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11 What drives the politicization of ART in Western and Northern European countries?¹

Nicolle Zeegers

Introduction

Not all of the dilemmas and problems connected to assisted reproductive technologies (ART) become political issues addressed by political parties and discussed in the parliamentary arena. As exemplified by some of the country chapters, there are jurisdictions in which ART rules are decided on in subsystems of experts, such as the medical profession, or in case law. Engeli et al. (2012) made a similar observation about how morality issues in the broader sense are defined and decided: Whereas in some countries, these are addressed in the arena of parliamentary politics and lead to passionate debates between political parties, in other countries, these are left to expert committees to decide on. In an effort to explain such a difference, the authors formulated the “two worlds of morality politics theory” (TWMP) that ascribes these different approaches to a difference in the countries’ political party system revolving around the question of whether this represents a religious-secular cleavage. This theory is confirmed in the cases of morality policies in the countries addressed in their compilation.² However, does it also fit with cases of ART policy as addressed in our compilation? After elaborating on the TWMP theory in “The two worlds of morality politics” section and explaining the concepts of morality issues and politicization in “Central concepts and their operationalization”, the subsequent section will answer this question for three European countries: Austria, the Netherlands and Sweden. The comparison between the process of politicization of ART in Austria and the Netherlands will lead to the identification of some shortcomings in the TWMP theory. “Closing the gap in the theory” section, will discuss Euchner’s (2019) effort to repair these shortcomings by enriching the TWMP theory with insights into wedge issue politics. Section 6 is the conclusion.

The two worlds of morality politics theory

Engeli et al.’s (2012, 2013) theory regards the political party system and in particular the question of whether a strong religious-secular cleavage is reflected in this system as a driving force for the politicization of morality issues (including ART) (Euchner, 2019). Whether a strong religious-secular cleavage in the previous sense

is present in a countries' political system is visible through strong Christian Democratic parties, such as the German CDU and the Dutch CDA, or Conservative parties, such as the Spanish Partido Popular (Bonafont & Roqué, 2012). On the basis of this criterion, Engeli et al. (2012, 2013) consider, for example, Germany and the Netherlands countries belonging to the religious world, whereas Portugal and the United Kingdom exemplify countries belonging to the secular world.

Engeli et al. (2012) found that this typology in terms of countries belonging to the religious or secular world better explains differences in attention patterns on morality issues than the classic typologies of political systems, such as consensus versus majority democracy (Banchoff, 2005; Fink, 2009; Rothmayr et al., 2004; Stetson, 2001). The TWMP theory claims to explain, first, the variety in attention patterns in different countries and, second, divergence and convergence in policy choices concerning ART and other moral issues.

The TWMP theory has found a very specific policy dynamic behind morality policy in the religious world, a dynamic that, rather paradoxically, often leads to relatively permissive policies in the countries belonging to this world. An integral part of this dynamic is the strategy that Christian Democratic parties followed from the 1960s onwards. These parties transformed themselves from a largely confessional voter base to broad catch-all parties in order to cope with the growing secularization in society (Engeli et al., 2013; Van Kersbergen, 1999). Part of this transformation was an 'unsecular' strategy, existing in a focus on family values and the welfare state and in not mentioning religion as such (Engeli et al., 2013; Kalyvas & Van Kersbergen, 2010). The latter means that Christian Democratic parties from that moment on often tried to avoid rather than appropriate morality issues. By addressing such issues, they would run the risk of mobilizing the more confessional voters and grass-roots activists in their constituency and thereby threaten the broad appeal of the party (Engeli et al., 2013). This risk and effort of Christian Democratic parties to avoid morality issues became an incentive for contesting secular as well as orthodox religious parties to politicize morality issues. Liberal parties define and promote issues concerning ART in terms of secular values such as individual autonomy to stress the difference with political actors that define them as religious values such as the sacredness of life or the importance of the traditional family.

In the countries belonging to the secular world, much less of a general dynamic is recognizable in the policy process concerning ART and other morality issues. Each issue follows an issue-specific dynamic, often defined by the subsystem and rather independent from parliamentary politics (Baumgartner & Jones, 1993).³ Whereas in the religious world, political parties have an angle they can hook onto morality issues, this is not the case in the secular world. This is because no divide between secular and confessional parties exists, and therefore the conflict that would draw morality issues into the macro-political agenda is missing. In the countries belonging to the secular world, the question of whether ART and embryo and stem cell research reaches the parliamentary arena at all depends on interest groups and their ability to form alliances with individual members of Parliament (MPs) who can raise the issue in the parliamentary arena (Engeli et al., 2013). In

general, in countries belonging to the secular world, political parties do not want to take a stance on or draw attention to ART and other morality issues.

The United Kingdom is the exemplary country belonging to the secular world with regard to morality issues. Although, in the mid-80s, it started out with Conservative backbenchers almost passing bills that would have banned nearly all IVF treatment and embryo research (Jackson, 2001), an alliance of scientists and MPs succeeded in preventing this (Jackson, 2001; Kirejczyk, 2000; Mulkey, 1997). Neither the governing conservative party's nor the opposition party's leadership were eager to have issues concerning ART and embryo research addressed in Parliament. Larsen et al. (2012) describe three phases of the Conservative leadership's avoidance strategy: First, it relegated questions concerning the issue to an expert commission, chaired by Mary Warnock (Department of Health & Social Security, 1984). Subsequently, after the publication of this commission's report, it kept the issue off the agenda by not allocating time for debate in Parliament; last, it only permitted fertilization treatment and embryo research to return to the agenda after the 1988 elections severely diminished the number of pro-life conservatives in the House of Commons. Larsen et al. (2012) and Engeli et al. (2013) point out how subsequently a lack of party conflict over ART issues as well as a focus on the economic growth potential of the new technologies involved have resulted in the most permissive regime concerning ART in Western Europe. The British subsystem of scientists and physicians has played an important role in pressing for such permissiveness.

In summary, the policy-making process concerning ART and other morality issues has shown a different pattern in the two types of countries distinguished by Engeli et al. (2012). In those belonging to the religious world, in contradiction to those belonging to the secular world, the regulation of ART issues is contested in the arena of parliamentary politics. The second expectation specifically regards the countries that belong to the religious world: Secular political parties and orthodox religious parties politicize ART issues, whereas Christian Democrats, as much as possible, avoid these issues.⁴

This chapter will answer the question of whether the way ART rules came into being in Austria, the Netherlands and Sweden fits with these expectations of the TWMP theory. In the next section, it will pay attention to the definition and operationalization of central concepts, for example, politicization.

Central concepts and their operationalization

Why can ART be regarded as belonging to the domain of morality issues? How to exactly delineate morality issues from other policy issues is a difficult question to answer, but political science scholars agree on the following common denominator: "conflicts about societal values rather than diverging material interests" (Euchner, 2019, p. 36). The issues concerned typically lead to debates and clashes concerning first principles as well as fights over what is right and wrong. The regulation of abortion, assisted dying and same-sex partnerships but also drugs and guns are policy examples of morality issues under this definition (Euchner, 2019).

However, the latter two subjects would be excluded in Engeli et al.'s (2012) definition, as these authors restrict morality issues to those that address questions relating to death, reproduction and marriage. ART clearly is included in this definition as well as in the broader one mentioned previously. From Engeli et al.'s (2012) more specific definition, it becomes clear that by studying morality issues, the authors want to focus attention on questions that historically belonged to spheres in which religion and the churches had a strong say (Euchner, 2019). What happens to such questions in times of secularization? What other spheres are expected to produce answers and rules: the medical, legal or political spheres?

This brings us to the second concept that needs explanation: politicization. Timmermans and Breeman (2012) define politicization as "a state of controversy in which political parties mobilize support by dramatizing an issue and increasing the stakes of policy decisions". Politicization concerns drawing attention to an issue by political parties, and by doing this, the issue is moved from the personal, medical or other sphere into the political. For example, although the regulation of in vitro fertilization (IVF) in Denmark, Germany and the Netherlands was initially left to the medical profession, the country reports show that at some point in recent history, the issue was put on the parliamentary agenda through questions by MPs, sometimes at the insistence of sections of the population. Thus, the regulation of in vitro fertilization in all three cases (Denmark, Germany and the Netherlands) seems to present examples of politicization.

However, from Timmermans and Breeman (2012) and Larsen et al. (2012), it can be inferred that two additional points have to be made about politicization as operationalized in Engeli et al.'s (2012) compilation. First, there are different degrees of politicization. There is a continuum of degrees of politicization, with intra-political party attention at the low end and government and parliamentary attention at the high end. If an issue leads to a government crisis, it is politicized to a higher degree than if it is only addressed briefly in a debate about another issue. Take, for example, political parties paying attention to an issue in their electoral program or in a report published by their scientific institute. Timmermans and Breeman (2012) do not regard these instances as such as clear signs of politicization. The authors explain how such attention by political parties to morality issues might merely serve a symbolic function, such as paying lip service to internal factions in the party. The authors only speak of politicization at the point when MPs raise an issue in the parliamentary arena, via bills, parliamentary questions, motions or urgent debates (Timmermans & Breeman, 2012). In other words, the institutional level at which ART is debated is an indication of the degree of politicization. In addressing the process of politicization of ART in Austria, the Netherlands and Sweden, attention will be paid to the different degrees of politicization in this sense.

Second, as becomes clear in Larsen et al.'s (2012) description of how IVF initially was addressed in the UK Parliament, it makes a difference whether a few isolated MPs ask questions or submit motions or bills in Parliament or these are MPs endorsed by the political party's leadership. Only if the party's leadership endorses this do the authors categorize this as politicization.

Therefore, this chapter will categorize instances of MPs dramatizing ART issues in the parliamentary and governmental arena as a high degree of politicization (provided that the MPs are not typical backbenchers). If ART is only discussed between political parties in the phases preceding parliamentary debate, this indicates a lower degree of politicization. Neither does the fact of a bill being tabled in Parliament – a formal requirement of law making – automatically lead to politicization of the issues involved. This is only the case if the issues are dramatized by MPs that call them into question.

The choice of country cases to investigate the expectations of the TWMP had different reasons. First, I needed cases for both categories of countries distinguished in the theory. The Netherlands, according to this typology, belongs to the religious world; the Christian Democrat party (CDA) – is historically a strong party. Therefore, in addition to the Netherlands, I needed a country that belongs to the secular world and therefore chose Sweden. Sweden belongs to the secular world, as the religious-secular cleavage historically has not been among the organizing principles of its party system.⁵ This is because until the 1990s, there was no political party with a religious signature. In 1991, for the first time, a Christian Democratic party did enter the Swedish Parliament (Aylott et al., 2013). Although rather successful for a short while,⁶ it never reached the powerful position of Christian Democratic parties in Western European countries such as Austria, Belgium, Germany and the Netherlands. Since the turn of the 19th to the 20th century, the religious-secular divide has been an organizing principle of the political party system in the latter countries, whereas in Sweden, the party system was organized solely along the labor-capital and the rural-urban cleavage lines (Sundberg, 1999).

Second, Austria, similarly to the Netherlands, belongs to the religious world.⁷ However, there are striking differences between the ART regime in these two countries that call for closer investigation. For example, equal access for lesbian couples became the rule in the Netherlands in the year 2000 (in Sweden in 2004), whereas in Austria, lesbian couples had to wait for such access until 2015. A second striking difference might be connected to this; the countries followed different paths in the making of the rules. Whereas in the Netherlands, political debate from time to time revived, in Austria, politicians debated the issues before 1992 and for a short period of time preceding 2015, so ART for a long time had not been discussed in the general meetings of Austrian Parliament.

Austria, Netherlands and Sweden

In order to answer the previous question, in the following, I will address whether and to what extent IVF, mandatory donor registration and preimplantation genetic diagnosis (PGD) became a subject of real debate between political parties in the Parliament – a so called hot topic – in the three countries.⁸ Table 11.1 addresses per technique whether and how issues became manifestly debated in the parliamentary arena.

Table 11.1 Did political parties debate the issue in a general Parliament meeting?

	<i>Austria</i>	<i>The Netherlands</i>	<i>Sweden</i>
IVF	The issues involved were only debated to a small extent, as FMedG 1992 was a precooked compromise between ÖVP and SPÖ. The issues were debated to some extent again in the preparation of FMedRag 2015.	Yes. The regulation through Planning Decrees is not conducive to such debate. However, the following issues were addressed: – Donation of egg cells debated in 1989. – Equal access for lesbian couples and single women in 2000.	No, the ban on egg donation was discussed between the medical profession and Insemination Committee but was not an issue of debate between political parties in the Parliament.
Mandatory donor registration	The issues involved were only debated to a small extent, as FMedG 1992 was a precooked compromise between ÖVP and SPÖ. The issue was debated to some extent again in the preparation of FMedRag 2015.	Yes, this issue was raised in the early 90s and agreed on at the end of the 1990s.	No, the ban on donor anonymity was discussed between the medical profession and Insemination Committee but was not an issue of debate between political parties in the Parliament.
PGD	Yes, this issue was raised in the early 90s but only later settled in <i>Gentechnikgesetz</i> . The issue was debated again in the preparation of FMedRag 2015.	Yes, in 2008, a proposal to widen access was fiercely discussed and accepted.	No information.

Source: (Country chapters in this book and Hadolt, 2007)

Austria

The first ART law in Austria, *Fortpflanzungsmedizinengesetz* (FMedG), was debated between interest groups and political parties for ten years before – after extensive consultation – being accepted in 1992. As in other Western European countries, AID and IVF were increasingly practiced, leading to questions concerning the status of children in family law as well as concerns about abuse of the IVF technique. In the early 1980s, Catholic conservatives were first in urging for regulations. Groups of law scholars, theologians, medical professionals and religious and feminist activists followed suit, together with big political parties such as ÖVP

and Austrian Social Democrats (SPÖ), as well as smaller political parties such as FPÖ and Grünen (Hadolt, 2007).⁹ Hadolt describes the political process preceding the acceptance of the bill in 1992 by all parties participating in Parliament in four phases (2007).¹⁰ There was a wide consensus about the bill in the Parliament; Griessler and Hager (2016) ascribe this consensus at the moment of acceptance in the Parliament to the pre-cooking that had been done by the governing parties in the years before: The conservative ÖVP and the social-democratic SPÖ each had different core values. However, an intersection existed, for example, between the former's norm of traditionally structured family (ÖVP) and the latter's protection of women from exploitation (SPÖ), and years of consultation and negotiation led to them formulating a compromise. The compromise between them existed of a rather restrictive law that limited access to IVF to married or cohabiting heterosexual couples.

Despite the fact that physicians and other stakeholders repeatedly asked to amend the law, foremost because the law excluded some groups from access to ART, it was more than 20 years before a new law was passed by Parliament. Griessler and Winkler (2022) explain why the Austrian ART regime had been in gridlock for such a long period and why things changed in the period preceding the passing of the FMedRag on 5 February 2015. The cultural process of individualization is pivotal in the explanation of the latter, as it led to pressures for law change through two channels. The first channel was the judiciary, because the ECtHR as well as Austria's Constitutional Court ruled about access to ART. In *S.H. and others v. Austria* (GC), no 57813/00 (European Court of Human Rights, 2011), the applicants were two married couples who wished to use medically assisted reproductive techniques banned under Austrian law at the time.¹¹ The ECtHR considered in this case "that the right to conceive a child and to make use of medically assisted procreation for that purpose is also protected by Article 8 ECHR". (Van Beers, 2014, p. 119).¹² The case submitted to the Austrian Supreme Court and the Austrian Constitutional Court concerned a lesbian couple demanding access to egg donation.¹³ The Austrian Constitutional Court judged that several clauses of the FMedG were unconstitutional and demanded rectification (10 December 2013).

The second channel was the arena of political parties, as liberal wings had developed in the ÖVP and in the SPÖ that also wanted to make the ART law less restrictive (Hadolt, 2007). The feminists within the SPÖ moved from emphasizing protection of women from exploitation to self-determination. A less religious fraction in the ÖVP became dominant which was tired of the battles fought over abortion and IVF.

In addition to these developments, the background of these changes within the traditional political parties was the breakdown of the dual polar political system – existing in a conservative and a social democratic camp. In 2013, the two parties together only gained 51% of the votes, illustrating how, in the last three decades, voting has become unpredictable and volatile (Plasser & Ulram, 2006). Since the upsurge of the FPÖ in the mid-80s, it has become clear to both traditional parties that they have to compete with other political parties for their share of power in Parliament, henceforth making them try to listen more to the preferences of the

voters, at least as far as expressed in the polls. This also played out in renewed attention to demands regarding the FMedG. Added to the fact that the Constitutional Court had not left much room for maneuver, the new attention led to the appearance of the issues concerning ART on Austria's parliamentary agenda. Griessler and Winkler (2022), describe how the populist political parties FPÖ and Team Stronach countered allowing egg donation – which would widen access to IVF – as well as opposing making PGD available, whereas the majority of parliamentarians from SPÖ, ÖVP, the Greens and the NEOS were in favor of more permissive regulations.

We must conclude about the decision making concerning ART rules in Austria that this only confirms the first expectation formulated in the TWMP. The issues involved and the proposals to resolve these are indeed addressed in the political-parliamentary arena, as can be expected from a country belonging to the religious world. However, until the end of the last century, the larger part of contestation and debate was done in the early phases of the political process, making it possible for the political elites of ÖVP and SPÖ to formulate compromises and to precook the decisions preceding the plenary debate in Parliament. This prevented a high degree of politicization of ART as defined and operationalized in this chapter. In addition, after the acceptance of the FMedG, the two traditional parties kept the ranks closed and for decades avoided addressing calls for change. A strategy of depoliticization, or at least avoidance of political conflict, is recognizable here, but, different from what the theory expects, both the conservative ÖVP and the social-democratic SPÖ applied this strategy.

A second deviation from the theory is that the – long-existing – pact between these parties was not cracked by secular or orthodox Christian political parties. Nor did the FPÖ or the Greens politicize access to ART. Instead, subgroups of individuals within the ÖVP and SPÖ did this, encouraged by citizens claiming access to ART in court as well as the fact that ART physicians helped patients in getting treatment abroad (Griessler & Winkler, 2022). The courts urged a review of the restrictive law, and this created momentum for these subgroups to enforce amendments. Notable is how populist parties such as FPÖ and Team Stronach – that have been important in breaching the dual polar political system – in discussing the FMedRag have rather defended the existing restrictive ART regime than contributed to its liberalization.

The Netherlands

Planning decrees regulate the quantity of IVF treatments and stipulate the quality requirements concerning these treatments as well as access to PGD, whereas Parliament accepted a law in order to make donor registration mandatory. In the process preceding the formulation of these regulations, the Christian Democrats in the Netherlands were the first to convey a clear opinion concerning IVF and mandatory donor registration (Weyers & Zeegers, 2022). The party paid attention to these subjects in its electoral program in 1986 (Timmermans & Breeman, 2012). In addition, its Scientific Institute published the report *Zinvol Leven*, among

others, claiming that IVF should only be allowed if there was a biological reason for childlessness. Following Timmermans and Breeman's (2012) definition of politicization, as explained in section 3, this is only a low degree of politicization. This allows the conclusion that IVF initially was not politicized to a noticeable degree. The Dutch government used planning decrees as an instrument to prescribe the boundaries within which the number of IVF treatments would be allowed to develop, as well as other requirements. In general, governing through decrees prevents debate from occurring in Parliament. As a matter of fact, it can be regarded as a strategy of governmental parties to evade debate, and it has been applied successfully quite often. However, in this case, after two CDA ministers agreed on a Planning Decree (1989) that in fact put a ban on IVF treatments with donated egg cells, there was a public outcry in the media, as banning treatments with donated egg cells would discriminate against women, especially those without egg cells of their own (Kirejczyk, 1996). After two MPs of D66, a left-liberal party, asked questions in Parliament, the ministers felt forced to amend the Planning Decree before the end of 1989.¹⁴ After this, subsequent governments left issues such as whether to allow using donated egg cells and who had access to IVF to hospitals to decide. This led to diverse treatment in hospitals, some giving lesbian couples and single women access to IVF treatment, whereas others refused such access. In 2000, on the instigation of the Equal Treatment Commission, the minister asked hospitals not to categorically exclude these groups from treatment anymore.

With respect to mandatory donor registration, the Lubbers II government, a coalition of the Christian democrat CDA and the right-wing liberal VVD, proposed a bill on the initiative of the CDA. The bill was briefly discussed in Parliament in the early 90s, with the secular parties showing reluctance to agree with mandatory donor registration and asking for more research into whether persons need to know their origins. At the end of the 90s, the bill returned to Parliament after the Dutch Supreme Court issued the Valkenhorst I Ruling that concerned a woman who had been born in a single mother's home and was refused information about her biological father. With this ruling, the case was settled and the court confirmed the right to know one's parents, referring to the right to personality (Weyers & Zeegers, 2022). Subsequently, the political parties in Parliament developed a consensus about this right, and the bill was almost unanimously accepted in Parliament in 2002.

In 2008, PGD had been heavily discussed in the parliamentary arena after a Social Democratic secretary of state proposed widening its availability by making a wider category of hereditary diseases indicative. Parliament accepted this proposal after fierce opposition by the more orthodox religious Christian Union, under the condition of strict oversight by a committee of medical professionals.

Having addressed rulemaking concerning these three subjects, we can safely conclude that political parties to a considerable extent have addressed issues concerning ART in the parliamentary arena, confirming this part of the TWMP theory about countries belonging to the religious world. The second expectation can be confirmed for how IVF and PGD came to be politicized. Here, secular political parties such as the social democratic PvdA and left liberal D66 initiated

parliamentary debate, whereas the CDA kept the issues as much as possible off the parliamentary agenda, among other things by using planning decrees to formulate rules and conditions. However, with regard to mandatory donor registration, the Christian Democratic CDA took the initiative by proposing a bill. This might be regarded as contradicting the TWMP theory somewhat. However, the issue of mandatory donor registration concerns family values; the CDA stressing these values rather than more fundamental religious principles is in line with the unsecular strategy that the TWMP theory expects this party to follow (Engeli et al., 2013; Kalyvas & Van Kersbergen, 2010).

Sweden

The Swedish legislature permitted the use of donor sperm for insemination in the 1984 Insemination Act and in the same act stipulated that donor registration was mandatory. This act had been carefully prepared by the Insemination Committee formed by the government in 1981 with Tor Sverne as special examiner. The issue of mandatory donor registration met with resistance from the medical professionals involved in ART (Singer, 2022). In the preparatory phase of the 1988 IVF Act, the proposal to ban egg donation – while permitting IVF under certain conditions – appeared to be another issue for this group of medical professionals. However, as Singer explains, neither mandatory donor registration nor the ban on egg donation was politicized in the sense of the definition used in this chapter, as the issues were not debated between political parties in the parliamentary arena. With its cautious approach to ART, the Insemination Committee precooked the 1984 Insemination Act, and it did this again with the 1988 IVF Act. Through this process of precooking, it made sure that these bills were widely accepted by political parties and did not lead to fierce discussions between them in the general meetings of Parliament (Singer, 2022; Swedish Government Official Report, 1985).¹⁵ In addition, when the question of banning egg donation appeared to keep simmering in the subsystem of medical professionals (Nordic Council of Ministers, 2006), the political parties did not take the issues up to bring them into the arena of parliamentary debate. Instead, the government assigned the Swedish National Council on Medical Ethics (*Statens medicinsk-etiska råd*), to review the issues mentioned, in addition to a number of other questions about fertilization outside the body.¹⁶ In 1995, this council advised permitting egg donation; in light of sex equality, it argued that infertile women should not be denied the opportunity of becoming mothers via donated eggs (Nordic Council of Ministers, 2006).¹⁷ The Swedish government followed this advice, although the ban on egg donation lasted until 2003.¹⁸ The next relevant step taken by the legislature was to allow lesbian couples access to assisted reproduction.¹⁹ Again, as Singer observes, no real resistance to the proposal had arisen in Parliament. This time, the preparatory investigations by the parliamentary Committee on Children in Homosexual Families had done the appeasement work. This committee investigated legal differences between homosexual and heterosexual couples as well as the facts about children living in homosexual families.²⁰ In addition, Singer describes the wide consensus that had existed

for a long time about the entitlement of children to two parents, which barricaded the access of single women to donor insemination and IVF (Singer, 2022). This barricade is an issue that politicians did address in Parliament: In 2005, a left-wing MP submitted a motion asking the government to allow single women such access.²¹ This motion as well as subsequent motions of MPs from five out of six parties in 2006 and six out of seven parties in 2008 were denied. However, in 2008, the Committee on Health and Welfare started an investigation into the matter, and in 2013, the government appointed the Committee on Increased Possibilities to Address Involuntary Childlessness to resolve the issue.²² In 2016, Parliament accepted legislation enabling single women to access assisted fertilization to the same extent as married and cohabiting couples.²³ Singer (2022) observes that this legislation was widely supported in Parliament, with the exception of the Swedish Christian Democrats.

Does the account of developments in the Swedish rules concerning ART confirm the TWMP theory and the idea that Sweden belongs to the secular world? In the secular world, each morality issue would follow an issue-specific dynamic, often defined by the subsystem and rather independent from parliamentary politics.

With the exception of allowing single women access, ART issues indeed hardly seem to have led to debate in general meetings of Parliament; instead, the issues were resolved by committees predominantly consisting of experts. Two subsystems have been paramount for finding solutions and anticipating possible differences of opinion, as they played a big role in conducting investigations and formulating and discussing the Swedish rules for ART. First, the subsystem of medical professionals specialized in ART and second, the subsystem of experts dedicated to what is “the best interest of the child”. When there were potential conflicts because of differences of opinion between the children’s rights experts and the medical experts, for example, with respect to the ban on donor anonymity, the former experts won because of the compelling character of arguing in the child’s best interests. In any case, things were almost completely settled without much parliamentary debate and without political parties taking much interest in the issues concerned. Issues, such as access to ART for homosexual couples, could be resolved in the course of time, because together with the newly generated evidence, the insights about what is in the best interests of the child changed. In addition, equal treatment (gender; sexual orientation) grew in importance. Although through these cultural changes, most issues could be resolved quite smoothly, this was different for allowing access for single women, as the idea that a child needs two parents appeared to be persistent. The government used the fact that “many women go abroad to have donor insemination” as an inducement to convince Parliament (Singer, 2022).²⁴

The only political party that really aligned itself with the issue of ART was the Swedish Christian Democratic party. The 2001 program of this party mentions human dignity as a guiding principle, “each and every person’s absolute, unique, and inalienable dignity shall inform the rules and practices of medical ethics” (Kristdemokraterna, 2001). The party has – unsuccessfully – sought to promote this principle through parliamentary motions to amend the Swedish law with a constitutionally guaranteed right to life. This conveys how this party has a

more orthodox Christian ideology than the Christian Democratic parties referred to in the TWMP theory.

The absence of conflict and divided debate between political parties about the issues involved in ART seems to confirm the TWMP in the Swedish case. However, pre-cooking things in committees, sometimes involving experts exclusively, sometimes including MPs, seems to be a general characteristic of the Swedish political system. Therefore, the extent to which the absence of politicization of ART (as defined in the TWMP) is convincing evidence for the theory remains to be seen. We have come across a general pattern in Swedish politics that also occurs when ART or other morality issues are at stake.

Conclusion about the TWMP theory

The process of formulating rules concerning ART in Austria, the Netherlands and Sweden to some extent does fit with the TWMP theory about politicization processes. Close comparison of the country cases, however, begs for some reflection on how politicization is defined in this theory and is rather about moving issues to a higher level of contestation than about where politics takes place.

When we look at where politics with regard to ART takes place, both in Austria and Sweden, this is often done in the early – preparatory – phases of law making, more often than in the Netherlands.²⁵ However, as described in section 3, politicization is about whether political parties mobilize the activity of resolving conflicts to higher levels of visibility and political contestation. In the Austrian case, there is clear evidence that ÖVP and SPÖ actively prevented such mobilization from happening, among other things by forming a pact in the preparation phase of the FMedG and subsequently keeping the ranks closed. Here we see forces at work that counteract and even block (potential) politicization forces, and we might label the former depoliticization. The resulting rather low level of politicization of ART is in fact the sum of these two contradictory forces. This is different for the low to negligible level of politicization of ART observed in Sweden: Here MPs were often grouped together with experts involved in the decision making concerning ART. However, there is no sign that they tried to mobilize the issues to a higher level of contestation or had to prevent other MPs from doing so.

Comparing Austria and the Netherlands might provide deeper insight into the degrees of politicization and the underlying forces. The process of decision making about ART in the Netherlands has known a much higher degree, as on different occasions, issues led to debates in general parliamentary meetings, in the case of PGD even leading to a small government crisis. Secular political parties, such as D66 and the Social Democratic party PvdA, as well as orthodox Christian parties, are the drivers of this process of politicization in the Dutch case. D66 and PvdA sided in challenging rules that restricted access to techniques and in calling for more equality for homosexuals. The orthodox Christian party, Christian Union, opposed the proposal of a Social Democratic secretary of state to widen the availability of PGD in government and in Parliament. No analogy can be found in the

role that secular political parties played in the Austrian case. Notwithstanding the presence of secular parties in the opposition, the call for liberalization of the ART rules and more equality in access mostly came from concerned couples who wanted to have access to ART and physicians who wanted to broaden its applications. In the end, only after the courts demanded a law review was this call taken up by subgroups of politicians that had formed within the Social Democratic and the Christian Democratic party, and the bill to liberalize ART rules was submitted to Parliament. Although politicization of ART issues occurred in both countries belonging to the religious world, in the Austrian case, depoliticization seems to have been more successful, resulting in a degree of politicization that was relatively low.

The TWMP theory does not go into how processes of politicization and depoliticization interact. A difference in degree of politicization will result from the interaction between political parties trying to politicize and political parties trying to depoliticize ART issues, as exemplified by the comparison between Austria and the Netherlands. The next section will try to deepen insights into these processes and interactions and supplement the theoretical framework.

Closing the gap in the theory?

In order to explain why ART in the Netherlands has been politicized to a higher degree than in Austria, although both countries belong to the religious world, differences in their political (party) system might be relevant. Euchner (2019) offers a clue for finding a relevant difference in this respect by proposing to enrich theory about morality politics by acknowledging the mechanism of “wedge issue politics”. She introduces this mechanism in her work on morality politics in four countries belonging to the religious world: Austria, Germany, the Netherlands and Spain. While endorsing the TWMP theory for explaining how these countries differ from those belonging to the secular world, she criticizes it for not explaining, first, differences in morality issue politicization across these countries and, second, differences in morality attention patterns in such a country over time. This criticism fits with the conclusion of the former section, and therefore the mechanism of “wedge issue politics” might offer a missing link in the explanation.

Euchner describes “wedge issue politics” as political parties politicizing a topic in order to drive a wedge between the supporters of the opponent in order to electorally gain from the division sown (2019). Pointing at this mechanism, she argues that political parties may use morality issues to challenge opponents and that they will do this only when conditions are favorable. The conditions for the political parties to do this are favorable when they are in the position of an opposition party and able to challenge a governing party that is more powerful but also vulnerable to wedge issue politics. Powerful opponents are vulnerable to such politics in the case of intra-party conflict or – in situations of coalition government – inter-party conflict (Euchner, 2019; Riker, 1986; van de Wardt et al., 2014). In the religious world, this is not only the case for Christian Democratic parties but also for the political parties that participate in government coalitions with them. Euchner

finds confirmation of this theory in her analysis of how parliamentary attention to homosexuals' rights and prostitution developed in her case studies.

By acknowledging the mechanism of wedge issue politics, the situation of the governing parties comes into play as a variable that scholars should take into account in explaining differences in the degree of politicization of morality issues between countries. With respect to the difference in the politicization of ART between Austria and the Netherlands, we should look into the differences in the composition of subsequent government coalitions in the two countries. Similar in the two countries – more or less – is the frequency of government coalitions that are a mix of a secular party and a Christian Democratic party. In the period of time relevant for ART rules, such mixes existed in the Netherlands from 1986 to 1994 and again from 2002 to 2012 and from 2017 to the moment of this writing and in Austria from 1986 to 2000 and again from 2007 to 2016. However, in the Netherlands, the secular party in the coalition was either a liberal or a social democratic party; the VVD and the PvdA more or less took turns in being the coalition partner of the Christian Democratic party. The Austrian political system is different because the third party that was strong enough to gain governance power was the FPÖ, as the Greens for a long time were still too weak. However, after Jörg Haider and his far-right populists came into power in the FPÖ, this party lost all its liberal elements. This resulted in a strategic position for the strong secular party in Austria that was different from the strong secular parties in the Netherlands: The secular parties in the Netherlands each had the other secular party as a coalition partner alternative to the Christian Democratic party, whereas the SPÖ in Austria did not have such an alternative, as entering government with the FPÖ was out of the question given its Nazi heritage. The ÖVP was the only choice for the SPÖ. Therefore, the incentive to compete with the governing Christian Democrats by driving wedges was much stronger in Dutch politics than in Austrian politics because both secular parties in the former had an alternative to forming government coalitions. In Austria, both the ÖVP and SPÖ were better off by keeping the ranks as closed as possible in order to continue in government. The SPÖ driving wedges between the voters of the ÖVP by politicizing ART was not an option because there was a risk of losing the ÖVP's willingness to govern with them.

As the examples of Austria and the Netherlands show, the mechanism of “wedge issue politics” can help to explain the differences in morality issue politicization between countries belonging to the religious world and through time. In Austria, the depoliticization of ART was a joint strategy of ÖVP and SPÖ and probably therefore more successful. The wedge issue mechanism indeed seems to offer an enrichment of the TWMP theory as it explicitly theorizes the situation of the governing parties. As long as the TWMP theory paid attention to governing parties, it one-sidedly focused on the Christian Democratic parties in this position. By addressing the situation of governing parties as a variable more broadly, the theoretical framework can be improved in two ways. First, it can be acknowledged how depoliticization of ART or other morality issues might also be part of the governing strategy of parties other than Christian Democratic ones. Second, more attention can be paid to the processes of depoliticization of ART issues that

occur in addition and reaction to (potential) processes of politicization, how these two processes interact and under what conditions the one prevails over the other.

Conclusion

Engeli et al.'s (2012, 2013) theory that a religious-secular cleavage in the party system is a driver of the politicization of morality issues is more or less confirmed in the Dutch and the Swedish case of rulemaking about ART; in the Austrian case, this seemed to be less so. The latter case offered a puzzle, as in comparison to the Dutch case, it showed a much lower degree of politicization of ART issues, whereas, according to the TWMP, both countries belong to the religious world. This puzzle could be solved by following the insights about wedge issue politics and looking into the situation of the governing parties of the three decades preceding 2016. The situation of the governing parties in the Dutch situation offered better incentives for “driving wedges” in support of the Christian Democratic parties than in Austria, where the Social Democrats also had an interest in the depoliticization of ART.

The assessment of the fit of TWMP theory with the processes of ART politicization in the three countries also delivered insights into some tensions and seeming contradictions in applying the concept of politicization and depoliticization. First, this chapter reflected on how the concept of politicization is concerned with the movement of an issue to a higher level of contestation. However, this higher level refers to the institutional level at which the issue is debated – general parliamentary meetings are, for example, higher than parliamentary committee meetings – as well as a higher level of expressed disagreement between political parties. These different aspects of politicization and the manner in which they are or can be operationalized in research need further specification and explanation. The concept of depoliticization is even more puzzling. First, it cannot simply be seen as a counter-movement – from higher to lower levels of contestation. It is much more concerned with preventing issues from moving to higher levels of contestation. Second, such efforts to prevent others from dramatizing issues and putting these on the political agenda are often less visible than efforts to politicize and at the same time prevent politicization from happening. This chapter noted how the low level of politicization of ART in Austria in fact is the sum of politicizing and depoliticizing forces contradicting each other, the latter mainly blocking the former. The understanding of the political processes involved in ART regulation would be served by a fuller detection of these forces, and clearer definitions and operationalizations of politicization would help to accomplish this task.

Notes

- 1 I want to thank Erich Griessler and Florian Winkler for thoroughly reading the chapter and providing me with very useful comments and Heleen Weyers for, in addition to this, also motivating me at a crucial moment to continue writing the chapter.
- 2 These are Denmark, Netherlands, Spain, Switzerland and United Kingdom.
- 3 Engeli et al. (2013) call for future research that would provide a more detailed understanding of the subsystem politics structuring morality issues in the secular world.

- 4 Engeli et al. (2012) formulate a third expectation, not addressed in this chapter: The change of government coalitions is decisive for the laws and rules that result from contestation about the proper scope of ART.
- 5 Sundberg (1999) describes how the labor-capital and rural-urban cleavages instead are the organizing principles of the Swedish party system.
- 6 In 1998, the party peaked by gaining 11% of the votes.
- 7 Krouwel, A. (2012) describes how the ÖVP (Austrian Peoples Party) is a Conservative and also Christian Democratic party. The ÖVP originated in the *Christlich Soziale Partei* founded in 1889 and was itself founded in 1945, following attempts to unite Christian Democracy beginning as early as 1870.
- 8 Since 2017, this technique has been called pre-implantation genetic testing (PGT).
- 9 The FPÖ is the result of a merger in 1956 of the *Verband der Unabhängigen* and the *Freiheitspartei*.
- 10 Although FPÖ and Grünen accepted with a proviso (Hadolt, 2007).
- 11 One couple needed the use of sperm from a donor and the other couple ova that had been donated.
- 12 *S.H. and others v. Austria* (GC), para 114.
- 13 The court asked the Austrian Bioethics Commission for advice. In 2012, this commission advised reforming the FMedG and permitting egg and sperm donation and PGD as well as widening access to ART more generally.
- 14 See electoral program.
- 15 This committee with Tor Sverne as special examiner was formed in 1981 in order to prepare legislation on donor insemination (Singer, 2022).
- 16 Regeringsbeslut 1994–06–23 nr 34.
- 17 In addition, the Council argued against the idea that confusion concerning maternity would arise, as the woman who gives birth to the child is the mother, irrespective of the existence of a genetic link. See Singer (2022) on the amendment to the Children and Parents Code that was necessary to solve the case of a non-genetically related birth mother.
- 18 Government Bill, Prop. 2001/02:89 Treatment of involuntary childlessness (*Behandling av ofrivillig barnlöshet*).
- 19 Government Bill, Prop 2004/05:137 pp. 41–42; Parliamentary Committee Report, Bet. 2004/05:LU25 Assisted fertilization and parenthood (*Assisterad befruktning och föräldraskap*).
In order to give all prospective children two parents, the rules concerning the establishment of parenthood were also amended.
- 20 Swedish Government Official Report, SOU 2001:10 Children in Homosexual Families. (*Barn i homosexuella familjer*) p. 18.
- 21 Parliamentary motion, Motion 2005/06:L262 Assisted fertilization and egg donation. (*Assisterad befruktning och äggdonation*)
- 22 *Utredningen om utökade möjligheter till behandling av ofrivillig barnlöshet*.
- 23 Government Bill, Prop. 2014/15:127.
- 24 Government Bill, Prop 2014/15: 127 p. 12.
- 25 Departing from Dahl's (1961) definition of politics as resolving inevitable conflicts in a peaceful manner.

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