THE POWER OF DISCOURSE – FROM LOVE OF JUSTICE TO ARTICULATIONS OF HATE

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Abstract: By tackling the malignant effects that pressure from religious fundamentalist groups has had on the Stockholm Program, this paper aims to emphasise the destructive power that discourses of hate may have on both social practices and the delivery of justice. One of the main goals of our European Union is to constitute itself as a secure space by promoting its core values not only internally, but around the world as well. However, in what regards the recognition of civil partnerships, for instance, there are huge differences among EU countries. The priorities of the Stockholm Program were to ensure that the Member States are held accountable if they refuse to respect the fundamental rights and freedoms of European citizens. But resistance to change, fuelled by deeply ingrained prejudice and deep-seated bigotry, has so far hindered the formation of a true European family, where freedom, democracy, the rule of law, as well as respect for human rights and human dignity are equally valued.

Keywords: human rights, civil partnerships, justice, bigotry, discourses of hate.

There is no denying that language is an extremely powerful tool, effectively used to more or less morally acceptable ends, from supporting dominance to resisting oppression, from avoiding punishment to pursuing justice, from seeking to be granted equal rights to keeping fellow human beings in the inferior position of second-class citizens. Whereas discrimination, intolerance and exclusion have always been universals of group politics, regardless of whether societies identified as secular or non-secular, following the advent of the mass-media, we have been witnessing a war of the worlds or ... world-views, and a war of the words: no longer a battle between or among nations, but one of principles, beliefs and discourses, a battle in which language and technology are employed by both sides to further their respective agendas. Our global village, still marred by double standards, is one whose citizens are supposed to be all equal, and yet some are more equal than others.

Here is a case in point: once the Lisbon Treaty entered into force, on 1 December 2009, bringing about necessary changes regarding areas such as Security, Freedom and Justice, the Stockholm Program (2010-2014) came to replace the Tampere Program of 1999 and the Hague Program of 2004. Prepared by the Swedish Presidency of the Council of the European Union between 15 - 17 July and adopted on 10 - 11 December 2009 by the European Council, it was designed to improve the lives and to promote the rights of European citizens, to ensure access to Europe in a globalised world by focusing on migration and asylum issues, to establish the principle of mutual recognition as the cornerstone of judicial cooperation on both criminal and civil matters, to allow European citizens access to justice anywhere in the Union, enabling them to assert and enjoy all their rights, including their civil rights.[1]

In an attempt to cover other essential areas, such as matrimonial property rights and the property consequences of the separation of couples, together with the problems of succession and wills (the creation of a 'European certificate of inheritance' and a system for registering wills)[2], on 24 November 2010 the assembly present during the plenary session of the European Parliament was to vote on the "Report on civil law, commercial law, family law and private international law aspects of the Action Plan Implementing the Stockholm

[1] http://www.mfa.gr/en/foreign-policy/greece-in-the-eu/area-of-justice-freedom-and-security.html?page=2
[2] Ibid.

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Program". What was to become the infamous Article 40 had constituted the basis for a storm of protests on the part of Christian fundamentalist groups, protests publicized in the media and, especially, on the Internet. Article 40 was meant to ensure mutual recognition of official documents issued by national administrations and of the effects of civil status documents, in order to "reduce barriers for citizens who exercise their rights of free movement"[3]. News agencies such as *Lifesitenews.com*[4] and organizations like the so-called 'pro-family' group bearing the misnomer 'European Dignity Watch (EDW)' had urged people to action, in the hope that the widespread concern expressed would determine the Members of the European Parliament to amend Article 40 by clarifying that "no policy of the Stockholm Program with regard to the mutual recognition of the effects of civil status documents issued by national administrations should affect in any way the competency of Member States to legislate in the family policy, specifically in defining the legal terms of "family" and "marriage"."[5] Their discourses of hate had labeled the issue as the product of "homosexualist" lobbyists' cunning strategy of employing one of the most useful "legal wedge issues", namely that of "cross-border harmonization", which requires the European Union members to recognise its laws in all the member states, strategy meant to later lead to the legalization of same-sex marriages.[6]

Completely disregarding the fact that unmarried heterosexual couples would also have benefitted from such a policy, blinded by their bigotry and hate disguised as a defense of the 'natural procreative marriage', such media representatives and such organizations seemed unable or unwilling to see the forest for the trees. Thus, they had argued, the express purpose of Article 40 was to impose on EU members a "*de facto* recognition of same-sex marriage through a back door" (word pun duly noted!) by severely violating a basic founding principle of the EU, namely the principle of subsidiarity. Each member state's definition of marriage was to shift "from family law, which is an exclusive competence of the Member States, to procedural law (mutual recognition of civil law documents, Stockholm program)"[7]. Consequently, Member States would have been compelled "to *indirectly* recognize same-sex unions as equal to marriage even if such recognition does not exist in the respective country's legal system"[8] and to grant same-sex couples the same social and legal benefits that heterosexual married couples have been enjoying for ages.

This would have occurred due to the following factors: on the one hand, once implemented, the Stockholm program was to become a **legally binding act of the European Union**; on the other hand, Article 21 of the European Union's Charter of Fundamental Rights referred to **Non Discrimination**, stating that "1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. 2. Within

[3] Committee on Legal Affairs, Rapporteur: Luigi Berlinguer (24.11.2010) "Report on civil law, commercial law, family law and private international law aspects of the Action Plan Implementing the Stockholm Program" http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2010-0252+0+DOC +PDF+V0//EN&language=EN Retrieved on 18.05.2013.

[4]http://www.lifesitenews.com/news/eu-parliament-votes-to-force-same-sex-marriage-on-all-member-states/ Retrieved on 18.05.2013.

[5] http://www.europeandignitywatch.org/es/el-dia-dia/detail/article/eu-aims-at-recognizing-same-sex-marriage-in-all-27-member-states.html Retrieved on 18.05.2013.

[6] Hilary White, Rome Correspondent for *Lifesitenews.com*, (24.11.2010) "EU Parliament votes to force same-sex "marriage" on all member states" Available at http://www.lifesitenews.com/news/eu-parliament-votes-to-force-same-sex-marriage-on-all-member-states/ Retrieved on 18.05.2013.

[7] http://www.europeandignitywatch.org/es/el-dia-dia/detail/article/eu-aims-at-recognizing-same-sex-marriage-in-all-27-member-states.html Retrieved on 18.05.2013.

[8] Ibid.

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the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited."[9] As a result of the co-existence of these two documents, any Member State's refusal to legally uphold the effects of civil status documents such as marriage or civil partnership certificates issued in another EU state would have fallen under the non-discrimination clause and would, thus, have been "deemed illegitimate"[10]. This would have been tantamount to "a *de facto* establishment of an EU-wide right to same-sex marriage"[11]. Moreover, the authors of this protest had explained, since the EU citizens are free to move about and choose which country they want to settle in, same-sex couples were planning to engage in "marriage-tourism" and travel to countries where such unions are recognized; upon obtaining the long desired civil status, they would then be able to come back to their country of residence and demand that their union be acknowledged!

This particular article's authors seemed to deplore the fact that gay people are free to roam across Europe in this 21st century of ours, and that Article 21 of the European Union's Charter of Fundamental Rights prohibits discrimination on grounds of sexual orientation – this borders on hate-speech. They also fuelled the anxiety and even the hatred of those who firmly believe marriage to be the exclusive union between a man and a woman by using the term 'marriage' instead of 'civil partnership' or 'registered partnership' – this is clearly deliberate misinformation of the public. They claim to be defending the natural **procreative** marriage, but, by their standards, the marriage of a man and woman who are, for medical reasons, unable to conceive, or who are too old for having children should not be recognized. Were their views to be upheld, if the man and woman already joined in holy matrimony fail to procreate, or decide not to, their marriage should be annulled and any married people should be banned from engaging in acts of a sexual nature without the express aim of producing offspring, as such acts would be illegal.

Regrettably, this campaign was, actually, successful, which goes to show that fundamentalists and extremists of all kinds will not refrain from using their right to free speech in order to promote discrimination and hatred, reinforcing bias, bigotry, prejudice, encouraging voluntary ignorance and outright intolerance. But those of us who allow their minds and hearts to be blinded by such mischievous allegations should recall the words of Albert Einstein: "The world is too dangerous to live in – not because of the people who do evil, but because of the people who sit and let it happen".[12]

There is an Internet website dedicated to *'The European Union at a Glance'* which welcomes visitors with this statement: "The European Union (EU) is a family of democratic European countries, committed to working together for peace and prosperity. It is not a State intended to replace existing states, but it is more than any other international organization. The EU is, in fact, unique. Its Member States have set up common institutions to which they delegate some of their sovereignty so that decisions on specific matters of joint interest can be made democratically at European level"[13]. The unfolding of the events related to Article 40 of the Stockholm program, however, clearly show that Mette Elise Jolly was, actually, correct in stating that the EU cannot really be grasped at a glance, and completely justify her

[9] http://www.jusline.net/index.php?cpid=f92f99b766343e040d46fcd6b03d3ee8&lawid=30&paid=22 Retrieved on 18.05.2013.
[10] http://www.europeandignitywatch.org/es/el-dia-dia/detail/article/eu-aims-at-recognizing-same-sex-marriage-in-all-27-member-states.html Retrieved on 18.05.2013.
[11] Ibid.
[12] Facing History and Ourselves Foundation, Inc., 1994. *Facing History and Ourselves. Holocaust and Human Behaviour*, Brookline: Massachusetts, p. x.
[13] http://europa.eu.int/abc/index_en.htm, quoted in Mette Elise Jolly, 2007. *The European Union and the People*, Oxford: Oxford University Press, p. 2.

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rhetorical query: "Is the EU really a family or might that be taking the romanticism a bit too far?"[14] One of the main goals of our European Union is to constitute itself as a secure space by promoting its **core values** "both internally and around the world"[15]. Among these there are freedom, democracy, equality, the rule of law, as well as respect for human rights and human dignity. The priorities of the Stockholm Program were to ensure that the Member States are held accountable if they refuse to respect the fundamental rights and freedoms of European citizens. One such provision regarded the respect of diversity and that of free movement for the citizens as well as for their family members. But resistance to change, fuelled by deeply ingrained prejudice and deep-seated bigotry, has so far hindered the formation of a true European family and has also thwarted the transformation of European citizenship "from an abstract idea into a concrete reality".[16]

Jolly explains that the distorted image of European citizenry lies on the flawed assumption according to which there exists, in this union, a so-called *demos*, worthy of this name – a people formed by individuals belonging to the various member states, individuals who display solidarity because, due to their common feeling of belonging, which endows them with a common identity, they are forever united in difference. But, as yet, this is clearly not the case within the European Union.[17] Stephan Leibfried pointed out that because the Union's focus is mainly on "market-building" other citizen-focused issues are left under the sole governance of each member state; yet, there is what could be called "an increasingly constraining multi-tiered polity" that came about due to the erosion process which "both the sovereignty (the legal authority), and autonomy (*de facto* regulatory capacity) of member states" in social policy have been subjected to during the European integration process.[18] Doubtlessly, the above mentioned process **is** of the eroding type, but it really **needs to be just that**. If the result of this erosion is **the common good of the citizens**, who should, after all, represent **the be all and end all** of any such unionistic actions as the creation of the European Union, then, I say, erode away!

For those who are still prone to denying the extent to which discrimination on grounds of sexual orientation affects the lives of many European Union citizens, here are the most recent results of the EU LGBT Survey report presented in The Hague on 17 May 2013 by the FRA Director Morten Kjaerum. Conducted on-line by the European Union Agency for Fundamental Rights, the survey contains feedback about experiences of discrimination and violence collected from over 93,000 LGBT people residing in the 27 EU Member States and Croatia[19]. FRA Director Morten Kjaerum stated that "[a] too great number of LGBT people across Europe are being barred from being themselves. Their ability to enjoy their basic human right of living with dignity, to enjoy life and express themselves freely without discrimination, is being denied. What is even more worrying is that LGBT people are frequently victims of hate crime and harassment. About a quarter of all respondents said they had been attacked or threatened with violence in the last five years. High levels of under-reporting were also detected: just 22% of the most serious violent incidents against LGBT people in the five years preceding the survey were reported to the police. These

[14] Mette Elise Jolly, 2007. *The European Union and the People*, Oxford: Oxford University Press, p. 3.
[15] http://europa.eu/about-eu/index_en.htm Retrieved on 19.05.2013.
[16] http://europa.eu/legislation_summaries/human_rights/fundamental_rights_within_european_union/ Retrieved on 19.05.2013.
[17] For more information regarding these issues see "Discrimination Shifts: A Gender-Related Skeuomorph", in Alina Preda, *Interferences: On Gender and Genre*, Argonaut, Cluj-Napoca, 2013, p. 23.
[18] Ibid.
[19] At the time Croatia was not part of the European Union, which this country joined only on July 1, 2014.

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figures stress the need for EU-wide and Member State action to counter the many obstacles LGBT people face in the enjoyment of their basic rights in everyday life."[20]

On the *YourEurope* website, updated on 3 March 2013, under the *Couples* entry we find not only **Marriage** and ***Registered Partnerships***, but also *Unmarried Couples* or *de facto unions*. Thus, **civil marriage**, regardless of religious affiliation, if any, "is a legal status recognized in all EU countries", but "national rules and practice for marriage **differ from one country to another**", especially as regards **the right of same-sex couples to get married**, which is offered only in the following EU countries: Belgium, Denmark, France, the Netherlands, Portugal, Spain and Sweden. Therefore, your marriage is, theoretically, "guaranteed to be recognized in all other EU countries" yet this "does not fully apply to same-sex marriages":

"Sample story: Same-sex marriage – when national practices differ

Emma, a Belgian national, married Carine, a French national, in Belgium. When Emma had to move to Germany for work, Carine followed her – but they were **not regarded as married** by the authorities, since same-sex marriage is not recognized in Germany. However, because **registered partnerships** between same-sex couples are allowed in Germany, Emma and Carine can be granted the same rights as couples with registered partnerships under German law."[21]

Registered partnership (or ***civil partnership***) allows you to register your relationship "with the relevant public authority" in your country of residence, which means that you can make your relationship official without getting married. However, there are huge differences among EU countries in what regards not only the possibilities offered by such a union, "but also the extent to which partnerships contracted abroad are recognized (if at all)." Thus, the following EU countries fail to recognize registered partnerships: Bulgaria, Cyprus, Estonia, Greece, Italy, Latvia, Lithuania, Malta, Poland, Romania, Slovakia. Whereas, theoretically speaking, "all countries that allow same-sex marriages generally recognize same-sex registered partnerships concluded in other countries", and "countries which do not allow same-sex marriages but which have introduced some form of registered partnership", offer you, if you have a same-sex marriage certificate issued abroad, "the same rights as a registered partnership", property rights and maintenance rights for people in registered partnerships "are not applied the same way in all EU countries: the rights you derive from your registered partnership in one country may be substantially different in another".

"Sample story: Able to stay – thanks to registered partnership

Nina is an entrepreneur from EU country "A" who was exploring a business opportunity in country "B" and wanted her registered partner Hans – unemployed at the time – to join her there. Although country "B" does not recognize registered partnerships, the existence of the partnership served as proof that the two had a long-term relationship, and Hans was allowed to move there with Nina, even without financial resources of his own."[22]

Your registered partner will not be entitled to come with you if you settle in one of the eleven countries mentioned above, since they do not recognize this type of union, but you can try to determine them to consider your partnership "a duly attested long-term

[20] Available at: http://fra.europa.eu/en/news/2013/fra-director-holds-speech-launch-eu-lgbt-survey-report Retrieved on 19 May 2013.
[21] http://europa.eu/youreurope/citizens/family/couple/marriage/index_en.htm Retrieved on 19.05.2013.
[22] http://europa.eu/youreurope/citizens/family/couple/registered-partners/index_en.htm Retrieved on 19.05.2013.

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relationship" in order to "facilitate the entry and residence of your partner"[23], yet this is a terribly cumbersome process.[24]

Conor O'Dwyer explains that due to "the weakening of leverage in the post-accession context" the European Union should "continue to use the 'bully pulpit' of official censure to draw attention to postcommunist governments' divergence from the liberal European embrace of diversity"[25]. Changes in mentality do not just happen, they must be fostered by promoting social learning in a persuasive manner, as otherwise they may come too late, especially for those whose lives might have been placed on hold for so long. Consequently, the directives and the policies of the European Union must urgently "convey rights on those subject to discrimination" despite the fact that "different axes of identity often intersect to form unique constellations of experience" which are bound to be unstable, and to thus constitute "a challenge for legal approaches that operate on the basis of generalized principles"[26].

Ultimately, we will have to decide whether we shall create a truly democratic European Union, or one whose counterpart would be the former American racial segregationist society, the South African apartheid system or Nazi Germany's white supremacist society. Are we really willing to settle for an Orwellian Union where all Europeans are equal, but some Europeans are more equal than others? Or can we find enough sympathy and sensibility in our minds and hearts to allow our unmarried fellow human beings, heterosexual or homosexual alike, access to a legal institution that would enable them to vest in each another such rights as those that married couples enjoy? Among these there are fiscal and succession matters pertaining to common property, tax benefits, health insurance coverage, the right to take care of one another in hospital or to make medical-related life and death decisions, etc. Markus Thiel pertinently points out that "democracy is a fragile gem" whose integrity must be protected. And even though most Western democracies display a "relatively stable condition", due to the absence of that "minimum of moral standard among the citizens", it is up to the EU democratic system to ensure that "the rights of minorities are adequately protected"[27] because whenever and wherever "the 'others' are not regarded as equal, the democratic community is out of balance"[28].

We need a fully democratic European Union **now**, a Union where all citizens are granted equal rights, and where the values of freedom and human development are treasured and preserved. This can be achieved by fighting fire with fire, by using the power of discourse to raise our voices against the increasingly powerful proliferation of novel practices that rely on the far-reaching abilities of the media, in all its forms, to obscure and distort the truth and to thus maintain, fuel or re-produce bias, animosity and discrimination. As those who fail to learn the lessons History tries to teach are bound to repeat their mistakes, it is mandatory that such an occurrence be prevented during this post-Stockholm phase, so as to ensure that the strategic guidelines regarding the development of newer policies are democratically defined. The true believers in human rights must react, refusing

[23] http://europa.eu/youreurope/citizens/family/couple/de-facto-unions/index_en.htm Retrieved on 19.05.2013.
[24] For further details regarding this issue see "Discrimination Shifts: A Gender-Related Skeuomorph", in Alina Preda, *Interferences: On Gender and Genre*, Argonaut, Cluj-Napoca, 2013, p. 31.
[25] Conor O'Dwyer, 2009. "Return to (Illiberal) Diversity? Resisting Gay Rights in Poland and Latvia". In Elisabeth Prügl and Markus Thiel, (eds.), 2009. *Diversity in the European Union*, New York: Palgrave Macmillan®, p. 131.
[26] Ibid., 237-238.
[27] Markus, Thiel, (ed.), 2009. *The 'Militant Democracy' Principle in Modern Democracies*, Surrey: Ashgate Publishing Limited, Chapter 15, *Comparative Aspects*, p. 379.
[28] Ulrich K. Preuß, 2002, "Die empfindsame Demokratie", in Carl Leggewie and Horst Meier (ed.) *Verbot der NPD oder Mit Rechtsradikalen Leben?* Frankfurt am Mein: Suhrkamp, pp. 104–19. Quoted in ibid.

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to allow religious fundamentalists to impose their 'violence of the letter' on the legislators' attempts to create the proper conditions necessary for the evolution of a complex society able to foster all its members in a nurturing climate of respect and understanding. Otherwise, by condoning hatred, intolerance and discrimination, we shall position ourselves on the wrong side of history, and we might run the risk that, in a few years' time, the Dark Ages will be thought of as including our own.

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