

Paper prepared for the ECSA 2001 Conference, held at the University of Madison,
Wisconsin 31st May – 2nd June

From Equal Pay to Parité
Panel chaired by Jytte Klausen (Brandeis University)

‘Framing women’s rights and gender policies in Europe: the Council of
Europe and the construction of parity’

Dr Jill Lovecy

Department of Government
University of Manchester
Manchester M13 9PL

Phone (44) 161 275 4881
Fax (44) 161 275 4925
Email jill.lovecy@man.ac.uk

Draft paper: comments *most* welcome
Please do not cite without permission

This paper explores issues of policy framing in an era of multi-level governance, focusing on a what is an under-researched arena at the European level: the Council of Europe. Adopting a primarily historical insitutionalist approach, it investigates the processes through which the politics of presence came to be constructed in terms of 'parity-democracy' and women's democratic citizenship rights through the Council of Europe in the late 1980s and 1990s and notes the usages which have subsequently been made of this claim to parity in France and within the governance arena of the EU.

‘Framing women’s rights and gender policies in Europe: the Council of Europe and the construction of parity’

Introduction

In the course of the last decade a substantial literature has been built up tracking what has been a dynamic but complex process: the Europeanisation of women’s rights and gender policies. The disciplinary bases of this work have clustered around social policy (Meehan & Sevenhuijsen 1991; Cox, 1993; Lewis ed. 1993; Duncan 1995; Ostner & Lewis 1995; Cockburn 1996) and labour market studies (Rubery 1994, 1998 and 1999; Rees 1998), as well as law (Hoskyns 1994 and 1996; Hervey & O’Keeffe eds.1996; Shaw; Barnard, 1999) and political science (Warner 1984; Vallance & Davies 1986; Buckley & Anderson 1988; Mazey 1988; Meehan 1990; Elman 1996; Mazey 1995, 1998 and 2000; Pollack & Hafner-Burton 2000). As is the case with studies of other EU policy sectors, this literature has been concerned with identifying the treaty-based policy remit of EU institutions in this field; the role played by the European Commission, on the one hand, and the European Court of Justice, on the other, in expanding that remit; and the interplay between actors and institutions organised at the national and European levels.

Accounts of the development of this expanding corpus of European-wide rules and norms in respect of women’s rights, and the policy machinery associated with it, have however focused particular attention on the presence and impact of a distinctive set of non-governmental actors (NGAs): second-wave feminists, and the networks and campaigning organisations they have established at both the national and the transnational levels. This concern with ‘outsider’ actors and groups, and with the terms on which they have been able to gain access to the policy process, has led in the more recent political science literature (Mazey 2000; Pollack & Hafner-Burton 2000) to an interest in adapting and applying to Europe’s new architecture of multi-level

governance the concept of *political opportunity structures*, which was originally developed and refined as a tool for the cross-national comparative analysis of new social movements (Snow & Benford 1992; McAdam et al. 1996; Tarrow 1998).¹ But in other respects this recent work does also fit with a broader mainstream body of EU sectoral studies, notably in terms of its concern with unravelling processes of issue-framing and the range of theoretical literature on ‘policy streams’ and ‘windows of opportunity’ (Kingdon 1984), frame-reflection (Schön & Rein 1994) and advocacy coalitions (Sabatier 1998) it has drawn on for analysing these.

And, taken as a whole, studies of the Europeanisation of women’s rights and gender policies have been firmly located in the mainstream in one key respect. This is in their identification of the European economic integration project and the governance arena of the European Community (EC), now the European Union (EU)², as, effectively, the sole sources and sites of such processes of Europeanisation.

The present paper seeks to extend our understanding of these processes, and of the complex and ambiguous interplay between ideas, interests and institutions associated with these new structures of multi-level governance in Europe, using a similar conceptual tool-kit but switching the focus of analysis to the Council of Europe (COE). This is a second arena for creating European-wide norms and policies, but one that remains, by comparison, remarkably under-researched in the English-language international relations and political science literatures (Robertson 1956 & 1961; Wohlgemuth & Palmer 1959; Palmer & Lambert 1968; Checkel 1999a, 1999b and 2001).³ What will be presented here, therefore, is an investigation of the role which the Council of Europe, as an international organisation, played in constructing in the late 1980s and sustaining through the early-mid 1990s a very different policy frame for women’s rights to that developed within the EC/EU. One centred not on gender equality in employment-related rights but on a claim to gender-parity in political citizenship rights, with the aim of securing equity of presence as between men and women in arenas of democratic, electoral representation.

The best-known part of ‘the parity story’, and the one that has to date been most extensively documented and commented on, concerns not the circumstances of its original construction but its ‘downstream’ usage in France, the only country where

mobilisation around this claim to parity-democracy has since succeeded in winning significant reforms. Here an amendment to the constitution, adopted in 1999, was followed in May 2000 by new statutory regulation of candidate selection by parties in all elections using a PR system with lists (Gaspard et al.1993; Mossuz-Lavau 1999; Lovecy 2000a and 2000b; *French Contemporary Civilisation* 2001). Most accounts of the parity campaign in France do note that its central mobilising claim was derived from this European level policy-arena. And they suggest that the Council of Europe's legitimising role, in establishing the credibility of what the French campaigners presented as a new normative theorisation of parity-democracy, was of some importance. But there has as yet been no systematic examination of how and why the claim to parity-democracy came to be constructed at this time and in this place. Yet this 'upstream' phase of 'the parity-story' involved a wide range of non-governmental and governmental actors, drawn from the member states of the Council of Europe, some of whom were prepared to devote their energy and activism to developing women's rights policies within this arena over a ten to fifteen year period. The main venues for the constructing of this claim to parity-democracy were a series of working parties of experts, of varying degrees of formality and durability (COE 1996b), of colloquia (notably COE 1984, 1992 and 1996a), and specialist Conferences of Ministers held successively in Strasbourg, 1986; in Vienna in 1989; in Rome, 1993 and in Ankara 2000.

What therefore needs to be investigated are the specific features of the Council of Europe as an international organisation that lent themselves to the parity-democracy project. What are its characteristics as an *international opportunity structure*, which can help to explain its attractiveness and accessibility to second wave feminist campaigners in this period? And how do these differ from what might in contrast be termed the *supranational opportunity structures* of the EC/EU? These questions will be addressed in the first section of this paper. But we also need to explore the light which this case-study casts on the complex issues of actor- and level-interaction that arise with the advent of multi-tiered structures of governance. What patterns of linkage do we find between the Council of Europe as an international opportunity structure and the domestic political opportunity structures of its member states? And how have these linkages fed in to the formation of differing transnational and national advocacy coalitions amongst second wave feminists on issues concerning

women's rights to political representation? It is to these questions that we will turn in the second section of the paper.

In engaging with these questions, and with the complexities and ambiguities of the interests-ideas-institutions nexus in an era of multi-tiered governance, this paper will work within a broadly historical institutionalist framework (Steinmo et al. 1992; Hall & Taylor 1996). This approach views institutions as reflecting and embodying historically-specific bargains struck between states, in the case of international institutions, or between the state and particular configurations of social, economic and political interests, in the case of domestic political institutions. Such bargains thereby also serve to legitimise particular ideas, claims and conceptions concerning the international or domestic social, economic and political orders, and to institutionalise these. As a result the historical institutionalism literature is concerned, on the one hand, with tracking the values embedded in institutions and the ways in which these may serve to 'frame' actors' ideas and perceptions of group identities and interests; and, on the other, with identifying the 'logic of appropriateness' corresponding to a given institutional context and the ways in which this may serve to shape actors' behaviour and alliance strategies.

This way of theorising the relationship between ideas and values, on the one hand, and institutions with their behaviour-shaping properties, on the other seems particularly salient for the present study, given its focus on actors' access to institutional arenas at more than one level and its concern with comparing the two very different policy arenas that have been put in place at the regional level in Europe.

The account that follows will be primarily concerned, in the first section, with identifying the substantive content of the organisational ideology of the Council of Europe, the key values embedded in its organisational arrangements and the elements of path-dependency resulting from this. The second section will then focus more especially on disentangling the respective roles of domestic and international institutions in shaping the policy concerns and alliance strategies of the actors who came to be mobilised in this period, either as supporters or as opponents of the 'parity project'.

Section 1 The Council of Europe as an international opportunity structure: policy-framing and its institutional setting

Pre-dating the project of European economic integration, which got underway in 1952 with the founding of the European Coal and Steel Community, the Council of Europe was founded in 1949 as the product of a rather different commitment by a broader nucleus of European states in the immediate aftermath of the Second World War. What its ten founding states sought to create with this new international organisation was an intergovernmental framework for political co-operation across a wide range of policy sectors, excluding defence, however, which was entrusted to the newly formed West European Union, and to NATO (Robertson 1956: 1-17). Overtime the organisation's membership rose steadily with a final upsurge in the 1990s, following the implosion of the former Soviet Bloc in central and Eastern Europe. With a membership of 43 states in 2000 the Council of Europe now embraces virtually the whole of its potential membership base (www.coe.int).

Although, as has been noted, the English-language secondary literature dealing with the Council of Europe as an institution is rather limited, the available evidence suggests that it has sustained over this period what can be characterised as a relatively consistent and clearly defined organisational ideology (Cox & Jacobson 1974: 22-3). Key elements are set out in its founding treaty, the London Statute of 1949. Here the main aims of the founding states are recorded as: pursuing 'peace based on justice and international co-operation'; 'reaffirming their devotion ... to the principles which form the basis of all genuine democracy'; and promoting 'greater unity' and 'closer association' between European states (London Statute, preamble). More specifically, article 3 of the London Statute committed its high contracting parties to accepting 'the principles of the rule of law and the enjoyment by all persons within (their) jurisdiction of human rights and fundamental freedoms'.

This concern with the legal rights of individuals in relation to the domestic political arrangement of the member states and with the importance of sustaining the democratic character of the latter offers an initial and striking point of contrast with the EC/EU. The latter has conferred legal rights on individuals primarily as economic actors, in the interests of promoting market integration. In the case of women in

particular, policies have as a result been built up from what was initially a very limited Treaty basis, the article 119 provision on equal pay ((Mazey 1998, 1995 and 1998; Hoskyns 1996; Hervey & O’Keeffe eds.1996). It is only much more recently that there have been significant attempts to incorporate into the Treaty bases of the EU elements more directly related to rights of political citizenship. In contrast the Council of Europe was from the outset broadly concerned with affirming the democratic inheritance of Europe and securing and sustaining ‘genuine’ democracy.

Nevertheless the Council’s organisational ideology was also informed from the outset by a quite particular ‘take’ on democracy (Lovecy 2001: 24-6). One which, by prioritising the protection of individual and minority group human rights, identified the subordination of political processes (and electoral politics) to the rule of law as a necessary and central task, as indicated in article 3 of the London Statute. This clearly points to is a reading of democracy sensitised to the dangers inherent in the majoritarian features of elective, representative democratic processes; and to the nationalistic and xenophobic excesses which these may facilitate especially, but not only, in ‘bad times’ - in the form of internal aggression against minorities and external aggression against neighbouring states. Such a reading, shaped by lessons drawn from European experiences of the 1930s and the Second World War, found its clearest expression in various currents of what became the European Movement in the aftermath of the war. These groupings played a crucial agenda-setting role in securing the establishment of the Council of Europe through the resolutions they presented at the Hague Congress in May 1948 (Robertson 1956: 3-7 and 14-5). But their core concerns, which they were able to project into the Council’s founding organisational ideology, were in any case reinforced, as the negotiations on the London Statute got underway, by the emergent context of the Cold War. In particular the reference to individual rights as the litmus test of regime-acceptability now acquired a new ideological resonance, and one that would be sustained over the following four decades. And yet with the end of the Cold War, the salience of these core features of the Council’s organisational ideology has once again been renewed in the 1990s in the radically altered context of central and eastern Europe’s ‘transition to democracy’. Major structural changes in its regional and international environment over the last fifty years have thus served to sustain rather than to challenge the path-dependency of the council’s organisational ideology.

In the words of one commentator, the primary role of the Council of Europe over this half-century has been as a ‘treaty-factory’ (Archer 1990: 48): a site in which by 1998 some 172 European intergovernmental conventions or agreements had been drafted and concluded (COE 1999b).⁴ Doubtless it is inevitable that an output of this volume should be characterised by considerable heterogeneity, and some of it is, indeed, quite narrowly technical in scope. Nevertheless a continuing focus on placing ‘majoritarian’, populist and electoralist features of representative democratic practice firmly in the corset of an ever-expanding armoury of enforceable individual human rights can be identified in the Council’s higher-profile work across this period. As an international organisation the Council does therefore seem to have sustained a remarkably persistent dominant policy-frame, and a ‘logic of appropriateness’ centring on these core-concerns, for over fifty years. The most fully institutionalised attempt to ‘lock-in’ this relationship between human rights and democratic practice within the nation-states of Europe, is to be found in the first and most famous of the Council’s conventions: the European Convention of Human Rights and Fundamental Freedoms (ECHR), which came into force in September 1953. Indeed the human rights regime this established entailed a delegation of authority by its high contracting parties of a scope and scale that remains without parallel in the world to this day (Keohane, Moravcsik & Slaughter 2000).

Crucially what the Convention provided for was a ‘collective guarantee’ for the signatory states’ obligations in respect of such rights, by making these obligations subject to ‘collective enforcement’, with the states delegating their authority in this respect to a new set of international jurisdictions at the European level. But a similar impetus can be found in the other major conventions and charters concluded through the Council of Europe: notably, the 1961 European Social Charter, the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment, the 1993 Declaration on Combating All Forms of Racism, Xenophobia and Intolerance, and the 1995 Framework Convention for the Protection of National Minorities. It can also be found in the ten additional protocols to the ECHR adopted between 1953 and the mid-1990s. These covered such issues as: freedom of movement (Protocol IV, article 2); prohibition of the expulsion of nationals (Protocol IV, article 3), prohibition of collective expulsion of aliens (Protocol IV, article 4), and procedural safeguards

relating to the expulsion of aliens (Protocol VII, article 1); the abolition of the death penalty (Protocol VI); the right of appeal in criminal matters, compensation for wrongful conviction, and the right not to be tried twice (Protocol VII, article 2, 3 and 4); and equality between spouses (Protocol VII, article 5) (Spielman 1999: 758).

Whilst the European Court of Human Right has certainly been the most prominent, continuing symbol of this dominant policy-frame, arguably it is the Assembly that has, as will be discussed more fully below, proved to be its most active and assiduous standard-bearer. Here a second significant point of contrast with the EC/EU is worth noting. In the case of the EC/EU, it is the European Court of Justice through its own expansive jurisprudence, which has been identified as a key source of an expanding body of individual rights - albeit acting in concert with its main *interlocuteurs*, that is the member states' court-systems at the national level, and the Commission at the European level (Weiler 1991; Burley & Mattli 1993; Slaughter, Stone Sweet, Weiler 1998; Dehousse 2000). In contrast, in the case of the Council of Europe, the substantive expansion of individual rights that can be enforced through its court-system has been dependent on the Assembly's role in initiating additional Protocols to the ECHR. An the Council's wider work in identifying and affirming individual and group rights through its other Conventions and Agreements has equally has been largely ^{reliant on} a continuing flow of new proposals from the Assembly. This suggests significant differences therefore in the pattern of political opportunity that the Council of Europe has offered for those campaigning around women's rights.

Finally any account of the original construction and subsequent renewal and consolidation of this dominant policy-frame of the Council of Europe needs also to give due weight to another key actor in the Council's wider international environment: the United Nations. Indeed in a number of cases, the Council of Europe's Assembly could arguably be regarded as acting principally as a regional agency of the UN's new global order. This is perhaps clearest in the case of the Assembly's 1981 initiative in proposing a draft European Convention for the Prevention of Torture. Its action then was triggered by a concern to 'hasten the adoption and implementation of the (UN's) draft Convention against Torture' in Europe (Robertson & Merrill 1989: 145), and it effectively took over the bulk of this latter text. Equally the Assembly's very first initiative in December 1948, which led

to the establishment of the ECHR, had centred on incorporating the main elements of the earlier UN Declaration into a listing of 10 fundamental human rights for Europe. Yet in the latter case this re-appropriation of UN norms to the European regional level was undertaken in the context of an extraordinarily ambitious proposal to establish a supranational court system with powers to enforce these rights in Europe, going far beyond anything then envisaged at the international level. Nevertheless it seems clear that the UN's successive human rights initiatives have furnished a legitimising reference for activist members of the Council of Europe's Assembly and for the expanding Directorate of Human Rights within the Secretariat. This was to prove important again in the 1970s, as will be discussed below, when the UN established a new human rights agenda focused on women, with its decision to declare 1975 International Women's Year and inaugurate its Decade for Women, and the adoption of its 1979 Convention on the Elimination of All Forms of Discrimination against Women. These served as a series of external prompts for actors within the Council of Europe and their non-governmental lobbyists to develop new initiatives in this issue-area at the European level (Parliamentary Assembly Document no.5370, 22.2.85).

This first part of our examination of the Council of Europe has therefore pointed to elements of congruence between the dominant policy-frame informing the work of this international organisation and the discourse and major mobilising themes of second wave feminism. Certainly the emphasis of the former on enhancing individual and group rights and its sensitivity to the incompleteness and shortcomings of 'actually existing' democratic institutions and practices would seem to make this a potentially attractive European policy arena for second wave feminists to campaign around. But to complete our analysis of the Council of Europe's key characteristics as an international opportunity structure, we need now to turn from this ideational dimension to its organisational structures and procedures, in order to clarify issues of access. And here, again, it will be useful to highlight significant points of comparison and contrast with the EC/EU, this time in terms of the latter's institutional arrangements.

As has already been noted, the court system (ECHR) operating within the Council of Europe's human rights regime has not developed the kind of path-breaking jurisprudential role and expansionist logic in respect of individual rights that proved

possible, in the EC/EU, for the European Court of Justice. As a result the ECHR has not emerged as a site to be targeted by feminist lawyers in the way that two Belgian feminist lawyers did with the three *Defrenne* cases they took to the ECJ - the second of which produced the landmark judgement of 1976, making the equal pay principle of Article 119 directly applicable (Hoskyns 1996: 15-17). However, as with the European Community founded almost a decade later by the 1957 Rome Treaty, the Council of Europe started life, under the terms of the London Statute of May 1949, with what was for an international organisation a most unusual mix of procedural and decisional rules governing its three main institutions: the Committee of Ministers, Parliamentary Assembly, and Secretariat (Lovecy 2001).

On the one hand, as its name, the Council of Europe, implies it was originally conceived of as being primarily an intergovernmental organisation, facilitating political co-operation between the states of Europe. Key decision-making powers were therefore conferred, under article 15, on the intergovernmental Committee of Ministers, comprised of the member states' Foreign Ministers or their representatives. On the other hand, this new arena of political co-operation was designed specifically to affirm the shared heritage of democratic values and institutions in Europe, whilst also, as has been noted, affirming the desirability of subordinating democratic, and mandate-based, processes of decision-making to the rule of law. We have already explored how these elements of its founding organisational ideology were sustained over the longer-term, creating a dominant 'frame' shaping the nature and substance of policies developed within this European policy-arena. But this democratic vision also fed into the initial design of the Council of Europe's organisational structures. Notably through the establishment of a Parliamentary Assembly composed of delegates nominated from each of the members states' national parliaments, and, most crucially, through the right to initiate new policy proposals that was conferred, under article 29, on this site of (indirect) democratic representation.

This embedding of democratic values in the institutional arrangements of the Council of Europe is, it is true, subject to significant constraints. In the first place, the Assembly's democratic function is weakly institutionalised, mediated by the mechanism of delegation from elected national parliaments and lacking clear linkages

with those whose rights and interests as citizens it seeks to represent. Assembly members might as a result be expected to seek to compensate for this by developing correspondingly closer linkages with non-governmental organisations that can claim to represent significant elements of mobilised public opinion. Secondly, and more specifically, an Assembly recommendation only goes forward for consideration by the Committee of Ministers if it is adopted by a two-thirds majority in the Assembly. And finally, where the Committee of Ministers fails to take action on an Assembly recommendation it is subject only to the modest sanction of being required to report back to the Assembly and explain its failure to act.

Nevertheless, the distinctive feature of the Council of Europe is that its formal opportunity structures centre are complicated by the presence of these two contrasting 'venues' (Baumgartner & Jones 1991): the intergovernmental Committee of Ministers and the representative Parliamentary Assembly; and by the role that the Secretariat may have been able to develop as a result of this dualism. Some elements of this complexity are reflected in the standard secondary literature on the Council of Europe, and the contrasting assessments of the terms on which non-governmental actors might gain access to this European policy arena and influence the policy process, which this literature suggests. A first account, found primarily in studies of the European integration process centred on the EC/EU, emphasises the intergovernmental character of the Council of Europe and the resulting ability of the Committee of Ministers to control the policy game. On this reading the most important point of access for NGA's is through the extensive range of expert-based working groups and committees on which the Committee of Ministers has come to depend in carrying out its responsibilities for drafting and negotiating new conventions and agreements. In contrast to the EC/EU, where it is the supranational European Commission that has pro-actively sought to build up and draw on transnational networks of experts, the mobilisation of non-governmental actors *qua* experts in the Council of Europe, it has been argued, has largely served to consolidate, and been subject to, the structuring logic of intergovernmentalism (Laffan 1992: 45-7).

A rather different account of the Council of Europe, developed within the international organisations literature (Archer 1990: 45-52; also Archer 1992), points

instead to the innovative elements of power-sharing between the Committee of Ministers and the Assembly. These are seen as providing the potential for more dynamic processes of interaction amongst the three core institutions, thereby opening up other significant points of access for NGAs. This second reading would certainly help to account for the large numbers of non-governmental organisations that have sought and won formal accreditation from the Council of Europe (currently some 350). And in line with this, we have already noted the Assembly's ability to exploit its formal powers and play a critical role in shaping the proposals that initiated many of the Council of Europe's most important conventions and agreements, including the European Convention for Human Rights. On this reading therefore the Assembly is placed in a somewhat similar agenda-setting position to the European Commission of the EC/EU, making it, like the European Commission, the target of lobbying activity. But with an (indirectly) elected body playing this role, rather than a bureaucratic one as in the EC/EU, this would tend to underscore the porous and accessible character of this second policy-arena at the European level.⁵ Moreover this account would identify the Committee of Ministers as a gate-keeper responding to an agenda set elsewhere, rather than itself controlling the setting of the agenda. And in this context, it is suggested, the third core institution, the permanent Secretariat, has also been able to accrue elements of an agenda-setting role for itself (Archer 1990: 52). From the 1960s on, this was reflected, in its co-ordinating role in the preparation of proposals for the Council's 'pluri-annual' Programmes of Work. This role would therefore open up the Secretariat as a third important point of access for NGAs.

More recently a significant variation on the first of these two readings has been developed within the international relations literature using the tools of social constructivism. This offers a third account of the terms on which non-governmental actors can influence policy outcomes in this arena. Starting from an intergovernmental reading of its core-institutions, Checkel has used a case-study of dual citizenship policy in order to theorise the conditions under which such intergovernmental structures may nevertheless serve as the site of complex processes of normative socialisation which result in crucial shifts in member-state policy preferences (Checkel 1999 and 2001). In this account it is the 'expert knowledge' that such NGAs bring into this arena and, more particularly, the persuasive role of key actors in small group interaction involving experts drawn from different member states, which

emerge as the crucial intervening variables - enabling non-governmental experts to extract themselves from the intergovernmentalist logic embedded in this policy arena and forge new elements of policy consensus.

This examination of the secondary literature has therefore identified a number of contending hypotheses concerning the roles which experts and other non-governmental actors and organisations may be able to play within the policy process of the Council of Europe, and the points of access to this policy-arena open to such actors. We can now turn to consider the application of these hypotheses to our parity-democracy case study. But before doing so, we need to briefly note two other characteristics of the Council's policy process and its policy outputs which again underline major differences between the opportunity structures offered by this international organisation and those that have developed around the EC/EU, as a supranational arena of governance. The first of these is the principle of differentiation that has been adopted in respect of both decision-making in the Committee of Ministers and the subsequent implementation process. This stands in sharp contrast to the long-standing prohibition on opt-outs that has characterised EC/EU policy-making, at least until the quite recent period (Ehlermann 1998). The second concerns the Council of Europe's general orientation towards soft-law. That is, to developing non-binding normative declarations and 'best practice' guidance which the member states are encouraged, but not legally required, to respect – again sharply contrasting with the motor role assigned to binding Directives in the European integration process.

Both of these are perhaps best regarded as mechanisms designed to facilitate the reaching of agreements. As such they are testimony to the difficult and often controversial areas of policy which the Council deals with, and to the kind of challenges to the established prerogatives of Europe's states which its concerns with affirming and protecting rights of individuals and minorities involve. But they also perhaps testify to the strength of this international organisation's commitment to producing agreements, even though these may require very long-drawn out processes of discussion and negotiation. For example, it took six years for the Convention on Torture to be adopted, even though it was based on a draft already established by the UN. As an organisation founded on the claim to a shared European identity and

heritage, the Council of Europe might indeed be expected to invest the painstaking process of constructing what can be portrayed as a European-wide consensus, and to its own role as a site for such consensus-building with a quite special status.

However, the Council of Europe's reliance on both differentiated decision-making and soft law might also seem to make it a rather less attractive candidate for the lobbying energies of NGOs. The principle of differentiation itself was explicitly introduced under the provisions of the London Statute, in article 20, but was then extended through a key early amendment, in May 1951, to article 15.⁶ These provisions allow policies to be adopted despite the abstention of up to one half of the membership, whilst also formally separating the process of adopting a convention or an agreement from the subsequent process of ratification. Ratification therefore involves what is effectively a separate series of 'opt-in' decisions by individual member states. The outcome, although with considerable variations, has been a patchy pattern of ratification for many of the policies formally adopted by the Council of Europe.⁷ Soft law provisions of a declaratory or exhortatory kind might, too, be seen as a rather limited prize for campaigning activists.

Nevertheless both these kinds of policy outcome may be worthwhile for NGOs to pursue. In the case of differentiated ratification, reluctant states may be drawn via processes of normative socialisation into a subsequent decision to ratify – as happened with the right of individual petition and right of access to the new European Court, in the case of the ECHR. In the case of 'soft law' agreements and declarations, the norms these affirm are conferred with a European status, and these may be a useful resource for actors within their own domestic arenas. Equally there is the possibility of upgrading soft law provisions over time into something closer to 'hard-law', through the introduction of enhanced arrangements for monitoring or auditing states' compliance with the norms and standards enunciated. Examples of such processes can be found in the cases of the European Social Charter, the Convention on Torture and, indeed arguably, also in the case of the ECHR (Lovecy 2001: 21-3).

Section II. The Council of Europe and the claim to ‘parity-democracy’

The Council of Europe’s role in the construction of the claim to parity-democracy forms part of a much larger story embracing a whole series of initiatives focused on women’s rights issues from the mid-1970s on. In this period the Assembly, working parties, colloquia and conferences examined and developed policy proposals on a range of issues including legal protection against discrimination, national institutional machinery to promote equality between men and women, equality between men and women in the European Convention of Human Rights and in the European Social Charter, the contribution of the media to the promotion of equality between men and women, and combating violence against women (COE 1985-1999). And across this period there is evidence of the three points of access previously identified – the Assembly, the Secretariat with its Directorate of Human Rights, and the Committee of Ministers (COM) – all playing a role in placing particular issues on the agenda and taking them forward.

However, the case of parity raises a number of especially intriguing issues. In part this is because of a certain ambiguity surrounding what it was that the Council of Europe actually endorsed in this period. In part, and related to this, it is because of the deep lines of division which the parity project provoked within this European policy-arena, cutting across both governmental and non-governmental actors. Here, in contrast to the case of dual-citizenship policy which Checkel has recently studied, what needs to be explained is not how the small group dynamics of a working-party of experts could contribute to forging a new transnational consensus. Rather it is how consensus of a kind could be formally constructed in the absence of expert agreement over the theorisation of parity-democracy, or over its usage to legitimise the case for statutory measures to enhance the representation of women in arenas of democratic elective representation. The analysis that follows is based on a preliminary phase of research that has been undertaken on this case.

In the Council of Europe’s work specifically relating to the political rights of women and the equal participation of women and men in public life we can note a number of key milestones. As early as 1952 the First Additional Protocol to the

ECHR had introduced the principle of equality between men and women in respect of the right to vote in elections (a principle which had not been guaranteed in 1950 in the original ECHR). These issues then resurfaced in the early 1970s when the COM, on the initiative of the Assembly, adopted a Resolution, R (72) 22, which among other things invited governments to guarantee the political rights of women by appropriate methods. This was followed by a further Assembly Recommendation in 1974 (no.741) and Resolution in 1975 (no.606), on the legal position of women and on the political rights and position of women (for a general account of the Assembly's work in respect of women's rights, see Kinnock 1995). But it was as part of the UN decade for women that in 1979 a first *ad hoc* Committee on the Status of Women was established and an initial set of its recommendations were adopted in 1985 in COM Resolution, R (85) 2, on Legal Protection against Sex Discrimination. By the early 1980s a comparative European study of women's under-representation had also been commissioned (Mossuz-Lavau & Sineau 1984). And, as a result of a rather distinctive external initiative, in March 1986 the first of what would subsequently be institutionalised as a regular series of Specialised Conferences of Ministers was held at the invitation of the French government, with the French Minister for Womens Rights, Mme. Yvette Roudy, in the chair.⁸

However, it was only once political equality issues could be integrated into the new perspectives on deepening democracy that were developed by the Secretariat in its Third Medium-Term Plan 1987-1991, *Democratic Europe: humanism, diversity, universality* (adopted in November 1986), that this *ad hoc* committee was finally upgraded by decision of the COM into a permanent Steering Committee for Equality between Women and Men, CEEG (Council of Europe 1996b). This new policy-frame on deepening democracy also furnished the context for the COM's formal adoption of the Declaration on Equality of Women and Men in 1988, which had been drafted at the 1986 Specialised Conference. In this Declaration the achievement of much enhanced levels of presence and participation by women in public life was now presented as a *sine qua non* of democracy and an imperative of social justice. It was thanks to this new context, too, that the CEEG was able to convene a seminar of experts in Strasbourg in 1989 to discuss ways of taking forward this agenda, the proceedings of this seminar being published in French as *La démocratie paritaire: quarante ans d'activité du Conseil de l'Europe* (COE 1989 and 1992). And it is here

that the Council of Europe's operation as a bilingual (French-English) institution may be seen as having the potential to contribute a distinctive element to processes of consensus-building. In effect, this title of the French-language publication seemed to accord special status to one of the contributions made to this seminar. This was the paper presented by Mme. Elisabeth Sledziewski (of the University of Strasbourg), which made the case for developing a new normative theorisation of democracy based on a reading of sexual difference as ontologically grounded. As one half of humankind women in democratic polities should have the right to hold one half of all elective offices. But the English-language text of these proceedings was published under a somewhat different title, *The democratic principle of equal representation: forty years of Council of Europe activity*.

However, these terminological differences were indeed reflective of the fact that a wider spectrum of theoretical positions on issues of gender difference had been presented and debated at this seminar, with differing implications for developing appropriate mechanisms for combating women's under representation in public life. At heart the debate about policy implications centred on strategies of winning informal quotas within political parties as against seeking statutory legislation on such matters. The underlying dispute resurfaced when the CEEG launched its new project *Human Rights and Genuine Democracy* with a view to developing policy recommendations for the Assembly and the Committee of Ministers on issues of positive action. As a result a new Group of Specialists on Equality and Democracy was convened in 1993-4 in an attempt to resolve these disputed issues of theory and practice (Council of Europe 1996b; Outshoorn 2001).

At one level these developments could be analysed in terms of the reproduction within this European level policy-arena of what has proved to be a major fault-line within second-wave feminism, centring around competing representations of sexual and gender difference (Haase-Dubosc 1999). On this interpretation the CEEG and its working-groups of experts should be seen primarily as sites for crystallising out and mobilising two competing advocacy coalitions (Sabatier 1998), that were already present within a wider set of transnational networks of feminists. But the actual construction of these two coalitions involves more complex processes, since the underlying mechanism for constituting the CEEG and its specialist working-

groups is that of national nomination. From this perspective what needs to be integrated into the analysis is therefore the ways in which the construction of these two coalitions also reflects the intergovernmental logic embedded in the international opportunity structures of the Council of Europe. Since it is the Committee of Ministers which provided the key venue for the organisation of the Council's work around women's political rights.

This then points to a second, rather different framework for analysis in which the wider epistemological debates and disputes within transnational feminist networks are seen to be reconfigured and reconstituted within this second European policy-arena via a process of territorialisation, in the form of two cross-national alliances. On this analysis the fault-line is seen to run between what is, on the one hand, a set of broadly Nordic /northern European and, on the other, a set of broadly Mediterranean actors. This way of understanding the identities of the two advocacy coalitions, therefore involves conceptualising them in terms of alliances formed around the broad features of a shared political culture (Outshoorn 2001: 1-2). But what such issues of shared political culture crucially points towards is a recognition of the extent to which the identities of the second-wave feminists actors present within this arena were grounded principally in a relationship to their domestic state institutions, party-systems and political cultures. It is these contrasting domestic contexts that operate as the structuring variable shaping differing feminist ideas and strategies in respect of the issue of informal versus formal quotas. Here then our analysis becomes instead concerned with 'bringing the national back in' to a 'neutral' arena of expertise.

In the case of the French participants these domestic perspectives were especially important precisely because of the role which a new discourse on women's rights to representation could play in unblocking the impasse over statutory quotas that had been created by the Constitutional Council's negative ruling in 1982. And in terms of the linkages between governmental and non-governmental actors we are perhaps here entering a terrain that is somewhat similar to that explored in the comparative literature on state feminism (Stetson & Mazur 1995; see also Mazur in Elman 1996). Certainly it would be from amongst this France-based network that the subsequent initiatives would come to take the claim to parity on to the EU arena, with

the Athens Summit of European Women Leaders and the subsequent Rome Charter of 1996.

¹ For a similar approach applied to feminist activism in the international arena see Joachim 2001.

² The composite acronym EC/EU will be employed in this paper as a generic term referring to the governance institutions established through the process of European economic integration, with the European Community (EC) or European Union (EU) used only where specific reference is being made to developments prior to or following the Maastricht Treaty.

³ In addition two recent French-language accounts of the role of the Council of Europe and its institutions have been published in English translation: De Vel 1994; Huber 1999.

⁴ The ratification record for many of these agreements in any case remains somewhat patchy: see COE 1999a and *infra* pp.13-14.

⁵ There is no published work on the membership of the Assembly, comparable to that of Vallance and Davies (1986) on women members of the European parliament, examining the kinds of people who gains nomination to the Assembly and the nature of their linkages with different organised interests on specific issues.

⁶ Article 20, however, incorporates an important *proviso*: as long as amongst the majority of states not abstaining *all* votes are *cast for* the agreement, with no state voting against. Para. iv inserted into article 15 states that 'The convention or agreement shall be binding only on such Members as have ratified it'.

⁷ See *supra* n.3.

⁸ This was therefore the final initiative taken by Mme.Roudy, prior to the Rights' return to government at the legislative elections held at the end March 1986, and prior to what would prove to be the permanent demotion of this ministry from cabinet rank.

Bibliography

Primary sources

Council of Europe(1986), *Third Medium-Term Plan 1987-1991*, Council of Europe: Strasbourg.

Council of Europe, Steering Committee for Equality between Women and Men (1989 and 1992), *The democratic principle of equal representation: Forty year of Council of Europe activity*, Strasbourg: Council of Europe

Council of Europe (Steering Committee for Equality between Women and Men (1994), *National Institutional Machinery in the Council of Europe's Member States to Promote Equality between Women and Men*, Re[port prepared by E.Vogel-Polsky, Strasbourg: Council of Europe.

Council of Europe (1994), *Equality between the Sexes and the European Convention on Human Rights. A Survey of Strasbourg Case-Law*, Report Prepared by M.Buquicchio-de Boer, Strasbourg: Council of Europe.

Council of Europe (1996a), Steering Committee for Equality between Women and Men *Equality and democracy: Utopia or Challenge?*, Council of Europe: Strasbourg.

Council of Europe(1996b), Group of Specialists on Equality and Democracy *Group of Specialists on Equality and Democracy: Final Report of Activities. Contributions and Studies*, Council of Europe: Strasbourg

Council of Europe (1999a), *Conventions and Agreements*, Strasbourg: Directorate of Legal Affairs (Treaty Section).

Council of Europe(1999b), *European Conventions and Agreements. Volume VII 1995-98*, Strasbourg: Council of Europe.

Council of Europe (1999c), *Equality between Women and Men in the European Social Charter*, Strasbourg: Council of Europe (Human Rights Social Charter Monographs - no 2).

www.coe.int

www.humanrights.coe.int

Secondary sources

Barnard, C. (1999), 'Gender Equality and the EU: a balance sheet', in Alsthor, P. ed., *The EU and Human Rights*, Oxford: Oxford UP.

Baumgartner, F. & Jones, B.(1991), 'Agenda dynamics and policy subsystems', in *Journal of Politics* 53 (4): 1044-73.

Buckley, M. & Anderson, M. (1988), *Women, Equality and Europe*, Macmillan 1988

Cox, R., & Jacobson, H, eds. (1974), *The Anatomy of Influence. Decision-making in International Organisations*, Princeton: Yale University Press.

Cox, S. (1993), 'Equal Opportunities', in *Gold, M. ed.*: 41-63

Elman, A. ed.(1996), *Sexual Politics and The European Union. The new Feminist Challenge*, Providence RI: Berghahn.

Gold, M. ed. (1993), *The Social Dimension . Employment Policy in the European Community*, London:Macmillan.

Haase-Dubosc, D. (1999), 'Sexual Difference and Politics in France', in *Feminist Studies* 25,1 (Spring): 183-210

Hall, P.A. & Taylor, R.C.R.(1996), 'Political science and the three New Institutionalisms', in *Political Studies* 44 (5): 936-58.

C.Hoskyns (1994), 'Gender Issues in International Law', *Review of International Studies*, 20 (July): 225-39.

Hoskyns, C. (1996), *Integrating Gender: Women, Law and Politics in the European Union*, London: Verso.

Joachim, J.(2001), 'Framing issues and seizing opportunities: the UN, NGOs and the cases of gender violence and reproductive rights and health' Paper presented at the Decision-Making in International Organisations Workshop at the ECPR Joint Sessions , Grenoble April 2001.

Kingdon, J. (1984), *Agendas, Alternatives and Public Policies*, New York: Harper Collins.

Kinnock, G. (1995), *The Gender Perspective*, Strasbourg: Council of Europe (Series: Parliamentary Assembly Debates).

Lovecy, J. (2001), 'Human rights, women's rights and 'policy-framing' in the Council of Europe: an institutionalist account'. Paper presented at the Decision-Making in International Organisations Workshop at the ECPR Joint Sessions , Grenoble April 2001.

Lewis, J. ed. (1993), *Women and Social Policies in Europe: Work, Family and the State*, Brookfield,Vt: Edward Elgar.

McAdam, D., McCarthy, J. & Zald, M.eds (1996), *Comparative Perspectives on Social Movement: Political Opportunities, Mobilizing Structures, and Cultural Framing*, New York: Cambridge University Press.

- Mazey, S. (1988), 'European action on behalf of women: the limits of legislation', *Journal of Common Market Studies* 27 (1): 63-84.
- Mazey, S. (1995), 'The development of EU equality policies: bureaucratic expansion on women?', *Public Administration* 73 (4): 591-610.
- Mazey, S. (1998), 'The European Union and Women's Rights: from the Europeanisation of national agendas to the nationalisation of a European agenda?', *Journal of European Public Policy* 5 (1): 131-52.
- Mazey, S. (2000), 'Introduction: Integrating Gender – intellectual and 'real world' mainstreaming, in *Journal of European Public Policy* 7 (3): 333-345.
- Meehan, E. (1990), 'Sex equality policies in the European Community', *Journal of Integration Studies* 13 (2-3): 185-96.
- Meehan, E. (1993), 'Women's Rights in the European Community' in J.Lewis, ed.: 194-205.
- Meehan, E. & Sevenhuijsen, S. (1991), *Equality, Politics and Gender*, London: Sage
- Mossuz-Lavau, J. & Sineau, M. (1984), *The Situation of Women in the Political Process in Europe*, Strasbourg: Council of Europe.
- Ostner, I. & Lewis, J. (1995), 'Gender and the Evolution of European Social Policies' in Leibfried, S. & Pierson, P. eds., *European Social Policy: Between Fragmentation and Integration*, Washington, DC: Brookings Institution.
- Outshoorn, J.(2001), 'Parity democracy as a theory of representation: a critical look', in *French Contemporary Civilisation* (forthcoming).
- Pollack, M.& Hafner Burton, E. (2000), ' Mainstreaming gender in the European Union' in *Journal of European Public Policy* 7 (3): 432-456.
- Rees, T. (1998), *Mainstreaming Equality in the European Union. Education, Training and Labour Market Policies*, London: Routledge.
- Rubery, J.(1994), 'Women and men in the labour market', in Brouwer, F., Lintner, V. & Newman, M. eds., *Economic Policy-making and the European Union*, London: The Federal Trust: 43-50
- Rubery, J. et al. (1998), *Equal Pay in Europe? Closing the Gender Wage Gap*, London: Macmillan
- Rubery, J., Smith, M. & Fagan (1999), C., *Women's Employment in Europe. Trends and Prospects*, London: Routledge.
- Sabatier, P. (1998), 'The advocacy coalition framework: revisions and relevance for Europe', *Journal of European Public Policy*, 5 (1): 98-130.

Schön, D. & Rein, M.(1994), *Frame Reflection. Towards the Resolution of Intractable Political Controversies*, New York: Basic Books.

Snow, D. & Benford, R. (1992), 'Master frames and cycles of protest' in Morris, A. & Mueller, C. eds., *Frontiers of Social Movement Theory*, New Haven: Yale University Press.

Stetson, D.M, & Mazur, A. eds.(1995), *Comparative State Feminism*, Thousand Oaks CA: Sage.

Tarrow, S. (1998), *Power in Moement: Social Movements and Contentious Politics*, New York: Yale University Press.

Vallance, E. & Davies, E. (1986), *Women of Europe: Women MEPs and Equality*, Cambridge: Cambridge UP.

Warner, R.H. (1984), 'Social policy in practice: Community action on behalf of women and its impact in the member states', *Journal of Common Market Studies* 23 (2): 141-67.