

# **Nordic Prostitution Policy Reform Project**

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A historic comparative analysis of pornography legislation**

**Inga Margrete Ydersbond**

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## **The “promiscuous” and the “shy”: Denmark and Norway - A historic comparative analysis of pornography legislation**

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### **ABSTRACT**

This paper seeks to explain why the two neighbouring Nordic countries Norway and Denmark, despite many political and cultural similarities, have had very different legal frameworks regulating pornography. Denmark was the first country in the world legalizing both literary (1967) and pictorial pornography (1969). Norway, on the other hand, to this date has had one of Europe’s strictest regulations, and legalized “hardcore” pornography as late as in 2006. Through combining the method of “most similar designs” with process tracing, this paper makes a historical comparative analysis of the political development leading to the different legislative outcomes. The paper argues that there are several reasons why the countries’ legislations represent opposite ends of the spectre in Europe. First, Christian conservative values have been much more widespread in Norway than in Denmark, as seen by an influential Christian Conservative party and massive popular resistance against liberalization in the four decades after World War 2. Second, Feminist groups in particular, but also Christian organizations and others mobilized massively against legalization in the 1970s and 1980s, contributing to keeping up strict regulations. Third, early legalization was to a much larger extent in Denmark than in Norway supported by the rulings of the court system. Fourth, prominent Danish intellectuals also contributed to a more liberal attitude in the public opinion, while liberal intellectuals in Norway met harsh resistance from other intellectuals and the public in general. The legalization in Norway came only after society, much as a result of influence from abroad, as a whole gradually had changed its attitude towards pornography.

## INTRODUCTION

Norway and Denmark are very similar countries culturally, politically and religiously. They were under the same crown for about 400 years, until 1814, and maintained strong contact also after 1814. Despite all similarities, the legislation on pornography has represented two extremes in a European context. Denmark legalized written pornography in 1967 and pornographic depictions in 1969 as the first country in the world. In Norway, on the other hand, few topics than pornography have stayed more constantly in parliamentary focus and been more politicised the last five decades. Although pornography was legalized in 2006, Norway seemingly still has one of the strictest regulations in Europe (Kutchinsky 1992a, State Film Authority 2000, Rolness 2003, Hansen 2005). The field of pornography regulation can, in general, be studied within many academic fields, including sociology, psychology, criminology, media studies and legal studies. In Norway, however, the legal and political processes have hardly been studied comprehensively by any of these disciplines. In addition, to my knowledge no research has surveyed this kind of legal and political comparison from a political science perspective. Therefore, the main question addressed in this paper is:

*Which factors can explain the fairly large differences between Denmark and Norway regarding legislation of pornography, both in the content and in the timing of liberalization?*

First, pornography will be defined. Second, the method in this study will be introduced and discussed. Third, the legal and political developments in Denmark and Norway are presented. Last, the paper analyses and discusses possible explanatory variables.

## **Definitions**

Pornography may be defined as "Representation of sexual behavior in books, pictures, statues, motion pictures, and other media that is intended to cause sexual excitement" (Encyclopaedia Britannica 2010). While this may be a good working definition, in its strictest interpretation it would classify thousands of romantic novels, short stories, art and not the least normal media productions as pornography. Some degree of sexual excitement may be said to be an intended side effect among the users of all types of art productions. However, media productions with erotic content are seldom regarded as pornography, and such written material is usually classified as erotica. In Norway, "hardcore" porn as a legal term is used about explicit descriptions or depictions showing genitals involved in sexual activity. In practice, this expression mostly has referred to pictures showing penetration by males. "Softcore" is used as a term for all other forms of pornography that are regarded as "normal" and harmless, such as depictions of naked people. While there is usually little disagreement on the classification of hardcore pornography, it is in practice impossible to draw a clear distinction between erotica and softcore pornography (Rolness 2003:13). The word, which stems from Greek *porne* and *graphos*, can be translated as "writing about (describing) prostitutes" (Encyclopaedia Britannica 2010).

## **METHOD AND DATA**

The method employed in this study will be comparative-historical case study combined with process tracing. The historic comparative method is characterized by employing most similar cases spatially, and where the "temporal aspects include the causal factor(s) of special interest" (Gerring 2007:212). The idea behind the methodology is similar to that of experimental logic. The goal is to compare cases with the same values at most independent variables except for ideally only one variable which have different outcomes on the dependent

variable. Through elimination of all similar variables, the one or few variables that are different will explain the variation on the dependent variable. The origin of most similar systems design stems from “the method of difference”, which was first formulated by John Stuart Mill in his book *A System of Logic* from 1843 (George and Bennett 2005:153, 156, Gerring 2007:131, 215). Here, the main focus will be on the decades after World War 2, because in this period, Denmark and Norway changed their legal frameworks regulating pornography from prohibition to legalization.

There are several advantages as well as disadvantages with the comparative method employed on such cases (Lijphart 1971, Frensdreis 1983). The typical advantages with case studies will also be an asset in this study. These for example include researching a phenomenon in depth through collecting “thick data”. Another advantage is achieving a high degree of measurement reliability and internal validity regarding causal mechanisms by using methods such as process tracing. The large number of variables characteristic for small-n-studies might, however, causes problems with multi-causality (equifinality) and possibly collinearity. Many determinants, as well as interplays between them, may lead to the same outcomes on the dependent variable (Lijphart 1971:691, George and Bennett 2005). Here, this challenge for example appears when features such as Christian conservatism, anti-pornography feminism, as well as political strategies to gain voter approval all can be claimed to explain the difference in the legal framework between Norway and Denmark. Which of these factors is then the most important in each stage of the legal development, and do they affect each other? If so, how has this happened?

To reduce the problems of many variables, Lijphart (1971:690) advises to focus on key variables. In this study, this is attempted through focusing on the main explanatory variables in the discussion. George and Bennett (2005:156, 206-215) emphasize that most similar designs alone rarely are sufficient to establish causal explanations if they are not

combined with *process tracing*. By process tracing, the researcher can test theories in cases characterised by multiple interactions between the independent variables. This technique makes it, in principle, possible to identify the causal chains and the causal mechanisms between the independent explanatory variables and the outcome on the dependent variables. Therefore, it can compensate for the limitations in controlled comparison. Here, process tracing is performed by studying historical and analytical documents from and about the different debates accompanying the introduction of new laws, as well as analyses of the societal contexts around the development of the legal framework. The legal development and parliamentary debates on pornography legislation are closely connected to actions by agents in civil society, such as publishers and non-governmental organizations. Therefore, these agents and their activities are included in the analysis.

Limitations with a small-n study such as this can be small potential for generalization, and thus low external validity (Gerring 2007:38, 43, 49). As this is a controversial field, where conflict lines and the activist groups involved also occur in other countries, the observations and conclusions can at least be used for generating hypotheses for research on the legal development in other Western states. Case studies require a large amount of information regarding the cases and their *context* in order to analyse causal mechanisms properly (George and Bennett 2005). Here, process tracing and causal analysis require, ideally, profound knowledge about the political and social context around the political processes and debates leading to implementation of new legislation in Norway and Denmark. The attainment of such knowledge is approximated through document analysis of different historic texts. These include accounts from the people who participated in the political debates, reading related newspaper articles, going through legal documents, as well as review of the research on the topic. Still, there remains a danger of omitted variable bias; that some explanatory factor is overlooked in the analysis, and the debates may also be misinterpreted.

In particular, when there is a large element of “symbol politics” in the public discourse, it may not fully reflect the underlying political and institutional processes. Such problems do not invalidate process tracing, but rather demonstrate the need for doing it in a very thorough manner.

### **DENMARK – “A SOCIAL EXPERIMENT”**

A general prohibition against so called “indecent publications” in all forms was proclaimed in 1743. Censorship in general ended with the change of political regime in 1848, when the king's “enevelde” was abolished. However, after a public debate, the Publishing law (1851) was formulated so that those who published obscene writings and similar material could be punished (Hertoft 2008:145, 146). In 1933, the penal code of 1930 entered into force with a considerably expanded paragraph about pornography. Public speeches, exhibitions and displays of obscene content were prohibited and to be punished by law (Hertoft 2008:146, citing Kutchinsky 1992). However, in what may be seen as an implicit legal distinction between “hard” pornography and “soft” erotica, “nude-magazines” featuring naked people in “natural” positions were legal (Thing 1999). In the 1950s, pornographic/erotic books were published more and more frequently, testing and pushing the limits of legislation. This did however not pass without controversy. Publishers of several such books were sued in court, and the police frequently confiscated the literature. Gradually, during the 1960s, the Danish courts freed more explicit literature from charge (Thing 1999, Hertoft 2008).

The most famous of these cases is the “Fanny Hill”-case, where the publisher of John Cleland's erotic/pornographic classic from 1749 won the case by a narrow margin in the Danish Supreme Court. The Chief prosecutor of state decided to charge the publishers of “Fanny Hill. Memories of a woman of pleasure (1749)” in 1963, which previously had been published in several other western countries (Hertoft 2008:103, 105). This came as a large



surprise to the publishers, Thaning & Appel, because several books of erotic/pornographic nature, such as *Kama Sutra*, the latest years had been published without legal interference. The publishers was freed of charges in courts at all levels, but won by very narrow margins (Hertoft 2008:114, 115, 121). Kutchinsky (1999:82) notes that hardly any books were liable to prosecution after the Fanny Hill case. After this, many publishers competed in finding titles in order to exploit the new legal liberalism and curiosity about erotic books (Kutchinsky 1999:85).

*Straffelovrådet* was established by the Danish ministry of justice in 1960 to consider a row of juridical questions as well as contribute in international cooperation (Hertoft 2008:108). In 1964, the Ministry of Justice recommended a review of the scientific evidence connected to harmful effects of pornography. Shortly after the Fanny-Hill case, Else Merete Ross from *Det Radikale Venstre* (the Social Liberal Party) asked the social democratic minister of Justice whether it was time for invalidation of § 234 in the Criminal Code in a questioning in the Parliament. She argued that it should not be the state's role to enforce the moral of some groups to the cost of other groups, and that grownups should be allowed to take interest in whatever they wanted as long as it did not hurt others (Thing 1999:138). Thing (1999:139, 140) points out that this perspective was cultural relativistic, and that this trend was much more marked in Denmark than in many other countries.

The review from *Straffelovrådet* was inconclusive, because solid scientific evidence did not exist on pornography's effect on society, groups or single persons (Thing 1999:140). Later, the council expressed concerns that the present pornography legislation gave the police and prosecuting authority an immense amount of work. Thus, it could be questioned if this law enforcement was at large gainful for society. In addition, it reminded that already books with so explicit and detailed descriptions of sexual life were published that considerable liberalisation in reality already had taken place. Therefore, *Straffelovrådet* concluded that the

authorities could either keep the old rule, or end the prohibition on written pornography completely (Hertoft 2008:109). In addition, private citizens mobilized for a more liberal legal framework. They stressed that the present legislation was unfair because the people who knew foreign languages and who “had the money”, had access to pornography, but not the “common man” (Kutchinsky 1999:65, 66).

In the 1960s, consumption of pornography rose sharply in Denmark. Some periodicals showed increasingly provoking photos, in part to test and push the limits of legality. Often the court rulings led to freeing of charges, which made it hard for the police to judge whether or not published material was legal (Hertoft 2008:122). From the successful release of the first petting magazine in 1965, picture pornography was soon to be seen everywhere, according to Kutchinsky (1999:86). In January 1967, the police conducted its last large action against pornography, and confiscated magazines at the worth of 10 million Danish kroner. According to Thing (1999:142), the real motivation for this activity was the involved police department’s fear of being closed down upon legalization. The main effect was that the porn producers went underground. This development gave rise to new markets for pictures of pornography of all kinds that were called “hardcore porn”. The editors of the hardcore picture magazine called *Politisk Revy* (Political Cabaret) were convicted in the county and regional court in 1967 and in the Danish Supreme Court in 1968.

Literary pornography was legalized through law change in Denmark in June 1967 with 159 against 13 votes (Thing 1999:140). Two years later, in 1969, all pornographic material was legalized with 125 votes for, 25 against and 4 abstentions (Thing 1999:147). One important reasoning behind the law changes was that permitting pornography would decrease interest, because it would not be as exciting and attractive any longer (Hertoft 2008). The legalization of all pornographic material in 1969 was based on the observation that legalizing pornographic books seemed to have the desired effect of reduced demand following

liberalization in 1967. However, according to Hertoft (2008) and Kutchinsky (1999), the real reason for the reduced demand was market saturation from the excess production of pornographic material following the liberalization. The idea of complete legalization was launched in a speech at the summer meeting for the Conservatives by the conservative Minister of Justice, Knud Thestrup (Hertoft 2008:122, 123).

This contradicted *Straffelovrådet*, which did not want to lift the ban, and stated that pictures had a stronger and more immediate effect on the viewer, and that legalization would lead to an increase in production and distribution, an increase in violation of decency and other people's feelings. In addition, it stated that legalization probably would lead to increased consumption of porn among children and youth (Hertoft 2008:124, 125). The Conservative party traditionally supported civic values and deeds, but at the same time it was against public censorship of literature for adults. Thestrup was originally sceptical towards liberalization of pornographic literature. Still, he was the person who proposed the legalization based on the experience of declining sales of pornographic literature (Hertoft 2008:122, Aarhus University 2009a).

The liberalization led to the development of a large pornography industry in Denmark the following years. Denmark soon became known internationally for this, and it became an additional attraction for tourists worldwide. Several strip clubs and escort services were established in Danish cities, offering all inclusive "sex-packages" (Hertoft 2008). Tourists coming to Denmark in this period could see pornographic pictures on virtually every corner. Some have claimed that pornography became a major export industry, but according to Hertoft (2008), pornography contributed to 2-3 percent of the Danish export at its peak. Kutchinsky (1999:90) estimate that in 1969, the total retail sales were between 50 and 70 million dollars. Furthermore, after a few years, the police and court intervened in strip clubs, brothels and the like, which essentially led to eradication of the public branches of these parts

of the industry (Hertoft 2008). Politicians and scientists both in Denmark and internationally were curious about the consequences of the legalization. Research conducted by the psychologist and criminology professor Berl Kutchinsky indicated that the legalization of pornography did not spark a rise in sexual abuse. Rather on the contrary: sexual abuse had declined after the legalization (Kutchinsky 1991, Kutchinsky 1999, Thing 1999:147). This pioneer research made him internationally renowned (Hertoft 2008). The results stood in sharp contrast to many people's notions of pornography as something detrimental and leading to increased rates of sexual crime. However, Kutchinsky was also criticized for his scientific methodology. His findings were claimed to be invalid, which he refuted strongly himself<sup>1</sup> (Kutchinsky 1992b).

Thing (1999:148) notes that at the feminist movement *Rødstrømpebevægelsen* (The red stocking movement), appeared at about the same time as pornography was legalized. Similar to other feminist movements, it criticised pornography for being oppressive to women, because it reduced them to sexual objects. Sadist porn was especially harmful, according to these feminists, and showed "the truth" about men's sexuality. The other marked opposition against the legalization came from some Christian groups. In the beginning of the 1970's, people inspired by the success of the Norwegian Christian Democratic Party, and protesting against the legalization of pornography, the introduction of sex-education and the right to abortion founded *Kristeligt Folkeparti* (the Christian Folk Party). Later this party changed its name to *Kristendemokratene* (the Christian Democrats). The party got 4,0 percent of the votes in the 1973 "earthquake" election, but competed with other protest movements. After 1977 it played only a peripheral role (Kutchinsky 1999:75, Heidar and Bakke 2008:77, Aarhus University 2009b).

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<sup>1</sup> E.g. Steven Alan Childress (1992). "Pornography, "Serious Rape" and Statistics, a Reply to Dr. Kutchinsky", *Law and Society Review*, 26, pp. 456-456.

After the 1970's, the only important legal changes in Denmark have been the introduction of a 1980 ban and later amendments of the laws regarding child pornography. In December 2003, the European Council enacted Council Framework Decision 2004/68/JHA in order to combat child pornography and harmonize the legislations in the member states (European Council 2004, Kierkegaard 2008:45). These developments generally led to stricter laws on child pornography, especially in Denmark. Today, the Danish police compiles a list of sites offering child pornography and cooperate with the internet service providers which block them (Kierkegaard 2011:582). On the other hand, "normal pornography" is still widely available and easily accessible. In 1999, *Kanal København* (Channel Copenhagen) started broadcasting freely available hardcore pornography to the public at night (Kanal København 2010). With the development of a multitude of competing distribution channels, most of the old pornography stores have been closed down. During the last years, the public debate has seemingly become somewhat more critical towards the issue (e.g. Krog-Meyer 2002, Henriksen 2008).

### **NORWAY: JURIDICALLY ILLEGAL, BUT OFTEN ALLOWED IN PRACTICE**

There are long traditions for concerted action against sexuality in general and pornography in particular in Norway. For example, in 1948 there was a protest movement gathering 400 000 signatures against provision of condoms to the Norwegian soldiers in *Tysklandsbrigaden* (the Norwegian troops in Germany) (Tessem 2012). Rolness (2003:238, 239) maintains that the paragraph in the Criminal Code about pornography, § 211<sup>2</sup>, has spurred more controversy and discussion in Parliament than any other in Norwegian history. Between 1902 and 1985, it was only subject to minor changes. The paragraph prohibited distribution and publication of obscene (i.e. might impede sexual moral or decency) writings, pictures and similar material.

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<sup>2</sup> Today, the legal framework on pornography is described in § 204 in Norway's Criminal Code. § 2011 was repealed 11. August 2000.

Obscene was viewed as what might impede sexual moral, or people's decency. To qualify, the creator's motive had to be arousal as well as that the depiction or writing was derogatory and intimidating for the viewer (e.g. Enger 2007). Like many other countries with similar legislation, for example in Great Britain<sup>3</sup>, the definition of "obscenity" has become narrower over time. Accordingly, jurisdiction has gradually permitted more and more sexual depictions, until there in practice was legalization in Norway in 2006.

In the beginning of the 1930's, the doctor and health pioneer Karl Evang wanted to work for a better public view of moral, sexuality and body, according to Ebbestad Hansen (2011a and 2011b). Evang did this through being the initiator and a co-writer in *Populært Tidsskrift for Seksuell Oplysning* ("Popular Magazine for Sexual Enlightenment") from 1932 to 1935, writing articles, holding speeches and performing illegal abortions. A main target was to spread knowledge about prevention and spread knowledge about sexual issues, but also fight what he perceived as the hypocritical sexual moral at the time. He met massive criticism, and was accused of being Norway's largest criminal and a youth deceiver. Evang's science-based magazine was charged of being pornographic by different Christian groups (Evang 1962, Ebbestad Hansen 2011a, Store norske leksikon 2012).

After the World War 2, a row of magazines with softcore/erotic content were launched in Norway. *Krydder* ("Spice") was first published in 1946, and *Coctail* was published in 1950. In 1952, the councils in 150 municipalities, all the Norwegian bishops and *Norske Kvinners Nasjonalråd* ("Norwegian Women's National Council" protested against *Coctail* and other publications in the same genre<sup>4</sup>. Thore Lystad, the publisher of other magazines in this genre, such as *Paris Tabou*, was convicted in Norway's Supreme Court in 1954 for publishing

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3 E.g. The Crown Prosecution Service (2012).

4 Such publications with sex/crime topics were popularly called "*smusslitteratur*" (Ebbestad Hansen 2011a:21).

magazines that depicted a sexual relationship between two women. Homosexuality was illegal until 1972. On the other hand, Lystad was not evicted for other series of pictures displaying sexualized nudity as a violation of § 211 in the criminal sense, although the court stated that the pictures clearly were lewd. Despite harsh and widespread popular resistance, publishers launched gradually more sexually explicit erotic/softcore magazines (Enger 2007:24-25, Ebbestad Hansen 2011a:23-34, 128-129). Further, the Kinsey reports about men's and women's sexuality were perceived as a large threat to Christian groups and cultural conservative people when they were published in 1947 and 1953<sup>5</sup>. This group included virtually all publicly known Christians Norway, such as Per Lønning, later to be bishop, the Christian Newspaper *Vårt Land* ("Our country"), and several prominent persons such as Minister of Justice, Jens Christian Hauge. In particular, a group of called *Den annen front*, marked itself as being sceptical towards the new tendencies of sexual emancipation (Ebbestad Hansen 2011a).

A small group of cultural liberals and cultural radicals, on the other hand, were positive to the Kinsey Reports and honed them for showing an honest picture about people's sexual life. This group defended pornographic/erotic literature and publications about sexuality, and included famous authors such as Andre Bjerke, Jens Bjørneboe and Agnar Mykle. Others were psychologists, such as the famous psychologists Ingjald Nissen and some literary critics. Their argumentation rested on several grounds, such as the liberating effect on people's sexuality and being positive stimulation for a healthy sexual life (Ebbestad Hansen 2011a:81-123).

In the 1950s and 1960s, there were court cases against the Norwegian author Agar Mykle's book *Sangen om den røde rubin* ("Song about the red ruby" 1957-58), the American

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<sup>5</sup> The book about women's sexuality was translated to Norwegian and published in 1954.

author Henry Millers “Sexus” (1959) and the radical Norwegian author Jens Bjørneboe’s book *Uten en tråd* (“Without a Stitch”, 1966). Mykle and his publisher Harald Grieg in Gyldendal were cleared after long procedures in one of the most famous court cases in Norwegian history in 1957-1958. Still, the rest of the books editions for sale were confiscated. Later, the Norwegian Supreme Court noted its strong artistic qualities, reversed the judgement and thereby permitted sale of the book<sup>6</sup>. Bjørneboe and his publisher’s convictions were, on the other hand, upheld in Supreme Court. His book was perceived as more or less purely pornographic, and it counts among his least important works (Wandrup 1984, Heger 1994, Sabo 2005, Ebbestad Hansen 2007, Ebbestad Hansen 2011a).

“Mykle and Bjørneboe were set on liberating sexuality through articles and novels. Their novels are legendary for the proceedings against them, the trials and the confiscations, accused of being pornographic” (Sabo 2009:149).

On the other hand, decency norms were also gradually changing. For example, in 1952, an uncensored version of D. H. Lawrence’s book “Lady Chatterley’s Lover” was published without legal interference. In 1955, Carl Erik Soya’s book *Syatten år* (“Seventeen years”) was published. In 1978, a sexually explicit and controversial work, “History of O”, was published without any juridical attention (Rolness 2003:238, Ebbestad Hansen 2011b). A stricter stance was long upheld against film and pictures. For instance, in 1978, a man was convicted in Supreme Court for showing pornographic movies in his private film club. Further, in 1984, the animation film “Snow White and the Seven Lovers” was convicted in Supreme Court because of indecency (Rolness 2003:240).

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<sup>6</sup> Afterwards, Bjørneboe thanked the Norwegian court system for the attention. He published the novel, and a sequel, “*Uden en trævl 2*” in Denmark. The controversy sparked large sales and was economically beneficial for him and his family. They dearly needed money because of his artist occupation’s unsteady income (Wandrup 1984).



In 1969, 12 000 people in a charismatic Christian layman movement demonstrated against pornography at a gathering in the Norwegian village Kvinesdal. Enger (2007:28) writes that the Criminal Code was changed in 1973. Then, “public interest” became a criterion for being prosecuted. Prosecution would only be made when public interest demanded it, and if not, the police could give waiver as a way of showing guilt. The practical consequence of this law change was that the prosecuting authorities only charged the large violation of the pornography law.

In 1974, groups in the new feminist movement started arguing and acting against pornography (Karlsen 1990:5). The anti-pornography “movement” in the 70’s was extremely heterogeneous. In 1977, *Kvinnefronten* (“The Women’s Front”) was at first the only feminist organization willing to side with Christian conservative groups. These worked with a general rather fundamentalist attitude, and were sceptical towards women's emancipation in general. Under the perceived pressure from the pornography industry, many people’s attitudes changed. On the initiative of the women in *Senterpartiet* (Centre Party, traditionally the farmers' party), 30 different women's organizations met and formed the broad coalition *Kvinnenes Fellesaksjon mot pornografi* (“Women’s Joint Action Against Pornography”) autumn 1977 (Rolness 2003:146, Rustad 2007). This broad coalition consisted of different groups that normally do not cooperate, such as the Christian women organizations, people from political parties from the right to the left such as the Christian Democratic Party and the Socialist left party, the Norwegian Housewives Union, trade union groups and traditional feminist groups. At its’ peak it claimed to have 500 000 (indirect) members and in 1979, it collected 42 000 signatures in support of the organization's requests (Rustad 2007, Nilsen 2008).

The feminist movement declared pornography and prostitution as their main targets of attack. Activist actions against pornography included large-scale demonstrations, making

“porn-fires” of pornographic magazines, holding speeches and lectures, educational campaigns and participating in debates in newspapers. Some of their methods were militant, like the tagging of cars to people who were whore-customers (Karlsen 1990, Rolness 2003:137, 138, Schaffer 2010). “All pornography is systematic propaganda for sexual abuse of children and women”, anti-porn feminist Karlsen (1990:3) argued. They did not make a distinction between “hard” and “soft” pornography, because to them, all porn was just a matter of the degree of sexual abuse the depictions featured. The anti-pornography movement was led by the feminists Unni Rustad and Torill Dahl. Especially Rustad’s large, charismatic and restless engagement for the case has been given credit for affecting Norwegians’ attitudes towards pornography (Karlsen 1990:8, citing Tessem and Wiedswang 1984:8). What, exactly the anti-pornography movement argued against was not always so clear, though:

“We defined pornography as images or films with sexual content and presented in a way that oppresses women. We emphasized that we were not against sexual images *per se*, but only images that eroticize the domination, humiliation and coercion of women” (Strøm 2009:30).

Due to the strong politicization, an expert commission was formed in 1984 to suggest the foundation for a new legal framework. This group was called *Straffelovrådet*, and was headed by a female Supreme Court Judge, Else Bugge Fougner. *Straffelovrådet* recommended that the principle of harm should replace the former decency-principle as a guideline for jurisdiction in accordance with normal principles behind criminal code. This is the guiding principle in the Criminal Code in Western countries. Since research had shown that pornography depicting normal sexual activities lacked the alleged harmful effects feminists claimed, introducing the harm principle would lead to a legalization of pornography. In addition, pornography should be matter of choice. Therefore *Straffelovrådet* also recommended prohibition of displaying pornography in public spaces (NOU 1985:19, Rolness

2003:242, 243). The only issue that the legal group suggested prohibiting was depictions involving children, dead corpses, violence and coercion. This implied that “everything that was legal in Norwegian beds, also should be allowed to show on film and TV” (Rolness 2003:243).

The debate also mobilised politicians in *Kristelig Folkeparti* (the Christian Democratic Party), *Senterpartiet* (the Centre Party) and *Arbeiderpartiet* (the Labour Party). Bypassing the ordinary preparatory process for new laws, they launched a private law proposal with obscenity as the guiding principle. The proposal included prohibition of the marketing of other derogatory depictions, such as of children, animals, violence, coercion and sadism (Karlsen 1990:16, NOU 1997:23, Rolness 2003:243-244)<sup>7</sup>. While Rolness (2003:243) maintains that the Labour Party purely acted to make obstacles for the centre-right coalition government ruling at the time, Karlsen (1990:16) argues that the main motivation for this private law proposal was winning approval from the voters before the up-coming parliamentary elections autumn 1985. The private proposal became law in express speed Easter 1985, but it had essentially no practical ramifications. Soft pornography in print was at this time considered normal, and was thus accepted. Hardcore pornography consumed privately was on the other hand permitted, while public showing of it was illegal.

The practical consequence of the prohibition was that pornography on Norwegian TV screens was censored through a black marker hiding penetration. However, this did not mean that Norwegians could not view the material from public sources in its complete version.

Through either turning off the “text TV” function, or switching on the decoder in order to

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<sup>7</sup> All Western countries today prohibit child pornography and “extreme pornography”, typically defined as: depictions of a) An act which threatens a person’s life; this could include depictions of hanging, suffocation, or sexual assault involving a threat with a weapon. b) An act which results in or is likely to result in serious injury to a person’s anus, breast or genitals; this could include the insertion of sharp objects or the mutilation of breasts or genitals. c) An act involving sexual interference with a human corpse; or d) A person performing an act of intercourse or oral sex with an animal, and a reasonable person looking at the image would think that the animals and people portrayed were real (United Kingdom Ministry of Justice 2009).

view the channels in the other Scandinavian languages, the ban was easily circumvented (Rolness 2003)<sup>8</sup>. The feminists in the anti-pornography movement were dissatisfied with the new law because in effect it changed nothing, apart from protecting certain weak groups better. “The new law was essentially useless”, remarks Karlsen (1990:16). The same year, *Cupido*, Norway’s first erotic magazine for both sexes was launched. Many of the anti-pornography feminists were against it, but it was not banned – which would probably also draw protests from many of their allies. After the law amendment, the anti-pornography movement gradually split up. Feminist groups did not longer want to co-operate with Christian conservative groups, and among themselves, the groups could not agree on problem perceptions and priorities. The following years, anti-pornography actions were mainly carried on by the feminists in *Ottar* together with ad-hoc organizations (Schaffer 2010).

In 1989, the Parliament prohibited import of pornography for sale. Import and possession of child pornography was prohibited in 1992 (Enger 2007:36). In the 1990s, pornography continued to be a hot political topic. Three large, public commissions working on behalf of the Government revised the legal framework again in the 1990s.

*Seksuallovbruddsutvalget*, *Konvergensutvalget* and *Ytringsfrihetskommisjonen* all recommended a liberalization of the legal framework. The Women group in Norway’s largest political party, the Labour Party, was also positive to liberalization. In addition, liberalization gained support from 105 of 120 different organizations and different public bodies that were invited to state their views when the law again was revised. Headed by the highly profiled Norwegian lawyer Mona Høiness, anti-pornography activists declared new mobilization against liberalization, and thus founded “Spontaneous-action against hard porn” in 1997. 104 000 signatures were collected and presented to the Minister of Justice. However, the

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<sup>8</sup> Indeed, a journalist claims that the desire to view pornography probably was one of the main reasons why Norwegians acquired parabolas in the 1980s (Rolness 2003).

centre-right government rejected the new legal proposal (Rolness 2003:245-253, Sabo 2005). Rolness (2003:247) argues that this was partly because of a deal made at the formation of the Bondevik-1 government. There, the liberals (V) gave up their principal stance on the matter in return for government participation. In 2000 the politicians again discussed pornography laws. They were shown a movie depicting gang rape, which allegedly contained normal scenes from pornographic movies. The strict legal framework was upheld (Rolness 2003).

During the same years, the international trend towards liberalization continued. Films, such as “Romance”, passed the censorship of the Norwegian Film Authority that would have been unheard of earlier because of their explicit sexual content. The argumentation for accepting the films in unabridged version was that they had strong artistic qualities. Thus, it could be accepted because artistic works had long been exempted from censorship in the legal framework (Hansen 2005). In 2003, to spark a new debate, the porn producer Hagen distributed free pornography magazines to members of the Norwegian Parliament and passers-by outside the Parliament. This led to a Supreme Court-case in 2005 regarding whether or not there should be censorship on pornographic magazines and films. The porn-producer Mattson then showed a cavalcade of uncensored scenes from ordinary movies which had been shown uncensored in Norwegian cinemas the last years. This video demonstrated that scenes in pornographic movies and magazines often were less “hard” and explicit than what the Norwegian population saw in movies and magazines that already had been published. In the Regional Court, all the expert witnesses were positive to a repeal of the ban. The court case ended with the Supreme Court lifting the ban on censorship of hard porn in magazines, but not films (Bjørkeng 2005). There were heavy commercial interests exerting pressure to have the censorship on film porn lifted. Next year, satellite channels complained to the State Media Authority about the censorship of programmes showing porn. They got approval for their complaints (Enger 2007).

In 2006, the censorship on movies for adults (movies with 18 years age limit) was lifted in the film and video law, which had regulated pornography in these media. The ministry handling the case, the Ministry of Church and Cultural Affairs, writes in its legal proposal that this change might have meant a certain involuntary liberalization. Still, depictions being “obscene” will be punishable by law. What is regarded as obscene, however, alters as people’s attitudes and society’s attitudes changes. In 2006, the *Body for complaint in cases regarding film and video* decided that the complainants were allowed to publish three videos which normally would be characterised as hardcore pornography. This decision would serve as a guideline for the State Media Authority in its interpretation of what is regarded as “indecent”. Public showings of obscene material were and are, however, still prohibited. Films with sexual elements would still be regarded as a whole and permitted only if they had sufficiently scientific, artistic or informative elements. In practice, the decision by the appeal body thereby led to a legalization of public distribution of most forms of pornography on films and videos for private consumption to adults, but not public viewing of them (Kultur- og kirke departementet 2005-2006:13-14).

**Table 1: Overview of the present legislation in Denmark and Norway**

	<b>DENMARK</b>	<b>NORWAY</b>
<b>Definition of pornography</b>	<i>Very liberal, no distinction between hard core and soft core material. Depictions of animal pornography allowed as long as the animal suffers no harm or pain.</i>	<i>Depictions of sex that are obscene or in other ways seem humiliating or derogatory, including depictions of sex involving dead bodies, animals, violence and coercion.</i>
<b>Exceptions</b>		<i>Depictions that are sexual that are regarded as proper from an artistic, scientific, informative or similar purpose.</i>
<b>Age limit for possession</b>	<i>16 years</i>	<i>18 years</i>
<b>Punishment for violation of general pornography laws</b>	<i>No punishment.</i>	<i>Fines and until 3 years of imprisonment, fines and imprisonment until 6 months if laws have been unintended violated.</i>
<b>Laws regarding child pornography</b>	<i>Illegal since 1980. Since 2003: Photos, film and video with concrete sexual actions of children under 18 years are prohibited from possession and distribution. This does not include so called "posing pictures" of children.</i>	<i>Production, owning, accessing, distributing, importing of depictions of sexual abuse of children under 18 years, and depictions that are sexualising children.</i>
<b>Definition of child</b>	<i>A person who is, or appears to be below 18 years old.</i>	<i>A person who is, or appears to be below 18 years old.</i>
<b>Exceptions</b>	<i>When a person over 15 years and less than 18 years old has agreed to the possession of a pornographic picture of itself.</i>	<i>Taking and possessing pictures of underage people between 16 years and 18 years if the person who has taken or possesses a picture if it is consensual and they are at about the same stage in age and development.</i>

<p><b><i>Punishment for violation of child pornography laws</i></b></p>	<p><i>Distribution of child pornography up to 2 years of imprisonment, in especially severe cases 6 years of imprisonment. Severe cases include threat of life, severe physical violence, and when production has been done in an organized way. Possession of child pornography: fines and up to 1 year of imprisonment.</i></p>	<p><i>Fines and until 3 years of imprisonment, fines and imprisonment until 6 months if laws have been unintended violated. The same punishments are for the head or leader who at purpose or unintended does not prevent production, selling and distribution of child pornography within his business.</i></p>
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Sources: NOU 1997:23, Norsk Lovtidend 2005, INTERPOL 2006, Kultur- og kirke departementet (2005-2006), Det Dyreetiske Råd (2006), Enger 2007, Kierkegaard 2008, Harpsøe *et. al* 2009, Lovdata 2011.

### **WHY DID SO SIMILAR COUNTRIES END UP DOING IT SO DIFFERENTLY?**

Value change can be viewed as one underlying explanatory factor for the change in legislation on pornography. In both Denmark and Norway, new policies in the late 1960s and 1970s reflected new attitudes in the up-growing generations in Western societies. This included new feminist movements being influential, especially in Norway, while, in addition, trends such as sexual emancipation and youth protest had a major impact in Denmark (Heidar and Bakke 2008:31, Aarhus University 2009a). Kutchinsky (1999:51) argues that the sexual liberalization that took place in most countries in the Western world was an important precondition for “the porno wave”. The paper argues that four main factors explain the large legal differences.

First, one important difference that may explain much of the large legal differences is that Denmark has had a more liberal culture regarding sexuality than Norway. In Norway, on



the other hand, Christian conservative values, as seen by large mobilization from different Christian groups, probably have made a major impact on the laws and how they have been interpreted. Kutchinsky (1999:51) maintains that Denmark is not to be considered a particularly permissive society, but rather that it is somewhat above average liberal regarding sexuality and sexual permissiveness in its popular culture. This is also reflected in the legal framework. For instance the ban homosexual relations between consenting adults was lifted already in 1933, and the age of consent for heterosexuals have been 15 years since the same year. Thus, Denmark has long had a tradition of official liberalism regarding sexual issues (Kutchinsky 1999:52, 53, Graugaard *et al* 2004:330-335). In contradiction, Norway has had a more conservative public tradition on most matters regarding sexuality. For example, Norway first lifted the ban on homosexual relations, § 213 in Norway's Criminal Code, between consenting grownups in 1972.

Kutchinsky (1999:65) also points out that the countries which had legalized pornography at the time all had a political trend between "liberal socialism" and "social liberalism". These countries were West-Germany, Denmark and Sweden. During the 1960s, the political climate in Denmark was characterized by social liberalism. The Social Democratic Party, *Socialdemokraterne*, was the major party 1950-1980, being in office much of the time. The Social Liberal Party, *Det Radikale Venstre*, grew markedly during the 1960s. Together with the Socialist People's party, *Socialistisk Folkeparti*, these three parties had more than two thirds of the seats in the Parliament. Proposals for legalization came in 1964 and 1965 from representatives from exactly these parties (Kutchinsky 1999:65). When the ban on pornographic depictions was withdrawn in 1969, the government in charge was centre-right and had a Social Liberal Prime Minister and a Conservative Minister of Justice.

In Norway, legalization of pornography has met massive popular resistance by a wide range of different groups. In particular, Christian conservative groups have engaged

themselves strongly in the debates in the decades after World War 2. The participants include Norwegian bishops, Christian newspapers and many Christian organizations/groups. In striking contrast, the church in Denmark chose to abstain from this debate. Rolness (2003) and Ebbestad Hansen (2011a) demonstrate how for example the Norwegian Christian Democratic Party, *Kristelig Folkeparti*, has worked continuously and to a certain extent successfully against a more liberal legal framework. The role of the Christian Democratic parties is extremely different in the two countries. The *Kristelig Folkeparti*, has had far higher levels of public support and thereby also more political power and influence than its Danish sister party (Heidar and Bakke 2008:47, 79). Founded in 1933, the party has had seats in parliament ever since, with support between 8 and 14% of the votes in the period 1945-2001. It had the prime minister 1972-73, 1997-2001 and 2001-2005 (Heidar and Berntzen 2007, Heidar and Bakke 2008:53). In contrast, the Danish sister party (now called Christian Democrats) was founded in 1970, and its popular support peaked in 1975, with 5.3% of votes and 9 seats in parliament. From 1979-2001, the support was below 3%. In the 2005 and 2007 elections, none of its candidates won seats (Heidar and Bakke 2008:77). Because of its central political position, the Norwegian party was able to create alliances and strongly influence the pornography legislation from 1966-2005, even when this contradicted legal and expert advice. This would, however, probably not have been possible without broad popular anti-pornography support (Rolness 2003).

At first glance, the national differences in positions taken by similar groups in the pornography law debates seems striking, especially among the left wing representatives: There, all Danish spokesmen were proponents in 1969, while the Norwegian representatives, though principally for it, expressed scepticism even in the last parliamentary debate in 2006. This may be seen more as indications of rhetorical hegemony than political stance, and the actual political actions in Norway were clear enough (Stortinget 2006, Hertoft 2008). The

representatives were talking to their voters. Only among the Right Populist, Conservative and Liberal audiences there was a strong support for deregulation, almost regardless of consequences. The majority of the other voters were principally positive, although they had reservations towards several aspects of pornography – many probably viewed it as a kind of necessary evil.

Controlling enforcement is one source of power (Bolman and Deal 2003:221). For example, the political parties that introduced and implemented their own private legal proposal in 1985, Kristelig Folkeparti, Senterpartiet and Arbeiderpartiet, did it at express speed and outside the normal parliamentary procedures. Hence, in this case they were able to grab this kind of power. The judges in Supreme Court are also endowed with this kind of power, in addition to having power in their capacity of being legal experts, in other words power based on information and expertise. In both Norway and Denmark, politicians in practice often left the drawing of limits to the judiciary, where the judges were free to exert their position power. In Norway, the judges increasingly often concluded that the pornographic material taken to court should not be punished. This position power was also clear in the last Supreme Court case in Norway in 2005, because only expert witnesses, such as sexologists, were there to have their say. These people were positive towards legalization. No dissenting voices were invited to the court case, according to a journalist from the newspaper *Aftenposten* (Bjørkeng 2005). Still, the law practices before legalization seem to have been stricter in Norway than in Denmark – reflecting the differences in legislation<sup>9</sup>.

Second, the organization and influence of the cooperation between feminist and other anti-pornography movements is characteristic for Norway. Bolman and Deal (2003:214) argue that coalitions are made because the members are reciprocally dependent on each other,

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<sup>9</sup> According to Enger (2007:2), 150 persons were punished for violating the pornography laws in Norway in 2005. All of these were men. 106 of these were sentenced to imprisonment.

albeit their interests only are partially overlapping. For example, Women's Joint Action Against Pornography, consisted of groups that seldom cooperated. Further, Norway probably has had one of Europe's largest feminist movements working against pornography. Feminists in many parts of the western world made pornography their main target during the 1980's (e.g. MacRae 2003). The anti-pornography feminist activism in Norway can be viewed as part of this. Much of their argumentation was inspired by the leading American feminists Andrea Dworkin and law professor Cathriona MacKinnon (Rolness 2003:322-323, MacRae 2003). Anti-pornography groups were guaranteed some public support for more reasons: Selling of the human body in the form of intimate services is by most regarded as inherently problematic. Few would want their partners to engage in such, and the pornography industry has not always lived up to the best standards of humanism and gender equity, to put it mildly. The feminists' argumentation ventured far beyond this. For example, despite scientific studies showing no connection or diverging results, the anti-pornography feminists kept on asserting that there is, generally, a connection between pornography and rape<sup>10</sup>.

The anti-porn movement's argumentation became public "truths" that few stood up against (Rolness 2003). Thereby they exercised a form of symbolic power, influencing the opinion through setting most of the premises for public discourse. They became "norm entrepreneurs" in Finnemore's and Sikkink's (1998) terminology. This kind of power is characterised by elites' and opinion leaders' opportunities to define and even impose the perceptions of reality that define identity, core beliefs and values. In addition, some of the leaders of the anti-pornography movement, like the restless and energetic Unni Rustad, probably possessed a personal power. This is defined by qualities such as having the ability to convince, and having energy and rhetorical talent to put cases on the political agenda (Bolman and Deal 2003:222). It is difficult to be a proponent of something that is inherently

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<sup>10</sup> This is still the situation regarding research on the effects of pornography today (e.g. Meland 2011).

problematic. In symbol politics, the competition is about being most against the “bad things” and most in favour of the “good things”. Therefore, activists like Rustad could dominate the public debate, yet in the end have little impact on the legislation and even less on its implementation.

It could be “politically correct” for Danish liberal leftist intellectuals to argue for liberalization in the 1960s public debate, while the situation was quite different in Norway from 1950 to 2000 (Bråten 2006). Then, the flood of pornography was in practice unstoppable<sup>11</sup>, and supporting it would mean supporting lots of rather bad causes. Therefore, many participants in the public debate rather chose to avoid the pornography issue as much as possible: The process of liberalization continued anyway – pornography was clearly on its way losing all the battles, but winning the war in Norway. Combatants on both sides, like Torill Karlsen and Kjetil Rolness, would, naturally, tend to underplay this dynamic, and rather present the story as a heroic war against dirty porn, or a fighting for the scientific truth and freedom of expression, respectively<sup>12</sup>.

Third, through creating *stare decisis*, or doctrine of precedence, by acquitting the publishers of Fanny Hill, the Danish Supreme Court in practice made most pornographic books legal to publish. In Norway, in contradiction, even books widely viewed as having strong artistic qualities made by renown authors could be liable to legal prosecution. As

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<sup>11</sup> Different studies document that high rates of Norwegian and Danes have consumed pornography during their lives. For example, Træen, Nilsen and Stigum (2006) find that 82 % of their sample of Norwegian respondents between 18 and 49 years having read pornographic magazines and 84 % having seen pornographic films.

<sup>12</sup> As late as in 2010, the Norwegian feminist group Ottar argued for introducing a legal prohibition against buying porn, as an extension of the prohibition of buying sex. They argued for prohibiting selling pornography both in stores and at the internet. Such material was to be stopped by making it impossible to transfer money to producers of pornographic material. Another Norwegian feminist group, *Kvinnefronten* (“The Women’s Front”), disagreed to this view. Generally, *Kvinnefronten* argues that pornography also can have positive effects (Pedersen 2010).

commented by Ebbestad Hansen (2011a), pornographic descriptions in it do not seem to have been the decisive criterion for being prosecuted in Norway, but rather the quantity of them.

A fourth major difference between the two Scandinavian countries is the influence of liberal intellectuals on the public debate. In Denmark, during the public debate rising in the 1960s, leading intellectuals argued for liberalization, and defended the publishers who were sued in court for publishing erotic/pornographic literature (Hertoft 2008). The intellectuals raising their voices for liberalization in Norway usually had to endure harsh public criticism, as demonstrated by Rolness (2003:146-150) and Ebbestad Hansen (2011a). In contradiction, until the recent years only a few people in Norway, perhaps most notably the sociologist Kjetil Rolness, have openly criticized the feminist argumentation on empirical background (Tessem and Wiedswang 2003).

## **CONCLUSION**

This comparative historical analysis has analysed the legal and political development influencing the regulation of pornography the last 60 years in Norway and Denmark. The analysis is based on a multitude of sources, including public documents, historic literature, previous research and media sources. Analysing a so multi-faceted phenomenon which has engaged so many different actors has demanded large resources. Going further in depth would probably give new insights, and possibly also reveal new causal mechanisms as well as further explanatory variables. Some explanatory variables have at purpose been left out of the analysis, including the role of media and the possible role of somewhat earlier modernization in Denmark than in Norway. Sweden was the second country in the world legalizing pornography in 1971. Finland, on the contrary, has had strict regulations in this field until the end of the 1990s, according to Paasonen (2009). Therefore, including Sweden and Finland in

the analysis would make an interesting study regarding which factors that in general might influence pornography legislation in Western countries.

This paper argues that there are four main explanatory variables for the large legal differences identified. First, the countries have had different cultural and political cleavages. While the Danish political elite have had a tradition of cultural-relativistic attitudes, Norway has had a broad Christian movement, including an influential Christian Democratic party, working against sexual liberalization in general and legalization of pornography in particular. Second, in the 1970s and 1980s, Norway had a very strong and well organised feminist movement that made the fight against pornography one of its main issues. Third, Denmark has in general had more liberal court rulings influencing how the laws should be interpreted. Fourth, public figures in Denmark were in general more liberal on the topic, while the people in Norway defending pornography met massive criticism. Underlying all these features are traditionally more politically liberal attitudes on certain fields in Denmark, especially in sexuality-related matters.

The advent of satellite and cable TV first, and then Internet, has made a fundamental difference in the possibility of controlling the access to pornography. Thus the new technology contributed to legal liberalization because it has become impossible to outlaw access to pornography. Based on these findings, there are several hypotheses for further research on regulation of pornography in Western countries.

**H1:** The presence of large, and active and politically influential Christian Conservative groups in morality politics leads to stricter regulations regarding pornography. This is especially likely when there is an influential Christian Conservative party in government.

**H2:** Especially in the period before internet was introduced, feminist movements could dominate the public debate and gain legal influence if they are well organised, participate in alliances and initiate targeted campaigns.

**H3:** The Internet has influenced laws on pornography because public authorities have lost most opportunities to control people's consumption. This has happened in tandem with generally more positive attitudes towards sexuality, and "pornification of the public space", leading to pornography becoming normalised and pornography becoming legalized.



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