

NEW CLAIMS IN HUMAN RIGHTS: THE POLITICAL SITUATION OF GAYS AND
LESBIANS IN THE EUROPEAN UNION

Camilo Mauricio Ramírez

A thesis submitted to the faculty of the University of North Carolina at Chapel Hill in partial fulfillment of the requirements for the degree of Master of Arts in the Department of Political Science.

Chapel Hill
2007

Approved by:

Donald Searing
John Stephens
Milada Vachudova

ABSTRACT

CAMILO RAMÍREZ: New Claims in Human Rights: The Political Situation of Gays and Lesbians in the European Union
(Under the direction of Don Searing)

International human rights norms are, in general, silent on issues of sexuality. Domestic laws are essential in overcoming limitations in international human rights law as it has traditionally applied to gay and lesbian communities. In recent years, the European Union has made progressive steps in protecting the rights of gay and lesbian citizens. Superficially, Europe appears far more advanced than the United States in legislating equality for sexual minorities. However, a philosophical problem remains unresolved at the supranational level of EU politics: What exactly constitutes discrimination based on sexual orientation? Three countries, the Netherlands, Belgium and Spain offer full protection and benefits under the law. For most of western Europe, life is tolerable for gay and lesbian citizens, offering civil unions and partner benefits. However, hostile conditions remain in some European countries, such as Poland, making life very difficult for gay and lesbian communities.

TABLE OF CONTENTS

LIST OF TABLES.....	iv
Chapter	
I. Introduction.....	1
II. The English Case.....	4
III. The Polish Case.....	8
IV. The Spanish Case.....	14
Lesbian Movement.....	15
The Chueca Model.....	16
V. European Union Policies on Human Rights.....	19
VI. European Union Policies on Gay and Lesbian Rights.....	22
Accession.....	24
Privacy.....	25
Non-discrimination.....	28
Family.....	30
VII. Conclusion.....	34
REFERENCES.....	37

LIST OF TABLES

Table

1. TNS Opinion & Social/Euro barometer.....2

CHAPTER 1

INTRODUCTION

Throughout the history of human rights discourse, the situations of sexual minorities have been marginalized. Up until the 1980's, gay and lesbian citizens were either ignored or completely discriminated against. However in the early 1990's, these groups began to organize themselves and demand recognition for their new identities. More recently, all across Europe, gay and lesbian social movements have been successful in progressive legislation towards full equality.

For these social movements, recognition of basic civil rights has been the driving force. Today, gays and lesbians are fighting for equal protection [and benefits] under the law. In most Western countries, the right to marry is the current contentious debate. Currently, only five countries in the world [three in Europe] permit marriage among homosexual couples. However, same-sex policies are evolving, and the EU is leading the way.

In October of 2006, TNS Opinion & Social/Euro barometer, surveyed 29,152 people age fifteen and over. They were asked to share their opinion on two issues: "Homosexual marriage should be allowed throughout Europe" & "Adoption of children should be authorized for homosexual couples throughout Europe". The phrase 'throughout Europe' was included to ensure that answers would refer not only to the respondent's own country but to Europe as a whole.

The results listed below show approval ratings at high as 92 percent for same sex marriage in the Netherlands and as low as 11% in Romania and 12% in Latvia. Adoption approval remains slightly lower with the Netherlands at 69 percent and Poland and Malta recording only 7 percent approval. These data illustrate a certain division between East and West. However the relative conservatism of two non-Soviet countries, Greece and Portugal, suggests that economic development is also an underlying factor in shaping attitudes towards gays and lesbians.

COUNTRY	MARRIAGE %	ADOPTION %
Netherlands	82	69
Sweden	71	51
Denmark	69	44
Belgium	62	43
Luxembourg	58	39
Spain	56	43
Germany	52	42
Czech Rep	52	24
Austria	49	44
France	48	35
Britain	46	33
Finland	45	24
EU	44	32
Ireland	41	30
Italy	31	24
Slovenia	31	17
Portugal	29	19
Estonia	21	14
Slovakia	19	12
Hungary	18	13
Malta	18	7
Lithuania	17	12
Poland	17	7
Greece	15	11
Cyprus	14	10
Latvia	12	8
Romania	11	8

TNS Opinion & Social/Euro barometer
Margin of error is 3%

The following thesis will review the current legal, political and social status of gay and lesbian people in Europe. It will concentrate on the countries of Spain, England and Poland as specific examples to represent liberal, moderate and conservative models of gay and lesbian policies in the EU. It is important to briefly examine the history of gay and lesbian social movements in these three countries in order to understand their contrasting conditions. Currently, Spain is a pioneer in gay rights having legalized homosexual marriage and adoption in 2005. England is in sync with a larger proportion of European countries by offering civil partnerships as well as benefits to their domestic partners. Poland, in contrast, illustrates less tolerant conditions in the EU by limiting supranational polities that protect the human rights of gay and lesbian citizens.

It is important to note that the circumstances of transsexuals, individuals whose sexual identity is different from his or her sex, and transvestites, individuals who dress like members of the opposite sex but usually are heterosexual, will not be taken into account.

CHAPTER 2

THE ENGLISH CASE

The Wolfenden Report of 1957 drew a conceptual distinction between public and private life in Britain. Public life was controlled, or under jurisdiction of the law, whereas private life was none of the law's business. It was not the law's function to interfere or enforce particular patterns of judgment. Through the work of Wolfenden, homosexuality became decriminalized in major respects throughout Britain in 1967 (Plummer 135).

Margaret Thatcher's government dominated the background of the gay movement from 1979-1997. Her government promoted economic conservatism, religious moralism and a pro-traditional-family agenda. Although Wolfenden and Thatcherism provided the background for the lesbian and gay movement, the late sixties were a time of counter-cultural revolution and student activism. Both the Gay Liberation Front and the Feminist movement can trace their origin to this time period.

Thus, Britain had the necessary tools and environment for a successful gay movement. However, its politics also illustrated the classic divide among all gay movements— between those that seek legal change through lobbying and those who believe in a much more radical stance (Marotta 1981). The radical wing of the Movement had little concern for respectability and assimilation. Its foundation was the short-lived Gay Liberation Front (GLF). Created in 1970 by a group in the basement of the London School of Economics, GLF progressed rapidly to larger and larger meetings, marches and protests.

These initial basement meetings laid the foundation of the Movement in Britain. GLF forced the Movement out of the closet and raised awareness in a way that simply had not happened before. It brought “coming out” as a major political process to the forefront (Plummer 146).

In the early 1970’s activism focused on urban, Labour councils. And the Movement was trying to fight a national conservative agenda; it soon found itself achieving small victories at the local level. Therefore many initiatives were set up to change local government in Greater London, Manchester, Nottingham, and Southampton City (Plummer 137). The Movement was successful in setting up many centers, establishing equal opportunity posts and supporting campaigns on positive images.

The politics of the gay movement began to change its focus as the 1980’s approached. Davina Cooper explains, “By the early 1980’s, the Lesbian and Gay Movement had undergone a substantial shift in emphasis. While the 1970’s witnessed an emphasis on ‘revolutionary strategies: separatism, political lesbianism and sexual deconstruction, the 1980’s saw a renewed interest in affirming gay identity, developing political alliances, particularly between men and women and working within the state” (1994:23, 137).

As with other gay Movements, pride marches became huge symbolic rallying events. When the marches commenced in London in 1972, they attracted only a small, devoted political crowd of about two thousand people. Throughout the 1980’s they grew exponentially. The atmosphere of the marches had also undergone a transformation. What began as largely a political event has now become a rally dedicated to the expression of a lifestyle. Marches and rallies have become much more commercialized and are gaining new allies each year.

To maintain momentum, all social movements need to be fed by conflict and struggle. The strength of the Lesbian and Gay Movement in Britain can be seen in its schisms, which were both internal and external, and prevented it from achieving the coherence of a single integrated entity. From its earliest days, the UK movement has been aided and hindered by these schisms and conflicts.

Initially the Movement was largely male centered, but a growth in the lesbian and bisexual scenes followed. Alongside a strong bar scene, there also existed a network of organizations. In 1996 in London, for example, these included: gay groups for Welsh, Cypriots, Black people, Asians, and Jewish people; gays for badminton, squash, Lycra cycling, windsurfing, futbol, and sailing; gay groups for artists, accountants, chamber choirs, teenagers and adults.

However despite the growing number of groups and activists, Parliament is reluctant to recognize the need to legislate new positive legal rights for their gay and lesbian populations (Britton 209). The adoption of civil unions materialized only after significant pressure came from international organizations. European law has been and, in my view, will continue to be, one of the main spurs for reforming English law regarding discrimination based on sexual orientation. This claim is discussed in detail in the final section of this thesis.

The gay and lesbian movement in England has been successful in many areas. Its early 'coming out' in the 1970's helped the Movement assess its numbers. Later it found early success at the local governmental level, even under a strong conservative central government. The Movement's close links with mainstream media helped with several

educational campaigns, while the role of the pink pound helped establish areas like SoHo and create a physical space for gay and lesbian communities.

Ultimately, however, the internal schisms within the Movement impeded many advances. Gender discrimination within the Movement itself undermined the formation of a strong lesbian component; and the internal battles among the various groups never spoke with a united voice to promote and successfully negotiate many gay and lesbian social issues.

CHAPTER 3

THE POLISH CASE

A decade ago there were no sexual politics in Poland. There was no term for “closet” and nobody spoke of coming out. Homophobia is not even part of the Polish language. Nevertheless, sexual minorities have become highly politicized and serve as a litmus test for a modern day democracy. Thus: “Although we are experiencing a massive outburst of homophobia in a deeply conservative Roman Catholic country [Poland], we are also witnessing the birth of a lesbian and gay identity and movement in a place that has long aspired to be seen as “modern” and “western” (Graff 435).

Homosexuality was decriminalized in Poland in 1932, but there was little political action or discussion of the subject during the Communist regime. An article by Barbara Pietkiewicz in the weekly *Polityka* entitled “Bitter Violet” appeared in 1981, which many scholars contend was the start of the Movement in Poland. Pietkiewicz described the attitudes of Poles towards homosexuality and provided a glimpse of the Warsaw gay scene. From 1984, several bars in Warsaw became unofficial meeting places for homosexuals (Kurpios 2004). However, like other Eastern European countries prior to 1989, gay and lesbian life existed only in small circles of friends.

Official registration for non-governmental gay and lesbian organizations was only allowed after 1990. Stowarzyszenie Grup Lambda [The Association of Lambda Groups], the first gay and lesbian organization in Poland, was registered in 1990. This group aimed at

increasing tolerance towards homosexuality and at the same time propagated safer sex through cooperation with public institutions regarding HIV/AIDS prevention (Adamska 26).

In the 1990's, Lesbian Lambda arranged monthly meetings for lesbians all over Poland, during which workshops and talks were organized. However, as with other gay and lesbian movements, lesbian activists soon became frustrated with finding a home within either the gay or feminist movements. Unfortunately, there is very little information about a lesbian movement during the 1980's.

For the most part, members of Lambda were against public activism, claiming that increased visibility might harm homosexual persons by attracting unwanted attention and fueling violence (Adamska 111). As a result, this group ceased to exist in 1997. This fear that permeated the gay and lesbian community during the 1990's impeded the advancement of the group's main goals. Lambda Warszawa was the only Polish gay and lesbian organization from 1997 to 2001.

In May of 2001, the first Equality Parade was held in Warsaw, organized by representatives of the Polish branch of International Lesbian and Gay Culture Network (Gorska 2006, electronic source). Several hundred participants attended, and it was the first time many heterosexuals, including feminists, could openly show their solidarity with the newly emerging minority. Unfortunately, there was little media coverage surrounding the event, which impeded the Movement's advances.

The 2001 parliamentary elections brought a false sense of hope. The victory of the *Soujusz Lewicy Demokratycznej* [The Alliance of the Democratic Left] in 2001 seemed to open the door to a breakthrough for gay and lesbian activism in Poland. The left promised to introduce a same-sex partnership bill and anti-discrimination protection for sexual minorities.

However, the Alliance's close ties to the Catholic Church ensured that these changes never materialized (Gorska 2006).

Although the Alliance did not follow through on their election platforms, a progressive interest group did emerge. In September of 2001, Robert Biedron, a member of the Democratic Left, created the national organization Kampania Przeciw Homofobi [Campaign Against Homophobia]. This group would soon focus its efforts on promoting positive visibility for gays and lesbians in Poland. In the spring of 2003, the group produced the social campaign "Niech nas zobacza" [Let them see us].

Let Them See Us opened in five galleries across the country. The campaign showed images of thirty smiling couples, fifteen gay and fifteen lesbian, holding hands, with the words "Let them see us" written in red. This same image later appeared across the country on national billboards. Let Them See Us was a spark that started a fire. "Until then, homosexuals functioned in the Polish collective consciousness a bit like extra-terrestrials: they existed somewhere, someone claimed to have seen them, or even talked to them, supposedly they have green antennae." Thanks to the campaign, "Poles were confronted with the fact that some of them actually were homosexual" (Warkocki 2004:101). This is considered by many of the Movement's leaders as the most important event in the group's history.

Today, the lesbian and gay movement holds an umbrella for more than just the rights of sexual minorities. Participants (many heterosexuals) use gay and lesbian events to express their desire to fully participate in the new Europe, with its culture of tolerance and pluralism. However, public resistance to the increasing visibility of gays and lesbians is growing in tandem with the emergence of nationalist and xenophobic feelings arising from Poland's

entrance into the European Union in 2004, as well as the activities of right-wing political forces, led by Lech Kaczynski.

Kaczynski started his political campaign in the summer of 2005 by producing a widely publicized leaflet entitled “Catholic Poland in Christian Europe”. As a former Mayor of Warsaw, he canceled the Warsaw pride parade in both 2004 and 2005 for “security reasons” and for the possibility of “danger” to public health and morality. He views these two events as some of his greatest successes while in public office.

In the fall of 2005 the topic of a “gay parade” and the question of its legality became one of the key themes of the presidential election. As Graff highlights, this issue was not to be underestimated. Each candidate’s attitude toward sexual minorities served as a litmus test for her or his views on modern democracy, Poland’s Westernization, freedom of speech, and traditional Catholicism.

The governmental and presidential elections, which took place in September of 2005, brought a victory of the right wing parties: Prawo I Sprawiedliwose [Law and Justice] and the League of Polish Families. One of the first decisions of the new government was to cancel the Office of Governmental Plenipotentiary for the Equal Status of Women and Men, which used to be the only official body on the government level dealing with matters pertaining to sexual minorities. The ban of the Poznan March came only a month after the decision, becoming a symbol for the new political regime.

The city of Poznan was preparing for its first Pride March in November of 2005. Like others around the country, the Poznan march was declared illegal by the mayor on the grounds that “it might be dangerous to property of great value”. The group All-Polish Youth, attacked the event with eggs and horse manure chanting, “Let’s gas the fags” and “We’ll do

to you what Hitler did to Jews”. Police separated the two groups and then began brutal attacks against the marchers, arresting sixty-eight people in total. However, for the first time the media supported the gay and lesbian community, criticizing the police brutality.

Many demonstrations across the country responded to the Poznan attacks. Moving speeches addressed the fact that when demonstrations are made illegal, democracy is in danger. Although Poznan was a tragic event, it served as a recruitment tool and gave fire to the Movement once again. Many of the people who joined in the protests had previously claimed that sex was a private affair, not to be turned into a topic of public debate. Now the issue was not so much about sexual minorities as about blatant violations of basic democratic principles (Graff 2006).

The gay and lesbian movement in Poland has made tremendous strides over the past two decades. Although clandestine groups were in existence in the 1980’s, only after the fall of Communism could the Movement formally organize and assess its numbers. The early 1990’s brought the collaboration of both gay and lesbian groups; however, fear soon led many of the members back into the closet. In general little progress was made before 2001.

With the help of leaders from the Left Party, the National Coalition Against Homophobia was founded in 2003. This organization was responsible for the controversial campaign, “Let Them See Us.” The campaign, which brought homosexuality into mainstream media, is the single most important event in Poland’s gay and lesbian history. Let Them See Us offered positive affirmation for the community, recruitment for allies (gay and straight), and more importantly was a message to the conservative Right that the Movement was here to stay.

The Movement has long been fighting many forces. First, as result of the prejudices of the communist state, the Movement was delayed nearly twenty years in comparison with other countries. Second, the role of Polish Catholicism is not to be underestimated. Christianity pervades all legislation that is passed throughout the country, and Poland's seat in Vatican City provided constant reinforcement for its dispositions. The Movement has little access to political leaders. The pseudo liberals of the Left are reluctant to represent the interests of the Movement. They fight for civil rights, as long as it doesn't have a pro-gay agenda. Finally, a persistent sense of homophobia poisons the country's capacity for rational thought about such topics. These sentiments can easily be seen in the 2004 Senate hearing where €10 million were solicited to cure Poland of homosexuality (Kitlinski).

Despite these difficult circumstances, the Movement has become politicized. The banning of the Equality and Pride Parades recruited more members than ever before, and the emotional energy gained after the beatings in Poznan in 2005 helped to re-energize the Movement in petitioning for rights. Thus, even in 2005, a same-sex partnership bill was submitted for review.

CHAPTER 4

THE SPANISH CASE

There is little literature regarding the small groups of gays and lesbians that existed prior to Francisco Franco's dictatorship. Homosexuality was a taboo subject, and there was fear that those who discussed it could be incarcerated or even killed. In the 1930's, as civil war broke out across Spain, the gay infrastructure of many cities suffered. One such casualty was a bathhouse in Barcelona. In 1934, more than thirty *mariconas* (Las Carolinas) went to this site and laid roses tied with black ribbon in remembrance of those who died, ending the silence (Llamas 215). For the first time in Spain, a group of openly gay men declared their identity and demanded recognition.

During the transition to democracy in the 1970's, many changes liberated the Spanish people. However, none of them liberated gays and lesbians. Gay people remained a "social threat" under the Danger and Social Rehabilitation Law (LPRS). As a result, gay men made up 8 percent of those incarcerated in 1976 (Terradillos 63). Therefore, even though Spain had its first democratic government (Central Democratic Union) with a new constitution, the lives of gays and lesbians remained almost the same as they were under Franco's oppression.

According to Frank and McEneaney (916), the "rise of individualism provides crucial ingredients for the rise and legitimization of same-sex sexuality." Thus, the transition initiated a change in the cultural values of many Spaniards. As policies prohibiting contraception, adultery and divorce disappeared, a new way of viewing sexuality emerged.

Same-sex relationships became another legitimate way to satisfy individual desires. The gap between genders roles decreased, and individualization of the Spanish people helped to change a sexuality based purely on procreation to one based on pleasure (Frank and McEneaney 916).

“Identity groups often split into many sub-groups because they cannot agree on or sustain mobility unless they collectivize against a common enemy (Berstein 533). Prior to 1978, the enemy was the persecution of LPRS. Having already achieved the goal of repealing LPRS, the numbers within the Movement decreased substantially. In 1978 there were over 200 activists in the group FAGC (Front d'Alliberament Gai de Catalunya), however in 1980 this same organization counted less than thirty members (Mira 491).

Lesbian Movement

From the beginning, a separate lesbian community was forming in Spain. Normally in the onset of gay movements, gays and lesbians begin working together but later separate to pursue their different goals. However, in Spain the lesbian movement acted individually and only united with the men in the late 1980's. This collaboration in the latter years proved to be a fundamental step in Spain's success.

The two groups did indeed have different goals, and the lesbian Movement wanted to form its own coalition. Even though they were fighting against the same oppression, their tactics needed to be distinct. In March of 1978, one of the first manifestos of a collective group (Col.lectiu de Lesbianes de Barcelona) said, “Our voices need to be heard so that we can develop the common aspects of our lives as women and affirm our differences as lesbians” (Llamas 217).

During the 1980's there was little progress compared with what was achieved a decade earlier. A type of liberal homophobia appeared and was very dangerous. Spain had become a democratic country and discriminatory laws were a thing of the past, but homophobia had not disappeared, it only changed form. It is difficult to grasp this homophobia, one that cannot be seen but only felt by those who experience it. For example Spain was proud to be less puritan than the English in the 1980's. Sex was no longer a scandalous subject and discrimination of sexual minorities was decreasing. But the paradox remained in the daily experience of many gays and lesbians who feared homophobia and remained in the closet.

In the 1990's the gay and lesbian movements united and activism was at a pinnacle point. New doors began to open in many cultural and social centers and people were out in the streets, claiming a physical space in the barrio of Chueca.

The Chueca Model

Since the 1980's there was an effort within the Movement to shut down the gay ghettos in Chueca, which drew public attention to negative images. However the new Chueca in the 1990's was just the opposite. Theatres, clothing shops, bookstores, political groups, cafes, restaurants and finally businesses began to fill the area. A gay neighborhood is more than just a street of bars where people can meet. It is a zone of relaxation, a place of gathering and living, functioning at day and night, offering new services, specializing in the needs of a concrete community (Mira 605). Today Chueca is a diverse and thriving community for both gay and heterosexual people.

The final challenge of most gay and lesbian movements is the right to marry. The campaign across borders is consistent in demanding that gays and lesbians should have the same right to marry as their heterosexual friends and family members do. Their lifestyle should not prohibit them from demonstrating their love for another person. The Movement's activities focused on achieving these civil rights throughout the 1990's and into the new millennium.

Access to political figures is important in any social movement, and Spain realized this in the early 1990's. Pedro Zerolo, a lawyer from Venezuela served a vital role in drafting progressive legislation. Zerolo was president of COGAM (The Lesbian, Gay, and Bisexual Collective of Madrid) and FELGT (State Federation of Gays, Lesbians, Bisexuals and Transgender) in Madrid. He also served as an advisor to the Senate and helped debate and successfully negotiate five modifications in the Civil Code in favor in homosexual marriage in 2001 and 2003.

On October 1st 2004, the Socialist Government approved modification to the Civil Code allowing for homosexual marriage in Spain (Zerolo). At this time, reports from the Center for Sociological Investigations showed that 67 percent of Spaniards favored this right for homosexual couples (Zerolo, Pingree). The support of the people in Spain was higher than in the Netherlands when it became the first country to legalize gay marriage in 2001.

In the summer of 2005 Spain acted to become the third country to legalize homosexual marriage. Since the country is over 90% Catholic, this phenomenon is the new hope for many other movements across the world. The activists have suffered many losses but their hard work can now be celebrated. Spain's success has not come easy; however, through tactical approaches it has achieved what many thought to be impossible.

Through their international contacts in the 1970's, Spain acquired support and absorbed strategies from countries around the world. Its new liberalized society with a pro-European agenda provided a venue for citizens to demand new rights, one of which being equal status for gays and lesbians. Spain also underwent a change in cultural values whereby the pro-Catholic, familial model dictated by Franco was replaced by a liberal, sexual revolution to which many people were attracted.

The role of the secular media aided the Movement in its educational campaigns and the collaboration of both the gay and lesbian movements allowed for a united voice against a contradicting democratic society. The rise and popularity of the Chueca model provided a physical space for the gay and lesbian community. And the power of the pink euro, just as in England, was a force to be reckoned with. Finally, the access the Movement had to political figures sealed the fate of the traditional Spanish society and paved the way for new battles to be fought and won in greater Europe.

CHAPTER 5

EUROPEAN UNION POLICIES ON HUMAN RIGHTS

In 1951, the six original member states agreed to form a European Coal and Steel Community. Their treaty created a common market, and member states forfeited their sovereign right to set tariffs or quotas on the import or export of steel. The success of this ECSC Treaty also encouraged the six member states to propose a common defense plan as well as a united political community. However, these efforts failed and the Community continued to address primarily economic issues.

Even after the creation of a European Court of Justice (ECJ), this ruling body discouraged individuals from petitioning human rights protection. The Court believed it had no competence or jurisdiction to consider human rights claims. Community law was supreme to national law and since Community law was limited to economic matters, it provided no basis for claims violations of human rights (Carolan 527).

However, as the Union evolved so did the ECJ. It concluded protection of fundamental human rights was implicit in the law of the European Community. In a series of decisions, the Court gave shape to fundamental human rights that formed an unwritten part of Community law. It drew its inspiration from common human rights principles of member states as well as from international agreements to which the member states were signatories, such as the European Convention on Human Rights (Defeis).

The Union has gradually pushed human rights issue to the forefront of its relations with other countries and regions worldwide. Since 1992, all agreements on trade or cooperation with third countries contain a clause stipulating human rights are an essential element in the relations between parties. To date, there are more than 120 such agreements (European Commission). The ratification of the Maastricht Treaty further solidified these sentiments by stating:

The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.

The core values; human rights, democracy and the rule of law found their place in the founding treaty and will be reinforced by the adoption of a *Charter of Fundamental Rights*. Respect for human rights is a prerequisite for countries seeking to join the Union and a precondition for countries that have concluded trade and other agreements. The focus of the Union's human rights policy is on civil, political, economic, social and cultural rights. It also works to promote the rights of women and of children as well as minorities and displaced persons.

Today, activists for human rights focus on fighting racism, xenophobia and other types of discrimination against minorities as well as rights in the areas of asylum and migration. A number of steps have been taken toward establishing a Common European Asylum System and the Union has adopted measures to provide temporary protection in the event of mass influx of displaced persons as occurred during the Balkan conflicts in the early 1990's. These new laws, which came to fruition after the war in Kosovo, protect displaced persons for up to three years, providing them with residence and work permits,

accommodation, access to social and medical services, and schooling for their children.

Through these means, they may also formally apply for asylum.

To continue their efforts, the EU finances the European Initiative for Democracy and Human Rights. Its budget has increased since 1994 and will exceed €1.1 billion from 2007-2013 (European Commission). The initiative places respect for human rights and strengthening democracy into a long-term context and focuses on four areas: strengthening democracy, abolishing the death penalty, combating torture and repressive measures and fighting racism and discrimination by ensuring respect for political and civil rights.

Today, the Union sees human rights as universal and indivisible. It promotes and defends these rights within its own borders as well in relations with outside countries. However, at the same time, the EU does not and cannot assume competence over the national governments in this area. To further illustrate this point, the human rights of sexual minorities will be reviewed in the following final section.

CHAPTER 6

EUROPEAN UNION POLICIES ON GAY AND LESBIAN RIGHTS

In 1948 the United Nations General Assembly declared in Article 2 of the Universal Declaration of Human Rights:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

This Declaration was only a resolution and not a treaty (Tahmindjis 11). It emerged after the atrocities of the Nazis and was meant to prevent future killings of minority populations (including the 34,000 gay men which died at the Sachsenhausen concentration camp). But sexual orientation was not mentioned.

Similarly, Article 2 of the International Covenant on Civil and Political Rights (ICCPR) provides that States must ensure these rights to everyone within their territory. However it is significant, that despite the width of application (to all individuals...) there is no specific mention of sexuality in the enumerated categories.

International human rights norms are, in general, silent on issues of sexuality. Domestic laws are essential in overcoming limitations in international human rights law as it has traditionally applied to gay and lesbian communities (Tahmindjis). Lesbian, gay and transgender human rights issues have only entered the international discourse in the last

twenty years, even though this group has suffered discrimination, persecution and injustice throughout the world since the beginning of the 20th century (Walker 122).

The debate over homosexual rights within the EU can be traced back to the early 1980's. However, it was not until the 1994 *Report for the Committee on Internal Affairs and Citizens' Rights on Equal Rights for Homosexuals and Lesbians in the European Community* that the relevance of such issues was addressed. This report detailed the harsh reality of widespread discrimination faced by gay and lesbian people in the EU in a variety of areas (Langenkamp 440).¹

Specifically, this report highlighted sexual orientation discrimination in areas of employment, marriage, adoption and privacy. Soon after, Parliament requested the Commission to draft recommendations on the equal treatment of all member state citizens regardless of their sexual orientation, and called for the immediate end to all forms of sexual orientation discrimination.

In Europe, gay and lesbian activists have found venues to address sexuality claims in various European Institutions. In particular, they have found success in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). All member states are signatories of the ECHR and thus bound by its provisions, whether or not their constitutions protect sexual minorities. For lesbians and gay men, privacy claims have generally succeeded. But claims based on respect for family life and equality have historically not fared so well (Walker 123).

Since the 1970's very few European countries have introduced anti-homosexual legislation and most are making progressive steps. There are common trends countries follow in their path towards recognizing gay and lesbian rights. First, there are associations

¹ Resolution on Equal Rights for Homosexuals and Lesbians in the EC, supra note 11, at 42.

of homosexuals that distribute information to the greater public. This usually results in decriminalization of homosexuality (if not already enacted) followed by an equal age of consent among homosexual and heterosexual adolescents. Third, anti-discrimination legislation can be introduced with the hopes of full legal recognition of same-sex partnership and parenting (Waaldijk 440).

In recent years, the EU has made progressive steps in protecting the rights of gay and lesbian citizens. Through the lengthy accession process of new candidate countries, governing bodies can demand human right violations against gay and lesbian people be remedied prior to application approval. Once admitted, the Union has been working to ensure rights in areas of privacy and non-discrimination and most recently new advances are being made in respect for the family life.

Accession

The Union plays a vital role in recognizing human rights violations through the accession process of new applicant countries. Both the European Parliament and the European Commission have taken a united stance against the accession of countries with anti-gay laws and practices (Langenkamp 438). The basis for enlargement lies in the EU's three foundational treaties: The European Coal and Steel Community in 1952 and the establishment of the European Economic Community and the European Atomic Energy Community both in 1958. As the Union has evolved in both economic and geographic terms, member states have also evolved through the drafting of three additional treaties: The Single European Act of 1986, the Treaty of the European Union in 1992, and the Treaty of

Amsterdam in 1997. Most recently, the summit in Nice has sought to amend the existing treaties.

A variety of institutions must approve an applicant country's accession into the EU: the Council of Ministers, Parliament and domestic approval by each of the existing member states are required. Parliament stands out as asserting the most influence over enforcing human rights obligations. In September of 1998, Parliament stated it would refuse to consent to the accession of any applicant country where legislation or policies violates the human rights of lesbians and gay men (Langenkamp 451)². It is worth mentioning however; that Parliament, whose members are elected by universal suffrage throughout the Union, once played little or no role in the adoption of UE legislation. When the EC Treaty did require Parliament's participation, the Council and the Commission were free to ignore their input. However, at present, Parliament is more or less an equal partner with the Council in the adoption of EU legislation (Carolan 533). And it continues to serve a vital role in the protection of sexual minority rights.

Any country seeking entry into the EU must also incorporate the body of EU law, including the *acquis communautaire*, into its national legislature. This requires any anti-discrimination law existing in the applicant country to be modified in relation with EU law prior to accession. Also, countries must guarantee respect for fundamental freedoms and human rights, including protections based on sexual orientation and gender identity.

Privacy

Article 8 of the ECHR provides:

² Resolution on Equal Rights for Gays and Lesbians in the EC, 1998 O.J (C 313) 186, 188 para J.

- Everyone has the right to respect for his private and family life, his home and his correspondence
- There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and as is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 14 of the ECHR further provides:

- The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

The European Court of Human Rights has supported privacy claims for gays and lesbians for many years. In the 1980's the Court was the first international body to rule that laws criminalizing consensual, private sexual activity between adults violated the right to privacy protected by article 8 of the ECHR (Walker 124).³

In *Sutherland v. United Kingdom*, the European Commission of Human Rights extended privacy rights to cover age discrimination of consent laws in the United Kingdom. The Commission decided that allowing a different age of consent for sex between men (18), from that for sex between a man and a woman (16), violated the right to privacy along with the non-discrimination clause in art 14 of the ECHR. The United Kingdom along with other countries soon changed their age of consent laws to match those for heterosexual adolescents.

³ *Dudgeon v United Kingdom* (1981) 45 ECHR; *Norris v Ireland* (1988) 142 ECHR; *Modinos v Cyprus* (1993) 259 ECHR.

Sutherland was important for many reasons. First, it overruled several earlier decisions in which the Commission upheld age discrimination of consent laws against gays and lesbians (Walker 126).⁴ It was also the first time either the European Court of Human Rights or the Commission upheld a claim concerning discrimination on the basis of sexual orientation under article 14.

Another victory occurred in 1999, when the European Court of Human Rights held that the investigation and discharge of lesbians and gay men from the military in the United Kingdom violated the right to privacy. *Lustig-Prean and Beckett v. United Kingdom* and *Smith and Grady v. United Kingdom* found a violation of article 8 in the policy and practice of the armed forces of the UK in relation to four applicants, three gay men and a lesbian. The plaintiffs were administratively discharged from the Army and Navy by reason only of sexual orientation. The Court went on to find that the rights of all four applicants' private lives had been violated.

The Court held that these interferences were not justified under article 8(2), even though the discharges were 'according to law' and taken to achieve a 'legitimate aim', namely national security. These interferences with privacy were not 'necessary in a democratic society'. As a result, the British Government has altered its policy on lesbians and gay men in the military, setting an example for greater Europe.

Most recently, the European Court of Human Rights decided in *ADT v United Kingdom* that the criminalization of sexual activities between men where more than two men are present also violates their right to privacy.

⁴ *Zukrigl v Austria* (No 17279/90); *Johnson* (1987) 9 ECHR 386; *App No 9721/82 v United Kingdom* (1985) 7 ECHR 145; *X v Belgium* (No 9484/81); *X v United Kingdom* (1980) 19 Decisions and Reports: European Commission on Human Rights 46; *X v Germany* (1976) 3 Decisions and Reports: European Commission on Human Rights 46.

Non-Discrimination

An amendment to the EC Treaty provided by the Treaty of Amsterdam in 1997 gave express powers to the European Community to legislate against discrimination based on sexual orientation. Article 13(1) now states:

Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability or sexual orientation.

This was the first document at the supranational European level to protect the rights of sexual minorities. However, as the following two cases illustrate, the EU has no consensus as what constitutes sexual orientation discrimination.

The European Court of Justice (ECJ) case *Grant v. South West Trains* in the United Kingdom denied travel benefits for Grant's lesbian partner. Grant argued this was sex discrimination within the meaning of article 119 of the *Treaty Establishing the European Economic Community* (requiring equal pay for men and women). The ECJ did not accept this argument, as the benefits for a man living with a man would also be denied in this case, thus there was no sex discrimination.

The ECJ held that the discrimination involved in *Grant* was based on sexual orientation, not sex, suggesting that negative treatment of homosexuals did not constitute gender discrimination as long as both male and female homosexuals were treated equally. The lasting effect of this decision is that under EC law, sex discrimination does not encompass discrimination against lesbians and gay men.

A successful claim in *Grant* would have seen the extension of marriage benefits to “stable” same sex couples. The actual implementation of the marital privileges would vary greatly across the EU depending on social attitudes towards homosexuality as well as existing anti-discrimination legislation at the national level. However, the ECJ is reluctant to vote in favor of cases involving the family life, as this remains the polemic issue across the continent.

However progress was made in 1999 when the European Court of Human Rights supported a claim of sexual orientation discrimination under art 14 of the ECHR for the first time. In the case *Salguiero da Silva Mouta v Portugal*, a gay man was denied custody of his child because he was gay and living with his lover. Mouta argued that an interference with his family life violated article 8 and article 14 in conjunction with article 8 of ECHR (Walker 137). The Court upheld his claim under article 8 and 14 and found that denial of custody constituted an interference with Mouta’s family life. This decision held that sexual orientation is undoubtedly covered by article 14 of the Convention and that there was no reasonable justification for the differential treatment. This case reversed, at last, a long history of the denial of non-discrimination claims brought under article 14, including five early criminalization cases, six age of consent cases, six same-sex couple cases and a military employment case (Walker 137).⁵

In 2000, the Framework Directive further prohibited sexual orientation discrimination in areas of employment. Most importantly, the Framework Directive forbade discrimination in all aspects of the employment relationship. The Directive is not only binding on member

⁵ For more detailed analyses of European law prior to 1995, see Robert Wintemute, *Sexual Orientation and Human Rights: The United States Constitution, the European Convention and the Canadian Charter* (1995), Kees Waaldijk and Andrew Clapham, *Homosexuality: A European Community issue—Essays on Lesbian and Gay Rights in European Law and Policy* (1993); Laurence Helfer, ‘Lesbian and Gay Rights as Human Rights: Strategies for a United Europe’ (1991).

states of the European Union, but all future states upon accession. As of 2003, all member states were required to have in place national legislation prohibiting discrimination based on sexual orientation (Carolan 541). Although some protections against employment discrimination are evident, sexual orientation discrimination remains endemic in Europe (Langenkamp 446).

Family

Ensuring rights for same-sex families remains the most difficult road ahead for sexual minorities under EU law. As early as 1994, the European Parliament passed a resolution in favor of equal rights for homosexuals—including the right to marry—but this resolution had no binding effect on national legislation. The family life falls under jurisdiction of the national courts and ultimately depends on the feelings towards gay and lesbian people in the individual countries.

In the first wave, Denmark approved the 1989 law on registered partnerships. This was followed by similar statutes in other Scandinavian States. A second wave of legislation occurred in the 1990's involving Hungary, France, Belgium, the Netherlands and some autonomous communities in Spain (Coester 586). The character of these laws and regulations vary from state to state.

The new century has seen more enactments. Germany followed the Scandinavian model in 2001, Finland in 2002 and the Netherlands, not completely satisfied with their domestic partnership bill of 1998, became the first State in the world to allow marriage to all partners, regardless of their sex. There have been a variety of tactics pursued in achieving

successful legislation on same-sex relationships. Michael Coester categorizes the approaches into four responses.

1. Piecemeal legislation

This is the most cautious approach. Rules are established for cohabitating partners in regard to the home, social security, liability for debts, inheritance rights and so on. This type of legislation is a step away from the marriage/non-marriage dichotomy with its all-or-nothing approach.

2. Domestic Partnership (cohabitants) legislation

This second model does not focus on the sexual relationship nor on the couple's commitment to a lifetime union. Instead, it highlights their formation of a stable union. This example is common in Sweden, where the law applies equally to both heterosexuals and homosexuals who choose to register their relationship.

3. Registered Partnership

Even the most comprehensive cohabitation legislation falls short of creating a legal status for the cohabitants. It only enables them certain rights and obligations, but with no formal title. Many gay and lesbian activists fight for this recognition. They want the highly esteemed social status that only comes with marriage. However, since most societies are unwilling to grant marital status to same-sex partners, the registered partnership model is the current compromise.

4. Same-sex Marriage

In April of 2001, the Dutch legislation took their registered partnership bill one step further and allowed 'a marriage to be contracted by two people of the same sex'. There exist minor differences among same-sex marriage laws, mainly in regards to children. All same-sex

marriages are open to foreigners, providing one partner is a national of the country in which marriage is proposed. However, applicants should be aware their marriage may not be recognized in other countries and are encouraged to obtain legal advice prior to relocation.

Article 8 of the ECHR protects the family from state interference as well as individual privacy rights. However, a problem remains that gay and lesbian relationships have never been considered a family for the purpose of article 8 in the ECHR, either by the European Court of Human Rights or the European Commission of Human Rights. Several cases have been brought before the Commission, but none have been successful. Rather, the Commission has held numerous times that a same-sex relationship is not equivalent to a heterosexual relationship (Walker 138).⁶

Superficially, Europe appears far more advanced than the United States in legislating equality for sexual minorities. The information discussed above is a strong testament to this. However, a philosophical problem remains unresolved at the supranational level of EU politics: What exactly constitutes discrimination based on sexual orientation?

Overall, the ECJ has acted as a conservative force, with decisions that have weakened progressive legislation at the national and supranational level (Carolan 529).

D v. Council of the European Union denied benefits to a same-sex spouse of a Swedish employee. At this time, Sweden accorded most legal marital rights to same-sex couples and had established registry for such partnerships. However, the ECJ supported the lower court's position that there was no breach of fundamental rights since homosexual partnerships are not to be afforded the same protections as married couples.

It is difficult to find uniformity throughout the member states. In legal terms, some countries recognize same-sex cohabitation as an equivalent to marriage; however, most view

⁶ See generally Wintemute, above n 6, 122-3.

it as only a stable heterosexual relationship outside of marriage with respect to a limited number of rights. Some states still do not recognize these relationships in any particular way (Stychin 289).

Article 12 of the ECHR states: “men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right”. However, Article 12 is couched in terms that make the right it affords, subordinate to domestic legislation. Therefore even if Article 12 could be constructed as conferring a general right to marry, it must nonetheless be read subject to impediments imposed by domestic legislation. And since there is a statute prohibiting same-sex marriage in many European countries, the broad interpretation of Article 12 is to no avail.

Positive changes can be seen through the *Charter of Fundamental Rights* proclaimed by Parliament, the Council and the Commission in 2000. Article 21 of the *Charter* does expressly prohibit discrimination on the grounds of sexual orientation. However, it is not part of the Treaty of Nice and therefore not legally binding. Parliament has vocally stated its adherence to the *Charter* as a set of standards and will uphold both member states and candidate countries to her statutes. However, this only applies to European institutions and to member states in their actions within the scope of European Union law, and not to domestic law (Tahmindjis 15). It is currently in review in conjunction with the new European Constitution that is still pending approval.

CHAPTER 7

CONCLUSION

The European Union is a legal system that has been oppressing homosexuality since its inception. However, gay and lesbian social movements have been fighting this oppression since the 1970's; and today, the situation for gays and lesbians in Europe is mainly positive. Three countries, the Netherlands, Belgium and Spain offer full protection and benefits under the law and allow homosexual couples to marry and adopt freely. For most of western and central Europe, life is tolerable for gay and lesbian citizens. Most countries offer civil unions or partnerships and debate progressive legislation to improve the lives of their citizens. However, there are parts of Europe, illustrated by the Polish case, in which life is very difficult and discrimination and hate crimes are far too prevalent.

Gay activists have adopted a number of strategies across the continent. We find them turning to local history and the cultural past to question the idea of an authentic, opposite-sex sexuality and tradition. They re-tell the story of a nation, but add their own new important characters. This reclaiming of a same-sex sexual history challenges the idea that homosexuality has polluted a sexually pure culture (Murray and Roscoe).

Activists have also begun to intersect their multiple identities. This proved very successful when pride marches would demonstrate with signs reading "Gay and Polish" for example. It is important to counter the claims that these two such identities cannot co-exist.

Dual-identity claims force opponents to realize the marginalized gays are real and, despite being pushed out of the community, they are normal people and deserve normal treatment.

Thirdly, activists utilize the human rights language as an essential feature in their campaign. This has proved very successful throughout Europe - and even in South Africa in the drafting of its new constitution. Through the work of the European Parliament and several NGO's, the political, social and cultural life of gay and lesbian citizens is improving. Gay and lesbian claims are viewed as human rights violations and this group is seen as a minority population in danger.

Today the most pressing problem is the protection of the family life. Many Courts will not recognize gay and lesbian relationships as equal to heterosexual relationships. And as this remains the polemic issue, European Courts are reluctant to set precedents in regards to protection of the family. However, the refusal of the institution of marriage is a very important issue. Many of the Treaties and Directives in the EU make references to marriages and spouses, which for most of Europe, is only granted to heterosexual couples. The institution of marriage itself has many economic, social, cultural and political implications that affect the lives of gay and lesbian people.

The result of the many treaties and declarations along with successful movements in Spain and failed attempts in Poland is a state of widespread confusion. The EU has not come to a consensus as what constitutes discrimination of sexual minorities. Most claims are dealt with at the national level and through the diversity and variety of the domestic courts, the EU remains a patchwork of contradictions in regard to gay and lesbian rights as well as the foundation of the EU—a transnational marketplace allowing free movement of people. Gay and lesbian citizens are moving to countries where their rights are recognized, creating an

unfair advantage to the majority of Europe as a significant creative population is attracted to a small number of states.

There is no monolithic continental attitude towards sexuality in Europe and, in particular, homosexuality generates many varied opinions across countries and produces many polarized responses within nations. At the supranational level, few advances will be made until more member states create progressive legislation and follow the example of Spain, Belgium and the Netherlands. The future of the family life of gay and lesbian people rests in the hands of Germany, France, Hungary, Greece, Italy, and many others. Only when national domestic legislation protects the lives of its gay and lesbian citizens, will greater Europe follow suit.

REFERENCES

- Adam, B. (2003). The Defense of Marriage Act and American Exceptionalism: The "Gay Marriage" Panic in the United States. *History of Sexuality*, 12(2), 259-276.
- Adamska, Katarzyna (1988) *Ludzie obok: lesbijki i geje w Polsce* [People on the margin: Lesbians and gays in Poland], Torun: Graffiti BC.
- Adler, Katya. "Gay Rights Bill Tests Spanish Values". British Broadcasting Corporation (October 1 2004); 3 p On-line. Internet Jan. 28 2006.
- Armstrong, E. A. (2005). From Struggle to Settlement: The Crystallization of a field of Lesbian/Gay Organizations in San Francisco, 1969-1973. In G. F. Davis, D. McAdam, & R. Scott (Eds.), *Social movements and organization theory* (pp. 161-187). New York, NY: Cambridge University Press.
- Bamforth, N. (2001). Same-Sex Partnerships and Arguments of Justice. In R. Wintemute & M. Andenaes (Eds.), *Legal Recognition of Same-Sex Partnerships* (pp. 31-54). Portland, OR: Hart Publishing.
- Berstein, M. (1997). Celebration and Suppression: The Strategic Uses of Identity by the Lesbian and Gay Movement. *The American Journal of Sociology*, 103(3), 531-565.
- Berstein, M. (2002). Identity and Politics: Towards a Historical Understanding of the Lesbian and Gay Movement. *Social Science History*, 26(3), 531-581.
- Britt, L. & Heise, D. (2000). From Shame to Pride in Identity Politics. In S. Styer, T. Owens, & R. White (Eds.), *Self, Identity, and Social Movements* (pp. 252-268). Minneapolis, MN: University of Minnesota Press.
- Brower, T. (2007). Multistable Figures: Sexual Orientation Visibility and Its Effects on the Experiences of Sexual Minorities in the Courts. *Pace Law Review*, 27(2), 141-198.
- Cádiz, X. (2007). ¿Un Milagro Español? In J. A. Herrero Brasas (Ed.), *Primera Planta: Ética y activismo la construcción de una cultura queer en España* (pp. 108-120). Madrid, Spain: EGALES.
- Campaign Against Homophobia. (2007). Situation of bisexual and homosexual persons in Poland: 2005 and 2006 report.
- Carolan, B. (2004). Judicial Impediments to Legislating Equality for Same-Sex Couples in the European Union. *Tulsa Law Review*, 40, 527-560.

- Coester, M. (2002). Same-Sex Relationships: A Comparative Assessment of Legal Developments Across Europe. *European Journal of Law Reform*, 4, 585-601.
- Cooper, D. (1994). *Sexing the City*. London: Rivers Oram.
- Dalvi, S. (2003). Homosexuality and the European Court of Human Rights: Recent Judgments against the United Kingdom and their Impact on other Signatories to the European Convention on Human Rights. *University of Florida Journal of Law & Public Policy*, 15, 467-524.
- De Búrca, G. (2003). Beyond the Charter: How Enlargement Has Enlarged the Human Rights Policy of the European Union. *Fordham International Law Journal*, 27, 679-714.
- Defeis, E. (2004). Equality and the European Union. *GA.J. Int'l & Comp. L*, 32(73), 73- 98.
- Frank, D. & McEneaney, E. (1999). The Individualization of Society and the Liberalization of State Policies on Same-Sex Relations, 1984-1995. *Social Forces*, 77(3), 911-944.
- Garlinger, P. (2004). "In All but Name": Marriage and the Meaning of Homosexuality. *Discourse*, 26(3), 41-72.
- Gimeno, B. (2007). Matrimonio Civil en España: Historia de una Lucha. In J. A. Herrero Brasas (Ed.), *Primera Planta: Ética y activismo La construcción de una cultura Queer en España* (pp. 32-42). Madrid, Spain: EGALES.
- Gorska, A. (2006). *Lestesmy W Polsce [Chronology of Lesbian Activism in Poland]*. Retrieved June 1, 2007, from Porozumienie Lesbijek, Warsaw. Web site: <http://www.porozumienie.lesbijek.org/GorskaLestesmyPolska.htm>.
- Graff, A. (2006). We Are (Not All) Homophobes: A Report from Poland. *Feminist Studies*, 32(2), 434-451.
- Gray, N., & Brazil, D. (2005). *Blackstone's Guide to the Civil Partnership Act 2004*. New York, NY: Oxford University Press.
- Gross, M. J. (2006). The Affirmation of homosexuality will. *GenderWatch*, 15(4), 60-66.
- Gruszczynska, A. (2006). A March to Remember: Women Organizing Against Homophobia in Poland. Unpublished manuscript.
- Gruszczynska, A. (2007). When Homo-Citizens Go Marching In: Politicization of Sexuality and the Lesbian and Gay Movement in Poland. Unpublished manuscript.
- Guasch, O. (1995). *La Sociedad Rosa*. Barcelona, Spain: Editorial Anagrama.
- Gutmann, A. (2003). *Identity in Democracy*. Princeton, NJ: Princeton University Press.

- Hillion, C. (2003). Enlargement of the European Union-The Discrepancy Between Membership Obligations and Accession Conditions as Regards the Protection of Minorities. *Fordham International Law Journal*, 27, 715-740.
- Kitlinski, T. & Leszkowicz, P. (2005). God and Gay Rights in Poland. *The Gay and Lesbian Review*, 26-29.
- Klandermans, B. & De Weerd, M. (2000). Group Identification and Political Protest. In S. Styker, T. Owens, & R. White (Eds.), *Self, Identity, and Social Movements* (pp. 68-90). Minneapolis, MN: University of Minnesota Press.
- Langenkamp, T. J. (2003). Finding Fundamental Fairness: Protecting the Rights of Homosexuals under European Union Accession Law. *San Diego International Law Journal*, 4, 437-466.
- Llamas, Ricardo., and Fefa Vila. "A History of the Lesbian and Gay Movement in Spain". The Global Emergence of Gay and Lesbian Politics: National Imprints of a Worldwide Movement. Philadelphia, PA: Temple University Press, 1999.
- Lund-Anderson, I. (2001). The Danish Registered Partnership Act, 1989: Has the Act Meant a Change in Attitudes? In R. Wintemute & M. Andenaes (Eds.), *Legal Recognition of Same-Sex Partnerships* (pp. 417-426). Portland, OR: Hart Publishing.
- Marotta, T. (1981). *The Politics of Homosexuality*. Boston: Houghton Mifflin.
- Mira, A. (2007). *De Sodoma a Chueca: Una historia cultural de la homosexualidad en España en el Siglo XX*. Madrid, Spain: EGALES.
- Murphy, J. (2003). Some Wrongs and (Human) Rights in the English Same-Sex Marriage Debate. *BYU Journal of Public Law*, 18, 543-567.
- Nash, J. (2005). Social Movements and Global Processes. In J. Nash (Ed.), *Social Movements: An Anthropological Reader* (pp. 1-26). Malden, MA: Blackwell Publishing.
- Pinel, E. & Swann Jr, W. (2000). Finding the Self through Others: Self-Verification and Social Movement Participation. In S. Styker, T. Owens, & R. White (Eds.), *Self, Identity, and Social Movements* (pp. 132-152). Minneapolis, MN: University of Minnesota Press.
- Plummer, K. (1999). The Lesbian and Gay Movement in Britain: Schisms, Solidarities, and Social Worlds. In B. D. Adam, J. Duyvendak, & A. Krouwel (Eds.), *The Global Emergence of Gay and Lesbian Politics* (pp. 133-157). Philadelphia, PA: Temple University Press.
- Purcell, Julius. "The Pain in Spain". New statesman. (May 30 2005). 1 p. On-line. Internet. Feb 18 2006.

- Rodrigo, B. (2007). Esta Batalla lo Vamos a Ganar. In J. A. Herrero Brasas (Ed.), *Primera Planta: Ética y activismo La construcción de una cultura queer en España* (pp. 88-98). Madrid, Spain: EGALES
- Sonka, Jaroslav. "30 Years of Spanish Transformation". New Presence: The Prague Journal of Central European Affairs. Vol. 7, 4. P 18-19 Winter 2007.
- Soriano Gil, Manuel. "Homosexualidad y represión." Zero. Madrid, Spain 1978.
- Sterling, Toby. "The Global View of Gay Marriage". The Associated Press (March 4 2004). 2 p. On-line. Internet. Jan 28 2006.
- Stychin, C. F. (2000). Grant-ing Rights: The Politics of Rights, Sexuality and European Union. *Northern Ireland Legal Quarterly*, 51(2), 281-302.
- Stychin, C. F. (2003). Same-Sex Sexualities and the Globalization of Human Rights Discourse. *McGill Law Journal*, 49, 951-968.
- Tahmindjis, P. (2005). Sexuality and International Human Rights Law. *Journal of Homosexuality*, 48(3/4), 9-29.
- Tarrow, S. (1994). *El poder en movimiento: Los movimientos sociales, la acción colectiva y la política*. New Cork, NY: Cambridge University Press
- Taylor, V. D. (2000). Mobilizing for Change in a Social Movement Society. *Contemporary Sociology*, 29(1), 219-230.
- Terradillos, Juan. "Peligrosidad social y estado de derecho". Akal. Madrid, Spain 1981.
- Thornberry, Malcolm. "Pope Dresses Down Spanish PM Over Gay Marriage Bill". 365 Gay.com (June 21 2004): 2 p. On-line. Internet. Jan 30 2006.
- Thornberry, Malcolm. "Spain to Legalize Gay Marriage". 365Gay.com. (April 15 2004): 2 p. On-line. Internet. Jan 30 2006.
- Tofiño, Iñaki. "Spain and Mediterranean Model". The Gay and Lesbian Review (May- June 2003): 2 p. On-line. Internet. Feb. 2 2006.
- Tremlett, Giles. "Gays Persecuted by Franco Lose Criminal Status at Last". The Guardian. (Dec 12 2001). 2 p. On-line. Internet. March 1 2006.
- Unknown. (2007). *Overviews of the European Union Activities: Human Rights*. Retrieved May 2007, from the European Commission, Brussels, Belgium. Web site: http://europa.eu/pol/rights/overview_en.htm.

- Waldijk, K. (2001). Small Change: How the Road to Same-Sex Marriage Got Paved in the Netherlands. In R. Wintemute & M. Andenaes (Eds.), *Legal Recognition of Same-Sex Partnerships* (pp. 437-464). Portland, OR: Hart Publishing.
- Waldijk, K. (2001). Towards the Recognition of Same-Sex Partners in European Union: Expectations Based on Trends in National Law. In R. Wintemute & M. Andenaes (Eds.), *Legal Recognition of Same-Sex Partnerships* (pp. 635-651). Portland, OR: Hart Publishing.
- Waites, M. (2003). Equality at Last? Homosexuality, Heterosexuality and the Age of Consent in the United Kingdom. *Sociology*, 37, 637-655.
- Walker, K. (2001). United Nations Human Rights Law and Same-Sex Relationships: Where to from Here? In R. Wintemute & M. Andenaes (Eds.), *Legal Recognition of Same-Sex Partnerships* (pp. 743-757). Portland, OR: Hart Publishing.
- Walker, K. (2001). Moving Gaily Forward? Lesbian, Gay and Transgender Human Rights in Europe. *Melbourne Journal of International Law*, 2, 122-143.
- Zerolo, P. (2007). Matrimonio y Dignidad. In J. A. Herrero Brasas (Ed.), *Primera Planta: Ética y activismo La construcción de una cultura queer en España* (pp. 52-62). Madrid, Spain: EGALES.
- Zukaite, G. (2005). Does the Prohibition of Same-Sex Marriages Violate Fundamental Human Rights and Freedom. *International Journal of Baltic Law*, 2(4), 1-24.