

EUROPEANIZATION THEORIES AND THE DEVELOPMENT OF EUROPEAN
UNION INTELLECTUAL DISABILITY NON-DISCRIMINATION POLICY

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ABSTRACT

JENNIFER SLADEN: Europeanization Theories and the Development of European
Union Intellectual Disability Non-Discrimination Policy
(Under the direction of Liesbet Hooghe)

This thesis examines the extent to which certain conditions (economic and human rights ties, established/coherent social movements, and court cases) mentioned in Europeanization theories explain non-discrimination policy development, utilizing a qualitative case study of European Union (EU) intellectual disability (ID) policy. I find that 1) economic ties explain initial but not widespread ID-related and ID-focused policy development; 2) human rights ties have positively impacted the development of EU ID-related/focused policies but this impact does not imply policy definition; 3) the relationships between social movements (as opposed to social movement coherency) have resulted in both furthering and stifling EU ID policy development; and 4) the lack of previous implementation of non-discrimination directives (particularly regarding legal incapacitation) and the use of an historically and policy inappropriate definition of disabilities has stifled the positive effects of court case prevalence on ID policy development.

PREFACE

When I was 11, I began volunteering in the intellectual disability (ID) community in my hometown, participating in Christmas parties, banquets, and landscaping projects for clients' homes. When I turned 19, I became employed at Easter Seals/ARC of Northeast Indiana. There, I worked with persons with ID in many sorts of settings: residential services (group homes, Medicaid Waiver, and two to three person households); employment services (supervising in the contained workshop for clients); and care programs (for more elderly or very low functioning clients who were unwilling/unable to work in the workshop). For my job, I took my clients out to dinner, movies, shops, sporting matches, health care appointments, and other such community events. As a result of my work, I began to notice my clients and people with ID more and more when I was out in the community.

During my time spent in Europe,—in the United Kingdom (UK), Belgium, and the Netherlands—I have noticed that people with ID have different levels of visibility in society and that different care models exist. I became intrigued by these differences and began to do research exploring these distinctions further. During my studies of the European Union (EU), I began to wonder why ID policies—specifically those supporting social inclusion—were not a focus of European integration. This project attempts to better understand the reasons for this lack of development in order to understand not only

the theories regarding conditions for EU policy development but also how they apply to this specific case. On a personal note, this research is in some ways a tribute to those friends and clients I have met over the years. It is my hope that highlighting this issue may make some small contribution to the betterment of the ID community.

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LIST OF ABBREVIATIONS

EDF	European Disability Forum
ECJ	European Court of Justice
EU	European Union
ID	Intellectual Disability(ies)
NGO	Non-governmental Organization
TIDE	Technology Initiative for Disabled and Elderly People

I. INTRODUCTION

In the Treaty of Amsterdam, the EU strengthened its commitment to its citizens' fundamental rights by explicitly prohibiting discrimination based on gender, race, religion, disability, age, and sexual orientation. This commitment to non-discrimination was reaffirmed in the 2000 Charter of Fundamental Rights of the European Union, which reiterated European citizens' rights to human dignity, life, and "integrity of the person" as well as social and economic rights to strike, work, healthcare, and social assistance (European Union 2009). Since this affirmation, the EU has instituted some non-discrimination legislation to help ensure equal treatment and protection of its citizens. This legislation includes funding projects and training activities; carrying out research, awareness-raising and information campaigns; supporting the development of civil society organizations; instituting expert groups to examine the impact of national and EU-level non-discrimination measures, evaluate these measures' effectiveness, and validate good practices; and implementing EU directives on non-discrimination (European Commission 2009b). However, this policy development does not extend to all non-discrimination policy areas.

This thesis examines the extent to which current Europeanization theories' conditions regarding policy development (economic and human rights ties, court case

prevalence, and the presence of an established social movement) can explain (the lack of) EU non-discrimination policy development. This project is important for two reasons. First, the analysis of the theorized conditions can affirm, reject, or amend their validity and provide a small insight regarding why European policies do or do not develop. Second, the better understanding of why such policies do or do not develop (either at all or significantly) can be utilized by interested parties in order to impact policy development. For the case utilized in this project,—intellectual disabilities (ID)— the better understanding and the application of Europeanization theory to ID policy may point to further avenues for action, lobbying, or awareness-raising.

To examine this relationship between policy development and the conditions mentioned in Europeanization literature, this thesis proceeds as follows. First, Europeanization is defined and limited in order to better isolate European policy development. Second, the conditions for Europeanization mentioned in the literature and the thesis's methodology are elaborated. Finally, the case of EU ID policy development is presented and results and conclusions are derived.

II. EUROPEANIZATION

Generally, Europeanization refers to transformations brought about by the EU's increasing influence over European member-states' policy decisions. However, the concept itself remains relatively ill-defined in Europeanization literature. In this literature, Europeanization has been used to refer simultaneously to the development of European policies; to national-level policy convergence as a result of EU policy; to member-states' ability to push national policy to the European level; to the socialization of EU and national elites; to modernization or Westernization (including democratization); and even to policy learning, emulation, and transfer between member-states (Wong 2005:140). Because of the wide range of meanings and processes referred to be these usages, this concept needs to be defined and limited for the purpose of this thesis. Consequently, this thesis defines Europeanization as the process by which domestic policy areas become increasingly subject to European policy-making (Börzel 1999: 574). This usage allows for the isolation of EU-level policy development as a central focus in line with the research topic. While other directions of change may still occur and be applicable to the case of ID, these elements are not studied extensively in this thesis.

III. CONDITIONS IMPACTING EU POLICY DEVELOPMENT

In Europeanization literature, a number of conditions have been argued to impact policy development. This section outlines four such conditions: (1) actual and perceived ties to European economic policy; (2) the use/effectiveness of a human rights frame; (3) the presence of an established and coherent social movement; and (4) the prevalence of court cases.

Ties to EU Economic Policy

According to neo-functionalist theories, the closer the actual and perceived ties between a particular non-discrimination issue and monetary/economic markets or policies, the more likely the Europeanization of the issue. In theory, this tie exists as a result of spillover effects where previous integration, particularly in the economic area,—the central focus of European integration—intensifies pressure for contiguous areas to become integrated (Andreatta 2005:21-21). According to Natali, national policies which relate to market development but are not economic policies per se (i.e. welfare state, health, and technological policies) eventually become delegitimized. This delegitimization occurs because the competing national-level policies appear inefficient and/or a strain in regards to common European economic policies (Natali 2004:1078-1082). These negative perspectives provide impetus for the occurrence of technical and political spillover (Natali 2004:1078-1082; Andreatta 2005:21-22).

However, this spillover can take several different forms. First spillover can appear as spill around, or the growth of a wider policy area without institutional deepening. In this type of spillover, a policy becomes the focus of the European institutions as an intergovernmental rather than supranationally-controlled policy. Consequently, though EU-policy exists, national governments maintain control on the direction and transmission of policies into national legislation. Second, spillover can appear as buildup, where an economic policy moves to the supranational pillar of the EU but does not significantly encourage growth in the related policy areas. Third, formal spillover, where policy extends to a wider arena with greater supranational control, can occur. In this case, the related policies come under the first pillar of the EU, which often results in greater continuity of the policy as well as greater EU ability to direct policy and enforce member-states adherence. Finally, the spillover can result in recession—spill back—of a policy to national control (Schmitter 1970:846, 859-863; Falkner 1998: 8-15).

For the purpose of EU non-discrimination policy development, formal spillover and spill around signal cases where economic ties positively impact EU-level policy development. Based upon these spillover types, two predictions regarding non-discrimination policy development can be made. *(H1) First, where a tie to economic/monetary policy occurs or is perceived, non-discrimination policy is likely to develop (either under intergovernmental/supranational control). (H2) Second, where formal spillover occurs, non-discrimination policy appears more extensively developed and defined.*

Ties to European Human Rights

Similarly to economic ties, the perception and actual linkages between a policy area and human rights may also increase the likelihood of EU policy development. In this case, the effectiveness of frames depicting a particular issue in human rights terms plays upon the EU's increasing participation in social and rights-based issues as opposed to its earlier operation in legal, political, and administrative matters relating exclusively to the economy (Delanty 2007:64-71).

The reason that this tie is effective stems from the fact that the EU's movement towards social and human rights issues is considered the EU's attempt to express and justify its purpose, role, and expansion after the Cold War. During the Cold War, the EU used several different narratives to justify further integration—the importance of Europe as a peace project, as a promoter of economic prosperity, and as an anti-communist bulwark. With the end of the Cold War, the end of the mid-century economic boom, and the death of the generation that lived through both World Wars, the reasoning for and legitimacy of European integration became increasingly questioned (Elbe 2001:263-267; Bickerton 2007:3-4). Consequently, the reasoning and justification for European integration had to be reformulated. Today, the main reasoning/justification coincides with the role of the EU internationally, specifically, as a normative or civilizing power. In its role as a civilizing power, its actions reflect its values and norms, including the adherence and promotion of human rights. As such, the EU links its policies around the world in aid, military support and intervention, and democratization projects to the idea of the cosmopolitan guarantee of human rights (Manners 2006:184; Bickerton 2007:6-22; Linklater 2005:382-383).

While the above-mentioned policies are foreign policies, the use of human rights as a content-based norm supporting the EU's self-conception and self-justification for implies that this norm is important to internal European policies as well. When norms and value preferences become key justifications for an actor's role or identity, then these value preferences also inform policy priorities/approaches as well as act as a guide for policy-making. This occurs because of the development of scripts—manners of reporting, promoting or discussing policy by policy-makers and citizens within a unit—that adhere with and reinforce these norms and value preferences. The EU and its policy-makers view themselves as respecting and promoting human rights. EU citizens and policy-makers report and discuss policy issues and events using language that reinforces this norm. Consequently, the EU—using scripts in its discussions of issues—develops policies that align with or reinforce the norm of human rights protection (Hudson 2007:111-119).

Based on this theoretical tie, this thesis hypothesizes that *(H3) the effective utilization of the human rights frame in a policy area leads to the first (or further) development of an EU-level policy.*

Presence of an Established Social Movement

Another condition which affects the development of a European policy stems from the presence/absence of established interest groups concerning the particular policy area. In this case, the ability of a social movement to raise awareness or influence policy-makers regarding an issue, the social movement's coherency, and the relationship between social movements and public opinion affect EU policy development.

First, the relationship between policy-making elites and a social movement often shades the behaviors and tactics used by the social movement to influence elite awareness. Social movements can utilize both insider tactics—including petitioning government contacts—as well as outsider tactics—like protests and dissemination of new information to the public—to influence policy-makers (Grant 1997:192; Lohmann 1993:319-322; Burstein and Linton 2002:386-387). While all social movements tend to use some mix of insider and outsider behaviors, European non-discrimination groups tend to utilize insider group tactics more prevalently as a result of their relationship with the EU. Regarding EU non-discrimination policies, the EU often employs a corporatist relationship with interest groups, allowing social movements to help carry out reports, monitor member-states, and advise policy-makers regarding policy development (Olson et al 2004:27-28).

Even with this insider role, the effectiveness of the social movement's tactics for swaying elites relies upon the presence of coherent policy preferences as well as the ability to raise public awareness regarding the issue. The presence of clear and coherent policy preferences within a social movement makes a clear snapshot of the social movement's ideology apparent. By presenting clear and uncomplicated preferences, the social movement can more effectively market its issues to elites and the public. In contrast, the lack of clear voice or ideology in a social movement may confuse policy-makers and public opinion regarding the particular issue by presenting too many or convoluted preferences. Worse, this incoherence can splinter the social movement itself and impede the ability of the movement's issue to develop into policy (Oliver and Johnston 2000:40-42).

Finally, public opinion regarding a social movement and its interests dramatically affects the group's effectiveness in attaining policy development. Simply, when public opinion is mobilized on the opposite side of a social movement's particular interests, policy-makers seldom respond to social movement tactics or translate the social movement's policy preferences into action. Alternatively, when public opinion appears ambiguous or favorable, interest groups have a greater chance to affect or attain policy development (Lohmann 1993:319; Burstein and Linton 2002:385).

Based upon these factors, two predictions can be made. *(H4) Where a coherent social movement exists, European policy development is more likely, and (H5) where negative public opinion regarding a particular movement's interests exists, policy development is minimal.*

Prevalence of Related European Court Cases

The final condition argued to affect European policy development is the prevalence of court cases at the European level—specifically in the European Court of Justice (ECJ)—that relate to the particular non-discrimination policy area concerned.

ECJ court case prevalence regarding non-discrimination topics may impact the development (or further development) of European policies in three ways. First, groups (social movements) and individuals may attempt to attain a new European precedent in order to attain legal protection by the European courts in a particular non-discrimination policy area. This could happen both as a result of the ability to raise cases on substantive legal grounds as well as groups or individuals choosing to pursue litigation as a result of the different procedures, publicity, and venues offered at the European-level (as opposed

to national courts). Regardless of motivation, the precedents or attention garnered from European litigation may in turn spur discussion regarding policy-making or further policy development (Vanhala 2006:553-556). Second, the ECJ may impact policy development by utilizing judgments and threats of financial penalties to push member-states and their representatives to comply with or further discuss EU-level policies in a non-discrimination policy area. Finally, the ECJ itself may use a judgment to clarify EU policies and legislation (for instance by defining terms used in EU policies). By doing this, the ECJ itself may extend further policy, raise elites' attention to an issue, and/or motivate EU policy-makers to clarify policies regarding an issue (Panke 2007:849-853).

Based on these theories, this thesis suggests that *(H6) the higher the prevalence of ECJ court cases regarding a policy issue, the more defined EU policy development.*

IV. METHODOLOGY

This thesis tests these theorized conditions and hypotheses through the use of one qualitative case study of EU ID policy development. This section explains and defends these methodological and case selection choices.

Regarding methodology, this thesis analyzes the impact of the theorized conditions through the use of a single qualitative case study. Case study research is ideal for this particular thesis because the wealth of knowledge gained from cases enables the researcher to make holistic, in-depth analyses of a particular issue, group, and/or event (Feagin et al 1991:5-17). This thesis relies upon the ability to investigate and explore in detail the relationships between the several theorized conditions and the reality of policy development. Thus, the rigorous nature of the case study allows for both the in-depth investigation of the conditions as well as the possibility of unexpected conditions, factors, and relationships to affect policy development (Soy 1997). While cases provide great advantages, case reliability and internal validity can be problematic. Consequently, this thesis triangulates data using sources including reports from EU monitoring agencies, EU legislation and policy strategies, activist websites, larger non-governmental organization (NGO) reports, and academic journals and books in order to provide for a more confident assertion of the accurate depiction of the ID-relate policy narrative and the relationships between the theorized conditions and ID policy development.

Some may criticize the usage of one case to test these theorized conditions; however, EU ID policy development has been selected because it appears a critical case to EU non-discrimination policy. ID appears a critical case because monitoring agencies and international organizations have consistently noted the continued discrimination and violations of the rights of people with ID in Europe. In fact, one agency—the Open Society Institute—has claimed that people with ID are the most marginalized and discriminated against people in Europe today (Open Society Institute 2005-06). Echoing the seriousness of this statement, Thomas Hammarberg, the Commissioner for Human Rights at the Council of Europe, noted in a 2009 viewpoint that “individuals with mental health or intellectual disabilities have been treated as non-persons whose decisions are meaningless, even in recent years. They have been deprived of basic human rights” (Hammarberg 2009). Because of the emphasis on people with ID as one of the most discriminated against peoples in Europe, it seemed logical to utilize this case when examining EU non-discrimination policy development.

This case selection appears more relevant because the ID case also acts against expectation. Though the importance of ID has been noted, EU ID policy has only been minimally developed. Specifically, only one piece of hard law—in combination with several pieces of soft policy and initiatives—are applicable to ID policy, and few ID-focused policies exist at the EU-level (Bell et al 2007:6-7; European Commission 2007a:3-6; Lecomte and Mercier 2009:43-49; Mansell et al 2007:1-4). This case may shed some light on why ID-focused policies do not appear when they would seem (based on the comments above regarding human rights) especially pertinent to non-discrimination in the EU.

Some may also criticize this case selection because it is not typically conceived of as separate from general disability policy. Though the modern ID movement shares similar trends to the general disability movement (developing a social model and emphasizing human rights), the ID movement differs in key manners from the general disability movement. First, as opposed to the older deaf and blind groups, the ID movement grew out of family associations formed after the horrific treatment of people with ID throughout the 1930-1940s at the height of the eugenics movement and the Nazi regime. Consequently, biological explanations of ID have been particularly despised by the ID movement, social and environmental care and definitions have been advocated consistently, and most importantly, social inclusion as a policy has been a clear policy preference of activist groups (Scheerenberger 1983:52-211). Other and older disability groups, including the deaf and blind communities have not necessarily shared these preferences. For instance, these communities have advocated cultural rights (or cultural protection) rather than social inclusion into the mainstream community (Olson et al 2004). Second, the historical and persistent social stigma regarding people with ID as “animal-like”, “sub-human”, “idiots”, or socially undesirable and ostracized is not necessarily shared with other disabled groups. For instance, the deaf and blind communities, though discriminated against, never were considered “animal-like” (Scheerenberger 1983:52-112; Covey 1998:3-26; ‘Eugenics’ 2010). While ID is a form of disability, is part of the disability movement, and is subject to EU disability policies, the ID movement—because of its distinct history, preferences, and the distinct relationship between people with ID and mainstream society—cannot be equated with all other disabilities and should be studied as an individual movement.

V. THE EU AND ID POLICY DEVELOPMENT

ID policies in Europe have existed throughout the modern period. In the 1800s and early-1900s, these policies often included institutionalization—where people with ID were put into large hospital-like homes and effectively locked away from the wider community—as well as sterilization and marriage laws aimed at stopping ID by prohibiting or ensuring that people with ID could not reproduce. However, with the horrors of the eugenics movement and the efforts of the national ID movements, several European nations began to institute more socially inclusive legislation (Scheerenberger 1983:112-211). This includes the adoption or implementation of special education programs to incorporate people with ID into mainstream classes or to provide special schools for people with ID; the building of health care institutions to treat people with ID; and the institution of sheltered or supported work programs to help people with ID earn a wage comparable to people without disabilities and to help promote community integration (Lachapelle 2004:1-20; Culham and Nind 2003:67-68). While these similar European ID policy trends exist at national levels, EU ID-focused policies have not developed significantly. Moreover, ID-related policies regarding ID have been relatively weak and have resulted in some policy which actually hinders further ID policy development.

This case study investigates this lack of ID-focused and weak ID-related

development, looking to the conditions presented in Europeanization literature for explanation. To do so, a narrative of EU ID-related policy development is first presented. Then, the theorized conditions (economic and human rights ties, an established social movement, and court case prevalence) and their relationship with EU ID policy development are investigated more fully.

EU ID-Related Policy

When examining EU ID-related policy development, three clear stages of development exist: policy based upon charity and aid to push people with deficiencies (disabilities) to work (1960s – mid 1980s); a transition period (1980s-1996); and official non-discrimination-based policies that emphasize the importance of equal rights (1996 – present).

The First Stage: Charity, Deficiencies and Work Policies (1960s – mid 1980s)

The first stage of EU ID-related policy development viewed people with disabilities as having deficiencies which needed to be fixed by rehabilitation or other professional programs. This viewpoint is expressed in the relevant European publications of this period. For example, two Council resolutions on handicapped people (1974 and 1981) reiterated disabilities as a deficiency or a “limitation” which impacts a person’s ability to work and do daily activities. These resolutions invited member-states to make sure that disabled people did not “shoulder an unfair burden of the effects of economic adjustment” as a result of these limitations (European Commission 1980:1; Gubbels 2006:1). Similarly, a 1980 Commission publication noted that disabilities—whether

physical or mental—made disabled people have a “tough existence” which necessitated a response (in training or in being given a job the Commission implies they are less qualified for) to overcome their “afflictions” (European Commission 1980:1-5).¹

Though the European Community expressed that problems facing people with disabilities encompassed many key areas of social policy, these attitudes only translated into vocational and professional rehabilitation of people with disabilities into the workplace (European Commission 1980:3-5). One of the most significant programs was the Community Action Program regarding disability (1974), which provided rehabilitation and training centers to increase employment of people with disabilities and improve the unemployment differential between disabled and non-disabled persons (Gubbels 2006:1).

The Transition Stage: Social and Civil Rights and International Movements (1980s-1996)

While many of the first stage’s statements and vocational programs continued throughout the 1980s, two EU movements—the social dimension and the growing EU civil rights discussions—as well as the international ID and disability movement began to transform EU ID-related policy from a primarily economic and charity-based to a non-discrimination issue.

First, Jacques Delors’ call for a revived social dimension to European integration helped develop EU-level social rights. Specifically, Delors argued that the formation of a

¹ Regarding the 1974 Community Action Program, the European Commission defended vocational and rehabilitation training on the ground that people with disabilities should be allowed to have employment at jobs because jobs are important for disabled people from a “human point of view”. Earlier, the Commission suggests that people with disabilities are not as qualified to complete jobs as easily as people with such limitations (European Commission 1980:4-5).

single European market and economic integration must be accompanied by social development and a “Social Europe”. As a result of this call and the work of social partners throughout Europe, the European Community recognized the importance of EU-level social rights and published the Community Charter of Fundamental Social Rights for Workers in 1989 (Atkinson et al 2002:4; Welz 2008:255-258). For people with disabilities, this charter specifically mandated “concrete measures aimed at improving [the] social and professional integration” of people with disabilities. (Mabbett 2005:101).² Though these measures stalled in the early 1990s with member-states moving against further integration, the development of this social rights language led to further Commission proposals regarding the convergence of social protection objectives and policies to ensure European citizens’ social rights (Welz 2008:255-258; Mabbett 2005:102).

At the same time, the EU began to emphasize social inclusion for people with disabilities as a basic human and civil right. This emphasis was first noted in a 1986 Council Recommendation on the employment of disabled people that stated that member-states should promote fair opportunities for people with disabilities. According to the recommendation, these opportunities necessitated the elimination of negative discrimination, the protection from dismissal on grounds of disabilities, and the increased ability for disabled people to go before bodies to establish their civil and legal rights (Gubbels 2006:1). This call for fair opportunities on the basis of equal rights was reiterated with the development of the concept of “social exclusion” at the EU-level. Though this concept would only be explicitly stated in the late 1990s, it developed during

² For more on the development of the social dimension and the formal and informal mechanisms of the charter, see: Lange 1993:5-13 and Table 1.

the early 1990s. Social exclusion emphasized the relation between those who have a lack of participation or power in society and those who tend to be the focus of social policy. Consequently, social exclusion argued that every European citizen had the right to a certain basic standard of living and also should be able to participate and be active in societal institutions. As a result of the increasingly rights-based language,—both social and civic—EU ID-related policy began to widen beyond concern with labor and income issues to encompass subjects like poverty, housing, health care, and education (Mabbett 2005:103-104).

This expansion and move towards rights-based policies can be seen in the changing design of the action programs in this period. While first stage programs were centered on labor and vocational rehabilitation, transition programs included wider policy areas and placed more emphasis on creating exchanges for activist groups and social partners. This wider range of activities can be seen in the four new disability programs: HELIOS I and II, Handynet, and the Technology Initiative for Disabled and Elderly People (TIDE). Though HELIOS I (1988-1991) and HELIOS II (1993 – 1996) focused on economic and labor issues, the HELIOS programs also included classroom initiatives to help encourage training and qualification for children with disabilities and instituted the exchange of experiences and the dissemination of innovations, ideas, and information to promote good practices in member-states (European Parliament 2010). Also, the HELIOS programs helped connect activist groups supporting various types of disability issues throughout the EU and converted these groups into a European platform, the European Disability Forum (EDF), to help advise EU policy-making (Gubbels 2006:1). The two other transition initiatives emphasized technological solutions and exchanges for

ID-related issues. Handynet (1988)—a computerized information system—collected and disseminated information on disability prevention, technical aids, education and training, and employment and physical independence for people with disabilities, and TIDE (1993) promoted new applications for rehabilitation technologies (European Parliament 2010).

At the same time as these new initiatives, the EU's existing financial funds became increasingly involved in ID-related policy. In the 1990s, the European Social Fund (ESF)—originally created in the 1950s to reduce differences in living standards through the EU and promote economic and social cohesion—began instituting disability-related projects to enhance the labor impact, promote accessibility, and encourage research and development for disability equipment and needs. In addition, the ESF set aside 5 percent of their budget in order to develop innovative programs. One such program was HORIZON (1994 – 1999), which offered vocational training and programs to improve qualifications and education of people with disabilities as well as financed conferences and paid financial aid to those undertaking disability-related business activities (Zolkowska et al 2002; European Parliament 2010).

Finally, this growth also became tied up with international disability organizations' movement towards a social model of disability.³ The social model

³ For ID, this movement towards a social model had been greatly impacted by policies of the early 20th century. During this period, the European eugenics movement's popularity led to the development of sterilization and marriage laws regarding people with ID. By 1933, sterilization laws—focused primarily on inmates of state institutions for the mentally handicapped and mentally ill—became increasingly prevalent in Europe ('Eugenics' 2010). However, the practice of euthanasia programs by the Nazi regime (where over 440,000 people were sterilized and 70,000 murdered) as well as the general horrors of the Holocaust as an expression of eugenics acted as a catalyst towards the disappearance of eugenics laws (1940-1950s) and the development of "normalization" policies for people with ID (1950s-1960s) (Braddock and Parrish 2003:93; Scheerenberger 1983:209-211). Normalization posited that living conditions for people with ID should be as similar to others in society as possible, that residential treatment (as well as educational and vocational treatment) must be promoted for each individual, and that the focus

emphasized a human rights approach to people with disabilities over an understanding of disabilities as deficiencies. In line with the social model, the first European Disabled People's Parliament (3 December 1993)—formed of people with disabilities throughout the EU—presented their experiences with discrimination to the European institutions. The parliament then requested that the EU and member-states ensure that the Treaty of the European Union include a general anti-discrimination provision. As a direct result, the Commission's 1994 White Paper on Social Policy and social action plan endorsed this request (Gubbels 2006:2).

The Third Stage: EU ID-related Non-Discrimination Policy

In 1996, the transition of disability from an economic to a non-discrimination rights policy became official with the publishing of the European Commission's disability strategy. This strategy explicitly recognized that previous EU policies had hinged upon the idea of charity as a response to disability and the idea of disability as a deficiency. It noted that the EU's response—though well-intended—had resulted in separate provisions and the development of specialist services that effectively compounded social exclusion, under-participation, and the “virtual invisibility” of people with disabilities in society (European Commission 1996). As a result, the EU recognized

of care should be on removing societal obstacles (speech and conversational skills) that impede the living habits of people with ID. This radical change in care was one of the first steps towards recognizing the importance of the human and civil rights of people with ID (Culham and Nind 2003:65-67). And, by the 1970s, social inclusion for persons with ID on the basis of their human rights—social role valorization (SRV)—became fully encapsulated in professional discussions regarding care for people with ID. Finally, by the late 1980s, discussions regarding social inclusion in the ID community regularly emphasized not only on the physical treatment of people with ID but also living and working in respectful and equal social and interpersonal relationships throughout one's life cycle (Stroman 1989:122-130). For more information on and illustrations of, the historical evolution of, and defenses of ID definitions and care policies, see: Baum 2006; Biasini et al 2009; Race 2007; Masland 1963; Dexter 1958; Mercer 1970; Linehan et al 2004; and Emerson 2007.

that these policies could not continue as such and officially shifted its disability policy to a rights-based approach to disability subsumed under the idea of non-discrimination (European Commission 1996). This sentiment was echoed in 1996 and 1999 European Council resolutions abolishing all forms of negative discrimination based on disability, re-emphasizing the objective of full participation of people with disabilities in social life, and reiterating the importance of non-discrimination and equal rights for people with disabilities. In line with this change of focus, the EU streamlined its existing programs and began to mainstream disability issues into all relevant aspects of the EU policy (social, education and training, research, transport, telecommunications, and public health) (European Parliament 2010).

Even with the new disability approach, the development and the strength of the first hard policy—Article 13 of the Treaty of Amsterdam—regarding non-discrimination on the grounds of disability appeared unexpectedly. The original proposed non-discrimination clause offered by the Reflection Group for the Intergovernmental Conference was relatively weak. In fact, this clause would have only added an additional general discrimination prohibition clause to a statement already prohibiting discrimination on the grounds of nationality. In a review of this clause by the EDF's legal group, it was found that no new EU competences would be created and that only activities with a transnational or Community element would be affected. However, the final clause—Article 13—appeared much stronger than the original version. Article 13's placement in the first section of the treaty meant that disability discrimination issues were no longer limited to the employment sphere or designated as social policy but rather

became a formal cross-cutting rights issue where the Community gained competence over member-states to fight against discrimination (Mabbett 2005:106).

The final version of Article 13 resulted from the joining together of a large number of non-discrimination activist groups looking to attain a strong proposal. While the movement of the Council towards a more integrationist stance towards social policy was helpful, the efforts of civil society organization and European platform groups across a variety non-discrimination areas played key roles in the push for a general anti-discrimination clause (Ruzzo 2004: 89-90). The groups came from many different non-discrimination policy areas, including sex, race, ethnicity, sexual orientation, disability, and age. These groups utilized the language of rights as a frame and focal point to push for their own interests; moreover, by these groups and platforms all utilizing a rights frame, these concerns and appeals by activist groups became linked together. The fact that Article 13 mentions the diverse grounds that discrimination can be combated on shows the diversity of political forces that led to the incorporation of the article into the treaty (Mabbett 2005:103-107). By uniting the diverse interests and resources of the various interested actors, Article 13 reflected unexpected progress made through the joining together of social groups to push for a broad anti-discrimination instrument (Bell 2002:393-398).

Since the Treaty of Amsterdam, EU disability policy has further developed in treaty and hard law. First, the Charter of Fundamental Rights of the European Union prohibited discrimination and reiterated the social and civil rights of people with disabilities. Though the Charter was put into full legal effect only on 1 December 2009 with the entry into force of the Treaty of Lisbon, the Charter still carried weight in the

European Court of Justice (ECJ) and in policy decisions because it had received the backing of the EU's three institutions (Council, Commission, and Parliament) (European Union 2008; European Union 2010b). Second, and integrally, in 2000, the EU passed its sole hard policy regarding disability and ID—the Employment Equality Directive—which required member-states to establish equal access to employment for disabled people with reasonable accommodations.

Since their inception, these treaty provisions and hard law have helped further develop EU disability policy. In fact, over 80 percent of the current secondary legislation regarding ID-related policies—in accessibility, transportation, communications, and employment-related issues—developed after 2000 (European Commission 2010b). Similarly, since 2000, soft ID-related policies have furthered in employment policies and widened to encompass education and residential action plans (European Commission 2007a). In employment policy, disability discrimination protection is required under the European Employment Strategy (EES) guidelines, and member-states must report back yearly to the European Commission on national employment initiatives. In education action plans, the European Commission—through the European Agency for Development in Special Needs Education—has launched educational initiatives for disabled persons. Finally, regarding community living issues, the European Commission has funded studies on the delivery services and the extent to which different living situations attain the appropriate levels of security, freedom, and independence for persons with disabilities (European Commission 2009c).

These provisions and the switch of disability to a non-discrimination issue have also led to greater funding for EU financial programs. Today, the European Social Fund

yearly supports approximately 300,000 of the 65 million persons with disabilities in Europe (European Commission 2010a; European Commission 2010c:12; European Disability Forum 2010a). Moreover, new programs, like PROGRESS and Equal (formerly HORIZON) fund programs supporting information sharing and learning, participatory debates, and networking projects and help create innovative solutions and additional projects to combat general non-discrimination (Equal 2010; European Commission 2010a).

Additionally, the move to non-discrimination policy has coincided with the development of groups focused on disability issues within the EU bureaucracy. In the European Commission, the Unit for Integration of People with Disabilities within the Directorate-General for Social Affairs promotes and influences policy initiatives at the EU and national level as well as identifies and removes various barriers in the economic and social environment for people with disabilities. Another group, the Disability Interservice Group—formed of people from relevant directorates-general in the Commission—and the High Level Group of Member States’ Representatives on Disability also aim to raise awareness of disability issues within the Commission. Similarly, the European Parliament has the Disability Intergroup (in which all countries and parties participate) to focus and raise awareness of disability issues (Van Santvoort 2009:46-47).⁴

Along with soft policy and bureaucratic development, the formulation of hard policies and law has led to two ECJ court cases dealing with disability. The first—Chacon Navas v. Eurest Colectividades (2006)—dealt with the issue of whether sickness

⁴ This group is in addition to the fact that the EDF advises the European Parliament on disability policy (Van Santvoort 2009:46-47)

could be equivalent to disability under the Equal Employment Directive. The ECJ determined that:

the concept of ‘disability’ must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life... [and] must therefore be probable to last for a long time (paras. 43-45, quoted in Waddington and Lawson 2009:14-15).

This ECJ statement constituted the first attempt to define what disability meant and who is considered disabled in the EU. This case has led to increased discussion in advocacy groups—particularly in the European Disability Forum—and in recent EU legal reports regarding the appropriateness of this definition as well as the meaning of other aspects of the Employment Equality Directive, such as “reasonable accommodations” for employees with disabilities (European Disability Forum 2010b; Waddington and Lawson 2009:14-18; European Parliament 2009).

The second case which has had an impact on disability policy development is the Coleman case (2008). In this case, concerning workplace discrimination against a mother whose child is disabled, the ECJ determined that the Employment Equality Directive applied not only to people who are disabled but also to family members and care givers. As such, employers cannot discriminate against employees who are caregivers/associates of someone with disabilities as a result of that relationship (paras. 38 and 51, quoted in Waddington and Lawson 2009:16). In this way, the ECJ has actively widened disability policy and ID policy to include families and caregiver relationships, and in this respect, has helped further develop policy.⁵

⁵ Any further effects have yet to be determined as the case ended relatively recently.

While it is clear that EU disability policy has developed, and ID policy by association, little ID-focused policies exist. Some development has occurred in regards to specific projects. For example, the Pomona Project has worked to develop coherent health indicators regarding ID prevalence and the social condition of people with ID throughout the EU; some ESF and PROGRESS projects support and enhance communication networks between domestic and international ID NGOs; and an increased number of EU-supported research projects dealing with ID and complex needs specifically have been developed (Linehan et al 2004; European Commission 2009c; Open Society Institute 2005-06; European Social Fund 2010).⁶ However, even with these specific projects, little clear or distinct policy beyond research and limited initiatives exists.

ID and Economic Ties

With regard to economic ties, the Europeanization literature mentioned that the actual and perceived connections between the EU economic area and a policy issue are important for policy development. This section examines the actual and perceived ties between ID and the EU economy.

The actual economic impact of people with ID in the European economy is based not only on the potential and actual labor but also on the consumption of special and additional goods, including care services for people with ID. Regarding labor impact, an accurate estimate for ID specifically is difficult to ascertain. This is because of a lack of

⁶ This is based on a perusal of the EU websites. All projects mentioning ID, retardation, or complex needs appeared to occur after 2000. In a preliminary investigation of the European Social Fund projects website, only 31 of 220 projects dealing with disability were related to people ID and mental difficulties/learning disabilities. As only 672 projects in total deal with people with disabilities, it can be reasonably estimated that approximately 15 percent of these projects have an ID-focus.

coherent methodologies used to determine the ID prevalence throughout Europe as well as a lack of accurate information regarding employed status (Linehan et al 2004:1).

Nevertheless, based on World Health Organization (WHO) figures (2001), the current ID prevalence is between 1 and 3 percent of the population (4.9 - 14.7 million people) in the EU (Linehan et al 2004:7-9; European Commission 2009a:6). This three percent can create a significant labor impact.

In addition to the labor impact, the particular challenges people with ID face can actually create an additional economic effect. Based upon a recent estimate by the US Center for Disease Control and Prevention (CDC), one person with ID incurs an additional 1,014,000 US dollars (in 2003) in lifetime costs over those experienced by a non-disabled person (Center for Disease Control and Prevention 2010).⁷ Again, assuming that 3 percent of the population pays this cost, people with ID represent a source of economic profit. Moreover, people with ID often need residential and educational services, medical care, home modifications, and adaptive equipment and technology over and beyond what non-disabled people need (Olson et al 2005:10-30). In addition to providing a niche market for business and research, these areas also signify a source of job creation for other workers.

The narrative regarding EU ID-related policy development suggests that the EU has recognized this economic tie, particularly in relation to labor policy; moreover, this

⁷ This evidence is included because the quality of living in Western Europe and the United States is similar, and exact EU figures were not available. This higher spending over the lifetime of persons with ID is more dramatic than at first blush because the average life expectancies of people with ID (particularly those with profound or complex needs) are less than those who are non-disabled. In general, the proportion of expected life lost is greater than 20 percent for all age groups for these cases. While people with mild ID do age and live to a similar age as non-disabled persons, this is relatively new trend and differs based upon quality of living and treatment of persons with ID in each country. For more information, see: Patja et al 2001.

economic tie appears integral to the primary development of EU ID-related policies. This can be seen in the fact that the very first policies applicable to ID at the EU-level—the 1974 Community Action Plan, HELIOS I and II, and Handynet—specifically focused on the mobilization of disabled people into the workforce through vocational rehabilitation and technological aids for employment mobilization. Even though these policies were often not effectively implemented regarding people with ID or not directed specifically at people with ID, these policies were integral to the initial translation of ID-related policy to the EU-level.⁸

This link remains an important factor in ID-related development today, even with the issue’s transition to a non-discrimination policy. Over 80 percent of secondary legislation at the EU-level applicable to ID concerns economic issues such as mobility (in workplaces and the community), technology and communications (in research and development, adaptive technology, and business policy) and employment policies (to further stimulate increasing mobilization of people with disabilities) (European Commission 2010b). This fact shows that this link still remains a strong influence in ID-related policy development. However, this tie has not led to the development of ID-specific policies but rather towards the continuing generalized disability policy.

Consequently, while economic ties have been important to initial and developing ID-

⁸ These policies’ ineffectiveness for people with ID can be seen in the project reports. In a 1995 draft report, a HELIOS team of educators visited schools in Europe and concluded that daily practice showed that most countries integrated only children with “minor” disabilities rather than children who had complex needs (including ID) (HELIOS 1995b:3). Similarly, a review of employment policies for persons with ID found that though supported employment—a job and an earned wage with supports provided at the workplace—was an option for a minority of people who wish to work, the use of sheltered workshops which maintain was still the prevalent form of employment for people with ID. Additionally, two sheltered/supported employment tracks often existed in one country: one for persons with ID and another for persons with other disabilities. These workers were not integrated with each other, and persons with ID were often further marginalized in society than the track for persons with other disabilities (for more information on this, see HELIOS 1995a; Bellver 1995; Walsh 1997).

related policy development, it cannot explain why ID-focused policies (in economic areas like sheltered work programs or supported employment) have failed to form.

ID and Human Rights Ties

The second condition argued to impact policy development is the ability/effectiveness of a policy to appeal to human rights. With regard to ID-related policy development, it is evident that the EU has recognized this appeal and that the frame use has been effective. The clearest example of this is the 1996 Commission disability strategy that recognized the need to transition to a rights-based policy as well as the problems of previous EU policy in maintaining social exclusion and denying the rights of people with disabilities.

Since this recognition of the human rights tie, EU ID-related policy has flourished, moving into hard policy as well as expanding into wider policy areas. Since 1996, Article 13, the Charter provision, and the Employment Equality Directive have developed and provided areas that people with disabilities (or relatives) have been able to use in order to attain European protection from discrimination. Moreover, the directive signifies supranational control, where the EU has mandated that this policy be translated into member-state legislation (Bell 2007:51-63). This deepening of policy has corresponded with a widening of ID-related policy from labor policies into employment initiatives to promote better and inclusive education for people with disabilities and community living research to better ascertain the living standards of people with disabilities.

Similarly, this recognized tie has led to the increased voice of ID-related actors, both inside and outside the EU. The recent development of disability groups within the Commission and the European Parliament show that disability issues have become increasingly important and discussed by European bureaucrats. Just as important, the HELIOS programs of the 1990s, influenced by the recognition of a need for a social dimension and the civil rights dialogue, led to the EU supporting disability NGOs to exchange information. This led to the creation of the EDF, which has played a key role in advising EU policy and advocating for ID-related EU policy development (Gubbels 2006:1).

In addition to policy deepening and widening and institutional development, the recognition of this link has led to the positive (but minimal) development of ID-focused projects at the EU-level. Examples of these projects include the work of the Pomona Project to harmonize health indicators for people with ID throughout the EU and help compile coherent and comparable European statistics, the development of sport programs to help socially integrate young people with ID into communities, and the 15 percent of disability projects funded by the ESF that emphasize labor-improving projects for people with ID and complex needs (Linehan et al 2004; European Commission 2009b; European Commission 2007b; European Social Fund 2010).

While ID as part of the larger disability movement has effectively utilized the human rights frame to further ID-related policy and some ID-focused projects have consequently developed, this tie has also not led to widespread ID-focused policies. This failure is significant, especially given that the Commissioner for Human Rights and a key EU monitoring agency have pointed out the ID signifies an integral EU human rights

issue (Hammarberg 2009; Open Society Institute 2005-06). As a result, the human rights tie appears to be able to explain the initial (and relatively minimal) development of ID-specific projects and the furthering of ID-related areas, but still has not translated to further and significant ID-specific policies.

The ID Movement, Public Opinion, and the EU

Social movements and positive public opinion are also theorized conditions that may impact policy development. This section analyzes the social movements that lobby for EU ID policy development—ID-specific NGOs and the wider disability movement—and presents information regarding the current public opinion with regard to ID in Europe.

Social Movements

With regard to social movements, the first major players are ID-specific groups. These groups—at least one from every EU member-state and candidate country—are united into the transnational NGO Inclusion Europe.⁹ Inclusion Europe provides the primary European voice for ID rights. Working with other human rights and disabilities groups, Inclusion Europe carries out a wide variety of tactics to raise EU policy-makers awareness of ID issues. These activities include direct lobbying of the EU to provide and promote socially inclusive policies; creating and disseminating reports on the effects of European policy of people with ID; monitoring candidates' and East and Central European members' treatment of people with ID and implementation of current ID-

⁹ Inclusion Europe is also a subsidiary of the larger Inclusion International (which has organizations on every world continent).

related policies; and drafting policy position papers regarding issues including inclusive education and the right of people with ID to work (Inclusion Europe 2010).

One of Inclusion Europe's most important ways of raising awareness of ID issues is through its membership in the EDF. The EDF—the strong European disability platform group created by the HELIOS programs—is one of the ID social movement's clearest connections to EU policy-makers. This is because the EDF plays a key insider role in the EU. The EDF gives advisory opinions of disability policies to the European institutions; meets with Disability Intergroup members in the European Parliament regularly to discuss disability issues, mainstreaming efforts, and EU policy implementation; and helps research the effects of seemingly-unrelated EU legislation on disability issues (Olson et al. 2004:24-26; European Disability Forum 2010b).

However, this membership in the EDF does not necessarily facilitate the translation of ID movement policy preferences to the EU. Rather, the size and diverse make-up of the EDF reduces the voice of the ID movement vis-à-vis other disabilities. The EDF is a very large organization, encompassing over 130 national and local NGOs as well as 25 member organizations representing different types of disabilities (Olson et al. 2004:24-26; European Disability Forum 2010a). While the immense size of this group is beneficial to raising awareness about general disability issues, ID-focused groups only attain a small voice. In fact, Inclusion Europe is the only ID-specific member organization of the EDF, and only 16 percent of the EDF member groups overall deal with types of mental disabilities (European Disability Forum 2010a).

This problem of voice is compounded by the distinct cultural and policy preferences of the various groups forming the EDF. In particular, physical disability

communities like the deaf and blind communities tend to clash with ID communities on particular policy preferences. Deaf and blind communities tend to view themselves as having their own distinct culture and/or language that sets them apart from the mainstream community. Consequently, these groups tend to promote their interests in multi-cultural rhetoric and emphasize cultural rights—which may allow insulation from mainstream society—rather than the equality rights and full social inclusion advocated by the ID communities (Olson et al. 2004: 3).

Though the EDF “respect[s] the wishes of dissenting member organizations when core issues are the subject of action”, the ID movement’s policy preferences can be crowded out by the vastly larger physical disability movement voice in the EDF (Olson et al. 2004:25). For example, the EDF supports the development of a European directive which allows for clients to choose which education system they would like to take part in. This EDF preference accommodates the deaf and blind communities’ desire for separate schools. However, the ID community argues that education become completely inclusive so that only one system and one classroom exist (European Disability Forum 2010b; Inclusion Europe 2010). For the ID movement, it is feared that the ability to choose between two systems would encourage governments to maintain the status quo in education, resulting in children with ID having to go to a special school or a non-integrated classroom that can accommodate their needs. Both these possibilities reduce the potential for social interaction and understanding between non-disabled students and students with ID (Inclusion Europe 2010). By emphasizing freedom to choose school systems over social inclusion, the EDF is likely to perpetuate school segregation and social exclusion of people with ID. For the ID movement more generally, this crowding

out may continue to stifle the generation of ID-focused policies, particularly when they differ from the larger disability community.

Public Opinion

The theorized condition regarding public opinion suggested that where public opinion is negative, minimal policy development is likely. This case has found evidence that both supports and contradicts this hypothesis.

First, the latest Eurobarometer polls suggest that discrimination against people with disabilities is still perceived to be widespread; this finding would suggest that little or negligible EU disability policy should have formed.¹⁰ However, evident in the policy narrative, EU disability policy has developed significantly in the past forty years. Consequently, this narrative would tend to show that negative public opinion appears to have little effect on the development of EU non-discrimination policies.

At the same time, research on attitudes towards people with ID shows support for this theorized condition that negative attitudes minimize policy development. Research has shown that negative attitudes as well as discrimination have persisted throughout the past 20 years (Akrami et al 2006:606).¹¹ These attitudes have appeared to remain of more or less the same vehemence, even after years of campaigning for increased tolerance towards people with ID (Haar et al 2000:304). Some have argued that the

¹⁰ In the poll, discrimination on the grounds of disability was viewed to be widespread by 53 percent of Europeans. This view of the prevalence of discrimination was even higher when asked to people who are disabled (nearly 70 percent) or to people who have friends who are disabled. This poll also suggests that a significant social stigma towards people with disabilities remains prevalent: only one-third of Europeans reported feeling totally comfortable with the idea of a disabled person holding the highest political office (Eurobarometer 2009:78-84).

¹¹ For more studies on public opinion towards people with ID, see: Handler et al 1994; Leyser et al 1994; Pittock and Potts 1988; Rimmerman 1998; and Hastings et al 1998.

change in terminology with regards to people with ID (as opposed to “idiots” or “imbeciles”) reflects an attitudinal shift. However, classical overt discrimination and modern covert discrimination towards people with ID have become apparent in recent tests (Akrami et al 2006:614).¹² Moreover, where overt positive attitude change regarding inclusion of people with ID has appeared, it has been more in reference to inclusion or equal treatment in leisure activities than in other activities. Though this shows some progress, it also implies that inclusion is supported where people without disabilities think people with ID can do less “damage” (Hastings et al 1998:251-253). Whether coincidence or not, one of the most recently developed EU ID-focused programs is a sports program to help promote social inclusion in leisure activities (European Commission 2007b). At the same time, other ID-focused projects focus on more potentially “damaging” labor issues (European Social Fund 2010). As a result, public opinion as a theoretical condition appears fairly indeterminate to explain policy development/non-development.

Prevalence of European Court Cases Dealing with ID Issues

The final theorized condition that may impact policy development is the prevalence of court cases regarding a policy area. Regarding ID policy development, there have been some positives and negatives. Positively, court cases have led to greater discussion regarding the need for definitions for various terms in the Equal Employment

¹² The Akrami et al (2006) tests studied this through polling of approximately 240 Uppsala University students in Sweden. They asked yes/no questions regarding classical and modern statements supporting types of discrimination against people with ID (i.e. People with ID should live in protected places to be safe from the dangers of society; It is unwise for people with ID to marry; People with ID are getting too demanding in their push for equal rights). They then coded the answers, and found that both these types of discrimination were prevalent.

Directive (as mentioned in the narrative) as well as the extension of the directive to family and associated of people with ID. Nevertheless, the definition of disability employed by the ECJ actually appears to hinder the development of socially inclusive ID policies. Further, the purpose of court case prevalence—to allow for a new jurisdiction where people and organizations can pursue litigation—has been hindered by the continuance of discriminatory legislation in member-states.

In line with two theoretical strands regarding the effects of a new jurisdiction, the two ECJ court cases involving ID-related issues has led to greater EU discussion on policy development and definition. The ECJ case law has sparked wider discussion regarding the proper definitions of “reasonable accommodations” to employment required by the directive and enlarged the directive to families and caregivers of people with disabilities. However, these positive effects appear mitigated, even reversed, by the ECJ’s definition of disability and the continuance of the discriminatory practice of legal incapacitation.

The ECJ’s disability definition causes significant issues for the development of ID-focused policy and for the current state of ID-related policies. This is because this definition utilizes a medical model/definition of disabilities in which the problem/impairment lies with the individual and not the societal reaction to the impairment or the overarching organization of society (Waddington and Lawson 2009:15; Bell 2008:39-40). This definition directly conflicts with the EU’s current rights-based policies that argue that ID stems from the failure of the environment to adjust to the needs and aspirations of people with ID. For EU ID policy, this creates two specific problems. First, the use of a medical model may reinforce the social stigma that

disability and ID is the fault of the person with the disability and thus strengthen social exclusion (Engs 2003:111). Given that public opinion regarding people with ID and disability is already negative, this situation is unlikely to reduce discrimination or promote social inclusion, thereby undermining the purpose of the policy.

Second, the existence of this definition means that the medical model determines access to a key equal rights policy developed by referring to the social model. This contradiction shows inconsistency, and this inconsistency has resulted in issues or the undermining of the policy's purpose in its translation to member-states (Waddington and Lawson 2009:16). Currently, several member-states have utilized this ECJ definition to undermine progress made in ID-related policy development by adding new elements to the definition of disability in their national legislation. These additions have resulted in 1) exceptions to the prohibition of direct discrimination against people with disabilities; 2) definitions that except people who are disabled and unemployed from protection; and/or 3) requiring that people who are disabled to prove they have a disability as defined in the always somewhat arbitrary national legislation. For the latter, this problem is compounded by the fact that proving a disability often requires extensive medical evidence as well as the fact that the individual must first prove that they are unable to do particular job-related activities (that there is an impairment) and later show that they are able to achieve the essential functions of a job. These exceptions, additional hoops, and contradictions make applying this law far more difficult (Inclusion Europe 2004:3; Waddington and Lawson 2009:18-23).

These threats to ID policy development and problems with definition are compounded by the inability for a significant portion of people with ID to bring their

cases to court as a result of legal incapacitation. Legal incapacitation—the finding by a court that a person is incompetent—as well as full/partial guardianship means that the person in question loses the ability to raise legal issues or vote. This loss effectively stifles a person’s legal and political voice (Powers and Ochswald 2004:6; Inclusion Europe 2005:4-15). While some member-states have worked to reform legal incapacitation guidelines, legal incapacitation procedures in EU member-states still do not generally cohere with international guidelines—those in the UN Convention on the Rights of People with Disabilities—to ensure legal incapacitation is used stringently (European Foundation Center 2009). Consequently, this loss mitigates the impact of creating a European area of jurisdiction in ID-related policies because people with ID are less likely to be able to use it.

In summary, the prevalence of court cases related to ID—while having some positive effects on discussion and extension of policy—has undermined the development of ID equality policy by utilizing a definition that is based on the medical model of disability. This medical model definition reinforces the sense that the disability is the fault of the person who has it, and this usage threatens the progress that has been made in transitioning the issue area to a non-discrimination field. In addition, the continuance of legal incapacitation of people with ID means that it is difficult for people with ID to utilize the development of the Employment Equality Directive and the Treaty of Amsterdam and Charter provisions. This has the effect of inhibiting further court cases to help define/clarify policies.

VI. RESULTS

The results of this case are as follows (summary in Table 1).

Table 1: Relationship between Conditions and ID Policy

Theorized Condition	Effect on ID Policy Development
Perceived Economic Ties	+
Use of Human Rights Frame	+
Coherency of Social Movement	Ambiguous
Inter-relations between Social Movements	+ and -
Negative Public Opinion	Indeterminate
Prevalence of Court Cases	+
Non-Implementation of Non-Discrimination Directives	-
Court Definition	-

First, regarding the initial development of ID-related policies, the perception of economic ties appears to have been integral. This linkage led to the first recommendations and policies in the EU regarding the development of ID-related policies, and economic policy regarding ID-related issues remains the majority of EU policy developed. Nevertheless, the economic tie has not lead to ID-related policy deepening in the most recent stage of

policy development and has not resulted in development of ID-focused policies.

Similarly, the human rights link has also played a critical and positive role in the deepening of ID-related policies and the limited development of ID-focused projects. Specifically, the human rights tie has influenced the creation of treaty and hard law, the development of court cases, the creation of bureaucratic groups to discuss ID-related policies, and the increasing amount of financial support given to ID-related and ID-focused projects. Moreover, this link has encouraged the development of ID-focused projects (e.g. one sport program and the research-based Pomona Project). However, this tie also has not resulted in any significant development of ID-specific policies.

The conditions regarding social movements and court case prevalence may shed more light onto why significant ID-focused policies have remained lacking. Regarding social movements, this project has found that the relationships between the ID, disability, and non-discrimination social movements have been important in pushing or stifling policies. Regarding the formation of Article 13, the joining together of different non-discrimination social movements helped ID-related policy make unexpected progress into treaty and later hard law. At the same time, the relationships between the different disability groups and movements in the EDF (particularly between the smaller ID movement and larger physical disability groups) have shown the importance of group dynamics. In this case, the voice of the ID movement has tended to be crowded out. This has resulted in the EDF taking stances opposed by the ID movement and actively pursuing policies that the ID movement fears. As a result, this relationship appears to hurt the chances further policy development.

Regarding court case prevalence, several factors have impacted ID development positively and negatively. First, the court cases have led to further discussion and clarity of ID policy; consequently, court case prevalence appears to have a positive effect of ID policy development. However, this prevalence has actually negatively affected policy because the ECJ definition of disability undermines the purpose of the equality policy. This has occurred as a result of two related factors: the fit of the court definition to previous EU policy and the non-implementation of non-discrimination policies. The court definition of disability has hindered policy by allowing member-states to make exceptions to the prohibition of discrimination and to force people to extensively prove their deficiency. Also, the failure of the EU to enforce the non-discrimination directive in the case of legal incapacitation has also hindered court case prevalence by making it more difficult for people with ID to bring their cases to European attention. As a result, these two additional considerations counteract the general benefits of court case prevalence.

Finally, two other theorized conditions—public opinion and social movement coherence—have appeared relatively indeterminate and ambiguous. Public opinion has remained negative towards both people with ID and disability, yet disability and ID-related policy has progressed and ID-focused policy has remained minimal. Consequently, this condition appears to have a minimal impact on level of policy development. Similarly, the ID movement has been relatively coherent in its policy preferences throughout this case, but ID-focused policy has not formed. Meanwhile, the European disability movement is less coherent but has been effective in pushing for ID-related and disability policy at the EU-level. Consequently, coherency appears to only ambiguously affect policy development.

VII. CONCLUSIONS

Four conclusions regarding the Europeanization conditions can be made. First, this case re-affirms the idea of spillover effects and neo-functionalism—up to a point. The spillover as a result of economic ties has developed into several initiatives and a few hard laws related to ID. However, the theories also suggested that where policies have been brought into the first pillar, policy would be more rigorous and defined. The continued limited hard policy development of ID-related policies, even in economic issues, shows the limits of this interpretation. As a result, neo-functionalism and spillovers can explain initial policy development but not necessarily subsequent development.

Second, as stated in Europeanization theories, the EU has developed policy in line with its adherence to human rights, and human rights can explain initial and further policy development. But even though human rights frames explain some development, it does not signify the development of clear or defined policies. In terms of policy, what qualifies as reasonable accommodations and the definition of disability itself remained ambiguous and open to court interpretation. This interpretation has had a negative effect on policy implementation and allowed member-states to circumvent policies already created. Consequently, while human rights frames have been important to initial and further development of policy, the lack of policy definition has stifled extensive policy development and may actually hinder further progress or harm the current policy development.

Third, various social movement have fundamentally affected the development of ID policies in Europe. This case showed both a positive and a negative relationship: the disability movement worked with other non-discrimination groups to attain a strong general non-discrimination law in the Treaty of Amsterdam. However, the general disability movement has been biased in favor of physical over mental disability, and ID policy preferences and voice within the group have been mitigated. The result of this is that ID groups' increased voice by participation in the EDF has been ineffective in promoting ID policy development.

Fourth, the prevalence of ECJ court cases has provided definition to and expansion of the European disability hard law, but member-states have failed to implement non-discrimination policies (including the reform of legal incapacitation) and failed to define policies and policy intent in the Employment Equality Directive. This lack of implementation and definition has led to ECJ decisions that have negatively impacted the relationship between court case prevalence and policy development.

The conclusions provide support for many of the conditions provided by Europeanization literature theories as well as introduce new conditions and factors (previous implementation, definition of policy, social inter-relationships) which have impact on EU ID policy development. At the same time, the critical nature of these two factors—previous implementation and policy definition—show that Europeanization theories on their own cannot explain all levels of policy development. Economic and human rights ties appear to be able to explain initial policy development, while social movement inter-relationships, the effectiveness of court cases, previous implementation,

and policy definition all appear to impact the development of widespread, significant legislation.

This case has emphasized the failure of the EU to effectively define ID as an issue and enforce the implementation of ID non-discrimination policy in its member-states. It has also shown the ID movement's reduced impact on EU policy as a result of crowding out in the disability movement. With further knowledge of the problems with ID policy development, it is possible to then begin to take action to counteract these issues.

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