Policy Learning in Policy Domains with Value Conflicts: The Austrian Cases of Abortion and Assisted Reproductive Technologies[1]

Erich Grießler and Bernhard Hadolt
Institute for Advanced Studies, Vienna (Austria)

1   Introduction

This paper addresses the question of how we can account for learning in policy domains, in which according to Sabatier's Advocacy Coalition Framework (ACF, Sabatier 1988, 1998, Sabatier & Jenkins-Smith 1993, 1999) learning is unlikely.

For a better understanding of the policy process the ACF starts from the assumption that "policy subsystems" or policy domains are structured by several – usually two – competing advocacy coalitions (AC). An AC is "composed of actors from various governmental and private organisations which both (a) share a set of normative and causal beliefs and (b) engage in a non-trivial degree of co-ordinated activity over time" (Sabatier 1998: 103). Policy beliefs again can be divided into deep core values, policy core beliefs and secondary aspects. Deep core values relate to deeply held and rather stable "fundamental normative and ontological axioms" (ibid. 112), which often are even not reflected and span across all policy fields. Policy core

beliefs refer to fundamental policy positions, whereas secondary aspects are about instrumental decisions. Both categories of beliefs are particular to a policy subsystem.

Sabatier attributes policy change to three different sources: First, changes in the "real world", i.e. changes in socio-economic conditions, public opinion, systemic governing coalition, or policy outputs from other policy domains; second, turnover in personnel; and third, policy-oriented learning. He defines policy oriented learning as "relatively enduring alterations of thought or behaviour intentions, which result from experience and/or new information and which are concerned with the attainment or revision of policy objectives" (Sabatier 1998: 104). Sabatier considers policy learning in policy core beliefs - in contrast to secondary aspects - as being rather unlikely and requiring external perturbation (Sabatier & Jenkins-Smith 1999: 123).

Sabatier presents several hypotheses, which identify conditions for and the likelihood of policy change and policy learning (Sabatier & Jenkins-Smith 1999: 124). Among other factors, he proposes that policy learning is more likely: in areas related to the natural environment and not the social world (learning hypothesis 3); if there are accepted quantitative data, explanations and indicators of success (learning hypothesis 2).

Available empirical research using the ACF has been predominantly concerned with policy subsystems, which are strongly informed by technical knowledge. Much less has this approach been used to understand policy domains that are characterised by normative or identity issues (Sabatier 1998: 100, 122).

In this paper we present two cases from Austrian life politics, which according to Sabatier's hypothesis are rather unlikely to involve policy learning, because they both belong to the social world and lack a problem

perception in terms of quantitative data and explanations. Nevertheless, we can detect learning in both cases. The first case is concerned with the Austrian debate on regulating abortion in the early 1970s, which led to a rather permissive law. The second case deals with the discussion about assisted reproductive technologies (ART) policy in Austria during the 1980s and early 1990s, which culminated in the enactment of the Reproductive Medicine Act (Fortpflanzungs-medizingesetz, FMedG) in 1992, a relatively restrictive regulation.

The analysis of the two case studies is based on expert interviews with relevant political actors in the abortion or ART debates, analysis of documents such as records of party conventions, parliamentary documents, ministerial files, newspapers as well as documentation of political parties. Moreover, we used published literature on the development and implementation of the new penal code, including its abortion clause, as well as on the regulation of ART.

2   Decriminalisation of abortion

2.1   Abortion as a policy problem

Abortion is an ancient and culturally contingent practice and the same applies to its legal regulation (Mesner 1994: 9).[2] Taking up Sabatier's distinction (1998) between technical policy problems that relate either to the natural or to the social world, abortion regulations are clearly a problem of the latter kind. They are concerned with the stance a society takes regarding wilful termination of pregnancy, which often is framed as a problem of ethics.

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[2] For a survey of abortion regulations in Austria from Roman times to the 1970s, see Lentner 1971 and Keller 1971.

Thus, according to Sabatier, policy learning should be more unlikely in this policy domain.

The Austrian abortion debate of the early 1970s was basically shaped by two antagonistic ACs characterised by incommensurable and conflicting belief systems (Sabatier 1998: 103). In accordance with the division of post-war Austrian society into two almost equally strong camps – a conservative and a social democratic one – until well into the 1970s, the division of the two ACs followed this fundamental demarcation line (Sagmeister 1981, Edlinger 1981, Stangl 1985, Enigl/ Perthold 1993, Lehner 1993, Mesner 1994). The restrictive AC consisted of the conservative Austrian People's Party (Österreichische Volkspartei, in the following ÖVP), the official Roman Catholic Church, catholic lay organizations, the Austrian Chamber Of Physicians (Österreichische Ärztekammer), a great number of influential physicians at university clinics, and catholic activist groups. The permissive AC was basically identical with the Austrian Socialist Party (Sozialistische Partei Österreichs, in the following SPÖ), its organisations, as well as individuals with an affinity to this party. On the whole, the restrictive AC dominated the abortion debate from the early 1920s until the early 1970s. Subsequently, the permissive AC gained the absolute parliamentary majority, won over coalition partners and acquired argumentative momentum.

The differences between the two ACs were particularly strong regarding their deep core beliefs (Sabatier 1998: 103). While the restrictive AC emphasised the protection of human life from procreation, the permissive AC was primarily concerned with the potentially negative consequences of unwanted children in medical, psychological, economic and social terms for a woman. Moreover, they demanded that women should in

principle have the right to terminate a pregnancy if she considered these conditions as unfavourable.

The permissive AC criticised the existing law as ineffective, unfair and harmful. They considered it as ineffective because it did not prevent abortions. In addition, punishment does not contribute to the convict's moral improvement. They criticised the law as unfair because privileged women were able to avoid the ban more easily than socially weaker women. Moreover, socially disadvantaged women were convicted more often than privileged women. The permissive AC regarded the law as harmful for women's health and life, because the prohibition of abortion forced many women to look for help by unskilled back-alley abortionists. The permissive AC advocated fewer, planned and healthy children. While this line of reasoning had remained almost unaltered since the 1920s[3], the call for female self-determination in the sense of deciding on abortion became central in their line of argumentation in the early 1970s. For example, a group of autonomous women stated:

"Going one step further, we demand that all women's right to medically optimal abortions be recognised as inviolable and natural. ... Women's right of self-determination means each woman's right to decide for herself about her own body, her own life, as well as whether and when to have children, and how many children each woman wants to have. We clearly deny those in power

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[3] However, there are also changes in comparison with the abortion debate during the 1st Austrian Republic. Whereas the debate in the 1920s and 1930s also included state focussed eugenic arguments (Rose 2001), this argument has almost completely disappeared since 1945. On the other hand, after 1945, some advocates of a restrictive abortion regulation linked abortion rhetorically with eugenic discrimination, euthanasia of the elderly and handicapped as well as with racist murder during the Nazi regime.

the right to decide about us." (AUF-Mitteilung no. 11, September 1973, quoted in Perthold 1993: 98).

In the same vein, but in less belligerent language, the SPÖ Women's Organisation declared at the 1972 party convention:

"The current cruel penalties on interruption of pregnancy are to be amended as part of a general revision of Austrian penal law, in such a way that, besides the indication-based solution contained in the government's proposed bill, women's special conflict situation is comprehensively addressed by giving them the right to decide freely for themselves within a medically reasonable period of time." (SPÖ 1972: 25, emphasis added by the authors).

Thus, in contrast to the restrictive AC that wanted either to stick to the existing restrictive abortion regulation and at most wanted to allow as few exceptions from an abortion ban as possible, the permissive AC advocated decriminalisation of abortion. According to positions within this AC, this decriminalisation should be effected by a complete abolishment of the abortion ban, by generally allowing abortion within a specific time limit and by defining specific exceptions.

Both ACs emphasised that abortion was undesirable and they unanimously decided on a number of so-called accompanying measures to reduce the number of abortions ranging, e.g., from sex education, reforms of inheritance law and family law to the increase of family and birth allowances. However, whereas the restrictive AC perceived such measures as an alternative to the abolishment of the strict abortion ban, the permissive AC only considered them as supplementary (Edlinger 1983: 123).

Looking again at Sabatier's AC approach, abortion policy is clearly a case where learning seems unlikely. At

the core of the debate was the basic and disputed question whether or not to decriminalise the widespread practice of abortion and to give women the right to decide for themselves on terminating a pregnancy. This question was completely normative, addressed the very centre of the two AC's core beliefs and it involved little technical knowledge. Since the basic question "right of choice versus protection of life" is still disputed today, the two ACs do not share a common policy goal (e.g. reducing the number of abortions). Consequently, no abortion statistics exist in Austria on which an evaluation of accompanying measures could be based. One reason for this is the permissive AC's argument that their opponents could use those numbers to argue against the limited-period abortion right.

Although there are various issues characterising the specific norm regulating abortion, in this paper we will concentrate on the question of exceptions from a general abortion ban, since this question was at the heart of the Austrian debate in the early 1970s.[4]

According to their belief system, different actors considered different conditions as valid justification for an exemption from a general abortion ban. Transferring a medical term to a judicial and (in the Austrian context) basically ethical problem, these exemptions were called "indications"[5] and classified as so-called medical, eugenic,

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[4] Other questions include: Is abortion violating a legal norm at all? What norm and why? Who is violating a norm? The woman who has an abortion? A person that carries out or assists the abortion, a person that knows about and/or supports the abortion, e.g. financially, intellectually? A person who advertises abortion? Is abortion considered a crime or a petty offence? How is it punished? Are there other means taken or proposed to prevent abortion than threat of punishment?

[5] Consequently, the abortion clause based on different indications was termed "indication solution".

ethical, socio-medical and social ones. In brief, these different indications can be described as follows. A medical indication considers abortion as justified if pregnancy and birth could endanger or harm the woman's health and life. The socio-medical indication opens the medical indication for social aspects by applying a comprehensive health concept. It considers abortion legitimate if social, economic and psychological hardships of childcare might endanger the woman's health. The eugenic indication regards abortion as acceptable if the child might be mentally and/or physically severely ill. The ethical indication supposes that a woman cannot be expected to give birth to a child whose conception was caused by a criminal act such as rape. The social indication considers abortion as legitimate if raising the child would put intolerable economic stress on a woman. Whereas almost all actors involved in the Austrian abortion debate agreed on the legitimacy of a medical indication, all other indications, in particular the social one, were much more heavily disputed.

In contrast to the case-by-case approach of the indication solution, a general right of abortion for a limited period, which was widely discussed in Austria from the early 1970s, decriminalises abortion independently of a particular woman's motives or living conditions as long as it is done during the defined time span. Beside a number of procedural advantages[6], the argument most prominently used by advocates of a time-limited abortion right in the early 1970s was, as already mentioned, the claim for female self-determination. It empowers the pregnant woman herself to decide on the termination her pregnancy

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[6] Firstly, it is not necessary to define indications. Secondly, no commissions or physicians are necessary to make case-by-case decisions whether to tolerate an abortion. Thirdly, as long as an abortion is carried out within the defined period of time, no legal appeal is possible.

rather than some physician or a commission of whatever composition.

2.2 Development of the Austrian abortion regulation

The Austrian penal code valid until 1975 was very restrictive regarding abortion. Without exception it threatened women who had terminated their pregnancy with strict imprisonment from 1 to 5 years (§§ 144 – 148)[7]. The law dated back to 1803 and 1852, respectively, and despite numerous reform initiatives, it had remained unchanged for the most part since then. Already in 1858 the Austrian parliament started a reform initiative, which after a number of attempts remained unsuccessful in the end because the outbreak of World War I did not allow any further parliamentary discussion of the initiative. Reform efforts during the 1st Republic, which aimed at the harmonisation with the more liberal German criminal law, also failed, not only because of deep-rooted conflicts between conservatives and social democrats and the ensuing instability of the Austrian political system, but also because the wishes of the Austrian authoritarian government for legal harmonisation with the neighbouring country ceased in 1933, when national socialists seized power in Germany (e.g. Keller 1971).

After World War II the penal code was again on the political agenda after 1954, when the Austrian parliament installed a Penal Code Commission (Strafrechtskommission) that consisted of a small number of male elite legal experts and parliamentarians of the ÖVP, the SPÖ and of the right-wing Freedom Party (Freiheitliche

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[7] Österreichisches Strafgesetz. Hrsg. Von der STAATSKANZLEI am 3. November 1945 = Amtliche Sammlung wiederverlautbarter Rechtsvorschriften 2/1945, 57f. zit. nach Sagmeister 1981: 11.

Partei Österreichs, FPÖ, Stangl 1985: 29 ff, Mesner 1994: 100 ff.). By 1962 this expert group had worked out recommendations for a general reform of the penal code, which included an extensive medical indication with psychological, social, eugenic and ethical elements (§ 102, Strafrechtskommission 1962 quoted in ÖVP 1971: 30ff). In 1964 the ministry of justice, led by SPÖ minister Christian Broda, prepared a proposal, which was based on those experts' draft but which was already slightly more restrictive. Now the medical indication included only a socio-medical component and the ethical, social and eugenic elements were dropped. In 1966, the SPÖ-led ministry worked out another yet more restrictive proposal that took into account the conservative critique of the ministry's previous proposal and included only a strict medical indication (Keller 1971). One explanation why the SPÖ proposals became increasingly restrictive was the position of the coalition partner, ÖVP, with whom the SPÖ formed a government from 1945 to 1966. The ÖVP blocked any change in the abortion clause going beyond a strict medical indication (Edlinger 1983: 95).

After a conservative single-party government from 1966–1970, which did not adopt a new penal code either, the reform bill was again introduced in parliament in 1971, after a SPÖ single-party government had taken office the previous year.[8] The proposal of Christian Broda, who was again appointed minister of justice, took up once more the experts' recommendations of 1962 and included a medical and social-medical indication with ethical and eugenic components. Again, the ÖVP passionately attacked this proposal.

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[8] From 1970 to 1971 the social democrat administration was supported in parliament by a relative SPÖ majority, from 1971 to 1983 by an absolute SPÖ majority.

In April 1972, at a party convention in Villach, the SPÖ women's organisation demanded a less restrictive regulation than the one proposed by their own minister and fellow party member. Abortion, according to this proposal, should not only be decriminalised in the case of certain "indications", but in addition it should generally be legal within a certain – not yet specified – period of time during pregnancy. The convention accepted this petition, which by then also minister Broda supported, with only ten dissenting votes. SPÖ parliamentarians introduced a corresponding amendment to the ministerial proposal in the legal committee of parliament. In 1973, parliament adopted the new penal code including the new abortion clause with the votes of the SPÖ and against fierce resistance by the two opposition parties ÖVP and FPÖ.

The new law came into effect in 1975 and adheres to a general prohibition of abortion (§ 96 (3)), but it also lists several important exceptions from punishment: first, if the intervention is carried out within a three months' period after the beginning of pregnancy (§ 97 (1) 1); second, even after this period, in cases of medical, eugenic or ethical indication (§ 97 (1) 2, see below). The law also provides that only physicians are allowed to carry out abortions, and only after previous medical consultation with the respective woman.

2.3 Policy change within the SPÖ

The described shift from an indication solution to a general limit-period abortion right plus additional indications without a time limit, marks a fundamental change of the official SPÖ position towards abortion. Although since 1918 social democrats had always advocated a softening of the restrictive abortion law, the official party position since 1926 had always been an "indication solution" of varying strictness, in line with

tactical considerations (Mesner 1994). Within the party, the calls for total abolishment of the prohibition of abortion, or a limited-period abortion right, had always remained in the minority.

Looking back thirty years later, party members and functionaries who participated in this shift describe the switch from an indication solution to a limited-period abortion right as a major policy change. But was this change also policy learning? In order to understand the development of the abortion regulation we will focus in this paper on learning processes within the permissive AC, because it was the SPÖ that enacted the limited-period abortion right by overruling the restrictive AC with its absolute parliamentary majority. However, we also have to consider the restrictive AC because its position was consequential for the permissive AC's policy.

In the permissive AC, we can distinguish the party leadership, party sub-units and associated organisations, individual members, as well as affiliated experts, such as elite jurists, physicians, and even a few individual protestant theologians and prominent catholic lay persons.

The AC was united by its common goal to soften the existing restrictive abortion law by decriminalising abortion. However, it is important to note that the AC was not homogenous in its belief system and that tensions between actors and positions existed. Some actors completely prioritised the claim for female autonomy against arguments of life protection. Others weighed the protection of life from the moment of procreation against the negative consequences of unwanted children and of the criminalisation of abortion. Moreover, as we will see, the AC was divided by different tactical and strategic positions.

Although the party leadership – a small elite of almost exclusively male politicians holding top positions in the party, in government and in parliament and thus

wielding formal and informal power - had the final word in formulating the party line, i.e. they did not pursue policy change actively. The SPÖ leadership wanted to reach a compromise with the ÖVP, or at least to get support by the second opposition party, FPÖ. The SPÖ leaders only reacted to developments within their party, where demands for a more radical stance regarding abortion were voiced.

The official SPÖ women's organisation, the sub-organisation which from the point of view of party organisation would have been the "natural" political actor to advocate a limited-period abortion right, had learned its lessons from past failures to attain a change in the party position and they obeyed to party discipline. Thus, they did not openly question the strategic rationale of the party leadership and the indication solution at first. Different youth organisations, which were closely affiliated to the SPÖ such as the Young Generation (Junge Generation), the Socialist Youth (Sozialistische Jugend, SJ) and the Organisation of Socialist Students (Verband Sozialistischer StudentInnen Österreichs, VSStÖ) supported an abortion regulation which was more permissive than the proposed indication solution earlier than the women's organisation.

However, it was the "Action Group for the Abolishment of § 144"[9] (in the following Action Group), a tiny, intellectual, feminist group of eight women on the very periphery of the SPÖ who were the propelling force in the process of relinquishing the party line of an individual indication for abortion. The Action Group started within the Young Generation party sub-unit and none of its members had any official party function other than simple party membership.

The Action Group used old and new forms of political campaigning to bring about the abolishment of the

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[9] § 144 of the penal code stipulated the strict prohibition of abortion.

ban on abortion, or at least to get a limited-period abortion right. They organised demonstrations, collected signatures for a petition on markets and in companies, they sent model appeals supporting their claim to local party organisations, they contacted party functionaries whom they considered to be open to their cause; they also organised press conferences and discussions, and they appeared on TV programmes. They also established contacts with the then rather small feminist groups outside the SPÖ. From a party discipline perspective, such activities would have been completely inappropriate in the 1950s and 1960s.

Thus, the Action Group exerted pressure on its leadership, which it accumulated inside and outside the party, by addressing the public and various levels of the SPÖ, i.e. the grass roots members, as well as middle and top functionaries. The Action Group became experts themselves on the various issues connected with abortion and they acted like a pivot connecting movements inside and outside the party. This combination fostered learning in the sense of introducing something new to the party by using the party structure.

A number of functionaries of the middle level and of the party elite sympathised with the Action Group and supported them symbolically, by resolutions and recommendations to the party convention, or they gave financial and organisational support. Some functionaries were also partly critical of the Action Group, mainly for strategic and tactical considerations. One of them concerned the question whether the Action Group should co-operate with feminists outside the party – whose claims some functionaries considered to be too radical and shocking for potential voters. The Action Group and their allies successfully radicalised the party's women's organisation for its cause, which then led to the draft resolution on the limited-period abortion right presented at

the party congress. However, it is important that the demand for limited period legal abortion was not entirely new to the party: it linked up with party history before 1926, when limited-period abortion had been advocated by a group of socialist women (Mesner 1993).

2.4 Role of experts and knowledge

The Organisation of Austrian Lawyers (Ständige Vertreterversammlung der Österreichischen Rechtsanwaltskammern) supported a limited abortion right and the Austrian Chamber of Notaries (Delegiertentag der Österreichischen Notariatskammern) approved the ministerial bill of 1971. In contrast, the Austrian Chamber of Physicians (Österreichische Ärztekammer) declined any attempts to go beyond a medical indication. Only individual physicians advocated an abortion right solution.

The Penal Code Commission (1954-1962) was an influential expert commission of jurists that also invited medical experts and representatives of the Catholic Church. The results of the Commission were influential until the early 1970s, firstly because people referred to their results, secondly, because a number of Commission members remained involved in the subsequent debate until 1975. This commission considered itself as "apolitical" in the beginning, but ended up with political bargaining. Such a commission was not an innovation of the post-World War II period as it had already existed in the Austro-Hungarian Monarchy and after World War I.

Both parties drew up documentations in 1970/1971 that collected material from research and examples from other countries on abortion and abortion regulations. An example is their brochure "Recht und Menschlichkeit" (Blecha 1973) that was compiled by the Action Group and edited by the SPÖ. The brochure deals with issues such as the tradition of the SPÖ on the question of abortion, the

development of law, suggestions and comments on different proposals for abortion regulation and international examples. This brochure, however, was circulated just within the party.

In 1972 several SPÖ parliamentarians conducted a parliamentary inquiry and asked their SPÖ minister of justice about abortion and related matters (number of abortions, number of prosecutions, legislation in other countries). This information, according to a member of parliament, was needed and used as "ammunition" in the political controversy.

In general, the decision on a limited-period abortion right was not based on systematic comparison of international experiences but on values, assessment of political opportunities, traditional forms of committees (Strafrechtskommission) and a strategic and opportunistic use of different sources of knowledge to strengthen the own case.

2.5   Learning in abortion policy making

The introduction of the limited-period abortion right to the Austrian penal code in 1975 was a major policy change (Sabatier 1998: 118) in two ways. First, it marked the change from a restrictive to a rather permissive law. Second, it was accompanied by a change in the permissive AC's policy core aspects. It meant a shift away from an extensive indication solution and the effort to reach consensus with the oppositional ÖVP and FPÖ on a limited-period abortion right, together with the determination to push trough the new bill with the absolute parliamentary majority of the SPÖ.

This policy change can be attributed to a number of factors, which are connected with the issues of "puzzling"

and "powering" (Heclo 1974) and which are endogenous and exogenous to the policy subsystem.

Exogenous elements were the emerging second women's movement as a social movement in Austria. In addition, other countries that served as examples also changed their abortion policy. Connected with these factors public opinion changed, too. Most importantly, however, the government constellation changed dramatically. For the first time, the permissive AC was able to pass the right to limited-period abortion into law. In 1971, the SPÖ gained the formal power to change the abortion law without support by the ÖVP and the FPÖ, having achieved an absolute parliamentary majority. Since the ÖVP rejected the ministerial proposal of 1971, a joint resolution, which was a strategy the party leaders would have preferred, became impossible. Thus, the road was clear for a more radical solution than a far-reaching medical indication, which was requested by a growing group within the SPÖ.

Within the permissive AC, the demand for limited-period legal abortion was compatible with its deep core beliefs, i.e. improvement of the living conditions of people, as it addressed the situation of unintentionally pregnant women. The demand for female self-determination was also in accordance with another deep core belief, to free human beings from oppression. The main obstacle to overcome within the permissive AC was a question of political strategy, i.e. to depart from consensus democracy in this question.

Learning in the AC became possible because policy change was propagated by a group of women who, although peripheral in the party and by no means members of the party elite, at the same time were both anchored in the SPÖ and connected with groups outside the party. They were familiar with the party, its structure, as well as its formal and informal rules. Moreover, they either disposed

of formal or informal connections with people at different levels of the party, or they established such connections. They propagated their initiative by PR activities outside and inside the party.

We cannot discern explicit, planned and systematic learning in this policy change. However, drawing on May's distinction between "policy" and "political learning" (May 1992) we can observe "political", as well as "social" and "instrumental policy learning" in the permissive AC on the level of the party elite, the social democrat women's organisations and the Action Group.

Political learning "entails policy advocates learning about strategies for advocating policy ideas or drawing attention to policy problems (…) Political learning is concerned with lessons about manoeuvring within and manipulation of policy processes in order to advance an idea or problem" (May 1992: 339ff.).

For the party leadership, political learning meant a partial and difficult departure from consensus democracy, and taking the risk of a "Kulturkampf" with the Catholic Church (which was the main worry of Federal Chancellor Bruno Kreisky). The main controversy, however, related to the question whether the SPÖ should to some extent depart from its central strategic lessons drawn from the extreme and finally armed confrontation with the conservatives until 1934, their subsequent repression from 1934-1938 by the conservatives in the Austro-Fascist regime, and the following oppression of both factions in the Third Reich. These lessons were that consensus should be sought with the conservative coalition partner – to promote economic reconstruction - and there should be reconciliation with the Catholic Church - to broaden the pool of voters and to prevail over the ÖVP in parliamentary elections. Within these rationales, controversial discussions with the coalition partner about abortion, as well as claims that potential

voters might have considered as too radical, were undesirable from the consensus-oriented party leadership's point of view. Thus, from 1945 to 1954 the leadership suppressed efforts by the socialist women's organisation to start an abortion debate. Only reluctantly the SPÖ leadership agreed to develop an official line on abortion when this issue came on the agenda in the context of a general reform of the penal code in 1954. But until 1966 – the time of opposition - the party leadership was keen to keep a lid on the discussion, to confine the debate within closed party elite circles and to involve as few people as possible. The strategic rationales, i.e. consensus and reconciliation, which were hard to shed, were dominant within the party leadership regarding abortion from 1945 to 1972, and this led to a position which only favoured a limited indication solution.

Women within the SPÖ, on strategic and tactical levels, learned new forms of political lobbying and coalition-building inside and outside the party. They also learned to turn away cautiously and partly from party discipline to achieve their own aims. Other women learned to pursue feminist policies outside the SPÖ and without men, and they formed the Austrian autonomous women's movement.

Instrumental learning in May's terms means "new understandings about the viability of policy interventions or implementation designs" (1992: 335). In these terms, the permissive AC reasoned that the existing restrictive abortion law was ineffective, unfair and harmful for women's health. The social democrats had used these arguments since the 1920s to argue for a relaxation of the law.

Social policy learning "entails a new or reaffirmed social construction of a policy by the policy elites of a given policy domain" (May 1992: 337). In the abortion

case, social policy learning meant to take self-determination of woman seriously. Female autonomy developed from a peripheral value (Mesner 1994) to one of the core arguments for limited-period legal abortion. Earlier, this had been used as an argument by a tiny minority within the SPÖ only. The autonomy case was integrated in the traditional socialist arguments for a softening of the abortion law.

On the level of social learning, women learned from the international debate, particularly in the USA, Germany and France, that the abolishment of strict abortion regulations could be a political goal. They also became counter-experts on abortion issues. As already mentioned, autonomy of women was the central argument and policy goal introduced to the debate by women. Moreover, for the first time, the everyday life perspective and experiences of women explicitly entered the political sphere. On the level of "puzzling", they dealt intensely with the issue of abortion; they studied and in some way rediscovered the historical development of the SPÖ position, regulations in other countries and the judicature of abortion law.

3 Regulating Assisted Reproductive Technologies (ART)

3.1 ART as political problem

ART[10] such as artificial insemination (AI) had already been available on a broader scale for some years

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[10] A practicable definition of ART has been suggested by Goggin et al.: "Assisted reproductive technologies are defined as those techniques where egg and sperm are not brought together (or an embryo is not created) through sexual intercourse, but rather through medical intervention." (Goggin et al. 2004:3).

during the 1970s. It was however only when Louise Brown, the first "test-tube-baby", was born after *in vitro fertilisation* (IVF) in Great Britain in 1978, that these techniques became an urgent political issue. Within just a few years IVF was introduced in many countries. As it was put into clinical practice in rapidly growing numbers, the call for legal regulation of IVF became louder, in order to clarify the legal and ethical issues that were seen to be connected with it. During the 1980s, state authorities, expert committees, civil society organisations and the media in many European countries and elsewhere struggled for satisfactory regulation. Their conclusions and respective legislation, however, have been rather diverse, ranging from more permissive regulations such as in Great Britain and Belgium (see Schiffino & Varone 2004 and this vol.) to more restrictive ones such as in Germany, Switzerland, Norway, and more recently Italy (Rothmayer & Ramjoué 2004, Bleiklie 2004, Rothmayer, this vol.,). With the enactment of the Reproductive Medicine Act (Fortpflanzungsmedizingesetz - FMedG) in 1992 Austria placed itself into the latter group.

In Austria, ART as political problem were discussed first in terms of the legal status of child and parents-to-be, which included the question of who would be the legal parents in the case of surrogacy motherhood and after insemination or IVF with donor sperm. Moreover, the discussion was concerned with liability questions of physicians and clinics. More pressing, however, were the ethical issues seen related to IVF. Most prominently, these concerned IVF's potential of creating new family relations, brought about by the dissociation of parenthood into biological, legal and social parents-to-be; the protection of embryos against technical intervention and the issue of surplus embryos; the exploitation of female reproductive faculties and the "marketing-up" of human reproduction, e.g. in the form of surrogate motherhood agencies and

semen banks; and the use of IVF for embryo research, eugenics and cloning. Right from the beginning of the debate, most Austrian policy makers deemed legal measures necessary in order to prevent what was conceived as "misuse" of IVF (Hadolt 2005).

There are several features of IVF as a biomedical technology and a social practice (in the following the term IVF is used as abbreviation for a range of reproductive technologies including AI, GIFT[11] and other techniques), which framed the Austrian ART policy in important ways:

(1) As IVF was a new technique posing a set of novel policy problems, there was no policy field with the obvious competence to deal with these problems at the beginning of the debate. Rather than being handled within an established policy subsystem (Sabatier 1998) and on the basis of experiences with past policies, ART required both policies and the policy-subsystem to be developed from scratch. Admittedly, these were not developed entirely free floating, as there were strong references to family policy, abortion policy and research and technology policy. Nevertheless, there were no direct predecessor policies available either at the national or international level. During the 80s, ART policies in most countries were only in the making (Bernat 1991). The ART-regulation process was thus framed by the emergence of a new policy subsystem, rather than merely policy-change within an already established policy subsystem. In that sense, ART policy was handled within a "nascent" policy subsystem (Sabatier & Jenkins-Smith 1999:136f) in which neither policies nor indicators for successful policies were available and ACs with distinct policy-beliefs were rather slow to emerge.

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[11] *Gamete intrafallopian transfer*, a technique where eggs and sperm are placed into the fallopian tube or tubes using a laparoscope.

(2) IVF, comprising a range of related techniques (such as hyperstimulation of ovaries, retrieval of gametes, cultivation and storage of gametes and embryos, embryo transfer), is a rather complex and dynamic subject matter, not least because these techniques can be put into practice in various ways (e.g. homologous and heterologous IVF, surrogacy motherhood, donor sperm and donor eggs, post-mortem insemination)[12]. Further adding to complexity, IVF is closely related to other medical areas such as genetic engineering, pre-implantation diagnostics and, more recently, stem cell research. How ART in general and IVF in particular work technically, and how they can be expected to develop in future, is therefore not easy to grasp by medical lay people. For the policy making process this meant that politicians and civil servants all too often were left with a strong feeling of uncertainty about what to do with ART and what position to take. As one interview partner, a high civil servant in the Austrian family ministry of the time, said: "In the beginning we were not sure if we should be for or against assisted reproduction." Accordingly, particularly during the early debate, policy makers changed their views quite a lot as they learned more and more about IVF. Likewise, clear-cut policy positions and ACs were slow to emerge and predominantly formed along criteria external to the policy subsystem (e.g. party membership), rather than by beliefs regarding problem perception and policy objectives. The complexity and diversity of issues related to IVF also account for the considerable importance of experts in producing and conveying policy-oriented information and ideas.

(3) A third central characteristic of IVF concerns the fast pace at which new applications of IVF were developed and put into clinical practice. Most policy

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[12] For an overview on these techniques from a medical point of view see Krebs & van der Ven 1999.

makers worried that politics cannot keep up with that pace and that politics at best may only be able to prevent the most undesirable developments. This was voiced e.g. by many speakers at the first big public symposium organised by the family ministry in 1985 (Bundesministerium für Familie, Jugend und Konsumentenschutz 1986). Reproductive medicine was seen as a strong agent and driving force inventing its own field of application beyond direct control by state authorities which in its course potentially threatened traditional values and institutions such as the integrity of life, the conventional family, or women's self-determination. Although most decision makers acknowledged that IVF may help involuntarily childless persons and that therefore IVF should not be banned altogether, they likewise did not want to allow whatever was technically possible. The crucial problem was not ART *per se*, but its uncontrolled ramifications in clinical practice and research. Austrian ART policy therefore essentially was (and still is) restrictive in its orientation and was shaped by a problem perception in which reproductive medicine was identified as the main obstacle to regulation, as opposed to some other possible AC.

The various ACs in the Austrian ART policy making process, however, differed in their views about what constituted the main problem of ART, which value was perceived to be most importantly endangered by ART and about how far ART should be restricted in terms of legitimate users and applications. As many as five ACs – and not merely two ACs, which usually dominate in other policy domains (Sabatier 1998) – can be distinguished in the Austrian ART discussion during the 1980s and early 1990s:

(1) A particularly influential AC, comprising parts of the SPÖ around the former Austrian minister of justice,

Christian Broda, high civil servants in the ministry of justice and in the family ministry and jurist organisations, saw the main problem of ART in the fact that these technologies are put into clinical practice without any clear legal regulations. This **legal-certainty coalition** was therefore mainly interested in establishing legal certainty about the permissibility of the various applications of ART, about their clinical implementation and about the legal status of child and parent-to-be. Though sceptical about the commercialisation of reproduction and embryo research, this coalition promoted relatively permissive policy-ideas, such as allowing single women to use ART, and they tried to obtain broad societal consent about ART regulation.

(2) In contrast, the **life-and-family-preservation coalition**, consisting of the conservative ÖVP, its closely associated organisations, theologians and the Catholic Church, advocated rather restrictive regulations. This coalition wanted ART to be allowed for married couples only, as last resort, and with as many embryos as possible having a chance to be born. They wanted a strict ban on all forms of surrogate motherhood, embryo research and the like. This group feared that ART would lead to additional forms of abortion, would undermine the conventional family, would intervene illegitimately in human life, and would generally be harmful to the wellbeing of the child.

(3) Yet another AC calling for a restrictive regulation comprised the SPÖ women's fraction (although also including some members of the Austrian Green Party), feminist scientists and autonomous women's organisation. This **feminist coalition** saw the main problem posed by ART in the possible exploitation of women's reproductive faculties in the case of surrogate motherhood and in the additional social pressure put on women to meet societal expectations related to women's role as mothers. Women's interest in making autonomous reproductive decisions were

put forward as the paramount value by this coalition. The feminist coalition was led by Johanna Dohnal, an SPÖ politician who had already been involved in the Austrian abortion debate during the 1970s. She was permanent secretary at the Federal Chancellery for General Women's Affairs (Staatssekretärin für allgemeine Frauenfragen im Bundeskanzleramt) from 1979-1990 and subsequently, until 1995, she was minister for women's affairs (Bundesministerin für Frauenangelegenheiten) in the newly established ministry. These government bodies and the SPÖ women's organisation were the major sources of information and of bargaining power of the feminist coalition.

(4) The **self-regulation coalition** advocated the most permissive policy-positions in the Austrian debate, even suggesting that surrogacy should to be allowed, though only in its non-commercial forms. This coalition, including the Austrian Freedom Party (FPÖ), some ART practitioners and reproductive medicine organisations, proposed that ART should be regulated only loosely by a law. Stressing the freedom of science and of individual choice as their core values, actors of this coalition suggested to leave ART to be self-regulated by reproductive medicine and its clients. As a political pressure group, however, they were not all too powerful, their main asset being the fact that ART were forcefully being put into clinical practice beyond the political sphere.

(5) A final, also not very influential, coalition was formed by the Austrian Green Party, left-wing Catholics and certain feminist groups. The main problem of ART as understood by this coalition was that IVF by way of fabricating extra-corporeal embryos provides the technical means for human genetic engineering. This was seen as in any case unacceptable and as a possibly massive intrusion into human nature that must be avoided. This

conservationist coalition was rather anti-technical in its attitude and sought to safeguard what they saw as human nature from genetic manipulation, but apart from that they held rather permissive policy-positions regarding ART (e.g. that single persons should not be excluded from access to ART).

The ACs formed around the main political parties of the time, which also provided their main source of political power. This was the SPÖ (legal-certainty coalition and feminist coalition), the ÖVP (life-and-family-preservation coalition), the FPÖ (self-regulation coalition) and the Green Party (conservationist coalition). It is to be noted that the SPÖ, having a strong women's rights faction, became associated with two ACs. Together with the conservative life-and-family-preservation coalition, these SPÖ-near coalitions dominated the policy making process, as the SPÖ and the ÖVP were the leading parties of the time. Their struggle was profoundly shaped by the changing power constellations during the 1980s. Until 1986, while in opposition, the ÖVP put forward rather strict propositions and demanded that legal regulations should be introduced as soon as possible. When the ÖVP entered a coalition government with the SPÖ after the 1986 general elections and took over the family ministry from the SPÖ, the decisions-making process became geared more towards compromise with SPÖ positions.

Interestingly, pursuing the same policy goals did not necessarily go along with sharing the same belief system, and thus this cannot be seen to demarcate ACs from each other. An outstanding example is the issue of surrogate motherhood, which – amongst others – both the life-and-family-preservation coalition and the feminist coalition rejected. However, whereas the former argued with the integrity of human life and of marriage, feminists sought to prevent the exploitation of women's reproductive faculties.

It is important to note that these ACs were not as clear-cut as it may seem from this description. They only became differentiated in the course of the debate, as their stock of relevant knowledge, their problem perception and policy positions became more pronounced. This process showed only gradually which values and core beliefs were at stake as a result of the introduction of ART. While, for instance, the legal status of child and parents and medical liability was part of the problem perception right from the beginning, feminist worries about the exploitation of women became voiced only from the mid-1980s onwards. One of the most demanding tasks for political actors was to achieve an appraisal of the various aspects of ART and to develop policy ideas consistent with their respective core values.

3.2 The ART policy making process from 1980 until 1992

The political and legislative processes of dealing with these problems in Austria, culminating in the enactment of the FMedG in 1992, can be divided into four phases.

The **first phase**, ("realising the problem"), started at the early 1980s and lasted until the middle of 1985. Against the backdrop of academic announcements about the technical promises of genetic engineering and of the new reproductive technologies, the birth of the first "Austrian test-tube baby" in 1982, the founding of the first IVF clinics in Austria and media reports on surrogacy agencies and trading of human eggs in the USA, assisted conception became realised as potential political problem requiring legislative regulation. This was the time when the first working groups and advisory bodies on the topic were initiated. In Austria, the ministry of science was first to deal with the topic – though practically unnoticed by the public.

At first, the ministry's various working groups were primarily occupied with drafting a research and technology development policy on genetic engineering in the agrarian sector, but soon they also came to deal with questions related to human IVF. Minister of science Heinz Fischer also initiated the so-called IVF Commission, which later became central in the discussions.

From 1984 onwards, jurists also began to examine IVF seriously with respect to its legalistic dimensions, as shown by several jurists' congresses and many publications (e.g. Österreichischer Rechtsanwaltskammertag 1985, Posch 1988, Selb 1987). Topically they particularly discussed the by then unclear legal status of the IVF-child and of liability problems arising for reproductive medicine practitioners and clinics. Jurists also played an important role as policy entrepreneurs approaching politicians, organising symposia and congresses, bringing the topic into the media, etc. The legal-certainty coalition formed in the course of these activities.

IVF was also attributed growing attention in the media, particularly in newspapers related to the Catholic Church, which called for legislative restrictions from about 1983 onwards. This contributed to the formation of the life-and-family-preservation coalition.

Leading politicians in phase 1, however, had an underlying attitude of loosely probing the area and gathering knowledge, arguments and viewpoints, and they adopted a policy of wait-and-see. They evaded the role of legislative forerunner in Europe and rather waited to see how other countries would be dealing with the topic.

This attitude changed during **phase 2** ("orienting and taking-a-stand"), when the debate forcefully entered the public sphere. In addition to the legal-certainty coalition, other ACs developed and politicians felt the necessity to take an active stand regarding ART. Lasting

from the middle of 1985 until the beginning of 1988, the debate became more controversial both in content and in tone and it expanded considerably in terms of the number of actors involved and of arenas where the debate took place. Experts were called in and representatives from interest groups such as the Catholic Church, reproductive medicine organisations and feminist groups entered the stage.

This was the phase when expert committees and ethics committees were introduced, when symposia, panel discussions and public hearings were organised, when press conferences were held, when first concrete legislative proposals and draft bills were publicly discussed and when legislative initiatives were introduced in parliament. During this period, the first legislative measures were also introduced in Sweden, Norway, Spain and Great Britain, which served as comparative cases in the Austrian debate (see commentary on the government bill for the FMedG, Regierungsvorlage 216 BlgNR 18.GP). Minister of science Fischer presented the important report of the IVF Commission to parliament (Bundesministerium für Wissenschaft und Forschung 1986). This was a comprehensive expertise and compilation of ART policy recommendations prepared by a highly prestigious expert committee, comparable to the German Benda-Kommission and to the British Warnock Commission. The science ministry, though, increasingly shifted its focus to legislative issues concerning genetic engineering, while the family ministry (until 1986 led by SPÖ minister Gertrude Fröhlich-Sandner and subsequently by ÖVP minister Marilies Flemming) took over the leadership in co-ordinating IVF legislation. This ministry organised two of the biggest congresses (Bundesministerium für Familie, Jugend und Konsumentenschutz, ed., 1986, Bundesministerium für Umwelt, Jugend und Familie, ed., 1988) and a public hearing on the topic

(Bundesministerium für Umwelt, Jugend und Familie, ed., 1990).

However, in this phase it was still not clear what was actually to be regarded as the central problems, and which issues, exactly, should be covered by legal regulations. Some actors, such as the legal-certainty coalition, suggested that only the legal status of the child and of the parents should be clarified. The life-and-family-preservation coalition and the feminist-coalition wanted a much more comprehensive legal framework, also covering issues such as the legitimate handling of embryos and a ban of commercial surrogate motherhood. Most actors, though, agreed on not wanting any commercialisation of IVF and objecting to genetic manipulation. The media played an important role in representing but also in forging the political standpoints and the perception of IVF as political and social problem.

During **phase 3** ("making compromises and working them out"), lasting until spring 1990, the public debate with its symposia, press conferences, ethics committees and parliamentary enquiries continued in the controversial manner of phase 2. But more or less behind the screens the ministry of justice, which also constituted an important part of the legal-certainty coalition, took over the initiative. Having been heavily criticised for an internal draft bill, which was leaked to the public in 1987 and which only addressed core issues of the legal-certainty coalition, the ministry changed its course, embarking on pursuing a compromise solution. A ministerial working group formed which brought together all relevant political actors from the parliamentary parties, as well as leading politicians and civil servants from other ministries (Hopf 1990). In addition, medical and legal experts were given advisory status.

The aim of this group was to reach consensus among all parties about basic questions of ART legislation. Based on the outcome of these negotiations, which lasted for about a year, jurists of mainly the ministry of justice formulated a detailed draft bill for the regulation of IVF, having closely consulted with Johanna Dohnal. The wording of the bill was then largely formulated by the two SPÖ-near coalitions, with some trade-offs for the life-and-family-preservation coalition. This text represented an early version of the FMedG enacted later.

In **phase 4** ("selling and giving one's blessing") this draft bill was finally sent out to all relevant bodies for general public assessment (Begutachtungsverfahren). The bill was adopted by parliament more or less unanimously. Neither public assessment nor parliamentary discussions resulted in any major changes of the original draft. The act entered into force as FMedG in July 1992.

In essence, the act allows ART only within the "homologous system", which is defined as heterosexual couples either married or living together in a long-term relationship. Any form of surrogate motherhood and IVF using donor sperm is forbidden. Consequently, single persons and homosexual couples are excluded from IVF. Insemination with donor sperm, though, is allowed under certain conditions and the resulting child has the right to know his or her genetic father on coming of age. As a further regulation, IVF is only allowed as "ultimate measure" for people who for medical reasons cannot conceive a child otherwise. Thus the production of embryos for and their usage in research is not allowed. Likewise, embryos must not be genetically screened or manipulated and they are not to be stored for more than one year. As such, and compared with legal frameworks in other European countries, the Austrian FMedG is rather restrictive and conservative in the sense that it favours the

heterosexual core family over other parent-child-arrangements and in that it forbids any research on embryos (Bernat 1992, Hopf 1991).

3.3 The sources of knowledge

Since no ART predecessor policies were available due to the novelty of the technology involved, policy makers could not draw on former experiences and they had to rely on other sources of knowledge to generate their policy orientation and policy ideas. Two sources of knowledge were particularly important: (1) policy ideas discussed in other countries and at the international level and, more importantly, (2) the expertise of national experts. In a kind of virtual exercise, such information and ideas were treated as quasi experience (or "virtual experience", see Stern 1997:71) in order to try out policy ideas in political discussions.

(1) Austrian civil servants and politicians were keenly aware of how ART was discussed and handled in other countries right from the beginning of the debate. There are also considerable parallels to be found between Austria and other countries in terms of problem perception, instruments used, kinds of knowledge and arguments regarded as relevant, timing and progress of the discussion and, not least, concerning concrete legal solutions put forward. However, this applied only for certain countries. As in many other areas, Germany was the most important reference point by far for Austria (Biegelbauer 2005), followed by Sweden and Great Britain, and in a very special respect by the USA. Norway and Switzerland played a minor role only. Other countries were hardly considered at all.

Sweden was particularly important, as in 1985 it was the first country which passed a law on donor insemination, and as it also initiated a "gene-ethics

committee" as early as in 1982. The committee's final report presented at the end of 1983 played an important part as reference paper for the initiation of similar committees in Austria and for formulating guidelines on ART regulation (Bundesministerium für Wissenschaft und Forschung 1986).

Germany and Great Britain not only passed IVF regulations at about the same time as Austria, but they also used the instrument of expert commissions. In all three countries, these commission reports constituted important groundwork, to which many politicians referred when formulating and backing up their arguments. In addition, Germany and Great Britain were important for the Austrian debate since they served as the two opposite poles of possible styles of IVF regulation.

The USA was in a rather peculiar position. It served as example how not to do something. The US was only referred to as reference for what was regarded as the most negative development of current ART practice: trade with eggs and embryos, commercial surrogacy agencies, court trials over parenthood, all sorts of "unusual" kinship relations etc. Besides such "horror stories", however, hardly anybody in the Austrian debate cared to look more closely at the actual legal frameworks in place in the various federal states of the USA.

As for the international level of knowledge transfer, the European Ministerial Conference on Human Rights was an important event. At the conference, held in Vienna in 1985, delegates of all Council of Europe member states discussed the human rights implications of the technological developments in the area of assisted reproduction, genetic testing and modification for human rights aspects. At this conference, e.g., Christian Broda, a former minister of justice, who at that time was still an important opinion leader within the SPÖ, enthusiastically

supported the policy ideas of his former colleague, the French minister of justice, Robert Badinter. By way of his influence, the main points of Badinter's proposal became included in the advocacy positions of the legal-certainty coalition.

(2) Experts – both as individual persons and as groups – played a major role in Austrian ART policy making. In their most common form they were called in as knowledge providers. Due to the complex and dynamic subject matter of ART, most politicians and civil servants considered the expertise of experts as indispensable. Experts provided information about technical procedures, success rates, biotechnological developments etc., but also about the legalistic implications for family law, constitutional law or human rights issues.

Two professions were crucial: biomedical ART specialists and legal scholars – for the most part male. There was hardly any symposium, working group or comprehensive publication on IVF in Austria without a representative of these professions taking part. Also important were theologians and other experts with a special interest in ethics, who at that time had their background predominantly in catholic and protestant ethics. Less significant were philosophers, scientists from disciplines such as microbiology and biochemistry and psychologists. Hardly present at all were social scientists. In any case, throughout the debate, it was more or less the same dozen of legal scholars and the same half a dozen of medical doctors who functioned as IVF experts.

This landscape of disciplines matches a particular Austrian problem perception of ART during the 1980s. Although it was stressed that ART poses an issue for society in general and that societal consent as broad as possible should be sought, ART regulations were nevertheless merely discussed in terms of their

technological and legalistic aspects. The social dimension was more or less reduced to an ethical problem. Feminist scholars, for instance, – even though they were politically quite active in their fight against reproductive technologies – remained placed in less important political niches and were left to lead their own discourse. They hardly ever acquired the status of experts in the way other professions did. Furthermore, the debate predominantly relied on academic elites. Non-academic voices were largely absent, muted or discredited as being "emotionalised", "oversimplifying" or based on "irrational fears".

However, such advisory bodies need not been that narrow with respect to disciplines represented and need not have been focused on academic elites. The Warnock Commission, e.g., consisted of a wide range of professions including social workers and a director of a pharmaceutical manufacturer. By contrast, the Austrian IVF Commission was set up by the council of university rectors and was largely composed of university professors.

Besides their function as knowledge providers, the experts were also referred to or sometimes they actively acted to legitimise particular advocacy standpoints. Most political factions in the debate had "their" expert, who clearly took their side. These kinds of "experts" often were also medical doctors and jurists, but they did not need to have credentials as proven IVF specialists. Most prominent in this connection were the gynaecologist Alfred Rockenschaub, already well known for his support of the SPÖ in the abortion debate during the 1970s, and the internist Johannes Bonelli, who was propagating the interests of the Catholic Church.

Yet another function of those experts was to make policy recommendations. Often they acted in this manner as individuals and they made their personal opinions known via newspaper articles, press conferences and academic

publications, or as speakers in panel discussions and symposia. Perhaps more relevant and certainly more visible were the various ethics and experts commissions, most importantly the IVF commission. In the mid-1980s, such committees were a rather new feature in Austrian policy making – at least concerning their function of making recommendations, which were explicitly supposed also to consider ethical dimensions. The purpose of such commissions was to produce a comprehensive evaluation of the problematic dimensions of IVF and to formulate policy-guiding recommendations, which supposedly were more balanced, more valid and better argued scientifically and ethically than individual expert opinions.

3.4   Learning in ART policy making

The enactment of the FMedG in 1992 established the first legally binding framework for an Austrian ART policy. Since there were no predecessor policies, this cannot be regarded as policy change in the strict sense of the term. Likewise, any policy-oriented learning in this case cannot be experience-based learning as it is usually understood.

Nevertheless, policies evolved and policy-learning obviously must have taken place, because a new policy subsystem was established, and as many as five ACs with their respective belief systems developed and fought for their preferred kind of ART regulation. In fact, we can observe learning, namely in the sense of both policy learning and political learning (May 1992). To some extent and in particular in relation to the use of experts and expert committees, such learning can even be qualified as planned and systematic in the sense that politicians and civil servants deliberately asked experts to provide policy-relevant information, arguments and ideas.

The early policy making process during the first half of the 1980s was marked by a broad search for information and standpoints, which primarily concerned problem perception. How do the various forms of ART work? How will this technology develop? What are the social consequences? What are the political difficulties? What should a legal regulation cover?

Policy ideas initially put forward were usually restricted to specific issues (such as defining the legal mother in the case of surrogate motherhood, prohibiting the creation of chimera, or liability questions of doctors and clinics). As the debate unfolded, ever more issues were regarded to be related to ART and policy ideas spanned a broader field of issues. Such issues were, e.g., the commercialisation of reproduction, usage of embryos for research, protection of early human life, the creation of "unusual" child-parent relations, intervention into the genetic makeup of embryos, exploitation of women's bodies, spare embryos, as well as psychic and physical burdens of treatment. Together with these issues, new ACs entered the political discussion.

When finally in 1988 the ministry of justice felt that all policy positions and policy ideas had been brought forward, it effectively narrowed down the decision-making process to the actors who were most relevant for a parliamentary resolution. Rather than further pursuing "puzzling" (Heclo 1974) over ART, the remaining time consisted of "powering" among these actors about the question which ideas should or should not become part of the law.

The interest of the ministry in achieving consent was facilitated by the fact that the ÖVP entered into a coalition government with the SPÖ after the general elections in 1986. Although the SPÖ-near ACs prevailed over the ÖVP-near advocacy coalition throughout the

process, the legal-certainty coalition, at that time most prominently represented by the ministry of justice, sought a compromise with the feminist coalition and the life-and-family-preservation coalition. All relevant coalitions had already learned during the preceding years that they would not get the necessary support for a bill in parliament that exclusively propagated their own particular interests. This, perhaps, was the most important lesson of political learning for the ACs concerned.

The overall trajectory of the ART debate in Austria, then, can be characterised as a double movement of opening and closing: an opening movement, in which an entirely new policy subsystem, with its ACs, policy beliefs, resource constellation and discussion procedures, had to be fashioned; and a closing movement, in which a consent on ART policy was to be negotiated and translated into a law.

During the opening movement, the ACs had to develop their respective policy cores. At that time and in this area, policy learning – both in the sense of social policy learning and instrumental policy learning – did predominantly take place. With the aid of experts and through examples from countries, the ACs developed their particular problem perceptions and they clarified the scope of policy, their policy goals and their policy instruments.

The ACs' underlying deep core values, however, were neither new nor did they change through the advent of ART. However, clarification was needed on which core values would be at stake, in what manner and how all this was to be handled best. In fact, the paramount learning task for policy makers was to understand the relevance of the various aspects of ART to their deep core values and clarification which core values would be at stake, in what manner and how they would be handled best. All policy makers attempted to defend their core values against the

perceived threat of ART. ART finally was only permitted in ways that upheld or at least did not grossly contradict traditional values and ideas related to the actors' deep core values: the heterosexual family, the ban on eugenics and on intervention in human genes, women's autonomy, non-commercialised reproduction. Applications that promised to engender new forms of reproduction and life (homosexual couples with biologically related children, families with more than two biological parents, selection of embryos with certain traits, etc.) were excluded. Central deep core values in Austrian society thus had been shaken to some extent, but in the end they were consolidated.

The driving force for Austrian ART policy making and policy learning was not that – as in the case of abortion – a deep core value gained increased importance. Rather, one attempted to protect existing deep core values against ART, which had arrived as a new external factor and was posing novel policy problems. ART policy, then, can also be understood as consolidation process in the central Austrian deep core values.

4 Conclusion

The Austrian debates about abortion and ART have in common their dealing with conflicts about deep core and policy core beliefs. Moreover, both of them are concerned, in Sabatier's terms, with the social rather than the natural world. In the abortion case, these value conflicts exist between the protection of early human life versus negative consequences of unwanted pregnancy and motherhood, as well as female self-determination. The ART case was concerned with conflicts between embryo protection, illegitimacy of genetic engineering as intervention into human nature, female autonomy understood as liberation from conventional role models and the protection of traditional family arrangements versus freedom of research and individual reproductive choice. Moreover, in both

cases, there were no indicators able to help evaluate the success of a certain policy.

However, the two cases also differ in several aspects. Whereas abortion is a mature and even ancient policy domain, connected to criminal law, ART policy, rather than having been part of an existing policy subsystem, basically had to be developed within a nascent policy domain. Moreover, technological development played a very different role in the two cases. In contrast to abortion, where technology itself was almost no issue, the pace and dimensions of ART development were the key to the debate and to the establishment of a new policy domain.

Both cases exhibit forms of policy change to a considerable degree. Whereas in the abortion case the permissive AC achieved a much more liberal abortion regulation than previously proposed, policy change in the ART case meant development of a regulation from scratch. In both cases, these changes were triggered by crucial developments outside the policy domain. In the case of abortion, this concerned the absolute parliamentary majority gained by the SPÖ in 1971, the rise of the second women's movement with its emphasis on female self-determination and an increasingly permissive public attitude towards abortion. Important developments outside of the ART policy domain were the rapid development and clinical implementation of ART, and change from a minor to a grand coalition between SPÖ and ÖVP, which suggested and facilitated a compromise between the conflicting ACs.

However, in order to understand these policy changes more comprehensively we have to take into account policy learning. In fact, in both cases we can observe learning in the sense of May's (1992) political, social and instrumental policy learning. Moreover, in both cases the expertise of experts and policy examples from

other countries played an important role in the change of the stock of knowledge at hand for policy makers. In the abortion case, expert knowledge and examples from abroad were not used systematically but primarily to legitimise an already held position. In contrast, policy makers in the ART case, due to its novelty and complexity, relied heavily on expert knowledge and international examples.

In the abortion case, political learning for the SPÖ meant using its parliamentary majority and overruling the ÖVP, and thus to partially depart from the then usual pattern of consensus democracy in Austria. Instrumental policy learning can be found in the way in which the permissive advocacy coalition reflected on abortion jurisdiction, and their subsequent critique of abortion jurisdiction. On the level of social policy learning, the permissive AC learned to take female autonomy in the context of abortion seriously and to consider it as highly relevant and justified. The value of female autonomy was compatible with other deep core beliefs held by the permissive AC.

In the ART case, political learning meant to find a compromise between the dominant ACs in changing power constellations and after the AC's realisation that bills merely supporting their own specific interests were not likely to get parliamentary majorities. Instrumental leaning was present in the deliberate use of experts and ethics committees in order to gather policy-relevant knowledge and policy ideas. As for social policy learning, policy makers had to understand the relevance of ART to their deep core values and policy cores.

In both cases, policy-oriented learning to a considerable degree was not brought about by evaluation of experiences with former policies, but rather through external factors: the (re)emergence and strengthening of a

deep core values in the case of abortion and the emergence of a new technology posing novel policy problems.

As a contribution to the ACF approach, we can conclude that changes external to the policy domains of abortion and ART may not only lead to policy change, but also and more specifically, to policy-oriented learning. We can further conclude that the ACF is not only useful in explaining policy change and learning in technocratic policy domains, but also in policy subsystems characterised by normative policy problems and value conflict.

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