

An Examination of Changing Patterns of Prostitution in Germany Since Unification

**Untersuchung des
Wandels der Prostitution in Deutschland
seit der Wiedervereinigung**

**Anna Bretzlaff
M.A. Candidate
Department of European, Russian and Eurasian Studies
Carleton University, Ottawa, Canada
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Abstract

Since unification, patterns of prostitution in Germany have undergone a series of changes. These changes are evident in terms of the increasingly visible and “normalized” nature of the sex industry, where and how prostitution is conducted, a rise in the overall number women working in the sex industry as prostitutes as well as in the number of customers they service, and in the sharp rise in the percentage of non-German women working as prostitutes in Germany. This research paper attempts to explain why patterns of prostitution have changed in Germany since unification. To this end, three central hypotheses will be examined and evaluated: the collapse of communism in Eastern Europe and the former Soviet Union (USSR), globalization and the expansion of the European Union (EU), and finally, the legalization of prostitution in 2002. In conjunction, these variables aim to provide a comprehensive explanation to a complex question.

Zusammenfassung

Seit der deutschen Wiedervereinigung, haben die Formen der Sexarbeit eine Reihe von Veränderungen gezeitigt. Diese Veränderungen werden deutlich durch die Tatsache zunehmender Sichtbarkeit und “Normalität” der Sexindustrie, wo und wie Prostitution abläuft, der Zunahme der Zahl der Frauen, die in der Sexarbeit als Prostituierte arbeitenden, die Zahl der Kunden die sie bedienen und im starken Anstieg des Anteils nichtdeutscher Frauen, die als Sexarbeiterinnen in Deutschland arbeiten. Diese Forschungsarbeit versucht zu erklären, warum sich die Formen der Prostitution seit der Wiedervereinigung in Deutschland geändert haben. Zu diesem Zweck sollen drei zentrale Hypothesen untersucht und bewertet werden: Der Zusammenbruch des Kommunismus in Osteuropa und der früheren Sowjetunion (UdSSR), Globalisierung und die Erweiterung der Europäischen Union (EU) und schließlich die Legalisierung der Prostitution im Jahre 2002. In der Zusammenschau sollen diese Variablen eine umfassende Erklärung zu der komplexen Fragestellung liefern.

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Table of Contents

Abstract	2
Acknowledgements	3
Table of Contents	4
Chapter 1 – Introduction and Overview	5
Chapter 2 – Push: The Collapse of Communism	51
Chapter 3 – Mobility: Globalization and the Expansion of the European Union	75
Chapter 4 – Rights and Recognition: the Legalization of Prostitution in Germany ...	102
Conclusion	138
References	143

Chapter 1 – Introduction and Overview

The division of Germany following the Second World War marked the beginning of what would become two very distinct identities: politically, economically, socially, ideologically. East Germany (the German Democratic Republic, or GDR) and West Germany (Federal Republic of Germany) developed two different (and often contradictory) notions of women, gender and sexuality; and each adopted policies that reflected and reinforced them. While in the West prostitution was (unofficially) tolerated, the selling of sex in the GDR was illegal and regarded as an especially crass form of capitalist exploitation that recognized women as victims of an unjust system. In this view, before mass entry into paid employment women sold their bodies in return for financial security, either in the “respectable” manner by way of marriage or in the open sex trade.¹

The collapse of communism in Eastern Germany entailed the dissolution of the state and its incorporation into the federal-democratic order of West Germany.² A clash of sexual discourse accompanied German reunification, characterized by a struggle for supremacy between East and West values. While the term *unification* suggests a merger of the two systems, the GDR joined West Germany under Article 23 of the Federal Basic Law, which entailed adopting FRG laws and its

¹ Ingrid Sharp, “The Sexual Unification of Germany” *Journal of the History of Sexuality* 13, no. 3 (2004): 351

² Willfried Spohn, “Transformation Process, Modernization Patterns and Collective Identities: Democratization, Nationalism and Religion in Postcommunist Germany, Poland and Russia” in Frank Bonker, Klaus Muller and Andreas Pickel (eds.), *Postcommunist Transformations and the Social Sciences* (Maryland: Rowman & Littlefield Inc., 2002), 241

constitution in their entirety. Even aspects of GDR life that were more favourable than West German provisions (for example state-funded childcare or more generous maternity benefits) were dismissed as being ideologically tainted or too costly to be worth saving.³ With the opening of borders, suddenly citizens of the former East Germany encountered a highly sexualized environment, a stark contrast to the relative lack of erotic imagery that existed in the GDR. Those with an eye for profit saw their chance to move into this previously underdeveloped sex market; sex could suddenly be consumed in a variety of forms – magazines, peep shows, videos and prostitutes. At the same time, the cliché of the sexy and forbidden “Ossi” woman was launched and men from the West would travel to the East for women from “the land that time forgot”, in exchange for lavish material goods not yet obtainable in the East.⁴

Like all former communist states, there was a significant amount of restructuring of Germany’s social, economic and political systems that took place following the collapse of communism, which was mirrored by the restructuring of gender roles and in the overall status of women. Throughout Eastern Europe and the former USSR, with paid work no longer a guarantee, many women found themselves shut out of the labour market and faced diminished options by which to earn a living. Increasingly, women were forced into non-traditional types of work – part-time, low paying jobs that made up the “grey” labour market. Some tried to leave their homes in order to find work in more prosperous countries in Western Europe

³ Sharp, 349

⁴ Sharp, 359

that offered more job opportunities, higher wages and lower unemployment rates. Over the years increased mobility between countries in Europe (thanks to an ever-expanding European Union) has enabled people to seek employment and a more prosperous life outside their home country. The intersection of systemic (regional) changes as a result of the transition process with the effects of globalization (global trends) created a unique context in which the sex industry has evolved and proliferated in Germany.

Thesis Question and Statement

“How have patterns of prostitution in Germany changed since unification and why?”

Since unification, patterns of prostitution in Germany have undergone a series of changes. These changes are evident in terms of the increasingly visible and “normalized” nature of the sex industry, where and how prostitution is conducted, a rise in the overall number women working in the sex industry as prostitutes as well as in the number of customers they service, and in the sharp rise in the percentage of non-German women working as prostitutes in Germany. As this paper aims to prove, it is this latter change (the rise of non-German women working in the sex industry in Germany) that is most problematic and indicative of broader economic and social issues in Germany and in the region.

Today, prostitution in Germany is big business. While obtaining accurate numbers is difficult, most newspaper articles, reports and literature on the subject estimate

that there are approximately **400,000 prostitutes and an annual 1.2 million men who use their services, the yearly turnover hitting €14 billion (\$16.5 billion USD) in 2004.**⁵

Obtaining accurate numbers on prostitution in Germany has been difficult, in large part because like any clandestine industry, numbers have been based largely on estimates made by NGOs and law enforcement (mainly via apprehension and prosecution). This conundrum is rendered more complex in a country like Germany which has undergone significant changes in legislation with respect to prostitution twice in the past 15 or so years; once upon unification (characterized by the transferring of West Germany's more liberal prostitution policy to the East), and again in 2002 when prostitution was officially legalized after years of "unofficial" toleration. It could be argued that the likely result of these changes is that there is bound to be a rise in the reported numbers of prostitutes for the simple fact that it is now more easily observed and monitored. However, the large number of foreign women working as prostitutes in Germany illegally (and thus who do not register as prostitutes nor work officially through brothels) means that there still exists a significant number of women working as prostitutes who are not accounted for and work without any protection.

The real difficulty thus lies in discerning a real rise in the number of prostitutes as the result of legislation from simply an increased level of visibility and reporting.

⁵ Udo Taubitz "What German Prostitutes Want" *Deutsche Welle*, 22 April 2004, <http://www.dw-world.de/dw/article/0,,1176335,00.html> (accessed February 19 2008)

To tackle this problem I suggest that change in *patterns* must be observed in more ways than just a rise in the reported number of prostitutes. Such indicators include (but are not limited to) an increase or decrease in the visibility of the sex industry, social acceptance/de-stigmatization of prostitution, the demographics of those working in the industry and lastly, overall numbers. For the purposes of this paper, a distinction between a rise in the number of German versus non-German prostitutes will be made and examined. By incorporating more than one indicator in my research I hope to show that the changes in the nature of prostitution in Germany has been both broad in scope, deep in impact and the result of national, regional and global factors.

Preliminary Hypothesis and Alternative Explanations

1) The change in patterns of prostitution in Germany is caused by the socio-economic consequences of transition in former Soviet States.

The collapse of communism in Eastern Europe in 1989 provided new resources – geographical and human – for the sex trade and traffic. Political and economic liberalization as well as internal and international militarism created new opportunity structures and economic uncertainties that have produced both a demand for and a supply of sex workers in and from Eastern Europe and the former Soviet Union.⁶ As author Peggy Watson asserts, “the transition to liberal democracy and a market economy based on private property, essentially entails

⁶ Gail Kligman and Stephanie Limoncelli, “Trafficking in Women after Socialism: To, Through and From Eastern Europe,” *Social Politics: International Studies in Gender, State and Society* 12, no.1 (2005): 119

the (re)structuring of opportunity and the creation and institutionalization of hierarchy based on market advantage; traditional ideas concerning difference, including gender difference, are playing a key role in shaping such exclusionary advantage in the new public sphere.”⁷ Rising inequality in people’s access to resources and opportunity (and thus a stratification of people themselves) has been the unfortunate (and some would even say inevitable) consequence of a period of such dramatic change.

A key feature of post-communist transition in Eastern Europe and the former Soviet Union has been the restructuring of the labour market and of social as well as economic inequalities. This **re-stratification of the labour market** has been differentially shaped by gender, class, race, nationality and citizenship, with women often suffering more than men.⁸ Women have been particularly affected by the rise in unemployment that has followed the region’s challenging transition to market economies. Along with the reorganization of the labour markets, there has been a resurgence of traditional gender roles being assigned to men and women. In contrast to the gender “equality” (whether in practice or in rhetoric) prioritized under communism, the post-communist period was characterized by the driving of women back into their “proper” or “traditional” nurturing and homemaker roles.⁹ This left the dwindling numbers of jobs for men while women

⁷ Peggy Watson, “The Rise of Masculinism in Eastern Europe,” *New Left Review* 198 (1992): 72

⁸ Tanja van der Lippe and Eva Fodor, “Changes in Gender Inequality in Six Eastern European Countries,” *Acta Sociological* 41, no.2 (1998): 2

⁹ Katherine Verdery, “From Parent-State to Family Patriarchs: Gender and Nation in Contemporary Eastern Europe,” *East European Politics and Societies* 8, no. 2 (1994): 237

were effectively shut out of the main labour market and left to work in part-time jobs or in the informal labour market, which for some ultimately meant sex work.

2) The change in patterns of prostitution in Germany is caused by increased globalization and expansion of the European Union.

With the fall of communism came the influx of industries and companies looking to expand their markets into the newly “opened up” states. Production facilities moved east to cheaper labour markets while workers living in these countries migrated westward to regions with higher wages and living standards. The sex industry was no different – the sex trade flocked to (and proliferated in) Eastern Europe and the former Soviet Union, in part because it offered comparatively little threat of institutional regulation and enforcement. The commodification of sex flourished in the region, drawing upon the seemingly endless supply of unemployed or underemployed women looking for work and facilitated by increased mobility in an increasingly globalized world.¹⁰ Prostitutes, like other kinds of labourers, began taking their “transferable skills” and looked to migrate to more prosperous countries in which they could earn more for their work.

Not surprisingly, the sex industry quickly became a buyer’s market and while there is dispute and confusion about the extent to which the total number of prostitutes in Germany has increased, the mass influx of sex workers from the East is more easily discernable. While demand remained constant, the supply

¹⁰ Kligman and Limoncelli, 122

increased suddenly and dramatically, flooding the market and driving prices down. Logically, sex workers began to look for more prosperous countries in which to work, a trend characterized by east to west migration patterns. The result has been a marked increase in the number of non-Germans working as prostitutes in Germany, a trend that has been facilitated by the expansion and integration of the European Union.

Along with political and economic transformation, the region's migration patterns have also changed significantly since the collapse of communism. Increased mobility – into and within Europe – partly as a result of greater freedom of movement within the EU and with migration from Southern and now Eastern European countries has created a large and transient sector within the sex industry. These factors have altered the structure of the sex industry, as is made evident in the ever-changing routes traffickers' use, which tend to coincide with EU expansion.

The expansion of the EU has been accompanied by facilitated internal mobility as well.¹¹ As a result, Western European countries are among the main destination for migration connected with trafficking in women and prostitution. Interpol

¹¹ The development of the Schengen Area has created a "borderless zone" in Europe where internal border checkpoints and control has been eliminated between signatory countries. Therefore, by entering one of these countries (whether legally or illegally) one can obtain access to the others. As of 2008 all new EU member states, including the eight former Soviet countries of eastern Europe -- Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia -- are members of the Schengen Area, creating a widescale border-free area in Europe. For more information on Schengen, consult "Where are the Schengen Countries" *Eurovisa* <http://www.eurovisa.info/SchengenCountries.htm> (accessed April 24 2008) and "European Countries" *Europa* online http://europa.eu/abc/governments/index_en.htm# (accessed April 24 2008)

estimates that there are some 300,000 women from Eastern European countries engaged in prostitution in Western Europe.¹² Germany is a top destination country for trafficking in women and children for prostitution, most victims coming from the former Soviet republics and Central and Eastern Europe.¹³

3) The change in patterns of prostitution in Germany is caused by a liberalized national prostitution policy, which took place in two phases: unification (1990) and in 2002.

Unification was marked by the political and economic amalgamation of two distinct Germanys. A “sexual unification” of sorts took place, marked by the clashing of East and West values towards gender, sex and sexuality. The perception of women - their role(s) and responsibilities - and sexuality in general differed from East to West, at least from an official standpoint. The fall of the Berlin Wall in 1989 marked the beginning of the bombardment of the East with a highly sexualized and more gender-stratified environment which included a more liberal approach to prostitution.¹⁴

In 2001 legislation was changed again when Parliament (lead by a coalition government of Social Democrats and the Green Party) passed a law (“**Prost.G**”) making prostitution legal in Germany. Prior to the new Law on the Legal Status

¹² Vincenzo Musacchio, “Migration, Prostitution and Trafficking in Women: An Overview,” *Public Law* 5, no. 9 (2004): 1024

¹³ Musacchio, 1025

¹⁴ Sharp, 349

of Prostitutes (**Gesetz zur Regelung der Rechtsverhältnisse der Prostituierten**)

prostitution had not been prohibited as such, but the legal system had granted prostitutes no rights with respect to contract law. The new law was intended to grant prostitutes legal recognition of their activity as a legitimate form of employment, along with social and labour rights. Women offering sexual services were now legally required to be paid in return, were free to choose their clients (who they conduct business with) as well as set the rate of payment. Prostitutes were given the right to social insurance provisions for unemployment benefits, sick pay and a pension. Perhaps most symbolic and satisfying for sex workers was the abolition of the official characterization of prostitutes as “immoral” under the new law.

It has been suggested that this liberalization of the law has contributed to the normalization and de-stigmatization of the sex industry in Germany. While this is difficult to measure and prove, the visibility of prostitution as a social issue (media coverage, public interest and debate) does seem to have increased as a result of the legislative change.¹⁵ It is also asserted that legalizing prostitution has increased its prevalence and proliferation, as was made event in an increase in the number of brothels as well as in the number of women who were employed by them.¹⁶ There is also a marked increase in the number of non-German women working as prostitutes in Germany, an increase that could be linked to the liberalized prostitution laws. Many women's groups and feminists argue that

¹⁵ Marc of Frankfurt, personal email communication and correspondence, <http://www.sexworker.at/prostg> e.a., October 26 2006

¹⁶ Taubitz

legalizing prostitution has contributed to a rising demand for sexual services that cannot be supplied by local (German) women: “Where prostitution is flourishing, pimps cannot recruit enough local women to fill up the brothels, so they have to bring in women from other places.”¹⁷ When there aren’t enough German prostitutes to supply this demand, foreign women come to Germany, whether on their own accord (on short-term travel visas, for example) or by being smuggled/trafficked into the country.

In this view, by tolerating or legalizing prostitution, the state, at least passively, may be contributing to the demand (the “pull”) while systemic factors (my first two hypotheses) provide the “push”. As author Donna Hughes has argued,

“Officials in destination countries do not want to admit responsibility for the problem of sex trafficking or be held accountable for creating the demand. At this point to a great extent, the wealthier destination countries control and shape the debate on how trafficking and prostitution will be addressed. Poorer sending countries often lack the power and the political will to insist that destination countries stop their demand for women for prostitution.”¹⁸

Germany represents a very unique context in that it is a prosperous country surrounded by less prosperous countries with whom it shares “invisible” borders, which means that there lacks the traditional mechanisms (a state’s geo-political boundaries) used to control trafficking. This means that Germany’s treatment of prostitution could cause reverberations felt throughout the region, since

¹⁷ Donna M. Hughes, “The Demand: Where Trafficking Begins,” from the conference *U.S. Embassy to the Holy See 20th Anniversary Conference A Call to Action: Joining the Fight Against Trafficking in Persons* (June 2004) <http://www.vatican.usembassy.gov/policy/topics/trafficking/trafficking.pdf> (accessed April 8 2008)

¹⁸ Hughes, “The Demand: Where Trafficking Begins”, 4

neighbouring countries are limited in how they can react against their neighbours' legislative changes.

A note on definitions and concepts

There exists controversy and confusion regarding what, exactly, constitutes “prostitution” and “trafficking”. Notwithstanding the ongoing academic, feminist and activist controversies over the definition of prostitution and about what is actually being “exchanged”, the term is popularly understood as the “exchange of sexual services for cash and other material benefits”. Prostitution may or may not be formally organized and women may engage in it of their own accord (i.e. does not necessarily imply “forced” participation by another person/persons, though the debate surrounding coercion shall be discussed later in this chapter).¹⁹

Talk of prostitution has often been (and continues to be) linked with issues of morality and family values (or lack thereof). This paper will not evaluate prostitution as a “right” or “wrong” act based on societal norms and constructed perceptions of what constitutes appropriate sexual behaviour in our society today. To do that accomplishes little in constructing an explanation as to why women end up as prostitutes or what can be done to improve the situation. That said, I agree with the notion that prostitution, as an act is generally harmful to women – physically and psychologically. Refuting this is more challenging – one would be hard-pressed to find someone who thought it a positive career choice for themselves, their sister, daughter or mother. It is also generally agreed upon that

¹⁹ Kligman and Limoncelli, 120-121

prostitution is a “last resort” occupation, something women turn to when in their view there are no other viable options available.

Therefore in this paper, prostitution will be treated as a generally negative phenomenon; not because it “threatens” monogamy, procreation, the family unit or public health (which it may or may not), but because it indicates a failure on the part of society and the state to ensure women have adequate access to opportunities and resources. If women had sufficient opportunities fewer would find themselves in a position where they would ultimately consider this “last resort” line of work feasible. While emphasis is often put on how or why women enter prostitution -- specifically why certain women end up as prostitutes and others don’t -- it is equally as important to examine why women *remain* in prostitution, or alternatively, what is preventing them from exiting the industry. Also important is the *composition* of the prostitution industry in a given country; in Germany a high percentage of non-German prostitutes is an important point that merits close examination as it may very well reveal subtleties as to the government’s treatment of prostitution, women and minorities. In the case of Latvia for example, author Daina Stukuls argues that the proportional representation of non-Latvian women among prostitutes in the country may in fact contribute to the official ambivalence to the issue. Therefore it is possible that in Germany dominance of the commercial sex business by ethnic “others” (non-Germans, whether Ukrainians, Russians, etc) may have allowed German and overall male dominated political structures to cast the issue of prostitution as a

juridical question, and marginalize it as one not fundamental to state and national interests.²⁰

While the expanding sex industry encompasses the selling of sex via various mediums (internet, telephone) by women, men and children, my research shall focus mainly on female prostitutes who exchange sexual services on a person-to-person basis (whether “street walkers” or brothel/apartment based sex workers) in exchange for money.

While there is some debate as to whether or not force is necessarily a part of prostitution, **trafficking in contrast implies overt coercion and force, defined by the UN** as

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation. Exploitation shall include, at a minimum, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”²¹

For the purposes of my research, I will use a more **simplified definition of trafficking**: “sexual labour that involves deception and coercion, whether at the

²⁰ Daina Stukuls, “Body of the Nation: Mothering, Prostitution and Women’s Place in Post-Communist Latvia” *Slavic Review* 3 (Fall 1999): 557

²¹ “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime” *United Nations Crime and Justice Information Network* (2002), 3
http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf (accessed April 24 2008)

point of departure when women are recruited or when they arrive at their destinations”²²

While this research projects seeks to examine the changing nature of prostitution in Germany, the issue of migration for the purposes of sex work as well as the trafficking of women for the purposes of sex work play important roles. It is my assertion that the trafficking of women for the purposes of sex is in many cases inextricably linked to prostitution, in that the latter’s existence represents the “supply” side to the demand for prostitutes that cannot always be filled locally. Changing patterns of migration or trafficking for the purposes of prostitution are telling as to the political, economic and social environment in both the countries of origin as well as destination. While the scope and length of this paper will not permit for an in-depth examination of migration or trafficking for the purposes of sex work per se, they will be incorporated in so far as to show the degree to which the systemic and regional factors are linked to patterns of prostitution in Germany.

Importance/Relevance of Topic

This topic merits examination and analysis for a number of different reasons. On a theoretical level, the way in which a state frames the issue of prostitution as well as its “treatment” can offer insight into a variety of societal dynamics including gender relations, the overall attitude towards women and the treatment of minorities. Germany has a unique history in that it is marked by two different and

²² Kligman and Limoncelli, 121

for the most part contradictory perceptions of prostitution and treatment of women. This dichotomous past may reveal subtleties as to the contemporary status of women and in particular non-German women in the post-communist era. In addition, the proliferation or decrease of prostitution in a given country is indicative of the overall inclusion and ability of women (and migrant women) to access resources and opportunities.

On a more practical level, the expansion of the EU has brought with it an increased debate surrounding the issue of prostitution. In particular, the increasingly transnational nature of prostitution as a result of facilitated mobility within EU borders has given rise to the question of whether or not a uniform approach to the issue is necessary among member states. Currently, there exists a wide spectrum of attitudes and approaches regarding prostitution among EU countries. The expansion of the EU and the mobility of people within it has had a dramatic effect on the sex industry as prostitutes are theoretically able to move (whether on their own accord or not) to work where they like. Not surprisingly, many member states have begun to re-evaluate and reconsider their national prostitution laws and policies in the wake of such changes and their rather dramatic effects. Their decisions are based on many things including public opinion, geographic proximity to “sending” countries, unemployment rates and relative wealth. Prostitution patterns and policy choices of countries can reveal subtleties about the internal social dynamics of a given country but also provide examples for other member states looking to reform their own laws. Examining

prostitution in Germany, a country that has recently adopted a legalized approach to prostitution could serve as a useful example to other countries considering instituting similar policies

Theory/Literature Review

Prostitution is a multi-faceted subject that intersects and cuts across many different issue areas and disciplines including gender relations/equality, social inclusion and the treatment of minorities. It can also be linked to broader concepts and debates such as globalization, post-communist transition and human rights. Given its complex nature, it is best studied in an interdisciplinary manner, keeping in mind the many frameworks used in order to avoid a one-dimensional analysis/assessment.

As with any social issue or challenge, prostitution does not exist in isolation, free from external influence or manipulation. Over the course of history, prostitution has been viewed through a variety of issue lenses, depending on the social, economic and political climate of the time. It was been treated as a law-and-order problem, a morality problem and a problem of public health and safety. More recently, prostitution is being framed as a state security or migration issue, reflecting the increasing concern that has developed surrounding the effects of globalization. Prostitution has been taken up as a cause by various groups over the years (such as Christian groups and feminists). It has been linked to broader social

issues such as family values or gender equality. Today, prostitution holds a precarious position at the centre of the human trafficking debate.

Over the years numerous sociologists have sought to develop and apply theoretical perspectives to the sex industry. These include the socio-biological or Social Darwinist theory (which attributes **sex roles to biological differences and explains prostitution as a social imperative to accommodate male sex drives**); the socio-pathological theory (which attributes **women's engagement in prostitution to abnormal psyches**); functional theories (posits that **all social institutions which involve sexual contact between men and women are functional**); the conflictual theory (which views prostitution as an expression of the wage labourer's position in capitalist societies); feminist theories (which focus on the **concept of patriarchy and men's domination over women**); and lastly, discourse analytic theory (which asserts that **the sex industry is not the conspiracy of male agency but rather constituted in pre-eminent "sexual discourses" which have their own unique histories**).²³ Each of these theories represents a sort of snapshot in time, the manifestation of the social, political and economic climate in which it developed.

The study of sexuality and sexual behaviour was greatly impacted by Michael Foucault's groundbreaking book *The History of Sexuality*. Foucault counters the traditionally accepted and widely-held belief that sexuality has been repressed in

²³ Graham and Annette Scambler, *Rethinking Prostitution: Purchasing Sex in the 1990s* (London: Routledge Publishing, 1997), xii

Western society since the 17th century. Rather, Foucault posits that sexuality has not been subdued but rather has flourished and proliferated in such a manner of controlling and exerting power. In his view **sexuality as a concept was created (socially constructed) to generate new norms and mainstream ways of thinking and doing amid a society that was smarter and held more power than ever before.** Bourgeois (or industrial) society put into operation an entire machinery for producing “true discourses” about sex; uniform ideas that established a new moral code. The goal was not to abolish sexuality (as previously thought) but rather to preserve health and promote procreation (therefore serving the interests of industrial capitalism)²⁴

Foucault outlines four reoccurring themes in the development of the “sexuality discourse”, one of which is the sexuality of adults becoming an object of study and all forms of “perverse aberrations” being seen as dangerous to society. In this view, prostitution can be seen as something which falls outside what has been labelled (constructed) as “normal” sexual behaviour and being linked with immorality and the demise of society. This constructed view of prostitution as such can be seen throughout the course of history in Germany and much of the western world, whereby its treatment was rooted in concerns about public health, public safety and moral declination. In this view then, the stigma surrounding the sexual behaviour associated with prostitution is not inherent or grounded in organic reality; rather, it is something we have created in order to create a

²⁴ Michael Foucault, *The History of Sexuality* (translated from French by Robert Hurley) (New York: Pantheon Books, 1978), 5, 18, 23, 69

“normal” code of conduct relating to sex, which leaves those who act otherwise to fall into the abnormal, aberrational behaviour.²⁵ As we will see, the diverging “sexual codes” which developed in East and West Germany prior to unification came to serve as symbols of their systems’ stark contrasts.

One particularly relevant aspect of Foucault’s analysis for the purpose of this paper is his focus on power and power relation as a central element to the study of any society, in particular with respect to sexuality. While Foucault insists that power relations are formed in all relations where differences exist it is important to note that he uses the term “power” in a slightly unorthodox fashion. In contrast to the traditional understanding of power which denotes dual or division between the dominator and the dominated, usually with negative undertones, Foucault sees power as an inherently natural phenomenon.²⁶ In contrast, many feminists and women’s’ groups view power and domination (male over female) as negative or detrimental to a women’s well-being and psyche.

More recently, many experts have written extensively on the topic of prostitution over the years including Donna M. Hughes, Gail Kligman, Stephanie Limoncelli and Catherine MacKinnon. Joyce Outshoorn (an expert on gender politics and women’s movements) wrote a comprehensive account of the evolution of the political discourse surrounding prostitution over the years in her book entitled *The Politics of Prostitution: Women’s Movements, Democratic States and the*

²⁵ Foucault, 36-49

²⁶ Foucault, 92 - 102

Globalization of Sex Commerce. Outshoorn maintains that while in the past prostitution has been largely kept off political agendas due to the lack of consensus among women and women's movements as to how prostitution ought to be perceived/treated, globalization has brought prostitution to the forefront of politics.²⁷ An increasingly interconnected and borderless world means that prostitution can no longer be treated in isolation from issues such as trafficking, immigration and labour migration since they are in many ways intrinsically linked.

Graham and Annette Schambler's book entitled *Rethinking Prostitution: Purchasing Sex in the 1990s* provides a very useful account of how modernity has affected the way the sex industry works, is perceived, and treated. The book highlights the importance social change has upon the sex industry and supports the notion that prostitution cannot be studied in isolation from variables such as economic prosperity (or depravity) and political change.²⁸ This argument supports this research paper's assertion that prostitution – one of the most direct manifestations of economic disparity and social and political exclusion – must be studied amid a backdrop of contextual analysis that takes into account the particularities of time and space (geography).

Since their inception, states have tried to control prostitution by adopting various policies, the culmination of which can be referred to as “**prostitution regimes**”.

²⁷ Joyce Outshoorn, *The Politics of Prostitution: Women's Movements, Democratic States and the Globalization of the Sex Commerce* (Cambridge: Cambridge University Press, 2004), 8

²⁸ Schambler and Schambler, xi

Joyce Outshorn defines such regimes as, “sets of laws and practices governing prostitution that shape prostitution in their respective jurisdictions in distinctive ways” and asserts they are mainly characterized by repression (or lack thereof) – towards women selling sexual services as well as other parties involved, including clients, entrepreneurs of sex work facilities or pimps.²⁹ The degree to which each of these “actors” is prosecuted or tolerated contributes to the state’s overall stance on prostitution and the sex industry.

Governments, at all levels, have long attempted to control prostitution, and depending on which way the issue is framed, have done so in different manners. The aim of each approach varies substantially: to maintain law and order, preserve morals, prevent the spread of STDs or to protect women from exploitation.³⁰ The approach chosen will determine in what political arena and policy (sub) system the politics of prostitution is fought, which actors are involved or excluded and which interest groups are mobilized to fight around the issue.

There are currently three main approaches to prostitution adopted by governments: *prohibition* (what is found in the United States with the exception of Nevada), *regulation* (Germany, The Netherlands) and *abolition* (Sweden). [*Liberalism, deregulation or, decriminalisation* is not mentioned in literature anywhere other by sex workers themselves. Ann. Marc of Frankfurt]. Though the

²⁹ Outshorn, 6

³⁰ *ibid*

terms are most often used by feminist researches, scholars and advocates (as supposed to governments), the three approaches encapsulate the range of positions adopted by states to deal with prostitution. Authors Outshoorn and Hughes offer clearly defined definitions of each approach that helps in the understanding of which activities or actors are criminalized, controlled or permitted under each.

The **prohibition** approach defines prostitution as a criminal activity, making all prostitution illegal and all parties liable to penalties, including the prostitutes. All activities related to prostitution (soliciting, pimping, brothel keeping) are criminalized and no distinction is made between those that sell sex, buy sex or facilitate either activity.³¹ This approach remains closely linked with the perception of prostitution as a morality problem and has often been advocated by various religious groups (particularly the Christian-right in the US)

Regulation is a rather broad term which refers to various forms of state intervention in controlling prostitutes. The regulationist approach opts to legalize prostitution and redefine it as a legitimate form of service work. Regulations are set up that seek to control of when the circumstances under which prostitution can occur. Such measures can include the establishment of brothels or red light zones in certain areas, compulsory STD testing and the required registration of

³¹ Donna M Hughes, "Combating Sex Trafficking: Advancing the Freedom for Women and Girls" keynote address, *Northeast Women's Studies Association Annual Conference* (2005), 4 http://www.uri.edu/artsci/wms/hughes/combating_sex_trafficking.doc (accessed April 8 2008)

prostitutes.³² In addition, the state expects to collect tax revenue from the industry's income may offer state benefits (health care and in some cases, the opportunity for union membership) to workers. This approach aims to reduce the potential harm prostitution can cause to the public, whether danger their health or simple public nuisance. Prostitution is seen almost as a necessary evil - inevitable but controllable (if not profitable).

Lastly, under an **abolitionist** approach, prostitution is viewed as a wholly harmful activity and laws and policies aim to ban and eradicate its existence. A distinction is made between victims (prostitutes) and perpetrators (johns, pimps), an approach that resembles the way in which domestic violence is treated. Prostitutes themselves are not liable to state penalties though third parties are (anyone that facilitates or promotes the buying of sex). In this view, prostitution is a form of violence against women or slavery and it is thought that by punishing the buyers of sex, the "demand" side of the industry will subside, discouraging women to become involved in the industry because it is no longer profitable.³³

Like most countries, the German state has experimented with more than one approach to prostitution over the course of its history. State responses to prostitution, like prostitution itself, are subject to – and influenced by – many factors including societal norms and attitudes and the social, economic and political climate at any given time. However, while over time attitudes about sex

³² Outshoorn, 8

³³ Donna M Hughes, "Combating Sex Trafficking: Advancing the Freedom for Women and Girls", 4

and prostitution have undergone many transformations, prohibitionism, regulamentarism and abolitionism remain the state's dominant legislative and policy framework options.³⁴ What *has* changed, however, is the degree to which one country's discourse and legislative treatment of the issue affects another. Globalization of the economy has meant globalization of the sex industry, which has become an industry without borders. A state government no longer has the luxury of making decisions to best suit itself and its citizens as an increasingly interconnected world means the effects of one country's decisions in any given policy area will inevitably cause reverberations in another. In the European Union, the effects of increasingly seamless borders between member states are dramatic. While the notion of "convergence" underpins the very purpose of the European Union, the great differences that exist between states initially– socially, politically, economically – are causing many unanticipated challenges for EU heavyweights such as Germany.

The debate surrounding the relationship (or lack thereof) between consent and prostitution deserves mention. In her article entitled "Rethinking Prostitution and Consent", author Barbara Sullivan explains there exists a significant international and feminist debate at present surrounding prostitution and consent. For radical feminists, under the worldwide conditions of male domination and endemic male violence, women are forced into prostitution and no real consent is possible. Even those who do not adopt a radical feminist perspective – and who admit the likelihood of valid consent in non-commercial and sexual relations – suggest that

³⁴ *ibid*

there is a particular problem with consent to prostitution as a result of economic and other coercions.³⁵

On the other hand, there are those who argue that consent to prostitution is relatively straightforward, a position that in the theoretical literature is most clearly represented by Ericsson. From this essentialist foundation, prostitution is seen as “a contractual relation in which services are traded” whereby the prostitute sells sexual services (as supposed to her body and thus herself). From this perspective, the kind of relationship that exists between prostitute and customer is one we would find in most service industries, making prostitution a straightforward negotiation in which consent is not problematised.³⁶

A broadly similar position has been advanced by some prostitutes' rights and advocacy groups. Freeman (1990) argues that groups like COYOTE (Call Off Your Old Tired Ethics), CORP (Canadian Organization for the Rights of Prostitutes) and the NTFP (National Task Force on Prostitution) are “essentially liberal and only reluctantly feminist.” This is due to the fact that they see prostitution as a voluntary exchange of sexual services for money, and in contrast to feminist theory, begins with the presumption of consent (rather than presumption of coercion). It is important to note, however, that not all prostitutes' rights groups adopt this liberal a perspective. Over the past decade or so, sex

³⁵ Barbara Sullivan, “Rethinking Prostitution and Consent,” conference paper from the *Australasian Political Studies Association 2000 conference* (2000), 1
<http://apsa2000.anu.edu.au/confpapers/sullivan.rtf> (accessed April 24 2008)

³⁶ Sullivan, “Rethinking Prostitution and Consent”, 2

worker advocates have in many cases developed much more nuanced accounts of consent, particularly in the wake of the new international debates about trafficking for the purposes of sex. This trend has been particularly apparent among sex worker advocates outside the liberal strongholds of North America.³⁷

The liberal position on prostitution and consent has been critiqued by various feminist theorists, including Carole Pateman, author of the book *The Sexual Contract*, (1988). Arguing against Ericsson, Pateman contends that prostitution should not be regarded as a “free contract” because “the prostitute cannot sell sexual services alone; what she sells is her body.” In this view, prostitution is “unilateral subjection to sexual acts with the consolidation of payment”; that is, payment occurs in place of real consent [payment or not may be a binary question. However type and intimacy of the service granted is not. There is a plethora of possibilities to act with more or lesser consent. The sex worker always has range of agency. Ann. M.o.F]. Pateman contends that the liberal language of the contract has been used – both in history and in the present day – to mask the operation of sexual power. Similar analysis has been utilized by many radical feminists including Sheila Jeffreys, Kathleen Barry and Catherine MacKinnon. Along with many others, they argue that “consent” is not a good driving rod as to the existence of oppression, and consent to violation is a fact to oppression. They believe that even if women express their “consent” to prostitution this is not, in fact, real consent.³⁸ [Sic. M.o.F]

³⁷ *ibid*

³⁸ *ibid*

While for many feminists the inherent coercive nature of prostitution makes consent impossible (and thus irrelevant), Sullivan (a so-called “radical” feminist herself) warns against such absolutes. She explains that by deeming the consent and non-consent of sex workers irrelevant, one runs the risk of reducing the ability of these women to make claims of rape in the criminal justice system. O’Connell Davidson (1998) argues that it is politically and morally “dangerous” to regard prostitution and rape as the same thing and that we must account for the diversity of prostitution that exists.³⁹ While Davidson agrees with feminists in that prostitute use (by clients) is an oppressive act, what distinguishes it from other oppressive acts (rape, for example) is a “veneer of consent”:

“prostitution is most usually organized as if it involved a mutual and voluntary exchange, and the various formalities which surround the prostitute-client transaction (such as payment and contractual specification...) make it possible for the client to read his sexual contract with the prostitute as consensual. Even where a client has negotiated with and made payment to a third party, rather than to the prostitute, he can tell himself that the woman concerned has agreed to work in this way. The veneer of consent makes prostitute use appear to be something quite other than rape or battery.”⁴⁰

Therefore in this view, it is this “veneer of consent” that constructs the particular power relation between prostitute and client and which distinguishes prostitution from rape. This important point links back with the idea of the construction of sexuality and sexual behaviour, as forwarded by Foucault. By measuring real consent by a liberal standard, it seems as though consent could really only occur

³⁹ Sullivan, “Rethinking Prostitution and Consent”, 3

⁴⁰ Julia O’Connell Davidson, *Prostitution, Power and Freedom* (Ann Arbor: University of Michigan Press, 1998), 121

in the absence of power relations, something that to Foucault, would be impossible since power inequity is inherent in every kind of relationship.⁴¹

With these rather polarized perspectives in mind, Sullivan offers her own thoughts on the subject. Taking a cue from Foucault she argues that to say sexual consent will always be constructed within power relations is not to suggest the impossibility of “real consent” but it is to call into question liberal consent (that is negotiated in the absence of power). She posits that women and men working in prostitution are not, at least in most cases, without power or the freedom to resist power.⁴² As we will see, this notion of self-empowerment and agency stood at the centre of many advocates’ arguments in favour of legalizing prostitution. Rather than relegating prostitutes to the role of powerless victim, granting them rights and protection under the law would provide the tools and social support needed to either leave the industry (if they did not want to be in it) or, if they chose to remain in it, make the occupation safer and accountable to some sort of standards.

While allowing for the possibility of some type or level of consent, the idea that prostitution inherently involves some degree of coercion deserves consideration. The question is what kind. As discussed before, this paper is based on the widely held assumption that prostitution is typically a last resort option in terms of profession choice. It could be assumed that many women working as prostitutes are doing so because from their perspective they have few (if any) other viable

⁴¹ Sullivan, “Rethinking Prostitution and Consent”, 3

⁴² Sullivan, “Rethinking Prostitution and Consent”, 6

options. In this view, engaging in an activity (prostitution) because one lacks other viable options (better job prospects, access to social services, etc) is a type of coercion – **systemic or structural coercion** – because one is excluded or deprived to the point where in their mind they have no option (alternative choice) but to engaged in prostitution. Systemic or structural coercion differs from individual coercion which is more direct in nature. This occurs when a women is forced in prostitution, whether by being physically, mentally or psychologically threatened by another individual or individuals, or even guilted or coaxed into it by a loved one or friend.

Regardless of the type of coercion, the essential point is the same. The individual feels they have no other viable option but to engage in prostitution, whether because someone has kidnapped them and is threatening their life or the lives of their loved ones or because it is the only way they will make enough money to survive. [To compare the incomparable. Working for ones livelihood is for most people a must. Hence economy is per se prostitutional? M.o.F] It could be argued that the vast majority of women working as prostitutes are doing so under a certain degree of coercion, whether of the individual or systemic/structural variety, which perhaps makes the granting of rights and protection that much more a key element of change.

The literature, much like contemporary debate itself, reveals a rather dramatic split in whether or not there exists a link between trafficking in women for the

purposes of sex and prostitution itself. While some (including many feminist, women's and anti-trafficking advocate groups) view the two as inextricably linked, others (particularly prostitution advocacy groups) separate the two and treat the two as separate phenomena that can (but do not necessarily) intersect. This separation (which is sometimes referred to as the **“de-gendering” of sex trafficking**) was caused in part by a lack of international consensus among women regarding prostitution. The result was the development of two central (but completely contradictory) transnational alliances against trafficking: the abolitionist US-run **Coalition Against Trafficking in Women (CATW)** and the **Global Alliance Against Traffic in Women (Global Alliance)**, which distinguishes between forced and voluntary prostitution and calls for decriminalization.⁴³

Another way to separate trafficking in women from prostitution occurs by looking at it as a form of transnational labour migration that should be viewed through the conceptual framework of migration systems. In this view, transnational prostitution can be analyzed in the context of a migration system between two countries.⁴⁴ Author Patterson defines a **migration system is defined as “any movement of persons between states, the social, economic and cultural effects of such movements, and the patterned interactions among such effects”**.⁴⁵

While this approach can be useful in analyzing patterns of movement of people

⁴³ Outshoorn, 10

⁴⁴ Susanne Thorbek and Bandana Pattanaik *Transnational Prostitution: changing global patterns* (USA: Zed Books, 2002), 83

⁴⁵ Thorbek and Pattanaik, 69

from one country to another for the purposes of employment, it overlooks the issue of coercion, whether personal or systemic, that often accompanies transnational prostitution. It also runs the risk of overlooking (or underplaying) the large role deception and violence play, as well as the involvement of criminal networks. Nonetheless it is an approach should be at least considered, a good example of which is Pataya's study of Thai women prostitutes in Germany.⁴⁶

The separation of prostitution and trafficking and **the framing of trafficking as a border security or migration issue** (rather than a human or women's rights issue) is more likely to lead to consensus when it comes to international agreements for the prevention of trafficking. Within the European Union, for example, the great variance in prostitution regimes means tackling transnational trafficking is easier dealt with if it is looked at from an imprecise perspective. While there exists varied opinions on how to treat prostitution, an issue like **illegal migration garners far more accord and cooperation** as it is relevant to more people as an issue (while **prostitution seems to garner far more diverse reactions** and opinions).

Authors and researchers have long strived to better understand the various approaches, opinions and perspectives on prostitution, and many works have been written on the subject. Germany is no different; there are numerous works treating prostitution in Germany over the years, particularly covering Imperial Germany, the interwar period and the Hitler regime. Two articles providing valuable

⁴⁶ *ibid*

historical accounts include Richard J. Evans “Prostitution, State and Society in Imperial Germany” and Julia Roos’ “Backlash Against Prostitutes Rights: Origins and Dynamics of Nazi Prostitution Policies”. These articles support the notion that **the perception of prostitution has been shaped over the course of history by social, political and economic context.**

Where there seems to be a gap in the literature is with respect to prostitution in the GDR. This comes as little surprise given government rhetoric at the time (prostitution did not exist under, at least officially) and represents an area in my research where German sources are most useful (and needed). One oft referred to text is Carsten Otte Ute Falck’s “VEB Bordell. Geschichte der Prostitution in der DDR” (“History of Prostitution in the GDR”). The article by **Ingrid Sharp** entitled “**The Sexual Unification of Germany**” explains in detail how the clash of East and West German values extended to into the realms of sex, sexuality and gender and had to be reconciled upon unification.⁴⁷ West Germans saw East Germans as backward, repressed, and non-erotic, while those in the GDR equated Western capitalism with exploitative, consumer-oriented attitudes toward sex that were outdated, inferior and damaging. Sharp explains that although sex and sexuality is rarely talked about in the context of unification (or if it is, it is generally relegated to the topic of reproductive rights), **Germans struggled to establish a “working moral consensus”, or a new sexual code**, for unified

⁴⁷ Sharp, 348-365

Germany. Sharp examines the role the media played in creating a new sexual reality in Germany.⁴⁸

There is a relative lack of scholarly literature written about the contemporary discourse of prostitution in Germany, particularly in English and in light of the recent legislative changes. This research paper will hopefully serve to shed some light on the changing situation in Germany with respect to prostitution and re-examine the link between prostitution, trafficking and gender relations in the post-communist region and increasingly globalized world.

Scholarly literature on post-communist transition/transformations as well globalization (as a concept in general but more specifically with respect to transitioning states) will also prove vital to my project. The collapse of communism and the social and economic upheaval which ensued, combined with a rapidly changing global economy leaves many women without viable employment options. The proliferation [Wucherung] of the sex industry in Eastern Europe and the former Soviet Union combined with growing inequality among its people means that for a growing amount of women, prostitution becomes the only option in which they can make a sustainable living.

There are many authors who treat the topics of globalization as well as post-communist transformation. Jacqui True discusses the inequities and effects of globalization which contribute to growing disparities between states and their

⁴⁸ Sharp, 348

people.⁴⁹ In her many works (including a particularly useful article entitled “Body of the Nation, Mothering, Prostitution, and the Place of Women in Post-Communist Latvia”, author Daina Stukuls examines **the asymmetric transitions experience of men and women and how structural and systemic aspects of the transition process (including the commodification and domestication of the post-communist era) have contributed to the proliferation of prostitution.**⁵⁰ Author Suzanne LaFont also examines the gendered nature of transition in her article entitled “One Step Forward, Two Steps Back: Women in Post-Communist States.” LaFont examines **how democracy**, while inherently a positive and progressive step for the region, **can at the same time result in negative consequences for women** (a widening gender gap and an increase in women’s unemployment and underemployment). The notion that transition from communism entails different experiences for women and men and is, in some ways, a progression that involves regression (if only temporary), is an interesting contradiction that will be discussed.⁵¹

Scope of project

Focusing on the time period from 1989 to the present, my project aims to provide an examination of prostitution in Germany. While considering the broader history of prostitution in Germany is necessary to a point in order to provide the necessary context and comparison as to the contemporary treatment of the issue,

⁴⁹ Jacqui True, *Gender, Globalization and Postsocialism* (New York: University Press, 2003)

⁵⁰ Stukuls, 537-558

⁵¹ Suzanne LaFont “One step forward, two steps back: women in post-communist states” *Communist and Post-Communist Studies* 34 (2001): 203

my analysis will focus on prostitution from unification until present day. This time period which is marked by two main changes in legislation – one upon unification and the second in 2002. At the same time, the socio-economic effects of transition and globalization in the region will be incorporated, as will limited comparisons to other transitioning states with respect to prostitution.

Methodology

The method used is that of a case study (Germany) with respect to prostitution legislation, with selected comparisons made with other countries if and when necessary. Germany's prostitution regime and recent legislative changes are in many ways unique, particularly in light of more abolitionist approaches being adopted by other EU countries (Sweden for example) and the increasing attention the trafficking of women from Eastern to Western Europe is garnering.

Examining other states' prostitution regimes is useful in that it helps shed light on the effects legislation has on the sex industry itself as well as those that work in it.

Primary sources for this project include legislation (German law on prostitution, immigration and asylum), data (on prostitution, trafficking and migration, mostly from NGOs) and newspaper articles. Legislation on prostitution will be examined in so far as to see what changes have occurred and what the likely impact would be on German as well as non-German prostitutes living in Germany. Specific transcripts of Parliamentary debate and proceedings may be used in order to get a better idea as to how legislation was passed and any difficulties that were

encountered along the way. Select personal interviews with individuals (rather than a mass survey) working closely with the sex industry will serve to fill gaps in the literature and may reveal subtleties as to the law's unintended or unexpected consequences. Secondary sources include NGO and government reports, academic and scholarly literature that treat the topics of post-communist transition, globalization, gender politics and more sociological-orientated sources covering the main prostitution debates.

Historical overview of prostitution in Germany

Like many other countries, Germany has long grappled with how to legally address prostitution and has experimented with various approaches over the years. Today, it could be surmised that **Germans are, on the whole, relatively ambivalent about prostitution** and its place in society. Prostitution is widely regarded as a social problem, while at the same time recognized as having social utility or at the least, as being non-eradicable.⁵² Author William Sanger's account of prostitution around the world sheds light on sex work throughout Germany from the Middle Ages until the early 20th century. While we see that there are indeed differences in the treatment of prostitution in Germany throughout space and time, an overall theme emerges – that the **treatment of prostitution was indeed, for the most part, based on a principle of toleration.**⁵³ This approach is a common one and though it is difficult to say exactly why “ambivalence”

⁵² Nanette J. Davis (ed.) *Prostitution: An International Handbook on Trends, Problems and Policies* (USA: Greenwood Press, 1993), 129

⁵³ William W. Sanger, *The History of Prostitution: Its Extent, Causes and Effects Throughout the World*, (USA: Eugenics Publishing Company, 1939), 252

towards prostitution is on the rise, the proliferation of the sex industry, the commonly accepted notion that prostitution as the world's oldest profession is here to stay and an **overall more lax approach to sex (including pre-marital and extra-marital)** in general can serve as partial explanations. This ambivalence, both by government and on the part of people, could be seen as contributing to why most recent legislative changes could be adapted so quickly.

While time and space will not permit for a historical survey of prostitution in Germany, certain periods are worth mentioning for the purposes of this paper. The years following the First World War were an interesting – if not tumultuous – time for gender relations and women's rights in Germany, and this had an impact on prostitution. This period was marked by a conflict between women's growing drive and demand for equality that grew out of their increased importance and participation in society during the war years, and enduring patriarchal notions of societal order. In the Weimar Republic, as was occurring elsewhere in Europe, anxiety-ridden discourses about “sexual disorder” and “moral decay” (characterized by a perceived rise in women's promiscuity) became potent political forces that helped shape attitudes towards women's role in society.⁵⁴

This period was also marked by an attempt to reform prostitution; in **1927** **Germany passed the Law for Combating Venereal Diseases (Reichsgesetz zur Bekämpfung der Geschlechtskrankheiten or “anti-VD law”)**. Prior to this

⁵⁴ Julia Roos “Prostitution Reform and the Reconstruction of Gender in the Weimar Republic, *Indiana University Scholar Works Repository* (2006), 3 <http://hdl.handle.net/2022/803> (accessed April 24 2008)

legislation, prostitution had been illegal in Germany, but cities with *Reglementierung* tolerated registered prostitutes. The form of state-regulated prostitution that existed in some areas subjected prostitutes to compulsory medical exams for STDs as well as restricted other personal freedoms such as where they would reside and their ability to travel. The *Sittenpolizei* (morals police) was responsible for the supervision of prostitution and were entrusted with a great amount of arbitrary power.⁵⁵

While some saw the **anti-VD law as a conservative attempt to solidify the association made between women's bodies and society's physical/moral contamination**, others understood it as an effort to make prostitution policy accord with women's recent enfranchisement [hier: Frauenwahlrecht] and the Weimar constitution's promise of civil equality of the sexes.⁵⁶ While certainly the post-war debates about STDs had a lot to do with conservative concerns about changes to the established gender order and family hierarchies, **the anti-VD law offered prostitutes new protections** (against landlord exploitation, for example) and the freedom to live where they pleased. Compared to the situation under *Reglementierung*, the situation under the new law was seen as a marked improvement for prostitutes; by granting prostitutes' civil rights, the 1927 reform signified a rather bold departure from the past.⁵⁷ By the early 1930s, however, the backlash against the decriminalization of prostitution had gained momentum and representatives of the moral Right (which included the Catholic Center Party and

⁵⁵ Roos, 4-5

⁵⁶ *ibid*

⁵⁷ Roos, 12

certain groups of conservative Protestants affiliated with the German-National People's Party) called for a return to the old regulationist system.⁵⁸

Adolf Hitler's reign during WW2 was marked by a reversion to the outright condemnation of prostitution. Hitler regarded prostitution as a provocation of mankind which **deemed prostitutes as the lowest form of an already low-status group: women**. Prostitutes were arrested, labelled psychopathic, feeble-minded, or schizophrenic, and some were subjected to forced sterilization. However, the ever-increasing demands of his soldiers for prostitutes eventually persuaded Hitler to establish Wehrmachtsbordelle (armed forces brothels) in an effort to appease them. Known prostitutes and women from concentration camps were assigned to work in such brothels, unpaid, their services enacted under duress.⁵⁹

In the years following WW2 German cities, like cities all across Europe, experienced a surge in street prostitution. Economic deprivation and desperation led citizens to make money and acquire commodities (including food, clothing) in any way they could. Efforts to deal with this situation ultimately led to the enactment of the **1960 Federal Penal Code** provision that authorized cities to create prostitution-free zones in their own jurisdictions (**essentially a return to state-regulated prostitution**).⁶⁰

⁵⁸ Roos, 17

⁵⁹ Davis, 135

⁶⁰ *ibid*

The division of Germany following the Second World War marked the beginning of the development of two very distinct entities; politically, economically, socially, ideologically. **East and West Germany would also develop two different and often contradictory notions of woman, gender and sexuality,** and each adopted policies which reflected and re-enforced them. West Germans (the Federal Republic of Germany, or FRG) saw the German Democratic Republic, or GDR, as backward, repressed, and non-erotic, while those in the GDR associated Western capitalism with exploitative, consumer-oriented attitudes towards sex that were outdated and damaging to women.⁶¹ Not surprisingly, the social and legal status of prostitution in East Germany was radically different from that in the Federal Republic and became a symbol of the clash between the two. It was only upon unification that a “coming together” of sorts took place (for some this was un-wanted) whereby the former East German states became subject to the laws that regulated the West.

The treatment of prostitution in West Germany could perhaps best be described as “pragmatic”- a reasonably workable approach to a social problem that has its origins in deeply rooted sex-based inequalities that go far beyond German borders, both geographically and historically. **Prostitution-related activities were considered harmful when they offended the public sense of decency,** a sentiment which remains widespread today. While the West German attitude was not unlike that which characterizes the treatment of prostitution today in Germany, there was a far more discriminatory nature to the policies surrounding

⁶¹ Sharp, 348

it. **Prostitutes had to pay taxes on their income and adhere to rather strict rules concerning where, when and in what manner they could work, and yet remained ineligible for social benefits** afforded to other Germans.⁶²

Not surprisingly, the treatment of prostitution in GDR was quite different. Like all aspects of everyday life, sexuality was a matter of concern to the state. **Sexual fulfillment was a right and duty for all citizens as one aspect of the “fully developed Socialist personality”**. This healthy, balanced sexual identity, enjoyed equally by men and women, received strong support in GDR legal codes. At least in theory, sexuality was no longer reserved exclusively for men, **nor were women assigned the traditional opposing roles of either innocent virgins or seductive whores**.

While prostitution in West Germany was (unofficially) tolerated, the **selling of sex in the GDR was illegal and regarded as a particularly crass form of capitalist exploitation** that recognized woman as victims of an unjust system.⁶³

According the government, a mere **3,000 woman were actively employed in the sex trade in the GDR**. Despite official claims to the contrary, prostitution continued in one form or another throughout the history of the GDR, though in a more discreet and clandestine manner than in the West. The prostitution that did exist was low-key; boasting no peep shows, no brothels, no telephone sex (though this is more a function of the comparative lack of telephones in the GDR), no

⁶² Davis, 152-153

⁶³ Sharp, 349-351

saunas and no flashy red light districts.⁶⁴ Until the post-Wende exposé of prostitution in the GDR, it seems that its discreet and unadvertised existence went largely unnoticed by most citizens, which enabled authorities to maintain the fiction that sex was no longer for sale in communist GDR territory.⁶⁵

A clash of discourses accompanied German reunification, a struggle for supremacy between East and West values. After 40 years of separately developed approaches to gender relations and sexuality, reunified Germans struggled to establish a “moral working consensus,” a sexual code for the new Germany. German Unification took place at a very rapid pace and had the effect of compressing a lifelong socialization process into an extremely short space of time.⁶⁶ While the term “unification” suggests a merger of two systems, the GDR joined West Germany under **Article 23 of the Federal Basic Law**, which entailed adopting Federal Republic of Germany (FRG) laws and its constitution in their entirety. In other words the structures and values of the new unified Germany were largely imposed upon Easterners by the West. Retraining and grooming courses were available to the GDR citizens who wanted to prepare for the new work environment; these courses provided instruction in how to walk, talk, dress and even smell like Westerners.⁶⁷

⁶⁴ Sharp, 353

⁶⁵ *ibid*

⁶⁶ Sharp, 348-349

⁶⁷ *ibid*

Following unification, in Germany the act of prostitution fell into the realm of legally acceptable social behaviour: prostitution was not a crime. The simplicity of this approach, however, is misleading. **Closer scrutiny reveals prostitution's narrowly defined and precarious legality as well as its position on the fringes of the German social order.** Stringent regulations and restrictions applied to virtually all forms of prostitution and social stigma continued to accompany the women who worked in the industry. Pragmatism became (and in many ways continues to be) the overarching sentiment regarding prostitution in Germany—one that kept prostitution out of residential neighbourhoods, reduced prostitution-related crime and encouraged the favouring of ‘houses of prostitution’ rather than the more overt forms like street prostitution.⁶⁸ While prostitution in Germany continued to have many forms, **only the more visible ones seemed to be of public or police concern**, which again highlights the tendency to see it as a **public nuisance**.⁶⁹

While one might assume that this more lax approach to prostitution upon unification would have been well-received to those working in the sex industry, working prostitutes, as well as the organizations that represented them (Hydra, for example) emphasized the **discriminatory nature of a policy that requires prostitutes to pay taxes on their income and yet remain ineligible for social benefits**. It was argued that only by eradicating this inequity which had long been inherent in Germany's regulationist approach would discrimination against

⁶⁸ Davis, 129

⁶⁹ Davis, 145

prostitutes be reduced. The **2002 Prostitution Act** aimed to address this disconnect by legalizing prostitution and giving sex workers rights and benefits in an effort to increase their legitimacy and reduce stigma surrounding their profession.⁷⁰

Prostitution is a complex subject which cuts across many policy areas and theoretical questions. By examining a variety of factors (structural, systemic, legislative) this research project aims to provide a comprehensive analysis of prostitution in Germany since unification. Subsequent chapters will examine the three central hypotheses in order to determine which best explains and substantiates the changes in prostitution patterns in Germany.

Chapter 2 focuses upon the role the collapse of communism in Eastern Europe and the former Soviet Union has played in creating a context in which prostitution is likely to increase and flourish.

Chapter 3 delves into the topics of globalization and the expansion of the European Union and how the proliferation of both has facilitated a key component to changing patterns of prostitution in the region – mobility.

Chapter 4 examines recent legislative changes to prostitution in Germany and whether or not the new law has impacted the sex industry to the degree anticipated.

⁷⁰ Davis, 153

Lastly, the final conclusion will summarize the paper's findings and offer final insight on to the topic and which hypothesis (or combination of hypotheses) best explains the changing patterns of prostitution in Germany. It is unlikely that a single hypothesis will provide an adequate explanation to such a complex question – it is more plausible that the three hypotheses, working together in a complimentary fashion, will prevail.

Chapter 2 – Push: The Collapse of Communism

The implementation of the communist regimes in Eastern Europe following World War II represented an entirely new social order, radically different than what preceded them. They [the regimes]

“swept aside private property, wiped out the middle class, collectivized agriculture, brought millions of country people to work in the city, dramatically increased the number of working women, brought entirely new people to power, reorganized and repopulated all levels of government, created new systems of education and scholarship, eliminated freedom of expression, turn East Europe away from its natural trade with Western Europe toward the Soviet Union, propagated a new public ethic, built a strong military, and in general, seized control of all aspects of public life.”⁷¹

Though to the outside world the Union seemed strong, there were many reasons – ranging from the political to the economic -- as to why the communist system didn’t function well in the region, two of them being the lack of market mechanisms in price setting and a Soviet-imposed policy of inward-looking trade. Though not for lack of trying (planners desperately tried to correct the over-investments and reverse the losses), it was ultimately impossible to change the increasingly inefficient system from within – either politically or economically, and the cracked foundation of the regimes soon gave way to collapse.⁷²

The rather sudden disintegration of communist regimes across Eastern Europe and the Soviet Union over 15 years ago came as a surprise to much of the world. The

⁷¹ Gale Stokes *The Walls Came Tumbling Down: The Collapse of Communism in Eastern Europe* (New York: Oxford University Press, 1993), 8

⁷² Stokes, 11

transition period which followed quickly blossomed into a major growth industry, engaging scholarly and policy communities and becoming the subject of intense debate and large-scale analysis.⁷³ One particularly interesting area of study that emerged from the collapse of communism in the region is the impact transition has had upon gender and gender relations. The role and status of women in Eastern Europe and the former Soviet Union is particularly fascinating as it was (and continues to be) rather varied and in some cases, contradictory.⁷⁴ Since the collapse, a rather significant shift in the role for women – in politics, the labour market, the economy, society at large – has occurred, though not in a uniform manner.

While socialism had, at least theoretically or rhetorically, achieved equality between men and women in a variety of areas (for example labour participation), in many ways its demise seems to be born differentially by the sexes. As a result, a new field of research emerged which questioned whether women fared differently than men amid the dramatic social, economic and political changes that characterized transition. In other words, was the introduction of reforms in formerly socialist countries a gender-neutral policy or were there different implications for women and men? Furthermore, are the experiences among women similar enough to make observations and draw conclusions?

⁷³ For a more extensive explanation of transitology and a comparison of post-communist transition in Eastern Europe with those of Southern Europe and Latin America, see Peggy Watson "Rethinking Transition: Globalism, Gender and Class" *International Feminist Journal of Politics* 2, no.2 (Summer 2000): 186 and Sarah Meiklejohn Terry, "Thinking About Post-Communist Transitions: How Different Are They?" *Slavic Review* 52, no. 2 (Summer 1993): 334-336

⁷⁴ LaFont , 203

Women Under Communism

One of the most well known (and oft boasted) features of Soviet communism was the high level of female participation in the labour force that began in the early 1930s in the Soviet Union and late 1940s in Eastern Europe following the introduction of central planning. As an incentive for women to work (and thus fuel the intense industrialization most of these countries initiated), they were guaranteed the right to equal pay for equal work (in the Soviet Union, this right was written into the 1922 Soviet Labour Code and the 1936 Constitution).

Generous maternity benefits and extensive provision of day care centers encouraged women to work; in most countries women were granted up to three years of maternity leave per child with the right to return to a suitable job with the same employment upon her return.⁷⁵ Incentives aside, relatively low average wages often compelled women to work in order to supplement household income.⁷⁶ As result, female labour force participation rates in Eastern Europe and the Soviet Union reached around 80% (of female working age population).

While these numbers are impressive by international standards, it should be noted that in addition to joining the labour force, many women (70% to 80%) continued to do the bulk of the housework, meaning that they bore a double burden of market and non-market work, which was made more difficult by the lack of services and modern appliances in these countries compared to the West. This

⁷⁵ Elizabeth Brainerd, "Women in Transition: Changes in Gender Wage Differentials in Eastern Europe and the Former Soviet Union" *Industrial and Labour Relations Review* 54, no. 1 (October 2000): 140

⁷⁶ *ibid*

double burden (and in some cases, triple as women were often expected to be politically active in the community in addition to working and managing the household) is sometimes discounted as one of the system's too-good-to-be-true policies. Importantly, there existed no "equality" for men's involvement in the domestic domain, which serves to support the argument that in many ways pre-communist patriarchy remained intact.⁷⁷ Authors Ann Graham and Joanna Regulska argue that socialist policies had less to do with the emancipation of women than self-serving needs of the (male dominated) state:

"Policies formulated to satisfy formally the socialist pledge to women – maternity leave, childcare, medical care, employment – were not used to liberate women, but were developed for instrumental reasons significant to the state. In actuality, the system liberated women not so they could choose their work and interests, but so that they could more easily contribute to the "common good" as dictated by the totalitarian system. The system, however, was compromised primarily of an elite cadre of men."⁷⁸

From this perspective, rather than experiencing total emancipation, communist women were forced into pseudo emancipation mainly because their labour was needed for communist industrial development.⁷⁹ While there may be a degree of truth to this statement, it could likewise be argued that while "equality" between the genders under communism may have been state-motivated, one could argue that regardless of origin, government rhetoric is still valuable in that it impresses upon the public the notion that women are as valuable and necessary to the state's survival and prosperity as men are. Regardless of motivation, the communist

⁷⁷ LaFont, 205

⁷⁸ Ann Graham and Joanna Regulska, "Expanding Political Space for Women in Poland: An Analysis of Three Communities" *Communist and Post-Communist Studies* 30, no.1 (1997): 67

⁷⁹ LaFont, 205

governments did succeed in achieving relatively equal labour market outcomes for women and men.⁸⁰ In addition, communism provided women with rights and social entitlements which at the time were often unavailable to women in Western countries (and are still unavailable in some parts of the world): legal guarantees of women's equality, greater access to education, the easing of cultural/religious mores which can inhibit women's political and economic activities, hence increasing opportunities in the public sphere, property and inheritance rights, child allowances, state-sponsored child care, lengthy maternity leave and guaranteed return employment after maternity leaves.⁸¹ That said, it is important to recognize that the official glorification of women, as represented in propaganda and the numerous statues of strong women proletarians standing alongside their male counterparts, unfortunately did not reflect the reality of most women's lives.⁸²

Women and the Collapse of Communism

While reforms were immediately implemented following the collapse of communism in the region, it only with time that discernable trends with respect to the effects of them upon women in Eastern Europe and the former Soviet Union.

These commonalities contributed to what author Daina Stukuls calls "the women

⁸⁰ Graham and Regulska, 67 As was the case in many countries, the occupational and industrial distribution of female employment in Eastern Europe and the Soviet Union was skewed towards areas such as education, health, retail trade and semi-skilled occupations. These professions often had shorter and more flexible working hours which made them attractive to women in a labour market where part-time work was almost unheard of. There were some gains made by women into traditionally male-dominated professions; for example doctors, manual labourers and in particular, manufacturing (45% of manufacturing jobs in Russia were held by women). Overall, it could be argued that occupational segregation in Eastern Europe was lower, on average, than in the advanced industrialized nations. For more information see Brainerd, 142

⁸¹ LaFont 206

⁸² LaFont 205

question”; that is, the widely held argument that women have disproportionately suffered the negative effects of post-communist transition.⁸³ While democracy, freedom and liberalization are goals which are theoretically beneficial to an entire country’s population, many feminist scholars argue that women in Eastern and Central Europe have borne a disproportionate burden of the economic transition. They argue that women workers were made redundant or became unemployed through privatization and restructuring at far greater rates than men in the region.

In addition, the socialist’s state support of women as workers and mothers was replaced by a new set of class identities based on an individualist male norm. As a result, women lost many of their previous social and economic rights as the new democratic governments increasingly promoted a “cult of domesticity” where women are retired to the household.⁸⁴ In addition, the backlash against socialism combined with “new capitalism” has promoted the sexual objectification of women, the implications of which are identifiable in changing patterns of prostitution. In this view, it is argued that while women as members of the *general* citizenry of a nation are (theoretically) able to share in the benefits that came with the fall of communism (increased freedom of speech, voting rights, the right to private property), women as *women* have had a different (and overall less positive) experience than men.⁸⁵

⁸³ Stukuls, 537

⁸⁴ True, 22

⁸⁵ *ibid*

While there is much evidence to support this argument, it is important to, again, keep in mind there exists significant differentiation across the region with respect to women in transition. The challenge of how to analyze transition – focusing on the individual experience versus gauging overall faring - extends into the area of gender equality. As previously discussed, close attention ought to be paid to the differences that exist between states, people, etc. in the way in which they have experienced transition so as not to make broad, overarching assumptions. That said, it is likewise important to avoid embracing the opposite extreme; that is, placing the focus solely on the differences to a point where no trends can be detected at all and more subtle (albeit important) patterns are overlooked. This is particularly important in the analysis of women and the “gendered” nature of transition; while it is unlikely the experiences of women in one transitioning state will match exactly the experiences of another, there are marked similarities among them that ought to be addressed. At the same time, trends suggest that overall, women in post-communist countries have on the whole benefited at best differently but more likely less than men from the so-called “post-communist opportunities” and have, in fact, suffered the consequences of the dual trends of commodification and domestication that have accompanied, respectively, the push toward economic modernity and the elevation of tradition in social life.⁸⁶

Author Elizabeth Brainerd’s research on the effects of transition on labour market institutions and women indicates that the while the introduction of market reforms in formerly socialist countries is not a gender-neutral policy, these reforms have

⁸⁶ *ibid*

affected women across the region in surprisingly different and unpredictable ways. Her research shows the women have borne the unequal burden of economic restructuring in Russia in Ukraine, but have gained substantially relative to men in the countries of Eastern Europe. Her study, which focuses on Russia, Ukraine, Bulgaria, Hungary, Poland and the Czech and Slovak Republics suggests that while despite the common difficulties of moving to a market economy, the narrowing of gender wage gap differentials across the Eastern European countries is remarkably consistent and suggests that women have benefited relative to men in the labour market in that particular region. Her study's results suggest that women's relative wages in the Eastern Europe increased substantially, with the most dramatic increases incurring in Poland (where the mean female/male wage ratio increased from 72% in 1986 to 81% in 1992) and Slovakia (from 71% to 77%). In Russia and Ukraine however, they fell substantially, with women earning on average 68% of male wages under Soviet reign and only 60% at the time of the study.⁸⁷ Despite these results, it would be an oversimplification to conclude the effect of transition on labour markets for women has been entirely negative in Russia and Ukraine. Brainerd points out that women in these countries have benefited in that the tremendous increase in the availability of goods and services in these countries has freed up a significant amount of time in non-market work previously required of women.⁸⁸

⁸⁷ Brainerd, 149

⁸⁸ Brainerd, 158. While the author's survey is useful in showing positive effects of transition on women in certain parts of the region, it is important to point out that the scope of the survey does not focus on or take into account rising unemployment or the effect of women's welfare of declining labour force participation. This is noteworthy in that if a large number of low-wage women were forced to drop out of the labour force disproportionately during the transition (a fact

It has also been suggested that democratization ‘opened up a space’ in Eastern Europe, one within which women can now seek to identify their interests and organize. In addition, the spread of capitalism introduced choice to consumers—the choice to express one’s identity. While these both seem like indisputably good things, they also serve as an example of how what is good for “people” in general may have unexpected or unintended effects on certain segments of the population, in this case women. Sociologist Peggy Watson argues that while offering a new space to women, the transition to liberal capitalism offers men the opportunity of putting a greatly increased social *distance* between themselves and women. It is this “rise in masculinism” which she describes as the primary characteristic of gender relations in Eastern Europe today.

Watson argues that the Eastern European experience indicates that the re-creation of the gender order in the transition to capitalism is in fact *predicated on* the rescinding of a range of rights accorded to women under state socialism.⁸⁹ With respect to consumer choice, the ability to express one’s identity (and thus establish differences from others) manifested itself in expressing one’s masculinity or femininity, as a form of emancipation from the forced equality of socialism. In contrast to the image of the working women, post-socialist images depict beautiful women as aids to consumer transactions and virile men as the new face of banks (rather than industry). Many see the remaking of gender identity (and more specifically the differences between them) as facilitating the

which other research projects support), the results could be misleading in that it would give a false appearance of rising female relative wages (see Brainerd, 148)

⁸⁹ Peggy Watson, “The Rise of Masculinism in Eastern Europe” *New Left Review*, 1 (1993): 71

extension of markets and consumerism, which in turn further entrenches the new images, for better or worse.⁹⁰

Two central discourses have contributed to the re-creation of a traditional image of women in post-communist society: the “return to home” / “motherhood” discourse as well as the “westernization” / “normalization” discourse. Author Ristanonic argues that this shift occurred as direct consequence of market economy and liberal democracy, as well as from the influence of nationalism and militarization.⁹¹ In this view, the new gender relations of post-communist societies are shaped by liberal democracy and market economy based on private property, which essentially entails the (re)structuring of opportunities and the creation of institutionalization of hierarchy based on market advantage. Traditional ideas concerning difference, including gender difference, continue to play a key role in shaping exclusionary advantage in the new public sphere. In this new sphere, hegemonic masculinity is associated with a “good provider” role while “emphasized femininity” is synonymous with being a full-time mother/housewife.⁹²

This recreation or regaining of a traditionally prescribed gender identity is an important aspect of the nostalgia for “normality” which has so often been expressed as what those living in Eastern Europe and the former Soviet Union

⁹⁰ True, 106

⁹¹ Nikolic Ristanonic, 55

⁹² *ibid*

most hope for in terms of post-communist change.⁹³ The “guaranteed” gender equality of the communist era has attached negative connotations to institutional initiatives and social movements for women’s rights in the post-communist period and has in many ways stunted progress. Even the vocabulary for opening dialogues about “women’s rights” and “gender equality” is limited because those terms are reminiscent of and associated with the rejected regime.⁹⁴ As Stukuls points out, the inequitable division of power between men and women that existed but was at least theoretically condemned under state socialism is enshrined in post-communist society.⁹⁵ If the communist system was “abnormal”, so too was the “over-emancipation” of women and hence, the very idea of post-communist normality carries within itself the seeds of gender inequality, which were “planted and nurtured in the soil of restored nationhood.” The absence of private property, politics and civil society under Soviet communism, which worked to neutralize both men and women as social actors, was replaced by a generally male-dominated public sphere.⁹⁶ Since traditional gender roles and power relations outside of the Soviet Union were accepted as “natural”, whereas women’s

⁹³ Peggy Watson, “Eastern Europe’s Silent Revolution: Gender” *Sociology* 27, no. 3 (August 1993): 473

⁹⁴ Stukuls, 542

⁹⁵ This statement reflects the idea that while equality between men and women was theoretically encouraged and promoted, in practice it was less clear-cut. Rather, two rather conflicting images of women seemed to emerge: that of the New (Amazon) Woman (also called superwoman, or omnipotent woman) and that of the traditional image of woman a housewife and mother. While on the one hand, “the feminine vision of socialism is completely linked to the workplace and the public domain, owing to the mass-mobilization of women in state-run factories”, women remained responsible for housekeeping and childrearing duties, a conundrum often referred to as the “triple burden”. Nonetheless it is argued that because women’s participation was imperative in order to keep productivity high, their particular needs were valued under the socialist system (as made evident by the generous social services - child care, maternity leave etc – that supported women’s participation in public life) than is seen in post-communist societies. For further elaboration please see Nokolic Ristanonic, 53

⁹⁶ *ibid*

equality was seen as “forced” and “unnatural”, re-traditionalisation and “renaturalization” of gender roles that was soon largely publicized as desirable. Therefore the “abnormality” of the gender regime of the Soviet order has been replaced in a post-Soviet vision by the “natural” gender regime, where women are defined by motherhood and family life.⁹⁷

The Collapse of Communism and Unification in Germany

Germany represents a unique case of transition in that the collapse of communism was accompanied by a reunification of what had become two distinct states rather than the systemic overhaul of a single state. Unifying Germany came after 40 years of enduring a regime that failed to meet the economic and social expectations of its people. The main sources of dissatisfaction among East Germans, particularly youth, included (but were not limited to) restrictions on personal autonomy including lack of travel rights, lack of objective reporting in the media, the gap between the GDR’s position in the world economy and the supply of desirable goods.⁹⁸

The conception of unification of the government of the Federal Republic of Germany, for which the majority of the population of the GDR had expressed itself, was rather simple and involved four main steps. First, it was to transfer the laws and institutions of the Federal Republic to the former GDR as quickly as possible in their entirety. Second, it was to place the GDR economy under the

⁹⁷ *ibid*

⁹⁸ Gert-Joachim Glaessner, *Germany After Unification: Coming to Terms with the Recent Past* (Amsterdam: Rodopi, 1996), 9

pressure of the free market as quickly as possible, so that a normal economic system might develop. Third, it was to eliminate those individuals from public life who had been responsible for the totalitarian order of the GDR. And lastly, it was to eliminate “bad habits” of GDR citizens through adaptation and re-education.⁹⁹ In many ways, the drastic experiment implemented by unification planners was more radical than the socialist experiment that had preceded it and the pressures to adjust to a rapidly changing context fell decidedly on the shoulders of East Germans. Few of them (as well as the citizens which supported it) had the faintest idea as to what was bound up in this process, or what the consequences would be. While transfer of power is a normal feature of democratic regimes, unification of Germany went far beyond a normal government change – it was a total regime overhaul.¹⁰⁰

Similar to Eastern Europe and the former Soviet Union, social and economic developments since unification have had a profoundly differentiating effect on the formerly egalitarian society of the GDR. As author Gert-Joachim Glaessner explains,

“there are many more social losers: women, those who cannot adapt to a competitive system, those whose once-valued expertise is now at a discount. Democracy, seen close up, is more individualistic, less socially caring, generally less collective (for good and bad) in daily life than many East Germans, including opponents of the regime may have thought.”¹⁰¹

⁹⁹ Glassner, 103

¹⁰⁰ Glassner, 104

¹⁰¹ Glassner, 13

In addition to adjusting to dramatic systemic changes, East Germans had to become reacquainted and reintegrated with their fellow Germans from the other side of the wall, a feat which proved challenging. The East Germans were often perceived as backwards, unsophisticated and awkward by their Western counterparts.

In her article entitled “Ten Years after the Wall: East German Women in Transition”, author Dinah Dodds provides some insight as to the challenges faced by East German women following the collapse of communism and the differential ways in which women fared throughout the transition.¹⁰² Her research (based on a survey of women) reveals that East German women’s lives underwent dramatic social, economic and political change as the country made the difficult transition to free-market capitalism. Many lost their jobs (over 90% of GDR women had worked outside the home), and all were struggling with new laws, new institutions such as schools and hospitals, and new bureaucracy. State support for women with children, such as affordable daycare, disappeared, leaving many anxious about their ability to provide for their families. “As a sign of this anxiety, the birth rate in new states, among the highest in Europe before unification, dropped by 60% in the first three years after unification.”¹⁰³

Dodds’ research revealed that the most significant experience of the GDR women after unification was the move from meaningful activity or work, with the social

¹⁰² Dinah Dodds, “Ten Years after the Wall: East German Women in Transition” *The European Journal of Women’s Studies* 10, no. 3 (2003): 161-276

¹⁰³ Dodds, 262

contracts that came with it, to meaningless work or unemployment and the accompanying isolation. In the GDR work provided many women with self-confidence and esteem, financial independence and a connection to a larger community. The displacement of unification was overcome when active and engaged women were able to remain active and engaged in both their professional and personal lives. On the other hand, resignation resulted when work was lost or without meaning and connections were broken.¹⁰⁴ These studies, which equate employment with a sense of community, support the idea that many women were negatively affected by transition by the fact that they endured highest numbers of job loss. According to UNESCO, 14 million of the 26 million job losses in Eastern Europe since 1989 affected women.¹⁰⁵

Therefore there exist strong support for the notion that dramatic changes in functions and processes of the post-communist welfare state and market have resulted in not only differing consequences for women and men but also, to a certain degree, between women. In the post-communist socio-political and economic context, women in general are more likely than men to be poor. They are more likely to be responsible for children after a divorce or if the parents were never married. Women are also more likely to be employed in positions with low remuneration, despite the fact that in many women in former Soviet countries

¹⁰⁴ *ibid*

¹⁰⁵ Andrea Spehar "Eastern European Women: Winners or Losers in Post-Communist Transitions?" *Centre for European Research at Göteborg University* (2005): 99-124 <http://gupea.ub.gu.se/dspace/bitstream/2077/517/1/A.%20Spehar,%20FoE%20nr%2018.pdf> (accessed April 26 2008)

have higher educational attainment level as a group.¹⁰⁶ Women suffer from marked wage gaps and the lack of savings; meagre state pensions mean that the elderly depend on external (non-state) financial help, a burden that often falls upon their children.¹⁰⁷ Although women certainly appear to be more vulnerable to poverty, focus on economic growth and a free market in the former Soviet Union has largely marginalized issues of social welfare that affect women the most including (but not limited to) childcare, maternity leave and wage equality. The special child allowance for single mothers, which had been established in the postwar USSR to encourage childbirth, was quickly eliminated in many countries after the fall of communism. In Latvia, nearly half of childcare centers (pre-schools) were promptly closed, making it difficult for many single mothers enter or remain in the workforce (if they still had jobs to go to, that is).¹⁰⁸ The rate of unemployment among younger adults, particularly young women, rose and in many cases remains high. The result is more women having to work in the informal or “grey” economies, taking on jobs that are short-term, vulnerable and low-paying (selling flowers on the street, for example).¹⁰⁹ Even in Germany today, recent estimates suggest that productive activity in the German informal economy constitutes roughly 16% of the Gross National Product (GDP).¹¹⁰ Therefore even in countries that have emerged from transition with strong

¹⁰⁶ Stukuls 546

¹⁰⁷ *ibid*

¹⁰⁸ Stukuls 544

¹⁰⁹ Stukuls 549

¹¹⁰ Holger Floeting and Dietrich Henckel “Job Nomads, Moonlighters, and Arab Pizza Cooks: The Futures of Urban Labour Markets?” *German Journal of Urban Studies* 43, no. 2 (2003) http://www.difu.de/index.shtml/publikationen/dfk/en/03_2/03_2_henckel2.shtml (accessed April 24)

institutions and economies, we find large and burgeoning grey economies, in all likelihood made up with those people which are left out of the main economy (usually either migrants who cannot work legally or those working in illegal or clandestine industry).

The rapid expansion of the free market has brought economic competition, choice and prosperity to some. It has also brought with it unemployment, a decrease in state support for the needy and the rapid rise of prices and the development of a competitive, capital-driven business environment, all of which combine to foster conditions ripe for the massive expansion of the sex business in Eastern Europe and the former Soviet Union. Stukuls highlights several factors which are particularly important in its proliferation; first, that economic hardships that are disproportionately borne by women; second, the commodification and marketability of sex and sexuality; third, the lack of comprehensive and enforceable laws and regulations in this sphere and the state's *laissez-faire* approach to the prominent and profitable sex trade.¹¹¹ Changes to everyday life as well as gender identities/dynamics – the result of transition – have greatly influenced the pace and direction of the sex industry's proliferation.

While many variables combine to create an environment where prostitution and the sex industry are likely to flourish, the economic hardships engendered by the transition to a market economy are widely held as the primary explanation for their expansion and proliferation. Author Gail Kligman posits that, “especially in

¹¹¹ Stukuls 550

this period of transformation, secondary economic activities remain critical to economic survival or betterment.’¹¹² For some women, including saleswomen, accountants or students looking to supplement their wages and make ends meet, these secondary economic activities include selling sexual services. For others, for example single mothers or addicts, for whom leaving the home for extended periods of time is not possible for one reason or another, prostitution becomes the primary means by which they earn a living. As one Latvian woman (who, by her own admission organizes women involved in prostitution, whether at home or abroad) commented, “It is better to work as a prostitute than to go hungry”, adding “the desire to go abroad and offer sexual services is great.”¹¹³

Prostitution, its expansion and proliferation across the Eastern Europe and the former USSR, can thus be seen as an unfortunate by-product of the combined effects of *marketization* and *democratic development*.¹¹⁴ Some might call it an inevitability of the transition process, though it is too easy or complacent to pass off a negative effect or reaction to something as “inevitable”. Perhaps “unintended” or “unexpected” are more appropriate words. Better yet, the explanation offered by Wijers and Lap-Chew: that sex work “appears as a strategy for many women to cope with painful economic consequences of global capitalism.”¹¹⁵ The socio-economic conditions as a result of the transition process in many post-communist countries have drastically narrowed women’s choices

¹¹² Stukuls, 551

¹¹³ *ibid*

¹¹⁴ Stukuls 555

¹¹⁵ Nikolic-Ristanovic, 124

for securing economic security to the point where many choose sex work. That said, while the effects of post-communist transition may serve as a “push” factor in more women becoming involved in prostitution, what must likewise be explained is the “pull factors” and to what degree they are responsible for the oppression of women throughout the former communist states. While the pull factor can exist on an individual level, this paper focuses on national and systemic elements that “pull” or at least facilitate the turn of women towards prostitution, including state legislation, regionalism and globalization (explained by my remaining two hypotheses).¹¹⁶

What is interesting about this transition explanation is that while it is widely held that “prostitution is driven by an individual’s poor material conditions”, economic solutions have largely been overlooked to what is clearly a problem with significant economic roots. As is the case in Germany, the debate often revolves around whether or not prostitution should be legal or illegal, rather than why there exists a problem to begin with. In many cases there seems to be a tenuous link at best between the problem as understood and the prescribed solution, whereby we know the problem is economic in nature but the solution is seen as lying in legislation.¹¹⁷ Rather than questioning the trends in post-communist development that have pushed women otherwise unable to make a living into prostitution, the issue has been narrowly defined as a juridical one. The issue of composition with

¹¹⁶ Some authors categorize legislation/policy as a “facilitating” factor or variable; that is, legislation or policy on its own acts as neither a push nor pull agent but rather as simply an enabling or facilitating element.

¹¹⁷ Stukuls, 554

respect to the sex industry in Germany – that is, the amount of nationals vs. non-nationals working as prostitutes – may play a significant role in the treatment of prostitution as a problem that needs to be legislated (rather than say, prevented or even understood).

Trafficking

The increase in vulnerability of women in post-communist societies – to poverty, exclusion, domestic violence, etc – extends beyond prostitution into the realm of human trafficking for the purposes of sex. Traffickers make use of the existing market demand for prostitutes and women's need to find jobs, and are greatly facilitated by our increasingly globalized and interconnected world. In that process the development of a market (neo-liberal) economy plays a major role both by enhancing disparity and inequality between countries and by creating demand for women as sex objects:

“Disparities and inequalities influence the channels of migration, in general, and the channels of trafficking in particular: they are the consequence of the of ‘the world economic order, of the distribution of wealth among nations and the exploitations of persons by others’”.¹¹⁸

Like any other trade, supply and demand are inextricably linked in the trade of women and girls for the purposes of sex. Economic hardships and their consequences to women create a potential supply of workers for the sex industry. That said, it is important to keep in mind that this “supply” would never be used

¹¹⁸ Nikolic Ristanoniv, 125

for sex trafficking the way it is if it was not for the demand for women as sex objects in both post-communist and developed countries.

It is important to address the oft-referred fact that many trafficked women make a conscious decision to go abroad, hoping to find a better life. While it is true that many women desire to leave their home countries for job opportunities in other countries, many sources suggest that deception – regarding the nature of work, conditions of work and wages, etc – plays a central role in women falling victim to trafficking. While women may consciously decide to better their personal economic situation, some are stripped of their agency along the way and they are no longer in control of their destiny. In many cases women are so desperate to improve their situation that they rely on tempting offers from job ads in the newspapers or on promises made by people known to them, both of which often leads them directly into the hands of traffickers. The most frequently used methods in which women of Central and Eastern Europe are “recruited” into trafficking include (allegedly legitimate) job offers, kidnapping, false invitations/arrangements for going abroad and the recruitment for domestic prostitution.¹¹⁹

Surprisingly, many women involved in prostitution are encouraged by their boyfriends, family or friends as a way to solve financial problems.¹²⁰ Involvement in domestic prostitution is often the first step in women falling prey to traffickers.

¹¹⁹ Nikolic-Ristanovic, 116

¹²⁰ Nikolic-Ristanovic, 117

Women who want to work in prostitution in their own country often have to do so through a pimp, who then sells them to other pimps, first within their own country and later outside the country. After becoming trapped in trafficking, women are usually resold over and over, in multiple countries. Increasingly then, transnational trafficking is increasingly interlaced with the regional and national.¹²¹ For example, Russian women are often resold multiple times within Serbia before they are trafficked to Italy or Germany for a much higher price. Once they are taken from their home country, women are completely dependent on their pimp for survival, making escaping trafficking and returning home near impossible. As we shall see in the next chapter, globalization and the expansion of the EU act as facilitating factors in the ability of traffickers to move women easily from East to West.

While the end of communism has seen a clear expansion of rights and opportunities, not the least of which are freedoms of speech and of the press and the creation of multiparty democracies and free markets (though admittedly to different degrees across various countries), it can be argued that women have been disproportionately affected by the negative processes engendered by the post-communist transformation, including the deepening impoverishment of the population, the open discrimination against women and the expanding market in bodies for sexual consumption.¹²² Sex and sexualized bodies have, from the early post-communist period, been a tremendous source of profit. The increase and

¹²¹ Nikolic-Ristanovic, 119

¹²² Stukuls, 558

spread of prostitution across the former Soviet Union was mirrored by a rapid expansion of pornography as well. While pornography is still widely available (to various degrees) across the former Soviet Union, it is no longer novel, and in many places the rapidly saturated market that followed the collapse of communism ultimately led to a decline in both purveyors and materials.¹²³ Prostitution, on the other hands, has flourished in many countries, and appears to lack neither service providers nor service purchasers.

The (re)introduction of a market economy and private property relations and privatization of state industry has created a social structure in which the redistribution of power, class and gender relations creates a different system of winners and losers.¹²⁴ While it is certain that many men living in Eastern Europe and Soviet successor states have been negatively affected by the drastic reforms, women have been differentially affected, in many cases negatively. As this chapter has discussed, the combination of many of effects of transition (expanding poverty among women, a shrinking job market for women, the assignment of traditional gender roles, etc), along with the current legal status of prostitution has created a situation where prostitution flourishes and seems unlikely to decline in the near future or anytime in the future for that matter, if we continue to overlook the systemic factors or root causes behind it.¹²⁵ That said, while the difficult economic conditions created by market transition policies are certainly an important variable in the proliferation of the sex industry, this only serves as a

¹²³ Stukuls, 557

¹²⁴ Graham and Regulska, 68

¹²⁵ *ibid*

partial explanation. As we shall see in Chapters 3 and 4, globalization and the legal context in which prostitution in a given country exists (whether it is legal or illegal, the degree to which it can be controlled, whether it is taxed or limited to particular zones) is extremely important and merits careful analysis.¹²⁶

¹²⁶ Stukuls 553

Chapter 3 – Mobility: Globalization and the Expansion of the European Union

The previous chapter examined how the socio-economic impact of post-communist transition contributed to the proliferation of the sex industry in the region. As we saw in Chapter 2, transitioning and economically fragile states provide the supply of women who work in the sex industry, or the “what”. Globalization and the expansion of the European Union, this chapter’s focus, represent the “how”, or the facilitating factor. This chapter will examine this “how” factor - how prostitutes physically move from country to country in order to fulfill demand where it exists, but also how the sex industry’s nature has changed as a result of the liberalization of trade and the increased flow of ideas and information exchange that accompanies the opening up of physical borders.¹²⁷

Accelerated processes of globalization are leading to unprecedented levels of displacement around the globe. Whether it involves people moving away from something (poverty, war, discrimination, persecution, etc.) or towards something (better employment opportunities, a higher quality of life, family reunification, etc) more people are leaving one country for another than ever before. In the year 2000 alone, more than 150 million people were engaged in international migration. This is a doubling in figures from the mid-1980s and one that is expected to double again by the end of this decade, a rate of migration which surpasses that which characterized the 19th and early 20th centuries, the “Great Age” of mass migration. Mass migration is viewed by some as one of the main

¹²⁷ Kligman and Limoncelli, 119

indicators of globalization. Others see it as the central force behind it. Others still see migration as a direct result of globalization. Each of these perspectives suggests that mass migration is intrinsically linked to the phenomenon known as globalization, which is characterized by acceleration seen in vast technological changes, media revolution, global economic integration and massive changes in production systems and labour markets.¹²⁸ And while the mass movements of people is hardly new, the patterns and pace of migration, specifically from where and to where people are moving, have changed and are changing substantially.

The acceleration associated with globalization permeates nearly every facet of our world today, including sex. Quite simply, globalization has affected the sex industry just as it has any other, and the effects are easy to detect. Internet pornography is a booming business as are sex tourism and so-called online intimate encounters. Pornographic magazines and movies from around the world, of any nature, are available to anyone who can afford them. Perhaps most remarkable is the effect increased mobilization of people has had upon the sex industry around the world, particularly in Europe. One only has to visit a brothel, sex house or simply walk the red light district of any major city in Europe to see the industry has become as diverse in its makeup as the continent is itself: Bulgarians in Belgium, Russians in Germany, Moldavians in Hungary; increasing demand for sex workers paired with facilitated mobility has completely changed the nature and makeup of the industry in Europe. As we saw, under communism

¹²⁸ Anny Misa Hefti "Globalization and Migration" from *Responding to Globalization* - European Solidarity Conference on the Philippines (September 1997) <http://www.philsol.nl/solcon/Anny-Misa.htm> (accessed April 15 2008)

pornography, prostitution and the like officially denounced (and in many cases did not “officially” exist). The lack of mobility either in, to or out of the region meant that the sex industries that existed were limited in nature and mostly restricted to the national.¹²⁹ Since then, there has been a marked increase in the mobility of prostitution, particularly transnational, to countries in the CEE region, European Union, Middle East or to other continents.¹³⁰ One of the most striking images of the changes in Eastern Europe soon after the fall of the Berlin Wall was that of women lining up along the highways across the region offering sex for sale.¹³¹

The collapse of communism catapulted the region from relative isolation into the global economy. The sudden availability of cheap labour and new potential markets brought multinational corporations, banks, and manufacturers to the region. To the sex industry came an influx of directors of pornographic films and magazines as well as international tourist agencies looking for new talent at cheap prices with little threat of penalty. Across Eastern Europe and the former USSR, global secondary economic activities rather than the more localized ones of the communist era blossomed. Among them were illegal and clandestine activities including the underground trafficking in people (including women for sex), drugs, firearms and even human organs.¹³²

¹²⁹ Kligman and Limoncelli, 122

¹³⁰ Licia Brussa “Migrant sex workers in Europe: STI/HIV prevention, health and rights” From *Research for Sex Work 5* newsletter (2002) <http://hcc.med.vu.nl/artikelen/brussa5.htm> (accessed April 24)

¹³¹ Kligman and Limoncelli, 119

¹³² Kligman and Limoncelli 122

As what happens with any industry when it intersects globalization, the sex industry is marked by fierce competition and falling prices as a greater number of sources become available. The expanding and disappearing borders that characterize contemporary Europe has added a whole other dimension to globalization of the sex industry – mobility. Facing greater competition, many prostitutes are inclined to take more risks (which includes leaving their home country for another) in order to attract clients and remain competitive.¹³³ The fact that prostitution is illegal in many European countries (though often unofficially tolerated) means that there is little protection or security for those working in the sex industry, both in their own country and even less so outside in a foreign country. Countries with more liberalized prostitution laws (Germany, the Netherlands) can attract foreign sex workers looking for work without fear of legal persecution (though they risk police arrest or expulsion for illegal migration).

The collapse of communism and the rise of globalization means that not only can industry and individuals move into Eastern Europe and the former Soviet Union, but it also meant that people can, after years of restricted mobility, leave the region and seek out a better life for themselves if they so desire. For countries with skyrocketing levels of unemployment and economic stagnation, migration represents one of the few opportunities to escape almost certain poverty, destitution or conflict. In Bosnia and Herzegovina for example, a 40% national

¹³³ Musacchio, 1025

unemployment rate has led to the majority of Bosnia youth (65%) wanting to leave the country in search of better opportunities and quality of life.¹³⁴

Female Migration

Migration has become increasingly common among women, a phenomenon not limited to Eastern Europe. Today women make up nearly half of all migrants worldwide, an estimated 95 million of 191 million people living outside their countries of origin in 2005.¹³⁵ On a regional level, migrant women numerically outnumbered men in Europe, Latin America and the Caribbean, North America and Oceania, while in Africa and in Asia they were generally underrepresented when compared to men.¹³⁶ The rise of mobility of women around the world is often referred to as the feminization of migration.

Women, as well as men, migrate for a variety of reasons. Not surprisingly, one of the most common motivating factors driving migration is economic in nature. A 2006 IOM publication explains that, “in the absence of catastrophic events, the movements of people from one area to another are primarily the direct result of inadequate economic and social opportunities in the area of emigration and superior opportunities in the area of immigration. Push-pull factors of today

¹³⁴ “Migration Management in Central and South-Eastern Europe: IOM Strategy and Objectives 2006-2007” *International Organization for Migration*, 21

¹³⁵ “Summary of the UNFPA-IOM Expert Group Meeting on Female Migrants” from selected papers of the UNFPA-IOM Expert Group Meeting *International Organization of Migration* New York (May 2006): 12

¹³⁶ “Summary of the UNFPA-IOM Expert Group Meeting on Female Migrants”, 24

hardly differ than before”¹³⁷ Though this explanation is certainly applicable to CEE and the former Soviet context, there also exists an argument that warns against relying too heavily upon the economy alone to explain the mass migrations of today. In this view, modern realities play as big a role as traditional variables in people’s decision to migrate. Author Anny Misa Hefti suggests that contemporary views on migration depart from earlier assumptions based on the push and pull theory. Whereas before purely social and economic forces impelled people to migrate, globalization of communication technology now plays a key role in the individual’s impetus to migrate. Linkages between sending and receiving countries are more easily established and networks connecting migrants and non-migrants are easily developed with the increased flow and sharing of information and news.¹³⁸

While we cannot discount factors such as poverty and social opportunity in peoples’ decisions to migrate, Hefti is correct to suggest that modern forms of technology and communication have affected patterns of migration and may very well play important roles in not only a person’s decision to migrate, but how and to where they will do so. Trafficking, likewise, has been significantly affected by globalization’s accelerations in the telecommunications field and in many ways owes its sustenance and proliferation to traffickers’ ability to communicate with one another to both make arrangements and avoid apprehension.

¹³⁷ Monica Boyd “Push Factors Resulting in the Decision for Women to Migrate” from Selected Papers of the UNFPA-IOM Expert Group Meeting *International Organization of Migration* New York (May 2006): 38

¹³⁸ Hefti

Though some may still associate female migration with family reunification and, in some cases as we will see, forced migration, more women today are migrating independently to meet their own economic demands, a process which has been facilitated by globalization. Not surprisingly, men and women circulate differently in the global economy, with women found predominantly seeking work in the service and welfare sectors (those typically more gender-segregated, unregulated and most conducive to labour migration).¹³⁹ There is a growing demand for female labour in many parts of the world and new social needs have created a demand for services in which immigrant women are prepared to work.¹⁴⁰

Sex work, and specifically, prostitution has become a particularly prevalent form of labour migration for women. Prostitution is a mobile or transient occupation because it involves easily transferable skills. A sex worker can perform their job in other countries with relative ease, unlike for example a teacher or an accountant where language or credential recognition could prove as a significant barrier. In addition, in some countries prostitutes from certain areas or regions are seen as “exotic” and may be sought after more than local ones. After the fall of the Berlin Wall men from the West would travel to East Germany for women from “the land that time forgot” in exchange for lavish material goods not yet available in the

¹³⁹ Boyd, 34

¹⁴⁰ Hefti

East.¹⁴¹ As a result of the both the demand and their facilitated movement, in some countries the influx of foreign prostitutes has lead to tension between local (or national) prostitutes and migrant sex workers who will often perform services for cheaper or in poorer working conditions.

Migration and Immigration in the EU

In addition to the collapse of communism in the region, migration and the mobility of people in Europe has been affected by the growth and expansion of the European Union. One of the fundamental goals of the EU is to abolish internal borders between member states (increase internal mobility), preventing the free and fluid movement of people and goods. The practicalities of this idea to create an area without internal border controls were first set out by the Schengen Agreement in 1985 and the subsequent Schengen Convention in 1995 that abolished controls on internal borders between the signatory countries.¹⁴²

Prior to the implementation of the Schengen Convention, travelling across Europe was much more onerous. Citizens of Europe had to show their national ID cards or passports at borders when travelling to neighbouring countries, with nationals of certain countries requiring separate visas for every country in Europe. A vast network of border posts existed across the continent which disrupted traffic and trade - causing delays and costs to both businesses and visitors. Since the

¹⁴¹ Sharp, 359

¹⁴² "The Schengen Convention: Abolition of internal borders and creation of a single EU external frontier" *Europa* (August 2005)
http://ec.europa.eu/justice_home/fsj/freetravel/frontiers/fsj_freetravel_schengen_en.htm (accessed January 15 2008)

implementation of the Schengen rules, border posts are no longer in operation between participating countries which means that between most countries road traffic is no longer delayed; road, rail and air passengers no longer have their identity checked by border guards when crossing borders (however, security controls by carriers are still permissible).¹⁴³

As of December 21 2007, 24 countries (including nine of the newest EU member states – Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia) plus Monaco have abolished border controls on the movement of persons within the Schengen Area. The EU's two newest member states, Romania and Bulgaria, are currently enhancing their respective security systems and will likely join over the next few years (newly accessioned countries are “phased in” as they are able to prove they have the capacity to properly monitor and safeguard the movement of peoples across their borders).¹⁴⁴

¹⁴³ For more information on the rules governing the movement of persons see Article 21(b) “REGULATION (EC) No 562/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders” (Schengen Borders Code) http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_105/l_10520060413en00010032.pdf (accessed April 25 2008)

¹⁴⁴ “6 December 2007 COUNCIL DECISION on the full application of the provisions of the Schengen *acquis* in the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic” (2007) http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_323/l_32320071208en00340039.pdf (accessed April 22 2008)
For more information on the Schengen Area and Schengen participants please see “The Schengen area and cooperation” *Activities of the European Union: online legislation* <http://europa.eu/scadplus/leg/en/lvb/l33020.htm> (accessed April 22 2008)

For citizens of non-EU, non-EEA countries, the development of the Schengen Area and signing of the Schengen Convention has had different implications. For those from non-signatory countries, in order to travel to, work or live in a country that forms part of Schengen, visas are still required, though different types are needed for different purposes and different countries are subject to different rules (all of which are outlined in Schengen Treaty). That said, though there are some exceptions, in general once a third-country national gains entry into one Schengen country, they may visit or pass through any other member country so long as they respect the time limit associated with their particular visa and show proper identification if and when required.

There are essentially two main types of visas associated with travel to and through the Schengen Area. The first is a short-term visa which enables third-party nationals to travel within the Schengen Area for a maximum period of 90 days. It should be noted that a Schengen visa does not confer automatic right of entry; all transit or entry conditions laid down by EU legislation must be met (for example they must have proper identification, proof of funds to sustain their stay, no record of being a threat to public safety, etc.)¹⁴⁵ For stays which exceed three months, so-called national visas (known as “category D” or long-stay visas) are issued by the relevant Schengen country where the third-country national intends to reside. This is where national immigration and residency policy can vary rather

¹⁴⁵ “REGULATION (EC) No 562/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)”

substantially as different countries have different requirements and rules. Any third-country national who is a holder of a residence permit of a Schengen state, which is granted for a stay which exceeds three months, is allowed to travel to any other member state for a period of up to three months.¹⁴⁶

Though illegal migration/immigration is hardly a new concept or concern for Europe, the expansion of the EU has brought certain considerations to the forefront, for example the importance placed on the countries that lie on the edge of the Schengen Area. The harmonized EU external border controls are defined in Article 6 of the Schengen Convention. They are further specified in the common manual on external borders, a set of operational instructions on the conditions for entering the territory of the signatories States and detailed procedures and rules for carrying out checks. A complex information system known as the Schengen Information System (SIS) was set up to exchange data on certain categories of people and lost or stolen goods.¹⁴⁷

While rules and regulations are in place to control the EU's external border, the virtual abolishment of internal boundaries means there are now fewer checks and balances with respect to monitoring and stopping illegal migration once individuals make it into the Area. Great pressure is placed upon countries that make up the external border of the EU and new members must prove they have

¹⁴⁶ *ibid*

¹⁴⁷ "Abolition of internal borders and creation of a single EU external frontier" *Europa online* (August 2005)
http://ec.europa.eu/justice_home/fsj/freetravel/frontiers/fsj_freetravel_schengen_en.htm (accessed on April 17 2008)

the resources, technology and capabilities to properly patrol and safeguard their boundaries. They represent the first (and some would argue, the most important and the only) line of defence in keeping illegal migrants and criminals out, and all members of the Union place their border security in their hands.¹⁴⁸

The expansion of the EU and the development of the Schengen Area have likewise affected migrant prostitution and the sex industry in Europe. With each successive round of enlargement, changing EU borders affect where sex workers come from, and, perhaps along with specific national prostitution policies, determine where they are headed and how they get there. While Ukraine, Russia, the Balkans and CIS countries for the most part remain what is often referred to as “sending” countries (source countries for migrant prostitutes) it is no longer Western Europe alone that serves as a popular destination for these migrant prostitutes (and similarly, the trafficking in women).¹⁴⁹ The CEE countries (traditional source countries) have become at the same time destination, transit as well as sending (source) countries. Hungary, for example, once a key source country for migrant workers, is now a transit and destination country as well due

¹⁴⁸ Interestingly, the EU’s most recent enlargement appears to have relieved some migration pressure on Germany’s eastern border. As a result of negotiations with the prospective member states, Poland has reinforced patrols on its border with Ukraine, Belarus, and the primarily ethnic Russian enclave of Kaliningrad, with support from the EU and Germany. Thus, unauthorized migrants can be picked up by the Polish Border Police and thereby barred from entering Germany. As new member states are permitted to join the Schengen Area, this trend towards even tighter border controls could become stronger.

¹⁴⁹ Musacchio, 1024

to its geographic location, EU membership and related economic prosperity (which all serve as “pull” factors).¹⁵⁰

That said, many Ukrainian, Russian and Moldavian women that initially come to work in the sex industry in Central Europe will, after some time, move further West to countries like Germany, Belgium or the Netherlands where wages are higher and prostitution policies may be more liberal. In the early 2000s, Interpol estimated that there were some 300,000 women from eastern European countries engaged in prostitution in Western Europe.¹⁵¹ An important change in the prostitution patterns has thus resulted from these enormous migration flows from Central and Eastern Europe towards Western Europe. The presence of Eastern European women in EU countries is on average 30%-40% of the total population of sex workers, with certain individual countries having a far higher percentage of their sex industry made up of foreigners. Another significant movement is the internal migration flow from Eastern Europe (e.g., Moldova, Ukraine) to Central Europe (e.g., Hungary, Czech Republic).¹⁵²

Migrant prostitution is therefore on the increase across Europe; we observe an enormous mobility of women looking for economic resources in the informal sector, such as sex work in their own country, within the region and at the transnational level. As a researcher in the field confirms, a rise in prices and a

¹⁵⁰ “Migration Management in Central and South-Eastern Europe: *IOM* Strategy and Objectives 2006 – 2007”, 31

¹⁵¹ Musacchio, 1024

¹⁵² Brussa

rise in the value of the euro all contribute to attracting foreign workers to Germany to work in the industry.¹⁵³ Prostitutes can more easily move and find employment in another country (though technically they should adhere to national rules regarding residency, which some do while others do not). While prostitution is illegal in most countries, it is “unofficially tolerated” in many. In others still, such as Germany, it is legal which serves as an additional “pull factor” in terms of attracting foreign sex workers to the country as they are able to work without fear of persecution. EU expansion has thus significantly facilitated a sex worker’s ability to work where he/she pleases and the demand is high.¹⁵⁴

Trafficking

Just as transnational migration from East to West has increased, the trafficking of human beings for sex purposes has been on the rise as well. Called “the underside of globalization” by the International Labour Office (ILO), human trafficking, as well as forced labour and child labour are practices of the global market economy that do not automatically disappear in the course of social and economic modernization.¹⁵⁵ In fact, if anything, modernization only contributes to the proliferation of human trafficking and smuggling. While trafficking is hardly a new phenomenon, similar to prostitution or migration, patterns of trafficking have been dramatically affected by globalization and the increased movement of people, wealth and information. Prior to the collapse of communism, most

¹⁵³ Representative from a research institute, personal telephone interview, March 3rd 2008

¹⁵⁴ *ibid*

¹⁵⁵ Cyrus, Norbert “Trafficking for Labour and Sexual Exploitation in Germany” *International Labour Office* Geneva (November 2005), 1

trafficked women came from South East Asia and Latin America to fill the demand for sex workers in Europe.¹⁵⁶ Today, the European Commission estimates that 120,000 women and children are trafficked into Western Europe each year (though it is difficult to say how many of those are for sex).¹⁵⁷ According to the IOM, 10% - 20% (2,000 – 6,000) of the 20,000 to 30,000 illegal female migrants who enter the sex industry in Italy each year are trafficked. In Greece, research has shown that over half of trafficked women are from Russia or Ukraine, while a third are from the Balkans and a small percentage from Asia and Africa. Trafficking to Belgium tends to be from Nigeria, China, Albania, Romania, Russia and Bulgaria. The majority of those that end up in the Netherlands appear to be from CEE. All European nationalities seem to be involved, with numbers and sources changing as the internal borders of the EU disappear and its external border expands.¹⁵⁸

Some blame the widening and deepening of the EU for the increase in the trafficking of women to and through Europe. In this view, as the EU widens and deepens, its focus has increasingly turned inwards as “Fortress Europe” grows and becomes more of a reality. The tightening up of European Union labour markets to third country nationals with professional qualifications (with a few exceptions) has meant that for many women, one of the few ways they *can* find work is in either the domestic sector or other low-skilled level service jobs, many of which form part of the informal or grey economy. The demand for women migrant

¹⁵⁶ Musacchio, 1015

¹⁵⁷ Musacchio, 1016

¹⁵⁸ Musacchio, 1025

workers in unskilled occupations, in particular those going into domestic service, is often high and sustained since they represent a form of “replacement mobility” for female nationals who are freed from their household and care responsibilities to take up other positions in the labour market. Many women from outside the EU will enter and work in the service industry in the hopes of eventually securing better or high-skill work down the road. This, however, is difficult without a long-stay visa, which can be challenging to obtain. The result is that many migrants work illegally and gain entry to the EU through illegal means.

Similar to what has occurred in terms of migration, changing EU borders and related visa requirements have also greatly affected trafficking patterns and routes. Each time a new country joins the Union, reverberations are felt in terms of from where, to where and how traffickers move people as they adjust to new contexts. For example, a 2004 US State Department reports that the liberalization of visa requirements for Romanians traveling to EU member states has resulted in more women being trafficked to Western Europe than say, to the locations of the former Yugoslavia. In this case, EU accession can be seen as facilitating trafficking within and across its internal borders as with country that joins, the common, borderless area across which traffickers can easily traverse once it grows in size and scope.¹⁵⁹ Field workers report seeing more Romanian and Bulgarian women in their counselling centers for trafficking victims; this proves that increased mobility does not completely eliminate the threat of coercion from

¹⁵⁹ Kligman and Limoncelli, 126

migration. They may be able to move around more easily but they are still vulnerable to traffickers.¹⁶⁰

Today, the main trafficking and smuggling routes into the EU lead from Russia and the Baltic States through Poland and the Czech Republic to Austria and Germany; from Ukraine through Poland, Slovakia, and Hungary to Austria and Germany; from the Balkans to Greece and Italy and Austria. The accession of new member states has serious implications for migration related organized crime, as the EU borders are now closer to key source and transit countries. Many smuggling networks originate from the directly surrounding countries i.e. Albania, Republic of Montenegro, Republic of Serbia, Turkey and Ukraine, and their members operate within the EU itself.¹⁶¹

Some suggest that restrictive immigration policies, while intending to curb immigration for a variety of reasons (the protection of labour market, security considerations, etc.) can result in an increase in illegal or irregular immigration, and a related increased incidence of traffickers and smugglers. From this perspective, a restrictive immigration policy means that there is less opportunity for people to legally immigrate to a country, which means they are more likely to resort to illegal means of entry (or not enter at all). As a representative from an anti-trafficking NGO in Germany points out, if you have more safe and legal ways into migration, there would be less danger and trafficking. It is near

¹⁶⁰ Representative from an anti-trafficking NGO, personal telephone interview, March 5th 2008

¹⁶¹ "Migration Management in Central and South-Eastern Europe: IOM Strategy and Objectives 2006-2007", 11

impossible for a single woman to immigrate into European countries, which leaves few options.¹⁶²

Human smugglers operate where people who want to migrate cannot find the legal means to do so, either because such means do not exist or the smuggled people are not aware of them. It is here that the issue of consent intersects smuggling and trafficking. People who are smuggled across a border and enjoy freedom upon arrival are considered to be party to a 'voluntary' agreement. A 'voluntary' agreement, however, may be the result of deception, or may involve an individual or family going into debt to pay for the trip, which in turn puts them at the mercy of the lender. This may result in physical confinement until the debt has been cleared. It may also, directly or indirectly, result in forced labour. In these cases, the initial 'voluntary' agreement becomes a form of trafficking¹⁶³ Therefore what may have been a consensual arrangement to start can easily become a situation marked by coercion.

In the he context of the EU, many suggest that the liberalization of internal policies relating to movement and trade of goods and people have been mirrored by increasingly restrictive approaches to policies relating to the external dimension, namely immigration. "Fortress Europe" may improve relations and opportunity within the Union, however those countries that fall outside the external boundary of the EU are left on the outside looking in upon an area that

¹⁶² Representative from anti-trafficking NGO, personal telephone interview, March 5th 2008

¹⁶³ Cyrus, 2

boasts prosperity and promise. Germany is an attractive destination country for migrant workers from all over the world. They enter the country through clandestine channels or as asylum seekers, seasonal labour migrants, visitors or students. Despite the fact that access to the labour market is relatively restricted, experts estimate that roughly one million migrants are currently employed in Germany.¹⁶⁴ It is likely that, similar to other countries, some migrants work in the grey or informal economy (domestic work, etc), a sector that generates roughly 16% of the GNP in Germany.¹⁶⁵

Migration and Immigration in Germany

The history of Germany's labour and immigration policies is unique and, at certain times, marked by contradiction. Since the end of the 1970s when the "guest worker programme" was terminated, Germany prioritized the prevention of unwanted immigration as a necessity in order to protect German labour markets and to make possible the integration of legal immigrants.¹⁶⁶ Though there was a brief period in 2000 when all political parties were pushing towards a more liberalized immigration policy, 9/11 changed the course as the German electorate showed increased concern over issues of security and crime associated with

¹⁶⁴ Cyrus, 1.1

¹⁶⁵ Cyrus, 13

¹⁶⁶ The term "*guest worker programme*" (or "*Gastarbeiterprogramm*" in German) refers to the bilateral recruitment agreements the German government signed with other European countries (Italy, Greece, Turkey, Portugal, and Yugoslavia) in the 1960s and 1970s in an effort to mitigate the labour shortages. These agreements allowed for the recruitment of foreign workers to work in Germany's industrial sector in low-skill and low-qualification jobs without adding permanent residents to the population (initially, though later many would permanently settle). Migrant populations in Germany from these countries grew rapidly as a result, and the guest worker programme became a controversial issue and was criticized for contributing to the poor integration of migrants in Germany.

immigration. This preoccupation made the development of a new immigration policy difficult as policymakers were tasked with designing a policy that took into account both the country's high de-facto immigration numbers (an estimated 30% of the population residing in Germany is born abroad or to immigrants who entered Germany after 1945) but at the same time, a rather strong anti-immigration sentiment.¹⁶⁷

After years of debate, commissioned reports and legislative gridlock, Germany's new Immigration Act finally came into force on January 1, 2005.¹⁶⁸ The Act constitutes the first comprehensive reform of the existing Aliens Law into a modern immigration law, with a focus on labour migration, humanitarian regulations, integrations and security dimensions.¹⁶⁹ Often referred to as the Resident Act (and replacing the previous "Aliens Act"), the law contains regulations on the entry of foreigners into Germany and residence in the country, on possible residence purposes and on termination of residence and asylum procedure.¹⁷⁰

One particularly interesting provision of the Resident Act relates to labour migration, specifically the replacement of separate residence and work permits with a single permit (Resident Permit), which gives residents access to the labour

¹⁶⁷ Cyrus, 7

¹⁶⁸ Oezcan Veysel "Germany: Immigration in Transition" *Social Science Centre Berlin* <http://www.migrationinformation.org/Profiles/display.cfm?ID=235> (accessed April 24 2008)

¹⁶⁹ "The Immigration Act" *Federal Foreign Office Immigration Act* <http://www.auswaertiges-amt.de/diplo/en/WillkommeninD/EinreiseUndAufenthalt/Zuwanderungsrecht.html> (accessed April 22 2008)

¹⁷⁰ *ibid*

market. The Act is said to provide for highly qualified persons to be granted permanent residence from the outset (rather than undergoing a long and multi-staged process). Self-employed persons who invest at least €1 million and create a minimum of 10 jobs are granted a permit, as are students for a period of one year following the completion of their studies. The general ban on the recruitment of unqualified and low-qualified people is to be retained, however, with the exception of certain occupation categories and if there is a public interest in an individual being granted the right to take up employment.

It would thus seem that the immigration process in Germany been designed to be more streamlined, with highly skilled individuals and those with resources more easily able to obtain residence and then unlimited settlement permits (student being an exception) than before, while those falling out of those categories (typically those who are less educated or skilled) are effectively shut out of the immigration process. Combating illegal immigration falls under the responsibility of the Department Finance, the specifics of which are outlined in the 2004 Illegal Employment Act (contains specifics regarding what, exactly, constitutes illegal employment and outlines the related punishments).

A preliminary review of the new Act reveals a number of provisions that relate to the situation of migrant prostitutes and trafficking in the region. While coming to visit Germany for a limited amount of time as a tourist is easy enough, obtaining a residence permit to live long term and work is more challenging. While

prostitution is now legal in Germany, it is unlikely that sex work will be one of the designated skill sets or careers that belong to the list of jobs and which get preference in terms of being granted residence permits, both because of the low-skill nature of the occupation and because of public opinion. It is therefore likely that many prostitutes from outside of Germany working in the country are doing so illegally, either by entering Germany under a tourist visa (or claiming to be traveling as a tourist) and simply staying past the short-term visa time limits, or by entering illegally, either at so-called “green borders” or using false identification or false passports.¹⁷¹ Since Germany is a member of the Schengen Area, an individual arriving at any one of the Schengen Area member states could make their way to Germany and enter the country without having to show their identity at the border.

In 2001 Ulrike Mentz analyzed the German Law for Aliens in force until 2004 in relation to its impact on the trafficking of women. She found that restrictive immigration policy together with the repressive treatment of irregular migrants engaged in illicit employment has promoted trafficking in women, particularly with respect to migrant prostitutes.¹⁷² Although her analysis pertains to the former Aliens Act, the fact that rules and regulations regarding low skilled immigrants haven’t really changed means the analysis is still indeed relevant. It is important to remember, however, that trafficking into sexual or labour exploitation is not always connected with illegal entry or coercion. It is estimated that about half of

¹⁷¹ Cyrus, 51

¹⁷² Kontos and Shinozaki, 16

the victims of trafficking in women enter the country legally. Many illegally employed workers enter with a visa obtained by fraud or enter as a bogus tourist with a secret intention of taking up illegal employment.¹⁷³ Though they may enter on their own accord, this is not to say that coercion will not enter the picture at some point. This all said, regardless of how they migrate, working illegally because it is not possible to do so via legal channels means that one is placing oneself in a far more vulnerable and dangerous position with few rights and little to no protection.

As we have discussed in this chapter, proliferation of the sex industry – and specifically prostitution – in Central and Eastern Europe and the former Soviet Union comes as a result of a dual process. The negative effects of transition upon women (higher unemployment, larger wage gaps, gender discrimination, and an overall increase in poverty and destitution) has forced more of them to turn to prostitution for survival. Globalization and EU expansion have simply facilitated their ability to do so by making them more mobile. The combination of these processes has made a significant impact on the region's migration patterns, including migration as it relates to prostitution. The recent liberalization of internal migration politics, their geographic location, improved economic prospects, the resultant opportunities, and their inexperience in combating unlawful immigration all mean that the European countries now face migration connected to traffic in women and prostitution.

¹⁷³ Cyrus, 71

It is important to note that although it is often referred to in a negative context or associated with negative circumstances, migration has the capacity to be very beneficial, for the migrants themselves as well as the countries which send and receive them. Migrants make a significant economic contribution through their labour, both to their countries of destination and, through remittances, to their countries of origin. In societies where women's ability to move autonomously is limited, the act of migration can be in itself empowering. The process itself is a force for removing existing gender imbalances and inequities, and for changing underlying conditions so that new imbalances and inequities do not arise. Women's voluntary migration can be seen as a powerful force for positive change in countries both of origin and of destination.¹⁷⁴

All too often, however, migration can prove to be challenging and dangerous for women, particularly for those working in informal or clandestine industries that have few monitoring mechanisms, for example the sex industry. As author Jörg Alt asserts, "The closer one comes to the bottom of the informal hierarchy, the more exploitation and poverty one encounters - most affected is the illegal immigrant in the country of destination who has no language competence and does not know his rights".¹⁷⁵ While a roughly equal number of women and men are migrating to and within Europe today, equal numbers do not necessarily confer equality of treatment in the migration process. Women have fewer opportunities than men for legal migration; many women become irregular

¹⁷⁴ *ibid*

¹⁷⁵ Cyrus, 16

migrants with concomitant lack of support and exposure to risk. Women are more vulnerable than men to violence and exploitation during the migration process. Their needs for health care, including reproductive health care, and other services are less likely to be met. They have less opportunity than men for social integration and political participation in their destination country. In addition, female migrants face different challenges and opportunities than men as they integrate into their host communities and become development agents for both their countries of destination and origin.¹⁷⁶

Though migrant prostitution certainly holds risks, some experts argue the long term benefits easily outweigh the short term consequences and that agency is an important factor to consider. Author Laura M Agustin supports this view and warns against sentimentalizing the plight of the “uprooted migrants”. She highlights the fact that many women are often fleeing small-town prejudices, dead-end jobs, dangerous streets, overbearing fathers or abusive boyfriends. Many look to the West as the ticket to freedom otherwise not possible if they were to stay at home and pursue their day to day. Whether or not the women are misled in terms of an offer of employment, their own desires and level of agency must be taken into account when considering their later experiences.¹⁷⁷ Agustin argues that if we strive to find a vision of globalization in which the poorer people are not considered solely in the light of victims, then we need to recognize that

¹⁷⁶ “Summary of the UNFPA-IOM Expert Group Meeting on Female Migrants” 6

¹⁷⁷ Laura M. Agustin “Still Challenging ‘Place’: Sex, money and agency in women’s migrations” from *Women and the Politics of Place* A. Escobar and W. Harcourt (eds.) (Bloomfield CT: Kumarian Press 2005), 3

strategies for fulfilling desires that seem less gratifying to some may be successfully utilized by others.¹⁷⁸ In other words, migration for the purposes of sex work need not be regarded as either desperate or a degradation nor at the same time as an improvement but an individual choice made by a women in a particular situation. Furthermore, powerlessness at one stage in migration process does not mean that power will forever be unattainable.

Though this argument certainly has merit, its relevance is less salient in the context of illegal or clandestine migration. Entering a country illegally to work in an illegal or stigmatized profession like prostitution makes it very difficult to break out of the cycle. Working illegally offers little security, protection or opportunities other than the one that first brought a person in. Even in countries where prostitution is legal – for example Germany or the Netherlands – the prospects for integration or protection in the new countries are slim and women remain very vulnerable to exploitation and abuse.

Therefore while it can be argued that migration, globalization and (to a lesser degree) prostitution are not necessarily bad or detrimental on their own per say, when all three are combined the result can be dangerous, complex and difficult to control. While economic disparity of transition may push women into prostitution and the pull of liberal prostitution policy may draw them to practice their work in a particular country, it is globalization and the expansion of the EU which enables this process to occur and in many ways perpetuates it. This in and of itself

¹⁷⁸ *ibid*

wouldn't be a terrible thing if the women working in the industry were protected and were granted basic human rights. Unfortunately, many women are working in the EU as prostitutes are doing so illegally and are therefore extremely vulnerable and at risk. The next chapter will examine Germany's new prostitution law and the degree in which it has impacted the sex industry in the country and the trafficking of women in the region.

Chapter 4 – Rights and Recognition: the Legalization of Prostitution in Germany

On October 19th, 2001, the German Bundestag passed the Act Regulating the Legal Situation of Prostitutes (Gesetz zur Regelung der Rechtsverhältnisse der Prostituierten, ProstG), **a one-page law sponsored by the Greens** [no]. On January 1st, 2002, this new Prostitution Act, which officially legalized prostitution in Germany, came into force.¹⁷⁹ Consisting of just three articles, the law serves as an omnibus act and includes three new sections relating to the civil and social insurance codes and two amendments to the Criminal Code.¹⁸⁰ The overall aim of the law is to improve the legal and social situation of those working voluntarily as prostitutes.¹⁸¹ The explanatory memorandum to the Act lists the main goals and expectations of the new law: improving the legal status of prostitutes, improving the social position of prostitutes, improving prostitutes' working conditions, cutting the ground from under the criminal activities that

179 There is some dispute over the official date of the legalization of prostitution in Germany. Some consider prostitution to have been decriminalized since the passage of the 1927 Law for Combating Venereal Diseases. Others, however, consider prostitution was legalized through the Prostitution Act of January 2002 that improved the social welfare and legal rights of prostitutes. Although prostitution is legal under the German Constitution, prior to the 2002 Prostitution Act, a series of regulatory laws and court rulings had restricted the legal and social welfare rights of prostitutes because prostitution was considered in violation of Germany's moral code. For these reasons for the purposes of this paper, legalization of prostitution in Germany shall refer to the Prostitution Act of 2002.

180 Prof. Dr. Barbara Kavemann, Ass. jur. Heike Rabe with the collaboration of Dipl. Soz. Päd. Claudia Fischer "The Act Regulating the Legal Situation of Prostitutes – implementation, impact, current developments: findings of a study on the impact of the German Prostitution Act" *Sozialwissenschaftliches FrauenForschungsInstitut an der Evangelischen Fachhochschule Freiburg (SoFFI K.)* (September 2007), 9 www.auswirkungen-prostitutionsgesetz.de (accessed April 24 2008)

181 "Gesetz zur Regelung der Rechtsverhältnisse der Prostituierten (Prostitutionsgesetz – ProstG)" *Bundesministerium für Familie, Senioren, Frauen und Jugend* (20 Dezember 2001), 1 <http://www.bmfsfj.de/bmfsfj/generator/RedaktionBMFSFJ/Abteilung4/Pdf-Anlagen/PRM-15320-Gesetz-zur-Regelung-der-Rechts,property=pdf,bereich=,sprache=de,rwb=true.pdf> (accessed September 11 2007)

accompany prostitution (reducing dependence on pimps, etc) and making it easier for prostitutes to exit prostitution.¹⁸²

Prior to the new Act, there was no specific legislation on prostitution in the Federal Republic of Germany, though this is not to say that it was an outright illegal activity. **Before 2002, prostitution was in essence a legal activity, though it was restricted by a host of different legal regulations.**¹⁸³ For example, while providing sexual services or owning a brothel was not prohibited per se, advertising, employment contracts between prostitutes and brothel owners, and registering brothels as proper businesses was not allowed. In addition, prostitutes were subject to compulsory medical examinations and were considered to be “immoral” under the law which perpetuated stigma against them and their profession.

The Act’s briefness can be explained in large part by the diverging positions taken by Germany’s 16 states (Länder) on the issue of prostitution. For this reason it was deliberately passed as a Federal Act (via the Bundestag) not requiring the approval of the Bundesrat (appointed Land representatives). Issues that fall under state jurisdiction (trade law, for example) were omitted since it would have necessitated approval by the Bundesrat and it was highly unlikely a majority vote in this upper chamber on such topics would have been achieved. The result is that regulations now valid under federal law that involve the interests

182 Kavemann, Rabe and Fischer, 10

183 Kavemann, Rabe and Fischer, 4

of the states remain unchanged while at the same time, state and local authorities retain regulatory powers relating to prostitution, for example establishing by-laws determining where prostitution is permitted.¹⁸⁴ As we will see later in this chapter, **the disconnect between interests and jurisdiction is proving to be a rather formidable challenge in the successful implementation of the Act.**

The new Act was adopted under the Greens/SPD (social democratic party) coalition government following a difficult political process that had spanned nearly 30 years. The push for legal equality for prostitutes had began in the early 1980s with what is known as the “**whores’ movement**”. In 1990 the Greens tabled an anti-discrimination bill that included a proposal for equal rights for prostitutes, though it never reached a vote due to the Bundestag’s shortened term as a result of reunification. In 1996, representatives of advisory services for prostitutes and STD advisory services joined forces and presented their own draft for an act on the legal and social equality for prostitutes. Though the movement had support – both from the media and politically from parliament – it was not until 2001 that the legislative process for what is known as the current Prostitution Act was initiated.¹⁸⁵

Given the rather controversial nature of the subject, the road to passing the new Act was not an easy one as federal parties struggled to reach a level of consensus on the legal future of prostitutes in Germany. Transcripts of parliamentary debate

184 Kavemann, Rabe and Fischer, 10

185 Kavemann, Rabe and Fischer, 3

from the months leading up to the passing of the law reveal that most parties in the Bundestag were in favour of legalizing prostitution, though two main parties - the Greens and the PDS - had distinct ideas of what such an Act would entail. The Green's draft bill (14/5958) focused upon enforcement of agreements made between prostitutes and their clients for services rendered (therefore changing Para 138 of the Criminal Code), enabling prostitutes to participate in social security schemes and improving conditions under which prostitutes work.¹⁸⁶ The PDS's draft (14/4456) was similar to the Green's in many respects and focused on eliminating the legal discrimination of persons providing sexual services (therefore removing the "immoral" characterization of prostitution). The draft also called for the integration of agreements between prostitutes and clients into the Civil Code under the Law of Services Act as well as for the legalization of advertising for the purposes of prostitution. The most distinguishing feature of the PDS draft bill was the elimination of the law pertaining to foreign workers (Para 36, no. 3 – **deportation on the grounds of breach of regulations concerning immoral trade.**)¹⁸⁷

Both parties submitted their draft bills to the Advisory Committee for Family, Seniors, Women and Youth as well as to the legal committee, the committee for labour and social affairs and to a health committee for comment and advice. The

¹⁸⁶ "Beschlussempfehlung und Bericht des Ausschusses für Familie, Senioren, Frauen und Jugend (13. Ausschuss)" Deutscher Bundestag 14. Wahlperiode", 6 (English translation: "Recommendation for a decision (or proposed resolution) by the committee dealing with Family, Women, Seniors and Youth (13th committee)" Lower House of German Parliament 14th Legislative Period, 6)

¹⁸⁷ *ibid*

pros and cons to each draft bill, as well as their likely consequences, were discussed and put to a vote in the Bundestag. It was the Greens' draft bill that garnered the most support and was ultimately accepted by the committee - the SPD, Greens, FPD and one PDS vote were in favour of the bill, while the CDU/CSU was opposed (plus one abstention by the PDS) (The PDS's draft bill was refused by the committee after all parties except the PDS voted against it). The party's longstanding support for the legalization of prostitution and its avoidance of the issue of foreign workers in the draft of its bill (thus making it more palpable to both the other parties and the public) likely contributed to the bill's popularity. At the same time, the committee passed an amendment to the bill put forward by the SPD and the Greens which included clarifications about the bill including the limited right of the employer to direct the prostitute under the employer-employee relationship as well as the fact that the commercial **procurement (by a third party) of sex services is to be punishable only if such activity limits the personal or economic freedom of movement of the service provider** (the prostitute).¹⁸⁸ In addition, the committee passed two resolutions for a motion put forward. The first was that of the SPD and Greens which requested that the Federal Government report back on the effects of the new legal situation within a few years (the results of the 2007 report entitled "The Impact of the Act Regulating the Legal Situation of Prostitutes (Prostitution Act)" will be discussed later in this chapter). The second resolution, that of the FDP, requested that the Federal Government check in and coordinate with the Lander on particular

¹⁸⁸ *ibid*

aspects of the change in Public Policy Law (this request was purposely omitted from the draft bill because it affects provincial jurisdictions).¹⁸⁹

Although the Greens were seen as a driving force behind the legalization of prostitution, the coalition government at the time meant that many compromises and concessions were made in the drafting of what would become the final Act.¹⁹⁰ Despite the amendments, **the Greens assessed the draft bill as a great breakthrough which would effectively terminated the double standard imposed on prostitutes in Germany.**¹⁹¹ Even the CDU/CSU (traditionally more conservative) supported certain aspects of the bill – for example prostitutes’ access to social security – however their proposed amendment to retain the “against public morality clause” was rejected by the other parties and they expressed concern over numerous clauses of the bill, for example the fact that the issue of minors and alien (foreign) prostitutes was left untouched.¹⁹² The FDP expressed satisfaction at the bill’s aim of decriminalizing prostitution, though they were in agreement with the CDU/CSU that in reality the new law was likely to profit only a small group. The party was doubtful that the double moral standard could be eliminated so long as a grey area surrounding the issue of advertising remained, an opinion shared by prostitution advocacy groups such as Hydra (it

¹⁸⁹ “Beschlussempfehlung und Bericht des Ausschusses für Familie, Senioren, Frauen und Jugend (13.Ausschuss)”, 8

¹⁹⁰ As stated in correspondence with a representative from German Federal Green Party (the Greens)

¹⁹¹ “Prostituiertengesetz grosser Erfolg grüner Politik” *Die Grünen* (The Greens) website (December 21 2001) <http://gruene-bundestag.de> (accessed January 30 2008)

¹⁹² “Beschlussempfehlung und Bericht des Ausschusses für Familie, Senioren, Frauen und Jugend (13.Ausschuss)”, 8

was reported that many **newspapers charged excessive sexual services advertising fees**).¹⁹³

Components of the Act

The first provision of the Act relates to contracts and the actionable right of sex workers to an agreed upon wage. While prior to the reform prostitution was not prohibited per se (i.e. it was unofficially tolerated), the legal system did not grant prostitutes any rights with respect to contract law. Since **prostitution was considered immoral under section 138 of the German Civil Code**, contracts between “sex sellers” (prostitutes) and customers were automatically null and void. Prostitutes thus had no legal recourse if a client refused to pay a bill for services rendered. The first sentence in Section I of the new Prostitute Act states that agreeing on payment of remuneration for the performance of sexual acts constitutes a legally effective claim. The explanatory memorandum for the draft legislation outlines that the legal relationship between the prostitute and her/his client is thus regulated as a **contract with unilateral obligations**. In addition, agreements made between a prostitute and the operator(s) of brothels or brothel-like establishments (for example if a prostitute agrees to make herself available for a certain period of time to perform certain acts for a previously agreed upon remuneration) also constitute a contract with unilateral obligations.¹⁹⁴ While the new law aims to improve the legal rights of prostitutes it does not, however, grant

¹⁹³ ¹⁹³ “Beschlussempfehlung und Bericht des Ausschusses für Familie, Senioren, Frauen und Jugend (13.Ausschuss)”, 9

¹⁹⁴ “Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes (Prostitution Act)”, 13

full contractual rights to their clients; in other words clients may not be entitled to sue prostitutes on grounds of “inadequate” services.¹⁹⁵

The second component of the new law aims to improve the overall working conditions and social situation of prostitutes. Prior to the reform, sex industry workplaces were, not surprisingly, often of very poor quality, due in large part to section 180(a) clause 2 of the German Criminal Code which listed **“promotion of prostitution” as a criminal offence**, punishable by up to three years in prison.¹⁹⁶ Brothels and “erotic houses” were often hidden away in decrepit and unsuspecting buildings, in which prostitutes worked in unsafe and unsanitary conditions. Under the new law, Section 180(a) clause 2 was deleted; the punishability of the “promotion of prostitution” was replaced by the punishability of the “exploitation of prostitutes” (forced prostitution, trafficking in human beings and prostituting children therefore remains illegal).¹⁹⁷

The last component of the Act sets it into motion and declares its effectiveness as of January 1, 2002.

Goals and Aims of the Act

The aim of the Prostitution Act is to grant prostitutes new rights previously unavailable to them due to their veritable exclusion from the traditional labour

195 Behrens, Martin “Ver.di seeks to give prostitutes a voice” *Eurofound* (March 19 2002) <http://www.eurofound.europa.eu/eiro/2002/03/feature/de0203203f.html> (accessed on 10 September 2007)

196 *ibid*

197 “Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes (Prostitution Act)”, 16

market and by extension, society in general. One important area now accessible to sex workers is the **right to form a union** and be represented as a collective group. Since the law came into force in 2002, Ver.di (one of Germany's largest and most well-known workers union) has been recruiting and organizing prostitutes in major cities like Dortmund and Hamburg and in the latter even set up a works council in one brothel.¹⁹⁸ Sex workers falls under Ver.di's Department #13 ("special services"), which provides services including legal advice and protection for prostitutes, advice concerning taxes and taxation, advice concerning health care, projects supporting exit strategies, public relations/education, training schemes and finally, lobbying for sex workers.¹⁹⁹

Although annual sex industry sales in Germany hover around 14.5 billion euros, prostitutes often see very little of that profit, in large part due to their reliance on pimps and managers (of brothel houses). It is estimated that while a **female prostitute typically earns €150 to €300 per day, her monthly income is less than €1500 as the bulk of the money goes to pimps and managers.**²⁰⁰ The new Prostitution Act aims to reduce the dependence prostitutes have on middlemen by granting sex workers the right to employment contracts and enabling them to more easily gain access to social insurance and health care. With the threat of criminal offence removed, prostitutes' "employers" (brothel owners, etc) are

198 Gregor Gall "Sex Worker Unionization: an Exploratory Study of Emerging Collective Organization" *Industrial Relations Journal* 38, 1 (2007): 73

199 Emilija Mitrovic (translated by Dirk Hauer) "Working in the Sex Industry: Report on the findings of a field research" based on the study "Social change in dealing with prostitution since the new legislation's entry into force on 1.1.2002" (2004), 12 http://www.verdi.de/besondere-dienste.hamburg/arbeitsplatz_prostitution/download/data/studie_englisch.pdf (accessed on April 24 2008)

200 Mitrovic, 3

allowed to register them with the social security administration. Prostitutes who work in an establishment are no longer considered “self employed” and thus are entitled to health and unemployment insurance as well as access to the statutory pension scheme. Though the specifics could vary, contracts would typically include provisions relating to worker rights - regular holiday pay and sick pay as well as something particular to the sex industry: medical examinations during work time. **Contracts could also ensure women earned a fixed income which could be transferred to their bank accounts instead of having to carry around large amounts of cash (which makes them more vulnerable to attacks).**²⁰¹

Under the new law prostitutes are also eligible to participate in publicly subsidized retraining programs geared to encourage “exit strategies” and their reintegration into the mainstream labour market. In North Rhine-Westphalia for example, prostitutes are finding work caring for the elderly as part of a **€1 million state and EU-funded project** designed to retrain prostitutes in a new field using their existing skills. Sex workers looking to leave prostitution are offered two years of courses and vocational training prior to working in geriatrics, a field in desperate need of workers to fill some 6,400 vacancies in the sector nationwide.²⁰²

It is worth noting that even with dropping prices for sex due to the influx of

201 For an example of a sample contract see Mitrovic, 3 - 15

202 Guido Kleinhubbert, “Prostitute Retraining Program: From Johns to Geriatrics” *Der Spiegel* (14 March 2006) <http://www.spiegel.de/international/spiegel/0,1518,405903,00.html> (accessed on October 1 2007)

sex workers from outside Germany, many of those working with the elderly earn a fraction of what they did in their previous jobs.

Assessment of the Act

Given the Act's relatively recent implementation, there are limited resources available (particularly in English) that focus upon the effects of the new law on the sex industry. One of the first studies published was that of Petra Mitrovic in 2004 that focused upon the realities of the new law, post-implementation. Her research was compiled into a qualitative study based on 51 interviews in seven big cities, mainly with prostitutes but also with brothel owners and managers and representatives of authorities and initiatives. The results of the study were used by Ver.di's working group on prostitution in the development of a support and advice scheme for sex workers (on labour laws, taxation, etc) as well as an employment contract for the field.²⁰³ The other highly anticipated study was published in 2007 by the German federal government, the English title of which is "The Impact of the Act Regulating the Legal Situation of Prostitutes (Prostitution Act)". For this report the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth commissioned and analyzed a total of three separate scientific reports: "A Study on the Impact of the Prostitution Act" by Sozialwissenschaftliches FrauenForschungsInstitut an der Evangelischen Fachhochschule Freiburg (hereinafter "SoFFI K"), an "In-Depth Study on Factors Influencing Those Wishing to Leave Prostitution" also by SoFFI.K, and lastly, "Regulation of Prostitution: Goals and Problems – A Critical Assessment of the

²⁰³ Mitrovic, 1 - 16

Prostitution Act” by Prof Dr Joachim Renzikowski. The findings of these three studies were analyzed and amalgamated into the final report.²⁰⁴

According to the reports, implementation and acceptance of the new law has proved to be a challenge in many areas. As with many controversial issues, norms, practices and acceptance seem to be lagging behind legislative change. Interestingly, wariness regarding the new law extends beyond society in general to include those who work in the sex industry: there has been significant hesitation on the part of sex workers to embrace the new prostitution law and take advantage of the benefits.

Many, particularly the Greens, thought contracts would be among the most well-received provisions of the new Act, however according to research done by the research group SoFFI K this is not the case. A lead researcher reports that based on their findings, **only a handful of contracts have been signed** to date.²⁰⁵ Early attempts by Ver.di to develop a collective contract were flatly rejected by a 100 member works council as many members feared that **contracts would mean a loss of privacy and work flexibility**.²⁰⁶ Despite this strong showing of initial scepticism, collective citywide contracts between prostitutes and their “employers” now exist in certain cases.²⁰⁷

204 All three reports can be found online on the Ministry’s website at <http://www.bmfsfj.de/Kategorien/forschungsnetz.html>

205 Research institute representative, personal telephone interview, March 3rd 2008

206 *ibid*

207 An example of this is Café Pssst, one of Berlin’s premier brothels, which began contract negotiations with sex workers soon after the new law was passed. The stipulations of the agreement included a basic salary of 600 euros for a 40-hour work week plus “profit sharing” of

The hesitation towards contracts is surprising given the new Act stipulates that a **contract of employment would obligate operators (brothel or club owners) to pay their employees a salary but does not grant them the right to issue instruction to their employees to provide a service to a client.** It is thus likely that it is a lack of clarification about the law itself that is contributing to hesitation towards contracts on the part of prostitutes (as supposed to the actual provisions themselves).²⁰⁸ “Operators” (owners of brothels, clubs, etc) do not seem eager to engage in employment contracts, presumably because it would mean an increase in workload for them and obligations towards their employees (payment of wages, paid holidays, social insurance contributions, etc.) and there seems to be little incentive for them to do so.

Scope and Accessibility of the Act

In assessing the degree to which prostitutes are accessing social insurance and benefits under the new Act, it is important to clarify that under the old law prostitutes were not entirely without these rights. In principle, social insurance legislation is value free and benefits cannot be refused or cut on account of a “discredited” profession. In order to qualify for insurance it is sufficient for a “de facto” employment relationship to exist, which means that even prior to the new Act coming into force prostitutes were in theory, eligible. In practice, however, many social insurance organizations felt that prostitution’s status as “immoral”

40 euros per client For more information see Erik Schelzig, “German Law Offers Prostitutes Union Rights, Profit Sharing” *Washington Post* (May 12 2002)
 208 Mitrovic, 1 - 16

served as an obstacle to finding that prostitutes were in an employment relationship and social insurance contributions had to be paid. Even more significant was the fact that the promotion of prostitution (which included brothels) was illegal under the Criminal Code which negated the opportunity for prostitutes to register for social insurance based on de facto employment relationships with brothel owners.²⁰⁹ Therefore in theory prostitutes working on a freelance basis prior to the new Act could have, just like any other freelancer, paid voluntary contributes into the pension system or applied to be treated as a compulsorily insured person which would have involved them making compulsory contributions on a regular basis. Therefore the Act's main impact has been to improve statutory health, unemployment and pension insurance in situations for prostitutes who find themselves in an employment relationship in a brothel or brothel-like establishment.²¹⁰

With respect to health care, it was found that the **majority of prostitutes (86.9%) had some form of health insurance**. Only a small proportion did not, though it is worth noting that this figure is considerably higher than the population overall (whereby 96.8% have either public or private health insurance). Interestingly, more prostitutes who listed prostitution as a **“sideline” job** (i.e. not their main job) claimed they had health insurance than those who listed prostitution as their main occupation. This is likely due to the fact that those who engage in

209 “Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes (Prostitution Act)”, 21

210 “Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes (Prostitution Act)”, 23

prostitution as a secondary occupation are **covered for health insurance under their main occupation** or are receiving social security benefits.²¹¹ Data relating to old-age pensions is similar in that those with more than one job typically opted to make payments from - and receive coverage under - their non-prostitution jobs. It should be noted that less than half of respondents stated they were covered under any form of pension provision, and those who did were typically those for whom prostitution was a sideline job.²¹² Mitrovic makes the point that despite initial anticipation to the contrary, there appears to be no special health provisions for prostitutes offered by health insurance companies.²¹³

Retraining and “exit strategies” were often quoted as one of the main aims of the new Act. Providing prostitutes with choices and giving them the tools needed to leave the sex industry should they desire was seen as an important step in the granting of rights to sex workers. The goal was not to eradicate prostitution per se (as discussed, Germany, like many countries is accepting of the idea that prostitution is here to stay), but to offer alternatives to sex workers and **reduce the coercion cycle that many prostitutes find themselves caught in**. It is also plausible that this particular aim was emphasized in order to make the Act more palpable to the general public and more conservative critics. Regardless, the notion of prioritizing the development of retraining and exit strategies was well-

211 “Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes (Prostitution Act)”, 24

212 “Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes (Prostitution Act)”, 28

213 *ibid*

received by both the public and by those working in - and on behalf of - the sex industry.

Interestingly, the idea is nothing new: conceptually these reorientation/drop out programmes are based on those which were developed in the 1980s in Germany (though a survey of state ministries reveals that due to state funding cutbacks only one German state is still running a programme of this kind.)²¹⁴ The hope is that with renewed effort and increased funding prostitutes will have a wider range of options and ways in which to exit prostitution if they so desire.

Exit programmes and individual exit support schemes are confronted with a slew of challenges. The labour market does not currently offer many realistic job possibilities for women leaving prostitution, many of whom have little vocational experience and an overall lack of education.²¹⁵ Exit strategy programs should take into account the multitude of challenges prostitutes face when leaving the industry, including financial concerns (debt), family problems, and health problems linked to prostitution as well as stress from violence.²¹⁶ They should also focus on providing support and **low-threshold access** including street work and outreach in red-light districts in addition to providing drop-in centers. A representative from an anti-trafficking NGO suggests that a **dual strategy** of

²¹⁴ Kavemann, Rabe and Fischer, 30

²¹⁵ *ibid*

²¹⁶ “Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes (Prostitution Act)”, 34

offering viable exit strategies to women who want to leave the industry as well as creating standards for those that want to remain in it.²¹⁷

The implementation and management of consultative services and community-based outreach programs for prostitutes fall on the shoulders of the Länder or local governments. Although it provides limited detail, the federal report reveals that over the past 10 years the **Länder have provided funding for only a few drop-out projects for prostitutes**. Cutbacks in public funding at the Länder and local authority level are said to be the main cause, which suggests **it is not the new Prostitute Act but rather Germany's overall economic situation and the restructuring of the legal basis of Social Code, Book II linked to the reforms of unemployment and social welfare benefits (known as "Hartz IV") that are mainly to blame**.²¹⁸ Named for the recommendations made by the "Hartz Commission" (led by Peter Hartz, Volkswagen's then personnel director), the 2004 social reform project was the largest in the history of the Federal Republic, and among the most controversial. Hartz IV was intended to increase employment without causing the financial collapse of its social systems, the main mechanism being the rather dramatic lowering of transfers for those unemployed that are capable of work.²¹⁹ Hartz IV was the fourth in a series of reforms (Hartz I – IV)

²¹⁷ Representative from anti-trafficking NGO, personal telephone interview, March 5th 2008

²¹⁸ "Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes (Prostitution Act)", p. 37

²¹⁹ Tim Lohse "Hartz IV – the German "Word of the Year 2004" and the Country's Hope to Overcome its Problem of Unemployment" Discussion Paper No. 311 *University of Hannover* (February 2005), 1 <http://www.wiwi.uni-hannover.de/Forschung/Diskussionspapiere/dp-311.pdf> (accessed April 22 2008)

and formed an integral part of Germany's "**Agenda 2010**" series which aimed to modernize the country's social security system and labour market.

Where the Act has made a positive difference is in the spreading of information and stirring up interest among sex workers who are interested in hearing about the provisions of the law and what it means for them. As an employee of an advice centre for prostitute pointed out, "**the Act has meant that we are now seeing more and more women who have questions about the Act, are working independently for themselves and are not weighed down with problems.**"²²⁰

Through renewed interest and curiosity it could even be speculated that prostitutes who perhaps initially had no intension of leaving the industry may be turning to special consultative services to find out more about the new Act and by default learn of exit strategies by "accident". Though they acknowledged the new law isn't perfect, fieldworkers credits **the Act with opening up a space for realistic discussion about prostitution in Germany.**²²¹

Finally, tax collection has likewise been met with a degree of confusion and dissatisfaction under the new Act. Like health insurance, **tax collection is not a new provision that was introduced with the legalization of prostitution.**

According to a lead researcher in the field, "many prostitutes equate the collection of taxes as the immediate outcome of the new law – but it has nothing to do with

²²⁰ Kavemann, Rabe and Fischer, 17

²²¹ Personal telephone interview

it, they were always supposed to be paying taxes.”²²² A 2005 BBC article that **revealed that when German sex workers try to register with tax offices under the new Act they are often charged back tax for 5 or 10 years.**²²³ This suggests while tax collection is nothing new, many sex workers did not feel compelled or did not want to do so for one of any number of reasons. In addition, there is arguably more effort put into the collecting of taxes from sex workers since there is more information and data available that reveals just how profitable this industry is.

Determining the overall number of prostitutes who are taking advantage of the provisions of the new Act is an important part of monitoring and assessing the new law. This has proven to be quite challenging, both because of the **inherently clandestine nature of the industry** but also due to the government’s monitoring and data collection methods. The Federal Employment Agency’s registration procedure does not distinguish prostitution from other occupations in the same “sector” (listed as “**code 913**”), which include jobs in the hotels, restaurants, pubs and bars. This makes it difficult to isolate the numbers of jobs in the sex industry and relevant data. That said, the Federation of German Pension Insurance did conduct an analysis on the entire sector (all jobs falling under code 913) from 2001 to 2003 in an attempt to determine the impact – if any – the new Prostitution Act had made on social insurance registration of prostitutes. The results show that while in 2001 367,797 jobs were registered under code “913”, in 2002 382, 297

²²² *ibid*

²²³ “German Prostitutes in Rights Plea” *BBC News* (June 24 2005)

<http://news.bbc.co.uk/2/hi/europe/4111738.stm> (accessed on October 1, 2007)

were registered, and in 2003 364,848 were recorded. Therefore since the new Act came into force the number of jobs registered as “913” dropped slightly, which the study suggests indicates that at least until late 2003, **few prostitutes had entered into employment relationships.**²²⁴ However, while one might expect that with approximately **400,000 (if not many more) prostitutes in Germany** there would have been at least a slight increase in the number of registered “913” jobs if only a fraction of the total number of prostitutes had registered with the Federal Employment Agency, there are too many variables at play to conclude that it is simply a case of not wanting to register. For example, less than two years is a very short amount of time for people to become informed and accustomed to the new law and actually go and register with the Agency. In addition, and perhaps most importantly, it is reasonable to suppose that the reason we aren’t seeing more prostitutes registering with the Agency has to do with the fact that the majority of them are foreigners, many of them working in Germany illegally and ineligible for any social benefits.

Exclusions of the Act

While the new Prostitution Act aims covers a broad range of issues pertaining to prostitutes and their rights, **one of the Act’s most obvious shortcomings involves the protection of foreigners** working as prostitutes in Germany. The oversight is so obvious the Bundestag itself admitted that the new Prostitution Act “by and large disregarded the legal and social situation of immigrants without a

²²⁴ *ibid*

valid residence permit, the situation of minors engaged in prostitution and the drug-related prostitution”.²²⁵ **The exclusion of these three groups is problematic given they are among the most vulnerable found in the sex industry.** The ‘Conclusions and Need for Further Action’ section of the Federal report recommends that in order to better protect young persons against sexual abuse, the **age of consent** in Section 182(1) Nos. 1, 2 Criminal Code be raised to 18 years old from 14 years of age (at the time the report was published a draft law on this issue was being debated in Parliament).²²⁶

The new law offers no protection to foreigners without valid work permits, a group which is estimated makes up roughly half of Germany’s 400,000 prostitutes”.²²⁷ The IOM estimates that the total number of foreign prostitutes working in Germany to be 75% of all prostitutes.²²⁸ Trade union Ver.di supports similar estimates, positing that the majority of foreign prostitutes in Germany (which they estimate to be around 200,000) are working as irregular (illegal) migrants. The EU-network TAMPEP (European network for HIV/STI Prevention and Health Promotion among Migrant Sex Workers) has reported similar numbers of estimates and confirms a steady increase in the proportion of migrant women in

225 “Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes (Prostitution Act), 9

226 Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes (Prostitution Act), 80

227 “German Prostitutes in Rights Plea”

228 Donna M. Hughes (compiled), “Germany: Sex Trafficking, Prostitution and World Cup Games” University of Rhode Island publications (last updated April 2007), 1
www.uri.edu/artsci/wms/hughes/germany_world_cup.doc (accessed April 22 2008)

the sex industry from 52% in 1999 to 60% in 2005.²²⁹ Therefore if we assume migrant prostitution is on the rise (which the vast majority of studies suggest and support), then the real number of illegal migrants is likewise on the rise, meaning that there are more prostitutes working in Germany without any protection than ever before.

As discussed in Chapter 3, the biggest share among the migrant prostitutes (about 50%) is made up of women from CEE countries. In her presentation of the results of a 2006 TAMPEP survey, Veronika Munk claims that the majority of migrant women in the German sex industry are autonomous migrants, i.e. their migration was not a forced. However she adds that they are often dependent on the “help” of others including smugglers, traffickers, etc in order to enter Germany because of its restrictive immigration policy.²³⁰ The exception to this would be migrants from other CEE EU member states who can legally enter Germany. Monk is likely correct in her assertion that the majority of migrant prostitutes are not physically forced into Germany by another person or other people, since many may technically enter legally at least for a limited amount of time. That said, as discussed a perceived lack of alternative options could be considered as situational coercion. Furthermore, even for those that “voluntarily” travel to engage in prostitution many do not anticipate the often horrible working and

229 Maria Kontos and Kyoto Shinozaki “Integration of new female migrants in German labour market and society and policies affecting integration: State of the Art” Working Paper No. 1 from *Integration of Female Immigrants in Labour Market and Society, Policy Assessment and Recommendations – A Specific Targeted Research Project of the 6th Framework Programme of the European Commission* (February 2007), 13 http://www.femipol.uni-frankfurt.de/docs/working_papers/state_of_the_art/Germany.pdf (accessed Oct 3 2007)

230 *ibid*

living conditions they are confronted with when upon arrival, and lack the resources or agency to be able to return home.

Though the sex industry is a relatively isolated one, the reality of German prostitutes as opposed to foreign prostitutes working within it can be quite different. The most obvious difference is wages: **compared to German prostitutes, irregular migrant prostitutes often offer their services for a very low price. Since they are not protected by the new Prostitution Act** (which would, in theory, give them the ability to sign a contract guaranteeing a base salary and a competitive wage), their earnings are neither consistent nor guaranteed. As a result many **end up indebted to brothel owners**. Real estate owners also stand to benefit from illegal prostitution; in their apartments where dominantly migrant women are working without working permits, they charge up to €50 per square meter. **The average price for professional sex services in Germany performed by an illegal migrant is approximately €75; landlords and pimps typically keep €25 each, which means that only €50 remain for the prostitute herself.**²³¹ These rather meagre wages combined with debt make it next to impossible to get ahead as an illegal prostitute, or even have control over one's own destiny. In addition, illegal prostitutes have no legal recourse with respect to non-payment for rendering of services or the ability to press charges in the case of physical, mental or emotional abuse, whether by customers or brothel owners. They cannot even report ill treatment or exploitation as they will likely face **deportation (which may be perceived as worse than the abuse itself).**

231 Mitrovic, 3

Therefore although they make up the majority of those working in the sex industry, they do so without any veritable rights or protection.

Trafficking

The implementation of the new Prostitution Act and a rise in numbers of illegal migrants brought with it increased discussion surrounding the problem of human trafficking. There emerged a fear from various factions (anti-trafficking advocates, feminists, conservatives) that a more lax approach to prostitution would open the doors to traffickers who make a profit bringing women into Germany to work in the sex industry. In this view Germany, already a top destination country for traffickers in Europe, would become an even more attractive place for traffickers to bring women to work in the sex industry since prostitution is no longer treated as a criminal act and thus the chances of being apprehended or persecuted were lower. The amended definitions of crimes under Section 180a (making exploitation in prostitution illegal) and 181a (making pimping illegal) of the Criminal code were accused of making it more (not less) difficult to fight crime in the world of prostitution, in particular the trafficking in human beings and organized crime. This fear is based on the fact that it is now more difficult for police to supply evidence that a prostitute was not working voluntarily (whereas in the past it was possible to fall back on simple indicators such as determining of prices, working time and place of work). In addition, because the promotion of prostitution has been decriminalized, the police are no longer able monitor the “scene” to the extent that they used to and intervene in

situations where trafficking is suspected. Therefore it is possible that victims of trafficking as well as minors working as prostitutes are going undetected simply because the police aren't monitoring the brothels in the same manner as they used to. As a result, some advocate are calling for the revoking of the Prostitution Act in part, specifically that the old Sections 180s and 181a of the Criminal Code be reinstated to improve the ability to keep track of what is going on inside of brothels.²³² In addition, some argue that reinstating the old laws would likely make working conditions for prostitutes unpleasant and thus serve as a deterrent to enter the sex industry. This last point bares little merit however since prior to the new law when there were no provisions intended to improve working conditions there were still hundreds of thousands of prostitutes in Germany.

In response to the rising criticism regarding implementation of the new Act with respect to trafficking, in April 2005 the CDU/SCU Parliamentary Group and the Bundesrat submitted a proposal for the creation of a criminal offence of "sexual abuse of victims of trafficking and human beings". The initiative included, among other things, a proposal to rescind the amendments to Sections 180a, 181a Criminal Code that were introduced as part of the new Prostitution Act in 2002.²³³ It was the Bundesrat's opinion that there are many punishable matters which are not covered by current criminal law that ought to be. For example, under the new applicable law, requesting the services of a prostitute is not a punishable law. The

232 "Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes (Prostitution Act)", 45

233 "Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes (Prostitution Act)", 10

client of a victim of trafficking generally cannot be prosecuted as an accessory to the offences of exploitation of a prostitute, pimping and trafficking in human beings. This would presuppose that he/she has contributed to the main offence, which is generally not the case. In order to close this “gap in punishability” several options have been suggested, for example including a provision for punishing the clients who wilfully exploit the helpless situation of a victim of trafficking in human beings or someone forced into prostitution. The Federal Government is currently looking into introducing a statutory offence that would address this gap however rescinding aspects of the new Prostitution Act would likely be met with significant opposition from prostitution advocates and prostitution rights’ groups and denounced as conservative ploy.²³⁴

In addition to questions regarding the new legislation and its effects on forced prostitution, the German government has fallen under criticism for not doing enough to protect and help victims of trafficking once they arrive in Germany.

Victims of trafficking are typically permitted to stay in Germany for up to 4 weeks (deportation suspended for a month during what is known as a “reflection period”) and the victim could be permitted to stay in Germany for the duration of court proceedings, which could in some cases take years.²³⁵ According to a representative from an anti-trafficking NGO, during the proceedings victims are typically accommodated and provided with the same benefits as are afforded to

234 “Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes (Prostitution Act)”, 58

235 “Human Trafficking & Modern Day Slavery: Federal Republic of Germany” *Human Trafficking* online <http://gvnet.com/humantrafficking/Germany.htm> (accessed Feb 8 2008)

asylum seekers; medical care (excluding dental), psychological therapy, etc).

They are not, however, allowed to take language courses or work or intern, and while some get counselling, this ultimately depends on the local authorities so it tends to vary by Lander.²³⁶

Testifying by the victims is a very important element to any anti-trafficking strategy. Many argue that Germany's practice of sending victims back to their country of origin that serves as one of the biggest impediments to fighting human trafficking in Germany. Many women wish to avoid contact with the justice system altogether because they are afraid of being deported and in many cases, they want to stay in Germany (whether to continue working as a prostitute or perhaps in another industry) and do not want to return to their country of origin. It is important to remember that many women who end up as victims of trafficking left home on their own volition for a reason, something that does not change simply because their situation becomes coercive and out of their control at some point.²³⁷

The Renzikowski study ("Regulation of Prostitution: Goals and Problems – A Critical Assessment of the Prostitution Act", one of the studies commissioned for the Bundestag report) supports this perspective and recommends that in addition to the temporary residence permits, Germany ought to consider granting humanitarian residence permits to victims after the end of the proceedings, as in

²³⁶ Representative from an anti-trafficking NGO, personal telephone interview, March 5th 2008

²³⁷ Researcher, personal telephone interview, March 3rd 2008

done in Italy or the US as part of victim protection programmes.²³⁸ Belgium has similar provisions: court-recognized victims of trafficking can apply for permanent Belgium residency permit. The proposal to adopt similar laws in Germany comes from the growing understanding that quick deportation of trafficking victims back to their homes only benefits the culprits, and in many cases victimizes the trafficked a second time by putting them back into the exact same vulnerable position from which they were originally targeted.²³⁹

The **2006 FIFA World Cup** in Germany brought the issue of trafficking in human beings and forced prostitution in Germany to the forefront of both public concern and media attention. In preparation for the games among the country's largest and most luxurious brothels, the **Artemis**, was built in Berlin. Developed by private investors, the building occupies 3,000 square meters, boasting 70 rooms that can accommodate 100 prostitutes and 650 clients at a time.²⁴⁰ Sponsors were sought out to distribute some 100,00 condoms in the vicinity of the Olympic stadium and the town halls of the 12 cities that were hosting the games made plans to provide special temporary licenses that would entitle sex workers to offer their services on the street (street walk) [citation missing. M.o.F]. While there were varied reports regarding the number of sex workers that were to be brought in for the games, 40,000 was the number most often quoted. With trafficking

238 "Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes (Prostitution Act)", 60

239 "EU: Germany should do more against forced prostitution" *Deutsche Welle* online (Feb 2 2006) <http://www.dw-world.de/dw/article/0,2144,1888926,00.html> (accessed on Feb 12 2006)

²⁴⁰ Damien McGuinness "Soccer Fans Will Get a Kick out of Berlin's Latest Brothel" *Der Spiegel* online (September 23 2005) <http://www.spiegel.de/international/0,1518,376214,00.html> (accessed April 25 2008)

being nothing new in Germany (it is estimated that around 15,000 forced labourers work in Germany, most of them women from Eastern Europe), the thinking was that traffickers would bring their victims to a place where sex workers are not only in very high demand but also where prostitution is legal and therefore less susceptible to police monitoring. According to a 2004 European Parliament Committee report entitled “Consequences of the Sex Industry in the EU”, there are approximately 500,000 people smuggled into the EU every year, with nearly 90% of them trapped in sexual exploitation.²⁴¹

In anticipation of a man influx of human trafficking and forced prostitution in Germany in conjunction with the World Cup, numerous campaigns (print, television, radio, internet-based) were produced and circulated, aimed at warning and informing the public about the seriousness and extent of the problem in Europe and worldwide. While ultimately these fears were not realized (reports by researchers and NGOs suggest that brothels and prostitutes report that there was no great increase in the number of trafficking victims and in fact the sex industry in Germany took a hit during the World Cup, possibly as a result of these extensive ad campaigns), the scope of the dialogue which took place surrounding the issues of trafficking was unprecedented. Also interesting was the degree to which the issues of prostitution and immigration played a central role in the debate. A report issued by the Expert Opinion Group on Trafficking in Human

241 “Draft Report on the Consequences of the Sex Industry in the European Union” from the European Parliament’s Committee on Women’s Rights and Opportunities (9 January 2004), 10 <http://action.web.ca/home/catw/attach/ErikssonDraftReportJan2004.pdf> (accessed on October 2, 2007)

Beings of the European Commission in 2006 acknowledged the need for more legal channels of migration in the EU as a way to reduce the risk of migrants ending up in the hands of traffickers. The consultative groups also recognized the need for more fact-based information in the reporting of human trafficking and suggested that a reliance on numbers in general is to be avoided as there are no confirmed figures quantifying the extent of the phenomenon.²⁴²

With respect to prostitution, a certain degree of tension between the EU and member states was revealed. While prostitution policy falls under national jurisdiction and is thus currently outside the realm of EU authority, there are some at the European level that insist that the legalization of prostitution not only works at cross purposes with pan-European anti-trafficking initiatives but that it also works against their efforts towards gender equality and gender mainstreaming. In a 2004 draft report from the **European Parliament's Committee on Women's Rights and Opportunities** addressed this issue directly:

“In recent years, several of the EU Member States have capitulated and, instead of fighting against such exploitation of human beings, have accepted the prevailing situation and, through legalization and regulation of prostitution, have helped to make what was previously a criminal activity part of the legal economic sector. The Member State then becomes part of the sex industry, yet another profiteer on the market. Many decision-makers believe that this would reduce the stigmatization of exploited people, that by taking these measures prostitution and sexual exploitation would decrease, but all the indications are to the contrary. At

²⁴² The Expert Group also commended Germany in their efforts in spreading awareness of the problem of trafficking and suggested that sporting events serve as a prime opportunity to address the issue to the consumers and users of goods and services (though awareness campaigns need to be ongoing). “Opinion of the Expert Group on Trafficking in Human Beings of the European Commission (in conjunction with the world Football Cup 2006 in Germany and the related assumptions of increased trafficking activities around this event)” *European Commission*, Brussels (May 2006) , 1

the same time as some exploitation becomes legal and above board, the phenomenon increases and the illegal activities also increase in scope. **The only thing achieved by legalization and regulation is that, in society at large, acceptance of sexual exploitation has increased.**²⁴³

This statement reveals that although prostitution, at least for the time being, remains under control of the member states, the **EU views a legalized prostitution regime as incompatible with the initiatives at the supra-national level.** However, by framing or linking the issue of prostitution to forced labour, exploitation and human trafficking, the EU is able to affectively address the issue of prostitution and apply pressure to member states to change their policies to fall more in line with EU perspectives and approaches.

This chapter has largely discussed Germany's new prostitution law and the effect the legislative change has had on the sex industry in Germany, as well as how and to what degree prostitution is linked to trafficking in the region. By passing ProstG, the German Bundestag has adopted a narrowly delineated approach to regulating particular aspects of prostitution, a bold departure from the stance many governments take (unofficial tolerance). The emphasis of the Act is placed on improving the conditions in which prostitutes work and make a living; it neither aims to condone nor abolish the practice, however it does seem to suggest that **prostitution is a social inevitability.**²⁴⁴ The Act undoubtedly brought about a

243 *ibid*

244 "Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes (Prostitution Act)" *German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth* (July 15 2007), 10
<http://www.bmfsfj.de/bmfsfj/generator/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/bericht-der-br-zum-prostg-englisch,property=pdf,bereich=,sprache=en,rwb=true.pdf>
 (accessed on October 1 2007)

legal re-evaluation of prostitution and at least in theory has altered the legal position of prostitutes in Germany, though as discussed, the degree to which these legal changes have translated into practical changes for the industry are modest or at the very least, unclear.

There are many reasons why implementation of the new Act has been challenging, among them is prevailing stigma, a lack of information/misinformation among sex workers, and a lack of commitment or variation at the Land level. While certainly some of the rather lacklustre results to date can be chalked up to the fact that the law is still quite new, many assert that until the Bundeslander becomes more involved little real change will take place, since it is at the local level that monitoring and ensuring consistent standards would be met.²⁴⁵ So far there is great variation in the manner and degree to which Länder are implementing the new legislation. An example of this is **Article 297 of the Act Introducing the Criminal Code which authorizes the Land governments to introduce ordinances prohibiting prostitution entirely or at certain times of the day “for the protection of young people or of public decency” across an entire municipality of parts of it, or along public roads, paths, in squares, parks and other locations visible from there.** In order to accomplish this, some Länder have transferred this power to various Land authorities who are tasked with decided where prostitution can occur and where it cannot. The result is that different Länder pursue different paths at the local level regarding delineating permitted and prohibited areas in which prostitutes can

²⁴⁵ Representative from research institute, personal telephone interview, March 3rd 2008

work. The lack of established standards and uniform implementation can lead to the **ghettoisation of prostitution** which can lead to not only more stigmatization but also to the exploitation of prostitutes by pimps – precisely one of the problems the Act was supposed to fix ²⁴⁶

While many cities have been very hesitant to accept the added responsibility the new Act brings, others have capitalized on it. The city of **Cologne**, for example, implemented a “**sex tax**” in January 2004 in an attempt to balance its budget. Levied on prostitutes, strip shows, pornographic cinemas and massage parlors, the sex tax generated €828,000 for the city in a single year. Each prostitute is required to pay **€150 per month** into the city’s coffers, while part-time prostitutes pay on a daily basis (€6 for each day on the job). While the tax may have enabled Cologne to meet their budget, the city fell under heavy criticism for its introduction of what closely resembles an old fashioned “**sin tax**” which not only **disproportionately affects low earners but also stigmatizes those working in the sex industry** (again, precisely what the new Act was supposed to address and alleviate).²⁴⁷ Whether one agreed with Cologne’s approach or not, the city demonstrates the flexibility afforded to the cities and Länder. There is a growing understanding that better clarification of the law, at all levels of government and

²⁴⁶ Nomi Levenkron (Ed. Ella Keren) “The Legalization of Prostitution: Myth and Reality – A Comparative Study of Four Countries” *Hotline for Migrant Workers* (2007) http://www.hotline.org.il/english/pdf/The_Legalization_Of_Prostitution_English.pdf (accessed April 24 2008)

²⁴⁷ “Sex Tax Filling Cologne’s Coffers” *Der Spiegel* online (15 Dec 2006) <http://www.spiegel.de/international/0,1518,454749,00.html> (accessed on 5 October 2007)

how it relates to their jurisdictions, is also imperative to effective implementation of the Act.²⁴⁸

Despite initial setbacks, unanticipated consequences or delayed results, the Act has brought about some discernable change. For example, despite varying opinions regarding specific provisions and methods of implementation, all federal parties are now in agreement that the law regulating prostitution is a necessary and positive development. There is debate and discussion at all levels of government which shows that the issue has clearly been identified pertinent and relevant. The Act has opened up a much needed (and long overdue) realistic dialogue – in government as well as among the public - in Germany on the subject of prostitution.

In terms of the impact of specific provisions on prostitutes and the industry in general, it just might be too soon to tell. At this point **it seems unlikely that it is the Act that has caused significant change upon the industry itself in Germany; rather, the Act came into force as a result of many changes** (to the industry, society and government) that occurred over a long period of time. If anything, the **Act has served as a catalyst** for discussion and hopefully, the beginning of the end of discrimination towards sex workers and their occupation in Germany. Because the impact is unclear, it is important to continue researching the effects of the law. If prostitutes aren't taking advantage of their

248 "Prostitutionsgesetz: Mangelnde Umsetzung der Lander ist das Problem" *Die Grunen* (The Greens) website (25 October 2006) <http://www.gruene-bundestag.de> (accessed on January 30, 2008)

new rights, it is important to find out why and then respond accordingly. For example, if employment contracts continue to be unattractive to prostitutes, whether based on a failure to fully understand them or not, then perhaps it is worth looking at **if there is not a different or better way to give them the same social rights, for example as freelancer workers** instead of “regular” employees. At the same time, as a representative from a leading anti-trafficking NGO pointed out, it is important not to get too bogged down with explanations at the expense of implementation and making real changes to the situation. Government officials and lawmakers are generally hesitant to act on something without first having a full and accurate picture of a situation, naturally. Given the diverse and clandestine nature of the prostitution industry, however, there is really no such thing as “normal” or “typical” prostitution, which means that it may be a long time before we completely understand or are able to explain or predict all aspects of it.²⁴⁹ For this reason ongoing research, surveys and analysis is key to not only monitoring the impact the Act has made but also as a safeguard to ensure it is moving in the right direction and that any changes needed to be made to account for unanticipated consequences can be addressed in good time.

What is quite clear, however, is the degree to which illegal migrant prostitutes are left out of the new Act. To this group - which makes up the vast majority of sex workers in Germany – the new law offers little in the way of protection or security. Their **exclusion may very well work at cross purposes to the new Act: by denying migrants prostitutes any rights (to an agreed to minimum wage,**

²⁴⁹ Representative from anti-trafficking NGO, personal telephone interview, March 5th 2008

right to employment contracts, standards of work) they may undercut the ability for legal prostitutes to take advantage of the benefits since brothel owners, clients, may show preference for prostitutes who don't demand such provisions. Either way, their exclusion from the new law's benefits is undeniable – and yet, hardly surprising. The law would never have been passed had it included provisions which allowed for the protection or extension of benefits to illegal migrants – there would have been far too much opposition given the country is teeming with **latent anti-immigration feeling** as it deals with a stumbling economy and high unemployment rates (though interestingly enough, one would be hard-pressed to find many Germans willing to work in the sex industry). The solution to this disconnect lies, as suggested by many advocates and fieldworkers, is a more liberalized labour market which is more inclusive of immigrants, particularly women. For if more women were able to immigrate to Germany legally (obtain valid work permits – whether in the sex industry if they choose or otherwise) then there would be less illegal migration, smuggling and trafficking. Perhaps much like the new Act itself, with some more time this growing reality will force decision-makers to adopt a realistic approach to a problem that is clearly not going away and not alleviated by a prostitution law that excludes the bulk of those who make up the industry it is intended to help.

Conclusion

While prostitution has long existed (it is no coincidence many people refer to it as the **world's oldest profession**), the nature of the industry and the context in which it operates is **rapidly changing**. For a multitude of reasons, **prostitution is on the rise around the world**, and there seems to be no limit – to the size, scope and geographic expansion of it.

As this research paper discussed, prostitution is often affected by **push and pull factors**. These variables shape the context in which prostitution is practiced and in many ways will determine the nature of it. As discussed in Chapter 2, in Eastern Europe and the former Soviet Union, the collapse of communism and the drastic social, economic and political restructuring which followed have created conditions in which prostitution is more likely to flourish. The lack of employment opportunities for women in many countries and social security provisions, combined with the rather sudden explosion of the sex industry in the region have made prostitution a feasible choice for many women. While much of the existing literature written on the topic of post-communist transition holds true today, the expansion of the European Union has in many ways created more differentiation and contrast among the former communist countries. An almost tiered system has developed in which countries which have joined the Union are prosperous, while those that fall outside its boundaries struggle to adjust and succeed in an increasingly global and competitive market. These **“tiers of prosperity”** among former communist countries are made evident when one

looks at the “**sending**” and “**receiving**” **countries** of prostitutes and trafficking victims. As countries become more prosperous they often shift from being a country from which women are leaving to seek out a better life, to a country of either transit or one which offers better opportunities. The great variety among post-communist countries in the region in terms of development wealth perhaps only serves to support that it is more advisable to focus on the differences among transition countries rather than make blanket observations and characterizations.

The expansion of the European Union, in conjunction with globalization, has also infused mobility into the sex industry, which has greatly impacted how and where prostitution is conducted. As Chapter 3 discussed, these two variables represent the “how” – the facilitating factor which determines how women move around and seek better opportunities outside their home country. This, as Agustin asserts, is in and of itself, is a positive thing. However, **this agency (to migrate, create a different and better situation for one’s self) can be compromised** and quickly replaced by coercion in the sex industry, **where there are few standards or checks and balances**. The empowering decision to leave one’s home country for another in favour of better job prospects can be snuffed out by deceptive job offers, dead-end, low-skill jobs, traffickers looking to take advantage of vulnerable in-transit women or the restrictive immigration policies of EU member states which make it very difficult for “outsiders” to enter and integrate into society. While the demand for prostitutes in EU countries is alive and well (and in many cases unable to be fulfilled by local sex workers), and the Union has

facilitated mobility in the region, there seems to be a lack of recognition on the part of member states of the reality of the situation. That regional (and global) migration is on the rise, **sex workers like other labourers are mobile**, and will require protection and acknowledgement by the state for their contributions like any other. To fight human smuggling, trafficking and forced labour without taking into account the push and pull factors characterizing the sex industry in Europe, while perhaps easier in that it avoids delving into sensitive policies which lie at the national level, is futile. **While Germany has taken the first step in recognizing sex work as a form of employment like any other, this gesture means little if they effectively ignore the vast majority of those that make up the industry.**

Contrary to initial assumptions, the legalization of prostitution in Germany does not serve as a pull factor attracting prostitution from across region. The desire of a prostitute to go to Germany (and Western Europe in general, for that matter) to earn a living existed before ProstG was passed and has little to do with the fact that their practice is now no longer considered immoral or illegitimate under the law. Rather, it has to do with **Germany's relative wealth**, a burgeoning [aufkeimende] sex industry (characterized by high demand) and the fact that moving within EU borders is so easy. After all, as discussed, the fact that the vast majority of women working in the sex industry in Germany are not German and working illegally without a valid work or residence permit are for the most part unconcerned with the national benefits suddenly afforded to sex

workers. While certainly the reduced threat of apprehension makes working easier, as discussed this has as much to do with the widening and deepening of the EU than it does the legalization of prostitution.

Though ProstG might not have caused prostitution to increase or prostitution patterns to change, it is still nonetheless very interesting and telling of the country's rather conflicted perception towards the industry. Moreover, the law's unanticipated effects (in particular, the **challenges associated with implementation at the local level** and the **prostitutes' accessibility to the rights and benefits** as provided under the Act) can serve as an example to other countries considering implementing similar policies. **Canada**, for example, which has been contemplating the legalization of prostitution should pay special attention to the tensions which exist between various levels of government as it is likely their federal system that would be bogged down with similar discrepancies and difficulties. At the same time, being surrounded by natural boundaries on three sides of its borders means that for Canada, illegal migration would not prove to be as big a consideration. This all said, **Germany's decision to legalize prostitution does represent an important step along the path to equal rights and opportunities for prostitutes**. Though it will likely be years before we will be able to properly assess the degree to which the new law is changing or improving the industry, **the removal of the characterization of "immoral" from prostitution does represent a bold step**, as does extending **workers' rights and responsibilities** to prostitutes. Perhaps how many take advantage of

them is the lesser point; the important thing is they have the choice, the option, which ties back to this paper's earlier discussion about **agency** (**Handlungsermächtigungen**) as an essential variable in breaking the system of **coercion** (Nötigung/Zwang) that so often characterizes the sex industry .

This research paper aimed to examine prostitution in Germany since unification, and provide some explanations as to why and how the industry has changed. As anticipated, it is not a single factor (or hypothesis) but **a combination of multiple factors which have combined to create unique and in many ways unprecedented patterns of prostitution in Germany**. Surprisingly, **the legalization of prostitution served less as a causal factor, more as an effect or outcome**. Given the complexity of the topic, there are a multitude of areas that could be further elaborated upon and delved into if time and space permitted. With such constraints in mind this paper was intended to give a comprehensive overview of the subject (changing patterns of prostitution in Germany) while touching upon related topics (trafficking, for example) which are pertinent and certainly merit future study. **Given that disparity of wealth is only increasing around the world, and that the EU is continuing to both widen and deepen, it is likely that prostitution will continue to be a topic of interest for some time to come.**

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