Transversal and particularistic politics in the European Union’s anti-discrimination policy: LGBT politics under neoliberalism

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Abstract: New research has contributed to uncovering the gendered inequalities in European Union (EU) politics, including its constituent member states, despite the normative-legal provisions set by the EU. In terms of LGBT rights, the Union pursues a employment-based antidiscrimination policy inclusive of a variety of stances on LGBT (and other) rights, which in certain instances clashes with member states conceptions and stimulates blowback from social conservative INGOs and other stakeholders. In its antidiscrimination regime, the EU pursues mainstreaming through a differentiated market-logic that potentially produces a particularistic perspective as well as field of (policy) action in relation to the various marginalized populations. At the same time, the anti-discrimination directive applies only to employment-related discrimination, with activists aiming to broaden its application beyond this limited application area. The questions appear if and how gender and sexuality are treated differently in the development of supranational anti-discrimination policies? And how does a neo-liberal EU policy orientation impact on the attainment of LGBT human rights? Inferences for novel IR theory building are drawn from the experience of LGBT groups representing an amorphous, transversal movement inclusive of wide array of identifications and expressions that ultimately contest the supremacy of markets.
Introduction

Not only has the field of international sexual politics received increasing policy attention in the past decade with the progressive vocalization of rights claims by sexual minorities all over the world, but also International Relations (IR) scholars have taken note of the significance of this relatively new field of research (Weiss & Bosia 2013, Patternotte et al. 2011; Beger 2009). The different manners in which states grant sexual rights to their citizens and residents, the varying cultural, developmental and national contexts make for a potentially rich research avenue. Particularly in the 28 member bloc of the European Union (EU), gender and sexuality rights are said to be highly regarded as part of the catalogue of fundamental rights available to EU citizens. In effect I would argue that the EU as a regulatory institution superordinate to the state in economic and related matters, ‘queers’ traditional domestic politics in significant ways. Yet, recent research is split on the effects of the EU rights regime in regard to sexual rights. While some view the region developing in a generally progressive direction (Patternotte et al 2011), others have commented on the expectations-capabilities gap resulting from normative-legal provisions and ‘soft’ law, i.e. the intergovernmental, voluntary agreement to best practices in the absence of comprehensively mandated gender equality (Kantola2010; Mazur & McBride 2012). In her provocatively titled book “Why Europe is Lesbian and Gay friendly (and the US never will be)”, Wilson similarly weighs the EU impact, stating that “the construction of the EU did present windows of opportunity in which inclusive policies could be framed as economically beneficial” (2013: 3). This essay, however, highlights another ambiguous aspect deduced from the EU’s economic origin, the predication of sexual rights on neoliberal market policies. Sexual/LGBTQ\(^1\) politics are a comparatively young field of policy action and analysis, and the bloc’s general antidiscrimination policy covering gender and sexual orientation in employment but not more generally results from the fact that all EU-law has to be related to the liberalization of the single market. The EU started to pass an employment-based anti-discrimination legal directive on various (gender, religious, sexual orientation, disability, age) grounds in 2000, and has been proposing a more comprehensive ‘horizontal’ anti-discrimination directive going beyond employment in 2008. But member state governments in the EU Council continue to bloc ratification (some countries, such as Poland or Lithuania, cite cultural incompatibilities, while others, such as Germany, feel that the implementation would be too costly for businesses, for example). Not only are LGBTQ individuals disadvantaged compared to the heterosexual majority populations, but a particular group/identity-based differentiation through the EU’s approach towards inclusion may

\(^1\) In the following, I use LGBTQ for movements or communities that include, albeit unevenly, all those individuals but reserve LGBT for the political stakeholders involved in EU advocacy politics.
reinforce the potential discriminatory impact of state governance in these fields. And it lays bare the volatile limits of sexual rights affirmation under the pretext of neoliberal market integration.

In this chapter, I take a closer look at the ‘politics of sexuality’, i.e. how the construction of sexual differences influences conditions the work of LGBTQ advocates in regional markets. This occurs in the context of the EU’s rights policy discourse, which has at least normatively been broadened to include all major ethnic and social minorities. In time, it became a rhetorical, mainstreamed approach towards policy-creation. Theoretically, transversal politics, i.e. a negotiation among stakeholders in which notions of difference are mediated and encompassed in equality provisions (Yuval-Davis 1999), is preferable over any particularistic approach that may stigmatize specific populations or conflict with the equality-for-all agenda of political liberalism in Western democracies. With respect to the EU’s potentially beneficial impact on sexual rights, the regional integration process “offers marginalized groups the opportunity to destabilize predominant discourses an to project alternative narratives and interpretations” (Kamenou, 2011, 33). Yet the EU struggles with the tension between providing supranational equality to all member state citizens based on its market-oriented legal prerogatives, the particularism of specific gender or LGBT group demands, as well as of member states policies and their political cultures. A look at the underlying societal mechanisms aids in explaining the ambiguous positioning of the EU when advocating limited equality provisions. In the EU’s multilevel governance context, the questions then arise why gender and sexuality are treated differently (by the EU, the states) in the development of common supranational anti-discrimination policies, and what societal discourses are responsible for such differences? Furthermore, how does a neo-liberal EU policy orientation impact on the attainment of LGBT human rights? Lastly, given this contentious policy field, what inferences for critical IR theory building can be drawn from the experience of LGBT groups representing marginalized minorities there?

Social movement literatures, as well as queer social theory supply the theoretical backgrounds on which these interactions play out. Scholarly works in International Political Economy (IPE) are largely silent on the question of the compatibility of neoliberal policies, i.e. policies emphasizing liberalization, privatization and competitiveness, and the rights claims of LGBTQ populations. Such a gap has become even more problematic since the Euro-crisis has revealed that marginalized populations are more severely affected by crisis-induced repercussions than the general population (Thiel 2013). Social movement literature, particularly as it developed in the US, emphasized the opening of opportunity structures for claim making and agenda-setting by movements, and the framing of issues in a way that
makes claims more receptive to other stakeholders. It details the organizational-framing aspects of gender-and LGBTQ civil society groups, whereas queer theory adds a critical perspective to the binary conceptions of gender, hetero-homo-relations, and the ‘queering’ of the national through the EU’s supranational involvement in policy processes. Queer theory is a diverse body of literature, but in the narrow focus applied here, it relates to activism that grapples with similar issues of ‘single-issue activism’ (by lesbians, gays, transgender, HIV/Aids groups) as opposed to a unifying umbrella conception that lays bare the dichotomy between a queering universality of rights and a homo-normative minoritization (Yekani, Elkan & Michaelis 2013). It also exposes the alleged attempts at ‘normalization’, on which much of the equality movement-discourse in Europe and elsewhere is based and which queer movements generally resent in their desire to remain alternative or different in society. Thus, by combining one ‘applied’ body of movement-literature with more ‘theoretical’ queer theory, I intend to open up new venues for analysis regarding the interactions of these groups, and probe those in regards to neoliberal assumptions about rights attainments. Feminist literature is tangentially important insofar it serves as comparator to the LGBT- and Queer Theory one.

I focus primarily on external representations of those groups (differences), and the resulting repercussions, rather than on their intrinsic characteristics. A focus on the external representation avoids identitive reifications of gender- and sexuality roles and stereotypes. Rather, by capturing the dynamics between claim-making, representation and political outcomes, I hope to uncover if and how transnational LGBT advocacy is different from gender-related politics (even though both are to a certain extent socially constructed), and how certain attributions and characteristics determine policy outcomes at the EU level. Both are heavily intertwined, though: it is fairly uncontested that, for example, “women’s rights and lesbian rights are inextricably linked in substantive way, not least because the defense of lesbian rights is integral to the defense of all women’s rights to determine their own sexuality” (Elman 2007: 118). But gender and sexuality-rights groups continue to experience different standings within the EU rights regime, with ensuing consequences for policies and rights attainment.

As for gender politics in the EU, Woodward (2012), in a summary article, highlighted four areas that are particularly relevant for research and policy on this topic: Representation of women in decision-making, EU gender equality policies, the European Welfare State, and the international gender experience. Whereas the first two components are fairly straightforward and could be considered a success-story, given the increase in female parliamentarians and leaders, as well as the progression of EU-mandated gender equality directives and gender mainstreaming across all EU policy areas (though
the latter has been viewed as soft law and thus, too easy to avoid by national governments), the latter two are more problematic, as welfare state reforms also had detrimental impacts on women. In addition, despite the fact that the EU wants to export ‘gender justice’ through development aid and conditionality on association programs, the transformative momentum of the EU diminishes when no concrete membership incentives exist. Applied to LGBT advocacy in the EU, except for the equality directives under review here, theoretical differences between political representation as an advanced status and antidiscrimination as a more basic one should be noted. Few guiding principles transferable to policy practice exist, neither with regards to LGBT representation in the EU – except for the European Parliament’s LGBT-intergroup made up of legislators from various countries & parties, no other institutional representation exist- nor with LGBT policy effects on welfare states and even less so with the EU’s international advocacy of LGBT rights in third countries (sometimes termed ‘homo-colonialism’ for its liberal-interventionist impact on post-colonial societies). With regards to the latter, while the Union has certain leverage over aspiring member countries that want to join the bloc and thus are required to integrate existing anti-discrimination clauses, once states acceded they sometimes retreat on rights provisions: six months after accession, Croatia imposed a same-sex marriage ban by referendum. Moreover, the explicit LGBT-friendly rhetoric of the EU in more distant regions elicits increasing pushback by, for instance, African or Asian states who decry such ‘homo-colonialist’ discourse.

In the case of the comprehensive horizontal anti-discrimination directive, the European Parliament is overwhelmingly in favor of this legislation, but needs to rely on the state-led EU Council which prevents it from passing. By these existing policy-benchmarks, then, the success of the women’s movement has relatively few inducements for emulation by the LGBT movement.

The EU’s history of anti-discrimination policies is legally based on the single market legislation, and as such automatically narrows legal rights against discrimination to employment- or market-related issue areas. Neoliberal policies have been appropriated by Brussels early on and it is in that area that the EU is strongest in terms of policy initiation through the European Commission and supervision, through the Court of Justice. Of the four existing anti-discrimination (Racial, 2000 Framework, Sex Amendment and the Goods & Services) directives- the EU’s most stringent legal instruments – the last two specifically aim at the equal positioning of men and women in the workplace and private law. The 2000 Framework directive encompasses a variety of intersectional grounds, albeit only in the narrow employment area. In contrast, legal cases that have in the past few years appeared in front of the European Court of Justice, led to a subsequent gradual expansion of LGBT rights through the provision of civil union rights on equal status with marriage rights, asylum-claims based on sexual discrimination,
and in other non-employment based areas. On a broader societal level, hundreds of LGBT-associations and INGOs can be found across EU member states that aim in a two-track way to influence national public attitudes and legislation. These national and regional organizations are linked up with umbrella-organizations in Brussels (such as the in LGBTQ-affairs dominant International Lesbian and Gay Association, ILGA-Europe) to lobby the major EU institutions, especially the Commission as the EU’s executive. Their work, while difficult to measure in terms of legal or political output, advances through auxiliary输入-measures on both, the state and EU level, the acceptance of said minorities. While the EU can generally be classified as progressive in LGBT-affairs, the legal limitations of the Single-Market, and the pushback by member states, remain obstacles to the achievement of substantive anti-discrimination and equality (similarly to gender-based groups, for example in the debate about the Commission’s proposal to mandate gender-quotas on executive company boards across the Union).

Research on the progression of LGBT movements and policies tends to focus primarily on the fairly strong impact that movements have on political decision-makers -few of which are openly GLBT, either on the national or European level- and resemble more closely the women’s movement of the 1970s. Back then, the LGBTQ movement was just emerging, whereas the feminist movement had already been experienced various ‘waves’ of political activism by then. What emerged in San Francisco and New York also resembled for the most part earlier feminist attempts of societal emancipation: mainly driven by white, heteronormative men, it largely aimed more at inclusion and representation than the appreciation of difference. This changed only with the aids crisis, when the ‘gay disease’ declared LGBT as abject by the majority population and in turn, queer activists vocalized their differences with an exclusionary mainstream society. It seems ironic that today’s largest LGBT activist groups seem, as Stein (2012) perceives it, to advocate “normalization as the price and ticket to success” (189), i.e. the inclusion of marriage equality, adoption and other hetero-normative elements into their policy stances. Such an adaptive approach is also being pushed by large parts of the media and the businesses, both of which have to gain from the normalization and inclusion of this particular constituency into the consuming masses (all the more because gay and lesbian couples, in contrast to transgender or queer populations, are viewed as relatively affluent ‘double-income-no-kids markets’ themselves). The more radical view of Gilreath (2011) in her ‘End of Straight Supremacy’ similarly objects to this adaptation to straight norms and pushes for ‘substantive equality’ abolishing the many

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2 The Council of Europe (unrelated to the EU) maintains the European Court of Human Rights, which also provided LGBT friendly judgments in the past. However, these are to correct national laws and actions and thus lack the EU-wide application provided by the EU’s Court of Justice.
socially-constructed binaries and dichotomies (straight/gay, pornography/death, speech/hate, etc.) instead of the now straight-abrogated ‘formal equality’ of heteronormative rights.

In the EU, there still exists a marked difference in the legal recognition of gender- and LGBT rights, not only in the degree of protection, but also in the application sectors in which Brussels needs to justify any initiative with recourse to market liberalization and – improvement. In practice, that means that while sexual and gender rights are officially protected in the employment-sector through so-called ‘framework directives’ that need to be adhered to by member states, the more comprehensive horizontal directive protecting LGBT and other individuals in all areas of EU competence such as housing, education, access to services etc. has been languishing since 2008 because of the resistance of 8 member states (ILGA Europe 2013). ILGA Europe, together with the Social Platform representing 47 major social INGOs, publicly pressed the case for the broader anti-discrimination directive. Ayoub and Paternotte (2012) show nicely how LGBT advocacy groups have consistently linked EU rights norms and values to their own political agenda, and had not only success in the liberal-democratic Western European part, but also increasingly established such linkages between LGBT friendly norms and EU integration in Central- & Eastern Europe, despite the relatively homophobic socio-political climate there. However, the primacy of transnational activism outweighs and distinguishes LGBT advocacy from feminist or gender policy advocacy, which seems as much state-oriented as it is transnational. There are two major reasons for this difference: Unlike the apex of women’s rights activism in the 1960s to ’80s, LGBT activism operates in a thoroughly globalized social network and media-based environment, which aids in the pursuit of collaborative transnational network activities among civil society groups. Particularly in the EU context, this led to a strong independent as well as EU-supported transnational activism when conducting institutional lobbying or public campaigns. On the other hand, the women’s movement started in its earliest configurations out as a movement for the right to vote, and as such was/is interested in sending representatives to the political instances such as cabinets, courts and parliaments. It has to be noted, though, that this difference may be not only due to the fact that the LGBTQ community does not have to deal with such substantial discrimination, but that there is more easily detectable visibility in terms of gender than in terms of sexuality, which will be problematized in the next section in greater detail.

Are particularism, (in)visibility and difference problematic when pursuing LGBT policies?
Particularism, defined here as a unique quality or characteristic that is being expressed and reified on a variety of personal, collective or national levels, proves to be an ambiguous strategy for achieving sexual rights. It can be stigmatizing in its stereo-typing nature, particularly when cultural homophobic norms are extenuated through ‘state sponsored homophobia’ (Holzhacker 2012), as is occurring in many Central- and Eastern European countries. Conversely, LGBT individuals as a category may be pressured to fit into a heteronormative copy of traditional societal structures, or defamed as an abject sexual ‘other’ when speaking up: “the paradox that you can only get rid of oppressive dichotomies by affirming the subordinate form in order to challenge the hegemonic term is one that continues to haunt the radical agenda” (Weeks, 7). In a more benign form, state particularism manifests as a way to lead through progressive domestic implementation the collective group of 28 EU member states: the degree of ‘state feminism’, for instance, is said to be a decisive factor in how substantive gender representation and equality can be achieved and diffused (Mazur & McBride, 2012). It has also been suggested that EU states historically adhered to a universalist versus differentialist model of sexual inclusion (Banens 2014)– though this refers more to a state-particularism rather than a group-particularism. An issue-specific particularism, e.g. in respect to gender-or GLBT movements, can thus mitigate the potentially detrimental excluding nature of societal mainstream norms if adopted and supported by equality state bodies– and by extension, by EU institutions or agencies such as the new EU Fundamental Rights Agency, which aims at the promotion of general human rights in the EU following the incorporation of the Fundamental Rights Charter in the EU’s latest ‘Lisbon Treaty’ of 2009. Yet at the same time it highlights and exposes through the special treatment of these individuals politicized issues related to sexuality and gender that in the past had either been ignored or left in the private realm.

Related to issues of particularism are questions of the ‘visibility’ of the LGBTQ population. Such visibility issues are two-fold, on the one hand referring to the fact that sexual orientation, unlike race or gender (in most cases except for transgender or genderqueer individuals), can be hidden and is not an easily detectable identity-marker to the outside world. Hence many policy-makers themselves regularly hide their sexual orientation in order to advance their political careers, and thus delay or negate political representation. In a hetero-normative climate such as electoral politics, this creates a vacuum in terms of influence and representation. Not only that, many policy makers do not even want to be associated with groups such as ILGA-Europe or other LGBT INGOs. Though this is more problematic on the national level where popular reelection features more prominently – as opposed to many EU institutions that are unelected and delegated by member states. The same invisibility exists in the private sector, where about one third of employees are still closeted, and almost none of the major company executives are
out (Economist 2014). This generalized invisibility prevents the creation of a more tolerant public sphere in which an array of sexual and gender expressions are publicly displayed and subsequently accepted.

On the other hand, within the LGBTQ demographic there exists a familiar hierarchical positioning that relegates for example lesbians behind gays in terms of socio-economic visibility in the wider population, and transgender and bisexuals even behind both categorical sexual dispositions. The latter are less visible and often, not even fully accepted within the LGBTQ community. Such divergent experiences and social standings do not easily cluster together, and continue to weaken the standing of LGBTQ populations, particularly as it relates to the creation of transversal-tolerant attitudes and policies encompassing difference. And as the gay and lesbian movement advances in the attainment of marriage or adoption rights, transgender individuals decry being left behind when it comes to more fundamental workplace protection rights or access to healthcare. In this sense, the general pressure for political representation is a real challenge to, for instance, transgender constituents, who often experience disidentification, hyper-visibility, transitional temporality, or ‘passing’ in their everyday environments (Sjoberg, 2013) – something that I found confirmed when conducting interviews with transgender groups that were not participating with other pan-European civil society groups in the EU Fundamental Rights Platform. The consequences of such modi are multifold and can be used to further IR theorizing in terms of moving away from established categories of self- and political representation and towards more fluid ambiguities, as will be recapitulated in the concluding section.

Thus, is (perceived) difference an important criteria for the differential treatment of women’s or LGBT groups? The latter group clearly oscillates between normalization and assimilation, and radical queerness in its self-positioning in society. Similar to the visibility issue, the question of the degree of desired inclusion/’normalization’ and remaining difference produces an advocacy setting that is quite different from the gender equality one. Gender equality groups were traditionally more concerned with equal status, and are overall more coherent than contemporary European LGBTQ communities. The latter fluctuate between assimilatory inclusion in all sectors of society, and expressive radical queerness that revolts against traditional societal norms and neoliberal commodification of both, consumption and family status. This becomes particular pronounced in the current decade, where both political orientations are quite visible, and pushed by actors themselves, as well as by the surrounding socio-political environment. It is noticeable that the younger ‘millenial’ generation of LGBT does not necessarily seem to pursue expressively political goals of emancipation, equality, or recognition of being different, but rather promotes an all-inclusive and personalistic stance on gender and sexual orientation
issues: for the LGBTQ generation coming of age in Europe and the US, it’s not a question of specific social and political expressions, but rather an open and fluid identification that possibly should not become a political issue and thus overcome some of the ‘labeling’ issues in the LGBT community. Such ambiguity, as much as it is helpful in expressing the diversity of LGBTQ voices internally and to the broader society, is moving away from stated political goals and rather, views acceptance of a wide range of lifestyles and individual expressions as more important (New York Times, 01/10/13). This has a potentially detrimental effect for a focused push for more political equality and representation, as it could open up LGBTQ-internal or -generational schisms and in the course, dilute the combined force of political campaigns structured in the EU predominantly around equality for gays, lesbians and more recently, transgender individuals.

Internationally, a similar conception of the terminological volatility of strong notions of ‘gender identity’ or ‘sexual orientation’ in human rights discourse emerges. Waites (2009) emphasizes the centrality of those two notions in contemporary human rights discourses, but also highlights the problematic nature of these in reifying binary, rigid matrixes and thus, problematizing and securitizing relatively fluid identitive concepts (sexual ‘orientation’, rather than expression or identity; or the use of ‘gender identity’, presuming a clear identity). They also exclude other important ones, such as bisexuality or transgender. In global forums such as the United Nations, a resulting split between the more tolerant countries and the more culturally conservative countries is visible on this issue, and becomes reinforced by the advancements of liberal democracies, that then lead to a similar pushback by member states, just as in the EU. Global queer politics by LGBT activists and human rights groups, then, should in his view move towards contesting the excluding and problematizing nature of such fixed, politically instrumentalized notions in the international community, including in the UN and the EU. Yet while theoretically stimulating, it is questionable that such identitive openness is something that the majority of countries globally can be open to, given that much of the binary and homophobic discourse was spread globally by the colonizing West in the first place.

Aside from issues of particularism, visibility and difference, are there other factors that influence how a sex rights regime will be articulated or influenced? It seems that organizational-institutional aspects on the receiving end of the organizations and institutions are also of significant relevance, thus the next section details some of the particular context in which EU anti-discrimination and gender/sex rights policies are developed.
Are organizational-institutional differences relevant?

Organizational-institutional differences in the EU occur on both, the national and supranational level. As such, the various policy-traditions and political cultures in large part determine the complex multinational, multi-level political environment in Brussels. So, for example, exists a variety of recognized same-sex marriage statuses across the EU states, ranging from full marriage in less than a handful of states (the Netherlands, Belgium, Spain, Portugal) and (un)registered partnerships to no recognition of such partnerships in some Southern and Eastern European member states. The only way in which a harmonization in EU member states can occur is through the application of the anti-discrimination framework directive, and through European Court of Justice judgments against member states that are heeded by other ones in order to avoid tensions with Europe’s most powerful court.

The institutional constellations within the EU system lend different opportunities to LGBT groups that aim to pursue more favorably policies and legislation: the preeminent European Court of Justice is viewed as the main provider of equality law when adjudicating issues of same-sex relationships, for example, that then are diffused to varying degrees throughout the EU depending on the extent of national pushback (Kollman 2009). In the executive and law-proposing EU Commission, which sees itself as the guardian of the EU-treaties (including the Fundamental Rights Charter and its Article 21 prohibiting discrimination based on sexual orientation), rights considerations have increased steadily, so much so that after the passing of the latest EU Lisbon Treaty of 2010, which made the Rights Charter legally binding, any new laws are supposed to be reviewed with the help of a ‘rights impact assessment’ to check for possible negative rights implications of new EU laws. In terms of advocacy group involvement, the support from the Commission is mixed: while it is vocal on norms, it has few means and little impact on getting states to actually comply with LGBT-equality laws. But the Commission regularly consults formally as well as informally with various rights advocates, elicits their input in online consultations, and materially support a number of LGBT groups. ILGA Europe as the largest one, for instance, receives core funding since 2000. In the European Parliament (EP), the LGBT intergroup made up of parliamentarians from different parties is very receptive to equality policies and is in close contact with umbrella INGOs based in Brussels, but has even less influence (over member states), and can only assist in making amendments or raising issues in the legislative process when new
laws are being proposed. The last major institution in the Union, the nationally-dominated European Council (which co-approves legislative proposals with the Parliament), remains the bastion of state sovereignty and intergovernmental bargaining, and as such is closed to non-state actors and not particularly receptive to any rights-related ‘intrusion’ into domestic policies. In particular, the more politically-economically powerful countries as well as the newer member states achieve opt-outs or signify their discontempt and non-agreement, be it because they fear interference into national matters, or because they still need to be socialized into the EU’s normative structure. There are also minor committees (of regions, social) and semi-independent agencies (EU Fundamental Rights Agency, EU Gender Observatory), but these are largely of auxiliary nature with limited impact on the legal-political provision of rights.

These institutional structures are similar in terms of power when applied to either gender-or LGBT-based provisions. What, if any, differences do these organizational-institutional setting produce when dealing with these somewhat different constituents? While the exertion of legislative EU power institutionally remains the same in both cases, differences in the treatment of LGBT groups become somewhat distinct from gender-based ones in that the national governments still continue to contest sexual orientation EU anti-discrimination directives on a variety of cultural or instrumental grounds (EU Observer 2012, ILGA Europe Rainbow Map 2014), and guard their own constitutional prerogatives carefully (for instance in family law, which often has negative repercussions for transnational LGBT couples residing in a country with such a restrictive law). So, for example, do 11 of the 27 member states not recognize gay marriages or partnerships from other EU states as family law is still largely a domestic affair unless contested at the Court. Gender-based antidiscrimination policy has been more or less successfully established with the passing of a gender-mainstreaming policy for all EU policy sectors following the Amsterdam Treaty of 1997, but we have not yet seen a similar LGBT–mainstreaming. The European Parliament has repeatedly requested a ‘roadmap’ for LGBT rights ranging from anti-discrimination to marriage rights (European Parliament 2013/2183), but given that it’s scope goes beyond the horizontal framework directive, it has not found the support of the Commission or the majority of member states. It is difficult to estimate the impact of such roadmaps, which on the one hand may lead to a more stringent anti-discrimination policy across the EU, but on the other hand represent a particularistic instrument that heightens the public and extra-ordinary visibility of an already politicized demographic (similar to the EU’s roadmap for Roma inclusion).
Attempting to theorize these institutional politics, Holzhacker (2012) extends Keck & Sikkink’s classic ‘boomerang model’ of pressure-inducing state-NGO-interaction when adding the ricochet process as ‘powerful transborder, transinstitutional circulation of information and argumentation between institutions and civil society’ (2), which amplifies the pressures when striking multiple institutional actors simultaneously. He makes an interesting case for LGBT groups using the basic civil ‘right of assembly’ to advocate publicly for their policy stances in less friendly states. Holzhacker correctly identifies the ricochet as a multi-actor, multi-level involvement process to convince state actors, but it is not quite clear how such a strategy could apply when faced with the EU as somewhat sovereignty-amorphous, supranational governance body. LGBT equality INGOs such as ILGA Europe, though, are consistently playing a two-level game when they address both, the EU institutions, as well as the member states themselves, and criticizing either one for failure to protect or implement LGBT-rights. And in fact, ILGA Europe is also expanding its transnational activity focus from NGOs from 28 EU member states to 42 European states that participated at their last conference, covering non-member states and aspiring candidate countries as well, and thus preparing the ground for a pan-European socialization, social learning and information exchange (ILGA 2012).

Following this logic, Santos (2012) has examined the strategic moves of South European LGBT movements in pursuing rights equality, and has found that despite the variety of impacts or outputs on the various national levels with regards to the political-legal recognition (successful in Spain and Portugal, not so in Italy), an input-oriented analysis avoids a misinterpretation of ‘success’ on the political-legal level. She finds a novel advocacy form of what she terms ‘syncretic activism’, which highlights equality goals rather than the ideological content in order to progress, as well as the removal of binaries and insider/outside-boundaries, for example through the involvement of straight allies. Her findings may prove insightful for IR theorizing in that it is going beyond established boundaries and binaries (input/output, straight/gay), but it is doubtful that such movements by themselves can exert sufficient pressure (aka input), when not transformed into longer-lasting NGOs or advocacy groups. And the fact that states continue to have different same-sex partnership regulations is a reminder that the national political level is still relevant.

Lastly, in my own research on the involvement of rights-NGOs in the work of the EU Fundamental Rights Agency, I found no significant linkage between gender- and LGBT movements (though they tend to support each other’s stances, and are now more focused on the EU-favored ‘structural antidiscrimination’ concept).
civil society platform elicited major pushback by other, more conservative human rights NGOs that felt neglected by the relatively visible LGBT agenda in the EU. But even a women’s group representative lamented in an interview that the EU’s ‘equality-for-all’ agenda delimits or denies a gender-specific lens. That is important, as it shows that in recent years, a more generalized – and maybe less politicized?—human rights discourse has become established in Europe that favors a transversal broadening of basic rights protection, as opposed to a particularistic focus on specific constituencies (Thiel 2014). Such broadening is obvious when considering the increase in civil society actor constellations, and the resulting competition of INGOs or states with each other. But it still leaves one with the dilemma of the need for focused sector-specific rights provisions to be balanced with changing LGBTQ-internal and more generalized human-rights ideas that presuppose an ‘equality-for-all’ agenda.

Rights attainment: subordinate to neoliberal market-policies?

The preceding sections already hinted at the sometimes competitive, sometimes contradictory claiming of rights differentiated according to the needs of the EU’s regional integration project. Among the socially progressive NGOs, LGBT groups compete but also collaborate with women’s groups, and among the grouping of LGBT advocates one finds a wide array of civil society actors that pursue everything from heteronormative assimilation to radical rethinking of patriarchal, traditional societal structures. ILGA Europe as the largest umbrella organization towers over the latter, trying to combat a ‘hierarchy of rights’ that as of now prioritizes race and gender anti-discrimination over sexual orientation in EU policy. Within the EU’s LGBTQ population, however, gays and lesbians are in a better position to be politically represented in terms of visibility, difference and significance for the single market project than the largely invisible bisexual or transgender constituents. And Queer political tactics that involve exposing, subverting and replacing heteronormative policies with more fluid ones often contain an inherent critique of the consumerist-capitalist society, but are not appreciated in a system in which civil society groups have to be viewed as reliable partners if they want an ear with the EU institutions (Beger 2009). The EU’s liberalization and competitiveness mantras makes transgender populations particularly vulnerable as they don’t easily fit into the gender-binary stratified labor market, though their transformative experience can tell us much about, for instance, the experience of women and men in the workplace before, during and after transition. To be fair, large European companies are on the whole progressive, sometimes more so than the states they are based in, in an effort to recruit the best and brightest.
In the ideological bent of the EU’s Single Market creation, ‘the market’ is not necessarily being anymore regulated by governments, but now the state has become embedded in the regionalized market, thus reversing the original postwar structural linkage (Streek 2000). This has led to a diminished control over economic policies, but also over social and related policies by governments. But it also means that through the apparent weakening of a country’s sovereignty through the regional market nationalist discourses emerge that decry the intrusion of the EU in economic, but also in LGBT-rights related matters. This is particularly evident in the member states that have more recently joined.

Edwards and Hulme (1995) add another critical perspective on the rise of NGOs under such neoliberal conditions. Convinced that markets and privatized service provisions are more efficient providers of welfare, NGOs are increasingly being funded by states and government agencies outsourced to the private sector (4). This shifts more responsibility onto the shoulders of civil society, while the state (or the EU as a conglomerate of states) retreats and absolves itself from its fundamental goal of securing the welfare of its citizens. In practice, many umbrella NGOs and civil society groups are materially supported by the European Commission, but their objectives accordingly need to fall in line with the EU’s funding preferences, which increasingly are formulated as the reintegration of vulnerable/at-risk individuals into the labor market. Thus, their focus is being shifted from the recognition and combatting of poverty and exclusion to the superordinate goal of increasing the labor participation rate. Moreover, given the EU-specific origin as a free market, those groups are pressured to prioritize market-principles (labor participation, making individuals more competitive), while becoming more dependent on governmental or EU-funding and as a result, less independent and without real decision-making power over policy implementation. At the same time, they represent part of the privatizing retreat of governments in social and welfare sectors. LGBT groups are no exceptions to this: if they want to retain funding from major EU funding lines such as the Progress Program or the European Social Fund, groups such as ILGA Europe have to link anti-discrimination activities towards achieving more inclusive workplaces, and more employment generally. Alternatively, they are increasingly challenged to diversify their funding so as to become less dependent on Brussels.

To recapitulate, the association of LGBT rights groups with EU funding instruments is a precarious one. The increasing dependency of such groups on neoliberal EU imperatives produces another hierarchy of rights which relegates social inclusion, equal rights and justice at the bottom. More broadly, the EU’s erosion of national governance signifies the retreat of the state from its traditional protection of civil welfare, exacerbated by the mislead austerity programs prescribed by the EU as a
remedy for the Euro-crisis (LeGrain 2013). What is worse, the transnational capitalist class takes advantage of the EU’s Single Market to create further policies that reduce national protections and increases competitive pressures on the general population and in particular, on the more vulnerable ones.

**Conclusion: challenging rights-based and market-based hierarchies**

The working out of different characteristics of the two groups under observation, gender and LGBT, should not be viewed as eliminating the intersectional connections that can result in multiple discriminations for individuals belonging to both categories. Given limited material and informational resources, the problem of treating both groups as separate, or in a hierarchical manner, becomes obvious. As Elman states, “without a greater willingness to confront contexts where gender converges and/or collides with other identities, those tasked with implementing equality will continue to wonder how to balance the needs of women with everyone else” (161). Applied to the EU context, those subtle differences in terms of policy reception by EU institutions may thus be amplified, and can have adverse effects on the impact of claim making and agenda-setting of the various groups, such as European Women’s Lobby, or ILGA Europe, which have to adhere to the mandate given by their chapter-members and have in practice little interaction with each other (aside from irregular exchanges and a common agreement on fighting ‘structural discrimination’).

In addition, the EU’s largely neo-liberal orientation means that equality provisions, in whatever form perceived, are largely evaluated on market-based terms. This puts women in a higher hierarchical status followed by gay men, because they represent a larger constituency and are easier to categorize than the increasingly diverse LGBTQ community. In addition, the Eurocrisis resulted in EU funding for social inclusion that prioritizes the young or long-time unemployed (some of which may be LGBTQ). Queer theory reminds us that such power-structures and reifications need to be challenged on both, essentializing and marketization grounds (Yekani, Elkan & Michaelis 2013). It also signifies that a substantive engagement with and reflection of normativity is needed, in the way neoliberal heteronormativity is desired by EU-stakeholders and accordingly (re)produced or challenged by gender/sex-based rights groups. The same can be said about the assumptions regarding the well-earning white gay double-income-no-kids consumer elite. Thus, the equal treatment of both may not be realizable, after all, as it is differentiated according to consumption patterns. A Queer perspective is
important for a critical reflection on the desirable, but also politically expedient normalization of non-
traditional sexualities, though in practice such groups’ critical or corrective function is underutilized in an
effort to gain political support as an EU ally.

It appears, from a synoptic review of the preceding analyses, that a qualitatively different LGBT-
movement may take shape that values expressions of internal diversity and the advocacy of more
generalized as well as individualized tolerance more than the pursuit of strategic political goals. This may
have a positive impact on anti-discrimination more generally, but detracts from a concerted effort for
LGBT rights. Sexual rights as such are not well recognized in the EU as a focus on neoliberal anti-
discrimination policies prescribes a particularistic approach towards affected minorities, while trying to
balance normatively a transversal ‘equality for all’ agenda. In a similar manner as the feminist
movement, which over time became more diverse and emphasized intersectionality, the LGBTQ
movement has attempted to become more inclusive, internally, but also became more amorphous with
the rising influence of the ‘millenial’ generation that tends to display more personal-individualistic as
well as more gender- & sexually ambiguous views. Hence, with time, transversal attitudes may give
shape to transversal politics, aiming to expand notions of generalized sexual rights that should be
accorded in a more universal and at the same time, individualistic manner. A move away from identity-
(sexual orientation or gender-based) conceptualizations of sexuality and the pursuit of sexual rights and
overall equality also opens up a window for broader coalition building with other social or straight allies.
NGOs such as ILGA Europe, for instance, have started to build coalitions with 8 major umbrella
organizations when addressing the EU institutions.

In terms of novel ways of IR theorizing that could be deduced from this research, the increasing
‘queering’ of the LGBTQ movement and ‘its’ (if ‘it’ exists as a collective whole as such) position on
claiming equality – or maybe rather, individuality and expressive freedom – highlights on the one hand
the de-politicizing effect of the advancement of such rights in the Western neo-liberal democracies, i.e.
the retreat from political activism in view of increased inclusion and progress on rights claims as
opposed to the vocal claims of representatives from more oppressive societies. It is hard to predict at
this point to what degree openness in more traditional-religious but liberal societies such as US, Spain,
Argentina or Mexico that have granted significant equal rights to LGBT groups will affect the diffusion of
sexual expression rights globally. If sexual rights are to follow the relative success of women’s rights, the
current same-sex rights-wave across the (Western) world, led by liberal democracies and post-
authoritarian systems, may present a global opportunity window for advocacy of those across the
globe, but may also lead in the course to a higher degree of internal (homonational) and external (homocolonial) contestation.

The changes in (self)representation of LGBTQ groups also concur with what many theorists (Sjoberg, Waites, etc.) see as the need to critically analyze the reification and ossification of social realities that are of predominant concern in IR. Just like ‘gender’ or ‘LGBT’ are increasingly contested positional-representative categories, IR concepts (war, liberalism, international community) and paradigms are often taken for granted and disciplinarily reproduced so that they achieve almost hegemonic status and don’t allow for more marginal, exceptional instances. If the purpose of social activist is to achieve change that’s favorable for underrepresented minorities, and the objective of queer theorists is to highlight the negative implications of hetero- and homo-normativity, then research that includes such subjects and challenges us to reevaluate accepted norms and concepts (such as in this case, the nation, markets, human rights, etc.) is relevant in keeping ‘the discipline’ of IR alive. But these non-conform strands also challenge analysts and thinkers to arrive at new ways of critical inquiry that goes beyond deconstructing and relativizing, as much of Queer Theory has done thus far.

In sum, it appears that the LGBTQ community slowly takes a different shape towards a more individualized, but also less cohesive constituency, that experiences simultaneously a wave of positive or negative attention by governments and intergovernmental organizations such as the EU or UN. The transnational strength of LGBTQ advocates, embedded in the neoliberal global market and the ‘human-rights industrial complex’ (Puar 2013) not only changes the way states operate and regulate minority affairs, but seems to have also left already an impact on non-traditional IR theorizing.

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