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Chapter 9

Finland as a Late Regulator of Assisted Reproduction: A Permissive Policy under Debate

Lise Eriksson

INTRODUCTION

Finland's first Act on Assisted Reproduction (1237/2006) became law in 2007, which is much later than the other Nordic countries.¹ The legislative process began in the 1980s and went on for a couple of decades. During this time there was much debate across society on the need to impose limits on the liberal reproductive practices in Finland (Malin and Burrell 2004). This chapter will focus on three themes that appeared in policy documents and political debates on ARTs in the *Eduskunta* (the Parliament of Finland) prior to the changes in the law in 2007: (i) childlessness as a medical problem, (ii) religious arguments, and (iii) perceptions of fatherhood in relation to sperm donation and donor anonymity. All three themes were part of the negotiations on ARTs related to notions of gender, sexuality, and families. Restrictive standpoints constructed the image of ARTs as primarily a means for infertile heterosexual couples to have children. These positions relied on ideas of a natural order and the nuclear, heterosexual family as superior to other family forms. Other parliamentarians defended the permissiveness of the Government bills, advocating all women's equal right to access ARTs.

The concept of “equality” will be given particular attention in my analysis. In the context of policy proposals, equality can be defined as the result of the elimination of discrimination, and as equal rights or equal opportunities. In the field of ARTs, equality can refer to eligibility to access ARTs, and to equal access to both public and private clinics, or to economic equality between patients. The equal subjects may be all women, women in comparison to men, or same-sex couples and single people in comparison to heterosexual couples.

In the field of ARTs, Finland is a late regulator with a permissive policy (see Engeli and Rothmayr Allison, this volume). The country offered one of the most permissive regimes in Europe regarding ARTs when it lacked specific legislation on the issue (Malin and Burrell 2004, 88–9). According to Isabelle Engeli (2009, 60), a policy within the field of reproduction is permissive if (1) medical autonomy and patient access are regulated by light policy instruments or not regulated at all; (2) all categories of patients have access to abortion and ARTs regardless of personal circumstances, civil status or sexual orientation; and (3) treatment costs are met by state funding or private medical insurance. I would characterize the Finnish Act on Assisted Reproduction as a relatively light policy, since it did not greatly change the liberal practice at clinics. It gives women the right to ARTs regardless of personal circumstances, civil status or sexual orientation, but with some limitations. Treatment costs are reimbursed for heterosexual couples, but not for single women or lesbian couples.

The main principle during the process of drafting the law in Finland was: “Why change something that works?” The practice at fertility clinics had become normalized. Clinics could

determine their own rules while ARTs were unregulated. According to Engeli and Rothmayr Allison (this volume), medical self-regulation often provides governments with efficient regulatory options. During the 1990s and early 2000s, some private clinics in Finland provided a wider range of treatments than most other Nordic countries. Heterosexual couples, lesbian couples, and single women could all receive ART treatment. Egg donation, embryo donation, and so-called altruistic surrogacy were all practiced until 2007. The liberal practices of clinics were incorporated into the law, with a few exceptions. The most important changes in 2007 were that surrogacy became forbidden and that donors of gametes or embryos were no longer permitted to be anonymous. Surrogacy became forbidden because of a political compromise. The Act on Assisted Reproduction had been in preparation for a long time, and the Government wanted it to finally be approved in Parliament. As Elly Teman (2010, 6–7) points out, surrogacy is often perceived as the least acceptable of the reproductive technologies (see also Melhuus, this volume). The public representation of surrogacy as a “cultural anomaly,” as Teman describes it, may be the reason why the Government thought it was easier to abstain from the issue, and perhaps raise it separately later.

This chapter will examine how the process of drafting the law and the political debate differ from the permissiveness of the previous situation. The political debate in Finland oscillates between a liberal standpoint and one in which religious arguments play a central role, and in which the importance of equality is challenged.²

THEORETICAL FRAMEWORK, METHOD AND MATERIAL

In this chapter I conduct a rhetoric and discourse analysis of the policymaking process and political debates on ARTs in the *Eduskunta*. Discourse analysis involves the study of social phenomena or social categories, while also problematizing these categories, their contents, and effects (Börjesson 2003, 19). Since the material consists of political debates and policy documents, I regard rhetoric as an important aspect of the analysis, which I will conduct through quotations from policy documents and debates. Critical incidents and discontinuities in the text are principles for the selection of quotations (Fairclough 1992, 230). I will select quotations that are either representative of the material, or critical incidents that bring something different to the text, and represent a boundary or an interruption in the debate.

A working group at the Ministry of Justice delivered the first draft of a bill on ARTs in 1988. Expert advisors were divided in their opinions about the contents of the draft, and it did not result in a Bill. In 1990, 1993, and 1997, working groups published new reports on ARTs (Malin and Burrell 2004). The first Bill (HE 76/2002), which was presented to the *Eduskunta* in 2002, was the result of many years of negotiations within Parliament and the Government. Unlike previous reports, this bill proposed that surrogacy should be prohibited. However, the Government withdrew the bill, because two issues created controversy in the Legal Affairs Committee in Parliament. The committee proposed that donor anonymity should be abandoned, and that only married or cohabiting heterosexual couples should have access to treatments (Malin and Burrell 2004, 82–88). However, the improvement of same-sex couples' rights was on the Government's agenda. The Act on Registered Partnership came into force in 2002, which may have contributed to the withdrawal of the Bill, because, on the one hand, it made the question of same-sex couples' right to reproduction via ARTs very

urgent, while, on the other hand, Conservative parliamentarians did not want to engage with this issue. The second Bill on ARTs (HE 3/2006) was presented to the *Eduskunta* in 2006. Again, problems arose in the Legal Affairs Committee, which suggested that access to ARTs should be limited to heterosexual couples. The *Eduskunta* finally voted in favor of the Bill in October 2006.

This chapter's empirical material consists of the two Bills on ARTs from 2002 and 2006, law drafting reports, and the parliamentary proceedings of the plenary sessions. The parliamentary proceedings are transcribed political speeches made in Parliament, which are available to the public on the parliamentary website.

The chapter's theoretical framework concentrates on how problems are represented in policy proposals and political debates. Carol Bacchi and Joan Eveline (2010) have developed analytical principles for policy studies with a gender perspective. In studies of policy proposals one should ask: "What is the problem represented to be?" The researcher should study the meanings that a problem is given, and how it is discursively constituted in the policy or policy proposal (Bacchi and Eveline 2010, 114).

Through their effects, policies can reinforce social categories based on, for example, sexual orientation, class, or gender (Bacchi and Eveline 2010, 112). Against this background, this chapter studies how problems are represented, and how problems associated with ARTs are discursively and rhetorically produced. I will also study how childless people and gamete donors are categorized and represented.

THE REPRESENTATION OF CHILDLESSNESS AS A MEDICAL PROBLEM

The introductions to the two Bills represent involuntary childlessness as a problem due to biological or medical factors, and emphasize female infertility (HE 76/2002, 5; HE 3/2006, 4).

Involuntary childlessness has become increasingly common in recent years, and is estimated to affect about 15 percent of married or cohabiting couples of childbearing age in Finland. Female infertility increases with age, and the higher average age of first-time mothers clearly increases the difficulty of becoming pregnant, and the need for assisted reproduction. (HE 3/2006, 4)³

This representation of childlessness in the Bill does not mention social causes, e.g. civil status or sexual orientation.⁴ In my opinion, a discourse that strongly emphasizes the belief that reproductive treatments should be received on medical grounds may be regarded as an expression of medicalization. Peter Conrad defines medicalization as follows: “a process by which nonmedical problems become defined and treated as medical problems, usually in terms of illness or disorders” (Conrad 1992, 209). According to Arthur L. Greil (2002, 102), through medicalization, childlessness and infertility have been defined in the context of the biomedical model and its perspectives on health, illness, and sick role. Medical specialists are perceived to have authoritative knowledge about infertility, and hold the exclusive right to treat it, while the infertile person accepts the role of patient.

Medical infertility is the focus of both Bills, but they also mention other situations in which ARTs can be applied. These exceptions include single women and lesbian couples, and cases where there is a risk of a serious genetically transmitted disease. One of the consequences of the representation of childlessness as primarily due to medical infertility is that the physician receives decision-making power over access to treatment. Engeli and Rothmayr Allison (this volume) describe a policy on ARTs that addresses only medical aspects as the typical result of a policy model that gives the medical community decision-making power. According to the Bill HE 3/2006, a prerequisite for treatment is that the person receiving assisted reproduction can ensure that the child receives a balanced upbringing, i.e. the physician should ensure that the child's best interests are taken into account. The Bill also states that it is the physician's responsibility to determine whether the woman's age is a health risk. The bill mentions no age limit for the woman, nor does the Act on Assisted Reproduction. The previous Bill, HE 76/2002, proposed 46 years as an age limit for women. Neither of the Bills proposed age limits for men.

Other consequences of the focus on medical infertility concern financial compensation, treatment eligibility, and differences between ART procedures at public and private clinics. ART treatments are provided at both public hospitals and private clinics in Finland. Public district hospitals offer basic investigations, medication, and surgery, while the five public university hospitals in Helsinki, Turku, Tampere, Kuopio, and Oulu offer a wider range of ART procedures (Malin and Burrell 2004, 73–4). There are 13 private clinics in Finland that offer ART treatments on a fee-paying basis (Yli-Kuha 2012, 23). However, the national health insurance scheme reimburses some of the costs. A central difference between the public and private sectors is that private clinics are less bureaucratic than the public sector,

and more liberal in regard to the woman's age and the number of treatment cycles that are offered. The procedures of egg and embryo donation were first introduced at private clinics during the 1990s (Malin and Burrell 2004, 73–4). Single women and lesbian couples are also referred to private clinics. The main reason for this practice is the distinction between involuntary childlessness, which is defined medically, and childlessness due to other causes.

Surrogacy arrangements occurred on a limited scale at four private clinics in Finland during the period 1991–2007. Three of the clinics were private, and one was public.⁵ The intending parents were in all cases heterosexual couples. In most cases the woman had no uterus – or a non-functional uterus – either from birth or as a result of a gynecological disease or childbirth complications. The surrogate mother was usually a close relative or friend of the couple. The arrangements were represented as altruistic and non-commercial. Children born through these surrogacy arrangements were in most cases the couple's genetic children (gestational surrogacy) (Söderström-Anttila et al. 2002, 748–50).

During the parliamentary debates, the relationship status of recipients of ARTs was often represented as a problem. The standard term for single women and lesbian couples in the Bill HE 3/2006 is “women who are not living in a relationship with a man.” The relationship status of lesbian couples and single women is thus defined by the absence of a man. The legal purpose of this terminology was to ensure equality between women. However, it is also a neutralizing rhetoric, which avoids explicit talk of same-sex couples' desire to have children, which was represented as a problem both in the *Eduskunta* and in media debates about the proposed legislation (Kanckos 2012). The following quotation is from a plenary debate on the Bill HE 76/2002.

Should medical reasons be the key criteria in health care and medical services? In my opinion, yes. What does it lead to, if medical evaluation is also removed in a wider sense from the evaluation of health-care services? A single person's or same-sex couples' infertility is not due to medical reasons. The world has been built and constructed in such a way that a woman and a man are required for the creation of life. In my view, nobody's rights are violated if ARTs are provided for medical reasons. (Sakari Smeds, Christian Democrats, PTK 198/2002)

This quotation shares the Bills' representation of childlessness as a medical problem, but goes even further. The speaker presents the world as being organized along a natural order, in which reproduction is based on heterosexual relationships. This quotation is an example of how arguments about nature can operate in medicalizing terms. The MP claims that medicine should serve to maintain the natural order. The traditional ideal of the nuclear family was justified in the debates by reference to biology, nature, medicine, tradition, or religion, which are typical authority arguments.

According to the Bill HE 3/2006, the people who are entitled to receive financial compensation for treatment are those who have a diagnosed medical cause for their infertility, which means that lesbian couples and single women are not compensated by the national health insurance. Treatment costs have also increased significantly since the law took effect in 2007. Another consequence of the emphasis on medical infertility is that a woman is not entitled to economic compensation if the cause of infertility is a reduced number of oocytes because of her age. It is recommended that couples who already have two biological children,

people with an infectious disease (e.g. HIV), and sterilized individuals do not receive assisted reproduction within the public health-care system (HE 3/2006, 7–8).

In an interview published by several Finnish newspapers in July 2005, Minister of Justice Johannes Koskinen, who was responsible for the drafting of the legislation, declared that although lesbian couples and single women would not get health insurance reimbursement for ARTs, no one is entirely excluded from treatments (Koskinen: Naisparien ... 2005). In saying this, Koskinen defended the policy proposal's representation of childlessness, which gives priority to medical infertility. This representation of childlessness is based on a specific understanding of equality, and is based on exclusions. He introduces an idea of equality that refers to access to treatment at private clinics, rather than economic equality, or equal access to treatments within the public health-care system.

In sum, the representation of childlessness as primarily medical infertility in the Finnish ART policy documents has legal, practical, and financial consequences.

RELIGIOUS VIEWS ON CHANGING FAMILY NORMS

Religion may impact upon people's attitudes to ARTs, in particular in a situation of moral uncertainty (Inhorn 2003). At the end of 2014, 74 percent of the Finnish population belonged to the Evangelical Lutheran Church of Finland, although active Church members represent only a small minority (The Evangelical Lutheran Church of Finland 2015). As the majority

Church, it may have an essential impact on political debates that concern moral or religious issues.

The debate on ARTs is also a good example of how the Christian Democrats have acted as defenders of conservative Christian family values in *Eduskunta*. The Bill's suggestion that single women and lesbian couples should have the right to receive ART treatments was often represented as a problem by the representatives from the Christian Democratic Party.

One should not start artificially producing situations where the child does not have a dad. Nevertheless, in our society, regrettably many children grow up suffering from the lack of a father. I had also hoped that the petition, which the Church released two months ago, would have been considered in the bill. [The petition] also came to all MPs, and it suggested that fertility treatments should be limited to married couples.
(Päivi Räsänen, Christian Democrats, PTK 76/2002)

ARTs are here represented as an artificial form of reproduction, and as a practice that should be limited by legislation. The chairman of the Christian Democrats, Päivi Räsänen, repeatedly emphasized the Church's position on ARTs. The Church was used as a moral authority. In the quotation above, she presents the lack of a father as a problem, and suggests that the decision makers should limit access to ARTs in accordance with the Church's proposal. This proposal was an informal petition that was sent to all Members of Parliament before the debate in 2002, suggesting that only married, heterosexual couples should have the right to treatment. The institution of heterosexual marriage was represented as threatened when other family forms become visible in society. The importance of marriage was often emphasized in the debates through references to religion.

Church statements were often referenced; for example, a statement made in 2005 by the Church Council of the Evangelical Lutheran Church.⁶ This emphasized that ARTs should be restricted to heterosexual couples, and that only the spouses' own gametes should be used in the treatments (Church Council 2005). Many MPs who supported all women's equal right to ARTs also used religious arguments, or positioned themselves as members of a Christian community. The speaker in the following quotation legitimizes his view on equality through religion, while simultaneously drawing limits to the extent to which he can identify with the Church.

I would like to say that I perceive myself as a Christian, I am a member of the Evangelical Lutheran Church, but I feel alienated from such a Church that does not approve of equality between people. (Jouni Backman, Social Democrats, PTK 100/2006)

Opinions about eligibility criteria for reproductive treatments were not only divided between parties, but also within parties. Members of Parliament were allowed to vote according to their own beliefs, which was an exception to the general rule of following voting decisions within parliamentary groups. This exceptional voting procedure is practiced in the *Eduskunta* on issues which are considered to concern personal values, e.g. alcohol, nuclear energy, religion, the family, and sexual orientation (Kanckos 2012, 110–11). This voting procedure probably contributed to an increased focus on personal values and religious beliefs in the debates on ARTs. Religion may have an impact on party politics in Finland not only through the personal beliefs of MPs, but also through the influence of religious institutions and

organizations, such as the Evangelical Lutheran Church of Finland and the Christian Democratic Party (see Engeli and Rothmayr Allison, this volume).

SPERM DONATION AND DONOR ANONYMITY

In the Finnish political debate, fatherhood was represented as a problem in relation to lesbians and single women who have children through ARTs. The sperm donor was represented by some speakers as a neglected biological father. Thus, the issues of sperm donation and donor anonymity were part of negotiations around notions of gender, sexuality, and families.

The Swedish model of registering the identity of gamete donors has been applied in many countries – including Finland – since Sweden paved the way in 1985 (Nordisk kommitté för bioetik 2006, 17, 46–7, 52). In accordance with the Act on Assisted Reproduction in Finland, since 2007 the identities of those who donate sperm, oocytes, or embryos have been registered by Valvira, The National Supervisory Authority for Welfare and Health. Children who are born as the result of ARTs with donor gametes or embryos may receive information about the donor's identity after they have turned 18.

The debate on anonymity for gamete and embryo donors clearly revolved around perceptions of differences between social and biological parenthood, as illustrated by the following quotation.

If we approve of gamete donation, then we should ask whether we have thoroughly thought it through. For my own part, whenever we begin expecting a baby in the family, we already have in mind what kind of child it is, what kind of children are born to us. If it does not match our expectations, will our affection be just as robust as if it had been a genuine biological event within the family? (Hannu Aho, Centre Party, PTK 76/2002)

This MP suggests that genetic ties to both parents mean that the baby is authentic. He questions whether an affectionate family relationship can be formed if the child has its origin in donated gametes. However, a more common view was that families do not depend on biological ties, and that the love between parents and children is more important. This is exemplified in the following quotation, which denies that there is a contradiction between good parenting and the lack of a father. The child's best interests were used in the debates both for and against lesbian or single women's rights.

I do not believe that such a contradiction exists. The best interests of the child and good parenting are based on a situation where a person has the desire to become a parent, and when she has this desire, it will give her the conditions to also ensure the child's best interests. (Anni Sinnemäki, Greens, PTK 13/2006)

In analyzing a political debate on egg donation in Norway, Kristin Spilker and Merete Lie (2007, 329–30) noticed that egg and sperm often metonymically referred to women and men. As a consequence, the debate concerned gender and family relationships, sexuality and heteronormativity. The importance of parenthood and equality was emphasized even at the level of cells. I have noticed a similar tendency in the Finnish debates. Some speakers felt it

to be important that the child should have the opportunity later in life to meet its biological parent. The determination of paternity played a central role in the Finnish debates, but the discussion mainly concerned a defense of fatherhood at the symbolic level.

Equality between women is emphasized, but the equality between men and women is completely forgotten in this context. The man has no rights. Is it not irresponsible to enact a law in which we forget the role of fathers? (Nils-Anders Granvik, Swedish People's Party, PTK 100/2006)

This MP believes that fatherhood is threatened when women who do not live in a relationship with a man receive the right to access ARTs. The quotation suggests that the emphasis on equality has focused on equality between women at the expense of the role of fathers. This quotation includes an understanding of equality as that between men and women. The MP is probably referring to sperm donors when he speaks of “fathers” and “men”. Sperm donors were represented in several speeches as having an ambivalent relationship to fatherhood: He is the biological father, but his fatherhood is disregarded.

Some speakers mentioned the risk of children being exposed to bullying at school if they do not have two parents of different sexes.

We imagine a lesbian couple's child, little Jussi, who attends kindergarten, and people asking him what kind of family he comes from. He says, “I have two moms, a lot more than other people.” But then people ask him, “what about the father?” “Well, my father is a bank, a sperm bank. Dad thrives in cold conditions, apparently in the freezer.” One can imagine what this would actually cause. There will be a black hole for the child until the age of 18, a black hole, when he does not really

know his background, whatever he says there. What has been said about school bullying is likely; we cannot do anything about it, because schools are in any case rather rough places. Neither the teachers nor the parents, or anyone at all, can handle this situation. If we know of a situation like this, little Jussi will surely become bullied at school. (Esa Lahtela, Social Democrats, PTK 13/2006)

In this quotation, donor sperm metonymically refers to the father of the child (cf. Spilker and Lie 2007, 329). The anonymous sperm donor is represented as an absent father, who is also described as a sperm bank and a black hole. The imagery is powerful, the speaker using irony and humor as rhetorical tools. Using the metaphors of the sperm bank and the black hole, this MP suggests that lesbian couples who have children through ARTs depreciate the biological father. The child in the story speaks of his father as if he does not know what a father is. I consider these metaphors, and the talk about school bullying, to be a critical incident in the debate. The speech gave rise to strong reactions from other speakers. The argument about school bullying was considered offensive to same-sex parents and their children, and was called “by far the worst point” in the debate (Pertti Salovaara, Centre Party, PTK 13/2006).

The representation of the sperm donor as a father has several discursive and practical effects. It suggests that a single mother or two lesbian mothers cannot constitute a genuine family. The law enables registration of the sperm donor's paternity in cases where a single woman or a lesbian couple receives ART treatment. However, very few sperm donors have agreed to become registered as the father. There was a decrease in sperm donations immediately after the Act on Assisted Reproduction became law, which suggests that some potential donors were scared off by the compulsory registration of their identity. However, the Act does not seem to have resulted in any long-term decrease in donor treatments. To date, about half of

all sperm donors are foreign (*Assisted Fertility Treatments 2013–2014 2015*).

Couples whose embryos are left over from ART treatments may donate them to other couples. However, there was hardly any discussion about the importance of parenthood in relation to donated oocytes and embryos. Sperm donors were emphasized as father figures, while oocyte donors were apparently considered less important as mother figures. The reason for this absent discourse is most likely the cultural and legal determination of motherhood as adhering to the woman who gives birth to the child.

CONCLUSION

I would characterize the Finnish policy on ARTs as permissive (cf. Engeli 2009). The Act on Assisted Reproduction was prepared over the course of two decades. A consequence of this slow legislative process is that clinics had the opportunity to develop liberal reproductive practices, which included oocyte and embryo donation, altruistic surrogacy, and women's access to treatment regardless of civil status or sexual orientation. Surrogacy still remains an unresolved issue in Finland, and the policy-making process has continued since it was prohibited in 2007 (see Eriksson 2016).

Even though the Finnish case is permissive, it is not merely characterized by a secular bioethical discourse with statements on rights, consequences, and justice. There is a

difference between the government bills, legislation, and liberal practices at clinics, which are permissive, and the political debate, which often exhibits discontent with this permissiveness.

The debates in Parliament reflect the post-secular situation of Finnish society, which includes voices in support of liberal practice, voices that support traditional family values, and conservative religious views. A post-secular situation is characterized by ambivalence, because distinctions between religious and secular spheres are blurred. Religious discourse is provided space in a society that has undergone a secularization process (Kanckos 2012). This chapter has examined the reasons behind and the effects of the Finnish ART policy proposals' representation of childlessness as a problem that primarily concerns medical infertility. I have argued that this representation undermines the importance of the social dimensions of childlessness. This representation has legal, practical, and financial consequences. For example, lesbian couples and single women are not compensated by the national health insurance scheme, and they are referred to private clinics. The Finnish debates indicate that assisted reproduction challenges many of the norms regarding parenting, gender, and sexuality that were previously taken for granted, but at the same time they illustrate that it can also be used to reinforce the norms of a society.

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Endnotes:

¹ The Swedish Insemination Act, which came into force in 1985, was the first of its kind, and several countries have used this law as a model for developing their own legislation. The Norwegian Act on Artificial Procreation (68/1987) came into force in 1987. Iceland and Denmark passed laws on assisted reproduction in the 1990s: Iceland in 1996 and Denmark in 1997. (Nordisk kommitté för bioetik 2006)

² This chapter summarizes some of the most important results of my doctoral dissertation. The dissertation examines the Finnish parliamentary debates on ARTs during the 2000s, and how these debates relate to changes in values and religious norms in society (Kanckos 2012).

³ All quotations have been translated from Finnish by the author.

⁴ Spilker (this volume) discusses perceptions of ARTs as techno-medical practices addressing medical infertility in comparison to lesbian couples' use of ARTs.

⁵ The total number of IVF treatments with surrogacy arrangements begun at Finnish fertility clinics during this period was 46, which resulted in 14 clinical pregnancies, and a total of 12 babies (*Assisted Fertility Treatments 2009–2010* 2011, Appendix Table 2; Kanckos 2012, 201; Söderström-Anttila et al. 2002, 748–51).

⁶ I have analyzed the impact of Church statements on the debate in another article (Eriksson 2016).