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ARTICLE

# Trying Porn in 1960s Austria

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## Abstract

Through the examination of a criminal trial that took place in Vienna in January and February 1968, this article explores postwar Austria's treatment of pornography. It argues that the 1950 law criminalizing pornography in Austria was a product of the Second Republic's consensus-driven politics and emphasis on international obligations under a 1923 international treaty against obscenity. The spectacle of the presiding judge berating defendants on trial in 1968 sparked public outrage and calls for legal reform. The Austrian government strove to liberalize the country's obscenity laws but soon abandoned these efforts. Through a comparison to Denmark and West Germany, the article suggests that the failure of legislative reform in Austria resulted from an emphasis on political consensus and on international law, as well as the terms of the debate over pornography after the 1968 trial, focused on restraining judicial power rather than artistic liberties and free speech.

**Keywords:** pornography; obscenity; international law; Austria

"In the Vienna jury courtroom, a giant pornography trial got under way yesterday, the likes of which Austria has never seen," the Austrian tabloid *Kronen-Zeitung* announced on January 23, 1968.[1] More respectable papers showed little more restraint. *Kurier* proclaimed it "the biggest pornography trial in years," and the normally staid *Die Presse* a "monster trial."[2] Eighteen Vienna residents stood accused of producing, performing in, and selling pornographic images and films in Austria and abroad. There seemed little doubt that the group would be found guilty of violating the 1950 "Pornography Law," which outlawed the production and distribution of "obscene" materials for a profit. Investigators had seized reams of pornographic photographs and film rolls and secured corroborating statements from many of those involved in their production. If the trial outcome seemed nearly certain, however, the salacious details of the case, press speculation, and presiding judge's theatrical grilling of the accused and witnesses drove on a media frenzy over postwar Austria's first major public encounter with hardcore pornography, a subject usually confined to hushed whispers and oblique innuendo.

The 1968 trial forced a frank public debate over pornography, though not on the terms that the conservatives who staged it hoped. Rather than reaffirming moral boundaries that

[1] Günther Fritsch und Harald Hofmeister, "Porno-Prozeß, Sultan mit Lieblingsfrau und den Sklavinnen auf der Anklagebank," *Kronen-Zeitung* January 23, 1968.

[2] Karl Drechsler, "Porno-Skandal: Produzenten und Darsteller vor Gericht," *Kurier*, January 23, 1968; "Vom Aktphotoklub auf die Anklagebank," *Die Presse*, January 23, 1968.

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had grown muddied in an era of changing sexual values, the case revealed Austrian obscenity legislation to be far out of step with prevailing attitudes. Over the course of the trial, popular and elite opinion in Austria swung against the Federal Law of March 31, 1950, on Combating Obscene Publications and Protecting Youth from Moral Danger, often referred to simply as the "Pornography Law," the legal centerpiece of postwar Austria's campaign against obscenity. If most Austrians agreed on the need to change the law and to temper the state's enforcement of it, they did not agree on the scale and nature of the reforms. In the face of such division, the government quietly shelved plans to follow European peers in liberalizing its obscenity laws. In fact, the Pornography Law remains formally in place today, making Austria one of the few states in Europe to maintain a statutory ban on the publication and distribution of obscenity.[3]

All but forgotten today, the 1968 trial sparked debates over pornography that illuminated core features of postwar Austrian identity. In West Germany, as Dagmar Herzog has shown, discussions of sexuality became a central arena in which the public and officials sought to reckon with the country's Nazi past and to forge a new, post-1945 identity.[4] Though West Germany was a persistent point of reference for Austrian discussions of pornography in the decades after the Second World War, the embrace of a "victim myth" minimizing Austrian complicity in Nazism imbued these discussions with a very different character.[5] Since the late 1940s, the government's approach to pornography reflected efforts to ground a new national identity in a consensual style of politics that could bridge historical gaps between the Catholic right and the Socialist left. The issue of pornography also became bound up in what Oliver Rathkolb has termed the "internationalization" of Austria, as the country embraced neutrality and put itself forward as a model global actor and bulwark of international laws and institutions.[6] Austrian officials thus worked across party lines to produce the Pornography Law in 1950, justified as fulfilling commitments under a 1923 international treaty on obscene publications. As a product of political compromise cast as the fulfillment of Austria's obligations under international law, the Pornography Law proved difficult to change.

The terms of debate over pornography in the aftermath of the 1968 trial also hampered reform efforts. Austrian public discussions of pornography in the late 1960s and early 1970s revolved around questions raised by the 1968 trial involving female sexuality and victimization, the sexualization of the media, and the prudishness and arbitrariness of judges and the judiciary. Few publicly questioned the unseemliness of the hardcore pornographic depictions the defendants were accused of producing, which made it more difficult to argue forcefully for the legalization of pornography. To grasp the importance of the terms of Austrian debates, we must compare it to discussions roiling other countries in Europe and the United States in this era, where sensationalistic trials of major literary and artistic works placed questions of artistic freedoms, free speech, and ultimately individual liberties, at the center of legal debates over obscenity. Scholars have long foregrounded these

[3] Christian Person, "Pornography: 'Soft-Core' Liberalization of Indecent Material in Europe," in *On the Road to Permissiveness? Change and Convergence of Moral Regulation in Europe*, ed. Christoph Knill et al. (Oxford: Oxford University Press, 2015), 102–28.

[4] Dagmar Herzog, *Sex after Fascism: Memory and Morality in Twentieth-Century Germany* (Princeton: Princeton University Press, 2007).

[5] Peter Pirker, "The Victim Myth Revisited: The Politics of History in Austria up to the Waldheim Affair," in *Myths in Austrian History: Construction and Deconstruction*, ed. Günter Bischof, Marc Landry, and Christian Karner (New Orleans: University of New Orleans Press, 2020), 151–72; Simon Blount, "The Victim Myth: The Reinvention of Austria in the Postwar Years," *Journal of Austrian Studies* 55, no. 4 (2022): 61–75.

[6] Oliver Rathkolb, *Internationalisierung Österreichs seit 1945* (Innsbruck: StudienVerlag, 2006); Oliver Rathkolb, *The Paradoxical Republic: Austria, 1945–2020*, 2nd ed., trans. Otmar Binder et al. (New York: Berghahn Books, 2021), especially 7–9, 187–208.

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legal struggles over censorship and free speech as the central battlefields on which pornography was legalized.[7] The Austrian example suggests that trials of hardcore pornography proved less amenable to framing the problem as one of the individual rights, and thus led to different paths to the decriminalization, rather than outright legalization, of pornography in the twentieth century.

The Austrian case also brings into focus the limits and the surprising persistence of the international legal and administrative regime controlling obscenity in the twentieth century. In the past decade, historians have moved beyond a national lens to show how the transnationality of pornography reshaped it as a licit and illicit trade, a locus of fears and desires, and a material object.[8] Yet the international legal framework against obscene publications that shaped these transnational flows remains largely unexplored.[9] Despite the flood of recent scholarship on the League of Nations, there is still no scholarly account of its work crafting or overseeing the 1923 treaty on obscene publications.[10] Nor has international law received more than passing mention in histories of the postwar treatment of pornography in Europe.[11] This is, in one sense, unsurprising, since the 1923 treaty on obscene publications did not even define the objects of concern, and instead left it to each state to define "obscenity" as it saw fit. If the international control of obscenity rested on shaky foundations, however, the Austrian experience suggests that it nonetheless shaped domestic debates and constrained government actors. Though not the overriding determinant of Austrian policy, appeals to international law bolstered support for passage of the Pornography Law in 1950 and hardened opposition to its repeal after 1970.

"'Pornography' names an argument, not a thing," the scholar Walter Kendrick famously argued, calling attention to its use in battles over sexual morals waged across the nineteenth and twentieth centuries.[12] For Kendrick, the period from 1966 to 1970 marked the transition from the "pornographic" to the "post-pornographic era," as assumptions about pornography's harms were broadly set aside along with enduring efforts to draw a line separating pornography and art.[13] The label "post-pornographic" was a questionable one in 1987, and is even more so in our own era of ubiquitous internet porn, yet Kendrick rightly noted an important historical shift, as the view that pornography had to be banned to protect public morals moved from a majority to minority position in much of Western Europe and the United States. In short, between the 1960s and 1970s, pornography ceased naming an argument over what objects threatened public morality and instead named a thing, a graphic depiction of sex, the moral harms of which were no longer simply accepted. For many Austrians, the 1968 trial helped usher in this new understanding of pornography.

[7] Charles Rembar, *The End of Obscenity: The Trials of Lady Chatterley, Tropic of Cancer, and Fanny Hill* (New York: Random House, 1968); Walter Kendrick, *The Secret Museum: Pornography in Modern Culture* (New York: Viking, 1987); Christopher Hilliard, *A Matter of Obscenity: The Politics of Censorship in Modern England* (Princeton: Princeton University Press, 2021).

[8] See especially Oliver Carter, Tommy Gustafsson, and Mariah Larsson, eds., "Transnational Porn," special issue, *Porn Studies* 9, no. 1 (2022); Leon Janssens, "Pornography on Rails: Trains and Belgium's 'War on Pornography,' 1880–1891," *Journal of the History of Sexuality* 32, no. 3 (2023): 269–87; Jamie Stoops, *The Thorny Path: Pornography in Early Twentieth-Century Britain* (Montreal: McGill-Queen's University Press, 2018).

[9] An exception is Philippa Hetherington, "The Highest Guardian of the Child: International Criminology and the Russian Fight against Transnational Obscenity, 1885–1925," *Russian History* 43, nos. 3–4 (2016): 275–310.

[10] On the League, see especially Susan Pedersen, "Back to the League of Nations," *The American Historical Review* 112, no. 4 (2007): 1091–117. Especially relevant here, Paul Knepper, *International Crime in the 20th Century: The League of Nations Era, 1919–1939* (New York: Palgrave Macmillan, 2011).

[11] Anne Urbain-Archer, *L'Encadrement des publications érotiques en France (1920–1970)* (Paris: Classiques Garnier, 2019); Elizabeth Heineman, *Before Porn Was Legal: The Erotica Empire of Beate Uhse* (Chicago: University of Chicago Press, 2011).

[12] Kendrick, *Secret Museum*, 31.

[13] Kendrick, *Secret Museum*, 226–27.

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While mindful of the problems of definition, this article will follow this latter understanding. The term "obscenity" will describe legal categories and debates concerned with the protection of public morality and "pornography" will denote graphic depictions of sexual acts, usually intended to arouse.[14]

## The Law

It was not just the accused who were on trial in the Vienna courtroom in January and February 1968 but also the 1950 law they were being tried under. Ingo Gutjahr, the presiding judge, made clear in the opening session his intention to make the trial a demonstration of the enduring validity of the law despite changing social mores: "Violations against the Pornography Law are no trivial offenses. Whoever is convicted under this law is to be seen as a criminal."[15] Pornography cases in Vienna were normally heard in the modest chambers of the city's Juvenile Court (*Jugendgerichtshof),* but the sheer number of defendants and lawyers had necessitated that the trial instead take place in the more commodious chambers of the Vienna Criminal Court. The judge strove to take advantage of the opportunities that this grand public stage offered to fulfill his pedagogical mission. At the trial's outset, he took the unusual step of declaring that all proceedings would be open to the press and public because, he subsequently explained, he regarded it as "the court's task to set straight the watered-down views circulating in the public."[16] He meant the trial to reaffirm Austrian commitment to the 1950 Pornography Law that he had spent much of his career enforcing.

Born in 1919 in Graz to a Protestant family, Ingo Gutjahr had moved at age fifteen with his family to Vienna, where he completed a degree in law at the university in 1937. His 1940 application to enter judicial training expresses his youthful ambitions "to help humanity. ... For the law does not only protect the community but also helps many offenders find their way back to the community."[17] His training was interrupted repeatedly, first by military service and then, after 1945, due to his membership in, and work as a minor functionary for, the Nazi Party. His Protestant confession likely tarnished him in the eyes of the authorities of Catholic Austria; that several family members belonged illegally to the Nazi Party before German annexation in 1938 certainly did.[18] Temporarily banned after the war from continuing his training in criminal procedure, he only resumed his judicial career with an appointment to the Vienna Upper Regional Court (*Oberlandesgericht*) in 1950. His work suffered due to the ailments that plagued him for the remainder of his life: a chronic heart condition and persistent retinal inflammation contracted in a POW camp that progressively robbed him of much of his vision, and in 1956 of his entire left eye. In 1955, Gutjahr prevailed upon his superiors to abandon plans to transfer him to a provincial court so that he could remain under the care of his doctors in Vienna, and he instead was assigned to the Juvenile Court. The court's mission of educating and rehabilitating young offenders to ensure their reintegration into society spoke to Gutjahr's early aspirations of judicial work. In practice,

[14] On defining pornography, see Alan McKee et al., "An Interdisciplinary Definition of Pornography: Results from a Global Delphi Panel," *Archives of Sexual Behavior* 49, no. 3 (2020): 1085–91.

[15] Drechsler, "Porno-Skandal." Because the court's transcripts from the archives omit the statements by the judge and prosecutor, Gutjahr's comments are reconstructed from press accounts. Nearly all quotes appearing in this article were printed in identical or nearly identical form in more than one press account of the trial.

[16] Josef Dvorak, "An den Pranger gestellt," *Arbeiter-Zeitung*, February 6, 1968. On the unusual step of inviting media attention, see "Der Prozeß, der zur Show wurde," *Volksblatt*, February 6, 1968.

[17] Österreichisches Staatsarchiv (ÖStA), Vienna, Archiv der Republik (AdR), OLG Wien, PA Ingo Gutjahr, Curriculum Vitae, Beilage 4 to letter to Oberlandesgerichtspräsident, Vienna, March 5, 1940.

[18] ÖStA AdR, OLG Wien, PA Ingo Gutjahr, Kommission nach § 19, Abs. 2, Verbotsgesetz 1947 beim Bundesministerium für Justiz, Erkenntnis, August 25, 1947.

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he was responsible for the increasingly thankless task of enforcing the penal sanctions of the Pornography Law against mostly adult offenders.

The passage of the Pornography Law in 1950 had marked a departure in Austrian treatment of obscenity. Austrian authorities had generally stood aloof from the transnational campaign against obscenity that swept Europe beginning in the 1880s, as middle-class activists strove to stop the flood of cheap print publications that they believed threatened the morality of the increasingly literate masses.[19] Ingo Gutjahr, who had joined an anti-alcohol movement in his youth, hailed from the European Protestant milieu that drove anti-obscenity and contemporaneous crusades against other forms vice.[20] The attitudes of the overwhelmingly Catholic authorities in Austria-Hungary were generally more relaxed than elsewhere in Europe, the anti-obscenity campaigners less influential, and the laws weaker.[21] The Austrian penal code of 1852 criminalized obscenity capable of causing a "public nuisance" (öffentliches Ärgernis), a restriction ill-suited to combating the transnational trade in smut.[22] Official forbearance turned Vienna and Hungary into centers of the international trade in obscene literature before the First World War.[23] Habsburg authorities did not generally attract the ire of anti-obscenity campaigners, however, who focused their efforts on France. The liberal press laws and a significant degree of official tolerance turned Paris into a haven for European producers of erotic literature, art, and photography beginning in the 1890s, and the French capital became the center of a thriving transnational trade.[24]

In 1910, under pressure from domestic anti-obscenity groups and eager to defend its good name abroad, the French government called a diplomatic conference on combating obscenity, attended by representatives of thirteen European states and Brazil. The government of the Austrian half of the Habsburg Monarchy did not initially plan to take part but reversed its position after learning of the Hungarian government's intention to attend.[25] At the conference, the Austrian delegate worked mostly to ward off the perceived efforts of the French and Swiss to universalize their own legal standards.[26] The conference concluded with an international agreement streamlining international police cooperation, which entered into force the following year.[27] A draft treaty obligating adherents to criminalize the production and distribution of obscene publications legislatively remained

[19] Annie Stora-Lamarre, *L'Enfer de la IIIe République: censeurs et pornographes, 1881–1914* (Paris: Diffusion PUF, 1990); Jean-Yves Le Naour, "Un Mouvement antipornographique: la Ligue pour le relèvement de la moralité publique (1883–1946)," *Histoire, Économie & Société* 22, no. 3 (2003): 385–94.

[20] ÖStA AdR, OLG Wien, PA Ingo Gutjahr, Curriculum Vitae, Beilage 4 to letter to Oberlandesgerichtspräsident, Vienna, March 5, 1940.

[21] Marianne Fischer, *Erotische Literatur vor Gericht: Der Schmutzliteraturkampf im Wien des beginnenden 20. Jahrhunderts* (Vienna: Braumüller, 2003), 21–38, esp. 25.

[22] Sabine Scholz, *Die Entwicklung Der Österreichischen Pornographiegesetzgebung seit 1740* (Bern: Peter Lang, 1999), 91–104.

[23] Johannes Frimmel, *Das Geschäft mit der Unzucht. Die Verlage und der Kampf gegen Pornographie im Kaiserreich und in der Weimarer Republik* (Wiesbaden: Harrassowitz Verlag, 2019), 54–57, 70–76.

[24] Colette Colligan, *A Publisher's Paradise: Expatriate Literary Culture in Paris, 1890–1960* (Amherst: University of Massachusetts Press, 2014).

[25] ÖStA Haus-, Hof- und Staatsarchiv (HHStA) MdÄ AR F60-104-1, Prot.Nr.22.363/1909, K.K. Ministerrathspräsidium to k.u.k. Ministerium des k.u.k. Hauses und des Aeussern, March 3, 1909; ÖStA HHStA MdÄ AR F60-104-1, Prot.Nr. 31.599/1909 Ministerium des k.u.k. Hauses und des Äußern to k.k. Ministerrathspräsidium, March 23, 1909; ÖStA HHStA MdÄ AR F60-104–1, Prot.Nr. 45.667/1909, K.K. Ministerrathspräsidium to k.u.k. Ministerium des k.u.k. Hauses und des Aeussern, May 12, 1909.

[26] ÖStA HHStA MdÄ AR F60-104-1, Prot.Nr. 32.162/1910, Eichhoff, "Bericht des Delegierten der k.k. Regierung bei der vom 18. April bis 4. Mai d.J. in Paris abgehaltenen internationalen Konferenz wegen Bekämpfung obszöner Publikationen," May 12, 1910, especially 4–5.

[27] Ministère des Affaires Étrangères, *Documents diplomatiques. Conférence internationale relative à la répression de la circulation des publications obscènes (18 avril–4 mai 1910)* (Paris: Imprimerie Nationale, 1910), 79.

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incomplete until 1923, when the League of Nations organized a conference attended by representatives of thirty-five states from the Americas, Asia, and Europe to refine its terms. The International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications, which entered into force the following year, obligated states to make it a "punishable offense" to produce, distribute, or trade in "obscene materials," including texts, images, and films.[28] The problem of obscene publications featured each year on the agenda of League's Advisory Committee on Traffic in Women and Children but seldom received more than cursory discussion.

The emerging system to control obscenity rested on a fundamental contradiction, for the agreements of 1910 and 1923 called on states to combat the production and trade in "obscenity" without actually defining the term. Across Europe, legislators left it to courts to determine what materials were legally obscene. Legal experts argued that such haziness made the category of obscenity sufficiently supple to follow changing social values (a work regarded as obscene one year might be permissible another) and to accommodate the view that many materials qualified as obscene only when made available to morally vulnerable groups (women, children, the working class) but not those with the moral fortitude to resist such corrupting influences (upper and middle-class men).[29] The notion that the obscenity of a work lay not in its intrinsic character but in its presumed effects on its likely audience might have called into question the entire endeavor of establishing an international system to combat it, given the formidable challenges that existed to cooperation against something without prior agreement. But after attempting to formulate a definition of obscenity, participants at the 1910 conference could only conclude that "each state reserves the right to define the legal meaning of the term 'obscenity' as it sees fit."[30] The 1923 conference's attempts at a definition proved equally fruitless.[31] The white male elites who decided such matters in Paris and Geneva were surely correct in assuming that they agreed more often than not on what was obscene, but this contradiction would continue to plague efforts to build a workable international system of control.

The First Austrian Republic, which emerged out of the core of majority German-speaking lands of the defunct Habsburg Monarchy after the First World War, sent a delegate to the 1923 conference and ratified the convention two years later. The government drafted a law to bring its provisions into force but never submitted it to parliament.[32] This attitude reflected a deeper ambivalence about the international system embodied by the League of Nations. The postwar treaties forbade a union between Austria and Germany without agreement from the Council of the League of Nations, making the League the guarantor of an independence unwanted by many Austrians, who identified as nationally German and felt trapped in a state that was economically "incapable of life" (*lebenunfähig*) and isolated from the international community.[33] To be sure, Austria joined the League in 1920 and cooperated on issues that served its interests, but the campaign against transnational

[28] League of Nations, *Records of the International Conference for the Suppression of the Circulation of and Traffic in Obscene Publications Held at Geneva from August 31st to September 12th, 1923* (C.734.M.299.1923.IV.) (League of Nations, 1923).

[29] Christopher Hilliard, *A Matter of Obscenity*; Christopher Hilliard, "'Is It a Book That You Would Even Wish Your Wife or Your Servants to Read?' Obscenity Law and the Politics of Reading in Modern England," *The American Historical Review* 118, no. 3 (2013): 653–78; Gary D. Stark, *Banned in Berlin: Literary Censorship in Imperial Germany, 1871–1918* (New York: Berghahn Books, 2009), 192–94.

[30] Ministère des Affaires Étrangères, *Documents diplomatiques*, 79.

[31] League of Nations, Records of the International Conference for the Suppression of the Circulation of and Traffic in Obscene Publications Held in Geneva from August 31st to September 12th, 1923 (C.734.M.299.1923.IV.) (League of Nations, 1923), 124.

[32] ÖStA AdR AAng BKA-AA VR 127 GZl 11.940/1925, Kadecka, Einsichtbemerkung, March 19, 1925.

[33] Bruce F. Pauley, "The Social and Economic Background of Austria's Lebensunfähigkeit," in *The Austrian Socialist Experiment: Social Democracy and Austromarxism, 1918–1934*, ed. Anson Rabinbach (Boulder, CO: Westview Press, 1985);

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pornography clearly did not. Even the International Criminal Police Commission, the predecessor to Interpol whose Austrian leadership were eager to extend their authority over transnational criminality, showed little interest in policing pornography.[34]

Unlike transnational obscenity, the domestic trade in pornography proved a contentious political issue in Austria throughout the 1920s. Campaigns against "filth and trash" (*Schmutz und Schund*), which linked the explicitly sexual and pornographic (filth) and the frivolous and worthless (trash), had roiled the German-speaking world since the late nineteenth century.[35] In 1920s Austria, the Catholic right wielded this rhetoric as a cudgel against the Socialist left.[36] As Austrian politics lurched toward rightwing authoritarianism, the government tightened restrictions on obscenity. Legislation tightening restrictions of the sale of offensive materials to people under sixteen years of age was passed in 1929 over fierce objections by the left. In March 1934, a month after violently suppressing the Social Democrats, the authoritarian Christian regime passed a decree imposing further criminal sanctions on the distribution of nude images and other obscenity.[37] These measures remained in force after Austria's annexation by Nazi Germany in 1938 and into the postwar period.[38]

After 1945, Austrians eagerly claimed the mantle of "Hitler's first victims" and sought a new identity that could gloss over their complicity in Nazism while avoiding the divisions of interwar politics. Those like Ingo Gutjahr, whose earlier pan-Germanist sympathies did not fit the new national identity, were sidelined, at least temporarily. Under joint occupation by the Allies, which dragged on until 1955, the *Sozialistische Partei Österreichs* (Socialist Party of Austria, SPÖ), on the left, and *Österreichische Volkspartei* (Austrian People's Party, ÖVP), on the right, developed a consensual style of governance based on power-sharing to avoid the ructions of interwar politics.[39] Where the fight against obscenity in the First Republic had been entangled with a broader ideological struggle between the Catholic right and Socialist left, the two leading parties in the Second Republic sought common ground in crafting a stable moral order. A focus on fighting an external moral threat to the nation's youth from "immoral" and "obscene" publications fit the postwar victimization narrative and the project of Austrian nation-building. It was also part of a much broader Western European campaign against obscenity, which reached a twentieth-century zenith in late 1940s and 1950s, as governments passed a series of youth-protection laws in an era of postwar conservative moral reconstruction.[40]

The initial impetus for the Pornography Law came from the Catholic right, but Socialists, who shared a concern about threats to youth morality, soon joined in the effort.[41]

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Tara Zahra, "Against the World: The Collapse of Empire and the Deglobalization of Interwar Austria," *Austrian History Yearbook* 52 (2021): 1–10.

[34] Oskar Dressler, *Die Internationale Kriminalpolizeiliche Kommission und ihr Werk* (Berlin: Internationale Kriminalpolizeiliche Kommission, 1942), 100. On the ICPC, David Petruccelli, *A Scourge of Humanity: The Origins of Interpol and the End of Empire in Central and Eastern Europe* (New York: Oxford University Press, 2025).

[35] Kara L. Ritzheimer, *"Trash," Censorship, and National Identity in Early Twentieth-Century Germany* (Cambridge: Cambridge University Press, 2016).

[36] Murray G. Hall, "'Nur für einen wissenschaftlich interessierten Leserkreis bestimmt …' Zum Vertrieb und Verkauf von erotischem Lesestoff in Wien im 20. Jahrhundert," *Mitteilungen der Gesellschaft für Buchforschung in Österreich* 16, no. 2 (2016): 43–60, here 45.

[37] "Verordnung der Bundesregierung zum Schutze der Sittlichkeit und der Volksgesundheit," BGBl I Nr 171/1934. Drafts and correspondence about this order are in ÖStA Allgemeines Verwaltungsarchiv (AVA) JM Allg. Sig. 1 A 1522.

[38] Scholz, *Die Entwicklung,* 141–51.

[39] Rathkolb, *Paradoxical Republic*, 41–46.

[40] Udi Greenberg, *The End of the Schism: Catholics, Protestants, and the Remaking of Christian Life in Europe, 1880s–1970s* (Cambridge, MA: Harvard University Press, 2025), 203–5.

[41] Matthew Paul Berg, "Schmutz, Schund and Sittliche Gefährdung: The Politics of Children's Morality Legislation in Early Postwar Austria," *German Studies Review* 21, no. 3 (1998): 449–51.

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A conservative draft law on "filth and trash" from March 1949, which foresaw the establishment of a government commission to limit the circulation of media threatening youth morality, faced sharp internal criticism for violating the constitutional ban on censorship and intruding into provincial authority over culture.[42] The SPÖ-led Ministry of Justice produced a new draft law that instead rested on criminal law, a matter clearly within the federal remit that sidestepped charges of censorship.[43] The focus on criminal policy, a result of Austria's consensus-driven politics and an interest in restraining government power, stood in sharp contrast with contemporaneous legislation elsewhere in Europe introducing direct government oversight over media. In West Germany, for instance, Konrad Adenauer's ruling Christian Democrats rammed a Law on Youth-Endangering Texts through parliament over fierce Social Democratic objections.[44]

As part of this reorientation around penal law, the Justice Ministry made the fight against pornography the centerpiece of a legislative project hitherto oriented principally around youth protection. Section 1 of the draft law criminalized the production and trade in obscene texts, photographs, and other materials for a profit, while subsequent sections provided for the protection of youths. Anti-pornography provisions were meant to supersede the country's dated obscenity laws and shore up support on the SPÖ's left flank, which remained wary of covert forms of censorship.[45] The Justice Ministry also stressed that its draft would allow Austria finally to fulfill its commitments under the 1923 international convention, an argument, a ministry official argued, that "should remove any fundamental objections to the penal provisions of Paragraph 1."[46] Although the law, unlike the treaty, only targeted the production and trade in obscenity for a profit, the government presented the draft law to parliament as the fulfillment of international legal commitments that Austria had taken on but failed to honor, as well as an urgent response to a transitory moral crisis that followed the Second World War.[47] After considerable debate, the ÖVP and SPÖ members of parliament unanimously passed the Federal Law on Combating Obscene Publications and Protecting Young People against Moral Danger, commonly called the Pornography Law, on March 31, 1950.[48]

What gave appeals to the 1923 treaty particular salience was the centrality of international law to Austrian identity and sovereignty after 1945. In their hopes of bringing the Allied occupation of their country to an end without enduring division like neighboring Germany, Austrian officials floated the possibility of neutrality along Swiss lines. In presenting the draft Pornography Law to parliament, the Austrian Justice Ministry cited

[42] ÖStA AdR BMJ II/L Kt. 114, II Strafrecht NG 4, GZ 10.528/49, Entwurf eines Bundesgesetzes über den Schutz der Jugend gegen Schmutz und Schund—Bericht über die Besprechung des Entwurfes am 7.3.1949.

[43] The possibility of criminal legislation is discussed in ÖStA AdR BMJ II/L Kt. 114, II Strafrecht NG 4, GZ 10.528/49, Entwurf eines Bundesgesetzes über den Schutz der Jugend gegen Schmutz und Schund—Bericht über die Besprechung des Entwurfes am 7.3.1949. See also ÖStA AdR BMJ II/L Kt. 114, II Strafrecht NG 4, GZ 13.465/49, Bundesministerium für Justiz to Vice Chancellor Adolf Schärf, January 5, 1950.

[44] Heineman, *Before Porn Was Legal,* 31–38. On the French law of 1949, see Urbain-Archer, *L'Encadrement*, 345–403; Richard Ivan Jobs, "Tarzan under Attack: Youth, Comics, and Cultural Reconstruction in Postwar France," *French Historical Studies* 26, no. 4 (2003): 687–725.

[45] ÖStA AdR BMJ II/L Kt. 114, II Strafrecht NG 4, 29, Gz. 13.465/49, Schreiben

des Herrn Bundesministers für Justiz an den Herrn Vizekanzler Dr. Adolf Schärf, January 5, 1950. On the problems of the 1934 law, see ÖStA AdR BMJ II/L Kt. 114, II Strafrecht NG 4, GZ 12.135/4, Helmer, Bundesministerium für Inneres, Anfragebeantwortung, June 17, 1948, 8. On leftwing criticisms of the law, see Berg, "Schmutz," 455–57.

[46] ÖStA AdR BMJ II/L Kt. 114, II Strafrecht NG 4, 42, GZ 10.744/1950, Memorandum, March 17, 1950.

[47] 105 der Beilagen zu den stenographischen Protokollen des Nationalrates (VI. G.P.), March 15, 1950 (https://www.parlament.gv.at/dokument/VI/I/105/imfname_335415.pdf).

[48] Stenographisches Protokoll. 23. Sitzung des Nationalrates der Republik Österreich. VI. G. P. 31. März 1950, 855–72. (https://www.parlament.gv.at/dokument/VI/NRSITZ/23/imfname_159340.pdf). See also Scholz, *Entwicklung*, 154–66.

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Switzerland as a model, implicitly tying the legislation to Austria's commitment to international law, neutrality, and a restoration of sovereignty.[49] The deepening Cold War delayed a resolution of Austria's status until the 1955 State Treaty (*Staatsvertrag*) brought Allied occupation to an end. This treaty and the Neutrality Law passed alongside it became cornerstones of a new Austrian identity that cast the small state as a trusted and trustworthy actor on the international stage.[50] International law, resented by many citizens of the First Austrian Republic for confining them to a small, unwanted state, guaranteed the security of the Second Austrian Republic and became core to its identity.

If the Pornography Law became bound up in Austria's new international image, its immediate effects were largely at home, where the authorities moved to crack down on the pornographers they believed exploited the moral confusion and lax legal framework of the postwar period. By 1952, the prosecutor's office in Vienna reported that "It has been possible effectively to combat pornography, resulting in a beneficial effect on the Viennese streetscape."[51] Much of the initial flurry of official activity invoked §1 of the law to prosecute people selling photographs of masturbation and heterosexual and lesbian intercourse to Austrian men and to members of the Allied occupation forces.[52] After this initial crackdown, however, the youth-protection provisions of the law saw wider application, as prosecutors sought to purge the public sphere of promotions for strip shows, scantily clad shop window mannequins, and advertisements showing too much female skin, and also to block the sale to young people of sexually explicit, violent, or simply frivolous comics and novels.[53]

Against the backdrop of stifling public sexual conservatism in the 1950s, private attitudes to sex were changing, however.[54] By the mid-1960s, officials across Western Europe began to relax legal restrictions on abortion, homosexuality, and other fields of sexuality to bring them into line with changing norms.[55] Denmark led the way in dismantling laws on obscenity, legalizing pornographic texts in 1967 and visual pornography in 1969. Sweden followed in 1971. Even before legalization, however, relaxing attitudes led pornography to flood out of these countries into Western Europe. Following a series of Danish court decisions in 1964–65 clearing the classic pornographic novel *Fanny Hill* of obscenity charges, producers pushed the boundaries of obscenity by publishing and selling increasingly graphic images of sex.[56] These were sold more or less freely in Denmark and exported clandestinely to the rest of Europe. In the eyes of authorities across Europe, Scandinavian tolerance seemed

[49] ÖStA AdR BMJ II/L Kt. 114, II Strafrecht NG 4, 42, GZ 10.744/1950, Memorandum, March 17, 1950.

[50] Rathkolb, *Internationalisierung*.

[51] ÖStA AdR BMJ II/L Kt. 115, II Strafrecht NG. 4/13, Staatsanwaltschaft beim Jugendgerichtshof Wien to Oberstaatsanwaltschaft Wien, October 23, 1952, 1–2.

[52] See for instance Wiener Stadt- und Landesarchiv (WStLA), Vienna, Jugendgerichtshof (JGH) A3 Vr 568/50.

[53] Paul M. Horntrich, "Advertising, Striptease, and the Lure of a Shop Window Mannequin. Reconstructing the Eroticized City Landscape of 1950s Vienna," *Revue d'Histoire Culturelle. XVIIIe–XXIe Siècles* 4 (2022), https://doi.org/10.4000/rhc.1988; Edith Blaschitz, *Der "Kampf gegen Schmutz und Schund." Film, Gesellschaft und die Konstruktion nationaler Identität in Österreich (1946–1970)* (Vienna: Lit, 2014).

[54] Franz X. Eder, "The Nationalists' 'Healthy Sensuality' Was Followed by America's Influence': Sexuality and Media from National Socialism to the Sexual Revolution," in *Sexuality in Austria*, ed. Gunter Bischof et al. (New Brunswick: Transaction Publishers, 2011), 102–30; Elizabeth D. Heineman, "The Economic Miracle in the Bedroom: Big Business and Sexual Consumption in Reconstruction West Germany," *The Journal of Modern History* 78, no. 4 (2006): 846–77.

[55] Dagmar Herzog, *Sexuality in Europe: A Twentieth-Century History* (Cambridge: Cambridge University Press, 2011), 152–60.

[56] Leif Blædel, Sagen om Fanny Hill. Forhistorie, anklage, erklaeringer, procedure, dommene, omgaengelse mod demokratiet (Copenhagen: Thaning & Appel, 1965).

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only to encourage ever more extreme and shocking depictions of sexuality: homosexual sex, group sex, bestiality, sexual violence, and sex with minors.[57]

As a judge responsible for cases falling under the Pornography Law, Ingo Gutjahr was on the front line of Austria's faltering efforts to stem the flood of Scandinavian pornography. Post offices intercepted a growing quantity of Danish and Swedish pornography entering the country in 1965 and 1966, but the court generally acquitted Austrian importers, whose claims they had not known the obscene character of the shipments could not be disproven, while the Scandinavian producers and suppliers remained agonizingly out of reach.[58] Accused of laxity in upholding the Pornography Law in the run-up to the March 1966 elections, the Socialist Justice Minister, Christian Broda, opened an inquiry into the dismissal of most cases, which ultimately determined that prosecutors had acted appropriately in nearly all instances.[59] The election was a major victory for the conversative ÖVP and heralded the end of coalition rule for the first time in postwar Austrian history. The new government remained powerless to stop the entry of Scandinavian pornography into the country. And then, in May 1967, authorities uncovered a group of Austrians producing pornography in Vienna. The trial, which began the following January, provided an opportunity to reaffirm Austrian commitments to holding the line against pornography.

## The Trial

Ingo Gutjahr made no secret of his intention to stage a public spectacle that could demonstrate Austrian anti-pornography zeal and dissuade others from producing or selling smut. This message did not go uncontested by the defendants and their attorneys, and the trial soon became a contest to shape public views of what was and was not pornography, and how the Austrian state should approach it. These questions were at the fore already on the first day of proceedings, January 22, 1968, when Vienna bookshop owner Karl W. gave his testimony.[60] Prosecutors accused him of using an association he founded and ran, "European Model and Artists' Association—Zentrum II," to recruit female models for nude and pornographic films and to operate an extensive mail order business selling "nudist," "pin-up," "nude," and "extra-nude" ("Extraakt") materials, the last of which investigators suspected but never proved meant explicit pornography.[61] He was an unlikely choice to serve as the face of the organization. Clean-cut, with soft features and thick-rimmed glasses, he hardly exuded the sexual menace or immoral avarice that prosecutors imputed to him.

Karl W.'s defense rested on exploiting the gap between the legal definition of obscenity and the public understanding of pornography by maintaining that he only produced and sold nude and "striptease" photos and films and not explicit depictions of sex acts. From a legal standpoint, it mattered little. Under the prevailing jurisprudence, an object was obscene, a Justice Ministry memorandum explained, "if it is capable of violating the morality and sense of shame of a normal, average person [*eines normalen Durchschnittsmenschen*]

[57] See especially Richard Ben-Veniste, "Pornography and Sex Crime: The Danish Experience," in *Erotica and Antisocial Behavior*, ed. United States Commission on Obscenity and Pornography (U.S. Government Printing Office, 1971), 246–48; Berl Kutchinsky, *Law, Pornography, and Crime: The Danish Experience*, ed. Annika Snare (Oslo: Pax Vorlag, 1999), 85–87, 95–102.

[58] See for instance WStLA, JGH Vr 1567/1966 and JGH Vr 1577/1966. ÖStA AdR BMJ II/L Kt. 115 II, Strafrecht NG. 4/59, Christoph Mayerhofer, "Die öffentliche Sittlichkeit und das Recht."

[59] ÖStA AdR BMJ II/L Kt. 115 II, Strafrecht NG. 4/42, Präsidentenkonferenz der Landwirtschaftskammern Österreichs to Bunderminsiterium für Justiz, January 12, 1966; ÖStA AdR BMJ II/L Kt. 115 II, Strafrecht NG. 4/42, "Bericht der OStAen betreffend Strafverfolgung in Strafsachen Schmutz- und Schundgesetz," August 2, 1966.

[60] Though the names were printed widely in the press, the names of defendants in the case will be shortened to their initials to preserve their privacy.

[61] WStLA JGH A3 Vr 678/1967, Bd. 2, Staatsanwaltschaft beim Jugendgerichtshof Wien, Anklageschrift gegen Karl W. und Gen., September 18, 1967, 9.

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in relation to sexuality. It is not required that it should directly arouse the sexual drive; it is sufficient that, by its nature, it is related to sexual life."[62] The suggestive poses and closeups of genitals and breasts that featured in Karl W.'s materials clearly met this threshold. But if these products were obscene, Karl W. could also argue that they were not pornographic in the public understanding of the term. He conceded that he imported and sold "Scandinavian nude films" which "perhaps qualify as pornographic in Austria, but in Scandinavia itself they do not."[63] By linking his activities to broader European transformations, he called into question the legal categories in Austria. Ingo Gutjahr sought to draw a clear moral line between the upright Austrians and the libertine Scandinavians. When another defendant noted the group had considered selling their products in Sweden, the judge exclaimed, "that is like offering an avid meat eater a vegetarian meal. The Swedes have completely different moral concepts!"[64] Karl W. also argued that his products were no worse than other depictions of nudity and sexuality legally shown in Austria. "I was at the Rondellkino yesterday," he argued referencing a Vienna cinema infamous for its racy programming, "and they showed exactly the same things I filmed."[65] Another defendant's lawyer attempted to introduce into evidence films then playing in Vienna cinemas that he claimed were as bad as those on trial.[66]

Peculiarities of obscenity trials aided such efforts at public persuasion. In order not to be complicit in the public display of obscenity, the court excluded the public and press "for reasons of morality" when it came time to view the seized materials on the second and third day of proceedings.[67] Left in the dark about the nature of the materials, some reporters echoed Karl W.'s claims that he had produced "artistic nudes" or "striptease" films.[68] Others reveled in the salacious image of a court of law turned into a porno theater. "Sex-show in the dark courtroom," a headline in the tabloid *Kronen-Zeitung* announced, "Judges watch porno films behind locked doors."[69] *Express* described how judges and prosecutors in between other cases packed the courtroom to view a "sex-show exclusive for the court."[70]

The defendants who testified in the days after the trial was reopened to the public on January 24 had little of the defiance of Karl W., leading some in the media to speculate that they had concluded that further denials were pointless after being presented with the seized evidence against them.[71] In fact, most of these defendants had already confessed to producing and distributing films and photos depicting explicit depictions of sex acts. There was Franz M., the owner of a lending library, had struck up a conversation one day with Karl W., invited the bookseller to the backroom of his library to watch pornographic films, and subsequently became involved in producing pornography with Zentrum II.[72] Gerhard P., an avid photographer and vice president of Zentrum II, openly boasted about producing

[62] ÖStA AdR BMJ II/L Kt. 115 II, Strafrecht NG. 4/48, GZ 18.152-9a/68, Eugen Serini, Bericht an den Herrn Minister über die heutige Rechtslage auf dem Gebiete des Pornographiegesetzes und die Rechtslage nach dem Entwurf 1968, February 27, 1968, 8. See also Elisabeth Holzleithner, "Grenzziehungen. Pornographie, Recht und Moral" (Dissertation, University of Vienna, 2000), 54, 63–65.

[63] WStLA JGH A3 Vr 678/1967, Bd. 3, Hauptverhandlung gegen Karl W. und Gen., January 22, 1968, 13.

[64] "Mädchen wußten vom Porno-Handel," *Kurier*, January 1, 1968.

[65] WStLA JGH A3 Vr 678/1967, Bd. 3, Hauptverhandlung gegen Karl W. und Gen., January 22, 1968, 14.

[66] "Der Sprung auf die große Leinwand gelang nicht," *Kurier*, January 30, 1968.

[67] WStLA JGH A3 Vr 678/1967, Bd. 3, Hauptverhandlung gegen Karl W. und Gen., January 22, 1968, 3.

[68] "Vom Aktphotoklub auf die Anklagebank," *Die Presse*, January, 23 1968.

[69] Günther Fritsch und Harald Hofmeister, "Im Porno-Prozeß: Sex-Show im dunklen Verhandlungssaal Richter sahen Filme hinter versperrten Türen," *Kronen-Zeitung*, January 24, 1968.

[70] "Porno: Sex-Show exklusiv für das Gericht!" *Express*, January 24, 1968. See also Peter Michael Lingens, "Pornographisches..." *Express*, January 25, 1968.

[71] "Mädchen wußten vom Porno-Handel," *Kurier,* January 25, 1968.

[72] WStLA JGH A3 Vr 678/1967, Bd. 1, 61a, Karl W. Statement, June 7, 1967.

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pornography depicting female masturbation, lesbian and heterosexual intercourse, and, in at least one case, bestiality.[73] Gottfried S., a technician at a nuclear plant, admitted to having produced forty-one films, mostly of women masturbating with objects such as beer bottles and candles.

And then there was Peter S., a noted film historian and film archivist in Vienna suspected of selling large quantities of obscene films out the back of his film rental store. During investigations, he had offered a series of contradictory and implausible explanations meant to prove his innocence. "I played every film I bought until a certain bodily reaction, which took place after 2 or 3 minutes," he explained. Because he reached sexual climax while the performers were still undressing, Peter S. claimed not to have realized they went on to have intercourse, and therefore had never knowingly sold pornography.[74] The investigators were understandably incredulous. Later, pressed on why burned film material had been found at his store, he denied seeking to destroy evidence: "I destroyed films that I had seen and that promised me nothing more. 'Promised me nothing more' means that I no longer expected to ejaculate when watching the films."[75] Over the course of a lengthy and contentious testimony on the stand, Peter S. confessed that he had bought and sold a small number of obscene films, but only at cost, and denied any involvement in their production.[76]

The court and the press showed little sympathy for these male producers and distributors but generally treated them respectfully.[77] Female defendants, by contrast, were subjected to cruelly misogynistic treatment. There was only one woman among the main defendants accused of distributing as well as performing in pornography. Born in 1943, Ingrid W. had trained as a classical musician until chronic tendonitis forced her to abandon this dream. Trapped in an unhappy marriage and working as a decorator to support her husband and herself, she answered an announcement seeking a nude model one day in 1965.[78] This is how she met Karl W., and she claimed that she posed nude for him first for money and then for love and finally out of a growing belief in the nudist philosophy that he preached. They began dating as her marriage broke down. She served in administrative roles in clubs he founded and let him use a PO box under her name, though she claimed ignorance about its use for the sale of nude films and photos. Ingrid W. maintained from the start of investigations that she had only acted in "striptease," and not "pornographic," photos and films.[79] She admitted only one lapse. At Karl W.'s request, she had personally delivered three striptease films, in which she starred, and one pornographic film, in which she did not, to a man who was unable to leave his home due to a disability.[80] This transaction served as the sole basis on which she was charged with distributing obscene materials.[81] The

[73] The formal charge sheet described him as "confessing from the beginning." See WStLA JGH A3 Vr 678/1967, Bd. 2, Staatsanwaltschaft beim Jugendgerichtshof Wien, Anklageschrift gegen Karl W. und Gen., September 18, 1967, 23. See also his comments on the copying equipment of Peter S., WStLA JGH A3 Vr 678/1967, Bd. 1, 361–62, Gerhard P. Statement, July 7, 1967. On the bestiality case, see WStLA JGH A3 Vr 678/1967, Bd. 1, 106d, Gerhard P statement, August 8, 1967; WStLA JGH A3 Vr 678/1967, Bd. 3, Hauptverhandlung gegen Karl W. und Gen., January 24, 1968, 21.

[74] WStLA JGH A3 Vr 678/1967, Bd. 1, 376, Peter S. statement, July 7, 1967.

[75] WStLA JGH A3 Vr 678/1967, Bd. 1, 383a, Peter S. statement, July 11, 1967.

[76] WStLA JGH A3 Vr 678/1967, Bd. 3, Hauptverhandlung gegen Karl W. und Gen., January 25, 1968, 12–19.

[77] For comments on the men, see Herbert Zinnebner and Fritz Schaler, "Psychiatry für Porno-Mädchen, das den Skandal platzen ließ," *Express*, January 25, 1968; "Pornoprozeß: Akteure gestehen," *Arbeiter-Zeitung*, January 25, 1968.

[78] Her biography is in WStLA JGH A3 Vr 678/1967, Bd. 3, Dr. Rudolf Lischka to Jugendgerichtshof Wien, March 8, 1968; WStLA JGH A3 Vr 678/1967, Bd. 3, Hauptverhandlung gegen Karl W. und Gen., January 25, 1968, 1–3.

[79] WStLA JGH A3 Vr 678/1967, Bd. 1, 105–105c, Ingrid W. statements, June 6, June 15, July 6, and August 8, 1967.

[80] WStLA JGH A3 Vr 678/1967, Bd. 3, Hauptverhandlung gegen Karl W. und Gen., January 25, 1968, 1–3.

[81] WStLA JGH A3 Vr 678/1967, Bd. 2, Staatsanwaltschaft beim Jugendgerichtshof Wien, Anklageschrift gegen Karl W. und Gen., September 18, 1967, 17.

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only woman among the main defendants, whom one newspaper labeled "the most attractive among the female accused," her image featured frequently in the press.[82] Newspapers described her as the "star of many films," and salaciously (but inaccurately) hinted that she had been filmed masturbating and in lesbian sex scenes.[83]

Ingo Gutjahr grilled Ingrid W. on the stand. Much of the testimony revolved around a "double striptease" film she had appeared in and sold to the housebound man in Vienna. It is one of the few films described in any detail in the case files thanks to a later court description: "The models take turns removing a piece of clothing while playing cards … the breasts of both models are shown very close up, each caressing their breasts, spreading their legs, or pulling up one leg, so that their genitals are clearly visible. The models are shown lying next to each other for a long time. The models' breasts and genitals are repeatedly clearly shown as they lie back. Finally, Ingrid W. spreads her legs again and caresses the inner thighs."[84] Ingo Gutjahr viewed this as unambiguously obscene, and subjected Ingrid W. to a grueling interrogation in an attempt to force her to concede the point.[85] She stood her ground. "I would have to be ashamed of something pornographic, but not of this," she explained, "I touched my thighs and breasts with my own hand. At the time I did not think that this is pornography, but it is viewed differently here. I can clearly see that the court believes that is pornographic."[86] The exchange set the tenor for Gutjahr's treatment of other women on the stand.

Investigators had identified dozens of "models," two of them men and the rest women in their late teens or twenties. There were waitresses, housekeepers, hairdressers, and quite a few without fixed employment. Only one previously reported having been involved in sex work. Many of the performers claimed they had first come into contact with Karl W. after answering announcements in newspapers seeking female photo models. Over a series of photo sessions, he pushed the boundaries of what they would accept, first photographing them fully clothed, then in lingerie or swimsuits, and finally nude. Karl W. introduced several models to other members of Zentrum II, such as Gerhard P., who filmed them in explicit masturbation or sex scenes.[87] Other producers principally recruited performers through personal connections or among the friends of performers. Models reported different motivations for taking part in filming. Several women said they hoped to break into modeling or acting and that producers claimed they were sending materials to modeling agencies. Others admitted that they simply needed money and that the work was easier than other options available to them. Several women reported that producers plied them with alcohol to overcome their compunctions. Nearly all were told the films were being sent abroad, allaying concerns that friends or family would see them.[88] A few women, and both male performers, admitted that they enjoyed the work.[89]

[82] "Porno: Sex-Show exklusiv für das Gericht!" *Express*, January 24, 1968.

[83] Drechsler, "Porno-Skandal." See also the summary of press accounts in WStLA JGH A3 Vr 678/1967, Bd. 3, Dr. Rudolf Lischka to Jugendgerichtshof Wien, March 8, 1968, 2–3.

[84] WStLA JGH A3 Vr 678/1967, Bd. 4, Hauptverhandlungsprotokoll, 20.4. bis 27.4.1970, Strafsache gegen Karl W. u Genossen, April 22, 1970, 5–6.

[85] WStLA JGH A3 Vr 678/1967, Bd. 4, Jugendgerichtshof Wien, Judgment against Karl W. und Gen., February 5, 1968, 14.

[86] WStLA JGH A3 Vr 678/1967, Bd. 3, Hauptverhandlung gegen Karl W. und Gen., January 25, 1968, 6–8.

[87] WStLA JGH A3 Vr 678/1967, Bd. 1, 253–57, 299–303, 477, statements by Waltraut L., June 27, 1967; Irene K., June 27, 1967; Waltraud S., June 22, 1967; and Helga T., June 30, 1967; Patricia Daubek, July 3, 1967; Angelika W., July 12, 1967.

[88] Oliver Carter has noted that such deceptions in British illicit pornography production. See Oliver Carter, *Under the Counter: Britain's Trade in Hardcore Pornographic 8mm Films* (Bristol: Intellect Ltd, 2023), 122.

[89] WStLA JGH A3 Vr 678/1967, Bd. 1, 225, Adolf W. statement, June 23, 1967; WStLA JGH A3 Vr 678/1967, Bd. 3, Hauptverhandlung gegen Karl W. und gen, January 25, 1968, 11. See also WStLA JGH A3 Vr 678/1967, Bd. 3, Hauptverhandlung gegen Karl W. und gen, January 29, 1968, 15.

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The court might have used this evidence to cast light on the social and economic constraints that made young women particularly susceptible to the exploitation and commercialization of their sexuality, a concern ostensibly animating anti-pornography campaigners. Instead, Ingo Gutjahr strove to make a public spectacle of them. As he later explained, he wished the public hearings "to serve as warning to those girls who are engaged in such activity but have not been caught by the law."[90] As each of the nine women charged with abetting in the production of obscene materials took the stand, Gutjahr berated them for their choices and the low value he believed they placed on their virtue. When one performer explained that she needed the money to pay off debts, Gutjahr interjected, "Then you could have worked as a waitress. You would have earned just as much money. I can understand someone doing this for 10,000 Schilling, but not for so little money!"[91] To another model, he exclaimed, "You only got 100 Schilling! To think what one can do with a girl for 100 Schilling!"[92] The judge and the prosecutor grilled the women about the number of films they produced, the acts they had performed, and how much they had been paid. The press piled on, reprinting the women's names and photographs alongside comments on the performers' physical appearance and moral lapses.[93] The *Kronen-Zeitung* was typically crass: "These relatively pretty, shapely girls have one thing in common: An aversion toward real work, a frivolousness that borders on stupidity, and not the slightest idea of the value of their own bodies."[94] Alongside photographs of women hiding their faces behind headscarves and large sunglasses, newspapers snidely commented on their newfound modesty. "Now they are embarrassed in front of the press photographers—although some of them are pretty enough to attract approving looks from men even in attire other than the offending 'Eve costume' [i.e., nude]," wrote the liberal *Die Presse*.[95] The Socialist daily, *Arbeiter-Zeitung* captioned a photograph of the female defendants "Now camera-shy."[96]

The second week of the trial found Ingo Gutjahr at his most theatrical and most paternalistic. He opened the session on Monday, January 29, by reading aloud an anonymous letter threatening the lives of his wife and children. "This nonsense doesn't bother me in the slightest!" he blithely proclaimed.[97] The following day, after the appointed time of an anonymous bomb threat had come and gone, he stated defiantly, "Let's smoke a cigarette, the bomb has not exploded. We have made it through it again!"[98] The press thrilled at the judge's insouciance, but he was losing control of the media narrative. Twelve female performers took the stand as witnesses in the second week, since the prosecution did not have sufficient evidence that they knew the films would be sold commercially to bring charges under the Pornography Law. The judge was not going to let them off the hook so easily.[99] Fully inhabiting the role of the stern and lecturing father figure, he harangued and berated one witness after another to extract a full and public confession of every act committed to

[90] Dvorak, "An den Pranger."

[91] "Strip-tease-Star um 100 Schilling," *Die Presse*, January 25, 1968.

[92] "Mädchen wußten vom Porno-Handel," *Kurier*, January 25, 1968. See also Günther Fritsch, "Was man doch von einem Mädchen für hundert Schilling alles haben kann," *Kronen-Zeitung*, January 25, 1968.

[93] For instance, in Günther Fritsch und Harald Hofmeister, "Porno-Prozeß, Sultan mit Lieblingsfrau und den Sklavinnen auf der Anklagebank," *Kronen-Zeitung* January 23, 1968; "Vom Aktphotoklub auf die Anklagebank," *Die Presse*, January 23, 1968.

[94] Fritsch, "Was man doch."

[95] "Vom Aktphotoklub auf die Anklagebank," *Die Presse*, January 23, 1968.

[96] "Amateure machten Pornofilme," *Arbeiter-Zeitung,* 23 January 1968.

[97] Günther Fritsch und Harald Hofmeister, "Porno-Prozeß: Obszönitäten in öffentlichen Kinos?" *Kronen-Zeitung* January 30, 1968. See the threat letter in WStLA JGH A3 Vr 678/1967, Bd. 3, 231, Mafia to Gutjahr, n.d.

[98] "Neue Drohung im Porno-Prozeß: Bombe im Saal!" *Arbeiter-Zeitung,* February 1, 1968.

[99] See Gutjahr's comments about his suspicions of these witnesses in WStLA JGH A3 Vr 678/1967, Bd. 4, Jugendgerichtshof Wien, Judgment against Karl W. und Gen., February 5, 1968, 25.

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film. "You have the childish trust of a ten-year old and the lust for experience of a seventy-year-old!"[100] he chided one performer. To another: "No man will put himself out for you if you can be had for 100 Schilling."[101]

In light of this cruel spectacle, the press recast the performers as victims and the judge as tormentor. "Frightened girls, growing more frightened the more the presiding judge grilled them. Loud admonishments and limp attempts to sugarcoat things. So it went all morning," *Die Presse* reported after the first day of witness testimonies.[102] The *Arbeiter-Zeitung* labeled it "a show trial in which not just the defendants but also the young female witnesses were mercilessly pilloried."[103] Even the conservative *Kronen-Zeitung* had misgivings, though less for the female witnesses than the good name of their relatives: "Now the shame has descended not just upon the careless girls but on whole families. The porno court shows neither leniency nor mercy; it presses for every last detail, wringing it out of the little girls, their noses raw from crying."[104] To be sure, newspapers continued to reprint the names, photographs, and testimonies of the women. Even the most sympathetic accounts traded one set of gendered tropes—the dangers of unrestrained female sexuality—for another—female passivity and victimization. Yet in shifting the core narrative from one of the criminality of the pornographers to the cruelty of the court, press accounts called into the question the legitimacy of the trial, and by extension the Pornography Law.

Conspicuously absent from discussion in court were the group's customers. The purchase or possession of obscene materials was not illegal under Austrian law, but the lack of criminal charges had not protected the witnesses from public shaming. The few clues present in the investigative files suggest that the customers were overwhelmingly heterosexual men of respectable backgrounds, men with whom the court officials may well have identified. It was common knowledge among defense attorneys that pornography tended to disappear from court evidence files.[105] Exposing the customers risked undermining the vision of public respectability underpinning the Pornography Law by revealing that the "normal, average person" harbored tastes for the legally obscene. One such person was Heinz S., an administrator in the Austrian Army whom investigators tracked down in order to ensure that Karl W. had actually sent materials after taking payments and could not be charged with fraud. Heinz S. had written in response to a newspaper announcement advertising "intimate films and photos," "Dear Miss Ingrid … I am interested in 8mm cine films with orgiastic scenes between multiple people of both sexes or also lesbian scenes. Sodomy films are also welcome." The film he received was rather different, he told investigators: "A black-haired girl, wearing only panties, performed various gymnastics exercises. She then took off her panties, continued performing, and occasionally touched her breasts."[106] He nonetheless expressed himself satisfied with the transaction. Investigators dropped their investigation of fraud and allowed Heinz S. to keep the film.

In its closing session on February 5, the court found all defendants guilty. As television cameras rolled, Ingo Gutjahr intoned, "The convicted are not martyrs of a new era, but

[100] "Der Sprung auf die große Leinwand gelang nicht," *Kurier*, January 30, 1968.

[101] "Anklage gegen Brigitte Bardot?" *Arbeiter-Zeitung*, January 30, 1968.

[102] "Pornoprozeß: Richter bedroht," *Die Presse*, January 30, 1968.

[103] Dvorak, "An den Pranger."

[104] Günther Fritsch und Harald Hofmeister, "Von den Mädchen, die sich nie auszogen, gibt es Stöße von Aktphotos," *Kronen-Zeitung*, January 31, 1968.

[105] Bundesministerium für Justiz, ed., Enquete über die Anwendung und Gestaltung des Pornographiegesetzes veranstaltet vom Bundesministerium für Justiz am 18. und 19. November 1970 in Wien (Vienna: Bundesministerium für Justiz, 1971), 45, 138–39.

[106] WStLA JGH A3 Vr 678/1967, Bd. 2, 277, Heinz S. to "Frl. Ingrid," September 26, 1967, and Heinz S. statement, August 22, 1967.

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individuals convicted of a crime."[107] The male producers and distributors received unconditional sentences (meaning they had no possibility of probation), with prison terms ranging from three to eight months and fines ranging from 5,000 to 30,000 Schilling (around 2,300 to 14,000 EUR in 2025).[108] Ingrid W.'s sentence, three months in prison, was particularly disproportionate.[109] Those convicted only of performing in films were given three years of probation in lieu of prison sentences. The court ordered the destruction of all photographs and films.[110]

It was the first time in years that the Pornography Law had been enforced with such vigor and determination, and in full view of the public.[111] It would also be the last, for far from bolstering the law, the trial led the press and public to question it openly. Newspapers uniformly condemned Gutjahr's behavior, which the tabloid *Express* deemed "beneath the dignity of a democracy that had vowed to honor human rights."[112] The ÖVP mouthpiece, *Volksblatt*, broadly sympathetic with the judge's aims, agreed that the trial had only proven the "Senselessness of running a trial in this form, namely, stretched over two weeks and, contrary to past practice, taking place in full public view. ... The proceedings, staged as a show trial, developed into a 'spectacle' trial; they attracted more listeners than they repelled, and likely increased demand for and interest in the denounced works rather than lowering it."[113]

The tenor of the press surrounding the trial certainly spoke to a growing tolerance for and interest in sexualized media. *Kurier* ran a story of a journalist hunting for illicit "striptease" photos in Vienna and another on Austrians' growing demand for nude photos and magazines since the trial's start.[114] Another article described the seemingly insatiable public appetite for sexualized media.[115] The tabloid *Express* assured readers that the possession or production for private use of pornography was not illegal in Austria.[116] *Die Presse* criticized the court's decision as hypocritical, since it made an example of a group of "more or less business-savvy amateurs" while refusing to address the sexualization of the media more broadly.[117] In interviews on Austrian television, a legal expert and the artist Friedrich Hundertwasser voiced criticisms of the trial and obscenity laws.[118]

The case led many Austrians to voice their dissatisfaction with the Pornography Law. Informal polls conducted in Vienna by *Kurier* and the *Arbeiter-Zeitung* revealed broad dissatisfaction with handling of the trial and the strict enforcement of the Pornography Law.[119] Members of the public voiced their criticism in letters to newspapers and government offices.[120] "Whose interests does the law actually protect?" one letter writer asked the

[107] "Urteile im Prono-Prozeß," *Kurier*, February 6, 1968. Compare the slightly different paraphrasing of his statement in "15 Schuldsprüche im Porno-Prozeß," *Die Presse*, February 6, 1968; Dvorak, "An den Pranger."

[108] Conversion using (https://finanzbildung.oenb.at/docroot/waehrungsrechner/#/).

[109] WStLA JGH A3 Vr 678/1967, Bd. 3, Dr. Rudolf Lischka to Jugendgerichtshof Wien, March 8, 1968.

[110] For full verdict and statement, see WStLA JGH A3 Vr 678/1967, Bd. 4, Jugendgerichtshof Wien, Judgment against Karl W. und Gen., February 5, 1968.

[111] ÖStA Adr BMJ II/L Kt. 115 II, Strafrecht NG. 4/59, Christoph Mayerhofer, "Die öffentliche Sittlichkeit und das Recht," May 1970.

[112] "Weich geworden!" *Express*, February 6, 1968.

[113] "Der Prozeß, der zur Show wurde," *Volksblatt*, February 6, 1968.

[114] "Der Haut-Import," *Kurier*, February 3, 1968.

[115] Paul Pollack, "Haut verkauft sich gut," *Kurier*, February 3, 1968.

[116] Herbert Zinnebner, "Porno nur zum Hausgebrauch bleibt straffrei!" *Express*, January 27, 1968.

[117] Thomas Chorherr, "Pornographie und Gesellschaft," *Die Presse*, February 6, 1968.

[118] ORF-Archiv, Vienna, Frage der Woche: Pornographie-Prozeß, February 3, 1968.

[119] Max Eissler, "Die Frage zum Tag? Was sagen Sie zum Urteil im Pornographie-Prozeß?" *Kurier*, February 6, 1968; "AZ-Interviews zu Pornoprozeß" *Arbeiter-Zeitung*, February 6, 1968.

[120] ÖStA AdR BMJ II/L Kt. 115 II, Strafrecht NG. 4/48, GZ. 18.243-9a/68, "Eingabe aus Anlaß des sogenannten Pornographieprozesses."

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Justice Ministry, "That of the actors? They are adults; no one forced them to do it; that of the customers? They even paid for it; that of the public? Without the police investigation and the criminal prosecution, they would have known nothing of it all."[121] Eugen Serini, the Justice Ministry official who oversaw the enforcement of the law, took such criticisms seriously, and personally telephoned the writer to explain the government's position. As an adherent to the 1923 convention, he argued, Austria "had a treaty obligation to enact legislation along the lines of the Pornography Law." This argument, he noted with satisfaction, "made a large impression" on the complainant. Serini further stressed that the law had passed in 1950 with the unanimous support of all four parties in parliament, that its basic principles had not been questioned by the legal experts working on drafting a new penal code, and that the interest at stake was public health. Pleasantly surprised that his concerns had been taken seriously, the letter writer vowed to direct his criticism not at the Justice Ministry but at members of parliament.[122]

Lawmakers' attitudes were changing alongside public opinion. The Socialist daily newspaper, *Arbeiter-Zeitung*, captured the sentiments of many on the left with its denunciations of a "show trial" in which an authoritarian judge sought to shore up an antiquated moral order.[123] The paper ran a series of expert interviews testifying that pornography was not harmful and that the Pornography Law was unconstitutional.[124] One legal expert noted the incoherence of Gutjahr's attempt to correct public attitudes he deemed too lax using a concept, obscenity, that was defined by mainstream public opinion.[125] Similar arguments were gaining traction in legal circles across Western Europe, and especially in West Germany, where jurists pointed out the tensions between obscenity law and liberal values of pluralism.[126] The trial marked a shift in attitudes on the Austrian left toward the Pornography Law from quiet skepticism to vocal criticism. On February 8, a group of SPÖ parliamentarians asked the conservative government pointedly whether Ingo Gutjahr had violated laws and norms of judicial neutrality and restraint. The government responded two months later by waving aside the criticism, but views within the ÖVP were also shifting.[127] As the party mouthpiece *Volksblatt* concluded with a note of resignation, the trial had shown that "the provisions of the Pornography Law do not correspond to the standards and requirements of modern times and are in urgent need of reform."[128] The public fervor faded as other matters dominated headlines, but the terms of debate were irrevocably changed, and outspoken voices for liberalization remained a prominent part of discussions of obscenity and pornography.

Ingo Gutjahr failed, then, in using the trial publicly to reassert Austria's hard line on obscenity under the Pornography Law. He failed legally, as well, for Austria's Supreme Court (*Oberster Gerichtshof*) overturned the verdict in a scathing decision issued in December 1969 to an appeal by the film archivist Peter S. The court determine that Gutjahr's verdict had contradicted itself, asserting at some points that all of group's films and photos

[121] ÖStA AdR, BMJ II/L Kt. 115 II Strafrecht NG. 4/47, Dr. Peter T. to Bundesminsiter für Justiz, Vienna, January 24, 1968. All surnames of private individuals will be given as initial in the interests of privacy.

[122] ÖStA AdR BMJ II/L Kt. 115 II Strafrecht NG. 4/47Eugen Serini, Memorandum, February 6, 1968.

[123] See especially Dvorak, "An den Pranger."

[124] "Gefährdet Sex die Volksgesundheit?" *Arbeiter-Zeitung,* February 3, 1968; "Soziologe: Sex ist Privatesache," *Arbeiter-Zeitung,* February 4, 1968; "Gesetz verfassungswidrig," *Arbeiter-Zeitung,* February 6, 1968.

[125] "Pornographieprozeß: Ende mit Fehlurteil," *Arbeiter-Zeitung*, February 11, 1968.

[126] See especially Fritz Bauer et al., eds., *Sexualität und Verbrechen. Beiträge zur Strafrechtsreform* (Frankfurt/Main: Fischer Bücherei, 1963); Ernst-Walter Hanack, *Zur Revision des Sexualstrafrechts in der Bundesrepublik. Ein Rechtsgutachten* (Reinbek bei Hamburg: Rowohlt, 1969).

[127] II-1029 der Beilagen zu den stenographischen Protokollen des Nationalrates, XI. Gesetzgebungsperiode (https://www.parlament.gv.at/gegenstand/XI/J/511). II-1242 der Beilagen zu den stenographischen Protokollen des Nationalrates, XI. Gesetzgebungsperiode (https://www.parlament.gv.at/gegenstand/XI/AB/539).

[128] "Der Prozeß, der zur Show wurde," *Volksblatt*, February 6, 1968.

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were obscene while conceding elsewhere that some might not meet the legal threshold of obscenity. "Such serious errors inevitably produce deficiencies in the reasoning of the verdict," the court concluded, overturning the decision and ordering a retrial in which the Vienna Juvenile Court would carefully examine and describe all films and images.[129]

When the eight main defendants came before the Juvenile Court in April 1970, Ingo Gutjahr no longer sat in judgment. He had suffered a debilitating stroke in late December 1968, and though he returned to the bench, his health continued to deteriorate until his death in 1974.[130] Unlike the first trial, the retrial took place behind closed doors, where a spirit of cooperation reigned between the defendants, prosecutors, and judges. The defendants, most of whom now admitted their guilt, frankly discussed the genesis and production of each film as it was displayed in court, in some cases using projectors the defendants lent to the court. Only Peter S. remained defiant, maintaining his innocence and combative attitude.[131] After five days, the court issued a guilty verdict for all five defendants, but made all eligible for parole except Karl W. and Franz M., who were deemed to have completed their sentences in pretrial detention in 1967. These were, the tabloid *Express* concluded, "extraordinarily mild sentences."[132]

It was not just within the courtroom that the tone was different. Reporting on the opening of the second trial, the tabloid *Kronen-Zeitung* yawned, "What can only be prosecuted thanks to the antiquated law on filth and trash nowadays arouses neither interest among pleasure-seekers nor outrage among philistines."[133] Much had changed in the intervening years. Austria did not experience student protests on the scale of France or West Germany in the months after the trial, but in a notorious public art performance in Vienna in June 1968, artists sang the Austrian national anthem as they stripped naked, drank urine, smeared themselves with excrement, and masturbated on stage before a packed university hall.[134] The crimes of Zentrum II seemed quaint in comparison. For many Europeans, the student upheavals of 1968 represented the symbolic start of a Sexual Revolution that swept away old restraints, including on pornography.[135] Denmark formally renounced the 1923 treaty in June 1968 and legalized visual pornography the following year, opening the floodgates of Scandinavian pornography yet further. And a public debate got under way in West Germany in 1969 that had profound influences on Austria.

## Reform Attempts

In the same days in late January and early February 1968 that the members of Zentrum II stood trial in Ingo Gutjahr's Vienna courtroom, a trial was unfolding in nearby Munich that would help transform the global treatment of pornography. Publisher Kurt Desch stood accused of violating West German obscenity laws by publishing a German translation of the eighteenth-century English pornographic novel *Memoirs of a Pleasure Woman*, more commonly known as *Fanny Hill*, after its protagonist. This rags-to-riches tale told through a

[129] WStLA JGH A3 Vr 678/1967, Bd. 4, Obergerichtshof Decision 10 0s 68/68-23, December 16, 1969, 8, 9.

[130] ÖStA AdR, OLG Wien, PA Ingo Gutjahr, Chefarzt Bundespolizeidirektion Wien, to Präs. des JGH, November 12, 1974.

[131] WStLA JGH A3 Vr 678/1967, Bd. 4, Hauptverhandlungsprotokoll, 20.4. bis 27.4.1970, Strafsache gegen Karl W. u Genossen.

[132] "Mildes Urteil," *Express*, April 28, 1970.

[133] "'Porno-Prozeß' hinter verschlossenen Türen!" *Kronen-Zeitung*, April 21, 1970.

[134] Caroline Lillian Schopp, "On Failing to Perform: Kunst und Revolution, Vienna 1968," *October* 170 (October 2019): 95–119. On 1968 in Austria, see Martina Novotny, *Die Revolution Frisst ihre Eltern. 1968 in Österreich: Kunst, Revolution und Mythenbildung* (Marburg: Tectum-Verlag, 2008); Fritz Keller, *Wien, Mai 68: eine heisse Viertelstunde* (Vienna: Junius, 1988).

[135] Peter-Paul Bänziger et al., eds., Sexuelle Revolution? Zur Geschichte der Sexualität im Deutschsprachigen Raum seit den 1960er Jahren (Bielefeld: transcript Verlag, 2015).

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string of graphic sexual encounters "for more than two hundred years had served as a handy synonym for 'obscenity.'"[136] The novel's rehabilitation in a series of trials in Denmark in 1964–65 had sparked the first wave of pornography production in that country and cleared a pathway to legalization. A US Supreme Court decision in 1966 helped overturn American obscenity law.[137] The Munich court attempted to thread the needle, exonerating Desch on the grounds that he reasonably believed the book had literary merit while also finding book obscene and ordering the destruction of all copies. Desch appealed, and in July 1969, the Federal Court of Justice (*Bundesgerichtshof*) cleared the book of these charges in a decision that remade German obscenity law. "The depiction of sexual acts as such can no longer be regarded as obscene," the court argued, declaring materials obscene only "when sexual processes are described in an exaggerated, provocative manner without any meaningful connection to other expressions of life."[138] Like in Denmark before it, this decision launched what West Germans labeled the "porn wave," as producers flooded the market with products that steadily expanded the boundaries of the permissible under this new and vague standard.[139]

The victory by Willy Brandts' Social Democrats in West German federal elections in 1969 opened a pathway for full legalization of pornography for adult consumption. In 1970, the government released draft legislation legalizing pornography for adult consumption except for depictions of sexual violence or sex with minors. After heated public debates, which led the government to tighten restrictions on public displays of pornography and introduce more robust measures for youth protection, parliament passed the law on a party-line vote in 1973.[140] Typical of West German debates over sexual politics in the 1960s, advocates of legalized pornography cast this as a matter of overcoming the legacies of Nazism by confirming German commitments to liberal democratic values.[141] Jurists redefined the role of penal law in a liberal state by reconfiguring the concept of the "legal good" (*Rechtsgut*), the interests protected by law, to ensure a rigorous defense of individual liberties.[142] West German reformers felt little fidelity to international norms that they believed impeded their country's transformation into a model liberal democracy, and the government unabashedly admitted that legalization of pornography would require the renunciation of the 1923 treaty.[143] When West Germany legalized most pornography for adults effective January 1, 1975, it simultaneously withdrew from the treaty.

In Austria, the Socialist government of Bruno Kreisky, who came to power in April 1970, closely followed the events to the north. Kreisky's justice minister, Christian Broda, a signatory of the SPÖ letter of February 1968 criticizing Gutjahr's handling of the trial, hoped to legalize pornography as part of a broader reform of the penal code. Austria's treaty obligations still posed an obstacle to reform. The postwar "internationalization" of Austria reached its apogee under Bruno Kreisky, exemplified by the opening of the third major

[136] Kendrick, *Secret Museum*, 209.

[137] Kutchinsky, *Law, Pornography and Crime,* 42–43. Rembar, *End of Obscenity*.

[138] "'Fanny Hill'—Urteil des Bundesgerichtshofes," in *Reform des Sexualstrafrechts*, ed. Friedrich-Christian Schroeder (Berlin: De Gruyter, 2019), 79–80.

[139] Pascal Eitler, "Die 'Porno-Welle' Sexualität, Seduktivität und die Kulturgeschichte der Bundesrepublik," in *Sexuelle Revolution? Zur Geschichte der Sexualität im deutschsprachigen Raum seit den 1960er Jahren*, ed. Peter-Paul Bänziger et al. (Bielefeld: transcript Verlag, 2014), 87–112.

[140] Heinemann, *Before Porn was Legal,* 152–57; Christian Person, "Der Staat lässt die (rechtlichen) Hüllen fallen: Die Liberalisierung pornografischer Materialien," in *Moralpolitik in Deutschland. Staatliche Regulierung gesellschaftlicher Wertekonflikte im historischen und internationalen Vergleich*, ed. Christoph Knill et al. (Wiesbaden: Springer, 2015), 165–83.

[141] Herzog, *Sex after Fascism*, 141–83.

[142] Heinemann, *Before Porn was Legal*, 2–8.

[143] "Begründung zu dem Regierungsentwurf eines Vierten Gesetzes zur Reform des Strafrechts," in *Reform des Sexualstrafrechts*, ed. Friedrich-Christian Schroeder (Berlin: De Gruyter, 2019), 83–148, here 137.

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complex of the United Nations in Vienna in 1980.[144] Abandoning the 1923 treaty, the custodianship of which had been transferred to the UN in the 1947, would be a delicate business. Yet attitudes seemed to be changing across Europe. Ahead of a meeting of Western European justice ministers in The Hague in May 1970, the Dutch government circulated a survey it had conducted of European governments which showed a broad interest in liberalizing the treatment of pornography, though several governments noted that the 1923 convention posed an obstacle to legal reform.[145] During the meeting, the Danish minister reported positively on his own country's experiences, and a lively discussion ensued in which several ministers expressed interest in relaxing controls on pornography. Only the British representative urged a strict line on pornography to control the growing transnational trade.[146] Shortly after this conference, Christian Broda instructed his ministry to prepare a meeting where experts and the public would have the opportunity to weigh in on proposed changes to the Pornography Law.[147]

On November 18 and 19, 1970, legal experts, theologians, representatives of youth organizations, the press, and interested members of the public gathered at the Palace of Justice in Vienna to discuss reforms to the Pornography Law. In his introductory speech, Broda stressed that he regarded it as inevitable that laws on pornography be brought into line with public attitudes, as in "other countries within our cultural sphere, such as Denmark and, more recently, the Federal Republic of Germany."[148] In a lengthy opening presentation, Friedrich Nowakowski, often described as the "Chief Ideologue of Penal Law Reform," proposed a series of reforms modeled on the recent West German draft.[149] He called for the legalization of the production and sale to adults of all but "qualified pornography," sexual images involving violence, children, or bestiality. Criminal law should instead protect youths and ensure that adults were not confronted with pornography against their will.[150] General Procurator Franz Pallin distributed a distillation of these proposals in language echoing West Germany debates, describing "the protection of legal goods [*Rechtsgüter*] as the task of criminal law in a liberal democratic community of a pluralistic character."[151]

The discussions that followed revealed sharp public divisions. Defense attorneys and members of the media complained that the "legal uncertainty" of the concept of obscenity made it difficult for individuals to know when they were likely to run afoul of the law.[152] Representatives of youth organizations spoke of changing sexual mores and asked whether pornography was really so harmful.[153] The conservative opponents of legalization, mostly hailing from Catholic milieus, focused overwhelmingly on youth protection

[144] Otmar Höll, "The Foreign Policy of the Kreisky Era," in *The Kreisky Era in Austria*, ed. Günter Bischof and Anton Pelinka (New Brunswick: Transaction Publishers, 1994), 32–77.

[145] ÖStA AdR BMJ II/L Kt. 115 II, Strafrecht NG. 4/66, Dekriminalisation. Mitteilung vorgelegt von dem Justizminister der Niederlande. Sechste Konferenz der Europäischen Justizminister (Den Haag, 26.–28. Mai 1970).

[146] Sixth Conference of European Ministers of Justice, CMJ (70) CR Final (Strasbourg, Council of Europe, 1970), 41–42, 474–78, 68–70.

[147] ÖStA AdR BMJ II/L Kt. 115 II, Strafrecht NG. 4/65, GZ 18.492-9a/70, Eugen Serini, Amtsvortrag: Vorbereitung einer Enquete über Probleme des Schmutz- und Schundgesetzes im Oktober 1970, July 8, 1970. On the groups invited, see ÖStA AdR BMJ II/L Kt. 115 II, Strafrecht NG. 4/65, GZ. 19.012-9a/70, Enquete über Probleme des Schmutz- und Schundgesetzes. Alphabetische Liste der eingeladenen Personen (Behörden, Institutionen).

[148] Bundesministerium für Justiz, ed., *Enquete,* 2.

[149] On Nowakowski, see Wirth, 224–26.

[150] Bundesministerium für Justiz, ed., *Enquete*, 5–28.

[151] ÖStA AdR BMJ II/L Kt. 115 II, Strafrecht NG. 4/65, GZ. 19.012-9a/70, Thesen des Generalprokurators Dr. Franz Pallin zur Enquete über Fragen einer Neugestaltung des PornographieG, 1. His discussion of this is in Bundesministerium für Justiz, ed., *Enquete*, 78–82.

[152] Bundesministerium für Justiz, ed., *Enquete,* 39–45, 137–44, 110–15, 144–49, 152–54, 160–65, 179–86.

[153] Bundesministerium für Justiz, ed., *Enquete*, 101–4, 165–72.

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and parental rights, since they argued parents would find it impossible to control their children's access to graphic sexual media in a world of legalized pornography.[154] Some warned darkly that legalization threatened the institution of the family and the "dignity of the woman and mother," and invited rampant crime and drug use.[155] These arguments tended to reproduce contemporaneous German debates, as an observer from the West German government reported to Bonn.[156] Two prominent themes were particular to Austrian discussions, however: criticisms of the judiciary over the 1968 trial and Austria's international obligations.

Though he was not present or mentioned by name, Ingo Gutjahr cast a shadow over the 1970 meeting. The prosecutors and judges who spoke almost unanimously called for reforms to Pornography Law in language that recalled the public opprobrium their professions had faced during the 1968 pornography trial. "We are not here to serve as judges of public morals [*Sittenrichter*]," the lead prosecutor at the Vienna Juvenile Court asserted, using a label critics often applied to Gutjahr in 1968, "A new law must avoid a situation in which the prosecution services and the courts are repeatedly exposed to public ridicule, thereby making these institutions an embarrassment and a laughingstock."[157] The president of the Vienna Juvenile Court testified to the "unease" among his fellow judges in trying pornography cases and urged: "The judge should not be forced into conflict with the views of society by applying the law. ... The Pornography Law needs to be changed."[158] They did not necessarily reject the goals of the law which the prosecutor at the Vienna Juvenile Court described as "a wholly inadequate and insufficient instrument in the fight against the evil of pornography."[159] Prosecutors and judges called on lawmakers, as representatives of the people, to more clearly articulate the boundaries of "obscenity."

Austria's obligations under international law also featured in discussions in a way they had not in Denmark or West Germany. Friedrich Nowakowski both opened and closed his preliminary presentation with a discussion of the 1923 treaty. First, he questioned the continued adherence to a treaty that sprang "from a time that had a completely different attitude to sexual behavior and its treatment in public than the present." Legal philosophy had evolved in the intervening decades, and the treaty no longer corresponded to the prevailing notion that the "task of penal law" is "the fight against social harms, the protection of legal goods."[160] Nonetheless, he concluded, "Renunciation [of the treaty] would be a spectacular step and, in some respects, perhaps not advisable. In fact, it probably is not necessary."[161] The treaty left it to individual states to define "obscenity" as they saw fit, and here was no reason not to narrow the definition only to cover pornography featuring violence, animals, and children. Conservatives were unconvinced. A judge on the administrative court, representing a Catholic organization at the meeting, responded, "I cannot agree with the opinion voiced here that the meaning of 'obscene' ought ultimately to be left to each party to the treaty. In my view, the way the international community uses the term—what it considers obscene—determines the parties' obligations."[162] The unilateral reinterpretation of the key concept of an international convention may have allowed

[154] Bundesministerium für Justiz, ed., *Enquete*, 60, 149–52, 154–56.

[155] Bundesministerium für Justiz, ed., *Enquete,* 82, 51–56.

[156] Bundesarchiv Koblenz, Germany, B 141/33580, 22–23, v. Bülow, Vermerk betr. § 184 StGB; Enquete des österreichischen Bundesministeriums für Justiz vom 18. bis 19. November 1970 in Wien.

[157] Bundesministerium für Justiz, ed., *Enquete*, 68.

[158] Bundesministerium für Justiz, ed., *Enquete*, 168–69.

[159] Bundesministerium für Justiz, ed., *Enquete*, 63–64.

[160] Bundesministerium für Justiz, ed., *Enquete*, 7–8.

[161] Bundesministerium für Justiz, ed., *Enquete*, 28.

[162] Bundesministerium für Justiz, ed., *Enquete*, 84.

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Austria to remain a party to the treaty while renouncing most of its obligations, but this hardly seemed the behavior of a responsible international actor operating in good faith.

The meeting failed to provide clarity on reform. Though a clear majority supported substantive changes to Austria's pornography legislation, there was little agreement on the details, while a sizeable minority remained united in favor of making only modest reforms. Following the meeting, General Procurator Franz Pallin drafted language to insert into the penal code that would legalize production and distribution of sexually explicit materials for adult consumption that were not "qualified" pornography. At a meeting in January 1971, Justice Ministry official Eugen Serini argued that Pallin's draft did not adequately maximize individual freedoms while also offering sufficient protection to people who did not wish to be confronted with pornography. Broda, unsatisfied with the solution, chose to postpone further work on the issue.[163] He continued to temporize. His natural instinct to build consensus, especially on controversial issues, led him to continue to defer reforming the Pornography Law. The polarizing debates over pornography in West Germany had dominated discussions of penal reform, and he likely feared that contentious debates in Austria would hinder his plans to liberalize laws on homosexual relations, passed in 1971, and abortion, passed as part of a major reform of the criminal code in 1975.[164] As a consequence, the 1950 Pornography Law survived the wide-ranging penal reforms of the 1970s and remains in force today.

## Conclusions

In 2010, the film archivist Peter S. and convicted pornography distributor recounted his life story in an oral history recorded by Österreichische Mediathek. A committed Socialist, he cast Austrian history in the decades after his birth in 1930 as a linear path of political repression running through the authoritarianism of the 1930s, Nazi dictatorship, and stifling Catholic conservatism of the postwar decades. He identified two turning points in Austria's turbulent twentieth century: political liberation by the Allies in 1945 and moral liberation by mass popular protest in 1968, which brought "four years of terror" under ÖVP single-party rule to an end two years later.[165] He fit his own conviction on pornography charges in 1968 into this narrative, arguing that the repressive ÖVP regime had used trumped-up obscenity charges to silence opponents like himself, his friend Karl W., "the only political bookseller then in Vienna," and indeed, "half the left movement in Vienna."[166] Broda's legal reforms after 1970 brought the era of Austrian repression to an end, and Peter S. recalled, inaccurately, how a Vienna court had exonerated the entire group that year. That the film archivist's recollection was rife with distortions is perhaps unsurprising given his tenacious denials and wild fabulations during the trial. It is also revealing. He merged his personal history and Austrian political history into a narrative that had been widely accepted on the West German left since the 1960s, a narrative that cast sexual liberation as a way to overcome an authoritarian past.[167]

[163] ÖStA AdR BMJ II/L Kt. 115 II, Strafrecht NG. 4/65, GZ. 18.027-9c/71, Neugestaltung der Strafbestimmungen gegen die Pornographie. Besprechung beim Herrn Minister am 8. Jänner 1971, January 14, 1968.

[164] Maria Wirth, *Christian Broda: Eine politische Biographie* (Vienna: V&R Unipress, 2011), 415–35; Person, "Pornography," 120–24.

[165] Österreichische Mediathek, Oral History Interview mit Peter S., February 28, 2010, Part 2, at ca. 30:00 (https://www.mediathek.at/atom/1A09CC13-29A-00088-00000D20-1A092045).

[166] Österreichische Mediathek, Oral History Interview mit Peter S., Part 2, February 28, 2010, at 6:40 (https://www.mediathek.at/atom/1A09CC13-29A-00088-00000D20-1A092045). Österreichische Mediathek, Oral History Interview with Peter S., Part 7, March 17, 2010, at 1:18:12 (https://www.mediathek.at/atom/1A09CD3B-1FC-00090-00000D20-1A092045).

[167] Herzog, *Sex after Fascism*.

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Austria did not follow the West German path. It was not complicity in Nazism but the polarized 1920s and 1930s, when Austrians had turned each other and been isolated from the international community, that most consciously shaped the politics of the early Second Republic. Nor was the Pornography Law of 1950 the conservative Catholic project described by Peter S., but rather a product of Austria's postwar politics of consensus, a compromise bill that secured broad parliamentary support by eschewing government censorship of media and through its framing as the fulfillment of Austrian commitments under international law. These characteristics contributed to the law's surprising resilience after 1970, when Justice Minister Christian Broda abandoned efforts to legalize most pornography legislatively.

If Austrian efforts to build a stable postwar politics shaped the country's legal approach to pornography, so too did the terms of debate that erupted over the 1968 pornography trial. It was not a political trial of the sort described by Peter S., though it was certainly political, dealing with the government's claims to police some of the most intimate aspects of its citizens lives. It was also a "show trial," staged by Ingo Gutjahr to impart a moral education on the Austrian population, especially the youth. Early press reports reveling in the case's salacious details certainly furthered Gutjahr's goals, but as the public spectacle of an imperious judge berating a procession of young women dragged on, the sympathies of the press and the public shifted. By the end of the trial and in its immediate aftermath, many Austrians voiced criticism of arbitrary judicial powers, the courts' mistreatment of defendants and witnesses, and a legal definition of obscenity out of step with public views. While some critics held that the Pornography Law should be repealed altogether, the prevailing sentiment favored more modest reforms to restrain courts and clarify the legal threshold of obscenity. That this trial involved producers and distributors of hardcore pornography, materials that few defended in public debates or argued should be completely freed from state control, shaped subsequent debates over pornography in Austria. This differed dramatically from the path taken by other states, such as West Germany and Denmark, where landmark court rulings on the novel *Fanny Hill* attached arguments over obscenity law to broader discussions of free speech and of individual liberties. By setting legal concepts of obscenity against fundamental individual rights, advocates were able to cast legalization as the only imaginable course for a responsible liberal democracy.

If Peter S.'s recollections got much wrong about Austrian controls of pornography, and its treatment of him and his codefendants, he got one critical point right: Broda's legal reforms did lead to liberalization of Austria's treatment of pornography, albeit indirectly. In a 1972 article, Franz Pallin, author of the draft provisions to legalize most pornography that Broda had shelved the previous year, expressed continued hopes for its passage. Rejecting counterarguments that appealed to the 1923 treaty, he argued: "If a party to the convention, half a century after the convention's conclusion, limits the elastic concept of obscenity to qualified pornography without eliminating it entirely, it is acting entirely within the framework of the convention."[168] But if the legal concept of "obscenity" under international law could simply be reinterpreted to cover only depictions of certain extreme acts, then surely the concept of "obscenity" under domestic law could, as well. This is precisely the path that Pallin took. In 1975, as president of the Austrian Supreme Court, he authored a landmark decision articulating a new "concept of absolute obscenity" covering acts "that by their nature are forbidden and punishable," including pornography depicting sexual

[168] Franz Pallin, "Lage und Zukunftsaussichten der österreichischen Strafrechtsreform im Vergleich mit der deutschen Reform," *Zeitschrift für die gesamte Strafrechtswissenschaft* 84, no. 1 (1972): 212.

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violence, bestiality, sex with minors, and homosexual intercourse, since the "propagation of homosexuality" was criminal under the new penal code.[169] Other pornography was considered "relative obscenity," and would be de facto legal when made available to consenting adults. Through this judicial redefinition of "obscenity," distinguished from most pornography, Austria brought its legal treatment of pornography broadly into line with European peers while formally continuing to fulfill its international commitments. Despite deep differences over the 1968 trial, Austrians had shared outrage over the high-handed behavior of a judge who arrogated to himself the right both to speak for and educate the public. It is not without irony, then, that Austria's treatment of pornography was liberalized not through political deliberation and legislative work but through judicial fiat.

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[169] Oberster Gerichtshof, Austria, June 6, 1977, 13 Os 39/77=RZ 1977/95=EvBl 1977/186, RIS—Rechtssätze und Entscheidungstext 9Os79/78 (https://www.ris.bka.gv.at/Dokumente/Justiz/JJT_19770606_OGH0002_0130OS00039_7700000_000/JJT_19770606_OGH0002_0130OS00039_7700000_000.pdf). The production and sale of homosexual pornography was only legalized in Austria in 2000. See Paul M. Horntrich, "Die Entkriminalisierung von Pornographie in Österreich," *History | Sexuality | Law*, September 24, 2020 (https://doi.org/10.58079/ppwb).

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