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The Stability of Political Compromise—Abortion Legislation in Denmark and Norway

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Abstract

In the 1970s, both Denmark and Norway passed abortion legislation that is still the basis for the regulation of abortion in these countries. The legislation was fairly liberal with abortion on demand until 12 weeks of gestation and a permission system for later abortions. This article provides a brief history of the developments leading up to these political compromises and an analysis of the reasons why they have proved remarkably stable. It ends by looking at some factors that may now destabilize 50 years of stable compromise about abortion.

Keywords: abortion; compromise; Denmark; juridification; Norway; reproductive rights

Introduction

Denmark¹ and Norway² both passed abortion legislation in the 1970s that is still the basis for the regulation of elective abortion in these two countries with some minor modifications since then (in this article, the term “abortion” is used exclusively with the meaning “elective abortion”). Both countries moved from quite restrictive legislation to fairly liberal legislation with abortion on demand until 12 weeks of gestation, and a permission system for later abortions based on the lists of social and medical criteria. The 1978 Norwegian legislation for instance provides the following list in §2:

After the end of the twelfth week of pregnancy, a pregnancy can be terminated if

- a. The pregnancy, birth, or care of the child can lead to a unjustified burden for the woman’s physical or psychological health. Regard shall be given to whether she has a pre-disposition for disease.
- b. The pregnancy, birth, or care of the child can put the woman in a difficult life situation.
- c. There is a significant danger that the child will get a serious disease due to genetic dispositions, illness, or harmful exposures during the pregnancy.
- d. She became pregnant under circumstances as mentioned in the Criminal Code [incest], or the pregnancy is the result of circumstances as described in the Criminal Code [rape, misuse of power, or misuse of institutional authority].
- e. She suffers from serious mental illness or is significantly developmentally disabled.

In the evaluation of a request for termination based on conditions mentioned in items a, b, and c, consideration must be made of the total situation of the woman, including her possibilities of

adequately caring for the child. Significant weight must be given to the woman's own assessment of the situation.

[...]

After the end of the eighteenth week of pregnancy, a pregnancy cannot be terminated unless there are especially weighty reasons for it [the termination]. If there is reason to believe that the fetus is viable, a permission to terminate the pregnancy cannot be given"³ (my translation).

Both countries have tax-funded public health care systems, and all elective abortions are fully funded as are other health care services available at no cost to the person seeking an abortion.

At the time that the abortion legislation was passed in the 1970s, it was a political compromise. The question this article tries to answer is why this compromise has been remarkably stable in both countries, despite it being difficult to justify based on most of the philosophical analyses of abortion extant in the bioethics literature.

The first section of this article will discuss how the compromise came about and some of the reasons for its stability. The next sections will describe and analyze the role of the Christian political parties in the abortion debate and how it has changed over time. It will be shown that although the Christian votes and voices have been prominent in the debate and have had considerable political influence, especially in Norway, it has never really threatened to overturn the compromise. The reasons for this will be analyzed.

The final section will describe how the compromise is currently under pressure from a reframing of the abortion question from being a political question to being a purely juridical question of compliance with more general human rights.

Compromising on Abortion

Why did the abortion compromise come about in the 1970s?⁴ Many strands of argument and changes in social attitudes coalesced at this point to make political action in relation to abortion necessary and a political compromise possible. There had long been a concern about the social consequences of a lack of access to abortion. Backstreet abortions were common, and for those women who carried their unwanted abortions to term, it was argued that it often had significant negative social effects on them and their families. These arguments had been prominent in the debate since the 1930s and were linked to broader debates about reproductive and public health.⁵ From the 1960s, this line of argument coalesced with arguments about sexual and reproductive freedom and women's rights put forward by the radical feminist and student movements. The participation of women in the labor market had increased markedly since the 1940s and this had led to a change in the general understanding of and attitudes toward the role of women in the family and in society. At this point in time, abortion had already become more easily available in the United Kingdom, Sweden, and Poland than in Denmark and Norway, and this led to considerable organized and unorganized travel to these countries to obtain abortions. This, in turn, created a situation where two types of fairness-based arguments became relevant. First, "Is it fair that wealthy women can go abroad to get safe abortions while poorer women have to resort to unsafe backstreet abortions?"; and second "Is it fair to force women to go abroad to get the abortions they need?" The abortion situation thus called for some kind of political action, and prior to the final settlement of the compromise in 1973 in Denmark and 1978 in Norway, there had been many liberalizing bills put forward from the late 1960s and some more piecemeal liberalization of the legislation.

On the other side of the political compromise, the traditional concerns about protection of the unborn child were still in play. These concerns had both an absolutist form, that is, roughly "the unborn child is a human being from conception and abortion is murder"; and a more gradualist form, that is, roughly "embryos and fetuses command respect and protection and this becomes more important as the pregnancy progresses." There is clearly no possibility of compromise with the first position, but the second position makes compromise possible.

The specific elements of the compromise, for example, the legalization of abortion on demand until 12 weeks cannot be straightforwardly explained by the issues, arguments, or societal attitudes. The Swedish abortion legislation, which was passed in 1974 following very similar debates, for instance, legalizes abortion on demand until 18 weeks of gestation.⁶

The compromise cannot be easily derived from the philosophical arguments extant in the abortion debate either. The more absolutist positions on the moral status of the fetus, that is, fetuses have no moral status or fetuses have full moral status are both incompatible with the time limits for abortion on demand in the legislation. And, the time limits are too low to be easily explainable as a philosophical balancing of a woman's right to have her pregnancy terminated against fetal rights.

Initially, the compromise was contested and fragile. In Norway, which had a two-chamber parliamentary system at the time of the 1978 change to the abortion legislation, the legislation only passed with one vote majority in both chambers, and in the upper chamber only because the President of the chamber exercised his casting vote when the vote was tied.⁷ It was thus by no means certain that the compromise would survive.

Why has the compromise then been reasonably stable, despite its initial fragility and determined attempts to overturn it? There are many reasons, and some of the more specific party-political reasons will be discussed below. However, the primary reason for the initial stability of the compromise is that it solved most of the social and political issues it was supposed to solve. Combined with other developments in reproductive medicine and contraception, it provided most women with what they perceived as sufficient reproductive control to reasonably satisfy feminist concerns over the link between reproductive liberty and equal participation in society. It also completely solved the problem of backstreet abortions and for a long time provided sufficient access to abortion to obviate the need for "abortion travel" to more liberal jurisdictions.

The Political Mobilization of the Christian Vote

Both Denmark and Norway had Lutheran state churches in the 1970s, and the majority of the population has traditionally been Lutheran Christians. Denmark still has an established state church, but the Norwegian church was formally disestablished in 2017, although it is still funded through general taxation and still mentioned in the Norwegian constitution.

In Denmark, there were historically no Christian parties since the mainstream parties pursued policies that were seen by most to be compatible with Christianity. This changed in the early 1970s when more liberal policies in relation to pornography and abortion led to the establishment of a specifically Christian party. *Kristeligt Folkeparti* (the Christian Peoples' Party) was established in 1970 as a reaction to the complete decriminalization of pornography in 1969 and the legalization of social indications for abortion in 1970. At the first election after the liberalization of abortion in 1973, the party entered the Danish Parliament with 5.3% of the popular vote. This was the high point of the party's popularity. It remained in parliament until 1994 and re-entered 1998–2005 but with around 2.5% of the popular vote only. It changed its name to *Kristendemokraterne* (the Christian Democrats) in 2003 to signal a closer alignment to traditional European Christian democratic parties. The party has been standing in subsequent national elections since 2005 but has not managed to get above the minimum level of 2.0% of the vote to get representation in parliament. At the latest election in November 2022, the party received 0.5% of the popular vote and no seats in the Danish parliament. This led the leader of the party to resign and suggest that the party should relinquish its ambition to re-enter parliament.⁸

In Norway, *Kristeligt Folkeparti* was established in 1933 as a response to perceived secularization of Norwegian society. The party has had considerably more electoral success than its Danish sister party and reached a peak of 11.3% of the popular vote in 1997. The leader of the party Kjell Magne Bondevik became prime minister and leader of a three-party coalition, and he led another coalition government from 2001 to 2005. In these two periods of apparent strength by leading the government, the party was unable to make major changes to abortion legislation because it had to spend its political capital on

keeping the coalition together and maintaining the prime ministership. Since 2005, the party has seen electoral decline and only managed to get 3.8% of the vote in the 2021 election.

Politically, the Christian parties have been socially conservative, but strongly supportive of the tax-based Nordic welfare state model. In the Danish and Norwegian context, they have always been seen as center-right parties, but have distinguished themselves from other center-right parties primarily as opponents of abortion and critics of new reproductive technologies, especially when these are used outside of the nuclear family, and as proponents of a Christian influence in education.

In describing the political positioning of the Christian parties that arose following the liberalization of abortion, it is important to note that the middle or median position in Danish and Norwegian politics on most issues is considerably to the left of the middle position in the United Kingdom or the United States. A party can be on the right of Danish politics, but still espouse policies that would be labeled as left-wing in the United Kingdom and socialist in the United States. It is also important that both Denmark and Norway are multiparty, parliamentary democracies. The election systems are based on proportional representation and almost always lead to a political situation where no party has an outright majority, but a coalition has to be cobbled together to form a majority government, or where a minority government needs to collaborate with nongovernment parties to stay in power.

In both Denmark and Norway, the Christian parties have at various points been in a situation where they have been able to influence the formation of the government, and they have sometimes been able to utilize this power to promote antiabortion policies. In 1987, the Danish Parliament passed a law establishing the Danish Council of Ethics and regulating certain reproductive technologies. Kristeligt Folkeparti, which was part of the government managed, to get a clause inserted stating that “human life begins at conception.” This was mainly a symbolic victory and has had no real policy implications.⁹ In 2019, Kristeligt Folkeparti became part of the Norwegian government and managed to secure a change to the abortion legislation exempting fetal reduction before 12 weeks of gestation from the general right to abortion on demand.¹⁰ The party is not currently part of the governing coalition and the current government has established a committee reviewing possible liberalization of the Norwegian abortion legislation including an increase of the gestational age limit for abortion on demand to 18 weeks.¹¹

The clear self-identification of the Christian parties as the antiabortion parties and their limited electoral success on this platform paradoxically has enabled other parties to include the protection of abortion rights in their platforms. On the political realist view very pithily described by Schumpeter where political parties do not win elections to pursue policies but pursue policies in order to win elections,¹² the existence of the Christian parties has given other parties incontrovertible and conclusive evidence for the view that antiabortion policies are not a significant vote winner in Denmark and Norway and that it is therefore not politically rational to pursue them.

Alongside the mobilization of the Christian vote through Christian parties, a number of issue-specific antiabortion organizations also emerged.¹³ These were and are sometimes not explicitly religious or Christian but must nevertheless be understood as essentially Christian organizations. These organizations have organized antiabortion demonstrations, happenings, and permanent memorials.¹⁴ Providing a detailed history of the establishment, mergers, de-mergers, and internal politics of these organizations is beyond the scope of this article. Their existence has clearly been important as pressure groups influencing the abortion policy of the Christian parties by making it more difficult for the parties to resile from their original very strong antiabortion stance.¹⁵

The Decline and Moderation of the Christian Parties

As described in the previous section, the Christian parties came to be identified with a strong antiabortion stance and were initially abolitionists arguing for a return to the previous restrictive legislation. However, over time both the Danish and the Norwegian parties have modified their stance on this and other reproductive and social value issues. In relation to abortion, these moves have been

from a goal of abolition to a goal of prevention. The political goal is no longer to make abortion, including early abortion on demand illegal, but to reduce the number of abortions through access to “neutral” advice and increased social support for pregnant women contemplating an abortion.¹⁶ This slow movement in the politics of the parties has partly been driven by a decline in the antiabortion Christian base due to ongoing secularization, partly by a desire to be seen as reasonable and therefore possible coalition or collaboration partners in a context where access to abortion has become completely normalized, and partly because the original policy goal has become obviously unattainable. This has led to considerable internal discord among the Christian parties with some members still arguing strongly against these policy shifts.¹⁷

The Future De-Stabilization of 50 Years of Stable Compromise?

There are now signs that the compromise that has secured stable abortion rights and a relatively quiet public abortion debate is under pressure. The population in the Nordic countries is progressively secularizing and although many immigrants, especially from non-EU countries, are religious the limited immigration has not stemmed the secularization process. The conservative religious voice in the debates is therefore waning. There is also a move to see the ethical issues in relation to sexuality and reproduction as matters for personal reflection and decision-making and not as matters for legislation and state intervention.¹⁸ This is, perhaps paradoxically partly rooted in a traditional Lutheran understanding of faith as a personal matter.

The pressure on abortion rights in the United States and in Poland has also revitalized the abortion debate in the Nordic countries with feminist participants in the debate, arguing that abortion rights are not as secure as they might seem. The soundness of these arguments is questionable since all major political parties in Denmark and Norway, as a minimum, support the current abortion rights and even the Christian parties grudgingly accept that they will not be changed. The claims that abortion rights are under pressure do, nevertheless, have considerable rhetorical force.

Over time there has also been a *de facto* narrowing of the possibility of accessing late abortions where the primary reasons for seeking the abortion are either the social conditions of the woman or the family, or the fact that the pregnancy is the result of incest or rape. This has happened because developments in neonatology and especially neonate intensive care have lowered the age of viability. Permissions for abortion of a potentially viable fetus are almost never given, unless the primary reason for the abortion is a serious risk to the health of the mother or a prenatally detected serious medical condition in the fetus. The *de facto* unavailability of abortion in cases of incest or rape after 22 weeks of gestation has anecdotally led to some women seeking abortion in other more liberal countries, thereby leading to a resumption of limited “abortion travel.”

However, the most important de-stabilizing factor is a reframing of the debate toward a more legal framing. That is, the abortion question is no longer framed as a question of how to solve social problems and thereby a primarily political problem, but as a question of how to implement overriding human rights, for example, the rights stated in the UN Convention for the Elimination of all Forms of Discrimination against Women (CEDAW) and those expressed by the Committee on Economic, Social and Cultural Rights in its General Comment No. 22 (2016) on the Right to sexual and reproductive health.¹⁹

Seen from such a legal perspective, it has been argued that we should not conceptualize the abortion situation in Denmark (and by implication Norway) as a successful compromise but as a decade-long stagnation in the recognition of women’s rights.²⁰

The recent 2022 WHO Abortion care guideline has a number of recommendations that have strengthened this new framing of the debate (quoted from the Executive Summary):

- a. **Recommend against** laws and other regulations that restrict abortion by grounds.
- b. **Recommend** that abortion be available on the request of the woman, girl, or other pregnant person.

Remarks:

- Grounds-based approaches to restricting access to abortion should be revised in favor of making abortion available on the request of the woman, girl, or other pregnant person.
- Until they are replaced with abortion on request, any existing grounds should be formulated and applied in a manner consistent with international human rights law. This means that the content, interpretation, and application of grounds-based law and policy should be revised to ensure human rights compliance. This requires that:
 - i. Existing grounds are defined, interpreted and applied in a human rights-compliant way.
 - ii. Abortion is available when carrying a pregnancy to term would cause the woman, girl or other pregnant person substantial pain or suffering, including but not limited to situations where the pregnancy is the result of rape or incest or the pregnancy is not viable.
 - iii. Abortion is available where the life and health of the woman, girl, or other pregnant person are at risk.
 - iv. Health grounds reflect WHO's definitions of health and mental health [...].
 - v. There are no procedural requirements to "prove" or "establish" satisfaction of grounds, such as requiring judicial orders or police reports in cases of rape or sexual assault [...].

Gestational age limits.

3 (LP) **Recommend against** laws and other regulations that prohibit abortion based on gestational age limits.²¹

The incompatibility of current Danish and Norwegian abortion legislation with these recommendations is obvious in relation to (1) the gestational age limit for abortion on demand, (2) the grounds- or reasons-based approach above this limit, and (3) the viability related age limit for certain grounds for abortion. This incompatibility has already been introduced as an argument in the public debate to advocate for a change in the gestational age limit for abortion on demand to at least 22 weeks²² or a complete abolition of the limit.²³ There is a further incompatibility in relation to requests from women who are below the age of legal majority, because such requests are not legally effective in themselves but require either consent from a parent or guardian, or a permission overriding the parental nonconsent.²⁴

It is difficult to predict the future developments in abortion legislation in Denmark and Norway in detail, but it will undoubtedly be in the direction of liberalization. The positions that eventually emerge will be new political compromises, but where these compromises will be struck will be significantly influenced by the re-framing of the abortion issue as an issue about the incompatibility of the current legal regime with fundamental human, reproductive rights exclusively.

So, in a very strange way, both the likely liberalization of abortion legislation in Denmark and Norway, and the abolition of Federal Constitutional abortion rights in the United States in *Dobbs*²⁵ are a result of the juridification of the abortion issue. Instead of being primarily conceived as a political issue on which it is possible to reach compromise, it has become a primarily legal issue involving a conflict of rights in which the "winner takes all." It is just that, at the moment, the side that is winning is different in these jurisdictions.²⁶

Conflict of Interest. The author declares no conflict of interest.

Notes

1. Lov om svangerskabsafbrydelse af 13. juni 1973.
2. Lov om svangerskabsavbrudd LOV-1975-06-13-50; Endringslov til abortloven LOV-1978-06-16-66.
3. See [note 2](#), Endringslov til abortloven, §2.

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24. See note 20, Herrmann, Petersen 2021, at 497–9.
25. *Dobbs v. Jackson Women's Health Organization*, No. 19–1392, 597 U.S. (2022).
26. Although some of the results of the U.S. mid-term elections 2022 seem to indicate that the return of the abortion issues to the states have led to considerable political mobilisation to protect abortion rights.