

in most countries as rules on adult pornography have been relaxed. While in some countries such as Germany or Austria, the compensatory tightening of child pornography regimes only took place some years after the liberalization of adult pornography, in other countries these processes evolved simultaneously, such as in Finland or Poland. Finland legalized adult pornography in 1998, but simultaneously criminalized the possession of child pornography, which had previously not been sanctioned explicitly. Additionally, it raised the sanctions for providing child pornography to a prison sentence of up to two years (before it had been six months). The same pattern can be observed in Poland, which legalized adult pornography in 1997, but at the same time raised the sanctions for providing child pornography from a maximum prison sentence of two years up to five years.

8

Prostitution: sin, unavoidable evil, or recognized profession?

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The extent to which governments should permit, tolerate, or prohibit the supply and demand of prostitution has constantly been a matter of social and political controversy. Debates are typically shaped by value conflicts that are not only related to the question of whether prostitution should be viewed as sinful, immoral behaviour or not, but also to conflicting views on the extent to which prostitution affects gender equality and undermines the rights and position of women in a society. Prostitution can hence be classified as manifest morality policy, notwithstanding the fact that prostitution is a commercial activity with enormous economic turnovers. A technologically mobile population now purchases and sells sexual services in various places (on the street and in flats, saunas, and clubs) and through different mediums (mobile phone and Internet) (Wagenaar et al. 2013: 17). Recent estimates from Germany indicate that the sector is economically very profitable, producing an annual turnover of about 12.5 billion Euros (BFSFJ 2012: 52). As a result, Germany has been called 'Europe's biggest brothel'. In addition to the economic impact, new patterns of migration and growing levels of human trafficking have changed domestic prostitution markets (Skilbrei and Holmström 2011).

At the same time, societal and political reform demands to change the regulation of prostitution reflect a highly pluralistic pattern. Reform impulses are generally highly diverse and ambiguous, indicating no clear and consistent direction towards more permissive or more authoritarian styles of regulation. While social value change should entail a push towards more permissive approaches, given the stronger emphasis placed on individual freedom and sexual liberty, representatives of the Catholic Church still argue that sexual intercourse outside a stable relationship and without the purpose of reproduction

is sinful and contradicts God's will (Catholic Church 1993; PCMIP 2005; Peach 2005). At the same time, relevant social interests, in particular women's movements, have highly different perceptions of prostitution problems. On the one hand, radical feminists consider prostitution to be a manifestation of male patriarchy that harms the dignity of women (Emma 2012; Outshoorn 2005; Stetson 2004). On the other hand, liberal feminists conceptualize prostitution as a regular job requiring improvements in working conditions. As a consequence, parliamentary debates are often very controversial due to the wide variance in values and beliefs in terms of individual freedom, collective security, and moral behaviour (see Wagenaar and Altink 2012).

While these features render prostitution an analytically highly interesting area for the study of moral conflicts and their impact on regulatory change, we still have limited knowledge on patterns and change of prostitution regulation.

This statement holds, although several research projects have examined prostitution policy in Europe. A research report from the International Centre for Migration Policy Development (ICMPD) has evaluated the regulation of human trafficking for the purposes of sexual exploitation in the EU member states (ICMPD 2009). Other endeavours have explored prostitution policy more specifically, but they either lack a detailed empirical assessment (Kelly et al. 2009; Verloo et al. 2011) or focus on policy framing for only a few countries (Outshoorn 2004c). There have also been thoughtful comparative studies conducted for a small number of countries (e.g. Dodillet 2005; Sauer 2006; Schmitt et al. 2013; Skilbrei and Holmström 2011; Wagenaar et al. 2013; Weitzer 2012) and several in-depth analyses of single cases (e.g. Outshoorn 2001, 2004d; Pates 2012; Euchner 2014). However, a detailed empirical assessment covering a larger set of countries and a longer observation period is still lacking.

To address these research gaps, the chapter provides a comprehensive overview of the regulation of prostitution in nineteen Western European countries between 1960 and 2010. In this context, the analytical focus is on the regulation of the demand and supply of adult prostitution. Related activities such as human trafficking, forced prostitution, and child prostitution are excluded from the empirical assessment. There is generally a broad political consensus that these kinds of activity are considered criminal behaviour. They hence rarely constitute issues of political controversy. In contrast, the consensual supply and demand of sexual services for adults and from adults has sparked heated debates.

In order to obtain a systematic empirical assessment of changing styles of prostitution regulation, the chapter relies upon a highly differentiated measurement scheme. The separate assessment of rules and sanctions is complemented with a strict separation between implications for prostitutes and clients. Based on this scheme, interesting regulatory patterns appear. While

the overall pattern of prostitution regulation is shaped by the political absorption of societal reform impulses, we find interesting deviations from this trend from the 1990s onwards. These deviations are puzzling for various reasons. First, in light of quite ambiguous reform indications that either pointed towards more permissive or more authority-oriented changes, it has been argued in chapter 4 that the most likely scenario should be the absorption of diffuse reform pressures and hence a relatively high degree of policy stability over time. This is indeed the pattern that can be observed for most of the countries under study, but there are obviously deviations from this trend. Second, these deviations can be classified as filtered transmissions in the sense that diverse reform impulses have been politically processed in a highly selective manner, entailing a divergence of prevalent regulatory styles over time. More specifically, some countries like Germany moved towards a permissive style of regulating prostitutes and clients. A second group of countries, by contrast, moved in the opposite direction by further restricting and sanctioning adult prostitution. A case in point is prostitution regulation in Sweden. How can we explain that some countries deviated from the general pattern of absorption and why did they adopt rather diverse policies? To shed light on these questions, particular emphasis is placed on the comparison of prostitution policy in Germany and Sweden. As will be shown, divergent deviations from the expected pattern of absorption can be traced to the presence of very specific conditions. In addition to a high degree of ideological fit between governmental positions and the ideas advanced by interest groups and social movements, the extent to which societal actors have privileged access to the political decision-making process and represent homogenous positions plays an important role in this regard.

8.1 Empirical patterns of regulating prostitution

As mentioned above, the measurement scheme captures legal amendments seeking to adjust the demand or supply of sexual services from adults for adults exclusively. In other words, the analysis centres on adult prostitutes and clients choosing voluntarily to become involved in the activity.¹ Moreover, for reasons of comparability, the empirical analysis concentrates on legislative developments at the national level. It is well acknowledged that in many countries, a range of regulatory aspects in this policy area falls under

¹ It should be emphasized that some authors deny that prostitution can be classified as voluntary activity. Some feminists argue that a separation between voluntary and involuntary prostitution is impossible, under the assumption that any person offering sexual services is at least indirectly forced to do so (Dodillet 2005).

the responsibility of regions or municipalities (e.g. regulations regarding the location of the activity). To cope with this problem, the general coding rule in unclear cases takes into account the approach valid for most of the sub-national entities.

8.1.1 The rules dimension

In terms of rules, the measurement scheme is based on a three-tiered system that distinguishes between general paradigms, personal requirements, and procedural rules. Four different paradigms are identified and ordered according to their restrictiveness from the perspective of the demand side: (1) prohibition; (2) abolitionism; (3) permission without recognition; and (4) permission with recognition. Most of these paradigms are based on ideal-typical categories proposed in earlier studies under different names (see Outshoorn 2004b; Weitzer 2012). The advantage of this underlying scheme is that the categories are truly selective and cover a comprehensive range of rules. The most restrictive paradigm, *prohibition*, covers all countries where selling sexual services is strictly prohibited. In the second paradigm, *abolitionism*, the purchase of sexual services is largely prohibited but offering sexual services is not necessarily restricted by law.² The third category, *permission without recognition*, subsumes countries where both activities (offering and purchasing sexual services) are legal, but prostitution as such is not recognized as a regular job. Hence, the supply of sexual services does not fall under the rules of public life (e.g. administrative or public law, access to the social security system). The fourth and most permissive paradigm, *permission with recognition*, permits the supply and demand of sexual services and recognizes the activity as regular work.

The second level of the rules dimension covers *personal requirements*. More precisely, the level assesses whether the individual (prostitute/client) is required to restrict the supply and demand of sexual services to certain locations. Again, four categories are identified and ordered according to their degree of restrictiveness: legal in private flats but not in brothels or on the street (very limited); legal in private flats and on the street but not in brothels (limited); legal in private flats and brothels but not on the street (wide); and legal in private flats, brothels, and on the street (very wide). A regime's *procedural requirements* determine whether profit-oriented third parties are allowed to organize the supply of sexual services. This may include pimping and procuring, as both activities generate profit for third parties. The study codes

² A country was assigned to this coding category when any national law valid for a broader jurisdiction prohibits the purchase of sexual services for clients in general or under specific circumstances.

Table 8.1. Prostitution: measurement of rules

General rules paradigm	Personal requirements (Location)	Procedural requirements (Profit-oriented activities by third parties)
<i>Prohibition</i>	Not relevant	Not relevant
	Very limited	Prohibited Allowed
<i>Abolitionism</i>	Limited	Prohibited Allowed
	Wide	Prohibited Allowed
	Very wide	Prohibited Allowed
	Very limited	Prohibited Allowed
<i>Permission without recognition</i>	Limited	Prohibited Allowed
	Wide	Prohibited Allowed
	Very wide	Prohibited Allowed
	Very limited	Prohibited Allowed
<i>Permission with recognition</i>	Limited	Prohibited Allowed
	Wide	Prohibited Allowed
	Very wide	Prohibited Allowed
	Very limited	Prohibited Allowed

only legal restrictions on pimping, for two reasons. First, national legislation seldom distinguishes between pimps and procurers, particularly in the early decades of the investigation. Second, pimps play a more decisive and controversial role. These actors are directly involved in offering and arranging the sale of sexual services, while procurers 'only' provide the necessary facilities. Accordingly, the measurement approach identifies whether pimping is prohibited or legal, evaluating the latter constellation as a more permissive rule than the former. Overall, the second level (personal requirements) and the third level (procedural requirements) are assigned to each of the general paradigms except the most restrictive category (see Table 8.1).

What empirical patterns can we detect on the rules dimension if we apply this measurement scheme? Figure 8.1 displays a first overview of the rules governing

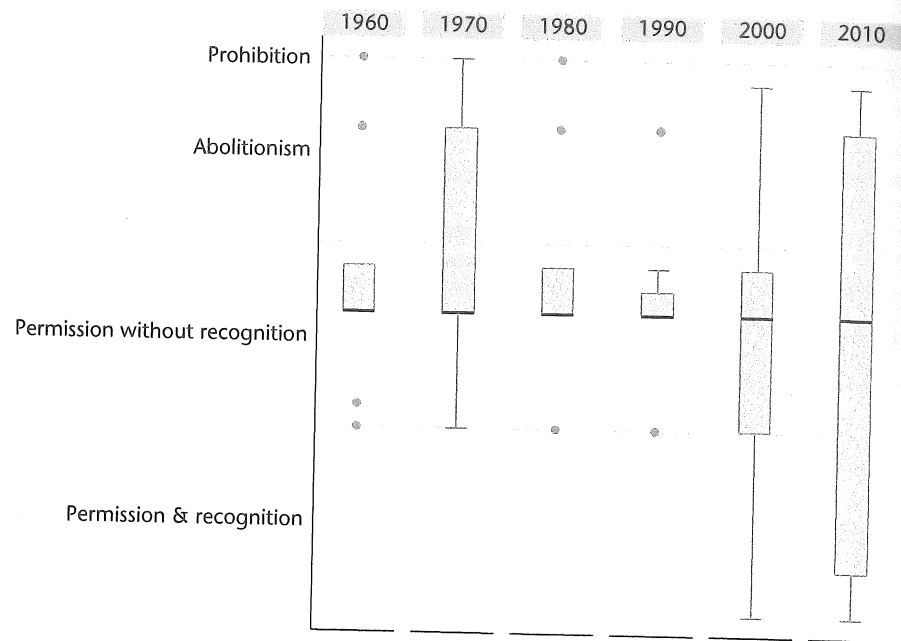


Figure 8.1. Prostitution: developments on the rules dimension

prostitution in nineteen Western European countries since the 1960s. First of all, the figure indicates that until the late 1990s, national rules converged on the paradigm of *permission without recognition*. Thus, most of the countries permitted the purchase and supply of sexual services but increased the personal and procedural requirements. The majority prohibited prostitution in brothels but legalized the activity in private flats or on the street. The profit-oriented activity of third parties was generally prohibited. Only a few states adopted a more restrictive paradigm (prohibition or abolitionism). Spain and Portugal are prime examples of the prohibitionist approach. Francisco Franco, the dictator who governed Spain until 1975, actively fought against what he considered the moral decay of society. He not only criminalized the supply of sexual services but also adopted stricter rules concerning homosexuality and pornography.³ Portugal was the last country in Europe to eliminate its prohibition on prostitution in 1981.⁴ As in Spain, the breakdown of the country's dictatorship opened up opportunities for more permissive rules with regard to morality issues.

Second, this pattern of regulatory convergence has been followed by divergent developments from the 1990s onwards. Although there is still a large

³ Law 16/1970 on hazards and social rehabilitation, 4 August 1970.

⁴ Law 221/1982 amending the Penal Code of 1982, *Official Gazette*, I, no. 221 of 23 September, 1982.

number of countries sticking to the dominant approach of permission without recognition, we observe deviations from this trend that are characterized by opposing directions of policy change. Germany, the Netherlands, and Greece have switched to a more permissive approach: these countries permit the purchase and supply of sexual services and acknowledge prostitution as a 'regular' job. Sweden, Norway, and Finland, by contrast, have adopted a more restrictive approach that reflects the abolitionist paradigm. Sweden, the forerunner of the group, prohibited the purchase of sexual services completely in 1999. Finland had long discussed this model but did not achieve consensus until the year 2003; since then, the supply of sexual services in public places has been prohibited (ICMPD 2009: 177). As brothels are illegal, the purchase of sexual services is permitted exclusively in private flats. In 2006, the Finnish parliament adjusted the country's penal code and criminalized the purchase of sexual services from victims of pandering and human trafficking (Skilbrei and Holmström 2011). Norway followed Sweden's example in 2008, prohibiting the purchase of sexual services in any location.

In sum, the pattern of rules adopted across the country sample reveals a combination of high stability of the paradigm of permission without recognition that coincides with deviations from this pattern that point in opposite directions. This development comes along with regulatory divergence in European prostitution regulation since the late 1990s that replaced the previous pattern of regulatory convergence towards permission without recognition.

8.1.2 The sanctions dimension

The sanctions dimension is based on an ordinal scale assessing the extent to which the most common rule violation is punished. The behaviour that constitutes an offence varies across paradigms and the related personal and procedural rules (e.g. sanctions for offering sexual services in general or in a specific location). The analysis distinguishes between the punishment of prostitutes (Figure 8.2) and clients (Figure 8.3) in cases of rule violation.

Figure 8.2 illustrates the development of sanctions for *prostitutes* illegally offering sexual services over the period of investigation. In the first two decades, a larger set of sanctions is employed; however, from the 1990s onwards, only three types of punishment are common (i.e. low and substitutable imprisonment, fines, and no punishment). In the early decades of the period of investigation, several countries punished prostitutes with imprisonment. France, for instance, punished the supply of sexual services in the street with a fine of between 1,000 and 10,000 Francs and imprisonment of at least three months. Spain and Portugal punished prostitutes by sending them to labour or re-education camps. Israel sanctioned prostitutes with fines or imprisonment of up to forty days. Nowadays, prison sentences have widely

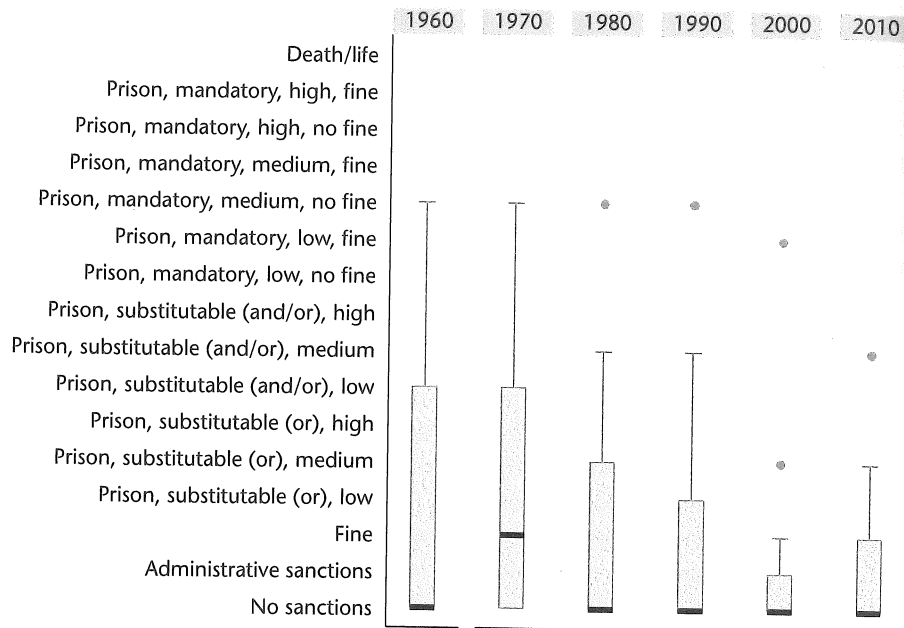


Figure 8.2. Prostitution: developments on the sanctions dimension (*prostitutes*)

been eliminated. Monetary fines are imposed in some countries, but most states refrain from punishing prostitutes at all.⁵ For example, in 1993, Ireland changed from a system of substitutable sanctioning, including intermediate levels of imprisonment and fines, to punishment via fines alone. However, some countries have moved against the general trend of reducing sanctions. France is one example; it is displayed as an outlier in the final decade of the sample (see Figure 8.2). The government abolished sanctions for offering sexual services in public places in 1992 but re-introduced high sanctions again in 2003. Prostitutes are now punished by a fine of 3,750 Euros or imprisonment of up to sixty days when convicted of offering sexual services in public places in an offensive manner. In sum, with regard to prostitutes, the move towards a more lenient approach to punishing rule violations indicates a trend of sigma-convergence; that is, the countries under study became more similar with regard to their sanctioning regimes. However, the data does not display

⁵ As our data collection does not take into account laws or decrees adopted at the regional or municipal level, the punishment for the violation of restrictions with respect to street prostitution might be underestimated. This is particularly a problem for federal countries such as Switzerland, Spain, Germany, and Belgium. Moreover, the dataset does not consider sanctioning of procurers or pimps in order to maintain comparability over time and across actors. This is a problem in the assessment of sanctions for the crime of illegally offering sexual services in brothels. Most of the time, procurers are sanctioned instead of prostitutes in such cases.

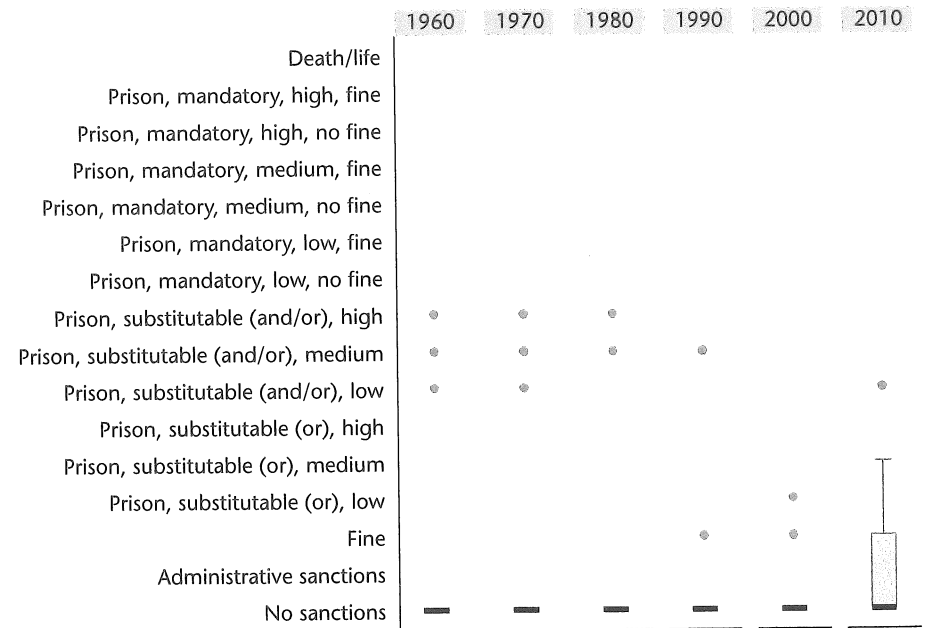


Figure 8.3. Prostitution: developments on the sanctions dimension (*clients*)

Note: On the basis of this measurement scheme, only countries following the paradigm of ‘prohibition’ or ‘abolitionism’ are likely to punish clients. As a result, the population varies over the period of investigation: 1960: four countries; 1970: five countries; 1980: three countries; 1990: two countries; 2000: four countries; 2010: six countries.

delta-convergence, as the median country has remained fairly stable over time. There is obviously no clear and dominant trend towards higher or lower sanctions.

Evidently, the rules and sanctions dimensions have developed very differently. More precisely, European countries diverge with respect to rules but converge in terms of sanctioning prostitutes. Does this hold true when we examine the second actor group, the clients? Figure 8.3 displays the development of sanctions for *clients* illegally purchasing sexual services. The punishment of clients appears to be the exception rather than the rule. In 1960, Italy, Israel, and Great Britain⁶ were the only countries to punish the actors purchasing commercial sex. In parallel with the later divergence in rules, however, additional countries began to punish clients as well over the course of the observation period (e.g. Sweden, Norway, Ireland). As of 2010, six European countries punish clients for noncompliant behaviour. In Ireland, for instance, clients must pay a fine of 250 Euros when convicted for purchasing sexual services in a public place. In Italy, the fine ranges between 15 and 100 Euros for the same offence. The Scandinavian countries (except Denmark) punish

⁶ In this chapter, when we speak of Great Britain, we refer only to England and Wales.

clients particularly harshly. In Sweden, the purchase of sexual services in any location is sanctioned with imprisonment of up to one year. Before 2005, clients either had to pay a fine or were punished with imprisonment of up to six months. Since 2008, Norway has punished the purchase of sexual services with fines or imprisonment of up to six months. In sum, the number of countries sanctioning clients for rule violation has increased since the 2000s. In 1960, most countries (of those actually sanctioning clients) punished the purchase of commercial sex with imprisonment; since the 1990s, less serious sanctions in the form of fines have been applied, for the most part. However, the data indicates an upward trend. In sum, the diverging development of the rules dimension and sanctions for prostitutes (divergence vs. convergence) is compensated in part by the pattern of sanctions for clients.

8.2 Changing styles of regulating prostitution

The combination of the two measurement approaches reveals distinct changes in prostitution regulation. The following figures combine the empirical information in box plots, facilitating the interpretation by displaying the individual country movements. Figure 8.4 and Figure 8.5 differ in the sanctions dimension: the former focuses on the punishment of prostitutes, the latter on sanctions imposed on clients in cases of rule violation. This structure is necessary to capture the complex architecture of prostitution policy.

In the rules dimension, both figures clearly reveal the above-mentioned combination of two trends, namely the stability of the paradigm of permissiveness without recognition and the emergence of divergent deviations from this trend from the late 1990s onwards. On the sanctions dimension, by contrast, initial diversity has been more pronounced than for the rules dimension. Nevertheless, Figure 8.4 indicates a clear trend towards increasing similarity across countries. The sanctions for prostitutes mostly decreased over the last decades. The sanctions of clients (Figure 8.5), by contrast, developed less coherently. As already mentioned, in the first few decades, clients experienced intermediate levels of punishment in a few countries. Later, the level of sanctions decreased; however, in recent years, an increase becomes visible again.

In sum, the comparative assessment of prostitution regulation reveals three central features. First, for a considerable number of the countries under study, regulatory patterns remained relatively stable over time. Reform pressures in these countries have been largely absorbed, with the prevailing paradigm of permission without recognition. Second, this overall trend has been complemented by two divergent developments from the late 1990s onwards. One group of countries moved towards a permissive style of regulating prostitution, including low or intermediate sanctions for prostitutes and clients.

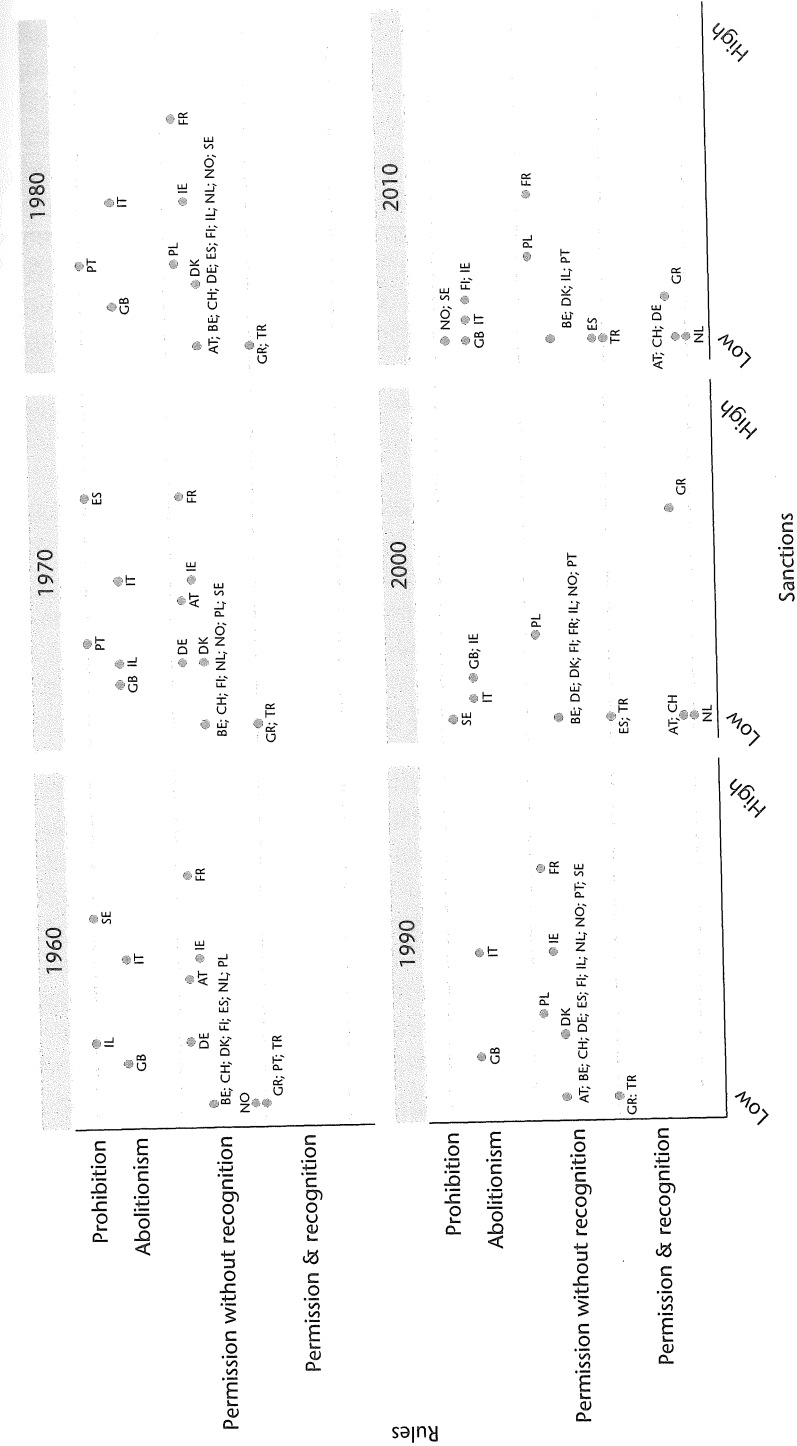


Figure 8.4. Prostitution: rules and sanctions over time, 1960–2010 (prostitutes)

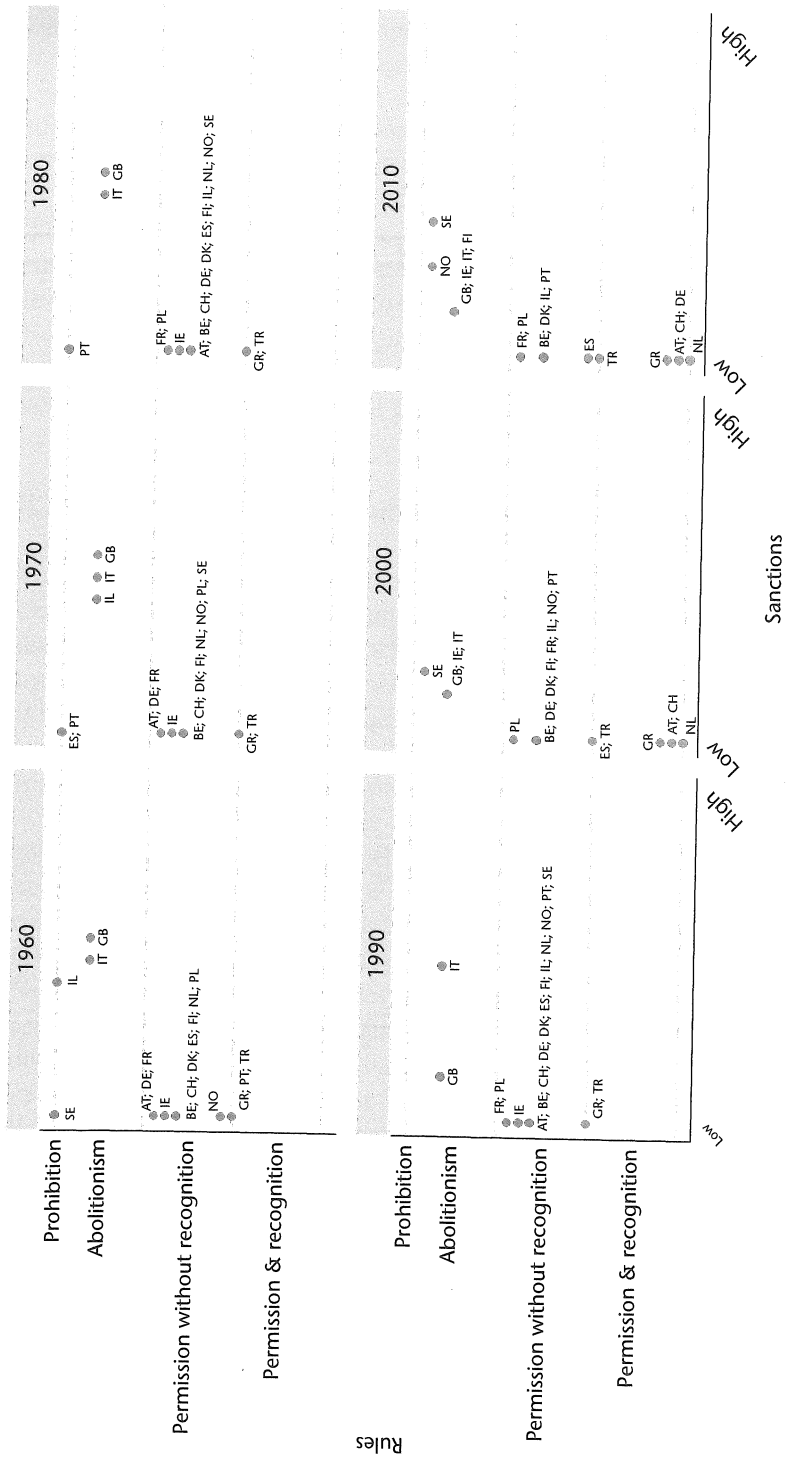


Figure 8.5. Prostitution: rules and sanctions over time, 1960–2010 (clients)

Another group of countries, by contrast, moved in the opposite direction of an authority-oriented style of regulation, strictly restricting adult prostitution. However, the degree of authority-oriented regulation of the countries in this latter group differs with respect to the punishment of clients and prostitutes. For clients, we observe a clearly authoritarian style of regulation. Access to sexual services for clients is restricted and noncompliant behaviour severely punished. By contrast, prostitutes are only weakly sanctioned or not at all. They are in principle free to offer sexual services, but are indirectly constrained by the criminalization of the purchase. Third, the empirical analysis reveals that European countries have followed very different regulatory styles since the mid-1990s with respect to prostitution. In contrast to other morality policies, there is no clear-cut trend towards permissiveness.

8.3 Analytical puzzle and case selection

Against the backdrop of the theoretical arguments developed in chapter 4, prostitution regulation should have basically followed a pattern of absorption; that is, the prevalence of the status quo with only minor adjustments over time. This expectation is based on two considerations. First, prostitution regulation can be considered a manifest morality policy. Political conflicts are predominantly shaped by value conflicts rather than conflicts over material interests (Wagenaar and Altink 2012; Weitzer 2012). These value conflicts refer not only to the question of whether the supply and demand of prostitution as such can be considered a sinful behaviour or not, but also touch upon the strongly debated relationship between individual freedom, women's rights and public health and order (Outshoorn 2004a: 269f.). These features generally imply that—in light of strong societal value conflicts of how to handle prostitution—political compromises are difficult to achieve.

A second factor that stands in the way of swift policy change refers to the fact that impulses for regulatory reform in this policy field are generally fairly ambiguous, hence pointing in different reform directions. Although the strength of these reform impulses to some extent varied over countries and over time, the crucial point is that—in all countries under study—they remained ambiguous in their direction. On the one hand, there are clearly identifiable cultural pressures that favour a general shift towards permissive styles of prostitution regulation. Most Western European countries have been confronted with societal value changes, including demands for sexual freedom and gender equality. As part of the student protests in the 1960s, a social movement was established that challenged traditional codes of behaviour relating to sexuality and interpersonal relationships. This movement sparked the so-called 'sexual revolution' that spread throughout the Western world

from the late 1960s onwards (see Etzemüller 2005: 11ff.). Closely connected to this discussion was the demand for women's rights. These demands were strongly supported at the European and international levels. Prominent events in this movement include the United Nations World Conferences on Women in 1980 and 1985. The European Parliament adopted a resolution on 'Violence against Women' in 1986.⁷ This document referred to prostitution policy and recommended decriminalization of the 'exercise of the profession' (Art. 55) and declared that prostitutes should be guaranteed the same rights as other citizens (Art. 56). Thus, most European states experienced comparable demands concerning sexual freedom and gender equality.

On the other hand, these cultural impulses towards permissiveness have been complemented by societal demands pushing towards more authoritarian styles of regulation. They basically emerge from the fact that the position of women's movements on prostitution is generally highly heterogeneous. The above-mentioned claims for nondiscrimination and professional freedom reflect only one side of the coin. At the same time, other branches of this movement push for a much more authoritarian stance on prostitution regulation, arguing that the permissive styles of regulation of prostitution entail the exploitation of women and their societal perception as a 'tradable commodity' rather than the strengthening of gender equality and women's rights.

Taking these considerations as a starting point, it seems indeed hardly surprising that until the late 1990s, we observe relatively stable patterns of regulation in the countries under study. What comes as a surprise, however, is that since that time some countries have been deviating from the theoretically expected pattern of absorption. And what is even more astonishing is that they did so by moving in different directions. Obviously, cultural pressures have been filtered differently in the political systems of these countries. As a consequence, we observe a diversification of styles of prostitution regulation in Europe. While some countries still stick to the status quo, hence absorbing reform demands, others have transmitted these demands into regulatory reforms. In so doing, however, different reform demands have been taken up in a highly selective manner, leading to strikingly different policy adoptions. What were the causal drivers behind this development? How can we explain that some countries deviated from the expected pattern of absorption? And why did they deviate in such different ways?

One could certainly argue that there is a range of factors that could help to account for this variation. In this regard, a common argument refers to the role of religion, in particular potential differences between Protestant and Catholic countries and different levels of religiosity. However, this argument

⁷ European Parliament 1986: Resolution on Violence against Women, Doc. A2-44/86, *Official Journal of the European Communities*, vol. 29, no. C. 176, 23, 25–6 (14 July 1986).

is of little help in order to account for the empirical developments we observe. The European countries following the same style of regulation from the 1990s onwards display a variety of religious characteristics. Highly religious and strongly Catholic countries, such as Italy and Ireland, have adopted the same regulatory style as Protestant and less religious countries, such as Norway and Sweden. Austria and Greece, countries with relatively high rates of religiosity and one prevailing religious denomination, share the same approach as Germany and the Netherlands, which have mixed religious systems and intermediate levels of religiosity. As a consequence, well-known cultural explanations cannot account for the diverging regulatory styles in Western Europe.

A further standard argument to account for regulatory variation refers to pressures emerging from increased immigration (see Mathieu 2012; Skilbrei and Holmström 2011). The breakdown of the former Soviet system in the late 1980s and further steps of European integration caused new migration flows. Legal and illegal immigration is often viewed as related to the milieu of prostitution (Wagenaar et al. 2013: 17). In particular, the associated phenomenon of trafficking for sexual exploitation increased national problem pressure in most Western European countries (Outshoorn 2004b: 8ff.) and influenced the problem definition (Mathieu 2012: 206f.). However, despite these common pressures, the countries obviously pursued very different reform strategies.

Moreover, scholars in the field of abortion and prostitution policy have argued that the empowerment of women may serve as a potential explanation (Outshoorn 2004c; Stetson 2001b; Stetson and Mazur 2010). These studies point to variables such as women's representation in parliaments, women's agency access, and the strength of women's movements in combination with issue framing. In terms of women's representation, we find high levels in the Scandinavian parliaments, with rates around 35 per cent in the mid-1990s (World Bank 2013). However, Ireland and Great Britain, which adopted the same regulatory style as the Scandinavian countries, exhibited much lower rates of women's representation (12 per cent and 18 per cent, respectively) (*ibid.*). Within the country group following a permissive style of regulation, the proportion of female deputies also varies remarkably. In the mid-1990s in Germany and Austria, about 25 per cent of the deputies were women; in the Netherlands, about 30 per cent, but in Greece, only 12 per cent. As a result, the seat share of women in parliament has limited explanatory power with regard to the emergence of two country groups in prostitution policy.

Finally, some studies emphasize differences in the strength of the women's movements, rather than the political power of women in the parliamentary sphere, as a potential explanation for different styles of prostitution regulation. For instance, Kaplan (1992: 63ff., 103ff.) classifies the Scandinavian women's movement as politically more powerful than respective movements

in Germany, Austria, or Switzerland. Such arguments, however, are still of limited help in order to account for the fact that Germany deviated from the initial pattern of absorption and adopted a highly different regulatory approach from Sweden. As emphasized by Outshoorn (2001, 2004c) and Dodillet (2005), the strength and position of women's movements may considerably affect the definition and perception of political problems related to prostitution. However, this approach falls short, in explaining differences in problem definition within the same country, as is currently occurring in Germany and the Netherlands, especially as their women's movements have been rather stable over time.

In light of the failure of existing theoretical arguments to account for the divergent deviations from expected patterns of absorption, the subsequent analysis concentrates on a comparative assessment of prostitution regulation in Germany and Sweden. Until the late 1990s, Sweden and Germany followed the same policy paradigm and logic of punishment. Thereafter, at almost the same point in time, they moved in diametrically opposite directions. Sweden reformed its prostitution policy in 1999 and Germany in 2001. The Swedish reform of 1999 made it unlawful to obtain or to attempt to obtain casual sexual services for compensation. Purchasing (rather than offering) sexual services became illegal, sanctioned with a fine or imprisonment of six months. Procuring and pimping remained illegal. Accordingly, Sweden has moved towards an authoritarian style of regulation. Germany, by contrast, passed a law that approved prostitution as a 'regular' profession in 2000. This means that the supply of sexual services has in some ways lost its stigma of 'immorality' (*Sittenwidrigkeit*), thus achieving the status of a valid transaction. Prostitutes are now subject to and benefit from social insurance contributions. Furthermore, prostitutes may sue clients for payment. Finally, the promotion of prostitution (also in the form of running a brothel) is no longer punishable under criminal law. Pimping is not allowed when it is deemed to be exploitative. Purchasing sexual services is legal and not sanctioned. Therefore, Germany has moved towards a permissive style of regulating prostitution for both clients and prostitutes.

8.3.1 Sweden: deviation towards authority

Until the mid-1990s, Swedish prostitution policy was fully in line with the dominant approach in our country sample, which followed the paradigm of permission without recognition. Although by the beginning of our observation period, a prohibitive approach had been in place, the predominant perception emerging during the 1960s was one that conceived of prostitution as an unavoidable evil (Dodillet and Östergren 2013). Until 1964, the Vagrancy Law made soliciting sexual services illegal, and noncompliant

behaviour was sanctioned severely (e.g. with hard labour). Any related activity of third parties was also illegal. The Law on Antisocial Behaviour adopted in 1964 stopped the general criminalization of prostitution but limited the activity to certain locations and established exit programmes. The stigmatization of prostitution as 'non-acceptable' and 'morally wrong' behaviour remained, however (Dodillet and Östergren 2013: 112).

While the 1964 law for a long time reflected a broad political and societal consensus, its legitimacy was increasingly called into question during the 1980s. These challenges emerging from decreasing societal and political acceptance of the status quo rather than functional considerations in light of changing problem constellations, however, did not result in any regulatory changes. In other words, Sweden followed a pattern of absorption—as it could be expected in light of the theoretical considerations developed in chapter 4.

During the 1980s, the legitimacy of the existing approach had been increasingly questioned in light of growing commercialization of sexuality, related economic crimes (e.g. money laundering) and the involvement of young girls in prostitution. Motivated feminist activists and policy-makers pushed the issue back onto the political agenda (Svanström 2004: 227). Spillover effects from related legislation on violence against women and pornography further contributed to the issue's continuing salience. At the same time, the public was increasingly questioning prostitution and all related activities. Although Sweden is known as a forerunner in terms of sexual freedom (see chapter 7 on the regulation of pornography), the public is much more critical in terms of prostitution. At the beginning of the 1980s, about 55 per cent of the population stated that they could never justify prostitution. This number increased to 65 per cent at the beginning of the 1990s, before dropping to 40 per cent in the mid-2000s (EVS 2011).

In response to these developments, the Minister of Social Affairs appointed the first expert commission on prostitution in 1981 (Dodillet 2005; Svanström 2004: 227). The commission defined prostitution as a question of human dignity, including both female and male sex workers in their considerations (Svanström 2004: 230). A highly heated debate followed, but the parliament could not agree on any regulatory changes. The 'only' output was that public pornographic shows were prohibited.

In the following years, the issue of prostitution was further politicized in the form of motions, interpellations, and bills leading to the establishment of a second commission in 1993. At that time, a coalition of the Moderate Party, the Liberals, the Centre Party, and the Christian Democrats was in power. The commission survived the legislative period; in March 1995, it finally recommended the criminalization of purchasing and offering sexual services and the sanctioning of both prostitutes and clients in cases of noncompliant behaviour (Svanström 2004: 234). While this recommendation was basically in line

with the position of the Christian Democrats, it was clearly incompatible with the positions defended by the Moderates and the Liberals (Dodillet and Östergren 2013; Svanström 2004). In light of these conflicts within the government coalition, a pattern of non-decision and hence preservation of the status quo prevailed. At the same time, any decision containing the criminalization and punishment of prostitutes only 'was never an option' for any party (Svanström 2004: 233), as prostitutes were considered victims of societal inequalities.

Up to this point, Swedish prostitution policy therefore hardly came along with any analytical surprises, but rather followed the expected patterns of absorption. In light of unclear reform impulses and incompatible policy positions within the governing coalition, the delegitimization of the status quo did not result in any changes of existing styles of regulation. In the course of the 1990s, however, this constellation changed fundamentally, implying that Sweden deviated from the prevailing absorption pattern and changed its prostitution policy in the direction of an authoritarian style of regulation.

Which factors account for this development? In a nutshell, the answer to this question lies in a rectification of reform impulses. The latter emerged from two sources: (1) the ideological compatibility of governmental positions on prostitution and the problem definition advanced by the Swedish women's movement; and (2) the highly coherent and politically influential organization of this movement.

In October 1994, the Social Democrats won the election and formed a minority government. Due to the single-party constellation and the long issue ownership of gender equality by left-wing parties, public demands for more restrictive regulations were largely in line with the governmental preferences. The dominant policy position of the Social Democrats strongly reflected the view that prostitution constitutes a female phenomenon and was thus linked to the feminist idea of the patriarchal society. Accordingly, male clients stood at the centre of the debate, accused of being responsible for the degradation of prostitutes (Dodillet 2005: 39ff.).

It was challenging, however, to find a majority for a bill that criminalized the client only, not least because of the government's minority position in the parliament. A reform consensus was only possible since the position of the Social Democrats resonated well with the policy solution that had been advocated by the Swedish women's movement. The largest women's groups in Sweden are the Fredrika Bremer Association (FBA) and the National Organization for Women's Shelters (ROKS).

The coherent policy position of these organizations and their manifold opportunities for political access contributed to resolving the stalemate, thus considerably influencing the response of the political system (see Dodillet 2005; Dodillet and Östergren 2013; Gould 2001; Svanström 2004). In

comparison with other women's movements in Europe, the Swedish groups have exhibited a relatively uniform position with regard to prostitution, especially in the last decades (Björklund 2007: 8; Outshoorn 2004a: 278f.). They consider prostitution to be 'patriarchal oppression of women' (Svanström 2004: 225) and, thus, link up with the ideas of radical feminism (Gould 2001: 437, 453). The main difference between radical feminism and liberal or socialist feminism lies in the conflicting view of male and female sexuality. Radical feminists consider male sexuality to be the main problem, intrinsically connected to violence and domination, whereas socialist and liberal feminists perceive male sexuality and the male sexual drive as unchangeable and ever-present (Kaur Dhamoon 2013: 91–3; Outshoorn 2005: 145). The ideas of radical feminism were prominent in Sweden regarding questions of gender-based violence (Björklund and Kvist 2008: 29); thus, also in terms of prostitution policy.⁸ The main Swedish women's organizations consider prostitution to be a product of a patriarchal society that allows the 'socially more powerful subject' to buy the 'weaker female object' (Svanström 2004: 230). Hence, the male client is viewed as responsible for the 'misery' of female prostitutes.

By contrast, other involved interest groups such as social workers and religious bodies were divided on the issue. Some supported the criminalization of both parties, while others agreed with the radical feminists (Gould 2001: 442). Moreover, women and men actively working as prostitutes were less strongly involved in Swedish women's organizations, in comparison with the situation in other countries (Outshoorn 2004a: 280). This might have contributed to the coherence in demands reaching the political system because sex workers and radical feminists often clash with each other due to their different positions (e.g. the First European Congress of the Prostitution Movement in 1991, described in Dröbner (1992)).

In addition, from 1995 onwards, the policy debate took place in a closed system, preventing any access for small societal groups. The mainstream representatives of the women's movement (ROKS and FBA) developed the principal elements of the final policy proposal with their numerous allies in the political parties and the public administration. In the 1980s, the long tradition of gender equality in Sweden had led to the establishment of several organizational units and posts advancing equal rights for women (e.g. a parliamentary committee on gender equality, a Gender Equality Unit in the Department of Labour, and the post of Minister of Gender Equality).⁹

⁸ In more traditional fields of gender equality such as non-employment policy, ideas of liberal feminism prevail in the political debate (Björklund and Kvist 2008: 29).

⁹ The first act on equal opportunities entered into force in the 1980s, prohibiting gender and salary discrimination in the labour market (Björklund 2007).

Moreover, each party still maintains a strong internal women's organization, facilitating access and paths of influence for the feminist movement (Svanström 2004: 232).

In the end, a coalition between the women's organization of the political parties (except the Moderates) resolved the conflict (Svanström 2004: 235). The Social Democratic government ultimately adopted a comprehensive framework law entitled 'Peace for Women' (*Kvinnofrid*), which included a passage on the criminalization of the purchase of sexual services (Svanström 2004: 239). Other issues such as domestic violence, rape, sexual harassment, and female genital mutilation were also newly regulated. This is another indicator that prostitution was being defined as an issue of violence against women. The proposal passed easily, by a vote of 181 to 92 in a chamber with 349 deputies. The Social Democrats, the Left, the Green Party, and the Centre Party voted in favour of the bill. The Christian Democrats abstained because they preferred to criminalize prostitutes as well as clients. The Moderates and a majority of the Liberal Party opposed the bill, as they sought more permissive regulation (Dodillet and Östergren 2013: 114; Svanström 2004: 241f.).

In sum, the Swedish deviation from politically absorbing societal reform pressures and the filtered transmission of these ambiguous impulses become apparent in a move towards an authoritarian regulation of prostitution demand. Although reform impulses had been more diffuse (including also suggestions of more authoritarian styles of supply regulation), the final decision primarily focused on the stricter and more punitive regulation of the clients. This can be traced to the fact that in light of the given political opportunity structures, this solution turned out to be the only feasible option. In light of the power constellation in the Swedish parliament, a consensus could only be achieved with the broad support of the Swedish women's movement. The latter advocated a highly homogenous position with regard to more authoritarian styles of demand regulation. At the same time the women's movement played an important role in order to establish an inter-party consensus. This development, however, was only possible because of the high congruence of the policy positions of the women's movement and the Social Democratic minority government. This also explains why under the previous government, for which this congruence had been lacking, reform attempts were doomed to failure.

8.3.2 Germany: deviation towards permissiveness

German prostitution policy has traditionally followed a pattern of permission without recognition. Prostitution has been stigmatized as 'asocial' and 'immoral'. In 1901, the *Reichsgericht* outlawed prostitution, stating that it contradicted public morality (*sittenwidrig*). This interpretation, which was

valid until 2001, declared all contracts between prostitutes and clients as null and void (Schmitter 2013: 23). Moreover, the activity was controlled by various types of registration, health checks, and limitations to certain locations in West Germany.¹⁰ Prostitutes had to pay taxes, and both procuring and pimping were criminal acts. Notwithstanding these legal limitations, prostitution in reality was confronted with only minor limitations. On the one hand, this was the result of the exploitation of loopholes in the legislation, leading to the establishment of several large-scale brothels during the 1970s under the legal construct of 'commercial subletting' (Kavemann and Steffan 2013: 9). On the other hand, existing legal restrictions in practice did not entail far-reaching limitations for the supply and demand of prostitution.

The discrepancy between social reality and the law for a long time was broadly accepted, implying that no strong delegitimization pressures on the prevailing regulatory style emerged. It was only in the 1990s that growing demands for regulatory change came to the fore. In 1990, a first proposal on prostitution policy put forward by the Green Party reached the parliamentary agenda. The party criticized the status quo as being based on old-fashioned customs and norms.¹¹ In the following years, the Left Party and the Social Democrats also pressured the government via various instruments of parliamentary control. As in Sweden, topics such as human trafficking and violence against women reached the parliamentary agenda, although they were discussed separately. The ruling coalition of Christian Democrats and Liberals largely ignored these demands for change, however. Overall, prostitution policy in Germany experienced a long stretch of regulatory stability, creating significant discrepancies between law and practice that had been politically absorbed.

This pattern of absorption is well in line with the theoretical expectations developed in chapter 4. More specifically, political absorption was facilitated by the fact that reform impulses have been diverse rather than being clearly directed towards a specific solution. This can be traced to the fact that—in contrast to the Swedish case—the German women's movement is characterized by a much more pluralistic structure, entailing more heterogeneous definitions and perceptions of prostitution problems. The women's movement in Germany can generally be characterized as highly fragmented, relatively weak, and plagued by internal dissent (Gebhardt 2012; Kamenitsa 2001; Kaplan 1992; Stetson and Mazur 2010). The younger cohort of feminists and the older generation represented by Alice Schwarzer do not see eye-to-eye

¹⁰ In East Germany, prostitution was formally prohibited until unification in 1990 (Kelly et al. 2009).

¹¹ German *Bundestag*, Drs. 11/7140: Entwurf eines Gesetzes zur Beseitigung der rechtlichen Diskriminierung von Prostituierten (Antidiskriminierungsgesetz Teil III—ADG III), 16 May 1990, Green Party.

(Gebhardt 2012). Schwarzer criticizes the younger crowd as ‘wellness feminists’ and claims that the new generation underestimates the influence of the patriarchy in society (Gebhardt 2012: 16). She considers male sexuality to be the central problem in prostitution (Emma 2012: 118ff.). The younger generation perceives male sexuality and the male sexual drive as unchangeable, ever-present, and not inherently evil (Gebhardt 2012). In that regard, Kamenitsa (2001: 111ff.) explains, ‘the willingness of several segments to question each other’s feminist identities has meant that “the” women’s movement in the FRG is better understood as a collection of various fractions.’ Ferree (1995: 12) identifies the unification of East and West Germany as one of the reasons behind the fragmentation of the country’s women’s movement, as women’s groups from the two sides had had fundamentally different experiences. Consequently, ideas of radical as well as socialist feminism are all present in Germany, varying with policy framing (gender-based violence vs. employment policy; see Urbanek (2008: 50)). Hence, it has been very difficult for ‘the’ German women’s movement to formulate one coherent voice, particularly in the last years. Moreover, Germany has a relatively backward position in terms of gender equality policies (Kaplan 1992: 101ff.; Stetson and Mazur 2010: 93ff.). Organizational units dedicated to gender equality were established quite late (e.g. inclusion of topics related to women from 1986 on in the Federal Ministry of Youth, Families and Health; establishment of the Conferences of Equality and Women’s Ministers in 1991). A federal office in charge of anti-discrimination affairs (*Antidiskriminierungsstelle*) was only established in 2007.

In light of this constellation the fundamental regulatory reforms adopted in 2000 could hardly be expected from the outset. With these reforms, Germany adopted a highly permissive style of prostitution regulation. It is one of a very few countries in our sample that officially recognize prostitution as a profession. Germany hence departed from the previous pattern of absorbing diffuse reform impulses in the exact opposite manner to Sweden.

Which factors can account for this development? How can we explain that German policy-makers fundamentally departed from the regulatory status quo by taking up reform demands in a highly selective manner? As in the Swedish case, we argue that this can be traced to a highly specific or even exceptional configuration of different factors. First, in 1998 a coalition of Social Democrats and Greens took office that generally was more open to reforming the status quo. Second, in contrast to Sweden, interest groups representing the supply side of prostitution strongly influenced the problem definition and agenda-setting process, in particular because of their very close ties to the Green Party. Third, the position of the Green Party and interest groups met broad public support and also got additional backing from landmark court decisions.

The electoral victory of the Social Democrats and the Green Party in 1998 can be seen as a necessary condition for the initiation of regulatory reforms. The Green Party could claim ‘issue ownership’ on prostitution policy, promising major reform steps even during the electoral campaign (Bündnis 90/Die Grünen 1998). The Social Democrats were open to amendments but had to cope with serious intra-party conflict. Several Social Democrats agreed that it was necessary to put a stop to double standards (*Doppelmoral*) with respect to prostitution policy, but they also declared that ‘the activity will never be a regular profession certificated and learned via training courses’ (Frankfurter Allgemeine Zeitung 2001). Notwithstanding these internal conflicts, the government agreed to initiate far-reaching reforms. This agreement was facilitated by the fact that during the decision-making process a range of concessions were made to get the support of the opposition parties in the second parliamentary chamber. These concessions also appeased reform opponents within the Social Democratic Party. The bill proposed to fully decriminalize prostitution, abolish its legal stigmatization, and recognize the activity of offering sexual services as a ‘regular’ profession.¹² References to public morality and changes in societal values came up in the parliamentary debate. Anni Brandt-Elsweiler, a Social Democratic deputy, explained the government’s position in the first parliamentary reading:

Norms aren’t permanent values, but are exposed to constant changes. Today, a large part of the German population no longer considers prostitution to be immoral. Even the courts are beginning to express this opinion. [...] With our proposal, we have done no more than adapt legislation to the changed awareness of the population.¹³

The Christian Democrats supported a different option. They proposed that the existing regulatory system of ‘permission without recognition’ should be maintained, but adjusted with respect to the surveillance and control of brothels. Moreover, their proposal sought to facilitate prostitutes’ access to the social security system. The legal status of immorality (*Sittenwidrigkeit*) would be maintained, however.¹⁴ Ilse Falk, a Christian Democratic deputy, appealed to the idea of the state’s responsibility of maintaining moral norms and values:

Is it truly necessary to give up fundamental norms and values in order to help [the female prostitutes]? [...] Do we really have to accept prostitution as a job like any

¹² German *Bundestag*, Drs. 11/7140: Entwurf eines Gesetzes zur Verbesserung der rechtlichen und sozialen Situation von Prostituierten, 08 May 2001, SPD and Green Party.

¹³ German *Bundestag*, 11 May 2001, plenary protocol 14/168, 16485C–16487C.

¹⁴ German *Bundestag*, Drs. 14/6781: Zum Gesetzentwurf der Fraktionen SPD und Bündnis 90/Die Grünen, 03 July 2001.

other? Shouldn't we consider the sale of the human body to be morally questionable?¹⁵

Overall, prostitution was not defined as a pure gender issue but rather in relation to human rights in general and sexual liberty in particular (see Dodillet 2005). The issue was 'gendered' insofar as prostitutes were considered to be discriminated in terms of employment and working conditions. Thus, the debate was linked to inequalities between men and women in the job market, as liberal feminists suggested. Arguments relating to ideas of radical feminism rarely came up. Consequently, the criminalization of (male) clients was never a serious option for resolving the problem of prostitution in Germany, indicating to the importance of issue framing in the field of morality policies (see Euchner et al. 2013).

Because some aspects of the proposal fell under the jurisdiction of the federal states (*Länder*), the governmental bill required the support of the second chamber. At that time, this chamber was ruled by opposition parties, and rejection was very likely. The left-wing coalition therefore split the bill into two parts. The first part contained the amendments to laws falling under the jurisdiction of the national government, while the second part encompassed all regulatory amendments requiring the support of the *Länder*. In the end, the first part was adopted. All related regulatory steps regarding the location of street prostitution, health controls, and commercial businesses were rejected due to the veto power of the second chamber. Even today, Germany faces severe implementation problems at the local level due to the continued lack of coherent regulation of these issues at the subnational level (Kavemann and Steffan 2013; Pates 2012).

Yet it would be insufficient to simply tell the German story as one of change in government and political bargaining. As mentioned above, the change in government cannot fully account for the adoption of a highly permissive style of German prostitution regulation. More specifically, we have to answer the question of why diffuse reform impulses were filtered in such a selective manner. How can we explain that the government and in particular the Green Party adopted this specific framing of underlying policy problems? In this context, it was to a lesser extent the women's movement that played a decisive role, but interest groups representing especially the supply side of prostitution. We hence observe a picture that is exactly the opposite of the Swedish constellation, which has been characterized by a strong women's movement and a weak representation of prostitutes' interests.

The political influence of supply side interests emerged primarily from a range of different prostitution projects that were rooted in liberal and socialist

¹⁵ German *Bundestag*, 11 May 2001, plenary protocol 14/168, 16487C–16489C.

feminism, often collaborations between social workers and former prostitutes. Hydra is one of the largest and most powerful prostitution projects. Hydra fights for the improvement of the legal situation of prostitutes and offers legal advice for sex workers (Hydra 2011). Social workers and former prostitutes work together in this group, and thus it has close ties to the 'milieu' and access to expert knowledge. Its message is that a large number of adult women offer sexual services on a voluntary basis. Prostitutes are not necessarily victims of male violence and coercion, Hydra argues, but they require better working conditions. The strong political influence of Hydra emerges in particular from the fact that it has always had close ties to the Green Party. It had already strongly contributed to the preparation of the 1990 legislative proposal of the Green Party. In the explanatory memorandum of the bill, the party referred several times to Hydra and its position papers.¹⁶ Hydra strengthened its position by forming together with other prostitution projects the so-called *AG Recht*. During the 1990s, this group of experts developed a legislative proposal which entered the government agenda via the Green Party.¹⁷

While the close connection between prostitutes' interests and the Green Party can certainly be viewed as a crucial driver of the German move towards permissiveness, two additional factors supported this development. First, the policy adopted by the Greens gained positive publicity in 2000 due to a decision by an administrative court. The administrative court of the state of Berlin was asked to address the discrepancy between law and practice in the late 1990s.¹⁸ A former prostitute and the owner of a prostitutes' bar in Berlin, Café Pssst!, sued for legal recognition and won her case in December 2000. The decision attracted considerable public attention. The administrative court stated that the German Licensing Law (*Gaststättengesetz*) is part of the Law on Public Order, which is not responsible for stipulating a minimum of public decency. The law rules daily life insofar as socially relevant behaviour is visible in public and disturbs its welfare. Voluntary prostitution in brothels was argued to not necessarily disturb the welfare of the public. Therefore, the court held, the owner of such an establishment should not lose his or her licence to operate on the grounds of facilitating an immoral activity. Moreover, on the basis of a large-scale survey, the judges claimed that the act of offering sexual services on a voluntary basis was no longer considered morally wrong. Finally, the administrative court explained that protecting the dignity of women against their will violates the right of self-determination and reinforces the legal and social disadvantage of prostitutes. Overall, the verdict

¹⁶ German *Bundestag*, Drs. 11/7140: Entwurf eines Gesetzes zur Verbesserung der rechtlichen und sozialen Situation von Prostituierten, 08 May 2001, SPD and Green Party, 12.

¹⁷ Telephone interview with a speaker of the prostitutes' association Madonna e.V., on 13 August 2014.

¹⁸ VG Berlin 2000; 35 A 570/99.

was seen as a landmark decision, particularly due to its effect on the problem definition of prostitution. The court could not exert widespread legal pressure in 2000 due to its position near the bottom of the administrative court system, but it reaffirmed the problem definition of prostitution put forward by Hydra and the Green Party.¹⁹ In particular, this definition was supported by a statement by the former prostitute, who declared that she had offered sexual services on a voluntary basis and confirmed that the milieu was not necessarily related to crime and violence (Frankfurter Allgemeine Zeitung 2000). The prostitute's declaration and its affirmation by the administrative court strengthened the conception of prostitution as a voluntarily conducted activity. Clients were of secondary interest, and brothel owners were portrayed as civilized members of society not interested in exploiting prostitutes.

Second, the publicity of the case may have contributed to higher levels of public acceptance. In the early 2000s, the proportion of Germans strictly rejecting prostitution dropped to 30 per cent, a decrease of 10 per cent in comparison with earlier decades (EVS 2011). One expert involved in the court decision stated that Hydra and the Green Party had actively publicized the court decision because it largely supported their own regulatory aims.²⁰ Possibly most important in this regard was the final guiding principle claiming that the dignity of women should not be protected against their will, as that would violate the right of self-determination.

To sum up, in a similar way to the development in Sweden, the German case shows that, in constellations of ambiguous reform impulses with the existence of veto points in the political decision-making process, any departure from the status quo presumes a highly specific configuration of factors. While in Sweden the presence of these factors implied that reform impulses were filtered towards the adoption of an authoritarian style of regulation, the German constellation entailed the political selection of permissive reform impulses. The move towards permissiveness can be understood against the background of a change in government, close ties between supply side interests and the Green Party, and the general support for these positions by the general public and the courts.

8.4 Conclusion

The analysis of prostitution regulation in Europe reveals several empirical and theoretical insights. In empirical terms, the analysis has shown that there is no

¹⁹ The Federal Administrative Court confirmed the decision in November 2002 (BVerwG 2002; 6C 16.02). As a consequence, the discrepancy between legal status and societal reality was abolished. In particular, the decision has facilitated the work of the police and local administrations (Telephone interview with a judge at the Administrative Court of Berlin, on 8 November 2013).

²⁰ Telephone interview with a judge at the Administrative Court of Berlin, on 8 November 2013.

clear regulatory trend towards either more authoritarian or more permissive regulation. Rather we observe three patterns of regulatory development. While some countries left their initial regulatory style of permission without recognition and moderate sanctions more or less unchanged over the whole observation period, two additional tendencies can be observed which are characterized by diverging styles of regulation since the late 1990s. One group of countries has moved towards a permissive style of regulating prostitutes and clients. This group has extended the availability of prostitution in legal settings and reduced sanctions in cases of noncompliant behaviour. A second group of countries has moved in the opposite direction by further restricting legal prostitution. With respect to the client, this development corresponds to an authoritarian style of regulation, as rule restrictions have been accompanied by the punishment of clients illegally demanding sexual services.

In theoretical terms, the findings partially support and challenge the theoretical expectations developed in chapter 4 of this book. Theoretical expectations are supported insofar as a number of countries display a highly stable regulatory pattern over time, implying that demands for regulatory reform have been more or less absorbed politically (see expectation 5 in chapter 4). This is indeed what one should have expected from the outset, given the fact that in the area of prostitution policy reform impulses in the form of cultural pressure have typically been rather ambiguous, indicating no clear and consistent reform direction. At the same time, prostitution policy reveals many characteristics of manifest moral conflicts. The relevance of fundamental value conflicts generally poses high challenges for reaching political agreement and hence adopting regulatory reforms. Although many countries indeed fit into the expected patterns, we observe striking deviations from this development.

These deviations indicate that under certain—rather specific—conditions countries are nevertheless able to adopt fundamental reforms, even in the presence of ambiguous reform pressures and value conflicts. The case studies on Sweden and Germany show that in essence such deviations are possible when two conditions are fulfilled. First, there is a high ideological fit between governmental reform positions and the position of relevant interest groups or social movements. Second, these social interests or movements are characterized by a highly coherent and homogenous structure and dispose of privileged political access points. It is only under these conditions that diffuse reform impulses coincide with a pattern of filtered transmission, that is result in reform decisions that selectively respond to reform demands. The comparison of Sweden and Germany has also demonstrated that—depending on the position advanced by powerful social groups—the presence of these conditions might result in highly diverse regulatory outputs.

Finally, the analysis of prostitution policy supports the theoretical expectations regarding the causal mechanisms that entail challenges to the status quo. There are, to a lesser extent, functional considerations that fuelled demands for regulatory reform; instead, pressures emerging from changes in societal attitudes and values with regard to prostitution were crucial forces. This led to a growing delegitimization of the status quo in many countries under study. The prostitution case hence shows that for manifest morality policies, challenges to the status quo emerge from legitimacy rather than effectiveness concerns, supporting the underlying argument of expectations 1 to 3 presented in chapter 4.

9

Homosexuality: patterns of hidden compensation on the road towards sexual liberty

Stephan Heichel

The regulation of human sexuality has rightly been characterized as a classical field of manifest morality policy (see, e.g., Ellis and Kasniunas 2011; Haider-Markel 2001). Due to its religious roots in Judeo-Christian moral values the regulation of male homosexuality has been particularly controversial in the Western world.¹ By regulating human sexuality, the state targets a core element of an individual's existence, namely the freedom to behave according to one's own needs and desires in one of the basic aspects of life (sexuality and sexual orientation). At the same time, the state's control of human sexuality targets a part of human existence that is (at least nowadays) commonly considered to belong to the sphere of absolute privacy. State efforts to regulate the sexuality of citizens are attempts to govern what is taking place within private bedrooms. This, however, is often thought to be of nobody's concern except for one's sexual partners. People perceive any restrictions in this sphere imposed by state authorities as a tremendous interference with their ability to live their lives according to their personal preferences.

In the case of homosexuality, in Western countries the arguments in favour of prohibition or at least restriction originate from the Judeo-Christian view that homosexuality is immoral. This is rooted in the belief that homosexual conduct is against nature and against the sexual role assigned to man by God (i.e. male-female sexuality for the purpose of reproduction). In this

¹ This chapter focuses only on male homosexuality in order to facilitate the investigation. Only a minority of countries has adopted a unified approach to regulating male and female homosexuality (e.g. Great Britain does not belong to that group).