

# **Opposite Trends in the Regulation of Pornography? Policy Differentiation and Policy Convergence Across 26 Countries Between 1960 and 2010**

*Christian Person, Steffen Hurka and Christoph Knill*

## **Abstract**

In recent decades, the regulation of pornography has been confronted with challenges emerging from cultural change, economic interests, and technological progress. As a result, the respective regulatory frameworks have changed substantially in many countries. These changes have been accompanied by fierce political struggles and societal value conflicts. However, there are few comparative studies on the reactions of national governments to these problems. In this article, we present new empirical data on the regulation of pornography in 26 countries between 1960 and 2010. To assess regulatory change, we rely on a new measurement approach that considers the extent to which governments intervene into individual freedoms and the degree to which noncompliance with these rules is actually sanctioned. Our analysis reveals a trend toward more permissive styles of pornography regulation. However, this trend is accompanied by growing regulatory specialization and a convergence toward more interventionist regimes for special types of pornography.

The publisher's version of this article is available at

<http://www.tandfonline.com/doi/full/10.1080/00224499.2015.1100701>

**DOI: 10.1080/00224499.2015.1100701**

**Citation:** Person, Christian, Hurka, Steffen, and Knill, Christoph (2016). Opposite Trends in the Regulation of Pornography? Policy Differentiation and Policy Convergence Across 26 Countries Between 1960 and 2010. *The Journal of Sex Research* 53 (7): 860-872.

## **Introduction**

In much the same way that such issues as abortion or prostitution are categorized, the regulation of pornography is commonly considered to be in the special class of so-called morality policies (Smith, 2001). The distinctive feature of these policies is that politics are shaped by conflicts over first principles, such as decisions about “right” and “wrong” and the “validation of a particular set of basic values” (Mooney, 1999, p. 675). To what extent shall governments—for the sake of the public good—restrict individual freedoms with regard to the consumption and production of pornographic material? Is pornography inherently malignant and should it be generally banned? Or should it be considered a “normal good,” with supply and demand left to individual decision making?

These questions have been a recurrent topic of political debate and societal value conflicts (Person, 2015), which typically center on the question of whether and to what extent the consumption of pornography is associated with negative effects for women. Advocates of restrictive legislation argue that pornography causes negative externalities, such as an overall increase in the number of sex-related crimes (MacKinnon, 1993; Morgan, 1980). Moreover, it is argued that pornography contributes to the degradation of women (Gruen, 2005; Hornsby & Langton, 1998; Langton, 1993). This includes not only the exploitation of women who perform in pornography itself but also the harm of (nonparticipating) women whose partners might pressure them to perform acts depicted in pornographic material (Dworkin, 1981; Dworkin & MacKinnon, 1988; for an overview, see Diamond, 2009, p. 304). By contrast, advocates of permissive regulation emphasize pornography’s positive effects, arguing that pornographic material can act as a positive displacement activity for sexual aggression (D’Amato, 2006) and contribute to the empowerment of women by liberating them from social constraints and conventions (Diamond, 2010).

Such debates, prominent in Western countries since the late 1960s, have intensified in recent years, given the growing ease with which pornography can now be distributed digitally, thus reigniting political conflicts over regulation and still-unresolved underlying value conflicts (Nair & Griffin, 2013; Nair, 2016). One issue that has been raised concerns the enforcement of youth protection laws (Thornburgh & Lin, 2002). Technological progress is perceived to make it more difficult to protect adolescents against confrontation with pornography and to keep them from viewing such material (Petley, 2014). In some countries, this development has spurred anti-pornography advocates to frame the issue as a public health problem, as such exposure is

perceived to harm the sexual development of minors. Iceland and the United Kingdom<sup>1</sup> recently announced initiatives to restrict access to online pornography to better protect youth (Helgadóttir, 2014; Petley, 2014). In addition, the wide dispersion of pornography has also allowed the increased distribution of such socially undesirable material as child pornography (Wortley & Smallbone, 2012). These trends pose new challenges for legislators to differentiate between legal and illegal material.

These political debates evolve against the background of a rectified societal and academic trend. With regard to societal trends, cultural change has shifted toward more tolerant positions regarding pornography in many industrialized countries of the Western world, especially in Europe. With the transition from industrial to postindustrial societies during the 20th century, priorities shifted from an emphasis on economic and physical security above all toward an increasing emphasis on subjective well-being, self-expression, and quality of life, giving high priority to tolerance of diversity and rising demands for political participation (Flanagan & Lee, 2003; Inglehart, 2008). These cultural trends have likewise brought about a sharp increase in the supply and demand of pornography (D'Orlando 2011, p. 53f). However, it should be emphasized that pornography is produced not only by large commercial entities but also—to a considerable and growing extent—by amateurs. Furthermore, the latter are now facilitated by digital distribution, thus putting increasing pressure on commercial suppliers (Hillyer, 2004). As emphasized by Diamond (2009), it is obvious that “the porn industry is fulfilling a major human desire” (p. 305).

In terms of academic engagement with pornography, numerous aggregate-level studies have analyzed the extent to which the availability of pornographic material is associated with an increase in sex-related crimes. Contrary to often-raised fears, evidence is weak for respective associations. Indeed, data suggest even a negative correlation, as growing availability of pornography seems to be associated with decreasing sex-related crimes (D'Amato, 2006; Kutchinsky, 1973; 1983, 1991; for an overview, see Diamond, 2009).

In short, the regulation of pornography is confronted with cultural, economic, and technological challenges that fundamentally changed the availability of and the demand for pornography in recent decades. Although these developments are well acknowledged in the literature, surprisingly little is known about the reactions of governments to these challenges. To what extent are these shifts reflected in government policies? Have governments adopted

---

<sup>1</sup> The United Kingdom consists of three criminal justice jurisdictions with differing legal frameworks concerning pornography. When we speak of the United Kingdom, we refer to England and Wales only.

more permissive stances on pornography over time, or have they upheld restrictive regulatory frameworks to restrict access to pornographic material? Comparative studies analyzing the regulation of pornography over time and across a large number of countries are scarce. Moreover, only a few investigations systematically address the political dimension of pornography regulation. But these studies suffer from a country bias toward the U.S. (Sharpe, 2003; Smith, 2001) or the Scandinavian context (Kutchinsky, 1999; Ydersbond, 2012). It is only recently that the subject has become more prominent in political science studies (Person, 2015).

The goal of this article is to address this research gap by relying on a new measurement scheme that allows for a systematic assessment of regulatory change over time. We examine not only the formal rules dimension that describes the extent to which governments intervene into individual freedoms but also the dimension of sanctions, hence the degree to which noncompliance with rules is actually ignored, tolerated, or punished (see also Knill, Adam, & Hurka, 2015). Only by considering both dimensions can we draw an accurate picture of regulatory change in morality policies.

We apply this measurement approach to new empirical data covering variation in pornography regulation for 26 countries from 1960 to 2010. Within this sample we try to identify general trends and different degrees of regulatory intervention over time and across countries. Do we observe increasing cross-national policy convergence, as suggested by the policy convergence literature (Heichel, Pape, & Sommerer, 2005; Knill, 2005), because states are confronted with similar challenges? Or do we identify diverse policy responses given different national institutional settings and opportunity structures that are, in turn, emergent from culturally specific policy paradigms, political ideologies, and belief systems?

The next section of this article presents the data set and the measurement approach. The results of the empirical analyses are shown in the third section. The final section offers concluding remarks.

### **Data Set and Measurement Approach**

The data set of our analysis covers 26 countries and a time period of 50 years (1960–2010). The country sample was developed in the scope of a large-scale research project, covering multiple policy areas. To make the project manageable, some trade-offs had to be made. For instance, we excluded countries that regulated many of the policies we were interested in on the subnational level (e.g., Australia, the United States, and Mexico) because this would have strongly increased the demands of our data collection. We also excluded countries for which

reliable policy experts are difficult to access (e.g., many African countries). Apart from these concerns, we tried to ensure the diversity of the country sample with regard to religious backgrounds and political institutions to cover policy developments in many developed nations as well as some newly industrializing countries. The sample consists of Austria, Belgium, Brazil, Chile, China, Denmark, Finland, France, Germany, Greece, Ireland, Israel, India, Italy, Japan, Norway, Poland, Portugal, Russia, South Africa, Spain, Sweden, Switzerland, the Netherlands, Turkey, and the United Kingdom.<sup>2</sup> Thus, the sample includes predominantly Catholic countries (e.g., Ireland, Brazil, Spain, Italy), predominantly Protestant countries (e.g., the United Kingdom, the Netherlands, Sweden), mixed-religion countries (e.g., Germany, Switzerland), and non-Christian countries (e.g., Japan, China, India, Israel, Turkey). Following the distinction by Lijphart (2012), it also features rather majoritarian (e.g., the United Kingdom, France, Greece) and consensual democracies (e.g., Austria, Switzerland, Denmark). The data set comprises information gained from own data collection (based on legal documents, secondary literature, and legal commentaries), complemented by a survey of experts.

In each country for which we could not collect data on our own, we contacted researchers—mainly political scientists’ specializing in policy analysis and legal scholars with a focus on criminal law—and asked them to provide country-specific historical data on the relevant legislation for the whole period of investigation via detailed, standardized questionnaires. To ensure comparable and accurate information across countries, these questionnaires were complemented by an additional supplementary document with definitions of important terms/concepts and supplementary comments to each question. In a first step, the experts provided the status quo concerning the regulation of pornography on December 31, 1959, as a common baseline for comparison. Starting from this, they documented every policy change until December 31, 2010, and provided the respective legal documents and secondary literature on which their documentation was based. To check the quality of responses and to ensure reliability of the information, we cross-validated the data by analyzing the provided documents in as much detail as possible and checking each of the questionnaires for internal consistency. In the case of inconsistencies, we contacted the experts again and asked them to clarify the respective points or we made further data collection efforts using additional secondary literature. This ongoing process of interaction with the experts during the data collection process helped us improve the quality of our data in several instances. Of course, language constraints limited our ability to check every detail of the provided information. In these cases, we had to rely on the precision of the respondents.

---

<sup>2</sup> There are missing values for some countries and time periods. These are listed in the figures’ footnotes.

Despite this solid data foundation, measuring the regulation of pornography is challenging. The prevalence of vague legal terms leaving much room for interpretation, complex interactions between laws and court rulings, as well as differing degrees of law enforcement, make it difficult to determine the exact level of regulation. In light of these problems, we concentrate our assessment on legislative outputs that (presumably) express the political will of the legislature. Although these outputs might be further specified by executive orders and court rulings, problems of data availability and interpretation of these data implied that the costs of collecting these additional data outweighed the potential benefits of a more precise measurement. Thus, we strictly focus on policy output (instead of outcome) as the object of policy change and thereby heed the call of other researchers who argue that a clear specification of the dependent variable is of critical importance in studies on policy change (Capano, 2009; Howlett & Cashore, 2009).

To capture regulatory change, we use a two-dimensional scheme covering both rules and sanctions. The rules dimension covers the extent to which policies interfere with citizens' personal liberties by adopting a body of rules defining what is legal or illegal. The sanctioning dimension covers the extent to which noncompliant behavior is accepted or not by society (Knill et al., 2015).

### **The Rules Dimension**

To analyze the rules governing the regulation of pornography, we apply a hierarchical measurement scheme consisting of three levels: (a) general policy paradigm, (b) personal qualification hurdles, and (c) procedural requirements. With this three-layered conceptualization of policy restrictiveness, we follow other researchers who have put forward similar tripartite concepts, albeit in somewhat different contexts. For example, Hall (1993) distinguished among policy changes of first, second, and third orders to make sense of economic policy change in Great Britain. Likewise, Sabatier (1988) argued that the difficulty of policy change varies depending on whether such change affects deep core beliefs, policy core beliefs, or secondary aspects. In this tradition, we constructed our measurement of policy restrictiveness as an index with three hierarchical levels.

These three levels differ in the degree of state intervention into citizens' personal liberties. The first level reflects the general regulation approach a country adopts (e.g., prohibition, partial, or encompassing permission). Regulatory changes on this level imply fundamental decisions regarding the permissibility of certain forms of conduct, thus significantly constraining or enhancing an individual's scope for legal behavior. The second

level measures the extent to which individuals must fulfill personal requirements if they want to engage in particular behavior. It specifies the general regulation approach more precisely by defining who is eligible to enact certain behavior. The third level covers instrumental rules, for example, additional provisions to steer individual behavior by facilitating or constraining certain behavioral patterns.

For analytical purposes, we develop two indices of pornography regulation. Index 1 covers rules for non-child pornography, or adult pornography (depictions of sexual interactions between consenting adults); violent pornography (depictions of sexual behavior characterized by the use of force); and pornography depicting bestiality (representations of sexual acts between human beings and animals). Index 2 covers the regulation of child pornography.

Table 1 shows the measurement concept for Index 1 (non-child pornography). With respect to general policy paradigm, we differentiate among three regulatory styles: total prohibition, partial liberalization, and full liberalization. Under the prohibitionist model, the provision of pornography is generally forbidden, apart from the private possession for exclusive personal use that is usually not sanctioned. In contrast, states adhering to the partial liberalization model allow for the provision and sale of adult pornography as long as people are protected against “unwarranted confrontation” and the protection of minors is safeguarded. However, violent pornography and depictions of bestiality are still prohibited. Finally, under the full liberalization regime, all kinds of non-child pornography can be offered legally. In terms of personal requirements, countries adopt different age thresholds at which individuals are allowed to buy pornography. Some states require a minimum age of 18 or 21, while other states allow minors under age 18 to purchase pornography. When it comes to procedural hurdles, states differ with regard to the legality of different distribution channels and the advertisement of pornography, the existence of ex ante or ex post control mechanisms, zoning requirements, and hours of operation.<sup>3</sup> For each aspect, several indicators are used and summarized in an additive index. The more restrictive the country, the higher its point score on this index.

---

<sup>3</sup> However, these requirements were not precisely specified in all countries at all points in time. In these cases we tried to reconstruct the application of these requirements via interpretation of the legal norms and secondary literature.

**Table 1.** *Measurement concept (non-child pornography)*

<b>Point score</b>	<b>General paradigm</b>	<b>Point score</b>	<b>Personal requirements</b>	<b>Procedural requirements</b>
<b>2</b>	<b>Total prohibition</b>	2	n/a	n/a
<b>1-2</b>	<b>Partial liberalization</b> (only adult pornography allowed)	1.66-2	> 18	Distribution via electronic networks / internet (yes = 0; no = 1) Distribution via public TV and radio broadcasting (yes = 0; no = 1) Distribution via satellite or cable TV (pay TV) (yes = 0; no = 1) Distribution via print media (yes = 0; no = 1) Distribution via videos, sex-shops, and adult cinemas (yes = 0; no = 1) Control mechanisms (no = 0; ex post = 1; ex ante = 2) Zoning requirements (no = 0; yes = 1) Advertisement (legal = 0; restricted = 1; illegal = 2) Hours of operation (not restricted = 0; restricted = 1)
		1.33-1.66	18 years	See above
		1-1.33	< 18 years	See above
<b>0-1</b>	<b>Full liberalization</b> (all types of non-child pornography allowed)	0.66-1	> 18 years	See above
		0.33-0.66	18 years	See above
		0-0.33	< 18 years	See above



**Table 2.** *Measurement concept (child pornography)*

<b>General paradigm</b>	<b>Personal requirements (age threshold)</b>	<b>Procedural hurdles (inclusion of simulated / virtual child pornography)</b>	<b>Point score</b>	
<b>Explicit prohibition of possession and purchase of child pornography</b>	18	Yes	4.0	
		No	3.9	
	17	Yes	3.8	
		No	3.7	
	16	Yes	3.6	
		No	3.5	
	15	Yes	3.4	
		No	3.3	
	14	Yes	3.2	
		No	3.1	
	<b>Explicit prohibition of possession of child pornography</b>	18	Yes	3.0
			No	2.9
17		Yes	2.8	
		No	2.7	
16		Yes	2.6	
		No	2.5	
15		Yes	2.4	
		No	2.3	
14		Yes	2.2	
		No	2.1	
<b>Explicit prohibition of sale / provision of child pornography</b>		18	Yes	2.0
			No	1.9
	17	Yes	1.8	
		No	1.7	
	16	Yes	1.6	
		No	1.5	
	15	Yes	1.4	
		No	1.3	
	14	Yes	1.2	
		No	1.1	
	<b>Implicit prohibition due to general pornography ban</b>	n/a	Yes	1.0
		n/a	No	0.5
<b>No prohibition of child pornography</b>	n/a	n/a	0.0	

Table 2 shows the measurement concept for Index 2 (child pornography). With respect to general policy paradigm, we differentiate among five regulatory approaches. The most restrictive approach, Number 5, sanctions not only the supply side of child pornography but also the customer side: It explicitly prohibits the possession (for personal use) and the purchase of such material (besides the sale and provision). A little less restrictive is approach Number 4, which punishes the possession but not explicitly the purchase of child pornography. Although

in practice both actions are quite similar (in the moment of purchase, property rights are reallocated), we nevertheless interpret it as a stronger political commitment if the legislator explicitly sanctions the purchase of child pornography too. Regulatory approach Number 3 covers the supply side but not the demand side: While the provision of child pornography is explicitly forbidden, private possession or purchase is not. States following regime Number 2 do not explicitly punish the provision of child pornography. Nevertheless, its provision is implicitly sanctioned by subsuming it under a general prohibition of pornography or obscene material. However, these regimes typically prohibit only the provision of pornography, not its possession. The most lenient approach sanctions neither the provision nor the possession of child pornography; instead, such material can be legally distributed.

The second level captures age thresholds that determine whether an individual participating in pornographic material is considered a child. The respective age thresholds vary between 14 and 18 years. The third level measures whether simulated or virtual child pornography is captured.<sup>4</sup> Simulated child pornography are depictions of pornography where the “actors” are in fact adults but are presented through dress and makeup in a way that suggests them to be children. Virtual child pornography consists of non-real depictions of child pornography (e.g., computer-generated images, comics, manga).

### **The Sanctions Dimension**

To measure the sanctioning of rule violations, we applied a 15-point scale showing the maximum sentence possible for certain misbehavior (see Table 3). This scale rests on the assumption that imprisonment is a stricter punishment than the imposition of pecuniary fines, irrespective of the length of the prison sentence or the amount of the fine. Thus, low jail sentences are perceived to be more severe than high pecuniary fines. In addition, mandatory sanctions are regarded as more severe than substitutable sanctions, e.g., if a prison sentence can be substituted with a fine. In between, there is the “and/or” category, which implies a relatively large amount of discretion on behalf of the court. Thus, low mandatory sentences are more severe than high sentences that can be substituted by fines. This scale was applied to the punishments pertaining to the illegal provision of (non-)child pornography. In all cases, we concentrate on the standard rule violation, thereby neglecting special circumstances that allow for higher sanctions (e.g., commitment of the crime within a criminal organization).

---

<sup>4</sup> Respective clarifications must be written down in statutory texts. Alternatively, we assumed that states punish simulated or virtual child pornography if they have signed the Optional Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography of the United Nations.

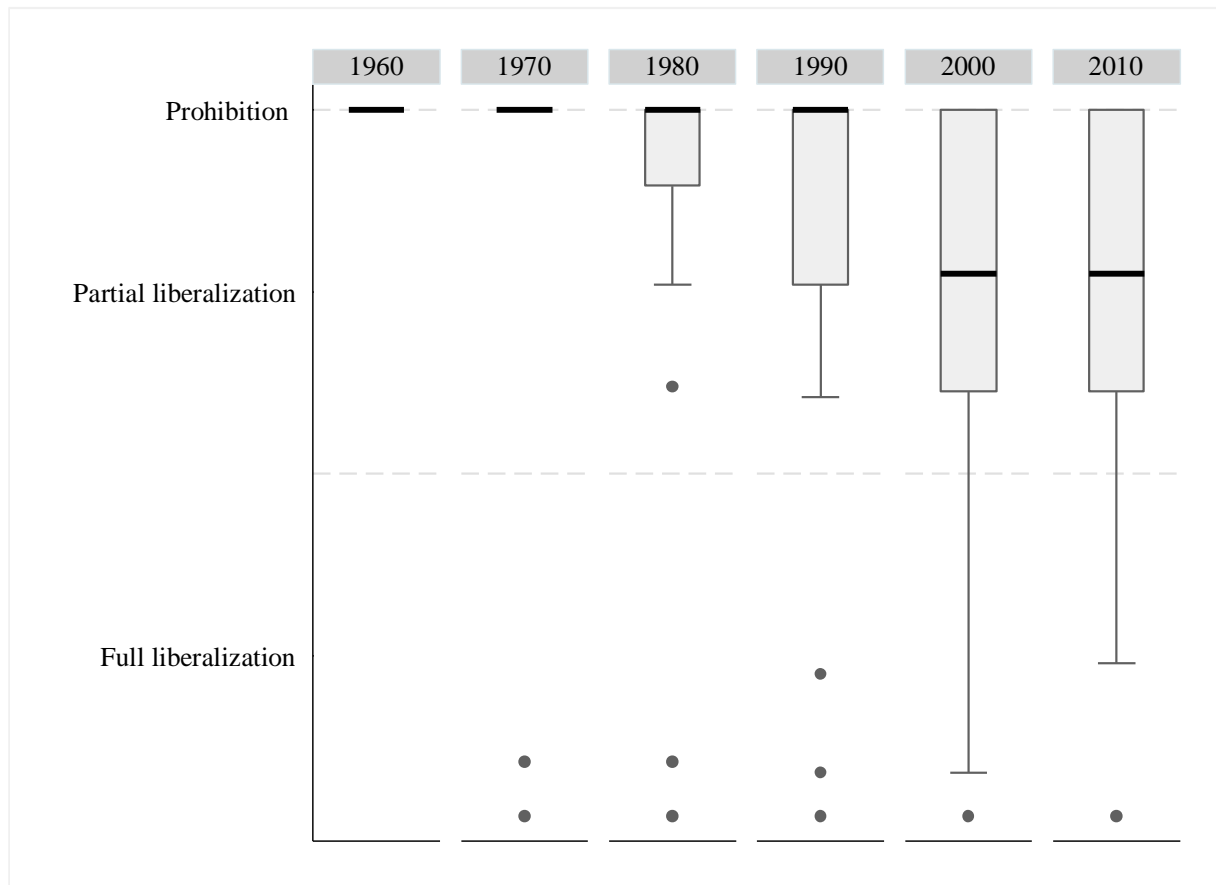
**Table 3.** *Measurement concept (sanctions)*

<b>Mandatory prison sentences</b>	
<b>14</b>	Life imprisonment or death penalty
<b>13</b>	High prison sentence (> 3 years) and fine
<b>12</b>	High prison sentence (> 3 years) no fine
<b>11</b>	Medium prison sentence (1–3 years) and fine
<b>10</b>	Medium prison sentences (1–3 years) no fine
<b>9</b>	Low prison sentence ( $\leq 1$ year) and fine
<b>8</b>	Low prison sentence ( $\leq 1$ year) no fine
<b>Substitutable prison sentences</b>	
<b>7</b>	High prison sentence (> 3 years) and /or fine
<b>6</b>	Medium prison sentence (1–3 years) and/or fine
<b>5</b>	Low prison sentence ( $\leq 1$ year) and/or fine
<b>4</b>	High prison sentence (> 3 years) or fine
<b>3</b>	Medium prison sentence (1–3 years) or fine
<b>2</b>	Low prison sentence ( $\leq 1$ year) or fine
<b>No prison sentence</b>	
<b>1</b>	Only fine
<b>0</b>	No sanction

### **Empirical Analysis**

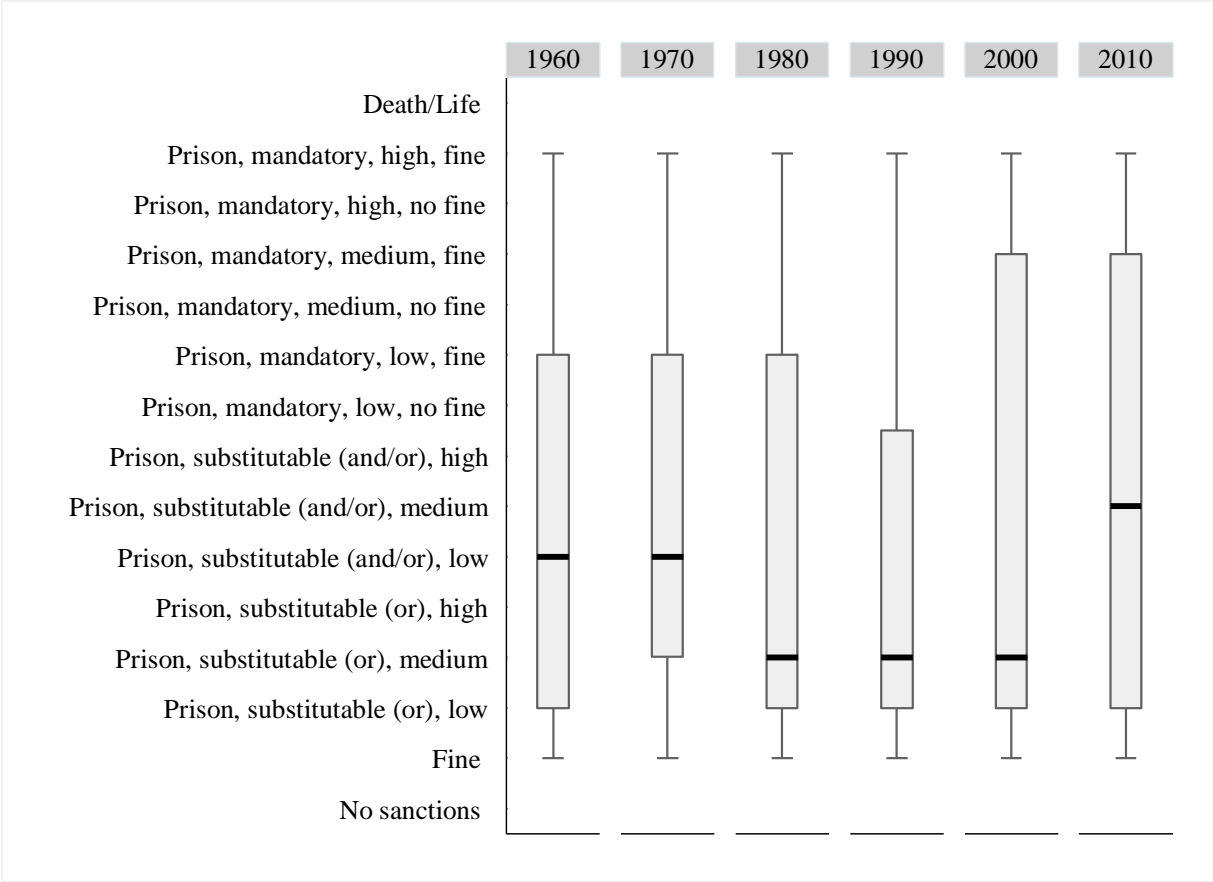
What patterns do we discern when we apply these measurement concepts to our data? To answer this question, we now map policy developments regarding the rules and sanctions for non-child and child pornography. To display these developments graphically, we rely on box- and scatterplots. While boxplots are suited to show patterns of policy convergence and divergence, scatterplots enable the reader to comprehend the relative positioning of individual countries over time. In brief, the analysis reveals that the rules governing the sale and provision of non-child pornography have become more permissive over time, whereas the sanctions for violating these rules have not undergone a similar change and still exhibit large cross-national variance. In contrast, both rules for providing, possessing, or purchasing child pornography and the sanctions for provision intensified strongly over time.

**Figure 1.** *Non-child pornography: changes of rules over time*



*Note:* the figure displays the variance of the rules applied to non-child pornography in a sample of 24 countries over time. The country sample includes Austria, Belgium, Brazil, China, Denmark, Finland, France, Germany, Greece, Ireland, Israel, India, Italy, Norway, Poland, Portugal, Russia, South Africa, Spain, Sweden, Switzerland, the Netherlands, Turkey and the United Kingdom. Missing: Chile and Japan.

**Figure 2.** *Non-child pornography: changes of sanctions for provision over time*



*Note:* the figure displays the variance of the sanctions applied to the provision of non-child pornography in a sample of 25 countries over time. The country sample includes Austria, Belgium, Brazil, Chile (1999-2010), China (1980-2010), Denmark, Finland, France, Germany, Greece, Ireland, Israel, India, Italy, Japan, Norway, Poland, Portugal, Russia, South Africa, Spain, Sweden, Switzerland, the Netherlands, Turkey and the United Kingdom. Missing: Chile (1960-1998), China (1960-1979), Japan.

In 1960, the provision of (non-child) pornography was prohibited in all countries under study. Over time, however, the median country moved from a total prohibition of pornographic material toward a partial liberalization of (at least adult) pornography. As the outlier dots in Figure 1 demonstrate, this development follows a leader-laggard dynamic; in other words, some progressive countries like Denmark, Sweden, and Germany took the lead and many others followed their example over time. Nowadays, the country sample covers the entire regulatory spectrum from total prohibition to total permission, while the median country has adopted a policy paradigm of partial liberalization.

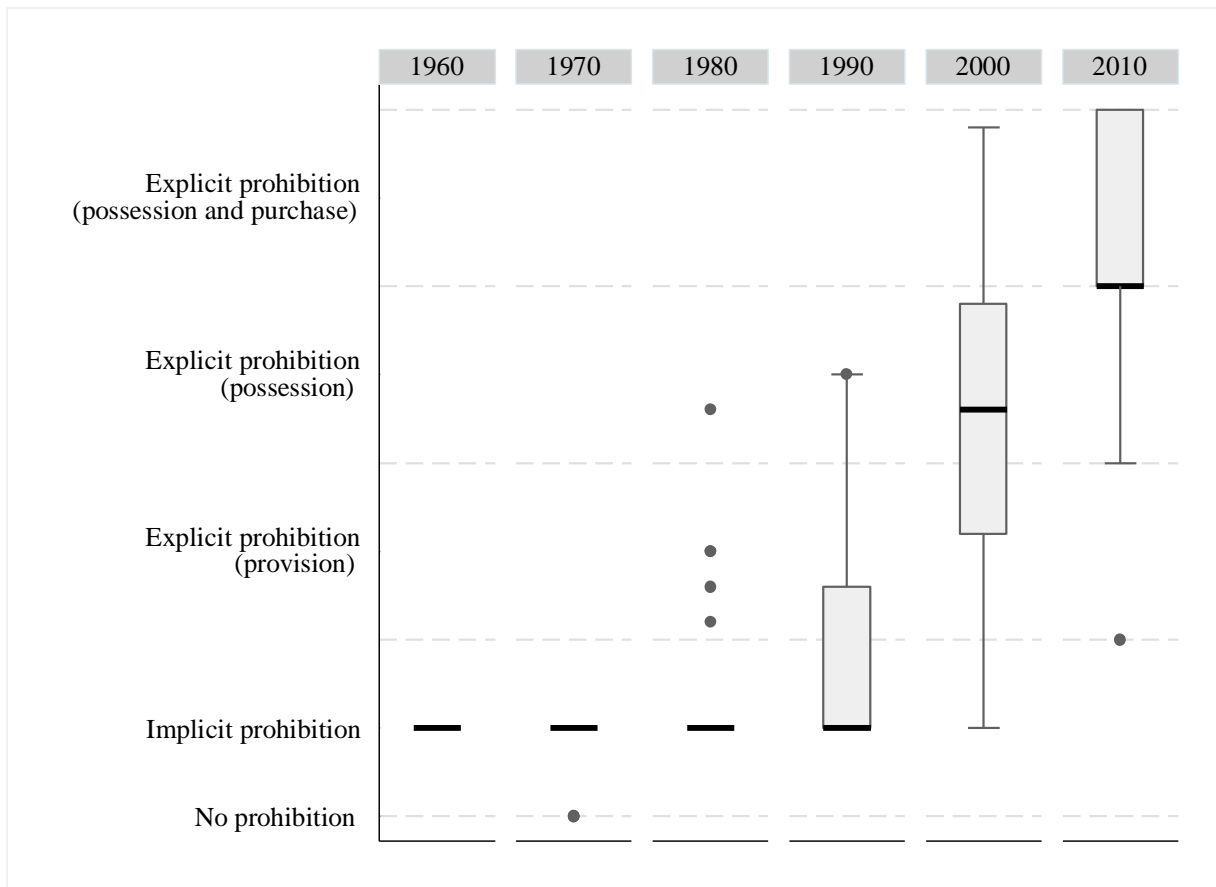
As far as sanctions for the provision of (non-child) pornography are concerned, we do not observe a comparable move toward more leniency (Figure 2). In fact, the variance of the sanctioning regimes is remarkably constant over time. But a closer look reveals significant differences in the sanctioning levels over time and among countries. From an aggregate perspective, sanctions initially became more lenient since the 1970s, but this trend was reversed

in the 1990s when aggregate sanctioning levels started to rise again. However, these trends were fueled by a handful of states only: 11 countries did not change their sanctioning levels at all; five countries changed them only marginally. The trend toward more leniency between 1960 and 1990 was mainly driven by Poland, Portugal, and Spain, all three of which replaced mandatory prison sentences with prison sentences substitutable by fines (in the case of Poland in 1969) or by pecuniary fines only (in the case of Portugal in 1976 and in the case of Spain in 1989). Only India raised its sanctioning level strongly in 1969, from low substitutable to medium mandatory prison sentences with fines. In contrast, since the 1990s, the overall sanctioning level within the sample became stricter, mainly due to developments in China, Turkey, and Chile. In 1997 China tightened its sanctions from substitutable to mandatory prison sentences (medium level); and in 2004 Turkey raised its sanctions from pecuniary fines to mandatory prison sentences (medium level). In addition, Chile introduced high mandatory prison sentences in 1999. Nevertheless, over time, most countries have been punishing rule violations with prison sentences that could be substituted by monetary fines. However, even though the median country has constantly been located within this area of the policy space, the range also includes countries with medium and high mandatory prison sentences (e.g., France, Italy, Greece) and countries that rely exclusively on financial sanctions (e.g., Denmark, Portugal, Turkey until 2004).<sup>5</sup> Nowadays, a majority of 14 countries, mainly from Northern and Central Europe, but also Brazil, Russia, and South Africa, apply prison sentences that are substitutable by fines, while a minority of only nine countries, mainly from Southern Europe, but also Turkey, Chile, China, and India, apply mandatory prison sentences. Denmark and Portugal are the only countries that rely solely on financial sanctions. However, in both groups, countries typically impose prison sentences of relatively short or medium duration. Thus, we can observe a certain degree of policy convergence toward more liberal rules for non-child pornography, but this trend is not accompanied by a similar cutback in the severity of sanctions.

---

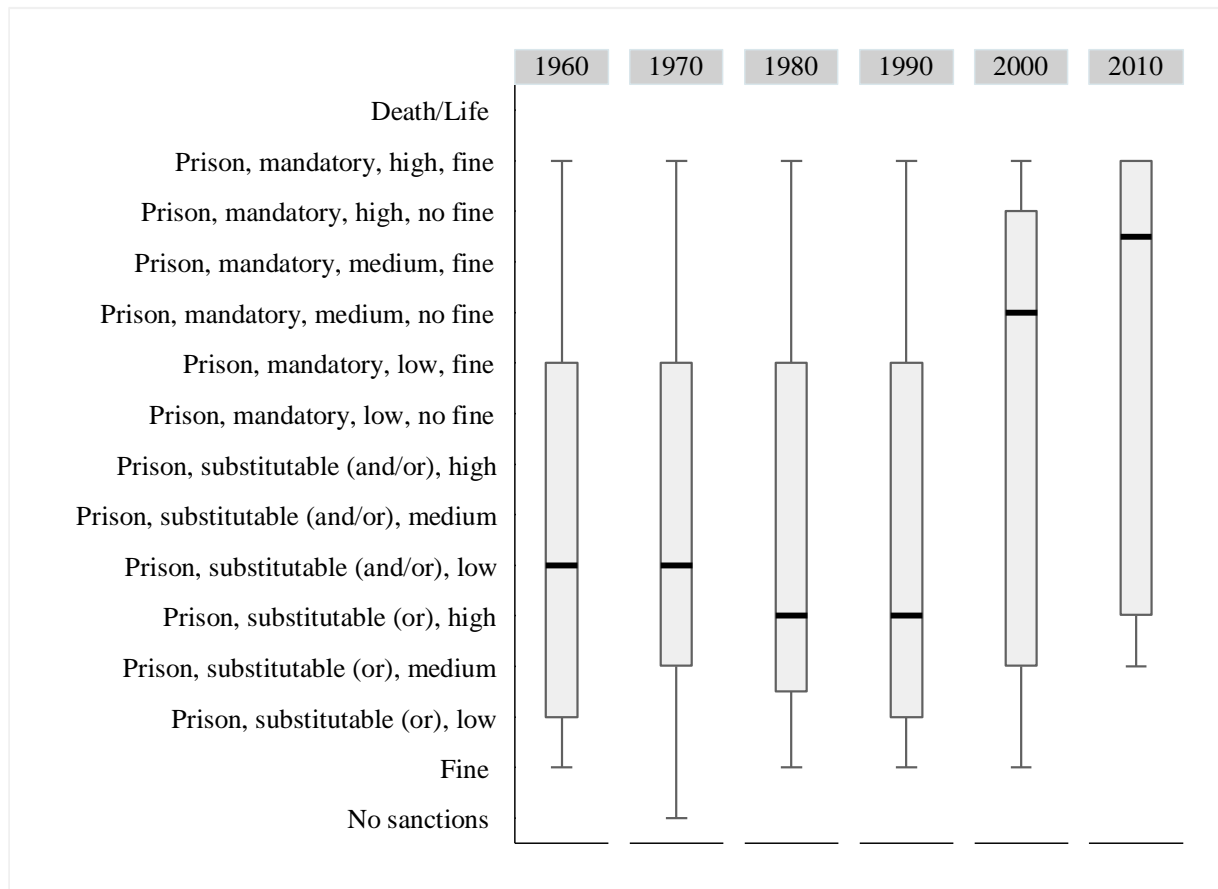
<sup>5</sup> Again, the reader should keep in mind that we focus on statutory texts. However, we could not investigate in detail their implementation in practice.

**Figure 3.** *Child pornography: changes of rules over time*



*Note:* the figure displays the variance of the rules applied to child pornography in a sample of 26 countries over time. The country sample includes Austria, Belgium, Brazil, Chile (2004-2010), China, Denmark, Finland, France, Germany, Greece, Ireland, Israel, India, Italy, Japan, Norway, Poland, Portugal, Russia, South Africa, Spain, Sweden, Switzerland, the Netherlands, Turkey and the United Kingdom. Missing: Chile (1960-2003).

**Figure 4.** *Child pornography: changes of sanctions for provision over time*



*Note:* the figure displays the variance of the sanctions applied to the provision of child pornography in a sample of 26 countries over time. The country sample includes Austria, Belgium, Brazil, Chile (2004-2010), China (1980-2010), Denmark, Finland, France, Germany, Greece, Ireland, Israel, India, Italy, Japan (1999-2010), Norway, Poland, Portugal, Russia, South Africa, Spain, Sweden, Switzerland, the Netherlands, Turkey and the United Kingdom. Missing: Chile (1960-2003), China (1960-1979), Japan (1960-1998).

A totally different picture emerges in the area of child pornography (Figures 3 and 4). With regard to the rules governing the possession and provision of child pornography, there is a clear cross-national trend toward more prohibitive policies. This development evolved typically as a two-step process: Many countries concentrated first on the supply side and explicitly punished the provision of child pornography, even though they did not prohibit the consumption of such material. But eventually focus shifted to the demand side, sanctioning the possession and purchase of child pornography. Similar to policy developments in the area of non-child pornography, some countries moved ahead in the 1970s, while others followed their lead in later decades. However, the substantive direction of these developments pointed in opposite directions. While the rules for non-child pornography have become more permissive over time, the rules for child pornography have become more restrictive. These parallel developments suggest that many countries compensated the introduction of more liberal rules



for non-child pornography by setting clearer and narrower boundaries with regard to child pornography. Furthermore, not only have the rules for the possession and provision of child pornography become more restrictive over time but the sanctions have also intensified.

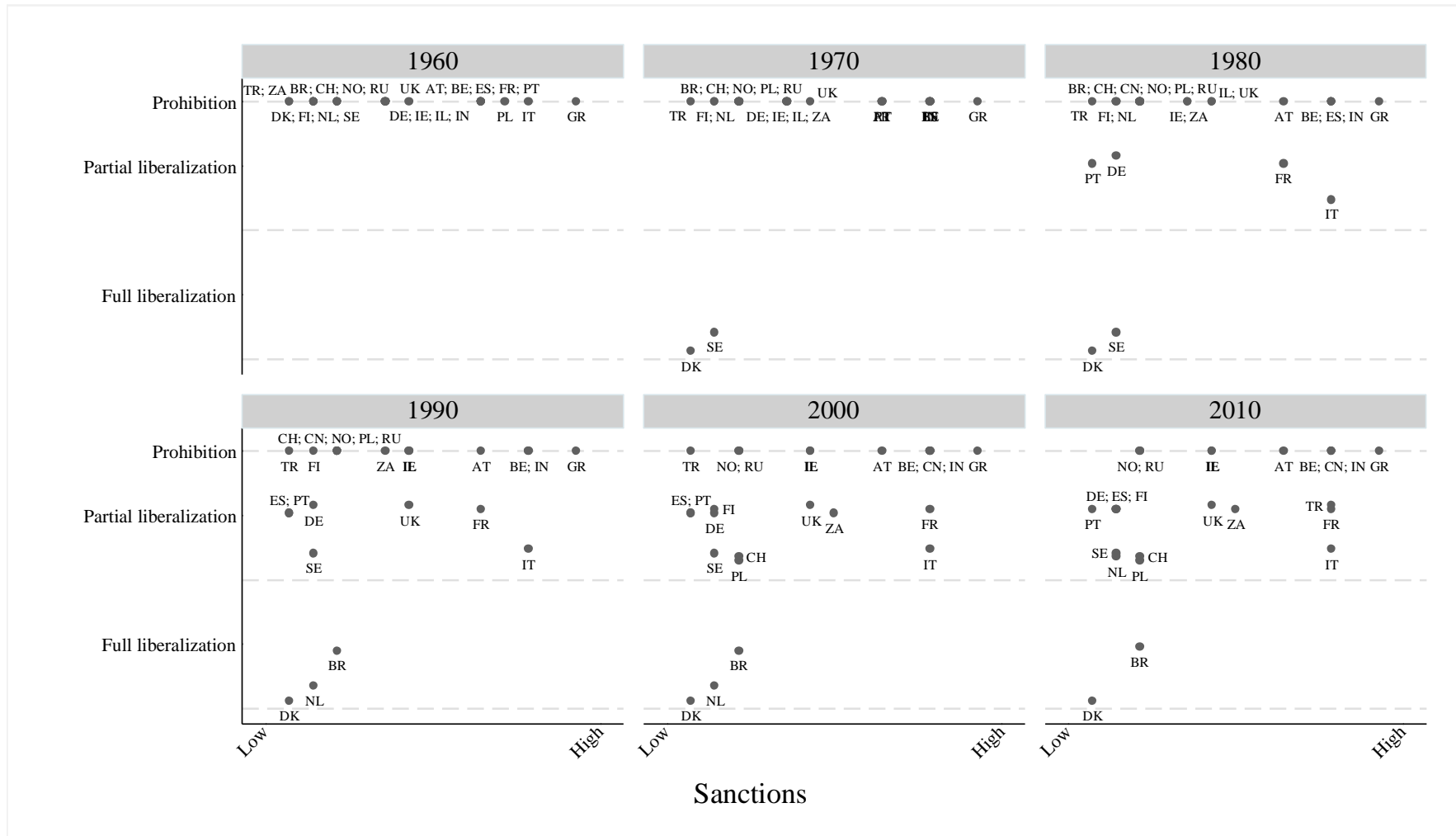
Although there is a remarkable amount of cross-national variance with regard to sanctions for the provision of child pornography, the 1990s and 2000s in particular brought significant changes in the overall distribution.<sup>6</sup> Up until the year 1990, the median country in our sample punished the provision of child pornography with short prison sentences substitutable by fines. Since then, the median country has not only lengthened the relevant prison sentences but also abolished the possibility of substituting them with fines. To be sure, there are still countries that have not followed this general trend, but a cross-national convergence toward more restrictive rules and more severe sanctions for the provision and possession of child pornography can be identified.

This trend toward more restrictive rules can also be observed at subordinate regulatory levels. The age thresholds determining whether an individual participating in pornographic material is considered to be a child became stricter as well. While 13 countries defined an age threshold of 18 years when they began to regulate child pornography (usually not until the 1990s), another 10 countries implemented lower age thresholds ranging from 14 to 17 years. The latter were typically those countries that explicitly prohibited child pornography already in the 1970s and 1980s. However, due to attempts of legal harmonization and the implementation of more effective protection of minors on the international level and the resulting adoption pressures, these countries started to raise their age thresholds. While Israel, Norway, and Sweden took the lead in the 1990s, Austria, Germany, Denmark, Finland, the United Kingdom, the Netherlands, and Portugal followed more recently. Currently, 23 countries apply an age threshold of 18 years. Switzerland and Ireland are the exceptions, implementing lower thresholds of 16 and 17 years, respectively. In recent years, procedural rules also became stricter, as states started to prohibit simulated or virtual child pornography. In the 1990s, forerunners Germany, the United Kingdom, Ireland, Norway, South Africa, France, and the Netherlands began to punish non-real child pornography. In the following decade, another 17 countries followed. By 2010, a total of 24 countries prosecuted non-real child pornography. Only Finland and Russia refrained from either adopting any explicit prohibition of such material in criminal law or signing the relevant optional United Nations protocol.

---

<sup>6</sup> Given the limitations of space, figures for possession-related sanctions are not reported here. In general, these sanctions have become more severe too.

**Figure 5.** *Non-child pornography: country movements over time for rules and sanctions*



*Note:* Abbreviations: AT=Austria, BE=Belgium, BR=Brazil, CH=Switzerland, CN=China, DE=Germany, DK=Denmark, ES=Spain, FI=Finland, FR=France, GR=Greece, IE=Ireland, IL=Israel, IN=India, IT=Italy, NL=Netherlands, NO=Norway, PL=Poland, PT=Portugal, RU=Russia, SE=Sweden, TR=Turkey, ZA=South Africa, UK=United Kingdom.

In sum, these policy developments demonstrate that while most developed countries have been lowering the hurdles for individuals who seek to consume, possess, or distribute adult pornography, these liberalizations have been paired with increasingly stringent rules and sanctions in the area of child pornography. To acquire a more precise understanding of the policy developments, we now take a closer look at individual countries.

Figure 5 shows that Denmark and Sweden can be considered the pioneers of more liberal approaches to regulating non-child pornography. At a time when the rest of the world still prohibited the sale of pornographic material, the two Scandinavian countries moved ahead and lifted all bans. In the 1970s, Germany, France, and Italy followed suit but only partially liberalized their regulations. Liberalization dynamics sped up in the following decades, but only Brazil and the Netherlands followed the Scandinavian example of full-scale liberalization. However, Sweden and the Netherlands then “corrected” earlier decisions by explicitly prohibiting violent pornography (in 1988 in Sweden) and pornography depicting bestiality (in 2010 in the Netherlands). All other countries only partially liberalized their regulations. In 2010, only nine countries still upheld general pornography bans. However, although these prohibitions are still valid at the statutory level because the legislator did not change the respective laws, the extent to which they are actually enforced is a question that cannot be answered in detail. Thus, despite persistent formal prohibition, pornography could be provided in some of these countries due to weak law enforcement or liberal court rulings legalizing certain types of pornography (e.g., Austria in 1977; Norway in 2005).

In contrast to the provision of pornographic material, private possession without the intention of distribution was usually not prohibited. In this respect, South Africa, under apartheid, is an exceptional case: It was the only country that explicitly sanctioned the private possession of non-child pornography. Recently, however, the trend toward more liberal rules regulating non-child pornography seems to have reversed to an extent, as some states started to explicitly punish not only the provision but also the private possession of certain types of non-child pornography, such as violent pornography (Switzerland 2001; United Kingdom 2008) and pornography depicting bestiality (Switzerland 2001; United Kingdom 2008; the Netherlands 2010). While this analysis focuses on violent pornography and pornography depicting bestiality, which are often referred to as “hard pornography” (in Austria, Germany, and Switzerland) or “extreme pornography” (in the United Kingdom), it should be mentioned that some countries explicitly regulate additional variants of “socially undesirable” pornography. Until the 1990s, Austria prohibited pornography depicting homosexual acts, which was considered “hard pornography.” In Switzerland sexual actions with human

secretions have been prohibited since 1991. And since 2008 the United Kingdom has explicitly prohibited pornographic material depicting sexual acts with human corpses as “extreme pornography.”

Despite the convergence toward more liberal rules in the area of non-child pornography, differences remain with regard to age restrictions, distribution channels, and control mechanisms. While nine states implement an age threshold of 18 years, six countries allow youth under age 18 to access pornographic material. These age thresholds have remained remarkably constant over time: Once introduced, they did not change. Thus, with regard to personal qualification hurdles, we do not identify a similar convergence trend toward more permissive rules.

Furthermore countries also differ on their procedural requirements: While nearly all countries exhibit some kind of zoning requirements, as pornography is usually allowed to be distributed only in special shops, or to advertise in accordance with strict rules, they differ with respect to the regulation of legal distribution channels for pornographic material. Some countries specify in detail via separate media or Internet laws which distribution channels are legal. Others have only general clauses in their penal codes allowing the distribution of pornographic material as long as youth protection laws are regarded and unwarranted confrontation of adults with such material is guaranteed. Under such circumstances, the proliferation of pornography is allowed as long as the respective criminal law requirements are observed. Thus, in most countries, pornography can be distributed via any distribution channel except public broadcasting, as broadcasting laws typically prohibit the distribution of pornographic programs. Only the broadcasting laws in the Netherlands, Spain, and South Africa contain no explicit prohibition of pornography. Nevertheless, one can assume that in these countries pornography cannot be distributed via public broadcasting due to the general provisions in their penal codes. Some countries also foresaw a prohibition of distributing pornography via separate distribution channels such as electronic networks or cable and satellite TV. However, most of these countries liberalized the respective rules recently (e.g., Germany and Sweden in the 1990s; Switzerland in the 2000s). In contrast to this liberalization trend, one can also detect moves toward stricter procedural rules with regard to hours of operation. While many countries initially had no explicit rules in their media laws, more and more countries have since introduced specific hours of operation, for example, times at which pornographic programs are allowed to be distributed via pay TV, video on demand, and the like.

**Figure 6.** *Child pornography: country movements over time for rules and sanctions*



*Note:* Abbreviations: AT=Austria, BE=Belgium, BR=Brazil, CH=Switzerland, CL=Chile, CN=China, DE=Germany, DK=Denmark, ES=Spain, FI=Finland, FR=France, GR=Greece, IE=Ireland, IL=Israel, IN=India, IT=Italy, JP=Japan, NL=Netherlands, NO=Norway, PL=Poland, PT=Portugal, RU=Russia, SE=Sweden, TR=Turkey, ZA=South Africa, UK=United Kingdom.

With regard to child pornography (Figure 6), the very same countries that were forerunners in the liberalization of non-child pornography were also forerunners in the tightening of child pornography regulation (Denmark, Sweden, and Germany). Indeed, Denmark was the only country in the sample to prohibit even the possession of child pornography early on. However, one should recognize that the tightening of child pornography regulation in Denmark and Sweden was a reaction to an (arguably unintended) consequence of an earlier decision. When Denmark and Sweden abolished their pornography bans in 1969–1970, they effectively legalized not only non-child pornography but also child pornography, as they failed to specify the latter’s prohibition. Thus, such material became legal and widely dispersed during the 1970s. As a corrective reaction, both countries moved to prohibit child pornographic material explicitly in 1979 (Sweden) and 1980 (Denmark). Figure 6 shows that Denmark and Sweden also belong to the group of countries with relatively lenient sanctions for rule violations. Accordingly, they should be considered “lenient authorities” (Knill et al., 2015), which combine strict rules with mild sanctions. The United Kingdom and Israel also belonged to the group of countries that explicitly prohibited the provision of child pornographic material in the 1970s, thereby employing more severe sanctions. In the following decades, more and more countries became increasingly restrictive; by 2010, most countries prohibited both the provision and the possession of child pornography.

In sum, a comparison between the policy developments in both areas reveals several interesting insights. First, the data demonstrate that the once-amorphous policy field of “pornography regulation” has become more fragmented over time. While pornography was initially banned broadly, without clearly codified distinctions among different types of pornography, recent decades have seen countries shift toward differentiated categories of pornography defined by their supposed harmfulness for society. While access hurdles to non-child pornography were lowered over time, child pornography was simultaneously defined as the line that may not be crossed. Second, the data show that the leader and laggard countries were identical in these parallel policy developments. Once Denmark and Sweden moved ahead on the respective rules dimensions, other countries followed their examples at varying rates. In the long run, these developments have resulted in a pattern of policy convergence toward more liberal rules for adult pornography and a parallel pattern of policy convergence toward stricter rules and sanctions for child pornography. More recently, a new trend seems to have evolved with regard to violent pornography and pornography depicting bestiality, as a number of countries have started to explicitly punish both the provision and the possession of such material.

## **Conclusion**

Although pornography is available in nearly all countries around the world with uncensored Internet access, its regulation has received relatively little scholarly attention. Comparative studies on pornography regulation are rare (as an exception, see the work of Diamond, 2009), even though legalization of pornography was often accompanied by fierce political struggles. Against this backdrop, this article has aimed to systematically investigate trends in pornography regulation across 26 countries between 1960 and 2010. Based on a differentiated measurement scheme, we have identified a range of opposing regulatory trends.

Our analysis reveals a clear trend toward more permissive regulatory approaches over time, at least with regard to adult pornography, which goes along with cultural change and the emphasis placed on postmaterialist values in modern societies. The picture looks quite different for the regulation of child pornography, where both rules and sanctions across countries are characterized by growing governmental intervention. There is even evidence that, in some countries, there have been compensatory developments between the regulation of non-child and child pornography, with more permissive approaches for the former being compensated by the parallel adoption of more authoritarian regimes for the latter (Person, 2015).

How have these divergent policy developments come about? We lack the space to engage in a detailed discussion of this question, but a few tentative explanations can be offered. First, more often than non-child pornography, the regulation of child pornography is susceptible to sudden focusing events (Kingdon, 2003) that put the issue into the public spotlight—for example, if child pornography is found on the computer hard drive of a prominent politician. Such sudden increases in perceived problem pressure due to specific events potentially have a more profound impact on the political agenda than the more gradual and less visible changes of aggregate indicators in the consumption and distribution of non-child pornography. Second, public and professional awareness of child abuse as a major societal problem increased during the second half of the 20th century, although it has also been shown that this awareness follows cyclical paths (Olafson, Corwin, & Summit, 1993). In fact, the notion that child abuse poses a societal public problem is much more recent than similar understandings of rape. Pfohl (1977) argued that child abuse was actually only “discovered” as a social problem in the 1960s. Accordingly, the increasing restrictions on child pornography we discerned might result from our temporal focus and simply mirror the increasing restrictions on adult pornography that took place before the time period we analyzed.

To conclude, the developments investigated in this article point to a growing regulatory specialization and differentiation of the field. This tendency, most clearly pronounced for child pornography, becomes increasingly apparent for other types of pornography, including violent pornography and bestiality. In addition, recent developments in some countries suggest that the growing incidence of so-called revenge porn (i.e., publication of private pornographic material without the consent of at least one of the included individuals) has further contributed to a differentiation of this policy field. In 2014, Israel made the publication of revenge porn a crime that can be punished with up to five years in jail (Yaakov, 2014). A few months later, the United Kingdom followed, introducing prison sentences of up to two years (Bowcott, 2014) for the publication of revenge porn. Thus, the growing differentiation of the regulatory substance has been increasing the complexity of corresponding laws and regulations. It remains to be seen whether these trends will continue in the years to come.

## References

Bowcott, O. (2014, October 12). Revenge porn to be criminal offence with threat of two years in jail. *The Guardian*. Retrieved from <http://www.theguardian.com/culture/2014/oct/12/revenge-pornography-criminaloffence>

Capano, G. (2009). Understanding policy change as an epistemological and theoretical problem. *Journal of Comparative Policy Analysis: Research and Practice*, 11(1), 7–31. doi:10.1080/13876980802648284

D'Amato, A. (2006, June 23). Porn up, rape down (Northwestern Public Law Research Paper No. 913013). Retrieved from [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=913013](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=913013)

Diamond, M. (2009). Pornography, public acceptance, and sex-related crime: A review. *International Journal of Law and Psychiatry*, 32(5), 304–314. doi:10.1016/j.ijlp.2009.06.004

Diamond, M. (2010). Porn: Good for us? *The Scientist*, 24(3), 29–30. D'Orlando, F. (2011). The demand for pornography. *Journal of Happiness Studies*, 12(1), 51–75. doi:10.1007/s10902-009-9175-0

Dworkin, A. (1981). *Pornography: Men possessing women*. New York, NY: Putnam/Perigee.



Dworkin, A., & MacKinnon, C. (1988). *Pornography and civil rights: A new day for women's equality*. Minneapolis, MN: Organization Against Pornography.

Flanagan, S. C., & Lee, A.-R. (2003). The new politics, culture wars, and the authoritarian-libertarian value change in advanced industrial democracies. *Comparative Political Studies*, 36(3), 235–270. doi:10.1177/0010414002250664

Gruen, L. (2005). Pornography and censorship. In R. Frey & C. Wellmann (Eds.), *A companion to applied ethics* (pp. 154–179). Oxford, UK: Blackwell.

Hall, P. A. (1993). Policy paradigms, social learning, and the state: The case of economic policymaking in Britain. *Comparative Politics*, 25(3), 275–296. doi:10.2307/422246

Heichel, S., Pape, J., & Sommerer, T. (2005). Is there convergence in convergence research? An overview of empirical studies on policy convergence. *Journal of European Public Policy*, 12(5), 817–840. doi:10.1080/13501760500161431

Helgadóttir, Á. G. (2014). The Icelandic initiative for pornography censorship. *Porn Studies*, 1(3), 285–298. doi:10.1080/23268743.2014.928462

Hillyer, M. (2004). Sex in the suburban: Porn, home movies, and the live action performance of love in Pam and Tommy Lee: Hardcore and uncensored. In L. Williams (Ed.), *Porn studies* (pp. 50–76). Durham, NC: Duke University Press.

Hornsby, J., & Langton, R. (1998). Free speech and illocution. *Legal Theory*, 4(1), 21–37. doi:10.1017/S1352325200000902

Howlett, M., & Cashore, B. (2009). The dependent variable problem in the study of policy change: Understanding policy change as a methodological problem. *Journal of Comparative Policy Analysis: Research and Practice*, 11(1), 33–46. doi:10.1080/13876980802648144

Inglehart, R. (2008). Changing values among Western publics from 1970 to 2006. *West European Politics*, 31(1–2), 130–146. doi:10.1080/01402380701834747

Kingdon, J. W. (2003). *Agendas, alternatives, and public policies (2nd ed.)*. New York, NY: Longman.

Knill, C. (2005). Introduction: Cross-national policy convergence: Concepts, approaches, and explanatory factors. *Journal of European Public Policy*, 12(5), 764–774. doi:10.1080/13501760500161332

Knill, C., Adam, C., & Hurka, S. (Eds.). (2015). *On the road to permissiveness? Change and convergence of moral regulation in Europe*. Oxford, UK: Oxford University Press.

Kutchinsky, B. (1973). The effect of easy availability of pornography on the incidence of sex crimes: The Danish experience. *Journal of Social Issues*, 29(3), 163–181. doi:10.1111/josi.1973.29.issue-3

Kutchinsky, B. (1983). Obscenity and pornography: Behavioral aspects. In S. H. Kadish (Ed.), *Encyclopedia of crime and justice* (Vol. 3, pp. 1077–1086). New York, NY: Free Press.

Kutchinsky, B. (1991). Pornography and rape: Theory and practice? Evidence from crime data where pornography is easily available. *International Journal of Law and Psychiatry*, 14(1–2), 47–64. doi:10.1016/0160-2527(91)90024-H

Kutchinsky, B. (1999). *Law, pornography, and crime: The Danish experience*. Oslo, Norway: Pax Forlag A/S.

Langton, R. (1993). Speech acts and unspeakable acts. *Philosophy and Public Affairs*, 22(4), 293–330.

Lijphart, A. (2012). *Patterns of democracy: Government forms and performance in thirty-six countries (2nd ed.)*. New Haven, CT: Yale University Press.

MacKinnon, C. (1993). *Only words*. Cambridge, MA: Harvard University Press.

Mooney, C. Z. (1999). The politics of morality policy. *Policy Studies Journal*, 27(4), 675–680. doi:10.1111/j.1541-0072.1999.tb01995.x

Morgan, R. (1980). Theory and practice: Pornography and rape. In L. Lederer (Ed.), *Take back the night: Women on pornography* (pp. 134–140). New York, NY: William Morrow.

Nair, A. (2016). *Regulation of Internet pornography: Issues and challenges*. London, UK: Routledge.

Nair, A., & Griffin, J. (2013). The regulation of online extreme pornography: Purposive teleology (in) action. *International Journal of Law and Information Technology*, 21(4), 329–353. doi:10.1093/ijlit/eat007

Olafson, E., Corwin, D., & Summit, R. (1993). Modern history of child sexual abuse awareness: Cycles of discovery and suppression. *Child Abuse and Neglect*, 17(1), 7–24. doi:10.1016/0145-2134(93)90004-O

Person, C. (2015). Pornography: “Soft-core” liberalization of indecent material in Europe. In C. Knill, C. Adam, & S. Hurka (Eds.), *On the road to permissiveness? Change and convergence of moral regulation in Europe* (pp. 102–128). Oxford, UK: Oxford University Press.

Petley, J. (2014). The regulation of pornography on video-on-demand in the United Kingdom. *Porn Studies*, 1(3), 260–284. doi:10.1080/23268743.2014.927705

Pfohl, S. J. (1977). The “discovery” of child abuse. *Social Problems*, 24(3), 310–323. doi:10.2307/800083

Sabatier, P. A. (1988). An advocacy coalition framework of policy change and the role of policy-oriented learning therein. *Policy Sciences*, 21(2–3), 129–168. doi:10.1007/BF00136406

Sharpe, E. B. (2003). Local government and the politics of decency. *Social Science Quarterly*, 84(2), 262–277. doi:10.1111/ssqu.2003.84.issue-2

Smith, K. (2001). Clean thoughts and dirty minds: The politics of porn. In C. Mooney (Ed.), *The public clash of private values: The politics of morality policy* (pp. 187–200). Washington, DC: Congressional Quarterly Press.

Thornburgh, D., & Lin, H. (2002). *Youth, pornography, and the Internet*. Washington, DC: National Academy Press.

Wortley, R., & Smallbone, S. (2012). *Internet child pornography: Causes, investigation, and prevention*. Santa Barbara, CA: ABC-CLIO.

Yaakov, Y. (2014, January 6). Israeli law makes revenge porn a sex crime. *The Times of Israel*. Retrieved from <http://www.timesofisrael.com/israeli-law-labels-revenge-porn-a-sex-crime/>

Ydersbond, I. (2012). The “promiscuous” and the “shy”: Denmark and Norway—A historic comparative analysis of pornography legislation. *NPPR working paper series: The Politics of Commercial Sex* 2012:1. Stirling, UK: Nordic Prostitution Policy Reform. Retrieved from <http://nppr.se/wp-content/uploads/NPPRWP201201.pdf>