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Pioneering Marriage for Same-sex Couples in the Netherlands

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Abstract:

Why did the Netherlands become the first country to allow same-sex couples to marry? I argue that in addition to social and political factors that have been well-highlighted in the literature, the desire of Dutch activists and policy elites to burnish their international reputation as a social policy and LGBT rights pioneer played a critical role in motivating the government to adopt this controversial policy. In making this argument, the paper addresses the often neglected topic of policy invention. I utilize the concept of regional policy community drawn from federalism studies to illustrate that such communities do not just facilitate the diffusion of new innovations across its constituent states, but they can also inspire pioneering states to experiment with new policy models in the first place.

Introduction

By 2015, more than thirty countries had implemented policies that recognize same-sex couples in law and a growing number—seventeen—did so by allowing such couples to enter civil marriages (table 1). European countries, particularly those located in the region's northwest corner, have often been on the vanguard of this policy reform and the expansion of lesbian, gay, bisexual and transgender (LGBT) rights. Given the rapid spread of same-sex unions (SSU) policies, it is easy to forget how controversial such policies were just two decades ago. This paper seeks to shed light on why certain countries played a pioneering role in expanding LGBT rights by examining the processes that led the Netherlands to become the first country to open marriage to same-sex couples in 2001. I argue that in addition to the cultural and institutional factors that have been well-highlighted in the literature, the desire of Dutch activists and policy elites to burnish their international reputation as a social policy pioneer played a critical role in motivating the government to adopt this controversial policy.

The Dutch same-sex marriage case highlights the often neglected topic of policy invention. Politics scholars have written extensively about how policies diffuse across borders and the ways in which governments in one jurisdiction learn from legislation adopted in another (Simmons et al 2008). We know a great deal about how, why and the circumstances under which new policies spread across borders, but we know far less about why states experiment with new ideas in the first place. In part this neglect stems from the belief that policy invention is separate from diffusion processes and determined by factors internal to pioneering states. Although internal factors are important, there are good reasons to suspect that the international context in which states exist also influences their decisions to experiment with new policy models. Much of the international learning literature emphasizes the role that the reputation of successful states plays in the decisions of receiving states to follow the example of regional leaders (Meseguer 2005). This literature rarely has turned its

lens in the other direction to examine the ways in which the lure of being a policy pioneer, and the international reputational gains that come with it, influence national debates and spur experimentation in pioneering states.

The issues of state-to-state policy diffusion and state policy invention have been particularly neglected by scholars of European public policy. Much of this literature has focused instead on the ways in which the European Union (EU) influences the policies of its member states through legal harmonization. More recently scholars of LGBT politics have addressed the neglected topic of horizontal diffusion across European states by highlighting the role that regional policy networks have played in catalysing the expansion of LGBT rights, and in particular the spread of SSU policies (Fernandez and Lutter 2013). This paper seeks to add to this literature by illustrating how the existence of a European LGBT policy community not only has facilitated the diffusion of SSU policies, but also has encouraged pioneering states such as the Netherlands to experiment with new forms of same-sex relationship recognition. I draw on an older US federalism literature, which unlike the international policy diffusion discourse examines the role that pioneering states play in the initial stages of diffusion processes (Walker 1969). This literature highlights the ways in which policy communities create competition among constituent states for reputational and material resources that can spur experimentation with new policy models. As I illustrate in the sections that follow, the Dutch marriage case demonstrates that European policy communities not only help member states to learn from their successful neighbours, but they also can motivate status-seeking states to experiment with new ideas and to act as teachers of new norms.

European Policy Communities, LGBT Rights Expansion and Policy Invention

In 1980, few European states had adopted legislation to combat discrimination against LGBT people either as individuals or couples. Within three decades almost all countries in the region had decriminalized same-sex sexual activity, implemented legislation to combat sexual orientation discrimination in the workplace and, starting with Denmark in 1989, a majority had adopted SSU legislation (Carroll and Itaborahy 2015). Increasingly, scholars have argued that this rapid expansion of LGBT rights is due not merely to simultaneous socio-political change, but to a significant degree has been catalysed by a European policy community. Although the EU and the European Court of Human Rights have brought about some of this reform through the imposition of legal mandates, recent scholarship has emphasized how informal policy networks have promoted the expansion of LGBT rights via horizontal, state-to-state policy diffusion (Kollman 2013). These informal processes have been particularly influential in the area of relationship recognition, where until very recently both the EU and the European Court of Human Rights have shied away from issuing far-reaching legal directives.[1]

These scholars draw on constructivist theories of social learning to show how LGBT rights policies spread across borders. Social learning occurs when engagement with new normative arguments and examples of proper behaviour lead political actors to change how they define their interests (Ruggie 1998). Philip Ayoub has shown that European states are more likely to implement LGBT rights legislation when their national movements have strong ties to European networks. Well-networked national activists utilize examples of pioneering countries to add legitimacy to their own campaigns for greater rights. These connections are particularly powerful in the new EU member states where LGBT rights remain more controversial than in Western Europe (Ayoub 2015). Juan Fernandez and Mark Lutter (2013) similarly argue that the wave of SSU policy adoptions in Europe since the 1990s has been influenced by cross-border learning. Countries that have greater links to

transnational NGOs and intergovernmental organizations are more likely to adopt an SSU

policy than countries where these linkages are weaker. David Paternotte and Kelly Kollman

(2013) have illustrated how a European network of LGBT activists and supportive

policymakers helped SSU campaigners in West European countries to craft strategies to get

the issue onto their country's political agenda and to legitimately frame it as a human right.

These authors show how important the demonstration effect of early adopters can be in

regional policy communities.

Very little of this literature, however, has examined why certain European countries

consistently have been the first to experiment with new LGBT rights policies. Scholars

largely have assumed that policy invention—the implementation of policy models that

previously have not been implemented elsewhere—can be explained by a limited set of

domestic factors. Older work on LGBT movements emphasized the role of institutional

opportunity structures such as party and parliamentary systems to explain the early and

differential policy successes of national movements (Adam et al 1999). Morality politics

scholars have examined how the nature of LGBT rights policies interacts with these domestic

factors. These scholars define morality politics as issues such as LGBT rights that are highly

salient to the public, technically simple and framed as issues over first principles (Heichel et

al 2013). As a result, the political processes that accompany LGBT rights expansion are

influenced by public opinion, religious values and party competition to a greater extent than

other policy types (Mooney and Lee 2001). European scholars have posited that this kind of

morality politics can affect the agenda-setting processes of European countries where religion

has been incorporated into the party system as a central cleavage as happened, for example,

in the Benelux countries, but not in Scandinavia (Engeli et al 2012). More recently,

Christoph Knill has combined the institutional opportunity and morality politics approaches

to explain why LGBT rights reform has occurred in certain European countries more quickly

than others after the issue has come onto the agenda. He and his co-authors illustrate how governing coalitions and institutional veto points shape these policy outputs (Knill and Preidel 2015).

Although clearly useful, these literatures largely ignore the international aspects of debates about LGBT rights expansion (Heichel et al 2013: 329-30). The same-sex marriage issue, however, has demonstrated that morality issues are also compelling to international audiences. There are thus good reasons to suspect that pioneering states' experimentation with novel LGBT rights would be influenced by the international context in which they exist in addition to domestic factors. This paper seeks to add to the LGBT and morality politics literatures by examining how institutional and cultural factors interact with the influence of the regional policy community to explain the under-explored issue of policy invention.

To do so, I draw on literature that examines policy innovation within federal systems. Numerous studies have illustrated the ways in which federal and quasi-federal systems act as laboratories for policy experimentation among these systems' constituent members (Kerber and Eckardt 2007). Much of this literature has been developed by US politics scholars, largely beginning with Jack Walker's seminal article. Walker's (1969: 880-81) enquiry sought to address two questions: Why do some (US) states adopt policy innovations more readily than others? [2] How do new policies diffuse across states after innovation has occurred? Walker's and the literature's interest in the first question—the subject of this paper—was based on the notion that policy innovation and diffusion frequently are related processes. Walker demonstrated that the spread of new policies often is driven by a leader-laggard dynamic in which certain US states consistently serve as early adopters or pioneers of new models. These policies are then taken up by other states in the region that take cues from well-known pioneers. [3]

Walker (1969), like many scholars, notes that richer and more urban US states tend to adopt new programmes more quickly than their more rural and poorer counterparts. This finding highlights the resources necessary for policy experimentation, but gives little insight into the motivation for doing so. Here scholars have speculated that a state's place in a broader policy community can serve as a motive to implement new policy. Laboratory federalism scholars argue that states in federal systems have an incentive to invent and implement new policies that will attract firms and/or citizens to their jurisdictions (Kerber and Eckardt 2007). These governments also have an incentive to build a reputation for policy innovation within the system. Martina Kerber and Wolfgang Eckardt (2007) have argued that although rarely explored by European public policy scholars, these dynamics also should apply to EU member states.

While much of the laboratory federalism literature focuses on the material incentives for policy innovation, others have argued that states can seek to build such a reputation for its own sake. Being perceived as a pioneer within a policy community that others seek to emulate is often a reward in itself. Walker (1969: 881) notes that Wisconsin frequently is keen to reinforce the reputation that it gained during the Progressive Era as a policy pioneer. Donald Haider-Markel and Ken Meier (2003) show how LGBT activists in Wisconsin used this reputation to persuade state policymakers to adopt the country's first anti-discrimination law that includes sexual preference. The desire to sustain a reputation for policy inventiveness within a regional system—with all the material and reputational advantages it engenders—can serve as a motive for future policy invention. I use these insights to illustrate how the prospect of becoming a high-profile LGBT rights pioneer, and a teacher of a new norm, influenced the marriage debate in the Netherlands and played a critical role in persuading the government to become the first country to do so.

Methods

I use the single case study of the opening of marriage in the Netherlands as a plausibility probe to evaluate the utility of laboratory federalism and leader-laggard models of diffusion for explaining policy invention in Europe. It is a useful case in which to do so. Same-sex marriage represents a high-profile, morality politics issue in which the reputational stakes are considerable because of the issue's prominence. This was reinforced in the Dutch case by several factors. First, LGBT rights were high on the European agenda by the mid-1990s with the incorporation of sexual orientation into the EU treaties and the expansion of such rights in Northern European countries. Second, the Netherlands had established itself as an LGBT rights pioneer. It was one of the first countries to implement anti-discrimination measures in the early1990s and was the fifth country to adopt a registered partnership (RP) law. Finally, the Dutch marriage law is a case of policy (re)-invention. The Netherlands made a significant change to the RP model, which was first implemented in Denmark and then emulated by other countries. The move from RPs to marriage, however, was no small tweak. It was an important victory for LGBT rights movements, most of which favour it to RPs because it signifies full equality and comes with significant symbolic benefits. Same-sex marriage invention thus represents a case where the reputational stakes within the regional policy community for a country like the Netherlands were high, but far from certain.

As such, it is a 'most likely' case for international reputational effects. As proponents of case study methods advise, most likely cases can serve as an effective plausibility probe to evaluate how well a theory explains a poorly understood phenomenon, in this case policy invention (George and Bennett 2005: 75). I seek to add credibility to my argument by examining the influence of the international reputation variable and its alternatives (government composition, movement support, tolerance of homosexuality and religiosity) within the case over time. Like all single case studies used to develop new—or adapted—

theory, more research is needed to assess the robustness of my findings and theoretical claims.

The case study findings are based on two sources of evidence: (1) translated documents of contemporary court decisions, parliamentary debates and legislative texts (2) semi-structured interviews with fifteen LGBT activists, government officials and policymakers, who took part in the marriage debate and represent views from both sides of the issue.

Pioneering Marriage for Same-sex Couples

Like most LGBT rights activists in western countries, Dutch SSU advocates favoured the opening of marriage to RPs. Unlike in the Nordic countries that pioneered RP laws, however, Dutch SSU activists refused to compromise and remained critical of RPs throughout the campaign. This focus on marriage partially stemmed from the fact that the main national LGBT organization, the Centre for Culture and Leisure (COC), had little interest in focusing on relationship recognition (Interview LGBT Activist 8/5/2009). Many within the organization preferred more radical reform such as de-regulating family policy and largely opted out of the campaign. This allowed an unusual coalition of legal activists and a crusading publisher of an LGBT magazine, Henk Krol, to argue that only opening marriage represents true equality for same-sex couples (Van Velde 2009).

Krol and several prominent lawyers helped launch court cases in the late 1980s that challenged the exclusion of same-sex couples from Dutch marriage law. These legal challenges ended with the Hoge Raad (Supreme Court) ruling in 1990 that confirmed only different-sex couples had a right to marry. In its ruling the Court did hint, however, that withholding the benefits associated with civil marriage might be discriminatory and put the government under pressure to address the issue (Maxwell 2000). The campaign for

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relationship recognition gained momentum in 1994 when a new government, which for the first time in the post-war era did not include the Christian Democratic Appeal (CDA), entered office. This so-called purple coalition made up of the Labour Party (PvdA), the Liberals (VVD), and the left-libertarians (D'66), however, remained reluctant to go beyond the implementation of an RP scheme. When the RP law came into force in 1998, it was dismissed by many activists as discriminatory (Van Velde 2009).

The marriage campaign was given further impetus in 1997, after the RP law had been adopted but before it came into force, with the publication of the Kortmann Commission's recommendations. The Commission, which was composed of legal experts, had been established by the government to examine the legal implications of allowing same-sex couples to marry (Curry-Sumner 2007). The government created this commission after a backbench parliamentary resolution was passed in 1996 calling on the government to open marriage rather than implement an RP, a move that was supported by a majority of the public at the time (Curry-Sumner 2007). The Commission gave the government breathing room to delay a reform that many report the government did not want (Van Velde 2009; Interview Justice Ministry Official 11/9/2009). When the Commission published its findings a majority on the panel urged the government to open marriage. After winning re-election in 1998, the purple coalition government agreed to implement its recommendations and on April 1, 2001 the world's first state-sanctioned marriage between two people of the same sex took place (Maxwell 2000).

The Invention of Same-sex Marriage in the Netherlands: The Insufficiency of Cultural and Institutional Factors

Why was the Netherlands the first country to pioneer this reform? Initially, it would seem that the institutional and cultural factors highlighted in the morality and LGBT politics

literatures offer an adequate explanation. The Netherlands has a well-established LGBT movement and one of the world's oldest lesbian and gay organizations, the Centre for Culture and Leisure. The COC spearheaded legal reforms throughout the 1970s and 1980s that left marriage supporters with a favourable policy legacy (Schuyf and Krouwel 1999). Further, since the 1980s international surveys have established that the Dutch public is comparatively tolerant of homosexuality and has moderate levels of religiosity (EVS 2011). Finally, the campaign for opening marriage coincided with the election of the first purple coalition government in post-war history, which forced the Christian democratic, CDA party into opposition. As some morality politics scholars argue, the secular parties of the purple coalition not only were more likely to favour opening marriage, they also had an incentive to put the issue on the agenda to win political points over the CDA (Engeli et al 2012).

The effects of these oft-cited factors on the Dutch debate, however, are not as decisive as they appear. First, the COC largely was uninvolved in the campaign and opening marriage was a low priority for many in the movement. Second, although the Dutch public in the 1990s was comparatively tolerant of homosexuality, levels of religiosity as measured by church attendance were still much higher than in Scandinavia (EVS 2011). Further, levels of religiosity and tolerance of homosexuality did not change dramatically over the decade during which the marriage debate occurred; it seems unlikely that these small changes alone, helped convince initially reluctant political elites to open marriage.[4]

Finally, the election of the purple coalition government may have been necessary for the opening of marriage, but it was far from sufficient. Historically left governments in Europe have not been enough to trigger the implementation of SSU policies. There were numerous centre-left governments in Western Europe in the post-war era and none adopted an SSU law until 1989; not one opened marriage until the Dutch did so in 2001. Although the purple coalition was the first Dutch government in post-war history in which the Christian

democrats did not participate, marriage did not automatically follow from its election. It took marriage activists and supportive backbench MPs more than six years to persuade a hesitant purple coalition government to support the reform and they did so only *after* they were elected into government for the second time. There is almost no evidence to suggest that the secular parties in this government sought to make same-sex marriage a central part of their governing agenda, nor did they use it for electoral gain.

The contention that these domestic factors were necessary, but not decisive for the Dutch decision is reinforced by examining the other marriage pioneers—Belgium, Canada, Spain and South Africa—that immediately followed in the Netherlands' wake. When compared to other established democracies, none of these countries had particularly high levels of tolerance towards homosexuality or particularly low levels of religiosity. Like the Netherlands, all four had or were seeking to establish an international reputation as a normative 'middle power' (Brysk 2009; Friedman 2012).[5] Canada and South Africa in particular had built international reputations as human rights leaders with the adoption of a Charter of Rights and Freedoms in the 1980s in the former and the overthrow of the Apartheid regime in the 1990s in the latter (Brysk 2009). Both countries incorporated sexual orientation protections into their constitutions early and reaped international reputational rewards for doing so. In both cases scholars have noted that 'international opportunity structures' played a role in the campaigns for opening marriage (Croucher 2011: 160; Kollman 2013).

As outlined below, it is striking how prominent concerns about international reputation were in the campaign for same-sex marriage in the Netherlands. Dutch marriage proponents used the growing example of SSU laws in other European countries to persuade policy elites they should address the issue of relationship recognition (Van Velde 2009). The use of these examples did not stop after the Netherlands implemented an RP law. Rather

such examples became an important part of marriage proponents' argument that the Netherlands should play a leadership role by opening marriage. It was this rapidly changing international environment—an environment that changed more dramatically during the 1990s than domestic levels of tolerance or religiosity—that Dutch marriage supporters used to convince an initially sceptical government that they should be the first country to allow same-sex couples to marry.

Locating the Dutch Marriage Debate within its International Context: The Lure of Being a Policy Pioneer

By the time the Dutch government began to consider same-sex relationship recognition, policy networks dedicated to lesbian and gay rights had already been established within the European polity. In 1996 this activism was institutionalized with the creation of the International Lesbian, Gay, Sexual, Trans and Intersex Association's European branch (ILGA-Europe). This organization has become the hub of a well-organized policy community that is made up of national LGBT organizations, activist lawyers and sympathetic policymakers (Paternotte and Kollman 2013). The policy community has secured notable victories within the European human rights regime. In 1981, the European Court of Human Rights ruled that national laws that criminalize same-sex sexual behaviour violate the European Convention on Human Rights (*Dugeon v United Kingdom* 1981). Later rulings established that European states should have equal ages of consent for same and different-sex sexual activity (*Sutherland v UK* 1996) and should allow gay men and lesbians to serve openly in national militaries (*Lustig-Prean and Beckett v UK* 1999). In 1997, the EU incorporated sexual orientation into the Amsterdam Treaty's anti-discrimination clause and then implemented legislation that outlawed such discrimination, albeit only in the workplace (Carroll and Itaborahy 2015). By the start of new millennium, the EU and several of its

member states had begun to define themselves as global LGBT rights pioneers. The Netherlands, whose activists have played a leadership role in building the policy community and whose government has pioneered sexual orientation anti-discrimination legislation, embraced this identity early (Rupp 2014).

Relationship recognition came onto the European agenda in 1989 when Denmark became the first country to implement an SSU policy in the form of an RP law, which granted couples many, although not all, of the rights and duties of civil marriage[6]. The RP model first was proposed in Sweden in the 1970s by reformers who wanted to introduce a less formal institution to legally recognize different-sex couples uninterested in marriage as well as same-sex couples (Rydstroem 2008). The Danish law kept the RP model, but limited it to same-sex couples. The fact that Denmark borrowed the model from Sweden illustrates how the issue has been shaped by cross-border learning from the beginning.

As this paper demonstrates, countries tend to emphasize their role as teachers in these processes. Denmark was no exception. Before the law was adopted its supporters argued that Denmark could serve as an international model and increase tolerance of homosexuality in other societies by legally recognizing same-sex couples (Bech 1992). This prediction came good in the Nordic region when Denmark's neighbours followed their lead by implementing similar RP laws in the 1990s. Some activists, however, criticized these RP policies as discriminatory and argued that separate and unequal institutions define same-sex couples as second class citizens (see Halvorsen 1998). Dutch SSU campaigners embraced this argument. By this time, the European LGBT policy community was more established and the potential for reputational gains for LGBT pioneers more tangible then when the Danes adopted their RP law. This rapidly changing European environment was used to great effect by Dutch marriage activists.

The Dutch marriage debate largely focused on the equality arguments of the marriage supporters and the counter arguments by opponents about the traditional meaning of marriage and its purpose as a site of procreation. From the beginning Dutch SSU activists clearly distinguished between the ability of marriage and RPs to bring same-sex couples full equality. This argument led to the incorporation of foreign comparisons into the debate. Indeed during the parliamentary hearings in 1995-96 that resulted in a backbench resolution calling on the government to open marriage to same-sex couples, the issue of the 'international context' was raised extensively by MPs on both sides. MPs from the Christian democratic parties argued that by fundamentally re-defining the institution, the government ran the risk of diminishing Dutch marriages in foreign countries. The deputy Justice Minister, Elizabeth Schmitz (PvdA), picked up on this argument. She used the example of the *Defense of Marriage* acts in the US, which were adopted by many states and the federal government following a positive same-sex marriage ruling in Hawaii in 1994, to highlight what can happen when one jurisdiction redefines marriage in ways not recognized by neighbouring jurisdictions (*Kammerstukken* 22 700 no.16 1995/1996). The international context also figured prominently in the deliberations of the Kortmann Commission, which the government formed to examine the legal implications of opening marriage. The Commission's minority, who recommended against opening marriage, highlighted the potential negative international consequences; these included a lack of recognition for Dutch couples who travelled abroad and potential problems with international adoptions (Maxwell 2000).

Marriage advocates responded by drawing on the Netherlands' reputation for social policy innovation to support their contention that the Dutch government should be the first to open marriage. This argument is reflected in the following statement by an MP from the

Green-Left party in the parliamentary debate to highlight the inadequacy of the proposed RP law.

> My [party] is therefore in favour of going further and positively putting the possibility of the opening of marriage on the table…I come to the point of the relationship between the Netherlands, Denmark, Sweden and Norway. These are probably the only countries in Europe that [will make] this step on relationships. For the rest the Netherlands will probably, like in the field of drugs, remain isolated within Europe (*Kammerstukken* 22 700 no.16 1995/1996; translated by Dorien Keizer).

Although this MP thought the Dutch could only influence a few like-minded countries, other marriage proponents were more optimistic about the possibility of Dutch leadership. Mieke van der Burg (PvdA), a leading backbench proponent of same-sex marriage, argued that "[w]hat the cabinet says on stepping out of pace internationally is correct, but what is wrong with that?" (*Kammerstukken* 22 700 no.16 1995/1996; translated by Dorien Keizer). Van der Burg went on to argue that the situation was different in Europe than in the US and that the Netherlands could serve as a model for other countries in the region by being the first to allow same-sex couples to marry. The majority of the influential Kortmann Commission that recommended opening marriage similarly augmented their legal arguments about equal treatment with the observation that the Netherlands could serve as an international model. In the conclusion to their report they noted the following.

> [S]ame-sex marriages represent a step towards recognizing homosexual relationships, and might in fact inspire other countries to extend proper recognition to homosexual couples. (Kortmann Commission quoted in Maxwell 2000).

The desire to compete with other 'progressive' European countries and the ambition to be a leader among them comes through in the testimony of these marriage supporters as leader-laggard and laboratory federalism arguments posit.

To better gauge the role that the international context played in the marriage debate, I interviewed 15 activists and policymakers that took part in it. When asked why the Netherlands was the first to open marriage, most interviewees mentioned that the election of the purple coalition government and high levels of tolerance towards homosexuality were important facilitating factors. Most also noted, however, that the government would have preferred to adopt an RP and had to be persuaded to open marriage. These activists and elites had different views about how and the extent to which the international context shaped the marriage debate and its outcomes. But both proponents and opponents agreed that the potential international ramifications of being the first country to allow same-sex couples to marry played an important role in the deliberations.

Several marriage activists felt that the international context had hindered their campaign as much as aided it. Opponents of the reform had argued that the Dutch were in danger 'of getting too far out ahead of events" and the international community (Interviews LGBT Activist 5/5/2009; PvdA Official 7/5/2009). One activist noted that in making such arguments supporters of traditional marriage were trying to tap into the feeling of many Dutch who disliked the country's reputation for permissive social policy (Interview Dutch LGBT Activist 5/5/2009). But another policymaker, who was in a senior government position in the early part of the debate, indicated that they thought the international context had aided the marriage campaign. They noted that at some point same-sex relationship recognition, which once had been thought of as a socially conservative reform, 'became a signal of progressivity' in Europe (Interview PvdA Official, 8/5/2009).

Several of the activists and policy elites also noted that Dutch LGBT activists and policymakers have tended to view the Netherlands as an 'exporter' of LGBT rights that sets rather than follows international trends (Interviews PvdA Official 5/5/2009; LGBT Activists 8/5/2009; 8/5/2009). As one interviewee recalled, many SSU activists 'wanted to influence the whole world' with the Dutch example and saw themselves as 'missionaries' (Interview Legal Scholar 7/9/2009). Whether seen positively or with scepticism, it seems clear that within the European LGBT policy community, the Dutch are more likely to see themselves as teachers than learners. Taken together the interviewees felt that the international context had a clear but complex influence on the marriage debate. Some, however, were less circumspect about its effects. When asked why the Netherlands was the first country to open marriage to same-sex couples, a CDA official who entered parliament just after the law's adoption, had this to say about the role of the international context.

> The main view in this country was we want to be modern, we want to be progressive and we will lead the world…We wanted to be the first (Interview CDA Official 8/9/2009).

The importance of the international context is also illustrated by the fact that in its introduction to the act that opened marriage, the government signalled its desire to serve as an international example when justifying its reasoning for the reform. While acknowledging that Dutch marriages between same-sex couples likely would not be recognized outside the country, the government noted the Kortmann Commission's finding that "this fact might put extra pressure on the other countries to end the phenomenon of limping [uneven] legal relations" (*Staatsblad* 2001, no.9; translated by Dorien Keizer).

Playing the Policy Entrepreneur: Burnishing a Reputation as a LGBT Rights Pioneer

The ways in which Dutch activists and policymakers have engaged with the European—and broader international—LGBT policy community since the opening of marriage illustrate the importance of the country's pioneering reputation to these actors and reinforces the view that augmenting this reputation served as an important motivation for becoming the first country to do so. Kees Waaldijk, a member of the Kortmann Commission, for example, has helped build an influential network of legal advocates that has aided national SSU activists in crafting legal arguments for marriage cases (Paternotte 2011). Through such publications as 'Others may follow: the introduction of marriage, quasi-marriage, and semi-marriage for same-sex couples in European countries', Waaldijk has drawn on the Dutch experience to promote same-sex relationship recognition in other countries (Waaldijk 2004). Indeed this document was submitted as an affidavit to the Canadian Supreme Court when it was considering a reference on opening marriage to same-sex couples. Henk Krol similarly has sought to burnish the Netherlands' reputation as a marriage pioneer by using the Dutch example to foster change in other countries. In a pamphlet published by his organization, he noted the following.

> Some countries will recognize the Dutch marriage, others will wait. In those cases, couples can challenge discriminatory laws and force new rights by going to court. The more couples do so, the quicker the rest of the world will follow the Dutch example of recognizing equality (quoted in Van Velde 2009: xx).

Since 2001, the Dutch government also has sought to promote its image as an LGBT pioneer by making the promotion of LGBT rights and same-sex relationship recognition a

key foreign policy goal. The government's LGBT Equality Policy Plan adopted in 2011 describes the motivations for such international efforts in the following way.

> [By] 2015 the Netherlands will be at the global vanguard in terms of the social acceptance and protection of the rights of LGBT people…[T]he Netherlands serves as an example within and outside Europe, working actively in support of equal rights and treatment as well as mutual recognition of registered civil partnerships and same-sex marriages…As the first country to legalise same sex marriage, the Netherlands plays an important initiating role in the world (Ministry of Education, Culture and Science 2011: 5; 26).

The policy plan earmarks resources for Dutch embassies to utilize to "provide moral and financial support to local LGBT organizations…" (Ministry of Education, Culture and Science 2011: 26). In Europe, Dutch policymakers have taken a leadership role in trying to establish a mutual recognition system for same-sex spouses across states in the region. In addition, they have helped to create networks of European policymakers that meet periodically to exchange 'good practice' on LGBT issues (Baks 2011).

LGBT activists and policymakers across the political spectrum have embraced the country's status as an LGBT rights pioneer. Indeed this reputation has been utilized by far-right politicians such as Geert Wilders, who use the country's status as an LGBT rights leader to argue for the moral superiority of Europeans over 'less tolerant' cultures and religions, especially Islam. Several observers have noted that tolerance towards homosexuality has become embedded in notions of Dutch national identity. This so-called 'homo-nationalism'—both its more benign and right-wing populist variants—draws on a century-

long tradition of recognizing minority groups and puts pride of place on the tolerance of homosexuality (Mepschen et al 2010).

The embrace of LGBT rights by the Dutch public and political elites illustrates the extent to which this identity is defined in relation to its European neighbours in much the same manner as Walker argues policy pioneers do in the US system. It seems unlikely that the issue of opening marriage to same-sex couples would have come onto the Dutch political agenda when it did or that supporters of the reform would have been able to convince the government to adopt the reform as early as they did without the existence of the European policy community. It served as a stimulus for getting the issue onto the political agenda in the early 1990s. It then served as a reservoir of potential reputational gains that marriage proponents used to convince a reluctant government of the merits of being the first country to take this controversial step.

Conclusions

As LGBT politics scholars have noted, European policy networks have helped to facilitate the expansion of LGBT rights and the diffusion of SSU policies across the region (Fernandez and Lutter 2013; Paternotte and Kollman 2013). But very little of this literature has examined why certain European countries consistently have pioneered this rights expansion. As this paper has illustrated, policy invention by these pioneer states is part of a related process. The formation of a European LGBT policy community in the early 1990s helped to inspire the Netherlands to become the first country to open marriage by creating a potential audience to recognize its leadership as well as reasonable expectations of reputational gains.

The desire to be first was not the only reason the Dutch decided to open marriage. The insights provided by the LGBT and morality politics literatures are also relevant for

explaining this outcome. Several of the cultural and institutional factors highlighted in these accounts are necessary for explaining the Dutch outcome, but none is sufficient. It took marriage campaigners almost seven years to persuade the centre-left government that opening marriage to same-sex couples was the right thing to do despite the high levels of tolerance for homosexuality and significant public support for the reform that existed when it entered office. As the nature of the policy discourse that unfolded in the Netherlands illustrates, an important part of what persuaded the government to take this controversial step was the expectation that their decision on this increasingly prominent issue would be recognized by an international audience and would add to their reputation for social policy innovation. Cross-border policy communities do not just create learners; they also create self-appointed teachers and a desire to be seen as a policy pioneer.

The Dutch marriage case highlights the potential of applying the lessons of laboratory federalism and leader-laggard models of policy invention to the European polity. The case presented in this paper is an illustrative one that draws on a 'most likely' case to illuminate the potential that these literatures hold for explaining policy invention in Europe, a largely neglected topic among policy scholars. Further research is needed to flesh out the extent, mechanisms and conditions under which the European polity spurs policy innovation within the region's constituent states.

The Dutch marriage case highlights two additional lines of future research. First, the findings have implications for the study of morality politics. Specifically, they illustrate that the unique characteristics of morality politics issues, such as high public salience and arguments over first principles, do not just affect how policymakers and activists seek to play to domestic audiences. Crucially, they also affect how these key political actors play to international audiences. In the Dutch case, there is far more evidence to suggest that same-sex marriage proponents in the secular parties were interested in influencing future European

debates about relationship recognition than in gaining an advantage over the Christian democratic parties as morality politics accounts posit. The global expansion of LGBT rights and the spread of same-sex marriage have highlighted how important the international aspects of these debates over first principles can be.

Finally, the Dutch marriage case implies that policy diffusion scholars should pay more attention to the role that pioneering states play as teachers of new norms and policy models within regional policy communities and international society. The diffusion literature largely has focused on the role that international organizations and advocacy networks play in the spread of new policy ideas. States generally are thought of as lesson-drawers in these accounts. Very little research has examined the ways in which state pioneers promote their inventions to other states or within advocacy networks. While it does not necessarily follow that policy pioneers automatically will strive to be active international teachers, the Dutch case makes clear that some pioneers will seek to do exactly that. It goes beyond the scope of this paper to trace the influence that the Dutch government has had on the spread of same-sex marriage laws since 2001. But their efforts highlight the fact the state teachers may be under-appreciated as promoters of new policy ideas within diffusion research, with the corollary that we may be over-estimating the influence of NGOs and intergovernmental organizations, even supra-national ones such as the EU.

Table 1: National Same-sex Unions Legislation since 1989

Marriage	Registered Partnership	Unregistered Partnership
Netherlands (2001)	Denmark (1989-2012)	Israel (1994)
Belgium (2003)	Norway (1993-2009)	Hungary (1996)
Canada (2005)	Sweden (1995-2009)	Canada (2000)
Spain (2005)	Iceland (1996-2010)	Portugal (2001)
South Africa (2006)	Netherlands (1998)	Austria (2003)
Norway (2009)	France (1999)	Croatia (2003)
Sweden (2009)	Belgium (2000)	Australia (2008)
Portugal (2010)	Germany (2001)	Brazil (2011)
Iceland (2010)	Finland (2002)	Estonia (2016)**
Argentine (2010)	Luxembourg (2004)	
Denmark (2012)	United Kingdom (2005)	
France (2013)	Andorra (200%)	
New Zealand (2013)	Switzerland (2005)	
Uruguay (2013)	New Zealand (2005)	
United Kingdom (2014)*	Czech Republic (2006)	
Luxembourg (2015)	Slovenia (2006)	
United States (2015)	Colombia (2007)	
Finland (2017)**	Uruguay (2008)	
	Ecuador (2009)	
	Hungary (2009)	
	Austria (2010)	
	Ireland (2010)***	
	Liechtenstein (2011)	
	Malta (2014)	
	Chile (2015)	
	Greece (2015)	

Source: Carroll and Itaborahy, 2015.
* Northern Ireland does not allow same-sex couples to marry.
**SSU policy has been adopted, but doesn't come into force until indicated in parentheses.
***Ireland held a referendum in May 2015 in which a majority supported opening marriage to same-sex couples. The government has to pass legislation to translate this decision into law.

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[1] On July 20, 2015 the European Court of Human Rights in the *Oliara and Others v Italy* case condemned Italy for failing to recognize same-sex couples in law.

[2] US federalism scholars distinguish between policy innovation and invention. The former occurs when a state adopts a policy that is new to it and the latter occurs when a state adopts a policy that is new to the system. This paper focuses on invention. The factors that influence the early adoption of policy should also influence states' propensity to invent.

[3] This dynamic can be driven by rational or social learning. Pioneers may produce empirical evidence about policies that successfully address common problems (rational learning) or they may set an example of how successful states should act (social learning) (Berry and Berry 2014).

[4] The percentage of people that agreed homosexuality 'is never justified' went from 13% in 1990 to 7% in 1999 (EVS 2011).

[5] The Nordic countries also have reputations as normative middle powers. Because Nordic LGBT activists had campaigned for RPs in the 1990s, it was difficult for them to argue for the necessity of marriage until it became an international norm.

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[6] 'The Netherlands and Sweden extended limited legal recognition to same-sex cohabitants in certain legislation before 1989. This recognition was piecemeal and most scholars do not consider such measures to be fully-fledged SSU laws.