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Title

"In the Name of the Folk": Women and Nation in the New Germany

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Journal

UCLA Women's Law Journal, 5(1)

Author

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Publication Date

1994

DOI

10.5070/L351017614

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“IN THE NAME OF THE FOLK”: WOMEN AND NATION IN THE NEW GERMANY

Hermine G. De Soto*

Three years after German unification, seven male judges and one female judge of the Federal Constitutional Court, “in the name of the folk,” found a newly legislated law on abortion to be constitutionally sound in part.¹ This legislation, which pivots on and around the law codified under Paragraph 218, principally proscribes abortions except for pregnancies accompanied by medical, embryo-genetic diseases, or criminal conditions. Under this legislation, however, a case of abortion would remain unprosecuted if it were undertaken in the first trimester of pregnancy. The final decision would be the responsibility of the woman, and under the Court’s requirements she, herself, would be required to pay for the abortion services, so that the state would not become a co-perpetrator in an unlawful action. Only costs for pre- and post-abortion examinations would now be covered by the woman’s health insurance. Additionally, under this new

* I wish to thank Frances Olsen for her energetic participation in co-organizing the conference *Women in Central and Eastern Europe: Nationalism, Feminism, and Possibilities for the Future*, which was held at the University of California Law School April 9–10, 1994, in Los Angeles. My gratitude also is extended to the generous financial and social support of the UCLA Center for the Study of Women, the UCLA Center for Russian and East European Studies, the UCLA Law School, and the Center for German and European Studies at the University of California, Berkeley. This paper was in part supported by a research grant from the National Council for Soviet and East European Research, and by the Women’s Studies Program and Women’s Studies Research Center at the University of Wisconsin-Madison. The support of both is greatly appreciated. Last but not least, this paper’s final version was possible only because of the endless moral and intellectual support of David John De Soto, and the ethnographic information so generously given by many East and West German friends, especially Petra Bläss.

1. The role of the German *Bundesverfassungsgericht* (Federal Constitutional Court) is to rule or decide on the constitutionality of parliamentary legislation which is sensitive to the *Grundgesetz* (Constitution), or basic law. The original *Bundesverfassungsgericht* document which contains the legal details regarding this decision is entitled *Abschnitt “Im Namen des Volkes,”* Karlsruhe: Bundesverfassungsgericht, May 28, 1993, at 1–183.

law, the pre-abortion or introductory counseling must be provided in public centers, while supplementary counseling must be completed by a gynecologist. A further stipulation of this legislation is that future abortion-conflict counseling would have to focus on the safety of unborn life, and this counseling would have to be legally documented. Even though this decision's basic outline remains constitutional, the legislature will still have to design and debate specific rules and regulations which are to be institutionalized and applied to issues of, for example, counseling fees, abortion costs, and whether or not persons who advise a woman to have an abortion should be prosecuted.

Concerned and politically active women from the German Bundestag who witnessed this historic judicial finding of May 1993 in Karlsruhe were petrified, and one East German woman politician representing an Eastern German constituency, voiced in disbelief:

Indeed, now the annexation is complete! According to today's ruling, from June 16, 1993, a unified abortion law [*Abtreibungs(un)recht*] will be enforced in East and West. This means not only that women from the former GDR lost their rights based on *Fristenregelung*, but also that we East women lost a right which we thought was irreversible, the right for self-determination over our bodies and our lifestyle preferences. While I grew up in East Germany, the story of Käte from Friederich Wolf's drama "Cyankali" symbolized for me a story of long past times. The reports from my West German women friends about their struggle against the shameful Paragraph 218 in the 1970s, and then the Memminger trials in 1989, all of these struggles belonged for me into a different world. Today, a medieval ruling hits us East German women.²

INTRODUCTION

After 1949, different social systems were constructed in the former German Democratic Republic (GDR) and the Federal Republic of Germany (FRG). The GDR was organized on a nation-state model that Konrád and Szelényi describe as a socialist rational redistributive system.³ The FRG was organized and constructed as a democratic capitalist system. Within these distinct social structures and political economies both states' actors also

2. Author's translation. Following anthropological ethics, the speakers' names associated with the blocked quotations throughout this paper will remain confidential.

3. GYOERGY KONRÁD & IVAN SZELÉNYI, *THE INTELLECTUALS ON THE ROAD TO CLASS POWER* 47-60 (1979).

constructed two particular German nations. A nation, according to Verdery, "as a construct, mediates the relation between subjects and states (which are themselves social constructs too). It is a cultural relation intended to link a state with its subjects and to distinguish them from the subjects of other states." Based on her recent research on gender and nation in Romania, Verdery defined the "socialist nation" as "a socialist paternalist nation which implicated gender by seeking to eradicate male-female differences to an unprecedented degree, casting onto the state certain tasks associated with household gender roles."⁴

Concurring with Verdery, and adopting conceptual advancements by Lerner⁵ for locating gender in both German nations prior to unification, I suggest that after 1949 both the GDR and the FRG constructed their societies within gendered nations in which women as subjects were located within distinct sex-gender systems which, although in different political and economic structures, allocated "resources, property, and privileges to persons according to culturally defined gender roles."⁶ My comparative research from Eastern and Western Germany indicates that women in the GDR positioned themselves within subjective relations of a socialist paternalistic dominance, which Lerner defines as a "relationship of a dominant group, considered superior, to a subordinate group, considered inferior, in which the dominance is mitigated by mutual obligations and reciprocal rights." In contrast, West German women's subjective relations were embedded within a class-based capitalist subordinate position.

As I have detailed elsewhere, it appears that women in the GDR were nationally legitimized as working mothers who would, after the "Baby Year," return to work.⁷ Since the GDR economy needed working women (as much as it needed working men), the paternal state planners constructed social policies and

4. Katherine Verdery, *From Parent-State to Family Patriarchs: Gender and Nation in Contemporary Eastern Europe*, 8 E. EUR. POL. & SOC'Y 225 (1994). [hereinafter *Parent-State*].

5. GERDA LERNER, *THE CREATION OF PATRIARCHY* 238-39 (1986).

6. GAIL RUBIN, *The Traffic in Women: Notes on the 'Political Economy' of Sex*, in *TOWARD AN ANTHROPOLOGY OF WOMEN* 157-210 (1975).

One striking document of different subjective experiences of East and West German women is Katrin Rohnstock's edited volume *STIEFSCHWESTERN: WAS OST-FRAUEN UND WEST-FRAUEN VONEINANDER DENKEN* (Fischer Verlag, Frankfurt, 1994).

7. Hermine G. De Soto, *Contesting Female Personhood: Comparison of East and West German Legal Cultures in the Process of Unification* (unpublished manuscript, on file with author).

legal practices aimed at coordinating occupations and motherhood.⁸ However, since the system did not principally challenge culturally defined gender roles in public and in the nuclear family, the working mother had to combine yet another role (and its work) into those of worker and mother, namely that of housewife.⁹

Quite different gender relations for women were constructed in the FRG after WW II. Contemporary working West German women who choose to have children have not been supported by state paternalistic policies to remain in the labor force or return to paid employment as were their East German counterparts. Instead, the institutional structure is such that women are expected to terminate their employment after pregnancy leave in order to free the labor market for full-time employment possibilities for new workers, most often for men. In this way, women are expected to return to the institutionally favored male-centered nuclear family, taking full responsibilities for reproductive labor in the household and for the raising of and caring for children. In the FRG, the nation-state legitimizes a sex-gender system in which women are primarily culturally defined as mothers and housewives, and, if need arises, women may move into the economical and socially insecure half-time labor sector.¹⁰ In pointed contrast to the GDR, the FRG capitalist state has not formulated policies which coordinate work and motherhood.

Following the democratic revolution of November 1989, the majority of the East German population voted for German unifi-

8. Hermine G. De Soto, *Equality/Inequality: Contesting Female Personhood in the Process of Making Civil Society in Eastern Germany*, in *THE CURTAIN RISES: RETHINKING CULTURE, IDEOLOGY, AND THE STATE IN EASTERN EUROPE* 289-304 (1993).

9. Here I would like to emphasize that women whom I interviewed wanted to make it known that, despite their structural or objective positions in the system, their subjective positions, i.e., their distinct individualities, personhoods, daily experiences, sensibilities, and identities ought to be equally addressed by western-trained researchers. To understand women's experiences and identities, future ethnographic research needs to pay more attention to narrations and life stories from a feminist anthropological point of view. An interesting methodological approach, although not based on ethnographic interviews, is provided in Irene Dölling, *Women's Experiences 'Above' and 'Below': How East German Women Experience and Interpret Their Situation After the Unification of the Two German States*, 1 *EUR. J. WOMEN'S STUD.* 29-42 (1994).

10. Frances Olsen made me aware of an interesting feminist legal concern on part-time work as possible sex discrimination. She discusses this problem in *Legal Responses to Gender Discrimination in Europe and the USA*, 12 *COLLECTED COURSES OF THE ACADEMY OF EUROPEAN LAW* 201-68 (1993).

cation. In October 1990, the Unification Treaty officially brought the GDR into the FRG's legal and economic/political structure and its accompanying institutional organization and power. From its beginning, German unification was marked by intense political debates and contestation over how to redefine the national self-understanding. During this rapid transition many profound changes occurred, particularly in East Germany. Among various chaotic, post-unification scenarios and contestations, social change in the first phase was quite unpredictable, particularly in regard to how political and civic actors would change their gendered understanding of women. Even two months before the German populations voice their preference for federal parliamentary representation, for the second time since unification, political elites are still competing for the power of the nation-state, control over the national identity, and control over women.

In the battle over the nation from 1990 to the present, I suggest that three profound social issues have become the means for mapping the groundwork for the future national self-understanding. First, for the purpose of reinventing a new "continuous" historical tradition, the German socialist tradition (which began around 1889, well before the GDR state) continues to be delegitimized.¹¹ Second, for drawing new legal boundaries of inclusion and exclusion in the national collectivity, the principle of ethnicity has been reemphasized as a legal requirement for citizenship.¹² Finally, in order to reinforce the patriarchal power in the nation-state, political elites have again resorted to a well-worn practice: circuitously denying women the right of self-determination and autonomy over their bodies and reproduction by legislating a nationally legitimized control over women's bodies to safeguard "future unborn citizens, and thus 'the Nation'."

My argument presented here is that in projects of nation re-building, it is not only history and ethnicity that have become instruments in the competition for hegemony over who will control the levels of future economic, social, and cultural powers in the unified Germany, but also that women (again) have become

11. This process was analyzed in my chapter, *Symbolic Productions in the New East Side of Berlin, 1990-1994*, in *THE CITY: TODAY, YESTERDAY, AND THE DAY BEFORE* (1994).

12. For more details on this development, see Hermine De Soto & Konstanze Plett, "Citizenship and minorities in the process of nation re-building in Germany," Paper Presented at the Annual American Anthropological Association Meeting, Washington, D.C., 1993.

utilized as instruments (not persons) in this current venture. In this paper I will focus on this latter cultural process, using an abbreviated case study of the East/West German abortion confrontation to illustrate the process.

HIS-STORY AND NATIONALIST DOMINATIONS

Since the collapse of socialist structures in Eastern Europe and the rise of newly defined nation-states, scholars engaged in analyses of gender and social change have drawn attention to the rise of diverse, complex, and often violent activities or campaigns directed against women in the name of the new nations.¹³ Although the GDR's transformation after 1989 and its unification with the social organization of the FRG were structurally different from the changes occurring among other eastern European countries, the problem of how to control women's reproductive rights in the unification process of the two different nations became as vital an interest in German national politics as these rights were in the national politics of post-socialist eastern European countries. In Germany these national debates occurred later than in Hungary or Poland, postponed in part because more urgent immediate problems confronting East German women, problems such as mass female unemployment and the comprehensive negation/suspension of the certainties of daily life; and in part because of the Unification Treaty of 1990.¹⁴ According to this treaty, the GDR abortion law and its applica-

13. See especially: on Romania, Gail Kligman, *The Politics of Reproduction in Ceausescu's Romania: A Case Study in Political Culture*, 6 E. EUR. POL. & SOC'Y 364 (1992) and *Parent-State*, *supra* note 4; on Hungary, Eva Huseby-Darvas, *Feminism, the Murderer of Mothers: Neo-Natalist Reconstruction of Gender in Hungary* (1991) (paper presented at the Annual American Anthropological Association Meeting, on file with author), and Susan Gal, *Gender in the Post-Socialist Transition: the Abortion Debate in Hungary*, 8 E. EUR. POL. & SOC'Y 256 (1994); on Poland, Małgorzata Fuszara, *Abortion and the Formation of the Public Sphere in Poland*, in GENDER POLITICS AND POST-COMMUNISM 241 (Nanette Funk & Magda Mueller eds., 1993) [hereinafter GENDER POLITICS] and Ewa Hauser et. al., *Feminism in the Interstices of Politics and Culture: Poland in Transition*, in GENDER POLITICS 257, *supra*; on the former Yugoslavia, Olga Supek, *The Unborn are also Croats* (1991) (paper presented at the Annual American Anthropological Association Meeting, on file with author), Rada Ivekovic, *Women, Nationalism and War: Make Love Not War*, 8 Hypatia (1993) and Andjeltza Milic, *Women and Nationalism in the Former Yugoslavia*, in GENDER POLITICS 109, *supra*.

14. Małgorzata Fuszara pointed out to me, in 1990 in Madison, Wisconsin, that the abortion problem was already a national debate in Poland. When I met Fuszara again in early 1992 in East Berlin, the debate in Germany about abortion had only then entered the national parliamentary discourse. Similarly, E. Huseby-Darvas and S. Gal, in presentations at the 1991 annual meeting of the American Anthropologi-

tion were to remain legal for East German women until December 31, 1992, by which time a united German resolution would exist. However, in the event that no regulation or agreement had been reached by that date, the GDR law would continue as valid in the six new federal states of eastern Germany until such law was implemented.¹⁵

The question of how political elites would “renegotiate” women’s bodies and reproductive rights was still open for debate. Yet women activists were amply aware that the new patriarchal state actors would not easily loosen control over such rights, particularly in view of the patriarchal past. Political contestation, power, and control over female reproductive rights has a long HIS-story in Germany. This particular male-centered tradition began with the construction of the modern nation-state in the Nineteenth Century. In the name of the new nation, German political elites zealously erected legal control over women’s bodies and their reproductive rights. Indeed, this dominating practice was of such immediate importance that in 1871 — the year in which the new nation-state became symbolically legitimized through the crowning of the King of Prussia as the emperor of the united German Reich — the empire, along with its incorporation of ethnonationalist citizenship principles, used women in its construction of its national identity, in part by passing a law which is still known as Paragraph 218. This imperial law stated that any pregnant women who would intentionally abort or kill inside the mother’s body (*Mutterleib*) would be punished and imprisoned for five years. From 1871 until the present, whenever the nation underwent major transformations, a national dispute arose over who would control women’s reproductive rights and how this control would be exercised.

During the transition to the Weimar Republic, Social Democrats and Communists battled to eliminate the imperial, class-

cal Association in Chicago, referred to national Hungarian debates. See HUSEBY-DARVAS, *supra* note 13; and GAL, *supra* note 13.

In Germany, although two particularly informative books on abortion and women’s bodies were published, according to my knowledge neither was influential in regard to the later parliamentary debates on these issues. See ENDE DER SELBSTVERSTÄNDLICHKEIT? DIE ABSCHAFFUNG DES PARAGRAPHEN 218 IN DER DDR (Kirsten Thietz ed., 1992), and BARBARA DUDEN, DER FRAUENLEIB ALS ÖFFENTLICHER ORT (1991).

15. Throughout this paper I refer to the GDR after unification as Eastern Germany. The six new federal states in eastern Germany are: City-State Berlin (with an uncertain status); Brandenburg; Sachsen-Anhalt; Thüringen; Sachsen; and Mecklenburg-Vorpommern.

based Paragraph 218. They argued that over 1000 of the women imprisoned under it were poor, working-class women. By 1926, this battle led to a "more progressive" change in the law: women accused of violating this law no longer were to be charged or convicted and imprisoned as felons, but were to face charges and possible jailing only as petty criminals. The political elites of the new Republic also amended a new rule which, at that time, was perceived as "liberal" (although since then this amendment has been periodically challenged by pro-choice advocates and by more receptive-minded politicians). This rule became known as the *medizinische Indikation* (medical indications). In the Weimar Republic, a *medizinische Indikation* meant that an abortion was not a crime if a doctor's medical diagnosis confirmed that an abortion was necessary due to critical medical, biological, moral, or social conditions facing a woman.¹⁶

Following the collapse of the Weimar Republic and the rise of the National Socialist Regime, abortions were legally prohibited. However, the new dictatorial state enforced the cruelest exemptions to the rule. For example, compulsory sterilizations were enforced to preserve the "nation" from genetic disorders. Additionally an abortion could be sanctioned by a doctor through the *eugenische Indikation*. In 1943, the Nazi state further abused women's reproductive rights to advance nationalist and racist programs. On the one hand, abortion again became a high crime as under Imperial Germany, with the new consequence that the "perpetrators who still continued to restrict the life energy or *Lebenskraft* of the German *Volk*" would face capital punishment. On the other hand, the further racist strategy of Nazi control over women's reproductive rights was seen in the many abortions forced upon East European women.¹⁷

At the end of WW II, after the defeat of the Hitler Regime, German women who asserted that they had been raped by Russian soldiers were legally permitted to have abortions. The post-war FRG, under the Christian Democratic political leadership,

16. Atina Grossmann offers an excellent insight to these conditions during the Weimar Republic in *Abortion and Economic Crisis: The 1931 Campaign Against Paragraph 218*, in *WHEN BIOLOGY BECAME DESTINY: WOMEN IN WEIMAR AND NAZI GERMANY* 66-86 (Renate Bridenthal et al. eds., 1984) [hereinafter *WHEN BIOLOGY BECAME DESTINY*].

17. These contradictory positions of the Nazi "ideology of racism" are examined in Gisela Bock, *Racism and Sexism in Nazi Germany: Motherhood, Compulsory Sterilization and the State*, in *WHEN BIOLOGY BECAME DESTINY*, *supra* note 16, at 271-96.

again adopted Paragraph 218 or the *Indikationsregelung*. Under this form of the law, an abortion was legal only if a woman's health was endangered (*medizinische Indikation*), if a woman was raped (*kriminologische Indikation*), or if the fetus was injured (*eugenische Indikation*). In 1974, under a Social Democratic leadership, the parliament enacted the so-called *Fristenregelung*, or *Fristenlösung*, a rule whereby a woman would have the right to an abortion in the first twelve weeks of pregnancy. Before going into effect, however, this resolution was contested to the Federal Constitutional Court by five Christian-Democratic governed states. In 1975, the parliament again enacted the *Indikations* law leaving control over abortion in the hands of doctors and licensed counselors. The *Indikations* law received a positive ruling from the Federal Constitutional Court whose Justices found the previously-enacted *Fristenregelung*, which had placed the right to decide whether or not to continue a pregnancy (at least for the first twelve weeks) in the hands of the pregnant woman, to be unconstitutional. Following this decision, from 1976 up to the present, under the Christian-Democratic governed country, West German women's reproductive rights remained under firm national control through the *Indikationsregelung*.

In the post-war GDR, between 1950 and 1965, abortions were illegal unless a medical diagnosis attested to severe medical and genetic conditions. This *Indikationsregelung* changed in 1965 and abortions thereafter were permitted when serious psychological and social afflictions were diagnosed. In 1972, the GDR paternal state enacted the *Fristenlösung*, whereby women had the right to abort in the first twelve weeks of pregnancy. Unlike the experience of women in the FRG, the *Fristenlösung* was never rescinded for women in the GDR; it remained unchanged until the unified legislature and judiciary, in 1992, forwarded a unified solution. It is this distinct, almost twenty-year-long experience of self determination over one's body with which East German women entered the unified Germany.

However, in 1992, as during previous social transformations in Germany, most political parties were not ready to give up control over the reproductive rights of the "new nation's" women. Moreover, during the profound process of "nationalizing" two different countries' cultural experiences, and in seeking a new unifying legitimate national identity, an abortion law which was pro-women and which could be identified and politically used as

a leftover from the "East German evil communist regime" would become an ideologically useful tool for political elites. Such practices as reappropriating East German women's rights and tightening legal control over West German women's reproductive rights would also help to redirect Germany's future toward a more conservative national self-understanding, all legitimized "in the name of the folk."¹⁸

During my fieldwork in early summer 1992, eastern German women mobilized throughout the six former East German states in order to form political pressure groups in response to the Federal Parliament's decision to debate and pass a final resolution for a new abortion law in June 1992. The women representing various political parties and political civic groups expressed differing views on this issue. In the course of events, it became obvious that there was a lack of well-organized, women-centered political groups which would effectively challenge the up-coming patriarchal national contest. This dilemma was recently addressed by Rosenberg, who examined the two German women's movements after unification:

The barriers to cooperation between eastern feminists and [the] western women's movement lie both in the radically different effects of unification on their lives and the differences between their pre-unification experience. The systems in which they lived, defined in many ways in opposition to one another, shaped their underlying assumptions and analytical approaches.¹⁹

DISCURSIVE CONTESTS, COMPLEMENTARY FILIATIONS

In the absence of such a woman-centered opposition, other civic and political groups and parties, directly and indirectly, entered the public debate over the control of women's reproductive rights prior to the June 1992 parliamentary debates. These included the West German civic groups referred to as *Lebensschützer* (pro-life groups), the CDU/CSU, FDP, SPD, Bündnis 90/Grüne, the PDS²⁰ and an independent citizens' initiative, the

18. For more details see the special report, *Bundesverfassungsgericht Abschrift "Im Namen des Volkes,"* May 28, 1993, at 1-183.

19. Dorothy Rosenberg, *Step-sisters: On the Difficulties of German-German Feminist Cooperation in*, COMMUNICATION IN EASTERN EUROPE: THE ROLE OF HISTORY, CULTURE AND MEDIA IN CONTEMPORARY CONFLICT (Fred L. Casmir ed., forthcoming 1995) and Dorothy Rosenberg, *Distant Relations: Class, Race, and National Origin in the German Women's Movement*, WOMEN'S STUD. INT'L F. (forthcoming 1995).

20. See Appendix for full party names.

Kuratorium for a Democratically Constituted Federation of German States.

Prior to 1992 and the collapse of the GDR, the *Lebensschützer* (pro-life groups) had organized against a "feminist cultural revolution."²¹ While most of the pro-life organizations continue to situate themselves at the right or extreme right of the CDU/CSU party's position, some of their leaders actively engage in campaigns for the CDU/CSU, hoping to persuade this major party, especially during nation-rebuilding, to adopt their nationalist demands of changing gender relations. Many leading members are either directly or indirectly in contact with particular political representatives of the Republikaner, the CSU, and the CDU. In their nationalist beliefs, they express the primacy of the German nation, which is to be morally rescued from feminism, Islam, and other foreign conspiracies. Currently, four pro-life groups which organize as Christian parties call for laws which: (1) would proscribe abortionist activities; (2) would call for legal changes to protect the life of unborn children; and (3) would change terms such as *Schwangerschaftsabbruch* (abortion) to *Menschentötung* (killing of humans). They further demand removal of doctors from *Indikations* diagnoses and straightforward state regulation opposing abortions. For these groups, a woman's "natural" *Beruf* (profession) in the renewed nation should consist exclusively of motherhood.

Nine other organizations which position themselves on the extreme right generally embrace such demands for new laws to protect "unborn children."²² However, in contrast to the Christian party positions mentioned above, these particular pro-life groups explicitly link nationalist, sexist, and racist notions in order to influence the post-unification abortion debate. In their view, abortion is the cause for the biological ruin of the nation, a nation which needs to be strong in order to become the leader in a different future Europe. For these organizations, Germany's current problems of unemployment, social welfare, and foreign workers are linked to those women who advocate abortions. As early as 1976, a member of such a pro-life group called for a

21. See FRAUEN GEGEN DEN PARAGRAPH 218 BUNDESWEITE KOORDINATION ; VORSICHT LEBENSCHÜTZER: DIE MACHT DER ORGANISIERTEN ABTREIBUNGSGEGNER (Hamburg, 1991.)

22. These organizations are: den Deutschen, NPD, Mündigen Bürgern, Deutsche Alternative, Deutsche Volkunion, Freiheitliche Deutsche Arbeiterpartei, Hamburger Liste für Ausländerstopp, Nationale Liste, and Nationalistische Front.

change in the *Indikationsregelung* of Paragraph 218, arguing "that this rule will now allow Turkish, Persian, African, Asian doctors, etc., who passed their medical examinations here, instead of going back to their countries, to remain here as assistants or doctors and decide over the right to life of every unborn German child." In their misogynist (not to mention openly racist) view, these nationalist pro-life proponents argue that a woman's only place ought to be within a bourgeois nuclear family based on Christian morals, biology, and the state. They believe that alternative lifestyles should be prosecuted or changed through therapy, and they conceptually dismiss differences between biological sex and cultural constructions of gender from their philosophy. Based on their myth, sex essentially determines subjective relations and equal gender relations would deny the "true nature" of men and women. Thus, they acclaim the nuclear family as the "natural cell" and a fundamental component of a healthy state, and a woman's "natural" role within that cell as being a subordinate and submissive mother.

The governing party, the CDU, began to publicize its legal and cultural position within the contest over reproductive rights months before the parliamentary debate and final vote on Paragraph 218. During my ethnographic interviews in the weeks before the June 25, 1992 vote, a female representative of the CDU explained that the party would call for improvement of safety for unborn life in the united Germany, and that "whoever would kill unborn life" would be prosecuted to the extent of the protection-of-life law (*Lebensschutzgesetze*). Moreover, I was told that the CDU would support the *Indikationsregelung*, under which women in the FRG had to undergo compulsory counseling and, if an abortion was approved and completed, under which the health insurance companies were legally required to cover the costs.

The Bavarian CSU, the coalition party of the governing CDU, concurred with the basic assumptions of the CDU, but stipulated some noticeable new demands: (1) to legally redefine the word *Schwangerschaftsabbruch* (pregnancy interruption) to mean *Tötung ungeborenen menschlichen Lebens* (killing of unborn human life), and (2) to change the aim of compulsory counseling standards to reorient women toward continuation of the pregnancy and not toward abortion. Moreover, both the CDU and the CSU proposed that, under the new law, the costs of an abortion should be sustained by the woman.

The small FDP party called for a new law which would provide improved security measures for “unborn life.” In contrast to the above CDU/CSU positions, this proposal put greater legislative emphasis on promoting a more child-friendly society, and counseling about sexuality, birth control methods, and family planning. This formulation for a new law favored a restrictive *Fristenlösung*, i.e., an abortion would be legal in the first trimester, however, a woman would have to undergo required counseling three days before the planned abortion.

The Social Democrats (SPD) also favored a new law whose emphasis would secure “unborn life.” In a minor difference from the FDP position, the SPD stipulated that Paragraph 218 should be changed into a *Fristenregelung*. I found in my interviews that, in contrast to the FDP, the SPD did not call for compulsory and prescriptive counseling, but rather sought to restrict this to a medical doctor who would counsel a woman on medical procedures about an abortion. Furthermore, the SPD continued to champion national insurance coverage of payment for abortions.

The minor party that reorganized its coalition after German unification — and which, in 1992, became known as Bündnis 90/Grüne — promoted a philosophy in which the law should secure freedom of choice for women with regard to unwanted pregnancies. In their pro-choice position, Bündnis 90/Grüne advocated gratis counseling services related to sexuality, methods, and family planning.

Another minor party, the PDS, was the only political group that called for the unrestrictive elimination of Paragraph 218, with emphasis on women’s self-determination over their reproductive rights. In this proposal, women would be free to decide about the abortion procedures, and doctors would be required to provide advice on these procedures. The medical costs would be covered by a woman’s health insurance.

Finally, the independent citizens’ initiative, the *Kuratorium*, which had formed during the East/West transition, attempted to influence the process of nation-rebuilding by proposing a new constitution. Women-centered and concerned professionals, politicians, and activists outlined alternative laws for women. During my fieldwork, four legal variations were discussed in public hearings in Bonn. The first one demanded a pro-choice right, and the second maintained that whoever terminates a pregnancy could not be legally prosecuted unless the abortion were conducted against the woman’s will. The third and fourth positions

resembled the first two with slight linguistic stipulations.²³ The *Kuratorium* withdrew from public engagement when their efforts were negated as the traditional constitution became re-legitimized rather than re-formed. Before the pivotal, determinative parliamentary meeting in June 1992, it soon became apparent that diverse parties were searching for alliances. In this historic moment, the SPD — competing for power with the CDU/CSU coalition — quietly had approached the FDP, and together they formulated a new compromise, the *Fristenlösung* with *Zwangsberatung* (compulsory counseling). Just a few days later, the CDU joined the alliance adding to the *Fristenlösung* (SPD) and compulsory counseling (FDP) that women would be legally required to prove that they were in a *Notlage* (severe distress). Soon, all parties except the PDS joined the new alliance. Together, they publicly forwarded the so-called *Gruppenantrag* (group proposal) for compromised control of reproductive rights. On May 21, 1992, before the decisive parliamentary vote, the legislature called for a last minute special hearing (*Sonderausschusssitzung*) in the Reichstag in Berlin on the “*Schutz des ungeborenen Lebens*” (“the protection of unborn life”). At this hearing, the representatives of parliament made their various partisan, last-minute appeals to all delegates to rethink their moral views about Paragraph 218.²⁴

Before the parliamentary representatives walked into the Reichstag in Berlin, hundreds of East German women confronted them in protest. For the last time, they tried to voice their existential fears in slogans such as: “Whoever cannot resist should at least oppose,” or “Remove Paragraph 218 — legal abortion instead of prohibited intrusion in female self-determination,” and “If men become pregnant with an idea, then Paragraph 218 is born.” After this last lobbying for votes by both sides, the representatives left again for Bonn.

23. The special hearings of the *Verfassungs-Kuratorium* are published in the report *DOKUMENTATION: FRAUENRECHTE IN DER VERFASSUNG* (Berlin, 1992). According to my interview with one leading feminist politician of the Federal Parliament, the *Kuratorium's* actions were not influential in affecting the national and political debates over the abortion problem of the unified Germany.

24. There were 17 such debates prior to this one. However, this special meeting was significant for East German women because it was the only one which was held in East Berlin instead of Bonn (West Germany). During the protest, women told me that this is the first time that members of parliament had to confront, face-to-face, East German women, about whose reproductive rights they would regulate.

After a fierce parliamentary debate in Bonn on June 26, 1992, the majority voted for the *Gruppenantrag*.²⁵ With that decision, non-CDU/CSU representatives thought that the battle for a unified law on women's reproductive rights was over; however, immediately after the vote, 247 CDU/CSU representatives brought a legislative challenge,²⁶ arguing that the new resolution inherent in the *Gruppenantrag*, or compromise law, violated the constitution, or *Grundgesetz*. In retrospect, it appears that this action by the CDU/CSU did not come as a total surprise. Already before and during the formulation of the new law, informed representatives from all political parties were aware of the fact that while the new law was "negotiated," all major parties had developed and projected their positions with the Federal Constitutional Court judges' ideology in mind. Germany's highest Court had persistently in the past ruled against women's right for self-determination over their bodies. The Federal Constitutional Court then issued a stay to maintain the status quo ante established in the Unification Treaty.

As stated at the beginning of this paper, in May 1993, the Federal Constitutional Court, which had been called into action by the CDU's legislative challenge to the constitutionality of the law, announced that "in the name of the folk" (*im Namen des deutschen Volkes*), it had decided that abortions would be principally illegal except for those based on medical, embryo-genetic diseases, or criminal conditions. However, abortions would remain unpunished if they were undertaken in the first trimester. The final decision would be made by the woman who would undergo compulsory counseling services paid for by her, so that the state would not become a co-perpetrator in an unlawful action. Only costs for pre- and post-abortion examinations would now be covered by the woman's health insurance. All other abortion-

25. In this paper, I will not analyze the final voting behaviors of individual party members. Suffice it to point out that there were unexpected voting swings within and across party lines. However, one important fact needs to be stressed: on this historic vote, the majority of progressive party members from the PDS and Bündnis 90/Grüne also voted for the *Gruppenantrag*.

26. In Germany, members of Parliament may challenge the constitutionality of a law directly before the Federal Constitutional Court before its implementation. This process is called *Abstrakte Normenkontrolle*. Such a challenge may be brought by either a majority in either House of Parliament (*Bundestag* or *Bundesrat*) or by at least 50% of one of the parties in Parliament (*Fraktion*).

related costs were to be privately paid.²⁷ The introductory counseling must be provided in public centers, while supplementary counseling must be completed by a gynecologist. Additionally, future abortion-conflict counseling (*Schwangerschaftskonfliktberatung*) would have to focus on the safety of unborn life and be legally documented. This judicial order went again to parliament for further debate and legislation.

The final parliamentary debate was held in May 1994. During the debate, one feminist woman representative from the PDS pleaded the following:

The women from the Federal Coordination Group who are against Paragraph 218 characterized the Supreme Court's decision as a specter that haunts the Federal Republic—the specter of the “unborn life.” All pro-life representatives of diverse positions, i. e., doctors, judges, CDU/CSU, FDP and now also SPD have chosen to safeguard unborn life against everyone and everybody, but most of all against pregnant women. Especially SHE, who in HER condition is seen by opponents as unaccountable, egotistical, frivolous, and irresponsible. According to these opponents, the unborn life needs to be protected from HER. The now-weakened role of the father or husband, who in past epochs decided over women's body, sexuality, and births, this role and safeguard function today was again appropriated by the state through the highest court. By utilizing the juridical myth of equality of legal subjects, this court successfully played women's right of self-determination against women's reproductive rights.²⁸ Paradoxically, however, this state's protective arm diminishes at the moment of birth.

A male representative from the CDU/CSU expounded:

The current *Zeitgeist* is predominately taken over by an *Ungeist* (mindlessness). Concepts such as the “beginning of life” or “pregnancy interruption” mean that in each case one deals or talks about the life of a boy or girl. If one considers these concepts in this way, then one can depart from the ideas of *Zeitgeist* and *Ungeist* and embrace those of the Holy Ghost who revealed that, with the cooperation of male and female, and with God's will and God's love, human life begins, a life which God told us will live forever.

27. There is one exception. Women who would qualify for receiving public assistance, or who are economically disadvantaged, would have their abortion costs paid for through a special welfare program.

28. Here the author believes that women's self-determination rights are inseparable from their reproductive rights. In the interviewee's opinion when these are separated it is a violation of women's self-determination over their reproductive rights.

And a male representative of the Republikaner (listed as an independent representative) vituperated:

A woman can experience self-determination before she becomes a caretaker for another life. If a captain on the high seas says my ship belongs to me, then this might be true. However, he can not say, on the high seas, "off with you from my boat!" This is exactly what those abortionists do. Another example, from my veterinarian experience in the former GDR: if a farmer has a valuable cow, then the unborn calf has for the farmer the same equal value or even a higher value than that of the cow. What may be ethical for an unborn animal must be even more ethical for an unborn human. We represent the right of life of all unborn children. . . . Decide today if we should call abortion and euthanasia welfare fascism or welfare bolshevism—it is murder in both cases since it is the planned killing of human life. (Excerpted from parliamentary recordings from Bonn, May 26, 1994.)²⁹

On the evening prior to the debate in the Bundestag, 300,000 pro-life supporters assembled outside parliament, holding lighted candles.³⁰ Identifying themselves as The Life-protectors (*Lebenschützer*), several pro-life right-wing groups handed out flyers which reiterated their nationalist anxieties over the plan to "save many small citizens (*kleine Staatsbürger*) whom our nation so urgently needs."

Inside the parliament, the majority vote passed. The conservative CDU/FDP positions became legitimized, and the cultural understandings about women's future position in the unified Germany, as were essentially expressed in this vote, substantiated the legal ideology of the Federal Constitutional Court (*Bundesverfassungsgericht*). Following this legislative procedure, the parliamentary bill of the house (Bundestag) proceeded to the Federal Council (Bundesrat) of representatives from the federal states for final ratification. At this time, however, the SPD, whose representatives constitute the majority in the Bundesrat, rejected the present form of the bill, contending that an abortion ought to be paid not by a woman or her health insurance, but rather by a special welfare program. It was expected that the adopted legislation, with minor amendments, would be enacted by a specially designated coordination committee (*Vermittlungsausschuss*) in September 1994, however, at the coordination

29. Author's translation. The entire parliamentary debates are available as proceedings, *Deutscher Bundestag, 12. Wahlperiode, 230. Sitzung*, (Bonn, May 26, 1994.)

30. The number 300,000 should symbolically refer to the 300,000 abortions which, according to the Livesavers, were carried out each year.

committee meeting in September, there was a last minute deadlock, due to the fact that the special coordination committee members were unable to come to an agreement on two issues: who should pay for an abortion, and whether or not persons in the family circle ("*familiäre Umfeld*") of a woman should be punished if such persons assist in advising the woman to have an abortion. Now the abortion problem will have to await a new hearing following the national parliamentary elections at the end of October 1994.

CONCLUSION

German unification was only the first act in a campaign undertaken by West German political elites to rebuild the nation-state. While a small and progressively minded group of citizens saw this historic moment as a possibility for expanding democracy, political elites had already begun to redirect Germany into a more traditionally oriented national self-understanding. Under this direction, a more narrowly defined understanding of history, citizenship, and the position of women became legitimized. This latter process became expressed in a national debate over women's right to self-determination in regard to reproductive rights. Struggles centered on women's bodies have consistently erupted into major national disputes whenever the German nation-state has arrived at a particular historic juncture of constituting or reconstructing itself. In all these political disputes women's bodies have been not merely besieged, but appropriated, compromised, and instrumentalized for political power and different nationalist visions.

The most recent victory of political elites in part became possible because the German women's movements were only able to organize symbolic resistance and were helpless to develop effective political opposition in a crucial time of nation-rebuilding after German unification. This failure of women to constitute themselves, even if only temporarily, as a cohesive group on the basis of their common gender role in the contest for power and control, in part, assisted the major contemporary German political parties in aligning themselves anew. Through this alliance, they again secured legitimation and reproduction of the now unified — and more strongly patriarchal — nation-state.

APPENDIX

Abbreviations for German Political Parties

CDU	Christliche Demokratische Union
CSU	Christliche Soziale Union
FDP	Freie Demokratische Partei
SPD	Sozial Demokratische Partei
	Partei des Demokratischen Sozialismus Grüne/Bündnis 90
PDS	(unabhängige Frauenverband)
Reps	

Republikaner Major Pro-Life Organizations

CDL	Christdemokraten für das Leben
CL	Christliche Liga
CM	Christliche Mitte
CPL	Christliche Partei für das Leben
DSL	Du sollst leben
DSU	Deutsche Soziale Union
DVU	Deutsche Volksunion
LFS	Ludwig-Frank Stiftung
ÖDP	Ökologische Demokratische Partei
SDV	Schutzbund für das deutsche Volk

