

Denying the right to work. German trade regulation and anti-gypsy policy 1871-1914

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**Denying the Right to Work. German Trade Regulation and Anti-Gypsy Policy
1871-1914**

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Abstract

This article examines the role that a discriminatory application of the German Trade Code (*Gewerbeordnung*) played in the ‘Gypsy’ policy of the German Second Empire. It argues that the Code became central to the legalistic, bureaucratic form that their persecution assumed in this period, serving to criminalize the itinerant lifestyle of the Sinti and Roma and contributing greatly to their social and economic marginalization.

Key Words

Trade regulations, Gypsies, Sinti and Roma, Pedlars, Germany, Second Empire.

6754 Words

Introduction: Policing the new freedoms. Labour mobility and its regulation in the 19th century.

Germany owed its emergence as a leading economic power in the late nineteenth century to its dynamic, national labour market, and to its ability to import workers from neighbouring states on a massive scale. If, in its first decades, huge numbers of Germans were opting to emigrate overseas, by the 1890s the *Reich*'s expanding urban centres exerted a greater pull, resulting in an exodus from the agricultural east to the industrial areas of central and western Germany.¹ Partly in response to the depletion of rural populations German agriculture also began hiring foreign workers in large numbers. By the twentieth century hundreds of thousands of Russian and Austrian Poles were working on German farms, and in construction, mining and other industries.² This extraordinary mobility of labour within and across German borders had been made possible by the lifting of long-standing restrictions on movement. The Prussian reforms of 1807-11 which abolished serfdom and ended guild control over access to employment, and serfdom's demise in the neighbouring empires of Austria-Hungary (1848-53) and Russia (1861), were fundamental steps in this process. Prussia's relaxation of documentary restrictions in 1817 and legislation introduced in 1842-3, which prevented communal authorities from turning away migrants they feared might become a public charge, also facilitated greater internal movement in the German state. In 1850 travel *between* German states became easier when Saxony, Bavaria, Hanover and Württemberg dropped a requirement for visas and introduced standardized 'pass cards' for cross-border travel, and easier still the decade after when (Württemberg excepted) they dispensed with the cards altogether. The most significant legislative intervention of this kind would follow in 1867 in the shape of the Law for the Freedom of Movement and Settlement (*Gesetz über die Freizügigkeit*), introduced in the North German Confederation and subsequently adopted by

the new, unified Germany in 1871. It proclaimed the right of all German citizens to settle and work across German territory, whether on a sedentary or itinerant basis, and abolished the legal requirement to carry passports for travel between German states and abroad, and even foreign subjects entering German territory.³

The measures which eased freedom of movement were nevertheless invariably accompanied by some mechanism for controlling those categories of the migrant poor who were viewed as a potential social threat or burden. This was true of the 1817 reforms, and of the Pass-Card Treaty of 1850 which simply excluded journeymen, servants, migrant and itinerant workers, along with anyone with a criminal record. The three kingdoms who dispensed with cards in 1865 still required prospective travellers to provide evidence that they were able to support themselves, and pedlars, entertainers and other itinerant workers were to be subject to further scrutiny over and above this. Critically, although the 1867 Law itself contained no separate obligations for the ‘dangerous classes’, existing requirements to carry documents to practice particular trades were kept for apprentices, servants and other workers. The Law of 1867 also preserved the right of state gendarmes to turn criminals, beggars and vagrants back at state borders, and for municipalities to refuse settlement to the already destitute.⁴ As has been well-documented, foreign workers were also subject to special controls during the Empire. Most notably, both for reasons of cost, and out of fear that a more permanent presence would lead to the ‘slavicization’ of the German countryside, all Polish agricultural workers in Prussia were compelled to return home over the winters.⁵

The following discussion can be located within this broader picture of mobility and its regulation. It looks in detail at the manner in which the German Trade Code of 1869 was used to restrict access to itinerant work, and, in particular, at the central role that this aspect of the

Code came to play in German state policy towards the Sinti and Roma. Scholars have noted the role that the licencing system played in the state's fight against 'Gypsies', but a closer look is warranted because it lay at the heart of the bureaucratic, legalistic form that their persecution assumed in this era.⁶ Beyond this, its targeted application here sheds light on the way discriminatory treatment can develop in states, like the German *Rechtstaat*, which are ostensibly committed to both equality before the law and the preservation of individual liberties.

Itinerant Trade and the Trade Code of 1869

Itinerant traders comprised only a small fraction of the total workforce. The occupational census of 1895 registered 127,000 *Hausierer* and their assistants (usually family members), although this figure did not include foreign citizens, and was regarded as too low an estimate by contemporaries.⁷ '*Hausierer*' (literally: 'house-to-housers') provided a wide range of goods and services, and included rag and bone men, scrap metal merchants, pedlars of agricultural produce and of finished goods, as well as livestock dealers, colporteurs, traveling craftsmen, showmen, buskers and many others. The economic significance of the *Hausierer* varied across Germany, but was pronounced in some regions, and branches of itinerant trade remained central to the economic life of particular villages. In hard times when increased numbers of Germans fell back on peddling as a way to make ends meet, their numbers grew.⁸

With some justification, historians have pointed to the Trade Code of 1869 as a relaxation of restrictions on itinerant trading, one that reflected the new legal commitment to freedom of movement begun in 1867, and one which they argue led to an expansion in the numbers of pedlars and other traders.⁹ The special commission tasked with drafting the regulations for

itinerant trade (part three of the Code) had worked on the principle that itinerant and sedentary trades should receive equal treatment, and that restrictions that were designed simply to protect the interests of sedentary businesses against competition from itinerant traders should not be permitted. In their view it should now be assumed that all goods could be traded in this way, unless specifically excluded by the Code. In general, pedlars should no longer be obliged to register with local police authorities in the places they visited, there were to be no restrictions placed on the length of time they could stay in one place, and no requirement for innkeepers to demand identity papers from them. The age at which one was allowed to practice an itinerant trade was also lowered to twenty-one.¹⁰ The economist Wilhelm Stieda would later summarise this change in approach as a shift ‘from forbidding to permitting itinerant trade.’¹¹

Here too, however, important restrictions remained, and a mechanism for limiting access to itinerant trade was retained. The commission responsible for the Code recognised as legitimate concerns over the probity of some practitioners whom it was thought posed a moral and security risk to the public, including people who claimed to be traders, but for the most part lived from begging or theft.¹² They also argued that regulation was needed to protect rural communities from uninvited, fleeting visitors who appeared only briefly and could not easily be brought to task over faulty goods or other malpractice. These ills were to be addressed through a licencing scheme which would help to separate respectable traders from the criminal element. Fears that licences might actually legitimize a vagrant way of life and, in their words, ‘promote the emergence of a population of homeless vagrants’ led them to include the proviso that officials might deny licences to those who could not furnish proof of a fixed address in Germany. And, whilst in most cases work permits were valid across German territory, there were exceptions, and it was not to be the case for traveling showmen,

who were consistently viewed as a threat to the communities they visited. Both these restrictions came to play an important role in state policy towards ‘Gypsies’. The licencing scheme was to be a policing matter. On the open road the task of checking papers and enforcing the requirement to carry valid licences was given to the gendarmerie, and in most cases the issuing officials (in the towns and cities the mayors, and in rural areas usually the *Amtsvorsteher* – the head of district) were also responsible for local policing, and this meant that security concerns would inevitably inform the decision to issue or refuse licences.¹³

The Trade Code and Gypsy Policy

Authorities in the German Second Empire viewed the Sinti and Roma as little more than beggars and vagrants. In official correspondence it became standard practice to refer to the ‘Gypsy plague’, the kind of language which sustained the fiction that this tiny minority posed a serious threat to the communities they visited, and which perhaps also helped to justify the state’s draconian response.¹⁴ The latter was two-pronged: to pressure itinerant ‘Gypsies’ with German citizenship into adopting settled lifestyles, and to prevent those of foreign nationality from crossing the border into German territory.¹⁵ These two aims remained central to policy throughout the Second Empire, and shaped the key policy documents that emerged in the 1880s (a series of Prussian directives from 1886, 1887 and 1889) and the more comprehensive Gypsy regulations issued in 1906.¹⁶ In their pursuit of both policy goals - removing foreign ‘Gypsies’ and settling those of German nationality - state officials adopted a strategy of denying ‘Gypsies’ itinerant trade licences wherever legally possible.

The principle that *foreign* pedlars could be treated separately, and potentially excluded from the licencing scheme altogether if so desired, was embedded in the Code at its inception. The special commission responsible for drafting the section on itinerant trade may well have had foreign Roma and Sinti in mind when they suggested that there existed ‘serious security concerns about subjecting those elements who are accustomed to roving throughout the Continent with their peripatetic trades to the same, very moderate restrictions envisaged for a national population of very different character’.¹⁷ Legally, they did not have to, since foreign pedlars were not covered by 1867 Law and anyway had no legal claim to equal treatment.

From the beginning of the Empire foreign ‘Gypsies’ were amongst those to be targeted, although they were not the only ones. In October 1870 Prussian officials were told not to issue licences to foreign ‘Gypsies’ or to Slovakian tinkers, another group widely regarded as parasitic. The Slovaks, usually from the county of Trencsén in Hungary, were singled out as carriers of disease,¹⁸ and by 1877 animosity towards them led the Federal Council to close the licencing scheme to foreign ‘potmenders’ and ‘wire-goods merchants’, although existing licence holders were still able to renew. This measure was designed to bring about their eventual disappearance from Germany.¹⁹ In the case of foreign Gypsies the policy that eventually emerged was more straightforward. Following revision of the Trade Code in 1883, new implementation guidelines simply ordered that licences should now never be issued to them in any circumstances, an instruction which remained in force for the remainder of the Second Empire.²⁰

By the 1880s it had become standard practice to deny entry to Sinti and Roma at the border, or to intercept groups who had crossed into the *Reich* and expel them under police escort, a

procedure sanctioned under sweeping police powers to defend ‘public order, security and peace’.²¹ Many were also expelled in a separate, lengthier process following their arrest and conviction on German soil, in almost all cases, for the offences of begging or vagrancy.

Under German criminal law foreign subjects convicted of these crimes could be deported in lieu of workhouse detention. Without licences, ‘Gypsies’ were much more vulnerable to both these charges; unable to work legally, they were more likely to fall back on the charity of others and thus to be charged with begging, and they now also lacked the documents to prove a livelihood and the ability to provide for themselves, the key consideration for the courts in vagrancy cases.²²

For the Roma and Sinti with *Reich* citizenship a more complicated strategy of licence refusal was developed which involved careful use of the regulations outlined in paragraphs 55 to 63 of the Trade Code, the section which dealt with itinerant trade.²³ The Code set out the rules for the allocation of itinerant trade licences, without which most itinerant traders could not work legally, and those who designed Gypsy policy sought to exploit the different ways in which, under its terms, applications from ‘Gypsies’ might be rejected. Paragraph 57, which concerned the issue of licences, was to prove particularly important. In part it addressed the threat posed to public health by itinerant trade, granting officials the powers to reject licence applications from persons who had contravened regulations preventing the spread of infectious diseases amongst humans or livestock. ‘Gypsies’ were singled out as a problem group during such outbreaks, but further research is needed before to know how much use of this particular provision was made in their case.²⁴ Other conditions included in this paragraph were invoked more frequently in the various Gypsy directives, including that relating to a permanent address.

Paragraph 57 opened with the phrase: *'A citizen of the German States over the age of 21 who has a fixed place of abode [...] may only be denied a licence if'*, before then proceeding to list various possible grounds for rejection. Here the intention was to provide safeguards against obstructive officials for applicants who could prove citizenship and a permanent address, but it left the many Sinti and Roma who lacked the necessary papers, or who did not have any obvious fixed domicile, in a very weak position. This was all the more true as the form of words adopted here was interpreted to mean that officials were entitled to reject applicants without proof of citizenship or address on other, unspecified grounds.²⁵ Legally speaking it still left the decision in the hands of the issuing authorities, and there thus remained some scope for issuing licences to Sinti or Roma applicants, but indications are that few were so minded in practice. The prevailing hostility towards 'Gypsies', and the fact that the major edicts on Gypsy policy encouraged officials to refuse licences to 'Gypsies' wherever possible meant that refusal became the normal course of action. The Prussian directive of 1887, which concerned 'Gypsies' of German nationality, emphasized that it would in general be possible to prevent them from plying an itinerant trade entirely if the Code was applied in a 'strict fashion', adding that 'special weight should be placed upon the requirement that the person concerned must have a fixed place of abode' (although the Code itself did not actually say this was an essential 'requirement'). This directive also made it clear that those who could not prove citizenship were to be treated as foreign and refused licences, and that, like foreign 'Gypsies', they might ultimately be deported. It is not clear how many were actually expelled as a result of this particular instruction, although the fact that neighbouring countries were universally unwilling to receive Sinti and Roma whose nationality was unclear seems to have prevented it happening on a large scale.

Criminal Records

Paragraph 57 also outlined the possibilities that existed for rejecting applicants with a criminal record. Officials were entitled to refuse licences to anyone who had been sentenced to a prison term of six weeks or more in the previous two years for a range of criminal activity, including that conducted for financial gain, criminal damage, or for crimes against public decency or against the person. Importantly, applicants could also be rejected if they had committed an offence carrying a lesser punishment, but which curtailed their civic rights, such as the criminalized practices of begging or vagrancy, if they remained under police supervision, or had ‘acquired notoriety through habitual indolence, begging, vagrancy or drunkenness’, which applied to anyone who had been convicted multiple times of these misdemeanours and publicly shamed for doing so in official bulletins. As suggested above the inclusion of begging and vagrancy offences caught many Sinti and Roma applicants in a vicious cycle; those with recent convictions for these offences could be denied licences, and failure to secure one in turn made it more likely that they would again be hauled before the courts for begging or vagrancy. The state officials who constructed ‘Gypsy’ policy exploited this fact. Throughout the period, decrees concerning ‘Gypsies’ looked to override the usual element of discretion exercised in encounters with the migrant poor and exhorted police to press charges in all cases for these offences.

In both 1883 and 1896 the Trade Code was revised by parliament to make it more restrictive, bringing in amendments which, for Stieda and others, amounted to a significant erosion of the more liberal Code of 1869.²⁶ The view that the existing measures were letting criminal types through, and lobbying from the representatives of sedentary business, played a role in swaying the opinion of *Reichstag* delegates on both occasions.²⁷ The perception that itinerant

trade was something to be restricted and policed, rather than fostered, was consistent with a belief held in official circles that an itinerant lifestyle was itself fundamentally uncivilized. In the debate which accompanied the 1883 revisions this view was articulated by the Conservative deputy Hans Hugo von Keist-Retzow who argued that:

a similar relationship exists between peddlers and the sedentary trades to that which exists between nomadic people and sedentary people. It is well enough understood that nomadic people have never attained a proper, civilized mode of life; it is equally certain that where sedentary commerce disintegrates into itinerant trade it is seriously harmful to a civilized nation. Gentlemen, it is about knowing where your home is, about local community, its religious and civil life, and about fulfilling one's responsibility to one another, whilst the life of a peddler is in general spent on the road and in the tavern. It is therefore utterly impossible that business associated with that kind of lifestyle should be accorded special privileges or even treated in the same way as sedentary business. ²⁸

This association between itinerancy and a primitive behaviour (one also viewed as corrosive of civilized, settled society) was especially prominent in the discourse surrounding 'Gypsies', and it was significant because it helped to justify enforced sedentarization as necessary step in the civilization of the Sinti and Roma, a process which policy-makers thought would, ultimately, benefit not harm those targeted.

The changes made during the revision of the Code made it harder to acquire a licence for some applicants, including many Sinti and Roma. In the draft of 1869, Paragraph 57 of the Code had provided a list of circumstances in which issuing officials *could* deny applicants licences and had thus given them considerable leeway when they came to decide whether to

approve or reject. Following revision in 1883, the formula '*is to be denied*' was adopted, making it clear that licences should from now on always be refused in certain cases, chiefly where applicants had been convicted of crimes carrying a three months prison sentence, if three years had not lapsed, and where the applicant 'was deemed to be a notorious beggar or vagrant'. As already indicated, more than one conviction for either offence (asking for food or sleeping out) was enough to confer 'notoriety'.

Two new paragraphs, 57a and 57b, were inserted in 1883. The first of these made things more difficult for pedlars with disabilities, some of whom it was thought were using licences as cover for begging. 'As a rule' 'blind, deaf or dumb' applicants, were now to be rejected. Applicants below the age of 25 should also not now be issued licences in normal circumstances, this apparently an attempt to steer young men towards the supposedly more orderly world of regular wage labour. 57b was now created to cover those circumstances where approval or rejection was to be left to the judgement of issuing officials, including, as before, cases where the applicant could not prove a fixed address, or where they had past convictions for crimes which had carried short sentences. This paragraph also indicated that officials could reject applications for renewal where licence holders had contravened licencing regulations on more than one occasion previously (for example by not carrying the licences on them).

The second revision of the Code in 1896 tightened the policy on criminal records further. The 1883 amendments had set the length of sentence that needed to have been served at six weeks, but this was now revised downwards to only one week. In 1883 57b had replicated the list of crimes given in 57 of the 1869 Code, but trespass and breach of the peace and resisting state authority were now also added. The transcripts of the German parliament's discussion of

the 1896 draft of the Code make it clear that for the legislators the dangerous and disreputable element among the *Reich*'s pedlars that they were targeting here extended well beyond 'Gypsies', but equally, that 'Gypsies' were identified as a particular problem. Tightening the restrictions of the Code, according to Centre Party delegate Wilhelm Schwarze, would help to combat the 'Gypsy plague' in the countryside.²⁹

The Education of 'Gypsy' Children

As the major Gypsy decrees made clear, 57b also provided the grounds for excluding anyone who could not guarantee that they were providing for their children, in particular by failing to ensure that their children were being adequately schooled. According to the Prussian edict of 1889 officials were to assume that 'Gypsies' would not be able to satisfy this condition, since it could not be met through the practice, adopted by some, of sending their children to different schools whilst traveling. Proper education should entail regular attendance in one place, and school teachers should refuse to accept the arrival of Gypsy children *en route*.³⁰ 57b was complimented by paragraph 62, which made it mandatory for licence holders to receive permission for any accompanying persons to travel with them, and stipulated that this should not be granted where children under 14 were to travel in a working capacity, nor where the holder had made insufficient provision for their child's education. These aspects of the Code dovetailed with the core policy of imposing sedentary and ordered lives on traveling Sinti and Roma. As outlined in the decree of 1887, 57b and 62 furnished issuing officials with an indirect means of ensuring 'Gypsy' children received regular schooling. In this way, it was hoped, they might be 'guided towards a settled way of life'.³¹ The apparently laudable aim of educating Sinti and Roma children - viewed as central to the business of

civilizing this primitive culture - also provided officials with an important moral justification for clamping down on the itinerant Romany.

It needs to be emphasized that the targeted use of the Code here, as elsewhere, was discriminatory. As the *Reichstag* delegates who opposed the tightening of the Code in 1883 made clear, denying licences to itinerant traders who were not paying the fees necessary for the schooling of their children was particularly harsh, since other workers who failed to do this were not punished with unemployment. In their view such a measure was also counterproductive, since traders who were denied the papers they needed to pursue a livelihood were ultimately less likely to be able to afford these fees.³² The way 57b was invoked in the case of ‘Gypsy’ applicants can also be contrasted with the much more flexible approach adopted towards Germany’s canal and river boat people, an itinerant culture which officials seem to have thought worth saving. In their case, schooling *en route* was permitted, with city authorities even going to the trouble of setting up special schools to cater to their needs.³³

To the extent that 57b invited local authorities to consider the welfare of Gypsy children the process of applying for a licence could ultimately have more far-reaching consequences than the refusal of an application. The Gypsy directives of 1887 and 1906 encouraged officials to assess whether the circumstances of the applicant’s family life and any failure on their part to support offspring might amount to neglect, and thus justify the removal and institutionalization of their children. After 1900 efforts to do this gathered pace and many Sinti and Roma – amongst thousands of other children – were brought into the borstal system.³⁴

If paragraphs 57 and 57b were of particular importance for Gypsy policy, some remaining provisions in the section concerning itinerant trade also deserve to be highlighted. These were the exceptional regulations governing traveling musicians and entertainers, amongst whose number many Sinti and Roma were counted. Under paragraphs 59 (60 and 60a of the revised Code of 1883) licences for such performers were issued only for the jurisdiction of the issuing authority and could only be used in other areas if they were subsequently approved for use by officials there. The decision to grant or reject applications in these cases was also to be informed by an assessment of local demand. Where it was felt that enough licences for entertainers had already been issued then this too could be grounds for refusal. All of these performers also needed additional police permission to perform in any particular locality , granted or refused at this official's sole discretion. The result of these measures was that Sinti and Roma who made a living in this way either needed to know where officials tolerated their presence or work illegally.

Special Scrutiny, Special Licences

The tightening of restrictions in 1883 was complemented by procedural changes which ensured that issuing authorities were themselves more carefully monitored. Duplicates of approved applications were to be passed to superiors,³⁵ and police were to forward the details of licences discovered in the possession of travellers to provincial officials so that the issuing authority could be identified and (if needed) reprimanded, and to note whether any grounds for their cancellation had since become apparent. Measures to counteract fraud were also introduced including the requirement to have the names of all accompanying persons, and, from 1913, photographs of the holder, on them.³⁶ Within this stricter regime applications thought to be from 'Gypsies' were subjected to special scrutiny. Officials in the Duchy of

Saxe-Altenburg, for example, were told to look out for applications for trades ‘which experience has shown are usually practised by Gypsies’, and ‘where the person comes from an area where Gypsies tend to come from’³⁷ From April 1900 Prussian officials were told that Gypsies who already had licences were not permitted to renew them in the usual way which required only that existing holders notify officials of their intent to renew, but should instead reapply each year.³⁸ It was at this stage that it also became mandatory for officials to note the ‘Gypsy status’ of licence holders on any that were issued to them, a procedure introduced to alert officials to ‘Gypsy’ applicants when they came to renew, but one which gave formal expression to the German state’s discriminatory treatment of the Sinti and Roma; these specially marked documents can be seen as precursors of the special internal passports of the 1920s, complete with fingerprints, which this group alone amongst German subjects had to carry with them.³⁹

According to the Prussian Interior Ministry’s own assessment the changes introduced in 1900 yielded results. In a letter to the provincial governors in December 1901 it was noted that ‘the measures implemented have had a positive effect, since applications from Gypsies are being rejected more frequently, and, as a result, the total number of itinerant trade licences issued to Gypsies has fallen markedly compared to previous years’. Officials should continue ‘to make as much use of the Trade Code regulations as possible’ and ‘always check the personal circumstances of applicants for itinerant trade licences with as much care as possible (especially with regards to the question concerning a fixed place of abode). This, the minister maintained, was ‘not yet happening in the manner wished for, and, as a consequence, licences [were] still being issued to Gypsies where it was mandatory to refuse them, *or where at least the law provided sufficient scope for refusal*’.⁴⁰ Further evidence for the success of the policy can be seen in a quarterly report from the summer of 1914 filed by provincial officials in

West Prussia, which records the rejection of seven applications submitted by members of the Strauss, Franz, Asler and Grünholz families for peddling, trading in horses, rat-catching and haberdashery on the grounds outlined in article 57, section 4 (likely to be previous convictions for begging or vagrancy), 57a, because they were under the age of 26, and 57b 1 & 2, because they could not provide proof of permanent address or had a criminal record.⁴¹

Implementation. Case Studies.

The strategy of licence rejection effectively criminalised cross border trade by foreign Sinti and Roma and helped to push many with German citizenship out of legal employment. It seems that it also ultimately led many towards adopting a more sedentary lifestyle, although there were other anti-Gypsy measures which played a role in this too. Newspaper reports from the early 1900s refer to the appearance of semi-permanent ‘colonies’ in German cities, and other contemporary accounts indicate the role that the licencing system played in this development.⁴² Set against the ultimate aim of a complete end to their traveling way of life, policy still fell some way short. As we have seen, the Code itself left some limited scope for the Sinti and Roma to secure licences, although this grew more difficult over the period. Inevitably, it was also the case that some issuing officials failed to make the proper checks and continued to issue licences to them. Here the difficulty of ascertaining who was and who was not a ‘Gypsy’ played a role, since it was often not clear to officials that applicant horse dealers or musicians were ‘Gypsies’.⁴³ It is also true that some officials were more tolerant than policy dictated, and were minded to issue licences where they felt there was a need for the services the Sinti and Roma provided.⁴⁴ The fact that refusal might lead to ‘Gypsy’ families requiring support from parish or state funds may well have persuaded some to do so.⁴⁵ Ultimately, the failure to completely stamp out the itinerant lifestyle of Sinti and Roma

would lead to a separate attempt to overcome the problem of their right to free movement. Reviving a strategy first pursued in the 1860s in Baden, in the immediate pre-war years several German states introduced bans on travel in 'hordes', defined - ridiculously - as a family traveling together with any non-family members.⁴⁶

The imperfect implementation of policy also owed much to the persistence of Sinti and Roma themselves of course, many of whom continued to exploit the possibilities that still existed for securing a licence, and to exercise their right to appeal decisions that had gone against them. The picture that emerges from the state government files on 'Gypsies' is of a game of cat and mouse between officials, most of whom were bent on the rejection of applications or the cancellation of any licences in the possession of 'Gypsies', and Sinti and Roma still capable of scoring small victories, applying and reapplying in different places until they obtained the vital documents, even if they could only hold on to them for a brief period. Three examples taken from German state archives shed some light on this struggle.

The first, from 1906, concerns Wilhelm Steinbach who rented a room in the Leipzig suburb of Großzschocher in order to secure the address he felt he needed for a licence. The letter of notification sent to Steinbach rescinding the licence, reproduced in full below, suggests that Leipzig officials viewed this as an underhand tactic, only employed to outsmart officials. If this was so, their vindictive treatment of Steinbach, who had paid his rent, his taxes, and registered with the police in the normal way, is nevertheless clear. So too the emergence of bureaucratic discrimination and a separate system of police registration, evident both in the expectation that 'Gypsy' be noted on identity papers, and the fact that Steinbach's name had found its way into the notorious *Zigeunerbuch*, a register of Gypsies compiled by the Bavarian police in use across Germany. It seems that Steinbach's licence was in part

withdrawn because he was not open about his 'Gypsiness' (a reason for rescinding his licence which had no basis in law.)

The Office for the Royal Saxon Governmental District of Leipzig. Leipzig, 16. July 1906

To the acrobat and businessman Wilhelm Steinbach,

On the basis of paragraph 58 of the Imperial Trade Code, and in accordance with paragraph 98.6 and paragraph 17.2-4 of the Guidance on Implementation from 1892, the Leipzig Governmental District Council has decided to rescind the itinerant trade licence nr. B.96 issued to you for the year 1906.

On 19 January 1905 you rented a room at nr. 49 Main Street, Großschocher-Windorf, from the property manager Löffler. You left a suitcase there, but no other furniture [sic], then registered with the parish council, the local police authority, here submitting proof of Prussian citizenship (although your Gypsy status was not indicated on the papers) and also registering to pay state income tax, subsequently paying this tax by post. On this basis you applied for an itinerant trade licence on 7. Nov., and, given that there were no reasons to object, the application was approved. According to a number of Gendarmerie reports that have since been brought to our attention you rove around the country like a Gypsy, in the company of other Gypsies, and are also listed under entry nr. 2566 in the Zigeunerbuch. Aside from this you have only ever been present in Großschocher-Windorf during the day, not overnight, so that it cannot be accepted that this constituted a permanent address, as was understood when the licence was issued. Rather, it should instead be assumed that you rented the room, registered with police and paid tax solely for the purposes of securing an itinerant trade licence. You have also never indicated that you have a different permanent residence elsewhere. As a result of all of these considerations the Royal Government District Authority has come to the conclusion that you do not have a permanent address in Germany at all.

Because, according to 57b, licences may be denied to applicants who do not have a permanent address in Germany, and because, according to 58, licences may be rescinded where, amongst other reasons, the reasons for rejection listed in 57b are apparent, your licence has been rescinded.

The licence is to be returned immediately,

The Royal Governmental Authority,

Johann Georg Freiherr von Welck (1839–1912)⁴⁷

A further set of documents from Saxe-Altenburg indicate the pressure that was sometimes exerted from above on state officials. In this case, officials from the office of the *Reich-Chancellor* wrote to the interior minister of the Duchy in 1897 asking why the ‘Gypsy’ Julius Lauenburger had been issued with a licence, and whether this could not be annulled, which it duly was. Lauenburger appealed the decision, only to have the ruling go against him. The judgment from 24 Sept 1897 clarified that officials had issued a licence for dealing in horses on 6 January 1898:

[..]. on the understanding that the appellant had rented accommodation in the town of Altenburg, which was indeed the case until the end of 1897 [..]. It later became evident that since the beginning of 1898 the appellant no longer had any accommodation in Altenburg, and that he had also not been able to prove that he had secured a different permanent address in Germany. The Office of the Ducal County Sheriff was for this reason authorized to rescind a licence which had been issued under false premise. No special grounds existed for the retention of the licence.⁴⁸

Correspondence from the Duchy of Brunswick relating to a request by another horse dealer with the surname of Fischer to include his son on his licence indicates that appeals such as this might sometimes prove successful. Fischer contested an initial decision by Wolfenbüttel officials to refuse the request and seems to have won the backing of the magistrate at Schöppenstedt who pointed out that Fischer was like the other 'Gypsies' resident in the town who, he noted, all paid their taxes and needed to take their older children with them when they worked away from home. Fischer's letter below again suggests that some officials were quite happy to reject requests from Gypsies out of hand, and without paying proper attention to the regulations, since there appear to have been no legal grounds for refusing his request.

Hannover, 1870-1941. The issue of pedlars' licences to Gypsies

Schöppenstedt, January 9th 1908

To the Ducal District Authority in Wolfenbüttel

In October 1907 I applied to the city magistrate here for an itinerant trade licence and requested that my 15-year-old son Albert Fischer be entered on the trade licence as an accompanying person. The Ducal District Authority rejected the request for his inclusion in their order of 21 December 1907 (nr. 24543), and my personal request for a hearing fell on deaf ears. I am regrettably forced to have my child with me because my wife deals in haberdashery goods and I cannot do without the boy. When we visit the fairs he is needed to keep an eye on my horses and to fetch fodder and water for them and such things. It is absolutely not possible for me to hire someone else over the age of 25. It is also hard to find such workers.

I want to add that I am a cripple, in that both my feet face inward, and that this prevents me from getting what is needed for my team of horses myself.

For the reasons given I humbly request that the Ducal District Authority add my son's name as an accompanying person on my trade licence. I would be able to send the licence immediately upon request.

In the hope that this justifiable request will be listened to.

Your most obedient servant, Fischer. The trade Licence carries the number 1.⁴⁹

Conclusion

Most of the Sinti and Roma on German soil were German subjects who could claim a right to free movement and – unlike those of foreign nationality - could not be excluded from the licencing system outright. Coupled with the inevitably imperfect implementation of Gypsy policy, this meant that there remained some scope for individuals to acquire licences, even if only for short periods. These small victories did not alter the essentially precarious situation of the traveling Sinti and Roma, whose freedom to move and work depended on officials who were either not as diligent as they were supposed to be, or who were prepared to defy directives and issue licences to ‘Gypsies’ in accordance with the discretion permitted to them in law. Overall, there is no doubt that the licencing system developed in the Second Empire furthered the social and economic marginalization of the Sinti and Roma. Those of foreign nationality who had previously crossed into the Empire for work were denied the legal means to do so, and those with German citizenship saw their opportunities for pursuing traditional livelihoods greatly constrained, the manner in which the regulations were applied in their case amounting to a serious infringement of their right to work and travel as German citizens. By the early 1900s, following a renewed assault on their itinerant way of life, many German Sinti and Roma came to adopt more sedentary lives in Germany's cities, establishing

‘colonies’ in the poor areas , or on the outskirts, away from other residents. The difficulties they faced in securing the work-permits needed for travel were a major reason behind this. The refusal and withdrawal of licences also criminalized those who continued to practice itinerant work without the required papers, not least because it left them more exposed to the charges of vagrancy and begging. Practising without a licence, and conviction for these misdemeanours in turn re-enforced the official view of ‘Gypsies’ as an anti-social and criminal group to be targeted with special measures. In this way their persecution became circular and self-perpetuating,

¹ Jürgen Reulecke, *Geschichte der Urbanisierung in Deutschland* (Frankfurt, Suhrkamp, 1985), pp. 69-71.

² Over 1.2 million foreign workers were employed in Germany by 1913. See Joachim Lehmann, *Ausländische Arbeiter unter dem deutschen Imperialismus 1900-1985* (Berlin, Dietz, 1988), p.6.

³ Although a renewed instance on proof of identity meant that they continued to be issued (although at very little cost). This summary is derived from John Torpey, *The Invention of the Passport. Surveillance, Citizenship and the State* (Cambridge, Cambridge University Press, 2018), 87-113. The 1867 law is reproduced in Hermann Kanngiesser (ed.), *Gesetze des Norddeutschen Bundes: Ausgabe mit Erläuterungen aus den parlamentarischen Verhandlungen und den Landesgesetzen und einem alphabetischen Sachregister* (Berlin, Müller, 1867), p. 12. <http://mdz-nbn-resolving.de/urn:nbn:de:bvb:12-bsb10563311-4>

⁴ For a discussion of these restrictive measures see Torpey, *Passport*, pp. 91, 93, 98-99, 103, 108.

⁵ Lehmann, *Ausländische Arbeiter*, pp. 39-45.

⁶ See, for example, Michael Zimmermann, ‘Ausgrenzung, Ermordung, Ausgrenzung. Nomalität und Exzeß in der polizeilichen Zigeunerverfolgung in Deutschland (1870-1980)’, in Alf Lüdtke (ed), *‘Sicherheit’ und ‘Wohlfahrt’. Polizei, Gesellschaft und Herrschaft im 19. und 20. Jahrhundert* (Frankfurt, Suhrkamp, 1992), pp. 344-349.

⁷ Or only six in every thousand of the total workforce. Wilhelm Stieda pointed instead to the number of itinerant trade licences issued each year (227,000 in 1893). See Wilhelm Stieda, *Das Hausiergewerbe in Deutschland* (Leipzig, Pöschel & Trepte, 1898), p. 21.

⁸ Stieda, *Hausiergewerbe*, p. 35.

⁹ Dietrich Denecke and Gareth Shaw, ‘Traditional Retail Systems in Germany’, in John Benson and Gareth Shaw (eds.), *The Evolution of Retail Systems c. 1800-1914* (Guildford, Leicester University Press, 1992), pp. 79-82.

¹⁰ For the genesis of the 1869 regulations for itinerant trade see Richard Rössger, ‘Eine Untersuchung über den Gewerbebetrieb im Umherziehen’, *Jahrbücher für Nationalökonomie und Statistik*, series 3, vol. 14 (1897), pp. 34-40.

¹¹ ‘Nicht das Verbot, sondern die Zulässigkeit des Hausierens ist fortan die Regel’, Stieda, *Hausiergewerbe*, p. 16.

¹² For the following see *Verhandlungen des Reichstages des Norddeutschen Bundes* 9 (1869), pp. 121-122. http://daten.digital-sammlungen.de/bsb00018304/image_126

¹³ Hue de Grais, *Handbuch der Verfassung und Verwaltung in Preußen und dem Deutschen Reiche* (Berlin, Springer, 1914), pp. 381-382. Athur Borries, *Die Amtsführung der Gemeinde-, Guts- und Amtsvorsteher in den in den östlichen Provinzen der Preußischen Monarchie* (Berlin, Heymann, 1896), pp. 142-143

¹⁴ There were around 20,000 'Gypsies' (*Zigeuner*) in this period, a total which included those who identified as Sinti or Roma, and some who did not, but who were still regarded by officialdom as 'Gypsies', the pejorative term used by the majority of society. References to 'Gypsies' here reflect this usage. Michael Zimmermann, *Rassenutopie und Genozid. Die Nationalsozialistische "Lösung" der Zigeunerfrage* (Hamburg, Christians, 1996), p. 72.

¹⁵ For a full account of policy see Simon Constantine, *Sinti and Roma in Germany (1871-1933). Gypsy Policy in the Second Empire and Weimar Republic* (London, Routledge, 2020).

¹⁶ The Prussian Directives from the 1880s are reproduced in Friedrich Retzlaff, *Polizeihandbuch. Zum praktischen Gebrauch für Polizeibeamte* (Monchen Gladbach and Leipzig, Schellmann, 1892), pp. 441-448. The 1906 instructions can be found in Arthur Geyger, *Der Polizeidienst. Ein Hilfs- und Nachschlagebuch für preußische Polizeibeamte* (Berlin, Kameradschaft, 1909), pp. 100-106. Most of the other state followed the Prussian lead and issued similar edicts in the same years.

¹⁷ *Verhandlungen des Reichstages des Norddeutschen Bundes* 9 (1869), p. 122. http://daten.digital-sammlungen.de/bsb00018304/image_127

¹⁸ *Sächsisches Wochenblatt für Verwaltung und Polizei*, issues: 7.8.1872, 9.10.1872, 10.6.1874, and 31.3.1875

¹⁹ For the 1877 changes see Karl v. Schicker, *Gewerbeordnung für das Deutsche Reich nach dem neusten Stande mit Erläuterungen und Ausführungsbestimmungen*, (Stuttgart, Kohlhammer, 1901), pp. 1161-1162.

²⁰ For the 1883 revisions see T. Ph. Berger, *Handbuch für Verwaltungs-Beamte* (Oppeln, Raabe, 1884), p. 505.

²¹ *Handbuch für Verwaltungsbeamte unter besonderer Berücksichtigung der für den Regierungsbezirk Düsseldorf erlassenen Polizeiverordnungen* (Düsseldorf, Schwann, 1888), p. 372.

²² *Handbuch für Verwaltungsbeamte. Düsseldorf*, p. 372. The 'Gypsies' deported in this way can be found in the weekly lists of expelled foreigners in the *Centralblatt für das Deutsche Reich*.

²³ For the following unless otherwise indicated see the Code, implementation instructions, and commentary in Berger, *Deutsche Gewerbe-Ordnung* and Schicker, *Gewerbeordnung*.

²⁴ Paul Stoelpel (ed), *Preußisch-Deutscher Gesetz-Codex* (Frankfurt Oder, Trowitzsch, 1902), p. 21; *Reichsgesetzblatt* (1904), pp. 68, 93, 111; D. A. Zimmermann (ed.), *Die preußische Verwaltungsgesetzgebung des Jahres 1878* (Berlin, Grosser, 1879), p. 143.

²⁵ Berger, *Deutsche Gewerbe-Ordnung*, p. 55.

²⁶ Stieda, *Hausiergewerbe*, p. 17.

²⁷ Rössger, 'Eine Untersuchung über den Gewerbebetrieb im Umherziehen', pp. 43-46.

²⁸ *Verhandlungen des Reichstages* 70 (1883), p. 1761. http://daten.digital-sammlungen.de/bsb00018440/image_171

²⁹ *Verhandlungen des Reichstages* 138 (1.2.1895), p. 665.

³⁰ Retzlaff, *Polizeihandbuch*, p. 447.

³¹ Retzlaff, *Polizeihandbuch*, p. 446.

³² See the comments by Karl Baumbach and Walter Dirichlet in *Verhandlungen des Reichstages* 70 (1883), p. 1838. http://daten.digital-sammlungen.de/bsb00018440/image_248

³³ M. Jentsch, *Die Pflege der schulpflichtigen Schifferkinder* (Hamburg, Drückerei des Rauhen Hauses, 1913), pp. 3-15.

³⁴ For a longer discussion See Constantine, *Sinti and Roma*, pp. 78-95.

³⁵ *Teltower Kreisblatt* (4.9.1886), p. 2.

³⁶ Ludwig Bartels, *Polizeilehrbuch. Zum Unterricht an Polizeischulen für die Aus- und Fortbildung von Polizeibeamten* (Berlin, Heymann, 1913), p. 152.

³⁷ Herzol. Sächs. Ministerium, Abteilung des Innern an das Herzogliche Landratsamt in Roda (15.2.1902), Thüringisches Staatsarchiv Altenburg, 1-15-0003 (Ministerium zu Altenburg, Abteilung des Inneren 1866-1922), 3954 (Das Zigeunerunwesen Bd 2), doc. 44.

³⁸ For the policy on renewal see the statement by Prussian Interior Minister von Rheinbaben in the *Reichsanzeiger* (10.1.1901), unpaginated. For the separate processing of applications see also Friedrich Retzlaff, *Kleines Polizei Handbuch* (Recklinghausen, Retzlaffs, 1912), p. 167.

³⁹ Walther v. Hippel, *Handbuch der Polizeiverwaltung* (Berlin, Vahlen, 1905), p. 185; For the Empire as a whole, see 'Ausführungsanweisung zur Gewerbeordnung für das deutsche Reich' (1.5.1904), *Ministerial-Blatt der Handels- und Gewerbe-Verwaltung* 1904, p. 123.

⁴⁰ My italics. Ministerium des Innern an den Regierungspräsident, Bromberg (20.12.1901), Geheimes Staatsarchiv Preußischer Kulturbesitz (GStA PK), XVI Rep 30 1133 (Die Bekämpfung des Zigeunerunwesens 1886-1919).

⁴¹ Nachweisung über Zigeuner denen die Ertheilung des Wandergewebescheins auf der Regierungsbezirk Bromberg versagt ist (8.7.1914), GStA PK, XVI Rep 30 1133.

⁴² See *Altonaer Nachrichten* (23.11.1907), p. 2; *Berliner Volkszeitung* (6.11.1914), p. 3; *Hamburgischer Correspondent* (12.8.1930), p. 8; Johan Miskow, 'A Recent Settlement in Berlin', *Journal of the Gypsy Lore Society*, Series 2, 5.1 (1911), p. 15 and Engelbert Wittich, 'The Organisation of the South German Gypsies', *Journal of the Gypsy Lore Society*, Series 2, vol. 4.4 (1911), pp. 291-292.

⁴³ This problem was highlighted by Centre Party leader, Matthias Erzberger. See *Verhandlungen des Reichstags* 202 (27.2.1905), p. 4842. http://daten.digitale-sammlungen.de/bsb00002812/image_827

⁴⁴ Angelika Albrecht, *Zigeuner in Altbayern 1871-1914. Eine sozial-, wirtschafts- und verwaltungsgeschichtliche Untersuchung der bayerischen Zigeunerpolitik* (München, Kommission für Bayerische Landesgeschichte, 2002), pp. 275-278.

⁴⁵ Ministerium des Innern, Karlsruhe an die Bezirksämter (17.11.1888), Landesarchiv Baden-Württemberg, Staatsarchiv Ludwigsburg E 175 (Kreisregierung Ellwangen 1818-1924) Bü 4329, Hausierer, Allgemeines (1875-1924), doc. 20158. <http://www.landesararchiv-bw.de/plink/?f=2-66372>

⁴⁶ For this policy see Constantine, *Sinti and Roma*, pp. 18-21.

⁴⁷ Sächsisches Staatsarchiv. Staatsarchiv Leipzig, 20024 (Kreishauptmannschaft Leipzig, 1573-1944), 0620 (Zigeuner 1886-1908), nr. 215.

⁴⁸ Thüringisches Staatsarchiv Altenburg, 1-15-0003 (Ministerium zu Altenburg, Abteilung des Inneren 1866-1922), 3954 (Das Zigeunerunwesen Bd 2), docs. 32, 34, 39, 42, and 47.

⁴⁹ Niedersächsisches Landesarchiv, Abteilung Wolfenbüttel, 127 (Kreisdirektion Wolfenbüttel), 3596 (Ausstellung von Wandergewerbescheinen an Zigeuner 1870-1941), no doc. nr.