From Conditionality to Persuasion? Europeanization and the Rights of Sexual Minorities in Post-Accession Poland

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From Conditionality to Persuasion? 
Europeanization and the Rights of 
Sexual Minorities in Post-Accession 
Poland

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ABSTRACT Through an examination of sexual minorities' rights in Poland, this paper compares the effectiveness of 'external incentives' and 'social learning' as Europeanization mechanisms after EU enlargement in post-communist Europe. The politics surrounding the rights of lesbian, gay, bisexual, and transgender (LGBT) people in Poland raise questions about the EU’s capacity to foster norms of tolerance and non-discrimination now that accession has weakened the tools of external incentives. Through interviews with LGBT activists and political elites in Warsaw in 2007, I examine the potential of a policy of Europeanization through persuasion, or social learning.

KEY WORDS: Europeanization, discrimination against sexual minorities, Poland

From 2004 to 2007, the European Union expanded to include post-communist states whose legacies of single-party rule, command economy, and weak civil society posed unprecedented challenges to their integration. The accession process helped these states overcome, or at least confront, these legacies as they emulated EU norms (Vachudova 2005). Arguably, where adopting norms is economically or politically costly, the most effective mechanism for Europeanization has been external incentives, in particular, conditionality (Grabbe 2003; Kelley 2004; Schimmelfennig and Sedelmeier 2005). Yet because conditionality promises rewards for compliance, we would expect its leverage to weaken after a country gains membership. If external incentives are, in fact, weakening in the new members, are there alternate mechanisms

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to propel Europeanization in areas where EU norms are still weakly established? The example analyzed here is non-discrimination toward sexual minorities.

I evaluate the intuitive hypothesis that membership weakens external incentives as a Europeanization mechanism. I then hypothesize about social learning, a major alternative mechanism posited in Europeanization theory, as a possible substitute. Social learning describes a process whereby states are persuaded of the appropriateness of EU norms, largely through the activity of transnational networks of domestic and European actors, who exert pressure on national governments and endorse European norms in the domestic discourse.

I compare the efficacy of both mechanisms in promoting EU non-discrimination norms after accession. I engage the related question of measuring overall Europeanization only insofar as it is necessary for comparing effectiveness. Since Europeanization can be driven by multiple, complementary, mechanisms, the overall Europeanization level says little about which mechanism(s) drove that result. To isolate the effectiveness of each mechanism, I use Europeanization theory to frame hypotheses about the conditions expected to obtain if either, both, or neither is effective. I then empirically address these hypotheses using a 2007 survey of Polish gay rights activists, politicians, issue experts, and representatives from NGOs and European institutions.\(^1\) Thus, I operationalize mechanism effectiveness not in terms of policy-making but of perceptions of activists and political elites.\(^2\)

External incentives and social learning are not, of course, the only Europeanization mechanisms proposed in the literature.\(^3\) I concentrate on social learning and external incentives because these models have been explicitly adapted to Eastern enlargement, particularly to Europeanizing liberal democratic norms (Schimmelfennig and Sedelmeier, 2005). Though there are many complementarities between the social learning/external incentives mechanisms and the alternatives — notably framing integration — theorization about these alternatives developed primarily to explain economic policy-making. Far from negating the alternatives, in the next section, I highlight those complementarities to build more nuanced research hypotheses.

Respect for sexual minorities’ rights recommends itself as a case study of post-accession Europeanization, first, because the status of this minority only really became politicized after accession. Second, it touches closely on cultural and social norms that conflict with a clear, legally codified EU norm, non-discrimination and equal political participation (O’Dwyer and Schwartz 2010).\(^4\) While Poland is decidedly a ‘hard case’, its situation is more mixed than its Catholic traditions would imply. In 2000, the EU applied conditionality to the applicant states’ labour codes, mandating the transposition of a Framework Directive, grounded in Article 13 of the Treaty of Amsterdam, that included sexual orientation among other banned discriminatory practices (Bell 2001, 82). Also, we should not exaggerate Poles’ opposition to homosexuality:\(^5\) there are Polish LGBT advocates with which EU institutions could build links. Arguably, there is more to learn about post-accession Europeanization from the hard cases than the easy ones, and Poland stands
out in the intensity of controversy surrounding same-sex rights (ILGA-Europe 2006, 44–5). Finally, this topic deserves attention because it has received less scrutiny than other minority rights, e.g. ethnic minority rights.

The next section uses Europeanization theory to frame hypotheses empirically gauging the effectiveness of external incentives and social learning in promoting non-discrimination norms so far. Section three contextualizes homosexuality in contemporary Polish politics. Section four’s survey questions adapt the research hypotheses for the interviews (see Table 1). The conclusion considers the implications of this analysis for understanding Europeanization after accession.

**Theory and Research Hypotheses**

Radaelli’s (2003, 37–8) conceptualization of Europeanization in terms of transformation, absorption, inertia, or retrenchment is useful for capturing mechanism effectiveness. Transformation occurs when the logic of national policy and larger context of political behaviour are changed. Absorption is the ‘accommodation of policy requirements without real modification of the essential structures and changes in the “logic” of political behavior’. Inertia and retrenchment describe, respectively, lack of change and situations where ‘national policy becomes “less European”’. An effective Europeanization mechanism is one producing transformative change, even if only gradually. Anything less is, fundamentally, an attempt to preserve the logic of national policy and context of political behaviour (Radaelli 2003, 38). Empirically, we must distinguish between processes of transformation and transformation as an end result: clearly, in this case, in the short term we would expect to observe, in the best case, transformation as a process not as an accomplished fact.

What are we to take as indicators of transformation? Following Radaelli (2003, 39), we may consider ‘interaction’ among domestic institutions (political parties, parliament) and European institutions (the Commission, the European Parliament (EP)). Second, we may consider the ‘institutional robustness’ of domestic organizations (ibid.). This dimension is particularly useful for analyzing social learning, which posits the formation of dense networks of norm advocates. Here, I investigate the organization, financing, and international links of Polish LGBT groups. Third, we may look for evidence of transformation in the political discourse, both among elites and in their communication with the larger public (through party competition).

According to the external incentives model, EU norms are adopted depending on their clarity, credibility, the magnitude of the reward, and the number of domestic veto players (Schimmelfennig and Sedelmeier 2005, 12–17). While external incentives and social learning are complementary in theory, before accession external incentives were emphasized. Scholars noted conditionality’s unprecedented stringency, the Commission’s tight monitoring of the applicants, the credible promise of membership, etc. (Grabbe 2003; Kelley 2004; Vachudova 2005). Yet even theoretically speaking, there are grounds to reconsider the efficacy of external incentives after accession.
Membership has been attained, and no comparable reward replaces it. Inasmuch as norm credibility depends on monitoring by European institutions, the credibility of non-discrimination is weaker now. With accession, most monitoring shifted from the Commission — a centralized bureaucracy with considerable information-gathering resources, including delegations in each applicant state — to the EP, which has no such systematic, on-the-ground monitoring capacity. Moreover, among the EU’s central institutions, the EP’s censure carries the least weight.

Theory would suggest, then, that external incentives weaken after accession, but is this true empirically? My first hypothesis addresses the interaction between European institutions (e.g. the Commission and the EP) and representatives of domestic political institutions (the government, state agencies, and political parties). External incentives theory predicts an interaction patterned on constraint, thanks to monitoring and threat of sanction; therefore:

$$H_1:$$ If external incentives are effective, we expect respondents to perceive that European institutions constrain the behaviour and rhetoric of Polish officials regarding tolerance of sexual minorities.

I include rhetoric because homophobic language in the public sphere constitutes a form of discrimination. Perception is admittedly a blunt measure of gradations of constraint, but a reasonable indicator of its absence.

The second hypothesis examines the discourse around sexual minorities’ rights. I conceptualize the public discourse to include statements by politicians, political parties, and state officials. If accession reduces the costs of non-compliance and if we consider a country with strong pockets of social conservatism, we would expect a ‘timing effect’ regarding the discourse on homosexuality — avoidance of this taboo topic before accession but an intensification and radicalization of the discourse afterwards:

$$H_2:$$ If accession weakens external incentives, we expect the public questioning of sexual minorities’ rights to intensify after accession.

Rather than transformation, such intensification would suggest inertia or even retrenchment of Europeanization. If external incentives remain effective after accession, we expect no immediate shift in the discourse, especially not a retrenching one.

Turning now to social learning, this account posits that Europeanization occurs when states are persuaded of the appropriateness of EU norms. It emphasizes the role of transnational networks combining domestic and European actors, which lobby national governments and endorse EU norms in the domestic political debate (Schimmelfennig and Sedelmeier 2005, 18–20). Using different terminology, Knill and Lehmkühl (1999, 2) have theorized ‘framing integration’ as a Europeanization mechanism: here the EU ‘neither prescribes concrete institutional requirements nor modifies the institutional context for strategic interaction, but affects domestic
arrangements even more indirectly, namely by altering the beliefs and expectations of domestic actors'. Such persuasion is easiest where EU norms 'resonate' with domestic ones (Knill and Lehmkuhl 1999, 20). Given the conflict between same-sex rights and Catholic orthodoxy (see next section), this issue certainly constitutes a hard case for social learning in Poland.

Yet, while factors like resonance may seem beyond the reach of actors to change, it is a mistake to see the social learning account as an explanation for stasis. As the name suggests, this mechanism emphasizes learning — the updating of beliefs and practices in the light of new information and deliberation. European institutions have the potential to influence both (Knill and Lehmkuhl 1999, 4). By fostering deliberation and by developing transnational networks that include domestic actors, European institutions can increase the perception of 'norm ownership'. Not only can this network serve as a channel for financial support, it helps legitimate these groups among otherwise indifferent domestic groups (Schimmelfennig and Sedelmeier 2005, 18). Much of such networking is spontaneous and self-generating, but supranational institutions can through their action (or inaction) have a significant impact.

Which actors and policies should we examine to gauge the effectiveness of social learning? Domestically, social learning will involve an advocacy network of social movements and NGOs engaged with same-sex issues and state agencies responsible for non-discrimination policy. It will also involve political parties, which both reflect and shape the political debate. At the European level, how developed are institutions in this area, and how robust are their links with domestic actors? Besides the Commission and the EP, the most relevant European institution here is the International Lesbian and Gay Association of Europe (ILGA-Europe), a small Brussels-based NGO established in 1996. Since 2006, ILGA-Europe has published 'toolkits' for Pride parade organizers in new member states, sponsored human rights seminars, and organized study visits in Brussels.

At both the domestic and European levels, then, there exist the kinds of actors that could, potentially, foster social learning. The following two hypotheses use elites' perceptions to gauge such learning empirically. First, I examine the advocacy network:

\[ H_3: \text{If social learning is effective, we expect to see an organized domestic advocacy network with robust links to European-level counterparts, both institutionally and financially.} \]

Domestically, is there a network of activists, NGOs, and policy experts (including those in state agencies with relevant mandates) sufficiently robust to lobby the national government and represent the issue in domestic debate? Recognizing the importance of social movements in this network, I do not use bureaucratic structure and policy technologies as robustness indicators (Radaelli 2003, 39). Social movement robustness is better captured in terms of consensus about goals, financial resources, the presence of full-time/professional activists, and the strength of linkages among groups. At the
European level, this hypothesis examines direct support for and mobilization of domestic advocates by European institutions, operationalized in terms of funding and strength of contacts. Here, I include institutions like the Commission, EP, and NGOs like ILGA-Europe.

Finally, are domestic and transnational networks influencing public deliberation? This is the hardest element of social learning to tap, especially through elite interviews. I focus on the debate among political parties, assuming that, through their programmes, policies, and statements, parties crystalize the plurality of public opinion. If an issue is not salient in party competition, it constitutes part of the assumed status quo, or the ‘regime of silence’, as one respondent described Polish treatment of homosexuality. A continuation of the regime of silence shows an absence of social learning. Thus,

\[ H_2: \text{If there is transformative public deliberation on LGBT rights, we expect it to be a salient political issue on which political parties differentiate themselves.} \]

A still more telling indication of transformation would be if some parties develop tolerant stances. I expect the most informative survey responses here from elites outside the LGBT movement. Rights-advocates can be expected to consider this issue important and to differentiate among parties’ positions, even if through informed guesswork.

**Historical Context: Gay Rights in Poland**

Gay rights first became politically visible in Poland just after EU accession in May 2004. Within months, the rights of sexual minorities to participate in public life came under a barrage of rhetorical, administrative, and sometimes physical attacks (O’Dwyer and Schwartz 2010; Gruszczyńska 2006; Amnesty International 2006). Pride parades were banned in Warsaw, Poznan, and Cracow. Government politicians attacked homosexuality: the Warsaw ban was executed by then mayor, now president, Lech Kaczyński of the Law and Justice party (PiS). Meanwhile, established patterns of discrimination in employment, housing, and health care continued (Abramowicz 2007). At the same time, however, Polish LGBT activists began organizing more intensely than ever before.

Two relatively new political parties, PiS and the League of Polish Families (LPR), led the campaign against ‘homosexual propaganda’. LPR was the more extreme. As Minister of Education, LPR leader Roman Giertych banned a Council of Europe textbook on tolerance (it discussed homosexuality), fired an official for distributing it, and threatened teachers using it with dismissal. LPR also proposed banning gay teachers and reinstating the death penalty for ‘murderer-paedophiles’, a thinly veiled reference (Wróblewski 2006). As respondents informed me, such proposals, though legally dubious, were intimidating, especially in rural schools (see also DHHR 2009, 8–9). These incidents soon soured relations with the EU. The EP twice
censored Poland in 2006. In 2007, the PiS-LPR government fell in a corruption scandal, and LPR failed to win re-election. While this removed the most stridently antigay party and shunted PiS into the opposition, PiS actually increased its vote share. The second strongest parliamentary party, it still controls the presidency. Moreover, this issue still aggravates Poland–EU relations. PiS used it to threaten ratification of the Lisbon Treaty, charging that it could allow homosexual marriage in Poland (‘Poland’ 2008).

Underpinning these developments is the deeper context of the Catholic Church’s role in Polish politics. Since 1989, it has successfully lobbied for the reinstatement of religious instruction in schools (1991), respect for ‘Christian values’ in broadcasting (1992), and an abortion ban (1993) (Ramet 2006, 122–8). The clergy frequently criticize LGBT activists: in 2004, Cracow’s archbishop denounced the Pride parade as a ‘demonstration of sin’ (Ramet 2006, 128). Decidedly, the Church increases the obstacles to social learning. It does not, however, doom it. Statistics on nominal religious affiliation in Poland — upwards of 90 per cent Catholic — overstate actual religiosity (Ramet 2006). As my interviews attested, there exist gradations of tolerance for homosexuality within the Polish Church. While opposition to gay marriage is near unanimous, liberal clergy condemn legal and political discrimination against individuals (Lizur 2005). The Church hierarchy has condemned the radical-right Father Rydzyk, and is more open to the EU than its social conservatism might indicate, publicly endorsing accession before the 2003 referendum. Arguably, this tension — between the Church’s endorsement of the EU and its uneasiness with specific EU norms — creates space for public deliberation and, hence, social learning.

The Interviews

In May–June 2007, I surveyed 28 elites in Warsaw with questions constructed from the hypotheses above. I used semi-structured elite interviews given the paucity of political science research in this area (see DIHR 2009, 4) and the nature of social learning itself, which depends on the behaviour and organization of issue advocates. The sample comprised two respondent categories. The first, whom I label advocates, consisted of nine activists and members of NGOs working on LGBT issues. Members of political parties and social groups, policy experts, state officials, and officials from international organizations like the European Commission and the Council of Europe comprised the second category, whom I label elites (n = 19). I interviewed the advocates on record, whereas most elites preferred anonymity. It was harder to arrange interviews with the LGBT movement’s critics, though I did interview members of PiS, the All-Poland Youth (LPR’s youth wing), and a Catholic priest. During my fieldwork, Warsaw hosted its fifth Pride parade. Conservative groups held a counter-demonstration, the Parade for Life and Family (Parada Życia i Rodziny), the following day.

Given the small size of Poland’s LGBT movement and widespread reticence about stating one’s sexual orientation, mine was not a random sample. As is typical for difficult-to-sample populations, I used snowball sampling,
Table 1. Interview coding questions and overview of responses

<table>
<thead>
<tr>
<th>Hypothesis/Survey question</th>
<th>LGBT activists</th>
<th>General political elites</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>% of respondents</td>
<td>Number of respondents</td>
<td>% of respondents</td>
</tr>
<tr>
<td><strong>H₀/Q1:</strong> How much influence do European-level institutions have, in your opinion, to shape Polish politics and policy on the issue of sexual minorities’ rights?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• A lot of influence.</td>
<td>0%</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>• Some influence.</td>
<td>33%</td>
<td>3</td>
<td>11%</td>
</tr>
<tr>
<td>• Not much influence.</td>
<td>67%</td>
<td>6</td>
<td>68%</td>
</tr>
<tr>
<td>• No answer or don’t know.</td>
<td>0%</td>
<td>0</td>
<td>21%</td>
</tr>
<tr>
<td><strong>H₀/Q2:</strong> It is my impression that the issue of sexual minorities’ rights only became visible in the public debate around 2003–04. What, in your opinion, explains the timing of this issue’s emergence? Do you see any connection here with Poland’s accession to the EU?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• The timing of the debate is closely linked to EU accession.</td>
<td>44%</td>
<td>4</td>
<td>21%</td>
</tr>
<tr>
<td>• The timing of the debate is linked to EU accession, but that’s not the main reason.</td>
<td>44%</td>
<td>4</td>
<td>0%</td>
</tr>
<tr>
<td>• The timing is coincidental.</td>
<td>11%</td>
<td>1</td>
<td>16%</td>
</tr>
<tr>
<td>• No answer or don’t know.</td>
<td>0%</td>
<td>0</td>
<td>63%</td>
</tr>
<tr>
<td><strong>H₀/Q3:</strong> How well defined is the LGBT movement in Poland in terms of organization and the clarity of its goals?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Not very well defined movement and no clear goals.</td>
<td>33%</td>
<td>3</td>
<td>0%</td>
</tr>
<tr>
<td>• Somewhat defined movement; some goals, but little consensus about them.</td>
<td>45%</td>
<td>4</td>
<td>0%</td>
</tr>
<tr>
<td>• Well defined movement with clear, shared goals.</td>
<td>11%</td>
<td>1</td>
<td>37%</td>
</tr>
<tr>
<td>• No answer or don’t know.</td>
<td>11%</td>
<td>1</td>
<td>63%</td>
</tr>
<tr>
<td>Hypothesis/Survey question</td>
<td>LGBT activists</td>
<td>General political elites</td>
<td>Total</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------------------</td>
<td>----------------</td>
<td>--------------------------</td>
<td>----------------</td>
</tr>
<tr>
<td></td>
<td>% of respondents</td>
<td>Number of respondents</td>
<td>% of respondents</td>
</tr>
<tr>
<td><strong>H₄/Q4:</strong> How would you describe the EU’s relationship with Poland’s LGBT movement?</td>
<td>0%</td>
<td>0</td>
<td>16%</td>
</tr>
<tr>
<td>• The EU serves as a locus for a transnational organizational network of rights activists through both funding and regularized contacts.</td>
<td>33%</td>
<td>3</td>
<td>16%</td>
</tr>
<tr>
<td>• The EU serves as a source of international contacts for Polish rights activists, but the network is ad hoc and funding is limited.</td>
<td>67%</td>
<td>6</td>
<td>11%</td>
</tr>
<tr>
<td>• There is no meaningful transnational network linking Polish and EU activists in the area of gay rights.</td>
<td>0%</td>
<td>0</td>
<td>58%</td>
</tr>
<tr>
<td>• No answer or don’t know.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>H₄/Q5:</strong> How important is the issue of sexual minorities’ rights in Polish party politics? How important, for example, was this issue to the appeal of a socially conservative party like PiS in the 2005 parliamentary elections?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Important.</td>
<td>56%</td>
<td>5</td>
<td>32%</td>
</tr>
<tr>
<td>• Somewhat important.</td>
<td>33%</td>
<td>3</td>
<td>11%</td>
</tr>
<tr>
<td>• Not very important.</td>
<td>0%</td>
<td>0</td>
<td>37%</td>
</tr>
<tr>
<td>• No answer or don’t know.</td>
<td>11%</td>
<td>1</td>
<td>21%</td>
</tr>
<tr>
<td><strong>H₄/Q6:</strong> Do you see distinctions among Poland’s political parties in terms of their stance toward gay rights, aside from LPR?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Yes, parties take different stances on gay rights.</td>
<td>89%</td>
<td>8</td>
<td>26%</td>
</tr>
<tr>
<td>• No, I see no significant differences among the parties on gay rights.</td>
<td>0%</td>
<td>0</td>
<td>42%</td>
</tr>
<tr>
<td>• No answer or don’t know.</td>
<td>11%</td>
<td>1</td>
<td>32%</td>
</tr>
</tbody>
</table>
utilizing the activists' network to select respondents. Since such sampling methodology is vulnerable to bias, I have cross-checked my results with the limited extant research. To distinguish between that research and my own interviews, I present the former in the endnotes.8

To gain the most nuanced responses, my questions were open-ended. I have coded the responses in order to facilitate comparison among advocates and elites and to summarize the interviews overall. The questions, coding categories, and distribution of responses are listed in Table 1. Given the sampling technique, I do not report confidence intervals. To use the interviews to full advantage, I also present extended quotations from them.

Weakening External Incentives

Does the intuition that accession weakens external incentives match perceptions on the ground? Respondents perceived the interaction between EU and domestic institutions in terms suggesting retrenchment rather than transformation: monitoring and threat of sanction were singled out as ineffective, especially regarding norm implementation and enforcement.9 On Question 1, not one advocate judged that the EU had 'a lot of influence', and among the categories 'some influence' and 'not much influence', most fell into the latter. Strikingly, elites were equally sceptical (see Table 1).10 Even the more optimistic assessment of activist Tomasz Basiuk was qualified. While noting that before accession the EU had forced Poland to amend its labour code to prohibit discrimination on the basis of sexual orientation, he expressed doubts about implementation. The EU's main influence is indirect said Basiuk, 'through expanded horizons for Poles, through travel, study, work ... This is the mechanism for change; not legal solutions. With the exception of this one change in the Labour Code, legal solutions have not really appeared.'

In another interview, conducted jointly with Robert Biedron and Marta Abramowicz of the Polish NGO Campaign Against Homophobia (KPH), Question 1 sparked this exchange:

Biedron: What kind of influence does the EU have?
Abramowicz: They have some influence, you know, because it's the only influence we have [in this NGO]!
Biedron: They don't have any tools.
Abramowicz: They have economic tools.
Biedron: They will not be willing to use them ... They only secure rights for employment, but what about the other spheres? We have a lot of cases in Poland of hate speech, of physical and psychological abuse, in the health system, and many, many other cases, which are not being protected ... From my point of view, the EU is completely impotent in this area.

Even Abramowicz's more positive assessment had caveats, as revealed by her rejoinder: 'I think that people still believe the EU has some impact. Maybe
they will discover that the EU doesn’t have or doesn’t want to use these drastic tools. Then they will be much more, let’s say, free in their expression, their hate speech.’

Many respondents touched on EP monitoring and criticism, usually in a negative light. As Szymon Niemiec, founder of Warsaw’s Equality Parade, said, ‘The EP sent a letter to the Polish parliament saying, stop homophobia in Poland ... The answer of the Polish parliament was, “We don’t care.”’ Another activist, Yga Kostrzewa, echoed this sentiment: ‘The EP has criticized us twice now for homophobia. Our politicians said, “They don’t attack our way of thinking, they attack Poland.”’

Discounting the power of EU sanction, one activist stated, ‘I don’t believe that I have an EU umbrella over me. It doesn’t make me feel any more courageous when I walk out on the streets. I didn’t believe it back then, and I believe it even less now, since Poland joined the EU.’

Elites’ views largely mirrored activists’ here. According to one official involved with the accession process, ‘Accession would be impossible [today] with such policies, such statements, such problems in the area of human rights ... There is no system of being a watchdog or a system of monitoring democratic standards in the new member states. When you are in, you are in, and the line is not to interfere in internal policy.’ Another respondent speculated that the Commission feared complicating negotiations over the Lisbon treaty (see also ‘Poland’ 2008). Others cited the unsuccessful precedent of sanctioning Austria’s Haider to explain the Commission’s restraint. The perception that European institutions are unable or unwilling to exert influence weakens those Polish officials seeking to bolster non-discrimination norms. As one state official reported, ‘We cannot actually say out loud, “No one should be discriminated against” ... Well we say this, but our voice is drowned out. We don’t have enough strength to say this out loud.’ Finally, elites generally discounted the EP’s resolutions. One official said, ‘I think this has no effect ... [T]here is a lot in the Polish media regarding the weakening of Poland’s international position ... but there are no consequences.’

Question 2 assessed external incentives’ effectiveness by examining the timing of the radicalization of the discourse about homosexuality. Among advocates, all but one saw the timing as linked to the end of pre-accession conditionality, and fully half saw the timing as ‘closely linked’. The overall trend among elites was less clear: since few had followed this issue over time, their response rate was lower. Many advocates saw Kaczyński’s 2004 Pride parade ban as the watershed event. Szymon Niemiec, who organized the first parade in 2001, noted:

For [the first] three years ... the media didn’t write about it; they treated it like some curious little situation ... In 2003, Lech Kaczyński signed the papers for the parade without comment. In 2004, when they [PiS] started to make their election campaign for parliament, he banned the parade for the first time ... [This was] when the All-Polish Youth and other nationalists started to react against it ... [and when] the media started talking about gay rights as a political issue.
Some respondents suggested that before the accession referendum, the left and the right tacitly agreed not to mention homosexuality to avoid jeopardizing a yes vote (see also Grymala-Busse and Innes 2003; Ramet 2006). Not all saw the timing of the controversy depending only on the EU, however. Some advocates acknowledged accession’s role but stressed the movement’s already growing visibility: Basiuk, Kostrzewska, and Strębska emphasized the role of the domestically initiated public awareness campaign ‘Let them see us’ in 2003, which posted billboards depicting same-sex couples. Some elites suggested deeper factors, such as the internet and the rise of low-cost airlines. The most conservative elites denied that accession explained the timing of the debate. Compared to Question 1, these results point less consistently across respondent types to the erosion of external incentives’ effectiveness, but they are compatible with that conclusion.  

A Social Learning Deficit

If the interviews indicated a weakening of external incentives, what did they reveal about social learning as an alternative? Addressing Hypothesis 3, Questions 3 and 4 probe the Polish LGBT movement’s organization and links to European networks. On Question 3, most respondents in both categories judged that a domestic movement has developed even if it lacks institutional robustness, consensus about goals, financial resources, and sufficient full-time members. Surprisingly perhaps, advocates were more sceptical of the movement’s strength than those outside of it. European institutions have not, according to advocates’ responses to Question 4, strengthened the movement through regularized contacts and funding. Most reported that there was no robust transnational network here to speak of. Interestingly, the elite respondents, which included officials from European organizations and Polish state agencies, were more positive, assuming close international cooperation. This disjunction itself indicates weak interaction between the European and domestic levels.

Illustrating this disjunction, one official summarized the elite response to Question 3: ‘This is a significant group here, very well organized, with international contacts.’ Advocates, however, described a growing but self-financing, volunteer-based, resource-poor network operating in a hostile environment. Among advocates, Ferens was the most optimistic, listing a host of interrelated groups, from performance artists to the Pride parade organizers to the NGO Lambda Warszawa, as well as a growing number of academic conferences. Most advocates, however, reported a lack of consensus about goals and the need for better organization: ‘It is a very scattered movement ... and I don’t know if I could legitimately speak about the goals.’ According to Basiuk, consensus has declined since the failure to achieve a law on civil unions under the earlier government led by the Democratic Left Alliance (SLD): ‘Since then, there is no political goal that one could point to. We’ve become part of the oppositional movement in Poland, pro-democracy and anti-PiS.’ Another activist expressed impatience with the network’s academic wing: ‘They are holding conferences and talking only to each other
... If you want to make this subject easier for society and even for LGBT people, you should talk to them in a different language.’ According to Niemiec, Equality Parade organizers were split over political goals. Echoing this, KPH leaders wondered aloud whether the parades did more to polarize society than promote tolerance.

These organizational shortcomings of the domestic advocacy network suggest an opportunity for European institutions and networks to step in, to confer legitimacy through affiliation, to more systematically link Polish groups to larger advocacy networks, and, very importantly, to improve their financial resources. Advocates and elites again offered different views (see Table 1, Question 4).

Many advocates downplayed links with European networks. Though the largest LGBT NGOs in Poland are members of ILGA-Europe (Ohlsen 2009), strikingly, not one advocate mentioned it in the interviews. Some credited the emergence of gay rights as a political issue in Poland to the primarily domestic public awareness campaign ‘Let Them See Us’. Ferens and Graff claimed that the strongest link with an outside group has been with the Polish feminist movement. According to Ferens, ‘To me, the EU accession was just a milestone. It had nothing to do with my own dynamics of getting involved. And the people that I do political activity with, I think, also would say that it wasn’t a key factor.’ Contrary to the view of Polish conservatives, the interviews suggested that the EU was not the founding impulse for the Pride parades. (One PIS-affiliated respondent declared that half the parades’ participants were internationals.) Advocates tended to discount that participation, ‘To be honest they [the foreign participants] always say the same thing, “Be equal, and so on.” But they underline that human rights are the fundamental thing in the EU.’

While Polish LGBT groups have benefited from some international financial support, that support is uncoordinated and, in the case of EU support, heavily constrained by the national government, which is responsible for implementation. Regional governments constitute another funding possibility, but respondents did not mention any examples. Advocates and elites largely agreed that the EU’s financial capacity to nurture advocacy networks was severely constrained. KPH’s Abramowicz reported that the PiS-led government had often refused to channel EU funding to LGBT groups, even after criticism by the Commission. Strębska, another activist, noted that non-LGBT NGOs with Commission funding sometimes refused to include LGBT groups. She also cited Education Minister Giertych’s (LPR) obstruction of education programmes promoting tolerance, which he labelled ‘homosexual propaganda’. Circumventing a hostile national government and applying directly for EU funding is usually not a feasible alternative because of the administrative complexity of the EU grant process. Without professional staff and with minimal resources to begin with, Polish LGBT groups are, paradoxically, largely locked out from EU funding to develop precisely those organizational assets (Ohlsen 2009, 45–6). As Ferens observed, ‘I’ve tried to apply for funding ... and I’ve come away with almost nothing, so I’m sceptical about the degree of commitment of the EU ... It doesn’t mean that there’s not something available ... but it’s not accessible to small folks like myself.’
An enlightening interview regarding funding constraints was with a Polish official dealing with non-discrimination policy, who reported that, even under the conservative leadership of PiS and LPR, the office made grants to LGBT groups. This funding was, however, 'under the table', and the office worked under constant pressure from hostile ministries.

As a last gauge of social learning, has the issue of non-discrimination toward sexual minorities entered public deliberation, as represented by political parties (Hypothesis 4, Questions 5 and 6)? Regarding issue importance (Question 5), the interviews provided mixed results for both advocates and elites. As expected, many advocates considered this an important political issue, but an almost equal number regarded it only 'somewhat important'. Advocates in the former group emphasized its resonance with human rights and liberalism. Ferens argued that a police crackdown on Poznan's 2005 Equality March, by reminding voters of Solidarity-era protests, became a litmus test in that year's elections. As Graff argued about those elections, 'I think that's what really got them [PiS and LPR] the votes. It's a kind of general image of "We are tough; we crack down on crime" ... In 2005 you could no longer be openly misogynistic in the way possible a few years earlier, but you could be openly homophobic.' Political advisors to PiS and Civic Platform also argued that this issue mattered because of its resonance with national sovereignty and liberalism. Overall, though, the ambivalent responses to this question, especially among elites, fail to provide strong evidence of transformation of the public discourse.

Question 6, which asked respondents to distinguish between political parties on LGBT issues, revealed a stark difference between advocates and elites. Whereas all advocates could distinguish among parties' positions, most elites saw no large differences — outside of LPR. If, for some advocates, differences among the right parties were small, all saw differences between the right and the left (post-communists). As Ferens observed, 'For [the center-right political party] Platforma Obywatelska, this is a really problematic issue because they feel they should be more European, more liberal, and open-minded, but they know it won't get them any votes in this country ... [But] the left is really riding this horse right now.' In contrast, elites downplayed differences among the major right-wing parties and questioned the commitment of left-wing parties. One conservative respondent suggested that Equality Parade supporters are a small group of extremists. Another elite stated, 'There are no sides on this issue. Poland is a conservative country full stop. All the parties are conservative, and they have to differ on something else.' If accurate, this suggests little public deliberation and an ongoing 'regime of silence' around homosexuality.16

To summarize, the interviews support the hypotheses about external incentives. European institutions are perceived to have little direct influence on these issues (Hypothesis 1), and the timing of the debate is largely perceived to be related to accession (Hypothesis 2). They also fail to provide strong evidence of social learning, at least so far. While a domestic advocacy network exists, it lacks robustness and interacts weakly with European institutions and networks (Hypothesis 3). Analysis of public deliberation
showed same-sex discrimination to be neither particularly salient nor critical to party competition (Hypothesis 4).

Conclusion

Though a core EU norm, non-discrimination toward sexual minorities has emerged as a troublesome issue in an enlarged EU. It is compelling not just because it concerns individual freedom but also because it offers a window into the dynamics of the post-accession period. I have addressed this question empirically and assessed whether alternative means of EU influence — particularly social learning — can fill the gap left by external incentives. My data are drawn first-hand through elite interviews in Poland, where LGBT rights have provoked much controversy. Of course, further research should probe other similar cases among post-communist member states: Latvia, Lithuania, Romania, Croatia, and Estonia (ILGA-Europe 2006, 44–5).

My interviews indicate that the EU has yet to develop instruments of social learning that could compensate for the weakening of external incentives. They also suggest that the current Europeanization outcome — as distinct from the effectiveness of Europeanization mechanisms — is retrenchment (Radaelli 2003), as surprising as that sounds after the pre-accession period's asymmetrical politics (Grabbe 2003). Before 2004, Poland was amending its labour code to prevent discrimination, albeit under the pressure of conditionality. After 2004, the Education Minister was threatening to fire teachers for spreading ‘homosexual propaganda’. These results refocus attention on domestic politics and prompt us to re-evaluate the relative weight of ‘domestic variables’ in both the external incentives and social learning frameworks. For reasons of space, I can only briefly sketch some of the theoretical and policy lessons of this analysis.

Regarding external incentives, this case study suggests we should now pay greater attention to domestic veto players relative to such ‘EU-side’ factors as the size of rewards, the threat of sanctions, and monitoring capacity. Before accession, the tendency of unconsolidated party systems like Poland's to generate new parties (potential veto players) that might even gain power (like PiS and LPR) was mitigated by the costs of jeopardizing accession; eurosceptic parties were pseudo veto players (Grzymała-Busse and Innes 2003). Eurosceptics are now actual veto players. As long as many of the region's party systems remain under-institutionalized, the effectiveness of external incentives will depend more heavily on domestic veto players than before accession.

The analysis suggests several considerations regarding social learning. First, further research should address whether this mechanism's shortcomings stem from institutional weaknesses (e.g., the limits imposed by the national implementation of funding) or whether they reflect lack of commitment on the part of EU and affiliated institutions to engage with this issue, as Bell (2001) has suggested. Consider ILGA-Europe: meaningful EU funding only began in 2001 (O'Dwyer and Schwartz 2010). Advocacy groups may be generally underdeveloped at an EU level, suggesting that the EP and Commission should
focus more attention on the European advocacy network, not just individual cases like Poland.

Second, though beyond the scope of this research, courts may provide a better form of EU support for social learning strategies, not the Commission, the Parliament, and affiliated NGOs. Cichowski (2007) has highlighted the role of the European Court of Justice in coordinating transnational actors around gender equality. Given the newness of same-sex discrimination as an issue, the courts’ role has been limited so far, but the ECHR is beginning to address it, ruling in 2007 against Warsaw’s bans on Pride parades. Ohlsen (2009, 48–51) is quite sanguine about the courts’ capacity to augment the influence of Polish rights NGOs, noting that NGOs can join civil proceedings on discrimination and file legal briefs. Courts are not without their limitations, however. Because they depend on domestic litigants’ legal resources and their willingness to initiate litigation, weakly organized advocacy networks constrain courts’ opportunities to act.17 Put differently, courts cannot solve the problem of anaemic advocacy networks. Finally, populists may portray courts as undemocratic, so that non-discrimination remains a legal norm with weak implementation.

Finally, is it fair to expect that new members adopt norms on such culturally charged issues? Could Europeanization ever transform the politics of this issue? As seductive as this rationalization might appear, the EU has already demonstrated a willingness and capacity to liberalize issues bound up with national identity and culture. The obvious example is citizenship policy, particularly in the Baltics, but that task was accomplished using hard conditionality before accession. It is far less certain whether a social learning strategy can yield similar results on issues touching deeply on cultural identity.

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Notes

1. I use ‘European’ to include institutions that are formally part of the EU and those, which though formally separate, collaborate to promote core EU norms, e.g. the Council of Europe and the European Court of Human Rights (ECHR).
2. Arguably, this approach says more about de facto Europeanization than studies of formal policy change; at the very least, it constitutes an essential complement to a policy approach.
3. Positive, negative, and framing integration (Knill and Lehmkuhl 1999), competitive selection, coercion, mimetism, cognitive convergence, and court-centred advocacy (Cichowski 2007) are just some of the alternatives. For an overview, see Radaelli (2003).
4. Discrimination based on sexual orientation is banned under Article 13 of the Amsterdam Treaty, a 2000 directive on employment, and the European Charter of Fundamental Rights. The Commission, the European Parliament, and the ECHR have all articulated this norm. It was also obligated under the Copenhagen Criteria.
5. In a 2005 poll, 55 per cent of Poles said that homosexuality should be tolerated, compared to 34 per cent who advocated intolerance (Wenzel 2005).

6. The Commission has not relinquished all of its monitoring capacity since enlargement. There is a legal network which reports to it on anti-discrimination policy, and the Commission can create new monitoring institutions — as in its recent call for a network of ‘Socio-Economic Experts in the Field of Anti-Discrimination’. My point is that, compared with the situation before enlargement, the Commission’s monitoring capacity is much smaller and more ad hoc.

7. In constructing survey questions 5 and 6 for this hypothesis, I excluded LPR. Because it focuses so strongly on homosexuality, including it would make the questions less sensitive indicators for other parties.

8. To my knowledge, the first analyses of same-sex non-discrimination norms in Poland combining Europeanization theory with empirical surveys are this one, Ohlsen’s (2009), and Holzhauser’s (2008). Gruszczynska (2006) has contributed case studies of the Polish LGBT movement. Lambda Warszawa’s 2005–2006 survey is the most extensive of homosexuality in Poland (Abramowicz 2007). Finally, various international organizations, including ILGA-Europe, Amnesty International, and the Council of Europe monitor this issue in policy briefs.

9. A recent DIHR report (2009, 3) noted that ‘there are no public institutions responsible for overseeing equality or anti-discrimination legislation and policies in Poland’. PiS abolished the relevant anti-discrimination office. The current PO government created a Plenipotentiary for Equal Legal Status in 2008, yet this does not bring Poland into full compliance with EU directives (Ohlsen 2009, 22).

While there is an Ombudsman with limited anti-discrimination competencies, the number of complaints directed to the Ombudsman have been few (26 between 2000 and 2007), of which even fewer (10) were investigated further (DIHR 2009; Ohlsen 2009, 22). Journalistic research into working conditions for homosexual teachers suggests significant implementation problems (Kwasniowska 2007). Last, Polish hate-speech law does not cover sexual minorities. Beyond the often vitriolic statements of politicians, this gap has been exploited by the website Redwatch, which publishes personal data of rights activists (DIHR 2009, 5–6).

10. To compare, Ohlsen’s (2009, 32) interviews lead her to characterize the Europeanization of non-discrimination norms in Poland as between ‘retracement’ and ‘inertia’. Holzhauser’s (2008, 22) respondents indicated that EU influence was insufficient to bring norm compliance.

11. In 2006, Polish parliament passed a resolution refusing the EP’s criticisms and opposing the promotion of homosexual ideologies (O’Dwyer and Schwartz 2010).


13. Ohlsen (2009, 58–60) also finds an established domestic advocacy network of NGOs, though she emphasizes their meagre financial resources, limited membership, and volunteer basis. While she describes greater intra-network cooperation, she notes the presence of rivalries, fragmentation over goals, and interpersonal differences (35–6).

14. By comparison, Ohlsen (2009, 42) is ambivalent about Polish activists’ ties with European-level institutions: ‘Polish LGBT NGOs are rather domestically organized and have [as] yet only tenuous linkages to the EU.’ She finds that financial ties are also weak (43–7). Personal links to EU institutions exist but are not institutionalized (42). Moreover, ‘When asked about the importance of and benefits from their membership in ILGA-Europe, the [Polish] NGO representatives are not too enthusiastic’ (38). Holzhauser (2008, 23) argues that transnational rights networks provide significant support in Poland; however, his characterization is based on KPH, which has the strongest European-level links.

15. Against convention, KPH was refused state support for office space; Education Minister Gierych vowed there ‘will be no more money spent on th[at] organization’ (DIHR 2009, 7). See also Ohlsen (2009, 43).

16. Holzhauser (2008, 8–9) calls this discourse over homosexuality ‘morality politics’, conflictual, of high salience, and resistant to coalition-building. Likewise, quoting Ohlsen, ‘The biggest problem for the NGOs in gaining access to the political scene in Poland is that “there is no party that would really want to deal with that topic in a serious, strategic way”’ (Ohlsen 2009, 57). Holzhauser (2008, 21–3) finds differences among parties quite small here: the ‘liberal’ Civic Platform is socially conservative on homosexuality. Civic Platform in government has largely ignored antidiscrimination policy and rebuffed overtures by LGBT groups.
17. There are only three sexual discrimination cases in which Polish NGOs have been involved (Ohlsen 2009, 51).

References


The Rights of Sexual Minorities in Post-Accession Poland


Interview List

Advocates:
Marta Abramowicz, KPH
Tomasz Basiuk, academic and activist, editorial board member of Inter Alia
Robert Biedron, KPH
Dominika Ferens, academic and activist, editorial board member of Inter Alia
Agnieszka Graff, academic and activist
Yga Kostrzewa, Lambda Warszawa
Szymon Niemiec, activist, formerly of the Equality Foundation
Adam Ostolski, activist, Green Party
Sylwia Strębska, Lambda Warszawa

Interviews also included respondents from the following:
Civic Platform Party (PO)
Council of Europe
Democratic Left Alliance Party (SLD)
European Commission
Instytut Spraw Publicznych, public policy think tank
Law and Justice Party (PiS)
Ministry of Labour (Poland)
Młodzież Wszechpolska (All-Poland Youth)
Conference of the Polish Episcopate of the Catholic Church
Warsaw University