Chapter 2
Internet Censorship in Liberal Democracies: Learning from Autocracies?

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Introduction

The expansion and increased use of the Internet has profoundly changed the lives of many during the last two decades. This is most apparent in social life, where (especially for the younger generation) *social networks* play a central role in communication. The Internet also has high commercial relevance: consumers increasingly do their shopping online, at home with their computers, or on the go with their smartphones, much to the chagrin of established companies such as booksellers. Whether the widespread use of the Internet also forces politics to change, and if so, how, is still being debated in public and the sciences.[1]

What can be said with certainty is that politics has taken notice of the Internet's importance. At least since Barack Obama's energetic 2008 presidential election campaign, it seems clear that to be successful as a political actor, means to be *online*. All parties, most politicians, and even many political institutions present their positions on more or less sophisticated and updated online platforms; additionally, they share their viewpoints on current political events to an increasing degree via *social media* such as Twitter or Facebook (Schwanholz and Busch 2016).

Besides its use as a medium of image cultivation for political actors, the Internet also has the potential to improve democracy itself through expanded avenues of political participation (Margetts 2013). Early observers already saw the possibilities of technical solutions for democratic progress. More than a quarter century ago, democratic theorist Robert A. Dahl postulated that

[1]For an overview, see Farrell (2012) or Dutton (2013).

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telecommunications could reduce the information gap between experts and citizens, which would lead to discussions with much broader participation (Dahl 1989, 339). Through decreasing transactions costs of acquiring information, easier ways to express one's own opinion to a broader audience, and simpler organization of political manifestations, the Internet could transform "an onlooker's democracy into a participation democracy" (Leggewie and Maar 1998). It was hoped that the well-known problems of party oligarchization could at least be mitigated, and political decisions could be taken faster and more directly through online communications (Siedschlag et al. 2002). Optimists even saw "organizations without organization" arise—new forms of collective action through mass mobilization, with the potential to change the world (Shirky 2008). Case studies about the central role that information and communication technology (ICT) played for social movements and political campaigns, such as those in Myanmar or the Philippines, or the protest networks advocating against the WTO, soon gave empirical credence to the relevance of these theoretical assumptions (Downing and Brooten 2007).

It is not surprising that states ruled by autocrats and dictators were highly skeptical towards the Internet as a medium from an early stage, fearing its emancipatory potential. They mostly reacted by restricting Internet access—in a physical sense (made easier by the fact that many of these states suffer from low economic development, which makes access costly), but also beyond: authorities succeeded in exercising control over content even where physical access was given. For the most part, such content control was accomplished through sophisticated filtering techniques, which precluded users from acquiring information from sources that authorities objected to.

Bringing such state interventions to light and documenting them is the chief goal of the "OpenNet Initiative" (ONI), a collaboration between researchers at the universities of Toronto (Citizen Lab at the Munk Centre for International Studies), Harvard (Berkman Center for Internet & Society), and Cambridge (Advanced Network Research Group).[2] The group's researchers have been collecting empirical data on Internet censorship since 2001 and have conducted systematic empirical tests on a first set of 40 countries since 2006. They found a wealth of evidence for Internet censorship through filters blocking access to certain websites.[3] State interference was strongest in specific regions, namely East Asia, the Middle East and North Africa, and Central Asia. Several former Soviet Union states also showed Internet filtering being employed (Deibert et al. 2008, 41). Access blocks were employed for websites featuring pornographic or "immoral" content, but often also for those with politically undesirable material. Filtering technology became more sophisticated over time: Early on, simple blocking pages were employed, while later advances gave states access control in real time, making it possible to

[2]More about the OpenNet Initiative and the results of its research can be found at opennet.net. On the history of ONI, see en.wikipedia.org/wiki/OpenNet_Initiative (last accessed Dec 13, 2016).

[3]See Deibert et al. (2008) or Zeidler (2005) for a German-language summary.

manipulate the availability of media content or opposition websites during election times, for example (Deibert et al. 2008, 42).

All results seemed to show that censorship of Internet content happened only under autocratic regimes. Where liberal democracies were investigated, ONI generally found "no evidence" for content filtering (OpenNet Initiative 2012). This pointed to a clear distinction between democracies and autocracies.

On these grounds, American foreign policy under the Obama administration looked to communication via the Internet as an avenue to foster democracy and freedom. In a programmatic speech on "Internet Freedom" in January 2010 in Washington, DC, Secretary of State Clinton took a strong stand against censorship: "We cannot stand by while people are separated from the human family by walls of censorship. And we cannot be silent about these issues simply because we cannot hear the cries" (Clinton 2010). To help those seeking to circumvent Internet filtering, the Department of State started a "Liberation Technology" Program in collaboration with Stanford University in 2009, which delivers know-how, software, and hardware to bypass censorship and make full use of electronic communication channels.[4]

But can we really uphold this initially plausible hypothesis of a strict distinction between democracies and autocracies when it comes to censorship and content regulation on the Internet—between "good," hands-off democracies and "bad," censorious autocracies?

Both general normative assumptions about democracies acting supportively towards the ideal of free speech, and the above-mentioned ONI data speak in favor of the assumption. However, several political episodes in recent years imply that democracies are not immune from the temptation of tampering with their citizen's access to online content. Germany saw political conflicts erupt in 2009 about the "Zugangserschwerungsgesetz" (Access Impediment Act),[5] which was designed to prevent access to child pornography on the Internet. The initiative necessitated a complex blocking infrastructure and was to involve the Federal Criminal Police Office; the law encountered constitutional concerns raised by experts (Schnabel 2009) and significant political resistance (Busch 2010), which led to its subsequent repeal.[6] Other liberal democracies have had similar discussions about, and shown evidence of, state tampering with the informational structure of the Internet. As early as 2004, the United Kingdom introduced its so-called *Cleanfeed* system, which was supposed to impede access to child pornographic material through self-regulation (McIntyre 2013).

[4]More information on the program at liberationtechnology.stanford.edu (last accessed Dec 13, 2016). The text by Diamond (2010) can be seen as a programmatic manifesto of this approach.

[5]See Bundestag printed matter 16/13411, at dip21.bundestag.de/dip21/btd/16/134/1613411.pdf (last accessed: Dec 13, 2016).

[6]See Bundestag printed matter 17/6644, at dipbt.bundestag.de/dip21/btd/17/066/1706644.pdf (last accessed: Dec 13, 2016).

Only comparative research can answer the question whether such episodes are isolated cases, or whether democracies do, in fact, act similarly to autocracies when it comes to online content regulation (and if so, in which way). This chapter builds on insights generated in a larger research project on "Net Blocking in Liberal Democracies".[7] Its first part provides an empirical introduction to the topic by looking at Internet blocking in 21 liberal democracies. Next, we provide an analysis of factors influencing whether democracies erect access impediments, and point out some common driving forces and obstacles. Lastly, we discuss the results with a special view towards the topics of "embedded democracy" and "crisis of democracy" (Merkel 2015b).

Internet Blocking in Liberal Democracies

At first glance, the Internet does not seem like a very good case study for questions about the influence of primarily national political variables on political outcomes. After all, did the Internet not already transcend the national level in its inception, and does it not severely limit executives' capacities to regulate it? But a deeper look reveals that over time, governments have found a variety of ways to exert influence over the Internet.

What we today call the Internet was born without central planning or even intent during the 1960s in the United States, where state-funded research by the military and its *Defense Advanced Research Projects Agency* (DARPA) created a resource-rich environment that was fertile ground for innovative ideas, even those that did not immediately produce tangible results. The creators of the Internet, a small group of scientists and engineers who dominated its genesis in the 1970s and development until the early 1990s, were steeped in an avant-garde, libertarian culture deeply skeptical towards all state regulation (Busch 2016). This attitude—occasionally called "techno-utopian" (Hofmann 2012)—was reflected in the architecture of the Internet itself, which distributed data packets without a centralized controlling instance, and remained agnostic towards the content of these packets. This neutral routing along the shortest path was an engineering solution for the problem of packet distribution, and foresaw neither hierarchical control nor security measures against criminal intent.

An almost arrogant belief in the infeasibility of government regulation of this "global social space" was the pervasive sentiment during the Internet's early years. It possibly found its most concise expression in the *Declaration of the Independence of Cyberspace*, penned in the mid-1990s by John Perry Barlow, one of the

[7]The project was conducted between 2012 and 2015 in the research cluster *Digital Humanities* within the *Göttingen Center for Digital Humanities* (GCDH) at the University of Göttingen. A deeper analysis of some points touched upon in this chapter can be found in Breindl et al. (2015); more about the project at www.gcdh.de/en/projects/tp2-ins/politics/ (last accessed: Dec 13, 2016).

founders of the *Electronic Frontier Foundation* (EFF). National governments, writes Barlow, those "weary giants of flesh and steel," had no sovereignty over *cyberspace,* and could not exert any real pressure to enforce their rules (Barlow 1996). A similarly optimistic assessment came from John Gilmore, another EFF activist, who asserted that "the Net interprets censorship as damage and routes around it" (Elmer-Dewitt 1993, 63).

Yet in parallel with the Internet's rapidly increasing number of users in the late 1990s, and its new economic importance, the political and social relevance of this new communication medium became ever more apparent. Tensions grew between the decentralized, anti-authoritarian structure of the Internet on the one side, and the necessarily territorial, nationally organized systems to regulate it on the other. In the end, the conflict was resolved mostly in favor of the latter: national laws and regulations, organized by governments, were extended from their physical place of applicability into cyberspace. This was possible because the Internet had never been truly virtual; its technical infrastructure—its fibers, wires, routers, and servers—were located on state territory and thus also subject to rule enforcement by nation states.[8]

The more widespread the debate about enforcing existing legal standards on the Internet became (often combined with the rhetorical figure that the Internet could not be allowed to be an "extralegal sphere"), the more it became possible to assert political preferences. States reserved the right to unilateral content regulation—without coordination since they had strongly divergent preferences about *which* content to regulate and *how* (Drezner 2004, 2007, 95–101). The following section shows in how far liberal democracies actually used this right and which factors advanced or hindered the implementation of content regulation. We first present the empirical picture, before analyzing driving forces and obstacles.

The Empirical Picture

Firstly, we must ask in what way liberal democracies regulate Internet content. The following findings are based on the research project mentioned above, and the data it collected: Internet content regulation in 21 liberal democracies from 2004 to 2012.[9] Before this chapter presents results and developments based on this rich data source, we develop a typology content regulation approaches. Not only will this

[8]Whether internet pioneers and enthusiasts had truly overlooked this fact, or whether their attitudes were so deeply shaped by the idea of freedom of speech that they did not deem it significant, would surely merit its own study.

[9]The project collected and analyzed official documents and law digests, among other sources. Further information about the 33 regulation systems that the study is based on can be found in Annex A1 of Breindl et al. (2015). The cases are focused on regulatory systems with universal prevalence for internet access in a country. Individual cases of access restrictions are not considered, such as those imposed by court orders, or the practices of individual companies (such as

differentiation allow a more systematic evaluation of the empirical landscape, but also link the findings to the more general literature on regulative politics (Levi-Faur 2011). Three broad types of content regulation can be distinguished:

- *Self-regulation*—regulation by private actors without direct involvement of state actors. Examples include industry standards and codes of conduct on content filtering, typically initiated and coordinated by industry associations.
- *Co-regulation*—often called "regulated self-regulation"; regulation through cooperation of private and public actors, e.g., situations combining goals set by the public side with private-side implementation.[10]
- And lastly *legal regulation*, where rule-making is provided by the state as the sole responsible party.

The distinction drawn here is thus based on variation in the sources of regulation, or the extent of the involvement of the public side.

The main finding from overlaying this typology on the empirical data of the 21 states during the given period is a strong upswing in the prevalence and extent of Internet content regulation. We observe barely any systems of regulation at all in 2004, while less than a decade later the opposite is true: in 2012, there is practically no state that does not regulate Internet content in some form or another. As shown in Fig. 2.1, this trend is also reflected in an increase of all types of content regulation—all three forms show roughly linear increases during the first half of the study's time frame. Beginning in 2008, further increases in regulation levels are chiefly due to a greater number of legal, state-led instruments being employed. Thus, both private *and* public actors are responsible for the rise of Internet content regulation in liberal democracies.

But what are the reasons for this rise? Is it a product of a uniform increase across all countries, or do only some liberal democracies drive this development, while others resist it? As Fig. 2.2 shows, content regulation is a broad trend with a similarly broad base in the included liberal democracies. While there are two clear frontrunners (Denmark and France with four regulatory systems) and two laggards without regulation in place (Austria and Iceland), the clear majority of states (17 of 21) lies between these extremes and has introduced one or two Internet content regulation systems. States also employ all different regulation types of self-regulation, co-regulation, and legal regulation. Most countries with more than one regulatory system also internally mix these approaches—exceptions from the rule are only France and Italy (only legal regulation), and the United States (only self-regulation).

Google or Facebook). Such cases are not the product of state intervention, and are thus much less problematic from a political and normative viewpoint than the cases discussed here.

[10]The relationship between both components can vary greatly in this case; it ranges from cooperation on equal footing between the actors at one end of the spectrum to the private side acting under the "shadow of hierarchy" at the other. However, such differences are of secondary importance for this study.

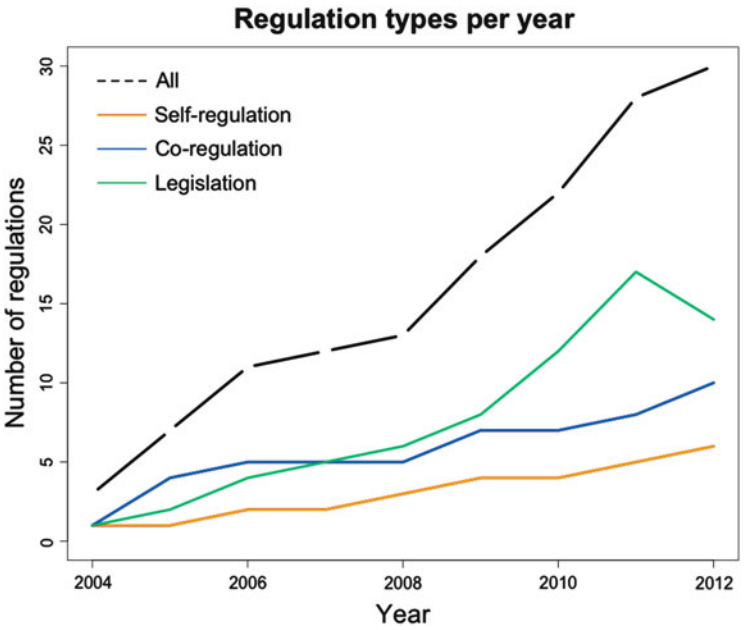

Fig. 2.1 Internet content regulation, total and by type, 2004 to 2012

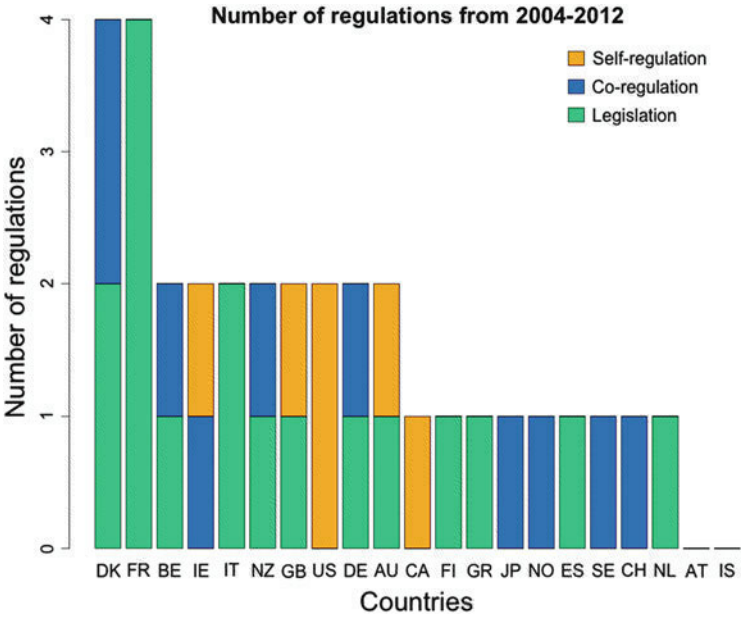

Fig. 2.2 Regulatory measures by country and type, 2004 to 2012

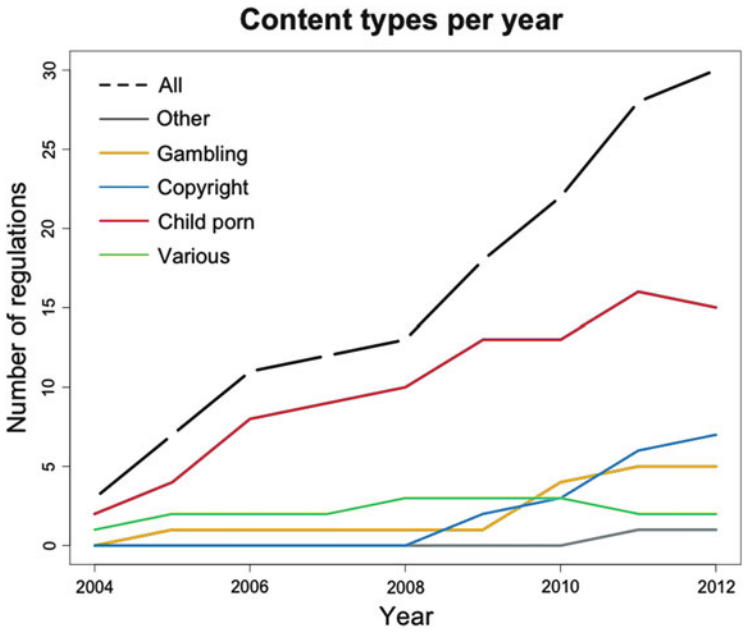

Fig. 2.3 Regulatory measures by issue area, 2004 to 2012

Despite this variation, one thing is clear: after its rapid and widespread adoption, Internet content regulation has become a common phenomenon in liberal democracies.

Next, we look at which types of potentially problematic content are being regulated. Figure 2.3 shows that the increase in regulation was mainly driven by the topic of child pornographic material between 2004 and 2009.[11] Practically, all countries that did in fact introduce content regulation at all also regulated against such material; only Greece and Spain are exceptions. Rules targeting child pornography thus constitute a "baseline" of content regulation. The introduction of these rules faced its share of criticism: commentators argued that once the systems were in place (especially in terms in technical infrastructure), there was little to stop their misuse to block other forms of content by political or state actors—a "thin end of the wedge" or "mission creep" argument. Figure 2.3 does nothing to dispel this critique: regulations in other areas (such as gambling or copyright) seem to increase in number only *after* child pornography has been access restricted. Similarly, Fig. 2.4 shows that the greater the number of regulations in a country, the more issue areas are being regulated. Further research is needed as to whether the same infrastructure is indeed used for this. However, it could be assumed that different

[11]The term "child pornographic material" is employed here because of its widespread use. However, the term is not entirely accurate in capturing the problem, which would better be described as a form of child abuse that is organized and documented through media.

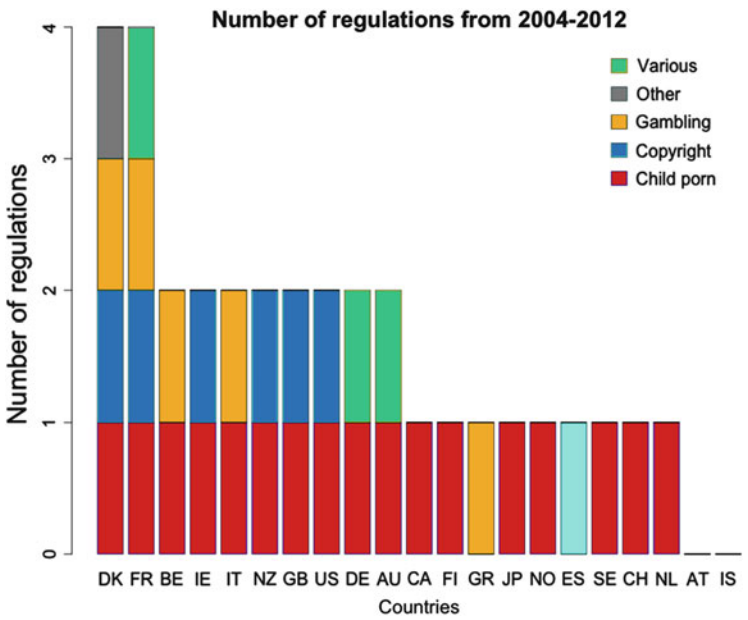

Fig. 2.4 Number and type of regulatory measures by country, 2004 to 2012

regulatory types (legal, co-regulation, self-regulation) also require different infrastructure implementation, which would imply the opposite effect.

As a last piece of the empirical picture of content regulation in liberal democracies, we examine the connection between substantive issue areas and types of regulation. Here, it is especially interesting to see whether there is a correlation between particular regulatory regimes being used more often to tackle specific issues. Looking at Fig. 2.5, no definitive answer presents itself: instead of generalizable insights, we see significant variation. As an example, gambling is regulated through legal means in all five countries that restrict its accessibility (see also Fig. 2.4). In contrast, combating child pornographic material is attempted through all three forms of regulatory schemes. The same is true in the case of copyright protection/piracy prevention, even though self-regulation and legal regulation clearly outnumber co-regulatory efforts. Taken together, there does not seem to be an overarching trend where each issue area has its own type of regulation.

As this—necessarily brief—exploration of characteristics of the data set has shown, liberal democracies have utilized Internet content regulation to a significant degree during the period under observation. Where there were only four regulatory schemes in 2004, by 2012 this number had risen to 33. In addition, this increase was evenly distributed (save for two of the 21 countries) and a product of a variety of regulatory regimes and instruments involving public and private actors. However, in nearly all countries the fight against child pornography seemed to be an important driver and catalyst for the introduction of further regulation, even though the

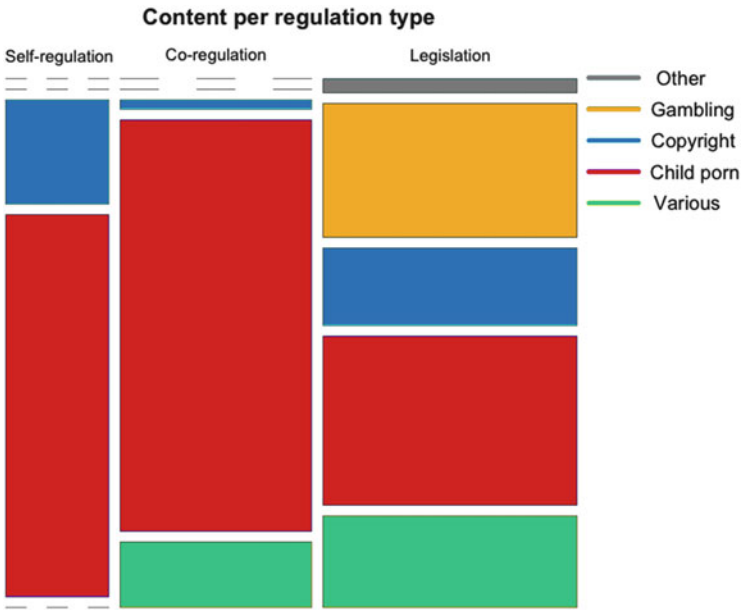

Fig. 2.5 Regulation type and content type

instruments employed to control access vary across cases. This contrasts with the issue of gambling, for example, where states exclusively use legal regulation.

While content type and regulatory instruments did not show a clear correlation, it is possible to discern some patterns when it comes to the relationship between political variables and the introduction and shape of Internet content regulation, which is especially interesting from a political science perspective. For a start, there are similarities within regions: English-speaking countries (North America, Great Britain, Ireland) seem to prefer the instrument of self-regulation, while the overwhelming majority of EU members and states in Oceania are more likely to choose the two other regulatory regimes (co-regulation and legal regulation). Whether these patterns are really the product of the systematic influence of institutional and political variables will be examined in the following section.

Analytical Framework: Driving Forces and Obstacles

After giving a primarily descriptive overview of the regulation of Internet content in liberal democracies, we now turn our attention to the question which institutional and political factors can explain the extent and variation of this regulation. The significant *variation in regulatory behavior* described above is especially in need of an explanation because of the *commonality of problems* (primarily caused by the increase in Internet communication).

Several variables related to a state's system of government could potentially help explain this variation. Based on the above-mentioned approach of *comparative public policy research,* such variables include the ideological orientation of the governing party or parties, the structure (and thus, influence) of interest group participation and representation, the existence of elements of federalism (which might impede political changes), or the extent of constitutional judicial review. Also relevant could be the differences between *majoritarian* (or *Westminster*) *democracies* and *consensus democracies* (Lijphart 2012).

Which effects would we expect these variables to have when it comes to introducing Internet content regulation? Which values of the variables could act as driving forces of regulation, and which ones as obstacles? The following sections will investigate these questions and report the results of a quantitative test using regression models.

The party difference hypothesis postulates that variations in policy results are due to the "color" or ideological direction of the governing party or—in the case of coalitions—parties. It is not immediately obvious whether the issue area of content blocking is subject to the traditional difference between "left" and "conservative" or "right" parties, and their often-competing approaches to regulation. Previous research has often made the point that Internet policy and politics do not adhere to the classical left-right spectrum (Breindl and Briatte 2013). This is especially true for the issue of content regulation when it is interpreted as a topic of personal freedom, for which both supportive and opposed viewpoints can be found on the left *and* right. Support for blocking could be justified with the goal of security (from the left with an affirmation for state intervention in principle; from the right with a preference for law and order). On the other hand, rejecting blocking could be cast in the light of a preference for free access to any kind of information by the left; while the right could base this in a healthy skepticism towards state intrusion into the affairs of its citizens. The exact impact of parties' ideological direction is not clearly determined—there might possibly be a consistent effect of the "color" of governing parties, but this is likely to be highly dependent on the context of national discussions about Internet blocking.

Regarding the effect of interest groups, the expectations are clearer. Based on the research discourse on pluralism and corporatism, we expect collective interests to be especially successful at interfacing with corporatist political systems (meaning those with a hierarchical structure and strong unions) since such systems have developed the requisite "receptors" to integrate collective interests into the political and legislative process (often in the form of early consultations). We thus hypothesize that corporatist systems will show greater influence of collective interest groups, such as unions, on decisions about regulating online content. However, it is unclear if this influence translates into opposition or support of regulation. If it is chiefly exerted by those who expect to benefit from the introduction of regulatory schemes (such as certain IT companies), the influence can be expected to act positively on regulation; where those in opposition to blocking are dominant (such as civil rights advocates), it can impede it.

Regarding states' territorial structure, we would expect changes from the *status quo* (in this case, the introduction of content blocking) to be easier in states with a unitary system, rather than a federal one. The reason for this is a higher consensus threshold which must be overcome in the latter. Additionally, there could be competition and uncertainly between the federal and federated levels about who possesses the competence to initiate and introduce regulation. A fragmentation or even blockage of the regulatory response thus seems likely. The hypothesis has a caveat: it applies mainly to the area of *legal regulation*. It seems less likely that the choice of co-regulation or self-regulation is impacted by the existence of federalism. At best, there might be an interaction effect: co-regulation and self-regulation might be more palatable options in federal systems precisely because the legislative route is blocked.

In contrast, the existence of constitutional judicial review has clear-cut implications. As described above, the introduction of content regulation on the Internet is often a contentious process since it potentially interferes with central tenets of liberal democracy, which in turn are protected by a constitutional text or its interpretation. The decisions of constitutional courts can thus reject or significantly delay access restrictions, especially those carried out through legal regulation. In states without written constitutions, or without constitutional courts, such blocks or hurdles are not possible—accordingly, our expectation is that this will lead to more regulation.

Using Lijphart's typology of democracies—between consensus and majoritarian systems—also generates several hypotheses. Consensus democracies are normally multiparty systems; when combined with proportional representation, this often leads to coalition governments. More often than not, such systems also feature bicameral decision-making based on principles of federalism, and strong constitutional courts. Taken together, these characteristics erect substantial hurdles against controversial policy changes. On the other end of the spectrum, majoritarian democracies lack these stumbling blocks, and thus can act faster, and have lower consensus thresholds. Of course, such institutional structures do not in themselves determine policy results since they are only the *context* in which political actors make decisions and take actions (Scharpf 1997). Still, an analysis that differentiates systems based on Lijphart's two-dimensional typology (*executives-parties* and *federal-unitary*) seems not only appropriate, but necessary for comparison with other issue areas. We expect more blocking in states where power is concentrated in executives and parties (high values on the first dimension), and in those with few institutional obstacles and veto players (low values on the second dimension).

This concludes our theoretical discussion and the resulting expectations. The following section will give a brief overview of the data set used to test the hypotheses, and present the results of a quantitative test using multivariate regression analysis.

Data and Quantitative Analysis

The data collection, preparation, and analysis proceeded in three steps. First, we documented more than 580 incidents of Internet content blocking from the 1990s onwards. From these, we selected 33 industry-wide blocking schemes in 21 states from 2004 to 2012.[12] We excluded (a) cases of isolated blocking incidents through court orders, or content policies of individual companies, instead focusing on policies that were implemented by all major Internet Service Providers; (b) the cases of Luxembourg and Portugal because of insufficient data; (c) cases before 2004 since the type of blocking adopted afterwards is qualitatively different from previous attempts at online content control. We then combined this data with the political and institutional variables from the "Comparative Political Data Set I" of the University of Bern's Department of Political Science (Armingeon et al. 2014). We specified a series of standard multivariate and multilevel regressions was specified where the dependent variable was either categorical (regulation type), or binary for each individual blocking type. Regulation type as a categorical variable was modeled with a linear regression, while each type of regulation received its own logit model. Because the data set includes repeated measurements at the state level, both multivariate approaches were further verified through multilevel modeling, where country-level or year-level random effects were incorporated into the intercept term, but not into the slopes of the individual coefficients. The intention was to partially pool the available data to construct an average model of regulation type for the countries in the sample, not create a precise model of any one individual state.[13]

For the logit models, the magnitude changes for each predictor (the substantive effects in terms of percent changes in the dependent variable) are based on average predictive comparisons. Evaluating the model at its mean is problematic given the inclusion of binary and categorical variables, and the tendency to overstate effect magnitudes (Gelman and Hill 2007, 466–473). Unless otherwise stated, the interpretation of average predictive comparisons refers to comparing a low and a high value (one standard deviation around the mean) of the underlying independent variable. The same is true for interpreting the coefficients in the linear model. Comparisons for binary variables refer to the difference between values of 0 and 1.

The results of these tests show that not all previously formulated expectations are borne out. To start, our analysis does not show any consistent effect of the "color" of governments on the extent and type of regulations; the only significant relationship stems from left governments being somewhat more hesitant to employ co-regulation instead of other regulation types (co-regulation is 16% less likely

[12]The countries included in this analysis are: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, the Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, the United Kingdom, and the United States.

[13]For a much more detailed account of our methodological approach and the empirical results of the regressions summarized here, see Breindl et al. (2015, p. 19).

under left governments). Election years also do not seem to significantly affect regulation choices—additional proof for the assertion that Internet content regulation is not a particularly salient issue for party competition.

There are, however, clear effects of the structure of interest group participation. The less pluralist the interest group structure of a country—in other words, the stronger the role of hierarchies and umbrella organizations, and the more corporatist the system—the more likely is a cooperation between private and public actors through co-regulation. Holding all else constant, countries with a multitude of freely organized, competitive, and nonhierarchically represented collective actors are 63% more likely to choose the path of self-regulatory blocking arrangements, while countries with noncompetitive, hierarchically ordered and functionally differentiated actors are 33% more likely to involve the public side through co-regulation. Note that legal regulation is not significantly impacted by the pluralist–corporatist variable. Pluralism is thus a structural effect, but not one that influences the extent of content regulation.

Variables capturing institutional characteristics such as the degree of federalism and constitutional review (both measured based on Lijphart's classification) also show clear relationships with regulation. The more pronounced a system's federalism is, and the stronger its judicial review mechanisms, the lower the probability that *legal regulation* is the chosen avenue of access blocking. Moving from a system with below-average scores in federalism to one above the average results in a 26% decrease in the likelihood to adopt legal measures. This lends credibility to the assumption that the existence of such "choke points" in a political system makes pushing for a legal solution more difficult. This is also supported by regression results which show that when compared to states with weak constitutional courts, strong judicial review makes both self-regulation (+25%) and co-regulation (+15%) more likely, but legislation less likely (−15%). Actors interested in blocking thus seem to try to circumvent key veto players through their choice of regulatory scheme. Again, this is a structural effect, which does not affect the extent of regulation itself.

Regarding Lijphart's distinction between consensus and majoritarian democracies, only parts of the empirical picture match expectations. On the *executives-parties* dimension, we see more majoritarian democracies being significantly more likely to use legal regulation (+14%) and co-regulation (+30%), but less likely to leave blocking to private actors through self-regulation (−19%). Consensual democracies, on the other hand, are more likely to block through co-regulation. Strong single-party majority systems thus tend to involve the state in regulation, either through legal means or co-regulation schemes; systems involving a variety of actors in their decision-making foster self-regulation. In a similar vein, the *federal-unitary* dimension shows that more federalist states tend to shy away from blocking through the instrument of legislation, while more unitary countries exhibit a 15% greater likelihood for adopting legal regulation. This aligns well with our expectations about veto players in federalist systems and their "displacement effect" increasing the incidence of self-regulation and co-regulation. One hypothesis that is not supported by the data is that of a positive relationship between majoritarian

systems and the *extent* of content regulation; their postulated greater decisiveness does not translate into a systematic tendency to enact more regulation.

Conclusion

Theorists of democracy and early net activists both understood the expansion of communication channels by means of the Internet as a chance for improving democracy itself, as shown in the introduction to this chapter. New ways of interaction and exchange could reduce the information asymmetry between experts and citizens, enable broader participation in societal discussions, and thus enhance a state's democratic quality. But the developments of past decades have put a damper on such high hopes for the Internet's potential. This is not only due to the limited evidence for the truly deliberative use of the Internet, but also the continued demonstration of the sinking level of public debate in large parts of social media. While ever-growing numbers of users are communicating and sharing their opinions, this quantitative increase is not matched by a qualitative increase in the discussion. It is no accident that the vulgar, but descriptive term of "shitstorm" has been coined specifically for the kind of agitated, breathless, and short-tempered debates that flourish online, where users seem more often to talk about each other, rather than with each other.

Similarly, most notions about the innate resistance against, or even impossibility of, regulation of the Internet and its contents have been overtaken by reality—the Internet no longer "interprets censorship as damage and routes around it," in the words of pioneer John Gilmore. As this chapter has shown, the trend towards regulation and access blocking that started in autocratic system long ago has made a forceful entry unto the stage in liberal democracies since the turn of the century.

But in contrast to autocracies, in liberal democracies the mechanisms and motivations behind content regulation can be traced and analyzed, as the authors have attempted here. What emerged is a complex picture of a political landscape that knows several distinct types of regulatory features, from self-regulation without state interference, to tight control via formal legislation. Although the pressures to deal with the problems related to the Internet as a global phenomenon are similar in all observed countries, they result in different regulatory approaches of varying intensity.

From the perspective of democratic theory, it is a positive finding that political variables can at least partly explain the variation in regulatory schemes. In this way, regulation—which often constitutes a restriction of democratic rights—can actually be influenced by political decisions. Strong basic rights protection through constitutional courts results in a lower incidence of legal regulation of Internet content. Less positive is the fact that this does not lower the total volume of such regulations; instead, our findings imply that the existence of protective mechanisms merely

reroutes regulatory efforts, resulting in blocking being introduced and implemented through self- or co-regulation.

The concept of *embedded democracy* (Merkel 2004) emphasizes the interdependence of subsystems through which a fully developed democratic system is constituted. From this perspective, it is alarming that institutional attempts at protecting basic rights are circumvented by evasive maneuvers described above. Too easily, such attempts result in regulatory solutions that are located on a mostly administrative level, which restricts democratic deliberation, and thus legitimized decisions, about the direction, content, and scope of regulation. This problem has been discussed in the literature mainly in the context of the *CleanFeed* system developed in the United Kingdom and implemented in Canada and Australia (Varadharajan 2010; McIntyre 2013). Realized by British Telecom, the system[14] allows ISPs to block their customers' access to URLs based on blacklists created and administered by an NGO, the *Internet Watch Foundation*. *CleanFeed* was introduced mainly to fight child pornographic content. The UK government pressed all British ISPs to voluntarily implement the system and threatened to pass legislation should adoption not be industry-wide—a classic case of illusory voluntariness in the shadow of hierarchy.

Democratic theory also criticizes such a system because it attempts to replace the regulative relationship between government and citizens with a relationship between citizens and their service provider. This implies a substantial qualitative change: citizens do not have the same options of legal and administrative control towards an ISP as towards state organs and actions. But consumers lack alternatives where all ISPs on the market include content filtering and access restrictions in their terms and services, which might make it difficult to politically challenge the situation, or protest to protect those rights that have been restricted.

Of course, political debates can also prevent regulations from being implemented, as the repeal of the Access Impediment Law in Germany in 2010 has shown. However, there are significant differences between this and the British situation: the German case not only had a clearly articulated legal basis (which allowed a new coalition partner to win recognition for its concerns after a change in government), but also placed the large parts of the implementation into the hands of the public side (the blacklists were to be provided by the Federal Criminal Police Office). It could thus be argued that this way of regulating content presented access points for a political debate which were lacking in the British or Australian case, and that this influenced outcomes.

The mechanisms for content regulation and blocking on the Internet hint at analogies in broader debates about the relationship between freedom and security in established liberal democracies. There, just like in our case, a significant increase in regulation has arguably led to nontrivial qualitative losses in civil liberties (Wagner and Kneip 2015). We must of course still draw a distinction between "true"

[14]With a nod to Aldous Huxley, the name of the system appeals to citizens' understanding of cleanliness and works to counter possible resistance to its introduction.

autocracies and situations such as those described above, where possibilities for the political contestation of existing regulations, and for a discussion of the compatibility of those regulations with civil liberties and basic rights still exist. Yet despite this categorical difference, Internet content regulation is evidently part of a larger trend of "eroding tendencies" that *embedded democracy* is faced within many established liberal democracies (Merkel 2015a, 490).

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