institutions to help frame and justify their own support of SSUs. As more and more democracies have come to offer gays and lesbians legal recognition of their relationships and as more and more international organizations have interpreted their human rights documents to include sexual orientation, it has become easier to persuade elites in these countries that this is something liberal democracies must do.

The final way in which the transnational network has affected domestic policy, namely by influencing attempts to directly harmonize policy within supranational institutions, is also the least common. As stated above, no treaty formally recognizes the relationship rights of gays and lesbians and as such states are not legally required to do so. However, European countries are coming under increasing legal pressure to grant some relationship benefits to same-sex couples. The recent ECHR decision that ruled the Austrian government must grant same-sex couples the same benefits enjoyed by heterosexual cohabitants has in essence created a DP law for gays and lesbians in those European countries that have DPs for heterosexual couples. To use Slaughter's terminology, the horizontal nature of this network is quickly becoming vertical as informal influence is giving way to binding legal precedents in Europe. Already two countries have reacted to these legal changes; Austria, of course, by implementing the decision.[5] More recently, a Civil Partnership Bill was introduced in the Irish parliament, which the government thus far has failed to bring to a vote. In his justification for the bill, however, the lead sponsor notes the following:

> Developments in this area were seen as inevitable in the light of the growing number of case precedents under the law of the European Convention on Human Rights and changes in the laws of individual member states including our close neighbor, the United Kingdom (Irish Parliament [Oireachtas] 2004).

Clearly the rulings of the ECHR as well as the decisions of other democratic governments are beginning to have an effect even in some of the more traditional societies in Europe.

Alternative Explanations

There are three major alternatives to the norm-driven, social learning argument of SSU convergence offered above: neorealist power, neoliberal cooperation, and domestic politics accounts. Realist, power-based approaches have a notoriously difficult time accounting for the growth and influence of the international human rights regime. The expansion of this regime to include norms against sexual orientation-based discrimination and its subsequent effects on national SSU laws is no exception. States gain no obvious relative material benefits by either passing SSU

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[5] The Austrian government has dragged its feet in implementing this reform. National LGBT groups have had to make use of the national courts to force the government to grant same-sex couples the same benefits given to heterosexual domestic cohabitants. The Austrian courts, however, have dutifully implemented the *Karner* decision.

laws or having other states do so. More importantly, the recognition of relationship rights has been championed by the smaller and less powerful states in Europe and opposed by the reigning hegemon, the United States.

Neoliberal institutional theories are also not much help in explaining compliance with human rights treaties. Even Beth Simmons, one of the leading proponents of the approach, concedes in her new book on the international human rights regime that mainstream IR theories of treaty compliance are not ''very satisfying for understanding treaty compliance in the human rights area'' (forthcoming:155). Many of the incentives that make treaty commitments and compliance appealing to states in the security, monetary and trade fields do not exist for human rights policy. Because human rights treaties do not produce mutual material gains, states will not be as concerned about issues of reciprocity. Additionally, since international norms of relationship recognition are largely informal, many of the credibility and reputational incentives states have to sign up to and comply with legally binding treaties also do not exist. Although states, particularly in the European common market, may have incentives to coordinate partnership laws in order to facilitate the free movement of people, this is precisely the area of SSU law where the least amount of coordination has occurred. No comprehensive mutual recognition system for SSUs exists outside of the Nordic countries and the new EU Freedom of Movement Directive is largely silent on the issue of same-sex spouses despite the EP's call for their inclusion in the legislation.

There is simply very little evidence to suggest that states are implementing SSU laws as a result of instrumental cost-benefit calculations that are at the heart of neoliberal and neorealist arguments. Neither national nor transnational LGBT groups have tried to use instrumental means to encourage governments to implement SSU legislation. LGBT groups have not used boycotts or other forms of economic sanctioning to any great extent. Where SSUs have become an important electoral issue as in recent U.S. and Canadian elections, the issue was raised by conservative candidates who oppose the recognition of gay relationships, rather than by LGBT groups trying to exercise their electoral influence.

The most plausible alternative explanation for SSU policy adoption can be found at the domestic level. It is possible that the wave of SSU legislation is simply the result of uncoordinated, simultaneous developments within the countries under study. Indeed domestic variables are important to the story of social learning offered above. Without changing social mores and a relatively strong national LGBT movement and competent lobbying organizations to apply transnational norms and models to national settings, the network would have very little influence at the national level. However, the regional and temporal clustering of SSU adoption strongly suggests these domestic groups did not act alone. Finally, there is a good deal of evidence to suggest that the adoption of SSU legislation has been elite-led. Public support for SSU laws has increased after their adoption in almost every country that has implemented one (Fish 2005). Both direct elite socialization and greater elite acceptance of the international norms used by domestic advocacy groups can help explain why governments have been ahead of publics on this issue. This evidence taken together with governments' frequent use of international norms and foreign models in their justifications of national SSU laws strongly suggests that these norms and transnational networks have been an important catalyst of domestic SSU policy developments.

Explaining Divergence: SSU Norm Failure in Western Democracies

Although the transnational network and its promotion of a relationship recognition norm have profoundly influenced SSU policy developments in western democracies, the effect of the network is varied and uneven. Different parts of the network seem to matter in different countries. In North America, where neither LGBT

groups nor policy elites are as integrated into the network and where supranational legal precedents have no formal authority, the impact of the network has not been as great. It is therefore not surprising that debates over national SSU legislation started later in Canada and the United States and that the human rights frame has been more difficult for SSU supporters to use successfully. Ultimately, the two countries diverged dramatically on the issue. This divergence and the lingering divergence among the European countries cannot be explained by a common transnational source. Here, we do need to examine how domestic factors mediate transnational pressure for convergent change. I begin by examining the legitimacy of international norms and transnational advocacy networks in the 18 democracies under study.

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 norms into their domestic policies. The effects of the human rights regime on democracies are generally subtler and are more likely to occur as a result of persuasion and learning across countries rather than through instrumental tactics involving sticks and carrots. Therefore, it is logical to assume that one of the important domestic level variables that helps determine how influential the regime can be, is how willing a democratic government and its citizens are to participate in and learn from transnational society.

A number of studies have shown that national governments are more likely to comply with an international norm if it "fits" well with domestic political culture and structures (Cortell and Davis 1996; Checkel 1999; Joachim 2003; Hawkins 2004). While correct, this argument assumes that countries are equally open to accepting influence from abroad if it comes in the right form. In the case of human rights norms and established democracies, however, the issue seems to have less to do with whether such norms fit with domestic political structures—they do—and more to do with the ability of governments to resist the framing of same-sex relationship recognition as a human rights issue. The more seriously governments take international and foreign norms in general, the more powerfully these examples can be used by domestic LGBT groups to support their claims. Thus, regardless of the norm under consideration, some countries are simply less willing to learn from transnational networks and policy makers outside their own borders.

To test this hypothesis I look at two different measures of transnational engagement and international norm acceptance, the number of major human rights and environmental treaties ratified by individual advanced industrial democracies, and the level of citizen and national NGO participation in INGOs on a per capita basis (see Table 2). The first indicator roughly measures the willingness of policy makers 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.[6] Not surprisingly, what becomes very clear when looking at the tables is that European countries are much more integrated into transnational society 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 many of these decisions are now made at the EU level. There is some variation among the

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[6] The second of these measures, participation in INGOs, seems to be highly influenced by the population size of a country. Small countries seem to have much larger participation rates than larger countries. Therefore, this second measure of participation in transnational society should be used to identify broad patterns of participation and particularly to distinguish participation rates between countries of similar size. The fact that Canada, for example, participates in INGOs less than other small European countries is probably significant as is perhaps the United States' extremely low participation numbers in comparison with medium sized countries such as Germany and the United Kingdom.

Table 2. Same-Sex Union Legislation and the Legitimacy of Transnational Influence—Elite Participation and INGO Membership

	Marriage	Registered Partnership	Unregistered Partnership	No Recognition
TransElite	The Netherlands (22)	France (21)	Austria (22)	United States (9)
(# of HR and Env. treaties ratified. Out of 22)	Belgium (22) Canada (21) Spain (22)	Denmark (22) Norway (22) Sweden (22) Germany (22) Finland (21) United Kingdom (21) Switzerland (21)	Portugal (22)	Ireland (22) Italy (22) Greece (21)
TransCivil Society	The Netherlands (365.7)	France (110.4)	Austria (563.2)	United States (17.6)
(INGO membership per million population)	Belgium (558.5) Canada (138.1) Spain (139.4)	Denmark (907.9) Norway (958.6) Sweden (588.2) Germany (78.5) Finland (872) Portugal (402) United Kingdom (105.8) Switzerland (726.5)	Portugal (402)	Ireland (944.5) Italy (102.7) Greece (349)

Sources: Glasius, Kaldor and Anheier (2002). *Global Civil Society 2002.* Oxford: Oxford University Press.
Wintemute "From 'Sex Rights' to 'Love Rights': Partnership Rights as Human Rights," 2005.
DOMA, defense of marriage; INGO, international non-governmental organizations.

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.

What the legitimacy of transnational participation does seem to explain is why Canada and especially the United States have lagged behind Europe in adopting SSUs as well as why Canada has moved toward the European position while the United States has moved in the opposite direction implementing DOMA legislation and debating the adoption of a federal marriage amendment. While both Canada and the United States lag behind the Europeans in citizen participation, the gulf between U.S. and Canadian participation in global civil society is also very telling. The U.S.'s participation rates in both categories are significantly below those found in Canada, in the case of elite participation in treaty regimes dramatically so. Part of the reason for the U.S.' low ratification rate is undoubtedly related to the difficult ratification rules that exist in the U.S. system; treaties must pass the U.S. Senate with a 2/3 majority vote. However, this institutional barrier only seems to explain part of the story. Ratification rules, for example, explain less well why the United States has only signed six of the thirteen unratified treaties or why the Bush administration took the unprecedented action of "designing" two of these treaties, the Kyoto Protocol and the Rome Statute of the International Criminal Court.

Additionally while Canada has taken a leadership role in fostering transgovernmental links between national judges and court officials (Slaughter 2004; Cardenas 2003), policy elites in the United States have balked at attempts by U.S. judicial officials to draw on foreign sources of expertise. When the Supreme Court ruled antisodomy laws unconstitutional in the 2003 *Lawrence v. Texas* decision, the majority opinion made note of, but did not base its ruling, on a similar decision by the ECHR. This brief mention of international law was enough to raise the ire of conservative Republicans in Congress. Resolutions forbidding the use of foreign or international law in judicial decisions were introduced in both the House and the

Senate in the wake of the *Lawrence* decision (Pearlstein 2005). Additionally, questions about the use of international law figured prominently in the confirmation hearings of the two new Supreme Court Justices, John Roberts and Samuel Alito this past year. Alito answered emphatically that he didn't think it "appropriate or useful" to examine foreign law in interpreting U.S. law (*New York Times* 2006).

Clearly the lack of influence that foreign law and international norms has on U.S. policy makers is not just a byproduct of high institutional barriers to treaty ratification. There is a deep-seated antipathy to the use of international legal principles and precedents among many U.S. political elites and the public, a reluctance that is much less visible in Canada and Western Europe. The data suggest that Canada's citizens and, in particular, their policy makers are better integrated into these transnational networks and are more willing to let their domestic policy be influenced by them. The domestic legitimacy of international norms and transnational networks cannot, however, explain why the SSU norm has failed in certain West European countries, as there is little variance in transnational participation rates across these countries. I turn to a second domestic variable to explain norm failure in these countries, national religious characteristics, and practices.

As argued above higher levels of legitimacy for international norms help domestic SSU advocates to frame relationship recognition as a human rights issue. However, no matter how legitimate a public and its government view international influence, the framing of SSUs as a human right has been challenged in all western democracies by religious organizations and their framing of marriage as an important traditional institution. Consequently, the level of influence the relationship recognition norm will have also depends on how well these religious groups can promote their counter frame. In the past political scientists largely have eschewed religious cultural explanations of policy outcomes in western democracies, partly out of the belief that widespread secularization trends have rendered religious variables toothless. However, as a prominent recent study by Pippa Norris and Ronald Inglehart (2004) shows secularization may be widespread but this process does differ across western societies and has not completely homogenized beliefs in God or levels of religious participation. Indeed a number of studies have shown that there is a visible religious impact on certain types of policies in western democracies, especially abortion and divorce law (Castles 1993, 1998; Minkenberg 2002).

As with abortion policy, there are logical reasons to think that religious variables could affect how the SSU issue is framed and therefore SSU policy outcomes. In western societies, the definition of marriage and the traditions associated with it are strongly tied to the religious history of that country. While few mainstream Christian denominations openly endorse SSUs, the various denominations do define the purposes of marriage and its place in a Christian life differently. Most Protestant denominations in Western Europe, for example, encourage their followers to participate in monogamous marriage but unlike in the Catholic and Orthodox Churches, marriage is not a sacrament thought to be directly blessed by God. This difference has allowed Protestant churches reluctantly to accept divorce and remarriage, which is strictly forbidden by the Catholic Church. Additionally, Protestant denominations traditionally have defined the purposes of marriage a bit more broadly than the Catholic Church, which ties marriage very closely to procreation and the raising of children. The Catholic Church also has strongly condemned homosexual behavior and relationships while a number of Protestant denominations, notably the Episcopalians and the Congregationalists in North America, have taken steps toward greater acceptance of homosexuality.

I draw heavily on the framework and measures used by Michael Minkenberg (2002) in his analysis of religion's affect on abortion policies in western democracies to help determine if there is a similar religious impact on SSU policy. In his study, Minkenberg uses indicators for three different aspects of national religious

characteristics: religiosity (level of religious participation), confessional heritage (nature of the dominant religious tradition) and church–state relations (level of state regulation of religious institutions) to address this research question (2002). I use Minkenberg's three-part measure of each variable to see which, if any, of these religious characteristics coincides with particular SSU outcomes. Religiosity, which is measured as high, medium, and low, is based on average church attendance levels in the 1980s and 1990s for each country.[7] Based on work by religious historians Minkenberg categorizes countries according to three different confessional heritages: Catholic, Protestant, and mixed heritage. This measure describes the historical influence of a particular denomination on a society and does not reflect more recent trends in church membership. Finally, Minkenberg draws on the separation of church–state index developed by Mark Chaves and David Cann to create a three-part typology for church–state relations. This index uses such indicators as state recognition of a church or several churches, state appointment of church officials, state payment of church officials' salaries and state allocation of taxes/subsidies for churches (Chaves and Cann 1992). Using this index he categorizes western democracies as having "full establishment" of a church by the state, "partial establishment," or "separation" of church and state.

These measures and their relationship to SSU outcomes are presented in Tables 3–5. In this section, I consider the relationship between religious variables and SSU adoption and nonadoption; in the next section these data will be used to examine SSU type. As the data in Table 3 indicate, there is a clear relationship between levels of religiosity and SSU adoption. All five countries with low levels of religiosity have an SSU law in place. Of the four countries nonadopter countries, all have high levels of religiosity.

Confessional heritage and church–state relations appear to have less impact on SSU outcomes. However, it is worth noting that while five Catholic countries have adopted an SSU law, only one of the nonadopter countries, the United States, is predominantly Protestant (see Table 4). Church–State relations are even less important for explaining SSU policy outcomes (see Table 5). No patterns appear between either partial establishment or separation and SSU policy outcomes. It is interesting to note, however, that four of the five countries with a fully established church (the Nordic countries and Greece) have adopted an SSU law. While this pattern is probably better explained by the low levels of religiosity in the four Nordic countries, these findings confirm what other research has found, namely that churches and religious movements are far more successful at influencing policy from outside the state than from within it (Minkenberg 2002). Thus, like Minkenberg, I find that religion does have a noticeable impact on policy outcomes and that the two cultural aspects of religion (religiosity and confessional heritage) appear to have greater policy effects than how church–state relations are institutionalized. In the case of SSUs, high levels of religious adherence appear to make it difficult for SSU advocates to frame SSUs as a purely human rights issues despite increasing transnational pressure to do so.

The indicators of religious culture used in this section are obviously quite blunt ones. The division of societies into traditionally Catholic or traditionally Protestant in particular seems to do violence to the concept of confessional heritage. Significant differences, for example, exist in the religious histories of North America and Europe. The Protestant evangelical sects that have played an important historic role in religious life in North America really do not have an equivalent in Europe.

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[7] More specifically religiosity is measured as the average frequency of church attendance (percentage that report going at least once a month). In high religiosity societies 35% or more of the respondents report going to church at least once a month; in medium religiosity societies 20–34% report doing so and in low religiosity societies <20% of respondents report monthly church attendance. These results are taken from the World Values Surveys of 1981, 1990–1991, and 1995–1998.

TABLE 3. Same-sex Union Legislation and Religiosity (% Monthly Church Attendance)

	Marriage	Registered Partnership	Unregistered Partnership	No Recognition/ Defense of Marriage
Low religiosity		France (17)[CO] Denmark (19)[P] Norway (13)[P] Sweden (12)[P] Finland (12)[P]		
Medium religiosity	The Netherlands (35)[M] Belgium (36)[CO]	Germany (31)[M] United Kingdom (24)[P] Switzerland (34)[M]	Austria (35)[CO]	
High religiosity	Canada (42)[M] Spain (44)[CO]		Portugal (42)[CO]	United States (58) (DOMA)[P] Greece*[CO] Ireland (88)[CO] Italy (47)[CO]

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. Levels of religiosity are measured by median levels of church attendance from 1980 to 1998 as reported in three different *World Values Surveys*. The numbers in parentheses represent the percentage of the population that reported attending church at least once a month, averaged over the three surveys.
Wintemute "From 'Sex Rights' to 'Love Rights': Partnership Rights as Human Rights," 2005.
CO, Catholic/Orthodox; P, Protestant, M, mixed Catholic/Protestant.
*Minkenberg does not code for Greece in his study and Greece was not consistently included in *World Values Survey* until 2000. I have coded Greece using data from Eurobarometer and European Social Survey data (2002). According to the Eurobarometer data Greece would be classified as medium religiosity; the European Social Survey indicates high religiosity. I have coded them as high religiosity based on other measures of religious participation, which are uniformly high in Greece, and because belief in God in Greece is among the highest in Western Europe (see Inglehart and Norris, 2004).
DOMA, defense of marriage.

Unlike the European Lutherans and Calvinists, evangelicals in North America have tended to hold at least as conservative views on marriage and homosexuality as their Catholic counterparts. This history is important for understanding the SSU debate in North America and the strength of the traditional marriage frame there.

If we look deeper into the nature of Protestantism in Canada and the United States, we can also find differences that help explain the divergent course SSU policy has taken in the two countries. While evangelical Protestantism has stronger roots in Canada than in Europe, it has never been as strong a movement as in the United States. Presently, approximately 22% of Americans identify themselves as evangelical Protestants while only 6% of Canadians do so (Adams 2003:263). Additionally, Canada's largest Protestant church, the United Church of Canada, has had a long tradition of promoting tolerance in Canadian society and since the early 1980s has promoted the rights of gays and lesbians within its own organization. The effect that these denominational deliberations have had on the wider political debate about the rights of gays and lesbians has been profound and has no real equivalent in the United States (Interview Canadian Policymaker, August 16, 2005). These important differences in the confessional heritages of the United States and Canada should not be overlooked. These qualifications, however, do not undermine the general point about the importance of religious cultural practices for explaining SSU outcomes. Rather they reinforce the argument while presenting a more nuanced picture of the situation in North America.

TABLE 4. Same-sex Union Legislation and Confessional Heritage

	Marriage	Registered Partnership	Unregistered Partnership	No Recognition/ Defense of Marriage
Predominantly Protestant		Denmark Norway Sweden United Kingdom Finland		United States (DOMA)
Mixed	The Netherlands Canada	Germany Switzerland		
Predominantly Catholic/Orthodox*	Belgium Spain	France	Austria Portugal	Greece 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. Minkenberg derives these categories from the works of religious historians. These categories reflect the historically dominant religious tradition and not contemporary membership in these countries.
Wintemute "From 'Sex Rights' to 'Love Rights': Partnership Rights as Human Rights," 2005.
*Minkenberg does not code for Greece but I have included the Orthodox Church in the Predominantly Catholic category for two reasons. First, the Greek Orthodox Church, like the Catholic Church and unlike Protestant denominations, views marriage as a sacrament blessed directly by God. Second, the Greek Orthodox Church, like the Catholic Church, has taken a strong public stance against homosexual behavior.
DOMA, defense of marriage.

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

	Marriage	Registered Partnership	Unregistered Partnership	No Recognition/ Defense of Marriage Act
Full establishment		Denmark Norway Sweden Finland		Greece*
Partial establishment	Belgium Spain	Germany United Kingdom Switzerland	Austria Portugal	Italy
Separation	The Netherlands Canada	France		United States (DOMA) Ireland

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. Minkenberg draws on the separation of church-state index developed by Mark Chaves and David Cann (1992) to create a three-part typology for church-state relations. This index uses such indicators as state recognition of a church or several churches, state appointment of church officials, state payment of church officials' salaries and state allocation of taxes/subsidies for churches.
Wintemute "From 'Sex Rights' to 'Love Rights': Partnership Rights as Human Rights," 2005.
*For Greece I use the Regulation of Religious Freedom Index used in Inglehart and Norris, 2004.
DOMA, defense of marriage.

Alternative Explanations

It is always difficult to argue that culture is one of the main causal variables of policy outcomes. Often cultural arguments are countered by institutional accounts as the latter are thought to have a more direct and stronger impact on decision-making processes. Indeed as outlined above most norms scholars have looked to domestic institutions to explain the differential impact that international norms have on national policies. In the case of SSUs, however, institutional variables appear to play only a secondary role. There are at least three institutional variables found in the literature that could explain the variable impact of the relationship recognition norm across western democracies (for an overview, see, Simmons forthcoming); executive-legislative relations, electoral and party systems, and common law versus civil law systems.

There are logical reasons to think that presidential systems, which have a greater number of veto points and in which the executive has to gain approval from a separately elected legislature to participate in international agreements, would have greater difficulties translating international norms into domestic policy. While it is true that one of the four nonadopter countries is a presidential democracy, the remaining three are parliamentary democracies. The one hybrid country, France, has adopted a SSU law.

It is also logical to think that countries with proportional representation electoral and multiparty systems would be more likely to produce parliamentary parties that favor SSU laws than countries with single-member district electoral and two-party dominant systems. Again, however, the evidence does not bear this hypothesis out. Of the four SMD, two-party dominant countries, three have adopted an SSU law and one has not. Of the two hybrid systems, Germany and Italy, one is an adopter country and the other is not. It should also be noted that Italy, the nonadopter, is far from a two-party dominant system.

Beth Simmons's recent work on legal traditions and international treaty commitments offers the most plausible institutional explanation for SSU adoption. In her forthcoming book, she argues that governments in common law legal systems have greater difficulty committing to binding international treaties because they incur higher adjustment and uncertainty costs than governments in civil law systems where judicial discretion and interpretation are less important (Simmons, forthcoming). Indeed this theory could explain why the common law systems (Canada, United Kingdom, United States, Ireland) are either late or nonadopters of SSU legislation.

While this institutional factor can help explain the lack of legitimacy some common law states accord international norms, it seems to offer a less convincing explanation of SSU adoption than those offered above. First the logic behind the common law argument is less compelling for soft law norms like the relationship recognition norm than with formal treaty commitment and ratification that Simmons addresses. With soft law no formal legal principle is incorporated into national law and therefore any adjustment and predictability costs are much lower. Governments can and do shape the general norm for relationship recognition to fit their own legal and cultural environments when enacting national legislation. Further while two of the nonadopter countries (Ireland and the United States) have common law legal systems, the other two common law countries under study (the United Kingdom and Canada) have implemented SSU laws. It should also be noted that these two nonadopters have comparatively very high levels of religiosity. Nor can common law heritage explain the different levels of international participation rates that exist between the United States and Canada, two non-European, common law countries. Other factors obviously play into the level of legitimacy certain governments and publics accord international norms. While the influence of this variable cannot be completely dismissed, both religion and a wider conceptualization

of international norm legitimacy appear to be logically more compelling as well as more empirically satisfying explanations of SSU norm failure.

Finally, I also have not found differences in national LGBT movement strength to be a particularly helpful variable in explaining divergence in SSU policy outcomes. Although certain early adopter countries such as Sweden, Denmark, and the Netherlands do have strong and well-established national LGBT political organizations, the relationship between large, well-resourced LGBT organizations and SSU recognition is far from a perfect one. The United States has two of the largest and richest LGBT organizations in the world, namely the Human Rights Campaign and the National Lesbian and Gay Task Force. These groups have been able to do little to prevent the passage of the national DOMA Act. Canada, for its part, has rather small national LGBT organizations and a less rich history of movement activism than the United States; yet, it passed a gay marriage law in 2005 (Rayside 1998). The LGBT movements in Spain, France, and Portugal have also not been particularly vibrant ones but all three countries legally recognize gay and lesbian relationships in one form or another (Adam, Duyvendak, and Krouwel 1998). Although the presence of a national LGBT movement is necessary for achieving SSU recognition, these organizations also seem to rely on some combination of the following factors to secure this recognition: a weak opposition, the existence of foreign and international examples to bolster their human rights claims, and a government willing to take these examples seriously.

Explaining Divergence: Translating the Relationship Recognition Norm into Policy Models

Because the relationship recognition norm is not incorporated into any legally binding international treaty, the countries that implement SSU legislation are free to structure this new institution as they see fit. Indeed the fourteen adopter countries included in this study have implemented a number of different SSU models from unregistered DPs to the opening of marriage to same-sex couples. Religion again appears to play an important role in determining which particular model governments embrace. Curiously, all five low religiosity countries have adopted a registered partnership model; not one of these countries has opened marriage to gay and lesbian couples (see Table 3). The four countries that allow same-sex marriage all score medium to high on the religiosity scale. It should be noted that Canada and Spain are on the lower end of the high religiosity category and have significantly lower levels of church attendance than the nonadopters countries of Italy, Ireland, and the United States.

A somewhat similar pattern emerges when comparing the confessional heritage of these countries with SSU policy outcomes (see Table 4). Again, we see that registered partnerships are associated, albeit not exclusively, with predominantly Protestant societies while the countries that have adopted marriage as a model are either predominantly Catholic or have a mixed confessional heritage. This association lends additional support to the idea that marriage is more likely to be adopted in societies with somewhat more conservative views of the institution. This finding suggests that the enduring importance of religious values leads these societies to prefer a more traditional SSU should they in fact agree to recognize gay and lesbian relationships. In more secular societies the idea of creating an alternative institution to marriage may simply be viewed as neither a cultural threat nor a discriminatory practice.

Canada is a perfect example of this phenomenon. In 2000 the Canadian government quietly bestowed gay and lesbian couples with almost all the benefits and duties associated with marriage by allowing them to enter into common law partnerships that previously existed for heterosexual, nonmarried couples. This victory spurred the movement to call for full marriage rights. When asked why the move-

ment kept campaigning for marriage even after gaining all the material benefits associated with it, one policy activist replied that "marriage still has meaning" in Canada (Interview Canadian Policymaker, August 11, 2005). Because marriage still has symbolic value in Canada, the word, ceremony, and symbolism become an end in themselves. Similarly, the argument that withholding this symbol amounts to discrimination has more weight in these countries. Where the perceived value of marriage is in decline, as in Scandinavia, the use of the word and the ability to participate in a specific ceremony are not considered as important, although most national LGBT groups have called for full marriage recognition. It should be noted, however, that religious values cannot fully explain the adoption of a marriage law as most medium religiosity countries in fact have opted for a registered partnership scheme. So far, comparatively conservative religious values have been a necessary but not sufficient condition for the opening of marriage to same-sex couples.

Alternatives

Because SSU policy is such a new field, very little research has been done on why different countries adopt the models they do. As such there is not a specific literature on which to draw for alternative explanations. It is logical to assume, however, that countries that have instituted alternative legal institutions for heterosexuals may be more apt to create another nonmarriage alternative for same-sex couples as a result of these existing policy structures. The problem with this argument, however, is that the propensity to create such nonmarital institutions is itself influenced by religion and confessional heritage. In general countries with either high levels of religiosity or a Catholic heritage, have been slow to grant unmarried heterosexual couples many legal benefits or obligations. These cohabitation laws are most developed in the Nordic countries and in the Netherlands and least developed in France, Germany, and the United States (Mueller-Freienfels 1987). Thus, while in general this variable would appear to help explain the models of SSU adopted by western democracies, its effects cannot be separated from the religious variables highlighted here.

   Model adoption also could be related to the different preferences of national LGBT organizations. Indeed some national movements have been divided on the issue of marriage as a result of feminist lesbian organizations' discomfort with the institution. However, the large, national LGBT organizations in almost every country under study have called for the opening of marriage to same-sex couples. The one prominent exception to this rule among adopter countries seems to be Germany where the influence of lesbian feminist groups, among other factors, has caused the national LGBT organizations to refrain from using the word marriage in its relationship recognition campaign (Interview German LGBT NGO, November 21, 2005). These groups' demands have been very similar across countries, in part as a result of transnational networking (Interview Canadian Legal Scholar July 19, 2005; Merin 2002).

Conclusions

Although not widely researched by political scientists, the wave of SSU adoptions across western democracies in the last 17 years represents one of the most dramatic cases of policy convergence in recent history. While national LGBT movements and changing social mores have clearly paved the way for convergence, the evidence presented in this paper reveals that in important, albeit varying, ways transnational networks of policy activists and elites have served as a catalyst for legal recognition. They have done so by both lobbying European institutions to recognize the rights of gays and lesbians as human rights and by serving as an information and best

practice conduit for national LGBT organizations and policy elites. The temporal and regional clustering of SSU laws in Western Europe indicates the importance of the network for explaining these policy outcomes. Additionally, the process tracing techniques used in this paper show how events that occurred within supranational institutions and transnational networks have worked their way into the national SSU policy debates. Textual analysis of national government documents and interviews with policy elites reveal how domestic activists and elites have used human rights frames developed at the European level and in peer countries to bolster their calls for SSU recognition.

This evidence also has revealed that the workings and effects of the transnational network function somewhat differently among established democracies than how the literature has reported it functions in developing and transitioning countries. First, the socialization processes that have led to the framing of SSU policy as a human rights issue appear to rely very little on the instrumental tactics of applying carrots and sticks to induce norm compliance; instead norm compliance has resulted from the social learning that occurs from argumentation and persuasion. While governments have uniformly justified their adoption of SSU legislation by invoking human rights frames, there is very little evidence to suggest that NGOs, intergovernmental organizations or powerful states have attempted to compel countries to comply with this human rights frame using material incentives. Instead of causing convergence through the use of instrumental arm-twisting or coaxing, the network has influenced national policy making through the more subtle processes of agenda-setting, elite learning, and more recently, through direct policy harmonization within supranational institutions.

Second, the transgovernmental networks of legislators, bureaucrats and judges described by Slaughter appear to play as important a role in SSU policy convergence as the NGO advocacy networks often emphasized in the human rights literature. This is in part a result of Europe's unique set of supranational institutions, which profoundly influence the work of national government officials in Europe. They also create vertical ties between the latter and European officials, who in certain fields can legally enforce commonly agreed upon norms and rules via the ECJ and the ECHR. Indeed, it is the existence of these vertical ties that help explain the greater impact of the network in Europe than in North America. These findings also suggest, however, the literature's focus on transnational NGOs may be partially obscuring the importance of networks between national government officials. Transgovernmental networks are no doubt most significant in European socialization processes; however, as regional integration projects in Africa (African Union), South America (MERCOSUR), and Asia (ASEAN) continue apace, scholars will need to pay more attention to the role that these networks play in international norm dissemination.

Cross-national policy convergence, while sometimes striking, is never complete. In the case of SSU policy, there are still a number of western democracies that do not legally recognize same-sex relationships and the form of recognition used by those governments that do varies significantly from country to country. Like most analysts in the human rights and wider norms literature, I argue that the pressure for norm compliance exerted by transnational actors is mediated by domestic factors. Although widely acknowledged, our understanding of this process is still very poor. The two domestic factors important for explaining SSU policy outcomes—domestic legitimacy of international/foreign norms and religious cultural values—rarely have been highlighted in the literature.

The first factor, which primarily helps distinguish SSU policy outcomes in Europe from those in North America as well as differences between Canada and the United States, resembles the argument about "goodness of norm fit" that is often employed by norm scholars in IRs. The point made here, however, is that it is not just the nature of the norm that matters. The level of legitimacy that governments

and societies place on using international norms of any kind in domestic discourse also determines how influential these norms can be. As national participation in human rights/environmental treaty regimes and membership in INGOs reveal, some countries do not find participation in transnational society as compelling as other countries.

In this paper, international norm legitimacy largely explains why the creation of a relationship recognition norm has had so little effect on the U.S. debate and why this marginal effect has been a negative one. On the surface this would appear to be another case of American exceptionalism. I would argue, however, that levels of international norm legitimacy vary more widely than this. The United Kingdom is notorious for being reluctant to integrate European norms into its own domestic policy debates. In the SSU case low religiosity in the U.K. minimized barriers to the acceptance of the relationship recognition norm but this is not always the case. Similarly while certain developing countries such as Costa Rica and post-Apartheid South Africa—which interestingly granted same-sex couples marriage rights in 2005—have been enthusiastic participators in international society, others such as China, Malaysia and at times India have been more reluctant to accept international, especially western, normative influence. While other scholars have noted the importance of different levels of international norm acceptance—Keck and Sikkink's "moral vulnerability" (1998) and Miranda Schreur's "willingness to learn" (2002)—this study represents one of the first attempts to systematically measure and test its effects. The measures used here are rather blunt but the variable does help explain SSU results. Constructivist scholarship needs to do more to refine this concept.

The second domestic level variable used to explain lingering SSU policy divergence is religious practices. Religion influences SSU outcomes in a number of interesting ways. Not surprisingly, nonadopter countries tend to have high levels of religiosity while all low religiosity countries have SSU laws in place. What is surprising is that these latter countries have all implemented the registered partnership SSU model rather than marriage. The opening of marriage to gays and lesbians is associated with countries that have medium, and sometimes even high, levels of religiosity and also have a Catholic or mixed Catholic/Protestant heritage. In comparatively traditional adopter societies, it seems governments are more susceptible to the argument that denying same-sex couples the symbolism of marriage amounts to discrimination.

These results are also interesting for theoretical reasons. First, they reinforce studies by scholars such as Minkenberg and Castles that show religion does still have an impact on public policy in western democracies despite clear—but as Norris and Inglehart point out variable—trends toward secularization. Similarly, they echo Minkenberg's finding that it is the cultural side of religion, that is, religiosity and confessional heritage, rather than how religion is institutionalized that shapes policy outcomes. This result, of course, has everything to do with the nature of this particular policy field. However, the growing number of studies that show secularization has not homogenized the value structures of different societies and that these differences have clear effects on certain policy outcomes indicates that public policy scholars need to consider the effects of religion and other cultural variables in a wider variety of policy fields. Cultural values clearly shape debates about a number of diverse topics from environmental policy to women's rights to store opening hours. This study and others reveal the effects of culture cannot be dismissed out of hand as they so often are by political scientists and that we need a better understanding of the mechanism by which culture affects policies. Because this study has used a fairly large number of country cases to establish that religion does have an effect on policy outcomes, these findings have less to say about the mechanism of culture's influence on policy outcomes. I have tried to use qualitative evidence to supplement the correlational data and

sketch out a more complete causal story, but clearly more work in this area is needed.

Similarly, these results suggest that the norms literature should take culture more seriously as an intervening variable. Although many scholars (Risse-Kappen 1995; Keck and Sikkink 1998; Checkel 1999; 2001) acknowledge the importance of these domestic intervening variables, the literature has tended to either focus on the role that institutions play in this mediating role or to subsume cultural variables under broad structural headings. Domestic institutions, of course, can be important mediating agents of international norms, but they are not the only variables that affect how these norms are received. In the case under study in this paper, government structures have played a distinctly secondary role in affecting outcomes. By teasing out the different effects that government structures and institutional norms have on international norm reception from those that broader patterns of societal values—what comparativists call culture—have on these processes we gain a much clearer picture of when, how, and why international norms influence national policies. The role that culture plays as an intervening variable may be even more important in nonwestern countries as most of the norms that are disseminated by intergovernmental organizations and across transnational networks are western in origin. The values that these norms contain therefore are more likely to clash with the culture(s) within these societies. This is not to say that institutional variables should be jettisoned, it simply means that we need to be more careful in how the literature defines institutions. Additionally we need to look beyond the narrow confines of domestic governments and political organizations to understand how international norms are received by and influence national societies.

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7

Conclusions: the same-sex unions revolution, its past and future

When Argentina became the first Latin American country to open marriage to same-sex couples in 2010, regional scholars of LGBT politics were quick to point out the role that 'transnational legalism' played in this outcome (Corrales and Pecheny, 2010a; Piatti-Crocker, 2010). Observers of LGBT politics in South Africa, which opened marriage in 2006, similarly highlight the importance of the 'global opportunity structure' in their explanation of the LGBT rights expansion in the Rainbow Nation (Croucher, 2011: 160). In contrast, references to international learning and the power of foreign examples have remained rare in the literature on LGBT rights politics in the more established western democracies. As this monograph has demonstrated, however, the international community's influence on debates about LGBT rights and the legal recognition of same-sex couples in particular did not begin in the 2000s and has not been limited to the more recently established democracies that lie outside of Western Europe and North America. Rather these processes of international socialisation began on 1 October 1989 when Denmark became the first country to allow same-sex couples to enter a state-sanctioned legal union that looked a great deal like marriage. This act and the global media attention that it garnered set in motion a far from inevitable or uniform set of policy developments that has led most western states, and increasingly beyond, to revolutionise their view of what constitutes a family and appropriate treatment of their gay and lesbian citizens. Although politics scholars often abet western societies' view that the human rights regime is something they shape rather than take their cues from, the SSU case clearly illustrates the more dialectic relationship that the established democracies have with international human rights principles and norms. There are very few western democracies in which the expansion of LGBT rights can be explained by the workings of domestic politics alone.

The processes by which international influence have led countries to adopt

similar policies are neither simple nor uniform. Indeed the national governments of three western democracies – Italy, Greece and the US – have failed to create any national institutions to recognise the relationships of gay and lesbian couples despite years of debate about the issue. In addition the western democracies that have implemented a national SSU law have done so through a variety of institutions that differ in terms of the benefits, symbols and obligations that they bestow on same-sex couples. As these outcomes indicate, international normative pressure to recognise gay and lesbian couples is mediated by domestic political systems and processes. Thus, and indeed this is the central contention of the book, SSU outcomes in most western democracies can only be understood by examining the interaction of international socialisation and domestic politics. This concluding chapter begins by summarising the study's main findings about how this interactive process has unfolded in western democracies since 1989 and then examines the implications of these findings. Having explored the nature of the same-sex unions revolution since 1989, I use the final two sections of the chapter to speculate about its future. First, I examine the increasing international focus on opening marriage to same-sex couples and explore the extent to which the international SSU norm is being transformed into one that defines marriage as the only appropriate form of same-sex relationship recognition. Second, I briefly examine the spread of the SSU norm outside of North America and Western Europe and highlight both the similarities and differences of the policy discourses that have resulted from the dissemination of the norm beyond the confines of the regions that gave rise to it.

The same-sex unions revolution since 1989: key findings and theoretical implications

The study's core finding is that the rapid uptake of SSU policies by western democracies over the past two decades is, to a significant degree, the result of international socialisation. This process began in the early 1990s when a transnational network of LGBT activists and policy elites created a soft-law norm for same-sex relationship recognition by knitting together the examples of early SSU-adopting states as well as the partial incorporation of sexual orientation into the European human rights regime. The study's three empirical chapters demonstrated that the emergence of this rights-based norm in the mid 1990s forced governments in other western democracies to confront the argument that relationship recognition is a human right that liberal democracies should uphold. Although most governments and publics in the early 1990s did not consider such claims legitimate, national LGBT movements' incorporation of the increasingly powerful norm into domestic policy discourses throughout the decade helped to induce a process of social learning that led the vast majority of western democracies to implement a SSU law by 2010.

International socialisation, of course, has played a variable role in these national policy processes. Its importance, however, is highlighted by the fact that SSU supporters in second- wave adopter countries – those that adopted an SSU law after 2000 – have been able successfully to make a case for relationship recognition despite lacking many of the domestic advantages that were necessary for success in SSU pioneer countries, which included a comparatively powerful LGBT movement, low levels of religiosity and a strong social democratic political legacy. As the German case illustrates these second-wave countries were able to utilise European norms and examples to overcome many of the domestic barriers that stood in the way of same-sex relationship recognition. Thus Risse and Sikkink's controversial concept of 'world time' appears to be increasingly important for explaining the nature of the wave of SSU implementation across countries. As the SSU norm has gained legitimacy within the European, and more recently the international human rights regime, these domestic facilitating factors have become less important. This is not to argue that national SSU activists in later adopter states have not played a vital role in applying the norm to domestic policy discourses, nor does it suggest that these debates and outcomes have unfolded in a uniform manner in all western democracies. But it does suggest that the SSU norm has become an increasingly potent tool for LGBT rights activists in European and other democracies over time. The book thus makes an important contribution to LGBT politics scholarship, which to date largely has sought to explain the dramatic expansion of LGBT rights, including relationship recognition, in western democracies through the somewhat narrow lens of domestic politics. While socio-legal and sexuality scholars have long noted the influence that globalisation and transnational LGBT movements have on legal discourses and sexual identities, politics scholars have been much slower to incorporate these insights into their accounts of LGBT rights expansion and policy outcomes. As such these findings illuminate the ways in which these transnational identities and discourses have effects in national policymaking processes.

If domestic political accounts cannot fully explain SSU policy in western democracies, more rationalist approaches to policy diffusion, which focus on coercion and simple learning, also are not a great deal of help. As the narratives of policy change in the case study chapters revealed there is little evidence to suggest that SSU supporters, either transnational or domestic, have utilised hard or soft forms of coercion to create the SSU norm or to convince national policy elites to act on it. Few elections have been fought on the issue and LGBT groups have not used boycotts to force governments to confront the issue. Similarly, there is little evidence to show that policy change has been the result of simple learning in which fixed interests are met via new means. In the SSU case the goals of family policy fundamentally have been changed through processes of complex social learning by publics and policy elites as they come to accept the idea that state relationship recognition is a right. As constructivists

predict a constituent norm such as human rights holds powerful sway over actors in liberal democracies.

Although European LGBT activists have sought to use the institutions of the EU and the ECtHR formally to harmonise relationship recognition across European states, to date they have only had minimal success with this strategy. Rather SSU supporters have relied on the power of persuasive argumentation and examples from other countries as well as increasing prohibitions by the two European courts against sexual-orientation discrimination in other policy areas to convince domestic publics and policymakers that same-sex relationship recognition is an important and timely reform. In fact, the creation and dissemination of the SSU norm has relied less on material incentives and instrumental calculations than constructivists themselves often imply is necessary in the early stages of international socialisation processes. As this study has demonstrated, when a norm cascade occurs across well-established democracies that are relatively equal in terms of power and status — a phenomenon that is surprisingly under-researched — it would seem logical that social learning and persuasion would play a greater role in norm compliance than instrumental incentivising.

The theories of international socialisation developed by IR constructivist scholars, however, remain under-developed in terms of spelling out the precise mechanisms by which international norms and persuasive argumentation lead to domestic policy change. To address this aspect of the policy convergence question we have to turn to comparative politics theory, in particular theories of the role that domestic discourse plays in processes of policy reform. Building on Peter Hall's insight about the importance of policy paradigms, scholars of policy discourse have shown how proponents of policy reform use persuasive argumentation to discredit existing policy settings, instruments and/or goals, while at the same time linking their novel ideas to notions of national interests, values and commonly understood myths. Discourses of policy reform, these scholars argue, do not just have to introduce new ideas, they have to illustrate why these new ideas are superior to those that currently exist in the policy sector in question.

As the four country cases illustrate, this is precisely the function that domestic policy discourse has played in the SSU case. The policy programme that proponents of relationship recognition have sought to displace is the paradigm of the heterosexual, Christian — and later nuclear — family that has underpinned family policy in almost all western societies for more than a century. Despite secularisation and other forms of social change the idea that marriage is made up of one man and one woman for the purposes of procreation was still deeply entrenched in most western societies' consciousness until well into the 1990s and even early 2000s. Supporters of SSU laws have argued that the proper goal of state relationship recognition should not be the promotion of a particular type of cultural institution, i.e. the traditional nuclear family, but rather state relationship recognition should be viewed as a civil or human right that comes with a bundle of privileges, duties and material benefits that states bestow on citizens so they can

form intimate relations of their choosing. Incorporating the insights of work done in comparative politics on discourse and policy change thus allows us to illuminate exactly how the rights-based SSU norm has catalysed change in many western democracies. In particular we gain insight into how local supporters of policy reform use international norms to bolster discourses that simultaneously displace an entrenched policy paradigm and graft the new norm onto broader national values or constitutional principles. As these theories highlight, the policy effects of international socialisation are more akin to Schumpeter's 'creative destruction' than to the 'manna from heaven' metaphor often implied by constructivist theory. By focussing on the workings of domestic policy discourses we thus correct a bias that has crept into a great deal of constructivist research, which tends to over-emphasise the role that transnational activists play in fostering social learning. In many cases it is domestic actors – some transnation-ally linked and others not – who 'domesticate' international norms for the purposes of national political discourse.

If constructivist theories of normative influence fail to illuminate fully the final stages of the international socialisation process, they do an even poorer job of explaining the variable effects that international norms have across countries. These questions about the divergent effects of the SSU norm make up the heart of the monograph's second and third questions: why have a minority of western democracies been late or non-SSU adopters and why have adopter countries implemented different models of same-sex relationship recognition? Although SSU policies in western democracies have become more alike as 'world time' has progressed, significant differences still remain. I have argued throughout the book that culture plays an important role in mediating the effects that the SSU norm has in individual western democracies. Theories of domestic norm reception within the constructivist discourse, however, tend to rely heavily on how domestic institutional variables shape what they call an international norm's 'fit' to explain why countries react differently to the dissemination of that norm. They are less adept at incorporating broader systems of meaning and values – what scholars of comparative politics call culture – into their explanations of domestic fit. I borrow the concept of discursive opportunities from social movement literatures to address this problem.

Defined as the level of acceptability that a specific set of arguments garner in a certain place and time, discursive opportunities help illuminate how cultural variables influence domestic norm fit. The concept is particularly useful for explaining why proponents of SSUs in western democracies with high levels of religiosity have had a difficult time re-defining relationship recognition as a human right. High levels of religiosity serve to entrench worldviews that support traditional definitions of the nuclear family and family policy. These worldviews limit the discursive opportunities of the SSU norm and the rights-based discourse used to promote it. The effects that high levels of religiosity have on SSU discourses have been reinforced in countries such as the US where international

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norms enjoy only minimal legitimacy in public policy debates and where popular and elite conceptions of rights are narrow and have taken on a frozen character. Thus as the three empirical chapters have demonstrated, culture has influenced countries' decisions about when and whether to adopt an SSU law in a way that current constructivist theories of domestic norm reception largely are incapable of fully explaining or conceptualising.

The question of why western countries adopt different SSU models – in particular why some have opened marriage to same-sex couples while others have created entirely new institutions such as RPs – cannot be answered as neatly with cultural variables as the question of why certain countries have been non-adopters or laggards. The choice about which SSU model to adopt appears to be a more complex one that is influenced by the nature of the domestic discourse surrounding relationship recognition, domestic institutions as well as cultural values. Here domestic policy discourses function as a mediating factor to explain the different effects that the SSU norm has had across countries. Constructivist scholars have tended to conceptualise discourse solely as a mechanism through which international socialisation occurs in their theories. What many of these scholars often miss, and scholars of policy discourse help to point out, is that domestic policy discourses, even those that are created or influenced by common international sources, still differ in nature and content. These differences can shape how individual governments respond to calls for policy change. In the SSU case, although most LGBT rights groups have favoured the marriage model, national activists have differed in their ability and/or willingness to create a discourse that clearly distinguishes between the potential of marriage and RPs to bring same-sex couples full equality. In many cases, especially before 2009, LGBT activists simply felt it was too controversial to campaign for marriage. In other cases divisions within the movement about the desirability of marriage under-mined the ability of its proponents to make their case. In still others such as Germany constitutional norms against changing the heterosexual privilege within legal definitions of civil marriage hindered a more aggressive discourse advocating for the institution. By contrast, countries that have opened marriage to same-sex couples have done so only after LGBT activists have made a clear and vigorous case for why the symbolism of the institution is so important to gay and lesbian couples.

Even the most effective national LGBT rights group, however, cannot fully determine the nature of the discourse about same-sex relationship recognition that unfolds in their society. Here too discursive opportunities have shaped the ability of these groups to sustain a debate about opening marriage to same-sex couples. Once again religion has played an influential role in these outcomes. Somewhat counter-intuitively, the countries that have opened marriage to same-sex couples have tended to have medium or even high levels of religiosity and an, at least partially, Catholic religious heritage. This was particularly true in the early stages of the SSU adoption wave. Four of the first five, and now five of the

existing eight, western democracies that have opened marriage to same-sex couples have medium to high levels of religiosity and a strong Catholic heritage. Not one low-religiosity or predominantly Protestant country allowed lesbian and gay couples to marry until 2009, after international normative pressure for marriage began to increase. The Nordic countries are now clearly moving towards replacing their RP laws with legal reform that opens marriage to same-sex couples. But their late conversion to marriage clearly marks a second pathway to this outcome. Before 2009, arguments about the symbolic importance of opening marriage to same-sex couples had greater resonance in countries such as the Netherlands and Canada with a slightly more conservative view of the family than those that place less importance on the institution of traditional marriage. Arguments for marriage appear to have been particularly resonant in countries that not only have medium levels of religiosity, but also entered the debate about same-sex relationship recognition later in world time, have tradi-tionally recognised the rights of minority groups, have an international reputa-tion for human rights and/or social policy innovation, and lend international norms a great deal of legitimacy in political discourse. The two marriage countries examined in-depth in this study, the Netherlands and Canada, are remarkably similar in these respects as are the other early marriage adopters, Belgium and Spain. In Spain and the more recent marriage adopter, Portugal, observers have noted that these countries' relatively recent experience with dicta-torship made them sensitive to developments in the European human rights regime and their countries' reputations as good human rights performers (Calvo, 2007). These largely cultural factors have come together to create a particularly propitious set of discursive opportunities in which to make demands for marriage equality.

However formal institutional variables – what social movement scholars often refer to as political opportunity structures – have also played a role in deter-mining which model of SSU a government will implement. Centre-left govern-ments in general have been more favourable to SSU policy adoption, and particularly to opening marriage to same-sex couples, than centre-right govern-ments. As argued in Chapter 4, however, differences in party systems and coalition governments have not played a significant role in determining whether a country will adopt an SSU as governments rotate between right and left govern-ments on a fairly regular basis in most countries. And indeed centre-right govern-ments have implemented national SSU policies. However, in certain continental European countries, consensus-style politics has led to frequent grand coalition governments in which the dominant centre-right party is almost always present. This can pose a problem for marriage proponents in countries where this propensity for grand coalitions is coupled with a dominant Christian democratic party as is the case in the Netherlands and Austria. It does not seem possible that Dutch marriage campaigners would have been successful in 2001 if the Christian democratic party had not been voted out of the government for the first time in

decades. As illustrated in Chapter 5, however, this was one of the many factors that came together to allow the Netherlands to become the first country to open marriage to same-sex couples. Without the cultural advantages that Dutch marriage supporters enjoyed, it is doubtful that the existence of the so-called purple coalition government alone would have been enough. After all, four centre-left governments before them had implemented an RP law.

Thus beyond the contribution it makes to LGBT politics literatures, the study's findings and argumentation help to refine constructivist accounts of international socialisation. The latter have been marred by an inability to describe the exact mechanisms by which international norms induce change in domestic settings or to explain fully why an international norm can be made to 'fit' better in certain settings than others. The framework used in this monograph illustrates the promise of integrating comparative politics and social movement theory into constructivist accounts of domestic norm reception. It is a tactic that has been much talked about, but unfortunately little employed. The concepts of domestic policy discourse and discursive opportunities add three crucial insights to constructivist theories of international socialisation. First, domestic policy discourse describes the mechanisms by which persuasive argumentation that utilises an international norm can lead to domestic policy change; namely by displacing certain elements of an existing policy paradigm, while grafting the new norm onto commonly held beliefs and/or institutional practices that lie outside that particular policy area. Constructivists often overlook the ways in which domestic discourses must simultaneously displace existing policy regimes while making a new norm fit with domestic practices and culture. Second, these domestic discourses are not just a mechanism through which international pressure operates, they are also a mediating factor that can explain why norms have differential impacts across societies. Too much of the current constructivist literature assumes that the discourse surrounding a norm is produced solely by international and transnational actors. In fact national actors usually play an important role in incorporating an international norm into national political processes. Unsurprisingly, the domestic discourses that accompany a norm's introduction into national political systems differ and, as the SSU case illustrates, these differences matter.

Third, the concept of discursive opportunities lends constructivists the tools necessary to incorporate culture more explicitly into their theories of domestic norm reception and fit. Crucially it also helps analysts distinguish between the effects that culture, institutional norms and formal institutional structures have on the domestic reception of international norms and ideas. These variables have often been subsumed under common and amorphous concepts such as 'norm salience' in constructivist literature on the topic. As a result of this conflation, broader understandings of culture that incorporate societal values, myths and national symbols often play second fiddle to constitutional norms, bureaucratic standard operating procedures and especially formal institutional structures in

constructivists accounts of domestic norm reception. In the SSU case policy outcomes cannot be explained without culture. Although this finding is clearly related to the nature of the policy under scrutiny, cultural factors are likely to be important for explaining outcomes of policy debates in any issue area that is emotive in nature, highly salient to publics or involves extensive public participation. Same-sex relationship recognition is clearly not the only policy that falls under this rubric. Constructivists and scholars of policy diffusion more broadly need to pay greater attention to and do a better job of conceptualising and assessing the effects of culture in their theories of domestic norm reception.

The same-sex unions revolution and norm evolution: the coming of marriage?

The progression of world time has not only served to strengthen the general SSU norm; there is growing evidence to suggest that it also has begun to change the nature of its content. Until very recently, the norm and its transnational supporters simply have called on states to recognise same-sex couples in law, but have not specified the particular institution through which this recognition should take place. Although most national LGBT rights groups have stated that opening marriage is their ultimate goal, for the first two decades of the same-sex unions revolution transnational LGBT activists and European institutions have been reluctant to put too fine a point on the SSU norm. The most obvious reason for this reluctance, as highlighted in the empirical chapters, is simply that until recently many LGBT rights groups, both domestic and transnational, thought it beyond the realm of possibility to get governments to open marriage to same-sex couples. Indeed as many of the early marriage court cases that took place in different western democracies from the 1970s to the early 1990s attest, marriage between two people of the same-sex was simply unthinkable to most political and judicial elites at the time. In addition this lack of precision accorded to the SSU norm in the 1990s and 2000s was due to the misgivings about the institution of marriage that existed in broader western LGBT movements. As discussed in Chapter 2, many feminist and queer activists have been more interested in dismantling the state's regulation of marriage than opening the institution to same-sex couples. Indeed the Nordic RP model that has been so internationally influential was first proposed in the 1970s as a broad family policy reform that would allow same-sex couples as well as groups of adults to register as families to gain state benefits and protections. By the 1980s the polygamous / communal living elements of the reform had been dropped and it became the model for the recognition of same-sex couples. The ambiguity about the nature of the reform represented by same-sex relationship recognition remained throughout the 1990s and indeed was reinforced by the adoption of SSU laws that were open to both same-sex and different-sex couples in the Netherlands, France and Belgium in the late 1990s and early 2000s. The French PACS in particular was often touted

as a progressive form of 'marriage lite' that filled a growing need for alternatives to traditional marriage.

All of this changed, however, on 1 April 2001 when the Dutch government opened marriage to same-sex couples for the first time. The international reaction to this reform was nothing short of astounding as the international media sent photos around the world showing two men and two women participating in traditional civil marriage ceremonies in Amsterdam's city hall. Above all else the Dutch example demonstrated that marriage is not, in fact, a pre-political, natural institution, but rather one that can be re-defined by the state to include gay and lesbian couples. It made an idea that was until that moment in time unimaginable to many into a reality. Perhaps more importantly the Dutch example served, as many sexual citizenship scholars have argued, to illustrate the social legitimacy that marriage, and marriage alone, still lends adults in western societies. This example helped many LGBT rights groups to take a more aggressive stand on marriage and to argue that only the latter represents equal treatment of same-sex couples.

The emergent norm for opening marriage has been strengthened by a transnational network of lawyers, who have worked together to build an expert legal discourse on the topic (Paternotte, 2011). These legal advocates have both shaped national debates about same-sex relationship recognition and worked together to lobby the institutions of the European and international human rights regime to include a right to marriage in their growing jurisprudence on sexual-orientation discrimination. Although no international organisation currently recognises such a right, European courts appear to be moving in that direction, albeit at a very slow pace. As outlined in Chapter 5, in 2008 the ECJ mandated that the German government grant same-sex registered partners the same workplace benefits that different-sex married spouses enjoy. The ruling led the German government to give same-sex registered partners almost all of the rights and benefits that accrue to marriage in German law. In 2010 the ECtHR for the first time agreed to hear a same-sex marriage case, *Schalk & Kopf v. Austria*, which was supported by ILGA-Europe and prominent members of the transnational legal network promoting marriage rights. Although the Court ruled that the Convention does not contain a right for same-sex couples to marry, it did for the first time recognise that same-sex couples have a right to a family life. The judges also noted that attitudes towards same-sex marriage are changing rapidly in Europe, and that while there is no agreement on the issue yet, they hinted the Court may need to revisit the issue in light of these social and cultural developments in the future (*Schalk & Kopf v. Austria*, 2010: 19).

As the ECtHR indicated, both public attitudes and state policies towards same-sex marriage have been changing rapidly in western democracies over the past five years. Since 2008, the number of established western democracies that allow same-sex couples to marry has doubled from four to eight. Since 2010 the governments of four additional West European countries – Finland, Denmark,

Luxembourg and the United Kingdom – announced plans to review the possibility of opening marriage to same-sex couples. Even governments that have not yet seriously considered opening marriage have reformed their RP laws to bring them in line with national marriage laws. At the same time the less comprehensive SSU model of unregistered cohabitation has fallen out of favour. Not one country in Western Europe or North America has adopted an unregistered partnership since 2003 and two of the countries that have this form of recognition, Austria and Portugal, have since adopted a more comprehensive form of recognition to complement it. Clearly the SSU norm has narrowed around a more specific set of claims that defines equal treatment as either the opening of marriage or implementing RPs that grant same-sex couples the same rights, benefits and obligations that their married different-sex counterparts enjoy. Whether we are on the verge of reaching a marriage tipping point in the European polity in which RP laws one by one will be replaced – or supplemented – with the opening of marriage remains to be seen.

What is clear is that it no longer takes a perfect political storm to convince governments in western societies to allow same-sex couples to marry as was the case before 2005. Many of the domestic political factors that came together in the Netherlands, Canada and other pioneering countries have not been present in the Nordic countries. The latter have created a second pathway to marriage reform that relies on experience with SSUs, a strong ethos of sexual equality and sensitivity to changing international norms. If the UK and Luxembourg open marriage yet another set of countries with differing domestic political circumstances will have followed suit. As was the case with second-wave SSU adopter countries, domestic political factors play a less crucial role in determining which countries will open marriage. The increasing international legitimacy that marriage has gained over the past five years has made it easier for SSU supporters to overcome national barriers to opening access to the institution.

This slide towards marriage says a great deal about the nature of sexual citizenship in contemporary western societies. Above all else it illustrates, as feminist scholars such as Calhoun and Phelan have argued, the extent to which marriage still represents an important, if unacknowledged, facet of what defines a full citizen. Legal institutions and contracts that contain the same benefits and mutual obligations as marriage cannot match the full symbolic power of being recognised as a person who can participate in the institution itself. Western societies are not done with marriage yet; it still determines who is a part of society and who remains outside it. Today willing gay and lesbian couples are being allowed to enter the institution in an increasing number of countries; polygamists and other less traditional families still need not apply. If the past twenty years have proven false sexuality scholars' more pessimistic predictions that RPs would re-inscribe gay and lesbian couples as second-class citizens, they largely confirm the fear that the SSU revolution would be a conservative one. States may have fundamentally changed the goals on which family policy is based

by agreeing to support a variety of intimate relations, but the basic instrument of recognition, and more importantly its overweening social legitimacy, remains intact. The early promise represented by the French PACS and other SSU laws that deviated from the marriage model has now been largely lost by the rush towards marriage and marriage-like RP laws. Many of the early critics of same-sex unions laws thus appear to have under-estimated the ability of SSUs to enhance western societies' tolerance of same-sex sexuality. But their pessimism about the ability of SSUs to change heterosexual orthodoxies about marriage largely has been borne out.

The same-sex unions revolution beyond Western Europe and North America

The first fifteen years of the same-sex unions revolution largely was a European and North American affair. The SSU norm was built on the back of pioneering SSU countries in these two regions and the greater incorporation of sexual orientation into the European human rights regime. This began to change in the mid 2000s, however, when newly established democracies in Africa, Central and Eastern Europe and Latin America started to incorporate the SSU norm into domestic political discourses and to adopt legislation that recognises same-sex couples in law. To date ten countries outside of Western Europe and North America have implemented a national SSU law: Argentina, Brazil, Columbia, New Zealand, Croatia, Czech Republic, Ecuador, Hungary, Slovenia, South Africa, Australia and Uruguay (see Table 7.1).[1] These countries now make up a substantial minority of the thirty-three countries worldwide that legally recognise same-sex couples. The uptake of these policies, as is in keeping with processes of international policy diffusion and socialisation, is still starkly regional in nature. With the exception of South Africa same-sex relationship recognition has failed to gain much of a foothold or even a hearing in Africa – North or sub-Saharan – or Asia. It is perhaps not surprising that campaigns for same-sex relationship recognition have found their greatest success in regions such as Latin America and Central and Eastern Europe that are both similar to Western Europe and North America in terms of economic development (at least when compared with sub-Saharan Africa and many parts of Asia), regime type and culture and are close in proximity to the policy and activist networks that gave rise to SSU norm.

The results of this study strongly suggest that international socialisation and policy diffusion can help explain these recent developments in Eastern Europe and Latin America. But the monograph's findings also highlight the need for further research to uncover how the SSU norm has been domesticated by societies that have very different histories of democratisation, relationships to international society and cultural understandings of family and sexuality from the established western democracies that have been the subject of this study. While I obviously only can speculate about the ways in which the interaction of international normative pressure and domestic politics will unfold in these

Table 7.1   National SSU policy worldwide, 2011

Marriage	Registered partnership	Unregistered partnership
Netherlands (2001)	Denmark (1989)	Israel (1994)
Belgium (2003)	Norway (1993–2009)	Hungary (1996)
Canada (2005)	Sweden (1995–2009)	Canada (2000)
Spain (2005)	Iceland (1996–2010)	Portugal (2001)
South Africa (2006)	Greenland (1996)	Austria (2003)
Norway (2009)	Netherlands (1998)	Croatia (2003)
Sweden (2009)	France (1999)	Brazil (2004)
Portugal (2010)	Belgium (2000)	Australia (2008)
Iceland (2010)	Germany (2001)	
Argentina (2010)	Finland (2002)	
	Luxembourg (2004)	
	UK (2005)	
	Andorra (2005)	
	Switzerland (2005)	
	New Zealand (2005)	
	Czech Republic (2006)	
	Slovenia (2006)	
	Colombia (2007)	
	Uruguay (2008)	
	Ecuador (2009)	
	Hungary (2009)	
	Austria (2010)	
	Ireland (2010)	
	Liechtenstein (2011)	

Source: Bruce-Jones and Itaborahy, 2011.

countries, there are a number of lines of enquiry that appear particularly interesting. This study has shown that how states are positioned in international society affects the mechanisms by which international socialisation shapes domestic policy processes. As I have argued throughout the book, persuasion and social learning become the main tools that norm supporters can use to affect domestic change when socialisation occurs across countries that are comparatively wealthy in material and reputational resources. Instrumental incentivising that relies on sticks or carrots, which scholars such as Risse and Sikkink have argued often make up the early stages of international socialisation, is more difficult to use against these powerful countries given their privileged position in international society. And indeed as this study has shown, with the rare exception of very limited attempts at policy harmonisation by the two European courts, there is very little evidence to suggest that western democracies have adopted SSU policies as a result of instrumental calculations of any kind. The question arises, however, whether such arm-bending or material incentivising via boycotts or muscular diplomacy will become more prominent as the SSU norm diffuses to regions of the world where governments are more vulnerable to such pressures.

This kind of pressure, of course, can lead to a backlash against LGBT rights claims if applied clumsily or used against countries with unfavourable domestic political environments as the US case illustrated in somewhat muted fashion. Indeed we can see the beginnings of this kind of backlash in certain East European countries such as Poland, Latvia and Russia.

The continuation of the SSU norm cascade outside the established western democracies also may give scholars of international socialisation a chance to tease out differences between processes of emulation and social learning. Initially the novelty and relative weakness of the SSU norm meant that governments and societies had to engage with its key claims to determine if they wished to comply with or reject its central tenants. Since the mid 2000s, however, the norm has strengthened and grown in prominence. It also has garnered a high level of international salience as governments and societies across the globe have paid a great deal of attention to countries that implement an SSU policy and particularly to those that open marriage. As one Dutch official interviewed for this study put it, at some point same-sex relationship recognition 'became a signal of progressivity' (Interview, Dutch policymaker, 8/5/2009). Given these developments over the past five years, it is possible that the motivations for complying with the norm may change as governments, particularly in newly democratising countries, seek to gain the international credibility that implementing a SSU law now bestows upon them. Empirically the line between social learning and emulation is a very murky one and indeed many scholars simply conflate the two. But conceptually these are distinct mechanisms of influence that are likely to have very different political and cultural effects. The study of SSU policy may give scholars a chance to distinguish between these two diffusion mechanisms as compliance with LGBT rights increasingly becomes an international marker of democratic performance and civility.

If the study's findings give us only partial insight into the mechanisms by which international normative pressure will have effects in countries outside of Western Europe and North America, it probably has even less to say about how non-western societies will mediate rights-based claims for same-sex relationship recognition. Indeed my decision to focus on western democracies in this study was made precisely because I appreciate both the extent to which politics and sexuality movements vary across cultures and how much these differences matter when translating international norms into national policy outcomes. The growing body of work on LGBT politics and sexuality movements outside the established democracies of the West, however, gives us insight into what the important factors at work may be. In particular this work suggests that we need to examine the ways in which processes and levels of democratisation, a country's colonial inheritance and cultural notions of sexuality will affect how societies react to demands for same-sex relationship recognition (Drucker, 2000; Tremblay, Paternotte and Johnson, 2011). In comparison with earlier democratisation waves, adherence to international human rights standards has become a

crucial indicator of democratic consolidation. In the twenty-first century the expansion of LGBT rights increasingly is used as the yardstick by which the quality of a country's human rights performance is measured (Corrales and Pechney, 2010b). It is thus perhaps not surprising that the SSU norm has gained traction and found particular resonance in many newly democratising countries, particularly those such as South Africa that are well integrated into transnational human rights networks and are attempting to overcome a particularly brutal non-democratic past. Indeed a number of scholars have made similar arguments about the resonance of the rights-based SSU norm in Portugal and Spain (Calvo, 2007).

But processes of democratisation and the search for democratic credibility cannot fully explain SSU policy outcomes. The normative pressure exerted by the European polity, for example, has caused a well-documented backlash against sexuality movements in several of the so-called new member states of the EU such as Poland and Latvia at the same time that European influence has been credited with fostering LGBT rights expansion, including relationship recognition, in other Central and East European countries (Chetaille, 2011; Kuhar, 2011). Clearly other domestic factors are at work. Many scholars continue to highlight the role that religion plays in these outcomes, but both its predictability and academic understandings of how religion affects the domestic reception of international LGBT rights claims lessens as we move away from Christian cultures. Many sexuality scholars have warned that it is extremely difficult to analyse the role that Islam plays in debates about the regulation of sexuality given the political climate of the post-9/11 world (Mepschen, Duyvendak and Tonkens, 2010; Puar, 2007).

Beyond religion, cultural notions of sexuality and sexual deviance will likely also shape how non-western countries translate the SSU norm into nationally specific outcomes or non-outcomes. Many scholars have noted that the identity categories on which the transnational LGBT rights movement is based do not travel well beyond the western cultures from which they emerged. Hakan Seckinelgin, for example, has argued that the western categories of lesbian and gay, as well as the somewhat imperialist way in which transnational groups have sought to impose them on local sexuality movements, have narrowed the space available for more traditional notions of same-sex sexuality in India and sub-Saharan African (Seckinelgin, 2009). Wah-Shan similarly has pointed out that in far-Eastern cultures the notion of tying a personal identity to a sexual practice and premising a claim to certain rights based on this identity does not resonate well (Wah-Shan, 2000). This in part may explain why the SSU norm appears to have made very little impact on the political discourse of Asian societies to date. It should be noted, however, that other scholars have argued that LGBT activists in Asia have made political progress over the past decade using a rights-based framing of their movement (Chan, 2007).

Many sexuality scholars also have examined the ways in which developing

countries' experiences with colonialism have shaped the regulation of same-sex sexuality. Like their Dutch counterparts, many Latin American countries have benefitted from the importation of the Napoleonic Code via Spain and its early decriminalisation of same-sex sex activity (Corrales and Pechney, 2010b). Former British colonies in the Caribbean and sub-Sahara Africa, by contrast, are still living with the 'anti-buggery' laws bequeathed to them by the British in the nineteenth and early twentieth centuries (Han and O'Mahoney, 2012). Somewhat ironically given the origin of these discriminatory laws, recent attempts by western governments and western-dominated human rights groups to persuade governments in these countries to expand the rights of LGBT people have led some of their political elites to frame homosexuality as a western disease and to defend colonial era laws that criminalise the same-sex sex as an anti-imperialist act (Dayle, 2007).

Thus as was case with western societies, we can expect the particularities of these countries' domestic politics, historic notions of same-sex sexuality and societal norms surrounding intimate relations profoundly to affect how countries outside of Western Europe and North America engage with and domesticate globalising LGBT rights claims, including those for relationship recognition. The dissemination of the SSU norm outside of western countries will likely increase the permutation of policy outcomes at the same time that it introduces a broadly common set of arguments to these societies. Clearly there is a need for both more and better research on sexuality politics and movements in non-western countries to better understand these processes.

Conclusion

This short discussion of the same-sex unions revolution in non-western countries serves to illustrate both the ambitions, but also the limitations of this study. Its primary ambition has been to demonstrate the often overlooked fact that national political debates about same-sex relationship recognition cannot be understood in the absence of the international context in which these debates have taken place. These national conversations, where they exist — which is now in most countries — have been colonised, influenced and shaped by processes of international norm diffusion and socialisation. In this one respect Germany is no different from Argentina, and Argentina does not differ from Hong Kong. To understand this fact, however, does not mean that we can map out how discourses will unfold in these very different societies and political systems, nor can we predict future national policy outcomes with any degree of accuracy.

International human rights norms, and increasingly LGBT rights claims, enjoy an unprecedented level of legitimacy at this moment in history, but their effects are far from monolithic or pre-ordained. The international diffusion of policy ideas and principles quite often results in increasingly convergent outcomes. This convergence frequently has led scholars of international politics

to ignore the domestic translation process and to give international actors and structures too much credit for the policy outcomes that ensue. These accounts also under-estimate the extent of the national variation that still exists even in the wake of global policy cascades. As this study has been at pains to demonstrate, the true effects of international socialisation, as with policy diffusion of any kind, can only be understood by examining the *interaction* of the international with the domestic. And as I have also been at pains to illustrate, it is only by marrying the theoretical insights of comparative politics with those of international relations that we will gain full insight into the workings of these increasingly important diffusion processes. Rather than limiting the contribution that the study can make to our knowledge of SSU policy in non-western countries, I would argue that this insight greatly enriches our understanding of how this policy revolution has unfolded in Western Europe and North America since 1989.

Almost by way of a postscript for this book, Denmark briefly re-entered the international spotlight for its stance on same-sex unions at the end of 2011, albeit with significantly less fanfare than in 1989. In late October the newly elected, centre-left government announced that it would pass legislation to open marriage to same-sex couples, making Denmark the eighth European country to do so. The government was making good on a campaign promise and responding to critiques by the LGBT community that Denmark was no longer on the 'vanguard' of LGBT equality (Buley, 2011). The country that first sparked the revolution in family policy was now being accused of being left behind by it. As in so many western democracies this accusation proved very resonant with the Danish public and political elites. This announcement was made just days before Axel Axgil, who with his partner Eigil Axgil were the first same-sex couple to register their partnership with a western state, died at the age of 96. Although the Axgils, as long-time LGBT rights activists, may have been foresighted enough to envision the far-reaching changes that were in store for family policy in western societies, the SSU policy revolution that followed in their wake is not something that many observers — political scientists least of all — would have predicted in 1989, a year it turns out that was ripe for all kinds of revolutionary change.

Note

1 Although not included in this study for largely practical reasons, Australia and New Zealand are generally also considered to be advanced industrial and/or western democracies.