

# Prostitution Policies in Switzerland and the City of Zurich

A Critical Frame Analysis of Official Documents and NGO  
Papers

Corinne Isler

University of Helsinki

Faculty of Social Sciences

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HELSINGIN YLIOPISTO  
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<p>The phenomenon of prostitution has been controversial in many countries, including Switzerland. Policy regimes on prostitution differ drastically between countries. In recent years, there have been two opposing trends regarding the reform of prostitution laws. Some countries, such as Germany and the Netherlands, have moved towards legalisation and normalisation of the sex industry. Prostitution is thereby regarded as a normal trade and feminist supporters of this model focus mainly on legal rights and improved working conditions for people who sell sex. In contrast, other countries, including Sweden, Norway, Iceland and most recently France, have adopted a policy regime based on the assumption that prostitution per se is a form of violence against women and should thus be eradicated. In Switzerland, prostitution has been de facto legalised since 1942 and the cantons and municipalities can adopt their own policies regarding the regulation of the industry. The City of Zurich adopted a new Prostitution Industry Regulation in 2011, which brought a number of changes regarding licencing procedures and zoning laws for street prostitution and brothels.</p> <p>This research aims at examining the ways in which prostitution has been framed by different socio-political actors in Switzerland and the City of Zurich in particular. For this purpose I analyse a number of official documents published by the Swiss government and the City of Zurich as well as NGO papers regarding prostitution, all published between 2010 and 2015. The analysis draws on the methodological approach of critical frame analysis, which adopts a constructivist perspective on policy problems. It is assumed that different ways of constructing a problem also lead to different suggestions for solutions. For Switzerland and Zurich, two main frames could be identified and I outline their central features as well as their internal inconsistencies. Despite the differences between these two frames, they have some important aspects in common. Both frames take a clearly normalising perspective on prostitution and accept the sex industry as a social reality that cannot and should not be eradicated. Fragments of an abolitionist perspective on prostitution are present in only one of the studied documents. Voices that take a critical perspective on prostitution itself seem to be strongly marginalised in Switzerland.</p>			
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## **1. Introduction and research questions**

Prostitution in Switzerland has been de facto legalised since the entering into force of the Swiss Criminal Code in 1942. There is no law on the national level that prohibits the practice of prostitution and since 1973, it is protected under the economic freedom guaranteed by the Swiss Constitution. The regulation of the sex industry lies in the hands of the cantons and municipalities, who can adopt their own policies within the limits of the national law. These policies concern possible permits and licences for street prostitution and brothels, designated areas where prostitution is allowed to take place ('zoning laws'), as well as issues concerning taxation and social security for people who sell sex. The legal ramifications and general characteristics of prostitution in Switzerland and the city of Zurich are described in more detail in Chapter 2.

While debates on prostitution in Switzerland have their own particular features as will be demonstrated in this thesis, they cannot be separated from a global context. Prostitution has been debated vigorously for many decades and the conflicts between different positions on this issue often seem to be unresolvable. This also applies to feminist positions on prostitution and the sex industry (see Chapter 3). One side considers prostitution to be a form of violence against women and fights for its eradication, mainly by holding sex buyers and pimps accountable for their actions while aiming to decriminalise people who sell sex and offer exit services to those who wish to leave prostitution. Meanwhile, the other side takes a so-called 'sex work' position by focusing on legal rights and better working conditions for 'sex workers', asserting that it is mainly the stigmatisation of 'sex work' that leads to problems within the sex industry.

These opposing positions as well as the more traditional view of prostitution as public nuisance or an offence against morality have also become apparent in policies on prostitution in different countries (see Chapter 4) and international conventions and recommendations addressing the sex industry. In August 2015, Amnesty International voted in favour of adopting a policy that decriminalises "all aspects of consensual sex work" (Amnesty International 2015), including the decriminalisation of buying sex and pimping. In contrast, the European Parliament passed a non-binding resolution in 2014 that recommends, among other measures, the adoption of the 'Swedish model' of prostitution law, meaning the criminalisation of sex buying and pimping,

decriminalisation of selling sex, as well as offering exit services to those who wish to leave prostitution (European Parliament 2014).

Prostitution and human trafficking for the purposes of sexual exploitation had already been addressed in several UN Conventions. The 1949 *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others* consolidated previous agreements on trafficking (UN General Assembly 1949). One crucial aspect of this convention is the agreement of the State Parties to punish procurement into prostitution and the exploitation of the prostitution of others, regardless of the consent of the person in question (ibid.: Art. 1). The 1949 Convention, however, does not consider prostitution itself to be a violation of human rights (Jeffreys [1997] 2008: 333). The 2000 *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children* (Palermo Protocol) was the first UN mechanism that addresses the demand side of prostitution and human trafficking. The Palermo Protocol calls on State Parties to “discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking” (UN General Assembly 2000, Art. 9(5)). It should be noted that while Switzerland is a signatory to the 2000 Palermo Protocol, the country never ratified the 1949 Convention.

In the analysis section of this thesis (Chapter 7), I examine the ways in which prostitution is currently framed in Switzerland and the city of Zurich. For this purpose, I analyse official documents published by the Swiss government and the City of Zurich on the sex industry as well as NGO papers that aim to influence public opinion and policy-making in this area (see Chapter 6). My analysis follows the theoretical and methodological approach of critical frame analysis outlined by Bacchi (1999), Verloo (2005), and Verloo & Lombardo (2007). This approach takes a constructivist view of policy problems and the solutions that are suggested to solve them, meaning that socio-political actors are assumed to influence the ways social issues are understood (see Chapter 5).

This thesis thus aims at analysing the ways in which different socio-political actors in Switzerland and Zurich perceive the problems of prostitution. The questions that guide the analysis are the following:

1. How do different actors who are involved in policy-making frame the issue of prostitution? What are considered to be the problems in relation to prostitution?
2. Who is considered to be responsible for said problems?

3. What kind of solutions are suggested and who should implement them?
4. What role do social categories, such as gender, race, class and nationality play in the representation of the problem?

The underlying assumption of this approach is that the way in which a problem is framed influences the types of solutions that are suggested to solve it. For this reason, it is fruitful to analyse the different framings of prostitution, also in order to examine the underlying assumptions and ideologies on which they are based. Such an analysis is particularly helpful at times when prostitution laws are being revised, as the dominant framings of the issue influence the available policy options. Alternative framings thus might open up new and different policy options (Kantola & Squires 2004: 96).

In Chapter 8, I discuss the main results of the data analysis and compare them to similar studies that have been conducted in other countries. In addition, I highlight the limitations of this thesis and offer suggestions for future research.

## **2. Prostitution in Switzerland**

This chapter consists of a short overview regarding the general characteristics of prostitution in Switzerland and in the city of Zurich in particular. In addition, the chapter provides a description of the main legal changes regarding prostitution in the past. This serves the purpose of providing a historical context for the empirical part of this thesis. However, this is also problematic due to the theoretical and methodological approach of this study. The literature that is used in this chapter, just like all other studies, reports and laws about prostitution, are part of existing debates and are framed in certain ways. They should thus be analysed as such, rather than presented as if they state neutral facts. But due to the limited capacity of this thesis, it is unfortunately not possible to conduct a thorough data analysis over a longer time period. For this reason, the information provided in this chapter is limited to the most important numbers and legal ramifications of prostitution. These include laws dealing with prostitution per se but also laws regarding other important issues that play a role, such as permits for foreign nationals as well as laws against human trafficking.

Another problematic issue in this regard is that different perspectives employ different terms, none of which can be considered neutral. Terms like ‘sex work’, ‘sex workers’ and ‘clients’ are usually part of a perspective that considers prostitution to be gainful employment, whereas a radical feminist perspective for instance avoids these terms and rather speaks of ‘prostitution’, ‘women in prostitution’, ‘prostituted women’ or ‘women who sell sex’, as well as ‘johns’ or ‘buyers’. In this chapter, I will use the latter terms, whereas in other parts of the thesis, such as the theoretical part and the presentation of the research findings, I use the terms of the perspective that is being employed.

### **2.1 General characteristics of prostitution in Switzerland and Zurich**

Different studies about prostitution have reported widely differing numbers of prostituted women in Switzerland. A common estimate is 13000 – 20000, which refers to the total number of women that sell sex for a short or longer period of time within one calendar year. Due to the fact that a large proportion of these women do not sell sex services full time and/or do so only for a short amount of time, the number of full-time ‘positions’ is calculated to be between 4000 and 8000. This number is relevant when it comes to estimating the total revenue of the sex trade in Switzerland. Based on this number, prostitution in Switzerland amounts to a revenue of 0.5 – 1 billion Swiss francs (475,000



– 950,000 euros) per year, whereas other sources assume a revenue of up to 3.5 billion Swiss francs (3.3 billion euros). The latter number is currently used by the Swiss national bank in order to calculate the total revenue of the sex industry as part of the Swiss GDP (Biberstein & Killias 2015: 75-78).

Prostitution in Switzerland can be divided into four main settings, namely street prostitution, massage parlours (some of them studios, some larger brothels), contact bars and cabarets. Only the first two of these are legally accepted, whereas the latter two officially only employ barkeepers and striptease dancers. In practice, however, these locations often serve as places for prostitution, and the women employed there are particularly vulnerable to exploitation by their employers (Bugnon et al. 2009b: 12-13). In studios and larger brothels, women who sell sex usually pass on around 40-50% of their earnings to the managers of the establishment. In contact bars, women pay a weekly room rental fee and are required to encourage customers to purchase alcoholic beverages (Büschi 2014: 725). While procuring is illegal in Switzerland, a distinction is made between procurers (*Zuhälter*) and managers of establishments. Procurers are thought to restrict the freedom of action of prostituted women by deciding on the amount, time and place of the work and/or forcing them to sell sex. In contrast, managers are thought to assume the role of an employer and to take responsibility for the facilities in which the work takes place, without interfering with the self-determination of the women (Büschi 2014: 727).

It is estimated that women in prostitution outnumber men by a factor of 50 and transgender individuals by a factor of 25. Prostitution in Switzerland, like in other countries, is thus a strongly gendered phenomenon. Also foreign nationals are clearly overrepresented in comparison with their percentage of the total population (Bugnon et al. 2009b: 24-27).

Regarding the proportions of each of the four settings mentioned above, different numbers are reported by different studies. Generally it can be stated that the majority of prostituted women in Switzerland work in massage parlours (around two thirds), while the other settings are considerably smaller. The share of street prostitution is estimated between 5% (Biberstein & Killias 2015: 40) and 13% (Bugnon et al. 2009b: 15), the most common countries of origin of these women being Hungary, Bulgaria and Romania (Biberstein & Killias 2015: 40). These percentages vary considerably between different

cantons and not all four settings are present in all cantons. In addition, comparing numbers between cantons is difficult because of differing regulations, some of which make it more difficult to estimate the number of prostituted women in each setting (ibid.).

The proportion of men who have bought sex at least once among the general population of men aged between 17 and 45 years in Switzerland is estimated at around 23% between the years 1987 and 2000, with no consistent increasing or decreasing trend over the years. (Jeannin et al. 2008: 557-558).

In general, the sex trade in Switzerland is characterised by strong heterogeneity and high volatility. There are big differences between indoor and outdoor prostitution as well as between different sizes of establishments. Especially smaller establishments seem to exist for a rather short amount of time, whereas larger establishments might exist longer but the fluctuation of women working in them is higher. This volatility also makes it rather difficult to estimate the total volume of the sex trade (Biberstein & Killias 2015: 82).

The number of establishments in the canton of Zurich in which indoor prostitution takes place is estimated at 283, not including cabarets. The total number of women working in such establishments per day is calculated to be around 1,400 (meaning full-time 'positions', the absolute number of women engaged in indoor prostitution over one year being about 3 to 4 times higher). Thus almost one third of all 'positions' in indoor prostitution in Switzerland are located in the canton of Zurich (Biberstein & Killias 2015: 43-44).

The number of women in street prostitution can be estimated relatively well in the city of Zurich, due to the fact that they are required to register with the authorities and purchase a daily ticket when working in the official zones for street prostitution. Considering that some women are not registered and do therefore not purchase a ticket, the actual numbers are estimated to be somewhat higher than the ones presented here. The numbers between January 2014 and January 2015 varied between 502 and 1,173 tickets sold per month, depending on the season (generally lower numbers in the winter months) (Biberstein & Killias 2015: 42).

The most common countries of origin of women in prostitution in the city of Zurich are Switzerland, Hungary, Bulgaria and Romania. Especially the number of women coming from Romania has increased steadily since the agreement on the free movement of people

between Switzerland and the EU was extended to Romania and Bulgaria in 2009. The same was the case for women from Hungary between 2005 and 2012. The number of Swiss women entering prostitution has decreased steadily since 2003 (there is no data for the time period before 2003). Overall, the number of women newly entering prostitution has increased until 2012, whereas in the years 2013 and 2014 a decrease in new entries has been registered (Biberstein & Killias 2015: 47-48).

## **2.2 Legislation of prostitution in Switzerland and the city of Zurich**

Prostitution in Switzerland has been de facto legalised and tolerated since 1942 when the Swiss Criminal Code entered into force. There is no legislation on the national level that explicitly prohibits the practice. Since 1973, prostitution is protected under the economic freedom (*Wirtschaftsfreiheit*) guaranteed by the Swiss Constitution (Hürlimann 2004: 1-2). Economic freedom protects economic actions by individuals from interference by the state and allows individuals to freely choose a profession in the private sector. It is supposed to ensure free competition within the market. State interventions that aim at favouring certain economic activities over others or steering the national economy according to a plan are not allowed (Häfelin & Haller 2005: 6). The economic freedom guaranteed by the Swiss Constitution is more comprehensive than in most other countries (Hürlimann 2004: 28). However, in cases where a state intervention is based on predominant public interest and relies on an appropriate legal foundation, a restriction of the economic freedom can be justified (Häfelin & Haller 2005: 6-7). This limitation of the economic freedom is currently not applied in the case of prostitution.

In 1992, the law governing sexual offences was revised and the offence of living off the avails of prostitution (*Passive Zuhälterei*) was abolished (Hürlimann 2004: 51). While prostitution is not clearly defined in Swiss law, the Swiss Federal Council defined it in a message regarding the revision of the law governing sexual offences of 1992 as follows:

Prostitution can be hetero- as well as homosexual prostitution. It consists of the occasional or professional offering and relinquishing of one's own body to any persons for their sexual satisfaction in exchange of monetary remuneration or other material goods. The sexual action does not need to consist of the undertaking of sexual intercourse (Bundesblatt 1985 II, 1082-1083, my translation).

The only current laws regarding prostitution on the national level are the prohibition of procuring (*Förderung der Prostitution*) (Schweizerisches Strafgesetzbuch: Art. 195) and the prohibition of the illegitimate practice of prostitution (*Unzulässige Ausübung der*

*Prostitution*) (ibid.: Art. 199). The latter refers to prostitution that violates cantonal or municipal regulations regarding the area, time or fashion in which prostitution is allowed. In the former law, prostitutes are viewed as potential victims of exploitation who deserve protection under the law. In contrast, the latter law regards prostitutes as potential law-breakers and enables the cantons to create their own regulations regarding prostitution (Bugnon et al. 2009a: 12-13). In addition, trafficking in people is outlawed, including trafficking for the purpose of sexual exploitation (*Menschenhandel zum Zwecke der sexuellen Ausbeutung*) among other purposes, such as forced labour and organ trade, (Schweizerisches Strafgesetzbuch: Art. 182). Prostitution is not explicitly mentioned in this law (Bugnon et al. 2009a: 13-14).

Also of importance are laws concerning immigrants, as these affect the legal status of prostitutes that are not in possession of Swiss citizenship. Due to the bilateral agreements of Switzerland with the EU and the country's membership of EFTA, foreign nationals are divided into two groups, namely EU-EFTA citizens and third-country nationals. The latter are able to obtain a work permit for employed or self-employed work if it serves the economic interests of Switzerland (Bugnon et al. 2009a: 14). Third-country nationals do not generally have the right to work in prostitution even when self-employed, due to the fact that they can only obtain a work permit if it serves the economic interests of the country (Bugnon et al. 2009a: 16). Cabaret dancers (i.e. striptease dancers) are working under an employment contract and are thus not legally allowed to engage in prostitution. In some cantons, however, third-country nationals working in cabarets were able to obtain a special type of permit (*Bewilligung L*) that represented an exception to the rule of only allowing people whose work serves the national economic interests (ibid.). This cabaret-dancers-statute was abolished in 2014, as the expected protection of cabaret dancers could not be achieved by means of this special permit (Staatssekretariat für Migration 2014).

Sex in exchange for money or goods is therefore legal, but at the same time contracts between a prostitute and a buyer as well as a prostitute and an 'employer' are considered an offence against morality (*Sittenwidrigkeit*) and thus null and void by the Supreme Court of Switzerland (Hürlimann 2004: 162). However, in 2013, the District Court of Horgen in the canton of Zurich ruled in a landmark case that a contract between a prostitute and a buyer is legally valid and that prostitutes have the right to make legal claims in cases where a buyer refuses to pay (Hürlimann 2013).

Until 2014, Switzerland was the only European country in which it was legal to buy sex from people under the age of 18. The country had ratified the 1989 *UN Convention on the Rights of the Child* in 1997, which aims at protecting children from commercial sexual exploitation. By allowing the buying of sex from minors, Swiss law violated the provisions of this UN Convention (Muoio 2013). In 2014, the Swiss Parliament raised the protection age for people in prostitution from 16 to 18 years of age in accordance with the practice of other European countries. Buyers who pay minors for sex can now be punished with up to three years in prison (Schweizerische Depeschenagentur 2014). At the same time, Switzerland ratified the 2010 Council of Europe Convention (Lanzarote Convention) which also concerns the protection of minors from sexual exploitation (ibid.).

In 2011, the City of Zurich adopted a new Prostitution Industry Regulation (*Prostitutionsgewerbeverordnung PGVO*), which introduced mandatory permits for people in street prostitution as well as brothel owners (Neuhaus 2011). Since 2013, people in street prostitution have to buy a daily ticket in order to be allowed to use the zones designated for street prostitution. One ticket costs five Swiss francs (around 4.50 euros) and can only be bought if one has completed the registration procedure with the public authorities. People who are caught selling sex without a ticket can be fined (Hürlimann 2012). There are only three areas in the city of Zurich in which street prostitution is allowed. People in prostitution as well as buyers who engage or try to engage in prostitution outside of the designated areas can be fined (ibid.). In one of the street prostitution zones in Zurich-Altstetten, drive-in ‘sex boxes’ were introduced in 2013. In addition, the NGO Flora Dora is present in this street prostitution zone and offers support and advice to people who sell sex (Fassbind 2014).

Brothels need a licence if three or more people are working there. Brothels, even small ones, are not allowed in areas where the residential ratio is more than 50% (Fassbind 2014). The conditions for obtaining a licence are strict and have led to a considerable reduction of the number of brothels in Zurich (Unternährer 2014).

The regulation of prostitution in the city of Zurich has undergone a number of changes since prostitution was legalised in Switzerland in 1942. In the 1960s, when street prostitution reached very high levels, the City Council of Zurich fined all sex buyers in areas for street prostitution and entered them into a sex buyers’ register (Zürcher

Frauenzentrale 2011a: 4-5). In 1972, street prostitution in residential areas was outlawed, which led to a considerable reduction of women in prostitution. However, the inclusion of prostitution under the protection of economic freedom in 1973 as well as the revision of the law governing sexual offences in 1992 (see above) have led to a less restrictive approach to prostitution also in Zurich. Prostitution also increased after Switzerland signed bilateral contracts with the EU, including the free movement of people (ibid.: 5).

### **3. Theoretical approaches to prostitution**

In this chapter I present the main arguments of different theoretical perspectives on prostitution. First, I briefly introduce traditional and sex liberal approaches on prostitution. The other three paragraphs are dedicated to different types of feminist perspectives on prostitution, as they differ significantly from each other.

As already mentioned in Chapter 2, the language that is used within these perspectives differs significantly. ‘Sex work’, ‘clients’, ‘managers’ and ‘sexual services’ for instance are common terms within liberal, sex radical and postmodern perspectives. In this thesis, I use these terms when describing the according perspectives, otherwise I follow Jeffreys’ (2009: 8-9) suggestions for using language that avoids legitimising the sex industry, such as ‘prostitution’, ‘buyers’, ‘pimps’ and ‘procurers’.

#### **3.1 Traditional and sex liberal approaches to prostitution**

In the 19th century, French physician Dr. Alexandre Jean-Baptiste Parent-Duchâtelet created a model of tolerating prostitution based on the view of prostitution as a ‘drainage system’. Sex was considered a cause of disruption and had thus to be channelled through prostitution in order to ensure social order and peace (Parent-Duchâtelet 1837). This model was highly influential and was exported to the rest of Europe and the French colonies (Ekman 2013: 42). From this perspective, prostitutes were usually viewed as ‘feeble-minded’ and generally inferior. Nonetheless, they were thought to benefit society by providing a sexual outlet for men. Men could take out their ‘urges’ on ‘fallen women’ who were considered not to be good enough for anything else (Lombroso & Ferrero 2004: 37).

Traditional approaches to prostitution rely on the idea of an inherent difference between male and female sexuality. Male sexual ‘needs’ are viewed as ‘uncontrollable urges’ that require an outlet and men are considered to be essentially polygamous. Based on this assumption, it is concluded that there is a constant, unchangeable need for prostitution and that men must have access to prostitutes (Scott [1968] 1996). These types of arguments continue to be used also nowadays in order to justify the existence of prostitution. Many studies indicate that sex buyers often refer to the idea of male sexual ‘needs’ when explaining their motivation to visit prostitutes (O’Connell Davidson 1998; Farley et al. 2011; Malarek 2011). The supposed ‘need’ for sex is often compared to the

need for food and prostitutes are thereby viewed as satisfying an essential human need (Ericsson 1980: 341-342). Based on the idea of men's 'uncontrollable urges', prostitution is viewed as a positive phenomenon that satisfies these urges and thereby brings peace and stability to societies. It is assumed that without the availability of prostitution, male sexual urges would be expressed in more destructive ways (Scott [1968] 1996: 22-23). From this perspective, prostitution is also considered to be useful for wives who would otherwise suffer from the constant sexual demands of their husbands (ibid.: 13).

The so-called 'sexual revolution' of the 1960s and 1970s was also based on the idea of essential sexual 'needs'. Some sexologists, such as Alex Comfort (1977), predicted that prostitution might die out or at least be considerably reduced due to the sexual revolution because liberated women would provide the sexual servicing of men and thus render prostitution obsolete. In contrast, other sexual liberals expected prostitution to become more available to men who were previously not able to pay a woman for sex, as described by sociologist David Sternberg:

Swedish psychiatrists, psychologists and social activists debated with some seriousness the formation of a "Sex Corps", analogous to the American Peace Corps, which would be comprised of dedicated and idealistic young men and women who would provide sexual services to incapacitated, disabled, and emotionally disturbed persons, including prison, hospital, and mental health institution inmates, as well as troubled, aggressive male outpatients (Sternberg 1983: 86).

Sex was thus still considered to be an essential need for men but in contrast to traditional views on prostitution, prostitutes (or 'sex workers') were no longer considered to be inferior but were rather to be admired. Meanwhile, deviance sociologists such as Erving Goffman (1963) identified prostitutes as a paradigm case of the 'deviant' and examined the ways in which they managed what he called a "spoiled identity". In *Stigma*, he states the following:

Prostitutes, drug addicts, delinquents, criminals, jazz musicians, bohemians gypsies, carnival workers, hobos, winos, showpeople, full-time gamblers, beach dwellers, homosexuals and the urban unrepentant poor – these would be included. These are the folk who are considered to be engaged in some kind of collective denial of the social order (Goffman 1963: 171).

Prostitutes are regarded as voluntarily declining to conform to social norms and expectations (Goffman 1963: 170). Prostitutes were thus viewed as rebels against the status quo. Sex buyers were not considered to be 'deviant' and were thus not included in



the analysis. Prostitutes themselves were considered to be the reason for the existence of prostitution. The concepts of ‘deviance’ and ‘stigma’ were also taken up by the prostitutes’ rights movement and identified as the main problems of prostitution, while prostitution in itself was considered unproblematic (Alexander 1988, Jenness 1993). This will be discussed in detail in the following paragraphs.

### **3.2 Liberal feminist approach to prostitution**

A central aspect of the liberal approach to prostitution is the focus on sexual self-determination for women, such as the right to sell sex and give consent to sexual activity. Priscilla Alexander, co-director of COYOTE (Cast Off Your Old Tired Ethics), an American organisation advocating for the decriminalisation of prostitution that was founded in 1973, argues that laws against prostitution and stigma imposed on sex work prevent women from determining their own sexuality (Alexander 1988: 184). Even though she states that prostitution exists in part because of the subordination of women in most societies, the focus is then shifted to the motivations of women in prostitution, such as money, independence and flexibility (ibid.: 188).

Related to this is the clear distinction that is made between ‘forced’ and ‘free’ prostitution. It is argued that individuals should be allowed to make their own decisions regarding the work they do and that this includes the right of women to work as sex workers. Therefore, organisations that want to support sex workers should aim at empowering them to make their own decisions and give them the necessary skills to do so, rather than making judgements about the work they do (Alexander 1988: 199-201). While this approach does address power relations, it does so in a rather different way than is the case for the radical feminist approach (see section 3.4), as the following quote illustrates:

Prostitution also involves an equation of sex with power: for the man/customer, the power consists of his ability to “buy” access to any number of women; for the woman/prostitute, the power consists of her ability to set the terms of her sexuality, and to demand substantial payment for her time and skills. Thus, prostitution is one area in which women have traditionally and openly viewed sex as power (Alexander 1988: 189).

A similar argument is made by Anna Kontula (2008: 615-617), who likens power to a feeling of being in control during a sexual encounter. Based on interviews with women and men in prostitution who do report such a feeling of control, she concludes that prostitutes are in a position of power vis-à-vis their customers, at least in certain

circumstances. Kontula further justifies this view by stating that the commercial transaction within prostitution strengthens the position of the sex worker because

the client has to pay and he is the one who wants something. In many cases, for him the successful act also requires the enjoyment of the prostitute, as we have seen. On the other hand, a sex worker can be quite satisfied if she just gets her money. Usually, money changes hands beforehand, so the amount does not depend on the degree of the client's enjoyment. Even when the prostitute is not in the business voluntarily, the source of her income is not confined to one customer and she has some degree of choice (Kontula 2008: 616-617).

It is often argued that sex work should be viewed as work like any other. Based on her field work, Sophie Day (2007) discusses the perspective of prostitution as work and the way sex workers define their experiences. Many women in prostitution highlight a clear separation between their work and their private life as well as a distinction between the body parts and activities that are included in their work and those which remain exclusively in the domain of private relationships, such as a sense of pleasure and intimacy (ibid.: 37-38). The main reason for stigmatisation of prostitution is identified in the challenge it poses to the distinction between public economy and the private realm of personal relationships. Sexuality is commonly considered a private matter that should not be sold on the market. Accordingly, this leads to a dehumanisation of prostitutes, as they are thought to lack a legitimate public and private self, despite the fact that they put a lot of effort into separating their work from their personal life and emphasise that they treat their work like any other work (ibid.: 41-42). Day (ibid.: 51) also refers to the well-known work on emotional labour by Arlie Hochschild (1983), who examined the difficulties in establishing boundaries around work in jobs such as air hostessing.

In liberal feminist thinking, prostitution is also regarded as a business and not merely work, meaning that women who sell sex are viewed as entrepreneurs rather than simply workers. This means that the emphasis is put on the independence of working in prostitution in comparison to regular wage labour. Sex workers report feelings of being in charge of the terms and conditions of their work and focus on calculating how to earn their money with minimum effort (Day 2007: 91-93). In this sense, sex workers are seen as entrepreneurs who have a considerable amount of control over their work, generate new opportunities for profit, and do not have to employ the sort of emotional labour described by Hochschild (1983). In this context, the role of neoliberalism is mentioned, especially the idea of defining freedom in market terms, for example the freedom to maximise one's own profit (Day 2007: 91-93). The negative aspects of prostitution, such

as exploitation, robbery and assault, are considered to be a result of a repressive state rather than an inherent part of prostitution. But the personal autonomy of sex workers depends on these difficult circumstances. For instance, creating a market under conditions of extreme discrimination was seen as a valuable skill. Such a perspective then reproduces the marginal position in which sex workers find themselves (Day 2007: 93-96).

Another important aspect of the liberal approach to prostitution is the claim that sex workers should not be regarded as victims, as such a view stigmatises them and denies their agency (Kempadoo 2001; Weitzer 2006; Agustín 2006, 2007). Some argue that the term 'prostitution' should be left behind altogether due its stigmatising nature (Agustín 2006: 29-30). Migrant people who sell sex should thus be regarded as flexible workers and active agents in globalisation (ibid.: 43). The experiences of migrants selling sex should be treated as diverse and complex, criticising the focus on examining whether the coerced or willing are the bigger group. The great demand for sexual services in Europe is framed in a positive way, indicating that it allows hundreds of thousands of people to make a living. Furthermore, it is suggested that many people prefer selling sex over other occupations available to them, such as poorly paid domestic or care work (ibid.: 32-34).

Regarding coercion, Agustín (2006: 37) suggests that "some people may 'feel' forced who actually *could* physically escape; others start out doing domestic work but feel 'forced' into sex work because of the differential in pay". The focus is thus put on the individual feelings of people who sell sex and thus shifts the responsibility for the situation onto them, while largely ignoring the structural realities in which prostitution takes place:

The relationship involving women who live inside sex establishments and rarely leave until they are moved to another place without being consulted receives the media's usual attention, it being taken for granted that this represents a total loss of freedom. In many cases, however, migrant workers prefer this situation, for any of a number of reasons: if they don't leave the premises they don't spend money; if they don't have working papers, they feel safer inside in a controlled situation; if someone else does the work of finding new venues and making arrangements, they don't have to do it; or having come on a three-month tourist visa they want to spend as much time as possible making money. The tragic situations so often referred to have been accessible to the media and to NGOs precisely because the police have become involved, whereas migrants who have not sought out or run into the police are often invisible to reporters and activists seeking out victims (Agustín 2006: 37).

The author also states that granting agency to migrants does not mean denying the structural changes that push and pull them, and that it does not make them over-responsible for situations they did not themselves create (Agustín 2006: 39). Despite this brief acknowledgement of structural influences on individuals, Agustín's approach is clearly agency-centred and does not examine the aforementioned structural realities any further.

Even though Agustín acknowledges that the term 'victim' can be used to refer to the recipient of a crime, she argues that the term also demands that these victims are "chaste and ignorant" (Agustín 2006: 38). This indicates that to be a victim is a character trait or an identity associated with weakness and passivity. Feminists who view prostitution as violence against women are seen as addressing the roles of perpetrator and victim as identities, thereby turning victims into passive receptacles of strategies that resemble "imperialist interventions in the lives of the native subject" (Agustín 2006: 41). Regarding people as victims is itself interpreted as a form of victimisation, as this leads to the conviction that the people in question need help and need to be saved, which gives a primary role to the supporters (Agustín 2003: 30; Doezema 2001). Western feminists are thought to construct third-world sex workers as a damaged 'other' in order to further their own interests (Doezema 2001). In contrast, migrant sex workers should be viewed as 'daring border-crossers' and 'cosmopolitan subjects' who have lived in different countries, speak a little of several languages, have interacted with many different people and have learned to be flexible and tolerant of people's differences (Agustín 2002: 112-114).

The practice of criminalising sex buyers is generally opposed within a liberal approach to sex work. For instance, Agustín (2001: 108-109) criticises the practice of criminalising buyers of sexual services, arguing that such a discipline-and-punishment model is not helpful due to the dysfunctionality of the criminal justice system. She states that constructing a victim also means to construct a perpetrator who then is viewed as the bad person. She argues that treating buyers as exceptional cases, referring to them as 'deviants' or 'perverts', is not appropriate due to the large number of men who have bought sex at least at some point in their lives and the fact that many men consider the buying of sexual services permissible (*ibid.*).

### **3.3 Sex radical and postmodern approaches to prostitution**

The postmodern approach to prostitution differs from the liberal view in that it puts a special emphasis on the concept of identity and aims at reconstructing the prostitute in a more positive way. There are a number of similarities between the liberal feminist approach on one hand and the sex radical and postmodern approaches on the other. For instance, the argument that it is mainly the stigmatisation of sex work that harms sex workers is common not only within a liberal perspective on prostitution but also from a sex radical and postmodern point of view (Rubin 1984; Vance 1984; Gira Grant 2014).

Two influential authors and activists of the sex radical position are Carole Vance and Gayle Rubin. Central to their analysis are the concepts of ‘sexual deviance’ and ‘sexual minorities’ (Rubin 1984; Vance 1984). Rubin (1984: 279-284) argues that society has established a hierarchical system of sexual value which stigmatises members of groups that occupy the lowest ranks of this hierarchy, such as transsexuals, transvestites, fetishists, sadomasochists, prostitutes as well as paedophiles – the last group being referred to as “those whose eroticism transgresses generational boundaries” (Rubin 1984: 279). It is argued that dominant sexual groups, including feminists, feel anxious and uncomfortable regarding ‘sexual deviants’ and that their fear of sexual variation leads to stigma and exclusion. Feminist discourse is then viewed as dogmatic and is accused of scrutinising and judging the sexual behaviour of individuals, up to punishing non-conformists by excluding them from the movement (Vance 1984: 19-22). In this way, any criticism of certain sexual practices is pathologised and attributed to feelings of shock and disgust, rather than a political analysis of sexuality and the existing power relations between men and women, adults and children etc. Rubin (1984: 271-272) goes as far as framing opposition to child pornography as ‘erotic hysteria’ and argues that the laws against it inflict on important civil liberties.

Regarding prostitution, it is acknowledged that there is a difference to other ‘sexual minorities’, due to the fact that prostitution is an occupation rather than a sexual preference. But nonetheless, prostitutes are likened to homosexuals and other minorities because they are treated as a criminal sexual population that is stigmatised on the basis of sexual activity<sup>1</sup> (Rubin 1984: 286). Rubin (*ibid.*: 297) views prostitution as innocuous

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<sup>1</sup> This account does not address the reasons for feminist critique of prostitution which does not see prostituted women as criminals or ‘deviants’ but rather analyses prostitution in the context of patriarchy and capitalism, concluding that it is a form of sexual exploitation (see section 3.4).

behaviour, arguing that the opposition invents victims in order to justify treating ‘vices’ as crimes. Furthermore, feminist discourse that criticises prostitution is said to recreate a conservative sexual morality, by stating that “the women’s movement may have produced some of the most retrogressive thinking this side of the Vatican” (ibid.: 302). Presenting feminist critique of pornography, prostitution and trafficking as moralistic and conservative is common in literature that takes a liberal or postmodern view on these issues. Accusations that feminists are creating a ‘moral panic’ about these issues are being made also in more recent publications, such as by Agustín (2006: 29), Kulick (2003: 208) and Weitzer (2006: 33).

Prostitution is considered to serve valuable social functions and it is not expected to disappear even if gender, race and class equality would be achieved. For instance, Pat Califia – another important representative of the sex radical approach – states that:

There will always be people who don’t have the charm or social skill to woo a partner. In a society where mutual attraction and sexual reciprocity are the normal bases for bonding, what would happen to the unattractive people, those without the ability or interest to give as good as they get? Disabled people, folks with chronic or terminal illnesses, the elderly, and the sexually dysfunctional would continue to benefit (as they do now) from the ministrations of skilled sex workers who do not discriminate against these populations (Califia 1994: 245).

Similar to the traditional perspectives discussed in previous paragraphs, sex radicals also rely on the concept of essential sexual ‘needs’ and thus view prostitution as socially necessary. Sex workers should thus be respected because they facilitate the satisfaction of basic human needs.

In her book “Reading, Writing, and Rewriting the Prostitute Body”, Shannon Bell (1994) attempts to challenge modernist and critical feminist perspectives on prostitution from a pre-modern as well as a postmodern subject position. She argues that the female body that is engaged in prostitution does not have an inherent meaning but rather that said meaning is constructed differently in different discourses. Bell criticises the negative construction of the prostitute body that is mainly focused on suffering and oppression, and in contrast analyses texts from the position of a positive construction of the prostitute body. She views sex workers as new political subjects who inscribe their own bodies in diverse and contradictory ways (ibid.: 1-6). She analyses the construction of the prostitute as an ‘other’, meaning the negative side of the dichotomy of virtuous woman and whore.

Both sides of this dichotomy depend on one another, i.e. they are constructed in relation to each other (ibid.: 40-41).

After describing the traditional construction of the prostitute as a ‘fallen woman’, Bell goes on to analyse feminist constructions of the prostitute body. She argues that the three main strands of feminism (liberal, socialist, radical) are all guilty – at least to a certain degree – of oppressing women of difference and silencing their voices. She states that only postmodernist feminism offers these ‘others’ the possibility to theorise their own subject position (Bell 1994: 73). Postmodern feminism is applauded for offering the possibility of challenging the dominant discourse. Following the work of Jacques Derrida (1976, 1981), Michel Foucault (1979, 1980a, 1980b), as well as Laclau and Mouffe (1985), among others, discourses are not viewed as closed systems but are always open for contestation. In addition, the fact that postmodern feminism allows for a female subject which does not have a unitary voice or sexuality<sup>2</sup> represents, according to Bell, a challenge to the dominant discourse. This also includes a positive construction of the prostitute, as she is now constructed as an active exchange partner rather than a passive participant or an object of exchange (Bell 1994: 86-89).

Following a postmodernist perspective, the prostitute is characterised as a plural, rather than a unitary subject. It is argued that the different experiences of prostitution have given rise to contested construction of the prostitute body. Prostitution as abuse is only one of many constructions, along with prostitution as work or even pleasure. Prostitutes’ rights groups create new meanings of prostitution that challenge the dominant discourse – the prostitute is now constructed as a healer, educator, sex expert or business woman. Commercial sex is viewed as just as valid as non-commercial sex. As mentioned above, prostitution is constructed as a sexual identity and prostitutes are likened to sexual minorities, such as gays and lesbians. In addition, the debates on prostitution are put in a general context of women fighting for the right to control their bodies, such as reproductive rights. This approach claims the right to prostitute as a right to sexual freedom (Bell 1994: 99-101).

Based on statements by prostitutes’ rights activists, Bell (1994: 108-110) regards commercial sex as a benefit to humanity and prostitutes as the new sex experts. The

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<sup>2</sup> “No unitary female experience”: This is a common argument against radical feminism, despite the fact that most writers and activists do not claim such a common experience of all women.

negative aspects of prostitution are seen to be caused by the broader sex-negative society. The focus is put on the feelings of individual prostitutes who do not necessarily or always feel victimised but sometimes actually feel empowered by their work. The right to sell sex is understood in the context of the right to sexual self-determination. Although prostitutes' rights approaches recognise that prostitution is not a completely free choice, their proponents argue that it is no less free than any other choice in a patriarchal, capitalist and racist system. Prostitution is thereby defined as a legitimate occupation for adults, regardless of whether the decision was made by choice or necessity (ibid.: 111-115). Prostitutes should thus be seen as radical political subjects and collective identity politics, which affirm the prostitute as a positive identity, are necessary. Prostitution is thereby seen as a means for prostitutes to control their own sexuality and to gain economic self-determination (ibid.: 122-123).

Similar to the liberal and sex radical approaches, in postmodern perspectives sex workers are regarded as rebels who transgress oppressive social norms (Gira Grant 2014: 76). Stigma and violence (particularly by the police) are considered the main problems connected to sex work, while the practice itself is considered unproblematic (ibid.: 7). Critique of sex work as a practice is often equated to a critique of sex workers themselves (ibid.: 36). Sex buyers are generally considered unproblematic and can even benefit sex workers by enabling them to make a living (ibid.: 73).

Women who oppose prostitution are sometimes regarded as indirectly responsible for the violence that is committed against sex workers. For instance, Gira Grant (2014: 127) states that "so long as there are women who are called whores, there will be women who believe it is next to death to be one or to be mistaken for one. And so long as that is, men will feel they can leave whores for dead with impunity". In this view, women's opposition to prostitution is considered to be the cause for men's violence. Similar to the liberal approach to prostitution, the criminalisation of buying sex is opposed from a postmodern perspective:

The demand for victims, as anti-sex work activists describe it, is driven by men's insatiable desire – not by sex workers' own demands for housing, healthcare, education, a better life, a richer life, if we dare. Male desire is held up as a problem to be solved, and ending men's "demand" for "buying" women is a social project to be taken up by producing alternatives for men – such as jail – and scant alternatives for sex workers – such as other forms of employment. It's a smaller and more convenient problem to want to solve: who men want to fuck and how. It's one that women who oppose sex work and sex workers' rights can pretend –



unlike poverty or racial inequality – that they have no role in, that they do not themselves benefit from (Gira Grant 2014: 42-43).

Sex work is thus thought to exist due to women's need to make a living and gaining a better life, and not by (male) demand for prostitution. Critique of prostitution is viewed as control of male sexuality and a denial of rights for sex workers.

### **3.4 Radical feminist approach to prostitution**

Radical feminists consider prostitution to be a harmful cultural practice and categorise it as a form of violence against women. They emphasise the gendered nature of prostitution and argue that it is inherently exploitative and cannot be made unproblematic (Jeffreys 2009: 12). In addition, they state that prostitution is gendered in a different way than it is the case for other areas that are dominated by women, such as domestic labour and care work. In domestic labour and care work, female workers could be replaced by male ones, and the outcome would not be changed. In contrast, the demand in prostitution is largely and specifically for women (ibid.: 19). Despite the fact that there are male and transgender people in the sex industry who are also subject to violence, prostitution is a practice that is overwhelmingly carried out through the bodies of women (ibid.: 10). In contrast, a gender neutral analysis of prostitution that focuses on individual experiences of violence and abuse ignores the gendered nature of prostitution and the patriarchal origins of the practice.

In the late 1970s in the United States, feminists began to organise activities and NGO group networks against pornography. They faced strong resistance from both liberals and conservatives. In contrast to the latter two groups, radical feminists argued that male sexual violence was not innate but learned and that pornography played a central role in this education, by eroticising of violence and inequality. Unlike conservatives, whose opposition to pornography was mostly concerned with morals and taste, these groups of feminists focused on exploitation and the harm that pornography caused to women as a class. However, liberals did and often still do confuse this feminist position with a conservative stance, describing feminist critiques of pornography as repressive and censorious (Leidhold 1990: XI-XII).

The question of social necessity is relevant when comparing prostitution to other forms of labour. Whereas care work, for example, benefits the population at large, the necessity of prostitution only applies to men, while not being socially necessary to women. Another

way in which prostitution differs from other forms of labour is the fact that youth and inexperience are highly valued in prostituted girls and women, which is not the case for most work outside the sex industry (Jeffreys 2009: 19). As domestic labour and care work are considered to be socially necessary, they cannot be abolished but rather they should be reformed and organised in a way that does not reinforce gender inequality. These differences are important because they suggest different ways of addressing existing problems.

The radical feminist position on the sex industry is often associated with a conservative, moralistic position because both argue for a reduction or abolition of prostitution. However, the underlying motivations differ significantly. Whereas the conservative position regards prostitution as immoral and harmful to families, the radical feminist position views it first and foremost as subordination and abuse of women and children. Despite these major differences in underlying premises, the radical feminist position is often criticised as repressive by advocates of sexual freedom who sometimes draw parallels between prostitution and homosexuality, arguing that in both cases the freedom of sexual expression should be respected (Jyrkinen 2005: 107-108). However, viewing prostitution as an expression of female sexuality is problematic because

[t]he essence of the prostitution contract is that the prostitute agrees, in exchange for money or another benefit, *not to use* her personal desire or erotic interests as the determining criteria for her sexual interaction. What this means is that the prostitute must, at least during working hours, assume her or himself as the Other, fix her or himself as an object, in order that everyone else may always be able satisfy their erotic “needs” on demand (O’Connell Davidson 2002: 91, italics in original).

While some women who sell sex are able to impose certain limits on buyers (for instance turning down certain buyers, refusing certain sex acts etc.), it remains highly questionable that many of them would be able to make a living if they only agreed to sex with buyers they found attractive and perform sex acts that they themselves enjoy (O’Connell Davidson 2002: 97).

Choice, agency and consent are concepts that are used frequently in debates about the sex industry. At times, radical feminists are accused of victimising women in prostitution by not recognising their agency, insisting that women’s sexual freedom should be respected (Jeffreys 2009: 21-22). The concepts of agency, choice and consent as well as victimisation deserve thus more detailed discussion. In contrast to a liberal approach (see

section 3.2), radical feminists focus on women's collective political agency rather than on the agency of individual women. In addition, they argue that agency and oppression are not mutually exclusive, meaning that women can exercise agency within the limits imposed by oppression and inequality (Jeffreys 2009: 26-27). The power relations within which the practice of prostitution takes place are based on what Carole Pateman (1988: 13-14) calls the male sex right, which refers to men's right to access women as non-negotiable and natural. Within this context, the concept of women's agency becomes problematic, as their only possibility for agency lies in answering the demand, while the demand itself remains unchallenged (ibid.).

This is not to say that women are not able to make choices at all, but rather that these choices – just like all choices – are constrained by the social and political circumstances in which women live, namely capitalism and patriarchy. For this reason, it is seen as unhelpful to merely focus on the choices of individuals, while stripping these from the context in which they are made. The following quote by Janice Raymond emphasises the importance of acknowledging and analysing the context in which women's choices are made:

The point is not to deny that women are capable of choosing within contexts of powerlessness, but to question how much real power these 'choices' have. To paraphrase Marx and apply his words here, women make their own choices, but they often do not make them just as they please. They do not make them under conditions they create but under conditions and constraints that they are often powerless to change. When Marx uttered these thoughts, he was acclaimed for his political insight. When radical feminists say the same, they are blamed for being condescending to women (Raymond 1990: 110).

The view that radical feminists are denying women agency and consider women to be weak and passive is therefore problematic because it misrepresents the actual argument being made and makes critiques of women's subordinate status difficult. By taking such an individualistic approach, any critique of structural inequality, oppression or coercion is dismissed by insisting on the idea of 'choice'.

Feminists who fight against prostitution, or domestic violence and incest, do not suggest that the women who are directly affected by these practices are weak or inferior to other women. They argue that what is done to these women represents a systematic act of discrimination and power over all women. In this sense, there is no 'us' and 'them', even though some women do take the brunt of the violence. All women are thought to be part

of a common condition, despite the differences that exist between them. Commonality does not mean sameness, but it does mean that there is a need for a collectivist movement to address existing power relations (MacKinnon 1990: 5). This stands in opposition to accusations made by liberals who state that the anti-pornography movement excludes prostitutes and treats them as ‘others’, or at best as misguided oppressed women who need help (Nestle 1988: 232).

Regarding the concepts of ‘choice’ and ‘consent’ within prostitution, Raymond (2003: 324) argues that it would be more appropriate to speak of a survival strategy rather than a choice made by prostituted women, as many women comply with the limited options that are available to them. In addition, it is argued that the standard by which prostitution is evaluated should not be consent, but rather the harm caused by the practice of prostitution (Raymond 2003: 325; Farley 2003: 248). Melissa Farley (2003: 249) states that real consent is not possible in prostitution due to power differences that limit women’s options. With regard to the concept of ‘choice’, Raymond notes the similarities between traditional and liberal perspectives on prostitution:

The conservative view of prostitution is to blame women and girls for their alleged choice to be in prostitution; the liberal view is to romanticize women’s “choice” as self-determination and use it to normalize prostitution as “sex work.” Both succumb to the belief that whatever happens to a woman in prostitution is normal because it’s her choice. Both these views have facilitated the expansion of sexual slavery in many parts of the globe and the extensive ways in which women themselves become “goods and services” – as prostituted women, as trafficked instruments of exchange, as objects of sex tourism, and as indentured domestic workers who are often sexually exploited as well (Raymond 2013: 46).

Furthermore, Kathleen Barry (1995: 89) states that ‘consent’ is not the indicator of freedom, as such a view is based on individualism rather than an analysis of power and oppression. She argues that consent to oppression is a condition of oppression itself and that it can never be a state of freedom. The fact that sexual exploitation, taking the form of prostitution among other forms, is accepted and sometimes even promoted among women should not be surprising. The acceptance of oppression by the oppressed class is the rule rather than the exception. Following this approach, it is not possible to create a clear distinction between ‘freely chosen’ and ‘forced’ prostitution, because all forms of prostitution are interrelated and based on power inequalities caused by gender, race and class (Barry 1995; Jeffreys 2009). In addition, prostitution and human trafficking for the purpose of sexual exploitation are considered to be intrinsically linked, even though not

all women who sell sex have been trafficked. The demand for prostitution usually increases under legalised systems as buying access to women's bodies becomes more socially acceptable. Increased demand favours trafficking and further expands the industry (Raymond 2003: 320-321). For this reason, it is argued that prostitution and human trafficking cannot be separated but are intrinsically linked (ibid.: 326-327)

One of the most widely used arguments within liberal and postmodern perspectives on prostitution is that 'sex workers' should not be viewed as victims but as agents/subjects. Within such perspectives, victimhood is equated with weakness and passivity and therefore considered an inappropriate concept for describing 'sex workers'. In this sense, victimhood is treated as if it were a character trait of the persons in question rather than something that is done to them under certain circumstances. The focus is therefore removed from what happens in prostitution to the question of what the women in prostitution are like (Ekman 2013: 15-16).

Kajsa Ekis Ekman (2013: 26-30) argues that this opposition between subject and victim is not correct. The opposite of 'subject' is 'object', whereas the opposite of 'victim' is 'perpetrator'. By creating a dichotomy between subject and victim, it is implied that a victim is actually an object, i.e. not anymore a person who thinks, feels and acts. In a social context where this is the dominant definition of 'victim', it is not surprising that women, whether they are prostituted or not, reject this label. So the fact that many women in prostitution protest against being called victims does not automatically prove that there is no harm inherent in prostitution. The subject-victim dichotomy, however, works in a way that makes the harm invisible and reduces it to the personal characteristics of the people involved. By implying that only weak and passive women can be victims, it inevitably takes a victim-blaming approach, which locates the reasons of victimisation in the victims themselves and removes the focus from the perpetrators. If there are no victims or if the victims themselves are to blame for their situation, there are also no perpetrators. Following this logic, liberal approaches to prostitution often ignore the buyers and focus exclusively on the women in prostitution (Ekman 2013).

Andrea Dworkin (1990: 38-39) also emphasises the importance of not treating victimisation as a state of being or even as the essence of a person. She states that it is problematic to claim that women are not victims but rather that some of them simply feel victimised and that feminism is to blame for this supposed state of mind. This would mean

that feminists should not point out oppression because that would lead to women feeling victimised and weak. However, victimisation is not the same thing as passivity. Acknowledging the victimisation of women (or any other group, such as African Americans, Jews or indigenous peoples) does not mean that one considers them to be passive or that their victimisation defines the totality of their existence (Raymond 1990: 108).

Another important point is that to criticise prostitution (or any other oppressive practice) should not be equated with criticising the women in prostitution. Being critical of prostitution does not mean blaming women in prostitution for the existence of the practice, nor does it mean that radical feminists exclude prostituted women from the feminist movement, as the following quote by Catherine MacKinnon illustrates:

When this movement criticized rape, it meant rapists and the point of view that saw rape as sex. When it criticized prostitution, it meant pimps and johns and the point of view that women are born to sell sex. When it criticized incest, it meant those who did it to us, and the point of view that made our vulnerability and enforced silence sexy. When it criticized battery, it meant batterers, and the point of view that violence expressed the intensity of love. Nobody thought that in criticizing these practices, the movement was criticizing their victims (MacKinnon 1990: 3).

Acceptance of prostitution itself is thus not regarded as necessary in order to defend women who sell sex. On the contrary, it is considered imperative to fight the system that exploits them rather than trying to normalise and sanitise it.

#### **4. Policy regimes on prostitution**

According to Marjut Jyrkinen (2005: 109-116), policies on prostitution can be divided into three main types, namely harm reduction, elimination of prostitution, and reduction of prostitution and its demand. I will briefly outline the main characteristics of each policy type and its subtypes, including their underlying ideological assumptions.

##### **4.1 Harm reduction policies**

At the basis of harm reduction policies lies the assumption that prostitution is inevitable and will always exist (Raymond 2013: 27-28). Male demand for prostitution is accepted as natural and is not questioned. The goal of harm reduction policies is thus limited to diminishing the negative side effects of the practice, such as sexually transmitted diseases, drug addiction, and the stigma faced by women in prostitution. There are three different kinds of harm reduction policies, which will be described in the following.

The first one, regulation, typically focuses on the women in prostitution and includes mandatory health checks (typically just for the women in prostitution, not for the male buyers) as well as punishments that are most often directed at the prostituted women. Prostitution as a practice is condemned on moral reasons and women in prostitution are viewed as spreaders of diseases and immorality. Since prostitution is seen as inevitable and immoral at the same time, an effort is made to limit it only to certain neighbourhoods ('zoning') in order to reduce public nuisance (Jyrkinen 2005: 111-112).

The second subtype within harm regulation policies is called neo-regulation. It is rather similar to traditional regulation policies, but in addition it puts an emphasis on the assumed difference between 'voluntary' and 'forced' prostitution. Neo-regulation is currently rather widespread in Europe and other parts of the world (Jyrkinen 2005: 112). Neo-regulationist policies assert prostitution as a woman's right and emphasise self-determination as an individual choice. Such policies distinguish between 'free' and 'forced' prostitution, with the result being a movement against trafficking that is not opposed to prostitution per se. Trafficking is opposed not due to the exploitative nature of prostitution but (at least partly) in order to protect the market values of local prostituted women. Despite this opposition to trafficking, the normalisation of prostitution caused by neo-regulation has led to an increase in trafficking to countries with such policies (Barry 1995: 234-235).

The third subtype, legalisation, aims at empowering 'sex workers' and reducing the stigma that women in prostitution face. It is often argued that the sex trade would simply move underground if it was illegal and would therefore become more dangerous for the women in prostitution. Prostitution is considered to be a job like any other and sometimes even advertised as providing the possibility for a lucrative income. The focus lies on improving the working conditions and health of 'sex workers'. The treatment of prostitution as a regular employment option is an important factor in the normalisation of prostitution. Also, the gendered nature of prostitution is accepted and normalised through legalisation (Jyrkinen 2005: 112-114).

#### **4.2 Elimination of prostitution**

Prohibitionist policies aim at eliminating prostitution and are based on strict legislation. Such policies can be found mostly in fundamentalist religious cultures. The penalties are usually directed at the women in prostitution, even though in theory all parties involved in the sex trade are subject to severe punishments. However, strict laws are often not followed applied to men when travelling abroad (Jyrkinen 2005: 114-115). Barry (1995: 222-227) distinguishes also between socialist suppression of and capitalist prohibition of prostitution. Both of these systems try to eliminate prostitution but fail to challenge the underlying sexual exploitation and misogyny on which the practice of prostitution is built.

#### **4.3 Reduction of prostitution and its demand**

Policies aimed at the reduction of prostitution include abolitionist and neo-abolitionist policies. Abolitionist policies were developed due to criticism of the regulation regime which targets mainly women in prostitution with sanctions (Jyrkinen 2005: 115). Abolition decriminalises both prostituted women and sex buyers, while procuring, brothel keeping and trafficking are illegal. It employs the distinction between 'free' and 'forced' prostitution, based on the assumption that prostitution itself is not damaging and not a form of sexual exploitation (Barry 1995: 235-239).

Neo-abolitionist policies, on the other hand, are the main challenge to current policies for legalisation and harm reduction approaches. Prostitution is considered to be a form of gendered violence and is viewed as a threat to gender equality. Such policies criminalise the sex buyers but not the people in prostitution. The focus is on combatting the demand for prostitution. Sweden was the first country to introduce a neo-abolitionist policy on



prostitution in 1999 (Jyrkinen 2005: 115-116). The law was part of a bigger bill called 'Kvinnofrid' ('Women's Peace') that addresses violence against women. In Sweden, prostituted women and children, as well as men in prostitution, are viewed as victims of sexual violence and therefore do not face legal penalties but instead they have a right to assistance to exit prostitution. Prostitution and trafficking in human beings are treated as intrinsically linked and neo-abolitionist policies highlight that trafficking cannot be effectively combatted without challenging prostitution itself (Ekberg 2004: 1189).

## **5. Methodological approach**

The methodological framework I use to analyse the empirical data is based on Carol Bacchi's (1999) approach on the construction of policy problems ('What is the problem represented to be?') and Mieke Verloo's (2005) and Verloo and Emanuela Lombardo's (2007) critical frame analysis on gender politics. Both approaches take a constructivist view on social problems in contrast to traditional, positivist views on policy making. Positivist approaches assume that social problems are objective and fixed, and that governments and other actors merely react to them based on a cost-benefit analysis in order to find solutions (Bacchi 1999: 17-18). Constructivist perspectives focus on the ways in which different socio-political actors create certain ways of understanding social issues. Policy responses are thus viewed as part of the construction of a problem rather than a purely pragmatic reaction to given problems (ibid.: 21, Verloo & Lombardo 2007: 31-32). Bacchi (1999: 21) calls these ways of understanding problems 'problem representations'.

A central assumption of this approach is that multiple interpretations of a social issue exist in the process of policy making, which differ in their representation of problems as well as their proposed solutions (Verloo & Lombardo 2007: 31-33). The approach is thus a theoretical and methodological framework to study the contested meanings of social problems with the aim of exposing the ways in which problems and potential solutions are represented in policy texts and other documents (ibid.: 32).

Defining something as a problem always means making a judgement, even though policy issues are often presented as rational, logical and free from power relations. Power and values are of central importance regarding the identification of a problem and the methods that are viewed as useful for studying and solving it (Marshall 1999: 69-70). Political debates in general can be seen as power conflicts over which knowledge is the 'truth', meaning which way of framing a problem is the 'correct' one and which kinds of measures are considered appropriate to solve it. Alternative 'truths' are often either marginalised or debunked by using a so called "discourse of derision" (ibid.: 64-65).

## 5.1 Policy frames

Frame analytical approaches are used in a number of different fields, including sociology and political sciences. Verloo and Lombardo (2007: 32) base their definition of policy frames on Erving Goffman's (1974) work, stating that "a frame is usually described as an interpretation scheme that structures the meaning of reality". Verloo (2005: 20) defines a policy frame as an "organising principle that transforms fragmentary or incidental information into a structured and meaningful problem, in which a solution is implicitly or explicitly included". The goal of this type of analysis is not, in contrast to positivist approaches, to find the 'best' solution to an objectively defined problem but rather to uncover the ways in which a problem is constructed and to what kind of – implicit and explicit – assumptions and interpretations it is connected as well as to show how the suggested solutions can be traced back to said assumptions and problem representations (Bacchi 1999: 21). The activity of framing is considered to be the "constructing, adapting and negotiating of frames" (Verloo 2005: 20).

In such a view, defining something as a problem is never a neutral act but rather a particular interpretation that involves judgement and choices (Bacchi 1999: 1-2, see also Ackerly & True 2010: 59-60). It is thus not only important whether or not a certain issue is considered to be a problem at all, but it also matters *how* the problem is represented. This influences the ways in which a problem can be addressed. For example, sexual harassment can be represented as a problem in different ways, such as viewing it as predatory behaviour by individual men, or, in contrast, as playing a role regarding the inequality between the sexes. The different framings of this problem, if it is considered to be a problem at all, then lead to different solutions (Bacchi 1999: 7). Another example are the different ways of framing the problem of domestic violence. Domestic violence can be framed as a private matter between two individuals in which the state should not interfere, or as a public problem that is connected to unequal gender relations in society. In the second framing, structural causes of the violence are targeted rather than merely addressing individual perpetrators (Verloo & Lombardo 2007: 29).

Bacchi's (1999) approach also draws on Michel Foucault's discourse theory, where discourses are defined as "practices that systematically form the objects of which they speak; they do not identify objects, they constitute them and in the practice of doing so conceal their own invention" (Foucault 1972: 49). Discourse does set the limits on what

can be said and it is therefore useful to regard discourses as frames, as they provide frameworks or ways of viewing issues (Bacchi 1999: 40). While problem representations are socially constructed, policy frames do have concrete and material consequences that set the conditions for future actions (ibid.: 41; Verloo & Lombardo 2007: 32). Bacchi refers in her work to John Codd (1988: 240-242.), stating that it is important to examine “how the use of language can produce real social effects”. Language does more than merely describe the social world but rather takes part in constructing social issues (Bacchi 1999: 41). This view represents a poststructuralist approach to language, which accounts for social effects of language. In contrast, structuralist approaches are based on the assumption of an arbitrary relationship between a word and the concept it describes (Saussure 1960). While frame analysis is compatible with Foucauldian discourse theory, I do not use the term ‘discourse’ in my data analysis, but rather speak exclusively of ‘frames’ in order to avoid complicating the analysis unnecessarily. Nonetheless, I pay attention to the language that is used in the different documents as certain terms often form part of particular ways of framing an issue (Bacchi 1999: 41), for instance ‘prostitution’ as opposed to ‘sex work’.

Verloo’s (2005: 15) analysis includes the concept of “strategic framing”, which accounts for the possibility that actors might intentionally adapt existing frames to pursue their respective goals. While actors are limited by existing policy frames, they are potentially capable of instrumentalising these frames in order to favour their own interests. However, the relationship between structure and agency remains somewhat ambiguous, as it is unclear in which way actors stand to the frames. The interests of actors are also based on certain assumptions and are thus not located outside of the existing frames (Bacchi 2005: 224-225). Actors are at the same time enabled and constrained by the existence of so-called ‘master frames’, which set borders within which different frames can move. These ‘master frames’ are thus similar to the concept of hegemonic discourses in a Foucauldian sense and can steer the actors’ conscious shaping of an issue in unintended directions (Bacchi 2005; Verloo et al. 2007: 281).

## **5.2 Critical frame analysis**

The key dimensions of a policy frame are diagnosis and prognosis, i.e. the ways in which a problem is represented and what kind of solutions are proposed (Verloo & Lombardo 2007: 33). In theory, prognosis should correspond to the diagnosis of a problem, meaning that the solutions are adapted to the ways in which the problem is represented. A frame analysis enables the researcher to assess to what degree this correspondence between diagnosis and prognosis occurs in the policy texts or whether there are inconsistencies within a given policy frame (ibid.: 35). In practice, total consistency between diagnosis and prognosis is rare. One reason for such inconsistencies is that different constituencies of actors are to be served in the development of policies. Therefore, alternative frames, or at least fragments, might be included in the texts. Inconsistencies can thus allow the introduction of new policy frames (Verloo et al. 2007: 298).

Questions regarding power and inclusion/exclusion add a critical element to the frame analysis (Verloo & Lombardo 2007: 36). The right to have a voice in the policy debate and in the framing of a policy issue, i.e. the inclusion or exclusion of certain actors, is closely connected to questions of power. In this way, participation in policy debates can serve the already dominant groups while further marginalising others (ibid.: 27). In addition, questions of intersectionality are an important feature of a critical frame analysis, i.e. the extent to which policy debates represent any other structural inequalities in addition to gender, such as class, race, ethnicity, age and sexuality, as part of the diagnosis and prognosis (ibid.: 33).

The purpose of this methodological approach is thus to map the way in which an issue is framed, to grasp the nuances of a policy frame and to reveal inconsistencies as well as marginalisations and exclusions (Verloo & Lombardo 2007: 37-38). The analysis aims at uncovering problem representations and examining to which possible solutions they lead (Bacchi 1999: 4-5). The coding guide that was used for the empirical analysis is a slightly simplified version of Verloo and Lombardo's (2007) methodology of critical frame analysis, which they developed to analyse gender policies in Europe.

## **1. Problem identification (Diagnosis)**

- |     |                        |  |
|-----|------------------------|--|
| 1.1 | Problem identification | What is represented as the problem?  |
| 1.2 | Gender                 | Is the problem seen as gendered? If so, how?   |
| 1.3 | Intersectionality      | Are other social categories (class, ethnicity, race, age, sexuality) part of the diagnosis of the problem? |
| 1.4 | Absences               | What is left unquestioned?   |
| 1.5 | Problem holders        | Whose problem is it seen to be?  |
| 1.6 | Responsibility         | Who is considered to be responsible for the problem?   |
| 1.7 | Voice                  | Who has / should have a voice in the policy debate?  |

## **2. Proposed solutions (Prognosis)**

- |     |                   |   |
|-----|-------------------|---|
| 2.1 | Solutions         | What solutions are proposed?  |
| 2.2 | Gender            | Is the problem seen as gendered? If so, how?  |
| 2.3 | Intersectionality | Are other social categories (class, ethnicity, race, age, sexuality) part of the solution of the problem? |
| 2.4 | Absences          | What alternative solutions are not mentioned?   |
| 2.5 | Target groups     | Who is acted upon?  |
| 2.6 | Action            | Who should do something about the problem?  |
| 2.7 | Voice             | Who has / should have a voice in suggesting courses of action?  |

While a critical frame analysis is a useful methodology to uncover the ways in which problems and corresponding solutions are framed and to reveal inconsistencies as well as exclusions, there are certain limitations to this approach. For instance, it remains difficult to understand why the existing frames have emerged in the way they appear to the researcher. Other approaches would be needed to address the question of how and why existing frames have emerged. Such research would have to examine the political context in which policy debates take place and the conditions under which some frames have become more dominant than others (Bacchi 1999: 19, Verloo & Lombardo 2007: 40). One possibility would be to employ a dynamic frame analysis which enables the analysis of the shifting of policy frames over time. Josefina Erikson (2012) employs such an approach in her analysis of the different framings of prostitution in Sweden. However, in this thesis I focus on the approach of critical frame analysis outlined above.

### 5.3 Positioning of the researcher

Traditional policy analysis is characterised by a belief in one ‘truth’ and assumes that objectivity of the researcher is possible and desirable. It assumes that all research subjects share the same relationship to their social environment, meaning that social categories such as gender, race and class are not considered important. In contrast, critical policy analysis regards all research as political, even though it is often presented as objective and neutral. This means that all analyses are tied to existing power relations, and therefore critical policy analysis focuses precisely on these relations of power. Feminist critical policy analysis puts a particular emphasis on the role of gender in this regard (Shaw 2004: 58-59). This thesis does therefore not represent a totally neutral description of the debates on prostitution in Switzerland but rather takes part in the meaning making. My analysis is thus located within the limits of existing ‘master frames’. Describing and evaluating the apparent interpretations of a problem is in itself a constructivist act. Total neutrality is therefore not possible for a researcher, but the way he or she evaluates the problem representations is based on his or her own assumptions and presuppositions (Bacchi 1999: 10). It is thus of central importance to reflect on the ways I myself interpret and evaluate the problem representations emerging from my empirical data and examine the grounds on which I evaluate them<sup>3</sup>. One possibility is to evaluate these interpretations by what one believes will be their effect and whether these effects are desirable (ibid.). Of course this supposed desirability is again based on certain assumptions and can thus not be viewed as a neutral description.

As is also the case for other types of data analysis, the problem of subjective interpretation of the data is always present, which makes transparency and reflection all the more important (Verloo & Lombardo 2007: 40-41). The study of power and its effects is a central concern of researchers across a wide range of topics. But not only the research subject itself is marked by power relations, also the researchers themselves are situated within power structures, and academic research itself is a particular form of power. An important challenge for a feminist researcher is to find a way to study power and its consequences, while also participating in the projection of power (Ackerly & True 2010: 21). It is therefore essential to reflect on the epistemologies that inform a particular research project, since an epistemology is in itself a belief system about what constitutes

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<sup>3</sup> The selection of the data in itself involved certain assumptions and judgements from my side and thus needs to be justified (see Chapter 6).

knowledge. Even though gender analysis is central within feminist epistemology, research is not limited to exposing power dynamics based on gender, but should also make efforts to include other ways in which power, knowledge and meaning are produced (ibid.: 24-29).



## **6. Empirical data**

The selection of my data is based on theoretical as well as practical considerations. The aim of my research is to study how prostitution is framed in Switzerland and particularly in the city of Zurich. Official documents published by the Swiss government and the City of Zurich are thus a crucial part of the data. Due to the fact that important decisions about the way prostitution is regulated are made on a cantonal or municipal level, half of the documents included in the data specifically deal with prostitution in the city of Zurich. However, the decision-making authority of the cantons and municipalities is limited in several respects, most important here is the tolerance of prostitution on the national level. This means, for instance, that cantons and municipalities cannot adopt laws that prohibit prostitution or criminalise the buying of sex at large. For this reason, the empirical data also includes documents that address prostitution on the national level. I also include NGO documents because they are explicitly drafted to influence policy-making on prostitution on the national and municipal level. These NGOs are listed on the website of the City of Zurich, in the section on prostitution. This indicates that these organisations have the possibility to make their voices heard on the issue of prostitution and to influence the debate and policy-making process.

As this thesis is limited to studying the current debates on prostitution, all of the documents are relatively new and have been published between 2010 and 2015. A longitudinal study by means of a dynamic frame analysis of the changing ways in which prostitution has been framed in Switzerland and Zurich in particular, similar to the Erikson's (2012) analysis of prostitution debates in Sweden, would certainly be fruitful, but does not lie within the scope of this thesis.

The national level data includes documents published between 2012 and 2015. The reason for choosing the year 2012 as a starting point was that in this year the Swiss government started a consultation procedure regarding the abolishment of the cabaret-dancers-statute (see section 2.2). This process sparked a more general discussion on prostitution and a number of reports about this topic were published. I selected three of these reports in order to analyse the ways in which they conceptualise the phenomenon of prostitution. In addition, I included one position paper, published collaboratively by a number of different NGOs, that addresses fundamental questions regarding prostitution (Document C). This position paper was the most comprehensive that could be found. Other, shorter statements

by one or more of the involved NGOs are strongly based on this paper and do not include any additional arguments. For this reason, I decided to include merely this one position paper among the documents for the national level.

The municipal level data of the city of Zurich consists of documents published between 2010 and 2015. In 2010, the City of Zurich created a first draft of the new Prostitution Industry Regulation (*Prostitutionsgewerbeverordnung PGVO*) (see section 2.2) and initiated a consultation procedure, where different actors were invited to submit statements about the planned policy. Here, the data comprises the original draft by the City of Zurich, two different statements by NGOs responding to this draft, and a report published by the City of Zurich on the development of the prostitution industry after the implementation of the new regulation. The following table gives an overview of the documents included in the empirical analysis<sup>4</sup>.

<b>Indicator</b>	<b>National / municipal</b>	<b>Official / NGO</b>	<b>Organisation / Institution</b>	<b>Title of the document</b>	<b>Year</b>
A	National	Official	Bundesamt für Migration (BFM) [Federal Office for Migration]	<i>Bericht zur Rotlichtproblematik</i> [Report about problems in the red light sector]	2012
B	National	Official	Bundesamt für Migration (BMF): Expertengruppe Hilber [Federal Office for Migration: Expert group Hilber]	<i>Bericht der nationalen Expertengruppe - Schutzmassnahmen für Frauen im Erotikgewerbe</i> [Report by the national expert group – Measures for protection of women in the erotic industry]	2014
C	National	NGO	TDF, FIZ, cfd, Xenia, PROKORE	<i>Diskussionspapier Sexarbeit - Fakten, Positionen und Visionen aus feministischer Perspektive</i> [Discussion paper sex work – Facts, positions and visions from a feminist perspective]	2014

<sup>4</sup> The original German wording of all quotes contained in the analysis section of this thesis (Chapter 7), along with the English translation, can be found in the appendix. All translations are my own.

D	National	Official	Schweizer Bundesrat [Swiss Federal Council]	<i>Prostitution und Menschenhandel zum Zweck der sexuellen Ausbeutung</i> [Prostitution and human trafficking for the purpose of sexual exploitation]	2015
E	Municipal	Official	Polizei-departement, Stadt Zürich [Police department, City of Zurich]	<i>Entwurf Prostitutionsgewerbeverordnung</i> [Draft of the Prostitution Industry Regulation]	2010
F	Municipal	NGO	ZSM, FIZ, ZAH	<i>Vernehmlassungsverfahren Prostitutionsgewerbeverordnung der Stadt Zürich – Stellungnahme</i> [Consultation procedure for the Prostitution Industry Regulation of the city of Zurich – Statement]	2011
G	Municipal	NGO	Zürcher Frauenzentrale	<i>Vernehmlassungsverfahren Prostitutionsgewerbeverordnung der Stadt Zürich – Stellungnahme</i> [Consultation procedure for the Prostitution Industry Regulation of the city of Zurich – Statement]	2011
H	Municipal	Official	Polizei-departement, Stadt Zürich [Police department, City of Zurich]	<i>Bericht über die Entwicklung des Prostitutionsgewerbes mit der neuen Prostitutionsgewerbeverordnung</i> [Report on the development of the prostitution industry with the new Prostitution Industry Regulation]	2015

## 7. Data analysis

Two main frames could be identified in the data, namely a *regulation frame* and a *sex work frame*. A number of contradictions could be identified within each frame. For instance, contradictions within some of the studied documents appeared, namely within the two documents on the Prostitution Regulation Industry published by the City of Zurich (Documents E and H) which rely on the *regulation frame*, while also including elements of the *sex work frame*. In the analysis, I will show how the combination of both frames leads to contradicting attempts to solve the existing problems in the sex trade.

In the following I present the main features and nuances of each of these frames, starting with the general assumptions and then moving towards more detailed features and policy implications. I also examine what is left unquestioned by each of these frames and to what extent and in which ways these frames are gendered. The analysis does not present a summary of each document but rather outlines the central elements of each of the frames and the ways in which the problem of prostitution is framed, illustrated by direct quotes from the data.

After presenting each frame separately, I analyse two underlying premises that are shared by both frames, namely the acceptance of prostitution as a social reality and the clear distinction between ‘free’ and ‘forced’ prostitution. Another important aspect shared by both frames is the opposition to criminalising the purchase of sex. In the analysis, I invoke the contrasting views of a radical feminist framing of prostitution (see section 3.4) which is largely absent from the data at hand, and which represents a different way of framing the problem of prostitution and thus would lead to different policy suggestions. In addition, I show that there are fragments of a *neo-abolitionist frame* in the studied documents. Overall, the data analysis shows a strong normalising view of the sex trade in Switzerland, with any challenge to the continuance of prostitution being dismissed as moralistic and counterproductive.

### 7.1 Regulation frame

Within the *regulation frame*, illegal prostitution is viewed as the main problem and the problem is combatted by criminalising those women who do not possess the necessary permit to sell sex. In this way, the regulation of the sex trade can turn into a regulation of women who sell sex. They are thereby constructed as potential law-breakers that should

be controlled and punished if necessary. At some points, foreign prostitutes are constructed as victims of exploitation at the hands of procurers and traffickers. This way of framing is built on the view that the sex trade per se is legitimate and it limits state interventions to the combatting of illegal prostitution and human trafficking. Prostitution is framed first and foremost as a labour issue, and regulation is implemented on the basis of labour and immigration law. The demand side as well as the gendered nature of prostitution are almost completely ignored.

### 7.1.1 Framing of the problem

The report about problems in the sex trade published by the Federal Office for Migration in 2012 (Document A) focuses almost exclusively on the regulation of prostitution. It describes in detail the different types of permits needed by foreign women in prostitution in Switzerland. Prostitution is thus framed exclusively as a labour and immigration issue. Foreign women who work in prostitution without a permit are viewed as mainly responsible for the problems in the sex trade. Prostitution is framed as a law and order issue, as illustrated by the following quote:

In this area, **some cantons are confronted with third-country nationals** who enter Switzerland with a tourist visa and **illegally earn money as prostitutes** in contact bars. This type of illegal prostitution is **very difficult to control** (A: 13, my translation and emphasis).

This quote reveals that the cantons are viewed as the party that is affected by the problem (problem holders), while the prostitutes from outside the EU are considered the ones responsible for the problem. Prostitution is thereby framed in the context of illegal immigration, with a focus on migrant women as potential criminals. Foreign women in prostitution are viewed as victimising society rather than being victims themselves (Raymond 2013: 40). Control of illegal prostitution is seen as necessary but difficult to achieve. Similarly, the following extract constructs the cantons as objects, with cabaret dancers (strippers) taking advantage of the differing legislation between cantons with regard to permits for third-country (i.e. non-EU) nationals:

The different handling does often lead to a **playing off of the cantons against each other** (for instance in some cantons, prostitutes receive L-permits<sup>5</sup> relatively easily. They then use the occupational and geographical mobility and **engage in**

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<sup>5</sup> In some cantons, third-country nationals working in cabarets were able to obtain a special type of permit (L-permit) that represented an exception to the rule of only allowing people whose work serves the national economic interests (see section 2.2).

**the occupation in a “for the trade more attractive canton”**) (A: 13, my translation and emphasis, quotation marks in original).

The two above quotes construct non-EU prostitutes as active subjects who create problems for the cantons by working illegally. They are not viewed as being affected by problems, but as the ones responsible for the existence of illegal prostitution. Also the following quote illustrates clearly how (some) women in prostitution are considered to be responsible for problems:

Repeated violation of legal provisions for the **protection of public safety**, represents on the whole – even if one single infringement by itself is not particularly severe – a **sufficiently serious threat to the common interest** (A: 18, my translation and emphasis).

In this quote, the actions of women in the sex trade are regarded as a potential threat to public safety and the common interest, with the latter not being defined more specifically. It is unsurprising that this kind of problem framing leads to proposed solutions that focus on control and regulation not only of the sex trade, but of the women themselves.

As mentioned above, the authors Document A implicitly accept prostitution as a social reality. Within the *regulation frame*, it is merely illegal prostitution that is represented as a problem and punitive measures are taken to combat it. In this way, the problem of prostitution is considered to be women’s behaviour, while the practice of prostitution itself is normalised as long as labour laws and immigration laws are not violated (see Carson & Edwards 2011: 77). The exclusive focus on foreign nationals, among those especially non-EU citizens, is not surprising given the fact that the document was published by the Federal Office for Migration. Nonetheless it is important to notice that prostitution of Swiss women is entirely absent from the document and is thus not viewed as a problem. Accordingly, Swiss prostitutes are not potential law-breakers, as they have the right to engage in prostitution, but they are also not considered to be in need of protection, further rights or better working conditions.

The demand side of prostitution is almost completely absent from the document. By representing illegal prostitution as the main problem and the prostitutes as the responsible party, the sex buyers are removed from the picture. The parts of Document A that mention demand describe the different settings of prostitution (street prostitution, massage parlours, contacts bars and cabarets), stating that those settings attract different types of clients and that in some settings (e.g. street prostitution) the ‘sex workers’ have more

autonomy regarding the choice of clients (A: 6). The existence of demand for prostitution per se remains unquestioned.

Document A only contains one paragraph that constructs some women in the sex trade as affected by problems (problem holders) and not as potential criminals. These group of women are the (non-EU) cabaret dancers, who are by law not allowed to engage in prostitution.

(...) these persons are often **urged to engage in illegal prostitution and have to incite the clientele** to the consumption of alcohol. (...) From the view of women's organisations, the cabaret-dancers-statute offers **some amount of protection**, provided that **controls by the authorities** are conducted consistently (A: 16, my translation and emphasis).

In contrast to the rest of Document A, cabarets dancers are here not constructed as subjects who engage in an illegal activity but rather as a group of people that is acted upon and pressured to engage in prostitution. This framing of the problem leads to different goals and measures, namely the protection of cabaret dancers rather than punishment. However, the quote makes clear that this kind of solution is advocated by women's organisations and thus not necessarily by the authors of the document itself.

The protection of cabaret dancers and prostitutes is not mentioned in the rest of the document, except for the appendix in which practices from other countries (Germany, Austria, Netherlands) are described and the main problems of prostitution in six different cantons (Bern, Zurich, Basel-Stadt, Solothurn, Geneva, Ticino) are outlined by representatives of these cantons. Only the canton of Bern mentions the protection of "people who engage in sex work" as a central aim of legislation. In addition, it should be noted that also in the above quote, controls by the authorities are viewed as a necessary measure to ensure the protection of cabaret dancers.

The report by a national expert group on measures for the protection of women in the sex trade (Document B) constructs 'sex workers' in general as affected by certain problems (problem holders) rather than as responsible for said problems. However, a distinction is still made between local and foreign 'sex workers', the latter being seen as responsible for the growing supply. They are presented to cause negative consequences for local 'sex workers', as the following quote illustrates:

The local sex workers are partly **pushed aside** within street prostitution. The supply exceeds the demand in many places, which has partially **led to price drops**

**and increased work insecurity. Unprotected sex practices have increased** (B: 11, my translation and emphasis).

In this quote, prostitution is framed exclusively in market terms. The passage argues that a serious problem of prostitution in Switzerland is that supply exceeds demand, which leads to increased competition among 'sex workers'. This in part lowers prices, creates more insecurity for 'sex workers', and increases the prevalence of unprotected sexual practices. The drop in prices and the increase of unprotected sex is thereby regarded as a natural consequence of high supply, while the role of the mostly male sex buyers is ignored (see Raymond 2013: 60-61). It also remains unquestioned why buyers demand unprotected sex in the first place. This perspective is also taken by the NGO position paper (Document C), which suggests that disadvantages created by an increase in supply are less problematic if the demand increases simultaneously. This position could be read as a wish that more men buy sex which would mean a further expansion of the sex industry.

Economic reasons are seen as the cause of increasing immigration for the purposes of prostitution, whereas the status of women in their countries of origin as well as globally is not mentioned.

Despite a lack of numbers for the whole of Switzerland, it can be noted the number of women working in the sex trade, at least in urban regions, has increased considerably in the past years. This increase is attributed to the agreement on the **free movement of people** on one hand, but also to the **difficult economic situation in Southern and Eastern Europe** (B: 10-11, my translation and emphasis).

The free movement of people between Switzerland and EU countries as well as the difficult economic situation in Southern and Eastern Europe are identified as the causes of the high number of women in prostitution. Some of the structural reasons that push (non-Swiss) women into prostitution are thus acknowledged but not further discussed. This framing also ignores the gendered nature of prostitution, as it does not address the underlying reasons why only women are being pushed into prostitution due to economic hardship. Whereas the above quotes ignore the role of the sex buyers, the following extract suggests that low demand can lead to human trafficking and thus on this basis rejects measures against trafficking that combat demand for prostitution.

For the prostitutes, this means that **the pressure of competition has increased** and that they have to assert themselves increasingly against other competitors in the market. One possibility is to use the **services of supposed helpers** who



promise them a certain income. In the case of foreign prostitutes, this can already happen in the country of origin. Thereby, the first fatal steps towards exploitation and human trafficking have taken place. From this perspective, **it seems questionable whether measures against human trafficking that focus primarily on the demand side are successful** (D: 65, my translation and emphasis).

In contrast to the above quotes, the responsibility is not put on the foreign prostitutes but rather on those who take advantage of them, such as procurers and traffickers, while the prostitutes are considered to be victims in this context. However, sex buyers are not considered to contribute to an increase in human trafficking. On the contrary, low demand for prostitution is identified as a factor that drives trafficking, in spite that a large-scale cross-country study has demonstrated the positive correlation between legalised prostitution and human trafficking due to higher demand under legalisation (Cho et al. 2013). In this way, sex buyers are constructed as supporting women in prostitution by helping them to earn a living and even decreasing the risks of exploitation (see also Gira Grant 2014: 73). Such a view normalises the behaviour of sex buyers and reinforces their supposed right to pay for sex (Raymond 2013: 63).

It is also important to note that Switzerland is a signatory to the UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children* of 2000 (Palermo Protocol), which states that State Parties should adopt or strengthen legislative or other measures to discourage the demand that fosters exploitation in order to prevent trafficking in persons (UN General Assembly 2000, Art. 9(5)). Refusal to discourage demand for prostitution can be interpreted as standing in direct opposition to Switzerland's obligations under the Palermo Protocol. However, the provisions of the Palermo Protocol have been interpreted differently in different countries. While for example Sweden considers prostitution itself to be exploitative and has criminalised the purchase of sex on the whole, the state of Victoria, Australia, like Switzerland, does not regard prostitution as exploitation, and therefore does not view legalised prostitution as a breach of the Palermo Protocol (Carson & Edwards 2011: 73-74).

In contrast to the above quote which identifies a lack of demand as a cause of human trafficking, another section of the same document refers to a study that claims that due to the high number of women who apply to work in Swiss brothels, these do not depend on the labour of potential victims of human trafficking:

According to a study from the year 2014, large-scale brothels (more than three prostitutes are present at the same time) receive a high number of applications. From this is concluded that large-scale brothels in Switzerland **do not depend on the work of potential victims of human trafficking** (D: 71-72, my translation and emphasis).

The link between the demand for prostitution and the trafficking of women for sexual exploitation is implicitly acknowledged but not further analysed. The language used in this quote is rather revealing. By stating that brothels do not depend on potential victims of human trafficking as they receive a high number of applications, it is implied that if such applications were to decrease, other methods would be used to secure a steady supply, possibly including victims of trafficking.

Similar to Document A, the first draft of the new Prostitution Industry Regulation of the City of Zurich (Document E) identifies non-Swiss prostitutes as a main cause of the problems. The existence of demand for prostitution itself is mentioned and naturalised, but not challenged:

On the one hand there is an **obvious and considerable demand for such services**, on the other hand the **free movement of people** with the EU countries has led to a considerable increase of the number of prostitutes. The flow of prostitutes from the East of the EU (Hungary, Romania) is particularly strong. A notable share of them work in street prostitution. These people stay in the city of Zurich only for a short time and are not familiar with the local living conditions. **They do not pay attention or are not familiar with the legal ramifications** (E: 2, my translation and emphasis).

This quote identifies demand as one factor that drives prostitution, but it does not make a statement regarding the legitimacy or possible ethical problems of such demand. After this brief mentioning of the demand side, the focus is shifted back onto the women in street prostitution, particularly those from the eastern part of the EU, and their perceived lack of respect for the local law. Foreign prostitutes are thus again constructed as ‘others’ and potential law-breakers. In addition, local and foreign prostitutes are positioned against each other, and the responsibility for existing problems in the sex trade is put almost entirely on foreign prostitutes.

An **increasingly aggressive struggle for clientele** has emerged among prostitutes (and their «protectors»), which has led to a drop in prices for services and deteriorating working conditions. It has been proven that due to this also the share of **unprotected sexual intercourse has increased**. The **protection of public health** is thus no longer guaranteed to a sufficient degree. In addition, there is an **unequal treatment** between legal prostitutes, which are officially registered with regard to tax and social security matters and who follow the rules, and those are

not registered and do not follow the rules (E: 2, my translation and emphasis, scare quotes in original).

This quote illustrates how foreign prostitutes are blamed for decreasing prices and the threat to public health that is caused by an increasing amount of unprotected sex. A possible responsibility of sex buyers to refrain from demanding practices that are damaging to the health of women in the sex trade is not taken up in this document. It is therefore the women who are implicitly made responsible for the danger to public health (i.e. the health of sex buyers and their sex partners outside of prostitution), while the role of the sex buyers is obscured. There is also a reference made to ‘protectors’ of prostitutes (presumably pimps). Despite the use of quotation marks, the use of such a term implies an unproblematic relationship and shared interests between prostitutes and their pimps. Pimps are regarded as supporters of women in prostitution, not their abusers (Raymond 2013: 40).

The gendered nature of prostitution is almost entirely ignored within the *regulation frame*. While sometimes gendered language is used, acknowledging implicitly or explicitly the fact that the vast majority of people in prostitution are women, there is no analysis of prostitution as a gendered practice. Prostitution is not viewed as a cause or consequence of gender inequality nor is it regarded as a social problem in and of itself.

### 7.1.2 Proposed solutions

The type of problem diagnosis presented above leads to the suggestion of measures that target women in the sex trade directly by means of stricter controls. The suggested solutions are thus compatible with the way the problem is framed. When illegal prostitution is represented as the main problem and (non-EU) prostitutes are conceived as the main responsible party for the existence of said problem, measures that aim at reducing illegal prostitution by means of stricter controls of prostitutes become a logical consequence. These measures consist of reporting prostitutes who work illegally and in some cases expelling them from the country, including banning them from re-entering the country for several years.

As a consequence of the geographic and occupational mobility, which is given after the admission to the labour market, it is to be ensured that **employed prostitutes do not receive short- or longterm residence permits**. In the context of the licensing procedure, it should be verified in detail whether there is a case of **false self-employment**. For this purpose it seems reasonable to invite prostitutes to a **personal interview**, in addition to the online registration. In the case of

repeated violation of zoning areas and/or repeated deception of the public authorities, **a travel ban of up to three years is to be considered** (A: 20, my translation and emphasis).

This extract is an example of the ways in which women in prostitution are subject to controls by the authorities. A distinction is made between ‘self-employed’ and ‘employed’ sellers of sex, with only the former being legal for EU/EFTA citizens (section 2.2). The possibility of false self-employment is a considerable concern under the *regulation frame*, not only in this quote but throughout the document. The wording here indicates that such false self-employment is viewed as deception of the authorities on the side of the prostitutes and not as hidden exploitation by a third party.

In its report on the development of the prostitution industry with the new Prostitution Industry Regulation published in 2015, the City of Zurich argues that regulation of prostitution is necessary and that the sex industry reacts quickly to changing conditions, partly by conforming to new guidelines and partly by trying to evade them.

Experience shows that **the prostitution industry reacts in a remarkably flexible way to changing conditions**. It generally adapts itself to the set rules, but also reacts quickly and creatively with evasions. **Economic considerations** are expressed therein, as ultimately the point is to earn money, **be it for safeguarding one’s livelihood or for the maximisation of profit**. As a guideline for regulation applies: As little as possible, as much as necessary. The city council is of course aware that one can and should debate on precisely this issue (H: 3, my translation and emphasis).

This quote names economic considerations as the central drivers of prostitution. Interesting herein is how the interests of women in prostitution and the profiteers of the sex trade are aligned with each other. The profiteers are thus not regarded as exploiters but merely as following their own economic interests. No distinction is made between engaging in prostitution for economic survival and profiting from the prostitution of others. This view mirrors the national legislation in Switzerland which does not criminalise living off the avails of prostitution, limiting criminalisation to active procuring of people for the purpose of prostitution (see section 2.2). This framing is further reinforced through the construction of the prostitution industry itself as an actor that adapts itself to changing conditions. Power differences within the industry are not addressed.

A central measure of prostitution regulation is the necessity of permits or licences that have to be acquired by (some) people engaged in the trade (see section 2.2). The following

extracts states the need for a permit for street prostitution in the city of Zurich, likening it to other forms of labour and thereby again focusing exclusively on the labour aspect of prostitution. The following quote is taken from the first draft of the new Prostitution Industry Regulation, which was published by the City of Zurich in 2010 (Document E).

**Similarly to the practice of other economic occupations on public ground,** such as the use of taxi stands or the sale of products at markets stalls etc., **an official permission should in the future be necessary** for the practice of street prostitution (E: 6, my translation and emphasis).

Comparing prostitution to other occupations and the use of the ordinary language of commerce serves to normalise the industry and makes the harms of prostitution invisible (Jeffreys 2009: 9-10). Women in prostitution are again the targets of regulation and control. However, not all persons who work in the sex trade are required to obtain a permit or licence but merely those engaged in street prostitution as well as brothel owners, as shown in the following extract:

The introduction of a general obligation to register for all people engaged in prostitution is rejected, as it would be neither productive nor proportionate. The law should rather concentrate on **street prostitution, in which people engaged in prostitution are exposed to the biggest amount of danger**, as well as on the **brothel owners**, who are responsible for their business and the people working there, and who should respect the legal ramifications. In these cases a licensing procedure is helpful, as the **licenses can be attached to corresponding obligations** (E: 8, my translation and emphasis).

Registration for people in street prostitution is justified by indicating that they are exposed to more danger than those in indoor prostitution. The causes of this greater danger as well as the ways in which registration is supposed to alleviate it are not further specified. Brothel owners are required to obtain a licence, as they carry the responsibility for their business and their employees. This kind of framing legitimises brothel owners as regular business owners and thereby serves to further normalise prostitution as labour.

While the main focus of control and regulation is still the women in prostitution, the new Prostitution Industry Regulation of 2011 introduced the possibility of fining sex buyers as well as brothel owners who do not respect the provisions.

Not only people engaged in prostitution can be fined, but **also sex buyers as well as brothel owners**, if they do not follow the provisions of the Prostitution Industry Regulation. Not only the persons offering the service, who are mostly women, but **also the usually male clientele who does not respect the provisions**, should be targeted by the regulation. Newly introduced measures are based on

administrative law such as warnings and revocation of permits (E: 7, my translation and emphasis).

The new Prostitution Industry Regulation does thereby also make sex buyers subject to control. However, sex buyers are merely expected to follow the provisions regarding areas and times in which prostitution is allowed. The new regulation does not challenge demand for prostitution per se, as sex buyers who respect the provisions cannot be charged. Prostitution is thus further normalised and considered acceptable as long as all parties follow the rules.

While it is stated that most people who sell sex are female and sex buyers are largely male, this is not further analysed and prostitution is not identified as intrinsically linked to gender inequality. This mentioning of women as sellers and men as buyers of sex could emphasise women's rights and the accountability of male buyers. However, due to the lack of any further analysis of the gendered relations of prostitution, such a statement amounts to little more than a cursory reference. It pales in comparison to the normalising and labour-focused language of the rest of the document.

The draft for the new Prostitution Industry Regulation of the City of Zurich (Document E) mentions the protection of minors in the sex trade. It has to be noted that this document was drafted before Switzerland adopted the raising of the minimum age for people in prostitution from 16 to 18 years of age in 2014 and ratified the Council of Europe *Convention on Protection of Children against Sexual Exploitation and Sexual Abuse* (Lanzarote Convention) (see section 2.2). With regard to potential penalties for sex buyers who use underage women in prostitution, the document states the following:

The City of Zurich does not have the legal power to introduce such a criminal law provision in its Prostitution Industry Regulation. However, due to the fact that a minor is not capable of acting in a legal sense, **he/she is not able to enter into a contract of sexual services in exchange for money nor to apply, for example, for a permit for engaging in street prostitution** (E: 7, my translation and emphasis).

The possible criminalisation of buying sex from minors is rejected on the basis of the City of Zurich's lack of legal power in this respect. The focus is on the sellers of sex and their permission to work in the sex trade. Since the adoption of the Lanzarote Convention, purchasing sex from people under the age of 18 is now illegal in Switzerland (Schweizerische Depeschagentur 2014). An overall criminalisation of sex buyers was rejected by the City of Zurich, not only because national law does not allow it (see section

2.2), but also because prostitution is considered to be a legitimate trade. The report on the development of the prostitution industry with the new Prostitution Industry Regulation, published by the City of Zurich (Document H) in 2015, states the following:

The prostitution trade is **legal and exists in every bigger city** and thus as a matter of course also in Zurich, which fulfils a centrum function also in this area. The city council **does not approve of a ban on prostitution** – apart from the fact that national law does not allow it –, even though **different forms of bans and penalisations are currently debated** particularly in the neighbour countries France and Germany (H: 3, my translation and emphasis).

Any form of criminalisation is rejected by the City Council of Zurich, without further specifying the vastly different forms of criminalisation, such as the criminalisation of buying sex (Swedish model) versus prohibition, which includes criminalisation of selling sex. A clear binary is created between legalisation on one hand and criminalisation on the other hand. At the time, France was considering the adoption of the ‘Swedish model’<sup>6</sup>, while Germany was debating the possibility of criminalisation of sex buyers who knowingly pay a victim of human trafficking for sex as well as the outlawing of so-called ‘flat-rate sex’ (Zeit Online 2013)<sup>7</sup>. However, in this document all forms of criminalisation are conflated and dismissed without further explanation. The existence of prostitution is viewed as inevitable and is therefore not questioned. This kind of framing leads to the rejection of all measures to restrict or abolish the practice of prostitution in the long term.

## 7.2 Sex work frame

The *sex work frame* also recognises prostitution as a legitimate trade but focuses on the rights of sex workers to fair working conditions and protection from violence and exploitation. Almost all forms of control and punishment of sellers of sex are rejected. While the *regulation frame* treats prostitution almost exclusively as a labour issue, the *sex work frame* addresses both the ‘work’ aspect as well as the ‘sex’ aspect of prostitution. The demand side of prostitution is addressed but not considered to be inherently problematic. The gendered nature of prostitution is analysed within this frame but it is suggested that prostitution is potentially compatible with gender equality.

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<sup>6</sup> After several years of debate, the French parliament adopted the ‘Swedish model’ of prostitution law on 6th April 2016.

<sup>7</sup> The planned reforms of prostitution law have not yet been implemented at the time of writing this thesis.

### 7.2.1 Framing of the problem

The position on prostitution within the *sex work frame* is directly derived from the sex work movement that originated in the 1970s in the United States and Western Europe (Alexander 1988; Jenness 1993; see section 3.2), as the following quote from a discussion paper on sex work published by a collection of NGOs in 2014 (Document C) states:

In this paper, we use the terms «sex worker» and «sex work» in order to emphasise the self-determined nature of the activity. The expressions date back to self-descriptions of a social movement that developed in the 1970s in the U.S. and Western Europe. The concern of the movement was to make sex visible as work and to call attention to **its contribution to the functioning of society, similar to invisible domestic work**. (...). We use «sex work» with regard to a society in which **sex work takes place in a self-determined manner and under premises of gender equality, even though the status quo does not correspond to this vision** (C: 4, my translation and emphasis).

In this extract, the focus lies on the ‘work’ aspect of sex work and its supposed contribution to the functioning of society. This implies a social necessity of sex work, however without offering any justification for this supposed necessity. It does not specify for whom sex work is to be considered necessary. Sex work is compared to the reproductive labour that women carry out in the home. For instance, Peterson (2003) compares prostitution to reproductive labour, arguing that sex work consists of being paid for sexual services similarly as domestic and care work have been commercialised and are often outsourced to poor women. But while the preparation of food and the raising of children can be considered necessary for society as a whole, the ‘social necessity’ of prostitution applies specifically to men (Jeffreys 2009: 19). In addition, an inclusion of ‘sexual services’ as part of reproductive labour stands in contrast to decades of feminist work that aimed to end the requirement that women engage in unwanted sex with no regard to their own pleasure (ibid.).

Another important aspect of the above quote is that sex work is viewed as potentially compatible with gender equality. It is assumed that the existence of prostitution per se is unproblematic and merely the circumstances under which it takes place are in need of improvement. Prostitution is thus not viewed as a cause nor as a consequence of gender inequality. The main problems are considered to be the lack of rights of sex workers as well as bad working conditions, violence, exploitation and discrimination. Sex work is framed as a human rights issue, as the following extract illustrates:



The foundation and leading idea of our position on sex work is the **universal application of human rights**, which have to be enforced also for sex workers without any compromises (...). These rights include the protection from physical and psychological violence, from exploitation and discrimination, further the right to health, to dignified working conditions and remuneration, but also for example the right to freedom of expression and **the freedom of choice in questions that concern one's own body and sexuality** (C:7, my translation and emphasis).

This quote asserts that sex workers should enjoy the same rights as anybody else with regard to working conditions and protection from violence, exploitation and discrimination. It also frames sex work itself as a human right by invoking the idea of freedom of choice regarding one's own body and sexuality. This line of argument is typical for the pro-prostitution stance of liberal feminism (see section 3.2). Radical feminist stances on prostitution identify this argument as a tactic to push for the normalisation of prostitution, as it puts the defenders of this view on a moral high ground (Moran 2013: 217). By invoking the concept of freedom of choice in this context, prostitution is framed as an expression of (female) sexuality (Rubin 1984; Vance 1984). It also implies that opposition to prostitution represents an intent to control sexuality. However, the view of prostitution as sexuality or as a sexual orientation and the treatment of women in prostitution as a sexual minority has been challenged by a number of authors (Barry 1995; Jeffreys [1997] 2008; Moran 2013: 233-234), which has been discussed in more detail in paragraph 3.4 of this thesis.

The quote above mentions the protection from exploitation as a human right, but does not consider prostitution itself as a form of exploitation. It is assumed that the harms of prostitution can be eradicated without ending the practice itself. Sex work is further compared to other types of work by pointing out that a number of other occupations are also often accompanied by discrimination, bad working conditions and health risks.

**Many forms of payed employment are uncomfortable, risky or exploitative and are performed by underprivileged people.** Examples are greenhouse farming, some occupations in the care industry, or monotonous work under bad conditions, be it a register of a supermarket or in the storage room of an online delivery company. Regarding questions of self-determination, fair working conditions and global justice, **sex work should not be singled out** (C: 9, my translation and emphasis).

It is suggested that the problems related to prostitution are merely consequences of bad working conditions and that prostitution does not inherently differ from other work. The problems related to prostitution are here framed as a labour issue while desexualising and

degendering the practice. In addition, this view stands in contrast to the particularly risky nature of prostitution, which becomes obvious in the safety advice that is commonly offered to women who sell sex in legal as well as illegal settings (see Raymond 2013: 62). The City of Zurich advises women in prostitution to only go to locations where there is a clear escape route, not under any circumstance go to a client's home, and never get into a car if there is more than one person sitting inside (Stadt Zürich 2015: 12). In order to protect themselves from violence, it is for example suggested that they avoid unsuitable positions which would make it difficult to run away, not to wear clothes that clients could use to strangle them, and to consider that if they carry weapons, these could be used against them (ibid.: 13). However, despite of all these risks from the side of sex buyers within a legalised system, it is still suggested that prostitution is not inherently more dangerous than other occupations.

While Document C does identify structural inequality as a factor that leads women to prostitution, there is a strong emphasis on sex workers as active subjects and agents of their own lives. The media is claimed to be responsible for presenting sex workers as victims, as the following extract illustrates:

Due to bad «starting opportunities», sex workers are often viewed or portrayed exclusively as victims. Media reports focus on the young age, the helplessness, the «barbaric conditions» that sex workers have to endure. Such stereotypes generate **a victim discourse that patronises the women** and does not correspond to reality. **Many sex workers have agency and acquire strategies to master their lives** (C: 8, my translation and emphasis).

A footnote to the above quote references a book by Laura Agustín (2007), whose perspective on prostitution and trafficking has been discussed in detail in the theoretical section of this thesis (see section 3.2). This extract takes up Agustín's argument that media reports patronise sex workers and reduce them to victims as opposed to active subjects. While in this quote, radical feminist arguments against prostitution are not mentioned and the focus is put on media reports, Agustín (2007) includes radical feminists as part of what she calls the 'rescue industry' that supposedly victimises sex workers and exaggerates the prevalence of human trafficking. Accusations that feminist critiques of prostitution make sex workers into passive victims is common for liberal and postmodern approaches to prostitution (Vance 1984; Alexander 1988; Nestle 1988; Doezema 2000; Califia 1994; Weitzer 2006).

A dichotomy between victimisation and agency is created, by presenting the two as polar opposites. As discussed in section 3.4, the suggestion that agency negates victimisation is problematic. Victimisation is commonly associated with weakness, passivity and helplessness and thus regarded as a personal characteristic of the victims themselves (Dworkin 1990: 38-39; Ekman 2013: 15-16, 29). From this perspective, victimisation is viewed as an inherent trait of an individual. In contrast, from a perspective that defines 'victim' as one side of a power relation between a victim and a perpetrator, a denial of victimisation automatically leads to a denial of the existence of a perpetrator. Acknowledging the victimisation of a group of people does not imply that the people in questions are passive or weak, nor does said victimisation define the totality of their existence (Raymond 1990: 108).

In addition, it should be noted that victims of different forms of sexual violence commonly develop techniques to minimise the abuse and to cope with it. However, this does not mean that the abuse is really not occurring but rather serves to alleviate momentary distress (Kelly 1988: 145-147). In cases of violence perpetrated by an intimate partner, women often deny or minimise the abuse directed at them and justify the actions of the perpetrator (ibid.: 147; Russell 1990). Similarly, the choice of women to enter or stay in prostitution should not automatically be interpreted as proof that there is no exploitation, as women in prostitution often develop coping techniques to minimise the harm and exploitation they face on a regular basis (Hoigard & Finstad 1992; Moran 2013: 129-137; Raymond 2013: 37-38).

Under the *sex work frame*, prostitution is viewed as not inherently exploitative but also potentially emancipatory on an individual level and, if occurring under the right conditions, also on a social level.

The work can be emancipatory on a sex worker's individual path of life. Sex work enables (above all) women to provide their own livelihood and thereby **achieve economic independence**. Viewed in this way, the activity has **emancipatory potential for individual sex workers**. With regard to the social level, the question about emancipation cannot be answered unequivocally. Sex work is often justified with the argument that «men simply need it». We consider this argument problematic because it reproduces sexist patterns of thinking. **On an individual and structural level, sex work can have an emancipatory effect if it takes place on the basis of equality**. Looking at the current situation in Switzerland, this condition is rarely given (C: 9-10, my translation and bolding, italics in original).

Emancipation is thus framed in economic terms, indicating that the ability to provide one's own livelihood equates to emancipation. This argument seems to be based on a neo-liberal view that equates employment with independence and independence with worthy citizenship (Baker & Tippin 1999). Irish prostitution survivor Rachel Moran (2013: 175) argues that financial determination is merely one aspect of self-determination and that the function of prostitution stands in direct opposition to the overall self-determination of prostituted women. Moran (2013: 202-203) further states that sexual self-determination is only possible in a context where one is not influenced to make decisions regarding one's sexuality based on circumstances that are beyond one's control. The necessary conditions for sexual autonomy are thus considered not to be in existence in the prostitution experience.

In contrast, liberal feminist authors commonly assume that the lack of sexual self-determination among women in prostitution is due to the laws criminalising the trade and the stigmatisation of women who sell sex (Alexander 1988: 184). And while critical analyses of other forms of wage labour are usually framed within the context of class, gender, race and global power relations and focus on the social and economic structures that limit worker's options, the sex work approach seems to suggest that selling sex represents a form of resistance to social inequalities (O'Connell Davidson 2002: 87).

In debates on prostitution, self-determination is often reduced to individual choice whereas in the context of international human rights self-determination refers to the rights of peoples, not individuals (Barry 1995: 233). However, the above quote takes the argument further by suggesting that women as a group benefit from the existence of prostitution, given that it occurs under the right circumstances. It is not further specified which form this supposed self-determination on a structural level would take, i.e. whether it refers to the economic or sexual self-determination of women. The quote could be interpreted as following a liberal feminist perspective that considers prostitution to be potentially liberating because it enables women to live outside of the domestic restrictions that entrap most other women (Nestle 1988: 236).

The quote opposes the idea that prostitution is necessary due to men's supposed sexual needs and identifies such an argument as being based on sexist thinking. It does however not further address the role of men in the existence of prostitution but shifts the focus back onto the women in the sex trade. The question of why prostitution exists in the first

place and what drives it is ignored. The authors of this document do not seem to agree with arguments that justify prostitution on the basis of a supposed male sex right (Pateman 1988: 13-14). According to radical feminist thought, the function of prostitution is to extend to all men the right of unconditional sexual access to women and girls, which is only limited by their ability to pay for it (Giobbe 1990: 72). While some liberal feminists do acknowledge structural causes for the existence of prostitution, including the subordination of women (Alexander 1988: 188), these are usually not further investigated and the role of male demand is often ignored, while the focus is shifted back to the individual motivations of women, as is also the case for the above quote.

In addition to the economic aspects of prostitution, the following extract addresses the area of sexuality and the stigmatisation of sex work. It is suggested that prostitution could potentially be an occupation like any other, given that the hierarchy between the sexes and the stigmatisation of sex work are dismantled.

**The stigmatisation of sex work stands in close relation with inequalities between the sexes.** (...) One reason for the **sanctioning<sup>8</sup> of non-conformist female sexuality** is the notion that women and their sexuality are in need of male control. Related to this is the perception that women should be available to men as outlets for sexual desires. Both assumptions are misogynistic and relate to fears of an untamed female sexuality. It leads to attempts to control an assumingly dangerous female sexuality. The attempt at control maintains a sexual hierarchy between the sexes. **If the hierarchy and thereby the entwined stigmatisation was dismantled, sexual services could lose their special status** in comparison to other care work activities (C: 12, my translation and emphasis).

Prostitution is framed as an expression of female sexuality and as a challenge to men's control over women's sexuality by suggesting that it is merely the control and stigmatisation of women in prostitution that upholds the hierarchy between the sexes. Accordingly, prostitution itself is not thought to originate in or maintain these power imbalances. This quote is particularly interesting as it constructs prostitution in opposition to the idea that women should serve as outlets for men's sexual desires, while traditional views of prostitution often justify its existence based on the necessity of such an outlet for men (Scott [1968] 1996). This quote could be read as exposing the hypocrisy of approaches to prostitution which justify its existence based on the supposed necessity of sexual outlets for men while simultaneously constructing women in prostitution as

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<sup>8</sup> The term "sanctioning" is to be understood as "punishing" in this context, opposed to the second and contrary meaning of the term, i.e. "accepting" or "approving".

deviant and inferior (Lombroso & Ferrero 2004). However, it also frames any opposition to prostitution as stigmatising and as an attempt to control female sexuality. This framing of prostitution as an expression of female sexuality has been challenged by Kathleen Barry (1995) who identifies prostitution as the prototype of sexual exploitation (see section 3.4).

The end of the above quote illustrates the assumption that prostitution could exist in a context of gender equality. While it is acknowledged in this same document that structural reasons, such as the North-South divide, the economic situation in Southern and Eastern Europe, racism, and sexism can push women into prostitution, this link is viewed as strictly one-way, i.e. structural inequality and gender discrimination leading to women engaging in prostitution. The possibility that the existence of prostitution itself maintains gender inequality as well as other forms of oppression and could not exist in an egalitarian society is not considered.

### 7.2.2 Proposed solutions

The framing of prostitution as labour as well as an expression of sexuality lead to the proposal of solutions which are intended to give more rights and recognition to sex workers, while defending the existence of prostitution itself. The framing of prostitution as not inherently exploitative and potentially emancipatory leads to proposed measures that are expected to improve the situation of sex workers.

For Switzerland, the social scientist Maritza Le Breton has noted that migrants in the sex trade are affected by multidimensional marginalisation and violence, namely women without a residence permit (...). An above-average number of sex workers have psychological problems such as depression, frequent thoughts of suicide or panic attacks. At the same time, **there are sex workers who are «better protected from violence and who exhibit less intense psychological and health strains.»** The living and working conditions of this group is an important point of contact: Based on it one can determine **the conditions for the improvement of the situation of sex workers who are affected by violence** (C: 11, my translation and emphasis).

Migrant women are named to be affected by different forms of marginalisation and violence, thereby addressing underlying social inequalities. The solution to these problems is considered to be the improvement of their working conditions, based on the example of sex workers who appear to be in a better situation. The perpetrators of violence are not named. Violence is presented as a consequence of certain living and working conditions rather than the actions of sex buyers or pimps. The gendered nature

of the violence within prostitution is not analysed. Violence is not regarded as an intrinsic part of prostitution, but rather as a negative side effect that can be reduced or eliminated without challenging the existence of prostitution per se. The vision of the authors of Document C for the future of prostitution is presented in the following quote:

Sex work as an activity that gains social recognition. A small segment of sex workers has **created a niche that shows that this is possible**. (...) Part of the vision is also that **sexual services are open to women as well as to men** (C: 13, my translation and emphasis).

Here the authors call directly for the normalisation of the sex trade by arguing that a small minority of sex workers have managed to benefit from the existence of prostitution. Such a view ignores the reality of structural inequality and oppression by using the relatively comfortable position of a small minority of women as proof that the prostitution industry is not inherently exploitative and damaging to women as a group. The goal seems to be to turn the exception into the rule, without considering the possibility that the exploitation of the majority might be necessary for maintaining the relatively privileged position of a small minority of sex workers. This is connected to the liberal idea that if a practice or action that is beneficial to individual women, it cannot be harmful to women as a class. Such a view ignores the possibility that members of oppressed groups can benefit on an individual basis by upholding the status quo (Whisnant 2015: 9-10).

Furthermore, part of the vision described in the above quote includes the possibility for women to pay for sex, a view that is also present in liberal feminist arguments in other countries. This represents a view of gender equality that is based on a male standard and is intended to give women an equal right to act in sexually exploitative ways. Equal participation in oppressive behaviour is thereby framed as a form of equality (Jeffreys [1997] 2008: 208-209).

In addition, sex buyers are viewed as potentially having a positive influence on the conditions within the sex trade. The following quote addresses the responsibility of sex buyers as well as brothel owners by suggesting that their behaviour can make a contribution to fair working conditions in prostitution. It is argued that the City of Zurich should target sex buyers in order to improve said conditions.

It is important to name **the target group of sex buyers and brothel owners not only in the comments but also explicitly in the regulation article**. The focus would for once be shifted away from the sex workers. And it would be made clear that many persons have a responsibility for fair and humane conditions in the sex

trade. In addition to mere transmission of information, the city should commit itself to **contribute to awareness raising on the demand side** (...). By means of responsible behaviour, sex buyers could make a considerable contribution to the promotion of fair and humane conditions within prostitution (F: 9, my translation, emphasis in original).

While some accountability is put on the sex buyers and brothel owners, this is limited to responsible behaviour with women in prostitution. The right to buy sex as well as profiting from the prostitution of others is thus not only reinforced but sex buyers and brothel owners are considered to potentially have a positive influence on prostitution, as long as they behave responsibly. This framing suggests that the interests of sex buyers and brothel owners are compatible with the interests of women in prostitution and creates a category of 'good' sex buyers and brothel owners. This view forms the basis of the suggestion that the City of Zurich should contribute to raising awareness on the demand side. Despite the fact that some responsibility is put on sex buyers and brothel owners, prostitution is strongly normalised by upholding the right to buy sex and to profit from the prostitution of others (Raymond 2013: 56-58). This view benefits sex buyers in that they can justify paying for sex while retaining their self-image of being a 'good' and 'responsible' client (O'Connell Davidson 2002: 88; Raymond 2013: 57).

The following quote puts prostitution in a larger social context by stating that also relationships outside of prostitution can exhibit commercial aspects. Sex work should thus not be singled out or stigmatised.

In order to understand and counteract stigmatisation, it is important to not examine sex work in an isolated manner. **Many relationships between men and women or between same-sex couples exhibit commercial aspects.** Next to sex work stand money marriages or expensive invitations for which a sexual service is expected. In the case of sex work, sex in exchange for remuneration is discredited. **In the context of marriage, the commercial aspect can be just as important but is less depreciated** (C: 12, my translation and emphasis).

The existence of commercial aspects within private relationships is here used to justify the existence of prostitution. This view does not consider heterosexual relationships to be shaped by conditions of gender inequality and does therefore not question the transaction model of sexuality inside or outside of prostitution. While radical feminist arguments also emphasise the importance of viewing prostitution in the larger context of heterosexual relations, they come to opposite conclusions by identifying the problematic nature of all sexual relations that are based on transaction and emphasising the context of women's subordination in which they occur (Pateman 1988; Barry 1995; Jeffreys [1997] 2008).



The above quote exposes a certain degree of cynicism regarding sexuality, indicating that the view of sex as a commodity that is given by one partner in exchange for something else is unproblematic. Sexuality that is based on mutual desire rather than the compensation of the undesiring party is not mentioned (see Ekman 2013: 115).

While both documents published by the City of Zurich on the new Prostitution Industry Regulation rely mainly on the *regulation frame*, some central elements of the *sex work frame* have been taken up, likely due to the influence of NGOs adopting this stance, which has led to contradictions with regard to potential solutions for the problems in the sex trade. The following quote from an NGO document clearly states the different and partially contradicting goals of the Prostitution Industry Regulation:

On one hand, it is about the **protection of the general public** from negative impacts of the sex trade and about the **protection of public order and public health**, but on the other hand also about improving the **working conditions** of people in prostitution and their **protection from exploitation and violence** as well as their right to **self-determination**. In order to reach these goals **preventive as well as repressive measures** are planned (E: 5, my translation and emphasis).

This quote demonstrates the explicit combination of the *regulation frame* on one hand and the *sex work frame* on the other. However, the more detailed provisions contained in the Document E focus first and foremost on protection of the public order and repressive measures. While protection of people in prostitution is mentioned in the document, this seems to amount to little more than a cursory reference, as noted by the NGOs' reaction to the document.

The Prostitution Industry Regulation **focuses mainly on control and repression**. Neither do these measures protect women and men in sex work from exploitation and violence, nor do they ensure prevention of health-related and social problems (F: 7, my translation and emphasis).

This quote identifies a mismatch between goals and measures presented in Document E and exposes the contradictions between the *regulation frame* and the *sex work frame*. While in Document E the two are presented as compatible and complementary, Document F strongly rejects all forms of repressive measures and highlights the incompatibility between control and repression of people who sell sex and the goal to protect them from violence and exploitation. While within the *regulation frame*, control is regarded as necessary to ensure the protection of people in prostitution as well as public order, the *sex work frame* views all forms of control of people engaged in prostitution as repressive and counterproductive. Regulation and licencing of prostitution, as opposed to full

decriminalisation, is thus viewed as a system of control rather than a way of ensuring the protection of prostitutes (see also Alexander 1988: 210-211).

Similarly to Document F, the reaction of another NGO (Document G) to this first draft emphasises the way in which the latter focuses largely on control and repression.

From our point of view the draft **should contribute more strongly to the improvement of the precarious situation of the women in prostitution**. The protection of people in prostitution from exploitation and violence is mentioned as a purpose (Art.1). Within the individual provisions, however, **control and repression are in the foreground** (G: 1, my translation and emphasis).

This extract shows even more clearly than the previous one that the goals and provisions contained in Document E are imbalanced. While the protection of people in prostitution is mentioned as a goal of the new Prostitution Industry Regulation, the strong focus on control and repression is exposed. In contrast, the report on the experiences with the new regulation (Document H) records an overall success of the new provisions.

With regard to the development of the prostitution industry, it can overall be asserted that with the regulation of the industry **the attractiveness of the City of Zurich has decreased**, particularly for prostitutes from the Eastern member states of the EU as well as for sex buyers from a wide geographic radius. The **negative excesses**, which had been present especially in street prostitution on the Sihlquai, could be stopped. Thanks to the different measures, the prostitution industry has reached an **agreeable level for the city and the specific neighbourhoods** (H: 34, my translation and emphasis).

The protection of women in prostitution, which was stated as one of the main goals of the Prostitution Industry Regulation (see above), is not mentioned here anymore. The success of the new regulation is measured in the reduction of prostitution in the City of Zurich, without addressing whether the trade might have moved to neighbouring cities or suburbs. The existence of prostitution is considered to be unproblematic as long as it remains at a tolerable level for the city and its residents.

As already discussed in the context of the *regulation frame*, the documents published by the City of Zurich include certain elements from the *sex work frame*. For instance the following quote focuses on the protection of women in prostitution rather than control and punishment.

The City of Zurich committed itself to ensure **low-threshold access to services** in the areas of health protection, medical treatment, social work as well as interventions in the case of exploitation, be it through municipal efforts or through efforts of third parties. By means of access to counselling, **prostitutes should be**

**given the possibility to improve their health-related and social situation.** Social work makes it possible to **warn prostitutes for example about violent clients and to encourage them to report such clients.** In the case of human trafficking, the prostitutes are encouraged to cooperate with the penal authority and they are accompanied throughout the trial (H: 9, my translation and emphasis).

While the City of Zurich itself is considered to be responsible to ensure access to different kinds of services for women in prostitution and support for victims of human trafficking, these services do not seem to include support to exit prostitution but are limited to improving the situation of women within prostitution. Violent clients are identified as a threat to women in prostitution and they should be held accountable for their behaviour. However, the responsibility is still largely on prostitutes to improve their situation and to avoid dangerous clients.

### **7.3 Shared basic elements within both frames**

This section presents important elements that are shared by both frames and which stand in clear contrast to an abolitionist framing of prostitution. Some of these commonalities have already been mentioned in the analyses of the two frames above but are discussed in more detail in this section. This analysis shows that the two frames are not as different as they might appear at first sight.

#### **7.3.1. Acceptance of prostitution as a social reality**

The sex trade is accepted as a social reality and thereby normalised within both the *regulation frame* as well as the *sex work frame*. The following quote explicitly asserts the legitimacy of prostitution and suggests that the protection of women in prostitution can be ensured without challenging the existence of prostitution itself.

The expert group has agreed to accept sex work as a social reality. For the purpose of **protecting the workers** in question, the expert group focuses on taking appropriate measures, but **not on questioning the legitimacy of sex work based on moral concerns** (B: 7, my translation and emphasis).

In this way, critique of and opposition to the sex trade is framed as a moralistic position, whereas the suggested approach is presented as a more pragmatic way to deal with problems related to sex work. Sex work is thus seen as a legitimate trade and gainful employment, although can include some problematic aspects, such as the exploitation of women through violence, forcing them into unprotected sexual practices as well as unreasonably high rents for rooms in brothels.

This view implies that objectivity and neutrality are not only possible, but desirable (Shaw 2004: 58). Critique of prostitution is claimed to be based ideology while accepting the sex trade as a social reality is viewed as a neutral stance. Even though acceptance of the status quo often appears to be an objective position, it should be kept in mind that all policy issues are situated within social and political power relations. It is the people in power who define policy problems and determine the appropriate concerns for research (Marshall 1999: 59, 69). Thus framing the toleration of prostitution as a pragmatic, non-ideological stance can be seen as an exercise of power, whereby a certain knowledge is established as the “truth”, while alternative “truths” (for example the radical feminist perspective of prostitution as an inherently oppressive, patriarchal institution) are marginalised (ibid.: 64-65). It should also be taken into consideration that under legalised systems, the state profits financially from the sex industry by collecting taxes and licence fees, as is the case in the city of Zurich. According to Jeffreys (2009: 173-174), states which legalise prostitution thus become pimps and procurers in the global sex industry.

While the authors of Document C acknowledge that sex work can reproduce gender inequality, it is assumed that the existence of sex work is possible in an egalitarian society.

Viewed as an «area of precarity», sex work reproduces conditions that run contrary to equal gender relations. For this reason some feminists view sex work as a fundamental violation of women’s rights and human rights and call for a ban. In this paper, **alternatives to a ban are discussed**. (...) Aspiring to decriminalise sex work does not mean to reject all forms of regulation or to support liberalisation at any price. But we advocate for **a society in which sex work and the use of sexual services in exchange for remuneration are possible**: for all genders, free from stigmatisation, discrimination and violence (C: 3-4, my translation and emphasis).

The existence of prostitution per se is thus not questioned and it is asserted that stigmatisation, discrimination and violence against sex workers can potentially be eradicated without abolishing prostitution. Buying sex is considered to be unproblematic as long as this possibility is open to everyone.

### **7.3.2. Clear separation of sex work and human trafficking**

Both the regulation frame and the sex work frame make a clear distinction between sex work and human trafficking, based on a separation between ‘free’ and ‘forced’ prostitution, with only the latter being framed as a problem, as the following quote illustrates:

At the same time, it is important for the expert group to **distinguish clearly between the spheres of sex work and human trafficking**. Human trafficking is a criminal offense and a severe violation of human rights (B: 7, my translation and emphasis).

This distinction between ‘free’ and ‘forced’ prostitution is very common in debates on prostitution in many countries (Raymond 2013: 38). This division is usually based on the idea of individual choice, arguing that all individuals should be allowed to make their own decisions with regard to their bodies and lives. For instance, Alexander (1988: 199-201, 211) argues that forced prostitution cannot be addressed properly until voluntary prostitution is legitimate. Critique of prostitution as a whole is interpreted as a judgement of the women in the sex trade. Human trafficking for the purposes of sexual exploitation is thus not seen as inherently connected to the existence of prostitution, despite the fact that empirical research has demonstrated a link between legalised prostitution and human trafficking (Cho et al. 2013). In addition, other countries that have legalised prostitution, such as the Netherlands have found it virtually impossible to distinguish between ‘free’ and ‘forced’ prostitution in practice. Proving coercion and addressing it is very difficult for the authorities (Daalder 2007: 13).

The following quote does not only distinguish between (voluntary) prostitution on one hand and forced prostitution and human trafficking on the other, it also creates a clear opposition between two supposedly different types of women in prostitution.

In the view of the City Council, the prostitution industry poses particular dangers for prostitutes. But prostitution should not be equated with forced prostitution and human trafficking. On one side stands **the woman who is independent and works in a self-determined manner**, on the other side **the exploited victim of force and human trafficking**. All forms of violence against prostitutes, as well as forced prostitution and human trafficking should be combatted with all means available (H: 3, my translation and emphasis).

In this extract, the harm of prostitution is viewed to be limited to cases where women have been directly forced (for instance by the threat of physical violence) or trafficked. While it is acknowledged that women in prostitution are subject to particular kinds of danger, including violence, other harms to women in prostitution are overlooked. The statement that all forms of violence against prostitutes should be combatted while simultaneously defending the existence of ‘voluntary’ prostitution shows clearly that prostitution is not considered to be inherently harmful. In addition, arguments that claim

the existence of an inherent link between prostitution and human trafficking are regarded as stigmatising sex workers, as the following extract shows:

Sex work is often **equated** with human trafficking and forced prostitution. This equation and mixing leads to wrong representations and in part also to **overall stigmatisation of sex workers**. Although sexual exploitation does often take place also in the sex trade, **not every sex worker is a victim of exploitation or human trafficking** (B: 8-9, my translation and emphasis).

This quote suggests that making connections between prostitution and human trafficking necessarily means equating the two. Overlooked are abolitionist positions that do not claim that all women in prostitution have been trafficked but rather that prostitution and trafficking are intrinsically linked, namely by the demand for prostitution (see section 3.4). Stating that “not every sex worker is a victim of exploitation or human trafficking” is not sufficient proof that prostitution and trafficking are two completely separate phenomena. Furthermore, it is argued that equating sex work with human trafficking and forced prostitution leads to the stigmatisation of sex workers. This view implies that being (falsely) identified as a victim of sexual exploitation and/or human trafficking equates to stigmatisation. Such a claim suggests that victimisation is regarded as a negative character trait of the victims, associated with weakness and passivity (see section 3.4). The denial of victimisation of prostitutes who were not trafficked is also emphasised in Document C:

In the case of human trafficking, it is appropriate to speak of victims. Here women and in rare cases men are forced to engage in sex work. This fundamental violation of human rights is subject to criminal prosecution in Switzerland. Sex work, in contrast, is **a transaction between two adults**. Women and men **do not sell their bodies but sexual services** (C: 7, my translation and emphasis).

The concept of ‘consenting adults’ is one of the central features in liberal approaches to prostitution (Kempadoo 1998; Weitzer 2006). However, the definition of sex work as a transaction between two adults should be analysed further. First, it ignores the fact that many women are under the age of 18 when they first enter prostitution (Farley et al. 2003). If people enter the sex trade as minors, prostitution does not suddenly become a choice once they turn 18 (Raymond 2013: 89).

Furthermore it is questionable whether it is possible to speak of informed consent in the context of prostitution (Moran 2013: 50-51). Even those who enter the sex industry willingly often do not know what conditions await them there (Raymond 2013: 37). The use of the terms ‘transaction’ and ‘sexual services’ frames prostitution strictly in business

terms. The sex worker is thus regarded as the seller of a service rather than a product (Jenness 1993: 67-68; Gira Grant 2014: 64). But if sex work was really merely a service that is performed in order to satisfy the sexual desires of the buyers, the physical appearance, gender, age and race of the 'sex worker' would be unimportant (O'Connell Davidson 2002: 90).

The extensive report by the Swiss Federal Council on prostitution and human trafficking for the purpose of sexual exploitation (Document D), published in 2015, directly addresses the role of demand for prostitution in the context of human trafficking.

In the context of coerced prostitutes one should, according to a study from Lucerne, **not only hold human traffickers but also sex buyers accountable**. One would be merely treating symptoms if one were to merely criminalise traffickers and not also the sex buyers who also exploit the coerced prostitutes and **because of whom human trafficking for the purpose of sexual exploitation exists in the first place** (...). Addressing general doubts as to whether such an offence can be proven, the study states that **the problem of verifiability also arises for other crimes**, such as rape in marriage (D: 63, my translation and emphasis).

This extract clearly put the responsibility for the existence of human trafficking for the purpose on sexual exploitation on the sex buyers by stating that without them such trafficking would not exist. This argument is thus in line with the 2000 Palermo Protocol, which has been ratified by Switzerland. Despite the fact that this quote refers to a study conducted in the canton of Lucerne and thus merely represents one of several viewpoints included in the report, this clear shift of perspective onto the sex buyer is important. In addition, it addresses the justifications for opposing the criminalisation of sex buyers who knowingly pay a victim of human trafficking for sex. The argument that such an offense is too difficult to prove and should thus not be written into law is countered by means of comparing it to other crimes that are difficult to prove, such as rape within marriage. While not contradicting the potential difficulties of implementing such a new law, it does not consider these difficulties to be sufficient reasons for refusing to criminalise sex buyers who engage in such actions. However, penalties are not aimed at all sex buyers and the distinction between 'free' and 'forced' prostitution is upheld by merely addressing the latter and explicitly speaking of "forced prostitutes" and human trafficking. However, within the same document sex buyers as a whole are taken into consideration and their attitudes are questioned.

The question arises **to what extent sex buyers reflect on their image of women and the consequences of their purchase of sexual services in a larger context.** Which sex buyer would want to have a prostitute as a mother, wife or girlfriend? What does it mean for society if one part of people is marginalised? On the basis of such examples, it becomes clear that there are unsolved contradictions here (D: 62-63, my translation and emphasis).

This extract illustrates the patriarchal division of women into two distinct groups (madonna vs whore) and the role of the sex buyer in upholding this distinction. However, there is no suggestion made regarding the ways in which the apparent contradictions should be resolved. As noted by Giobbe (1990: 76-77), liberal approaches to sexuality commonly blur the distinction between ‘madonna’ and ‘whore’ by defining sexual liberation as unconditional access to women, thus elevating the ‘whore’ side of the aforementioned dichotomy. It is unclear from the above extract whether the solution is thought to be the complete destigmatisation and normalisation of prostitution or whether sex buyers should be held to account for their exploitation of marginalised women.

### **7.3.3 Opposition to the criminalisation of the purchase of sex**

The option of introducing the ‘Swedish model’ that criminalises the purchase of sex is considered in Document B, but rejected with the argument that it would weaken the protection of sex workers. The main questions raised regarding the ‘Swedish model’ were to what extent it could be implemented in Switzerland and what effects it would have on the combat of human trafficking (B: 13). The report refers to the debate abroad, particularly in France, where the ‘Swedish model’ was considered at the time, and Germany, where the law was changed to criminalise clients of coerced prostitutes (B: 14-15).

The expert group reached – also on the basis of the conducted hearings – the conclusion that a ban of prostitution in Switzerland would not be productive. According to the expert group, **a ban based on the example of Sweden is not suitable to ensure the protection of women in the sex trade.** It is indisputable that there are **coerced prostitutes** in Switzerland and that the so-called poverty prostitution favours exploitative situations and human trafficking (...). A ban would, according to the perspective of the expert group, lead to a situation where **the protection of all sex workers would be weakened.** Furthermore, such a ban would stand **in opposition to the economic freedom guaranteed in the constitution** (B: 15-16, my translation and emphasis).

The assumption that the ‘Swedish model’ would weaken the protection of sex workers is taken for granted and not further justified. Whereas the quote correctly states that only sex buyers are criminalised while the selling of sex is decriminalised, referring to it as a



ban of prostitution (*Prostitutionsverbot*), a term which is used interchangeably with the more correct term “ban of the purchase of sexual services” (*Sexkaufverbot*) is misleading and seems to associate the ‘Swedish model’ with full criminalisation of prostitution.

While naming ‘coerced prostitutes’ (*Zwangsprostituierte*) as a special group, the interests of all sex workers are considered to be the same with regard to the ‘Swedish model’, i.e. all sex workers would be less protected under such a policy regime. In addition, the concept of economic freedom (*Wirtschaftsfreiheit*), which is guaranteed by the Swiss constitution, would be violated if the Swedish model was introduced. In this sense, legislation regarding prostitution is dependent on higher-level legislation that should not be infringed upon. The concept of economic freedom highlights the right of individuals to take up employment, without the state being allowed to restrict possibilities for employment in the private sector. However, in cases where such an intervention is based on predominant public interest and relies on an appropriate legal foundation, a restriction of the economic freedom can be justified (Häfelin & Haller 2005: 6-7). The decision regarding whether or not to include prostitution under the latter definition is largely dependent on the way in which prostitution is framed. If prostitution were viewed as violence against women and an extreme form of sexual exploitation (see Barry 1995: 65, Moran 2013: 127), the criteria for justifying a restriction of the economic freedom would certainly be fulfilled.

However, in this context prostitution is framed as gainful employment and thereby the right to engage in prostitution is considered to be guaranteed by the constitution. This framing ignores the demand side of prostitution, while focusing exclusively on the supposed ‘right’ of women to work in the sex trade. The direct involvement in and the responsibility of male sex buyers for the existence of prostitution thereby disappears from the focus (Moran 2013: 195; Raymond 2013: 37). The above quote seems to suggest that the existence of economic freedom automatically leads to the acceptance of prostitution as gainful employment.

It is also crucial to consider who was able to make their voice heard in this debate and had the possibility to influence the position taken by the expert group. The hearings that are mentioned at the beginning of the above quote were conducted with a number of different persons and organisations. These included official bodies such as police departments of different cantons, representatives of different cities, the district attorney

of the canton of Zurich, but also representatives of so-called sex-worker organisations as well as programmes that offer advice for sex buyers, such as the Don Juan Project in Zurich. The sex worker organisations that were heard were *Aspasie*, the oldest sex-worker organisation in Switzerland, and the *Syndicat des travailleuses et travailleurs du sexe* (STTS), the first ‘sex-worker union’ of the country. Both organisations regard prostitution as a social reality that can and should not be abolished and thus should not be criminalised.

In addition, the expert group itself included members of the *Fachstelle für Frauenhandel und Frauenmigration* (FIZ) in Zurich, which was a co-author of two of the NGO documents included in this analysis (Documents C and F) and the *Network of Organisations, Projects and Individuals Who Defend the Interests of Sex Workers* (PROKORE), which co-authored one of these documents (Document C). PROKORE states on its website that the sex trade has to be recognised as a reality that cannot be abolished and that one should distinguish between ‘free’ and ‘forced’ prostitution. Thus, the positions of all the NGOs that were heard by the expert group can, according to the analysis presented in this paper, be grouped under the *sex work frame* (see section 7.2). No critical voices against prostitution per se were included. There is no indication that former prostituted women were heard, a flaw that is common in liberal analyses of prostitution (Giobbe 1990: 68).

In addition to rejecting the ‘Swedish model’ that criminalises all purchase of sex, the expert group also rejected the idea of criminalising sex buying when sex is bought knowingly from victims of human trafficking.

In the context of the debate in Germany, the expert group also discussed the criminalisation of sex buyers, who knowingly receive services from prostitutes who engage involuntarily in prostitution. According to the expert group, it would not be possible to implement such a criminal offence in practice. **It is very difficult, to determine and prove, whether someone is a victim of human trafficking or not. No controls would be possible that would lead to more protection.** The expert group agrees that neither the criminalisation of sex buyers discussed in Germany nor the one existing in Sweden would make sense, as it would be **almost impossible to enforce** (B: 29, my translation and emphasis).

It is argued also here that criminalisation of buying sex would not lead to more protection of women in prostitution. Thereby sex buyers are not held to account for their behaviour, not even if they pay a victim of human trafficking for sex. The reason for opposing the criminalisation of buying sex is said to be the difficulty of enforcement of such legislation, which in and of itself is not an unfounded concern. For instance, Finland passed such a

law that criminalised sex buyers who pay forced or trafficked persons for sex in 2006 (Jyrkinen 2009: 75). The law has been largely ineffective due to the difficulty of producing evidence of buyers' knowledge that the women they paid had been forced into prostitution (ibid.: 92). For this reason, Finland is currently considering a law that criminalises all sex buyers, following the example of Sweden (Reinboth & Wolley 2014).

Opposition to the criminalisation of demand is also part of the *sex work frame*, based on the argument that this would merely push the sex trade underground and thereby worsen the working conditions of sex workers. In this way, the 'Swedish model' is represented in the same way as a prohibitionist policy that also criminalises women in prostitution.

The ban of sex work or the criminalisation of sex buyers as in Sweden does not solve the problems, on the contrary. **Criminalisation pushes the trade underground.** Neither a ban nor the Swedish model thus make the sex trade disappear, but rather **worsen the working conditions.** In order to improve the situation of sex workers, **structural conditions have to be changed** (C: 13, my translation and emphasis).

This quote reduces the 'Swedish model' to the criminalisation of the purchase of sex, which is in reality only one part of this model. The quote ignores the crucial importance the model gives to exit services for women in prostitution and the creation of viable alternatives (see Ekberg 2004; Waltman 2011). The statement that it is structural conditions that need to be changed as opposed to criminalising sex buyers falsely represents the 'Swedish model' as not addressing structural conditions that lead women to prostitution. By ignoring the crucial differences between prohibition of prostitution on one hand and the 'Swedish model' on the other, both approaches are dismissed based on the same arguments.

It should also be noted that no references are provided for the claim that the 'Swedish model' pushes prostitution underground and negatively affects the working conditions of women in the sex trade. This argument has become somewhat of a truism in that it is often stated without references to empirical studies or by claiming that studies that refute it merely overlooked hidden parts of the sex trade. In this way, the argument can turn into a non-falsifiable claim, with no amount of research being considered sufficient to refute it. Furthermore, it is not clarified what exactly is meant by "underground". In such debates, it is often argued that prostitution is driven to the internet but it is unclear why online advertisements for prostitution are considered to be "underground". As such

advertisements have to be visible to potential buyers, they are also visible to the police (Raymond 2013: 61).

In (partial) contrast to this opposition to criminalise the buying of sex stands the statement in response to the first draft of the Prostitution Industry Regulation (Document F), published by three NGOs in Zurich, including the FIZ, which is also a co-author of Document C. The following extract addresses the raising of the minimum age for prostitution to 18 years, implemented on the national level in 2014 in order to fulfil the obligations under the Lanzarote Convention of the Council of Europe, which Switzerland signed in the same year (see section 2.2).

**We appreciate that the age of protection is raised to 18 years.** We have demanded this already for a long time. For the foreign sex workers who have to register at the cantonal Office for Economy and Labour the age of majority is already a condition. The capacity to act (age of protection) and the permission for employment are verified there (F: 14, my translation and emphasis).

The acceptance of a minimum age for people in the sex trade appears to be the only restriction of legal prostitution within the *sex work frame*. By referring to this age limit as a protection age (*Schutzalter*), it is implied that the age limit is enforced for the protection of people in prostitution. The protection age is linked to the criminalisation of sex buyers who use minors in prostitution (Schweizerische Depeschagentur 2014). There seems to be no opposition within the *sex work frame* to a protection age and no arguments are brought forward which would suggest that this form of criminalisation of sex buyers pushes minors who engage in prostitution underground and worsens their working conditions. This is a crucial inconsistency within this way of framing prostitution and it is not further justified why the criminalisation of sex buying is appropriate in one case and not the other.

The report on prostitution and human trafficking for the purpose of sexual exploitation published by the Swiss Federal Council in 2015 (Document D) states that while some ideas on how to handle the problems with prostitution can be adopted from other countries, every country should create its own prostitution policy.

The collected information at hand allows the conclusion that the state has to focus on the protection of people in prostitution from physical and psychological violence. There are neither simple solutions nor mandatory conclusions. A glance abroad is useful for particular ideas, but **every country needs its own method of resolution in handling prostitution and its negative side effects**. This should be

adapted to the respective image of humanity and social ideal (D: 3, my translation and emphasis).

The emphasis on the importance of local solutions to the problem of prostitution and the claim that there are no mandatory conclusions implies that the nature of prostitution differs from country to country. This statement thereby stands in opposition research that shows the globalised nature of the sex trade. The latter perspective thus argues for a global solution, including attempts to abolish the practice of prostitution worldwide (Moran 2013: 219).

#### 7.4 Fragments of a neo-abolitionist frame

The published by the Zürcher Frauenzentrale in response to the first draft of the new Prostitution Industry Regulation (Document G) is the most critical of prostitution among the studied documents. For instance, it puts more responsibility on sex buyers and holds them accountable for their actions, as the following extract shows:

The strong increase in the number of prostitutes during the past months has led to a considerable drop in prices. **The buyers do thus not only have easy and cheap access to sex, they are also able to enforce sexual practices that are damaging to the health (...).** In addition, **for most women prostitution is linked to extreme psychological and also physical strain.** Many resort to alcohol and drugs in order to be able to cope psychologically with their work (G: 2, my translation and emphasis).

While the information contained in this extract is almost identical to quotes analysed under the *regulation frame* (see section 7.1.1), the framing here is rather different. The sex buyers are identified as mainly responsible for the current problems, which is made clear by depicting them as agents who have the power to enforce certain practices and who benefit from low prices. In addition, the severe harms of prostitution are highlighted and the quote seems to indicate that these harms are inherent to the practice of prostitution (Jeffreys [1997] 2008; Farley 2003, 2004; Raymond 2003, 2013; Moran 2013) and not merely due to unsafe practices or outright violence. The demand for prostitution is questioned to some extent in the following extract:

Often it is stated that there is an obvious and considerable demand for sexual services. But it is certainly **not the duty of the state to ensure the satisfaction of sexual wants** (G: 2, my translation and emphasis).

While this quote does not challenge the existence of demand for prostitution per se, it does however contest assertions that the state should provide resources and infrastructure

for the purpose of prostitution. An example of the public provision of infrastructure for the sex trade are the ‘sex boxes’ that have been installed in the new zone for street prostitution in Zurich-Altstetten in 2013 and are operated and financed by the City of Zurich (see section 2.2).

With regard to the question whether sex can indeed be considered a need or rather a want, the position of the Zürcher Frauenzentrale remains unclear. While I have translated the German expression ‘sexuelle Bedürfnisse’ with ‘sexual wants’, the meaning of the term is ambiguous and could also be translated as ‘sexual needs’. The mere fact that the state is not considered to be responsible for the satisfaction of such wants or needs, does not clarify the ambiguity, as the existence of such supposed ‘needs’ could still be used to justify the existence of the sex trade as part of the private sector. For instance, Jyrkinen (2005: 29-32) states that within a consumer culture consumption is viewed as a form of self-expression and a possible source of identity. Consuming is often associated with freedom and individuals are considered to be the best judges of their own needs, from which follows the assumption that their choices should not be criticised. The role of industries, including the sex industry, in creating or at least shaping such ‘needs’ is thereby ignored. The view of the sex industry as simply supplying the services demanded by (male) consumer should thus be viewed critically (ibid.).

The document also stops short of portraying prostitution as a socially undesirable phenomenon and does thus not fully fall under a *neo-abolitionist frame*.

The increase of prostitution induces many to regard prostitution as a normal trade. However, **prostitution is not normal work** and it will and should not be, due to its **negative side effects**. The Zürcher Frauenzentrale is **far from wagging the moral finger**. It is however not acceptable to condone the **degrading situation of many prostitutes** as a social reality under the guise of self-determination and economic freedom (G: 3, my translation and emphasis).

The wording of this extract shows that despite acknowledging the degrading situation of many women in prostitution as well as the refusal to accept prostitution as normal work, it does not view prostitution per se as gendered violence or a human rights violation. This is exemplified by the mentioning of negative side effects rather than the existence of prostitution itself being the problem. The refusal to “wag the moral finger” implies that a condemnation of prostitution as a whole would be moralistic and conservative. The statement that “many prostitutes” live in degrading situations also shows that merely the conditions under which prostitution currently takes place are problematic, as opposed to

considering prostitution itself to be degrading for women as a class and not merely to individual women in prostitution (Barry 1995: 75).

While this extract comes relatively close to the radical feminist position on prostitution, it does not seem to follow through to the expected conclusion and returns to presenting critique of prostitution as conservative. It is possible that the reluctance to name prostitution as a socially undesirable phenomenon in need of eradication, despite the otherwise critical stance towards the sex trade, is influenced to a considerable degree by the otherwise almost complete absence of an abolitionist framing of prostitution in Switzerland. There might also be reasonable fear of being tainted as moralistic and condemning sex when critiquing the sex industry (Raymond 2013: 36). This phenomenon occurs in a larger social context where criticism of anything that is connected to sexuality has been dismissed immediately as old-fashioned, moralistic and/or censorious (ibid.: 36).

## 8. Discussion

The aim of this thesis was to show the ways in which prostitution has been framed in recent years within official documents and NGO papers in Switzerland and the city of Zurich in particular. The focus was put on the ways in which prostitution is constructed as a problem, who is responsible for said problems, who is affected and how policy solutions are represented. The basic assumption following Bacchi (1999) and Verloo & Lombardo (2007) was that different ways of understanding a problem lead to different suggestions for solutions. Policy problems as well as their solutions are thus viewed as socially constructed rather than objective and fixed. Such an analysis of problem representations is particularly important at times when prostitution legislation is being revised, as the existing framings influence which policy options are available. Framing prostitution in different ways than has previously been the case might thus open up new policy options (Kantola & Squires 2004: 96).

The analysis presented in the previous chapter demonstrates how public authorities in Switzerland and the city of Zurich in particular adopt a *regulation frame* and thereby regard prostitution largely in the context of labour and immigration law. Only the illegal aspects of prostitution, such as foreign prostitutes without a permit or brothel owners without a licence, are considered problematic. Foreign women who sell sex in Switzerland are mainly regarded as potential law-breakers and competitors with local prostitutes. Despite the fact that protection of women in prostitution is mentioned as a goal, this is then used to justify more regulation not only of the industry but also of the women themselves. Protection by means of control seems to be the main approach to the perceived problems. This framing by public authorities is not exclusive to Switzerland. For instance, Birgit Sauer (2004) and Melanie Hamen (2011) have found a similar framing of prostitution in Austria, where a law-and-order approach is also dominant and the aim of protection of women who sell sex is used to justify more control and repression (Hamen 2011: 125-126). Gill Allwood (2004) exposed a focus on law and order, as well as immigration control in French debates on prostitution at the time. Similarly to the findings of this thesis, Allwood (2004: 152) found that a division between ‘good’ and ‘bad’ prostitutes is created, the former being seen as local, independent ‘workers’ whereas the latter are represented as foreign prostitutes who undercut prices and work indiscreetly. Despite the recognition of the fact that most people who sell sex are women, the focus on



labour and immigration issues degrades the practice of prostitution and does not further analyse its connection to gender (in)equality.

Meanwhile, the studied NGO papers rely largely on the *sex work frame*, which is opposed to most forms of control and repression by the authorities and focuses in contrast on the rights of 'sex workers'. The main problems are considered to be the precarious working conditions of women who sell sex as well as the stigmatisation of 'sex work'. In contrast to the *regulation frame*, the *sex work frame* does view prostitution not merely as a labour issue but also focuses on the sex aspect of prostitution. It is argued that because everyone should have the right to make decisions that concern one's own body and sexuality, engaging in prostitution should be regarded as a right with which the state should not interfere. A clear division is made between 'free' and 'forced' prostitution, with only the latter being considered problematic. The vision of prostitution is one where the practice is destigmatised, the legal rights of 'sex workers' are ensured and 'sexual services' are open to everyone, framing gender equality as sameness of women and men, without challenging male behaviour. Critique of prostitution is thought to be rooted in traditional and moralistic attitudes to sexuality and gender. In this way, the *sex work frame* equates radical feminist perspectives on prostitution with traditional approaches, largely disregarding the diametrically opposed assumptions of the two perspectives (see Chapter 3).

Whereas the *regulation frame* and the *sex work frame* differ considerably from each other in the ways they frame the problems of prostitution and their according solutions, the underlying assumptions of both frames seem to be more compatible than it would appear at first sight. Erikson (2012: 163) suggests that the prostitution debate can be characterised by two overarching 'master frames', namely the *normalisation frame* (prostitution is an acceptable activity which needs to be normalised) and the *neo-abolitionist frame* (prostitution in itself is a problem and should be tackled). Within both of these 'master frames', there are many different views on prostitution, differing in the way they see the problem, causes and potential solutions (ibid.). In the case of Switzerland and the city of Zurich, the two main frames that could be identified can both be grouped under the *normalisation master frame*. I have shown the ways in which both frames construct prostitution as an inevitable social reality, while critique of prostitution is commonly regarded as moralistic and abolishing prostitution as unrealistic. In addition, both frames share a clear separation between ('free') prostitution and human trafficking.

The impact of the legal prostitution industry on sex trafficking is thereby overlooked. It is the same (accepted as inevitable) demand that drives both legal prostitution and sex trafficking (Carson & Edwards 2011: 86; Cho et al. 2013). The assumption that trafficking for the purpose of sexual exploitation can be reduced under a legalised system is thus highly questionable. Nonetheless, two of the examined documents included the claim that low demand for prostitution leads to lower prices and more trafficking. On this basis, legal approaches that aim to reduce demand are opposed. Thus, there appears to be a wish for higher demand for prostitution, even though this is not stated explicitly in the documents.

The framing of prostitution as inevitable is also present in other countries where prostitution has been legalised, such as the Netherlands. The Dutch Minister of Justice explained the legalising of brothels and pimping by saying “That prostitution exists is a given fact, even for the government. That requires a realistic approach, without moralism” (quoted in Raymond 2013: 33). Ethical considerations of prostitution are thus regarded as having no practical value, and it is assumed that prostitution can be made better by improving the ‘working’ conditions for women in the sex trade and ‘destigmatising’ the industry (ibid.). However, by legalising and normalising prostitution, it seems to be mostly the sex buyers and pimps who are destigmatised and constructed as ‘clients’ and ‘managers’ (Raymond 2013: 33). In addition, under a legalised system the state profits from the revenues of prostitution through taxes, licence fees and so on. Jeffreys (2009: 173-174) suggests that such an arrangement means that the state becomes a pimp and procurer in the global sex industry. In addition, it should be noted that this assumption of the inevitability of prostitution within a liberal state supports the older ideology about sexuality that is based on the ‘inevitability’ of male desire. In this way, the old patriarchal view of sex and prostitution has merged with a modern economic ideology (Carson & Edwards 2011: 84-85). In general, liberal states favour individual freedom over collective liberation. In the context of prostitution this means that the idea of women in prostitution as individual agents in the global sex industry dominates (Jeffreys 2009: 1999). Countries with liberal policies on prostitution are thus typically opposed to legislation that limits individual freedoms. In the case of Switzerland, this is apparent in the fact that prostitution is protected under the economic freedom guaranteed by the constitution.

In contrast, the dominant framing of prostitution in Sweden understands the sex industry in the context of gender inequality. It views male demand as the main cause of prostitution

and thus represents it as a problem of men's rather than women's behaviour (Ekberg 2004; Waltman 2011). While this view is mainstream in Sweden, it is almost non-existent in Switzerland. If it is mentioned at all, it is quickly dismissed as ideological, moralistic and not realistic. The supposed inevitability of prostitution is thereby presented as indisputable truth, while opposing views are marginalised. As argued by Marshall (1999: 64-65) political debates in general can be regarded as power conflicts over which knowledge is the 'truth', despite the fact that policy issues are often presented as rational and free from power relations (ibid.: 69-70).

However, this thesis has certain limitations with regard to an analysis of power. Further research is needed to examine this issue in more detail. There is a lack of research on precisely which actors and organisations have a voice in the debate. This would also include information on the membership and the funding of the organisations in question. In addition, it should be examined what kind of support and services they provide to people who sell sex. Is the support limited to harm reduction within prostitution, or do they also offer support for people who want to exit the industry? And based on which assumptions do they consider themselves able to speak for (all) women who sell sex? Are the voices of women who exited prostitution considered relevant? In general, it would be fruitful to include a wider range of data in order to include more marginalised positions and the extent to which they are able to make their voices heard in the policy debates. This could include interviews with people who sell sex and members of different organisations, as well as an analysis of media articles on prostitution.

In conclusion, it can be said that the framings of prostitution in Switzerland and the city of Zurich strongly normalise the sex industry, with an alternative abolitionist framing being very unlikely to gain traction in the near future. Voices that are critical of prostitution are not only marginalised but considered counterproductive as moves towards abolition are thought to be based on moralistic assumptions and to further weaken the position of women who sell sex. Under these conditions, the adoption of the 'Swedish model' on prostitution seems to be out of the question for Switzerland. It is unclear at this moment which conditions would provide the necessary context for abolitionist arguments to be considered. France's recent adoption of the 'Swedish model' might have an impact on the debates in Switzerland. Nonetheless, a clear shift towards abolitionist policies remains unlikely given the strongly normalising framing of prostitution that is currently mainstream in Switzerland.

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## Appendix – Data excerpts (translation and original)

### Document A

- p. 13      In this area, some cantons are confronted with third-country nationals who enter Switzerland with a tourist visa and illegally earn money as prostitutes in contact bars. This type of illegal prostitution is very difficult to control.
- Einige Kantone sind in diesem Bereich namentlich mit Drittstaatsangehörigen konfrontiert, die mit Touristenvisa in die Schweiz kommen und in Kontaktbars illegal als Prostituierte Geld verdienen. Diese Art von illegaler Prostitution ist sehr schwer zu kontrollieren.
- The different handling does often lead to a playing off of the cantons against each other (for instance in some cantons, prostitutes receive L-permits relatively easily. They then use the occupational and geographical mobility and engage in the occupation in a “for the trade more attractive canton”) (quotation marks in original).
- Die verschiedene Handhabung führt nicht selten zu gegenseitigem Auspielen der Kantone (z. B. werden L-Bewilligungen in gewissen Kantonen relativ einfach an Prostituierte erteilt. Diese machen dann von der beruflichen und geografischen Mobilität Gebrauch und üben die Tätigkeit dann in einem „fürs Gewerbe attraktiveren Kanton“ aus) (Anführungszeichen im Original).
- p. 16      (...) these persons are often urged to engage in illegal prostitution and have to incite the clientele to the consumption of alcohol. (...) From the view of women’s organisations, the cabaret-dancers-statute offers some amount of protection, provided that controls by the authorities are conducted consistently.
- (...) werden diese Personen oftmals auch zu illegaler Prostitution angehalten und müssen die Kundschaft zum Alkoholkonsum animieren. (...) Aus Sicht von Frauenorganisationen bietet das Cabaret-Tänzerinnen-Statut indessen einen gewissen Schutz, sofern die behördlichen Kontrollen konsequent durchgeführt werden.
- p. 18      Repeated violation of legal provisions for the protection of public safety, represents on the whole – even if one single infringement by itself is not particularly severe – a sufficiently serious threat to the common interest.
- Wird wiederholt und in unbelehrbarer Weise immer wieder gegen Rechtsvorschriften zum Schutze der öffentlichen Sicherheit verstossen, so liegt – auch wenn ein einzelner Vorstoss für sich alleine genommen nicht besonders schwer wiegt – insgesamt eine hinreichend schwere Gefahr für das Gemeininteresse vor.
- p. 20      As a consequence of the geographic and occupational mobility, which is given after the admission to the labour market, it is to be ensured that employed prostitutes do not receive short- or longterm residence permits. In the context of the licensing procedure, it should be verified in detail whether there is a case of false self-employment. For this purpose it seems reasonable

to invite prostitutes to a personal interview, in addition to the online registration. In the case of repeated violation of zoning areas and/or repeated deception of the public authorities, a travel ban of up to three years is to be considered.

Infolge der nach der Zulassung zum Arbeitsmarkt gegebenen geografischen und beruflichen Mobilität ist sicherzustellen (Art. 8 Anhang I FZA), dass an unselbständig erwerbstätige Prostituierte keine Kurz- oder Aufenthaltsbewilligungen erteilt werden. Im Rahmen des Melde- oder Bewilligungsverfahrens ist weiterhin vertieft zu prüfen, ob nicht Scheinselbständigkeit vorliegt. Zu diesem Zweck erscheint es sinnvoll, Prostituierte auch im Meldeverfahren zusätzlich zur elektronischen Online-Meldung zu einem persönlichen Gespräch einzuladen. Bei wiederholten Verstößen gegen Bewilligungs- oder Meldevorschriften, bei mehrfacher Missachtung von Strichzonen und/oder mehrfacher Täuschung der Behörden ist der Erlass von Einreiseverboten durch das BFM mit einer Dauer von bis zu drei Jahren zu prüfen.

## **Document B**

p. 7 At the same time, it is important for the expert group to distinguish clearly between the spheres of sex work and human trafficking. Human trafficking is a criminal offense and a severe violation of human rights.

Gleichzeitig ist es der Expertengruppe ein Anliegen, klar zwischen den Bereichen Sexarbeit und Menschenhandel zu differenzieren. Menschenhandel ist ein Verbrechen, ein Straftatbestand und eine schwere Menschenrechtsverletzung.

The expert group has agreed to accept sex work as a social reality. For the purpose of protecting the workers in question, the expert group focuses on taking appropriate measures, but not on questioning the legitimacy of sex work based on moral concerns.

Im Interesse des Schutzes für die betroffenen Arbeitskräfte geht es aus Sicht der Expertengruppe darum, die geeigneten Massnahmen zu treffen, nicht aber die Berechtigung der Sexarbeit aus moralischen Überlegungen in Frage zu stellen.

pp. 8-9 Sex work is often equated with human trafficking and forced prostitution. This equation and mixing leads to wrong representations and in part also to overall stigmatisation of sex workers. Although sexual exploitation does often take place also in the sex trade, not every sex worker is a victim of exploitation or human trafficking.

Häufig wird Sexarbeit mit Menschenhandel und Zwangsprostitution gleichgesetzt. Diese Gleichsetzung und Vermischung führen zu falschen Darstellungen und teilweise auch zu pauschaler Stigmatisierung von Sexarbeiterinnen. Sexuelle Ausbeutung findet zwar häufig auch im Sexmilieu statt, aber nicht jede Sexarbeiterin ist ein Opfer von Ausbeutung oder von Menschenhandel.

pp. 10-11 Despite a lack of numbers for the whole of Switzerland, it can be noted the number of women working in the sex trade, at least in urban regions, has

increased considerably in the past years. This increase is attributed to the agreement on the free movement of people on one hand, but also to the difficult economic situation in Southern and Eastern Europe.

Trotz fehlender Überblickszahlen für die Gesamtschweiz kann festgestellt werden, dass die Anzahl im Erotikgewerbe tätiger Frauen in den letzten Jahren zumindest in den städtischen Regionen deutlich zugenommen hat. Diese Zunahme wird einerseits auf das Abkommen über den freien Personenverkehr (Freizügigkeitsabkommen/FZA), andererseits aber auch auf die wirtschaftlich schwierige Situation in Süd- und Osteuropa zurückgeführt.

- p. 11 The local sex workers are partly pushed aside within street prostitution. The supply exceeds the demand in many places, which has partially led to price drops and increased work insecurity. Unprotected sex practices have increased.

Die ansässigen Sexarbeiterinnen werden auf dem Strassenstrich teilweise verdrängt. Das Angebot übersteigt vielerorts die Nachfrage, was teilweise zu Preiszerfall und auch zu erhöhter Arbeitsunsicherheit geführt hat. Ungeschützte Sexpraktiken haben zugenommen.

- pp. 15-16 The expert group reached – also on the basis of the conducted hearings – the conclusion that a ban of prostitution in Switzerland would not be productive. According to the expert group, a ban based on the example of Sweden is not suitable to ensure the protection of women in the sex trade. It is indisputable that there are coerced prostitutes in Switzerland and that the so-called poverty prostitution favours exploitative situations and human trafficking (...). A ban would, according to the perspective of the expert group, lead to a situation where the protection of all sex workers would be weakened. Furthermore, such a ban would stand in opposition to the economic freedom guaranteed in the constitution

Die Expertengruppe gelangte – auch aufgrund der geführten Hearings – einstimmig zum Schluss, dass sie ein Prostitutionsverbot in der Schweiz als nicht zielführend erachtet. Nach Auffassung der Expertengruppe ist ein Verbot beispielsweise nach dem Vorbild Schwedens nicht dazu geeignet, den Schutz der Frauen im Erotikgewerbe zu stärken. Es ist unbestritten, dass auch in der Schweiz Zwangsprostituierte arbeiten und die sogenannte Armutsprostitution Ausbeutungssituationen und Menschenhandel begünstigt. Ein Verbot würde nach Ansicht der Expertengruppe jedoch dazu führen, dass der Schutz aller Sexarbeiterinnen geschwächt würde. Ferner stünde ein solches Verbot gegen die in der Verfassung verankerte Wirtschaftsfreiheit

- p. 29 In the context of the debate in Germany, the expert group also discussed the criminalisation of sex buyers, who knowingly receive services from prostitutes who engage involuntarily in prostitution. According to the expert group, it would not be possible to implement such a criminal offence in practice. It is very difficult, to determine and prove, whether someone is a victim of human trafficking or not. No controls would be possible that would lead to more protection. The expert group agrees that neither the criminalisation of sex buyers discussed in Germany nor the one existing in Sweden would make sense, as it would be almost impossible to enforce.

Im Kontext der Debatte in Deutschland diskutierte die Expertengruppe ebenfalls über die Bestrafung von Freiern, die wissentlich die Dienste von Prostituierten, die der Prostitution unfreiwillig nachgehen, in Anspruch nehmen. In der Praxis wäre nach Meinung der Expertengruppe ein solcher Straftatbestand nicht befriedigend umzusetzen. Es ist sehr schwierig, festzustellen und zu beweisen, ob jemand Opfer von Menschenhandel ist oder nicht. Es wären keine Kontrollen möglich, die zu mehr Schutz führen würden. Die Expertengruppe ist sich einig, dass weder die in Deutschland diskutierte noch die in Schweden geltende Freierbestrafung Sinn macht, da sie kaum durchsetzbar wäre.

### Document C

pp. 3-4 Viewed as an «area of precarity», sex work reproduces conditions that run contrary to equal gender relations. For this reason some feminists view sex work as a fundamental violation of women's rights and human rights and call for a ban. In this paper, alternatives to a ban are discussed. (...) Aspiring to decriminalise sex work does not mean to reject all forms of regulation or to support liberalisation at any price. But we advocate for a society in which sex work and the use of sexual services in exchange for remuneration are possible: for all genders, free from stigmatisation, discrimination and violence.

Als «Zone der Prekarität» betrachtet, reproduziert Sexarbeit Verhältnisse, die gleichberechtigten Geschlechterbeziehungen zuwiderlaufen. Deshalb sehen manche Feminist\_innen in der Sexarbeit eine grundlegende Verletzung von Frauen-, bzw. Menschenrechten und fordern ein Verbot. In diesem Papier werden Alternativen zum Verbot diskutiert. (...) Entkriminalisierung der Sexarbeit anzustreben bedeutet nicht, jegliche Regulierungen abzulehnen oder für eine Liberalisierung um jeden Preis zu sein. Doch wir plädieren für eine Gesellschaft, in der Sexarbeit und die Inanspruchnahme sexueller Dienstleistungen gegen Entgelt möglich sind: für alle Geschlechter, frei von Stigmatisierung, Diskriminierung und Gewalt.

p. 4 In this paper, we use the terms «sex worker» and «sex work» in order to emphasise the self-determined nature of the activity. The expressions date back to self-descriptions of a social movement that developed in the 1970s in the U.S. and Western Europe. The concern of the movement was to make sex visible as work and to call attention to its contribution to the functioning of society, similar to invisible domestic work. (...). We use «sex work» with regard to a society in which sex work takes place in a self-determined manner and under premises of gender equality, even though the status quo does not correspond to this vision.

Wir verwenden in diesem Papier die Begriffe «Sexarbeiter\_in» und «Sexarbeit», um den selbstbestimmten Charakter der Tätigkeit zu betonen. Die Ausdrücke gehen auf Eigenbezeichnungen einer sozialen Bewegung zurück, die sich in den 1970er Jahren in den USA und in Westeuropa formierte. Anliegen der Bewegung war, Sex als Arbeit sichtbar zu machen und darauf aufmerksam zu machen, dass sie wie unsichtbare Hausarbeit zum Funktionieren der Gesellschaft beiträgt. (...) Wir verwenden «Sexarbeit» im Hinblick auf eine Gesellschaft, in der Sexarbeit selbstbestimmt und unter

Vorzeichen geschlechtlicher Gleichberechtigung stattfindet, auch wenn der Status quo dieser Vision nicht entspricht.

- p. 7 The foundation and leading idea of our position on sex work is the universal application of human rights, which have to be enforced also for sex workers without any compromises (...). These rights include the protection from physical and psychological violence, from exploitation and discrimination, further the right to health, to dignified working conditions and remuneration, but also for example the right to freedom of expression and the freedom of choice in questions that concern one's own body and sexuality.

Grundlage und Leitidee unserer Position zur Sexarbeit ist die universelle Geltung der Menschenrechte, die es auch für Sexarbeiter\_innen kompromisslos einzufordern gilt (...) Zu diesen Rechten gehören insbesondere der Schutz vor physischer und psychischer Gewalt, vor Ausbeutung, vor Diskriminierung, weiter das Recht auf Gesundheit, auf würdige Arbeitsbedingungen und auf Entgelt, aber etwa auch das Recht auf Meinungsäusserungsfreiheit und die Entscheidungsfreiheit in Fragen, die den eigenen Körper und die Sexualität betreffen.

In the case of human trafficking, it is appropriate to speak of victims. Here women and in rare cases men are forced to engage in sex work. This fundamental violation of human rights is subject to criminal prosecution in Switzerland. Sex work, in contrast, is a transaction between two adults. Women and men do not sell their bodies but sexual services.

Im Fall von Menschenhandel ist die Rede von Opfern angebracht. Hier werden Frauen und in seltenen Fällen Männer zu Sexarbeit gezwungen. Diese fundamentale Verletzung der Menschenrechte wird in der Schweiz strafrechtlich verfolgt. Sexarbeit hingegen ist ein Geschäft zwischen zwei Erwachsenen. Frauen und Männer verkaufen nicht ihren Körper, sondern sexuelle Dienstleistungen.

- p. 8 Due to bad «starting opportunities», sex workers are often viewed or portrayed exclusively as victims. Media reports focus on the young age, the helplessness, the «barbaric conditions» that sex workers have to endure. Such stereotypes generate a victim discourse that patronises the women and does not correspond to reality. Many sex workers have agency and acquire strategies to master their lives.

Aufgrund schlechter «Startchancen» werden Sexarbeiter\_innen oft ausschliesslich als Opfer gesehen oder dargestellt. Medienberichte fokussieren auf das jugendliche Alter, die Hilflosigkeit, die «barbarischen Verhältnisse», die Sexarbeiter\_innen aushalten müssen. Solche Stereotype generieren einen Opferdiskurs, der die Frauen entmündigt und nicht mit der Realität übereinstimmt. Viele Sexarbeiter\_innen sind handlungsmächtig und eignen sich Strategien an, um ihr Leben zu meistern.

- p. 9 Many forms of payed employment are uncomfortable, risky or exploitative and are performed by underprivileged people. Examples are greenhouse farming, some occupations in the care industry, or monotonous work under bad conditions, be it a register of a supermarket or in the storage room of an

online delivery company. Regarding questions of self-determination, fair working conditions and global justice, sex work should not be singled out.

Viele Geldjobs sind unangenehm, risikoreich oder ausbeuterisch und werden von unterprivilegierten Menschen verrichtet. Beispiele sind die Treibhaus-Agrikultur, manche Tätigkeiten der Care-Arbeit oder monotone Arbeit für wenig Geld und zu schlechten Konditionen, sei es an einer Supermarktkasse oder im Lager eines Online-Versands. Wenn es um Selbstbestimmung, faire Arbeitsbedingungen und globale Gerechtigkeit geht, ist also nicht allein auf die Sexarbeit zu achten.

- pp. 9-10 The work can be emancipatory on a sex worker's individual path of life. Sex work enables (above all) women to provide their own livelihood and thereby achieve economic independence. Viewed in this way, the activity has emancipatory potential for individual sex workers. With regard to the social level, the question about emancipation cannot be answered unequivocally. Sex work is often justified with the argument that «men simply need it». We consider this argument problematic because it reproduces sexist patterns of thinking. On an individual *and* structural level, sex work can have an emancipatory effect if it takes place on the basis of equality. Looking at the current situation in Switzerland, this condition is rarely given (*italics in original*).

Auf dem individuellen Lebensweg einer Sexarbeiterin oder eines Sexarbeiters kann die Arbeit emanzipatorisch wirken. Sexarbeit ermöglicht (vor allem) Frauen, für ihren eigenen Lebensunterhalt zu sorgen und damit ökonomische Unabhängigkeit zu erlangen. So gesehen hat die Tätigkeit für einzelne Sexarbeiter\_innen emanzipatorisches Potential. Im Hinblick auf die gesamtgesellschaftliche Ebene ist die Frage der Emanzipation nicht eindeutig zu beantworten. Sexarbeit wird oft mit dem Argument «Männer brauchen das halt» gerechtfertigt. Dieses Argument finden wir problematisch, weil es sexistische Denkmuster reproduziert. Auf individueller *und* struktureller Ebene kann Sexarbeit dann emanzipatorisch wirken, wenn sie auf Basis eines gleichberechtigten Verhältnisses stattfindet. Betrachten wir die aktuelle Situation der Schweiz, ist diese Voraussetzung selten gegeben (*Kursiv im Original*).

- p. 11 For Switzerland, the social scientist Maritza Le Breton has noted that migrants in the sex trade are affected by multidimensional marginalisation and violence, namely women without a residence permit (...). An above-average number of sex workers have psychological problems such as depression, frequent thoughts of suicide or panic attacks. At the same time, there are sex workers who are «better protected from violence and who exhibit less intense psychological and health strains.» The living and working conditions of this group is an important point of contact: Based on it one can determine the conditions for the improvement of the situation of sex workers who are affected by violence.

Für die Schweiz stellt die Sozialwissenschaftlerin Maritza Le Breton fest, dass Migrantinnen im Sexgewerbe von mehrdimensionaler Ausgrenzung und Gewalt betroffen sind, namentlich Frauen ohne legalen Aufenthaltsstatus (...). Überdurchschnittlich viele Sexarbeiterinnen haben gesundheitliche und psychische Probleme wie Depressionen, häufige Selbstmordgedanken oder

Angstanfälle. Zugleich gibt es Sexarbeiter\_innen, «die besser vor Gewalt geschützt sind, und die weniger starke psychische und gesundheitliche Belastungen aufweisen.» Die Lebens- und Arbeitsbedingungen dieser Gruppe ist ein wichtiger Anknüpfungspunkt: Davon ausgehend lassen sich die Bedingungen für die Verbesserung der Situation gewaltbetroffener Sexarbeiter\_innen bestimmen.

- p. 12 The stigmatisation of sex work stands in close relation with inequalities between the sexes. (...) One reason for the sanctioning of non-conformist female sexuality is the notion that women and their sexuality are in need of male control. Related to this is the perception that women should be available to men as outlets for sexual desires. Both assumptions are misogynistic and relate to fears of an untamed female sexuality. It leads to attempts to control an assumingly dangerous female sexuality. The attempt at control maintains a sexual hierarchy between the sexes. If the hierarchy and thereby the entwined stigmatisation was dismantled, sexual services could lose their special status in comparison to other care work activities.

Die Stigmatisierung von Sexarbeit steht in engem Zusammenhang mit Ungleichheiten zwischen den Geschlechtern. (...) Ein Grund für die Sanktionierung nonkonformer weiblicher Sexualität ist die Vorstellung, dass Frauen und ihre Sexualität männliche Beherrschung brauchen. Damit verwandt ist die Vorstellung, Frauen sollten Männern als Ventil für sexuelle Begierden zur Verfügung stehen. Beide Annahmen sind frauenfeindlich und mit Ängsten vor einer ungezügelter weiblicher Sexualität verbunden. Sie führen zur Bestrebung, eine vermeintlich gefährliche weibliche Sexualität zu kontrollieren. Das Kontrollbestreben hält eine sexuelle Hierarchie zwischen den Geschlechtern aufrecht. Würde die Hierarchie und die damit verschränkte Stigmatisierung abgebaut, könnten sexuelle Dienstleistungen ihren Sonderstatus gegenüber anderen Tätigkeitsfeldern der Care-Ökonomie verlieren.

In order to understand and counteract stigmatisation, it is important to not examine sex work in an isolated manner. Many relationships between men and women or between same-sex couples exhibit commercial aspects. Next to sex work stand money marriages or expensive invitations for which a sexual service is expected. In the case of sex work, sex in exchange for remuneration is discredited. In the context of marriage, the commercial aspect can be just as important but is less depreciated.

Um die Stigmatisierung zu verstehen und ihr entgegenzuwirken, ist es wichtig, Sexarbeit nicht isoliert zu betrachten. Viele Beziehungen zwischen Männern und Frauen oder zwischen gleichgeschlechtlichen Paaren weisen kommerzielle Aspekte auf. Neben Sexarbeit stehen etwa Geldheiraten oder teure Einladungen, bei denen eine sexuelle Dienstleistung erwartet wird. Im Fall der Sexarbeit ist Sex gegen Gegenleistung in Verruf. Im Zusammenhang der Ehe kann der kommerzielle Aspekt ebenso wichtig sein, er wird jedoch weniger abgewertet.

- p. 13 The ban of sex work or the criminalisation of sex buyers as in Sweden does not solve the problems, on the contrary. Criminalisation pushes the trade underground. Neither a ban nor the Swedish model thus make the sex trade

disappear, but rather worsen the working conditions. In order to improve the situation of sex workers, structural conditions have to be changed.

Das Verbot von Sexarbeit oder die Bestrafung von Freier\_innen wie in Schweden lösen diese Problematik nicht, im Gegenteil. Die Kriminalisierung bewirkt, dass sich das Gewerbe in den Untergrund verschiebt. Weder ein Verbot noch das schwedische Modell bringt also das Sexgewerbe zum Verschwinden, vielmehr verschlechtert eine solche Illegalisierung die Arbeitsbedingungen. Wenn es darum geht, die Situation von Sexarbeiter\_innen zu verbessern, muss bei der Veränderung struktureller Bedingungen angesetzt werden.

Sex work as an activity that gains social recognition. A small segment of sex workers has created a niche that shows that this is possible. (...) Part of the vision is also that sexual services are open to women as well as to men.

Sexarbeit als Tätigkeit, die gesellschaftliche Anerkennung findet. Ein kleines Segment an Sexarbeiter\_innen hat eine Nische geschaffen, die zeigt, dass dies möglich ist. (...) Teil der Vision ist auch, dass sexuelle Dienstleistungen Frauen ebenso offen stehen wie Männern.

## **Document D**

- p. 3      The collected information at hand allows the conclusion that the state has to focus on the protection of people in prostitution from physical and psychological violence. There are neither simple solutions nor mandatory conclusions. A glance abroad is useful for particular ideas, but every country needs its own method of resolution in handling prostitution and its negative side effects. This should be adapted to the respective image of humanity and social ideal.

Die vorliegend zusammengetragenen Informationen lassen den Schluss zu, dass der Schutz der sich prostituierenden Personen vor physischer und psychischer Gewalt für den Staat im Zentrum stehen muss. Einfache Lösungen gibt es eben so wenig wie zwingende Schlüsse. Der Blick ins Ausland ist zwar nützlich für einzelne Ideen, aber jedes Land benötigt einen am jeweiligen Menschenbild und Gesellschaftsideal angepassten Lösungsansatz im Umgang mit Prostitution und ihren negativen Begleiterscheinungen.

- pp. 62-63      The question arises to what extent sex buyers reflect on their image of women and the consequences of their purchase of sexual services in a larger context. Which sex buyer would want to have a prostitute as a mother, wife or girlfriend? What does it mean for society if one part of people is marginalised? On the basis of such examples, it becomes clear that there are unsolved contradictions here.

Die Frage drängt sich auf, inwiefern sich die Freier Gedanken über ihr Frauenbild und die Auswirkungen ihres Kaufs von sexuellen Dienstleistungen in einem grösseren Kontext machen. Welcher Freier möchte etwa eine Prostituierte als Mutter, Frau oder Freundin haben? Was bedeutet es für die Gesellschaft, wenn ein Teil der Menschen ausgegrenzt wird? Anhand solcher Beispiele wird besonders deutlich, dass hier ungelöste Widersprüche zu Tage treten.



- p. 63 In the context of of coerced prostitutes one should, according to a study from Lucerne, not only hold human traffickers but also sex buyers accountable. One would be merely treating symptoms if one were to merely criminalise traffickers and not also the sex buyers who also exploit the coerced prostitutes and because of whom human trafficking for the purpose of sexual exploitation exists in the first place (...). Addressing general doubts as to whether such an offence can be proven, the study states that the problem of verifiability also arises for other other crimes, such as rape in marriage.

In Zusammenhang mit Zwangsprostituierten müssten nach Ansicht einer Luzerner Studie nicht nur die Menschenhändler, sondern auch die Freier stärker in die Pflicht genommen werden. Es gleiche einer „Symptombekämpfung“, wenn man lediglich die Menschenhändler sanktioniere und nicht auch die Freier, welche die Zwangsprostituierte ebenso ausnützten und wegen denen es den Menschenhandel zum Zweck der sexuellen Ausbeutung überhaupt gäbe. (...) Generellen Zweifeln, ob der Vorsatz des Täters überhaupt nachgewiesen werden kann, entgegnet die Studie, dass sich das Problem der Nachweisbarkeit auch in vielen anderen Straffällen stelle, zum Beispiel bei Vergewaltigung in der Ehe.

- p. 65 For the prostitutes, this means that the pressure of competition has increased and that they have to assert themselves increasingly against other competitors in the market. One possibility is to use the services of supposed helpers who promise them a certain income. In the case of foreign prostitutes, this can already happen in the country of origin. Thereby, the first fatal steps towards exploitation and human trafficking haven taken place. From this perspective, it seems questionable whether measures against human trafficking that focus primarily on the demand side are successful.

Für die Prostituierten bedeutet dies, dass der Konkurrenzdruck gestiegen ist und sie sich gegenüber anderen Mitbewerberinnen auf dem Markt zunehmend behaupten müssen. Eine Möglichkeit dazu ist, dass sie die Dienste von vermeintlichen Helfern beanspruchen, die ihnen einen sicheren Umsatz und somit Verdienst versprechen. Dies kann im Falle von Prostituierten ausländischer Herkunft bereits in ihrem Herkunftsland geschehen. Damit sind die ersten fatalen Schritte zur Ausbeutung und zum Menschenhandel vollzogen. Es erscheint aus dieser Perspektive fraglich, ob Massnahmen gegen Menschenhandel, welche sich primär auf die Nachfrageseite fokussieren, erfolgreich sind.

- pp. 71-72 According to a study from the year 2014, large-scale brothels (more than three prostitutes are present at the same time) receive a high number of applications. From this is concluded that large-scale brothels in Switzerland do not depend on the work of potential victims of human trafficking.

Laut einer Studie aus dem Jahr 2014 gehe eine hohe Anzahl von Bewerbungen bei Grossbetrieben (mehr als drei Prostituierte gleichzeitig anwesend) ein. Daraus wird gefolgert, Grossbetriebe seien in der Schweiz nicht auf die Arbeit von potenziellen Opfern von Menschenhandel angewiesen.

## Document E

p. 2 On the one hand there is an obvious and considerable demand for such services, on the other hand the free movement of people with the EU countries has led to a considerable increase of the number of prostitutes. The flow of prostitutes from the East of the EU (Hungary, Romania) is particularly strong. A notable share of them work in street prostitution. These people stay in the city of Zurich only for a short time and are not familiar with the local living conditions. They do not pay attention or are not familiar with the legal ramifications.

Zum einen besteht eine offensichtliche und erhebliche Nachfrage nach solchen Dienstleistungen; zum andern hat die Personenfreizügigkeit mit den EU-Staaten zu einer deutlichen Zunahme der sich Prostituiierenden geführt. Hauptsächlich aus dem Osten der EU (Ungarn, Rumänien) ist der Zustrom der sich Prostituiierenden gross. Ein erheblicher Anteil von ihnen arbeitet auf dem Strassenstrich. Diese Personen halten sich nur kurze Zeit in der Stadt Zürich auf und sind mit den hiesigen Lebensverhältnissen kaum vertraut. Rechtliche Rahmenbedingungen kümmern sie nicht oder sind ihnen nicht bekannt.

An increasingly aggressive struggle for clientele has emerged among prostitutes (and their «protectors»), which has led to a drop in prices for services and deteriorating working conditions. It has been proven that due to this also the share of unprotected sexual intercourse has increased. The protection of public health is thus no longer guaranteed to a sufficient degree. In addition, there is an unequal treatment between legal prostitutes, which are officially registered with regard to tax and social security matters and who follow the rules, and those are not registered and do not follow the rules (scare quotes in original).

Es ist teilweise ein zunehmend aggressiver Kampf der sich Prostituiierenden (und deren «Beschützer») um Kundschaft entstanden, der zu einem Preiszerfall bei den Dienstleistungen und zu verschlechterten Erwerbsbedingungen geführt hat. Dadurch hat erwiesenermassen auch der Anteil an ungeschütztem Sexualverkehr zugenommen. Der öffentliche Gesundheitsschutz ist deshalb nicht mehr im erforderlichen Mass gewährleistet. Zudem besteht eine Ungleichbehandlung zwischen sich legal Prostituiierenden, die steuer- und sozialversicherungsrechtlich offiziell angemeldet sind und sich an die rechtlichen Regeln halten, und solchen, die das nicht sind bzw. sich nicht an diese Regeln halten (Anführungszeichen im Original).

p. 5 On one hand, it is about the protection of the general public from negative impacts of the sex trade and about the protection of public order and public health, but on the other hand also about improving the working conditions of people in prostitution and their protection from exploitation and violence as well as their right to self-determination. In order to reach these goals preventive as well as repressive measures are planned.

Einerseits geht es um den Schutz der Bevölkerung vor negativen Auswirkungen durch das Prostitutionsgewerbe und um den Schutz der öffentlichen Ordnung und öffentlichen Gesundheit, andererseits aber auch um

eine Verbesserung der Arbeitsbedingungen der die Prostitution ausübenden Personen und deren Schutz vor Ausbeutung und Gewalt und ihr Selbstbestimmungsrecht. Um diese Ziele erreichen zu können, sind sowohl präventive als auch repressive Massnahmen vorgesehen.

- p. 6 Similarly to the practice of other economic occupations on public ground, such as the use of taxi stands or the sale of products at markets stalls etc., an official permission should in the future be necessary for the practice of street prostitution.

Analog zur Ausübung einer anderen wirtschaftlichen Tätigkeit auf öffentlichem Grund wie beispielsweise die Benutzung von Taxi-Standplätzen oder der Verkauf von Produkten an Marktständen usw. soll künftig auch für die Ausübung der Strassenprostitution die Bewilligungspflicht gelten.

- p. 7 Not only people engaged in prostitution can be fined, but also sex buyers as well as brothel owners, if they do not follow the provisions of the Prostitution Industry Regulation. Not only the persons offering the service, who are mostly women, but also the usually male clientele who does not respect the provisions, should be targeted by the regulation. Newly introduced measures are based on administrative law such as warnings and revocation of permits.

Neu können nicht nur die Prostitution ausübenden Personen, sondern ausdrücklich auch Freier sowie Inhaberinnen und Inhaber von Salonbetrieben gebüsst werden, wenn sie sich nicht an die Vorschriften der Prostitutionsgewerbeverordnung halten. Es sollen nicht nur die Dienstleistung anbietenden Personen, welche meistens Frauen sind, sondern auch die meistens männliche Kundschaft, die sich nicht an die Vorschriften halten, ins Recht gefasst werden können. Neu eingeführt werden verwaltungsrechtliche Massnahmen wie beispielsweise Verwarnung und Bewilligungsentzug.

The City of Zurich does not have the legal power to introduce such a criminal law provision in its Prostitution Industry Regulation. However, due to the fact that a minor is not capable of acting in a legal sense, he/she is not able to enter into a contract of sexual services in exchange for money nor to apply, for example, for a permit for engaging in street prostitution.

Die Stadt Zürich hat keine Kompetenz, eine solche Strafbestimmung in ihrer Prostitutionsgewerbeverordnung einzuführen. Da eine minderjährige Person jedoch aufgrund ihres Alters nicht handlungsfähig ist, kann sie keinen Vertrag über eine sexuelle Dienstleistung gegen Entgelt eingehen (Art. 19 ZGB) oder bei der Behörde zum Beispiel eine Bewilligung zur Ausübung der Strassenprostitution beantragen.

- p. 8 The introduction of a general obligation to register for all people engaged in prostitution is rejected, as it would be neither productive nor proportionate. The law should rather concentrate on street prostitution, in which people engaged in prostitution are exposed to the biggest amount of danger, as well as on the brothel owners, who are responsible for their business and the people working there, and who should respect the legal ramifications. In these cases a licensing procedure is helpful, as the licenses can be attached to corresponding obligations.

Auf die Einführung einer allgemeinen Meldepflicht für die Prostitution ausübenden Personen wird verzichtet, da sie weder zielführend noch verhältnismässig ist. Vielmehr soll sich die Gesetzgebung auf die Strassenprostitution, bei der die Prostitution ausübenden Personen den grössten Gefahren ausgesetzt sind, und auf die Inhaberinnen und Inhaber von Salons konzentrieren, welche die Verantwortung für ihren Betrieb und die dort tätigen Personen tragen und sich an die gesetzlichen Rahmenbedingungen halten müssen. In diesen Fällen ist ein Bewilligungsverfahren zielführend, da die Bewilligungen mit entsprechenden Auflagen versehen werden können.

## Document F

p.7 The Prostitution Industry Regulation focuses mainly on control and repression. Neither do these measures protect women and men in sex work from exploitation and violence, nor do they ensure prevention of health-related and social problems.

Die Prostitutionsgewerbeverordnung stellt Kontrolle und Repression in den Vordergrund. Weder schützen diese Massnahmen die Frauen und Männer in der Sexarbeit vor Ausbeutung und Gewalt, noch stellen sie die gesundheitliche und soziale Prävention sicher.

p. 9 It is important to name **the target group of sex buyers and brothel owners not only in the comments but also explicitly in the regulation article**. The focus would for once be shifted away from the sex workers. And it would be made clear that many persons have a responsibility for fair and humane conditions in the sex trade. In addition to mere transmission of information, the city should commit itself to **contribute to awareness raising on the demand side** (...). By means of responsible behaviour, sex buyers could make a considerable contribution to the promotion of fair and humane conditions within prostitution (emphasis in original).

Es ist wichtig, **die Zielgruppe der Freier und Etablissementbesitzer nicht nur in den Erläuterungen, sondern auch explizit im Verordnungsartikel zu benennen**. Der Fokus würde für einmal von den Sexarbeiterinnen genommen. Und es würde deutlich gemacht werden, dass viele Personen eine Mitverantwortung für faire und menschenwürdige Bedingungen im Sexgewerbe tragen. Zusätzlich zur reinen Information sollte sich die Stadt in Artikel 3 verpflichten, einen **Beitrag zur Sensibilisierung der Nachfrageseite** - der Freier - zu leisten (...) Die Freier können mit einem verantwortungsvollen Verhalten wesentlich dazu beitragen, dass faire und menschenwürdige Bedingungen in der Prostitution gefördert werden. (Hervorhebung im Original)

p. 14 We appreciate that the the age of protection is raised to 18 years. We have demanded this already for a long time. For the foreign sex workers who have to register at the cantonal Office for Economy and Labour the age of majority is already a condition. The capacity to act (age of protection) and the permission for employment are verified there.

Wir begrüßen es sehr, dass das Schutzalter auf 18 heraufgesetzt wird. Wir fordern dies schon lange. Für die ausländischen Sexarbeiterinnen, die sich

beim kantonalen Amt für Arbeit und Wirtschaft (AWA) bewilligen lassen müssen, ist die Volljährigkeit bereits jetzt schon Voraussetzung. Die Handlungsfähigkeit (Schutzalter), die Zulassung zur Erwerbstätigkeit werden dort geprüft.

## Document G

p.1 From our point of view the draft should contribute more strongly to the improvement of the precarious situation of the women in prostitution. The protection of people in prostitution from exploitation and violence is mentioned as a purpose (Art.1). Within the individual provisions, however, control and repression are in the foreground.

Aus unserer Sicht sollte der Verordnungsentwurf stärker dazu beitragen, die prekäre Situation der sich prostitutierenden Frauen zu verbessern. Der Schutz der sich prostituierenden Personen vor Ausbeutung und Gewalt ist zwar im Zweckartikel (Art. 1) erwähnt. Bei den einzelnen Bestimmungen stehen jedoch Kontrolle und Repression im Vordergrund.

p. 2 The strong increase in the number of prostitutes during the past months has led to a considerable drop in prices. The buyers do thus not only have easy and cheap access to sex, they are also able to enforce sexual practices that are damaging to the health (...). In addition, for most women prostitution is linked to extreme psychological and also physical strain. Many resort to alcohol and drugs in order to be able to cope psychologically with their work.

Die starke Zunahme von Prostituierten in den letzten Monaten hat zu einem regelrechten Preiszerfall geführt. Die Freier kommen dadurch nicht nur leicht und billig zu Sex, sie haben es auch noch in der Hand, Sexualpraktiken durchzusetzen, welche die Gesundheit gefährden (...). Hinzu kommt, dass die Prostitution für die meisten Frauen mit extremen psychischen und auch körperlichen Belastungen verbunden ist. Viele greifen zu Alkohol und Drogen, um ihre Arbeit psychisch bewältigen zu können.

Often it is stated that there is an obvious and considerable demand for sexual services. But it is certainly not the duty of the state to ensure the satisfaction of sexual wants.

Häufig wird geltend gemacht, es bestehe eine offensichtliche und erhebliche Nachfrage nach sexuellen Dienstleistungen. Es ist aber gewiss nicht die Aufgabe des Staates, die Befriedigung sexueller Bedürfnisse sicherzustellen.

p. 3 The increase of prostitution induces many to regard prostitution as a normal trade. However, prostitution is not normal work and it will and should not be, due to its negative side effects. The Zürcher Frauenzentrale is far from wagging the moral finger. It is however not acceptable to condone the degrading situation of many prostitutes as a social reality under the guise of self-determination and economic freedom.

Die Zunahme der Prostitution verleitet manche dazu, Prostitution als ein normales Gewerbe anzusehen. Prostitution ist jedoch keine normale Arbeit, und sie wird und darf es wegen der negative Begleiterscheinungen auch nicht sein. Es liegt der Zürcher Frauenzentrale fern, den Moralfinger zu erheben. Es geht jedoch nicht an, unter dem Vorwand der Selbstbestimmung unter der

Handels- und Gewerbefreiheit die menschenunwürdige Situation vieler Prostituerter als gesellschaftliche Realität hinzunehmen.

## Document H

p. 3 The prostitution trade is legal and exists in every bigger city and thus as a matter of course also in Zurich, which fulfils a centrum function also in this area. The City Council does not approve of a ban on prostitution – apart from the fact that national law does not allow it –, even though different forms of bans and penalisations are currently debated particularly in the neighbour countries France and Germany.

Das Prostitutionsgewerbe ist legal und existiert in jeder grösseren Stadt, also selbstverständlich auch in Zürich, das auch in diesem Bereich eine Zentrumsfunktion erfüllt. Der Stadtrat hält nichts von einem Verbot der Prostitution – abgesehen davon, dass das übergeordnete Recht ein solches nicht zulässt –, auch wenn Verbote oder Bestrafungen in verschiedenen Formen derzeit vor allem in den Nachbarstaaten Frankreich und Deutschland politisch debattiert werden.

Experience shows that the prostitution industry reacts in a remarkably flexible way to changing conditions. It generally adapts itself to the set rules, but also reacts quickly and creatively with evasions. Economic considerations are expressed therein, as ultimately the point is to earn money, be it for safeguarding one's livelihood or for the maximisation of profit. As a guideline for regulation applies: As little as possible, as much as necessary. The City Council is of course aware that one can and should debate on precisely this issue.

Das Prostitutionsgewerbe reagiert erfahrungsgemäss äusserst flexibel auf ändernde Rahmenbedingungen. Es passt sich grundsätzlich den gesetzten Regeln an, reagiert aber auch schnell und kreativ mit Ausweichbewegungen. Darin kommen wirtschaftliche Überlegungen zum Ausdruck, geht es doch letztlich darum, Geld zu verdienen, sei es zur Existenzsicherung oder zur Profitmaximierung. Als Leitlinie für die Regulierung gilt deswegen: So wenig wie möglich, so viel als nötig. Dem Stadtrat ist selbstverständlich bewusst, dass gerade darüber debattiert werden kann und soll.

In the view of the City Council, the prostitution industry poses particular dangers for prostitutes. But prostitution should not be equated with forced prostitution and human trafficking. On one side stands the woman who is independent and works in a self-determined manner, on the other side the exploited victim of force and human trafficking. All forms of violence against prostitutes, as well as forced prostitution and human trafficking should be combatted with all means available.

Für den Stadtrat birgt das Prostitutionsgewerbe für Prostituierte besondere Gefahren. Prostitution darf aber nicht gleichgesetzt werden mit Zwangsprostitution und Menschenhandel. Auf der einen Seite steht die eigenverantwortliche und selbstbestimmt arbeitende Frau, auf der anderen Seite steht das ausgebeutete Opfer von Zwang und Menschenhandel. Jegliche Form von Gewalt an Prostituierten, Zwangsprostitution und Menschenhandel sind mit allen verfügbaren Mitteln zu bekämpfen.

p. 9 The City of Zurich committed itself to ensure low-threshold access to services in the areas of health protection, medical treatment, social work as well as interventions in the case of exploitation, be it through municipal efforts or through efforts of third parties. By means of access to counselling, prostitutes should be given the possibility to improve their health-related and social situation. Social work makes it possible to warn prostitutes for example about violent clients and to encourage them to report such clients. In the case of human trafficking, the prostitutes are encouraged to cooperate with the penal authority and they are accompanied throughout the trial.

Die Stadt Zürich verpflichtete sich, den Prostituierten niederschweligen Zugang zu Angeboten in den Bereichen Gesundheitsschutz, medizinische Behandlung, Sozialarbeit sowie Intervention bei Ausbeutung zu gewährleisten, sei es durch städtische Leistungen oder durch Leistungen von Dritten. Mit dem Zugang zu Beratung soll den Prostituierten die Möglichkeit gegeben werden, ihre gesundheitliche und soziale Situation zu verbessern. Die aufsuchende Sozialarbeit ermöglicht es, die Prostituierten z. B. vor gewalttätigen Freiern zu warnen und sie zur Anzeige gegen diese zu ermutigen; in Fällen von Menschenhandel werden die Prostituierten zur Zusammenarbeit mit den Strafbehörden ermutigt und während des Prozesses begleitet.

p. 34 With regard to the development of the prostitution industry, it can overall be asserted that with the regulation of the industry the attractiveness of the City of Zurich has decreased, particularly for prostitutes from the Eastern member states of the EU as well as for sex buyers from a wide geographic radius. The negative excesses, which had been present especially in street prostitution on the Sihlquai, could be stopped. Thanks to the different measures, the prostitution industry has reached an agreeable level for the city and the specific neighbourhoods.

Hinsichtlich der Entwicklung des Prostitutionsgewerbes ist insgesamt festzustellen, dass mit dessen Regulierung die Attraktivität der Stadt Zürich insbesondere für Prostituierte aus den EU-Oststaaten und für Freier aus einem weiten geografischen Umkreis gesunken ist. Die negativen Auswüchse, die sich vor allem auf dem Strassenstrich am Sihlquai gezeigt hatten, konnten unterbunden werden. Dank den verschiedenen Massnahmen spielte sich das Prostitutionsgewerbe auf ein stadt- und quartierverträgliches Niveau ein.