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ORIGINAL ARTICLE

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State repression of racist associations: Dilemmas of tolerance in the Nordic countries

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Abstract

When faced with organised racism, liberal democracies attempt to strike a balance between combating extremism and protecting core values such as freedom of association. Earlier research has argued that states that have experienced nondemocratic regime control in the twentieth century—either through a domestic takeover or a foreign occupation—are more likely to take a repressive approach to racist associations. In this study, I show that the previously overlooked Nordic region speaks against this explanation. Finland, which managed to avert a domestic authoritarian threat, is more repressive of racist associations than are the Scandinavian countries. The latter, two of which faced Nazi occupation, take a more liberal approach, which targets illegal actions rather than associations. These findings lead me to argue that the explanatory power of historical legacies cannot be reduced to a binary indicator such as nondemocratic regime control. I conclude by proposing a direction for future research on state repression of organised racism.

INTRODUCTION

How and why do liberal democracies differ in their legal responses to organised racism? In the aftermath of World War II (WWII), many European states banned fascist groups. As the support for movements and parties openly hostile to democracy has become increasingly marginal, however, legal repression has shifted its ideological foundation from anti-fascism to

anti-racism (Fennema, 2000). The banning of racist associations can be controversial because it requires states to strike a balance between combating extremism and protecting democratic values such as freedom of expression and freedom of association (Bleich, 2011a). When faced with such associations, then, liberal democracies find themselves in a 'dilemma of repression' (van Donselaar, 2003). For this reason, it is perhaps not surprising that different states pursue different strategies in this regard (Bale, 2014; Capoccia, 2013; Minkenberg, 2006).

In a study of 10 liberal democracies, Bleich and Lambert (2013) find that a history of nondemocratic regime control in the twentieth century is the most significant factor that predisposes a country to increased levels of repression against racist associations. All the countries in their study that have a nondemocratic regime history, that is, take relatively repressive approaches towards racist groups. Moreover, the authors identify three 'situational triggers' that explain the timing of when a state passes such legislation: the transition to democracy; international pressure, such as in the form of convention obligations; and 'problem solving' in response to, for example, high levels of racism in society. While Bleich and Lambert aim to develop a probabilistic explanation, they conclude that the Nordic region—which is not included in their study—appears to be an outlier with regard to the historical factor. Although Denmark and Norway were both occupied by Nazi Germany, while Sweden and Finland were not, the authors note that the four countries appear not to differ much in their handling of racist associations.

In this study, I test whether Bleich and Lambert's explanation applies to the Nordic region. The findings show that the Nordic countries do, in fact, differ in important ways. Finland stands out with more far-reaching legislation targeting racist associations—and it is the only country that has actually dissolved such a group. Due to the high value placed on freedom of association, the Scandinavian countries instead have a preference for targeting illegal actions (through hate speech bans) rather than associations. This leads me to argue that, although historical legacies clearly matter for state repression of racist associations, they are not reducible to a binary indicator such as nondemocratic regime history.

The article is structured as follows. The next section addresses theories of democratic tolerance and existing research on association bans. I then turn to research design, justifying the choice of the Nordic region and describing the analytical framework and material used. This is followed by the empirical analysis, where I briefly describe the relevant legislation in the Nordic countries before addressing in turn each of three explanatory factors: nondemocratic regime history and transition to democracy, international pressure, and problem solving. In the final section, I summarise my conclusions and propose a direction for future research.

BANNING RACIST ASSOCIATIONS

In Europe, the question of association bans is closely linked to the experience of WWII. Observing country after country succumbing to fascist rule during the interwar years, German political scientist Karl Loewenstein—exiled in the United States—made the case for 'militant democracy' (1937a, 1937b). As in the case of the Weimar Republic, Loewenstein took the foremost enemy to be political parties intent on abolishing democracy through the use of legal means. To protect its institutions, then, democracies needed to ban both anti-democratic movements and expressions, so as to prevent democracy from being 'the Trojan horse by which the enemy enters the city' (Loewenstein, 1937a, p. 424). Following the defeat of Nazi Germany, the Federal Republic of Germany came to constitute the paradigmatic example of a militant democracy. According to the German Constitution, a party that pursues anti-constitutional goals—even if it does so by legal rather than violent means—can be deemed unconstitutional and dissolved by a decision of the Federal Constitutional Court (Backes, 2019). In the postwar years, many European states introduced legislation that banned anti-democratic parties from political competition (Bourne & Casal Bértoa, 2017). This is the core of militant democracy: the protection of democratic institutions from ideas and movements that seek to undermine them through legal means. Acts of violence and terrorism, therefore, do not pertain to the domain of militant democracy per se (Müller, 2012). While actions aimed at combatting terrorism may be similar in that they also infringe upon democratic rights and freedoms (Macklem, 2006), they are more appropriately viewed as a matter of state security rather than militant democracy (Engelmann, 2012).

From around 1970 onward, the European far-right started both to distance itself from prewar fascism and to adopt political propaganda that was less overtly neo-fascist, making existing bans less effective (Fennema, 2000). Because racism and anti-Semitism were considered a proxy for fascism, however, many states also banned political racism. In 1965, the United Nations adopted the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), calling for its signatories to ban not only racist associations but also racist expressions. Many states that ratified ICERD introduced bans on expressions amounting to incitement of racial or ethnic hatred—commonly referred to as 'hate speech' (Bleich, 2011b). Since the early postwar era, Fennema (2000, p. 28) notes,

> the legal repression of extreme right parties has shifted its ideological foundation from antifascism to anti-racism. In the process, the philosophical anchorage has changed. In the antifascist legislation the underlying logic was that of a 'militant democracy' in which fascist propaganda was considered illegitimate because it

> was direct against democracy. In the present anti-racist legislation, however, the philosophical foundation is some form of human equality principle, which lives in an uneasy cohabitation with the principle of freedom of expression.

Indeed, banning certain beliefs from 'the marketplace of ideas' may come into conflict with some of the freedoms at the very heart of liberal democracies (Issacharoff, 2007). Association bans and hate speech bans, for example, constitute an infringement of freedom of association and freedom of expression, respectively. Whether or not democracies should tolerate intolerant ideologies—the famous 'paradox of tolerance' (Popper, 1945)—'is perhaps the central paradox of democratic regimes' (Fox & Nolte, 1995, p. 14). Stated otherwise, states are faced with a 'dilemma of repression', where they must balance the need to manage extremism and the protection of fundamental civil rights (van Donselaar, 2003). Since there are few clear-cut answers as to both the appropriateness and the effectiveness of different approaches, states tend to be guided by trial and error (Bale, 2014). It is not surprising, then, that liberal democracies differ markedly in terms of how they approach racist associations. In recent years, political scientists have taken an increasing interest in accounting for the variation in states' degree of democratic militancy (Beimenbetov, 2014; Bourne, 2012; Bourne & Casal Bértoa, 2017; Capoccia, 2013; Downs, 2012; Pedahzur, 2003; van Donselaar, 2003).

In a comparative study of ten liberal democracies, Bleich and Lambert (2013) assess the ability of different explanatory factors to account for state repression of racist associations. They find that a history of nondemocratic regime control in the twentieth century is the most significant factor that predisposes a country to increased levels of repression. Contrary to their expectations, the authors do not find any difference between countries that experienced such a regime due to homegrown fascism and those that did so because of foreign occupation. In their study, all states that have experienced nondemocratic regime control have adopted some kind of ban on racist groups.

Bleich and Lambert also identify three 'situational triggers', which explain the timing of when a country passes repressive legislation. First, association bans can be adopted during the transition to democracy, as in the case of Germany. Second, states can face international pressure, such as convention obligations, under which they adopt new bans. In the present context, one of the most salient sources of international pressure is the United Nations. Under the ICERD convention, mentioned above, the signatories are required to report their compliance with the articles of the convention on a recurring basis. Third, states can engage in 'problem solving', where new legislation is adopted in order to combat, for example, high levels of racist violence or hate speech. High-profile events may also have a catalytic effect on the enforcement of existing legislation (van Donselaar, 2003). Below, I describe how I use the factors

identified by Bleich and Lambert as an analytical framework guiding the empirical analysis.

RESEARCH DESIGN

This article extends Bleich and Lambert's study in two distinct ways. First, the choice of the Nordic region is justified by the fact that these authors, who do not include the Nordic countries in their study, identify the region as a potential outlier with respect to their overarching argument (Bleich & Lambert, 2013, p. 143). The four Nordic countries—Norway, Denmark, Sweden, and Finland—share many cultural similarities. The region is also characterised by strong popular movements, a factor that has been used to explain why democracy prevailed in the interwar years (Hilson, 2019). Still, there is an interesting historical variation, where two of the countries (Norway and Denmark) faced Nazi occupation during WWII, whereas the other two did not. Finland, however, faced civil war and narrowly avoided democratic breakdown due to internal threats during the interwar period (Capoccia, 2005). Sweden, meanwhile, faced neither internal anti-democratic threats nor occupation during WWII, but the contemporary extreme-right is stronger than in the other Nordic countries (Ravndal, 2018). The Nordic Resistance Movement (*Nordiska Motståndsrörelsen*), the most prominent extreme-right movement in the Nordic region, is registered as a political party in Sweden and has been represented in the municipal council of its stronghold Ludvika (Korsell et al., 2020; Lundberg, 2021).

Second, Bleich and Lambert opt for a medium-n research design, where they assess the congruence between binary independent variables and a five-point ordinal dependent variable in 10 cases.[1] The small-n nature of the present study, by contrast, allows me to analyse each case and each explanatory factor more in-depth. Among other things, this allows for an evaluation of the relative weight of each of the explanatory factors; for assessing the time order of events underlying the adoption of new legislation; and for considering the motives presented by state officials (cf. van Noorloos, 2014). While the medium-n strategy is appropriate for developing a probabilistic explanation of variation in state repression, then, a small-n design using new empirical cases is well suited for evaluating it. To this end, the analysis is structured by an adapted version of Bleich and Lambert's framework.

As shown in Table 1, the analysis focuses on two kinds of civil rights that can be restricted in the interest of combatting organised racism, and three reasons for so doing. In this study, I focus not only on racist associations but also on racist expressions. The reason for this choice is that hate speech bans can potentially serve as de facto association bans, to the extent that they target organised activities. Due to scope limitations, I do not analyse cross-national

TABLE 1 Two types of civil rights and three reasons for restricting them

Civil right	Reason for restrictions		
Freedom of association Freedom of expression	Nondemocratic regime history and transition to democracy	International pressure	Problem solving

variation in the *enforcement* of hate speech bans nor do I address the question of whether they are, in fact, effective as a substitute for association bans.

In the analysis, I assess the potential of each of the explanatory factors in Table 1 to account for the adoption of association bans and/or hate speech bans in each of the four countries. The analysis is based on a variety of data. First and foremost, I make use of primary data in terms of official state documents. These include government proposals for new legislation, reports by parliamentary committees and state agencies, and court decisions. Analysing such documents allows me not only to assess temporality but also the arguments underlying legal amendments; when new legislation is proposed, the government needs to justify why it believes it is necessary. Second, I rely on official documents produced by nonstate parties, such as the Committee on the Elimination of Racial Discrimination (CERD)—the body that oversees compliance with ICERD—and the European Court of Human Rights. Third, I also draw on secondary literature, in particular for the interwar and early postwar eras for which primary material is less readily available.

ANALYSIS

Bans in the Nordic countries: Expressions or associations?

Before turning to the three explanatory factors, I will provide a brief descriptive account of bans on racist expressions and associations in the Nordic region. In all four countries, freedom of association and freedom of expression are safeguarded in the respective constitutions. Furthermore, the European Convention on Human Rights (ECHR)[2] has the status of law in all four countries, meaning that alleged violations can be brought before the European Court of Human Rights. Freedom of association or of expression is, however, not absolute in either national or international law. Articles 10 and 11 of the ECHR state that these freedoms can be restricted in accordance with law and for reasons that are necessary for a democratic society. The European Court of Human rights has also tended to uphold the member states' right to restrict freedom of expression in order to combat hate speech (Bleich, 2012). Furthermore, the court has ruled that state interference with racist associations is permissible under certain circumstances.[3]

Hate speech legislation in the four Nordic countries is broadly similar, having been modelled after the ICERD (discussed in more detail below). In Finland and Sweden, the laws constitute a ban on 'ethnic agitation', specified in the respective Criminal Codes.[4] In Denmark and Norway, the corresponding sections of the Criminal Codes are informally referred to as the 'racism paragraphs'.[5] Broadly speaking, these laws ban the act of expressing contempt for or promoting hatred towards a group of people with allusion to race, colour, ethnicity, or national origin.

As for bans on racist associations in national legislation, there is a larger variation between the countries. According to the Danish Constitution, associations formed for the purpose of committing unlawful acts can be dissolved through a court order (§ 78). Since hate speech is banned in the Danish Criminal Code, associations formed for the purpose of inciting ethnic hatred could, in principle, be dissolved. However, this possibility has never been used in Denmark.[6]

Sweden, meanwhile, has actively refrained from adopting legislation similar to that of Denmark. The argument for this has been that freedom of association is of such fundamental importance that it should not be possible to restrict it through ordinary law.[7] Although there is explicit constitutional leeway to ban associations whose activities 'constitute persecution of a population group on grounds of ethnic origin, colour, or other such conditions',[8] no ban has been put in place in the Criminal Code.

In Norway, the constitution does not explicitly permit restrictions on freedom of association, but according to case law, exceptions can be made in accordance with the European Court of Human Rights.[9] Historically, the Norwegian Criminal Code has prohibited participation in associations that encourage criminal offences.[10] However, when the current Criminal Code came into force in 2015, this ban was not carried over since it was taken to be too broadly applicable.[11] Despite its hate speech ban, then, Norway currently has no ban applicable to associations, even of the indirect (Danish) kind.

In Finland, finally, restrictions on freedom of association are specified in two places. First, the Criminal Code prohibits *participation* in the activity of an 'organised criminal group' (ch. 17, § 1a). The definition of such groups is specified in the Criminal Code and includes groups engaged in ethnic agitation (ch. 6, § 5(2)). Second, the Associations Act permits the *dissolution* of associations that (among other things) act 'substantially against law or good practice' (§ 43). In 2020, the Finnish Supreme Court ruled to dissolve the Nordic Resistance Movement based on the Associations Act (Kotonen, 2021). The court concluded that the association was unlawful both in that it violated fundamental rights enshrined in the constitution and in international human rights treaties, and in that some of the activities—such as the dissemination of texts constituting ethnic agitation—were contrary to the Criminal Code.[12] Furthermore, the court found the association not to be protected by the ECHR,

TABLE 2 Overview of Nordic bans on racist hate speech and racist associations

	Denmark	Norway	Finland	Sweden
Is racist hate speech banned?	Yes	Yes	Yes	Yes
Can racist associations be banned?	Yes (dissolution)	No	Yes (dissolution and participation)	No
Have racist associations been banned?	No	No	Yes	No

Note: See text for details.

since its intention to undermine the fundamental rights of others constituted an abuse of these very rights. The Nordic Resistance Movement was, however, the first association of its kind to be dissolved in Finland in over 40 years (a point to which we return in the next section).

The findings above, summarised in Table 2, show that the Nordic countries have a preference for banning expressions rather than associations. Whereas all four countries have adopted hate speech legislation, only two out of four have some form of association ban, and only one has ever dissolved a racist group. Finland thus stands out as significantly more repressive of racist associations than the other three: it has the strongest legal tools, and it is the only country that has put them to use. However, Finland also stands out in terms of its history—the factor to which we now turn.

Nondemocratic regime history and transition to democracy

Finland was the first of the Nordic countries to face a significant anti-democratic threat during the twentieth century. The Finnish Constitution was adopted in 1919, after independence from the Russian Empire in 1917, followed by a civil war between the socialist 'Reds' and the conservative 'Whites' (where the latter prevailed). In 1929, Finland started to drift towards authoritarianism with the formation of the right-wing protest Lapua Movement (Rainio-Niemi, 2019). Under pressure from the Lapuans, the Finnish Parliament enacted a number of laws intended for the repression of the Communists. This included an amendment of the Associations Act that gave the government wider powers to ban associations engaged in 'illegal activities' (Capoccia, 2005, pp. 160–162). The Lapua Movement pursued increasingly violent tactics, and following an armed insurrection against the democratic government in 1932, it was disbanded and subsequently banned—by virtue of the very legislation, it had itself advocated (Huttula, 2000, p. 430). Finland thus faced WWII as a parliamentary democracy, but joined forces with Nazi Germany against the Soviet Union during the so-called Continuation War (1941–1944) (Kivimäki, 2012). After negotiating peace with the Soviet Union, Finland was required by

the Moscow Armistice Agreement (1944) to 'dissolve all pro-Hitler organisations (of a Fascist type) situated on Finnish territory' (art. 21), which among many others included the parliamentary successor to the Lapua Movement, the Patriotic People's Movement (Karvonen, 1988). The fascist ban was carried over to the subsequent Paris Peace Treaty (1947, art. 8) and was put to use as late as 1977 when it formed the legal basis for dissolving a number of marginal neo-Nazi associations (Pekonen et al., 1999, p. 37). Only with the collapse of the Soviet Union in 1991 did these restrictions finally lose their relevance (Kestilä, 2006, p. 171).

Denmark and Norway faced anti-democratic threats that were quite different from the Finnish case. Neither country saw the rise of an anti-democratic party that manage to win more than a marginal share of parliamentary seats, or that threatened to establish authoritarian rule through the use of force. On the other hand, both countries were invaded by Nazi Germany in 1940 and faced occupation until 1945. The Danish government pursued a pragmatic strategy of 'cooperation' with Germany, which kept its existing political system largely intact (Lund, 2004).[13] The peaceful nature of the occupation led Germany to reduce its military presence to a bare minimum within weeks of the invasion (Déak, 2000). The Danish resistance movement actively restrained its use of violence, and the German countermeasures were relatively moderate (Pedersen & Holm, 1998). From 1943, the occupation took a more repressive turn following a period of civil unrest, after which the Germans introduced a state of emergency and the government resigned. When the occupation ended, suspected collaborators were tried for treason, but no bans were introduced on anti-democratic associations or propaganda. As described above, the Danish Constitution (adopted in 1953) does allow for the banning of associations with unlawful purposes; however, an association formed for the purpose of abolishing democracy is, in fact, considered lawful, as long as it aims to do so by parliamentary rather than by violent means.[14]

When Norway was invaded by German forces, the government fled into exile in London, from where it communicated with the resistance movement. For the remainder of the war, the Norwegian political administration was controlled by the occupying power. The Norwegian Nazi party National Gathering (*Nasjonal Samling*, NS) had been a minor player prior to the invasion; during the occupation, it came to form a collaborationist puppet government aiming at the 'Nazification' of Norwegian society (Hetland et al., 2021). Meanwhile, the exile government was working from London in preparation for a 'reckoning' with the collaborators (Seemann, 2020). In 1942, the exile government issued a decree banning membership in NS or any other organisation aiding or collaborating with the enemy. This decree was justified with the argument that '[t]he organization of traitors into parties constitutes a greater danger to the community than if traitors act only as individuals' (Wold, 1942, p. 507). When the occupation ended, NS was

dissolved and the public administration was purged of former members (Andenæs, 1979). Still, Norway refrained from introducing a permanent ban on successor parties or ideologically similar associations, opting instead for a libertarian constitutional approach in this regard (Niesen, 2013, p. 545). In fact, the postwar treason trials constituted something of a temporary anomaly in a country where the legal tradition has long been to punish unlawful *acts*, not group membership or even the joint formulation of illegal ideas (Dahl, 2006, p. 160). This has also been the prevailing view in the Norwegian Parliament with regard to racist associations (Larsen, 2016, p. 80).

Moreover, a plausible argument can be made that the experience of an oppressive regime could in fact make a state *less* likely to adopt an association ban (Kemmerzell, 2010). In Norway, the Standing Committee on Justice has taken the principled position that association bans should be used with restraint since they 'can be abused as an argument for limitations that go beyond the intended purpose and as an argument for totalitarian regimes'.[15] To such an explanation, one might add the experience of Norway's postwar reckoning, which was harsher than in many other European countries (Borge & Vaale, 2021). Due to the hard-line approach taken after the war, which included the revoking of civil rights for NS members, the societal costs of illiberalism became acutely evident (Dahl, 2006; Seemann, 2020). While any conclusive causal argument in this regard is beyond the scope of the present study, the Norwegian case clearly shows that a fascist occupation—even a repressive one—need not lead to association bans. Potentially, such an experience may even be part of a process leading to a libertarian outlook.

Sweden, finally, faced neither domestic anti-democratic threats nor foreign occupation during the war. In 1940, the Swedish Parliament nevertheless passed a temporary law allowing for the dissolution of associations aiming, among other things, to change the form of government through violent means or with the aid of a foreign power.[16] The law was renewed throughout the remainder of the war, but never put to use.

Summing up so far, we can see that the findings above do not appear to support Bleich and Lambert's (2013) explanation when it comes to the importance of nondemocratic regime control. In the Nordic region, Finland is the only country where the historical factor appears to have much explanatory power in accounting for the contemporary repression of racist associations. Indeed, the Associations Act, through which the Lapua Movement was banned, is the same law (though obviously amended) used to ban the Nordic Resistance Movement almost a century later. The Finnish case thus shows that an indicator simply measuring whether or not a country has experienced authoritarian rule is much too blunt. Together with the Danish and Norwegian cases, these findings also speak in favour of the claim that homegrown fascist threats result in harsher measures than do periods of fascist occupation. This was hypothesised by Bleich and Lambert (2013, p. 128)—the logic being that

states want to prevent history from repeating itself—but not supported by their findings.

International pressure

We turn now to the second explanatory factor: international pressure. Such pressure for a state to act can of course come in many forms. As we have seen, Finland was called on by the WWII peace treaties to ban fascist organisations, and more generally the Finnish government was mindful of how its actions were perceived by the Soviet Union (Kotonen, 2020). For the purposes of this study, however, the most significant source of international pressure is the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). ICERD was adopted by the United Nations General Assembly in 1965 and entered into force in 1969. According to Article 4 of the convention, its parties

> (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
>
> (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

As can be seen, these obligations potentially conflict with freedom of expression and freedom of association, respectively. Indeed, a number of countries issued reservations against Article 4 to the effect that the article cannot encroach upon civil liberties (Lerner, 1980, p. 156). When the Nordic countries ratified the convention in the years 1970–1971, they all did so without reservations. Prior to the ratification, the three Scandinavian countries revised their existing hate speech legislation to bring it in line with the convention, while Finland introduced a new hate speech ban in accordance with it. However, the four countries differ somewhat in the interpretation of their obligations, as well as in their compliance with recommendations issued by the governing body CERD (which lacks any formal jurisdiction over the state parties).

As mentioned earlier, the Swedish Instrument of Government does not permit the enactment of association bans for reasons other than those explicitly specified. When the Instrument was being revised shortly after the ratification of ICERD, it was therefore deemed prudent to introduce a provision that allowed

for the banning of racist associations, so as not to interfere with Sweden's convention obligations.[17] The fact that this provision has not been used to introduce an association ban in the Swedish Criminal Code has repeatedly been criticised by CERD.[18] Sweden has not, however, yielded to this criticism. In its correspondence with CERD, the Swedish government has instead argued that the hate speech ban constitutes a de facto ban on racist associations by forcing them into passivity.[19] As stated by a Swedish MP defending this approach, it is based on the principled belief that legislation should target 'what someone does, not what or who they are'.[20]

In Denmark, the CERD correspondence contains little criticism of legislation per se, but it expresses concern about the actual enforcement of this legislation. For example, CERD has noted that organisations using racial propaganda are not, in fact, declared illegal and dissolved.[21] A specific example concerns a local radio station, Radio Oasen, operated by a neo-Nazi association. When faced with criticism from CERD, the Danish government responded that, taking into account the right to freedom of expression, it would not consider changing the law in order to prevent Radio Oasen from broadcasting.[22] Demark has also resisted the call for an independent body for overseeing the decisions taken by the Director of Public Prosecutions, arguing that this 'would entail a departure from one of the most fundamental principles in Danish criminal procedure'.[23]

Despite its far-reaching Associations Act, Finland has been criticised by CERD for lacking a ban on *participation* in organisations that promote racial hatred.[24] Initially, Finland countered this criticism with reference to the freedom of association guaranteed by the constitution, the fact that acts of hate speech are banned in themselves, and the fact that associations as such can be dissolved on the grounds of racism.[25] In 2000, however, the Criminal Code was amended due to obligations under the European Joint Action on making it a criminal offence to participate in a criminal organisation.[26] The Finnish government deemed that the existing legislation had proven adequate with regard to racist associations; still, because the Criminal Code was being amended anyway, the government conformed with the CERD recommendations.[27] In 2011, the hate speech ban was revised to target the digital spreading of racial propaganda in order to comply with the Council of Europe Convention on Cybercrime.[28] An aggravated offence was added at the same time, in conjunction with broader revisions of penalty scales following the Finnish ratification of the Rome Statute of the International Criminal Court.[29] Overall, then, Finnish legal reform has clearly been influenced by international obligations, but pressure related specifically to racist associations and hate speech appears to have played a largely incidental role.

Norway, finally, has been criticised by CERD for both the absence of an association ban and an alleged failure to adequately prosecute racist hate speech.[30] In a much-publicised court case in 2000, the leader of a neo-Nazi

group known as the Boot Boys, Terje Sjølie, was prosecuted for having held an anti-Semitic speech during one of the group's rallies.[31] Sjølie was acquitted by the Supreme Court, which found that 'support of the Nazi ideology cannot simply be assumed to include acceptance of mass extermination or other systematic and serious acts of violence against Jews or other groups' (Wessel-Aas et al., 2016, p. 31). Moreover, the court found that a conviction of Sjølie would be equivalent to a de facto ban on Nazi organisations, which would be taking § 135 of the Criminal Code (the racism paragraph) too far. Following criticism from CERD, The Norwegian Minister of Justice and Police promised to abide by its recommendations (Bangstad, 2014a, p. 273). A state investigation into amending § 135 was initiated, where particular attention was to be paid to CERD's recommendations.[32] The racism paragraph was subsequently amended in multiple ways, including the addition of a ban of symbols and a lowering of the threshold for when hate speech is considered 'public' in legal terms. As these amendments were debated, the Minister of Justice made a point of the fact that, due to an increasing number of international commitments, the Criminal Code was no longer a strictly national matter (Myhrer, 2008, p. 41). At the same time, Norway continued to disregard CERD's call for an association ban, arguing—much like Sweden—that anti-extremist legislation should target actions rather than associations.

Summing up this section, we can see that there is some evidence that international pressure matters. At the same time, the states are clearly not afraid to ignore CERD recommendations when they wish to do so. Most notably, the three Scandinavian countries have all resisted the pressure for association bans (either in terms of legislation or enforcement), opting instead for stricter hate speech bans. In addition to the historical differences noted earlier, a plausible (if tentative) explanation for this variation can be found in the uniquely strong historical link between social movements, voluntary associations, and political parties in the Scandinavian countries (Klausen & Selle, 1996). The absence of bans, that is, is perhaps not that surprising given that voluntary associations 'have played a larger role in the Scandinavian countries than in almost any other country' (Goul Andersen, 1996, p. 77).

Problem solving

From a comparative European perspective, the Scandinavian countries were early adopters of hate speech bans. This appears to have been driven mainly by problem-solving concerns, specifically to protect Jews from persecution. Denmark introduced its ban on hate speech already in 1939, as a response to the increasing anti-Semitism emanating from Germany.[33] Norway introduced its racism paragraph in 1961 in response to a wave of anti-Semitic attacks in Western Europe (Bangstad, 2012). In Sweden, the legislation appears to have been driven by a combination of problem solving and international pressure.

In the mid-1940s, the notorious anti-Semite Einar Åberg started translating and distributing propaganda to other countries, but the Swedish government downplayed the severity of his actions (Brå, 2001, p. 12). Not until the American Jewish Committee reached out to Swedish authorities, calling attention to Åberg, was he convicted of disturbing the public order. Two years later, in 1949, the hate speech ban was introduced into the Criminal Code.

As described earlier, the hate speech bans were revised in the early 1970s to better reflect the content of ICERD. After this, each Nordic country has made additional revisions at least once, as shown in Table 3. With some exceptions, these revisions appear to have been driven primarily by problem-solving

TABLE 3 Timeline of racist hate speech legislation

Year	Denmark	Norway	Finland	Sweden
1939	Hate speech ban (anti-Semitism)			
1949				Hate speech ban (anti-Semitism)
1961		Hate speech ban (anti-Semitism)		
1970–1971	Revised ban (ICERD)	Revised ban (ICERD)	Hate speech ban (ICERD)	Revised ban (ICERD)
1983				Revised ban (broader protection)
1989				Revised ban (broader applicability)
1995	Revised ban (aggravation)			
2003		Revised ban (symbols)		Revised ban (aggravation)
2006		Revised ban (increased penalty + broader scope)		
2011			Revised ban (aggravation)	
2015		Revised ban (broader scope)		

Note: See text for details.

Abbreviation: ICERD, The International Convention on the Elimination of All Forms of Racial Discrimination.

concerns. In Denmark, the ban was revised in 1995 to the effect that dissemination of hate speech material 'of a propagandistic nature' constitutes an aggravating circumstance. The reason for this change was the perception that neo-Nazis, from Germany in particular, were increasingly using Denmark as a sanctuary from which to disseminate racist material.[34]

Sweden similarly made two changes to the hate speech ban in the 1980s due to problem-solving concerns. In 1983, the law was reformulated in response to difficulties encountered in legal practice: prior to the amendment, it had been difficult to prosecute hate speech that was directed at immigrants in general, as opposed to more clearly defined ethnic groups.[35] In 1989, the ban was again revised by dropping the requirement that hate speech be directed at the public. This was again driven by difficulties encountered in legal practice, for example, the fact that the law was not applicable to dissemination of hate speech within schools.[36] In 2003 (similar to Denmark in 1995), the Swedish ban was expanded with aggravating circumstances, justified by the increased presence of racist associations in Sweden since the 1990s.[37] The idea of an outright ban on racist associations has been considered and rejected many times in Sweden. In the spring of 2021, however, a commission of inquiry backed by a parliamentary majority proposed that a ban on 'organised racism' be introduced into the Swedish Criminal Code.[38] The commission found that the problem of organised racist persecution had increased to a level where a prohibition of participation in racist groups was now justified. High-profile events also served as a catalyst: the Swedish Minister of Justice raised the issue following the Nordic Resistance Movement's intimidating presence during the political event 'Almedalen Week' in the summer of 2018 (Sveriges Radio, 2018). However, the commission's draft bill was strongly criticised by a large number of civil society organisations during the public hearing process (Johansson et al., 2021). At the time of writing, no proposal for an association ban had been submitted by the government.

In Norway, as we have seen, some of the major legislative reforms have coincided with international pressure in the form of CERD recommendations. At the same time, however, they have also coincided with a more general debate in Norway about striking an appropriate balance between freedom of expression and protection from hate speech (Bangstad, 2014b; Høy-Petersen & Fangen, 2018). This issue rose to the top of the political agenda in 1997, when the leader of a small neo-Nazi party was convicted of racist hate speech. A Supreme Court minority voted to acquit, arguing that a conviction would amount to a ban on political speech, which is expressly protected by the constitution.[39] Unlike earlier cases relating to the racism paragraph, this case sparked an intense public debate (Bangstad, 2012). This debate was then revitalised by the subsequent acquittal of Sjølie (described above) in 2000. Given that the issue was high on the national political agenda, then, it is difficult to assess how crucial international pressure was as a driver of legislative reform.

Something that speaks against international pressure as a necessary factor is that although the subsequent amendments did conform with CERD recommendations, not all recommendations were, in fact, heeded (most notably the call for an association ban).

Finland, finally, is the country where convention obligations (albeit not necessarily pertaining to ICERD) appear to have mattered most for legislative reform. In terms of actual enforcement, however, problem solving has played a key role. In the 1970s, the airing of a documentary about a small but active neo-Nazi organisation caused a public uproar, after which the group was dissolved (Yle, 2015). Its supporters responded with a series of violent acts, culminating with the prosecution and conviction of the group's leader (Kotonen, 2020). More recently, the Nordic Resistance Movement had been on the radar for years, until legal action was triggered by a high-profile event where one of its members assaulted and seriously injured a passer-by during one of the group's rallies (Sallamaa & Kotonen, 2020). The fact that association bans are only rarely enforced in Finland means that, even though the Finnish case stands out in a Nordic comparison, it is still much less repressive than are some other European countries (cf. Bleich & Lambert, 2013).

CONCLUSIONS AND DISCUSSION

How and why do liberal democracies differ in their legal responses to organised racism? Earlier research has argued that states with a history of nondemocratic regime control in the twentieth century are more likely to ban racist groups (Bleich & Lambert, 2013). Although this explanation is probabilistic rather than deterministic, all states with a nondemocratic regime history surveyed by Bleich and Lambert have adopted some kind of association ban. In this study, however, I have found that the previously overlooked Nordic region speaks against this explanation.

In spite of the experience of Nazi occupation, Norway has refrained from adopting a ban on racist associations, and Denmark has refrained from enforcing a more general association ban that could technically target racist groups. The Norwegian case, in particular, shows that, even with the experience of an oppressive fascist occupation, a state can opt for a liberal approach to racist associations. Finland, meanwhile, is a more convincing case for the claim that authoritarian experiences in the past—in particular homegrown ones—make states more likely to ban racist groups. The Finnish legislation can be traced to the interwar era, which saw the dissolution of the Soviet-backed Communists in the 1920s, and then of the right-wing Lapua Movement, which brought Finnish democracy to the brink of collapse in the 1930s. This shows that, even if an authoritarian threat is not fully realised as a nondemocratic regime, it may be just as important in accounting for association bans. In other words, the explanatory power of historical legacies cannot be reduced to a

binary indicator. The Nordic findings are thus in line with research showing how historical contexts can shape responses to extremism in a multitude of ways (Art, 2006; Bourne & Casal Bértoa, 2017; Kemmerzell, 2010; Moroska-Bonkiewicz & Bourne, 2020).

Moreover, this study has shown that the absence of association bans cannot be plausibly attributed to a lack of 'situational triggers' that catalyse the adoption of new legislation. Because of the high value placed on freedom of association in the Scandinavian countries, however, such triggers have instead resulted in expanded hate speech bans. Although this constitutes repression by other means, it targets *actions* rather than *associations*, and it has the less militant aim of undermining rather than of ending racist groups (cf. Bleich & Lambert, 2013, p. 126). Most instances of legal reform analysed in this study can be understood as 'problem solving' in response to either an increasingly salient threat (e.g., neo-Nazi mobilisation) or to difficulties encountered in legal practice. That is not to say that international pressure, such as obligations under the ICERD convention, is unimportant. However, such pressure seems to result in legal reform mainly if (a) the relevant laws are being amended anyway, or (b) if it coincides with problem solving. Rather than blindly bending to international pressure, then, the Nordic countries strive to maintain law-making autonomy in their response to organised racism. That said, the two kinds of factors can clearly interact.

Where, then, do we go from here? Based on the findings in this study, a promising way forward would be to shift the analytical focus from discrete explanatory factors to an analysis of the *process* by which new legislation is adopted. Stated otherwise, such an approach would open up the black box of 'problem solving' by focusing on *how* the issue of anti-racist legislation gets on the political agenda, and *why* certain solutions (rather than others) are adopted. This would allow different factors to interact, enabling a closer examination of why a state might prefer a hate speech ban to an association ban, and tracing of the mechanisms that lead a state to take a liberal rather than a repressive approach to organised racism. It would also be compatible both with a historical-institutionalist understanding of how earlier legislative choices constraint subsequent ones (see e.g., Capoccia, 2016; Pierson, 2004; Thelen, 1999), and with accounts of how history constitutes a collective 'memory' that actors mobilise for different political purposes (cf. Moroska-Bonkiewicz & Bourne, 2020). In the end, historical legacies clearly matter for state responses to racist associations, but more research is needed to uncover the process by which the former shape the latter.

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ENDNOTES

[1] Their independent variables are (1) a nondemocratic regime history, (2) ratification of ICERD without reservations and/or within 5 years and (3) a far-right party in the national parliament (as a proxy for high levels of racism). Their dependent variable measures the level of repression using the categories (1) low, (2) low-medium, (3) medium, (4) medium-high and (5) high.

[2] Formally the Convention for the Protection of Human Rights and Fundamental Freedoms.

[3] ECHR 35943/10, Vona v. Hungary 2013-07-09, p. 28.

[4] Ch. 16, § 8 of the Swedish Criminal Code; ch. 11, § 10 of the Finnish Criminal Code.

[5] § 266 b of the Danish Criminal Code; § 135 of the Norwegian Criminal Code.

[6] In modern times, only one association has been dissolved in Denmark on the basis of unlawful activity: the criminal gang Loyal to Familia (Østre Landsret S-335-20, 2020-11-12).

[7] Lagrådet 2019-03-20, pp. 14–15.

[8] Swedish Instrument of Government, Article 24.

[9] HR-2016-2554-P, pp. 13–14.

[10] § 330 of the 1902 Criminal Code.

[11] Ot.prp. nr. 8 (2007–2008), p. 229.

[12] HD:2020:68, S2018/698.

[13] See Dethlefsen (1990) for a discussion about the linguistic nuances of 'cooperation' and related terms.

[14] SOU 2021:27, p. 112.

[15] Innst. O. nr. 29. 2002–2003, p. 3.

[16] Prop. 1940:260.

[17] SOU 1975:75, p. 132.

[18] For example, CERD/C/304/Add.37; CERD/C/304/Add.103; CERD/C/64/CO/8; CERD/C/SWE/CO/18.

[19] For example, CERD/C/SWE/22-23, p. 18.

[20] SOU 2021:27, p. 297.

[21] CERD/C/304/Add.35, p. 3.

[22] CERD/C/496/Add.1, p. 14.

[23] CERD/C/DNK/CO/18-19, pp. 2–3; CERD/C/DNK/20-21, p. 9.

[24] CERD/C/304/Add.7, p. 2.

[25] CERD/C/320/Add.2, p. 35.

[26] Council of Europe L351, 1998.

[27] That is, by making the crime of participating in the activity of an organised criminal group applicable to associations engaged in ethnic agitation (RP 183/1999).

[28] RP 317/2010, p. 12.

[29] LaUB 1/2008 rd, p. 3.

[30] For example, CERD/C/304/Add.40; CERD/C/304/Add.88; CERD/C/63/CO/8; CERD/C/NOR/CO/19-20.

[31] HR-2001-01428.

[32] NOU 2002:12.

[33] Bt. 553-1969, p. 34.

[34] Lovforslag nr. L46 1994, p. 529. Propaganda is understood to be systematic, intensive or continuous efforts with a view to influencing opinion formation (CERD/C/496/Add.1).

[35] KU 1981/82:24, p. 4.

[36] Prop. 1986/87:151, p. 109.

[37] Bet. 2001/02:KU23

[38] SOU 2021:27.

[39] Norwegian Supreme Court (Rt. 1997/1825).

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