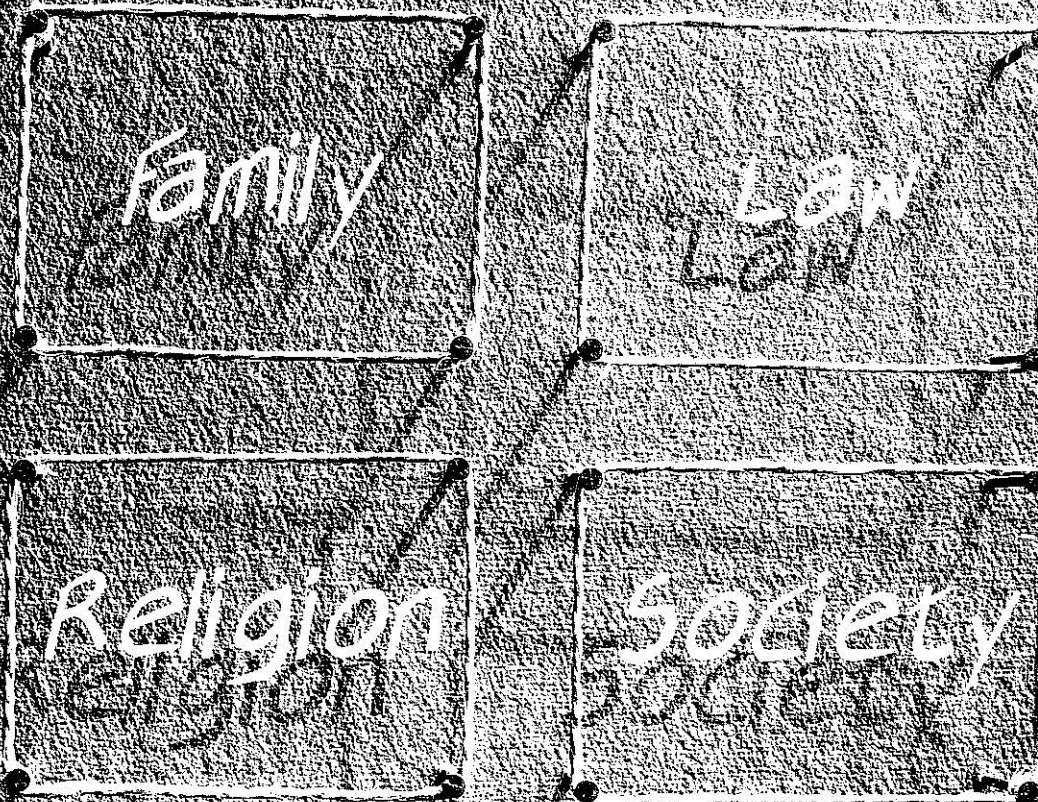# THE FAMILY, LAW, RELIGION AND SOCIETY IN THE EUROPEAN UNION AND MALTA

Edited by PETER G. XUEREB
(Project Co-ordinator)

Family

Law

Religion

Society

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Acknowledgement

The European Documentation and Research Centre of the University of Malta was designated a Jean Monnet European Centre of Excellence in October 2004. Contemporaneously, the Centre won a grant under the Jean Monnet Project to work on a range of issues connected to citizenship, civil society and generally Malta's transition into its new role as a Member State of the European Union. One facet of this Membership is Malta's role as a Member State in the Mediterranean. In the first year of the project, the theme chosen was that of Anti-Discrimination, Inclusion and Equality in Malta in light of the Acquis Communautaire. This second Report focuses on The Family and Family Values as inherent in the Acquis, and as the acquis relates to the individual citizen, all within the wider context of intercultural dialogue and the development of the Union as an exponent of democratic values and of plural citizenship. It situates the Malta context within that broader picture.

The methodology adopted for the production of the studies comprising this Report was to set up groups of academic/practitioner experts and NGO experts to set the research priorities and agenda and then conduct the studies. While the experts would work separately and even produce their studies separately, group meetings were held in order to cross-fertilise ideas and approaches. Priority themes emerged in this way and certain issues became focal: the scope or coverage of the relevant multi-lateral and regional legal instruments; the interpretation of key provisions in the proposed Constitutional Treaty and relevant secondary Union Legislation; the role of religion in the public sphere; societal change in Europe and Malta; the need for dialogue with and between religions and also at the level of civil society; the vital and urgent importance of review of education for plural citizenship; the role of civil society. The studies in this Report address all these issues. The aim was to give an encompassing overview of the issues and the debates. This Report presents the fruits of this collaborative venture in which some thirty experts participated, and presents twenty-two studies offering an overall picture of the 'state of play' on the theme of The Family and Family Values in the European Union and Malta. This Report can form the basis for full discussion in a Conference to be held in September 2006 and a basis for continuing study and action.

The European Documentation and Research Centre (EDRC) of the University of Malta is a research, consultancy and teaching centre in European Integration Studies. It is a Jean Monnet European Centre of Excellence. It incorporates within it the European Documentation Centre, which houses a comprehensive collection of treaties, legislation, documentation, reports, statistics and studies published by the Commission and other institutions of the European Union.

THE POTENTIAL FOR CHANGE: EUROPEANIZATION, CIVIL SOCIETY AND ETHICS

MARK HARWOOD

Europeanization aims to analyse domestic change caused by European integration.[1] The European Union has assumed greater and greater significance over the lives of its citizens as its borders continue to enlarge, its competence increase and its complex network of official and unofficial decision-making become more embedded within a multi-level system of governance that brings governments and civil society from across the twenty-five members into greater contact. In this environment, domestic political systems and actors change and adapt. That change is what dominates current research in Europeanization. The easiest and most recognizable impact of Europeanization is upon government structures, processes and policies. But attention has also come to be focused upon how EU membership impacts civil society and, more importantly, norms and values. While research in these areas is still in its infancy, this paper will seek to outline what Europeanization is, how it impacts its domestic political systems and what consequences it may have for civil society and the values that civil society groups promote.

Europeanization as a Research Agenda

Europeanization is a buzz-word. It can be found in various academic disciplines, ranging from anthropology and law to economics and sociology but has, at best, been little more than a label attached to any phenomenon associated with the EU or even Europe in general. In the area of European Studies it only emerged as a concept some twenty years ago. However, European Studies was largely preoccupied with charting developments at a European level, analysing why integration was happening and what was the result in terms of supra-national structures. The impact of European-level developments on the domestic political systems of each member state was largely ignored.

This supra-national preoccupation began to change in the 1990s, helped in no small part by the Single European Act and the Treaty on European Union, developments which extended the EU's competence into many new spheres, as well as increasing the power of the European Parliament. As Brussels gained greater power over more and more policy areas, it

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[1] Borzel and Risse, 2000.

was logical to postulate that the EU's influence over domestic policy was increasing rapidly and that this increasing shift in decision-making to Brussels would impact government structures; more and more national bureaucrats would have to work on EU issues or with the EU directly. It was also logical to expect that the increasing power of the EU would foster the proliferation of political and bureaucratic links across 'Europe' as governments scrambled to establish alliances amongst themselves in order to defend their national interests/priorities within the Council. Government also had to prioritise the coordination of EU policies: From old members to new ones, ministries sprouted EU-related offices, central coordinating structures and national parliaments established offices and committees to deal with the additional load of having to debate EU issues.

Most of the early Europeanization research shared two fundamental features. The first was that, as the EU's principal influence was in creating policy, then the main stimulus for change at the national level would stem from policy changes as well; National adaptation would centre on making the necessary changes to national policy to become compliant with the EU's policy in the diverse areas where the EU had competence. If national policy was significantly different from what the EU was stipulating, then a large degree of change was necessitated, whether changes to government structures or processes as well as the actual policy itself. If the difference between the two was small, then adaptation would also be relatively small.

In addition to a general consensus that Europeanization was policy-driven, the second feature was the fact that academics believed that the principal impact of the EU would be on government structures and processes. It was the government (taking government to be the executive in its entirety, including bureaucracy) which came into contact with the EU institutions and it was the government which controlled and determined both domestic and, in union with the other member states, EU policy.

However, it became increasingly clear that both of these features were far too narrow and restricted to actually reflect the reality of how the EU was impacting upon domestic political systems. Another related misconception from this period was the popular notion that, as EU policy was the same across the Union, member states were adapting in a similar fashion and that, eventually, all EU members would come to resemble each other, one model state for the EU.[2] Research quickly showed that member states tackled the obligation of adapting to the same policy in very different ways and that the likelihood of the EU becoming a Union of twenty-five (or more) identical states was highly improbable.

Our ideas of Europeanization have developed in two key directions, namely the domains of Europeanization (what actual changes take place at the national level) and in the mechanisms of Europeanization (what stimulates change and what controls the transfer of EU integration into national outcomes).

Europeanization as an Evolving Concept

Europeanization is now understood to be a much wider and idiosyncratic process than hitherto thought. Countries adapt but do so within the confines of their own particular

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[2] Wessels *et al* (2003).

circumstances while change is now associated with a broad range of actors, from central government to bureaucracy, from political parties to interest groups, and manifests itself in various ways, including changes to how governments do business and to the values and expectations of society in general. These various domains of Europeanization are illustrated in Table 1.

Extending the focus of research to the various domains listed below reflected an increasing reality to be seen throughout the European Union after Maastricht. This included the fact that the EU's increased competence, and the greater power given to the European Parliament, increasingly brought more and more domestic actors into EU decision-making, both as active partners but also as increasingly concerned observers.

Table 1: Domains of Europeanization
Domestic Structures
Political structures
Institutions
Public Administration
Intergovernmental relations
Legal structures
Structure of representation
Political parties
Pressure groups
Societal-cleavage structures
Public Policy
Actors
Policy problems
Style
Instruments
Resources
Cognitive and normative structures
Discourse
Norms and values
Political legitimacy
Identities
State traditions
Policy paradigms, frames

Source: Featherstone and Radaelli (2003)

Lobbying activity in Brussels also increased exponentially after the SEA and the Maastricht Treaty and the steps towards a more complex multi-level polity (including the extension of

Qualified Majority Voting within the Council) meant that more and more domestic actors were involved in EU issues. An example was seen in the area of interest groups where areas of direct concern to groups increasingly came under those areas of EU competence; national governments were only one component in arriving at the final decision but, because of the use of QMV within the Council, not even the national government was strong enough to stop changes which might have had negative consequences for particular groups, meaning that interest groups had to look beyond the national government to try and guarantee greater support for their interests (by lobbying the Commission or approaching MEPs).

At the same time, it was recognised that while EU policies could bring about domestic change, there was also a more widespread effect of EU membership; domestic structures and actors (including civil society) could in turn be affected by changes in government brought about by the European Union and that, in turn, could cause further changes outside the parameters of government. At the same time, the inability of governments to guarantee outcomes that depended on EU decision-making could alter the expectations and views held by actors of the importance and role of governments.

The growing awareness of the implications of EU membership has been encapsulated in Radaelli's much quoted definition of Europeanization as 'processes of (a) construction (b) diffusion and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies'.[3]

With this greater awareness of the complexity of what constitutes Europeanization, research has increasingly focused upon the mechanisms of Europeanization, namely what stimulates change at the national level and what domestic factors condition the national response to those stimuli.

The Mechanisms of Europeanization

Europeanization is now believed to be a much more complex process than hitherto thought. In terms of stimulus, two related factors have emerged. The first, and the most complex, is the difficulty of differentiating change stemming from European integration from other factors which bring about change at the domestic level. Countries may adapt due to their own internal forces, including modernisation or the adoption of new public management policies amongst others. In the case of many southern European states, EU membership went hand-in-hand with modernisation, the European Communities constituting a template around which wider change happened.[4] In this context, it can be almost impossible to map domestic changes to European integration as developments may not depend totally on European forces.

In relation to norms and values, it has often been argued that the Council of Europe has been more instrumental in bringing about change than the European Union even though the Council of Europe would not, immediately, fall under our definition of Europeanization,

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[3] Radaelli as quoted in Bulmer and Lequesne, 2005: pg 12.
[4] Featherstone and Kazamias (2001).

which increasingly is exclusively used in relation to the EU, some even preferring to use the term 'EU-ization'. The situation becomes even more complex when we take globalization forces into consideration.

The second factor to have emerged relates to the varying stimuli which the EU creates and which bring about change. Originally, academics had taken EU policy-making to relate to traditional areas of EU competence, such as agricultural or transport policy. In this context it was easy to evaluate the degree to which national policies complied with EU policy and then to map Europeanization by following the national adoption of EU law. However, time has shown that this approach was too simplistic and it is now assumed that Europeanization can occur due to three different types of 'policy', or integration, coming from Brussels, namely positive, negative and framing integration.

'Positive integration' is taken to be 'market-shaping' policies which stipulate how something should be done by intervening in the market and involving a broader, institutional change. 'Negative integration', on the other hand, denotes 'market-making' policies that actually attempt to restrict the government's control over policies and involve a rolling back of the state. As such, it does not provide a model of integration but an indication of what the domestic model should *not* be. In this context, how each member state implements this policy will be idiosyncratic. Finally, 'framing integration' is a more ideational 'force', weaker and more difficult to define, establishing a set of norms in areas where there is a lack of support for greater cooperation amongst the member states. With the Open Method of Co-ordination, facilitated cooperation has become an increasingly conspicuous stimulus for change though almost impossible to adequately map. An example cited by Kohler-Koch was the Commission's propagation of the principle of cooperative governance in order to improve European regional development.[5]

But understanding the differential impact of EU membership due to the differing policy types is only half of the story as to why countries adapt differently to Europe. In between the stimulus for change and the outcome of Europeanization at the domestic level, we now understand that a series of mediating factors exist which condition change. They act, in a way, as communicators of the impulse for change and, as such, can determine the nature of domestic reforms. A range of such factors include the following, though it should be stressed that mediating factors depend on differing approaches to the study of institution which this article does not have the space to go into.

Mediating factors include:

- Institutional traditions[6]
- Executive leadership within the institution
- The administrative reform capacity of the institution and timing (is the change timed while the institution/country is already reforming?)
- The presence of legitimising policy discourse.[7]

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[5] Kohler-Koch, 2002.
[6] Cowles, Caporaso and Risse, 2001: pg 120.
[7] Featherstone and Radaelli, 2003: pg 47.

- Norm entrepreneurs (epistemic and advocacy communities which actively promote change based on the new European context)
- Cooperative informal institutions (informal understandings of correct institutional behaviour and the logic of change)
- multiple veto players (the more there are the greater the difficulty in bringing about change)
- facilitating formal institutions (opportunities for actors to organise themselves around new structures and therefore increase their relative power)

In this way, Europeanization is understood to be a process that brings about domestic change in institutions, processes and values; but that change is conditioned by the nature of the EU-derived impulse and the mediating factors which determine and control domestic change, whether individual actors, institutional traditions or the willingness to implement what the EU is advocating change in. The multiplicity of outcomes that can stem from this highly complex process is reflected in the fact that academics now accept that Europeanization will not always result in successful adaptation but can, at times, have the opposite result. This can be seen in Table 2.

Table 2 The Degree of Adaptation		
Degree of Adaptation Needed	Domestic response	Degree of change
Limited Adaptation	Absorption	Limited changes to processes, policies and institutions
Larger degree of Adaptation	Accommodation	Relatively large changes to domestic structures and processes but changes which do not alter the essential characteristics of the institution
Substantial degree of Adaptation	1. Transformation	Old structures or processes replaced by radically new ones
	2. Inertia	Large resistance to change with result that no change takes place though change is needed
	3. Retrenchment	Structures and processes actually regress, adopting former and even more unsuitable responses to the misfit

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Europeanization, Civil Society and Values

The greatest factor which points towards an impact of EU membership on civil society stems from the increasing tendency to conceptualise the EU as constituting a multi-level governance system which offers countless opportunities and pitfalls for the civil society of each member state. Civil society groups, in wishing to protect their interests, may need to shift their focus to the European level should their area of concern constitute an area of EU competence. However, even at a national level, interaction with the EU or with other similar-minded groups from across Europe may be desirable. The European level offers opportunities for groups to consolidate their domestic influence by acquiring EU-level influence or gaining from association with larger and more powerful groups abroad. It is seen as inevitable that, at some stage or other, civil society will come across and interact with the wider European governance system, even if their concerns are wholly domestic. It is in negotiating this multilevel governance system that some Europeanization is expected, though, as already indicated, Europeanization can also accrue from contacts with those, particularly in public administration, who are themselves working closely with the EU.

What has been observed in this context is that, while EU membership may challenge civil society to seek European-level contacts (most national groups eventually join a European umbrella organisation of sorts, unless time and money preclude this), domestic civil society retains its primacy as a determinant in the national political system and in the coordination of EU affairs. European level groups have significant advantages and powers, but it is national civil society which has the ear of domestic governments, MEPs and representatives in bodies such as the Committee of the Regions. While Europeanization brings about change, it does not appear to have brought about a diminishing of the role of civil society within the domestic arena, the most important venue for most civil society groups. In some cases it has actually augmented national influence and organisational capacity as can be seen within the Maltese political system in terms of the opportunities offered to, and seized upon by, local environmental groups to raise their concerns at the European and Maltese level.[8]

While Europeanization does not undermine the power and opportunities open to groups at the national level, civil society has a long history of participating at the European level with the Commission, in particular, having encouraged this activity. However, while logic would imply that EU membership should radically affect civil society activity, certain factors have restricted the radical impact that Europeanization was expected to cause directly to civil society groups.

In the first place, each domestic political system is unique. In each system, the role, characteristics and features of civil society is different. These differences may be a product of the divergent representation systems different countries have (pluralist, corporatist, statist) or because of political culture, but that unique bundle of features means that civil society remains constituted around the domestic political system, defined very much in terms of their role within that domestic political system and, apart from promotional groups which may find it easy to seek European-level alliances, many civil society groups can actually find it difficult to find suitable and like-minded partners across Europe. Therefore,

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[8] Bulmer and Lequesne (2005): pg 318.

civil society groups may actually choose to ignore the European level should it have little consequence for the group's national standing and the power to effect domestic change through influence. Europeanization thus comes to depend more on the general commitment of the government to European integration and the national importance given to EU decision-making and less an automatic reaction to European integration.

The importance of the domestic political system for conditioning changes in civil society is further reinforced by the principal features of domestic politics, namely that certain civil society groups may have privileged relations with certain political parties or even the government. Importance and influence therefore have a largely domestic context which would indicate a certain futility in seeking to accommodate the European-level. Related to this, a government which is prepared to defend the interest of certain groups within the Council of Ministers further consolidates the logic of not needing to adapt immediately to changes caused by membership as the domestic political system remains the defining key to activity for such groups.

Related to this factor one must also mention that civil society groups may also find themselves isolated at the European level. Attempts to join umbrella groups or to strike up alliances across Europe may not always result in positive feedback. The inability to find European-level groups to join can further drive groups away from focusing on the European level and this can also act as a stimulus away from adapting to EU membership. Most umbrella groups deal with politics of the lowest common denominator, attempting to ensure backing from large groups of often disparate national associations. The effectiveness of such groups to defend particular national concerns is thus compromised and their utility equally undermined.

In the case of Maltese civil society, it must also be taken into consideration that they operate within certain limitations. Resources make activity highly selective, both because of financial constraints but also a lack of human resources. In turn, a European-level strategy must operate alongside domestic priorities with a splitting of time and money. Deciding whether one has the luxury to try and interact at the European level is the first hurdle and one that many groups may decide not to tackle. This further consolidates the importance of the domestic political system and further limits the effects of Europeanization other than as a consequence of the wider changes in the central structures of domestic political administration. It is in terms of that central administration that Europeanization of civil society can best be measured.

In terms of the above, a central question to ask is whether EU membership alters the position of civil society groups in their standing with their prime target, namely the government. In this respect, EU membership is believed to have two principal effects. In the case of groups whose areas of interest are transferred to the European level, the result can be that influence is actually diluted as the national government is not the sole source for policy. The government may be unable to defend all its interests at the European level and, therefore, the group loses out within the overall political system because it cannot guarantee outcomes. In a perverse way, the government loses its primacy as the sole target.

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However, conversely, civil society groups can see their influence increased, especially when the EU becomes involved in a policy area and certain EU institutions, in particular the Commission, are open to consultation with the domestic interest groups concerned. The outcome is that groups which may not have had much influence over domestic decision-makers actually see their importance increase due to the importance given to them by EU institutions or European-level groups. It can be argued that local environmental groups, as potential whistle blowers with the Commission, are more likely to gain the ear of the Maltese administration as the government seeks to control and minimise unrest in a highly sensitive policy area.

One factor that seems assured is that domestic civil society endures, even after membership. This appears to be the product of the efforts made by civil society to protect its interests and develop European-level strategies to promote those interests. Rather than be supplanted by European-level groups, this concerted attempt to assert influence at the European level by domestic groups has maintained their importance. Ultimately, groups have found that no single umbrella group can be guaranteed to protect the interests of every member, and their *raison d'etre* remains.

This continued importance is consolidated by changes in the way governments do business. The coordination of national EU policy, the need to create effective reaction to EU proposals and to follow up to ensure its implementation, have resulted in countries being more assiduous in the consultation of groups. It may take time and may not be immediate on membership but member states find effective consultation with civil society ensures that priorities are better articulated within the confines of the national EU policy, that this guards against possible negative press at the EU level (with national interest groups using other EU institutions such as the Commission or the EP to work against their own government) as well as ensuring that implementation is facilitated by the cooperation of civil society. This opportunity for greater civil society consultation can be seen in the run up to EU membership with the creation of the Malta-EU Steering and Action Committee and may be operative in the future with the Malta in Europe Forum, though the latter is not yet fully operational and as yet unable to meet the requirements of Maltese civil society.

In terms of norms, the research on how EU membership impacts our collective values as a society is still very much in its infancy. European integration may well have influenced the development of collective values in the original member states, countries which have been cooperating at a regional level for nearly sixty years, but new members are unlikely to have seen the impact of EU membership at the normative level of collective values. Countries such as Malta and Cyprus may well have seen a greater impact from membership of the Council of Europe or the original OSCE, institutions of which they have been members for some decades now. The inclusion of the 'EU Flag' on Maltese number-plates some years before membership of the EU was as a consequence of Malta's membership of the Council of Europe but reflected the need, both at the individual and national level, for the country to re-affirm its European credentials.

One of the clearest areas where membership can impact collective values is in relation to our expectations of government and institutions. The Ombudsman's Office was established over ten years ago in Malta but the run-up to membership also saw much emphasis upon the

opportunities offered to Maltese citizens to have redress to the European ombudsman, amongst other institutions such as the European Court of Justice and the Commission. It shows an increased awareness, within a short period, of what an ombudsman does, what can be expected and the 'security' such structures offer for citizens to feel they are protected from their own governments. The local councils have also had a similar effect. Having been established for over thirteen years, many Maltese now accept that central government cannot arbitrate in local issues such as polemics over wardens or the state of cleanliness of certain areas. This shows that certain normative issues such as what we expect and do not expect from central government can change over time.

Much the same happens with EU membership though two years is far too short a period to expect any substantial changes. If anything, we are most likely still learning what to expect from European institutions as well as the limitations of the national government to defend all national interests at the European level. This was noted in the run-up to, and the aftermath of, EU membership: Many still question why the Commission cannot intervene in the issue of Maltese rent laws while concern that the EU could undermine Malta's anti-abortion stance necessitated the inclusion of a specific protocol in the Accession Treaty. As a society, we are starting to develop clear understandings of what can and cannot be expected from the EU institutions while also starting to appreciate the limitations of the national Government in this wider, European polity. The Government's attempts to involve its European partners in helping with the influx of large numbers of immigrants shows the limitations of the EU while popular concepts of the power of the European Parliament may be undermined once initiatives to change aspects of Dublin II will, most likely, fail to gain backing within the Council.

On a wider level, research has been undertaken to analyse how EU membership has an impact on diverse normative issues such as gender equality and citizenship. In relation to citizenship, norms or values may change for two principal reasons. Firstly, collective values may change because of new understandings of interests and identities (normally transmitted via individual actors or interest groups) or, secondly, they may change because EU membership 'constrains' the choices and behaviour of domestic groups with particular identities. What is also highly interesting is that the development of changes to collective identities, especially in relation to citizenship, take place, in part, outside the EU mainframe; European integration and the creation of a European polity are central to the development of changes in concepts of citizenship but so too is a more nebulous European discourse which takes place outside the EU structure and which offers alternative concepts upon which national groups can build new, collective identities. In particular, the federalist movement in Europe can be seen as an important initiative to develop alternative concepts of collective identity to which national groups could interact 'with' or 'against'.

In conclusion, the limited research on the Europeanization of civil society groups and the values they promote can be said to show that EU membership;

- Offers a multilevel political system in which civil society can devise new avenues for activity, activity which has been encouraged by the Commission.
- Europeanization may not flow simply from membership. The importance of the domestic political system means that groups often change as a consequence of

changes in their standing with government and not as a direct consequence of EU stimuli.

- This gap between the stimuli and the resultant change means that other mediating factors play a determining role, namely changes to government processes and the role played by civil society groups in domestic political systems.
- The need to better coordinate national EU policy means that governments are traditionally more likely to incorporate civil society into decisions.
- This seems to imply that it is in governments' interests to better consult with civil society and this willingness to consult will determine the rate of Europeanization of domestic groups.
- The change in values associated with EU membership still remains a nebulous area of research. Collective expectations of national and European institutions change over time but more disparate issues such as concepts of family, gender or citizenship often change within a wider framework, not exclusively associated with EU membership. This makes EU-ization a component of change but not an exclusive component, thus rendering it only partial Europeanization (within the confines of the concept's parameters mentioned above).

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