

Rights and Rhetoric: The Expansion of Social Policy in the European Union

Undergraduate Honors Capstone in International Studies
March 2011

Colleen McCracken
School of International Service
American University
4400 Massachusetts Avenue N.W.
Washington, DC 20016-8071

Tel: 908-420-4434
colleen.mccracken@american.edu

Abstract: This research explores social policy expansion in the European Union by conducting a discourse analysis of public debates in the European Parliament. Two cases with different policy outcomes are examined using discourse analysis: corporal punishment of children and mutual recognition of same-sex unions. The analysis shows that EU competence is broadening, but only into areas that overcome resistance by framing issues as central to the founding principles of the EU: a common market with freedom of movement for labor and universality of fundamental rights for EU residents.

Keywords: History of European Integration, negotiations and decision-making in the European Union, constructivism, discourse analysis, policy frame analysis, parliament, social policy, rhetoric, mutual recognition, freedom of movement, LGBT rights, same-sex unions, child rights, corporal punishment¹

Table of Contents:

1. Introduction
2. Background on the EU
3. Literature Review
 - 3.1 Major theoretical paradigms
 - 3.2 Theorists addressing social policy expansion
4. Methods
5. Case 1: Banning Corporal Punishment of Children
6. Case 2: Mutual Recognition of Same-sex Unions
7. Conclusions
8. Works Consulted

¹ The author is grateful to Heidi Heibert, Maria Greene Cowles, Clement Ho, Patrick Thaddeus Jackson, William Davis, David Bosco, Leah Hersey, and Carl LeVan for helpful guidance.

1. Introduction:

Researchers have long assumed that the European Union (EU) is a common market made of sovereign Member States, but recent studies about the rise of the EU have intensified debates about its expanding competencies. As the influential critical theorist Jürgen Habermas argues in, “So, Why Does Europe Need a Constitution?” that the legitimacy of the EU lies upon shared values, prompting the study of convergence on social issues.² Some social policies have become harmonized through the legislature of the EU while others have not. The puzzle is why does the case of mutual recognition of same-sex unions make it through the European Parliament while the ban of corporeal punishment of children does not. The primary hypothesis is that parliamentarians and lobbyists successfully overcame resistance to harmonization by framing the mutual recognition of same-sex unions as central to the principles of the EU: a common market with freedom of inputs and equal protection of fundamental rights. The competing interpretations are Patrick Jackson’s coercive constructivism³, Martha Finnemore’s norm cascade⁴, and Walter Korpi’s political interest models⁵.

² Habermas 2001.

³ Jackson 2007.

⁴ Finnemore 1998.

⁵ Korpi 1998.

2. Background of the EU

The EU is considered a modern manifestation of the long-standing idea of European integration. Post-World War II, European states felt that institutionally combining Europe could be important to recovery, ensuring peace, and securing a spot in the new world order. The first European institution was the Council of Europe, created in 1949 to guarantee "soft security" by promoting human rights, democracy, and rule of law. Although it is outside of the EU system, the organization does work on the issues considered in this research. It has 47 members who may bring cases to the European Human Rights Court - the guardian of the European Convention on Human Rights.

In 1951, Belgium, France, Germany, Italy, Luxembourg, and the Netherlands signed the Treaty of Paris establishing the European Coal and Steel Community (ECSC). The European Economic Community was created in 1957 with the Treaty of Rome. It allowed Europe to speak as a bloc within the GATT and create a common agricultural policy, but did not provide for any mandate to legislate on social policy.⁶

Britain joined in the ECSC 1973, but the process of enlargement truly began in the 1980s with Portugal, Spain, and Greece. Today the EU has twenty-seven members. The Maastricht Treaty established the name "European Union" in 1993. The EU gained the power to legislate on social matters through the Maastricht Social Agreement.⁷ Member States have relinquished part of their national sovereignty in specified areas to EU institutions but in other areas, the Member States work together to administer sovereign powers jointly or retain sovereign power only. The EU has the power to enact laws that are directly binding on citizens.⁸

⁶ Falkner 2006: 80.

⁷ Ibid 82.

⁸ Stevenson 2011: 1.

Key Institutions and Jurisdictions

The European Parliament is the only democratic transnational legislature. Popularly elected members sit in political groupings. It has no formal power to initiate legislation, but it can call attention to issues, hold hearings, etc. It has the power to force all commissioners to resign, question the commission and council of ministers, and amend or reject the annual budget. It interacts with the council through consultation (can propose changes to legislation), co-decision (can form a joint committee to negotiate) and assent (parliament can vote up or down on a proposal).

The European Commission is a supranational bureaucracy and executive in Brussels with 27 commissioners. They are the executive directors of the EU, appointed by national governments, acting for the union. It is the treaty guardian and policy initiator, implementer, overseer, administrator, enforcer, and manager. It also manages EU finances and external relations. It can warn, fine, and take countries to the European Court of Justice for non-compliance.

The Council of Ministers is the intergovernmental executive and legislator that looks out for interests of EU members and facilitates compromises. It approves EU legislation and changes in policy in conjunction with European parliament.

The European Economic and Social Committee is an advisory body that provides important input for EU policy and laws from their respective constituencies. The European Economic and Social Committee represents the economic and social interest groups across the EU that collectively make up “organized civil society.”

Subsidiarity the principle which means that the European Union does not take action (except in the areas which fall within its exclusive jurisdiction) unless it is more effective than action taken at national, regional, or local level.

Exclusive EU jurisdiction: The customs union, the common commercial policy, competition rules, and monetary policy for euro countries.

Shared EU-Member State jurisdiction: Internal market rules; aspects of social policy; economic, social, and territorial cohesion; agriculture and aspects of fisheries; the environment; consumer protection; transport; trans-European networks; energy; the area of freedom, security, and justice; aspects of public health; aspects of research and technological development and space; and aspects of development cooperation and humanitarian aid.

Member State jurisdiction with support from the EU: Protection and improvement of human health; industry; culture; tourism; education, vocational training, youth and sport; civil protection; and administrative cooperation.

Sources: Leibfried, et al. 1995 and Stevenson 2011: 1.

The creation of the monetary Euro-zone in 2002 was important to creating a single market, with sixteen countries in the Euro-zone. The 1987 Single European Act tried to shift the organization from economic to political union with a joint defense policy and cooperation on immigration.

The Lisbon Treaty was signed December 2007, coming into force in 2009, to deepen and accelerate integration by majority voting on more issues, strengthening the European Parliament by increasing legislative co-decision powers with the Council of Ministers, and adding a Permanent High Representative of Foreign Policy. Because I propose that the expansion of social policy is linked to frames that are central to EU core values, it is important to list them here. The core values set out at the beginning of the Lisbon Treaty are, “Human dignity, freedom, democracy, equality, the rule of law and the respect for human rights.”⁹ There is also a list of more detailed objectives including the promotion of social justice and protection, and the fight against social exclusion and discrimination.¹⁰

Each successive Treaty had expanded the mandate of the EU, and it continues to do so in the implementation of the treaties through Parliamentary Resolutions and Commission Directives. This research considers the nature of expansion in the area of social policy. How and under what circumstances does this expansion happen? Scholars from different theoretical schools of thought have studied the role of the EU and social policy.

⁹ "The Treaty of Lisbon: A Europe of Rights and Values" 2011: 1.

¹⁰ Ibid 1.

3. Literature Review

3.1 Major theoretical paradigms

There are several theoretical paradigms through which scholars analyze the EU, its role, and its relative power. International regime analysis, the regulatory approach, liberal inter-governmentalism, the policy-network approach, the Fusion-Thesis, multi-lateral governance, institutionalism, rationalism, constructivism, reflectivism, and post-modernism make up an exhaustive list put forward by Philippe C. Schmitter in *European Integration Theory*.¹¹ This section will review a few of the most important paradigms considered in this research.

Neorealists, such as Kenneth Waltz, in his 1979 work, *Theory of International Politics*, reason that international politics are defined by competition between sovereign states and their power interests in an anarchic world.¹² Therefore, international cooperation happens only in order to pursue national interests that align with others and rhetoric is a secondary phenomenon that may occur alongside of material interests.¹³ His views on IGOs are: “Units in an anarchic order act for their own sakes and not for the sake of preserving an organization and furthering their fortunes within it...in the absence of organization, people or states are free to leave one another alone.”¹⁴ According to this logic, we would look to see Members of Parliament (MEPs) in the EU defined by their national and self- interests and in power struggles.

From this tradition, Walter Korpi studies social policy. In his article, “Political and economic explanations for unemployment: A cross-national and long-term analysis,” Walter Korpi writes,

“The causal factors behind unemployment since are best understood by focusing on conflicts of interest in Western democracies, on the distribution of power

¹¹ Schmitter 2009.

¹² Waltz 1979.

¹³ Jackson 2007.

¹⁴ Keohane 1986: 110.

resources between major interest groups and on strategies of conflict...Strategic action by government elites and long-term patterns in settling conflicts are major factors behind...Western unemployment levels.”¹⁵

Korpi also supports the power resources approach to explaining the development of social citizenship in eighteen OECD countries since 1930.¹⁶ This theory is a competing hypothesis for this research. However, realism had “difficulty accounting for the major transformations in policymaking that are occurring in areas removed from the European Community's central goal of creating a common market”.¹⁷

Liberals, led by Immanuel Kant in *Eternal Peace, and Other International Essays*, argue that democracy and trade are powerful forces that lead to a stable and lasting peace, and IGOs matter to the extent that they promote democracy and trade.¹⁸ From this tradition, Lisa Martin and Beth Simmons, in “Theories and empirical studies of international institutions,” hold that states are the most important actors, but an IGO can facilitate cooperation between them, enabling more optimal outcomes.¹⁹ They also credit scholars of American politics who have done considerable research into “modern theories of domestic institutions that draw on similar assumptions of unenforceable agreements and opportunistic behavior by individuals that characterize most work in international relations.”²⁰

The father of neofunctionalism, Ernst B. Haas, said in *The Uniting of Europe; Political, Social, and Economic Forces, 1950-1957* that transferring loyalty to the EU followed not from the material benefits received through European integration, but from national identities now contain “Europeanness.” It is possible to do so without giving up one’s national identities

¹⁵ Korpi 1998: 1.

¹⁶ Ibid.

¹⁷ Leibfried et al 1995: v.

¹⁸ Kant 1914.

¹⁹ Martin and Simmons 1999.

²⁰ Ibid.

because of the structure of the EU that allows for both member state representation and European representation. Scholars such as Thomas Risse, author of “Neofunctionalism, European identity, and the puzzles of European integration” add that neo-functionalism places major emphasis on the role of secretariats of regional organizations and regional interest groups.²¹ When Member States sign onto some agreement, the IGO exploits the fact that fulfilling limited tasks may require the IGO to expand its functions and responsibilities. Michael Barnett and Martha Finnemore, in *Rules for the World*, ask how IGOs operate with autonomy, how ideas and values circulate, and what causes dysfunction.²² From their case studies on the United Nations and the International Monetary Fund, they explain that IGO’s have delegated authorities from states, but also moral, and expert authorities that allow them to have autonomy from states to orient action and create social reality.

This research is rooted in the constructivist tradition. Alexander Wendt directly countered neorealist arguments in *Social Theory of International Politics*, claiming that significant aspects of international relations are historically and socially contingent, rather than inevitable consequences of human nature.²³ Wendt and scholars such as Nicholas Onuf, Peter J. Katzenstein, Emmanuel Adler, Michael Barnett, Kathryn Sikkink, John Ruggie, Martha Finnemore, and others, within a short period of time, established constructivism as one of the major schools of thought in the field.

The study of norms as a “collective standard of appropriate behavior”²⁴ is an example of the constructivist attitude that state interests and identities are central determinants of state and international organization behavior. Scholarly interest in norms re-emerged in the late 1980s as a

²¹ Risse 2005.

²² Barnett 2004: 5, 16.

²³ Wendt 1999.

²⁴ Checkel 2005, and Finnemore and Sikkink 1998.

competitor to interest-based or power-based explanations. According to Martha Finnemore and Kathryn Sikkink, in their article, “International Norm Dynamics and Political Change,” the processes of social construction and strategic bargaining are “deeply intertwined”.²⁵ They pose that states conform to norms because of peer pressure, persuasion, socialization, and habitualization. This literature points to the importance of entrepreneurs—who initiate change processes and who try to ‘sell’ policy ideas to other actors.²⁶ There is a “tipping point” at which a “critical mass” of states adopted the norm. “Empirical studies that measure the ratification of international treaties suggest that norm tipping rarely occurs before one-third of the total states in the system adopt the norm.”²⁷ This is a competing hypothesis for this research.

While the general image is useful, it has some limitations. Existing norms are often change-resistant. New norms compete with traditional norms in a mechanism Jeffery Checkel calls cultural match.²⁸ Adherents of old norms actively oppose the introduction of novel ideals that compete for resources and attention. He emphasizes that, “Socialization dynamics may well take us beyond the nation-state, but their legitimacy and governance implications bring us back-forcefully-to it.”²⁹ He would say that this is why Paul Leibfried et al. entitled their anthology: *European Social Policy: Between Fragmentation and Integration*. The EU is not strong enough to initiate policy change on its own; it must come from below.”³⁰

Patrick Jackson proposes another interpretation of constructivism, which still places value on ideas, but argues that translation, negotiation, and coercion better describe some processes. Actors use public rhetoric to reframe policy debate so that it is essential to the ideals

²⁵ Finnemore and Sikkink 1998.

²⁶ Fabian 2007.

²⁷ Ibid.

²⁸ Checkel 2001.

²⁹ Checkel 1999.

³⁰ Leibfried et al. 1995.

and values of a society and it cannot be countered.³¹ The second stage in his analysis he argues that, “The rhetorical interplay itself provides leverage in explaining outcomes.”³² From that, he defines his model of rhetorical coercion as when, “the claimant’s opponents have been talked into a corner, compelled to endorse a stance they would otherwise reject.”³³

Jackson differs from liberal constructivists in that he is skeptical that politics does not involve some powering.³⁴ He proves his point with two case studies based on economic data, parliamentary debates, and public media. First, the Druze Arabs gained Israeli citizenship by coercing the government with arguments framed around their military service and the equation of rights and obligations. Secondly, the United States supported the Marshall Plan because of the rhetorical construct of “Western civilization versus communism.”³⁵

3.2 Theorists addressing social policy expansion

Legislative and other EU bodies have increasingly considered social policy, defined by T.H. Marshall as the use of “political power to supersede, supplement, or modify operations of the economic system in order to achieve results which the economic system would not achieve on its own.”³⁶ This section will give a critical overview of social policy in general first, and then delve into the more specific areas of law necessary for the case studies on corporal punishment of children and mutual recognition of same-sex unions.

A number of empirical studies show that social policy has expanded over time in the EU. According to Gerda Falkner’s, “Forms of Governance in European Union Social Policy:

³¹ Jackson 2007: 36-42.

³² Ibid 36.

³³ Ibid 36.

³⁴ Ibid 42.

³⁵ Ibid 38.

³⁶ Marshall 1975: 15.

Continuity and/or Change?" the quantity of EU social laws is "impressive."³⁷ Falkner's main method is counting how many legislative measures - of different types, and on different topics - have been passed from 1957 to 2005. Her work lays the ground for future studies on social policy by showing an increase in time of the number of bills and resolutions passing and the funding for social policy. What she fails to ask however is why, how, and into which directions is social policy expanding.

Social Law and Policy in an Evolving EU, edited by Jo Shaw, is an essential anthology on European Social Policy. In the article title, "The Integrationist Rationale for European Social Policy", Phil Syrpis attempts to answer why social policy is expanding. He puts forward four rationales for social policy at the EU level: (1)

"Fundamental" human rights, (2) economic, (3) integrationist, and (4) responding to market failure.³⁸

He supports the integrationist rationale, which calls

for elimination of "barriers to free movement" and "distortions of competition"³⁹ Freedom of movement of labor and equality are necessary for an economic union, and policies that encourage employment are also important to citizens in the EU. While the definitions of the terms are contested and vary according to whim in the European Court of Justice, the European Community has gained competence in social policy.⁴⁰ In Syrpis' opinion, the EU should only legislate on these issues if labor law standards in a Member State are unacceptably low - to prevent "a war of competitive regulation" - and should avoid rigid harmonization measures.⁴¹

Figure 1: Four Rationales for EU Social Policy

1. "Fundamental" human rights
2. Economic
3. Integrationist
4. Responding to market failure

³⁷ Falkner 2006.

³⁸ Syrpis 2000: 49.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid: 1-17.

The scholarship on European family law reveals a dichotomy that creates fragmentation between the national and EU levels. At the supranational level, family law is left to the states. If family law were to be harmonized, we would expect legislation to be at the most conservative lowest common denominator in order to pass with a majority of votes. However, EU legislation can be justified if member state laws conflict with the EU Treaty and the rights it ensures to all citizens.

At the national level, Mavis Maclean and Jacek Kurczewski describe in *Families, Politics, and the Law*, a rollback or privatization, with increasing amounts of privacy given to the family.⁴² Their anthology of research is based on both case studies and survey data on family policies and the role of the law in the United Kingdom and Poland. Their main conclusion to the questions about what Europeans seek from the law in family life is that it varies on a national level depending on political forces and individual values.⁴³ Conservatives in each country prefer a rigid line drawn around the family to keep it same from government intervention, while liberals are more inclusive in their definitions of family and accept intervention to protect the vulnerable from the strong. Individual values can be influenced by societal forces such as the Polish Church, the elevation of the family as a safe haven under Communism, and thinking of child abuse as a medical problem. Their conclusions seem to echo Walter Korpi's analysis of political forces, but their discussion of values affected by ideas supports constructivist interpretations.

In contrast, trends in family law at the EU level show expansion of social policies that affects the family sphere.⁴⁴ Part Five of Jo Shaw's anthology is entitled, "Hidden agendas: Family formations and capital development" indicating some kind of coercion on the part of

⁴² Maclean and Kurczewski 1994: 3.

⁴³ Ibid 12.

⁴⁴ Lewis 2006.

either the EU Commission (trying to dupe the member states) or on the part of liberals (trying to dupe conservatives) to expand social policy into the realm of family law.⁴⁵ Elissaveta Radulova's work, "The construction of EU's childcare policy through the Open Method of Coordination," finds that childcare policy expanded over time based on different normative frames. From 1986 to 1997 framed as a gender equality initiative, from 1998 to 2002, framed roughly equally between gender equality and economic competitiveness, and from 2002 to 2008, framed two-thirds of the time as a measure to promote economic competitiveness.⁴⁶ From that she also concludes that the European Employment Strategy was a "window of opportunity" to link childcare policy with a more prominent policy paradigm, and it caused the shift in framing within five years of its passing.⁴⁷ Radulova's assumptions are constructivist, and her methods include both a word count of European law and a qualitative content analysis of the legislation. I find her content analysis to be much more compelling than the word count, particularly Table 1 on page 16 in which she lays out the dimensions of the frames.⁴⁸ "Childcare and its derivatives and synonyms appear 183 times in the 83 documents," holds little explanatory value on its own.⁴⁹

This research will contribute to the scholarly debate by challenging the different theories of European integration and the mechanisms by which social policies are expanding in the EU. It bridges the literatures on law, policy, human rights, and European integration. The goal is not to make value judgments, but instead explore the expansion of social policy and make some conclusions on how it is expanding and why. These conclusions can be of interest to human rights advocates, politicians, and lawyers.

⁴⁵ Shaw 2000: 3.

⁴⁶ Radulova 2009: 20.

⁴⁷ Ibid 12

⁴⁸ Ibid 16.

⁴⁹ Ibid 10.

4. Methods:

The method employed for analysis is discourse analysis, a way of understanding social interactions by focusing on what actors say, in what contexts, and to what audiences.⁵⁰ Political scientist William E. Connolly defines political discourse by saying “the language of politics is not a neutral medium that conveys ideas independently form but and institutionalized structure of meanings that channels political thought and action in certain directions.”⁵¹ It assumes that: (1) the material world does not exist independently from our ideas and beliefs about it⁵², instead, (2) structures of signification in discourse construct social realities, and (3) that discourse is productive, legitimating which subjects may speak and how they may act.⁵³ It uses the positivist conception that discourses are instrumental devices that can foster common meanings and their task is to measure how effective they are in bringing about outcomes.⁵⁴

The major goal in this research is to discover the production of meaning of social policy that ensures homosexual and child rights in Europe. It aims to describe both (1) articulation: the construction of discursive elements from cultural and linguistic resources and (2) interpellation: how these resources do their work and become “naturalized,” different in varying social contexts and times.⁵⁵ The practice of discourse is linked to the dominating discourse, and finding ways in which the “intelligible grid of meaning” or “truth” is also inherently unstable. The methods employed to do so are: (1) the deconstructive method in which original “truth” can be reversed and displaced, (2) the juxtapositional method that shows what the “truth” fails to acknowledge or address, and (3) the subjugated method that extends analysis to explore alternative accounts. It

⁵⁰ Jackson 2007: 36.

⁵¹ Connolly 1993.

⁵² Milliken 1999.

⁵³ Ibid.

⁵⁴ Howarth

⁵⁵ Milliken 1999.

also looks at verbs, adverbs, and adjectives that attach to nouns, study of different agents to determine the social background against which debates take place and, how the theory applies through stages of empirical discoveries.⁵⁶ Much is based on counterfactuals: how if the significative system and its objects had been different, a different policy or agreement might have been possible.

This research aims to understand the power of different discourses or themes in the text that bring about change and discern how they do their work of advancing LGBT issues into EU policymaking but fails to include corporeal punishment issues in parliamentary forums. A discursive element can be an event, symbol, or use of rhetoric that either weakens or sustains the current discourse. The use of rhetoric is evaluated with frames that are coded as either persuasive or coercive.

Since the hypothesis assumes that historical context plays a role, it calls for small-n qualitative case studies. A case study is the detailed examination of an aspect of a historical episode to develop or test historical explanations that may be generalized to other events. Case studies can help illuminate complex causality.⁵⁷ One of the main advantages of case studies is their ability to serve the heuristic purpose of inductively identifying additional variables and generating hypotheses. The data on language is difficult to operationalize in a parsimonious way.

While quantitative methods may work for organizational sociologists, Jeffery Checkel argues that case studies are the best way to study the micro-mechanisms of norm diffusion. He and other critics argue that "mainstream" constructivism has "abandoned many of the most important insights from linguistic-turn and social-constructionist theory in the pursuit of

⁵⁶ Ibid.

⁵⁷ George and Bennet 2005.

respectability as a ‘scientific’ approach to international relations”.⁵⁸ Even word counts in legislation have been conducted to show an increase in the mention of certain issues. A criticism of Elissaveta Radulova’s 2009 study of the construction of child care policy in Europe is that her word count misses how and in what context the issue of child care policy was mentioned. Her work on the framing of the issue is much more illuminating.⁵⁹ Context is always brought in to explain a quantitative outcome, and I believe it is the most illuminating part of a quantitative study. Therefore, I conduct a cross-case analysis that uses diverse forms of internal evidence about causation that are brought to bear on explaining a single, overall outcome. The three more specific models tested in this research are Martha Finnemore’s theory on international socialization of norms⁶⁰, Walter Korpi’s advanced welfare states and power interests⁶¹, and Patrick Jackson’s coercive constructivism⁶².

The cases, one a 2010 parliamentary debate on the harmonization of LGBT union laws, the other on a Human Rights Court case on corporeal punishment of children, were inspired by Mill’s method of difference to single out the variables (or causal mechanisms) that deserve greater attention.⁶³ They differ on the dependent variable -- same-sex unions have the support of the European Parliament and Commission while a ban of CP does not, yet, they mirror each other on many independent variables such as the Council of Europe works on both issues, they are in the same legal space of family law, and they are both about rights. The independent variables of difference are hypothesized to be the strength of interest groups, and the perception

⁵⁸ Checkel 1999.

⁵⁹ Radulova 2009.

⁶⁰ Finnemore 1998.

⁶¹ Korpi 1998.

⁶² Jackson 2007.

⁶³ George and Bennet 2005.

of the “fit” of the issue with the competencies of the EU. I will assess "the fit" by categorizing frames as positive or negative, or cross-cutting and able to counter the negative arguments.

The research takes place in the context of the years of European integration (1948-2010), but the case studies clarify what frames were introduced and received during 1982 and 2010. I measure reception by the voting outcome and whether the answer to the parliamentary questions is positive or negative. The first case uses law records from 1978 to 2000 of cases at the European Court of Human Rights, other resolutions and publications from the Council of Europe from 2003 to 2007 as primary data, and a Parliamentary question in 1984. Primary data for case two includes legislation from 1957 to 2010, the English versions of records of European Parliamentary questions from 2010, and Parliamentary debates from 2010. It includes political statements by the LGBT minority around the time of the debates in the summer and fall of 2010. Interviews of relevant scholars for background complement the data.

It is important to distinguish that despite the work that the Council of Europe does on the cases considered here, it is important to explain why a case made it or did not make it on the European Parliament’s agenda. A recent resolution calling for a summit on reform admits that the Council of Europe is at risk of becoming obsolete to the EU. It points to “a persistent refusal by the Committee of Ministers to give the Organisation a budget commensurate with its tasks, whereas parallel structures duplicating the Council of Europe's mechanisms and instruments are being generously funded within the European Union.”⁶⁴ In addition, the Parliament is popularly elected and can pass enforceable legislation, while the Council of Europe cannot. Therefore, this analysis recognizes the work of the Council, but places importance on the role of the European Parliament and tries to explain which cases will be considered by the Parliament.

⁶⁴ Resolution 1783: 2011.

Research into competing hypotheses includes Eurobarometer surveys, domestic legislation on the issues, the relative activity and strength of relevant political parties, and lobby groups. To support my hypothesis, the data would have to show that competing hypotheses themselves cannot sufficiently explain outcome – that arguments for the passage of same-sex union rights are linked to issues core to the meaning and mandate of the EU, while CP arguments fall outside the scope.

5. Case Analysis 1: Banning corporal punishment (CP) of children

Based on human rights, ethical, and health, and effectiveness arguments, UN Convention on the Rights of the Child prohibited CP in 1989⁶⁵, and the European Children's Network (EURONET) is a network of European and national NGOs committed to promoting children's rights in the European Union. EURONET has published a position paper on ending corporal punishment in the home that makes recommendations to EU policymakers and politicians.⁶⁶

In the EU today, 22 of 27 countries have banned CP of children in the home, school, and the justice system.⁶⁷ Sweden was one of the first to do so with a school-wide ban in 1958 and a family-wide ban in 1978 to what most agree was a significant decrease in the use of pain-inflicting punishments on children. While most nations have passed laws against CP, there are still nations that resist the "norm change." Only France, Czech Republic, Tajikistan, and Turkey do not outlaw the practice in schools.

The Council of Europe and ECHR have been using many different measures – legal cases, Recommendations, positive and negative resolutions, and public campaigns – since 1978 to raise awareness and end CP.⁶⁸

⁶⁵ Convention on the Rights of the Child: 1989.

⁶⁶ "International, Regional and National Campaigns for Law Reform to Prohibit All Corporal Punishment of Children" 2001: 1.

⁶⁷ "Raise your hand against smacking - Council of Europe Campaign" 2011: 1.

⁶⁸ "Selected Legal Texts" 2011: 1.

Figure 2: Work of the European Council and ECHR on CP and frames 1978-2008.⁶⁹

Year	Event	Description	Accepted/rejected Frame
1978	<i>Case of Tyrer v. UK</i>	ECHR rules against judicial birching of children.	Accepted: Degrading punishment
1982	<i>Case of Cambell and Cosans v. UK</i>	ECHR rules against CP inflicted at school (whipping the palms).	Accepted: Parent's right to an education that is in conformity with their own philosophical convictions, such as the physical integrity of the person.
	<i>Seven individuals v. Sweden</i>	Unsuccessful attempt to challenge the court.	Rejected: Right to respect for family life
1998	<i>Case of A v. UK</i>	ECHR rules against parental use of CP that causes a more than transitory or trifling hurt or injury (a stepfather caused bruising to his stepson with a garden hose). In accepting the ruling, the UK asks for refrain from a general statement about CP.	Accepted by ECHR but rejected by UK: "inhuman or degrading punishment" and failure of "positive obligations"
2000	<i>Philip Williamson and others v. UK</i>	The ECHR rejected by unanimous vote an application against the implementation of the ban on corporal punishment in private schools	Rejected: Parents' rights to freedom of religion and family life
2003	World Organization against Torture (OMCT) v. Belgium	The European Committee of Social Rights (ECSR) concluded that Belgium, Ireland, and Greece were in violation for failure to "prohibit and penalise in all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well being of children".	Accepted: Violence against children
	OMCT v. Ireland		Physical integrity, dignity, development or psychological well being of children
	OMCT v. Greece		
2004	Recommendation 1666	Parliamentary Assembly recommends a Europe-wide ban of corporal	

⁶⁹ Events based on "Selected Legal Texts" 2011: 1. and "Raise your hand against smacking - Council of Europe Campaign" 2011: 1.

		punishment of children.	
2006	OMCT v. Portugal	The ECSR concluded that Portugal was in violation for failure to "prohibit and penalise in all forms of violence against children, that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well being of children".	Accepted: Violence against children Physical integrity, dignity, development or psychological well being of children
	Recommendation 19	The Committee of Ministers detailed policy to support positive parenting.	Positive parenting
2006	"Building a Europe for and with children"	A Council of Europe program for the promotion of children's rights and the protection of children from violence	Children's rights Violence against children
	Theseus	Database containing case law on children's rights from the ECHR	Children's rights
2007	Recommendation 1778	Parliamentary Assembly on child victims: stamping out all forms of violence, exploitation and abuse; report prepared by the Committee on Legal Affairs	Violence against children
2008	"Raise a Hand Against Smacking". ⁷⁰	Public campaign to end CP including posters, TV spots, plays, and an extensive website.	Positive parenting eg. "Your hands should nurture not punish." ⁷¹

⁷⁰ Ibid. The Council of Europe has also passed resolutions and commissioned studies on the issue addressed in the second case study on LGBT rights. The ECHR has also taken on this issue in court.

⁷¹ "Raise your hand against smacking - Council of Europe Campaign" 2011: 1.

Figure 3: Frame analysis for ending the CP of children

Positive Frames⁷²	Negative Frames	Cross-cutting frames (absent)
Inhuman or degrading punishment Physical integrity, dignity, development or psychological well being of children Parent's rights to education in their philosophical views Children's rights Violence against children Positive parenting Begin with human rights at home	Right to respect for family life Parents' rights to freedom of religion and family life Parents' rights to punish their children at their discretion Member state rights It is the ECHR's and Council of Europe's issue (in the European Parliament)	No economic imperative Not linked to single market Not linked to "fundamental" rights

The role of the European Parliament, a body that could make the law universal, has been largely absent. In fact, the sole explicit mention of CP in the body is in 1984 when Michael Elliot - a liberal MEP from Great Britain - wrote a Parliamentary question entitled, "United Kingdom – Corporeal punishment of children," about what the Parliament is doing to prevent CP of children.⁷³ The answer was to refer the issue to the ECHR based on a ruling in the same year on *Cambell and Cosans v. UK*.⁷⁴

Why, given the EU's reputation for social progressiveness and the success of the harmonization of same-sex unions has the Parliament not outlawed the corporeal punishment of children in school or at home? I concede that the absence of discourse in the Parliament implies a disregard for it that signals a "cultural match" model of norm diffusion, but still hold that it is important that there is no linkage of arguments to the EU mandate even though it could be labeled under fundamental rights. They have also used different framings of the issue each time

⁷² Ibid.

⁷³ Elliot 1984: 17-18.

⁷⁴ "Selected Legal Texts" 2011: 1.

in an effort to “persuade” members to take action. A counterfactual to consider is would the Parliament have taken up the case if it had been consistently framed in a way that links to core values of the EU as written in the Treaties (fundamental rights or human rights)? If child rights could have been linked to the Lisbon Treaty and Stockholm Programme, both focused on elevating the fundamental rights of citizens, it is possible that the issue would have gone farther.

6. Case Analysis 2: Mutual Recognition of Same-sex Unions

In contrast to the work done on banning CP of children, the reasoning for passing new social policy in the European Union has been returning to the same principles (see below). The accepted frames appear to the integrationist (Create a single market, ensure freedom of movement), fundamental rights, and market failure (inclusive labor force) rationales for EU Social Policy.

Figure 4: Frame analysis for the expansion of EU social policy 1957-2010⁷⁵

Year	Area of Social Policy	Accepted Frame
1957	Free movement of workers Social security coordination	Create a single market Free movement of workers
1986	Working environment (health and safety)	Free movement of workers
1991	Atypical employment (safety and health) Contracts or employment relationships	Free movement of workers Fundamental rights
1992	Funding for employment policy Protection of workers where their contract of employment is terminated Collective interest representation, codetermination Employment of third-country nationals Working conditions (general) Worker information and consultation Gender equality for labor force Integration in labor market Pregnant workers	Free movement of workers Fundamental rights Inclusive labor force
1993	Working time	Fundamental rights

⁷⁵ Social Policy areas based on Falkner 2006: 81, 92.

1994	Protection of young people at work	Fundamental rights
1996	Parental leave	Gender equality for labor force
1997	Part-time work Action against discrimination on grounds of sex, race, ethnic origin, belief, disability, age, sexual orientation "Measures" against social exclusion "Measures" assuring equal opportunities and treatment of both men and women Employment policy coordination	Fundamental rights Inclusive labor force Free movement of workers
2001	"Measures" to improve coordination between States "Incentive measures" to combat discrimination	Free movement of workers Fundamental rights
2004	Directive on Freedom of Movement	Free movement of workers
2009	Charter of Fundamental Rights into European primary law Social rights applied within companies e.g. right to strike Right to petition the Commission inviting it to take a legislative initiative ⁷⁶	Fundamental rights Democracy
2010	Measures to improve fundamental rights and freedoms of citizens	Fundamental rights

In 2008, the EU Agency for Fundamental Rights found that 18 out of 27 EU Member States have gone beyond the minimum requirements of EU anti-discrimination legislation and have provided for legal protection against discrimination on grounds of sexual orientation in the areas of employment, access to public goods and services, housing and social benefits.⁷⁷ The

⁷⁶ "The Treaty of Lisbon: A Europe of Rights and Values" 2011: 1.

⁷⁷ "Freedom of Movement for LGBT People" 2011: 1.

legal recognition of same-sex couples has expanded among EU member states. Currently, Belgium, the Netherlands, Portugal, Spain and Sweden (5 of 27) allow same-sex couples to marry.⁷⁸ Austria, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Luxembourg, the Netherlands, Slovenia and Great Britain (14 of 27) allow same-sex couples to enter a civil partnership.⁷⁹ However, at least 11 Member States (Estonia, Greece, Ireland, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Slovakia, Slovenia) do not recognize the validity of same-sex marriages.⁸⁰ There is currently no consensus on the issue of same-sex unions.

In 2004, the Commission passed a Directive on Freedom of Movement.⁸¹ “This Directive sets out the rules applying to EU citizens and their family members who wish to move to another Member State. This can now be for various purposes: to take up a new job, to undertake studies or even for retirement. It is particularly important for lesbian, gay, bisexual and transgender (LGBT) families who want to exercise their right to free movement.

The right to free movement of persons is a fundamental right guaranteed to European Union (EU) citizens by the Treaties.⁸² The Commissioner of freedom, security and justice without internal borders oversees policy in this arena. The official EU website reports, “The concept of free movement of persons came about with the signing of the Schengen Agreement in 1985 and the subsequent Schengen Convention in 1990, which initiated the abolition of border controls between participating countries.”⁸³ The Stockholm Programme is a policy roadmap for the EU in the area of justice, freedom and security for the period 2010-14.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰

⁸¹ Bell 2009.

⁸² "The Treaty of Lisbon: A Europe of Rights and Values" 2011: 1.

⁸³ "Free Movement of Persons, Asylum and Immigration" 2011: 1.

The 2008 EU Agency for Fundamental Rights (FRA) publication entitled “Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States: Part I – Legal Analysis”, indicates that if a host member state does not recognize same-sex couples, it still has the obligation to examine if a ‘durable’ relationship duly attested⁸⁴ obliges it to ‘facilitate entry and residence’ of the partner.⁸⁵ Despite this, once a partner has entered and is residing in the host country, their relationship loses its legal recognition and associated rights.⁸⁶ Some MEPs argued that this loss of rights would deter same-sex couples from moving, thus violating their right to free movement, so policy at the EU level was warranted.

A Parliamentary question to Commissioner Viviane Reding, the Commissioner for Justice, Fundamental Rights and Citizenship on September 7, 2010 displayed that this issue has the power to transcend national lines.⁸⁷ There was no consensus among MEPs. The positive and negative frames that came out in the debate are organized in the table into positive, negative, and cross-cutting.

⁸⁴ To be a ‘durable’ relationship duly attested,’ couples must show that they have been together for some time. An easy case would be if they were living together and sharing household responsibilities.

⁸⁵ Bell 2009.

⁸⁶ Ibid.

⁸⁷ "European Parliament Wants EU Countries to Recognise Existing Same-sex Unions" 2010: 1.

Debate

Positive Frames	Negative Frames	Cross-cutting Frames
<p>Non-discrimination</p> <p>End a cause of oppression and suffering</p> <p>Want to move on the issue before the Council of Europe</p> <p>The Commissioner already agreed to take action</p> <p>Mutual recognition is done with other goods, expand to social issues</p> <p>Does not change national laws on civil unions</p>	<p>Must be sensitive to different countries' traditions</p> <p>Undermines sovereignty of Member states on family law</p> <p>Homophobia</p> <p>Public opinion supports traditional unions</p> <p>Liberals wouldn't want mutual recognition of conservative abortion laws</p>	<p>Equal application of fundamental rights</p> <p>Freedom of movement of labor</p>

Ms. Anna Zaborska (PPE) says,

“National parliaments respect the opinion of their citizens and 80% of citizens approve of the definition of family as a stable union between a man and a woman. Eurostat publishes these figures, but no one talks about these figures. If we were to talk openly about the majority approve of a model of family based on a man and a woman, it would be held differently.”⁸⁸

The Committee on Legal Affairs unanimously adopted the non-legislative resolution report by Luigi Berlinguer (S&D, Italy) on civil law, commercial law, family law and private international law aspects of the Action Plan implementing the Stockholm Programme on September 20, 2010.

On November 23, 2010, the European Parliament voted to adopt a report on civil, commercial, family and private international law that in line 40,

“Stresses the need to ensure mutual recognition of official documents issued by national administrations; welcomes the Commission's efforts to empower citizens to exercise their free movement rights and strongly supports plans to enable the mutual recognition of the

⁸⁸ CRE 07/09/2010 – 17.

effects of civil status documents; calls for further efforts to reduce barriers for citizens who exercise their rights of free movement, particularly with regard to access to the social benefits to which they are entitled and their right to vote in municipal elections.”⁸⁹

In practice, this would require that all member states recognize existing same-sex unions when citizens move in the EU.⁹⁰ Following this vote, the European Commission will propose ways to enable the mutual recognition.’

The Vote on the Berlinguer Report⁹¹

Positive Frames	Negative Frames	Cross-cutting Frames
<p>Calls for implementation of Stockholm program on civil aspects</p> <p>Harmonization of civil law</p> <p>Develop entrepreneurship in all economic sectors</p> <p>Support equal rights for same-sex unions</p> <p>Survival of a single market</p>	<p>Homophobia</p> <p>Undermines national sovereignty in family law as laid out in Article 81(3) of the Treaty on the Functioning of the European Union</p> <p>Does not respect fundamental values</p> <p>Need to properly assess the effectiveness and compliance with set objectives of measures already imposed</p> <p>Does not respect member states’ communities and options</p> <p>Imposes same-sex marriage and adoption by homosexual couples on those Member States that do not recognize them in their own law</p>	<p>Moral superiority of fundamental rights</p> <p>Freedom of movement of labor</p> <p>Creation of a European judicial space</p>

Positive Arguments⁹²

David Martin (S&D)⁹³, “I welcome the adoption of this report...to ensure mutual recognition of ...same-sex unions, meaning that partners in same-sex unions can act as next of kin in case of accidents abroad and, where appropriate, have equal rights to tax benefits while living or working in another Member State.”

Lara Comi (PPE)⁹⁴(Italy) To this day, there are certain differences in the civil law of the 27 Member States and of those set to join the EU in the near future. The action plan presented is a step forward; it notes the similarities and highlights the differences so as to draw attention to

⁸⁹ A7-0252/2010: 2010.

⁹⁰ Ibid.

⁹¹ PV 23/11/2010 - 8.2.: 2010.

⁹² All from PV 23/11/2010 - 8.2.: 2010.

⁹³ Group of the Progressive Alliance of Socialists and Democrats.

⁹⁴ European People’s Party.

the need to reduce those differences...I believe that the creation of common rules and the implementation of an integrated judicial system are essential for guaranteeing the survival of the single market. While everyone's legal traditions and specific characteristics should be respected, today's challenges require, in fact, a common effort to harmonise European laws.

Vilija Blinkevičiūtė (S&D), (Lithuania) *I voted for this report because the European Parliament calls on the Commission to ensure as effectively and swiftly as possible that the Stockholm Action Plan truly reflects the needs of Europe's citizens, particularly as regards free movement throughout the European Union, along with employment rights, the needs of business and equal opportunities for all.*

Negative Arguments⁹⁵

The dominant discourse is that EU does not have competence in family law - member states do. Evidence for this discourse in society includes the fact that Latvia has a constitutional ban on same-sex unions while the Netherlands allows same-sex civil partnerships. The conservative MEPs highlight societal evidence supporting the dominant discourse.

Anna Záborská (PPE), (Slovakia) *If we do not allow a critical exchange of views on the integration process, it will only reinforce the concerns of many Member State citizens...The Commission and the Council must therefore explain that neither the socio-legal mechanisms nor the Stockholm Protocol will ever lead to the creation of a statute of marriage for same-sex couples. If we want to build a strong Union, it must not be at the cost of restricting Member State powers or the common good. The ECR Group has submitted proposals for amendment which emphasise the powers of the Member States. Unless these proposals are adopted, I will vote against the submitted report.*

Peter van Dalen (ECR⁹⁶), (Netherlands) *Paragraph 40 of the Berlinguer report emphasises mutual recognition of marriage and family law without any reference to Article 81(3) of the Treaty on the Functioning of the European Union. This article states that each Member State shall remain sovereign in matters of family law with cross-border implications. I have declined to endorse this report, both because this European principle has not been explicitly observed and because the European Conservatives and Reformists' amendment in that regard has been rejected.*

Carlo Casini (PPE), (Italy) *I abstained from the final vote on the Berlinguer resolution because Amendment 2 was thrown out. This was extremely important for ruling out possible erroneous interpretations of item 40, which states that Parliament 'strongly supports plans to enable the mutual recognition of the effects of civil status documents'. The expression could suggest, for example, a European Union-wide obligation to recognise a union between people of the same sex registered in a Member State where such a union is permitted.*

In actual fact, we must distinguish between the effects of a completed legal action (in the case of marriage) and the effects of an official registration document. The latter bears full witness to

⁹⁵ All from PV 23/11/2010 - 8.2.: 2010.

⁹⁶ European Conservatives and Reformists Party.

what is documented (for example, that a homosexual marriage has been entered into in Holland) and this public witness is the effect of the official marital status document. However, the effects of the official registration document are something different and their recognition (for example, a survivor's pension) is not permitted in a State that does not recognise them. Matters of family law are, in any case, part of the identity of individual states and cannot be touched by EU law. The possibility of a different interpretation led me to choose to abstain.

Andreas Mölzer (NI)⁹⁷, (Denmark) *"Paragraph 40...represents a serious intrusion into national law, by calling for same-sex marriages and partnerships which are entered into in a specific Member State to be recognised in all other Member States. Clever wording is being used to smuggle this measure in through the back door. In the German version of the motion and, I suspect, in many other language versions, the actual aim of this paragraph is not nearly as clear as it should be. Since I am opposed to gay marriage out of principle and, in particular, to this deceitful style of politics, I have voted against this paragraph and against the report..."*

Bruno Gollnisch (NI), (France) *"...It is unacceptable, above all, for the free movement of persons and non-discriminatory access to the social security benefits of countries of residence to be used as a pretext for demanding mutual recognition of civil status documents, because the real aim behind this proposal is not to make life easier for European families who have moved to another EU country. The real aim is to impose same-sex marriage and adoption by homosexual couples on those Member States that do not recognise them in their own law. Family law is strictly and exclusively the responsibility of the Member States, and it must remain so."*

Arguments that are cross-cutting and 'bridge the gap'; they 'fit' with the rationales for Social Policy as connected to the mandate of the EU in the Treaties

Luigi Berlinguer, rapporteur. (Italy) *Mr. President, ladies and gentlemen, due to the change in the agenda approved yesterday by this House, I would firstly like to express my approval for the fact that the Committee on Legal Affairs has unanimously approved the draft report that we are voting on today.*

The fact that the construction of the European judicial space finds such a broad consensus in Parliament is important. The Stockholm Programme envisages that everyday life should be intrinsic to the process of constructing a Europe of citizens and not merely of political forces or institutional representations. It sets out to resolve the everyday problems of Europeans by the real and unified creation of an effective market of labour, goods and services, entrepreneurial activity without internal borders and without red tape, to strengthen the common basis of rights of succession, contracts, consumers, timely payments, the family, children and more.

It will also be the duty and responsibility of the justice system, national judiciaries, solicitors, accountants and workers who operate within individual States to build Europe, to interpret the laws that unite our continent. Our past is marked by different judicial and legal traditions – Common law and Civil law – with differences between the French or German systems and histories that are sometimes very different. We respect national prerogatives and the principle of subsidiarity, but we realise that in order to build Europe – and fortunately we are still on that

⁹⁷ Non-Inscrits, or MEPs unaffiliated with a political group.

road – we need progressive convergence that is based on the great constitutional tradition of fundamental rights for which Europe stands.

*Mr. President, the Action Plan that we will approve sets out to construct, reinforce, extend and disseminate a solid European judicial culture, a European legal mindset. That is why I will vote in favour.*⁹⁸

In the final Berlinguer Report:

*“Overall, Parliament recognizes the need to respect and accommodate radically different legal approaches and constitutional traditions but it considers that it is necessary to address the adverse legal consequences for citizens arising from these divergences, and underlines that the divergences between legal systems should not constitute a barrier to the further development of European law. The Commission must make sure that the Stockholm Action Plan truly reflects the needs of individual citizens and business, particularly small and medium-sized enterprises, for more Europe (in respect of mobility, employment rights, the needs of business, equal opportunities) while promoting legal certainty and access to rapid and efficient justice.”*⁹⁹

In the explanations for the votes and the debates, sovereignty and subsidiarity represent arguments that put up a formidable road-block to passing the legislation. Many opposing the directive focus their argument on the fact that it represents an intrusion on member state sovereignty. This is a powerful frame suggesting that passing this legislation violates the EU mandate, in the same way that the proponents frame not passing the legislation as discriminatory or homophobic. The Parliament was locked in by two ideologies, unable to pass a directive on a belief alone. That is why cross-cutting rhetoric appeals to core values of the EU. Conservatives who voted for the legislation whose fellow MEP's did not, such as Lara Comi (PPE), therefore use aseptic language and emphasize the survival of the single market, freedom of movement, and fundamental rights to legitimize the new discourse on integration.

I argue that coercive rhetoric is a better explanation than simple persuasion. The authors of the Parliamentary question and the MEP's who voted for the Berlinguer Report use rhetoric to confront the moral weakness of those controlling the dominating discourse. By emphasizing the

⁹⁸ PV 23/11/2010 - 8.2.: 2010.

⁹⁹ A7-0252/2010: 2010.

moral superiority of freedom of movement and non-discrimination, they poke holes in the restrictive family laws of certain member states such as Greece, Italy, Poland, and Latvia. They delegitimize claims to sovereignty as allowing of homophobia, complete with examples of how it can cause oppression and suffering. They also legitimize the new discourse of mutual recognition, soliciting the Commission for action.

Skeptics may object that framing is not the most important variable at work. Walter Korpi's realist model would be right to claim that LGBT interest groups and lobbyists are better organized around the European Parliament.¹⁰⁰ In fact the Parliamentary Intergroup on LGBT Rights is made up of 155 MEPs from all 5 main political Groups (EPP, S&D, ALDE, Greens/EFA, and GUE/GNL), and from 20 different Member States.¹⁰¹ In addition, one can claim that same-sex and transgender Parliamentarians speak in their self-interest on this issue. However, the emphasis on public opinion – the base of power for publicly elected MEPs – does not hold true since the conservative PPE group There were ten political parties and no majority party recognized in 2010, making consensus in the legislature difficult.¹⁰² The two largest parties around which political groups form, is the Progressive Alliance of Socialists and Democrats for Europe (S&D) party and the conservative European People's Party (EPP). In the 7th European Parliament from 2009 to 2014, there are 265 MEPs in the S&D party and 184 MEPs in the PPE party.¹⁰³ The two tend to divide committee assignments and rotate the presidency.

In fact, the largest conservative party, the PPE party, was split on the vote. For example, one can observe that one of two MEPs from the same PPE party and the same country (for both Portugal, Italy) voted for the resolution, and one against.

¹⁰⁰ "Intergroup event discussed mutual recognition of same-sex unions" 2010: 1.

¹⁰¹ "Members" 2011: 1.

¹⁰² "Grants from the European Parliament to political parties at European level 2004-2010" 2010: 1.

¹⁰³ "Your MEPs : By country and political group" 2009: 1.

Finally, Martha Finnemore's model would point to the emerging European social identity and norm diffusion by persuasion. What is difficult about this explanation is that the dominant discourse points to different national identities and traditions. In addition, both corporeal punishment of children and LGBT rights are addressed in the law at the national level in a majority of member states, making it seem that both issues have reached their critical points, yet there are different outcomes for the two cases. If an issue such as CP is important to national governments, but cannot cross the rhetorical barrier to become important or feasible at the EU level, it supports Patrick Jackson's coercive rhetoric model because something must be at work to move the debate beyond the roadblock and coerce enough conservative party MEPs to vote for the legislation.

7. Conclusion:

In legislating for social values, the use of rhetoric and framing are important. The supremacy of European law over national law is an important implication. The fact that EU law breaks national law - even constitutional law - really highlights the importance of the same-sex union's case. If the Commission were to pass legislation relating to same-sex unions and the like, Member States would be forced to adhere to it or face massive penalties at the European Court of Justice (ECJ). On the other hand, implementation is not perfect and the ECJ has an overwhelming with caseload.

Further research could focus on the legal influence of the ECJ and ECHR, trends in legal integration, and the media coverage of the issues. Scholars can test the models and mechanisms on other topical issues in Europe, or to political science analysis in other parts of the world.

8. Works Consulted

Primary

- A7-0252/2010. "Report on Civil Law, Commercial Law, Family Law and Private International Law Aspects of the Action Plan Implementing the Stockholm Programme (2010/2080(INI))." The European Parliament. 24 Sept. 2010. Rep. Web. 25 Apr. 2011. <<http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2010-0252&language=EN#title4>>.
- Bell, Mark, and Matteo B. Baraldi. *Lesbian, Gay, Bisexual and Transgender Families and the Free Movement Directive: Implementation Guidelines*. Publication no. 978-92-95066-01-4. The European Region of the International Lesbian, Gay, Bisexual, Transgender & Intersex Association (ILGA), Jan. 2009. Web. 25 Apr. 2011.
- Case of A. v. the United Kingdom (100/1997/884/1096). *ECHR Reports* VI (1998): n. pag. HUDOC. Web. 26 Apr. 2011.
- Convention on the Rights of the Child. *OHCHR Homepage*. UN High Commissioner for Human Rights, 20 Nov. 1989. Web. 02 May 2011. <<http://www2.ohchr.org/english/law/crc.htm>>.
- CRE 07/09/2010 – 17. "Discrimination of same-sex married or in civil-partnership couples (debate)." The European Parliament. 7 Sept. 2010. Rep. Web. 25 Apr. 2011. <<http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20100907&secondRef=ITEM-017&language=EN&ring=O-2010-0117>>.
- CRE 23/11/2010 - 8.2 "Civil, commercial, family and private international law aspects of the action plan implementing the Stockholm Programme." 23 Nov. 2010. Rep. Web. 25 Apr. 2011.
- Elliot, Michael. "Written Question No 618/84." *Official Journal of the European Communities*. C.283 (1984): 17-18. Microform.
- European Commission. Directorate-General for Justice, Freedom and Security. "An Area of Freedom, Security and Justice Serving the Citizen: Proposal of the Commission for 2010-2014 - Stockholm Programme." *The Official Journal of the European Union*. Vol. C 115/01. Brussels: European Commission, 2010. Print. Ser. 2010.
- "European Commission issues clear statement on mutual recognition of same-sex unions." 7 Dec. 2010. Web. 25 Apr. 2011. <<http://www.lgbt-ep.eu/parliamentary-work/ec-issues-clear-statement-on-mutual-recognition/>>
- "European Parliament debates recognition of same-sex unions." The European Parliament Intergroup on LGBT Rights, 23 Nov. 2010. Web. 25 Apr. 2011. <<http://www.lgbt-ep.eu/press-releases/european-parliament-debates-recognition-of-same-sex-unions/>>.
- "European Parliament Wants EU Countries to Recognise Existing Same-sex Unions." The European Parliament Intergroup on LGBT Rights, 23 Nov. 2010. Web. 25 Apr. 2011. <<http://www.lgbt-ep.eu/press-releases/european-parliament-wants-eu-countries-to-recognise-existing-same-sex-unions/>>.
- "Free Movement of Persons, Asylum and Immigration." *EUROPA – The Official Website of the European Union*. Web. 02 May 2011. <http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/index_en.htm>.
- "Freedom of Movement for LGBT People." *The European Parliament Intergroup on LGBT Rights*. Web. 25 Apr. 2011. <<http://www.lgbt-ep.eu/work/priority-1/>>.

- “Grants from the European Parliament to political parties at European level 2004-2010.” European Parliament Directorate-General for Finance, 14 Oct. 2010. Web. 26 Apr. 2011. <www.europarl.europa.eu/pdf/grants/grant_amounts_parties.pdf>.
- “Intergroup event discussed mutual recognition of same-sex unions.” The European Parliament Intergroup on LGBT Rights, 23 Nov. 2010. Web. 25 Apr. 2011. <<http://www.lgbt-ep.eu/intergroup-documents/intergroup-event-discussed-mutual-recognition-of-same-sex-unions/>>.
- “International, Regional and National Campaigns for Law Reform to Prohibit All Corporal Punishment of Children.” Global Initiative to End All Corporal Punishment of Children. Web. 3 May 2011. <<http://www.endcorporalpunishment.org/pages/reform/campaigns.html>>.
- O-0081/2010. “Discrimination against same-sex married or in civil-partnerships couples.” The European Parliament. 4 June 2010. Rep. Web. 25 Apr. 2011. <<http://www.europarl.europa.eu/sides/getDoc.do?type=OQ&reference=O-2010-0081&language=EN>>.
- O-0117/2010. “Mutual recognition of marriages and civil partnerships contracted by same-sex couples.” The European Parliament. 30 Aug. 2010. Rep. Web. 25 Apr. 2011. <http://www.europarl.europa.eu/sides/getDoc.do?type=OQ&reference=O-2010-0117&language=EN>
- O-0118/2010. “Discrimination against same-sex couples, freedom of movement, LGBT rights, EU Roadmap.” 31 Aug. 2010. Rep. Web. 25 Apr. 2011. <<http://www.europarl.europa.eu/sides/getDoc.do?type=OQ&reference=O-2010-0118&language=EN>>.
- PV 23/11/2010 - 8.2. Oral explanations of vote. The European Parliament. 23 Nov. 2010.
- P7_TA(2009)0090. “European Parliament resolution on the Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen – Stockholm programme.” 25 Nov. 2009. Rep. Web. 25 Apr. 2011. <<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2009-0090&language=EN>>.
- P-7422/2010. “Threat to national sovereignty.” The European Parliament. 15 Sept. 2010. Rep. Web. 25 Apr. 2011. <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+P-2010-7422+0+DOC+XML+V0//EN&language=EN>>.
- P-7422/2010. “Answer given by Mrs. Reding on behalf of the Commission.” The European Parliament. 1 Dec. 2010. Rep. Web. 25 Apr. 2011. <<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2010-7422&language=EN>>.
- “Raise your hand against smacking - Council of Europe Campaign.” Council of Europe. N.p., n.d. Web. 26 Apr. 2011. <http://www.coe.int/t/dg3/children/corporalpunishment/default_en.asp>.
- Recommendation 1666. “Europe-wide Ban on Corporal Punishment of Children.” Council of Europe. Parliamentary Assembly. 23 June 1994. Web. 02 May 2011. <<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta04/EREC1666.htm>>.
- Resolution 1783. “Follow-up to the Reform of the Council of Europe.” Parliamentary Assembly, 25 Jan. 2011. Web. 01 May 2011. <<http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta11/ERES1783.htm>>.

- "Selected Legal Texts." *Council of Europe*. Web. 03 May 2011.
 <http://www.coe.int/t/dg3/children/corporalpunishment/CPLegalTexts_en.asp>.
- Stevenson, Melinda. "Understanding the European Union." *EU Focus*. Ed. Stacy Hope. Delegation of the European Union to the United States, May 2011. Web. 30 Apr. 2011.
 <<http://www.eurunion.org/eu/images/stories/eufocus-understandingeu-5-2011.pdf>>.
- "The Stockholm Programme — An open and secure Europe serving and protecting citizens." European Council. *The Official Journal of the European Union*. Vol. C 115/01. Brussels: European Council, 2010. Print. Ser. 2010.
- "The Treaty of Lisbon: A Europe of Rights and Values." *EUROPA*. The European Union. Web. 25 Apr. 2011. <http://europa.eu/lisbon_treaty/glance/rights_values/index_en.htm>. Waltz, Kenneth Neal. *Theory of international politics*. Reading, Massachusetts: Addison-Wesley Pub. Co., 1979. Print.
- "Your MEPs : By country and political group ." *European Parliament*. N.p., n.d. Web. 28 Apr. 2011. <<http://www.europarl.europa.eu/members/expert/groupAndCountry.do;jsessionid=F1B60FD52FE0560B93F4FA85057A196C.node2?language=EN>>.

Secondary

- Barnett, Michael N., and Martha Finnemore. *Rules for the world: international organizations in global politics*. Ithaca, N.Y.: Cornell University Press, 2004. Print.
- Börzel, Tanja A. and Thomas Risse. "When Europe Hits Home: Europeanization and Domestic Change." *European Integration online Papers* 4 (2000): 1-24.
- Checkel, Jeffrey T. "International Institutions and Socialization in Europe: Introduction and Framework." *International Organization* 59 (2005): 801-826.
- Checkel, Jeffrey T. "Norms, Institutions, and National Identity in Contemporary Europe." *International Studies Quarterly* 43(1999): 83-114.
- Checkel, Jeffrey T. "The Constructivist Turn in International Relations Theory." *World Politics* 50 (1998): 324-348.
- Checkel, Jeffrey T. "Why Comply? Social Learning and European Identity Change." *International Organization* 55(2001): 553-588.
- Conant, Lisa. *Contested Boundaries Citizens, States, and Supranational Belonging in the European Union*. Robert Schuman Centre for Advanced Studies, 2001. Web. 25 Apr. 2011.
- Connolly, William E. "The Terms of Political Discourse." (1993). Web. 2 May 2011.
 <<http://press.princeton.edu/titles/366.html>>.
- Elgström, Ole. "The construction of new norms regarding gender and development in EU foreign aid policy." *Journal of European Public Policy* 7(2000) 457-476.
- Fabian, Katalin. "Norm Diffusion in Central and Eastern Europe's Domestic Violence Policies." *Contemporary Studies in Economic and Financial Analysis* 89 (2007): 253-303.
- Falkner, Gerda. "Forms of Governance in European Union Social Policy: Continuity and/or Change?" *International Social Security Review* 59.2 (2006): 77-103.
- Falkner, Gerda, Oliver Treib, Miriam Hartlapp and Simone Leiber, "Complying with Europe: EU Harmonisation and Soft Law in the Member States." Cambridge: Cambridge University Press, 2005. Print.
- Françoise Schild. Rev. of "Complying with Europe: EU Harmonisation and Soft Law in the Member States. " *Common Market Law Review* 43.2 (2006): 609-610.

- Finnemore, Martha and Kathryn Sikkink. "International Norm Dynamics and Political Change," *International Organizations* (1998): 887-917.
- George, Alexander L., and Andrew Bennett. "Comparative Methods: Controlled Comparison and Within-case Studies." *Case Studies and Theory Development in the Social Sciences*. Cambridge, MA: MIT, 2005. Print.
- Guiraudon, Virginie. "European Courts and Foreigners' Rights: A Comparative Study of Norms Diffusion." *International Migration Review* 34 (2000): 1088-1125.
- Haas, Ernst B. *The Uniting of Europe*. Stanford: Stanford University Press, 1958. Print.
- Haas, Ernst B. "International integration: the European and the universal process." *International Organizations* 15(1961): 366-392.
- Haas, Ernst B. *Human Rights and International Action*. Stanford: Stanford University Press, 1970. Print.
- Habermas, Jurgen. "So, Why Does Europe Need a Constitution?" *UNED.es*. Robert Schuman Centre for Advanced Studies, 2001. Web. 25 Apr. 2011.
- Hantrais, Linda. *Social policy in the European Union*. St. Martin's Press: New York, 1995. xii, 251. Print.
- Jackson, Patrick Thaddeus and Ronald R. Krebs. "Twisting Tongues and Twisting Arms: The Power of Political Rhetoric." *European Journal of International Relations* 13 (2007): 135-66.
- Jordan, Andrew. "The Europeanization of National Government and Policy: A Departmental Perspective." *British Journal of Political Science* 33 (2003): 261-282.
- Kant, Immanuel, W. Hastie, and Edwin D. Mead. *Eternal Peace, and Other International Essays*. Boston: World Peace Foundation, 1914. Print.
- Keohane, Robert O. *Neorealism and its critics*. New York: Columbia University Press, 1986. Print.
- Korpi, Walter. "Political and Economic Explanations for Unemployment: A Cross-National and Long-Term Analysis." *British Journal of Political Science* 21 (1991): 315-348.
- Liebfried, Stephan and Paul Pierson, eds. *European Social Policy: Between Fragmentation and Integration*. Washington, DC: The Brookings Institution, 1995. Print.
- Lewis, Jane. "Work/family reconciliation, equal opportunities and social policies: the interpretation of policy trajectories at the EU level and the meaning of gender equality." *Journal of European Public Policy* 13 (2006): 420-437.
- Macleane, Mavis and Jacek Kurczewski, eds. *Families, Politics, and the Law: Perspectives for East and West Europe*. Oxford: Clarendon Press, 1994. Print.
- Marshall, T. H. *Social Policy*. London: Hutchinson, 1975. Print.
- Martin, Lisa L., and Beth A. Simmons. "Theories and Empirical Studies of International Institutions." *Exploration and Contestation in the Study of World Politics*. Ed. Peter J. Katzenstein, Robert O. Keohane, and Stephen D. Krasner. Cambridge, MA: MIT, 1999. Print.
- "Members." *The European Parliament Intergroup on LGBT Rights*. Web. 03 May 2011. <<http://www.lgbt-ep.eu/about/members/>>.
- Milliken, J. "The Study of Discourse in International Relations: A Critique of Research and Methods." *European Journal of International Relations* 5.2 (1999): 225-254.
- Orucu, Esin. "What Next in the Convergence Process in Europe?" *Opening Up European Law*. Mauro Bussani and Ugo Mattei, eds. Durham, NC: Carolina Academic Press, 2007: 181-189. Print.

- Posner, Eric. "The Regulation of Solidarity Groups: The Influence of Legal and Nonlegal Sanctions on Collective Action." *University of Chicago Law Review* 63 (1996): 133-197.
- Posner, Eric. *Law and Social Norms*. Cambridge, MA: Harvard University Press, 2000.
- Risse, Thomas. "Neofunctionalism, European identity, and the puzzles of European integration" *Journal of European Public Policy* 12.2 (2005). 30 Apr. 2011.
<<http://www.informaworld.com/10.1080/13501760500044033> >
- Schmitter, Philippe C. "Neo-neofunctionalism." *European Integration Theory*. Ed. Antje Wiener and Thomas Diez. Oxford: Oxford UP, 2009. Print.
- Shaw, Josephine. *Social law and policy in an evolving European Union*. Oxford: Hart, 2000. Print.
- Sobich, Robert. "The Social Problem of Child Abuse in Poland: The Conflict between Privacy and Control." *Families, Politics, and the Law: Perspectives for East and West Europe*. Mavis Maclean and Jacek Kurczewski, eds. Oxford: Clarendon Press, 1994: 169-178. Print.
- Syrpis, Phil. "The Integrationist Rationale for European Social Policy." *Social law and policy in an evolving European Union*. Josephine Shaw, ed. Oxford: Hart, 2000. Print.
- Torella, Eugenia, and Annick Masselot. *Reconciling work and family life in EU law and policy*. New York, NY: Palgrave Macmillan, 2010. Print.
- Wendt, Alexander E. "The Agent-Structure Problem in International Relations Theory." *International Organization*, 41 (1987): 335-370.
- Wendt, Alexander E. *Social Theory of International Politics*. Cambridge: Cambridge University Press, 1999. Print.
- Zürn, Michael and Jeffrey T. Checkel. "Getting Socialized to Build Bridges: Constructivism and Rationalism, Europe and the Nation- State." *International Organization*, 59 (2005): 1045-1079.