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The Irish Same-Sex Marriage Referendum: Its Meaning for LGBT Rights in the EU

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MICHAEL PELZ, JUN 19 2015

In May 2015, Ireland became the first country in the world to legalize same-sex marriage through a public referendum. Over 60% of voters backed expanding the definition of marriage to include same-sex couples – a remarkable shift for a country that has a deep Catholic heritage and only legalized divorce in 1995. No doubt, the recent abuse scandals facing the Church in Ireland limited its ability to influence the outcome, while cross-party support for expanding marriage to same-sex couples made the referendum results, at minimum, less of a surprise. The widespread and largely positive media attention surrounding the vote has had knock-on effects both close to home and well beyond Ireland: calls for similar referendums or demands to expedite same-sex marriage legalization have been observed in Northern Ireland, Italy, Germany, and also as far away as Australia.

The success and widespread popular engagement surrounding the referendum also suggests that, at least within older EU member states, the promotion of LGBT rights is becoming less of an elite-driven project. Never before have there been so many role models, politicians, businesses, and NGOs working to promote tolerance and education for LGBT persons. This supportive environment has been conducive to the emergence of an electorate increasingly knowledgeable about gay rights, and the unique and often pervasive discrimination faced by LGBT communities. The case of Finland is similarly instructive here, as it was ultimately a citizen's petition (signed by over 160,000 people) that forced the Finnish parliament to address same-sex marriage – having only recently voted against it.

However, the Irish referendum also sharpens the increasing divide on LGBT rights in Europe, and raises important questions about the role that the EU can play to ameliorate this divide. While Norway, Iceland, and ten EU member states have introduced same-sex marriage (and a growing number have expansive civil unions that provide many similar benefits), others provide no recognition – or have explicit bans – on same-sex marriage. Countries falling into the latter category include Latvia, Poland, and Slovakia amongst others (ILGA-Europe, 2015). The kaleidoscope of different laws across the Union creates significant challenges for same-sex couples, whose relationship is only recognized in some countries, and weakens the value of the EU's freedom of movement provisions.

This patchwork of national laws covering gender and sexual minorities also questions the assumption held by some that the EU, and the networks surrounding it, are committed to advancing greater policy convergence on LGBT rights, or that they have the tools to do so (See also Kollman and Paternotte, 2013). One could be forgiven in thinking that policy convergence, presumably in favour of partnership recognition, is an unstated EU goal. Indeed, a growing collection of scholarship (particularly within the social movements literature) has argued that there is a growing, normative understanding that human rights for LGBT persons are a constitutive element of being part of the EU, and of European citizenship (See, amongst others, Ayoub and Paternotte, 2012; Santos 2013; Swiebel 2009).

However, despite impressive constellations of EU institutions, subsidiarity agencies, and closely linked transnational advocacy networks working on LGBT causes, the EU actually has very few 'hard tools' at its disposal to facilitate policy advancement for LGBT rights. In the absence of a larger horizontal directive, whose passage looks more unlikely with each subsequent year that it is delayed, the EU and associated advocacy networks must rely on soft-power initiatives and what Kollman (2009) refers to as 'elite persuasion.' Yet, the extent to which these efforts at elite persuasion and socialization have been successful is debatable – given that the majority of homophobic backlash

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has occurred *after* countries have joined the Union (O'Dwyer, 2013; see also Kuhar 2011).

In my own research, centered primarily on the Baltic States, I have witnessed that the EU must do more to promote LGBT rights. Especially in Latvia and Lithuania, there is relatively little appetite amongst elected officials and, more generally, the public to address sexuality and gender rights. Popular attitudes remain generally hostile, with solid majorities against same-sex marriage. The transformations from communism to democracy and EU membership left traditional views on homosexuality mostly untouched, and in some cases, amenable to arguments that gays and lesbians are threatening to national values, an import from Brussels, and without local precedent. Russia's passage of anti-gay propaganda laws have also led to copycat legislation, including a lighter version passed in Lithuania. The anti-discrimination laws that do exist were passed largely for instrumental reasons, as a result of EU conditionality pressures during the accession process, and without an appreciation for what precisely the laws entailed.

No doubt, some elected officials and committed civil society activists are striving to improve inclusion for LGBT persons in this region, but many legislators face significant political risks in voting to strengthen gay rights – particularly in the volatile party systems common across the region (See O'Dwyer and Schwartz, 2010). In Latvia and Lithuania, for example, opportunistic political leaders have often turned to anti-gay politics as a strategy to win votes, and to distinguish themselves in an otherwise crowded electoral arena. Estonia has shown greater willingness to address LGBT rights, and became the first country in the post-Soviet sphere to pass gender-neutral partnership legislation in 2014. However, it is unclear whether that law will come into effect as planned in 2016 after conservative forces entered into a new coalition government.

More generally, if eventual policy convergence on LGBT rights and partnership recognition is a EU goal, which I believe it should be, it seems unlikely the EU can accomplish this with its current tools – at least in the near future. Indeed, a more robust discussion appears necessary on charting out where LGBT rights fit within a deepening union. One option is whether the time has come for partnership recognition to become a supranational competency. Although many national elites would vigorously resist such a proposal, by giving the EU jurisdiction over the regulation of the family, conservative elected officials would be granted a face-saving opportunity to 'upload' the intractable debates on marriage and partnerships to Brussels, as has been done with other contentious policies in the past.

A better long-term strategy to close the sharp divide on LGBT issues in Europe is for the EU and its partners to redouble their efforts to explain *why* LGBT rights and partnership recognition matters in countries where sexual and gender minority issues are either resisted or poorly understood. Unlike the Irish case, LGBT human rights promotion across much of Central and Eastern Europe remains largely an elite-level project, leaving the traditional views on LGBT issues that are prevalent in the electorates of many countries largely untouched. So often accused of being opaque and poorly understood by the average voter, the EU must work more directly with national partners to demonstrate that LGBT rights matter equally across the Union, and have as much history in Dublin or Galway as they do in Vilnius or Bratislava. Though the causal relationship between changing public attitudes and public policy is not direct, increased awareness and popular support of LGBT persons is the EU's best tool in facilitating policy convergence and overcoming the profound discrimination that so many in the LGBT community continue to face.

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About the author:

Michael Pelz is a PhD candidate at the University of Toronto in the Department of Political Science. His doctoral research examines variations in state policies towards LGBT persons in Central and Eastern Europe, with a particular focus on the Baltic States. Outside of academia, Michael has served as an International Policy Analyst with Egale, Canada's national LGBT human rights organization. He previously studied at the London School of Economics and the University of Western Ontario. You can follow him on Twitter @pelzm.