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**Paths to the Recognition of Homo-Parental Adoptive Rights in the EU-27: a QCA  
Analysis**

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**Abstract:**

Although the recognition of the adoptive rights of LGBT couples is a socially salient topic, cross-national variation regarding this issue has been largely underexplored in social science research. With the aid of configurational analysis, this article fills this gap and shows the conditions that explain the recognition of the adoptive rights of homosexual couples in the countries of the EU-27. It is argued that two different paths led to this outcome. All countries where adoptive rights were recognized had higher degrees of secularization and lower levels

of social homophobia. In addition, in Northern European countries, the Protestant background and absence of conservative governments for a certain time period seemed to be the determinant. However, for the remaining European countries that recognized these rights, rising levels of gender equality appeared to have a more salient role.

**Keywords:**

Homo-parental adoption; family rights; LGBT; QCA; EU-27

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# **Paths to the Recognition of Homo-Parental Adoptive Rights in the EU-27: a QCA Analysis**

## **Introduction**

One of the most salient political topics in Europe during recent decades has been the recognition of the rights of homosexual people. Through an internationalised social movement, the lesbian, gay, bisexual and transgender (LGBT) community has long campaigned for the extension of individual and collective rights to sexual minorities, framing its claims in terms of human rights that cannot be denied on the grounds of sexual orientation (Helfer, 1991-1992; Jenness, 1995). In addition, linked to the transformation of traditional family models, the question of the adoptive rights of homosexual couples has generated significant social and political attention and has become a priority of the LGBT movement across the European continent (Santos, 20013: 84).

The question of homo-parental adoptive rights poses several interesting research puzzles. Neighbouring European countries, often with similar social backgrounds, have largely divergent legislation. Although countries such as Spain and France have recently recognised the rights of lesbian and gay couples to marry and jointly adopt children, other countries such as Portugal, Poland and Italy do not allow any type of homo-parental adoptive rights. With this background, it is striking that social scientists have not attempted to understand the existing cross-national variation. Likely because of the methodological difficulties in engaging in macro-level, cross-national comparisons, social science research on homosexuality has generally been attitudinal and has used individuals as units of analysis (inter alia Andersen and Fetner, 2008; Adamczyk and Pitt, 2009; Becker, 2012). Although the issue of adoptive rights has sometimes been approached from a legal and even socio-legal perspective (inter alia Te, 1999; Connolly, 2002; Fraioli, 2012), the socio-political determinants of the recognition of these rights at the national level remain unknown.

This article attempts to fill this gap by offering for the first time a cross-national comparison of the conditions that have driven the recognition of the adoptive rights of LGBT people for the entire EU-27 (before the accession of Croatia). In particular, we will attempt to identify the circumstances under which national legal systems recognise the adoptive rights of homosexual couples. To conduct our analysis, we will use cs/QCA as our main methodology. This tool is ideal in overcoming the intrinsic difficulties in comparative macro-level research and has the potential to efficiently address medium-N objects of study. With the aid of QCA, we will show that the recognition of adoptive rights in the EU-27 countries was a result of the interaction among many socio-political conditions. These conditions include the degree of secularization of the country, the degree of gender equality, hegemonic religious denomination, the degree of social homophobia and the ideology of the party in power. These various explanatory conditions combined differently in diverse countries and created many specific paths towards the inclusion (or exclusion) of gay and lesbian couples in the regulation of adoptive rights.

The remainder of this article proceeds as follows. After this introduction, we will briefly discuss homo-parental adoption in the framework of the most recent academic literature and present some configurational hypotheses. Subsequently, we will describe the methodology and operationalization used to test these hypotheses, which gives QCA a protagonist role. Next, we will present our empirical models and findings, including the analysis of the necessary and sufficient conditions for the outcome and its negation. We end this article by summarizing and reflecting on our main findings.

### **Understanding the recognition of homo-parental adoptive rights: theory and configurational hypotheses**

Although gender and sexuality have become important issues in the agendas of social scientists, specific topics such as the causes of the variation in the recognition of rights are still notably under-studied. The research in the field has been typically conducted at the micro

level and has attempted to understand the variables that explain the tolerance/intolerance of individuals towards homosexuality and the rights of homosexuals (Larsen et al., 1980; Lewis, 2003; Brewer and Wilcox, 2005; Andersen and Fetner, 2008; Adamczyk and Pitt, 2009; Schwartz, 2010; Baunach, 2012; Becker, 2012; Pacilli et al., 2011; Van den Akker et al., 2012). Other literature has contributed to the understanding of issues such as health, education or employment in the LGBT community (Robinson and Ferfolja, 2001; Lambert et al., 2006) or to the analysis of LGBT associations (Calvo and Trujillo, 2011). Additionally, certain progress has also occurred in the areas of social mobilisation, elite support and policy legacy regarding LGBT rights (Andersen, 2005; Riggle et al, 2005; Segura, 2005; Lax and Phillips, 2009).

The cross-national macro-level comparative research on the rights of homosexuals and the policies towards homosexuality is much more scarce (although see inter alia Polikoff, 2000-2001; Kollman, 2007). Although a large part of the literature still focuses on one country studies (inter alia Calvo, 2007; Smith 2010; Nedbálková, 2011), some authors suggest that, given the internationalisation of the LGBT movement, legal and policy achievements cannot be interpreted in national boundaries alone (Kollman and Patternote, 2013). Furthermore, concerning the countries of the European Union, Europeanisation of Member State legislation is usually interpreted as beneficial to the recognition of sexual diversity and some of the rights inherent in it (but see for a discussion O'Dwyer, 2010; O'Dwyer, 2012). However, this effect is less obvious regarding family rights. Although the accession of the European countries to the EU has often involved an improvement in the legal status of the LGBT community, this has not included 'non-discrimination in a wider context, e.g., the possibility of marriage and civil union, child adoption by homosexual couples, and the like' (Kochenov, 2007: 483). In particular, the regulation of adoptive rights essentially remains a competence of the Member States.

In her seminal study, Polikoff (2000-2001) documented two main paths towards the recognition of the family rights of LGBT citizens in Europe and America, namely, statutory reforms and judicial decisions. In Europe, the extension of family rights generally occurred when a new parliamentary majority decided to adopt new legislation, which overcame a status quo that had typically excluded homosexual citizens. By contrast, in America courts

had a much more active role in the legalization of LGBT family rights, with homo-parental adoptive rights often achieved in the judicial arena. Although the general situation of LGBT rights in many European countries has improved in recent decades, this has not led to a homogeneous landscape on the continent, especially in terms of adoptive rights where important variations still exist. According to the ILGA reports, just before the recent accession of Croatia (the period of reference for this article), 17 Member States of the EU still did not recognize any type of adoptive rights for homosexual couples. Only 10 Member States allowed some form of homo-parental adoption.

To explain this variation, this article uses as a starting point the existing evidence in the field. As we will discuss in detail below, our theory suggests that macro-level variation in the recognition of homo-parental adoptive rights is the result of the interaction among many cross-national socio-political explanatory conditions, whose salience for this topic has long been documented by the empirical research. These conditions relate to the secularization of the country, gender equality, social homophobia, hegemonic religious denomination and the party in power. Our theory is that these background socio-political factors are the underlying explanation for the recognition of adoptive rights, regardless of whether this recognition occurs in the parliamentary arena or in a court of justice. Concerning parliaments, the impact of these conditions is rather intuitive, because the institutional arrangements that characterize democratic systems make them sensitive to socio-political attitudes and changes. Regarding courts, the Judicial Politics literature provides overwhelming evidence of how social preferences and political influences impact judicial decision-making (see *inter alia* Dahl, 1957; Barnum, 1985; Epstein and Knight, 2000; Shapiro and Stone Sweet, 2002). Although judicial interventions in the extension of adoptive rights in the cases that are covered in this article are scarce, in the empirical section, we document some of them. As we will show, the courts acknowledged their receptiveness to the sociological changes regarding attitudes towards family conventions, homosexuality and LGBT rights.

The background sociological and political explanatory forces that form our model are the following.

- Secularization. The empirical evidence that suggests the link between secularization and LGBT issues is overwhelming. At the individual level, Van der Akker et al. (2012) found evidence that suggests an association between religiosity and the rejection of homosexuality. Similarly, Gerhards (2010) found that people who are involved in religious institutions are more likely to disapprove of homosexuality. At the macro level, there is also strong support for this claim. Kollman (2007) showed important evidence that the countries that lack same-sex union laws were highly religious, whereas countries with low religiosity rates were more likely to pass such bills. Similarly strong evidence was also provided by Fernández and Lutter (2013:112), who found that ‘countries with more secularized value systems are more likely to legalize SSUs [same-sex unions]’. More generally, Fetner (2008) indicated that the upsurge of LGBT-driven debates and claims have encountered a response from the religious realm in many countries. Thus, we can expect a causal connection between secularisation and the extension of rights to homosexual couples.

- Gender equality. Regarding gender equality, there is a tradition of both theoretical and empirical research that connect it to the social situation of LGBT citizens. Feminism has traditionally argued that a link exists between sexism and homophobia (Valdes, 1996; Murphy, 2006). For Newman (1989: 451-452), there is a connection between the goals of feminism and gay rights ‘because both movements attempt to achieve non-restrictive roles for all men and women’. According to the author, ‘homosexual behaviour may be seen to violate traditional gender role standards, so that those who hold such standards might view homosexuality negatively, while those who hold less fixed ideas of the roles of men and women might see homosexual behaviour more positively’ (Newman, 1989: 452). Furthermore, this idea has found support in empirical studies, which suggest that individuals with more traditional views of gender roles are associated with patterns of greater hostility towards homosexuals (Herek, 1988; Whitley and Ægisdo’ttir, 2000). In this regard, we expect higher levels of gender equality to be causally linked to the recognition of the adoptive rights of same-sex couples.



- Social homophobia. Societies that are largely homophobic can also be expected to be more reluctant to legalize adoptions by same-sex couples. At the individual level, Wood and Bartkowski (2004: 58) showed that support for LGBT rights was lower among ‘persons with little or no favourable contact with gays, individuals who embrace negative stereotypes about gays, and persons with high scores on an index of homophobia’. In addition, Brewer (2003) showed that general ‘feelings towards gays and lesbians’ was an important predictor of support for LGBT rights. This condition may be bidirectional, with the granting of rights to homosexual people having as a consequence the improvement of social attitudes towards homosexuality (Gerhards, 2010). However, the problems of causal endogeneity are minimised if we consider that adoptions by gay and lesbian couples are still a too recent and minority phenomenon to have displayed significant effects on the general social attitudes. Thus, lower average levels of social homophobia should be causally connected to the extension of adoptive rights.

- Hegemonic religious denomination. With the impact of secularization, the literature in the field has demonstrated a connection between different types of religious denominations (i.e., Catholics, Protestants, Orthodox individuals) and attitudes towards the LGBT community and its rights. Gerhards (2010) showed evidence that Protestants are in statistical terms significantly more likely to be tolerant towards homosexuality than Catholics, Muslims, and Orthodox individuals. According to Kollman (2007), in general, European Protestants such as Lutherans and Calvinists have less conservative views than North American evangelicals and Catholics. Some of these European Protestant denominations have even, in some cases, accepted same-sex marriage (i.e., the Church of Sweden and some Anglican and Lutheran Churches). In contrast, the opposition of Catholic and Orthodox Churches to the recognition of LGBT rights has been largely documented by the literature (inter alia O’Dwyer, 2010; Gerhards, 2010:15-16). Thus, we expect countries where the hegemonic denomination is Protestantism to be associated with a greater extension of rights, whereas countries with a Catholic or Orthodox background are more inclined to restrictive approaches to homo-parental adoption.

- Party in power. Our final line of argument refers to the role played by political elites and political parties. Empirical evidence suggests that left-wing parties not only rhetorically sympathise more with LGBT rights but also enact legislation that extends these rights when they are in power. In their study on the legalisation of same-sex unions, Fernández and Lutter (2013:112) provided strong evidence that ‘countries with stronger left-wing parties tend to hasten the enactment of the reforms’. Furthermore, in his analysis of this situation in Spain, Calvo (2007) showed the existence of links between left-wing parties and the LGBT movement. On the contrary, right-wing parties are more reluctant to extend these rights. Empirical studies document the strong electoral connection between religiosity and right-wing parties (Liu and Macedo, 2005; Campbell and Monson, 2008). However, there is also evidence that even conservative parties can support LGBT demands when public opinion is tolerant towards these issues (Hayton, 2010; Clements, 2014), which indicates the need to analyse this condition in its configurational connection to the remaining factors (see below). Our expectations connect liberal and/or progressive political hegemonies with the extension of adoptive rights to homosexual couples. This causal connection is obvious concerning parliamentary recognition of adoptive rights, but can also occur when the extension of rights is the result of judicial decisions, given the links between political actors and courts (inter alia Volcansek, 2007; Garoupa et al. 2008; Ferejohn, 1998-1999).

As we have explained, the literature has advanced many factors that are capable of having an impact on the regulation of homo-parental adoption, such as secularisation, the type of hegemonic religious denomination, the degree of gender inequality, the social attitudes towards homosexuality, and party hegemony. Our view is that there is a tension between, on the one hand, the combinations of factors that could lead to supporting the extension of adoptive rights to LGBT people and, on the other hand, the combinations of factors that could impede it. This article follows a configurational approach, where the different interactions among the explanatory conditions lead to the outcomes. For this reason, the hypotheses of the research have a configurational nature:

H<sub>1</sub>: The presence of homo-parental adoptive rights occurs in countries marked by the presence of a supportive hegemonic religious denomination that is combined with

high levels of secularisation and gender equality and low levels of social homophobia and liberal/left-wing party hegemony.

H<sub>2</sub>: The absence of homo-parental adoptive rights occurs in countries that are characterised by the absence of a supportive hegemonic religious denomination combined with low levels of secularisation and gender quality and high levels of social homophobia and conservative/right-wing party hegemony.

A final theoretical remark is necessary. Although this article focuses on adoptive rights, we believe that our theoretical approach could also have a strong explanatory value for the recognition of other family rights, especially marriage. In fact, in some cases, the extension of adoptive rights to homosexual couples and the granting of marriage rights occurred simultaneously, such as the legislation enacted by Zapatero's socialist government in Spain. Furthermore, the empirical evidence shows that a great overlap existed between countries that granted adoptive rights and countries that recognized marriage rights, with only four cases of mismatch (ILGA Report 2013). However, although this points to the theoretical strength of our model, it also poses a theoretical problem: how to explain the few examples where marriage, but not adoption, was legal (Portugal) or where adoption, but not marriage, was recognized (Germany, Slovenia and the UK).

Because this article focuses on homo-parental adoption, any inquiry involving other family rights falls clearly beyond its scope. However, several hypotheses regarding these four cases of mismatch can be advanced. A good explanation could be that a different intensity in the same explanatory conditions was necessary for the different rights. For example, a certain level of respect for homosexuality or secularization could be sufficient for marriage rights, but higher levels of these indicators may be necessary for adoptive rights. Another explanation could be that certain rights have a higher social acceptance than others, which creates more incentives for their legal recognition, or that pre-existing regulation of these rights is easier to adapt to family diversity. In this regard, it is striking that three out of the four cases of mismatch were caused by the recognition of second-parent adoption (in the absence of the recognition not only of marriage but also of any other form of adoption), which may indicate the existence of greater incentives to granting this concrete right. The different strategies of the LGBT movement in each Member State of the EU (see in this

regard Holzhaecker, 2012), especially the emphasis on different rights in different countries, may also be part of the explanation. However, given that all family rights are a goal for the mainstream LGBT movement everywhere, these different strategic emphases may be precisely the result of the socio-political conditions of each country to which the empirical model of this article refers. At the same time, the great overlap between marriage and adoptive rights is not surprising: the granting of any of these rights has the potential to increase the visibility and tolerance towards homosexuality, which paves the way for the extension of additional rights. Future research will have to analyse in detail the relation among different family rights.

## **Data and Methods**

This paper performs a Qualitative Comparative Analysis (QCA), a methodology first proposed by Ragin (1987). QCA analyses the necessary and sufficient conditions for the production of a certain outcome and has been traditionally – but not exclusively – employed in medium-N research (Berg-Schlosser et al., 2009). Although we cannot explain the functioning of QCA in detail here, we provide some brief definitions of key concepts to facilitate the understanding of the analyses to readers who are unfamiliar with the methodology. QCA uses Boolean algebra to identify causal ‘paths’ that lead to an outcome. These paths are combinations of explanatory conditions that produce the outcome that is explored by the research, assuming that the interaction among these conditions – instead of their independent impacts – facilitates the occurrence of the phenomena (Ragin, 2006). The configurational nature of QCA is reflected by the type of solutions displayed and their notation. In this article, the presence of a condition is expressed with the name of that condition. The absence of a condition is expressed with the name of that condition and preceded by the sign ‘~’; the symbol ‘\*’ means logical AND, and the symbol ‘+’ means logical OR.

Conditions are ‘necessary’ if they are always present when the outcome is present, and they are ‘sufficient’ if the outcome is always present when they are present. One of the potentials of QCA lies with the idea of equifinality, the possibility that the same outcome may be produced with different combinations of conditions (Berg-Schlosser et al., 2009:8). Finally, QCA solutions provide indicators of ‘coverage’ and ‘consistency’. ‘Coverage’ refers to how

many of the cases with the analysed outcome are covered by a certain solution, whereas ‘consistency’ refers to how many of the cases that are covered by the solution share the outcome of interest.

This study uses cs/QCA (crisp-sets Qualitative Comparative Analysis), which employs dichotomous values to indicate the presence and absence of explanatory conditions (Rihoux and De Meur, 2009). Although dichotomisation may involve a certain loss of information when addressing continuous phenomena, this technique was selected because it allowed a more straightforward and transparent analysis of the cases. This technique also allowed an easier identification of the existence of potential logical contradictions – i.e., cases with the same configurations of conditions but with opposite outcomes. The dichotomisation of data in cs/QCA must be performed in a clear, transparent and informed manner. Table 1 summarizes the conditions, sources, raw data, and dichotomisation rules.

- Table 1 about here -

The analyses were conducted for the EU-27 before the accession of Croatia in July 2013. We chose the analysis of the EU-27 for two reasons of academic rigour. First, non-domestic phenomena such as Europeanisation have been considered to be a relevant factor to understand the extension of rights to same-sex couples (Kollman, 2007; 2009; Kollman and Patternotte 2013), but Croatia only recently joined the Union and has been less exposed to its influence. Second, and more importantly, because of this more recent accession, less information was available for this country. In particular, the country had not been historically included in the Eurobarometer surveys, which we used as one of our main sources of information. Other alternative sources of information had to be discarded because they included data for a lower number of EU Member States. Consequently, the data we gathered referred to the EU-27 and was the most recent information available prior to the accession of Croatia in July 2013. As shown in the table, the data come from recent cross-national publications such as the ILGA report (2013), the UN Gender Inequality Index (2012), and various Eurobarometer polls that included questions regarding the degree of secularisation and attitudes towards homosexuality.

The outcome was deemed to be present if the country had any type of homo-parental adoptive rights – including adoption, second-parent adoption or automatic co-parent

recognition – and absent if none of these rights was recognized. Countries were included in the set of the ‘most secularized’ if at least 15 per cent of the population declared not to have super-natural beliefs (reaching 40 per cent in countries such as France). This operationalization was theoretically meaningful because it accounted for the existence of a significant, sometimes powerful, minority of non-believers in the country, and because it allowed variation within the population of countries. With this operationalization, approximately 55 per cent of the countries were included in this set and 45 per cent were excluded. Countries were designated to be ‘more egalitarian’ in gender issues if their score on the Gender Inequality Index was less than 0.15, with 0 being perfect gender equality. With this dichotomisation, 62 per cent of the cases were included in this set. However, this threshold is relatively strict if we consider scores in the index outside the European context. Countries were included in the group of those with ‘less social homophobia’ if their citizens scored on average a 5 or more when asked regarding their acceptance of a homosexual politician on a 0 to 10 scale. For the type of religious denomination, we simply used the largest religion in the country by the number of believers. Finally, for the years of conservative government, we considered whether at least in half of the last 14 years the conservative parties had been part of the country’s government.

## **What Explains the Recognition of the Adoptive Rights of Same-Sex Couples?**

### **Necessary Conditions**

In this subsection, we will show which conditions are necessary to explain the legal recognition of homo-parental adoptive rights. The analysis of necessary conditions reveals to what extent a condition is necessary for an outcome to occur, although it does not guarantee the occurrence of the outcome (Ragin, 2009: 109). For positive cases (adoption), the analysis indicates the salience of certain sociological conditions as necessary for the legalisation of homo-parental adoption. Explanatory conditions such as gender equality, acceptance of homosexuality and secularism had a consistency score equal to or higher than 0.90. This result suggests that the wider social context of the countries is essential to understand the legal changes in the regulation of adoptive rights. Conversely, political explanations alone are

not conclusive in this regard, because both countries with progressive governments and those with conservative hegemonies have recognized these rights or, at least, have maintained them in the legal system. Nevertheless, countries with a conservative hegemony represent only a small share of countries that allow adoptive rights.

- Table 2 about here -

Interestingly, for the absence of the outcome (~adoption), sociological factors played a more limited role. The only explanatory condition with a high consistency score (0.941176) is the absence of Protestantism, which means that countries that had not still legalised adoption by same-sex couples were mostly Catholic and Orthodox. This result suggests that differences among religious denominations matter when understanding policy choices on family rights for same-sex couples, an idea that was largely confirmed in the analysis of sufficient conditions (see below). In addition, other salient explanatory conditions are the absence of secularism (consistency: 0.705882) and the hegemony of conservative governments in previous years (consistency: 0.647059), although the consistency scores in these cases are too low to depict them as truly necessary conditions.

### **Sufficient Conditions**

The analysis of sufficient conditions shows the different combinations of causal conditions that caused the occurrence outcome. Table 3 shows the analysis of the presence of the outcome – i.e., causal paths explaining the recognition of adoptive rights. Table 4 explains the absence of the outcome – countries where adoptive rights are denied to same-sex couples. In both cases, the Truth Tables were contradiction-free. Both models displayed perfect solution consistency (1.000000) and coverage (1.000000) scores.

Regarding Table 3, we obtained two paths that account for the presence of the outcome. The first path can explain up to 90 per cent of the cases (raw coverage: 0.900000), and it indicates secularized societies that have progressive conceptions of gender and sexuality. These countries have, in comparative terms, a higher gender equality score and a more tolerant attitude towards homosexuality. This path includes countries as diverse as Belgium, Slovenia, France, Spain and The Netherlands.

Spain is a good example of the impact of sociological conditions on the extension of rights. The country is characterized by the evolution from conservative Francoism to secularisation and higher degrees of gender equality. This evolution culminated in the reform of the Civil Code that allowed same-sex marriage and extended homo-parental adoptive rights under Zapatero's socialist government (2004-2008). Consistent with our findings, for Pichardo (2011:545), the changes in the Spanish approach to gay rights are related 'to a double transformation; the general liberalizing of the Spanish society after the ending of the dictatorship and a wider revolution in the social relations of gender and sexuality'. Other countries that are included in this path, such as France and Germany, adopted in the late nineties a policy of recognition of registered partnerships for homosexual couples, which, however, generally excluded adoptive rights (Polikoff, 2000-2001: 725 ff.). In Germany, adoptive rights were granted by a legislative amendment in 2004 and extended through a decision of the German Federal Constitutional Court in 2013. The ruling of the German court appears to confirm our finding that, for this path, the change in social attitudes was a determinant in the extension of rights. The court devoted a large part of its reasoning to identify the change of '*society's attitude to homosexuality and the life of same-sex couples*'. Today, viewing two persons of the same sex as joint parents is no longer frustrated by denial of the legitimacy and recognition of a homosexual couple's enduring civil partnership<sup>1</sup>. In France, the restrictive regulation of homo-parental adoptive rights was overcome in 2013 with the legalization of equal marriage. When the new legislation was brought before the French Constitutional Council, the conseillers insisted that it was for the Parliament – not for them – to decide the regulation of the family and that nothing in the French Constitution opposed the new legislation<sup>2</sup>. Similarly, in Spain, a complaint against the legislation that regulates marriage and extends homo-parental adoptive rights was presented to the Constitutional Court. The magistrados, who upheld the constitutionality of the legislation, emphasized the 'mutable' and 'historical' character of the definitions of marriage and family<sup>3</sup>. The German, French and Spanish rulings, thus, provide qualitative evidence that supports our idea that courts are also sensitive to their wider socio-political context. Furthermore, consistent with our model, constitutional jurisdictions have often referred to the wider

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<sup>1</sup> German Federal Constitutional Court, case 1BvL 1/11 and 1 BvR 3247/09, judgement of the First Senate of 19 February 2013.

<sup>2</sup> French Constitutional Council, decision 2013-669 DC, judgement of 17 May 2013.

<sup>3</sup> Spanish Constitutional Court, case 198/2012, judgement of 6 November 2012.



sociological transformations in their countries and acknowledged the impact of these changes in the re-definition of the concepts of family.

The second path in Table 3 indicates a second way to legalise adoptive rights, which we could refer to as the Northern European way, because it includes the Nordic EU countries (Denmark, Finland and Sweden) and the UK. This path, which explains almost 40 per cent of the positive cases, describes societies where religious constraints did not impede legalisation (these were highly secularised Protestant countries). These societies have tolerant attitudes towards homosexuality and a hegemony of progressive or liberal governments in previous years. This path thus shows the interaction between societal-religious factors and political factors, with a secularised and Protestant background that allows liberal and social-democratic governments to implement pro-rights policy choices. Denmark is a good example of how in recent decades a series of liberal and social-democratic governments have implemented an ambitious agenda, including artificial insemination rights for lesbian couples (2006), joint adoption by same-sex couples (2010) and gay marriage in 2012. Sweden also shows the overlap between political cleavages and adoptive rights. In this country, the first step towards the recognition of homo-parental adoption was a report issued at the request of the Government. This report recommended in 2001 – when same-sex marriage was still unlawful in the country – that homosexual registered partners were given the possibility of joint adoption ‘in the same way as a married couple’ (Polikoff, 2000-2001: 722). The social-democratic Justice Minister showed his agreement with the recommendation, whereas the conservative opposition did not support it (Polikoff, 2000-2001: 723). Two years later, in 2003, under a social-democratic government, adoptive rights were extended to registered gay partnerships.

Some cases (Denmark, Finland and Sweden) were overdetermined, which means that they could be explained by either of these two paths. In our view, in these cases, the two paths converged and reinforced one another in making adoptive rights a reality in these societies. Finally, the overall model confirms much of our theoretical expectations and partially overlaps with our configurational hypotheses. The explanatory capacity of the conditions that we had selected received strong empirical support, because in their different combinations, they were able to explain all the cases of recognition of homo-parental adoptive rights in the EU-27.

- Table 3 about here -

The constellation of countries that show a negative outcome is more complex, with five different paths (Table 4). The model covers all cases of absence of adoptive rights in the EU-27. However, the first path is particularly salient, because it alone can explain almost 65 per cent of the negative cases, including Italy, Poland, Romania and Slovakia, for example. This path consists of a simple combination of non-Protestant, non-secularised societies and thus clarifies the importance of religious factors and their impact on the recognition of certain LGBT family rights. The configurational nature of QCA analyses turns out to be particularly important when addressing a combination such as this, where the interaction between the explanatory conditions is clear. The preferences of more conservative religious denominations had a wider impact in these countries because societies were less secularised, which impeded the legalisation of adoptive rights regardless of the ideology of the party in power in the country. The case-based literature appears to confirm our findings. Simoes and Machado (2012:662) have recently noted the influence of the Catholic Church in the debate regarding the rights of homosexuals in Portugal, where ‘same-sex marriage was legalized under intense dispute since it excludes same-sex couples from adoption and reproductive rights’. A similar influence of religion has been acknowledged by the reports on Slovakia (Fuskova and Kocnerova, 2011). According to O’Dwyer (2012:336), ‘the political role of the Polish Catholic Church and the common identification of Polishness with Catholicism’ explain why EU legislation did not manage to improve to a larger extent the legal status of homosexuals in this country. In fact, there is empirical documentation regarding how religion has been used by certain Polish political actors. A good example is the mayor of Warsaw – who subsequently became President of Poland – who was reported to have described Equality Parades as ‘sexually obscene and offensive to other people’s religious feelings’ (Kochenov 2007: 484).

The second path, which can alone explain 33 per cent of the cases, shows the impact of conservative social views on gender and sexuality. In addition to being non-Protestant, these countries all show a higher degree of gender inequality and exhibit – on average – less tolerant views of homosexuality. All countries in this path are post-socialist Central and Eastern European countries (Bulgaria, Estonia, Hungary, Lithuania, Romania and Slovakia), which may indicate certain common sub-regional patterns. The fact that the LGBT

community faced similar challenges in Central and Eastern European countries had already been advanced by some of the literature. Consistent with our findings, for Kochenov (2007: 482), despite the improvements in terms of rights caused by the democratization of these countries, ‘general prejudice against gays’ is ‘still extremely strong’ in large sectors of the population. The author (2007:485) also identifies the strategies that are followed by certain political actors: ‘the public embrace of homophobic discourse is a reality in Eastern European politics, giving rise to openly discriminatory campaigns and parliamentary debate of explicitly homophobic bills’. In the case of Latvia, Waitt (2005) has extensively documented the survival of traditional gender roles and intolerant attitudes towards homosexuality in parts of the society. The relation between higher degrees of gender inequality and the restricted rights of homosexual couples, which is suggested by our path, finds confirmation in some of the crude paragraphs where the author describes the discourse of some actors in the country. ‘[C]alls for the moral conservatism of the “traditional” gender/sex order are portrayed as essential to defend the nation against homosexuals’ (Waitt, 2005: 170).

Finally, unlike the previous cases, the third, fourth and fifth paths turn on political factors, and especially on the hegemony of conservative governments. However, the explanatory capacity of these three latest paths is somehow residual, because they cover approximately just 23, 13 and 12 per cent of the cases, respectively. In the third path, the hegemony of conservative governments is combined with a higher degree of gender inequality in non-Protestant societies (Estonia, Luxembourg, Malta, and Slovakia). In the fourth path, the conservative political hegemony is combined with higher degrees of homophobia in, again, non-Protestant societies (Czech Republic, Estonia, Greece, and Slovakia). Consistent with this finding, for Nedbálková (2011:132), the lack of recognition of the adoptive rights of homosexual couples in the Czech Republic is because of the fact that ‘the notion of family (...) is rather traditional’ despite less intolerant attitudes towards homosexuality and higher atheism than in other neighbouring countries. Finally, in the fifth path, the conservative hegemony interacts with a scarce secularisation, higher social homophobia and higher gender inequalities (Latvia and Slovakia). Thus, following our theoretical expectations, the different explanatory conditions converged and combined in producing the outcome.

Similar to the previous model, some cases of absence of recognition of adoptive rights such as Slovakia and Romania were overdetermined, which means that for them, many different combinations of factors converged to make homo-parental adoption illegal. In our view, this

result suggests that future attempts to extend adoptive rights in these countries will have to face strong constraints at many different levels.

- Table 4 about here -

## **Final Remarks**

The regulation of homo-parental adoptive rights was largely divergent in the countries of the EU-27. This article has clarified this topic and made a double contribution. At a substantive level, we have shown the socio-political forces that cause the different national regulations of adoptive rights in the region. At a methodological level, we have shown the potential of QCA to engage with macro-level comparative analysis in medium-N research. Our results suggest the existence of differentiated paths for different groups of European Union Member States, but they also illustrate the cross-national explanatory capacity of certain conditions. Because it was conducted at a macro-level, our research necessarily involved a great level of generalisation. Thus, our results should not be oversimplified. Macro-level indicators and general patterns are useful, but they always hide micro-level diversity and heterogeneity. Macro-level indicators provide a general narrative, but they should not be downgraded to national or group stereotypes.

For a large group of countries, the recognition of adoptive rights was the result of deep sociological transformations, including higher degrees of gender equality, intense secularization and increasing tolerance of homosexuality. This path included countries as diverse as Spain, Germany and Slovenia and showed the importance of larger societal change to the recognition of rights. However, for another group of countries, essentially Northern European countries, there was a different way to explain the granting of rights. Countries such as the UK, Denmark, Finland and Sweden legalized homo-parental adoption as a result of the interaction among the Protestant religious backgrounds of their societies, higher degrees of secularization, lower degrees of social homophobia, and the hegemony of liberal/progressive governments in previous years. This path shows that, in addition to sociological conditions, political conditions can play a key role in the recognition of rights. Finally, the explanation of the lack of recognition of adoptive rights in many European Union Member States indicated a number of different paths. However, the most salient path, which

could account for almost 65 per cent of the negative cases, was a very simple combination of low secularization and Catholic/Orthodox backgrounds (as opposed to Protestant). This path provides strong evidence that religion and religious actors still play an essential role in many countries regarding the regulation of the rights of LGBT people.

Our analysis was a static picture of the EU-27 (before the accession of Croatia). QCA analysis rests on the assumption of modest generalisation, which recommends caution when trying to generalise the results to other geographical contexts or other moments in time. Most likely, the analysis of other world regions will reveal the existence of different explanatory forces, and even an evolution in the European context may alter the causal impact of the conditions advanced by this study. However, the results of this article are backed by strong empirical evidence. Thus, in our view, the causal impact of socio-political conditions such as secularization, religious background, gender equality, tolerance of homosexuality and the party in power will need to be seriously considered in any future research on LGBT family rights.

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## TABLES

<b>TABLE 1. DATA AND OPERATIONALISATION</b>			
<b>Condition</b>	<b>Source</b>	<b>Condition Rule</b>	<b>Dichotomisation Meaning and Rule</b>
Adoption	ILGA 2013 Report	Adoption Rights as of May 2013	<i>Meaning:</i> 1 = Adoption and/or second-parent Adoption and/or automatic co-parent recognition; 0 = No Adoption Rights <i>Rule:</i> 1 = Any form of adoption right; 0 = No adoption rights
Gender Equality	UN 2012 Gender Inequality Index	Gender Equality	<i>Meaning:</i> 1 = More egalitarian countries; 0 = Less egalitarian countries <i>Rule:</i> 1: $X < 0.15$ ; 0: $X \geq 0.15$
Homosexual Acceptance	Special Eurobarometer 393 - Discrimination in the EU (2012)	Question: How would you feel about having a homo/bisexual person in highest elected political position?	<i>Meaning:</i> 1 = Less social homophobia; 0 = More social homophobia <i>Rule:</i> 1: $X \geq 5$ ; 0: $X < 5$
Secularism	Special Eurobarometer 73.1 - Biotechnology (2010)	Question: Do you believe there is any sort of spirit, God or life force?	<i>Meaning:</i> 1 = Highly secularized societies; 0 = lowly secularized societies <i>Rule:</i> 1: $X \geq 15$ ; 0: $X < 15$
Religious denomination	www.eurel.info; National Statistics Institutes and Surveys; European Values Surveys	Largest religious denomination in the country	<i>Meaning:</i> 1 = Protestantism; 0 = Other religious denominations (Catholic; Orthodox) <i>Rule:</i> 1 = Protestantism; 0 = Catholic or Orthodox
Conservatism	National Governments Webpages	Conservative Governmental Hegemony (2000-2013)	<i>Meaning:</i> 1 = Conservative Governmental Hegemony; 0 = Non-Conservative Governmental Hegemony <i>Rule:</i> 1: $\geq 7$ years with conservative government; 0: $< 6$ years with no conservative government

**TABLE 2.**  
**ANALYSIS OF NECESSARY CONDITIONS**

Conditions tested:	Adoption		~adoption	
	Consistency	Coverage	Consistency	Coverage
gender_equality	0.900000	0.529412	0.470588	0.470588
~gender_equality	0.100000	0.100000	0.529412	0.900000
acceptance_homo	1.000000	0.588235	0.411765	0.411765
~acceptance_homo	0.000000	0.000000	0.588235	1.000000
secularism	1.000000	0.666667	0.294118	0.333333
~secularism	0.000000	0.000000	0.705882	1.000000
protestant	0.500000	0.833333	0.058824	0.166667
~protestant	0.500000	0.238095	0.941176	0.761905
conservatism	0.300000	0.214286	0.647059	0.785714
~conservatism	0.700000	0.538462	0.352941	0.461538

**TABLE 3.  
ANALYSIS OF SUFFICIENT CONDITIONS (POSITIVE OUTCOME)**

	raw coverage	unique coverage	consistency	Cases
secularism*acceptance_homo*gender_equality	0.900000	0.600000	1.000000	Belgium, Denmark, Finland, France, Germany, Netherlands, Slovenia, Spain, Sweden
~conservatism*protestant*secularism*acceptance_homo	0.400000	0.100000	1.000000	Denmark, Finland, Sweden, UK

Notes: Model: adoption = f(gender\_equality, acceptance\_homo, secularism, protestant, conservatism). Frequency cutoff: 1.000000; consistency cutoff: 1.000000; solution coverage: 1.000000; solution consistency: 1.000000. Assumptions: gender\_equality (present); acceptance\_homo (present); secularism (present); protestant (present); ~conservatism (absent). When asked to select prime implicants we marked them all.

**TABLE 4.  
ANALYSIS OF SUFFICIENT CONDITIONS (NEGATIVE OUTCOME)**

	raw coverage	unique coverage	consistency	Cases
~protestant*~secularism	0.647059	0.352941	1.000000	Austria, Cyprus, Greece, Ireland, Italy, Lithuania, Malta, Poland, Portugal, Romania, Slovakia
~protestant*~acceptance_homo*~gender_equality	0.352941	0.117647	1.000000	Bulgaria, Estonia, Hungary, Lithuania, Romania, Slovakia
conservatism*~protestant*~gender_equality	0.235294	0.058824	1.000000	Estonia, Luxembourg, Malta, Slovakia
conservatism*~protestant*~acceptance_homo	0.125294	0.058824	1.000000	Czech Republic, Estonia, Greece, Slovakia
conservatism*~secularism*~acceptance_homo*~gender_equality	0.117647	0.058824	1.000000	Latvia, Slovakia
Notes: Model: ~adoption = f(acceptance_homo, gender_equality, secularism, associationism, marriage, conservatism). frequency cutoff: 1.000000; consistency cutoff: 1.000000; solution coverage: 1.000000; solution consistency: 1.000000. Assumptions: ~acceptance_homo (absent); ~gender_equality (absent); ~secularism (absent); ~protestant (absent) conservatism (present). When asked to select prime implicants we marked them all.				