

The Legalisation of Child Pornography in Sweden and What Followed (1969-1999)

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Abstract

After some years of debate among intellectuals about the freedom of individuals in relation to the state, sexual intercourse in public was legalised in Sweden in 1971 with an age limit of 15 for participants, and all kinds of printed pornography were legalised without an age limit for those involved. (The representation and private adult consumption of pornography in moving images remained legally unregulated like before.) The reform was similar to a reform that had entered into force in Denmark in 1969. A re-regulation of pornography was carried out during the period 1973-1999. The result of this study shows that although child pornography in print and sexual intercourse in public were criminalised during the rule of conservative Governments (1976-1982), it was not until 1990 that all political parties took a firm stand against child pornography in moving images. The results have been interpreted in the light of the Scandinavian legal realism that characterised Swedish legislation until the 1990s.

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1. Introduction

Today the King mentioned my retirement again. A bit tired, sad, and resigned, he once more pleaded with me to stay. (---) He did not hide his apprehension about Palme, whose judgement he doubted.

From the diary of Prime Minister Tage Erlander, February 7, 1969.¹

On February 17, 1971, two decisions came into effect in Sweden that overruled the ban on violations of 'public morality' (*tukt och sedlighet*) in writing and images, as well as words and actions.² The consequence of the first decision was that all kinds of pornography, including pornography featuring children and young people, could be legally produced or imported, marketed, sold, and distributed to adults in Sweden. The second decision entailed the legalisation of sexual intercourse in public, in a form of public event that was later to be called 'pornographic performance', and where the minimum age limit for performers was 15 years of age.

The following is an analysis of the political process that took place before and after the decisions until the possession of child pornography was banned in 1999. The aim is to interpret the debate that went on parallel to this process through answering the following question:

- What arguments were used to justify, defend and denounce the repeal of the ban on violations of public morality in Swedish legislation, and how did the ensuing political debate regarding the controversial consequences of the decision develop up until 1999?

The question has been answered through a qualitative study of the arguments about pornography presented in two categories of sources, partly literature on pornography that was published in Sweden up to ten years before the decisions in 1970, partly material that was created in immediate connection with the legislative processes in Sweden and (in two cases, see below) Denmark. The sources in the former category have been identified through a systematic search in the union catalogue LIBRIS, based on the criteria that it has been coded with one of the subjects 'pornography', 'sexual deviations', 'Sweden's political science and politics: political writings' or 'freedom of expression'. It must also have been published between 1960 and 1970 and deemed to relate to conditions in the Nordic region.³ The latter category of sources contains both information about the consequences of previous decisions and motives behind future decisions or positions, namely inquiry reports, government bills, materials produced in parliamentary discussions and regulations. Since the argumentation in the years

1 Erlander (2016) pp. 11-12.

2 Svensk författningssamling (SFS) 1970:225, SFS 1971:29, Kunglig Majestäts (Kunlg Maj:ts) brev 1971:19.

3 LIBRIS, http://libris.kb.se/form_extended.jsp?f=ext.

following 1973 was based to a high degree on the observations of the government Crime Commission, unpublished working materials from its archives have been used as well. The period after 1990 has only been examined cursorily. Some documented consequences of political decisions have been presented by referencing previous research.

When reporting the results, a special emphasis has been placed on identifying the individuals or parties that have represented various standpoints. No attempt has been made, however, to assess how explicitly expressed standpoints have compared to the platforms or agendas of political parties, or similar policy documents.

In order to find rational explanations for the development of Swedish politics, the answer to the research question has been considered in the light of the general view of law and values that characterised Swedish policy debates during the current period, more precisely those that concerned the majority's responsibility for the minority. These perceptions are developed later in the presentation.

Due to the broad definition of 'pornography' provided by the Swedish Government when the proposal for legalising it was presented to the Riksdag, the concept here does not only include printed or moving images meant to be sexually arousing, but also 'mediated pornography'. This was later defined by The Crime Commission as 'a performance in which sexual situations or courses of events are presented in a crude and provocative way'.⁴

The definition of 'child' corresponds to the contemporary definitions of 'underage' in the Children and Parents Code (*Föräldrabalken*), that is, a person who had not yet turned 20 years of age between July 1, 1969, and June 30, 1974, or 18 years of age after July 1, 1974. By 'young people' is meant a person who after 30 June 1974 had turned 18 but not turned 20 and who was thus covered by the provisions of the Child Welfare Act (*Barnavårdslagen*) on the obligation of municipalities to intervene to protect children and young people up until the age of 20 years who adopted an 'immoral lifestyle'. The law was first replaced in 1982 and then in 1990 by other legislation with the same meaning and the same age limit.⁵

The context in which this research is presented has necessarily meant that it has been surrounded by a number of limitations and reservations. The selection of referenced previous research has been guided by whether it had immediate relevance to interpreting the answer to the research question. Research on the development of freedom of expression or children as legal subjects has therefore only been referenced in exceptional cases. Arguments expressed in the Danish Parliament in connection with the legalisation of pornography and the criminalisation of child pornography

4 Prop. 1973:115 p. 108.

5 SFS 1960:97 ch. 4 § 25, SFS 1969:157, SFS 1969:164 § 25, SFS 1974:236, SFS 1980:621 § 1, SFS 1990:52 § 3.

have been investigated only when they have had immediate consequences for Swedish debate and legislation. However, no attempt has been made to derive the argument of the Danish legislators from any national political or legal context. Nor have any attempts been made to investigate the conditions in Finland and Norway, where all pornography and pornographic performances were prohibited during the entire period in question. Finally, it must be stated that the analysis of the results should be regarded as preliminary since they rest on a limited empirical basis.

In the next section, the previous research that most closely relates to the study's research question is referenced. Section 3 is a summary of the importance of legal realist views for Swedish legislation during the 20th century. In the chronologically structured section 4, the development of press freedom legislation up to the 1960s is presented, followed by the study of the literature on pornography. The section ends with a snapshot of the political conditions in the country in 1970. Sections 5-8 form a chronological account of the development of Swedish legislation on child pornography from 1970 until 1999. In the ninth and concluding section, the answer to the research question is discussed in the light of changing legal philosophical viewpoints.

In some places in the text, a few short descriptions of the Swedish political context have been added to increase readability for readers without qualified prior knowledge of the history.

2. Previous research

Child pornography has not been specifically addressed in previous historical research on Sweden, neither in works on Swedish sexual policy nor sexual abuse of children in Sweden.⁶ Nor is it touched upon in scientific biographies of the politicians responsible for the reform, nor in popular historical works, nor in jurisprudential review works.⁷ The research devoted to adult pornography comes closest to the subject.

The Swedish debate about pornography in the 1960s has been thoroughly investigated by Lena Lennerhed, alongside the contemporary view of sexual minorities.⁸ Lennerhed characterised the Swedish sexual debate at the time as defined by the resistance of young liberal intellectuals to what they saw as the freedom-restricting legislation of a 'nanny-state', and their argument, based on moral nihilism, that the sexual practices of individuals must be seen as a private matter.⁹ However, the new left movement that

6 Arnberg, Laskar and Sundevall (2015), Bergenheim (2005).

7 Bjereld (2015), Joshi and Navlakha (2010), Mattson and Petersson (2022), Misgeld *et al.* (1989), Östberg (2009), Östberg and Andersson (2013).

8 Lennerhed (1994) ch. 'De unga liberalerna' and 'Sexuella minoriteter'.

9 *Ibid* pp. 231-240.

developed in Sweden during this decade was described as critical towards what it called 'sexual liberalism'.¹⁰

Earlier studies of Swedish pornography have primarily dealt with pornography featuring adults.¹¹ Max Waltman focused mainly on its connection to prostitution and its consequences for participating grown-ups in particular, partly in the period after 1999.¹² In her research on the development of the porn industry during the second half of the 20th century, Klara Arnberg made the important observation that until the mid-1990s, the Swedish debate concerned primarily the effects of pornography on consumers and third parties, not participants.¹³ Although Arnberg did note that the production of child pornography began in Sweden after the legalisation of pornography in 1971, she insisted on downplaying the significance of legalisation for the development of printed pornography. The decision, she said, was more or less a decriminalisation of a process that was already ongoing and well advanced, albeit probably accelerated by expectations of an imminent legalisation. She conceded, however, that legalisation made the content more daring, and that this in turn increased sales.¹⁴ In an overview study of the development of legislation on pornography in several countries from 1960-2010, Steffen Hurka and Christoph Knill described the legalisation of child pornography in Denmark and Sweden as 'arguably unintended', but without presenting any empirical support for that conclusion.¹⁵

A brief account of the process that resulted in the partial criminalisation of child pornographic images in 1980 was included in a study of the constitutional reforms in Sweden 1965-1980, published by the author of this article. From the overwhelming majority of consulting bodies that in 1978 expressed support for criminalisation, the response of the Swedish Association for Sexuality Education (RFSU) was cited, which paid particular attention to the fear shown by children who had *witnessed* child pornographic images of adults having intercourse with children: 'That children in the face of child pornographic images have such reactions as mentioned here have been confirmed within RFSU in contacts with preschool staff.'¹⁶

Ambitious evaluations of the consequences of the legalisation of pornography in Denmark in 1969 have been published by the Danish criminologist Berl Kutchinsky (partly posthumously). In one study Kutchinsky found a 63% decrease of sexual offences in Copenhagen between 1959 and 1969, a change that had taken place

10 *Ibid* p. 251.

11 Arnberg (2007), Arnberg (2010), Arnberg and Husz (2021), Gustafsson and Larsson (2009), Larsson (2017), Larsson *et al.* (2021).

12 Waltman (2014) ch. 5-7, 9, 12.

13 Arnberg (2007) pp. 28-38, 47-50.

14 *Ibid* p. 120, Arnberg (2010) pp. 277-278.

15 Hurka and Knill (2016) p. 21.

16 Svanberg (2020) pp. 434-436.

mainly during the latter half of that period. The decrease involved primarily what he calls 'Peeping Toms' and perpetrators 'molesting little girls', and according to him this could undoubtedly be explained by the increased availability of pornographic material, the main conclusions being that the legalisation in any case did not stimulate any crime and that access to pornography probably prevented sexual crimes against children.¹⁷ During the debate that preceded the criminalisation of the commercial sale of child pornography in Denmark in 1980, Kutchinsky summarised on behalf of the *Folketing* the scope and content of the commercially produced child pornography in Denmark, which had been produced from its inception in 1971 until the fall of 1979. The number of printed issues was estimated at around 200 and the number of films at around 100. They had been sold in around one million copies, which was estimated to correspond to around one percent of the total sold pornography in the country until then. The majority of the images were said to show naked Western European (white) children, but there were also several images of intercourse that had been taken of child prostitutes in Tunisia, India, Thailand and Hong Kong, which had then been resold. A lot of the Danish material had been sold to Swedish and German customers and retailers. Based on these data and the fact that sexual assaults against girls under 15 in Copenhagen had continued to decrease during the 1970s, Kutchinsky argued extensively *against* the criminalisation of child pornography, with reference to the assessed risk of increased sexual crime against Danish children. In what he called a 'compromise proposal', it was proposed that the *Folketing* should limit the criminalisation to include pornography with *young* children up to ten or eleven years old.¹⁸

Another contemporary participant in the Danish child pornography debate, author Lone Backe, gave a description of the content of the Danish child pornography similar to Kutchinsky's, in a debate book which to some extent fulfills scientific requirements, but added that it had become increasingly rough during the 70s. In 1980, pictures of simply naked children could no longer be sold in Denmark.¹⁹

In a 1992 article, Jan Schuijjer and Benjamin Rossen presented estimates of the number of items of child pornography, and the number of children represented in them, that had been produced in Europe up until 1984 (excluding, therefore, numerous American items). After several caveats concerning what should be seen as pornography and the difficulties of identifying children and determining their ages, the authors arrived at the estimate that between 5,000 and 10,000 children whose pubertal development had not been completed, had participated in close to 800 issues of different magazines. Given the authors' narrow definition of 'child', large amounts of older children and young people who participated in the pornographic activities

17 Kutchinsky (1970/1972) pp. 177-179, Kutchinsky (1999) pp. 99-102, 276-277.

18 Kutchinsky (1980).

19 Backe (1980).

are therefore not included in the reported figures. The number of children who had participated in films was considerably smaller, and it is not clear if they have been included in these calculations. The Swedish production of printed child pornography was said to have been small but continuous throughout the 1970s.²⁰ A conservative assessment of sales in Sweden of this material is presented later in this account.

The Child Pornography Commission (1997) presented its own assessment of the number of children involved in the production of child pornographic films distributed in Sweden specifically, based on the content of material confiscated in connection with Swedish criminal investigations in the 1990s. This assessment was vague, but estimates indicated a three-digit number.²¹

As for the establishment of sex clubs and sex shops, Arnberg demonstrated in a later study of the development of the porn industry in Stockholm 1965-1985 that out of 54 screened premises housing what she called 'sex clubs' in this period, 30 had been established no earlier than 1971. In addition, 'sex clubs' were started at 18 additional addresses in 1970, when everyone could feel quite confident that an advantageous decision was imminent. However, Arnberg's category 'sex clubs' included facilities offering only striptease (for instance the amusement park *Gröna Lund*), which was not categorised as 'pornography' in the 1973 Crime Commission report. At the same time, the study excluded all legal posing studios in the city (see below for a description). Out of 25 confirmed sex shops selling pornography in print or moving images, 19 were established no earlier than 1970.²² In the light of this information, it appears to be a reasonable interpretation that the legalisation in 1971 was in fact crucial for the establishment of sex clubs and sex shops, both of them businesses that involved child pornography, in the city of Stockholm.

In terms of findings based on research, there is also the conclusion of special investigator Inger Lindquist in the Prostitution Commission (1981), which implied precisely the legalisation of pornography in 1971 as the reason for the massive increase in sex clubs and prostitution in Stockholm in the early 1970s. Lindquist notes: 'Thus, approximately two percent of women born in the Stockholm region in the mid-1950s have engaged in prostitution.'²³

20 Schuijjer and Rossen (1992). This study has been referred to both by the Child Pornography Commission and by Klara Arnberg (Statens offentliga utredningar [SOU] 1997:29 pp. 114-116, Arnberg (2007) pp. 14-15, Arnberg (2010) p. 264). Although I see no reason to doubt the information referred to here, the authors' interpretation of the collected data may be questioned, for instance in regard to basic research ethical demands (Schuijjer and Rossen (1992) Appendix C-E).

21 SOU 1997:29 pp. 116-139.

22 Arnberg (2022) pp. 25-26.

23 SOU 1981:71 pp. 109, 160, 175.

In an analysis of the development of Swedish child welfare legislation during the 20th century, Titti Mattsson claimed that coercive interventions to protect children and young people under 20 before 1982 took place with only limited respect for the young person's personal integrity, even after the age of 15, when children began to be regarded as independent legal subjects. The purpose of protecting society from the young person's behaviour then shifted to protecting the young person himself.²⁴ In a later published analysis of the position of children in the Swedish fundamental laws, Mattsson celebrated the old Swedish freedom of the press and children's right to publish their opinions, but at the same time underlined the importance of EU membership for the incorporation of the European Convention on Human Rights (ECHR) in Swedish law.²⁵ Leif G.W. Persson's study of prostitution in Sweden, which constituted part of the material for the Prostitution Commission, showed how the Child Welfare Act was applied in the country's three largest cities during the 1970s and will be discussed below, together with the freedom of the press legislation.

3. Theory

How can the legalisation of child pornography be interpreted theoretically? The background to Scandinavian legal realism can be traced to the development of the European universities towards the end of the 19th century, which in Sweden, among other things, was manifested in the form of a legal positivist reaction against the then-prevailing legal doctrine of natural law. The criticism was that the concept of objectively existing values and truths, 'natural law', was a metaphysical idea. Although laws were said to be based on such ideas, they were nevertheless merely expressions of the legislator's social norms, the critics argued. The main proponent of legal positivism in Sweden, the philosopher Axel Hägerström in Uppsala, further claimed that these norms, instead of metaphysics, should rest on 'objective' scientifically based ideas.²⁶ This legal doctrine developed in several rival directions during the early 20th century, where the one having social welfare as a stated goal, particularly came to appeal to the Swedish social democrats in their exercise of power from the 1930s onwards. In modern literature, it has been called 'Scandinavian legal realism'.²⁷ Jes Bjarup has critically described the consequences of social engineering directed by social democrats whose goals and means sometimes were weakly anchored among the electorate.²⁸ Another consequence of the eventually dominant legal realism was, according to Ola Wiklund, the opposition of the social democrats to constitutional

24 Mattsson (2002) pp. 47-52, 76-86 (summary in English pp. 465-477).

25 Mattsson (2019) pp. 106-108.

26 Thorpenberg (2003), Björne (2007) pp. 315-316.

27 Strömholm (2002), Björne (2007) pp. 316-330, Strang (2018).

28 Bjarup (2005).

rights and liberties and opposition to the involvement of lawyers in the exercise of state power because it increased the risk of legal review of what the political majority had agreed upon.²⁹

The renaissance of natural rights after the Second World War, for example manifested in the ECHR, therefore did not make a significant impact in Sweden. The convention was ratified in 1952 but Martin Sunnqvist has described in detail and in line with Wiklund how both the Swedish legislators and the Swedish courts (similar to other Nordic countries) avoided referring to the convention until well into the 1990s, the former group because they perceived that national law already fulfilled convention rights, the latter because of reluctance to review political decisions.³⁰ The Swedish Social Democrats' opposition to both convention rights and constitutional rights, to lawyers' involvement in the legislative process and to judicial review, was particularly clearly expressed during the constitutional debate of the 1970s. The arguments for this view of democracy, summed up in the words 'majority principle' (*majoritetsprincipen*), also made an impression on the right-wing parties in the *Riksdag*, even if they expressed support for the interests of various minorities, for example children, to a greater degree than the Social Democrats. However, it was this party, which was in charge of the government until 1976, that mainly left its mark on the legislation until then. In an earlier study of the Swedish constitutional debate 1965-1980, the author of the present article has shown that, in relation to questions concerning relationships between individuals and the state, the Social Democrats from at least 1970 and until 1976 rejected constitutionally regulated freedoms and rights due to the risk of lawyers without democratic mandates appealing or discrediting political decisions. The policy was not designed haphazardly. The political leaders, Prime Minister Olof Palme and Minister of Justice Lennart Geijer, were both lawyers who had been trained during the period when legal realism had the greatest influence on Swedish law schools.³¹ The intention is not to suggest that legal realism would be a homogenous conception of law. In this context, the meaning of 'legal realism' refers primarily to the idea that although politicians' legislative work may be inspired by value considerations, rights perspectives are downplayed in favour of social facts and social utility considerations.

An adaptation to European Union law only began after Sweden's application to the EC in 1991. Then, legal philosophical viewpoints that protected majority rule at the expense of minority protection began to be replaced by a legal philosophy that protected minority protection at the expense of majority rule.³²

29 Wiklund (2009).

30 ETS No. 005, Sunnqvist (2014) pp. 579-597, 801-817, 963-995, 1005-1011 (summary in English pp. 1074-1089).

31 Svanberg (2020) pp. 24, 386-387, 449, 451-452.

32 Möller (2022), Strömholm (2002).

Johan Strang's detailed and nuanced analysis of the development, diversification and change of the Scandinavian legal realism during the 20th century, as well as the important relationship between law and power, does not affect the overall picture drawn above that the dominant legal realist philosophy during most of the 20th century contributed to a policy who showed a very limited understanding of society's vulnerable or marginalised groups. Strang himself mentions the practice of forced sterilisations as a good example.³³ In the following sections, it is examined whether legal philosophical concepts can provide the answer to the article's research question.

4. Background to the legal and political situation in 1970

In Sweden, freedom of the press has been regulated since 1766 in a fundamental law called the Freedom of the Press Act. Several different fundamental laws with this name have succeeded each other, but up to and including the Second World War, the Freedom of the Press Act of 1812 applied. After the war, it was decided that it was once again time to replace the current act with a new one. The basis for that view was above all the experiences from the war years, when the government, with the support of vague formulations in the old fundamental law, had banned certain press from being printed and distributed. The meaning of the new Freedom of the Press Act, which came into force in 1950, was that freedom of the press would be expanded and guaranteed by the authorities to a greater extent than before. The press offences had now been more clearly defined in order to prevent misuse of the legislation. One of the thirteen listed offences was the publication of representations, in *writing or images* of 'behaviour that violates public morality', a wording that had been carried over from the older legislation. Great importance was placed on preventing the spread of such representations among children and young people. Individual police officers were given the right to confiscate them immediately.

The trial in press offence cases would normally take place in two stages. First, a jury – one appointed for each of the 24 counties – would answer 'yes' or 'no' to the question of whether a published writing was criminal at all. Unless six of the nine jurors found the writing to be criminal, the defendant would be acquitted, a decision that could not be appealed to a higher court. Only if the answer was 'yes' would the case proceed to the ordinary court, without the latter having to take part in the jury's deliberations, for example what in the petition the jury had perceived to be criminal and how serious this crime was considered to be. The meaning of the provisions was clear: It would be difficult to be convicted of press offences.³⁴

After the press freedom regulation had come into force, however, it turned out that it came to be applied differently in different counties. Since the meaning of a 'behaviour

33 Strang (2018) pp. 217.

34 Prop. 1948:230, Konstitutionsutskottets utlåtande 1948:30, SFS 1949:105.

that violates public morality' had not been specified, the assessment was completely dependent on the opinion of the individual juror. If in addition (simplified), the publisher, printer or author of the text was unknown, it was the 'spreader', i.e. the seller, who was prosecuted for the press offence, which is why the legality of the same text could be tested in several counties. In counties with a large city, after 1950, the attitudes of the jurors developed faster than elsewhere in a liberal direction, which meant that the same writ that was convicted by a jury in a small town could be acquitted by another jury in one of the counties with a large city, which in turn made good arguments for the defendant's small-town defence attorney. This combined with the provision that acquittals could not be appealed, led to a varying practice within the country but with the tendency for the judiciary's view of what violates public morality steadily became increasingly liberal.³⁵

The ban on violations of public morality in *words and actions*, in spaces to which the public had access, was regulated in an area of general legislation, from 1965 called the Penal Code (*Brottsbalken*).³⁶

The Swedish Freedom of the Press Act regulated only printed matter and images. Before the Fundamental Law on Freedom of Expression entered into force in 1992, expressions in radio broadcasts, audio recordings and moving images were not regulated in any fundamental law, but could be regulated in general legislation. The 'video violence law', referred to below, is one such example. Certain film screenings were also regulated in general legislation. All films intended for public viewing (between 1911 and 2010) had to be examined and approved in advance by the State National Board of Film Censors. Film screenings for adults at private functions were however legally unregulated, and this was the case at a time when a new generation of intellectuals started reassessing old conventions.

In a debate book from 1963, *A Liberal Approach (En liberal attityd)*, journalist Hans Hederberg rejoiced at the recent years' dramatic revitalisation of the cultural and social debate in Sweden. Traditions and old truths were discussed as never before in books, newspapers, films, radio and TV. The topics concerned economic distribution, cultural patterns and gender roles. However, unfortunately, one group had not kept up with the development, he believed, namely the country's politicians, described as a boring collection of gentlemen who agreed on most things. In which subjects could this group also be activated in a vital discussion about the future? The influential newspaper editor and political scientist Herbert Tingsten's answer to the question is referenced by Hederberg: 'education issues and moral debate in the broadest sense'. Hederberg described his book as the starting point for such a debate. In a large

35 SFS 1949:105 ch. 8, Silbersky and Nordmark (1969) pp. 11-20, SOU 1969:38 pp. 30-32, Prop. 1970:125 pp. 69.

36 SFS 1962:700, ch. 6.

number of shorter chapters, called 'sketches', he outlined the guidelines for a renewal of the political discussion.

The seventh sketch, entitled *The Nanny State Laws (Förmyndarlagarna)*, is an attack on the then-current legislation on contraceptive advice, abortions, marriage, film censorship and pornography, which he believed collectively contributed to the disempowerment of the adult population. Hederberg criticised, among other things, the growing number of press offence lawsuits against erotic representations that were considered to 'violate public morality'. The consequence of the 'nanny state laws' is summarised: 'Using the laws to transfer moral views from one generation to another is an expression of true conservatism and a static view of society. The feared changes are suppressed and, in the worst case, the moral innovators are criminalised.'³⁷

In the following years, similar debate books were published on this theme. In psychiatrist Lars Ullerstam's book *The Erotic Minorities (De erotiska minoriteterna)* published in 1964, solutions are proposed to the difficulties that people with a number of described sexual preferences face in society, with the aim of increasing the tolerance of the majority society through the dissemination of knowledge and, through information and 'reform proposals', to help 'the erotic minorities to realise their own happiness'.³⁸ One of the sexual deviations described is *paedophilia*, that is, the sexual attraction of adults to children. 'The most sought-after ages are between 5 and 9 years of age', Ullerstam noted, and claimed that non-violent sexual contacts between children and adults can harm the children only if their parents have created a 'fear of sexuality', which 'disables them [the children] through sexual inhibitions'. Contrary to this, the author argued, sexual contacts can instead benefit the child: 'An intimate connection often develops as a result of repeated sexual contacts. The child gets lollipops and a kind of physical affection that is lacking at home.' Since a certain proportion of the paedophiles are in fact violent, however, Ullerstam accepted a continued criminalisation of sexual contacts between adults and minors, but described it as a crucial challenge for the future to find legal ways for paedophiles to satisfy their sexual needs: 'The sexual distress of "dirty old men" is a problem that tomorrow's more humane society must solve.'³⁹ Some of the numerous reform proposals he presented later in the book include a call to the country's parents to 'encourage the children's sexual curiosity, to enjoy their sexual activity', to legalise pornography (the country's varying jurisprudence regarding the phenomenon is noted) and to decriminalise procuring and establish brothels: 'These institutions would ideally be supervised by doctors and social workers and the National Swedish Board of Health [*Medicinalstyrelsen*] would have oversight of the activities.'⁴⁰

37 Hederberg (1963) pp. 11-16, 61 (quotation).

38 Ullerstam (1964) p. 6 (also available in English and in several other languages).

39 *Ibid* pp. 58-62.

40 *Ibid* pp. 120-123.

In a couple of debate papers published in the following two years, further arguments for public sanctioning of prostitution were presented. Journalist Jörgen Eriksson, associated with the liberal national daily newspaper *Dagens Nyheter*, advocated the introduction of state brothels in order to provide prostitutes with safe working conditions and a pension after their careers be over.⁴¹ Journalist Hans Nestius argued in a debate paper published in support of the Liberal People's Party's upcoming election campaigns (*Folkpartiet*, during the early 1960s the largest opposition party, which received around 17-18% of voter support; from 2015: The Liberals), for the decriminalisation of both incest, pornography and procuring. The legal regulation of sexual life, he wrote, should be minimised to protection against rape and protection for minors.⁴²

In 1969, lawyer Leif Silbersky and journalist Carlösten Nordmark drew attention to the then highly topical issue of pornography. Based on a significant number of interviews with people from different parts of social and cultural life about their experiences with and attitudes towards pornography, from anonymous nude models to Denmark's Minister of Justice (1968-1971) Knud Thestrup, the authors argued for maximum liberalisation in the area. Despite the formal meaning of the word, 'pornography' was not limited to sexually challenging representations in images or writing but included the words and actions that the printed pornography conveys. Whether the sexual stimulation arises from representations in text, image or film, from observing the sexual activities of others at a sex club or through one's own participation in intercourse in a brothel, was irrelevant to the authors. Selling sex is also engaging in pornography, judging by the petition. Silbersky and Nordmark declared themselves to be well aware of the ongoing work of The Commission for Free Speech and Press Freedom Legislation, which is why the intention of the book must clearly have been to influence the outcome of the pornography issue.⁴³

According to the authors, the basic problem was that Sweden lacked good pornography, printed or 'mediated', but the arguments for its decriminalisation were similar to previously referenced authors in this section: Due to unclear jurisprudence on what is considered to violate public morality, pornography should be legalised to benefit more people, especially lonely people. For adults, it is hardly more dangerous than alcohol and tobacco, they argued. The authors did not discuss the age of sexual consent, but stated that there is at least a lack of scientific support for the claim that children would be harmed by pornographic images. With reference to information from the police authority in Stockholm and to investigations by the Danish physician Anders Groth, it was also argued that crimes of sexual offense have decreased

41 Eriksson (1965) pp. 44-50.

42 Nestius (1966) pp. 105-113.

43 Silbersky and Nordmark (1969) pp. 7-8, 182-184.

significantly in line with the increased access to pornographic images.⁴⁴ With the support of Minister of Justice Thestrup, the chair of the student union of the party Venstre and another Danish physician, Jarl Wagner Smitt, the authors also argued for the legalisation of brothels but that these should be placed under some kind of public scrutiny in order to guarantee regulated wages and tolerable working conditions for employees. In addition to the fact that such a reform would correspond to a demand in the market, it would create a new income opportunity for the country's still large number of housewives.⁴⁵ The latest development in Copenhagen was highlighted as an example:

*Husbands drive their wives into downtown. Business is arranged at one of the small hotels. The husband is always nearby and oversees so that his wife is not subjected to abuse. That kind of love trade is always temporary. It ceases as soon as a concrete goal is reached and the new car, washing machine or TV set is paid for. As an extra spice, the spouses get something exciting to discuss in their bedroom.*⁴⁶

However, Knud Thestrup expressed in the interview that he primarily preferred a Nordic solution to the brothel issue, to avoid an excessively high load of sex tourists in the Danish capital.

To summarise the ideas of the researched debate literature that relate to the topic at hand:

- Children have a fundamental right to sexual contact with other people. These contacts must be based on the children's own curiosity.
- The children's curiosity must be confirmed and encouraged by the adult world, for example the parents and the school. Curiosity should not be stigmatised, otherwise it leads to anxiety.
- The sexual contacts must be based on mutual consent, where children are attributed a general ability to give such valid consents.
- There is a lack of scientific support for the claim that children are harmed by consuming pornography.
- Brothels and pornography are excellent remedies for 'sexual distresses'.

It is of course impossible to assess how representative these views were in relation to the Swedish public. It is clear, however, that the authors and the individuals they

44 *Ibid* pp. 11-20, 185-188.

45 *Ibid* pp. 175-179.

46 *Ibid* pp. 175 (quotation translated by the author of the article). For a detailed analysis of the Swedish debate on sexuality during the 1960s, see Lennerhed (1994) (summary in English, pp. 307-313).

quote are made up of intellectual elite of physicians and journalists. Few would object to the claim that Leif Silbersky later became Sweden's most famous lawyer.

On the other hand, one thing that had a documented effect on the legalisation of pornography in Sweden, was the legalisation of pornography in Denmark. In the spring of 1969, the *Folketing* and Hilmar Baunsgaard's government with Minister of Justice Knud Thestrup carried out the legislative process that legalised all pornography, including child pornography and sexual intercourse in public (albeit with a distribution ban to young people under 16). The reform also covered private consumption of moving images.⁴⁷ The Danish government's stated motive for the reform was to increase the individual citizen's freedom of choice, while it at the same time aimed to reduce the public's curiosity about the formerly illegal pornography. Difficulties in drawing the line between 'lewd' and 'artistic' content and the increasingly liberal Swedish jurisprudence on the matter were also cited. The legalisation of pornographic performances was described as a 'natural consequence' of the legalisation of image pornography. A conservative member of parliament called for an age limit for participating models but was told by the Minister of Justice that the existing sex crime legislation provided sufficient protection against the exploitation of young people. In May 1969, the proposal was adopted by the *Folketing* without extensive discussions and without a vote, and entered into force on 1 July of the same year.⁴⁸

In Sweden, the process of legalising pornography started the following month with the publication of an inquiry report, *The Limits of Free Speech*, which included suggestions for how free speech and press freedom could be expanded. The report was written by The Commission for Free Speech and Press Freedom Legislation, a parliamentary inquiry appointed in 1965 and chaired by Council of Justice Sven Romanus. The task of the commission had been to suggest alignments to prevailing values of a number of regulations pertaining to free speech and press freedom.⁴⁹ Among other things, the report advocated a relaxation of the ban on violations of public morality. The boundaries for what words and images could be printed and disseminated were to be drawn generously, with reference to changing attitudes among the public. The ban was to pertain only to 'violations of the public conception of decency through grossly immoral or blatantly brutalising content', in the motivation included in the report exemplified by 'descriptions of sexual abuse of children or markedly sadist and brutal sexual behaviours'.⁵⁰

47 Lov nr. 224 af 4. 6. 1969, Thing (1999).

48 Folketingstidende. Forhandlingerne i folketingsåret 1968-69. spalte (sp.) 2606-2610, 3171-3184, 7145-7151, Tillæg A. Sp. 3049-3056, Tillæg B sp. 2035-2038, Tillæg C sp. 831.

49 Arnberg (2007) pp. 28-33 (for a more detailed description of the directive and work of the commission).

50 SFS 1965:818 ch. 7 § 4 punkt 14, SOU 1969:38 pp. 7, 66.

Two months later, in October 1969, a change of government took place. In the end, the entreaties of King Gustaf Adolf proved futile, as Prime Minister Tage Erlander finally left office after 23 years and was replaced by the Minister of Education, Olof Palme, who had recently been elected chairman of the Social Democratic Party. In connection to the change of government, the new Prime Minister appointed a new Minister of Justice, Lennart Geijer. The then National Police Commissioner, Carl Persson, described the new Minister of Justice much later in his autobiography as an inaccessible recluse who disliked police officers, disliked prisons and represented a radically new and what Persson calls 'liberal' view of criminal policy.⁵¹ Over a few months after the change of government, the Department of Justice completed a reform bill (*proposition*) which included a number of legislative proposals based on the inquiry report.

In simple terms, the legislative process in Sweden in 1970 first required the minister responsible for the issue at hand, to get the Government's consent to send a bill to the *Riksdag* for approval. At the time, a bicameral parliamentary system was still in place. The 151 representatives in the first chamber were elected by the county councils throughout the country. The term of office was eight years, and one eighth of the representatives were re-elected each year. The 233 representatives in the second chamber were appointed by general election every four years. All elections were held in the fall, but the annual meeting of the elected representatives did not take place until January the next year. Suggestions for amendments to the law had to be approved by the Government and both chambers of the parliament, while amendments to fundamental laws, such as the Freedom of the Press Act, had to be approved by the Government and both chambers *twice*, with an election to the second chamber in between the two parliamentary decisions.⁵² The coordination of the chambers was facilitated by the fact that the proposals were considered by standing joint committees that included representatives from both chambers. If the parliament decided to change a proposal, something that happened occasionally, the Government in turn had to approve the new wording of the proposal for it to come into effect.

Some types of regulations were decided by the Government alone, sometimes 'after hearing the Riksdag'. The Public Order Statute, which will be discussed below, belonged to the latter category.

In the late 1960s, a large parliamentary majority had decided to replace the bicameral *Riksdag* with a unicameral parliament consisting of 350 representatives, appointed by general election every three years. The election for the first unicameral *Riksdag* would take place in the fall of 1970.

51 Persson (1990) pp. 171-174.

52 SFS 1965:815 §§ 81-82, 87.

The Social Democratic Party had been in power without interruption since 1936. They had sometimes governed in coalition with other parties, but since 1957, all ministers were social democrats. In parliament, the Social Democratic Party had held a majority in the first chamber ever since the 1942 election. In the 1968 election to the second chamber, a Social Democratic majority was secured there as well. Thus, in the context of Swedish history, Prime Minister Olof Palme started his term in office from a uniquely strong parliamentary position. The proposal of the Minister of Justice concerning an expanded definition of free speech was therefore likely to pass, but there were many others as well who had to extend their approval.

5. The legalisation of pornography

No Government minister expressed reservations as the bill of the Department of Justice was handed over to the *Riksdag* for further consideration in April 1970.⁵³ In the Parliament, it was noted that the Government had suggested a much more far-reaching liberalisation than the inquiry had advised. The ban in the Freedom of the Press Act pertaining to representations that violated public morality was simply going to be repealed and replaced with nothing except a ban on showing pornographic images in public or sending them to someone without a previous request, which supplemented the existing ban on the distribution of similar representations among children and adolescents. But this was not all. By means of a special law, the ban in the Penal Code on violations of public morality in words and actions was also going to be repealed. In legalising ‘mediated pornography’ in this way, the Swedish Government seemingly wanted to contribute to the Nordic solution of the brothel issue, called for by Knud Thestrup. The government’s overall justification for the entire reform was summed up in the straightforward phrase that ‘anyone who wants to consume pornography should be allowed to decide for themselves.’⁵⁴

Before the writing of the proposal, a great many authorities and organisations had been invited in accordance with standard procedures to offer their views on the inquiry report, and most of them had endorsed the suggestion to retain an absolute limit of what pornographic representations should be allowed to contain. However, the Minister of Justice had not been convinced by the arguments presented by the inquiry or by the consultation bodies. A completely decriminalised pornography, albeit in combination with limited distribution rights, was suggested and justified on the grounds that ‘extensive free speech is necessary for a well-functioning formation of public opinion and debate on issues related to culture and society’ and that the

53 Prop. 1970:125 pp. 11, 83, 104, 106.

54 *Ibid* pp. 1, 3.

claim that pornography ‘incites crime’ had not been proven in research.⁵⁵ Since the bill lacks references to literature, it has not been possible to substantiate any influence in the proposal from the texts cited in the previous section. However, it can be stated that the proposal almost completely corresponds to the proposals in this literature.

In the *Riksdag*, the proposal for an amendment to the Freedom of the Press Act was considered by the Committee on the Constitution (*Konstitutionsutskottet*). The proposal for an amendment to the Penal Code was considered by the First Law Committee (*Första lagutskottet*), a task later transferred to the Standing Committee on the Administration of Justice (*Justitieutskottet*), appointed in 1971.⁵⁶ As has been mentioned above, the *Riksdag* was entirely free to suggest changes to the proposals, but when they reached the two committees, nothing happened. The majority of both the Committee on the Constitution and the First Law Committee approved their respective parts without objection. One of the representatives in the former committee majority was Lena Hjelm-Wallén, and we will return to her below.⁵⁷

However, the debates in the chambers that preceded the vote on the proposal, held in May 1970, turned out to be lengthy and turbulent. Among other things, differences of opinion surfaced regarding experiences of legalising pornography in Denmark the previous summer. While Minister of Justice Geijer in debates in both chambers of the *Riksdag* referred to his Danish colleague Thestrup, who had notified him that no criminality or other adverse effects had been recorded due to the new legalisation, Ragnar Sveningsson from the Moderate Coalition Party referred in the first chamber to media reports concerning part of the reform, which painted a different picture:

*We will certainly see, we are afraid, the same thing here as the papers report from our neighbouring country Denmark, where it is allowed to charge a fee to show an audience in a certain venue what rape looks like or naked young girls engaging in bestiality with dogs. Whatever kind of pleasure the spectators might be able to get from such performances. We should keep the current regulations; perhaps they can keep some of that squalor away.*⁵⁸

However, the Social Democratic representatives of the previous inquiry now joined the liberal line of the Government, mainly because the Government after a period of deliberation had decided to keep the film censorship for adult audiences (applied to movies that were to be screened publicly). In the first chamber, the government bill was defended vigorously by Lisa Mattson, chairperson of the National Federation of Social Democratic Women 1964-1981. In the second chamber, the proposal was

55 *Ibid* pp. 47-53, 68-69. A longer summary of the comments received can be found in Arnberg (2010) pp. 178-183.

56 SOU 1969:62 p. 32.

57 Konstitutionsutskottets utlåtande 1970:39 pp. 12-14.

58 Riksdagens protokoll, ak 1970:30 p. 93, Riksdagens protokoll, fk 1970:30 p. 22 (the quote), 36.

defended primarily by the social democrat and lawyer Bo Martinsson. Thanks to the ban on signage, there was no longer a need for an absolute limit for what could be allowed in pornography, according to Martinsson, since the public did not have to see it.

The government bill was passed with a broad margin in both chambers on May 28, 1970. In the first chamber, 71 representatives voted for, 65 against and three representatives abstained; in the second chamber, 117 voted for, 85 against and two abstained.⁵⁹

In the general election in the fall of that year, 264 of the representatives were elected to the new unicameral *Riksdag*. One of them, the representative from the Moderate Coalition Party, Allan Hernelius, made a final attempt to reject the pending constitutional bill through a motion (private bill), but no action was taken and the constitutional proposal as well was approved by a large majority of the new *Riksdag* on February 10, 1971: 184 votes for the bill, 128 against, and twelve abstained.⁶⁰

The voting records of the *Riksdag* show how the members voted. In total, 255 representatives had voted for the government proposals at one of the three votes held by the *Riksdag*. Altogether four Speakers of the *Riksdag*, current or future, had voted 'yes': Henry Allard (1969-1979), Ingemund Bengtsson (1979-1988), Thage G. Peterson (1988-1991) and Birgitta Dahl (1994-2002). Four Prime Ministers had done the same thing (since most ministers at this point were also Members of the *Riksdag*): Tage Erlander (1946-1969), Olof Palme (1969-1976, 1982-1986), Ola Ullsten (1978-1979) and Ingvar Carlsson (1986-1991, 1994-1996). Numerous others had also voted 'yes': for the Centre Party (only) Bertil Fiskesjö, future deputy speaker and author Per Olof Sundman (member of the Swedish Academy), and for the Liberal People's Party in the first vote a few representatives in the second chamber, apart from Ullsten also the future chairman of the party Per Ahlmark and the future Minister of Social Affairs Gabriel Romanus, among others, but in the second vote approximately one third of the entire parliamentary group. On the Socialist side of the *Riksdag*, however, the entire parliamentary group of the Left Party – the Communists voted for the proposal, as did almost the entire enormous Social Democratic group, including Alva Myrdal, the minister for disarmament and future Nobel Peace Prize winner, and Anita Gradin, who would become internationally famous 25 years later in her role as the first Swedish representative in the European Commission (1995-1999). Several others among these representatives did not achieve international fame, but were famous in Sweden. In 1970, Bo Martinsson was appointed director-general and head

59 Riksdagens protokoll, fk 1970:30 pp. 21, 27, 29, 49, 63, Riksdagens protokoll, ak 1970:30 pp. 84-85, 127. A longer summary of the proposal, the follow-up motions, and the chamber debates can be found in Arnberg (2010) pp. 183-189.

60 Motion 1971:535, Konstitutionsutskottets betänkande 1971:7, Riksdagens protokoll 1971:22 § 10 p. 32.

of the government agency that is known today as the Swedish Prison and Probation Service, and stayed in office for 17 years.⁶¹

The parliamentary endorsement of the pending constitutional bill was communicated to the Government on the same day. Two days later, on February 12, 1971, the Government approved the amendment to the Freedom of the Press Act, whereupon the decision entered into force on February 17 when an open letter to this effect was read out to standing Members of the *Riksdag*.⁶²

6. 'Mediated pornography' (categorised as 'prostitution' by some)

Since the decision to repeal the ban on violations of public morality in words and actions was not a constitutional issue, it had been made already at the same time as the first decision regarding the amendment to the Freedom of the Press Act, but the date of entry into force had been set to the same date as the entry into force of that amendment.⁶³ This law, then, opened the door to sexual intercourse in public in the sex clubs and posing studios that were established shortly thereafter, mainly in the major cities.⁶⁴ Support for organising sexual intercourse in public was provided in the Public Order Statute (*Allmänna ordningsstadgan*), which regulated what was called *public events* (*offentliga tillställningar*), that is, different types of arrangements to which the public had access, possibly for a fee. In contrast to dance and circus performances, no police permits were considered required for the relatively quiet events featuring public sexual intercourse. It was enough for the organiser to *announce* to the police authorities that the event was going to take place. At sex clubs, sexual intercourse took place in front of a paying audience (this sometimes included 'audience participation'), and in posing studios, in front of or together with individual customers. The age limit for participation in this type of sexual performance was the same as for participation

61 Voteringsprotokoll. 1:a kammaren. 28.05.1970, Voteringsprotokoll. 2:a kammaren. 28.05.1970 and Voteringsprotokoll. 10 02 1971.

62 Riksdagens protokoll 1971:26, § 1, Riksdagens skrivelse 1971:10, Kungl Maj:ts öppna brev 1971:19. In November 1971, the government appointed an inquiry with instructions to propose changes to the Penal Code, aiming at decriminalising or substantially reducing the punishments for incest and a number of sexual offenses against children and young people, using similar arguments as those used as the basis for the legalisation of pornography. However, the report of The Committee on Sexual Offences was not published until 1976, which probably contributed to the fact that the inquiry's proposals were never translated into legislation due to the change of government later that year (see below). The debate on the controversial report has therefore been judged to be outside the scope of this study. Riksdagens protokoll 1973. Bihang. Berättelse till 1973 års riksdag om vad i rikets styrelse sig tilldragit pp. 60-64, SOU 1976:9 (summary in English pp. 21-23).

63 Första lagutskottets utlåtande 1970:47 pp. 55-57, Riksdagens skrivelse 1970:267.

64 SFS 1970:225. The older wording of the Penal Code ch. 16, § 11 can be found in Prop. 1970:125 p. 6.

in public theatrical performances and the same as the age of sexual consent in the Penal Code, 15 years. Since the age of majority had been 20 years since 1969, this in fact meant that child pornography had been legalised, also in 'words and actions', for children and young people between 15 and 19 years of age.

However, the legal situation that emerged as the reform entered into force risked leading to a conflict of norms in relation to at least a few other regulations. The Child Welfare Act stipulated that a municipality must take action if persons under 20 years of age adopt an 'immoral lifestyle', while one of the conditions for 'procuring' in the Penal Code was the 'habitual promotion or exploitation of a person's promiscuous way of life'. Was it an immoral or promiscuous way of life to participate in a legal public event that had been announced to the police authorities? Was it promotion of a promiscuous way of life to run a sex club, to rent a facility to a posing studio, or to publish advertisements for those businesses? Could the activities be described as a form of prostitution? In addition, to what extent were the regulations compatible with compulsory education, extending until the spring semester of the year a child turned 16? These questions had not been discussed when the amendment was considered, so answers had to be found in the application of the law over the next few years.⁶⁵

The first reactions were voiced in the *Riksdag* in January 1972, less than a year after legalisation, when Ingegerd Fränkel from the Liberal People's Party, among others, told the Minister of Justice that there had already been reports of underage performers in sex clubs and posing studios and that not even the lenient age limit of 15 was observed at all times: 'We know that girls between 13 and 16 are exploited in these businesses. The age limit keeps getting lower.' A case involving a girl as young as twelve was reported to have been brought to court, and parents of exploited girls were said to have contacted the Minister of Social Affairs Sven Aspling and several Members of the *Riksdag* with pleas for action. Fränkel urged the Minister of Justice to take measures. Lennart Geijer rejected such appeals, however, and claimed that existing legislation would suffice to handle any problems that might arise. The rapid expansion of these businesses, he said, primarily signalled 'that the view of sexuality in society and among citizens has seen changes in recent years in the direction of increased tolerance'. 'No legislative measures are required', he declared, which must be interpreted as continued support for the age limit of 15 years.⁶⁶

However, the information mentioned above and other things that surfaced contributed to the appointment in January 1973 of a government inquiry, The Crime Commission. As part of a general assignment to suggest measures that could be implemented to 'fight crime and improve public order', it was also expected to evaluate the criminality that had emerged in connection to sex clubs and posing studios in Sweden. Among

65 SFS 1956:617 §§ 9, 12-13, 21, 28-29, SFS 1962:319 ch. 6 § 30, SFS 1962:700, ch. 6, §§ 3, 6-8, SFS 1969:157 ch. 9 § 1, SFS 1969:164.

66 Riksdagens protokoll 1972:8 § 6 pp. 22-24.

the representatives in the commission, we find Lena Hjelm-Wallén and National Police Commissioner Carl Persson. The inquiry moved very quickly, possibly due to effective preparatory work carried out by the police authorities. Already in late March, a report was presented that included a number of legislative proposals, and just two weeks later, these constituted the basis for a bill.⁶⁷

Based on information from the police authorities in the three major cities in January 1973, it was found that there were around 200 posing studios in Stockholm, 100 in Gothenburg and 25 in Malmö and in addition approximately 20 sex clubs in each of these cities, where the 'member fee' was the same thing as the admission fee.⁶⁸ Many of the women working in sex clubs in Malmö were said to be from Copenhagen. Contrary to what the Danish government had hoped in 1969, the legalisation of pornography had not killed the curiosity about it, but on the contrary given birth to a completely new business, the *porn industry*. As far as the pornographic performances are concerned, the enormous increase in sex clubs in Copenhagen had led to the situation getting out of hand, which is why the majority of clubs had lost their permits in 1972, which in turn was the reason why some of the employees had left for Malmö instead.⁶⁹

In the handed down working material of the inquiry, retrieved from the same police authorities, it is reported that the business of public sexual intercourse largely had replaced street prostitution in Sweden. The connection to specific addresses had made it very profitable to place advertisements for the services offered in the daily press. In addition, the revenue of the clubs had also been possible to increase substantially through offers of 'private posing' in small separate rooms. A great deal of crime flourished at these establishments, especially procuring and assault due to rejections of offers of 'protection'.⁷⁰

The material from the Gothenburg police includes a sample survey from September 1972 of 100 local prostitutes who figured in the social registers of the city. In the survey, the women are divided into two categories: 70 'street prostitutes' and 30 'club and studio prostitutes' (12 and 18, respectively, in each type of business). The reported years of birth in the latter category indicate that three of them were teenagers between 17 and 19 years of age when the survey was conducted. Half of the 30 club and studio prostitutes had children of their own, 32 in total.⁷¹

67 Prop. 1973:115.

68 *Ibid* pp. 9, 103, 105, 108.

69 *Ibid* p. 108, SOU 1981:71 p. 173.

70 Brottskommissionens arkiv, PROMEMORIA 1973-01-16 pp. 1-6, Brottskommissionens arkiv, PROMEMORIA 1973-02-01.

71 Brottskommissionens arkiv, RAPPORT 1972-09-28.

In their report, the Crime Commission described the case law that had developed since pornography was legalised. Temporary sexual contacts in posing studios had been interpreted as a 'promiscuous way of life', which is why the letting of premises for such businesses at a higher rent than the usual rate (for comparable apartments and commercial spaces) had been defined as 'procuring'. By contrast, participation in public sexual intercourse at sex clubs had not been judged as a 'promiscuous way of life' according to a ruling in a Court of Appeal (*Hovrätt*). The compulsory education stipulated by the Education Act or the demands of the Child Welfare Act to intervene in cases of young people leading 'an immoral lifestyle' were not addressed specifically, but a couple of passages in the report described the common practices of passive child protection authorities that preferred delaying coercive legal measures against young people for as long as possible, finding support in a prevailing treatment ideology based on voluntariness.⁷²

Immoral or not, the age limit for participation in public sexual intercourse was, as we have seen, 15 years. Without reasoning about this issue, the Crime Commission suggested that this age limit should be raised to 18, which possibly indicates that the suggestion was the result of a compromise in the inquiry. This was done through suggesting a new category of public event involving public sexual intercourse to the Public Order Statute, *pornographic performance*, with the definition quoted in the introduction above. At the same time, a ban was suggested for persons under the age of 18 to participate in such public events. However, striptease was expressly not categorised as a 'pornographic performance' and no changes were proposed for the otherwise much discussed Child Welfare Act, which is why it appears to be a reasonable interpretation to say that the participation of children (aged 15) in striptease or young people's participation in sexual intercourse in public were not in fact seen as a reason for interventions by the child protection authorities.⁷³

In addition to raising the age limit, the inquiry endorsed two requests from the police authorities. One of them was the idea that pornographic performances, like for instance dance performances (and corresponding to the Danish regulations), should *require a permit* according to the Public Order Statute, which would grant the police completely different options than before in terms of monitoring such businesses and their objectives and operations. As was pointed out above, however, since regular striptease was not categorised as 'pornography', those kinds of shows did not require a permit and in turn did not necessarily feature performers aged 18 or over. The other request, a desired restriction of the newspaper advertising related to posing, was granted through a contact with the Swedish Media Publishers' Association. Already on January 25, 1973, the board of this association stated that the member companies had been recommended, until further notice, to 'refrain from publishing

72 Prop. 1973:115 pp. 104, 127-128, 138-141.

73 *Ibid* pp. 107-109.

advertisements intended to promote contact with posing studios, and with sex clubs that offer the same kinds of services as the posing studios in their advertising.⁷⁴

With the proviso, then, that the statements of the Crime Commission must not be 'understood as taking a stand in relation to pornography as such', the Government approved and the parliamentary majority endorsed the suggestions of the inquiry, but the grounds for the various components of the constitutional proposals are extremely vague. The new regulations entered into force on October 1, 1973. On the other hand, the proposal of the Moderate Coalition Party and the Liberal People's Party to prohibit sexual intercourse in pornographic performances did not win the approval of the majority of the Standing Committee on the Administration of Justice, which included Lisa Mattson and Lena Hjelm-Wallén, referencing the doctrine determined in 1971 that 'anyone who wants to consume pornography should be allowed to decide for themselves.'⁷⁵ The result of this process, then, was that young people who were 18-19 years old could continue to participate in sexual intercourse in the public events that from now on were called 'pornographic performances'. A few months after the entry into force of this regulation, Lena Hjelm-Wallén was promoted to Minister of Education and thus left the domain of the Standing Committee on the Administration of Justice.

Repeated proposals suggesting that public sexual intercourse should be prohibited were defeated in parliamentary votes over the next few years as well. In November 1975, the two left-wing parties, with support from part of the Centre Party, were still rejecting proposals to ban the pornographic performances in sex clubs and posing studios, or even investigate them further.⁷⁶

However, although things were at a standstill in the *Riksdag* for several years, the tide was turning in the field. The self-imposed ban on the advertising of posing studios among newspaper publishers had an immediate and dramatic effect on the number of posing studios, which started decreasing right away. A previous overexpansion contributed to the decrease as well, something that criminologist Leif G.W. Persson was able to ascertain when he was appointed a few years later to investigate prostitution in Sweden. Of course, some posing studios started advertising as 'massage parlours', but the decrease was still substantial and continuous. Moreover, after a couple of years, thanks to the new permit requirement, the police had gained control of the sex clubs and those establishments too started decreasing in number. In this process, it seems as though the remaining underage performers were phased out from this part of the porn industry but the number of young people involved remain uncertain.⁷⁷

74 *Ibid* p. 110, Brottskommissionens arkiv, TU-uttalande om annonsering 1973-01-25.

75 Prop. 1973:115 p. 105, Justitiekottets betänkande 1973:26 pp. 24-26, Riksdagens protokoll 1973:106, § 5, Riksdagens protokoll 1973:107, § 1, SFS 1973:561.

76 Justitiekottets betänkande 1975/76:2, Riksdagens protokoll 1975/76:20 § 14.

77 Persson (1981) pp. 38-39, 69-71, 162-164.

If things, despite everything, started moving in the right direction in 1973 regarding the pornographic performances, it was the other way around in the same period concerning printed and recorded child pornography, which was produced internationally without advertising restrictions and without age limits.

7. Printed and recorded child pornography

Currently, there is a lack of detailed knowledge about the content and scope of the printed and recorded child pornography that has been sold legally in Sweden. No detailed inventory similar to that carried out in Denmark in 1979 appears to have been done. The previous research in the field can at least convey some basic facts.

According to Schuijjer and Rossen, the United States had been the main producer of commercial child pornography in the late 1960s, but in 1970 production began in Denmark. In Britain and West Germany, production started the year after. In Sweden, it began in 1972 and continued throughout the decade.⁷⁸ It is reasonable to assume that the legal trade outlets in Denmark and Sweden contributed to the expansion.

Regarding printed child pornography, an internal investigation (2009) carried out at the National Library of Sweden (*Kungliga biblioteket*) reveals that ‘approximately one shelf meter’ of child pornography is kept in the closed collection, and that the material derives from legal deposits of printed matter sold in Sweden.⁷⁹ The union catalogue LIBRIS includes 83 titles in this collection, published 1971-1979, and a single title can comprise several issues.⁸⁰ It should be noted that not all the titles in this directory *have to* contain child pornography and that other titles in the holdings of the library *might* do so. The National Library’s inventory of its collections is valuable, but of course, it does not say anything about the number of items sold.

Over the first few years after the legalisation of pornography, according to Arnberg, the Swedish Government and *Riksdag* focused primarily on how printed and recorded pornography was displayed and marketed.⁸¹ Child pornography itself seems only to have been discussed on a single occasion before the 1976 parliamentary election. It is relevant in the context that on January 1, 1975, the 1974 Instrument of Government and 1974 Riksdag Act entered into force. This meant that the *Riksdag* then was turned into the only legislative power, which in turn meant that it did not require approval by the Government to amend laws or fundamental laws.

78 Schuijjer and Rossen (1992) App. A.

79 Rydén (2009) p. 25.

80 LIBRIS, ‘bP-L’, <http://libris.kb.se/hitlist?f=simp&q=bP-L&r=&m=50&s=rc&t=v&d=libris&p=1>.

81 Arnberg (2010) pp. 232, 237-238.

When Karin Söder, a Member of the *Riksdag* for the Centre Party, asked critical questions concerning printed child pornography of the Minister of Justice in February 1975, the Minister dismissed her by saying that ‘it does not appear efficient to intervene against pornography with a certain content, no matter how repulsive it may seem.’ The Penal Code already prohibited sexual intercourse with children under the age of 15, he said. Söder’s comment that mainly foreign children probably figured in the material was answered tersely in terms of ‘accepting certain phenomena in the name of press freedom.’ Despite the new constitution and despite the explicit stance of the Government, the *Riksdag* did not take the initiative to propose changes to the current legal situation.⁸²

8. After the change of government in 1976

The general election in the fall of 1976, the third election to the unicameral *Riksdag*, resulted in a majority for the right-wing parties and thus a change of government. The Social Democratic Party had to relinquish power for the first time in 40 years, and the new Government consisted of an alliance of the three parties to the right led by the chairman of the Centre Party, Thorbjörn Fälldin. (He had voted ‘no’ in both votes about the legalisation of pornography in 1970-1971.) Sven Romanus was appointed the new Minister of Justice.

In response to repeated demands from individual members of parliament to prohibit pornographic performances, the new *Riksdag* majority decided already in November to request a systematic inquiry into the activities of the Swedish sex clubs, despite extended arguments in the opposite direction presented by the Social Democratic minority (led by Lisa Mattson), based on the claim that nothing had happened that justified an assessment so soon of the legal amendments carried out in 1973. One of the Members of the *Riksdag* from one of the parties in power commented on the reservation of the minority in early November as ‘a completely unfathomable passivity in relation to an extremely serious social problem.’⁸³ At the same time, however, a unanimous Committee of Social Affairs (*Socialutskottet*) called for an inquiry into prostitution in Sweden. Together with a very much talked-about episode of the current affairs TV show *Studio S* which was broadcast in late November, called ‘Little girls for sale’, this seems to have had at least an equal role in subsequent developments as the initiative presented by the *Riksdag*. The TV show, summarised in detail by Klara Arnberg, described the existence of printed child pornography on sale in Sweden,

82 SFS 1962:700, ch. 6, § 3 (1975 version), Riksdagens protokoll 1975:23 § 6 pp. 43-46.

83 Justitiekommitténs betänkande 1976/77:5, Riksdagens protokoll 1976/77:23 § 9 p. 127, Riksdagens protokoll 1976/77:24 § 7.

including images of sexual intercourse with children who were primarily from 'poor countries,' and the presence of underage children in the Swedish street prostitution.⁸⁴

The results of The Prostitution Commission that was appointed in 1977, with the Member of the *Riksdag* and lawyer Inger Lindquist from the Moderate Coalition Party as special investigator, were presented in the fall of 1981. Although the inquiry did not comment on the participation of young people of 18 or 19 in the legal porn industry, it had been able to ascertain that underage children no longer participated. Despite this, a ban on pornographic performances was recommended due to the increased risk for the participating women to be pulled into prostitution, that the performances consolidated a view of sexuality as different from other human relationships, and because of the perceived negative effects on the ongoing process towards gender equality. When Allan Hernelius had the last word as the debate in the chamber preceding that decision was closing, he posed a rhetorical question in one of his last speeches in the *Riksdag* regarding his own attempt to stop the legalisation of pornography eleven years prior: 'How much misery could have been avoided in Sweden in terms of crime, dirt, vulgarity and misogyny, had the *Riksdag* ratified the motion [535] in 1971?'

The ban on pornographic performances in public entered into force on July 1, 1982, only a few months before the Social Democratic Party once again regained power.⁸⁵

The question of printed and recorded pornography continued to be considered after the election in 1976, however completely separate from the issue of pornographic performance. It also turned out to be processed for a much longer period.

As has been mentioned above, the Freedom of the Press Act regulated only printed (but from 1978 also photocopied or duplicated) texts and images.⁸⁶ As has also been mentioned, the production and distribution of moving images among adults in private functions, either on film or in videograms, were likewise unregulated. The name of the latter medium was the formal term for the information carriers that could be played on videocassette recorders that were becoming widespread among the public at this time. During this period, several parliamentary inquiries were working in different ways on the constitutional protection of expressions in other types of media than the print media. One of these was The Freedom of Expression Commission, appointed by the Minister of Justice Romanus, active 1977-1983. In the directives, he especially emphasised the possibility, which had also been in place for the previous inquiry on the same matter headed by him, to once again suggest an absolute limit for pornography 'with children in sexual situations' represented in images as well as

84 Arnberg (2010) pp. 247-254.

85 SOU 1981:71 p. 17, Prop. 1981/82:187, Justitiekommitténs betänkande 1981/82:56, Riksdagens protokoll 1981/82:159, § 13 p. 164, SFS 1982:344.

86 SFS 1976:955 ch. 1 § 5.

films and videograms. Among the seven original members of the inquiry, most of them from a journalist background were Lisa Mattson and Bertil Fiskesjö, mentioned above.

In the fall of 1978, the inquiry presented an interim report on child pornography, but despite the generous directives and for reasons which remain unclear, they chose to suggest a limited ban on child pornography in print media only, not in moving images.⁸⁷

Without debate or vote, a decision was then made to introduce into the Freedom of the Press Act a prohibition against depicting 'children in pornographic images intended for distribution', which entered into force on January 1, 1980. The meaning of the word 'distribution' was not completely clear, however, and the Council on Legislation (*Lagrådet*), an advisory body that performs quality review of legislative proposals, had presented a lengthy line of reasoning to the effect that 'the definition of distribution requires something more than making an image available to just a few persons'.⁸⁸ This meant, of course, that the distribution condition was easy to circumvent, at the same time as the production and dissemination of moving images remained unregulated.

After this half-hearted reform, it turned out that the commitment to further criminalisation of pornographic representations had declined in all parties. If the abating commitment was because people were waiting for the processing of the new Fundamental Law on Freedom of Expression is unclear, but in any case, there was certainly no lack of opportunities to decide on general legislation, for the time being, regarding the content of moving images. This is apparent from the consequences of the heated debate that emerged in Sweden in late 1980, about the effects of certain representations of violence in film.

These controversial representations typically involved extended dramatised violence in films that were rented or purchased in the form of the more and more widespread videocassettes, and thus referred to as 'video violence' in the debate. One of the most notorious films was the American horror movie *The Texas Chain Saw Massacre* (1974).⁸⁹ After a much talked-about TV show, once again an episode of *Studio S*, a ban was prepared and introduced within just a few months on the professional distribution of films with this type of representations of violence to children under the age of 15. The so-called 'video violence law' entered into force in the summer of 1981, only a little more than six months after the issue had been raised. One year later, the same ban was extended to include the entire public of Sweden. Although there is no direct connection between 'video violence' and pornography, the rapid emergence of this law and its relatively far-reaching restrictions on the freedom of

87 Prop. 1978/79:179 pp. 12, 17, 26.

88 *Ibid* pp. 59-61, SFS 1979:936.

89 Hooper (1974).

expression and information prove that the drafting of new legislation depended solely on political will.⁹⁰

As mentioned above, the Social Democratic Party regained power in the fall of 1982, again with Olof Palme as Prime Minister. Half of the ministers that he appointed this time around had been involved in legalising pornography in 1970-1971. Through the appointment by the Government the same year of an eighth member of the Freedom of Expression Commission, the previous majority of the parties to the right was lost. One section about pornography in the report that was submitted in the fall of 1983 refers to the above-mentioned study from 1970 by – Berl Kutchinsky. In order for that reference to be understandable, we return for a moment to the situation in Denmark.

Although the Danish sex club situation had been curbed in 1972, the country's industry in print and moving image pornography continued to expand throughout the rest of the decade, a small portion of which was child pornography. Another consequence of the legalisation of pornography in 1969 was that a new political party had been formed and elected to the *Folketing*, the Christian People's Party (*Kristeligt Folkeparti*; from 2003: the Christian Democrats). Members of this party had later raised the issue of banning child pornography. After a period of debate, the parliament decided to investigate the matter with the criminologist Berl Kutchinsky as one of the experts. In the fall of 1979, he reported to the *Folketing* the above-referenced results of his investigations into child pornography in Denmark, concluding that it prevented sexual crimes against Danish children and therefore should not be banned. All parties except one, the small Left Socialists (*Venstresocialisterne*), with 6 out of 179 seats, rejected Kutchinsky's argument. The great majority argued like Lissa Mathiasen, Social Democrat, who stated that the protection of Danish children could not be done at the expense of foreign children. A ban on the production and distribution of child pornographic images and films entered into force on 1 July 1980.⁹¹

Unlike the majority of the *Folketing*, the Swedish Freedom of Expression Commission came to accept Kutchinsky's conclusion about pornography's crime prevention effect. In its report, the inquiry does not make a specific statement about child pornography in particular, but about pornography in general, but argues against an extended ban on pornography if the only purpose of the criminalisation is to 'safeguard a certain attitude, conception of morality, or ethical norm.'⁹² In light of the way in which the inquiry treated child pornographic images five years earlier, this position can reasonably be interpreted as continued acceptance of child pornographic films, based on an assumption about the crime preventive effect of child pornography. Although the report does not refer to Kutchinsky's detailed argument against the criminalisation

90 Prop. 1980/81:176 pp. 4-5, SFS 1981:485, SFS 1982:563.

91 Folketingstidende. Forhandlingerne i folketingsåret 1979-80. (2. Samling) sp. 2813-2814, 4550-4571, 10432-10445, 10621-10623, Tillæg A. sp. 1761-1788, Tillæg B sp. 833-838.

92 SOU 1983:70 p. 285.

of child pornography, which was addressed to the *Folketing* in 1980, but to an earlier publication, it appears extremely unlikely that the members of the inquiry did not know about it.

Despite this view, the inquiry did approve a proposal to supplement the video violence law with a ban on 'representations of sexual violence or coercion' (similar to a norm that was already applied by the National Board of Film Censors). However, as the Child Pornography Commission noted later, this proposal was hardly relevant at all in relation to child pornography since the age of the participants played no part in the assessment, and neither did the question of whether or not the representations involved actual sexual abuse.⁹³

However, in 1985 the Social Democratic Minister of Justice Sten Wickbom and a large majority of the Committee on the Constitution backed the conclusions of the Freedom of Expression Commission in relation to these aspects. If there were negative effects among the consumers of pornography, these should be 'addressed in other ways than through criminalisation'.⁹⁴

In February 1986, Olof Palme was assassinated and replaced as Prime Minister and party chairman by Ingvar Carlsson. The year after, for the first time, there was a certain shift in the argumentation of the Social Democrats regarding pornography. Using the same inquiry report as in 1985, Minister of Justice Wickbom suggested in April 1987, that the ban on representations of 'sexual violence or coercion' should be extended to include printed images as well. In a lengthy line of reasoning in the proposal, he explained that he had not in fact changed his mind compared to two years prior, but that he had listened to critical comments on the Freedom of Expression Commission's conclusion on pornography, among other things in the form of a joint statement from the women's associations of the political parties (including the Social Democratic one, now with another chairperson than Lisa Mattson). The regulations of the new press offence 'unlawful depiction of violence' entered into force in 1989.⁹⁵

The older arguments remained in use, however, for another year or so. In response to a motion to ban the distribution of child pornography, a unanimous Standing Committee on the Administration of Justice quoted the wording from the Freedom of Expression Commission that pornography should not be restricted only to 'safeguard a certain attitude, conception of morality, or ethical norm' as late as October 1989, and claimed that knowledge of the effect of pornography on consumers was still lacking:

93 SOU 1997:29 p. 151.

94 SOU 1983:70 pp. 67, 271-273, 283, 285, 337-338, Prop. 1984/85:116 pp. 18-20, Konstitutionsutskottets betänkande 1985/86:11, SFS 1985:989.

95 Prop. 1986/87:151 pp. 101-103, SFS 1988:1448.

‘Judging from what little we know, it seems impossible to conclude that the effects of pornography are entirely negative.’⁹⁶

However, the Government of Ingvar Carlsson with the new Minister of Justice Laila Freivalds completed the processing of the Fundamental Law on Freedom of Expression, including a list of offences partly identical to the one in the Freedom of the Press Act, and thus extended the crime of child pornography to encompass moving images as well. The new fundamental law entered into force on January 1, 1992.⁹⁷ The legal cases resulting from the legislation, in combination with the emergence of a new generation of Social Democratic politicians seem to have moved the focus of the political discussion from the rights of producers and consumers to those of the participating children. ‘We have a completely different point of view now’, declared Member of the *Riksdag* Margareta Israelsson in a debate in November 1994, in response to an attack on the former stance of the Social Democrats in relation to this issue.⁹⁸ Because of that process and after a large inquiry, The Child Pornography Commission mentioned above, a ban on the possession of child pornography entered into force on January 1, 1999. In the inquiry report from 1997, it is however noted that the child pornography that had been distributed legally between February 17, 1971 and December 31, 1979, or December 31, 1991, was still being disseminated and that new methods kept being developed. It is explained to the reader what ‘the Internet’ is. This was still early days for that network.⁹⁹

9. Discussion

Although the Swedish government’s proposal in 1970 to legalise pornography did not explicitly refer to the previous years’ opinion formation on the issue, the investigation has shown that the proposal largely coincided with opinions that intellectuals in Sweden and Denmark had published in the immediately preceding years. The government bill was based mainly on the argument that the values of the public had turned more liberal during the 1960s, that the law should therefore be liberalised to the same degree, and that ‘a well-functioning formation of public opinion and debate on issues related to culture and society’ required an unregulated pornography. A common feature of both the examined literature and the bill is that they do indeed express the ambition to interpret the public’s attitudes towards pornography, but that they also do not claim to be representative of any broad electorates. The liberal debaters’ criticism of the country’s ‘nanny state laws’ was an opinion that was certainly not in line with traditional social democratic politics, but at the moment it

96 Justitiekottets betänkande 1989/90:JuU6 pp. 15-16, 22.

97 Prop. 1990/91:64, SFS 1991:1469 ch. 5 § 1.

98 Riksdagens protokoll 1994/95:23 § 11 p. 23.

99 SOU 1997:29 ch. 4-5, SFS 1998:1438, SFS 1998:1439 (with preparatory works).

is not possible to make a more detailed statement about the relationship between the opinion formation of the 1960s and the 1970 bill.

From 1970 and until around 1977, the line of conflict regarding pornography mainly corresponded to the boundary between the left and the right in Swedish politics. The support from the Social Democratic Party and the Left Party – the Communists (*Vänsterpartiet Kommunisterna*; from 1990: the Left Party) for total legalisation and their later pushback in relation to re-regulation was opposed primarily by the three parties to the right, arguing that an unregulated pornography sustained misogyny among consumers.

In the first few years after legalisation, the content of the debate was focused mainly on the immediately obvious consequences of public sexual intercourse, the ‘mediated pornography’. When the opponents claimed that underage persons were pulled into the porn industry through these events, the response of the Government was that those developments should be addressed by the existing social legislation, not by criminalising pornography. After the introduction of the permit requirement in 1973, and the raising of the minimum age of participation to 18, the left-wing parties opposed further investigation of the consequences of the reform until the fall of 1976.

Child pornography in print was not discussed until 1975, and was defended by the Government at that point as a reasonable price to pay for a very generous definition of free speech. Once again, existing legislation were referred to as sufficient protection for Swedish children. This defence shows more than anything else does that the legalisation of child pornography was not ‘unintended’.

Soon after the parties to the right seized power in 1976, the efforts to place restrictions on pornography were resumed for a while. The political disagreements appear to have abated after the appointment of the Prostitution Commission and the Freedom of Expression Commission in 1977, but the results of those inquiries must be described as ambivalent. While the Prostitution Commission led to the criminalisation of public pornographic performances in 1982, the parliamentary Freedom of Expression Commission turned out to accomplish its instructions to criminalise child pornography only minimally. It merely proposed a partial ban on printed images that was easy to evade, despite the development of video technology that was accelerating rapidly around the same time. Using arguments about the potentially crime preventive effect of pornography, the inquiry in its final report in 1983 opposed any further criminalisation of pornography, which remained the position of the Government and all parties in the *Riksdag* until the bill on the Fundamental Law on Freedom of Expression was presented in the fall of 1990.

Just as Klara Arnberg has established earlier (discussed above in section 2), until around this point in time the debate on pornography was primarily focused on the estimated effects of pornography on consumers or third parties. An explicit child

perspective on child pornography did not emerge until after the Fundamental Law on Freedom of Expression entered into force in 1992.

Two causal explanations for the far-reaching legalisation of pornography seem particularly valuable for understanding this issue: The obvious support for the reform among the party leaderships to the political left, in combination with the uniquely strong parliamentary position of the Social Democratic Party in 1970, surely reduced the political will to arrive at a broad compromise solution to the problems of pornography together with the Liberal People's Party and the Centre Party in the *Riksdag*. It is all the more difficult to explain the stance of the political majority in the next few years.

Few constitutional issues in modern times are likely to have had a greater significance for the media output and cityscapes of Stockholm, Gothenburg and Malmö in particular. What may have seemed in 1970 to be hypothetical, or in the Danish case possibly temporary, negative consequences of liberalisation must have been impossible to miss a couple of years later for anyone who moved through the streets and shops of Stockholm, for instance. Several serious negative consequences were observed relatively soon after the legalisation, for instance regarding the participation of underage persons in the porn industry. The measures taken by the authorities to protect children and young people from commercial sexual exploitation were reported to be either absent, inadequate, or so slow that it was already far too late for many of them. The question of compensation for victims does not even seem to have been up for discussion, neither at the time nor later.

After the reservation of the Social Democratic Party in November 1976 in relation to a proposal on yet another evaluation of the pornographic performances, the party's position during the rest of the period of conservative Government can perhaps be interpreted as expressing an increasing degree of pragmatism. Pragmatic considerations may also have influenced the parties to the right, aiming for consensus in order to get the issue off the table.

In any case, this study has been able to show that the influence of what has been referred to as 'sexual liberalism' on Swedish politics was fairly delimited, both in relation to a certain group and to a certain period. Hence, it does not seem either meaningful or fair to explain the policy of unregulated pornography as the expression of a sexually liberal *Zeitgeist* prevalent among politicians in general. The divergent views on pornography were already from the beginning too polarised and too split between different parties. Apart from the large minority from the Liberal People's Party that supported legalisation in 1971, the sex liberal group in Swedish politics can instead be specified as the members of the two governments led by Olof Palme and the groups in the *Riksdag* that provided them with parliamentary support. Outside parliament, this group was supported at least by the National Federation of Social Democratic Women. The outcome constitutes a sharp contrast in relation to the view

of the new left attitude towards the sexual liberalism of the 1960s, described earlier by Lena Lennerhed (discussed above in section 2).

How, then, could the doctrine that ‘anyone who wants to consume pornography should be allowed to decide for themselves’ be connected to Scandinavian legal realism? First, it must be emphasised that there is no causal connection between legal realism and an unregulated pornography. In Norway, also characterised by legal realism, pornography remained illegal throughout the period examined in this study. Nevertheless, if legal philosophy cannot explain why the legalisation of pornography was brought up to date, it can probably explain the reasoning and considerations in both the 1970 and the 1973 bills. A reform for the adult public was decided and later defended without any real impact analysis for the minor or young public in Sweden or abroad. The many years of lack of interest in the consequences of the reform for the young and minors or for possible norm collisions with superior legal rules, is completely in line with the doctrine of the ‘majority principle’ that the undersigned author described in his previous research in the field, that was referenced in section 3. The result is also consistent with the conclusions of Strang, Bjarup and Wiklund (also referred to in section 3), since it appears as yet another example of how the fulfillment of goals of a theory-driven social engineering were considered superior to the well-being of individuals and marginalised minorities.

The adoption of the Fundamental Law on Freedom of Expression did indeed coincide with Sweden’s application to the EC, which makes it difficult to reliably assessing the reason for the criminalisation of child pornography in moving images. Anyhow, the continued process towards criminalisation of possession was probably facilitated by the fact that the country now began to adapt to European Union law, which in that case is also consistent with previously referenced research by Strömholm, Bjarup, Wiklund, Sunnqvist and Möller. The changed view of children as legal subjects, which took place during the 1980s and as described by Mattsson, certainly also contributed to this.

The period characterised by Social Democratic sexual liberalism is delimited relatively clearly by Olof Palme’s term of office as party chair. Future research will have to show if this was a coincidence, but it is clear that the scope and significance of the support of the labour movement for unregulated pornography emerges from the present study as the most important area of future investigation.

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