

**“EQUAL BUT NOT THE SAME”:
THE STRUGGLE FOR “*GLEICHBERECHTIGUNG*” AND THE REFORM OF
MARRIAGE AND FAMILY LAW IN EAST AND WEST GERMANY, 1945–1968**

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ABSTRACT

Alexandria N. Ruble: “Equal but Not the Same”:
The Struggle for “*Gleichberechtigung*” and the Reform of Marriage and Family Law in East
and West Germany, 1945–1968
(Under the direction of Karen Hagemann)

This dissertation explores the interplay of political, social, and economic factors that first prevented and later led, despite all resistance, to the reform of family law in East and West Germany in the 1950s and early 1960s. After 1945, Germans inherited a Civil Code that dated back to 1900 and had designated women as second-class citizens in marriage, parental rights, and marital property. In the postwar period, in the context of the founding of the East and West German states and the rising Cold War, female activists in both Germanys revived the old feminist goal of reforming civil law, but faced fierce resistance from Protestant and Catholics. After much struggle, legislators in both states replaced the old law with two new, competing versions that purported to expand women’s rights in marital and familial matters. I argue that the East-West German competition in the Cold War provided the momentum to finally accomplish the long-desired reforms. In both states, allusions to the other Germany’s treatment of women marked political discourse and were a key factor in all negotiations and decisions on family policies. The project demonstrates that gender and the family were important markers of difference between the two Germanys and, more broadly, battlegrounds of the Cold War.

This dissertation widens scholarly understandings of gender and the family in the two Germanys and Central Europe in two crucial ways. First, while scholars have previously

conceived of women's roles in East and West Germany as largely dissimilar, this project shows how family law linked and complicated the bond between the two states. At the same time, this study acknowledges the key differences between the East and West that ultimately set the two states on divergent paths regarding family law and gender roles. Second, this project challenges current understandings of gender, politics, and citizenship in the 1950s by showing that female activism in East and West Germany reemerged after the end of the Second World War, meaning that feminism was alive and well long before the 1970s.

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LIST OF ABBREVIATIONS

ACC	Allied Control Council
AFA	Antifascist Women's Committees
BDF	Bund Deutscher Frauenverein
BGB	Bürgerliches Gesetzbuch
BVP	Bavarian People's Party
CDU/CSU	Christian Democratic Union/Christian Social Union
DAB	Deutscher Akademikerinnenbund
DAV	Deutscher Anwaltverein
DDP	German Democratic Party
DEF	German Protestant Women's Association
DFD	Democratic Women's League of Germany
DGB	German Confederation of Trade Unions
DJB	Deutscher Juristinnenbund
DNVP	German National People's Party
DP	German Party
DSV	Deutsche Staatsbürgerinnenverband
EF	Protestant Women's Aid
EFD	Evangelische Frauenarbeit in Deutschland
EKD	Protestant Church in Germany

FDGB	Free German Confederation of Trade Unions
FdK	Familienbund der Katholiken
FDP	Free Democratic Party
FRG	Federal Republic of Germany
GDR	German Democratic Republic
KDFB	Catholic German Women's League
KPD	Communist Party of Germany
LDPD	Liberal Democratic Party of Germany
MSPD	Majority Social Democratic Party of Germany
NLP	National Liberal Party
NSDAP	National Socialist German Workers' Party
OMGUS	Office of Military Government, United States
Ost-CDU	East Christian Democratic Union
RJWG	Reichsjugendwohlfahrtsgesetz
SED	Socialist Unity Party
SMAD	Soviet Military Administration in Germany
SPD	Social Democratic Party of Germany
USPD	Independent Social Democratic Party of Germany
VGB	Volksgesetzbuch
Z	Center Party
ZFA	Central Women's Committee

INTRODUCTION

In 1949, the provisional constitutions of the two newly founded German postwar states, the Federal Republic of Germany (FRG) in the West and the German Democratic Republic (GDR) in the East, made the same bold and unprecedented promise to their citizens: to incorporate *Gleichberechtigung von Männern und Frauen*, or “the equality of men and women,” into all future legislation. In East Germany, controlled by the Socialist Unity Party of Germany (*Sozialistische Einheitspartei Deutschlands*, SED), the constitution immediately invalidated all laws opposing equality. The West German Basic Law (*Grundgesetz*), meanwhile, mandated the Bundestag and the government, led by the Christian Democratic Union of Germany (*Christlich Demokratische Union Deutschlands*, CDU) and its Bavarian sister party, the Christian Social Union in Bavaria (*Christlich-Soziale Union Deutschlands*, CSU), to overturn all legislation that conflicted with the principle of equality by 31 March 1953.

One major area that required extensive reform was marriage and family law, regulated by the Civil Code (*Bürgerliches Gesetzbuch*, BGB) from 1900, which was still in effect in both postwar Germanys. The BGB’s regulations concerning marriage and family designated women as second-class citizens in marriage, parental rights, and marital property. Not all citizens of the German Empire subscribed to these notions of marriage and the family. The majority in the bourgeois and socialist women’s movements, for instance, fought since the late nineteenth century against the patriarchal Civil Code. This struggle continued after

1945 in East and West Germany. Female activists in both newly founded German states urged politicians to alter the BGB. After approximately a decade of debate among politicians, society, and the media, coupled with resistance from the Christian conservative parties, Christian women's associations, and the Protestant and Catholic Churches, legislators in the FRG and GDR replaced the old law with two new, competing versions: the 1957 Equal Rights Act (*Gleichberechtigungsgesetz*) in West Germany and the 1965 Family Code (*Familiengesetzbuch*) in East Germany. The new laws purported to expand women's rights in marriage and the family. These parallel pieces of legislation, ostensibly separate because of the division of postwar Germany, remained intimately linked, however, because of their shared history. Since the late 1940s, the emerging Cold War thus shaped these debates and decisions, because the respective family model and the role and status of women in society were used in political discourse as "markers of difference" from the state on the other side of the Iron Curtain. Here, like in many other areas of politics, society, and culture, the relationship between the FRG and GDR was one of "demarcation and entanglement."¹

Prior scholarship has explored the situation of women, gender, and the family in East and West Germany, but has rarely examined the entanglement of the deliberations and the political processes that resulted in the new Equal Rights Act in the FRG and the Family Code in the GDR. "Entangled history," as explained by historians Jürgen Kocka and Heinz-Gerhard Haupt, "looks at interrelationships between two entities, whether nations, regions, towns, or institutions."² Although rarely explicitly identified as a category of analysis by

¹ Christoph Kleßmann, "Abgrenzung und Verflechtung. Aspekte der geteilten und zusammengehörigen deutschen Nachkriegsgeschichte," *Aus Politik und Zeitgeschichte* 29-30 (1993): 30-41.

² Heinz-Gerhard Haupt and Jürgen Kocka, "Comparative History: Methods, Aims, Problems," in *Comparison and History: Europe in Cross-National Perspective*, eds. Deborah Cohen and Maura O'Connor (London: Routledge, 2004), 31.

mainstream studies of contemporary history, gender historians working on post-1945 German and European history have identified and explored the importance of gender and the family as central “markers of difference” and entanglement between East and West Germany and Europe since the 1990s. They emphasize the many interrelated discourses and policies and suggest “gendering” comparative studies.³ As historian Susan Pedersen observes, comparative women’s and gender history can “offer meaningful explanations for particular outcomes, not [...] formulate general laws.”⁴ Family law in the two Germanys thus offers a fruitful case for a comparative study of “entangled” post-1945 German history, because a shared legal history and similar cultural norms tied the two states together. At the same time, the contest of the Cold War and different economic, social, and political systems divided them, which is also revealed in different gender ideologies in both postwar Germanys that emphasized opposite ideas of a woman’s role in the family, society, economy, and politics. The family laws introduced in both German states in the 1950s and 1960s reflected these tensions.

This dissertation explores the interplay of political, social, and economic factors that first prevented and later led, despite all resistance, to the reform of marriage and family law in East and West Germany. It examines how the federal governments, the governing political parties, the parliaments, social organizations, churches, and the media discussed

Gleichberechtigung and its place in civil law between 1945 and 1965. The study asks: how

³ For an overview of the state of research, see Karen Hagemann and Sonya Michel, “Gender and the Long Postwar: Reconsiderations of the United States and the Two Germanys, 1945-1989,” in *Gender and the Long Postwar: Reconsiderations of the United States and the Two Germanys, 1945-1989*, eds. Karen Hagemann and Sonya Michel (Baltimore and Washington, DC: Johns Hopkins University Press, 2014), 1-27; as well as the forthcoming volume edited by Friederike Brühöfener, Karen Hagemann, and Donna Harsch, *Gendering Post-1945 German History: Entanglements* (Oxford and New York: Berghahn Books, 2018).

⁴ Susan Pedersen, “Comparative History and Women’s History,” in *Comparison and History: Europe in Cross-National Perspective*, eds. Deborah Cohen and Maura O’Connor (London: Routledge, 2004), 99.

did the different actors discuss and negotiate the terms of the new family laws in both Germanys? What political, social, cultural, and economic factors influenced their discussions? And to what extent were “entanglement and demarcation” deciding factors in these negotiations and the resulting legislative changes? The dissertation argues that the East-West German competition in the Cold War provided the momentum to finally accomplish the long-desired reforms. In both states, allusions to the other Germany’s treatment of women and gender not only marked political discourse, but were key factors in all negotiations and decisions on family law and other policies related to gender. The project confirms and demonstrates that gender and the family were important markers of difference between the two German states and were battlegrounds of the Cold War.

Although the Cold War provided the catalyst for change, the struggle for equal civil rights of women, especially in marriage and the family, had a much longer tradition in Germany. Civil equality in marriage and family law was, from the beginning, a major aim of the rising women’s movement in the nineteenth century.⁵ One important cause for this struggle was the German Civil Code that had been contested since the publication of its first draft in 1881. The bourgeois and socialist women’s rights activists labeled it a “patriarchal law” and demanded reforms since the 1880s, because it gave, among other things, the husband and father the final decision in all matters related to the household and family. They aimed to formulate a different version of the law that honored equal civil citizenship for women, which they considered a fundamental condition for their equality with men.⁶ Despite

⁵ The developed literature on the German women’s movement is presented in Belinda Davis, “The Personal is Political: Gender, Politics, and Political Activism in Modern German History,” in *Gendering Modern German History: Rewriting Historiography*, eds. Karen Hagemann and Jean H. Quataert (New York: Berghahn Books, 2007), 107-127.

⁶ Dieter Schwab, “Gleichberechtigung und Familienrecht im 20. Jahrhundert,” in *Frauen in der Geschichte des Rechts: Von der frühen Neuzeit bis zur Gegenwart*, ed. Ute Gerhard (Munich: C.H. Beck, 1997), 793.

their ardent resistance, female activists and socialists lost this battle. The *Reichstag*, the national parliament of the German Empire, approved the Civil Code in 1896, which then became effective on 1 January 1900.

For nearly two more decades, until the German Empire's collapse in the *Novemberrevolution* of 1918 at the end of World War I, the BGB's provisions restricted married women's legal personhood. The establishment of the democratic Weimar Republic in the context of this revolution on 8 November 1918 offered new opportunities for women in principle, though practice was a different matter. Although the Weimar constitution from 11 August 1919 proclaimed in Art. 109: "All Germans are equal before the law. Men and women have in principle the same civic (*staatsbürgerliche*) rights and duties," it did not promise equal civil rights to women, especially in marriage and the family.⁷ Rather, Art. 119-122 of the Weimar constitution guaranteed the "special protection" of marriage and family. Despite proposed changes to the Civil Code, the fierce struggle of liberal and socialist feminists for the equal civil rights of women and men continued until the end of the Weimar Republic.⁸

After 1933, the Nazi regime implemented its racial policy in legislation such as the antisemitic Nuremberg Laws from September 1935 and the introduction of a separate Marriage Law in July 1938 that allowed, for example, the easy divorce of a "racial intermarriage" or a "childless marriage."⁹ Furthermore, in 1939, a Nazi legal commission

⁷ Article 109 of the Weimarer Verfassung reads as follows in the original German text, "Alle Deutschen sind vor dem Gesetze gleich. Männer und Frauen haben grundsätzlich dieselben staatsbürgerlichen Rechte und Pflichten," http://www.documentarchiv.de/wr/wrv.html#ERSTER_ABSCHNITT02.

⁸ Schwab, "Gleichberechtigung und Familienrecht," 796-801.

⁹ Elizabeth Heineman, *What Difference Does a Husband Make? Women and Marital Status in Nazi and Postwar Germany* (Berkeley: University of California Press, 1999), 21-23; Claudia Koonz, *Mothers in the Fatherland: Women, the Family, and Nazi Politics* (New York: St. Martin's Press, 1987), 372.

began debating a full-scale overhaul of the old Civil Code's marriage, family, and marital property law sections.¹⁰ They intended to refit the BGB with racialized language, but set it aside in 1941, planning to return to the task once Nazi Germany won World War II.

The defeat of the Nazis on 8 May 1945 and the subsequent military occupation by the British, French, Americans, and Soviets created a legal vacuum in Germany. Although the Allied Control Council invalidated racist Nazi laws in 1945, further legal reforms were necessary to accommodate the dramatically altered structure of many families. After all, approximately 30 percent of the estimated 17.3 million German men who were called up *Wehrmacht* had died.¹¹ They left behind a “surplus” of 7 million women who took up jobs and had to raise families on their own because of the immense losses during the war.¹² In response to this legal gap, the Allies introduced their own marriage law, called *Kontrollratsgesetz* Nr. 16, or the *Ehegesetz*, in February 1946.¹³

One of the problems of the Allied Control Council marriage law was that it left many provisions of the old Civil Code intact. Several male political leaders at the time maintained these regulations because they saw the family as necessary to stabilize and restore Germany's gender and social order in the wake of postwar destruction. Many female contemporaries, especially leftists and liberals, however, believed that the BGB no longer reflected the changed status of women in society. They demanded that the promise of “civic equality,”

¹⁰ Justus Wilhelm Hedemann, Heinrich Lehmann, and Wolfgang Siebert, *Volksgesetzbuch*, Arbeitsberichte der Akademie für Deutsches Recht, vol. 22 (Munich: Beck, 1942), 11.

¹¹ Rüdiger Overmans, *Deutsche Militärische Verluste im Zweiten Weltkrieg* (Munich: R. Oldenbourg, 1999), 215, 225.

¹² Heineman, *What Difference Does a Husband Make?*, 3; Ute Frevert, *A Nation in Barracks: Modern Germany, Military Conscription and Civil Society* (Oxford: Berg, 2004), 255.

¹³ Annette F. Timm, *The Politics of Fertility in Twentieth-Century Berlin* (Cambridge: Cambridge University Press, 2010), 231.

already made in the Weimar constitution, had to finally be fulfilled and extended beyond political rights to all areas of the economy, society, and family. One important early arena for this postwar struggle became the debate about the provisional constitutions in the four zones occupied by the Western Allies and the Soviets.

In 1947–48, following months of conflict set off by the announcement of the Truman Doctrine (1947), the European Recovery Program (ERP), known as the Marshall Plan (1948), and disagreements over the democratization of Germany, the Soviets and the Socialist Unity Party decided to move forward on their own terms without the Western Allies. In March 1948 they formed the People's Council (*Volksrat*) to rewrite the constitution and design a government modeled after Soviet-style democratic centralism. In their discussions over the basic rights of the East German constitution, the SED-controlled People's Council debated, but ultimately agreed that the new constitution would immediately overturn all laws that prohibited *Gleichberechtigung*, in particular the BGB. The suggestions of regional women's committees and the mass women's organization, the Democratic Women's League of Germany (*Demokratischer Frauenbund Deutschlands*, DFD) proved persuasive. They had already begun drafting proposals for the new marriage and family laws even before the advent of the People's Council, as a demonstration of their commitment to the old socialist program of "women's emancipation" (*Frauenemanzipation*). Oppositional parties such as the Eastern branch of the Christian Democratic Union (*Ost-CDU*) and the Liberal Democratic Party of Germany (*Liberal-Demokratische Partei Deutschlands*, LDPD) likewise offered propositions for legal changes, but the increasing acquiescence of these parties to SED rule limited their influence. Despite contrary opinions among the parties, they all agreed, unlike their Western counterparts, that *Gleichberechtigung* should apply to all

areas of society, politics, and the economy. Thus, the new constitution of the GDR, approved on 7 October 1949, went into effect with the following promise in Article 7: “Men and women have equal rights.”¹⁴ The SED, however, viewed the family as the central cell of its new socialist society. The new constitution therefore included an additional provision guaranteeing that marriage and family “are the foundation of social living” and stood under the special protection of the state. Even at this juncture, East Germans had trouble balancing socialist beliefs in equality with age-old cultural norms regarding marriage and family.

In response to the People’s Council, the Western Allies and their German partners convened the Parliamentary Council (*Parlamentarischer Rat*) in September 1948. In the Western zones, legal experts and politicians were more sharply divided and could express themselves more publicly. Members of the main political parties, the Christian conservative CDU and its Bavarian sister party, the CSU, the leftist Social Democratic Party (*Sozialdemokratische Partei Deutschlands*, SPD), the liberal Free Democratic Party (*Freie Demokratische Partei*, FDP), and the Communist Party of Germany (*Kommunistische Partei Deutschlands*, KPD), which was banned in 1956) disputed how to reconcile the “equality of men and women” and the “protection of marriage and family” during the proceedings of the Parliamentary Council. While the SPD, KPD, and a handful of FDP members pushed for legal equality of men and women in politics, the economy, and society, the CDU/CSU and some FDP representatives focused on the protection of marriage and family.¹⁵ In a political compromise, proposed by the only four women in the Parliamentary Council and backed by

¹⁴ The original German text reads: “*Mann und Frau sind gleichberechtigt.*” See the East German constitution, October 7, 1949. <http://www.documentarchiv.de/ddr/verfddr1949.html>

¹⁵ Robert G. Moeller, *Protecting Motherhood: Women and the Family in the Politics of Postwar West Germany* (Berkeley: University of California Press, 1993), 41.

public support, the Council reluctantly accepted the following formulation of Art. 3.2 of the Basic Law, approved on 8 May 1949: “Men and women have equal rights.” In exchange, the SPD and KPD agreed to include the CDU/CSU-proposed Art. 6, which echoed the Weimar constitution by stating: “Marriage and family enjoy the special protection of the state.”¹⁶ Because many existing laws contradicted Art 3.2 of the Basic Law, Art. 117 stipulated that all legislation had to be reformed by 31 March 1953. The Cold War entanglement of both states informed the argumentation of politicians in these early debates on the constitutions of the FRG and GDR, who constantly invoked the other Germany and its policies on women as a way of differentiating their position on equality.¹⁷

After the constitutions were approved and both states were officially founded in 1949, the problem of how to reconcile constitutional promises of *Gleichberechtigung* and protection of marriage, motherhood, and the family remained unresolved on both sides. In the GDR, the Ministry of Justice produced a draft of the new family law in January 1950, which came under intense scrutiny from legal experts and the DFD. In particular, they struggled to reconcile the goals of the new socialist state with the old bourgeois Civil Code and societal norms. The new family law thus never went before the East German parliament (*Volkskammer*) for approval. Instead, in September 1950, the *Volkskammer* passed the Law for the Protection of Motherhood and Children and for the Rights of Women (*Gesetz über den Mutter- und Kinderschutz und die Rechte der Frau*), which provided numerous welfare provisions to assist working mothers and furthermore overhauled some provisions of the old

¹⁶ The original text of Article 3 states: “Männer und Frauen sind gleichberechtigt.” The original text of Article 6 states: “Ehe und Familie stehen unter dem besonderen Schutze der staatlichen Ordnung.” See Basic Law of the Federal Republic of Germany, 1949, <http://www.documentarchiv.de/brd/1949/grundgesetz.html>

¹⁷ See for example: “Sechszwanzigste Sitzung 30. November 1948,” [AGG], Kurt Georg Wernicke, Hans Booms, and Walter Vogel. *Der Parlamentarische Rat, 1948-1949: Akten u. Protokolle* (Boppard am Rhein: Boldt, 1975), 752.

BGB, such as the *Stichentscheid*, the right of a husband to make the final decision in the marriage and family. This law served both pragmatic and ideological goals. During the 1950s, with the introduction of the first Five-Year Plan in the GDR, the SED increasingly needed married women and mothers to fill labor shortages. The party therefore had a profound economic interest to help them to balance domestic and work responsibilities, but also wanted to affirm its rhetorical commitment to women's emancipation.¹⁸ Although the Ministry of Justice tried in 1954 and 1958 to redraft the Family Code (*Familiengesetzbuch*), it took eleven years until its passage. The long-awaited arrival of the new Family Code in 1965 came after over a decade of political and social resistance inside the GDR, particularly from both the Protestant and Catholic churches, but more broadly from enduring cultural values. Despite all socialist rhetoric of women's emancipation, a traditional gendered division of labor dominated in the economy, society, and the family in everyday life in the GDR.

On the other side of the Iron Curtain, West Germans faced a similar dilemma. The Federal Ministry of Justice worked on a new family law between 1950 and 1952. The Bundestag, the West German parliament, however, failed to meet the constitutionally-mandated deadline, propelling its members into increasingly intense debates. Women in the major leftist and liberal political parties (SPD, KPD, and FDP), independent nonparty women's organizations, and trade unions pushed for changes that would grant women more autonomy and equality in marriage, family, and the workplace. Their main opponents were

¹⁸ Leonore Ansorg and Renate Hürtgen, "The Myth of Female Emancipation: Contradictions in Women's Lives," in *Dictatorship As Experience: Towards a Socio-Cultural History of the GDR*, ed. Konrad Hugo Jarausch (New York: Berghahn Books, 1999), 163-176, 165; Dagmar Langenhan and Sabine Roß, "The Socialist Glass Ceiling: Limits to Female Careers," in *ibid*, 177-194, 177-178; Donna Harsch, *Revenge of the Domestic: Women, the Family, and Communism in the German Democratic Republic* (Princeton: Princeton University Press, 2007), 8, 44.

Christian conservative women who supported the family policy of the ruling CDU/CSU, which was buttressed by the Catholic and Protestant churches and their associations. These organizations, such as the German Catholic Women's Federation (*Katholischer Deutscher Frauenbund, KDFB*), Catholic Family Federation (*Familienbund der Katholiken, FdK*), the Protestant welfare organization Diakonie (*Deutsches Diakonische Werk*), Protestant women's associations such as the Protestant Women's Aid (*Evangelische Frauenhilfe*), and commissions formed by both major churches were instrumental in pressuring the federal government and Parliamentarians of the national representation of the *Bundestag* to pursue a Christian-conservative family policy based on the ideal of the male-breadwinner-family.¹⁹ They feared that more autonomy and equality for women, especially their paid work outside the home, would threaten the stability of the family, which they perceived as the basis of state and society. For them the family was, alongside the churches, the only "unsullied" institution that had survived the Third Reich. The goal of their policy was not only the re-Christianization, but also re-familialization (*Re-Familialisierung*) of West Germany, which they saw as the best form of "protection" against the "threat from the communist East," with its "socialized children" and "exploited and exhausted working women."²⁰ Male members of the CDU/CSU and other parties were also concerned that granting more equality to women would undermine the status of men in politics, economy, and society, but they discussed this fear less openly.

In the end the conflicting discourses in both German states resulted in new marriage

¹⁹ Lukas Rölli-Alkemper, *Familie im Wiederaufbau: Katholizismus und Bürgerliches Familienideal in der Bundesrepublik Deutschland 1945-1965* (Paderborn: Schöningh, 2000), 416-487; Claudia Lepp, *Tabu der Einheit?: die Ost-West-Gemeinschaft der evangelischen Christen und die deutsche Teilung (1945-1969)* (Göttingen: Vandenhoeck & Ruprecht, 2005), 91.

²⁰ Moeller, *Protecting Motherhood*, 180.

and family laws that represented an ambiguous and half-hearted reform, especially in the FRG. With the approval of the Equal Rights Act (*Gleichberechtigungsgesetz*) on 18 June 1957 (implemented on 1 July 1958), the FRG took an important step toward legal equality of men and women. The law removed, for example, the *Stichentscheid*, meaning that women could have equal input on matters such as domicile and how to raise their children. Married women were now also allowed to work outside the house without their spouse's consent. But their rights were still limited in certain ways; they were only permitted to do paid work outside the home if it was reconcilable with their "obligations" in the household and family.²¹ This restriction clearly marked the 1957 Equal Rights Act as a political compromise designed to protect the dominant ideal of the male-breadwinner family that informed Christian-conservative family policy.

The 1965 Family Code (*Familiengesetzbuch*) of the GDR, passed on 20 December 1965, was an even more important legal step towards civil equality of women. The provisions of the final law were much more progressive compared to those of its Western counterpart. According to the new Family Code, spouses had equal rights and duties in marriage and family, including in raising their children. They also shared all property and were equally responsible for contributing income to the household. Unlike the West, where married women and mothers were supposed to work at the most part-time, state policies encouraged East German women to work full-time, even as mothers.²² The state provided

²¹ Christine von Oertzen, *Teilzeitarbeit und die Lust am Zuverdienenden: Geschlechterpolitik und Gesellschaftlicher Wandel in Westdeutschland 1948-1969* (Göttingen: Vandenhoeck & Ruprecht, 1999), 12, 14-15, 359.

²² Christine von Oertzen and Almut Rietzschel, "Das 'Kuckucksei' Teilzeitarbeit. Die Politik der Gewerkschaften im deutsch-deutschen Vergleich," in *Frauen arbeiten. Weibliche Erwerbstätigkeit im deutsch-deutschen Vergleich*, ed. Gunilla-Friederike Budde (Göttingen: Vandenhoeck & Ruprecht, 1997), 212-251.

necessary all-day facilities for children, which enabled them to do so.²³ In everyday life in East Germany, however, an unequal division of labor in the workplace and at home persisted even after 1965.²⁴

Although social organizations and politicians in both Germanys were able to modify legal definitions of *Gleichberechtigung* to some extent, much was left to be done regarding the reform of marriage and family law and its application in societal practices. In West Germany, the 1957 Equal Rights Act was at best a first step towards establishing the long-demanded equal civil rights of women. In fact, the law came under scrutiny almost immediately. In July 1958, for example, when the new law came into force, the left-liberal political weekly *Der Spiegel* published an article that criticized the practical impact of the law.²⁵ This was the first of many critical voices in the mass media that would come during the late 1950s and 1960s, particularly after the rise of the New Women's Movement in the late 1960s. The political push for more gender equality finally led the SPD/FDP coalition, which took over the federal government in October 1969, to a far-reaching reform: the First Law for the Reform of the Marriage and Family Law (*Erste Gesetz zur Reform des Ehe- und Familienrechts*), approved by the Bundestag on 14 June 1976 and enacted on 1 July 1977.²⁶

²³ See Karen Hagemann, "Between Ideology and Economy: The 'Time Politics' of Child Care and Public Education in the Two Germanys," *Social Politics: International Studies in Gender, State and Society* 13, no. 2 (2006): 239-241; see also Karen Hagemann, "A West-German 'Sonderweg'? Family, Work, and the Half-Day Time Policy of Childcare and Schooling," in *Children, Families, and States: Time Policies of Childcare, Preschool, and Primary Education in Europe*, eds. Cristina Allemann-Ghionda, Karen Hagemann, and Konrad H. Jarausch (New York: Berghahn Books, 2011), 275-300; Monika Mattes, "Economy and Politics: The Time Policy of the East German Childcare and Primary School System," in *Children, Families, and States: Time Policies of Childcare, Preschool, and Primary Education in Europe*, eds. Cristina Allemann-Ghionda, Karen Hagemann, and Konrad H. Jarausch (New York: Berghahn Books, 2011), 344-363.

²⁴ Hagemann, "A West-German 'Sonderweg'?", 275-300; Mattes, "Economy and Politics," 344-363.

²⁵ "Die Zukunft der Notare," *Der Spiegel* 28, July 9, 1958, 22-26.

²⁶ Ute Gerhard, *Frauen in der Geschichte des Rechts: von der frühen Neuzeit bis zur Gegenwart* (Munich: Beck, 1999), 811.

In the GDR, the new Family Code from 1965 legitimated the ideal of the socialist family based on equality between the sexes and the need to overcome the bourgeois male breadwinner family model associated with the West. This law finally fulfilled, at least in one German state, all the demands of the liberal and socialist women's movement of the prewar period and gave women legally equal civil citizenship. Yet the GDR is an especially interesting case, because despite legal equality and all socialist rhetoric of "women's emancipation," the gendered division in the family in the everyday life remained similar to the FRG.²⁷ Sociologist Ute Gerhard refers to this gap between law and practice as a "cultural lag."²⁸ Consequently, men and women in both German states possessed rights that were "equal but not the same," which most likely reflected the dominant thinking of most ordinary citizens about gender differences in both German states. Despite all other dissimilarities, most Germans on both sides of the Iron Curtain agreed in the first two postwar decades on at least one point: that men and women were different by nature and thus not the same, which defined their roles in the family and society.²⁹

Looking back at the public discourse in both German states, it is remarkable that despite all other differences, contemporaries usually framed the conversation on *Gleichberechtigung* in terms of women's rights. This emphasis on women is telling, because it marks women as the sex that has to be made "equal" and "emancipated" to the standards of men. If "equality" is a "women's question" (*Frauenfrage*), then women are perceived as the

²⁷ Carola Sachse, *Der Hausarbeitstag: Gerechtigkeit und Gleichberechtigung in Ost und West, 1939-1994* (Göttingen: Wallstein, 2002), 34.

²⁸ Ute Gerhard, "Family Law and Gender Equality: Comparing Family Policies in Postwar Western Europe," in *Children, Families, and States: Time Policies of Childcare, Preschool, and Primary Education in Europe*, eds. Karen Hagemann, Konrad H. Jarausch, and Cristina Allemann-Ghionda (New York: Berghahn, 2011), 81.

²⁹ Moeller, *Protecting Motherhood*, 7.

“exception” and men as the “universalized norm.” However, a more careful reading of the contemporary sources shows that actors at the time reflected on the changing role of husbands and fathers too, only less openly. A study like this therefore needs to critically analyze both the images of masculinity and femininity drafted in this discourse, because “gender equality,” the current term used for *Gleichberechtigung*, is a relational concept.³⁰

The influence of the Cold War, which defined the boundaries of thinking, was another dimension in the contemporary discourse that was shared by both states. The East-West relation of demarcation and entanglement created an especially difficult situation for the Left, especially the SPD, in the FRG. The SED, on the other side of the Iron Curtain, now occupied traditional socialist positions regarding the family, education, and the gender equality of the Weimar SPD, eliminating the possibility of taking the same stances for the newly founded postwar SPD in the West. This narrowed discursive space in the West informed and restricted the debate and implemented policies on the “women’s question” in a dramatic way. The socialist women’s emancipation theory promulgated by parts of the SPD and the trade unions during the Weimar Republic was no longer an acceptable position in the anti-Communist climate of the postwar West.³¹ Similar to CDU/CSU supporters, even most female SPD members propagated now that “women are equal but not the same” and thus supported a relational feminism and the ideal of the male breadwinner family. During the

³⁰ For more on the concept of “gender equality” see the part on methodology.

³¹ Moeller, *Protecting Motherhood*, 73; see Patrick Major, *The Death of KPD: Communism and Anti-Communism in West Germany, 1945-1956* (Oxford: Oxford University Press, 1998), and Stefan Creuzberger and Dierk Hoffmann, *“Geistige Gefahr” und “Immunisierung Der Gesellschaft”: Antikommunismus und Politische Kultur in der frühen Bundesrepublik* (München: Oldenbourg Verlag, 2014) for longer studies of anti-Communism in the FRG. For literature on socialist women before 1945, see Karen Hagemann, *Frauenalltag und Männerpolitik: Alltagsleben und Gesellschaftliches Handeln von Arbeiterfrauen in der Weimarer Republik* (Bonn: J.H.W. Dietz, 1990); Jean H. Quataert, *Reluctant Feminists in German Social Democracy, 1885-1917* (Princeton: Princeton University Press, 1979).

Weimar Republic, this approach to feminism was primarily supported by the older female leadership of the Social Democratic women's movement and its followers. The younger female generation in the ranks of the Weimar SPD often still continued to press for the old socialist idea of women's emancipation that promoted paid work as the major path to equality.³² In the East, this powerful ideal was difficult to overcome too, not in the official political rhetoric of the SED, but in the day-to-day practice.

The condensed narrative above reveals that the years between 1945 and 1968 were rife with arguments over equality, marriage, and the family. This dissertation focuses on the period between the approval of the provisional constitutions in 1949, which promised equality between men and women and required its inclusion in all laws, and the enactment of the 1957 Equal Rights Act in the West and the 1965 Family Code in the East and the respective aftermath of these reforms in politics and society of both states. After an overview chapter of the developments before 1945 mainly based on the existing research, my own analysis begins in the early postwar period because the end of World War II incited crucial social, political, and cultural changes that had a lasting impact on understandings of *Gleichberechtigung* in East and West Germany and influenced the debates about the respective constitutions. For different reasons, 1968 is a useful endpoint for the FRG and the GDR. In the FRG, 1968 marked the rise of the New Women's Movement, whose members broke away from the "relational" approach to feminism of the earlier women's movement and called for more radical reforms of marriage and family law based on an "individual"

³² See for the Social Democratic women's movement in Weimar Germany and controversies about emancipation theory extensively, Hagemann, *Frauenalltag*, 509-638.

approach to feminism.³³ On the other side of the Iron Curtain, the SED approved a new constitution in 1968 that asserted its socialist agenda more strongly than the 1949 constitution. It included a clearer declaration that “men and women are equal in all areas of society, state, and private life,” thus establishing a stronger commitment to the socialist program of *Frauenemanzipation*.³⁴ Therefore, in 1968, a new turn of debates on the questions of *Gleichberechtigung* and *Frauenemanzipation* began in both German states and societies.

Historiography

My dissertation builds on and contributes to the scholarship on gender and the family, and gendered politics in the postwar Germanys. Historians such as Sybille Buske, Christine Franzius, Donna Harsch, Elizabeth Heineman, Robert Moeller, Merith Niehuss, Christine von Oertzen, and Carola Sachse, next to others, have emphasized the significance given to marriage and the family as a “stabilizing force” not only by the American Allies and West German legislators, but also by the Soviets and East German politicians.³⁵ Their scholarship demonstrates how public policies in the postwar Germanys contained unchanged notions of a

³³ See more on the terms “relational” and “individual” feminism, Karen Offen, *European Feminisms, 1700-1950: A Political History* (Stanford: Stanford University Press, 2000), 21-22.

³⁴ See the 1968 East German constitution, <http://www.documentarchiv.de/ddr/verfddr.html#KAPITEL%201-2>. Women’s emancipation had been a tenet of the socialist movement since the late nineteenth century, but had always been subsumed by class struggle. Several scholars have outlined the SPD argument that solving the class problem would solve the “women’s question.” See Catherine Dollard, “Socialism and Singleness: Clara Zetkin,” in *The Surplus Woman: Unmarried in Imperial Germany, 1871-1918* (New York: Berghahn Books, 2009), 164-175; Jean Quataert, *Reluctant Feminists*, 5-17; Hagemann, *Frauenalltag*, 516-551; Karen Offen, *European Feminisms*, 200-212.

³⁵ Sybille Buske, *Fräulein Mutter und ihr Bastard: eine Geschichte der Unehelichkeit in Deutschland, 1900-1970* (Göttingen: Wallstein Verlag, 2004); Christine Franzius, *Bonner Grundgesetz und Familienrecht: die Diskussion um die Gleichberechtigung von Mann und Frau in der westdeutschen Zivilrechtslehre der Nachkriegszeit (1945-1957)* (Frankfurt/M.: Klostermann, 2005); Harsch, *Revenge of the Domestic*, 2; Heineman, *What Difference*, 112; Moeller, *Protecting Motherhood*, 196; Merith Niehuss, *Familie, Frau und Gesellschaft: Studien zur Strukturgeschichte der Familie in Westdeutschland 1945-1960* (Göttingen: Vandenhoeck & Ruprecht, 2001), 7; Oertzen, *Teilzeitarbeit und die Lust am Zuverdienenden*; Sachse, *Der Hausarbeitstag*.

gendered division of labor that continued to relegate women to domestic roles, despite the rhetoric of equality and “women’s emancipation,” which was especially developed in the GDR. Women in both Germanys were responsible for housework and family care, even if they worked full-time outside the house.³⁶ In the East they had better access to job training and full-time work, because the chronic labor shortage in the GDR created a high demand for female workers. They also were supported by the state with all-day childcare and a protective legislation for working mothers, but the conventional gendered division of labor at home was not questioned.³⁷

In spite of the relation of entanglement and delineation between the East and the West, in-depth comparisons of the situation of women in East and West Germany are few. One exception is Carola Sachse’s 2002 monograph on the *Hausarbeitstag* or “housework day,” which shows how both German states designed policies after 1945 to alleviate the double burden of work and household labor for women, yet simultaneously reinforced a gendered division of labor.³⁸ Similarly, more recent works by Gunilla Budde, Karen Hagemann, and Monika Mattes have pointed out the gendered dimensions of the entangled debates and policies related to labor, social and family policy and the time-structure of

³⁶ David Großekathöfer, “*Es ist ja jetzt Gleichberechtigung*”: *Die Stellung der Frau im naheheiligen Unterhaltsrecht der DDR* (Cologne: Böhlau, 2003). Großekathöfer’s 2001 dissertation explains that by denying divorced women access to alimony, the SED encouraged them to enter the workforce.

³⁷ Gunilla-Friederike Budde, *Frauen der Intelligenz: Akademikerinnen in der DDR 1945 bis 1975* (Göttingen: Vandenhoeck & Ruprecht, 2003); Karin Zachmann, *Mobilisierung der Frauen: Technik, Geschlecht und Kalter Krieg in der DDR* (Frankfurt/M. & New York: Campus, 2004); Oertzen, *Teilzeitarbeit und die Lust am Zuverdienen*, 14; Sachse, *Der Hausarbeitstag*, 15, 95-96, 111; Hagemann, “Between Ideology,” 239-241; Gesine Obertreis, *Familienpolitik in Der DDR, 1945-1980* (Opladen: Leske Budrich, 1986).

³⁸ Sachse, *Der Hausarbeitstag*, 34. For a discussion of how educational policy reinforced the gendered division of labor before the late 1960s, see also Hagemann, “Between Ideology,” 242.

childcare and education systems in the two Germanys.³⁹ Leonie Treber's study on the postwar policy of the clean-up of the rubble in both Germanys and the West German mythos of the *Trümmerfrauen* provides yet another example of comparative gender history.⁴⁰ My dissertation contributes to existing scholarship by comparing the reforms of civil laws, which determined women's civil rights in marriage and the family as well as property rights.

Another way my research adds to the history of marriage and family is by including the dimension of fatherhood and masculinity in the analysis of postwar discourses. As Robert Moeller and Christine von Oertzen have demonstrated, in West Germany, protecting motherhood was a major goal of the Christian conservative Adenauer administration, whose proposed reforms to family law and policy sought to reinforce a male breadwinner/female homemaker/female part-time worker model. Related language about fatherhood and masculinity remain underexplored in their main monographs, however.⁴¹ According to scholars such as Frank Biess, Heide Fehrenbach, Robert Moeller (in other works), Uta Poiger, and Till von Rahden, masculinity was in crisis after World War II. Men who returned home from the front felt emasculated, especially in comparison to their American

³⁹ Hagemann, "A West-German 'Sonderweg'," 275-300; Mattes, "Economy and Politics," 344-363; Budde, *Frauen Arbeiten*.

⁴⁰ Leonie Treber, *Mythos Trümmerfrauen: Von der Trümmerbeseitigung in der Kriegs- und Nachkriegszeit und der Entstehung eines deutschen Erinnerungsortes* (Essen: Klartext, 2014). See on the "Trümmerfrauen" also, Karen Hagemann, "Geschichtswissenschaft, Medien und kollektives Gedächtnis: Zum 'Mythos Trümmerfrauen'," *Neue Politische Literatur*, no. 4 (2015): 203-212; and for another example of forthcoming scholarship comparing gender in postwar Berlin, Jane Freeland's recent dissertation, "Behind Closed Doors: Domestic Violence, Citizenship and State-Making in Divided Berlin, 1969-1990," (Ph.D. diss., Carleton University, 2015).

⁴¹ Moeller's *Protecting Motherhood* briefly covers some discussions of fatherhood on 191-192; Oertzen, *Teilzeitarbeit und die Lust am Zuverdienen*, 14.

occupiers.⁴² “Remasculinization,” especially of fatherhood, therefore occupied a central role in West German rhetoric.⁴³ A similar need to strengthen masculinity after the war existed in the GDR, but little historical work has been done so far on the legal definitions of masculinity and fatherhood in East Germany.⁴⁴ My dissertation touches on the changing cultural, social, and legal constructions of masculinity and fatherhood that accompanied the discussion over an expansion of women’s civil rights in the reforms of marriage and family law in both states.

This study of marriage and family law also contributes to the history of gendered politics in the postwar Germanys. Historiography on gender and politics during the 1950s and early 1960s has concentrated primarily on women’s roles in “formal” institutions such as the parties and parliaments. Some of this scholarship was written by contemporaries who conducted sociological studies of women as voters, party members, and parliamentarians in the 1950s and 1960s.⁴⁵ Later studies in the 1970s and 1980s by political scientists and sociologists shifted from studying demographics of women in formal politics to analyzing

⁴² Heide Fehrenbach, “Rehabilitating Fatherland: Race and German Remasculinization,” *Signs* 24, no. 1 (1998): 107-127; Frank Biess, *Homecomings: Returning POWs and the Legacies of Defeat in Postwar Germany* (Princeton: Princeton University Press, 2006), 12-13.

⁴³ Susan Jeffords, “The ‘Remasculinization’ of Germany in the 1950s: Discussion,” *Signs* 24, no. 1 (1998): 163-169; Robert G. Moeller, “The ‘Remasculinization’ of Germany in the 1950s: Introduction,” *Signs* 24, no. 1 (1998): 101-106; Till von Rahden, “Fatherhood, Rechristianization, and the Quest for Democracy in Postwar West Germany,” in *Raising Citizens in the Century of the Child*, ed. Dirk Schumann (New York: Berghahn Books, 2012), 141-165.

⁴⁴ Uta G. Poiger, “A New, ‘Western’ Hero? Reconstructing German Masculinity in the 1950s,” *Signs* 24, no. 1 (1998): 147-162.

⁴⁵ Gabriele Bremme, *Die politische Rolle der Frau in Deutschland: eine Untersuchung über den Einfluss der Frauen bei Wahlen und ihre Teilnahme in Partei und Parlament*. (Göttingen: Vandenhoeck & Ruprecht, 1956). See also Gabriele Sandmann-Bremme and Mechtild Fülles, *Die Frau in der Politik* (Cologne: Verlag Wissenschaft und Politik, 1969).

their impact on particular legislation, such as the 1957 Equal Rights Act in West Germany.⁴⁶ More recently, historians have turned to detailed studies of the influence of women in the major political parties (CDU, SPD, and FDP) in West Germany.⁴⁷ Much of this scholarship has outlined the discrimination against women in all political parties and the parliaments. It described the female activism that followed the old patterns of Weimar policy therefore usually as a “failure.” My dissertation re-evaluates female activism both in- and outside of “formal” politics and its influence. It argues that there was feminist activism before the new women’s movement in both German states, which is indicated by a small number of studies.

Works on the 1950s and 1960s that have analyzed the gendered nature of political participation outside of voting, the parties, or Parliaments are few. Renate Genth’s edited volume on women’s organizations in Berlin is one example, but it only covers women in the immediate postwar years of 1945–49 and the Western Allied sector.⁴⁸ The best-known analysis of East German women’s political participation is Donna Harsch’s *Revenge of the Domestic*.⁴⁹ Harsch shows that women, particularly in the DFD, were instrumental in

⁴⁶ Ines Reich-Hilweg, *Männer und Frauen sind gleichberechtigt: der Gleichberechtigungsgrundsatz (Art. 3 Abs.2 GG) in der parlamentarischen Auseinandersetzung 1948-1957 und in der Rechtsprechung des Bundesverfassungsgerichts* (Frankfurt/M.: Europ. Verl.-Anst., 1979); and Ute Frevert, “Frauen auf dem Weg zur Gleichberechtigung – Hindernisse, Umleitungen, Einbahnstraßen,” in *Zäsuren nach 1945: Essays zur Periodisierung der deutschen Nachkriegsgeschichte*, ed. Martin Broszat (Munich: R. Oldenbourg Verlag, 1990), 113-130; Heide-Marie Lauterer, *Parlamentarierinnen in Deutschland 1918/19-1949* (Sulzbach/Taunus: Helmer, 2002).

⁴⁷ Gisela Notz, *Frauen in der Mannschaft: Sozialdemokratinnen im Parlamentarischen Rat und im Deutschen Bundestag 1948/49 bis 1957* (Bonn: J.H.W. Dietz, 2003); idem., *Mehr als bunte Tupfen im Bonner Männerclub: Sozialdemokratinnen im deutschen Bundestag 1957-1969: Mit 12 Biographien* (Bonn: J.H.W. Dietz, 2007); Petra Holz, *Zwischen Tradition und Emanzipation: CDU-Politikerinnen in der Zeit von 1946 bis 1960* (Sulzbach/Taunus: Ulrike Helmer Verlag, 2004); Sylvia Heinemann, *Frauenfragen sind Menschheitsfragen: Die Frauenpolitik der Freien Demokratinnen von 1945 bis 1963* (Sulzbach/Taunus: Ulrike Helmer, 2012).

⁴⁸ Renate Genth, *Frauenpolitik und Politisches Wirken von Frauen im Berlin der Nachkriegszeit 1945-1949* (Berlin: Trafo Verlag Dr. Wolfgang Weist, 1996).

⁴⁹ Harsch, *Revenge of the Domestic*.

pressuring the SED to change its employment and family policies to better accommodate working women's needs as mothers and breadwinners. Myra Marx Ferree's recent study on *German Gender Politics in a Global Perspective* includes a chapter on the German women's movement from 1848 to 1968.⁵⁰ The main analytical thrust of her chapter, however, is comparing the German and American cases. Thus, she devotes scant attention to women's organizations and the East-West relationship. Genth, Harsch, and Ferree have offered important insights into the continuance of the women's movement after World War II. Yet their studies are still limited in some ways. First, they have focused primarily on women instead of gender in a broadly defined sphere of politics. Second, the East-West relationship has not been drawn out explicitly in these works and deserves more attention because it informed so much of the contemporary discourse on *Gleichberechtigung* and its enactment in marriage and family law.

The historiography on gender in German politics in the 1950s and 1960s can be characterized as looking forward and backward at the same time. Some feminist scholars have criticized the older generation for failing to accomplish more substantial changes, or for not pressing the government for the same issues they found relevant in the 1970s and 1980s. Most prior studies have thus ignored the intense political discourse on *Gleichberechtigung* in marriage and family law in both postwar Germanys that began long before the new women's movement in the late 1960s in the FRG. Even feminist scholarship on the post-1945 women's movement has claimed that there was no serious activism for "gender equality"

⁵⁰ Myra Marx Ferree, *Varieties of Feminism: German Gender Politics in Global Perspective* (Stanford: Stanford University Press, 2012).

before the new women's movement.⁵¹ They overlooked the development in the East and the role of the different political parties, the media, and social organizations in the struggle for *Gleichberechtigung*. They also ignored the fact that in both states it was mainly women, often representatives of women's associations, who challenged the gendered division of labor in the economy and society and advocated for changes. My project thus builds on this scholarship, but simultaneously challenges some of its main assumptions.

Methods and Sources

My theoretical and methodological approach combines the concepts of path dependency and *histoire croisée* with the approaches of political history, discourse analysis, and most importantly, gender history and feminist theories of citizenship and civil society. First and foremost, my work draws on the concept of path dependency, introduced by political scientists. One of them was Paul Pierson; according to him, “we cannot understand the significance of a particular social variable without understanding ‘how it got there’—the path it took.”⁵² His observation that states in similar conditions proceed on different paths historically and that “‘small’ or contingent events,” timing and sequence, and the role of institutions can influence “‘large’ outcomes” fits well for my own study of how the two Germanys began with the same law and similar conditions and ended up following very different paths.⁵³ He analyzes which factors shaped and inform certain paths of the development of a state, its institutions and policies, enabled change, or prevented it. His main

⁵¹ Reich-Hilweg, *Männer und Frauen sind gleichberechtigt*; Ute Frevert, “Frauen auf dem Weg zur Gleichberechtigung”; Ferree, *Varieties of Feminism*.

⁵² Paul Pierson, “Increasing Returns, Path Dependence, and the Study of Politics,” *The American Political Science Review* 94, no. 2 (2000): 252.

⁵³ *Ibid.*, 251, 253.

argument is that states and institutions tend to continue on a taken path, because change is often costly, not only financially, but also socially and culturally. The longer a path is trodden and embedded in the structures of a system, the more difficult reform becomes. In other words: “New institutions and policies are costly to create,” and increasing returns makes each step along the old path “more attractive for the next round.”⁵⁴ In the context of the Cold War, politicians in both German states had to weigh the political, economic, and social costs of reforming the old shared family laws, which not only had a long legal tradition but also had informed several other policies regarding the family and gender relations. The old family laws reflected ideas about gender that were part of society and culture in both postwar German states, despite a different political rhetoric in the propaganda of the GDR.⁵⁵ Thus, laws, institutions, and policies were not the only factor that made reforms challenging. Following here historians Karen Hagemann and Konrad H. Jarausch, who used the approach of path dependency in their comparative project of the time structure of child care and school systems in postwar Eastern and Western Europe, my study emphasizes that cultural norms and the gender order, in addition to legal, institutional, and economic conditions, determined their separate paths.⁵⁶ Reigning cultural norms about gender and the family pushed politicians and certain interest groups, especially the Protestant and Catholic churches, to defend the image of the male breadwinner/female homemaker, which forced legislators to reassess their work on the two laws. The approach of path dependency is therefore vital for

⁵⁴ Pierson, “Increasing Returns,” 253, 259.

⁵⁵ Ibid., 254.

⁵⁶ Karen Hagemann, “Halbtags oder Ganztags? Zeitpolitiken von Kinderbetreuung und Schule in Europa im historischen Vergleich,” in *Halbtags oder Ganztags? Familie, Frauenarbeit und Zeitpolitik von Kinderbetreuung und Schule in Europa im historischen Vergleich*, eds. Karen Hagemann and Konrad Jarausch (Weinheim: Beltz-Juventa, 2014), 20-83, 51-54.

my project, because it allows me not only to identify the different political, economic, social, and cultural factors that interacted and prevented family law reforms in both German states, but also to determine the historical moments and factors that enabled change.

My dissertation also draws on the approach of *histoire croisée*, suggested by historians such as Michael Werner and Bénédicte Zimmermann.⁵⁷ They argued that a comparison of states, countries, and regions is not enough, because they usually have an entangled history. In other words, “the objects and practices are not only in a state of interrelationship but also modify one another reciprocally as a result of their relationship.”⁵⁸ Postwar Germany, as one of the few historical examples of a divided nation-state with a common history, provides a unique case study for an entangled transnational study, suggested by *histoire croisée*, because the two sides at all levels (high politics, society, and in the media) were so closely interrelated, shared a joint history, and shaped each other’s laws and policies. This approach helps me parse out the connections as well as similarities and differences between the two German states’ and societies’ negotiations over family law.

In both Germanys, dominant gender norms played an important role in constructing power hierarchies, social structures, and determined, to some degree, the paths each state took for family law reform. I rely on historian Joan W. Scott’s conception of gender as both a framework for understanding power relationships between different groups of men and women as well as a way of studying the changing meanings of sex/gender, masculinity, and

⁵⁷ See Michael Werner and Bénédicte Zimmermann, “Vergleich, Transfer, Verflechtung. Der Ansatz der Histoire Croisée und die Herausforderung des Transnationalen,” *Geschichte und Gesellschaft* 28, no. 4 (2002): 607–36. On comparative history: Haupt and Kocka, “Comparative History: Methods, Aims, Problems,” 25; Heinz-Gerhard Haupt and Jürgen Kocka, *Comparative and Transnational History: Central European Approaches and New Perspectives* (New York: Berghahn Books, 2009); Hartmut Kaelble, *Der Historische Vergleich: Eine Einführung zum 19. und 20. Jahrhundert* (Frankfurt/M.: Campus Verlag, 1999).

⁵⁸ Michael Werner and Bénédicte Zimmermann, “Beyond Comparison: Histoire Croisée and the Challenge of Reflexivity,” *History and Theory* 45, no. 1 (2006): 30–50, 35.

femininity.⁵⁹ Scott's definition of gender as context-specific and a relational signifier of power is important for my research, because while contemporary discussions were explicitly about raising women to equal status with men, they were also implicitly about men's status and rights. Granting women equal civil rights was important for both sexes, because it had consequences for men too, whose power and authority as husbands and heads of the family would be weakened, but who could gain new experiences as equal partners in a marriage and fathers. For some contemporaries, the consequences for men and the family structure were considered prohibiting factors for changing the law, even if it meant further limiting women's rights. Other historians of post-1945 German history have analyzed discourses about the *Frauenfrage* ("women's question") and motherhood, but I take the relational aspect of gender more seriously in order to deconstruct the contemporary discourse on motherhood, fatherhood, and spousal relations that were the core of marriage and family law. Furthermore, Scott emphasizes historicizing language, which is important for my work. The idea of gender as a social construction did not exist in contemporary discourse. I thus employ "gender" strictly as an analytical category. For the analysis of the contemporary discourse I attempt to deconstruct and historicize the central concepts of the time in order to more accurately convey its historical meaning. One central concept was *Gleichberechtigung*, equality between the men and women.

Additionally, Scott's argument that language and discourse construct knowledge about sexual difference, especially in politics, is fruitful for my work.⁶⁰ I apply her

⁵⁹ Joan W. Scott, "Gender: A Useful Category of Historical Analysis," *American Historical Review* 91, no. 5 (1986): 1053-1075; idem., "Gender: Still a Useful Category of Analysis?," *Diogenes* 57, no. 1 (2010); idem., "Introduction," in *Gender and the Politics of History* (New York: Columbia University Press, 1999): 1-14.

⁶⁰ Scott, "Introduction," 1-14.

suggestion in my study of how different actors in politics and society defined *Gleichberechtigung* and attempted to challenge dominant discourses and related policies, and thus, set marriage and family law on new paths. Based on feminist scholarship on “gender and politics,” I define “politics” to include political institutions (such as the governments, parties, and parliaments); social organizations (especially the Protestant and Catholic Churches and women’s associations); and the public with its mass media.⁶¹ I devote special attention to the role of political actors outside of the parties and parliaments in the disputes over family law, interrogating ways civil society has historically served as a venue for individuals, groups, and associations to pressure the members of formal political institutions for equal civil rights.

“Civil citizenship rights” are a central point of my analysis. Following the work of leading historians and sociologists, I see gender as a central component of citizenship. I use feminist sociologist Ruth Lister’s concept of citizenship, which inverts sociologist Thomas Marshall’s tripartite conception of political, social, and civil rights and instead emphasizes that women, unlike men, tend to gain civil rights much later than political and social rights.⁶² In this context Lister defines citizenship as a practice that “involves fulfilling the full potential of the status” via political participation.⁶³ She asserts, however, that even when women have the right to vote or the right to work, they still lack the “personal autonomy”

⁶¹ Belinda Davis, “The Personal is Political: Gender, Politics, and Political Activism in Modern German History,” in *Gendering Modern German History*, eds. Karen Hagemann and Jean H. Quataert (New York: Berghahn Books, 2007), 107-127.

⁶² Ruth Lister, *Citizenship: Feminist Perspectives*, 2nd ed. (New York: New York University Press, 2003), 70. See also T. H. Marshall, *Citizenship and Social Class, and Other Essays* (Cambridge: Cambridge University Press, 1950). Marshall explains that historically, civil rights are the precondition to equal political and social rights, although Lister and other feminist scholars have challenged his argument, explaining that for women, the opposite trajectory is typically true and civil rights tend to come last for them.

⁶³ Lister, *Citizenship*, 42.

offered by civil rights that serves as a “precondition for action in any culture.”⁶⁴

Historian Kathleen Canning builds on Lister’s theoretical framework in her call to historicize citizenship in the context of German gender history. Canning develops Lister’s rights-based approach by accounting for the historical subjectivity of citizenship. She “considers both the power of law and citizenship discourse and the interventions and interpretations of those who encounter, embrace, or contest them” as central to deconstructing historical understandings of citizenship and how it has changed over time.⁶⁵ She furthermore does not restrict citizenship to the realm of law, but argues that popular culture, the media, and consumption inform the practice and contemporary understandings of citizenship as well.

“Practice” of citizenship complements a rights-based approach, according to Lister and Canning. In particular, informal politics were (and are) an especially critical venue for women’s political participation.⁶⁶ Illuminating this idea in the German context, historian Belinda Davis has argued that the literature on women’s politics in Germany has shown “that effective activism requires some work outside existing formal political channels but also necessitates efforts to increase a presence within these structures as well.”⁶⁷ Here, too, Canning’s assertion that citizenship is fluid, contested, and can be informed by many actors and institutions is important. Combining Lister’s, Canning’s, and Davis’s approaches help me to understand how different actors, especially party and non-party women’s associations,

⁶⁴ Lister, *Citizenship*, 17.

⁶⁵ Kathleen Canning, “Of Meanings and Methods: The Concepts of Class and Citizenship in German History,” *Gender History in Practice: Historical Perspectives on Bodies, Class & Citizenship* (Ithaca, NY: Cornell University Press, 2006), 193-211, 209.

⁶⁶ Lister, *Citizenship*, 196.

⁶⁷ Davis, “The Personal is Political,” 120.

but also members of the media, conceptualized civil rights differently and worked inside and outside of official channels to challenge and change contemporary understandings of civil rights in marriage and the family.

Building on this idea of informal activism, my study is also informed by comparative research on the history of feminism as a political movement. I do not label my historical actors as “feminists,” as the term was rarely used by contemporaries. Before 1933, some used the term “*Frauenrechtlerin*” (women’s rights activists), but after 1945, they identified themselves as members of women’s organizations. The term “*Feministin*” was reserved for activists of the new women’s movement and defined by “individual feminism.” Recent historical scholarship, however, has shown that the term “feminism” can be a useful category for a comparative analysis of the struggle for equal rights of men and women. Historian Karen Offen suggests extending our understanding of “feminism” and to differentiate between “relational” and “individual feminism.” “Relational feminists” believe that men and women are different by “nature” and their “innate” biological differences lead to different cultural and social “characters” of men and women, which in turn define their sphere of activity in the economy, society, and politics. Because of their “spiritual motherhood,” women “by nature” are better suited to serve in the “female spheres” of the economy, society, and politics. They “complement” men. This approach led to the slogan “equal but different.”⁶⁸ Meanwhile, “individual feminism” is based on the assumption that all men and women have the same human rights as human beings. Therefore, the rights of an individual

⁶⁸ Karen Hagemann, “Civil Society Gendered: Rethinking Theories and Practices,” in *Civil Society and Gender Justice: Historical and Comparative Perspectives*, eds. Karen Hagemann, Sonya Michel, and Gunilla Budde, 17-42 (New York: Berghahn Books, 2008), 32.

transcend everything, including sexual difference.⁶⁹

As Offen points out, however, there is not a strict dichotomy between individual and relational feminisms in practice. Both positions were fluid and need to be understood as relational and in their specific historical context. She stresses that “any comprehensive discussion of feminism must therefore encompass both these argumentative traditions, account for the ways in which they point to very different societal outcomes, and examine the tensions between them in particular contexts.”⁷⁰ Despite her insistence of the multiple meanings of feminism, she does not include in her study the tradition of “socialist feminism.” Her main argument is that socialist feminists believe that a full emancipation of women is only possible when the working class is liberated, i.e. after an economic and social revolution. For them the social and the women’s question are closely connected. Only women’s integration into the labor force can therefore contribute to their “emancipation.” For her, this disqualifies them from being “feminist.” My own study uses a broader definition of feminism that includes all three approaches and emphasizes the fluidity of these positions. One example is the aforementioned development of the debate in the Weimar SPD.⁷¹ In the post-1945 SPD women’s organization, relational feminism dominated and explains why in the context of the Cold War in the SPD, few female members radically questioned the gendered division of labor in politics, society, and family. Following Offen, I analyze the competition and interplay between the different forms of feminism in order to understand

⁶⁹ Offen, *European Feminisms*, 22.

⁷⁰ Ibid., 22.

⁷¹ See Hagemann, *Frauenalltag und Männerpolitik*, 528-43.

how and why various women's rights activists struggled with each other to redefine men's and women's equal rights in marriage and the family from the mid-1940s to the late 1960s.

Additionally, the concept of "civil society" is central to my project, because I view it as the primary arena where women advocated for equal civil rights in marriage and the family. In particular, I utilize an "action-logical" approach to civil society, understood, following here Karen Hagemann, as "a web of autonomous associations and activities independent of the state, which binds citizens together in matters of common concern and by their existence or actions."⁷² Furthermore, this approach identifies civil society as self-organized, peaceful, and aimed as "the so-called common good."⁷³ For my own study, particularly the West German half, the action-logical approach makes the most sense, because I examine how numerous autonomous groups—the major churches and their religious associations, women's organizations (secular and Christian), trade unions, and professional federations—all voluntarily took up family law reforms as a joint cause, for the "common good," despite their different perspectives and goals. They create unity and simultaneously exclude by "othering." Next to gender and class, religion is of crucial importance for my study, because religious women's organizations were often at the forefront of debates on the new family law, at least in the West.⁷⁴ With these theories, I am able to use the debates over the Equal Rights Act in society to examine how voluntary organizations in the West pressed for reforms, and what circumstances enabled or limited

⁷² Hagemann, "Civil Society Gendered," 21.

⁷³ *Ibid.*, 21.

⁷⁴ Hagemann, "Civil Society Gendered," 22; see also Shalini Randeria, "Kastensolidarität als Modus zivilgesellschaftlicher Bindungen. Gemeinschaftliche Selbstorganisation und Rechtspluralismus im (post)kolonialen Indien," in *Zivilgesellschaft national und transnational*, eds. Dieter Gosewinkel and Jürgen Kocka (Berlin: Edition Sigma, 2004), 223-243.

their abilities to respond.

Although “civil society” is a helpful framework for the FRG, the Western concept of civil society does not fit well for the East, because the GDR was, by most accounts, a dictatorship that “destroyed civil society in most respects.”⁷⁵ For this reason, scholars have typically identified the citizen movements of the 1980s as the beginning of civil society in the GDR, because it was otherwise barred.⁷⁶ Yet other scholarship on the cultural sphere of the GDR has argued that traces of a civil society were present before the 1980s among the East German literati such as Christa Wolf and Stefan Heym.⁷⁷ Furthermore, individual actors still remained capable of peaceably protesting the government. In my own study, I do not argue that the GDR had a developed “civil society” in the 1950s and 1960s. Still, to paraphrase historian Jürgen Kocka, I seek out the “residuals of civil society [that] survived the dictatorships.”⁷⁸ In this project, the residual elements of civil society mostly existed in the Protestant and Catholic churches in the GDR, whose protests against the Family Code exposed that “the dictatorship’s rule was more limited than assumed by theories of totalitarianism.”⁷⁹

Finally, as a method, I employ discursive analysis in order to understand the construction of discourse on *Gleichberechtigung* on the different levels of politics, civil

⁷⁵ Jürgen Kocka, *Civil Society and Dictatorship in Modern German History* (Hanover: University Press of New England, 2010), 29.

⁷⁶ See, for example, Christiane Olivo, *Creating a Democratic Civil Society in Eastern Germany: the Case of the Citizen Movements and Alliance 90*, 1st ed. (Houndmills, Basingstoke, Hampshire & New York, NY: Palgrave, 2001).

⁷⁷ David Bathrick, *The Powers of Speech: The Politics of Culture in the GDR* (U of Nebraska Press, 1995).

⁷⁸ Kocka, *Civil Society and Dictatorship*, 29.

⁷⁹ *Ibid.*, 39.

society, and the media. I consider social background, political affinity, experiences, memories, and other factors to be part of the formation of discourse by different political actors. Newspapers and magazines played an important role in both mediating and reflecting debates on gender equality to their audiences. Additionally, theories on the discursive construction of “the other” are important for my examination of the entangled relationship between the FRG and the GDR. The construction of competing discourses, how they changed, and their interplay on the different levels of politics, society, and the media comprise much of my analysis.⁸⁰

The interdisciplinary approach of my dissertation is based on a broad variety of primary sources and printed sources like protocols, reports, newspapers, and journals in order to understand the struggle for *Gleichberechtigung* and its implementation in marriage and family law in East and West Germany between 1945 and 1968. The first level of my analysis explores the discussions and negotiations among members of governing political institutions. In particular, I focus on the official politics of the federal governments and their ruling parties, specifically the CDU/CSU and the federal Ministries of Justice, Interior, and Family in the FRG, and the SED and the Ministries of Justice and Interior in the GDR. Here, I rely on internal documentation from the West German Ministries of Justice, Interior, Family, and the Office of the Federal Chancellor, such as memoranda, *Stellungnahmen* (opinion pieces), drafts of legislation, petitions from West German social organizations, and other miscellaneous documentation. Published sources such as the *Bundeskabinett* protocols are

⁸⁰ My work draws on both poststructuralist theorists and cultural historians such as Michel Foucault and Roger Chartier. See Lynn Hunt, *The New Cultural History* (Berkeley: University of California Press, 1989); Roger Chartier, *On the Edge of the Cliff: History, Language, and Practices* (Baltimore: Johns Hopkins University Press, 1997); for media and history, see Karl Christian Führer et al., “Öffentlichkeit – Medien – Geschichte,” *Archiv für Sozialgeschichte* 41 (2001): 1-38.

equally important. Likewise, for the GDR, I use gray material from the SED-*Zentralkomitee*, the Office of the Ministers' Council (*Ministerrat*), and the Ministries of Justice and Interior and the State Secretary for Clerical Issues. These collections also contain memoranda, petitions, letters, legislative drafts, meeting minutes, and opinion pieces. Such documents allow me to peer inside the internal debates within the East and West German governments, in order to distinguish the most important issues concerning marriage and family and how the arguments for and against the proposed laws were constructed.

The second level of my study analyzes the debate in society and the degree to which societal intervention alternately halted and drove forward the reforms. I especially look at social organizations like the churches, trade unions, and independent women's associations; the major political parties and their women's organizations; and the parliaments. To understand their internal deliberations, I analyze memoranda, party newsletters, fraction protocols, and depositories of party leaders. Of special importance are internal memoranda, letters, and meeting minutes of the women's organizations of the CDU/CSU, FDP, KPD, and SPD and their newsletters such as *Gleichheit*, *Genossin*, *Was Frauen wissen wollen*, and *Frau und Politik*. Similarly, I examine publications from Catholic and Protestant organizations such as *Die Christliche Frau* and *Evangelische Verantwortung*. Additionally, I rely on gray material from the Women's Office of the German Trade Union Confederation (*Deutsche Gewerkschaftsbund*, DGB). For the GDR, I examine petitions, opinion pieces, protocols, reports, meeting minutes, internal memoranda, and newsletters such as *Die Frau von heute* and *Lernen und handeln* for the SED, Ost-CDU, LDPD, DFD, and other respective political parties and organizations such as the Free German Trade Union Confederation (*Freie Deutsche Gewerkschaftsbund*, FDGB). In particular, citizens' petitions—sent in

through a system set up and monitored by the SED—provide a critical lens into ordinary East Germans’ complaints and praise for the forthcoming legislation. Finally, I utilize the published parliamentary protocols for the *Bundestag* and *Volkskammer*. These sources provide not only a sense of the discourse within the respective political parties and independent organizations, but also an idea of how the relationships among associations in “civil society” functioned and were affected by the Cold War political culture.

On the third level, I explore in what ways the media in the GDR and the FRG represented and mediated the debates over family law. Here I study national newspapers and magazines such as *Neues Deutschland* and *Berliner Zeitung* for the GDR, and *Die Welt*, *Frankfurter Allgemeine Zeitung*, *Frankfurter Rundschau*, *Der Spiegel*, and *DIE ZEIT* for the FRG. Where necessary, I include regional newspapers, because these were more commonly read in the early 1950s in West Germany than national dailies.⁸¹ Additionally, women’s magazines such as *Für Dich* in the GDR, and *Brigitte* and *Constanze* in the FRG are critical to my project. Interesting sources for the broader public response are *Leserbriefe*, or letters to the editors, in the national newspapers and these three magazines. I have selected these newspapers and magazines in order to get a broad spectrum of political viewpoints, at least in West Germany. In the GDR, the national newspaper *Neues Deutschland* was controlled by the SED and conveyed only its political agenda. Nevertheless, it is important to analyze and understand the SED’s presentation in *Neues Deutschland* of the debates over the new socialist Family Code.

Finally, all levels of my dissertation compare the discourse and processes in East and West in order to analyze their entangled relationship during the Cold War. For the

⁸¹ Christian Steininger, “Die freie Presse: Zeitung und Zeitschrift,” in *Die Kultur der 50er Jahre*, ed. Werner Faulstich (Munich: Wilhelm Fink, 2002), 241.

comparison of the political, economic, social, and cultural factors that informed the legislation and policies and their long-term aftermath, I use economic, demographic, and social statistics and government reports as well as the extensive secondary literature. In my analysis of the parliamentary protocols, party-level discussions, newspapers, and other documents, I pay close attention to the references to the other Germany and the Cold War.

My dissertation is structured in six chapters. Chapter 1 summarizes the pre-1945 debates, led by the different branches of the German women's movement, over changing the marriage and family law provisions of the Civil Code. Chapter 2 examines the impact of the postwar "crisis years" and the Soviet and Western Allied occupations on women and the family between the years 1945 and 1947, focusing on how women's organizations regrouped and began, even at this stage, to press for changes to family law. Chapter 3 looks at constitutional reforms in the Soviet and Western Allied occupation zones in 1948–1949, specifically female activists' initiatives to include an "equality clause" and a "family protection clause" in the forthcoming provisional constitutions (approved in both states in 1949). Chapter 4 explores the first stages of debates over the new marriage and family laws in each German state from 1949–1953, which failed to produce new legislation by mandated deadlines. Chapter 5 analyzes the second round of deliberations over the new laws in the FRG, which led to the 1957 Equal Rights Act. It ends in 1968 with the rise of the New Women's Movement, which initiated a new discussion of family law in the 1970s. Finally, Chapter 6 covers the final negotiations that resulted in the 1965 Family Code in the GDR. In 1968, the GDR's new constitution provided an even stronger formulation of the equality clause, leading East Germans on a new path regarding women's rights. Each chapter stresses the connections, but also key differences, between the two Germanys in the early Cold War.

CHAPTER ONE

ENGENDERING PATRIARCHY: MARRIAGE AND THE FAMILY IN GERMAN LAW BEFORE 1945

On 4 February 1896, jurist and judge Gottlieb Planck, the *Bundesrat* (Federal Council) commissar and a prominent National Liberal parliamentarian, addressed the *Reichstag*, the national parliament of the German Empire, on the forthcoming reforms to the Civil Code (*Bürgerliches Gesetzbuch*, BGB). In his speech, Planck stressed the urgency and necessity of a common legal structure to govern the German Empire, a federative nation-state with 25 federal states (*Bundesstaaten*) and different legal traditions, based on the General States Laws for the Prussian State (*Allgemeines Landrecht für die Preußischen Staaten*) from 1794 and the Napoleonic Code from 1804. He identified several reasons for the new legislation, but above all, he emphasized that “community order, property, inheritance, marriage, [and] family stand as the wide and firm basis of a common German law.”¹

When Planck made this statement, politicians in the German Empire had been debating civil law for approximately two decades without any resolution. After Germany unified “from above” in 1871, the conservative German chancellor, Otto von Bismarck, recognized that “Germany existed on paper, but it lacked widespread legitimacy as well as seasoned institutions.”² He therefore initiated several legal reform projects, which included

¹ Verhandlungen des Deutschen Reichstags, 31. Sitzung, 4. February 1896, 740.

² David Blackbourn, *The Long Nineteenth Century: A History of Germany, 1780–1918* (Oxford: Oxford, 1998), 243, 259.

the creation of one unified Civil Code, drawn together from the legal codes of the 25 kingdoms, duchies, free cities, territories, and principalities that formed the German Empire. He tasked Planck and the National Liberal Party—then the largest party in the imperial *Reichstag*—with formulating a new Civil Code.

After more than twenty years of controversial debate and protest, mainly from the German bourgeois women's movement, Catholics, and the Social Democratic Party, the *Reichstag* finally passed the new Civil Code on 18 August 1896, slated to go into effect on 1 January 1900. The new law regulated the formation of contracts, property rights, inheritance rights, and marital and familial relations. Regarding family law, National Liberal and conservative politicians envisioned a legal order in which husbands took precedence over their spouses in all areas of marital decision-making, marital property, and parental authority. Married men, for example, had the right to make all decisions for their wives and families. Married women could only work with the express permission of their husbands. Upon marrying, women relinquished the rights to their personal property. Furthermore, the right to divorce hinged on the guilt principle. Finally, unwed mothers and their children did not possess the same legal status as married women and their offspring.

These provisions became a mainstay of German jurisprudence and politics for more than half a century, outlasting the empire and the following four political regimes, two world wars, and the division of Germany after 1945. Although historians have examined the causes and effects of the Civil Code in-depth, they have not adequately explained why this particular legislation endured so long in Germany.³ This chapter shows that, despite continuous

³ Jean Quataert, *Reluctant Feminists in German Social Democracy, 1885-1917* (Princeton: Princeton University Press, 1979), 26; Margaret B. Crosby, *The Making of a German Constitution: A Slow Revolution* (Oxford: Berg, 2008), 207; Dieter Schwab, "Gleichberechtigung und Familienrecht im 20. Jahrhundert," in *Frauen in der Geschichte des Rechts*, ed. Ute Gerhard (Munich: C.H. Beck, 1997), 793; Stephan Buchholz, "Das Bürgerliche

resistance, the fourth book of the Civil Code remained largely unaltered throughout the *Kaiserreich*, the Weimar Republic, and the Third Reich because many contemporaries saw the male breadwinner/female homemaker family model outlined in the BGB not only as a unifying and stabilizing force in German society, but also as the basis of a functioning state. Although the discourse about stability remained the same, the circumstances that precipitated anxieties about national stability changed. In the late nineteenth century, the Civil Code became a response to unification and industrialization. When the empire crumbled at the end of World War I, especially the conservative Catholic politicians of the Center Party (*Zentrumspartei*, Z), which governed first in a coalition with the SPD and the liberal German Democratic Party (*Deutsche Demokratische Partei*, DDP), and later also with more national-conservative Protestant parties like the German People's Party (*Deutsche Volkspartei*, DVP) and right-wing German National People's Party (*Deutsche Nationale Volkspartei*, DNVP) vehemently opposed any reform of the Civil Code's prescriptions for marriage and the family. The Catholic and Protestant majority in the Weimar society saw the family as a stronghold against economic and social crisis and the dangers of "socialism," their label for the Weimar welfare state. After seizing the government in 1933, the Nazis, too, presented the male breadwinner/female homemaker family as the solution for social peace and stability in the German *Volksgemeinschaft* ("Community of People"), similar to the Catholic Center Party and the Protestant nationalist-conservative parties during the Weimar years and thus did not support any major changes to the Civil Code. Early on, they implemented, however, special regulations for all "non-Aryan" marriages and families, like the antisemitic

Gesetzbuch und die Frauen: zur Kritik des Ehegüterrechts," in *Frauen in der Geschichte des Rechts*, ed. Ute Gerhard (Munich: C.H. Beck, 1997), 670-682; Werner Schubert, "Die Stellung der Frau im Familienrecht und in den familienrechtlichen Reformprojekten der NS-Zeit," in *Frauen in der Geschichte des Rechts*, ed. Ute Gerhard (Munich: C.H. Beck, 1997), 828-850.

Nuremberg Laws (*Nürnberger Gesetze*) from 16 September 1935. Their defeat in 1945 at the hands of the Allies ensured that the Nazi project of a new, racialized family law never came to fruition. From the late nineteenth century to the mid-twentieth century, family law provisions remained the same as major political, social, cultural, and economic upheavals confronted each political regime.

This chapter also demonstrates the continuing public conflict over the fourth book of the BGB. From the beginning, its aims and language were contested. Proponents of the new regulations—namely liberal and conservative politicians—praised the law for protecting women and preserving their “natural” differences from men.⁴ Meanwhile, the bourgeois women’s movement and the Social Democratic Party—representing decidedly different political and social strata—both railed against the new law’s severe restrictions on women’s legal personhood. These groups continued their struggle against the Civil Code during the Weimar Republic, but were quickly silenced after the Nazis’ seizure of power in January 1933. The National Socialist German Workers’ Party (*Nationalsozialistische Deutsche Arbeiterpartei*, NSDAP) outlawed and persecuted its opponents from the Left. The umbrella organization of the bourgeois women’s movement, the Federation of German Women’s Associations (*Bund Deutscher Frauenvereine*, BDF), founded in 1894, dissolved itself in 1933 because it did not want to become a Nazi organization.

This first chapter describes the political, social, and economic factors that influenced the initial form of the marriage and family law provisions of the Civil Code, and discusses why it stayed in force despite two changes of the political regime in 1918–19 and 1933. The first section traces the BGB’s inception following the unification of Germany in 1871 and

⁴ Karen Offen, *European Feminisms, 1700-1950: A Political History* (Stanford: Stanford University Press, 2000), 203.

importance for the German Empire. The second section outlines how the dissolution of the German Empire following the end of World War I and the Weimar Republic (1918/19–1933) shaped new debates over marriage and family law. The last section analyzes the fate of marriage and family law during the Third Reich (1933–1945).

Drafting the Civil Code, 1874–1900

The 1900 Civil Code had its roots in the disparate regional codes that governed marriage and the family prior to German unification in 1871. Married women's subordination to men was long embedded in the legal tradition of the civil laws of many states and principalities of the Holy Roman Empire and German Confederation of 1815. For example, the General State Law for the Prussian States, passed in 1794, gave men legal authority over their wives.⁵ In addition, the Napoleonic Code of 1804, which remained applicable in several German territories that had belonged to the Confederation of the Rhine even after the defeat of Napoleon in 1815, made the situation even more complex. After the unification of 1871, the so-called "Rhenish Law" applied in a sixth of the territory of the German Empire (for example, in the newly acquired Rhenish territories of Prussia, the Grand Duchy of Baden, and the Bavarian Palatinate). In addition, the Kingdom of Saxony implemented its own *Bürgerliche Gesetzbuch für das Königreich Sachsen* (the Saxon BGB) in 1865, which stipulated that after marriage, men controlled their wives' property, women adopt their husbands' surname, and women could no longer conduct business transactions by themselves.⁶ Despite different legal traditions, the various civil laws and regulations of the 25

⁵ Crosby, *Making*, 175.

⁶ Margaret Barber Crosby, "The Civil Code and The Transformation of German Society: The Politics of Gender Inequality 1814–1919, (PhD diss., Brown University, 2001), 114–115.

federal states in the new German Empire shared a certain inclination toward limiting women's civil and property rights within marriage.

The result of the different legal traditions was that, despite a general tendency of the legal regulations to protect patriarchal structures in marriage and family, the practice often differed by region, as historian Margaret Barber Crosby notes.⁷ The legal situation was further complicated by the fact that marital contracts based on local inheritance customs and statutes could trump federal law, even when the laws of a federal state stated otherwise. This was a common practice before the implementation of the Civil Code.

The variety of regional statutes and customs came under intense scrutiny after German unification. In 1873, Otto von Bismarck, the German Chancellor and head of the *Bundesrat*—the Federal Council comprised of the heads of each German state—initiated reforms of civil law as part of his unification process for the German Empire. On 20 December 1873, the *Reichstag* approved an amendment to the *Gesetz betreffend die Verfassung des Deutschen Reiches* that added civil law to a long list of laws in need of revision.⁸

To address the issue of the Civil Code, Bismarck and the *Bundesrat* appointed the *Kommission zur Erarbeitung eines Bürgerlichen Gesetzbuches* (or shorter BGB Commission) in the *Reichstag*, which faced the daunting task of consolidating at least eight major regional civil codes and hundreds of local customs and statutes into one

⁷ Crosby, "The Civil Code," 140–141.

⁸ Kommission zur Ausarbeitung des Entwurfs eines Bürgerlichen Gesetzbuches, *Entwurf eines bürgerlichen Gesetzbuches für das Deutsche Reich: Erste Lesung* (Berlin: J. Guttentag, 1888), 3.

comprehensive body of law to govern the fledgling German nation-state.⁹ In this commission, Gottlieb Planck emerged as one of its leaders and the central figure in the formulation of one common family law.¹⁰ Born to a prominent liberal family from the Kingdom of Hannover, Planck had studied law in Göttingen and Berlin, where he took courses on Roman law, German private law, Pandecticism, inheritance law, and civil society.¹¹ He was a civil servant for the Kingdom of Hannover before entering the Hannoverian Parliament as part of the National Liberal Party (*Nationalliberale Partei*, NLP). After the annexation of Hannover and German unification in 1871, Planck joined the new German national parliament, the *Reichstag*, where he continued to represent the NLP. Urged by Bismarck, his party formed an alliance with the Conservative Parties, who shared similar goals of supporting unification and a strong empire by reducing the power of the Catholic church and its Center Party as well as the Social Democratic Worker's Party and the labor movement, supporting industrialists, increasing the intervention of the state, and standardizing all laws.

Planck's educational background and political beliefs informed his approach to the law. Like many nineteenth century legal experts, he had been trained in Roman and German law. The Civil Code ultimately reflected both schools of thought, although in the case of family and marriage law, the Germanist influence was much more evident. For instance,

⁹ The Prussian *Landrecht* and Bavarian Civil Code ruled the largest states under the German Empire. To the north and west, Danish and French Civil Codes governed Germans living along the North and Baltic Seas and the Rhine River. The Badisch and Saxon Civil Codes ruled over yet more Germans.

¹⁰ Crosby, "The Civil Code," xxx, xxxiii. Gottlieb Planck (1824–1910) was a lifelong liberal who came from a prominent Göttingen family. He studied law in Berlin in the 1840s, where he became further involved in liberal causes. After German unification, he was selected to head a Family Law Committee responsible for the draft of the fourth book of the BGB. He later led the revisions committee. He died in 1910. For more on Planck's biography, see Crosby, *Making*, 190–191.

¹¹ Crosby, "Civil Code," 202.

Germanists rejected old Roman notions of independent marital property for married women and adopted older Germanic notions of masculine control of the property.¹² Many of the Family Law committee members, such as Planck and Richard Schroeder, subscribed to these Germanist interpretations of law, which shaped the formulation of the Civil Code.

Furthermore, Planck was committed to legal unity, to a point of being “more concerned in the 1870s with the formal aspects of legal unification than with the content of the law.”¹³ Historian Michael John notes that Planck believed that “‘a unified legal consciousness will develop out of unified legislation’.”¹⁴ Planck was willing to overlook regional peculiarities that may have come with marriage or family law because he theorized that one unified law would eventually override these differences. Moreover, liberals saw legal disunity as impeding economic growth.¹⁵ In addition, Planck was a devout legal positivist. According to John, Planck and his fellow commission members followed “a legal philosophy which emphasized the unimpeded exercise of personal choice by autonomous legal subjects,” which they of course thought of as male, because only men possessed the preconditions for individual autonomy.¹⁶ It is important to keep this in mind. Reflecting nineteenth-century bourgeois thinking, most contemporary legal experts coded personal liberties and freedoms as male. According to historian Karen Hagemann, this was “part of an ‘invented tradition’ designed to secure male supremacy not only in the family, but also in the

¹² Crosby, *Making*, 210.

¹³ Michael John, *Politics and the Law in Late Nineteenth-Century Germany: The Origins of the Civil Code* (Oxford: Clarendon Press, 1989), 90.

¹⁴ John, *Politics*, 83.

¹⁵ Dirk Blasius, *Ehescheidung in Deutschland 1794-1945* (Göttingen: Vandenhoeck & Ruprecht, 1987), 129.

¹⁶ John, *Politics*, 87.

economy, society, and politics.”¹⁷ For a National Liberal like Planck, then, autonomous legal subjects such as propertied men could only have free rein if their wives or children could not interfere, especially in matters of property ownership or inheritance.

In addition to Planck’s legal knowledge and political beliefs, the conditions facing the BGB Commission members factored into their approach to the new law as well. In the beginning, the BGB Commission had to balance several competing interests in the fledgling and fractured German Empire. It had to consider Prussia’s predominant position—which Bismarck was eager to protect—and whether or not following a Prussian model would be acceptable to non-Prussian states.¹⁸ The commission ultimately rejected this idea, choosing instead comprehensive reform, although, as historian Dirk Blasius notes, Prussia still ended up with the most influence.¹⁹ Relatedly, Planck and the BGB Commission also had to consider the degree to which local interests were given space in the law; in this regard, family law played a special role, because it was seen as “unsuitable for national legislation because of regional variations.”²⁰ Despite the reluctance of some legislators, the commission pushed for one comprehensive law in order to draw the splintered empire together.

The BGB Commission’s 1888 draft of the Civil Code reflected the ways Planck and other leading committee embraced Germanist legal thought, which was based on Roman law, positivism, and liberal notions of masculine privilege. The new legislative draft stood poised

¹⁷ Karen Hagemann, “Civil Society Gendered,” in *Civil Society and Gender Justice: Historical and Comparative Perspectives*, eds. Gunilla-Friederike Budde, Karen Hagemann, and Sonya Michel (New York: Berghahn Books, 2008), 34. See also Karin Hausen, “Liberalismus und Frauenemanzipation,” in *Liberalismus und Emanzipation. In- und Exklusionsprozesse im Kaiserreich und in der Weimarer Republik*, eds. Angelika Schaser and Stefanie Schüler-Springorum (Stuttgart: Franz Steiner, 2010), 40.

¹⁸ John, *Politics*, 76; James N. Retallack, *Imperial Germany, 1871-1918* (Oxford: Oxford, 2008), 33.

¹⁹ John, *Politics*, 84; Blasius, *Ehescheidung*, 127.

²⁰ John, *Politics*, 76, 82.

to eliminate all regional differences in treatment of married women in favor of one national code. Although the draft obligated both spouses to a mutual “marital community,” it also privileged men in several areas of marital relations, property, and parental authority. For instance, from this point forward, men had the right to make all decisions for their wives and families, including where the family resided. Women had to take their husbands’ names upon marriage. Additionally, women were charged with leadership of household affairs and wives could only complete legal transactions with their husbands’ permission. Furthermore, men could control their wives’ property. Divorce rulings—which could typically only be pursued in cases of adultery—rested on the guilt principle. In cases of divorce, if the woman was declared the guilty party, she would take her maiden name so as not to besmirch the man’s family name. Declarations of guilt affected custody, too. Male children over the age of six would go to the father, while male and female children under the age of six could remain with the mother. Men possessed the legal right to make all decisions regarding the children, though mothers had the *duty* to care for their children. Finally, the proposed law removed rights of illegitimate children to make material or familial claims to their fathers. As a whole, the law limited married women’s individual rights in favor of male authority and subordination to the family unit.²¹

Over the next eight years, until its approval in 1896, the draft remained largely unchanged, despite resistance from bourgeois women’s associations, male legal experts, Social Democrats and Catholics, who all protested for different reasons. From its inception in 1874, the BGB Commission came under fire from women’s organizations such as the General German Women’s Association (*Allgemeine Deutscher Frauenverein*, ADF), founded

²¹ Kommission, *Entwurf*, 279-419.

in October 1865 in Leipzig by the Saxon educators, journalists, and women's rights activists Louise Otto Peters²² and Auguste Schmidt²³, who led the organization until the 1890s.²⁴ In March 1894, Schmidt formed with other leaders of the growing bourgeois women's movement, like Helene Lange, the founder of the General German Women Teachers Association (*Allgemeinen Deutschen Lehrerinnenverein*, or ADL), the Federation of German Women's Associations (*Bund Deutscher Frauenvereine*, or BDF) as an umbrella organization of the bourgeois women's movement. Schmidt was the leader of the BDF until 1899. She was succeeded by the liberal-minded minded “*Frauenrechtlerin*” Marie Stritt, who had founded the Legal Protection Association for Women (*Rechtsschutzverein für Frauen*) in 1894 in Saxony that soon became a national organization.²⁵ As the leader of this *Rechtsschutzverein* and later the BDF, Stritt was an ardent opponent of the patriarchal Civil Code. In 1910, however, Stritt was replaced by the more conservative Gertrud Bäumer, who had belonged to the BDF executive committee before as a leader of the ADL. One year after its founding the BDF represented 65 associations; by 1913, the number had grown to 2,220 with approximately 500,000 members.

According to historian Michael John, there was a “lack of attention paid to the

²² On Louise Otto-Peters (1819–1895), see Ruth-Ellen Boetcher-Joeres, “Otto-Peters, Louise,” in *Neue Deutsche Biographie* 19 (1999): 715–716. Born in 1819, Otto-Peters founded a women's newspaper in the wake of the 1848 revolutions and then co-founded the ADF in 1865, remaining in charge of the organization until her death in 1895.

²³ On Auguste Schmidt (1833–1902), see Astrid Franzke, “Schmidt, Auguste Friederike Wilhelmine,” in *Neue Deutsche Biographie* 23 (2007): 179. Born in 1833, Schmidt trained as a teacher and met Otto-Peters in 1864, one year before they decided to establish the ADF. She later became a leader of the BDF, running the organization until 1899.

²⁴ Irene Stoeher, *Emanzipation zum Staat?: Der Allgemeine Deutsche Frauenverein-Deutscher Staatsbürgerinnenverband (1893–1933)* (Pfaffenweiler: Centaurus-Verlagsgesellschaft, 1990).

²⁵ “Marie Stritt, geb. Bacon (1855-1928),” last accessed February 19, 2017, <https://www.jura.uni-hannover.de/2289.html>. Stritt, born in 1855, trained as an actress before entering the German women's movement and later became the leader of the BDF.

deliberations of the [Civil Code] commission before 1888,” but the work of the ADF, which he ignored, undermines this assertion.²⁶ Between 1874 and 1900, the ADF and the BDF employed several strategies to protest the proposed legislation. In 1877, following a public “Appeal! (*Aufruf!*)” in the previous year, the executive board of the ADF petitioned the *Reichstag* to ensure that the forthcoming national Civil Code guaranteed “general legal equality of the sexes (*die allgemeine rechtliche Gleichstellung der Geschlechter*).”²⁷ They requested the removal of provisions that deemed women “incapable;” changes to divorce law; and changes to custody rights for both parents. In addition, they asked that women be allowed control over their own property and inheritance. They requested the removal of patriarchal authority and custody over children in the case of divorce and elimination of “general stylistic elements in the law” that reduced women to the same status of minorities and invalids.²⁸ This petition to the *Reichstag*, was forwarded to the responsible BGB Commission, led by Planck and the *Reichskanzlei*, the office of the Chancellor Bismarck, but neither answered it. For the legal historians Stephan Meder and Arne Duncker, the lack of response indicates that “no party-political discussions of its contents” occurred.²⁹ They believe that it was as a “tactical error” of the ADF not to address the *Reichstag* directly.³⁰ Given the misogynist political culture of the time, however, it is unlikely that this would have

²⁶ John, *Politics*, 105.

²⁷ “Allgemeiner Deutscher Frauenverein (Vorstand): Aufruf! 1876,” in *Die Rechtsstellung der Frau um 1900: eine kommentierte Quellensammlung*, eds. Stephan Meder, Arne Duncker, and Andrea Czelk (Köln and Weimar: Böhlau Verlag, 2010), 35-36; “Allgemeiner Deutscher Frauenverein: Petition des Allgemeinen Deutschen Frauenvereins an den Reichstag, 1877,” in idem, 36-41.

²⁸ “Allgemeiner Deutscher Frauenverein: Petition des Allgemeinen Deutschen Frauenvereins an den Reichstag, 1877,” in Meder, Duncker, and Czelk, *Die Rechtsstellung der Frau um 1900*, 37-40.

²⁹ Ibid., 37.

³⁰ Ibid.

created more response.

The silence of the BGB Commission and the *Reichskanzlei* left the ADF little recourse for further action at the time. The bi-weekly newspaper of the ADF, *Neue Bahnen*, edited by Peters and Schmidt, regularly published articles against the draft of the BGB, but had few options to create publicity beyond the newsletter and petitioning. Later on, the BDF changed its tactics. In 1895, it formed a legal committee (*Rechtsausschuss*), published several anti-BGB brochures, and ratcheted up its public protests.³¹ According to one source, they sent in approximately 20,000 signatures to the Reichstag in 1896.³² They furthermore continued to critique the Civil Code in the many newspapers and magazines of women's movement, including the *Centralblatt des Bundes Deutscher Frauenvereine*, the national publication of the BDF, which was published since 1899.³³ Although the ADF and later the BDF railed against the Civil Code, they had difficulty persuading the male legislators in the *Reichstag*. After all, they had little political capital because they were not allowed by federal law to join political parties until 1908 and were prohibited from voting until 1919. Since women were not a constituency, politicians in the *Reichstag* had little incentive to listen to their demands. Contemporary critics were aware of these problems; one later blamed "the spirit of masculine egoism" for the final version of the law.³⁴

³¹ Angelika Schaser, *Frauenbewegung in Deutschland 1848-1933* (Darmstadt: Wissenschaftliche Buchgesellschaft, 2006), 54.

³² "Die Frauenbewegung: Zum Bürgerlichen Gesetzbuch (II), 1896," in Meder, Duncker, and Czelk, *Die Rechtsstellung der Frau um 1900*, 366.

³³ "Die Frauenbewegung 1896/96 – Rechtskämpfe um das BGB im Spiegel der Zeitschrift 'Die Frauenbewegung'," in Meder, Duncker, and Czelk, *Die Rechtsstellung der Frau um 1900*, 356; "Die Stellung der sozialdemokratischen Frauen gegenüber dem Entwurf eines bürgerlichen Gesetzbuches, 1895," in Meder, Duncker, and Czelk, *Die Rechtsstellung der Frau um 1900*, 358; "Die Frauenbewegung: Zum Bürgerlichen Gesetzbuch (I-III), 1896," in Meder, Duncker, and Czelk, *Die Rechtsstellung der Frau um 1900*, 364-370.

³⁴ "Käthe Schirmacher: Der praktischen Nutzen des Frauenstimmrechts, 1904," in Meder, Duncker, and Czelk, *Die Rechtsstellung der Frau um 1900*, 794.

Next to the leading organizations of the bourgeois women's movement, the Social Democratic Party was among the most vocal opponents of the new BGB. From its foundation in Eisenach in 1869, the Social Democratic Party, under the leadership of August Bebel, made "women's emancipation" (*Frauenemanzipation*) one of its main tenets. Bebel was a strong supporter of gender equality. His book *Women and Socialism* (*Die Frau und der Sozialismus*), published in 1879, became a socialist bestseller. By 1891, more than 220,000 copies were published in Germany alone; by 1914, 53 German editions came out and the book was translated into 20 languages, with several editions. In the book Bebel denounced the patriarchal oppression of women in capitalist societies and developed the vision of a liberated woman in the socialist future.³⁵ One of his main arguments was that female emancipation required women's economic equality with men in order to achieve liberation from other constraints within the family, politics, and society. But he also insisted on civil and political equality of men and women. His position influenced the different SPD program before 1914, including the Gotha program from 1875 and the Erfurt program from 1891. The latter was the first program after the abolition of the Anti-Socialist Law that had banned the Social Democratic Party and trade unions, closed 45 newspapers, and prohibited all groups or meetings that spread social democratic ideas. But the SPD was still allowed to participate in the *Reichstag* elections and gained increasing influence.³⁶ In 1893, the party achieved 23 percent and in 1912 nearly 35 percent of the votes in the *Reichstag* elections. From the beginning the SPD *Reichstag's* faction under Bebel's leadership fiercely opposed the BGB.

³⁵ August Bebel, *Die Frau und der Sozialismus* (First edn.: 1879, Jubiläumsausgabe; Berlin: J.H.W. Dietz, 1929). On August Bebel (1840–1913), see Anne Lopes and Gary Roth, *Men's Feminism: August Bebel and the German Socialist Movement* (Amherst, NY: Humanity Books, 2000), 38.

³⁶ Quataert, *Reluctant Feminists*, 95.

Despite its programmatic support of “women’s emancipation,” however, the majority of the male members in the SPD, like most men in Wilhelmine Empire, did not perceive women as equal, as the struggle of the Social Democratic women’s movement against male prejudices and resistance in its own party indicates.³⁷

Prominent legal experts such as Gottlieb Planck and other *Reichstag* members resisted giving into the women’s movement’s and the socialists’ demands. In June 1896, for instance, in an address to the *Reichstag*, Planck refuted the women’s movement’s claims by arguing that the “natural concept” of different rights in marital life was in the “interests of women,” especially compared to life before the BGB.³⁸ Another *Reichstag* member, Freiherr von Stumm-Halberg, a representative of the Free Conservative Party (*Freikonservative Partei*), referred the women’s movement as “evil” for “evoking opposition between the sexes” and “bringing dissent into the marriage.”³⁹ Even after the law’s approval in August 1896, Planck continued to face opposition. At one point, in 1899, Planck responded to the protests, addressing a Göttingen women’s group. He explained, for instance, that men had the “marital duty” to support the entire family.⁴⁰ He pointed to the predominance of men’s economic support as a reason to disenfranchise their wives at home. He argued, however, that women were not disadvantaged by the law: the “*Schlüsselgewalt*” granted women

³⁷ Karen Hagemann, *Frauenalltag und Männerpolitik: Alltagsleben und Gesellschaftliches Handeln von Arbeiterfrauen in der Weimarer Republik* (Bonn: J.H.W. Dietz, 1990), 511; Quataert, *Reluctant Feminists*, 95.

³⁸ Verhandlungen des Deutschen Reichstags, 105. Sitzung, June 15, 1896, 2916; see also “Einleitung,” in Meder, Duncker, and Czelk, *Die Rechtsstellung der Frau um 1900*, 12.

³⁹ Verhandlungen des Deutschen Reichstags, 118. Sitzung, July 1, 1896, 3083.

⁴⁰ “Gottlieb Planck: Die rechtliche Stellung der Frau nach dem bürgerlichen Gesetzbuch, 1899,” in Meder, Duncker, and Czelk, *Die Rechtsstellung der Frau um 1900*, 677, 679.

authority within the household.⁴¹ In his view, the separate and unequal roles of the sexes was not only natural, but an asset to society.

This type of argumentation appealed to an unexpected ally: Catholics. Initially, Catholics opposed the draft legislation, although for decidedly different reasons than the bourgeois and socialist women's movements. For Catholics, the law, and by extension the state, interfered too much with the authority of the church. Protestant conservatives, such as Bismarck, and liberals, such as Planck, opposed the influence of the Catholic Church, perceiving it to undermine the aims of the nation-state.⁴² Bismarck responded to the perceived threat of the Church by waging the *Kulturkampf*, a “domestic preventative war against the Catholic minority,” and its political representatives, the Center Party (*Zentrum*) in the 1870s.⁴³ During the *Kulturkampf*, the government had pursued a number of laws that supplanted the Catholic Church with civil institutions. For instance, civil marriages became mandatory across the German Empire in 1875. This anti-Catholic legislation was designed to support German unifications under national-liberal augury and limit and control the power of the Catholic Church.⁴⁴ Indeed, Catholics perceived measures such as the 1875 civil marriage regulation as attacks, although, as historian David Blackbourn points out, they gradually “came to feel more German with the years.”⁴⁵

⁴¹ Ibid., 679.

⁴² Michael B. Gross, *The War Against Catholicism: Liberalism and the anti-Catholic Imagination* (Ann Arbor: University of Michigan, 2004), 185.

⁴³ Blackbourn, *The Long Nineteenth Century*, 261. For studies on political Catholicism, see Ellen Lovell Evans, *The German Center Party, 1870–1933: A Study in Political Catholicism* (Carbondale: Southern Illinois Univ. Press, 1981), 56; Hans-Ulrich Wehler, *The German Empire 1871–1918*, trans. Kim Traynor (Leamington: Berg, 1985), 76; Gross, *The War Against Catholicism*, 10.

⁴⁴ Crosby, *Making*, 157.

⁴⁵ Blackbourn, *The Long Nineteenth Century*, 263.

Although Catholics initially took issue with state intervention, the underlying sentiments of the Civil Code resonated with their Catholic beliefs. In fact, the Catholic Center became allies of the National Liberals in the debates about the new law, in spite of the two parties' long history of hostility. They became a major force in the process of the implementation and enforcement of the BGB. One reason was, that since 1890s, the National Liberals' influence was waning and political Catholicism and socialism were growing more popular among the electorate.⁴⁶ For this reason Bismarck and the conservative parties struck up an "uneasy compromise" with the Center to combat the SPD's growing influence,⁴⁷ which in the 1890 *Reichstag* election for the first time received with nearly 20 percent of the votes.⁴⁸ Only together, the Center, the National Liberals, and Conservatives comprised with 51 percent the majority of the votes and seats in the *Reichstag*, meaning that only as a bloc, they could outweigh the SPD. Collaboration on the matter of the Civil Code was easy, despite all former antagonism, because the National Liberal proposals, for the most part, closely matched Catholic and Conservatives views on familial structure and male authority.⁴⁹ The BGB was passed in the *Reichstag* in 1896 with 232 votes, 80 of them by the Center. 48 *Reichstag* members opposed new Civil Code and 18 voted in abstention.⁵⁰

⁴⁶ Wolfgang J. Mommsen, *Imperial Germany 1867-1918: Politics, Culture, and Society in an Authoritarian State* (London: Arnold, 1995), 10-11. Geoff Eley furthermore suggests that "agrarian radicalism" contributed to the liberals' demise. See "The Crisis of German Liberalism," in *In Search of a Liberal Germany: Studies in the History of German Liberalism from 1789 to the Present*, eds. Konrad H. Jarausch and Larry Eugene Jones (New York: Berg, 1990), 195.

⁴⁷ Mommsen, *Imperial Germany*, 17.

⁴⁸ Historische Ausstellung des Deutschen Bundestages, "Wahlen im Kaiserreich 1871-1918," last modified May 2006, https://www.bundestag.de/blob/190454/782a532c7e19aa9cd5119e62ca77a260/wahlen_kaiserreich-data.pdf

⁴⁹ Blasius, *Ehescheidung*, 143.

⁵⁰ *Ibid.*

Despite fervent resistance and a last ditch effort in 1899 to petition the *Reichstag*, the ADF, BDF, and SPD were not able to revoke the law.⁵¹ On 1 January 1900, the BGB came into effect. The new Civil Code attempted to define all areas of private life for the approximately 50 million residents of the Empire through five books: “Common Property,” “Obligation,” “Property Law,” “Family Law,” and “Inheritance Law.”⁵² The fourth book, “Family Law,” offered a number of provisions governing the rules of engagement and the marriage ceremony, prohibitions on marriage, the spousal community, parental authority, divorce, and marital property.

The Civil Code’s prescriptions for marriage and the family did not distinguish between men and women on several matters such as who could marry, spousal community, and divorce. No one, for example, was permitted to commit incest by marrying relatives or adopted siblings.⁵³ As another example, the rules of engagement stated that fiancé(e)s may be liable for expenses incurred on behalf of the marriage if they broke off the engagement. In the case one of the pair was at fault for ending the engagement (i.e. committed adultery), then he or she was legally liable for damages.⁵⁴ Additionally, marriage was designated a “spousal community” and abuses of spousal rights were grounds for divorce, which remained strictly regulated.⁵⁵ Either spouse could press a divorce case in the case of adultery, criminal activity, abuse, malicious behavior, abandonment, attempted murder, or if a spouse’s mental illness

⁵¹ Crosby, “The Civil Code,” 291; John, *Politics*, 106–107; “Käthe Schirmacher,” in Meder, Duncker, and Czelk, *Die Rechtsstellung der Frau um 1900*, 794.

⁵² This number is taken from Arnold Nieberding’s remarks to the *Reichstag*. *Verhandlungen des Deutschen Reichstags*, 30. Sitzung, February 3, 1896, 706.

⁵³ Das Bürgerliche Gesetzbuch für das Deutsche Reich (BGB) §1310-1311 (1896).

⁵⁴ BGB §§1297–1302. The statute of limitations on such provisions was a maximum of two years.

⁵⁵ BGB §1353.

destroyed the “intellectual community” of the marriage.⁵⁶ No one could enter a new marriage before the last one was dissolved.⁵⁷ Divorce required a guilty party.⁵⁸ Finally, marriage contracts could be used for declaring separate property holdings.⁵⁹ These are all examples of provisions that gave the same rights to married men and women.

At the same time, the new law distinguished between the rights of men and women in several areas such as marrying age, parental authority, and property rights. For example, while men could not marry before the age of twenty-one (the legal age of majority), women could marry at the age of sixteen.⁶⁰ Additionally, although both partners were supposed to contribute mutually to the “marital community,” husbands were endowed with the *Stichentscheid*, or the right to make all decisions for their wives and families. Men furthermore held the right to determine the domicile of the family (an extension of §10, which required married women to share their residence with their husbands). If a woman believed her husband abused his right, then she was not obligated to follow the decision, but often had to for the sake of keeping her family together.⁶¹ Furthermore, while husbands were required to support their wives according to their station in life, property, and employment capability, women could only contribute financially in the case that their husbands were not

⁵⁶ BGB §1564–1569. In any case, a six month probation period was required and the case could be thrown out if the circumstances predated the case by ten years or more. Divorce could be forestalled if the spouses forgave each other.

⁵⁷ BGB §1564–1569.

⁵⁸ BGB §1574.

⁵⁹ BGB §1368.

⁶⁰ BGB §1303.

⁶¹ BGB §1353, 1354, 10.

able to do so, reinforcing the place of men as breadwinners.⁶² Women who stayed home were entitled to the right to lead and maintain the household—thus identifying wives as the primary domestic caretakers—and intervene in their husbands’ business if necessary, though husbands had the right to prohibit wives from doing so. If a man abused this right, then his wife could press a legal suit against him in the guardians’ court (*Vormundschaftsgericht*).⁶³ In parental authority, the father was designated the primary authority over the child and tasked him with caring for the child’s “person and property” (which included the right to decide their education).⁶⁴ The mother could step in as the primary authority only if the father’s authority was hindered.⁶⁵ If a couple did not create a contract, then control of women’s property transferred to their husbands upon marriage and property obtained by the woman (such as through her employment) during the marriage was considered communal property.⁶⁶ The property of wives (with the exception of jewelry, clothes, utensils, and acquisitions through work or independent enterprise), for example, transferred to their husbands upon marriage.⁶⁷ In the case the woman was incapacitated, the husband’s administration of property could not go through without her legal representative present.⁶⁸ While neither spouse could remarry before the last marriage was dissolved, women specifically were barred from entering a new marriage for ten months, and they typically had

⁶² BGB §1360; 1605, 1613-1615.

⁶³ BGB §1356–1357.

⁶⁴ BGB §1627.

⁶⁵ BGB §1634, 1684, 1685.

⁶⁶ BGB §1363, 1373.

⁶⁷ BGB §1365-1370.

⁶⁸ BGB §1363-1431.

to keep their ex-husbands' surnames, which they were required to take upon marriage.⁶⁹

Finally, it excluded illegitimate children and single mothers from full equality with legitimate children born to married couples.⁷⁰ The fourth book on "Family Law" governing matrimonial community, marital property, and parental rights plainly identified men as breadwinners and invested them with full authority over their wives and families. The BGB furthermore attempted to secure a clearly gendered division of labor in family and society, defining women as caretakers of the home and family.

According to historian Volker Berghahn, the enactment of the Civil Code "was celebrated at the time of its ratification [in 1896] as a great advance in the creation of a modern bourgeois society."⁷¹ But its feminist and socialist opponents hardly saw it as progress. In 1902, the BDF mounted one last campaign against the Civil Code, but to no avail. In the meantime, the organization pursued other paths to women's equality, such as the struggle for equal access to higher education, better job opportunities, the professionalization of social work and the fight for women's suffrage. After 1908 many members also joined the political parties.⁷²

By the demise of the German Empire in 1918, the social and political status of women had improved to some degree, though they had yet to achieve equal status with men in all areas of politics, the economy, and society. The access to secondary education for girls

⁶⁹ BGB §1313, 1577.

⁷⁰ BGB §1705-1718. An illegitimate child, for instance, had to keep his or her mother's last name, even if she remarried. Mothers were also not technically the legal guardians of their children even though they were tasked with caring for their offspring.

⁷¹ Berghahn, *Imperial Germany*, 184.

⁷² "Die historischen Wurzeln des Deutschen Frauenrates," accessed October 7, 2016, <https://www.frauenrat.de/deutsch/verband/geschichte.html>; see Schaser, *Frauenbewegung*, 33, 54, 63.

had improved. Between 1900 and 1909 German universities in all federal states finally had opened their doors to unmarried women with the necessary educational prerequisites. Other professional options, especially in the teaching profession, social work and health care, also slowly opened for middle- and upper-class women.⁷³ Since 1908, women of any class could join political parties, but unlike their male counterparts, could still not vote or be elected for any parliamentary position. Despite these changes, cultural assumptions about the gender order and biological difference between the sexes as well as the “proper” gender division of labor in the family dominated.

As this section has shown, there were several legal, political, and social currents that shaped the formation of the Civil Code. The legal experts appointed to the BGB Commission had to balance competing interests in the empire, which led them to reject a Prussian-style code and to emphasize the importance of legal unity. On an ideological level, National Liberals saw the new family law as rooted in natural sexual difference. Male authority and the disenfranchisement of women in marriage and the family, they believed, was best for Germany’s development. The bourgeois women’s movement and socialists never really accepted this version of the law and protested its approval. The semi-authoritarian nature of the imperial government barred socialists from gaining much traction and prohibited women from voting at all, thus diminishing the opposition’s chances of overturning the Civil Code. Once the law was in place, it became even more difficult to protest. The bourgeois women’s movement ended up focusing its energies elsewhere, hoping to attain women’s equality in other arenas, such as education or professional life. World War I further altered their path, as the BDF devoted itself to nationalist and patriotic wartime causes. As the German Empire

⁷³ Berghahn, *Imperial Germany*, 60–61.

crumbled after its defeat in World War I and in the wake of a November Revolution of 1918, Germans saw the potential for a democratic republic at last. This Germany would, in the imaginations of many women, also bring more equality to them.

Weimar's Broken Promise to Women, 1919–1933

The defeat of the German Empire in World War I and the *Novemberrevolution* of 1918 opened the door to radical political and social transformations in Germany. In the years to follow, politicians in the new Weimar Republic continued to address the fall-out of the First World War, constructing a series of policies and laws to deal with large-scale postwar demographic changes, demobilization of soldiers, economic upheaval, and political instability. Despite such massive changes in Germany after the war, some elements of imperial Germany's legal and political structure, such as civil law, remained intact. The fragile postwar economic and political environment, changes in gender roles, and anxieties about the failure of the traditional family all pushed contemporaries in the Weimar Republic into heated debates about expanding constitutional rights and reforming the Civil Code.

One of the first decrees of the two leading parties of the revolution—the Majority Social Democratic Party (*Mehrheitssozialdemokratische Partei Deutschlands*, MSPD) and the Independent Social Democratic Party (*Unabhängige Sozialdemokratische Partei Deutschlands*, USPD), founded in April 1917 as an socialist anti-war opposition—introduced general universal suffrage for men and women over the age of twenty. In other words, they abolished the three-class voting system for men in the Prussian state and other *Bundesstaaten*, extended the universal suffrage for the *Reichstag* elections to women and

lowered the voting age from 25 to 21.⁷⁴ Women first exercised their right of active and passive suffrage in the National Assembly (*Nationalversammlung*) elections on 19 January 1919 with a nearly 90 percent participation rate (average 83 percent).⁷⁵ The MSPD and the USPD came out of the elections as the two majority parties in the National Assembly, though the Catholic Center Party (*Zentrum*), the left-liberal German Democratic Party (DDP), the national-liberal German People's Party (DVP), and nationalist-conservative German National People's Party (DNVP) came in at a close second.⁷⁶ 9.6 percent of the members of the National Assembly were female; nearly half of them (21) belonged to the MSPD and USPD.⁷⁷ Even though the MSPD and the USPD were the largest parties, they had to form a coalition government with the DDP and the Center.⁷⁸ Friedrich Ebert (MSPD) became the provisional President of the new Weimar Republic and Philipp Scheidemann (MSPD) its first Chancellor. The 423 elected delegates of the National Assembly then gathered in Weimar on 6 February 1919 to draft a national constitution for Germany. The negotiations among the four coalition parties influenced the content and form of the new Weimar Constitution, which was enacted on 31 July 1919 and signed on 11 August 1919.⁷⁹ The new constitution formally declared a parliamentary republic in Germany; professed individual rights for citizens; and

⁷⁴ Margaret Anderson, *Practicing Democracy: Elections and Political Culture in Imperial Germany* (Princeton: Princeton University Press, 2000), 399; Julia Sneeringer, *Winning Women's Votes: Propaganda and Politics in Weimar Germany* (Chapel Hill: University of North Carolina at Chapel Hill Press, 2002), 4–5.

⁷⁵ Sneeringer, *Winning Women's Votes*, 66.

⁷⁶ The KPD, though founded in late 1918, was not represented. The DNVP, DDP, and DVP formed out of the ashes of the imperial era National Liberals and the German Conservatives.

⁷⁷ Kathleen Canning, "Claiming Citizenship: Suffrage and Subjectivity in Germany after the First World War," in *Weimar Publics/Weimar Subjects: Rethinking the Political Culture of Germany in the 1920s*, eds. Kathleen Canning, Kerstin Barndt and Kristen McGuire (New York: Berghahn Books, 2010), 116–137, 127.

⁷⁸ Eberhard Kolb, *The Weimar Republic* (New York: Routledge, 2008), 17.

⁷⁹ Kolb, *The Weimar Republic*, 18.

proclaimed rights and regulations for community life, including the family.

Three articles of the Weimar Constitution—Articles 109, 119, and 121—addressed the status of women, family, and marriage. Article 109 specified that: “All Germans are equal before the law. Men and women have in principle the same civic rights and duties.” This provision ostensibly granted equal political rights to both sexes, but the phrase “in principle” constrained their equality in other areas of society, the economy, and at home. Article 119 further qualified “equality,” defining it within the context of marriage and the family. The article stated, “Marriage, as the cornerstone of family life and the nurturing and growth of the nation, stands under the special protection of the constitution. Marriage depends on the equality of both sexes.” The second and third paragraphs of Article 119 guaranteed mothers, families, and especially “child abundant families” state protection and welfare assistance.⁸⁰ It made no mention of unmarried women, but their children were afforded “equal conditions for their physical, spiritual, and social development.”⁸¹ Equal rights in the Weimar Constitution were predicated on gender and marital status.

The problems the new constitution posed for married women and unmarried mothers were already apparent during the negotiations over its content in the National Assembly. Female parliamentarians of the SPD and USPD had quickly identified the problems of the draft of the constitution presented by the State Secretary of the Department of the Interior and later Reich Minister of the Interior Hugo Preuß (DDP).⁸² The female leaders of the

⁸⁰ “Die Verfassung des Deutschen Reichs of 11 August 1919,” accessed February 2, 2015, <http://www.gesetze-im-internet.de/wrv/BJNR013830919.html>

⁸¹ “Die Verfassung des Deutschen Reichs of 11 August 1919.”

⁸² On Hugo Preuß (1860–1925), see Manfred Friedrich, “Preuß, Hugo,” in *Neue Deutsche Biographie*, vol. 20 (2001): 708–710.

Social Democratic women's movement, Luise Zietz (USPD) and Marie Juchacz (MSPD),⁸³ for instance, proclaimed that the wording of the constitution was too limiting and would reinforce the patriarchal structures outlined in the Civil Code, which indeed remained in full force throughout the existence of the Weimar Republic.⁸⁴ Accordingly, in July 1919, the factions of SPD and USPD in the National Assembly proposed a more broadly formulated "equality clause" that read: "Men and women have equal civic rights. Provisions of public law and civil law are to be framed accordingly."⁸⁵ Their suggestion would have removed the qualifying phrase "in principle" and enforced a reform of the Civil Code. But the more conservative majority in the National Assembly, backed by their female parliamentarians, rejected this proposal. They defeated the SPD and USPD by a vote of 144 to 128.⁸⁶ The limited equality of men and women was crystallized when the entire constitution was signed into law in August 1919.

Zietz's and Juchacz's fears came true: civil law never changed during the Weimar Republic. This consequence was not a result of apathy on the part of the MSPD, USPD, or the DDP. The Social Democrats and the DDP had party programs that favored different approaches to "women's emancipation" and higher numbers of women in the *Reichstag*, many of whom championed changes to the Civil Code. Well-known female activists such as

⁸³ On Luise Zietz (1865–1922), see Gisela Notz, "Alle, die ihr schafft und euch mühet im Dienste anderer, seid einig! Luise Zietz, geb. Körner (1865–1922)," in *Jahrbuch für Forschungen zur Geschichte der Arbeiterbewegung*, 2 (2003): 135–149; on Marie Juchacz (1879–1956), see Susanne Miller, "Juchacz, Maria, geborene Gohlke," in *Neue Deutsche Biographie* 10 (1974): 633. Both women were leading female Social Democrats and were part of a small contingent of female Reichstag members. See also Canning, "Claiming Citizenship," 128.

⁸⁴ Heike Drummer, *Ein Glücksfall für die Demokratie: Elisabeth Selbert (1896–1986): Die große Anwältin der Gleichberechtigung* (Frankfurt/M.: Eichborn, 1999), 29.

⁸⁵ Canning, "Claiming Citizenship," 129; Barbara Greven-Aschoff, *Die bürgerliche Frauenbewegung in Deutschland, 1894–1933* (Göttingen: Vandenhoeck & Ruprecht, 1981), 169.

⁸⁶ Canning, "Claiming Citizenship," 129.

Zietz, Juchacz, and Toni Sender represented the MSPD and USPD in the *Reichstag*. Other prominent women, such as Clara Zetkin, formerly of the SPD, joined and represented the KPD. Additionally, BDF leaders Gertrud Bäumer and Helene Lange,⁸⁷ alongside Marie-Elisabeth Lüders and Agnes von Zahn-Harnack,⁸⁸ for example, had joined the left-liberal DDP and tried to push the party towards the support of earlier goals of the BDF, such as equal civil rights, better access to education, and improved employment opportunities. Bäumer and Lüders also represented the DDP in the *Reichstag*.⁸⁹ Meanwhile, they continued to serve in the executive board of the BDF and its member organizations and used these positions to sway middle-class, secularized Protestant women. Women such as Zietz and Lüders spoke up in the *Reichstag* and advocated changes to longstanding legislation such as the Civil Code.

Female socialists and liberals, however, were unable to get the support of Catholic and other more conservative female representatives in the *Reichstag* who refused any reform of the German Civil Code from 1900 and supported the politics of their own party in this matter. Based on the small number of gender-separated counting of votes, they argued that the majority of women supported a more traditional family ideal and voted for that reason in higher numbers than men for the more conservative, confessional parties—the national-

⁸⁷ On Gertrud Bäumer (1873–1954) and Helene Lange (1848–1930), see Angelika Schaser, *Helene Lange und Gertrud Bäumer: Eine politische Lebensgemeinschaft* (Cologne: Böhlau, 2000).

⁸⁸ On Marie-Elisabeth Lüders (1878–1966), see Ludwig Luckemeyer, “Lüders, Marie-Elisabeth,” in *Neue Deutsche Biographie* 15 (1987): 454–456; and Agnes von Zahn-Harnack (1884–1950), see Gisa Bauer, *Kulturprotestantismus und frühe bürgerliche Frauenbewegung in Deutschland: Agnes von Zahn-Harnack (1884–1950)* (Leipzig: Evangelische Verlagsanstalt, 2006).

⁸⁹ Sneeringer, *Winning Women's Votes*, 24–25. The program of national-liberal Deutsche Volkspartei (DVP) was not very different from that of the liberal Deutsche Demokratische Partei (DDP) but they attempted to criticize their closest opponents anyway.

liberal DVP, the conservative Catholic Center, and the nationalist-conservative DNVP.⁹⁰ All three parties indeed appealed to specific groups of female voters, but in different ways. The DVP pushed for the equality of single women in the workplace on the grounds that their feminine characteristics were a benefit to the workplace. For married women, it emphasized the importance of a male-breadwinner/female homemaker family.⁹¹ Meanwhile, the Center, driven by Catholic politics, argued fervently for women's natural place in the home as wives and mothers. With similar arguments, the DNVP rallied middle-class, Protestant women to its cause. One of its representatives in the Reichstag was Paula Müller-Otfried, the founder of the conservative German Protestant Women's Association (*Deutsche Evangelische Frauenbund*, DEF), which was not a member of the BDF and had rejected female suffrage until 1919.⁹² All three parties tried to rally female voters with platforms designed to foster anxieties about associations with Marxism, cosmopolitanism, and feminism. They pledged to foster the national strength of Germany and to preserve the integrity of Germany's Christian heritage. Furthermore, female voting declined over the course of the Weimar Republic and increased only in moments of crisis.⁹³ The Communist Party (*Kommunistische Partei Deutschlands*, KPD), founded in 1918, the MSPD and USPD, which joined together again in 1921, and the DDP offered more progressive party programs for women and did well among certain sets of female voters, especially in the working class of the urbanized and

⁹⁰ Sneeringer, *Winning Women's Votes*, 4.

⁹¹ Sneeringer, *Winning Women's Votes*, 33.

⁹² On Paula Müller-Otfried (1865–1946), see Michaela Fenske, "Müller-Otfried, Paula," in *Neue Deutsche Biographie* 18 (1997): 327–328; and Andrea Süchting-Hänger, *Das "Gewissen der Nation": Nationales Engagement und politisches Handeln konservativer Frauenorganisationen 1900–1937* (Düsseldorf: Droste Verlag, 2002), 149–151.

⁹³ Sneeringer, *Winning Women's Votes*, 4.

industrialized Protestant regions and its large cities.⁹⁴ But they could win neither Catholic women, nor large numbers of Protestant female voters from the urban, middle- and upper classes, nor from rural regions. These groups of women voted for the Center, DVP, and DNVP. Female voters, thus, were as split as the male voters. Many supported parties that in the Weimar *Reichstag* rejected any change to the Civil Code.

The legislators of the Catholic Center, DVP, DNVP, and later, the rising NSDAP rejected all changes to civil law because they saw it as a stabilizing force for the Weimar Republic, which for them was in a state of constant crisis. In the eyes of many politicians, especially Catholics and nationalists, the war had exacerbated the already slowing birth and marriage rates, and thus jeopardized the traditional family. Moreover, a “surplus” of roughly 2 million women existed in Germany after World War I, creating further anxiety about restoring childbirths and marriages.⁹⁵ The incarnation of confessional and conservative anxieties was the postwar image of the “New Woman,” single, “sexually emancipated and childless,” who “symbolized both the liberating changes in sexual mores and the nightmare of nationalists concerned that the German nation was in danger of dying out.”⁹⁶ Indeed, Catholics and nationalists saw the “New Woman” as both competition and temptation for men.⁹⁷ Socialists and some liberals responded to these perceived postwar crises with

⁹⁴ See, for example, Hagemann, *Frauenalltag*, for discussions of the SPD female voters in Hamburg.

⁹⁵ Sneeringer, *Winning Women's Votes*, 12; Helen Boak, *Women in the Weimar Republic* (Oxford: Oxford, 2015), 200-201.

⁹⁶ Boak, *Women in the Weimar Republic*, 200.

⁹⁷ Cornelia Osborne, *The Politics of the Body in Weimar Germany: Women's Reproductive Rights and Duties* (Ann Arbor: University of Michigan Press, 1992), 84-85; see also Jennifer M. Lynn, “Contested femininities: representations of modern women in the German illustrated press, 1920–1945 (PhD Diss., University of North Carolina at Chapel Hill, 2012), 67-225. Lynn demonstrates that there were competing images of the New Woman, depending on the political group and press in which they published. The reality of the New Woman's status was also far from the image that conservative commentators propagated.

proposals such as changing divorce regulations and the rights of unwed mothers, and propagated an ideal of the “New Woman” that emphasized a “compassionate marriage” (*Partnerschaftsehe*) and “comradeship” (*Kameradschaft*) between men and women, as indicated in the “Equal Rights, Equal Duties” slogan of the MSPD on an election poster from 1919. Meanwhile, Catholics and nationalists continued to propagate the family ideal of the male breadwinner/female homemaker family and countered that the old Civil Code’s provisions would help restore social and gender order and allow women to take their rightful places in the home and the family.⁹⁸

One of the major areas of the Civil Code that gained traction in the Weimar *Reichstag* was divorce reform. The divorce rate had increased significantly during the war, going from 14.66 per ten thousand marriages ending in divorce in 1914 to its peak of 32.57 per ten thousand in 1920, and subsequently declined slightly in the early years of Weimar.⁹⁹ Divorce occurred largely because of war-related circumstances; adultery, financial independence, abuse, and readjustment to cohabitation were among the main troubles for married couples.¹⁰⁰ Under the old Civil Code, couples could pursue divorce for multiple reasons such as adultery, marital breakdown, desertion, mental incapacity, and death threats. To obtain a divorce for any of the above-mentioned reasons, however, couples had to prove guilt of one party, which could become expensive, difficult, and leave one partner (typically women) economically vulnerable. The USPD, MSPD, and DDP reacted by suggesting replacing the

⁹⁸ Ben B. Lindsey, *Companionate Marriage* (New York: Boni & Liveright, 1927); Lynn, “Contested femininities”; Hagemann, *Frauenalltag*.

⁹⁹ Blasius, *Ehescheidung*, 157-158.

¹⁰⁰ Michelle Mouton, *From Nurturing the Nation to Purifying the Volk: Weimar and Nazi Family Policy, 1918-1945* (Cambridge; New York: Cambridge University Press, 2007), 71-72; Richard Bessel, *Germany after the First World War* (Oxford: Clarendon Press, 1993), 228; Boak, *Women in the Weimar Republic*, 222.

guilt principle with no-fault divorce. On 26 January 1921, for example, Marie-Elisabeth Lüders (DDP)—one of the first women to receive a doctoral degree in *Staatswissenschaften* (today political sciences) in Germany in 1912 and an unmarried mother herself—proposed the replacement of the guilt clause with no-fault divorce in the case of irreconcilable differences.¹⁰¹ More than a year later, Johannes Hoffmann (SPD) cited the “unsettling of morals and especially marriage morality” and the staggeringly high number of “unlucky marriages” after World War I as evidence of the need for change to divorce law.¹⁰² He suggested that introducing no-fault divorce would circumvent practices such as committing adultery in order to formally end a marriage.¹⁰³ The SPD and the DDP found support outside the Reichstag; the BDF, too, supported no-fault divorce on the basis of irreconcilable difference.¹⁰⁴ Easier divorce regulations therefore found a large support base, but also much opposition, in- and outside the parliament in the years following World War I.

SPD and DDP representatives in the *Reichstag* who tried to push through reforms of the divorce section of the Civil Code had to persuade their less enthusiastic national-liberal, Catholic, and nationalist conservative colleagues in the parliament without success. They offered a number of reasons to bar reforms. Some of them, such as Adelbert Düringer (DNVP), opposed the proposal on the grounds that it stood counter to the “Christian worldview,” a recurring argument for the Catholic and nationalist parties.¹⁰⁵ Later on, in June

¹⁰¹ Verhandlungen des Deutschen Reichstags, 57. Sitzung, 26. January 1921, 2135. For Lüders’ biography, see: Ludwig Luckemeyer, “Lüders, Marie-Elisabeth,” in *Neue Deutsche Biographie* 15 (1987), 454-456. Lüders, born in 1878, earned her doctorate in 1912 and joined the DDP in 1918.

¹⁰² Verhandlungen des Deutschen Reichstags, 176. Sitzung, 23. February 1922, 6023.

¹⁰³ Ibid.

¹⁰⁴ Usborne, *The Politics of the Body*, 91.

¹⁰⁵ “176. Sitzung,” 6023.

1922, when the DDP tried again to introduce divorce law reforms, Center and DVP representatives halted them on the grounds that marriage was “insoluble” in Christianity.¹⁰⁶ The Christian and conservative parties were backed by a powerful ally: the Protestant and Catholic Churches. The latter denounced divorce reform as “a new sad symptom of the progressive demise of the morality of our people.”¹⁰⁷

Along with Christianity, these parties invoked the dangers of Bolshevism as a reason to halt reforms. The Russian Bolsheviks had, in fact, first allowed no-fault divorce already one year after their revolution in 1918.¹⁰⁸ They furthermore no longer distinguished between legitimate and illegitimate births, and did not require registered marriages any longer.¹⁰⁹ The Protestant and Catholic Churches and more conservative parties in the *Reichstag* seized upon these recent reforms in Soviet Russia to undermine the SPD.¹¹⁰ While the KPD embraced the Soviet model, moderate socialists hesitated to accept comparisons to the Bolsheviks, because they shared the anticommunist sentiments of their political opponents.¹¹¹ Although the SPD wanted to push through reforms, it desisted to preserve its own reputation and keep peace with its coalition partners.

In addition to divorce, legislators sought to reform the section of the Civil Code on illegitimacy. After World War I, illegitimacy rates had risen and sparked nation-wide anxiety

¹⁰⁶ Mouton, *From Nurturing the Nation*, 76.

¹⁰⁷ Mouton, *From Nurturing the Nation*, 76; Blasius, *Ehescheidung*, 168-169.

¹⁰⁸ Wendy Z. Goldman, *Women, the State and Revolution: Soviet Family Policy and Social Life, 1917-1936* (Cambridge: Cambridge University Press, 1993), 49.

¹⁰⁹ Usborne, *The Politics of the Body*, 92; Blasius, *Ehescheidung*, 167.

¹¹⁰ Blasius, *Ehescheidung*, 167.

¹¹¹ On the KPD's position, see Blasius, *Ehescheidung*, 173-174.

about the family. By 1921, for example, the rate of out-of-wedlock births rose to 9.7 percent in Prussia (up from 7.7 percent in 1910) and 8.1 percent in Hamburg (from 5 percent).¹¹² The average illegitimacy rate hovered around 11 percent until 1933.¹¹³ Although these numbers were not particularly high, Weimar policymakers still perceived illegitimacy to be a symptom of the “crisis of the family” and the endangered health of the “body of the population” (*Volkskörper*), especially because of the high infant mortality rate of out-of-wedlock children.¹¹⁴ Weimar politicians thus wanted to help illegitimate children without condoning their mothers’ behavior, which some contemporaries saw as morally depraved. While some socialists, Communists, and liberals advocated introducing new welfare programs and legislation to assist single, unwed mothers, their opponents in the nationalist conservative parties and the Catholic Center feared that equality for out-of-wedlock children would undermine the rights of legitimate children to inherit, and moreover, would encourage promiscuous women.¹¹⁵ The Center Party, DVP, and DNVP were supported in this matter outside the *Reichstag* by the increasingly conservative majority in the BDF, the Protestant and Catholic Churches and their women’s organizations, the German Protestant Women’s Association (*Deutscher Evangelischer Frauenbund*, DEF), founded in 1899, and the German Catholic Women’s Association (*Katholischer Deutscher Frauenbund*, KDFB), founded

¹¹² Mouton, *From Nurturing the Nation*, 198; Hagemann, *Frauenalltag*, 180.

¹¹³ Usborne, *The Politics of the Body*, 82.

¹¹⁴ Mouton, *From Nurturing the Nation*, 198-199.

¹¹⁵ Mouton, *From Nurturing the Nation*, 199; Karen Hagemann, “‘Rationalization of Family Work’: Municipal Family Welfare and Urban Working-Class Mothers in Interwar Germany,” *Social Politics* 4, no. 1 (1997): 19–48.

1903.¹¹⁶ Meanwhile, only the KPD faction in the *Reichstag* and its Communist supporters outside together with a small number of more radical socialists wanted to radically redefine marriage and family law.¹¹⁷

Whichever side they supported, Weimar politicians recognized out-of-wedlock children as a problem. To deal with the increased numbers of illegitimate children, in addition to many other issues of youth welfare, the *Reichstag* controlled by a government under Joseph Wirth (Center Party), based on a coalition of his party, the SPD, and the DDP in power from October 1921 to November 1922, implemented the Reich Youth Welfare Law (*Reichsjugendwohlfahrtsgesetz*, RJWG) on 9 July 1922. It was the first attempt to create a consistent and unified law in the area of youth care and youth welfare, based on a compromise of Social Democratic and Catholic principles. One aim of the RJWG was to carry out Article 121 of the Weimar constitution: “Legislation has to create equal preconditions for children born out of wedlock, concerning their bodily, spiritual and social development, as they are given to legitimate children.” For this purpose the RJWG created a “Youth Office,” designed to identify legal guardians for out-of-wedlock children and offer guidance for their care.¹¹⁸ Although the RJWG made some minor changes to the Civil Code, such as introducing legal guardians for illegitimate children, for the most part, the old law remained the same and legislators largely dropped the subject of the Civil Code for several years, until 1928, near the end of the “golden years” of Weimar.¹¹⁹ Following the May 1928

¹¹⁶ Hagemann, *Frauenalltag*, 179; Mouton, *From Nurturing the Nation*, 199; Osborne, *The Politics of the Body*, 82.

¹¹⁷ Mouton, *From Nurturing the Nation*, 199.

¹¹⁸ Michael Stolleis, *History of Social Law in Germany* (Heidelberg: Springer, 2013), 106; Mouton, *From Nurturing the Nation*, 200-201.

¹¹⁹ Osborne, *The Politics of the Body*, 61.

elections, the SPD had a much stronger position in the *Reichstag*, while other parties such as the DNVP and the NSDAP had lost seats. This empowered the Social Democratic delegation—the largest in the *Reichstag* and allied with the DDP, Center, DVP, and the Bavarian People’s Party (BVP)—to introduce a proposal to “implement Article 119,” especially its first section: “Marriage, as the foundation of family life and of the preservation and increase of the nation, stands under the special protection of the constitution. It shall rest upon the equality of rights of both sexes.”¹²⁰ Like in earlier years, however, the SPD failed to sway the Catholic Center, and once a Center Party representative, Karl Theodor V. Guevard, became Minister of Justice, any reform of the family law including divorce law became a lost cause.¹²¹ This policy of continuity was strongly supported by the conservative judiciary. Many judges were holdovers from the *Kaiserreich* and sided with the DVP, DNVP, and later, NSDAP.¹²²

Although Social Democrats, often aided by the DDP, never reached their aim to change the laws on divorce or illegitimacy, they still shaped marriage and the family in Weimar through other means, such as social and welfare policy. They sought to expand the welfare state for all Germans, but especially the working class. While the postwar crisis years gave conservatives moral reasons to promote the family, this period also gave trade unions incentive to press for higher wages, especially in the period of stability, and the SPD to push for social policies secured unemployment and health insurance as well as old age pensions

¹²⁰ See *Verhandlungen des Deutschen Reichstags*, Antrag, Nr. 83, IV. Wahlperiode, June 22, 1928.

¹²¹ Mouton, *From Nurturing the Nation*, 78.

¹²² *Ibid.*

and improved public health care and welfare, including maternal and child care.¹²³

Sometimes, these issues crossed political lines and the SPD could form coalitions with the Catholic Center, DDP, and DVP. One example for the latter is maternity protection (*Mutterschutz*).¹²⁴

Since 1929, however, when the Depression hit Weimar Germany, the resources for social aid and welfare increasingly dried up. The fiscal depression thus precipitated shifts in thinking on the benefits of welfare and who should receive it. Historians Michelle Mouton, Detlev Peukert, and Paul Weindling have concluded that traces of future Nazi policy were present in Weimar.¹²⁵ With more and more German families seeking state assistance, some prominent doctors and social reformers began to advocate “the elevation of the interests of the ‘race’ above those of the individual.”¹²⁶ Although the approach of social hygiene and eugenics increasingly gained influence in Weimar Germany, similar to many other countries in the interwar period (including Sweden and the United States), a racist approach to eugenics still remained on the fringes, and the republic’s pluralistic nature meant that the state, unlike the Nazis, did not create a uniform family policy.

For fourteen years, left and liberal politicians in the Reichstag, with the strong support of the SPD women’s movement and the dwindling help of BDF outside the

¹²³ Usborne, *The Politics of the Body*, 38; Young-Sun Hong, *Welfare, Modernity, and the Weimar State, 1919-1933* (Princeton: Princeton University Press, 1998).

¹²⁴ Usborne, *The Politics of the Body*, 40.

¹²⁵ Mouton, *From Nurturing the Nation*, 14; Detlev J. K. Peukert, “The Genesis of the ‘Final Solution’ from the Spirit of Science,” in *Reevaluating the Third Reich*, eds. Thomas Childers and Jane Caplan (New York: Holmes and Meier, 1993), 285; see also Paul Weindling, *Health, Race, and German Politics between National Unification and Nazism, 1870-1945* (Cambridge: Cambridge, 1989).

¹²⁶ Mouton, *From Nurturing the Nation*, 14.

parliament, repeatedly tried and failed to reform the Civil Code.¹²⁷ While Weimar's "crisis years," its high divorce rates, and rising levels of out-of-wedlock births motivated Social Democrats, Communists, and some liberals to change outdated provisions, the unstable economic environment and fractured politics of the young republic also offered conservatives reasons to keep the law as it was. Trapped in a grand coalition with the Center and DDP for several years of the Weimar Republic's rather fragile existence, the SPD often had to surrender on issues such as divorce reform.

The establishment of the Weimar Republic was in many ways a turning point for equal rights. The 1919 constitution, although flawed, reflected an important first step with its articles guaranteeing equality in principle and protection of the family. For the first time, women could vote and serve in public office alongside men. By the same token, nationalist conservative and Catholic politicians used their positions to block initiatives to reform the Civil Code. Laws and social policies promoted a male breadwinner through dismissing married women from their jobs and increasing the family wage for men. It was an era of expanded political and social rights to some degree, but men and women were never afforded equal civil rights. When it comes to equal rights for men and women, Weimar may best be summed up as an era of mixed legacies.

Alterations to Civil Law during the Third Reich

The Nazi takeover on 30 January 1933 put an end to the pluralistic Weimar Republic and within half a year transformed Germany into a totalitarian state that promoted and protected the racial supremacy of "Aryan" Germans. In order to carry out their racial agenda,

¹²⁷ Cornelia Usborne notes that the BDF continued to press for expanded property rights and parental rights for married women. See Usborne, *The Politics of the Body*, 93.

the Nazi Party infiltrated many areas of private life, such as marriage and the family. The Nazis saw marriage, and by extension the family, as the nucleus of the wider *Volksgemeinschaft* because both institutions “had a large part to play in the ‘racial preservation’ of the nation.”¹²⁸ While state intervention in private matters was not particularly new to Germany, the racialized understanding of marriage and the family was.

The Nazis had several reasons for targeting marriage and the family as part of their broader agenda. For one thing, marriage, reproduction, and the family were key components of the racial ideology undergirding the Nazi regime. Nazi propaganda linked the supposed and the “degeneration” of Weimar society to the “degeneration of the family” and the German people as a whole. In Nazi rhetoric, the further decline of the birth rate after the First World War, the “New Woman,” cosmopolitanism and Bolshevism, and racial mixing, especially with Jews, all threatened the health and strength of the Aryan German *Volk* and the German nation during the Weimar Republic.¹²⁹ The Nazi leadership, according to historian Lisa Pine, thus “considered the Weimar era to have been one in which there was a great lack of understanding about family life.”¹³⁰ They responded to this lack with a series of welfare and family policies and laws aimed at redefining marriage and the family.

One way the Nazis intended to cultivate their racialized ideas of marriage and the family was through large-scale reforms of the family law sections of the Civil Code. According to historian Michael Stolleis, the Nazis even considered removing the old Civil

¹²⁸ Lisa Pine, *Nazi Family Policy, 1933-1945* (Oxford: Berg, 1997), 8, 16.

¹²⁹ Pine, *Nazi Family Policy*, 9; Claudia Koonz, *Mothers in the Fatherland: Women, the Family, and Nazi Politics*, 1st ed. (New York: St. Martin’s Press, 1987), 6.

¹³⁰ Pine, *Nazi Family Policy*, 9.

Code entirely.¹³¹ With the aim of Nazifying German law, the leading Nazi lawyer Hans Frank founded the Academy of German Law (*Akademie für Deutsches Recht*) in 1933, an institute where lawyers and politicians collaborated to pursue this project. Many scholars have dismissed Nazi-era law as an aberration that destroyed the traditional German *Rechtsstaat*.¹³² In order to understand post-1945 German legal practice, however, attempted Nazi legal reforms must be taken seriously. After all, the Nazi regime, for all its tyrannical tendencies, still relied on “constitutional and legal legitimacy” and continued many pre-1933 legal practices.¹³³ The regime’s reluctance to completely abandon old legal traditions, partly explains why it attempted in the end to reform civil law and make it “better suited to the national spirit emanating from the ‘community of blood and soil’ than the BGB,” rather than overhaul it.¹³⁴

Under the guidance of Hans Frank, in 1939, Justus Wilhelm Hedemann, a conservative jurist and law professor, assembled eleven experts (many of whom were Nazi party members or at least sympathizers) in a working group to draft the new “People’s Code” (*Volksgesetzbuch*, VGB), which would regulate marriage and family, personal rights,

¹³¹ Michael Stolleis, *The Law under the Swastika: Studies on Legal History in Nazi Germany* (Chicago: University of Chicago Press, 1998), 17.

¹³² Stolleis, *The Law under the Swastika*, 42.

¹³³ Alan E. Steinweis and Robert D. Rachlin, *The Law in Nazi Germany: Ideology, Opportunism, and the Perversion of Justice* (New York: Berghahn Books, 2013), 2; Blasius also remarks on the “legal perversions,” but also continuities, of the Nazi regime. See Blasius, *Ehescheidung*, 188.

¹³⁴ Mathias Reimann and Joachim Zekoll, *Introduction to German Law* second edn. (The Hague: Kluwer Law International, 2005), 30; Steinweis and Rachlin, *The Law in Nazi Germany*, 46. Hans Frank was the leading lawyer in the Third Reich, the Reich Commissioner of Justice, leader of the Nazi Lawyers’ League, and later the General Governor of occupied Poland. See Gerhard Schulz, “Frank, Hans,” in *Neue Deutsche Biographie* 5 (1961): 341; see also Hedemann, *Das Volksgesetzbuch der Deutschen* (Munich: C.H. Beck’sche Verlagsbuchhandlung, 1941), 1. A 1934 law provided a legal basis for the organization.

property rights, labor law, and other aspects of German society.¹³⁵ Hedemann outlined numerous reasons for the revisions. For one thing, they wanted to unite the “abundance of smaller laws, regulations, [and] proclamations” in the Third Reich.¹³⁶ Between 1933 and 1939, the Nazis had passed several new laws and policies aimed at “fixing” German families with racial hygiene. On the one hand, the Nazis tried to accomplish this goal by prohibiting “racially unhygienic” persons from marrying or reproducing. As historian Gisela Bock has argued, the Nazi regime used reproductive and maternal policies to discriminate against Jewish, non-Aryan, and “feeble” women.¹³⁷ On 14 July 1933, for example, the regime passed the “Law for the Prevention of Offspring with Hereditary Diseases,” which authorized members of the medical and social work communities to forcibly sterilize some mentally and/or physically ill Germans.¹³⁸ The government could also deny couples the right to marry, depending on their health or family history.¹³⁹ In addition, the Nuremberg Laws of 15 September 1935 prohibited Jews (and other “non-Germans”) from marrying or engaging in sexual relations with Germans.¹⁴⁰ These laws were meant to intervene in personal relations and halt any possibility of “diluting” German blood with racially impurities or

¹³⁵ The group he assembled included Hedemann, Georg Eisner, Alfred Hueck, Fritz Jacobi, Heinrich Lehmann, Dr. Luther, Karl Michaelis, von Mutius, Paul Nitzsche, Wolfgang Siebert, and Franz Wieacker. See Justus Wilhelm Hedemann, Heinrich Lehmann, and Wolfgang Siebert, *Volksgesetzbuch, Arbeitsberichte der Akademie für Deutsches Recht*, vol. 22 (Munich: Beck, 1942), 7. For Hedemann’s biography, see Werner Ogris, “Hedemann, Wilhelm” in *Neue Deutsche Biographie* 8 (1969), 187.

¹³⁶ Hedemann, Lehmann, and Siebert, *Volksgesetzbuch*, 3.

¹³⁷ Gisela Bock, *Zwangssterilisation im Nationalsozialismus: Studien zur Rassenpolitik und Frauenpolitik* (Opladen: Westdeutscher Verlag, 1986), 380.

¹³⁸ Pine, *Nazi Family Policy*, 13. 0.5 per cent of the population was sterilized between 1 January 1934 and 1 September 1939.

¹³⁹ Mouton, *From Nurturing the Nation*, 33.

¹⁴⁰ Reichsbürgergesetz, September 15, 1935. <http://www.verfassungen.de/de/de33-45/reichsbuerger35.htm>.

physical/mental disabilities.

At the same time, Nazi regime promoted the marriage and procreation of “racially pure” Germans. State authorities encouraged couples to visit doctors and find out their racial suitability before marriage. Those who did not fit could be denied marriage certificates. Additionally, the Nazis tried to increase the birth rate by incentivizing births. For example, couples received subsidies per child. Furthermore, racially pure women with several children received medals from the state, because the Nazis saw their work as mothers as service to the nation.¹⁴¹ According to female Nazi leaders, the famed “Kinder, Kirche, Küche” was empowering for Aryan women.¹⁴² Another way the Nazis promulgated racially pure births was through the *Lebensborn* program, created in 1935, where SS men were encouraged to procreate with approved Aryan women in Germany, and later on, in Norway and several other occupied countries.¹⁴³

The Nazis’ emphasis on racial purity also made party leaders consider adopting more lenient attitudes toward divorce and illegitimacy, despite reservations about promoting immorality. The party toyed with the idea of introducing no-fault divorce, for instance, because it would ease dissolution of marriages for racially mismatched partners, or pairs who were unable to produce racially pure offspring.¹⁴⁴ Racial hygiene factored into Nazi views on illegitimacy as well. Pronatalist Nazi policies, such as tax breaks, were meant to encourage

¹⁴¹ Pine, *Nazi Family Policy*, 9.

¹⁴² Koonz, *Mothers in the Fatherland*, 13-14.

¹⁴³ Dagmar Herzog, *Sex after Fascism: Memory and Morality in Twentieth-Century Germany* (Princeton: Princeton University Press, 2007), 22; Annette F. Timm, *The Politics of Fertility in Twentieth-Century Berlin* (Cambridge: Cambridge University Press, 2010), 159.

¹⁴⁴ Mouton, *From Nurturing the Nation*, 86.

equal treatment of “racially pure” unwed mothers and their children.¹⁴⁵ Furthermore, the Nazis saw illegitimate children as another potential solution to the falling birth rate, although they faced resistance from some doctors and eugenicists.¹⁴⁶

As the Nazis expanded their empire, their legal statutes extended to their occupied territories. In 1938, following the annexation of Austria, the Nazis passed the *Gesetz zur Vereinheitlichung des Rechts der Eheschließung und der Ehescheidung im Lande Österreich und im übrigen Reichsgebiet* (hereafter *Ehegesetz*), designed to bring all areas of the German Reich under one distinctly National Socialist law. On the one hand, the law abolished parts of the older BGB. It removed several provisions that regulated entry into marriage, annulment, and divorce.¹⁴⁷ Now, men and women could divorce if they had married a “non-Aryan” or were unable to reproduce. On the other hand, the law maintained some parts of the BGB, such as the minimum marrying age for men (21, or 18 if legally independent from parents) and women (16).¹⁴⁸ Bigamy was prohibited.¹⁴⁹ Women had to wait 10 months to remarry after a divorce.¹⁵⁰ The new law furthermore added distinctly Nazi racial rhetoric to the old law. Those “incapable (*geschäftsfähig*)” or “of foreign blood” could not marry those of German blood (a reiteration of the two earlier Nazi laws passed in 1935).¹⁵¹ The Nazis also

¹⁴⁵ Mouton, *From Nurturing the Nation*, 215.

¹⁴⁶ Pine, *Nazi Family Policy*, 42.

¹⁴⁷ Gesetz zur Vereinheitlichung des Rechts der Eheschließung und der Ehescheidung im Lande Österreich und im übrigen Reichsgebiet (*Ehegesetz*), §84 (July 6, 1938); see also Mariken Lenaerts, *National Socialist Family Law: The Influence of National Socialism on Marriage and Divorce Law in Germany and the Netherlands* (Leiden: Martinus Nijhoff Publishers, 2014), 123.

¹⁴⁸ *Ehegesetz*, §1 (July 6, 1938).

¹⁴⁹ *Ehegesetz*, §8 (July 6, 1938).

¹⁵⁰ *Ehegesetz*, §11 (July 6, 1938).

¹⁵¹ *Ehegesetz*, §4 (July 6, 1938).

refused anyone serving in the Wehrmacht or Reich Work Service from marrying without permission until their mandatory service ended.¹⁵² The 1938 *Ehegesetz* unified the Austrian and German civil codes until the occupation powers overturned it in 1946.¹⁵³

Despite already having several laws on the books, the replacement of the BGB still resonated with the Nazis for numerous reasons. For one thing, the Nazis viewed the People's Code as a symbol of the historic progress of their regime. Hedemann labeled the VGB a “dose of stability” for the Third Reich, implying that the preceding years had been too erratic and had unmoored the traditional family.¹⁵⁴ Furthermore, according to Hedemann, the old law did not “speak to the disposition and voice of the people” after so much sociological change.¹⁵⁵ Finally, the Academy aimed to replace “the individualistic and liberal character of both old Civil Codes [with] the idea of community spirit and community welfare,” themes considered more appropriate to the Nazi idea of *Volksgemeinschaft*.¹⁵⁶ Such language was meant to depict the years preceding the Third Reich as unstable and present the VGB as a positive solution to these problems.

Hedemann also identified German expansion and World War II as reasons to go forward with legal reforms. One impetus was the 1938 *Ehegesetz*, which spurred the Academy to create “an entirely new unified law” for all Germans.¹⁵⁷ The Academy thus continued its work throughout the early years of World War II, despite criticism that they

¹⁵² *Ehegesetz*, §13 (July 6, 1938).

¹⁵³ *Ehegesetz*, §84 (July 6, 1938).

¹⁵⁴ Hedemann, Lehmann, and Siebert, *Volksgesetzbuch*, 11.

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*, 12.

¹⁵⁷ *Ibid.*, 3-4.

were not contributing to the war effort. Hedemann asserted that they were working on the “ethos” that would “accompany the writings and landmarks of peace for the German people in the future.”¹⁵⁸ The new VGB, he argued, would represent the “crowning achievement of the martial and political events” for the “*völkisch* lives of ninety million [people].”¹⁵⁹ The Academy continued its work until 1944, when its president and the Reich’s Justice Minister, Otto Georg Thierack, formally called it off.¹⁶⁰

In the meantime, between 1939 and 1942, the working group drafted part of the new Civil Code, titled “Grundregeln und Buch I.” The “basic principles (*Grundregeln*)” were intended to guide the ensuing laws and keep them in line with the Nazi party program. In fact, Hedemann went as far as to declare the *Grundregeln* “sentence for sentence, saturated with the Nazi way of thinking.”¹⁶¹ The third principle exemplified Hedemann’s assertion. It stated:

Marriage as a fundamental institution of *völkisch* communal life stands under the special protection of the legal order. It should prove itself to be a complete spousal life partnership and serve the higher goal of the preservation and furthering of the race and species.¹⁶²

While echoing the wording of the Weimar constitution’s promise to protect marriage, the *Grundregeln* imbued this statement with distinctly Nazi rhetoric about safeguarding the *Volk* and racial purity. Parents were furthermore obligated to raise their children “in the spirit of

¹⁵⁸ Ibid., 14.

¹⁵⁹ Ibid., 3-4.

¹⁶⁰ “Otto Georg Thierack 1889-1946,” last accessed October 31, 2016, <https://www.dhm.de/lemo/biografie/otto-thierack>. See also: Sarah Schädler, „Justizkrise“ und „Justizreform“ im Nationalsozialismus. *Das Reichsjustizministerium unter Reichsjustizminister Thierack (1942–1945)* (Tübingen: Mohr Siebeck, 2009), 7-8.

¹⁶¹ Hedemann, Lehmann, and Siebert, *Volksgesetzbuch*, 38.

¹⁶² Ibid., 11.

National Socialism;” the state promised to assist them.¹⁶³ Both clauses demonstrated Nazi commitment to institutions such as marriage and the family as a way to promulgate their expansionist and racist goals.

The draft of Buch I, though incomplete, outlined certain provisions the Academy deemed important for married individuals and their families, such as naming rights, legal age of consent, and parental authority of legitimate and illegitimate children. Given Germany’s defeat in World War II, it remains unknown what the final version of a Nazi civil law would have looked like. The fragments that do exist offer some insight into the Nazi vision of civil law. Above all, Buch I imbued marriage and the family with the Nazis’ racial and *völkisch* agenda. Men, after all, could only marry if they had served the nation through the military or labor.¹⁶⁴ Women did not have similar restrictions, presumably because their service to the nation would come *after* marriage, when they bore the children of racially pure men. Married women had to share their husbands’ domiciles.¹⁶⁵ They could also, “depending on the provisions of marital property,” freely control the use of their own assets.¹⁶⁶ Unmarried women risked losing their children, since the law mandated that illegitimate children go to live with their fathers.¹⁶⁷ For the most part, the proposed VGB reinforced a male head-of-household and female nurturer, and even illegitimate children (if recognized) were seen as better off in the hands of paternal authority, rather than their unwed mothers. Neither of these ideas were radically different from the Kaiserreich or Weimar. At the same time, to be able to

¹⁶³ Justus Wilhelm Hedemann, *Das Volksgesetzbuch der Deutschen* (Munich: Beck, 1941), 30.

¹⁶⁴ See §37. Hedemann, Lehmann, and Siebert, *Volksgesetzbuch*, 24.

¹⁶⁵ See §62.1. *Ibid.*, 31.

¹⁶⁶ See §38.2. *Ibid.*, 24.

¹⁶⁷ See §62.2. *Ibid.*, 31.

marry and reproduce, German men and women had to place the nation, state, and the German race first, and this sentiment marked a clear change from earlier decades of German history.

The defeat of the Nazis in May 1945 brought their empire to an end, and with it, the *Volksgesetzbuch* reforms and other marriage laws and family policies. Several factors enabled the Nazis to pass these laws. On the one hand, there was the existence of the Nazi “dual state,” a term coined by political scientist Ernst Fraenkel to describe how the Nazis simultaneously operated outside the parameters of the law while relying on old legal frameworks, trained lawyers, and the judicial system to carry out other goals.¹⁶⁸ The people behind the reforms, such as Hans Frank or Justus Wilhelm Hedemann, had trained as lawyers in the late years of the German Empire and the Weimar Republic, but became complicit and even enthusiastic supporters of the Nazi regime. The case of the Civil Code illustrates how the Nazis intended to retain the old legal order, but update and Nazify it by adding racialized language.

On the other hand, the Nazi dictatorship’s circumvention of old traditions and the former democratic structure shaped the form of the *Volksgesetzbuch* as well. In 1933, they eliminated most dissent in society—and therefore anyone who could have opposed changes to the Civil Code or other legislation—through the Nazi policy of *Gleichschaltung*, or “bringing into line.” The first targets were the oppositional parties on the left, the SPD and KPD. Many female and male leaders of the SPD and representatives in the parliaments, for example, Herta Gotthelf, Marie Juchacz, and Toni Sender, the editors of the SPD women’s

¹⁶⁸ Ernst Fraenkel, *The Dual State: A Contribution to the Theory of Dictatorship* (New York and London: Oxford University Press, 1941), xiii-xiv; Steinweis and Rachlin, *The Law in Nazi Germany*, 2.

magazine *Frauenwelt*, were forced to leave the country.¹⁶⁹ Others, such as the lawyer Elisabeth Selbert, who had the courage to run for a mandate in the Reichstag in March 1933, stayed in Germany, but risked political persecution.¹⁷⁰ The BDF and its associations soon became targets as well. The Nazis requested that all associations exclude Jewish members. To avoid this step and dissolution by the Nazis, the BDF and many of its associations dissolved themselves in 1933.¹⁷¹ Some of the former Jewish leaders of the BDF, like Alice Salomon, the founder of the Social Women's Schools, had to emigrate.¹⁷² Others like Gertrud Bäumer and Marie Elisabeth Lüders stayed in Nazi Germany, but lost their positions in civil service.¹⁷³ The Nazis, meanwhile, replaced the formerly independent women's movement with their own women's associations, such as the National Socialist Women's League (*NS-Frauenschaft*), under the leadership of Gertrud Scholtz-Klink, and the German Women's Bureau (*Deutsche Frauenwerk*, DFW).¹⁷⁴ Although male Nazi party leaders often argued among themselves over marriage and the family, which sometimes hindered movement forward on certain reforms such as divorce law, they nevertheless benefited from silencing a

¹⁶⁹ On Herta Gotthelf (1902–1963), see Karin Gille-Linne, *Verdeckte Strategien: Herta Gotthelf, Elisabeth Selbert und die Frauenarbeit der SPD 1945–1949* (Bonn: Dietz, 2011); and on Toni Sender (1888–1964), see Christl Wickert, "Sender, Toni," in *Neue Deutsche Biographie* 24 (2010): 248–249; and Annette Hild-Berg, *Toni Sender (1888–1964): Ein Leben im Namen der Freiheit und der sozialen Gerechtigkeit* (Cologne: Bund-Verlag, 1994).

¹⁷⁰ Selbert managed to hold onto her position as a lawyer, but had to support her family after her husband was prohibited from working because of his political beliefs. See Gille-Linne, *Verdeckte Strategien*; and Hessische Landesregierung (ed.), *Ein Glücksfall für die Demokratie: Elisabeth Selbert (1896–1986)—die grosse Anwältin der Gleichberechtigung* (Frankfurt/M.: Eichborn, 1999).

¹⁷¹ Koonz, *Mothers in the Fatherland*, 143.

¹⁷² On Alice Salomon (1872–1984), see Dirk Hainbuch and Florian Tennstedt, *Biographisches Lexikon zur Geschichte der deutschen Sozialpolitik 1871 bis 1945* (Kassel: Kassel University Press, 2010), vol.1, 134–135.

¹⁷³ On Gertrud Bäumer, see above; on Marie-Elisabeth Lüders (1878–1966), see Doris Kull, "Marie-Elisabeth Lüders (1878–1966): Das Leben einer Parlamentarierin zwischen Fortschritt und Tradition" (PhD diss. University of Düsseldorf, 1988).

¹⁷⁴ Koonz, *Mothers in the Fatherland*, 129.

large portion of the population that would have opposed their proposals.

Under the Third Reich, marriage and the family took on new meanings for the totalitarian regime with racist and expansionist aims. No longer just protected by the state, as they had been under Weimar, marriage and reproduction were seen as services to the German nation and the Nazi state. Several family policies and laws passed between 1933 and 1938 both permitted and prohibited certain groups of Germans from marrying and producing children. The Nazi Party's desire to keep old German legal traditions alive led its leaders to embrace reform, rather than elimination, of the old Civil Code. The draft People's Code would bring together the disparate policies and pieces of legislation governing marriage and the family under one umbrella. The work of the Academy furthermore benefited from the silence of potential opponents in society. Although the Academy kept working well into World War II, despite admonishment, it never completed its task. Nazi capitulation in May 1945 ensured that the People's Code never materialized and that all existing legislation would soon be undone by the Allied occupation.

Conclusion

As this chapter has shown, between 1871 and 1945, the path dependency of the German Civil Code was shaped by numerous legal, political, social, cultural, and economic factors. First, the legal and institutional frameworks were significant. Imperial politicians examined the 25 different legal codes before settling on a BGB that most closely resembled the Prussian and the Napoleonic Codes. These two legal codes were the most restrictive for women in Germany before unification. Moreover, many imperial politicians, especially National Liberals, Conservatives, and the Catholic Center, subscribed to Enlightenment ideas

about masculine authority and privilege. These legal and intellectual traditions came together in the 1900 Civil Code and, with the support of the semi-authoritarian imperial government and the fractured Weimar Reichstag, remained just strong enough to prevent legislative change later on.

Second, the changing political circumstances of Germany before 1945 shaped the creation and retention of the 1900 Civil Code. At the outset, National Liberals and conservatives—with the aid of Bismarck’s pseudo-authoritarian government—saw the Civil Code as a unifying force in the recently established and disjointed German Empire. Prior to unification, approximately 25 different regional and local statutes governed spousal and familial relations and marital property. One German nation-state, in contemporary thinking, required one common civil law. The National Liberals and conservatives at the helm of the legal reforms constructed a law that reflected their respective beliefs in personal property and male dominance. Over time, despite opposition, this law became the accepted norm in German society, and one that conservatives and some liberals fought to maintain throughout the Weimar Republic. Under the Third Reich, the Nazi Party saw the law as yet another way to construct their racist and misogynistic utopia.

Relatedly, decreasing criticism from society also played a role in the law’s longevity. From the beginning, the women’s movement, socialists, and even some male legal experts opposed Planck’s proposed Civil Code. They sent letters to the *Reichstag*, printed articles in the women’s press, and published brochures that protested the Civil Code. Their efforts, however, never swayed the National Liberals, Center, or German Conservatives, whose parliamentary alliance in 1896 was just strong enough to ensure the approval of the BGB. During the Weimar Republic, some women’s movement leaders used their new positions in

the Reichstag to press for reforms, which were especially salient in the post-World War I years when the state of the family had changed dramatically. Outside the parliament, they sometimes gained the support increasingly conservative BDF, who still formally opposed the Civil Code, but pursued other paths to greater equality for women as well, such as educational and professional development. Under the Third Reich, the elimination of parliamentary opposition and an autonomous civil society ensured the silence of those who would have protested the Nazis' reforms to civil law.

Third, economic changes factored into the formulation of the Civil Code. For one thing, unification necessitated bringing together all labor and civil laws. Furthermore, industrialization had prompted workers to form their own political movement and party, which also vowed to protect female laborers. The existence of working-class women, however, clashed with the ideal male breadwinner/female homemaker family model that National Liberal, Catholic, and Conservative politicians imagined. The upheaval of World War I, in which thousands of women took over men's jobs, reinvigorated discussions during the Weimar Republic about the rights of women in all areas of the economy, politics, and society. The takeover of the Nazis in 1933 and the start of World War II in 1939, in many ways, replayed these same issues for many women who had already lived through the First World War.

Finally, hegemonic ideas about gender and social and cultural norms steered these debates and ultimately prevented reform. Politicians throughout the Empire, Weimar, and the Third Reich emphasized its potential for stabilizing an unsettled Germany. Imperial politicians, especially National Liberals and conservatives, stressed the law's unifying force for the population of a fractured empire. Later on, the altered state of marriage and the family

after World War I and the “crisis years” of Weimar pushed some politicians to support retaining the law’s patriarchal provisions. After 1933, the Nazis seized on Weimar’s frequent instability as a reason to “fix” German marriages and families with racialized family policies and laws. While the reasons for instability changed over time, the discourse about the importance of the family for stability did not.

Opponents of the Civil Code, for their part, protested how the law reinforced hierarchies between men and women in marriage and the family. In some matters, such as the marriage ceremony, divorce regulations, or adoption, the language of the law did not distinguish between the rights of men and women. In other areas, however, the law awarded married men and fathers far greater rights and duties. For example, men had the right to make all decisions for their wives and families. Married men were entitled to control and benefit financially from their wives’ property. Men alone had the right to decide if their children could marry before the age of twenty-two. Even unwed mothers were not considered the legal guardians of their children. Meanwhile, married women did not have equal rights in their marriages or authority over their children. They could not remarry until ten months after their last marriage ended. They technically still owned their own property, but had to relinquish control over its usage and assets. Mothers only gained formal authority over their children if the husband died. If divorced, a woman still had to bear her former husband’s name; if declared guilty, he could permit her to renounce his name, indicating masculine control. Although at times, some Germans demanded reforms of parts of the law, such as divorce or legitimacy after World War I, its provisions—and thus its prescriptions for gender, marriage, and the family—remained intact well into the postwar period.

CHAPTER TWO

FAMILIES IN CRISIS, SOCIETIES IN TRANSITION: REBUILDING POSTWAR GERMANY, 1945–1947

On 15 December 1949, Frau K. wrote to the West German federal government to express her reservations about the current marriage law, known as Allied Control Council Law Nr. 16, or the *Ehegesetz*. The Western and Soviet Allies approved the law, designed to replace existing Nazi marriage laws, on 20 February 1946. In the eyes of some contemporaries, however, the legislation was not necessarily an improvement over past conditions. Frau K. explained that she had been married nine-and-a-half years, during which she renounced her claims to social security at the behest of her husband. After he committed adultery, she pursued a divorce and was declared the “guiltless” party in 1947, meaning she was entitled to alimony as long as she did not work. She posed the following question to the federal government: “What right do legislators have to expect guiltless divorced women to live worse than adulterers?” According to her, the 1946 *Ehegesetz* was “in urgent need of reform” and “far worse than that of the Third Reich,” an unqualified phrase meant to grab the attention of lawmakers who sought desperately to avoid resemblance to the Nazi regime.¹

By the time Frau K.’s letter arrived at the West German federal government in December 1949, Germany had undergone remarkable changes in the four years since Nazi Germany’s defeat on 8 May 1945. Immediately after the Nazis’ surrender, the Soviets,

¹ Frau Christel Krajno an die Bundesregierung, December 15, 1949, B140/36525/50, BArch Koblenz.

British, Americans, and French began to confront the effects of total war, namely demobilization of troops and reconstruction of the landscape, economy, politics, and society. The war and its immediate aftermath, especially the return of former soldiers, contemporaries believed, had precipitated a postwar crisis of the family. Many Germans and the Allies viewed the postwar “return to the family” as part of the demobilization and restoration of a society shaped by National Socialism, militarism, and war.

Less than a year after Nazi Germany’s surrender, on 20 February 1946, the Allies approved the *Ehegesetz*. In the preceding months, the Allies had pursued various measures to implement the four “D’s”: denazification, democratization, demilitarization, and decartelization.² Part of this process was legal reform. As part of denazification, the *Ehegesetz* removed all provisions from earlier, Nazi-era marriage laws that contained “eugenic or racially-based norms.”³ At the same time, the Allied law did not create, according to Frau K., better circumstances for married or recently divorced women. The 1946 *Ehegesetz*, in fact, upheld several provisions from the 1938 Nazi law and did not overturn the old BGB’s regulations on marital property schemes, spousal relations, or parental authority. After 1945, married women were still legally required to obey their husbands’ decisions, turn over management of their property to their spouses, and relinquish full authority over their children.

These regulations technically governed marriage and the family in all four of the occupation zones. After the formal division of Germany into two states in 1949, these

² Christoph Klessmann, *Die doppelte Staatsgründung* (Göttingen: Vandenhoeck & Ruprecht, 1982), 78.

³ Petra Kannappel, *Die Behandlung von Frauen im nationalsozialistischen Familienrecht* (Darmstadt and Marburg: Hessischen Historischen Kommission Darmstadt und der Historischen Kommission für Hessen, 1999), 195.

provisions remained valid in the German Democratic Republic until 1955 and in the Federal Republic of Germany until 1957. Despite the longevity of the 1946 law, prior studies of the Civil Code in the postwar Germanys have tended to gloss over it.⁴ I seek to explain the different political, social, and economic factors that influenced the decision to adopt the 1946 Allied Control Council law, a critical stepping stone toward the postwar debates about the Civil Code. Its provisions emerged in the specific context of denazification during postwar political and legal reconstruction and served an important function for Allies and Germans in context of the aftermath of World War II and the occupation: providing legal parameters in the midst of a perceived postwar crisis of the family. This crisis, contemporaries maintained, stemmed from major demographic changes, new family arrangements, and changing labor market conditions. In response, some contemporaries, especially Christian conservatives, turned to the image of the family and the old provisions of the BGB as stabilizing forces. Meanwhile, the perceived crisis pushed others, such as women's associations, Social Democrats, liberals, and Communists, to embrace the new family structures (especially families led by single or widowed working mothers) and urge reforms of the longstanding Civil Code.

This chapter also demonstrates that the Civil Code became salient and contentious once again in the early postwar years in the Soviet and Western zones. In the midst of their

⁴ Robert G. Moeller, *Protecting Motherhood: Women and the Family in the Politics of Postwar West Germany* (Berkeley: University of California Press, 1993), 50. Moeller skips from the 1938 Nazi law to the Basic Law debates in the Western zones in 1949. Gesine Obertreis's study of family policy in the GDR devotes little space to this law and although she explains that it "did not further develop marriage law," she does not explain how. See Obertreis, *Familienpolitik in der DDR 1945–1980* (Opladen: Leske und Budrich, 1986), 109. Elizabeth Heineman also surprisingly omits mention of the 1946 law. Heineman, *What Difference Does a Husband Make? Women and Marital Status in Nazi and Postwar Germany* (Berkeley: University of California Press, 2003); Christine Franzius also mentions the 1946 law as a denazification measure. Franzius, *Bonner Grundgesetz und Familienrecht: Die Diskussion um die Gleichberechtigung von Mann und Frau in der westdeutschen Zivilrechtslehre der Nachkriegszeit (1945-1957)* (Frankfurt/M.: Vittorio Klostermann, 2005), 16.

reconstruction processes, the Allies chose the expedient solution by denazifying the legislation and reinstating longstanding regulations on marriage and divorce. While the Allies provided necessary legal parameters for an increasingly chaotic and confusing environment, their decision to do so attracted criticism, namely from women's associations, who had long been critical of the Civil Code and then been barred from public political participation during the preceding twelve years of the Nazi regime. In the context of postwar reconstruction and the reemergence of political parties and social organizations, Communist and non-Communist women's organizations in the East and Social Democratic, Christian conservative, Communist, and independent, non-party women's associations in the West were able to begin discussing reforms to the Civil Code in the early postwar years. At the same time, women's associations' discussions were subject to the politics of the burgeoning Cold War, which dictated the political space they could inhabit and limited their ability to press for reforms until the Allies resolved the "German problem." Their willingness to pursue reforms, even at this early juncture, however, reflected that they viewed the postwar years as a "moment of promise."⁵ Even if their proposals were contingent on the outcome of the earliest Cold War battles, they still represented important strides in the postwar years toward rectifying past legal constraints on women and provided important templates for later debates about a new Civil Code.

This chapter begins by examining the perceived postwar crisis of the family in the four occupation zones. Here, I examine how labor policies, demobilization, and personal crises shifted the gender order that had become predominant during World War II and eventually drove many Germans to seek out the traditional family as a stabilizing

⁵ I borrow this term from Mark Mazower's *Dark Continent: Europe's Twentieth Century* (New York: Vintage, 2000), 229.

mechanism. The second section covers the political and social reconstruction of the four occupation zones, which led to the re-establishment of women's organizations. The third section explores the denazification of German law, in particular marriage law. It shows that denazification was a driving force for the Allied occupiers, who then inadvertently implemented legislation that limited women's rights. The fourth section analyzes how women's organizations reacted to the 1946 legislation and the older BGB regulations and began to craft their own versions of a new Civil Code.

The Postwar Crisis of the Family

On 8 May 1945, the military leadership of the German *Wehrmacht* submitted unconditionally, leaving the German population at the mercy of the victorious Western and Soviet Allies who subsequently occupied the territories of the former *Reich*. Before the end of the war, at the Yalta Conference in February 1945, the Allies had made plans for postwar occupation, but had to abruptly shift gears upon Germany's surrender when the realities of wartime destruction did not measure up to their expectations.⁶ As historian Gerhard Weinberg succinctly put it, "The Allies found a Germany without government or administration, but with massive destruction, misery, and dislocation."⁷

Misery and dislocation appeared frequently in postwar accounts of the "crisis years." Allied bombings had reduced several large German cities to rubble, destroying approximately 3.4 million of 17 million homes.⁸ In addition to harming infrastructure and

⁶ Moeller, *Protecting Motherhood*, 21.

⁷ Gerhard Weinberg, *A World at Arms: A Global History of World War II*. 2nd ed. (Cambridge and New York: Cambridge University Press, 2005), 838.

⁸ Volker Berghahn, *Modern Germany: Society, Economy and Politics in the Twentieth Century* (Cambridge: Cambridge, 1987), 177.

homes, the Allies had attacked major industrial areas of Germany, thus crippling the postwar economy. Meanwhile, expellees from the East fled westward to escape the approaching Red Army and vengeful neighbors. A large portion of these 6.5 million expellees were women and their children.⁹ In accounts of the months immediately after the war, Germans often recalled their own suffering in this period of chaos and destruction.

The effects of mass destruction, especially on the gender order, marked the contemporary discourse in the occupation zones. Sociologists, the census, and women's magazines, for instance, all noted the demographic imbalance of the sexes.¹⁰ The war, especially its final months, had exacerbated the gender gap in Germany that dated back to before the First World War.¹¹ Although Germany already had a "surplus" of women after 1918, the high number of male casualties in the Second World War only worsened the demographic discrepancies, because 5 million of the approximately 18 million men who had volunteered or been called up to the front never returned home.¹² By the end of the war, approximately 7 million more women than men lived in occupied Germany.¹³ To be sure, the numbers differed slightly in the four zones. The 1946 census counted 7 million more women

⁹ Merith Niehuss, *Familie, Frau und Gesellschaft: Studien zur Strukturgeschichte der Familie in Westdeutschland 1945-1960* (Göttingen: Vandenhoeck & Ruprecht, 2001), 28.

¹⁰ Moeller, *Protecting Motherhood*, 27.

¹¹ Catherine L. Dollard, *The Surplus Woman: Unmarried in Imperial Germany, 1871-1918*. 1st ed. (New York: Berghahn Books, 2009), 200.

¹² Rüdiger Overmans placed the number at 5.3 million. See Overmans, *Deutsche Militärische Verluste im zweiten Weltkrieg* (München: R. Oldenbourg, 1999), 16-17, 228; Elizabeth Heineman places the number of casualties between 3 and 4 million. See Heineman, *What Difference*, 48. Frank Biess offers a more conservative estimate at 1.5 million. Frank Biess, *Homecomings: Returning POWs and the Legacies of Defeat in Postwar Germany* (Princeton: Princeton University Press, 2006), 19.

¹³ Heineman, *What Difference*, 3.

than men, a number that decreased gradually over time.¹⁴ By 1950, in West Germany, there were 3 million more women than men; in the East, it was 2 million.¹⁵ The smaller total population in the East (18 million in 1950) compared to the West (51 million) meant that proportionally the “surplus” was larger in the East.¹⁶

Those 7 million women comprised what historian Elizabeth Heineman calls the “generation of German women standing alone” who had managed paid work, raising their families, and other tribulations during and after the war.¹⁷ One particular challenge for many women during the war was balancing employment and home life. Single women were often conscripted into six months to a year (or more, later on) of wartime service that ranged from factory work to auxiliary military service.¹⁸ Meanwhile, women who had married and lived with their spouses before the war could collect a family allowance and work to support their children, but the family allowance was docked according to a percentage of her income. In consequence, many wives found it more financially rewarding to stay home.¹⁹ In June 1941 and January 1943, decrees ordered married women to return to the workforce, but many found reasons to remain exempt and by 1944, female participation only went up 1.2 per cent

¹⁴ Heineman, *What Difference*, 210; Donna Harsch uses a more conservative estimate of 5 million. See Harsch, *Revenge of the Domestic: Women, The Family, and Communism in the German Democratic Republic* (Princeton: Princeton University Press, 2007), 20.

¹⁵ Heineman, *What Difference*, 210.

¹⁶ “Bevölkerungsentwicklung,” last modified 2012, Statistisches Bundesamt: Statistisches Jahrbuch 2011.

¹⁷ Heineman, *What Difference*, 44, 80.

¹⁸ For more on women’s service in the military in Nazi Germany, see Karen Hagemann, “Mobilizing Women for War: The History, Historiography, and Memory of German Women’s War Service in the Two World Wars,” *Journal of Military History*, 75, 4 (2011): 1055-1093.

¹⁹ Heineman, *What Difference*, 61.

more than before 1939, namely because many women already worked.²⁰ Those who did work received low wages, endured long hours away from home, and had little upward professional mobility.²¹

Nazi Germany's surrender brought women's work in wartime industries to an abrupt end. Although work conditions during the war had not been ideal by any stretch of the imagination, employed women faced a series of new challenges related to survival, the process of demobilization, and labor under the Soviet and Western occupations. After the war, women's focus shifted to their families' survival, an unpaid task that required long hours. Some women, especially in the East, had to toil as *Trümmerfrauen*, clearing the rubble from the streets of major cities.²² Women often bore the burden of negotiating the black market economy, housing shortages, ration shortages, and migrations. For female expellees from the East, survival was especially complicated.²³ Meanwhile, as part of demobilization, Allied labor policies, especially in the West, prioritized reintegrating men into society and the economy, often at the expense of married women. To some degree, being pushed out of the workforce was not a new phenomenon for the older generation of German women, many of whom had been fired from their jobs to make space for men in the context of the Weimar demobilization policy after the First World War.²⁴

²⁰ Heineman, *What Difference*, 63. See also Rüdiger Hachtmann, *Industriearbeit im „Dritten Reich“*. *Untersuchungen zu den Lohn- und Arbeitsbedingungen in Deutschland 1933–1945* (Göttingen: Vandenhoeck & Ruprecht, 1989).

²¹ Heineman, *What Difference*, 61-64.

²² Leonie Treber, *Mythos Trümmerfrauen: Von der Trümmerbeseitigung in der Kriegs- und Nachkriegszeit und der Entstehung eines deutschen Erinnerungsortes* (Essen: Klartext, 2014), 202.

²³ Harsch, *Revenge*, 20.

²⁴ Susanne Rouette, *Sozialpolitik als Geschlechterpolitik: Die Regulierung der Frauenarbeit nach dem ersten Weltkrieg* (Frankfurt/M.; New York: Campus, 1993), 17.

In other ways, however, demobilization of men and the return of married women to the home after 1945 were fundamentally different from 1918. For one thing, the political circumstances differed dramatically. Unlike after the First World War, there was no revolution or postwar German government; the Allies took over all aspects of governance and did not quickly transfer power to Germans.²⁵ Furthermore, although the *Wehrmacht* had surrendered unconditionally, its officers never disbanded the military, and the Allied Control Council did not formally dissolve the armed forces until 25 September 1945.²⁶ In the meantime, the Allies placed nearly 10 million troops into prison camps to await processing or, for some, trial. Initially, the Allies released men without proper papers, though they changed this policy in 1946. The Allies agreed to release all prisoners-of-war by December 1948, a promise that the West upheld; the Soviet Union did not follow through until 1950.²⁷ The absence of a government, lack of official demobilization policies, and differing procedures made demobilization into a long and drawn-out process that did not take place uniformly across the occupation zones.

For the next five years, roughly 2 million former *Wehrmacht* soldiers, as well as civilians and women employed by the military, returned to Germany, precipitating the perceived postwar “crisis of the family.”²⁸ Historian Elizabeth Heineman states that: “While men’s absence had not shattered the ideals of marriage and the nuclear family, men’s

²⁵ Volker Berghahn mentions that official Allied governance began on 5 June 1945. See Berghahn, *Modern Germany*, 177.

²⁶ Konrad H. Jarausch, *After Hitler: Recivilizing Germans, 1945-1995* (Oxford and New York: Oxford University Press, 2006), 28.

²⁷ Biess, *Homecomings*, 45.

²⁸ Biess, *Homecomings*, 45; idem, “Men of Reconstruction – The Reconstruction of Men: Returning POWs in East and West Germany, 1945–1955,” in *Home/Front: The Military, War and Gender in Twentieth-Century Germany*, eds. Karen Hagemann and Stefanie Schüler-Springorum (Oxford: Berg, 2002), 335-358, 335.

presence frequently did.”²⁹ Many of these men came home “exhausted, weak, and often traumatized,” which prompted “widespread (and divergent) diagnoses of a masculinity in crisis.”³⁰ Indeed, certain experiences transcended borders. After years apart, husbands and wives had to reacquaint themselves to each other and postwar daily life. This process and period of adjustment elicited a range of responses, from relief and elation to abuse and manipulation.³¹ The more extreme cases of abuse often stemmed from men’s perception that their jobs and positions as patriarchs had been usurped by women. Men, according to contemporary discourse, no longer had a firm grasp on who they were.

Even if similar patterns existed on both sides, discourses about imperiled masculinity nevertheless differed across borders. In the West, psychiatric and medical professionals focused on how malnutrition and mistreatment in Soviet POW camps contributed to men’s desexualization and continued trauma after the war.³² In the East, Communist party leaders emphasized how the return of former fascist soldiers held the potential to disrupt the Sovietization of postwar Germany.³³ At the same time, East Germans propagated the idea that imprisonment had depoliticized men—equally insulting in the highly politicized Soviet zone.³⁴ In both societies after the war, contemporaries emphasized the necessity of “remasculinizing” men, but in a distinct contrast from the “hypermasculine, militarized ideal

²⁹ Heineman, *What Difference*, 108.

³⁰ Biess, *Homecomings*, 12.

³¹ Heineman, *What Difference*, 118, discusses the case of one woman whose husband blamed her for his physical ailments when she refused to have sex with him. Moeller, *Protecting Motherhood*, 10, discusses a similar case.

³² Biess, “Men of Reconstruction,” 340.

³³ *Ibid.*, 341.

³⁴ *Ibid.*, 341.

of the National Socialist front-line soldier” and the starving returnees.³⁵

For many contemporaries in the East and the West, an essential piece of remasculinization was employment. German officials across all four zones, in fact, argued for the release of POWs for the sake of the economy.³⁶ Not that the economy was recovering very quickly. The Allies had bombed several key industrial regions such as the *Ruhrgebiet* in Germany, which retarded postwar growth.³⁷ Moreover, as a punitive measure, the Allies enforced heavy reparations, often paid in the dismantlement and transportation of factory equipment. The Soviets especially insisted on carrying out this policy.

Even if the four Allied powers agreed that integrating former POWs into society and the economy was necessary, economic recovery and labor policies still varied across borders and along gendered lines. In the West, occupation labor policies, designed to promote capitalism, placed a heavy premium on male labor. After 1948, Western employers began dismissing women from their jobs in order to grant men their old positions (if available) or privileged spots based on their presumed roles as breadwinners.³⁸ Women who remained in the workforce tended to be single, widowed, or divorced.³⁹ While the Western Allies ostensibly allowed equal pay for men and women, they ultimately left enforcement to the discretion of employers.⁴⁰ Meanwhile, the Soviets shied away from the same approaches,

³⁵ Biess, “Men of Reconstruction,” 342.

³⁶ Heineman, *What Difference*, 112.

³⁷ Klessmann, *Die doppelte Staatsgründung*, 45; Ivan Berend, *Case Studies on Modern European Economy: Entrepreneurship, Inventions, and Institutions* (London: Routledge, 2013), 187.

³⁸ Biess, *Homecomings*, 117.

³⁹ Friederike Maier, “Zwischen Arbeitsmarkt und Familie -Frauenarbeit in den alten Bundesländern” in *Frauen in Deutschland, 1945-1992*, eds. Gisela Helwig and H.M. Nickel, 257-279 (Bonn: Bundeszentrale für Politische Bildung, 1993), 258.

⁴⁰ Heineman, *What Difference*, 90.

partly because of the larger demographic imbalance in the East and partly for ideological reasons. In August 1946, for example, the Soviet authorities issued an “equal pay for equal work” order and supposedly barred sexual discrimination (although practice was often a different matter).⁴¹ They furthermore actively sought out women for employment in their planned economy.⁴² Demobilization and labor policies were therefore designed to help German families, but depending on the occupation zone, had adverse effects on women in the years immediately following the end of the war.

For some Germans, survival, labor, and demobilization contributed to personal crises. Indicative of the difficulties of postwar reunions, the divorce rate boomed. In 1948, for example, there were 87,013 divorces granted—the highest number after the war.⁴³ Historian Dagmar Herzog notes that this number was ten times the pre-World War I rate.⁴⁴ Many couples credited the difficult wartime separation and reunification as reasons to pursue divorce.⁴⁵ Additionally, illegitimacy rates also went up significantly during and after the war. In the West, non-marital births reached their highest point in 1946 at 16.4 percent and declined thereafter, hitting 10 percent in 1950.⁴⁶ In the East, nearly 200 per one thousand births in 1946 were non-marital, though this rate declined quickly, reaching a low point

⁴¹ This order was SMAD Order 253. Obertreis, *Familienpolitik*, 44; Harsch, *Revenge*, 50-51.

⁴² Heineman, *What Difference*, 92.

⁴³ Moeller, *Protecting Motherhood*, 29.

⁴⁴ Dagmar Herzog, *Sex After Fascism: Memory and Morality in Twentieth-Century Germany* (Princeton: Princeton, 2005), 67.

⁴⁵ Moeller, *Protecting Motherhood*, 30.

⁴⁶ Moeller, *Protecting Motherhood*, 32; Sybille Buske, *Fräulein Mutter und Ihr Bastard: Eine Geschichte der Unehelichkeit in Deutschland, 1900–1970* (Göttingen: Wallstein Verlag, 2004), 196.

around 1949 with around 120 per thousand births.⁴⁷ The “surplus of women,” high divorce rates, and increased numbers of out-of-wedlock births meant that non-traditional family structures became more normal, as single women often headed households, lived with ex-partners because of the housing shortages, or found “uncles” with whom they cohabitated.⁴⁸ Popular attitudes reportedly became more accepting of these non-traditional family structures.⁴⁹ As historian Robert G. Moeller points out, however, popular attitudes were more about “accommodation to conditions that were viewed to be exceptional” rather than adjustments to long-term trends.⁵⁰ In fact, many Germans in the West began to associate marriage and the nuclear family with stability and order in the wake of wartime destruction. Some commentators, especially Christians, expressed disappointment on behalf of the “surplus” women who would never marry.⁵¹ In the East, many Soviet and German Communist leaders labeled marriage a “hopelessly outdated” institution because of its association with women’s economic dependence.⁵² On the ground level, however, citizens of the Soviet zone often embraced more traditional views of marriage and familial structures.

In all four occupation zones, contemporaries perceived the immediate postwar years as a crisis of the family. Media pundits and politicians emphasized the problematic nature of the “surplus” of 7 million women. Meanwhile, medical professionals and politicians stressed the emasculated state of male prisoners-of-war and sought to correct their condition through

⁴⁷ Heineman, *What Difference*, 251.

⁴⁸ Moeller, *Protecting Motherhood*, 24, 30-31; Heineman, *What Difference*, 83.

⁴⁹ Moeller, *Protecting Motherhood*, 32.

⁵⁰ Ibid.

⁵¹ Herzog, *Sex after Fascism*, 67-68.

⁵² Heineman, *What Difference*, 126.

labor policies. At home, Germans confronted the difficulties of reunion. Some couples never recovered from the wartime changes, choosing instead to divorce. In the immediate postwar years, altered family structures became more normal. While these families became accepted in both German societies, their existence also precipitated the opposite reaction: a shift toward wanting “traditional” family and marital structures. As the next section shows, women’s groups, which reemerged in the context of postwar political and social reconstruction aided by the Soviet and Western Allies, took a vested interest in the postwar crisis of the family.

Re-forging Politics and Society in the Postwar Germanys

At the fore of the postwar crisis of the family were female activists. In the weeks immediately following the end of World War II, women organized on the grassroots level across the four occupation zones in order to help women and their children survive. In all four occupation zones, but especially in the Soviet zone, women’s groups quickly became targeted by occupation authorities.

The Post-1945 Development in the Soviet Occupation Zone

Early on, the Soviets and German Communists tried to bring women into their fold by directly taking control of women’s grassroots activities. For example, the Soviets turned “women’s centers,” which sprang up immediately after the war ended, into “antifascist women’s committees” (AFA) in June 1945.⁵³ On a pragmatic level, the AFA were responsible for helping women collect food and clothing, operate soup kitchens, and learn

⁵³ Norman M. Naimark. *The Russians in Germany: A History of the Soviet Zone of Occupation, 1945-1949* (Cambridge, MA: Belknap Press of Harvard Univ. Press, 1995), 132.

their legal rights.⁵⁴ On an ideological level, the Soviets and leaders of the newly re-founded Communist Party of Germany (*Kommunistische Partei Deutschland*, KPD) hoped the AFA would unify the previous divisions in the women's movement under the guise of antifascism, antimilitarism, and promoting democracy (albeit Soviet-style). To some extent, the AFA succeeded, bringing together roughly 300,000 women from all political persuasions and economic backgrounds (housewives, farm laborers, and white-collar workers).⁵⁵

The Soviets' support of women's emancipation stemmed from a combination of their own history of revolution as well as contemporary circumstances induced by occupation. Since 1918, the Soviets, in particular female activists like Alexandra Kollontai, had grappled with the "woman question" in Russia with varying degrees of success.⁵⁶ The Communist Party had a Women's Department (*Zhenotdel*) that had called for an end to bourgeois family order in 1918.⁵⁷ According to historian Wendy Z. Goldman: "The Bolsheviks believed that capitalism had created a new contradiction, felt most painfully by women, between the demands of work and the needs of the family" and that socialism provided a solution to this double-burden.⁵⁸ Although the Women's Department's influence faded in the 1930s, especially as Stalin called to strengthen the role of the family, the idea of women's

⁵⁴ Harsch, *Revenge*, 30-31; Ingeborg Nöding, "'Mitwissen, mitverantworten und mitbestimmen'" Zu den Anfängen des Demokratischen Frauenbundes Deutschland," in *Frauen in der deutschen Nachkriegszeit*, Bd. 2, ed. Annette Kuhn (Düsseldorf: Schwann Düsseldorf, 1984), 122-126, 122.

⁵⁵ Demokratischer Frauenbund Deutschlands, *Geschichte des DFD* (Leipzig: Verl. für d. Frau, 1989), 46. See also Renate Genth, *Frauenpolitik und Politisches Wirken von Frauen im Berlin der Nachkriegszeit 1945-1949* (Berlin: Trafo Verlag Dr. Wolfgang Weist, 1996), 49, 56-57; Harsch, *Revenge*, 31; Heineman, *What Difference*, 181-183.

⁵⁶ Wendy Z. Goldman, *Women, the State and Revolution: Soviet Family Policy and Social Life, 1917-1936* (Cambridge: Cambridge, 1993), 1-6.

⁵⁷ *Ibid.*, 4.

⁵⁸ *Ibid.*, 2-3.

emancipation was still a core tenet of the Soviet platform.⁵⁹

Despite the Soviets' commitment to women's emancipation, attracting German women to Communism after 1945 was still a daunting task. Before 1933, women had traditionally voted for the SPD or the Center, not the KPD.⁶⁰ Furthermore, historians Norman Naimark and Donna Harsch both suggest that the Soviet Red Army's aggressive actions against women may have provoked a backlash against Communism.⁶¹ The long history of "emancipating" women in Russia, a spotty history of female support of the KPD, and a recognition of women's plight under the occupation led the Soviets and their German partners to try desperately to attract women to Communism.

Within a few months, the Soviets took further steps toward centralizing the AFA under Communist rule. On 30 October 1945, SMAD issued Order Nr. 80, which decreed that the antifascist women's organizations were both officially sanctioned and under the jurisdiction of the city administrations.⁶² After Order Nr. 80 came out, the German Administration for Education designated a department ("*Frauenausschüsse*") to cover all issues related to women. In July 1946, the Berlin Central Women's Committee and the Education Department worked together to form a compendium of all women's committees in the SBZ, the Central Women's Commission (*Zentralen Frauenausschuss*, or ZFA).⁶³ In March 1947, the ZFA was supplanted by the Democratic Women's League of Germany

⁵⁹ Goldman, *Women, the State and Revolution*, 338.

⁶⁰ Harsch, *Revenge*, 28-29.

⁶¹ Naimark, *The Russians in Germany*, 129; Harsch, *Revenge*, 29.

⁶² Obertreis, *Familienpolitik*, 34.

⁶³ Karin Opelt, *DDR-Erwachsenenbildung* (Münster: Waxmann Verlag, 2005), 56. This ZFA should not be confused with its forerunner, the Berlin ZFA.

(*Demokratischer Frauenbund Deutschlands*, DFD).⁶⁴ By September 1947, 242,000

women—most of them unaffiliated with a party and housewives—had joined the DFD.⁶⁵

The “bringing into line” of the women’s associations in the Soviet zone was representative of a larger trend of political consolidation in the East. Even before the Potsdam Conference from 17 July to 2 August 1945, where the Allies agreed to negotiate and finalize plans for the end of World War II and Germany’s political restoration, the Soviet Military Administration in Germany (SMAD) had already begun rebuilding politics and governmental structures in their zone. Eager to outpace their Western counterparts, defuse the impact of the independent antifascist committees that had sprouted up around the Soviet zone, and take control of the civilian populace, in June 1945, SMAD set up districts and installed Communist Party members in secondary administrative positions.⁶⁶ The Soviets then authorized the reestablishment of the KPD, the long avowed enemy of Nazism, in June 1945.⁶⁷ In particular, the Soviets favored exile leaders like Walter Ulbricht who had already been a part of the Central Committee of the KPD during the Weimar years and then spent the

⁶⁴ Demokratischer Frauenbund Deutschlands, *Geschichte des DFD*, 65; see Robert G. Moeller, *West Germany under Construction: Politics, Society, and Culture in the Adenauer Era* (Ann Arbor: University of Michigan Press, 1997), 43, for information on Durand-Wever’s aid work in the immediate postwar years. She had opposed the Nazis, but soon found there was little political space for her in the Soviet zone as well. Harsch, *Revenge*, 41-42. In December 1946, the ZFA—led by the physician Anne-Marie Durand-Wever, an unaffiliated female activist who later defected to the West—suggested an “independent, unified, democratic” and allegedly nonpartisan women’s organization to Soviet military leaders. Initial resistance from male SED leaders gave way after female activists such as Käthe Kern and Elli Schmidt convinced them that an SED-controlled mass organization could divert women’s attention from bourgeois parties like the Christian Democrats.

⁶⁵ Heineman, *What Difference*, 183; Nödinger, “Mitwissen,” 125.

⁶⁶ Eric D. Weitz, *Creating German Communism, 1890 - 1990: From Popular Protests to Socialist State* (Princeton: Princeton Univ. Press, 1997), 322.

⁶⁷ Richard Bessel, *Germany 1945: From War to Peace* (New York: HarperCollins, 2010), 297-298.

Second World War in Moscow.⁶⁸

Although the Soviets clearly preferred Communists, they allowed other political parties to form as well. The Social Democratic Party of Germany (*Sozialdemokratische Partei Deutschlands*, SPD), following on the heels of the KPD in 1945, argued that they too had opposed Nazism.⁶⁹ Before 1932, the SPD had been the largest party in Weimar and had fiercely opposed both the more radical KPD and the far-right NSDAP. New parties emerged as well after 1945 in all four occupation zones, including the Soviet zone. Protestants and Catholics—represented during the Weimar period by several bourgeois and nationalist parties such as the Center Party, DDP, DVP, and DNVP—joined forces to create the inter-confessional Christian Democratic Union (*Christlich Demokratische Union*, or East-CDU when referring to the Soviet zone branch).⁷⁰ Liberals formed the Liberal Democratic Party of Germany (*Liberal-Demokratische Partei Deutschlands*, LDPD) in the Soviet zone in July 1945.⁷¹ Within these spaces, German men and women—but mostly men—could reorganize politically under the watch of the Soviet authorities.

Although the Soviets ostensibly permitted political diversity, provided the parties were antifascist, in practice, they supported Communist rule of the Eastern zone. Exiled German Communists had arrived in Germany in April and May 1945 with a clear agenda for

⁶⁸ Mirjam Husemann, “Walter Ulbricht 1893–1973,” last modified September 17, 2014, <https://www.dhm.de/lemo/biografie/walter-ulbricht>

⁶⁹ Donna Harsch, *German Social Democracy and the Rise of Nazism* (Chapel Hill: The University of North Carolina Press, 1993), 100.

⁷⁰ David Broughton, “The CDU-CSU in Germany: Is There Any Alternative?” in David Hanley, *Christian Democracy in Europe: a Comparative Perspective* (London; New York: St. Martin’s Press, 1994), 101-102; Jarausch, *After Hitler*, 140.

⁷¹ Jarausch, *After Hitler*, 134-135. Smaller parties in the Eastern zone, such as the Democratic Farmers’ League of Germany and the National Democratic Party of Germany, were founded in 1948.

their country's future: an antifascist "German road to socialism."⁷² Such a path, many believed, would loosen the rigorous adherence to Leninism that Weimar Communists had advocated and would promote "a more egalitarian cast to a social or liberal democratic formation."⁷³ This vision fell to the wayside in the face of political competition among socialists in the first year of the Soviet occupation. Social Democrats and moderate Communists found themselves surrendering to the minority of Communists willing to implement a Soviet-style state. Although German socialists would not completely abandon the "German road" until 1948, there were already signs of a gradual tightening of political space in the Soviet zone. In April 1946, for example, having already suffered losses in the Western zone elections and fearing an electoral defeat to their Social Democratic rivals in the approaching elections, the KPD in the Soviet zone forced the SPD to merge into one party: the Socialist Unity Party (*Sozialistische Einheitspartei Deutschlands*, SED). The party eventually pushed out former Social Democrats and asserted control over all other non-Communist parties (like the East CDU and their women's associations) in the East.⁷⁴

In addition to women's associations and political parties, other social organizations, namely trade unions, churches, and the press, reemerged in the Soviet zone after the war. The SED's relations with social organizations varied from antagonistic to acquiescent. As they had with women's associations, the Soviets and the SED were able to more easily assert their authority over some social organizations, such as the trade unions. The Weimar-era

⁷² Weitz, *Creating German Communism*, 312.

⁷³ *Ibid.*, 313.

⁷⁴ For more information on the Ost-CDU, see Manfred Wilde, *Die SBZ-CDU 1945-1947: Zwischen Kriegsende und Kaltem Krieg* (Munich: Utz, 1998); Michael Richter, *Die Ost-CDU: Beiträge zu ihrer Entstehung und Entwicklung* (Weimar: Böhlau, 1995); Manfred Agethen, "Bürgerliche" Parteien in der SBZ/DDR: zur Geschichte von CDU, LDP(D), DBD und NDPD 1945 bis 1953 (Köln: Verlag Wissenschaft und Politik, 1995).

Allgemeiner Deutscher Gewerkschaftsbund, a confederation of the free German trade unions, had been founded in 1919, but was disbanded by the Nazis on 1 May 1933 and replaced by the German Labor Front.⁷⁵ On 10 June 1945, SMAD ordered the reestablishment of trade unions under their authority.⁷⁶ In February 1946, the Confederation of Free German Trade Unions (*Freier Deutscher Gewerkschaftsbund*, FDGB) came together in the Soviet zone as an umbrella mass organization for individual trade unions.⁷⁷ The FDGB also established women's sections for employed, single women, although the SED shut these down in 1948.⁷⁸

The Soviet occupation forces also quickly re-established the press, which had been subjected to the Nazis' policy of *Gleichschaltung* since 1933, but allowed only publication of periodicals by "parties and social groups" that supported "the socialist revolution."⁷⁹ By the 1950s, Soviet/SED censorship of the press left the SED-run newspaper, *Neues Deutschland*, the *Berliner Zeitung*, some regional papers, the Christian Democratic *Neue Zeit*, and the major women's magazines *Für Dich* and *Die Frau von heute*.⁸⁰

In some cases, however, the Soviet occupation forces and the ruling party in the East, the SED, were unable to assert complete control over social organizations. The Protestant and Catholic churches were one important example. Sociologist Sabrina Petra Ramet states

⁷⁵ Andrei Markovits, *The Politics of the West German Trade Unions: Strategies of Class and Interest Representation in Growth and Crisis* (New York: Cambridge University Press, 1986), 62. See also Heinrich Potthoff, *Freie Gewerkschaften 1918-1933: Der Allgemeine Deutsche Gewerkschaftsbund in der Weimarer Republik* (Düsseldorf: Droste, 1987).

⁷⁶ Siegfried Mielke and Peter Rütters, eds., *Der Freie Deutsche Gewerkschaftsbund 1945 bis 1949/50* (Bonn: Dietz, 1985), 27.

⁷⁷ Klessmann, *Die doppelte Staatsgründung*, 130.

⁷⁸ Heineman, *What Difference*, 186.

⁷⁹ Christian Steininger, "Die freie Presse: Zeitung und Zeitschrift," in *Die Kultur der 50er Jahre*, ed. Werner Faulstich (Munich: Wilhelm Fink, 2002), 232.

⁸⁰ Heineman, *What Difference*, 186.

that initially, the Soviets and the SED praised “the brave conduct of the [Protestant] clergy in the struggle against the barbarism of Hitler.”⁸¹ They were aware that 92 percent of the population in the Soviet zone were Christian. But unlike the highly centralized Catholic Church, Protestants in the immediate postwar years had to confront potentially divisive theological and political differences. During the Nazi regime, Protestants split in three groups: the traditional Evangelical Church of the Old Prussian Union, the Nazi-supporting German Christians and the Nazi-opposing Confessing Church. To overcome this divide, various Protestant factions bonded together in 1948 to create the Protestant Church of Germany (*Evangelische Kirche in Deutschland*, EKD), an umbrella structure designed to oversee the Länder-based church operations (*Landeskirchen*) in all four occupation zones and, after 1949, in both German states. Only in 1969 the Eastern *Landeskirchen* broke away and founded the Federation of Evangelical Churches in the GDR (*Bund der Evangelischen Kirchen in der DDR*, BEK).

Leaders of the Catholic and Protestant Churches in the East took a decidedly anti-Communist stance in the postwar years. As many church leaders emerged from the shadows and asserted their opposition to totalitarianism and Soviet rule, the SED grew less tolerant and began actively attempting to halt church activities. Thereafter, the ruling party and the two major churches maintained a relationship that alternated between antagonism and cooperation. On the one hand, because devout Communists viewed Christianity as incompatible with socialism on an ideological level and the churches as political competition, the SED tried to suppress the influence of the churches. On the other hand, some church

⁸¹ Sabrina Petra Ramet, “Protestantism in East Germany, 1949-1989: A Summing Up,” in *Protestantism and Politics in Eastern Europe and Russia: The Communist and PostCommunist Eras*, ed. Sabrina Petra Ramet (Durham, N.C.: Duke University Press, 1992), 171.

leaders and members of the East-CDU collaborated with the SED in an effort to make Christianity compatible with socialism.

The Development in the Western Zones

While the Soviets and the SED consolidated and centralized Communist rule in the East, the West went in the opposite direction, encouraging decentralization and plurality, provided it was antifascist, pro-Western democracy, and after 1947, anti-Communist. Much like they did in the Soviet zone, women's "self-help" groups organized on the local- and regional level within the first few weeks of the end of the war, primarily to help women restore their daily existence, especially food rations.⁸² Over time, political parties and independent women's associations took over their work.⁸³ These groups, for the most part, escaped the overt politicization of their counterparts in the Soviet zone.⁸⁴ Some Western women's groups, however, did have a certain political agenda. Regionally-based groups like the *Bremer Frauenklub 1945*, for example, considered themselves part of the larger antifascist movement that spanned the four occupation zones.⁸⁵

⁸² Barbara Henicz and Margrit Hirschfeld, "Die erste Frauenzusammenschlüsse," in *Frauen in der deutschen Nachkriegszeit*, Bd. 2, ed. Annette Kuhn (Düsseldorf: Schwann Düsseldorf, 1984): 94-101; Petra Holz, *Zwischen Tradition und Emanzipation: CDU-Politikerinnen in der Zeit von 1946 bis 1960* (Königstein: U. Helmer, 2004) 52.

⁸³ Sylvia Heinemann, "*Frauenfragen sind Menschheitsfragen*": die Frauenpolitik der Freien Demokratinnen von 1945 bis 1963 (Sulzbach: Helmer, 2012), 163; Andrea Hauser, "Alle Frauen unter einem Hut? – Zur Geschichte des Stuttgarter Frauenausschusses," in *Frauen in der deutschen Nachkriegszeit*, 102-109; Monika Möller, "Der Frauenausschuss in Hamburg-Harburg," in idem, 110-121; Ingeborg Nödinger, " 'Mitwissen, mitverantworten und mitbestimmen' – Zu den Anfängen des Demokratischen Frauenbundes Deutschland," in idem, 122-126; Henicz and Hirschfeld, "Der Club Deutscher Frauen in Hannover," in idem, 127-134; Henicz and Hirschfeld, " 'Wenn die Frauen wüßten, was sie könnten, wenn sie wollten' – Zur Gründungsgeschichte des Deutschen Frauenrings," in idem, 135-157; Denise Tschardtke, *Re-Educating German Women: The Work of the Women's Affairs Section of British Military Government 1946-1951* (Frankfurt a/M.; New York: P. Lang, 2003), 119.

⁸⁴ Henicz and Hirschfeld, "Die erste Frauenzusammenschlüsse," 96.

⁸⁵ Ibid., 94.

Antifascism and aid ostensibly connected women across the four occupation zones, but women's groups in the West still faced considerably different circumstances than their Eastern counterparts. Logistics were one problem. According to political scientist Angela Icken, these groups had little opportunity to work together because of the destroyed infrastructure and the necessity of interzonal travel passes (unlike the Soviet zone, which was smaller and under one central authority).⁸⁶ Organizing on a national level became easier once they received official licensing by the occupation powers in January 1946.⁸⁷ Still, women's organizations did not hold their first interzonal meeting until May 1947 in Bad Boll.⁸⁸ Furthermore, women's associations did not have much bureaucratic support and their treatment depended on their occupiers. The British Military Government, for instance, assigned women's affairs to its Civic Development Section in the summer of 1946.⁸⁹ The Office of Military Government, United States (OMGUS) established its own Women's Affairs Section of the Education and Cultural Affairs Branch nearly two years later, in March 1948, a result of pressure from American women's rights activists to address the "women's

⁸⁶ Angela Icken, *Der Deutsche Frauenrat: etablierte Frauenverbandsarbeit im gesellschaftlichen Wandel* (Opladen: Leske & Budrich, 2002), 52.

⁸⁷ Marianne Zepp, *Redefining Germany: Reeducation, Staatsbürgerschaft und Frauenpolitik im US-Amerikanisch Besetzten Nachkriegsdeutschland* (Göttingen: V&R Unipress, 2007), 157-158. Donna Harsch documents the process in her article "Public Continuity and Private Change? Women's Consciousness and Activity in Frankfurt," *Journal of Social History*, Vol. 27, No. 1, Autumn 1993, 29-58. Genth's 1996 edited volume *Frauenpolitik und politisches Wirken von Frauen im Berlin der Nachkriegszeit 1945-1949* examines the special case of Berlin women's groups. See also biography of Fini Pfannes. Elke Schüller, Kerstin Wolff, and Deutscher Hausfrauenbund Landesverband Hessen, *Fini Pfannes (1894-1967): Protagonistin und Paradiesvogel der Nachkriegsfrauenbewegung* (Königstein: Helmer, 2000); Barbara Henicz and Margrit Hirschfeld, "Die erste Frauenzusammenschlüsse," 97.

⁸⁸ Rebecca Boehling, "Gender Roles in Ruins: German Women and Local Politics under American Occupation, 1945-1947," in *Gender and the Long Postwar: The United States and the Two Germanys, 1945-1989*, eds. Karen Hagemann and Sonya Michel (Washington DC: Woodrow Wilson Center Press, 2014), 55. See also Holz, *Zwischen*, 53.

⁸⁹ Tscharntke, *Re-Educating German Women*, 19. A year later they renamed the division the Women's Affairs Section.

problem” in postwar Germany.⁹⁰ Meanwhile, the French never formally set up a bureau for women.⁹¹

Even without guaranteeing much formal or financial help, British and American occupation governments vowed to assist women. The American women appointed to lead the Women’s Affairs Section, such as Ruth Woodsmall, a former teacher and later a United Nations Commission on the Status of Women representative, “intended to empower women, albeit in the private sphere,” and invested little in politicizing German women or offering other paths to equality (such as equal wages).⁹² The British and American Women’s Affairs Branches pursued citizenship and re-education programs for women, which largely stemmed from the popular Allied assumption that under the Nazi regime, women lacked political development, were apathetic, or as historian Rebecca Boehling characterizes it, were repressed.⁹³ The Western Allies therefore designed various programs to reacquaint women with democracy and social welfare while fulfilling their “womanly” desires.⁹⁴

Despite Allied efforts to democratize German women, especially the older ones who already had active and passive voting rights in Weimar Germany and often were members of the many Weimar women’s organizations, hardly needed an introduction to democracy. Many leaders of the new women’s committees and organizations had been politically active

⁹⁰ Zepp, *Redefining Germany*, 247-248; Boehling, “Gender Roles in Ruins,” 54, 56.

⁹¹ John Stark, “The Overlooked Majority: German Women in the Four Zones of Occupied Germany, 1945-1949, a Comparative Study,” (Ph.D. Diss., Ohio State University, 2003), iii.

⁹² Boehling, “Gender Roles in Ruins,” 56.

⁹³ Boehling, “Gender Roles in Ruins,” 56-57; Tscharnkte, *Re-educating German Women*, 72. Tscharnkte points out that this point-of-view was not entirely confined to British women, but rather came from some prominent German women as well, such as Agnes von Zahn-Harnack. See also Zepp, *Redefining Germany*, 81.

⁹⁴ Tscharnkte, *Re-educating German Women*, 72-73.

in Weimar, either in the *Reichstag*, the *Landtag* (the equivalent of a state representative assembly), or at the local level. Many of these women rejoined major political parties after the war, and some of them led the parties' women's committees. The Social Democrats were the only major party to include a formal branch devoted to women when they introduced the *Frauenbüro* in 1946, headed by Herta Gotthelf, the female activist who had edited the Social Democratic women's newsletter *Genossin* in the prewar years and then spent the war in exile.⁹⁵ Christian Democrats and Free Democrats, although they had regional and local groups, did not introduce their own national-level women's committees until the early 1950s.⁹⁶ At the helm of these groups were women such as Helene Weber, a former Center *Reichstag* representative, and Elisabeth Schwarzhaupt, a leader of the *Evangelische Frauenarbeit*.⁹⁷ Finally, the Communist DFD formed its West German branch in 1950 under the leadership of Lilly Wächter.⁹⁸ By the early 1950s, every major political party in West Germany had an official, national-level women's committee.

While political parties offered one way for women to press their concerns, independent, non-party women's associations provided another option. Women such as Theanolte Bähnisch, a lawyer and Social Democrat from Hannover who founded the *Club deutscher Frauen*, or Schwarzhaupt, who founded the *Frankfurter Frauenausschuss*, established groups on the local or regional level with the aim of replicating the pre-1933

⁹⁵ "Herta Gotthelf 1902-1963."

⁹⁶ FDP women started gathering at the "überregional" level in 1947 but did not start a federal group until 1949. See Heinemann, *Frauenfragen*, 126; CDU women started meeting on the regional level in the late 1940s and started a federal committee in the 1950s. See Holz, *Zwischen*, 72-73.

⁹⁷ Holz, *Zwischen*, 60-65, 299-300.

⁹⁸ Icken, *Der Deutsche Frauenrat*, 51.

bourgeois women's movement's "non-confessional" and "non-party" goals.⁹⁹

These non-confessional and non-party women's organizations represented a variety of political and professional interests. Many of these associations dated back to before 1933 and had been forced to disband when the Nazis came to power. For instance, the German Female Citizens' Union (*Deutscher Staatsbürgerinnenverband*, DSV)—founded in 1865 as the ADF and renamed in the 1920s—picked up its work again in 1947 and formally reestablished itself in 1949 under the watch of Else Ulich-Beil.¹⁰⁰ Similarly, the German Female Academics' Union (*Deutscher Akademikerinnenbund*, DAB), founded in 1926 by Agnes Zahn-von Harnack and Marie-Elisabeth Lüders, reemerged on the regional level in 1948. The DAB formed a national-level organization in June 1949 under the leadership of Zahn-von Harnack, Lüders, and Emmy Beckmann.¹⁰¹ Others were successors to earlier organizations. The German Female Lawyers' Association (*Deutscher Juristinnenbund*, DJB), for instance, derived from the remnants of the earlier *Deutschen Juristinnen-Vereins*. The association reestablished itself as the DJB in 1948 under the guidance of well-known female legal experts such as Elisabeth Selbert, Erna Scheffler, and Schwarzhaupt.¹⁰² These organizations had been active in Germany before 1933, dissolved under the Third Reich, and reemerged in public after 1945.

⁹⁹ Holz, *Zwischen*, 96-97.

¹⁰⁰ "Geschichte des Verbands," accessed October 26, 2016, <http://www.staatsbuengerinnen.org/philosophie/geschichte.html>; see also Irene Stoehr, "Cold War Communities: Women's Peace Politics in Postwar West Germany, 1945–1952," in *Home/Front: The Military, War and Gender in Twentieth-Century Germany*, eds. Karen Hagemann and Stefanie Schüler-Springorum (Berg: Oxford, 2002), 311-333, 318.

¹⁰¹ "Geschichte des DAB," accessed October 26, 2016, http://www.dab-ev.org/de/wer-wir-sind/Geschichte_des_DAB.php

¹⁰² "Geschichte," accessed October 26, 2016, <https://www.djb.de/verein/geschichte/>

Alongside non-confessional associations were religious (namely Christian) women's organizations. Founded in 1903 and forced to disband in 1933, the Catholic German Women's Association (*Katholischer Deutscher Frauenbund*, KDFOB) continued its work under the umbrella of the church. The organization re-formed after 1945 underneath the direction of Gerda Krabbel.¹⁰³ Associated with this organization were other Catholic women's groups, such as the *Berufsverband Katholischer Fürsorgerinnen* run by Helene Weber. In addition to Catholic women's organizations, the Protestant women's associations—the Protestant Women's Aid (*Evangelische Frauenhilfe*, EF), German Protestant Women's Association (*Deutsch-Evangelischer Frauenbund*, DEF), and German Protestant Women's Work (*Evangelische Frauenarbeit Deutschlands*, EFD)—reestablished themselves after 1945 under the leadership of women such as Elisabeth Schwarzhaupt and Hildegard Ellenbeck.¹⁰⁴ These associations worked closely with both their church leaders and the CDU/CSU in the postwar years. All of these women's organizations—non-party, professional, or confessional—reemerged in the immediate postwar years with the tacit support of the Western Allies.

To be sure, these categorizations of women's associations in the West are somewhat superficial. Many female leaders represented several organizations or parties at once. Elisabeth Schwarzhaupt, for example, was a CDU member, led the Protestant Women's Work and the *Juristinnenbund*, and worked for the Protestant Church. Whatever their affiliation, the women who led these organizations brought years of experience and political activism with them. But the variety of associations and multiple affiliations caused discord as

¹⁰³ "Geschichte des KDFOB," accessed October 26, 2016, <http://www.frauenbund.de/wir-ueber-uns/bundesverband/geschichte-des-kdfo/>

¹⁰⁴ Dagmar Biegler, *Frauenverbände in Deutschland* (Opladen: Leske and Buske, 2001), 72-75.

well. SPD *Frauenbüro* leader Herta Gotthelf, for example, condemned the work of female SPD leaders like Theanolte Bähnisch who established independent women's associations. Gotthelf was highly critical of their efforts, forbade them to continue, and asserted that the SPD was the only women's movement that Germany needed.¹⁰⁵ Many women, either because of prewar experiences or because they had seen the "bringing into line" of the DFD with the SED in the East, preferred the independent organizations to the SPD. Additionally, the CDU faced its own, different set of problems. For Christian conservative women, historian Petra Holz argues, tension came from the divisions between national and local leadership over which women's issues to prioritize (e.g. "practical" versus broader legal and political matters).¹⁰⁶

Western military officials feared that disunity among women would create space for Communist infiltration. As the Cold War began in 1947/48, historian Hanna Schissler asserts that the Americans mobilized women's groups to foster anti-Communism.¹⁰⁷ After all, by early 1947, the Soviets had eliminated the possibility of political competition in the East and consolidated the women's committees into the DFD, which had a marginal but growing presence in the West.¹⁰⁸ British occupation officials responded to the DFD by supporting the formation of one women's association (the *Deutscher Frauenring*) in 1947 to unite all of the

¹⁰⁵ Gotthelf an Esser, April 30, 1947, 2/KSAA000178, Archiv der sozialen Demokratie; see also Gisela Notz, *Frauen in der Mannschaft: Sozialdemokratinnen im Parlamentarischen Rat im Deutschen Bundestag 1948/49-1957* (Bonn: Dietz, 2003), 43.

¹⁰⁶ Holz, *Zwischen*, 99.

¹⁰⁷ Hanna Schissler, "German and American Women Between Domesticity and the Workplace," in *The United States and Germany in the Era of the Cold War, 1945–1990: Volume 1, 1945–1968*, eds. Detlef Junker, Philip Gassert, and Wilfried Mausbach (Cambridge: Cambridge, 2004), 564. See also Boehling, "Gender Roles in Ruins," 66.

¹⁰⁸ Although smaller than the other organizations, it still boasted 5,700 members in North Rhine-Westphalia alone in 1950 and its growing numbers caused enough consternation that the Adenauer regime banned its members from serving in public office. See Icken, *Der Deutsche Frauenrat*, 51.

regionally-based independent women's associations in their zone.¹⁰⁹ The American occupiers also later funded the set-up of the *Informationsdienstes für Frauenfragen* in 1951, which then became the *Deutscher Frauenrat*—effectively the successor to the prewar BDF.¹¹⁰ The Allies' efforts to unify German women, however, were ultimately hindered by old divisions and different interests.

Allowing a plurality of opinions—provided they were antifascist, democratic, and anti-Communist—was a key point of the Western Allies' approach to reconstructing society and politics in its occupation. Unlike the Soviets, the Western Allies waited until after the Potsdam Conference from 17 July to 2 August 1945 to authorize political parties and other social organizations. The Americans allowed local branches of each party to congregate at the end of August 1945; the British followed suit a month later. The French, still bent on punishing Germans, refused to permit political parties until the end of the year.¹¹¹ In the Western zones, the SPD and the CDU/CSU emerged as the leading parties. The SPD's postwar leader, Kurt Schumacher, had spent the war locked away in several different concentration camps and opposed Communism, therefore granting the SPD further legitimacy in the eyes of the public.¹¹² His faction of the party was simultaneously anti-Western and anti-Communist. Other prominent members, such as SPD Women's Office

¹⁰⁹ Tscharntke, *Re-Educating German Women*, 163.

¹¹⁰ Icken, *Der Deutsche Frauenrat*, 57. When HICOG ceased funding German organizations, it instead bought subscriptions to the newsletter *Informationen für die Frau*. See Informationsdienst fuer Frauenfragen e.V., November 15, 1954, B106/48585, BArch Koblenz.

¹¹¹ Bessel, *Germany 1945*, 297; Daniel E. Rogers, *Politics After Hitler: The Western Allies and the German Party System* (New York: NYU Press, 1995), 24. According to Rogers, this was official policy, but individuals in the French zone often sanctioned political organization long before December 1945.

¹¹² For the biography of Kurt Schumacher, see Jeffrey Herf, *Divided Memory: The Nazi Past in the Two Germanys* (Cambridge: Harvard University Press, 1997), 240-243.

leader Herta Gotthelf, had survived the war by going into exile in London.¹¹³ The SPD considered its clean credentials to be the gateway to the top spot in postwar Western politics.

The SPD's primary opponent was the Christian conservative CDU and its Bavarian sister party, the Christian Social Union (*Christlich Soziale Union*, CSU). Initially, the CDU/CSU had a strong regional presence in the West, but did not form a national leadership until 1950. Nevertheless, the leaders of the CDU and the CSU across the occupation zones (including the East) shared a commitment to reshaping Germany through Christianization and a return to "traditional" societal roles.¹¹⁴ These views comprised the platform of the future party chairman, Konrad Adenauer, a devout Catholic and staunch anti-Nazi who had been mayor of Cologne. Adenauer was decidedly more pro-Western than Schumacher and emerged as the biggest threat to the SPD leader.

The outcome of the power play between the SPD and CDU/CSU in the Western zones depended on the cooperation of smaller parties. One of the most important was the Free Democratic Party (*Freie Demokratische Partei*, FDP), formed officially in December 1948 from several disparate liberal factions across the three Western sectors.¹¹⁵ It was designed to bring together former Weimar-era liberals from the German People's Party (DVP), the German National People's Party (DNVP), and the German Democratic Party (DDP). The conservative German Party (*Deutsche Partei*, DP) formed after the war as well,

¹¹³ For the biography of Herta Gotthelf see, "Herta Gotthelf 1902-1963," accessed October 25, 2016, https://www.fes.de/archiv/adsd_neu/inhalt/recherche/Frauenbiografien/gotthelf.htm

¹¹⁴ Moeller, *Protecting Motherhood*, 2.

¹¹⁵ David Broughton, "The FDP in the Federal Republic of Germany," in *Liberal Parties in Western Europe*, ed. Emil Kirchner, 62-93 (Cambridge: Cambridge University Press, 1988).

but received fairly limited support.¹¹⁶ For Catholics who chose not to enter the CDU/CSU, the Center Party (*Zentrum*, Z) still existed in some pockets of Germany.¹¹⁷ For those on the far left, the KPD offered a marginal, but viable, option.¹¹⁸ The Western zones as a whole, because of the anti-Communist politics of the Americans, British, and French, were reluctant to embrace leftist politics, though the SPD's strong presence after the first federal election in August 1949, when the CDU/CSU got 31 percent, the SPD 29 percent, the FDP 12 percent and the KPD 6 percent. The election results indicate that the majority of German voters remained, for a time, in the political center.¹¹⁹

In addition to political parties, the Western Allies authorized the establishment of new social organizations such as trade unions, professional organizations, and the press. The FDGB's Western counterpart, the Confederation of German Trade Unions (*Deutscher Gewerkschaftsbund*, DGB), was formed in April 1947 in the British zone and then reorganized as an umbrella association for all trade unions in the Western Allied occupation zones in October 1949.¹²⁰ The DGB majority traditionally allied itself with the SPD and KPD, although its base also included Protestant and Catholic workers who supported the

¹¹⁶ Michael Klein, *Westdeutscher Protestantismus und politische Parteien: Anti-Parteien-Mentalität und parteipolitisches Engagement von 1945 bis 1963* (Tübingen: Mohr Siebeck, 2005).

¹¹⁷ Elisabeth Friese, *Helene Wessel (1898-1969). Von der Zentrumspartei zur Sozialdemokratie* (Essen: Klartext Verlag, 1993); Hans-Georg Aschoff, "CDU und Zentrumspartei in Niedersachsen nach 1945," in *Nationalsozialismus und Region*, eds. Marlis Buchholz, Claus Füllberg-Stolberg, and Hans-Dieter Schmid (Bielefeld: Bielefeld, 1996), 315–337; Joseph Nietfeld, "Die Zentrumspartei. Geschichte und Struktur 1945–1958," (Ph.D. Diss. Universität Braunschweig, 1985).

¹¹⁸ For more on the West German KPD, see Patrick Major, *The Death of the KPD: Communism and Anti-Communism in West Germany, 1945-1956* (Oxford: Clarendon, 1997).

¹¹⁹ Jarausch, *After Hitler*, 146.

¹²⁰ Klessmann, *Die doppelte Staatsgründung*, 128.

CDU, which at times divided DGB leadership.¹²¹ The DGB also had a women's division, led by CSU member Thea Harmuth.¹²² Additionally, professional organizations such as the German Lawyers' Union (*Deutscher Anwaltverein*, DAV) reemerged after 1945.

Finally, the Western Allies permitted the press to reopen in their zones. The Allies ensured some modicum of control by vetting applications and only granting licenses to anti-Nazi, democratic editors and journalists.¹²³ The Western press displayed a greater diversity of opinion and was in principle less restrictive than in the East. Over time, newspapers grew again in popularity. By the late 1950s, 70.3 percent of the 39.3 million adults in the FRG read a daily newspaper, either a regional version or one of the national dailies: the *Süddeutsche Zeitung*, *Frankfurter Allgemeine*, *Frankfurter Rundschau*, *Die Welt*, or the weekly paper *DIE ZEIT* and the weekly illustrated magazines *Der Spiegel* and *Stern*.¹²⁴ Others received their news from trade, church, or party newsletters such as the social democratic *Vorwärts* or the Christian-conservative *Christ und Welt*. In addition commercial women's magazines like *Constanze* or political newsletters for female party members like the social democratic *Genossin/Gleichheit* were options for readers. On both sides of the Iron Curtain, the press served as an important mediator and communicator of ideas between the upper echelons of political leadership and its readership.

¹²¹ Catholic trade unions were in contact with DGB leaders. See, for example, Katholische Arbeiter-Bewegung an Harmuth, February 12, 1953, 5/DGAR000868 (24/4450), Archiv der sozialen Demokratie. See also Sibylle Plogstedt, »*Wir haben Geschichte geschrieben*« *Zur Arbeit der DGB-Frauen (1945-1990)* (Giessen: Psychosozial-Verlag, 2013).

¹²² For biography of Thea Harmuth, see: "Thea Harmuth," last accessed February 11, 2017, https://www.fes.de/archiv/adsd_neu/inhalt/nachlass/nachlass_h/harmuth-th.htm. Harmuth was a trained stenotypist and housewife before joining the Bavarian trade union and then moving up to the national headquarters of the DGB.

¹²³ Steininger, "Die freie Presse," 232-233.

¹²⁴ Steininger, "Die freie Presse," 241.

Other mediators in the West were leaders in the Catholic and Protestant Churches, who often used their sermons and church newsletters to sway churchgoers and used formal petitions to pressure the federal government. Among Catholics, the anti-Nazi archbishop of Cologne, Josef Frings, became a well-known member of the Christian conservative CDU.¹²⁵ Similarly, his Protestant counterpart Otto Dibelius—an anti-Semite nationalist who nevertheless opposed the Nazis and allied himself with the West—joined the CDU and became an outspoken opponent of the SED in the East.¹²⁶ Because of the Christian politics of the CDU/CSU and anti-Communism, the churches became influential political players in the postwar years.

In the months immediately following the defeat of Nazi Germany, the Soviets and the Western Allies embarked upon the political and social reconstruction of their occupied territories. As a first step, the four powers aimed to reintroduce democratic, antifascist political parties and social organizations in Germany. These processes differed greatly across borders. In the Soviet zone, “democratization” became marked by political consolidation under Communist rule. In the Western zones, “democratization” meant a plurality of political options—as long as they were antifascist, anti-Communist, and pro-Western-style democracy. In the context of democratization, women’s associations were permitted to reform. As the next section shows, at the same time the Allies began to reestablish political organizations and women’s associations, they also approached the legal reconstruction of Germany.

¹²⁵ Irmgard Zündorf, “Josef Frings,” last modified August 2, 2016, <https://www.hdg.de/lemo/biografie/joseph-frings.html>

¹²⁶ “Otto Dibelius,” accessed October 25, 2016, <https://www.dhm.de/lemo/biografie/otto-dibelius>

Allied Legal Intervention in Postwar Family Law

Without a government, the legal system still had no enforcement. The absence of a postwar government meant that racist Nazi laws technically stayed on the books a few months into the Allied occupation, until the Potsdam Conference. Here, Allied leaders met to reevaluate their earlier discussion at Yalta and devise the next phase of planning for Germany's future.¹²⁷ To carry out these plans, they formed the Allied Control Council (ACC), the highest governing body in the occupied sectors, which functioned until March 1948, when the Soviet zone withdrew in order to begin its independent constitutional reforms. The Council established the semblance of stability and unity because, unlike other policies that were left up to the discretion of each military governor, these laws applied uniformly across the four zones. On 20 September 1945, for instance, the ACC declared all Nazi laws null and void in all four zones.¹²⁸ The ACC then periodically issued a number of orders, laws, and proclamations that asserted its authority over the four sectors. One of these laws was the Allied Control Council Law Nr. 16 (*Kontrollratsgesetz* Nr. 16), issued on 20 February 1946, which established regulations for marriages and families in the absence of other laws.¹²⁹

More than anything else, the Allied Control Council Law Nr. 16 was intended as a denazification measure. The ACC's September 1945 order had explicitly overturned laws such as the 1935 "Law for the Protection of German Blood and German Honor," but did not

¹²⁷ Barbara Fait, "Supervised Democratization: American Occupation and German Politics," in *The United States and Germany in the Era of the Cold War, 1945–1990: Volume 1, 1945–1968: A Handbook*, eds. Detlef Junker, Philipp Gassert, and Wilfried Mausbach (Cambridge: Cambridge, 2004), 57-58; Klessmann, *Die doppelte Staatsgründung*, 28.

¹²⁸ *Kontrollratsgesetz* Nr. 1 (September 20, 1945).

¹²⁹ *Kontrollratsgesetz* Nr. 16 (Ehegesetz) (February 20, 1946).

address other marriage or family laws.¹³⁰ Since the People's Code had never come to fruition, two laws pertaining to marriage and the family—the 1938 “Law for the Unification of Marriage and Divorce Regulations in Austria and Surrounding Territories” and the old Civil Code—were still in effect until the Allies overturned them.

For their part, the Allies settled on partial reforms rather than a radical overhaul. The 1946 *Ehegesetz* scrapped the racist language embedded in the 1938 law, but it did not overhaul all Nazi-era legislation related to marriage and the family. The 1946 law, for instance, upheld the 1933 “Law against Abuses of Marriage and the Adoption of Children” and the 1938 “Law on the Change and Addition of Family Law Regulations and the Legal Status of Stateless Persons,” which had overturned the BGB's regulations on entering and nullifying marriages, divorce, custody, the legal status of children born to annulled marriages, and marriage among persons already related by marriage.¹³¹

In addition to hanging onto some Nazi-era provisions, the Allies also chose to reuse the language from the 1900 Civil Code. Under the 1946 law, men under the age of 21 and women under the age of 16 could not marry.¹³² Siblings, whether full, half, adopted, or illegitimate, were barred from marrying.¹³³ Remarriage was prohibited until annulment, divorce, or otherwise voided, to prevent bigamy.¹³⁴ If one party was found guilty of adultery,

¹³⁰ Kontrollratsgesetz Nr. 1 (September 20, 1945).

¹³¹ “Gesetz über die Änderung und Ergänzung familienrechtlicher Vorschriften und über die Rechtstellung der Staatslosen (April 12, 1938); Gesetz gegen Missbräuche bei der Eheschließung und der Annahme an Kindes statt (November 23, 1933).

¹³² Kontrollratsgesetz, §1 (February 20, 1946).

¹³³ Kontrollratsgesetz, §4, 7 (February 20, 1946).

¹³⁴ Kontrollratsgesetz, §5 (February 20, 1946).

he or she could not marry the other party.¹³⁵ A woman could not remarry within ten months of the dissolution of her last marriage, though exemptions could be given.¹³⁶ Parties of either gender with children could not remarry until the Guardianship Court approved. Intentions to marry had to be announced publicly six months ahead of time, and ceremonies had to be performed before civil authorities.¹³⁷ Marriages were to be annulled if they did not follow the proper procedure; if a woman married to obtain a new name “without the establishment of conjugal relations;” were bigamous, or contracted out of “willful deceit.”¹³⁸ If partners assumed dead reappeared and their spouses had remarried, the first union was considered dissolved.¹³⁹ No-fault divorce could be pursued, after a separation of three years, in cases of adultery, destruction of “conjugal life,” “mental derangement,” or mental and/or physically contagious diseases.¹⁴⁰

While the 1946 law provided all of these measures on marriage and divorce, it did not overturn several existing measures of the old BGB. Marital property schemes, for example, still dictated that married women’s property and their assets were controlled by their husbands.¹⁴¹ Furthermore, old provisions such as the *Stichentscheid*, or the right of the husband to make all decisions in the family, were still valid.¹⁴² Full parental authority and

¹³⁵ Kontrollratsgesetz, §6 (February 20, 1946).

¹³⁶ Kontrollratsgesetz, §8 (February 20, 1946).

¹³⁷ Kontrollratsgesetz, §13-15 (February 20, 1946).

¹³⁸ Kontrollratsgesetz, §17-34 (February 20, 1946).

¹³⁹ Kontrollratsgesetz, §38-39 (February 20, 1946).

¹⁴⁰ Kontrollratsgesetz, §42-46, 48 (February 20, 1946); see also Niehuss, *Familie*, 100.

¹⁴¹ BGB §1365-1370.

¹⁴² BGB §1354.

decision-making were still the domain of the father.¹⁴³ Women still had to take their husbands' surnames.¹⁴⁴ If married, their husbands still had the right to bar their wives from working.¹⁴⁵ Women were still considered the head of the household and could only work if their husbands were unable to support the family.¹⁴⁶ Although the 1946 law expanded rights in divorce law and dismissed outdated regulations on entering marriage, it did not overhaul provisions that had long constrained women's rights in marriage and over their children.

Despite the limits of the law, there were several reasons why the Allies chose this path. Above all, they were interested in denazification. Although the Allies retained parts of Nazi-era laws, these sections were not necessarily indicative of the racist Nazi worldview. The Allies made sure to remove the portions of the 1938 law that most reflected racist Nazi beliefs. The Allied decision to pursue partial reforms may have been the diplomatic route. By February 1946, the four Allies already had a history of poor cooperation. The Soviets, for instance, had been obstinate at the Potsdam Conference and had delayed approving the formation of the ACC or voting on other joint decisions.¹⁴⁷ Fully rewriting the law would have required compromise among the Soviets, Americans, British, and French. Any serious discussion would have likely ended in stalemate, especially because the four powers had very different conceptions of gender roles in marriage and the family. Additionally, the 1946 law was the expedient choice in a constantly evolving and chaotic postwar environment,

¹⁴³ BGB §1628.

¹⁴⁴ BGB §1355.

¹⁴⁵ BGB §1357.

¹⁴⁶ BGB §1356.

¹⁴⁷ Günther Mai, "The United States in the Allied Control Council: From Dualism to Temporary Division," in *The United States and Germany in the Era of the Cold War, 1945–1990: Volume 1, 1945–1968: A Handbook*, eds. Detlef Junker, Philipp Gassert, and Wilfried Mausbach (Cambridge: Cambridge, 2004), 50.

especially one in which the Allies prioritized other initiatives, such as currency reform.¹⁴⁸ They wanted to get a new law on the books, and recycling the old BGB's measures provided a fast and easy solution. Finally, reusing German text may have made the legislation more familiar to the Germans under occupation since, in theory, they would have known the provisions of the old BGB. This combination of reasons likely pushed the Allies to adopt regulations that were reminiscent of the older Civil Code. Allied Control Council Law Nr. 16 went into effect in this form on 1 March 1946.¹⁴⁹

Issues with the Allied Control Council Law soon arose, however, that the Allies did not anticipate. The British Zone Central Justice Administration, for example, received several inquisitive letters from jurists and other legal officials scattered across the Western zones in 1946–1947. For instance, one woman wanted to know if there were rules about attaining a divorce from her husband who was in an internment camp.¹⁵⁰ Others sought guidance on matters such as the recognition of marriages contracted between non-Germans in postwar Germany.¹⁵¹ Finally, the British Zone Central Justice Administration got questions about how the age of majority for marriage worked.¹⁵²

The women's presses on both sides of the border also reflected on the postwar crisis and problems with the law. Women's magazines such as *Die Frau von heute* in the Soviet zone, *Sie* in West Berlin, and *Constanze* in the British zone editorialized on divorce, the balance of power in marriage, the effects of women's employment on partnerships, and

¹⁴⁸ Mai, "The United States in the Allied Control Council," 55.

¹⁴⁹ Kontrollratsgesetz Nr. 16 (February 20, 1946).

¹⁵⁰ Dr. Kuhnt an Herrn Präsidenten des Zentral-Justizamtes, November 30, 1946, Z21/566, BArch Koblenz.

¹⁵¹ Lacherbauer an das Generalkonsulat der türkischen Republik, June 2, 1948, Z21/569, BArch Koblenz.

¹⁵² An den Herrn Präsidenten des Zentraljustizamtes, October 14, 1948, Z21/569, BArch Koblenz.

illegitimacy.¹⁵³ Readers' letters were another strategy the editors used to highlight problems. In September 1946, for example, *Die Frau von heute* printed a letter from orphaned nineteen year old Annedore Z., who asked if she could marry without her guardian's permission. Her fiancé had recently returned from a prisoner-of-war camp, but her legal guardian forbade the marriage. Annedore wanted to know if she had to wait to marry.¹⁵⁴ Another writer asked if her husband, also recently returned from the front, had the right to divorce her without her consent.¹⁵⁵ In each case, the female writer expressed some confusion or frustration with the law. As a whole, editors of Western and Eastern women's magazines used the pages of their publications to deliver critical evaluations of the state of the postwar crisis of the family and its legal ramifications.

Apart from minor revisions set by the *Kontrollratsgesetz* Nr. 52, passed on 21 April 1947, the *Ehegesetz* remained on the books until 1955 in the East and 1957 in the West. The Allies chose the text for purposes of expediency and ease as they tried to quickly denazify and restabilize Germany. The result, however, was a law that continued to dictate unequal rights for men and women in marriage and the family. Shortly after the Allies pursued legal rebuilding, as the next section shows, women's associations began to debate the future of the Civil Code.

Women's Committees Fight for a New Civil Code

The postwar crisis of the family, the introduction of the 1946 *Ehegesetz*, and the

¹⁵³ Heineman, *What Difference*, 128-133.

¹⁵⁴ Annedore Z. an *Die Frau von heute*, *Die Frau von heute*, Nr. 14, September 1946.

¹⁵⁵ G.K. an *Die Frau von heute*, *Die Frau von heute*, Nr. 6, March 1947.

opportunity to organize spurred women's associations in all four occupied zones to begin crafting their own proposals for a new civil law. One of the early goals of the ZFA (and then the DFD) in the Soviet occupied zone was to reform the Civil Code. To this end, in August 1946, the ZFA established a legal commission, led by Hilde Benjamin.¹⁵⁶ Benjamin had joined the KPD in 1927 and became a lawyer for the party. After the Second World War, she joined the newly founded SED and worked her way up to Chief Prosecutor and Director of the German Justice Administration for the Soviet zone. She furthermore had been a longtime advocate for women's rights.¹⁵⁷ Within the ZFA, she led a commission comprised of women's working groups from across the five *Länder* and occupied Berlin sector. The working group aimed both to attract women to the legal profession and to clarify complicated legal matters to women in the Soviet zone. At its first meeting in August 1946, for instance, the commission vowed to provide "clarity for all legal questions," especially those that "no longer correspond[ed] with social developments."¹⁵⁸

Moreover, rather than merely provide social welfare in response to the changed society, the legal commission sought to change the laws standing in the way of "full equal rights of women." In particular, Benjamin identified the "place of women in family law" and "the rights of unmarried mothers and illegitimate children" as laws that "hung in the air" and desperately needed revisions. The ZFA planned to collect proposals from the regional and

¹⁵⁶ The ZFA had other commissions as well, such as the Arbeitskommission für Arbeit und Sozialfürsorge; Kommission für Gesundheitsfragen; Arbeitskommission Hauswirtschaft/Volkswirtschaft; and the Arbeitskommission für Kultur und Erziehung. It was not uncommon for women to serve on multiple commissions at once. See Protokoll, November 1946, DY 34/21619, BArch Berlin.

¹⁵⁷ Irmgard Zündorf, "Biografie Hilde Benjamin," last modified February 22, 2016, <http://www.hdg.de/lemo/biografie/hilde-benjamin.html>

¹⁵⁸ Übersicht: Herausgegeben von der Arbeitskommission für Rechtsfragen beim Zentralen Frauenausschuß, August 7, 1946, DY 34/21619, Bl. 1, BArch Berlin. The document does not indicate which meeting this was; however, the text notes how important their task is and what they aim to do, which are often hallmarks of first meetings.

local women's committees, discuss them in the *Kommission* meetings, then send on all suggestions to the German Justice Administration. This plan, Benjamin hoped, would bring together "bottom-up" and "top-down" approaches to change the laws.¹⁵⁹

Beyond sending proposals to the German Justice Administration, the ZFA and the DFD found other ways to express their opinions about civil law, namely through publishing in the women's press. Between 1946 and 1948, the editors of East German women's magazines such as *Die Frau von heute* and *Für Dich* published series of articles and readers' letters that simultaneously praised the SED for its progressive stances on equal rights while criticizing the enduring status of the old Civil Code. One article by SED member Käthe Kern, for instance, a former Social Democrat, applauded the ruling party, because "the full equality of women is realized for the first time as a human right."¹⁶⁰

At the same time, the women's press sought to expose readers to existing obstacles to equality and therefore subtly critiqued the continued existence of the Civil Code and the SED's lackluster attempts to change it. The editors and authors conveyed their criticism through two strategies. One way was to simply present the limitations of the law. In May 1947, for example, *Für Dich* published an unsigned article that began with a rhetorical question: "How would it be if women still wore fashion from 1897? [...] We would all find that a bit strange, right?"¹⁶¹ The query gave way to a larger point: if women would not stand for dressing in the same clothes for fifty years, why should they obey the same outdated

¹⁵⁹ Übersicht, DY 34/21619, Bl. 1-2, BArch Berlin.

¹⁶⁰ Käthe Kern, "Menschenrechte – nicht Männerrechte," *Die Frau von heute* 1, 16, December 1, 1946, 2.

¹⁶¹ "Entscheidend – ist Dein Mann! Sagt heute noch das BGB, das vor 50 Jahren fertiggestellt wurde," *Für Dich*, May 1947, 5. The Soviet zone produced a magazine by the same name of the later *Für Dich*. In 1950 *Für Dich* and *Die Frau von heute* merged. See Simone Barck, Martina Langermann, und Siegfried Lokatis, *Zwischen „Mosaik“ und „Einheit“ – Zeitschriften in der DDR* (Berlin: Christoph Links Verlag, 1999).

laws? The article then featured the insights of a male jurist on several parts of the old BGB, which had not been changed under the 1946 law. First and foremost, the article emphasized that Germany had a responsibility to move away from the “capitalist-patriarchal principles of family law of the BGB that formerly only existed for the husband and father and imposed serfdom on wives and mothers.”¹⁶² It therefore suggested changing the *Stichentscheid* to give spouses equal say in all decisions concerning the marriage and family. Furthermore, the article argued that women’s rights to work outside the home and represent their husbands legally could no longer be limited. Men would no longer have control over their wives’ property. Finally, unmarried mothers would get full authority over their children. Similarly, a series titled “Equality Yes—But Also Equal Rights,” published in 1948 by *Für Dich* outlined each aspect of the old Civil Code that was still valid under the 1946 *Ehegesetz*.¹⁶³ These types of articles not only informed readers about their legal rights, but exposed them to their legal limitations.

Another rhetorical strategy the authors and editors in the East often employed was comparison to the Soviet Union. In an October 1946 article in *Die Frau von heute*, Elli Schmidt called the work of the Soviet occupiers a “great gift” to women.¹⁶⁴ Schmidt’s positive assessment was not surprising, as she enjoyed close relations with the Soviets and the SED. Trained as a seamstress, Schmidt joined the KPD in 1927 and spent the war in exile in Moscow. She returned to Germany in June 1945 and became a leader of the women’s

¹⁶² “Entscheidend – ist Dein Mann! Sagt heute noch das BGB, das vor 50 Jahren fertiggestellt wurde,” 5.

¹⁶³ Hilde Benjamin “Gleichberechtigung, Ja – Aber Auch Gleiche Rechte,” *Für Dich*, April-May 1948, vols. 17, 19, 20, 21, 22.

¹⁶⁴ Elli Schmidt, “Zur wahren Gleichberechtigung der Frau,” *Die Frau von heute*, October 1946, 8.

division of the Central Committee of the SED.¹⁶⁵ Despite these accolades, leaders of the Soviet zone women's committees also used the Soviets' progress to criticize the SED's work. In an article from 2 September 1948, for example, the author pointed out that in the Soviet Union, women were free to choose their maiden names or their new husbands' names.¹⁶⁶ The article did not explicitly critique the SED, but the comparison implied that other, better models of family law existed than what remained in effect in Germany.

Finally, the editors of women's newspapers often printed readers' letters as a way to voice problems with the legal situation in the Soviet zone. Sometimes letters expressed the cultural and social barriers women faced at home. In one letter, for instance, a Frau F. stated that she was excited to join the DFD, until her husband intervened on the ground that married women should stay home and refrain from political activity.¹⁶⁷ Other times, readers' letters emphasized legal confusion. Frau L. wrote in June 1947 to complain that she had been adhering to the BGB and working in her husband's business, but the Soviet authorities ordered her to enter the workforce.¹⁶⁸ Another woman wrote to ask if it was really possible that her husband could demand a divorce without her consent.¹⁶⁹ Like the other articles, the publication of these letters served to inform female readers about their rights and offer

¹⁶⁵ "Schmidt, Elli," last accessed February 11, 2017, <https://www.bundesstiftung-aufarbeitung.de/wer-war-wer-in-der-ddr-%2363%3B-1424.html?ID=3074>. Schmidt was born in 1908 and trained as a seamstress before joining the KPD. She went to Moscow during the war and returned with the Red Army in June 1945. She became an important figure in the women's committees in the Soviet zone.

¹⁶⁶ "Der Staat schützt die Ehe," *Die Frau von heute*, September 2, 1948, 15.

¹⁶⁷ "Mein Mann wünscht eine unpolitische Frau," *Die Frau von heute*, 8, April 1947, 18.

¹⁶⁸ "Um die mitarbeitende Ehefrau," *Die Frau von heute*, 12, June 1947, 18.

¹⁶⁹ "Hat mein Mann das Recht zur Scheidung?" *Die Frau von heute*, 6, March 1947, 18.

solidarity with other women, while pointing out legal and cultural barriers that still existed in the Soviet zone.

While the SED asserted its control over the ZFA and the DFD, there were still opportunities in the early postwar years for non-Communists (mainly liberals and Christian Democrats) to discuss a new civil law. In October 1947, for instance, the East CDU's Women's Committee addressed the ZFA's recent proposals for a new BGB. According to the East CDU, the ZFA's suggestions focused too much on *Gleichberechtigung* of women, not the family, which would only leave women "isolated and more vulnerable."¹⁷⁰ They were highly critical of the ZFA's assertion that the law would reflect the "people's opinion (*Volksanschauung*)," observing that the Nazis had relied on populist sentiments.¹⁷¹ In the end, the East CDU put together a list of its own positions, which reflected a combination of their Christian views and addressed the limits of the BGB and the 1946 law. Its members agreed that the right to spousal obligation (meaning that spouses were beholden to form a matrimonial community) could stay. They suggested maintaining men's right to decide the domicile; in all other matters, spouses would have the mutual right to decide. The committee supported women taking their husbands' names, leaving open the option of hyphenation. They agreed that women should receive assistance from their husbands in maintaining the household. Women would still be obligated to help their husbands' business. Men could retain the right to restrict women's power to represent them (regarding household matters) with the permission of the court. Men could also no longer terminate their wives' work contracts. With tightening political space, however, the Christian conservative women's

¹⁷⁰ Protokoll über die Sitzung des Unterausschusses "Familie" der Frauenarbeitsgemeinschaft am 28.10.1947, Ost-CDU VII-010-1713, Archiv für Christlich-Demokratische Politik-Sankt Augustin (ACDP).

¹⁷¹ Ibid.

suggestions were sidelined in favor of the ZFA/DFD's. Still, their discussions highlight that women's associations in the East engaged with the problem of the Civil Code at a very early stage, even before the Cold War began or the German question was solved.

It was clear early on that the SED and the Soviet occupiers saw women as central players in the reconstruction of the East. Similar to the trade unions and the press, Communist leaders brought antifascist women's committees under their influence as much as possible within the first year of the occupation. While political parties such as the Ost-CDU and the LDPD were permitted to have their own women's committees, these groups were gradually shut out by the SED-supported ZFA and DFD. The result was that, for the rest of the Soviet zone's (and later the GDR's) lifespan, Communist women dominated all discourse on gender roles, labor, and the family.

In the Western zones, the paradigm was reversed. Communist women were in the minority, while the SPD and independent women's associations dominated the critical discourse that aimed for reforms of women's rights in marriage and the family. Despite their divisiveness, many Western women's associations possessed similar goals to one another and to their Eastern counterparts: to rebuild Germany "as a new democratic state" in opposition to the Nazi dictatorship that preceded it.¹⁷² A fundamental part of reconstruction, these leaders maintained, was granting women equal rights, especially in marriage and the family. In January 1946, the Founding Program of the *Frankfurter Frauenausschuss* vowed, for instance, that the organization would fight for the "complete equality of women in all areas" (especially public office and the workplace) and would work to guarantee women equal

¹⁷² As one example, see "Founding Program of the Frankfurter Frauenausschuss," accessed October 25, 2016, <http://digam.net/dokumente/911/1.jpg>; Genth, *Frauenpolitik*, 150 also mentions this.

rights in marriage and marital property.¹⁷³ The *Dortmunder Frauenausschuss* similarly professed its commitment to the struggle “for the equality of women,” legal aid for women, and “support and help for employed and breadwinners of their families.”¹⁷⁴ Finally, in 1946, the official program of the Hannover-based *Club deutscher Frauen* promised “the recovery of family life” and the “reinsertion of women in public life.”¹⁷⁵

Although groups like the *Frankfurter Frauenausschuss* were clearly committed to equality in marriage, fewer archival records on Western women’s committees’ early work on the Civil Code exist, likely a result of the decentralized nature of social organizations in the West. Many women’s associations did not develop national-level umbrella organizations until 1948 or the early 1950s; as a result their records from the earlier period remain spotty. The limited pieces of evidence available from the SPD and the CDU, however, indicate that discussions about the Civil Code occurred in the West, even if complete documentation of their debates is unavailable in major archives. The SPD left the most complete paper trail, most likely because the party had an official *Frauenbüro* since 1946 that kept records of local- and regional-level discussions. On 28 December 1947, for instance, a local SPD women’s committee leader from Regensburg, Friedl Schlichtinger, sent a list of proposals to the SPD *Frauenbüro*. The recommended changes concerned the rights of illegitimate children, namely that it would give them “equal claims to spiritual and corporal assistance as

¹⁷³ Founding Program of the Frankfurter Frauenausschuss; The FFA would become the Frankfurter Frauenverband in 1947, see Donna Harsch, “Public Continuity and Private Change? Women’s Consciousness and Activity in Frankfurt,” *Journal of Social History*, Vol. 27, No. 1, Autumn 1993, 29-58, 43; Heinemann, *Frauenfragen*, 160.

¹⁷⁴ “Q47 Vorschlag eines Arbeitsprogramm für den Frauenausschuss der Stadt Dortmund,” in *Frauen in der deutschen Nachkriegszeit*, 210-211.

¹⁷⁵ “‘Club Deutscher Frauen’ in Hannover,” in *Frauen in der deutschen Nachkriegszeit*, 224.

legitimate children.”¹⁷⁶ The proposed law would also ensure that the father would be whoever had been with the mother during the conception time; if there were multiple potential fathers, they would all be held accountable. Alimony, however, depended on the father’s station in life, especially if he was an occupation soldier.¹⁷⁷ Schlichtinger’s proposals illustrated that local-level discussions of family law occurred. The SPD brought up the Civil Code again at its September 1948 women’s conference and during the Parliamentary Council.¹⁷⁸ Records from Christian conservative women point to discussions about equal rights and civil law in the Christian conservative women’s circles as well. In 1948, for instance, CDU women’s leader Stefanie Roeger from North Württemberg prodded her party to introduce an equality clause that would both guarantee men and women equality in professional life as well as promote equal treatment of domestic duties.¹⁷⁹

Traces of critical discourse about equal rights and the future of the Civil Code can be found in the Western women’s press as well. The West Berlin magazine *Sie* and the Hamburg-based women’s magazine *Constanze*, for instance, published articles that clearly supported equal rights for unwed mothers and urged women to pursue divorces.¹⁸⁰ The SPD women’s newsletter for female party members, the *Genossin*, edited by Hertha Gotthelf, printed articles that criticized the state of the BGB as well, homing in on issues that the 1946

¹⁷⁶ Schlichtinger an Gotthelf, December 28, 1947, 181 (2/KSAA000181), Archiv der sozialen Demokratie.

¹⁷⁷ Ibid.

¹⁷⁸ “Siebzehnte Sitzung des Hauptausschusses 3. Dezember 1948,” *Der Parlamentarische Rat, 1948-1949: Akten U. Protokolle*, eds. Kurt Georg Wernicke, Hans Booms, and Walter Vogel (Boppard am Rhein: Boldt, 1975), 511; for internal Western SPD discussions, see “SPD-Frauentagung in Wuppertal,” *Neuer Vorwärts*, September 11, 1948, 6, Archiv der sozialen Demokratie; “Wuppertal,” *Genossin*, October 1948, 117.

¹⁷⁹ Roeger an Frauenarbeitsgemeinschaft der CDU/CSU Deutschlands, July 14, 1948, Frauenvereinigung/Frauen-Union/EFU, 04-003-001/1, Archiv für Christlich-Demokratische Politik-Sankt Augustin.

¹⁸⁰ Heineman, *What Difference*, 127-128.

Ehegesetz had not addressed, such as the right of men to make all decisions for their families or men's right to control and profit from their wives' property holdings.¹⁸¹ The editors of these magazines thus exposed their subscribers to critical issues surrounding women's equal rights and status in marriage and the family.

From the beginning, the women's committees in the West faced certain obstacles that their Eastern counterparts did not. For one thing, they faced physical and logistical barriers. Restrictions on travel and much larger territories prevented a national-level movement from forming until later. Furthermore, the decentralized nature of politics and society in the West meant that debates over issues like the future Civil Code often occurred on the local or regional level and are more difficult to trace in the archival record. Another issue women's committees faced was overcoming long-established ideological, class, and confessional differences that had marked the German women's movement since the late nineteenth century. Additionally, they faced the problem of aligning goals with the Western occupiers, who wrongly assumed that German women needed democratization. The endeavors in which the Western Allies were willing to put time and money, such as initiatives to teach women citizenship, were not what women's committee leaders envisioned for themselves. Unlike the Soviet zone, the Western Allied powers did not intervene early on in the women's committees, although they showered them with more attention later on when they realized what an invaluable tool women were to rebuilding Germany.¹⁸² Finally, as the Cold War began in earnest in late 1947/early 1948 and the Allies found a solution to the German

¹⁸¹ "Wuppertal," Genossin, October 1948, 117.

¹⁸² Reports Women's Affairs, box 51, file 5, Women's Affairs Branch, Semi-Annual Report, 1 July-31 December 1949. National Archives, College Park, Maryland (accessed July 2008). According to this OMGUS report: "The Women's Affairs unit...is based on the recognition of the fact that German women are in a decisive position either to promote or retard the development of Germany as a democratic state."

questions, women's associations became subject to the tug-of-war and limited political space in which they could maneuver.

Conclusion

As this chapter has shown, between 1945 and 1949, numerous legal, political, social, cultural, and economic factors shaped the paths of family law under the Soviet and Western occupations. First, the legal and institutional frameworks in both states informed the diverging paths in the four zones. In the context of the chaotic postwar "crisis of the family," contemporaries turned to the old Civil Code as a source of stability. At this stage, path dependency was strong in the Soviet and the Western zones, mostly because the Allied powers implemented the Allied Control Council *Ehegesetz* in February 1946. This legislation, designed to provide parameters for the imperiled states of marriages and families, largely reinforced old provisions lifted from the Civil Code. At the same time, path dependency was less strong in some circles. In particular, female activists in the Western and Soviet zones saw the postwar crisis year as a tabula rasa for women's rights and were less keen on retaining the old law.

The particular political climate of the occupation zones influenced nascent discussions of marriage and the family as well. In the Soviet zone, the SED, with the backing of their occupiers, gradually exerted control over other political parties, the press, trade unions, and women's organizations. This process allowed Communists to begin discussing legal reforms, even before they knew the fate of Germany, but it also prevented other groups from having a say. Meanwhile, in the Western zones, the decentralization and variety of political parties, trade unions, media outlets, and women's associations allowed a plethora of

opinions to circulate, but also reinforced longstanding divisions among certain groups in society.

Third, economic factors mattered immensely in contemporary responses to the perceived crisis of marriage and the family in the occupation years. Across Germany, there were more women than men. In the East, the Soviet occupiers dealt with their imbalanced gender ratio by integrating single, married, and widowed women and mothers into the labor force and creating an “equal wages for equal work” policy to entice women to keep contributing to the planned economy and reconstruction efforts. In the West, the Allies pushed married women and mothers out of the work force as soon as their husbands began returning home, emphasizing that male employment was necessary to restore stability and help men recover from the war. By 1949, the two sides had adopted two different family models that would then shape future reforms of marriage and family law.

Fourth, notions of the gender order and hegemonic cultural ideas played important roles in the occupation zones. Part of the reason why the postwar crisis of the family was considered such a calamity was because of the upended gender order. Although women’s organization leaders in East and West resisted the old BGB, the 1946 *Ehegesetz*, and the reinforcement of traditional family roles, not all Germans did. Men who returned from the front were unwilling to give up their positions as patriarchs. Many women, who had worked and raised the family in men’s absence, were equally unwilling to relinquish authority. For some Germans, however, a return to the traditional family was desirable during postwar crisis. In addition, the occupying powers’ different emphases on women’s emancipation affected how much attention they gave to women and gender issues as well. The Soviets’ own history of female emancipation, coupled with their fear of losing control of the Soviet

zone, led them to actively fight for women's support. Meanwhile, the Western occupiers were less focused on women's public roles and emancipation, although they were concerned about "democratizing" German women after twelve years of fascist dictatorship. They therefore initially invested less money and support for women, only ratcheting up aid after the Cold War began in late 1947/early 1948.

Despite all of their differences, one of the things that bound the diverging states together was the 1946 *Ehegesetz*. In all four occupation zones, family law continued to limit married women's equality with men. Married women still had to obey their husbands' decisions, relinquish control of their property and its assets, and take their husbands' surnames. As the case of the woman at the beginning of the chapter, Frau K., illustrates, they often faced financial disadvantages if they chose to divorce their spouses. Women's groups recognized these problems and sought to change the Civil Code accordingly. They acknowledged, however, that changing the Civil Code required more than just proposals. As the next chapter shows, prominent female activists fought for equality clauses in the new constitutions as the first steps that would facilitate bigger alterations to other legislation such as the Civil Code.

CHAPTER THREE

“MEN AND WOMEN HAVE EQUAL RIGHTS”: CONSTITUTIONAL REFORM IN POSTWAR GERMANY, 1946–1949

In January 1949, the high-ranking female SED functionary Käthe Kern published an article in the Soviet zone women’s magazine *Die Frau von heute* titled “Bonn Opposes Women’s Rights.” Kern had been active in the SPD women’s movement in Berlin before 1933. After 1946, she joined the SED, rose up in the ranks of the East German Democratic Women’s League, the DFD, and then became a representative of the People’s Council (*Volksrat*), the Soviet zone’s constitutional convention.¹ In her article, Kern relayed to readers that the Parliamentary Council—the Western zones’ constitutional congress in Bonn—had rejected a proposal to grant women greater equality with men in their provisional constitution, the Basic Law (*Grundgesetz*).² In contrast, the SED and the People’s Council had already adopted complete equality for men and women as a basic right in their own constitution. Kern therefore labeled the People’s Council’s stances on equality as “a step forward for women and a peaceful future” and labeled the West as “backwards.”³

When Kern’s article was published, the People’s Council had been working on a new

¹ For Käthe Kern’s biography, see: Heike Amos, *Die Entstehung der Verfassung in der Sowjetischen Besatzungszone/DDR 1946-1949* (Münster: LIT, 2006), 59; “Käthe Kern,” last modified October 2009, <http://bundesstiftung-aufarbeitung.de/wer-war-wer-in-der-ddr-%2363%3B-1424.html?ID=1671>. Kern was born in 1900 and joined the SPD in 1920, eventually becoming leader of the SPD Greater Berlin women’s committee. She joined the SED in 1946 and became, alongside Elli Schmidt, a chairwoman of the SED Central Committee women’s department.

² Käthe Kern, “Bonn gegen Frauenrechte,” *Die Frau von heute*, January 1949, 10.

³ *Ibid.*, 10.

constitution for the Soviet zone for nearly a year. In 1947, the wartime alliance had broken down in the context of the Cold War, which led to increasing conflicts between the Soviets and the West. These were further fostered by the introduction of the Truman Doctrine and the Marshall Plan by the US government and the related currency reform in the three West German zones. Already in early 1948, the Western Allies excluded the Soviets from the Six-Power Conference. In response, the Soviets left the Allied Control Council and began constitutional reforms in their occupation zone. In the context of debating basic rights for the citizens of the future German Democratic Republic (GDR), female activists such as Kern and Hilde Benjamin advocated constitutional equal rights for men and women. The People's Council propagated the equality clause as fulfillment of socialist women's emancipation theory and proof that the Soviet zone was more progressive than the West. Moreover, they promised equal wages for men and women, state protection of the family, and equal rights for out-of-wedlock children as constitutional rights.

In response to the Eastern People's Council, the Western zones convened their own Parliamentary Council in September 1948. Shortly thereafter, the Social Democrats, supported by some Free Democrats and female activists from other parties, proposed a broader equality clause. Initially, they faced opposition from Christian conservatives and Free Democrats, who insisted on keeping the old Weimar formulation that men and women were only equal "in principle." Furthermore, they argued that the Basic Law must protect marriage and the family. The Christian conservative coalition changed their position, however, when women's organizations, trade unions, and individuals protested the decision. In the end, the two sides compromised, creating a Basic Law that contained a broader equality clause and a family protection clause.

On 23 May 1949, the West German Basic Law went into effect with the promise that “men and women have equal rights” (“*Männer und Frauen sind gleichberechtigt*”). A few months later, on 7 October 1949, the East German People’s Council passed their own constitution, complete with a nearly identical equal rights clause that read: “Men and women have equal rights” (“*Mann und Frau sind gleichberechtigt.*”) Additionally, in each state, the promise of *Gleichberechtigung* was constrained by the “family protection clause,” which guaranteed that the state would safeguard marriage and the family. Finally, both provisional constitutions guaranteed the overhaul of all legislation prohibiting *Gleichberechtigung*. In the GDR, this clause went into effect immediately; the West German government had until 31 March 1953 to change its legislation. The matching mandates encased in the 1949 provisional constitution of the GDR and the Basic Law of the FRG provided the necessary legal foundation for reforming the longstanding Civil Code in the 1950s and early 1960s.

Scholars who have written on gender and the family in the two provisional constitutions have not fully explained how and why East and West German politicians adopted the matching equality clauses.⁴ This chapter shows that strong path dependencies, manifested through different political, social, and economic factors, determined the negotiations and decisions regarding the equality clauses in the provisional constitution of the GDR and the Basic Law of the FRG in the context of the early Cold War. At the same time,

⁴ Robert G. Moeller, *Protecting Motherhood: Women and the Family in the Politics of Postwar West Germany* (Berkeley: University of California Press, 1993), 40. Moeller has argued that the West German Basic Law was “an explicit response to the past of National Socialism, to the social dislocation of the immediate postwar period, and to the present global conflict between east and west,” but he does not cite even earlier legal or constitutional precedents, nor does he go into detail about the Cold War competition since his study focuses on the West. Amos, *Entstehung*, 37. Regarding the East German case, historian Heike Amos has outlined constitutional debates in general as a product of Soviet and Western disagreements and paid scant attention to gender in the People’s Council’s debates. Donna Harsch’s monograph *Revenge of the Domestic: Women, the Family, and Communism in the German Democratic Republic* (Princeton: Princeton University Press, 2007) inexplicably skips the constitutional debates.

this chapter demonstrates that, in certain ways, the discussions and decisions on both sides were similar. For one thing, politicians in East and West relied on similar discourses about the historical precedents of the Civil Code, in Wilhelmine, Weimar, and Nazi Germany to defend and oppose equality. Furthermore, as the chapter will reveal, the intensifying Cold War conflict not only factored into their discourse, but determined the decisions each side made, although to different degrees.⁵

This chapter covers the debates over the equal rights and family protection clauses in the Soviet and Western occupation zones between 1946 and 1949. The first section examines the discussions over the equality of women in a new, all-German constitution in the Soviet zone. At first, the SED was complacent with recycling the Weimar constitution's equality and family protection clauses. The intervention of German female activists and the Soviet occupiers pushed the SED to accept a stronger equal rights clause. The second section analyzes the parallel debates in the Western zones. Here, politicians and legal experts fought long and hard to retain the Weimar formulation, partly as a rejection of Soviet-style equal rights for women. In the end, however, they surrendered to the masses of women protesting for greater legal protection. The third section reverts to the Soviet zone, where the West's adoption of a broader equal rights clause took SED politicians by surprise and provoked them to look one step ahead to reforming the Civil Code.

⁵ Moeller, *Protecting Motherhood*, 40, briefly mentions the role of the Cold War but does not conduct a systematic comparison.

Emancipating Women in the Soviet Zone, 1946–1949

In July 1946, the SED approached the Soviets about writing a “*Reichsverfassung*,” or a national constitution that would cover all German territories.⁶ Several events in the preceding months precipitated this pitch. First, the CDU and SPD had fared much better than the KPD in local and regional elections in the American zone, making the KPD and the Soviets uneasy.⁷ The KPD, in fact, responded in April 1946 by forcing the SPD in the Soviet zone to merge with them into the SED to guarantee electoral gains. Second, at the end of June 1946, the American Allies started to write *Länder* (in American usage, state) constitutions in Württemberg-Baden, Bavaria, and Hessen. The American occupiers made it clear early on that they intended to pursue American-style federalism in their zones, which startled the SED and the Soviets. Historian Konrad H. Jarausch argues that part of the problem stemmed from different conceptions of democracy in the Soviet and Western sectors, namely democratic centralism versus federalism.⁸ When the US rejected the idea of a centralized Germany at the Paris Conference in July 1946, pushing instead for a federalist system, the Soviets balked and gave the SED permission to draft a national constitution.⁹

In August 1946, the responsible SED committee presented the Soviet Military Administration in Germany (SMAD) with the first draft of the “Constitution of the

⁶ The word “Reich” transliterates to “empire” or “realm” and in other contexts, referred to the German Empire. In this context, given that World War II put an end to German imperial aims, I translate it as “national.”

⁷ Patrick Major, *The Death of the KPD: Communism and Anti-Communism in West Germany, 1945–1956* (Oxford: Clarendon Press, 1997), 37; Harsch, *Revenge*, 38; Monika Kaiser, “Change and Continuity in the Development of the Socialist Unity Party of Germany,” *Journal of Contemporary History* 30, no. 4 (1995): 687.

⁸ Konrad H. Jarausch, *After Hitler: Recivilizing Germans, 1945–1995* (Oxford: Oxford University Press, 2006), 130–131.

⁹ Amos, *Entstehung*, 38.

Democratic Republic of Germany.”¹⁰ Four of the five male committee members—Wilhelm Pieck, Walter Ulbricht, Otto Grotewohl, and Max Fechner—were political leaders of the SED with little legal training. Pieck and Ulbricht, both Communists before 1933, spent World War II in exile in Moscow before returning to Germany with the Red Army in April 1945.¹¹ Grotewohl and Fechner, former Social Democrats, were imprisoned during the war for their SPD membership and resistance to the Nazis.¹² The fifth committee member, Karl Polak, had received his law degree in 1933, but was dismissed from his civil service post under Nazi law because of his Jewish heritage. He went into exile in the Soviet Union, where he taught legal theory in Tashkent. He returned to Germany in 1946, joining the KPD/SED.¹³ His law degree and time in exile teaching law in the Soviet Union qualified him to lead the constitutional reforms within the SED.

When Polak produced the first draft of an all-German constitution in August 1946, the Soviet authorities did not approve it. Historian Heike Amos’ comprehensive study on the subject does not explain why, apart from mentioning that Soviet authorities disagreed on it.¹⁴ One possibility is that the Soviets wanted to see how local elections in their zone would go

¹⁰ Amos, *Entstehung*, 37. Translation: “Verfassung der demokratischen deutschen Republik.” The SED also presented a draft outlining the Parteivorstand of their party.

¹¹ Hermann Weber, “Pieck, Wilhelm,” in *Neue Deutsche Biographie* 20 (2001), 421-422. <https://www.deutsche-biographie.de/gnd118594273.html#ndbcontent>; Mirjam Husemann, “Walter Ulbricht,” last modified September 17, 2014, <https://www.dhm.de/lemo/biografie/walter-ulbricht>

¹² Dorlis Blume and Irmgard Zündorf, “Otto Grotewohl,” last modified February 19, 2016, <https://www.hdg.de/lemo/biografie/otto-grotewohl.html>; Markus Würz, “Max Fechner,” last modified February 19, 2016, <https://www.hdg.de/lemo/biografie/max-fechner.html>

¹³ For Karl Polak’s biography, see Amos, *Entstehung*, 37-50.

¹⁴ Amos, *Entstehung*, 53. Two authorities within SMAD did not agree on the matter and sent it to Moscow, where higher-ups, likely because of increasing tensions among the Allies in Germany, also tabled the problem. The reasons are not clearly stated in Amos’ study of the issue. Amos, however, also did not focus on gender and may have glossed over the issue in an otherwise comprehensive study.

before broaching the topic. Another likely reason was that the draft, which closely resembled the old Weimar constitution, was too moderate in nature. Although Polak made some key changes, such as moving the “Basic Rights and Duties of Germans” section, the text still replicated much of the liberal, bourgeois language of the constitution of the failed Weimar Republic and did not offer a radically transformed template for a future German socialist state.¹⁵

In September 1946, SED deputy chairman and former Communist Party leader Walter Ulbricht pressured SMAD to revisit the issue.¹⁶ One of Ulbricht’s main arguments was legal and political unity. Ulbricht insisted that publishing a draft of the national constitution would remind Germans that the Soviets and the SED intended to keep Germany united, unlike their Western counterparts.¹⁷ He furthermore told the Soviets that it was no longer sufficient to criticize the West, but that the SED needed to take action.¹⁸ The SED’s relative success in the October elections for the state parliament (*Landtag*) convinced the Soviets to relent and allow the SED to move forward with composing the national and state constitutions for Germany.

In November 1946, the SED assembled a constitutional committee of sixteen representatives, in contrast to the insular group that drafted the August 1946 version.¹⁹ A key difference was that this time, the SED permitted women to participate. Käthe Kern was the

¹⁵ Amos, *Entstehung*, 358-405.

¹⁶ For further information on Walter Ulbricht’s rise to power in the Communist Party of Germany, see Eric Weitz, *Creating German Communism* (Princeton: Princeton University Press, 1997), 293-303, 318-322.

¹⁷ Amos, *Entstehung*, 54.

¹⁸ Ibid.

¹⁹ The committee was comprised of sixteen representatives from each of the five *Länder* in the Soviet zone, as well as delegates from the different groups within the SED. Amos, *Entstehung*, 58-59.

sole female delegate, chosen to represent women's interests. As the "token woman" in the SED constitutional committee, Kern lobbied for a separate and stronger equality clause under the pretext that the former Social Democratic women she represented and who had fought so long for equality wanted it.²⁰ The leader of the commission and former SPD chairman Otto Grotewohl rejected her proposal on the grounds that "the big picture will be blurred if everyone plucks the morsel from the kitchen that tastes especially good to him."²¹ Undeterred, Kern responded by forwarding a written request for the amendment to the SED Central Office and SMAD. Perhaps motivated by their own constitutional guarantees of equal rights for men and women²², or seeing the political opportunity to attract women to Communism, the Soviets responded positively to Kern's appeal and ordered the SED to add the equality clause.²³

Kern's initiative and Soviet intervention on her behalf altered the path of the German constitution in the Soviet zone. Had the Soviets approved Polak's initial version, which largely replicated the old Weimar formulations, married women would have experienced little change in their legal rights. The new version published on 16 November 1946, however, expanded civil rights for women, gender, and the family. For example, Article 7 stated: "Men

²⁰ Harsch, *Revenge of the Domestic*, 35-40; Amos, *Entstehung*, 59.

²¹ Amos, *Entstehung*, 64; Norman Naimark, *The Russians in Germany: A History of the Soviet Zone of Occupation, 1945-1949* (Cambridge: Cambridge University Press, 1995), 131. Naimark claims that Kern and Grotewohl were former lovers, which may have contributed to their conflict in the committee.

²² "1936 Constitution of the USSR," December 1936,
<http://www.departments.bucknell.edu/russian/const/36cons04.html#chap10>

²³ Käthe Kern petitioned the SMAD authorities on November 11, 1946. Five days later, the draft was published in *Neues Deutschland* with the equal rights clause in it. Given Otto Grotewohl's outright dismissal of Kern's suggestion and the quick turnaround of the SED's draft, I suggest that SMAD intervened and ordered the SED to include the clause, although there is no documentation in materials I have examined that gives a definite answer either way. Since the Soviets' own constitution included an equal rights clause in Article 122, it is possible that they saw this as a prime opportunity to "Sovietize" the SED and the Soviet zone using the equal rights clause in the constitution as another vessel.

and women have equal rights (*Männer und Frauen sind gleichberechtigt*).” Additionally, Article 25 specified: “The family stands under special constitutional protection. Marriage derives from the equality of both sexes.” Furthermore, Article 26 said: “Women are equal to men in all areas of civic, economic, and social life. All legal definitions that oppose the equal rights of women are overturned.” Finally, the same clause promised equal wages for men and women and equal treatment of illegitimate children and their unwed mothers.²⁴

The SED hid Kern’s struggle with her male colleagues from the public. Instead, the SED used the Soviet zone press to present a positive and unified public image of its treatment of the equality clause. One strategy the East German media used was emphasizing historic change. Several articles published in the November and December 1946 editions of *Neues Deutschland* praised the SED’s draft for finally overcoming the shortcomings of Weimar.²⁵ Two of the authors, non-party female activist Majabert Foerstner and Kern, both identified the phrase “in principle” as the central problem. It was, as Foerstner pointed out, a “weakening” word, one that diplomats used “to say no when they do not want to say no.”²⁶ The articles simultaneously critiqued the old Weimar text and lauded the SED’s attempts to create more equality for men and women in all areas of the economy, politics, and society.

Additionally, newspaper editors employed contemporary comparisons to the division of Germany and the West. At the time, the Western zones were in the midst of creating state-

²⁴ See also “Entwurf einer Verfassung für die deutsche demokratische Republik vom 14. November 1946,” in Amos, *Entstehung*, 358-405.

²⁵ Majabert Foerstner, “Die Frau in der Verfassung,” *Neues Deutschland*, November 28, 1946, 4; Käthe Kern, “Die Frau und der Verfassungsentwurf,” *Neues Deutschland*, November 26, 1946, 4; Friedrich Möglich, “Das Frauenproblem im Verfassungsentwurf,” *Neues Deutschland*, December 15, 1946, 4.

²⁶ Foerstner, “Die Frau in der Verfassung.”

level constitutions, many of which included their own versions of equality clauses.²⁷ The West, however, had not yet broached the subject of a constitution or equality on the national level. The editors of *Neues Deutschland* therefore presented the SED as the leader in the race with the West over equal rights for women. An article titled “Voices from the West,” from 19 December 1946, for example, featured an unidentified woman complaining about the proceedings in the Bavarian state constitutional committee. Some Bavarian representatives had opposed the inclusion of an equality clause on the grounds that the Bible granted men authority over women.²⁸ The article ended by juxtaposing the Bavarian regional constitution (*Landesverfassung*) with the SED draft and the Weimar constitution, pointing out that only the SED would give women the full legal equality that they never experienced before. Using the voices of Western women to condemn the Bavarian constitutional committee’s position on *Gleichberechtigung* was a way for the SED to criticize the West while also reproving their political opponents, the Christian Democrats.²⁹

Given the CDU’s gains in earlier local- and regional elections, SED leaders aimed to discredit the opposing party, harping on equal rights as one reason to disparage their opponents. In a *Neues Deutschland* article from 28 December 1946, the editors emphasized how the issue of *Gleichberechtigung* differentiated the SED from the East-CDU. The SED asserted here that equality of the sexes stood, alongside dispossession of large estates, the

²⁷ The Americans had started to draft Land-level constitutions in June 1946 in Württemberg-Baden, Bayern, and Hessen. Britain soon followed suit, though its states (Schleswig-Holstein and Nordrhein-Westfalen) did not ratify their constitutions until 1949 and 1950, respectively.

²⁸ “Stimmen aus dem Westen,” *Neues Deutschland*, December 19, 1946, 4. The article cited an excerpt of a Rhenish women’s group’s discussion, originally printed in the “West German People’s Echo,” a newspaper published by the KPD in Dortmund for the Western sectors. Joachim Joesten, *The German Press in 1947* (New York: New Germany Reports, 1947). <http://hdl.handle.net/2027/mdp.39015049425583>. The People’s Echo had a general circulation of about 147,000.

²⁹ “Stimmen aus dem Westen,” *Neues Deutschlands*, December 19, 1946.

“conveyance of natural resources,” and the punishment of former Nazis as one of the four prerequisites “that promote progressive democratic development in Germany.”³⁰ The message communicated to readers was that the CDU would not address the issues facing Germany. As a whole, the impression the SED aimed to give readers was that they had produced historical change for the trajectory of women’s rights that their Christian conservative and Western counterparts were unable and unwilling to accomplish.

The SED’s media campaign for equality dropped off for much of 1947 as the wartime alliance among the Western Allies and Soviets deteriorated in the context of the Cold War. The Allied powers saw Germany more and more as the nucleus of future European stability. Indeed, Germany was already relatively stable compared to the rest of Europe, especially countries such as Greece, where between 1945 and 1949 a civil war was fought between the Greek government army, supported by the United Kingdom and the United States, and the Democratic Army of Greece (DSE), the military branch of the Greek Communist Party that had led the partisan struggle against the Nazi occupation, backed by the new Yugoslavian, Albanian, and Bulgarian governments. In response, US President Harry S. Truman delivered a special speech to Congress on 12 March 1947 in which he laid out the eponymous “Truman Doctrine”: “the policy of the United States to support “free peoples” who are resisting attempted subjugation by armed minorities or by outside pressures,” which tried to prevent the rise of Communism.³¹ In June 1947, the US drew up the Marshall Plan, although it would not be signed into law until a year later, which aimed to support, as part of the fight against Communism, the development of Western European capitalist economies. The Soviet

³⁰ “Zum Verfassungsentwurf der CDU,” *Neues Deutschlands*, December 28, 1946.

³¹ Denise M. Bostdorff, *Proclaiming the Truman Doctrine: The Cold War Call to Arms* (College Station: Texas A&M University Press, 2008), 5.

Union reacted by strategically delaying approval of the Plan. Throughout 1947, numerous meetings of the Council of Foreign Ministers failed to settle outstanding disagreements among the Soviets and Western Allies.

The SED revisited the issue of the constitution in December 1947 at the London conference. Here, the SED created the People's Congress (*Volkskongress*) movement, an initiative designed to introduce direct democracy as a form of government for Germany. The Soviets and SED envisioned a provisional congress comprised of representatives from the Eastern and Western sectors that would draft an all-German constitution.³² Delegates from across the occupation zones attended the first meeting, but the composition of the group—primarily the SED and a small number of Western KPD representatives—raised red flags for the Western Allies.³³ The Western Allies failed to latch on to the idea, and further demonstrated their dissonance by not inviting the Soviets to the London Six-Power Conference in February 1948, where they discussed the “German question.”

The Soviets and the SED took their exclusion from the Six-Power Conference as a signal that the wartime alliance could not be reconciled. In response, they pulled out of the Allied Control Council. In February 1948, Grotewohl recommended turning the People's Congress movement into a “provisional parliament.”³⁴ The Soviets approved the idea, thus paving the way for the new parliament, dominated by the SED, to begin its work on 19

³² Inga Markovits, “Constitution Making After National Catastrophes: Germany in 1949 and 1990,” *William & Mary Law Review*, 49, 1307 (2008), 1315. <http://scholarship.law.wm.edu/wmlr/vol49/iss4/9>

³³ Ibid.

³⁴ Otto Grotewohl, “Nationale Selbsthilfe,” *Neues Deutschland*, February 22, 1948, 1. He used the term “Vorparlament”; a few weeks later, Liberal Democratic Party chairman Wilhelm Külz also called to change the People's Congress into a parliament and suggested the name German People's Council (*Deutscher Volksrat*); Amos, *Entstehung*, 135.

March 1948.³⁵ Grotewohl chaired the Constitutional Committee (*Verfassungsausschuss*), which became responsible for debating individual, social, and cultural rights in the new socialist Germany, Grotewohl argued that the SED cared deeply about individual freedoms. He stated, “As far as private life comes into consideration, I would like to leave no doubts that my party would not like to work with petty restrictions in the constitution, but rather that the principles of private life and the right to personal freedom should be seen as universal.”³⁶ Grotewohl cited equal rights for men and women as a specific example of universal freedoms, proclaiming that “it is self-evident that men and women must be treated equally in the constitution.”³⁷ He said little more on the topic, but made his point clear enough: that the People’s Council intended to include constitutional equality for men and women, as the SED had championed since 1946.

Grotewohl’s defense of women’s equality was surprising, given his earlier disregard of Käthe Kern’s proposals.³⁸ At the same time, a lot had changed in a year and a half. By the time the Constitutional Committee convened in June 1948, German division was almost inevitable as a result of the exclusion of the Soviets from the Six-Power Conference, their

³⁵ The *Volksrat* had 300 delegates total: 85 from the SED, 42 CDU, 43 LDP, 10 from the *Vereinigung der gegenseitigen Bauernhilfe*, 70 from the DFD, FDGB, DBD, FDJ, Kulturbund, and VVN, and 50 “unaffiliated.” See Amos, *Entstehung*, 139. The six committees of the People’s Council were: *Friedensvertrag* (Peace Treaty); *Verfassungsausschuss* (Constitutional Committee), *Wirtschaftsausschuss* (Economic Committee), *Justizausschuss* (Justice Committee), *Kulturausschuss* (Cultural Committee), and *Ausschuss für Sozialpolitik* (Committee for Social Policy). Although the ostensive purpose of the People’s Council was to form a government and constitution for all of Germany, the balance of power was always tilted largely in favor of the SED, since the majority of the committees were run by SED members, and SMAD approved all final decisions. The *Verfassungsausschuss* had thirty members, twelve of whom belonged to the SED. The CDU had three members; the LDPD had six; mass organizations had five; and there was one “nonparty” delegate. Grotewohl, the former chairman of the SED constitutional committee, chaired the group. Amos, *Entstehung*, 140-141, 144.

³⁶ *Verfassungsausschuss*, 9. Sitzung, Deutscher Volksrat, July 13, 1948, DA 1/154, Bl. 9, BArch Berlin.

³⁷ *Ibid.*

³⁸ *Ibid.*, Bl. 7.

rapid departure from the Allied Control Council, and the announcement of the Truman Doctrine, the Marshall Plan and the currency reform in the West German Trizone on 10 June 1948, which cemented the economic and political division of Germany. Going on their own path allowed the SED and the Soviets to pursue their own version of basic rights without consideration of or fighting with the Western Allies. Furthermore, the SED had already embraced a broad equality clause and recognized the salience of equal rights as a “Cold War weapon.” Although Western states had, to different degrees, granted women equal rights in their state-level constitutions, the People’s Council (and the SED) saw an opportunity to implement equality on a national level first.

It was one thing to support equality in principle, but another to actively change inequities. Many male People’s Council representatives were reluctant to do the latter and relied on their female colleagues to do the heavy lifting for the constitutional convention. In the Constitutional Committee and the People’s Council at large, female SED and DFD delegates such as Hilde Benjamin, Käthe Kern, and Hildegard Heinze, a lawyer and former member of the KPD from Saxony, took the reins. Kern argued, as she had in November 1946, in favor of “the complete equality of women to be anchored in a future constitution.”³⁹ Kern called for the constitutional equality of men and women “in all areas of public (*staatlich*), economic, and social life” and to overturn (“*sind aufzuheben*”) all legal barriers preventing equality for women.⁴⁰ Furthermore, she asserted, constitutional equality for women was important “for the entire economic construction and redevelopment of

³⁹ Verfassungsausschuss, 9. Sitzung, Deutscher Volksrat, July 13, 1948, DA 1/154, Bl. 18, BArch Berlin. Kern was also a member of the DFD, which had formed its own constitutional committee, whence Kern’s proposals came.

⁴⁰ Ibid.

Germany.”⁴¹ At the same time, Benjamin argued that the People’s Council’s current guideline, which stated, “Women are equal (*gleichgestellt*) with men in all areas of constitutional, social, and economic life,” was insufficient because it implied that men were always the measuring stick for women.⁴² She proposed instead the same formulation as the earlier SED draft, which stated: “Men and women have equal rights.”⁴³

Female activists recognized that they needed to move from promises to enactment. Heinze observed that the concept of equal rights and its inclusion in the constitution were not disputable.⁴⁴ Rather, she asked, “The question is only, how can we actually implement it [*Gleichberechtigung*] as effectively as possible?”⁴⁵ She insisted that they could go further to demand equality in all areas. Heinze suggested, in fact, that the wording change from “*be* overturned (*sind aufzuheben*)” to “opposing legal definitions *are* overturned (*entgegenstehende Bestimmungen sind aufgehoben*).”⁴⁶ Immediate removal of the laws would avoid a temporary legal loophole, because there would be no dispute between existing laws and the basic rights of citizens in the Soviet zone. As a specific example, Heinze raised the problem of the future viability of the Civil Code. According to Heinze, the Civil Code’s provisions on family law, marriage law, marital property law, and unmarried mothers demanded special attention. Similarly, in a separate address to the People’s Council, Hilde

⁴¹ Verfassungsausschuss, 9. Sitzung, Deutscher Volksrat, July 13, 1948, DA 1/154, Bl. 18, BArch Berlin.

⁴² 4. Tagung des Deutschen Volksrats, August 3, 1948, DA 1/5, Bl. 53-54, BArch Berlin.

⁴³ Ibid., Bl. 54, BArch Berlin. Interestingly, Benjamin did not cite the earlier SED draft, but rather cited the unpublished North Rhine Westphalia state constitution, which also stated: “*Männer und Frauen sind gleichberechtigt.*”

⁴⁴ For biography on Hildegard Heinze, see: “Hildegard Heinze,” accessed November 28, 2016, <http://bundesstiftung-aufarbeitung.de/wer-war-wer-in-der-ddr-%2363%3B-1424.html?ID=527>

⁴⁵ Verfassungsausschuss, 9. Sitzung, July 13, 1948, DA 1/154, Bl. 23, BArch Berlin.

⁴⁶ Ibid., Bl. 23. Emphasis mine.

Benjamin expressed concern that the current discourse had omitted civil equality for men and women. She stated:

It is not only necessary that the forthcoming German constitution explicitly pronounces this basic right [of equality]. [...] Women's work, for decades, has no longer been imagined as nonexistent in our economy. But [equality] is completely missing in private life, especially for married women under family law.⁴⁷

In Benjamin's opinion, in order to move forward, Germany had to enact equality in all spheres.

In addition to focusing on historical precedent, female activists often used comparison to the West to present their own reforms in a better light. Kern, for instance, criticized the Weimar Republic and Western (specifically the Bavarian and Bremen) state constitutions for only guaranteeing equality "in principle (*grundsätzlich*)," an empty promise that perpetuated legal disadvantages for women.⁴⁸ As another example, Benjamin asserted that equality "is missing, as we can see in the Western part of Germany, in the area of constitutional equality" and that "[equality] is absent, with the exception of the Soviet zone in the subjective side of their role in economic life, i.e. regarding the recognition of the demands of women in the framework of the economy."⁴⁹ Here, she stressed that even if the Soviet zone had not yet achieved full equality in all areas, they had still done more than their Western counterparts. As another example, Benjamin identified the restrictions on female, and especially married, tenured civil servants (*Beamtinnen*) as an example of flawed West German laws. Similarly, in October 1948, Kern cited Western quotas of 10 percent of female students in higher education, whereas the Soviet zone's percentage of women had already risen to 33.5

⁴⁷ 4. Tagung des Deutschen Volksrats, August 3, 1948, DA 1/5, Bl. 53, BArch Berlin.

⁴⁸ Verfassungsausschuss, 9. Sitzung, July 13, 1948, DA 1/154, Bl. 18, BArch Berlin.

⁴⁹ 4. Tagung des Deutschen Volksrats, August 3, 1948, DA 1/5, Bl. 53, BArch Berlin.

percent.⁵⁰ Furthermore, she noted that in Bavaria, married female doctors could still be dismissed from their jobs; this would be the case until 1953 when the Bundestag changed the civil service law.⁵¹

At its next meeting in October 1948, the People's Council agreed to adopt the new constitution, although it was not yet legally binding. Between 1946 and 1948, constitutional equality in the Soviet zone underwent several changes. Originally following the Weimar template, the SED decided to abandon its first draft under pressure from female activists like Käthe Kern and the Soviets, which resulted in their adoption of a broader equality clause. Once the SED settled on this version, they argued it was a vast improvement over the Weimar formulation, it was more progressive than the West, and it would facilitate the long-desired reforms of the Civil Code. Since the ruling party first broached the topic of a national constitution in 1946, however, the international stakes of the constitutional debates in the Soviet zone had changed dramatically. By late 1948, the SED was under more pressure to out-do the Western sectors, where a concurrent discussion of a new constitution—and by extension, women's equality with men—was occurring. As the next section shows, similar discourses over the constitutional equality of men and women unfolded in the Western Parliamentary Council in late 1948 and early 1949, but different impulses shaped their decision to adopt a broader equality clause.

⁵⁰ 5. Tagung des Deutschen Volksrats, October 22-24, 1948, DA 1/6, Bl. 122, BArch Berlin.

⁵¹ Curt Garner, "Public Service Personnel in West Germany in the 1950s: Controversial Policy Decisions and their Effects on Social Composition, Gender Structure, and the Role of Former Nazis," in *West Germany under Construction: Politics, Society, and Culture in the Adenauer Era*, ed. Robert G. Moeller (Ann Arbor: University of Michigan Press, 1997), 140-141.

Sexual Equality “In Principle” in the West German Basic Law, 1948–49

By October 1948, the Western sectors had begun their own state and national constitutional reforms, as Käthe Kern alluded in her speech to the East German People’s Council in the same month.⁵² The formation of the People’s Council a year before had forced the Western Allies into a tight spot. They could agree to the Eastern constitution, as the SED, Soviets, and West German KPD hoped in vain, or they could create a separate West German state.⁵³ The Western Allies chose the latter. They wanted, however, to preserve the possibility of reunification in the future and therefore officially pursued a “provisional” government and “Basic Law (*Grundgesetz*)” rather than a constitution.⁵⁴ With these considerations in mind, a committee crafted a set of guidelines for the forthcoming Basic Law at the Herrenchiemsee Convention in August 1948.⁵⁵ Herrenchiemsee set the stage for the upcoming Parliamentary Council, where the basic structures and rights of West German citizens would be defined.

On 1 September 1948, sixty-five delegates gathered in Bonn to compose the Basic Law of the Federal Republic of Germany. Ambivalence permeated the atmosphere of the opening sessions of the convention. Memories of the failures of the Weimar Republic,

⁵² The Americans had started to draft Land-level constitutions in June 1946 in Württemberg-Baden, Bayern, and Hessen. Britain soon followed suit, though its states (Schleswig-Holstein and Nordrhein-Westfalen) did not ratify their constitutions until 1949 and 1950, respectively. For Soviet zone constitutions, see Gerhard Braas, *Die Entstehung der Länderverfassungen in der Sowjetischen Besatzungszone Deutschlands 1946/47* (Köln: Verlag Wissenschaft und Politik, B. von Nottbeck), 480-525.

⁵³ Patrick Major, *The Death of the KPD: Communism and Anti-Communism in West Germany, 1945–1956* (Oxford: Clarendon Press, 1997), 107.

⁵⁴ Markovits, “Constitution Making after National Catastrophes,” 1308-1309.

⁵⁵ Eleven male delegates convened at Herrenchiemsee in Bavaria to draft the guidelines for the future constitution. According to Markovits, the delegates chose “Basic Law (*Grundgesetz*)” instead of “constitution (*Verfassung*)” to emphasize providing a structure for the new German society. See Markovits, “Constitution Making after National Catastrophes,” 1309-1310. Konrad H. Jarausch has also asserted that the new Basic Law would represent a combination of German tradition and Allied influence. See Jarausch, *After Hitler*, 114.

coupled with the destruction of the Nazi regime, created a nation-wide anxiety about democracy. Moreover, the Western delegates were well aware of the developments in the Eastern People's Council. Some historians suggest that most Germans had some hope for democracy, because "it offered an experiment, a pragmatic effort that could hardly be worse than the status quo," which remained rather unstable.⁵⁶

Part of this instability was political. Average Germans were rather apathetic about politics and democracy in general.⁵⁷ Those who were politically active had to carve out their spots carefully. They had to prove themselves sufficiently antifascist, anti-Communist, and pro-democracy. Initially, SPD leaders believed they might represent the best of these qualities, but they had to compete with the recently formed center-right CDU/CSU, whose chairman, Konrad Adenauer, also held the powerful position as chair of the Parliamentary Council.⁵⁸ The outcome of the power play between the SPD and CDU/CSU depended on the cooperation of smaller parties in the Council. The liberal Free Democratic Party (FDP) formed a coalition with the CDU/CSU, often throwing its three votes in the larger party's favor.⁵⁹ Likewise, the conservative German Party (DP) and the Catholic Center Party (Z) aligned themselves with the CDU/CSU on the Council.⁶⁰ The SPD's closest ally was the

⁵⁶ John Gimbel, *The American Occupation of Germany: Politics and the Military, 1945-1949* (Stanford: Stanford University Press, 1968), 224. See also Moeller, *Protecting Motherhood*, 2.

⁵⁷ Jarausch, *After Hitler*, 20.

⁵⁸ Peter W. Sperlich, *Oppression and Scarcity: The History and Institutional Structure of the Marxist-Leninist Government of East Germany and Some Perspectives on Life in a Socialist System* (Westport: Praeger, 2006), 19.

⁵⁹ David Broughton, "The FDP in the Federal Republic of Germany," in *Liberal Parties in Western Europe*, ed. Emil Kirchner (Cambridge: Cambridge University Press, 1988), 62–93.

⁶⁰ See also Michael Klein, *Westdeutscher Protestantismus und politische Parteien: Anti-Parteien-Mentalität und parteipolitisches Engagement von 1945 bis 1963* (Tübingen: Mohr Siebeck, 2005). See *Der Parlamentarische Rat, 1948-1949: Akten und Protokolle*, eds. Kurt Georg Wernicke, Hans Booms, and Walter Vogel (Boppard am Rhein: Boldt, 1975), 429.

marginalized KPD, but even the Social Democrats kept their distance from Communism because of their anti-Communist politics.⁶¹ The Council leaned more to the right, as most of the liberal and conservative parties voted alongside the CDU/CSU, whereas only the Communists voted with the SPD.⁶²

Divisions in the Council were not only along political lines, but gendered lines. Only four of the 65 delegates (6 percent) were women. Representing the Social Democrats were long-time activists Elisabeth Selbert, a lawyer from Kassel, and Friederike Nadig, a social worker and politician from Westphalia.⁶³ From the CDU came Helene Weber, a prominent Catholic German Women's Union leader from North Rhine-Westphalia. Finally, Helene Wessel, a social worker from the Dortmund area, represented the Catholic Center Party.⁶⁴ Together, they became known as the "four mothers" of the Basic Law.⁶⁵ The FDP, DP, and KPD had no female delegates, but their leading female members worked behind the scenes to influence their parties' male representatives.

⁶¹ Major, *The Death of the KPD*, 35, notes that the SPD and their leader, Kurt Schumacher, were anti-Communist.

⁶² "Vorgeschichte," in *Der Parlamentarische Rat, 1948-1949: Akten und Protokolle*, eds. Kurt Georg Wernicke, Hans Booms, and Walter Vogel (Boppard am Rhein: Boldt, 1975), XXV-LII.

⁶³ Heike Drummer and Jutta Zwilling, "1948/49 Als 'Anwältin der Frauen' im Parlamentarischen Rat," in *"Ein Glücksfall für die Demokratie": Elisabeth Selbert (1896-1986), die große Anwältin der Gleichberechtigung*, Hessische Landesregierung (Frankfurt/M.: Eichborn, 1999), 90; see Gisela Notz, *Frauen in Der Mannschaft: Sozialdemokratinnen im Parlamentarischen Rat und im Deutschen Bundestag 1948 49 bis 1957. Mit 26 Biographien* (Bonn: Dietz, 2003).

⁶⁴ Petra Holz, *Zwischen Tradition und Emanzipation: Politikerinnen in der CDU in der Zeit von 1945 bis 1957* (Königstein/Ts.: Ulrike Helmer Verlag, 2004), 118.

⁶⁵ Holz, *Zwischen Tradition und Emanzipation*, 118. It is important to note that male members of the Council, such as Ludwig Bergsträsser of the SPD, supported the "four mothers" as well. See Moeller, *Protecting Motherhood*, 46. It is also necessary to note that while other parties like the KPD and FDP did not have female representation, prominent female party members did push from the outside, as will be shown later in this chapter.

On many issues, the four women were divided and voted along party lines. When it came to *Gleichberechtigung*, however, the four women joined forces to mount a campaign against their male compatriots in the Council. They all believed in the importance of an equal rights clause, even if their conceptions of equality differed. Nadig and Selbert, for instance, unequivocally supported equal legal rights of men and women in all areas of the economy, politics, and society, including marriage and family. Weber and Wessel meanwhile wanted the “natural differences between the sexes” to define their gender specific tasks in all areas, while acknowledging that the equal rights of both sexes were inviolable.⁶⁶ As a result, they championed equal rights while also defending the utility of the family protection clause.

Discussions over *Gleichberechtigung* began in the Committee on Basic Matters and Rights (*Ausschuss für Grundsatzfragen und Grundrechte*, AGG), whose task was to identify the fundamental issues affecting the future Federal Republic and to determine the basic rights of its citizens. Upon the insistence of the SPD and the FDP, the AGG drafted a Catalog of Basic Rights, which Social Democrat Ludwig Bergsträsser, a political scientist and parliamentarian from Hesse, presented to the committee in late September 1948.⁶⁷ Bergsträsser’s Catalog began with a broad statement about equality (“*Gleichheit*”): “All people are equal before the law without consideration of sex, race, origin, religion, or political persuasion.” He supplemented this proclamation with recycled language from the

⁶⁶ For biography of Helene Weber, see: “Helene Weber,” last modified September 1, 2008, <http://www.bpb.de/geschichte/deutsche-geschichte/grundgesetz-und-parlamentarischer-rat/39156/helene-weber-cdu>. She had been the only female CDU representative as well as one of three in the Council who had served in the Weimar National Assembly. For biography of Helene Wessel: see “Helene Wessel,” last modified September 1, 2008, <http://www.bpb.de/geschichte/deutsche-geschichte/grundgesetz-und-parlamentarischer-rat/39159/helene-wessel-zentrumspartei>. Wessel, born in 1898, was a longtime Center Party member who eventually joined the SPD in 1957.

⁶⁷ For biography of Ludwig Bergsträsser, see: “Ludwig Bergsträsser,” last modified September 1, 2008, <http://www.bpb.de/geschichte/deutsche-geschichte/grundgesetz-und-parlamentarischer-rat/39049/ludwig-bergstraesser-spd>. Bergsträsser came to the Council having helped draft the Hessian provincial constitution, which included equality for men and women in wages.

Weimar constitution: “Men and women have the same fundamental civic rights and duties.”

Additionally, the Catalog guaranteed equal rights in employment. It stated that all public offices were equally accessible to everyone. Finally, women and youth must receive the same wages “for equal activity and equal accomplishment.” Bergsträsser argued that an equality statement was necessary to correct the wrongdoings of the Hitler era. He singled out the equality clause as an area that demanded special attention because it represented an “entire series of legal definitions and customary traditions that have not drawn out the reasoning of the principle [of equality].”⁶⁸

Some Council representatives used vague legal language as a strategy to respond to Bergsträsser’s proposals. As the Council debate over access to public office showed, proponents of inequality were keen to gloss over explicit references to women.⁶⁹ Hermann von Mangoldt, a lawyer and CDU politician from Schleswig-Holstein, who was also the AGG chairman, explained to this committee that there had been much disagreement over reusing the Weimar formulation, which stated:

- (1) All citizens, without exception, in accordance to law and corresponding to their capabilities and accomplishments, are permitted to serve in public office.
- (2) All admission regulations against female civil servants are removed.
- (3) The requisites of a civil service appointment are regulated through law.⁷⁰

According to Mangoldt, stipulating that no prohibitions existed on female civil servants was

⁶⁸ “Katalog der Grundrechte 21. September 1948,” in *Der Parlamentarische Rat, 1948-1949: Akten u. Protokolle*, 16.

⁶⁹ “Sechste Sitzung 5. Oktober 1948,” in *Der Parlamentarische Rat, 1948-1949: Akten U. Protokolle*, 135. Public office, as committee chairman and law professor Hermann von Mangoldt defined it, included civil servants (*Beamten*) and honorary civil service appointees (*Ehrenbeamten*). For biography of Hermann von Mangoldt, see: “Hermann von Mangoldt,” last modified September 1, 2008, <http://www.bpb.de/geschichte/deutsche-geschichte/grundgesetz-und-parlamentarischer-rat/39105/hermann-von-mangoldt-cdu>. He had been a member of the Nazi lawyers’ union and maintained his teaching position throughout the Third Reich. In 1948 he was elected to the Landtag of Schleswig-Holstein.

⁷⁰ “Sechste Sitzung 5. Oktober 1948,” in *Der Parlamentarische Rat, 1948-1949: Akten u. Protokolle*, 135. See also the 1919 Weimar constitution: <http://www.documentarchiv.de/wr/wrv.html>

superfluous, because the equal rights clause covered women's rights.⁷¹ The Council voted to remove the second paragraph. Without the explicit guarantee that women would have equal access, coupled with the third paragraph, female activists had reason to fear that future lawmakers could once again (as they had in Weimar and Nazi Germany) pass legislation barring women from office.

With the issue of public office settled, the Council then focused its attention on the subject of equal wages, a difficult subject because of the East. Two years before, the Soviets had enforced an "equal wages for equal work" policy in their zone.⁷² The impending East German constitution furthermore promised equal wages for men, women, and youth in Article 18.⁷³ The Western zones had left the issue to the discretion of individual factory owners, with the unsavory side effect of much lower levels of implementation. Large salary differences continue to exist in most cases. Given this precedent, the SPD wandered into tenuous territory when it proposed that "women and youth have claims to equal wages for equal activity and equal accomplishment."⁷⁴ The SPD, however, found unlikely allies in the FDP and some Christian conservative female activists. Theodor Heuss, the leader of the FDP and future president of the Federal Republic, threw his support behind the SPD, only stopping to warn them that the original wording could become problematic because "it leads one to conclude that women and youth should be treated equally, but not in relationship to

⁷¹ "Sechste Sitzung 5. Oktober 1948," 136.

⁷² Heineman, *What Difference*, 90.

⁷³ "Die Verfassung der Deutschen Demokratischen Republik vom 7. Oktober 1949," <http://www.documentarchiv.de/ddr/verfddr1949.html#b1>

⁷⁴ "Sechste Sitzung 5. Oktober 1948," 142.

men.”⁷⁵ Helene Weber (CDU) offered her staunch support for an equal wages clause. The SPD responded by remedying its formulation to say: “Equal activity and equal accomplishment require equal wages.”⁷⁶

Other members of the AGG opposed the SPD’s proposal. Mangoldt (CDU) emphasized two potential problems with implementing equal wages. He argued that there was an issue with “the equality in wage assessment,” implying that it was too difficult to monitor the determination of wages by employers.⁷⁷ In other words, he was unwilling to intervene in the workplace, thus allowing employers to continue to discriminate against women. Moreover, Mangoldt followed up these remarks with a second point, what he called “the entire question of social order.” He asked, “Why is this special issue singled out here?” It was wholly inappropriate, he asserted, to bring up the problem of equal wages in the AGG, whose purpose was to determine basic rights.⁷⁸ Rather than addressing the fruitfulness of equal wages for men and women in the new postwar state, Mangoldt skirted the issue by emphasizing that legislators could not intervene in workplace practices of privately owned companies on a logistical or a juridical basis.

In a matter of moments, the few allies among the FDP and CDU/CSU abandoned the SPD. Heuss (FDP) offered up the alternate wording “equal rewards,” claiming now that making equal wages a constitutional right might prevent promotion opportunities and

⁷⁵ “Sechste Sitzung 5. Oktober 1948,” 143. For biography of Theodor Heuss, see: “Theodor Heuss,” <http://www.bundespraesident.de/DE/Die-Bundespraesidenten/Theodor-Heuss/theodor-heuss-node.html>.

⁷⁶ “Sechste Sitzung 5. Oktober 1948,” 143.

⁷⁷ Ibid.

⁷⁸ “Sechste Sitzung 5. Oktober 1948,” 143.

therefore become “a consequence for individual life possibilities.”⁷⁹ Helene Weber (CDU) asserted that equal wages did not belong as a basic right, though she conceded that they remained an important social-political issue.⁸⁰ Other members of the CDU/CSU, such as Anton Pfeiffer, a leading Bavarian politician, expressed sympathy for the SPD’s sentiments, but nevertheless asserted that the issue belonged elsewhere.⁸¹

Members of the SPD tried in vain to defend their position. Frieda Nadig (SPD) averred that the issue was not merely social-political, but that women and youth had claims to such basic rights.⁸² Nadig’s background as a youth social worker and member of the Westphalian provincial diet informed her ardent support.⁸³ She claimed that such a constitutional right “could mean a fundamental change for the majority of women who had no rights in these areas.”⁸⁴ Similarly, Bergsträsser pointed out that many labor agreements expressly stipulated lower wages for women who performed equal work. To make the matter a constitutional right was, he asserted, “important for the sense of a modern structure and equal rights of women.”⁸⁵ The SPD thus saw equal wages as a necessary basic right for the new and modern postwar German state. Their opponents attempted to block the issue by arguing that it would undermine social order and intervene too much in the affairs of

⁷⁹ “Sechste Sitzung 5. Oktober 1948,” 143.

⁸⁰ Ibid., 144.

⁸¹ Ibid., 145. For the biography of Anton Pfeiffer see: Christiane Reuter-Boysen, “Pfeiffer, Anton” in: *Neue Deutsche Biographie* 20 (2001), 314. <http://www.deutsche-biographie.de/pnd118828169.html>.

⁸² “Sechste Sitzung 5. Oktober 1948,” 144.

⁸³ For Frieda Nadig’s biography, see: “Frieda Nadig, 1897-1970,” last modified January 19, 2016, <https://www.hdg.de/lemo/biografie/frieda-nadig.html>

⁸⁴ “Sechste Sitzung 5. Oktober 1948,” 144.

⁸⁵ Ibid.

employers.

At this point, the opposition of the CDU/CSU and FDP proved too much for the SPD, who were forced to temporarily concede on the matter. The subject of equal wages, however, emerged again in November 1948 in the context of a debate over the non-discrimination clause in the constitution. Here, the Council addressed the West German KPD's proposal for a Basic Rights Catalog. Its suggestions namely centered on social and economic rights. One article (vaguely reminiscent of the SED's language) stated:

Men, women, and youth receive equal wages for equal work.
Women enjoy special protection in labor contracts. Laws will establish facilities that ensure that women can reconcile their tasks as citizens and creators with their duties as wives and mothers.
Motherhood grants women claims to the special protection and welfare of the state.
Out-of-wedlock births may not disadvantage mother or child.⁸⁶

The KPD's suggestions reflected the long-standing goals of the party. Since the 1920s, it wanted to grant women the social and economic equality they needed to achieve emancipation. At the same time, it reinforced notions that women's roles were defined as much by marriage and the family as they were the workplace.

The KPD's suggestion resonated with many members of the Council. Some members of the AGG responded by noting that some Western state constitutions (specifically Bavaria and Hessen) offered equal wages for equal work. Helene Weber (CDU) furthermore suggested adding the phrase: "If they accomplish the same work, they have the claim to equal wages." Nadig (SPD) offered her support for the KPD by way of comparison. She observed that in the Soviet zone, the SED's draft went even further in its promises of full equality to

⁸⁶ "Sechszwanzigste Sitzung 30. November 1948," in *Der Parlamentarische Rat, 1948-1949: Akten u. Protokolle*, 752.

women, equal wages, and special protection in labor contracts.⁸⁷ Her use of comparison was a way to subtly label the Western KPD's proposal as moderate and non-threatening. Nadig's argument, however, had the unintended consequence of reminding the Council of the SED's actions in the Soviet zone and that any support of the Western KPD might lead the new republic down the same path. Despite the Council's initially positive—or at least, not outright negative—reactions to the KPD, enough center-right and liberal members voted against the “equal wages” clause to ensure its permanent omission from the final draft of the Basic Law.⁸⁸

The Council's debates over “equal wages,” which stretched out for a full two months, reflected the ambivalence of its members on the issue. Most of the representatives could agree that men and women deserved equal wages if they performed equal work. The problem was their willingness to upend traditional social and economic structures in order to implement equal wages. The CDU/CSU and their liberal allies refused to experiment with social order—although it was already destroyed in the immediate postwar years—at the expense of expanding women's rights in the workplace. The SPD was willing to take the gamble, but could not overcome its Christian conservative and liberal rivals to do so. Nor, for that matter, could it avoid semblances to the Soviet zone.

A second issue that arose during the AGG's debates was the family protection clause. Prompted by a series of petitions submitted by primarily male Catholic Church members, the CDU/CSU initiated a campaign to include a “family protection” clause in the Basic Law. One group from Eschweiler, claiming to represent all Catholics in the city and surrounding

⁸⁷ “Sechszwanzigste Sitzung 30. November 1948,” 752.

⁸⁸ Ibid.

region, proclaimed to the Council that they demanded “the protection of marriage and the family” for the sake of “the Christian ethnic community (*Volksgemeinschaft*).”⁸⁹

Furthermore, the CDU/CSU justified their suggestion by citing the UN’s as-yet-unpublished Declaration of Human Rights, which identified the family as the “fundamental cell of society and demanding of protection.”⁹⁰ Finally, the center-right delegates claimed that the precedent of a family protection clause in the Weimar constitution necessitated its repetition in the new Basic Law.

The SPD opposed the CDU/CSU’s suggestion on the grounds that it would prevent the enactment of “a family law that matched modern relationships.”⁹¹ The CDU/CSU, however, was less concerned with the future of the republic than they were repeating its past. Legal expert Adolf Süsterhenn, Minister of Justice in Rheinland Pfalz and one of the founders of the CDU, claimed that the Weimar constitution had actually gone too far in granting women equality in marriage.⁹² He stated, “The equality of men and women in marriage can only exist so far as the natural functions of the sexes are allowed to agree.”⁹³ When the Social Democrats objected that such beliefs hindered legal equality and did not

⁸⁹ Katholikenausschuss Dekanat Eschweiler an den Parlamentarischen Rat in Bonn, November 17, 1948, Z5/109, Parlamentsarchiv Berlin; Katholikenausschuss des Dekanates Erkelenz an den Parlamentarischen Rat, November 14, 1948, Z5/108, Parlamentsarchiv Berlin; Arbeitsgemeinschaft Katholischer Frauen, Eingabe an den Parlamentarischen Rat, November 26, 1948, Z5/110, Parlamentsarchiv Berlin; Diozesankomitee der Katholikenausschüsse in der Erzdiozese Köln an Herrn Präsidenten des Parlamentarischen Rates Bonn, November 15, 1948, Z5/110, Parlamentsarchiv Berlin.

⁹⁰ “Vierundzwanzigste Sitzung 23. November 1948,” in *Der Parlamentarische Rat, 1948-1949: Akten u. Protokolle*, eds. Kurt Georg Wernicke, Hans Booms, and Walter Vogel, 643.

⁹¹ Ibid.

⁹² For Adolf Süsterhenn’s biography, see: Christoph von Hehl, “Adolf Süsterhenn,” last accessed December 2, 2016, <http://www.kas.de/wf/de/71.8602/>. Süsterhenn was deeply steeped in Catholic teaching and had been a member of the Center Party before 1945.

⁹³ “Vierundzwanzigste Sitzung 23. November 1948,” 643.

account for social changes for women, the CDU/CSU replied that guaranteeing “absolute equal rights” would not change “the nature of men and women.”⁹⁴

Essentialist arguments were not the only form of rhetoric the CDU/CSU and their liberal allies used to undermine the SPD. Christian Democratic discourse also reflected a poignant awareness of the increasing Cold War tensions with the East. When Nadig proposed changing the Civil Code, Mangoldt pointed out that the UN Declaration should prompt the Council to “take leave of its strong contact with the East and its laws,” especially regarding marriage and family, because “in Russia the relations are just different.”⁹⁵ How much this argument was part of Cold War rhetoric demonstrates the previous section: the everyday gender relations in Russia and the Soviet zone were not so different and even in the discourse and policies one can find similarities. The SED, for instance, had its own “family protection” clause, although it was equally committed to an expansive equal rights clause. Moreover, the Council was well aware of the developments in the East. When the CDU/CSU encouraged their compatriots to “take leave” of the East, they intentionally constructed the idea that the two sides were fundamentally different in regards to their policies on marriage and family and tried to make both to a marker of Cold War differences.

The CDU/CSU’s ability to erect the notion of fundamental differences between East and West in the context of the Cold War had huge consequences for the SPD as it struggled for *Gleichberechtigung*. When the SPD initiated discussions on the equal rights clause in November 1948, they faced the challenge of both fighting the CDU/CSU’s traditionalist stance as well as avoiding resemblance to the SED. They pursued the following reforms to

⁹⁴ “Vierundzwanzigste Sitzung 23. November 1948,” 643.

⁹⁵ Ibid.

Bergsträsser's Catalog of Basic Rights. First, they wanted to keep the opening line of the "equality" paragraph: "All people are equal before the law."⁹⁶ Second, they proposed for the first time in November 1948 that the Council should adopt a broader formulation of the equal rights clause that stated: "Men and women have equal rights."⁹⁷ Finally, the SPD qualified that they wished to uphold the third paragraph, which read: "No one may be discriminated against or advantaged because of his ancestry, sex, and so forth."⁹⁸

Did the rest of the Parliamentary Council consider all people to be equal before the law? The discourse employed by the CDU/CSU demonstrated that they believed in the contrary. They drew inspiration from liberal jurist and fellow Council delegate Richard Thoma, already in the Weimar Republic a leading expert in constitutional law, who had recently published a critique of the Catalog of Basic Rights.⁹⁹ Thoma asserted, regarding equality, that it "is the task of the law...to treat what is the same equally and what is different unequally, or 'handle it according to its nature.'"¹⁰⁰ Thoma implied that sexual difference was natural and therefore must be handled differently from other forms of rights. His formulation became the basis of the CDU/CSU's position on *Gleichberechtigung*. Mangoldt (CDU) defended Thoma, drawing out several examples of difference that, in his mind, demanded particular legal treatment. He stated, "Legislators must treat a minimum of rights

⁹⁶ "Sechszwanzigste Sitzung 30. November 1948," in *Der Parlamentarische Rat, 1948-1949: Akten u. Protokolle*, 738.

⁹⁷ Ibid.

⁹⁸ Ibid., 739.

⁹⁹ Christine Franzius, *Bonner Grundgesetz und Familienrecht: Die Diskussion um die Gleichberechtigung von Mann und Frau in der westdeutschen Zivilrechtslehre der Nachkriegszeit (1945-1957)* (Frankfurt/M.: Vittorio Klostermann, 2005), 26, 47, 52, 78.

¹⁰⁰ "Sechszwanzigste Sitzung 30. November 1948," 739.

equally. But there are individual rights and duties, let's say professions, where there are different possibilities to treat them differently for reasons of difference."¹⁰¹ Mangoldt followed up this statement by pointing out the role of ethnic or racial differences in law, observing that groups such as Gypsies (Roma/Sinti) or African Americans who just "had natural nuances that must lead to a different regulation."¹⁰²

Another line of argumentation concerned masculinity and the rights of fathers. Some Christian conservative members argued against equality because it would not treat men fairly. For instance, Mangoldt argued that some legal protections regarding motherhood could not extend equally to men.¹⁰³ Council representatives in the opposition did not entirely disagree with Mangoldt. Bergsträsser (SPD) called the idea of "manly motherhood" "absurd," indicating that he was hesitant to embrace complete equality of the sexes as well.¹⁰⁴ In addition, Helene Weber (CDU) asserted her own position that, "No equality exists among men either," pointing out to the Council that drawing distinctions between men and women was arbitrary, since all individuals were different.¹⁰⁵ Some Council members, then, tried to undermine support for women's equality by highlighting its detriments for men and arguing that no one was created equal.

In order to build on the promises laid out in the original formulation of Paragraph 1, the SPD offered as Paragraph 2: "Men and women have equal rights." Nadig (SPD) argued that such wording was necessary to ensure the reform of the BGB. In particular, she singled

¹⁰¹ "Sechszwanzigste Sitzung 30. November 1948," 740.

¹⁰² Ibid., 741.

¹⁰³ Ibid., 741.

¹⁰⁴ Ibid., 741.

¹⁰⁵ Ibid., 742.

out the property rights of married women as a highly problematic section of the Civil Code. As she further noted, it was no longer uncommon for women to earn more than men or to have their own professions. She implied that it was ridiculous for a law to persist that relegated women's property to their husbands when, given the current social crisis, they were often the breadwinners in the family.¹⁰⁶

Several liberal and center-right representatives immediately ganged up on Nadig. Thomas Dehler, a left-liberal FDP member who would later become the FRG's first Minister of Justice, opposed the SPD's proposal on the grounds that it would make the BGB unconstitutional.¹⁰⁷ Mangoldt (CDU) argued that the third paragraph's non-discrimination clause should provide sufficient legal protection. After all, he retorted to the Council, "Civic equality has not yet been implemented everywhere in Europe. In Switzerland women do not yet have the vote. We are already far ahead in this direction and we would emphasize in this way, what was formerly controversial."¹⁰⁸

Other members of the Council were somewhere in the middle. Helene Weber, for example, supported the notion of altering the legal prohibitions encapsulated by Civil Code. However, she expressed reticence toward the idea of completely changing women's roles. She claimed that there were cases where women's work forced them to "withdraw" from the family, a situation that was "good neither for the woman, her husband, or the children."¹⁰⁹ Weber thus proved an unstable ally for the SPD, which was unsurprising given her Catholic

¹⁰⁶ "Sechszwanzigste Sitzung 30. November 1948," 747-748.

¹⁰⁷ Ibid., 748. For biography of Thomas Dehler, see: Udo Wengst, *Thomas Dehler: 1897-1967. Eine politische Biographie* (Munich: R. Oldenbourg Verlag, 1997).

¹⁰⁸ Ibid., 749.

¹⁰⁹ Ibid.

background. While she expressed support for changing the Civil Code, her arguments for women's roles in the family did not set her radically apart from her male colleagues. She exemplified the contradictory attitudes toward *Gleichberechtigung* held by many CDU/CSU, liberal, and even some Social Democratic women at the time.

The November 1948 debate over *Gleichberechtigung* demonstrated the divisiveness of the issue. For Social Democratic delegates like Nadig or Bergsträsser, the need for a wide-ranging equality clause was clear. Without it, they believed the future government of the Federal Republic of Germany would never be able to change the longstanding Civil Code. Others like the Catholic women's leader Weber had to reconcile the conflict between their desires for legal equality and preservation of different societal roles for men and women. Finally, Christian-conservative members such as Mangoldt and Dehler refused to confront the possibility of male authority changing, so they relied on legalese to argue around the issue. In the end, the committee tabled the discussion.

In early December 1948, the SPD reintroduced the equality clause before the Steering Committee of the Parliamentary Council. This time, the SPD employed a decided shift in strategy. Party leaders enlisted the help of Elisabeth Selbert, a female activist and jurist. Selbert's path to politics had been anything but straightforward. Born to a "rural middle-class" family, she eventually became politically active in the Weimar Republic, joining the SPD and standing for local election. Meanwhile, she completed a dissertation on divorce rights and began to practice family law. Her work as a lawyer supported her family during World War II after her husband (a longtime SPD leader) was removed from his position for political reasons. After 1945, Selbert came to prominence again within the SPD, though her

later attempts to join the *Bundestag* and Federal Constitutional court failed.¹¹⁰

When Selbert went before the Steering Committee, the SPD stood in a precarious position regarding equality. It had already suffered several defeats since the Council had convened, the last only four days before. The Steering Committee was set to review the Catalog of Basic Rights, which included an equality paragraph that stated:

1. All people are equal before the law. The law must treat what is equal as equal, it can treat what is different according to its nature. No one's basic rights may be violated.
2. Men and women have the same civic rights and duties.
3. No one may be discriminated against nor advantaged because of his sex, ancestry, race, language, homeland and origin, beliefs, religious, or political views.¹¹¹

Once again, the SPD recommended to change the second paragraph to say: "Men and women have equal rights."¹¹²

The SPD's success, at this stage, largely depended on Selbert's ability to convince the Steering Committee. She approached her speech from three different angles. First, she harped on historical precedents, declaring that it was "self-evident that today, one must go further than Weimar and that equality must be given to women in all areas." Second, she argued that women's sacrifices during the Second World War necessitated granting them full equality. The non-discrimination clause (paragraph 3 of the above quote), she asserted, would do little to guarantee women the equality they deserved. Accordingly, she suggested that the Council not only adopt the SPD's formulation, but that they add a statement guaranteeing its implementation in the Civil Code by 31 March 1953. Finally, she warned the Council that if

¹¹⁰ Barbara Böttger, *Das Recht auf Gleichheit und Differenz: Elisabeth Selbert und der Kampf der Frauen um Art. 3 II Grundgesetz* (Münster: Verlag Westfälisches Dampfboot, 1990), 123; Die Hessische Landesregierung, "Ein Glücksfall für die Demokratie," 39-40.

¹¹¹ "Siebzehnte Sitzung des Hauptausschusses 3. Dezember 1948," in *Der Parlamentarische Rat, 1948-1949: Akten u. Protokolle*, 510.

¹¹² Ibid.

they did not comply, the “leading women in the entire public” would protest.¹¹³

The CDU/CSU rebuffed Selbert’s powerful arguments on the grounds of “legal consequences.”¹¹⁴ According to Mangoldt (CDU), the CDU/CSU never disagreed with the notion of women’s equality with men, but rather “the legal consequences that cannot be overlooked concerning the different definitions of civil law.”¹¹⁵ He qualified that they had specific concerns about family law, not necessarily marital property or marriage law. Besides the potential legal crisis, he argued that the SPD’s framing was unnecessary because the non-discrimination clause was there as a “security measure.”¹¹⁶ When Mangoldt pointed out that marital property could change, but not the patriarchal family law, he reified the CDU/CSU’s belief that the status of women and the family (as a social structure) were unchanging, because they were based on “natural differences” between the sexes. The exclusion of a wide-ranging equality clause was indeed a security measure, one designed to protect the notion that (perceived) biological difference determined legal status.

These assumptions permeated the Council. Liberals and Communists alike proved unwilling to accompany the SPD, although for different reasons. The FDP, though it objected to the existing marital property structure, remained reluctant to change other aspects of family and marriage law that were “not equally applicable for both [spouses].”¹¹⁷ One delegate, a liberal Protestant lawyer named Max Becker, asked the Council rhetorically:

Should men and women take both names? Whose name will the child have, the

¹¹³ “Siebzehnte Sitzung des Hauptausschusses 3. Dezember 1948,” 510-511.

¹¹⁴ *Ibid.*, 511.

¹¹⁵ *Ibid.*, 511.

¹¹⁶ *Ibid.*, 511.

¹¹⁷ *Ibid.*, 513.

man's, the woman's, or both? Who has legal authority over underage children, the man, woman, or both? Whose opinion comes first, if they don't agree with each other? You see, the practical implementation offers considerable difficulties.¹¹⁸

Furthermore, Becker warned the Council that imposing a 1953 deadline would create a legal vacuum.

Meanwhile, the KPD called the SPD's formulation "empty" and insisted again, unsuccessfully, on the inclusion of an "equal wages" clause to substantiate women's claims to equality.¹¹⁹ When Selbert rebutted that the SPD's broad wording included equal wages, the KPD responded skeptically. They implied that the SPD's priorities were misguided. Heinz Renner, a KPD politician and former Minister from North Rhine-Westphalia, argued, "The place that the BGB allots women is in my opinion simply a manifestation of the place that the bourgeois capitalist society gives women."¹²⁰ The actual solution, he asserted, was to ensure women and men earned equal wages for equal work. Additionally, he expressed fear that the proposed 1953 deadline would prove ineffective and would only result in the repetition of the stalemates that had occurred in Weimar.

The CDU/CSU not only defended its stance on juridical grounds, but pursued another rhetorical alternative: seizing upon the politically weak position of the SPD. According to Theophil Kaufmann, a Christian Democratic journalist, there were many legal definitions that protected the "peculiarities and special tasks of women." He quoted an article from the Social Democratic Party organ, *Neuer Vorwärts*, which explored the working lives of women

¹¹⁸ "Siebzehnte Sitzung des Hauptausschusses 3. Dezember 1948," 513. Max Becker had been a member of the German People's Party (DVP) during Weimar. For Becker's biography, see: "Max Becker," last modified September 1, 2008, <http://www.bpb.de/geschichte/deutsche-geschichte/grundgesetz-und-parlamentarischer-rat/39047/max-becker-fdp>

¹¹⁹ "Siebzehnte Sitzung des Hauptausschusses 3. Dezember 1948," 512.

¹²⁰ Ibid., 514.

in the Soviet Union, as evidence of how the East “erased” sexual difference. He stated:

It says there: ‘Women are equal to men there, and one has taken [into account] in the legal and actual place in public life of women no consideration of the biological basis and the spiritual demeanor of women. The fact of equalization [*Gleichsetzung*] to men creates unattractive appearances before all in the production process.’¹²¹

Kaufmann pointed out to the SPD and KPD—using their own words—that they shared the Christian Democrats’ reluctance to grant full equality because of women’s essence and biology. According to Kaufmann, it was best to focus on preventing discrimination based on sex, but not enforcing complete equality. He claimed that the phrase “equal rights (*Gleichberechtigung*) does not capture what we actually want.”¹²² Rather than compare the SPD to the Soviet zone, the CDU/CSU capitalized on the Left’s precarious position in the West in the context of the Cold War to demonstrate its inability to accomplish the goals it set out for equality. The CDU/CSU’s arguments proved to be just effective enough. With a narrow margin of two “yeas”, the committee voted to reject the SPD’s proposal and adopt the CDU/CSU’s formulation.

The Western public learned from newspapers and radio broadcasts of the SPD’s defeat. The Munich Radio (*Münchner Rundfunk*), in the American controlled occupation zone, supported the position of the SPD and communicated to its listeners that all hope was not yet gone. *Gleichberechtigung* would come before the plenary again and that listeners could remain optimistic that “the real sense for the role of women in economic and public life will conquer prejudice.”¹²³ The liberal-conservative *DIE ZEIT* reported on the success of the

¹²¹ “Siebzehnte Sitzung des Hauptausschusses 3. Dezember 1948,” 515.

¹²² Ibid.

¹²³ The transcript was reprinted in the Social Democratic women’s newspaper *Genossin*, January 1949, Jahrgang 12, Nr. 1, 15. I have not been able to find any specific secondary sources on the Munich Rundfunk.

Catholic and Protestant churches, though it did not mention the SPD's defeat.¹²⁴ The SED newspaper *Neues Deutschland* reported that the Bonn "splinter constitution" paled in comparison to their own constitution, which guaranteed full equality to the sexes.¹²⁵ Many readers and listeners, regardless of political milieu, reacted to the news with discernible unease and with no clear consensus, as the public uproar would demonstrate.

Within a week of the meeting, the Parliamentary Council started to receive petitions and telegrams from independent women's organizations, trade unions, and individuals protesting the recent decision. Historians such as Elizabeth D. Heineman and Robert G. Moeller have noted that, unlike the rest of the Parliamentary Council's proceedings, the issue of gender equality generated intense public reactions.¹²⁶ These petitions expressed a range of different opinions that stretched from complete support for the SPD to rejection of any of the parties' proposals. Many of the petitions from individual associations within the *Deutscher Frauenring*, for example, expressed support for the SPD's formulation, even though many members did not support the party in general.¹²⁷ Erdmuthe von Falkenberg, leader of the

¹²⁴ "Bonn und das Konkordat," *Die Zeit*, December 23, 1948. Given that the newspaper's founder, Gerd Bucerius, was a CDU member and the paper only reported on the CDU's success, it is safe to interpret the paper's position at this time as liberal. Franklin Kopitzsch and Dirk Brietzke call *DIE ZEIT* a "liberal-conservative" newspaper, although this can be understood as liberal. See Franklin Kopitzsch and Dirk Brietzke, *Hamburgische Biografie-Personenlexikon* (Hamburg: Wallstein Verlag, 2003), 73.

¹²⁵ "Volksrat gegen Spalterverfassung," *Neues Deutschland*, December 21, 1948, 2.

¹²⁶ Heineman, *What Difference*, 143; Moeller, *Protecting Motherhood*, 41; Ines Reich-Hilweg mentions the public outcry as well in her analysis of Article 3's impact in West Germany, but never went into detail about how it was conducted. Ines Reich-Hilweg, *Männer und Frauen sind gleichberechtigt: Das Gleichberechtigungsgesetz (Art. 3 Abs. 2 GG) in der parlamentarischen Auseinandersetzung 1948-1957 und in der Rechtsprechung des Bundesverfassungsgerichts* (Frankfurt/M: Europäische Verlagsanstalt, 1979), 21-22.

¹²⁷ Arbeitsgemeinschaft Frauenringe der französischen Zone, January 9, 1949, Z5/112, Parlamentsarchiv Berlin; Frauenring Siegerland an den Hauptausschuss des Parlamentarischen Rates, December 10, 1948, Z5/95, Parlamentsarchiv Berlin; Frauenring der britischen Zone, December 14, 1948, Z5/97, Parlamentsarchiv Berlin; Weiblichen Abgeordneten des Niedersächsischen Landtages an den Parlamentarischen Rat in Bonn, December 29, 1948, Z5/96, Parlamentsarchiv Berlin; Frauenring der britischen Zone, December 31, 1948, Z5/111, Parlamentsarchiv Berlin.

independent, non-party Heidelberg Women's Association (*Heidelberger Frauenverein*), who had studied law from 1931 to 1939 and was *Wissenschaftliche Assistentin* (assistant professor) at *Juristische Seminar* (law department) at the University of Heidelberg from 1945 to 1949, expressed her association's "sharp protest against the denial of full equality in the constitution."¹²⁸ Similarly, the telegram from the independent Karlsruhe Women's Group (*Karlsruhe Frauengruppe*) noted that they "joined the plea of the women of Hesse and Wuerttemberg-Baden to change the formulation of Article 4, Paragraph 2 of the basic rights."¹²⁹

Other groups supported the SPD's formulation, but with additional stipulations. For example, the Wuppertal branch of the *Deutscher Frauenring* (*Frauenring Wuppertal*) proposed to add the following phrase: "All existing opposing legal definitions are to be voided and immediately replaced."¹³⁰ Similarly, the non-partisan Women's Committee of Hamburg (*Frauenausschuss Hamburg e.V.*) recommended that the Council add, "All opposing laws of the Civil Code are overturned," to the constitutional clause.¹³¹ Yet others, such as the labor-oriented Female Civil Servants and Salaried Employees in Frankfurt (*Beamtinnen und weiblichen Angestellten im Arbeitsamt Frankfurt a/M*) urged the Council to adopt only the following: "All people are equal before the law, without distinguishing

¹²⁸ Heidelberger Frauenverein an den Parlamentarischen Rat, Z5/110, Parlamentsarchiv Berlin; little is known about von Falkenberg. Gustav Radbruch and Günter Spengel mention her stint at the University of Heidelberg. See Radbruch and Spengel, *Biographische Schriften* (Heidelberg: C.F. Müller, 1988), 462. See also "NL Falkenberg, Erdmuthe, 1910-2003," last accessed February 11, 2017, <https://findstar.scopearchiv.ch/detail.aspx?ID=68374>

¹²⁹ Frauengruppe Karlsruhe, January 3, 1949, Z5/110, Parlamentsarchiv Berlin.

¹³⁰ Frauenring Wuppertal an den Hauptausschuss des Parlamentarischen Rates, January 1, 1949, Z5/111, Parlamentsarchiv Berlin.

¹³¹ Frauenausschuss Hamburg an den Parlamentarischen Rat, January 6, 1949, Z5/111, Parlamentsarchiv Berlin.

between sex, race, origin, religious, or political persuasion.”¹³²

Several association leaders offered their own versions of the “equality clause.” The independent, non-party South German Women’s Circle of Nuremberg (*Süddeutsche Frauenarbeitskreis Nürnberg*, SFN), for example, rejected the formulations of the CDU and SPD, stating instead: “Men and women have equal constitutional and private rights and duties.”¹³³ They stressed the urgency of constitutional protection as a response to major social changes. At the same time, their reluctance to embrace the word “*Gleichberechtigung*” and its so-called erasure of sexual difference was clear. Their proposed phrase left out the term entirely, instead reiterating the words “rights and duties” from Weimar and the CDU/CSU, but qualifying them by adding “equal constitutional and private” and “absolute equal status (*unbedingte Gleichstellung*).” In another letter, the SFN drew inspiration from the Women’s Association of Hessen (*Frauenverband Hessen*), which had proposed the following: “Men and women have equal rights and duties.” These independent associations exemplified the plethora of opinions among postwar women’s associations. Support of equality did not automatically translate to adherence to the SPD. These groups therefore attempted to find their own solutions to the issue of *Gleichberechtigung*.¹³⁴

Women’s associations were not the only members of civil society to respond to the Council’s decision. Trade unions, in particular their women’s bureaus, wrote petitions to the Council in opposition to the December 3rd vote. As the Free Trade Union of Hessen (*Freier*

¹³² Die Beamtinnen und weiblichen Angestellten im Arbeitsamt Frankfurt a/M an den Parlamentarischen Rat, January 8, 1949, Z5/112, Parlamentsarchiv Berlin.

¹³³ The original text stated: “*Männer und Frauen haben die gleichen staatsrechtlichen und privatrechtlichen Rechte und Pflichten.*”

¹³⁴ Süddeutsche Frauenarbeitskreis Nürnberg an den Parlamentarischen Rat, December 21, 1948, Z5/111, Parlamentsarchiv Berlin.

Gewerkschaftsbund Hessen) asserted: “As employed women, we know exactly and yes, experience daily, the equality of us women is not yet ensured in a paragraph of the constitution.” They furthermore averred that they must fight for equality in practice in all areas of the economy and politics in order to persuade the Council.¹³⁵ Likewise, the Industry Trade Union Metal for the British Zone and Bremen (*Industriegewerkschaft Metall für die Britische Zone und Bremen*), representing 40,000 women metal workers, wrote to Adenauer personally to affirm their support of the SPD’s proposal for all women.¹³⁶ Trade union representatives of workers’ councils sent letters to the Council to protest the 1953 deadline. The women’s committees of the trade unions representing *Deutsche Dunlop Gummi Compagnie* and *W.C. Heraeus Platinschmelze*, for instance, each wrote to demand the implementation of *Gleichberechtigung* even before the proposed 1953 deadline.¹³⁷ The women of these trade unions and workers’ councils, though coming at the issue with the specific agenda of equal rights for female workers, joined forces with the independent women’s associations to urge the Council to change its mind.

Finally, individuals wrote to the Council. Unlike the women’s associations, who presented legal arguments, and the women’s committees of trade unions, who argued for equal treatment in the workplace, individuals’ arguments emphasized the social changes in

¹³⁵ Freier Gewerkschaftsbund Hessen an den Vorsitzenden des Parlamentarischen Rates Herrn Dr. Adenauer, December 15, 1948, Z5/95, Parlamentsarchiv Berlin.

¹³⁶ Industriegewerkschaft Metall für die Britische Zone und Bremen an Herrn Dr. Adenauer, December 30, 1948, Z5/110, Parlamentsarchiv Berlin, Z5/110.

¹³⁷ Deutsche Dunlop Gummi Compagnie an den Parlamentarischen Rat, January 28, 1949, Z5/113, Parlamentsarchiv Berlin; Heraeus an den Parlamentarischen Rat, February 2, 1949, Z5/114, Parlamentsarchiv Berlin. For more on the Deutsche Dunlop Gummi Compagnie, one of Germany’s leading rubber companies, see Neil Forbes, *Doing Business with the Nazis: Britain’s Economic and Financial Relations with Germany, 1931-1939* (New York: Psychology Press, 2000), 142. For more on Heraeus, see Ralf Schrank, *Heraeus--ein Familienunternehmen schreibt Industriegeschichte: von der Einhorn-Apotheke zum Weltkonzern* (Munich: Piper, 2001).

postwar Germany. For example, the letter from Dorothea Groener-Geyer of Ludwigsburg stressed that the equal status of women had already been realized during World War II when women provided for their families as their husbands fell in battle.¹³⁸

The fifty-plus petitions, representing independent associations, trade unions, companies, state-level governments, and individuals, began to sway the Council. Some members of the FDP, for instance, uncomfortable with the prospect of being on the losing side, started to shift allegiance. The FDP had no female delegates in the Council, but Herta Ilk, a doctor of law who had been a member of the FDP party executive committee in Bavaria since 1948, worked behind the scenes to urge male FDP delegates to switch sides.¹³⁹ In early January 1949, she wrote to Thomas Dehler (FDP) with her own formulation of the equality clause, which read:

Men and women have equal rights in all areas of law. Exceptions can only be allowed in civil law, so far as it necessitates the preservation of the family. Here the mutual agreement of men and women of the parliamentary committee is required.¹⁴⁰

Ilk attempted, with this formulation, to find a “third way” that combined the SPD’s broad promise of equal rights with the CDU/CSU’s concerns about the endangerment of the Civil Code. She argued that the family’s needs must not systematically come before *Gleichberechtigung*. The FDP did not introduce the clause, but Ilk was nevertheless influential. Dehler changed his mind and threw his support behind the SPD in the next Council vote on the issue.

On 18 January 1949, the Council met again to review the basic rights of the Basic

¹³⁸ Frau Dorothea Groener-Geyer an den Parlamentarischen Rat, January 2, 1949, Z5/111, Parlamentsarchiv Berlin.

¹³⁹ For biography of Ilk, see: Rudolf Vierhaus and Ludolf Herbst, *Biographisches Handbuch der Mitglieder des Deutschen Bundestages 1949–2002* (Munich: Saur, 2002), 375.

¹⁴⁰ Herta Ilk an Informationsdienst Nr. 62, A5-50, Archiv der Liberalismus-Gummersbach.

Law. Walter Strauß, a leading Hessian CDU representative, pushed the rest of the Council to respond to the resounding public response, saying that the Council had been “too juridical.” He asked the Council if they could strike the word “civic (*staatsbürgerlich*)” from the clause. He justified this proposal by acknowledging the double burden placed on women. He stated: “Most German women have now been employed for years, like men, but they have the additional tasks of the household and childrearing.”¹⁴¹ The framing of his argument suggests that he did not challenge the notion that women should be primary caretakers and that men played an ill-defined role as fathers and breadwinners. Rather, he saw the equal rights clause as a reward for women taking on the “double burden” of employment and family life.

Other members of the CDU offered similar interpretations. Helene Weber, for example, stressed the different natures of men and women. According to her, the Council had to be careful to consider “the uniqueness and dignity of women and not a schematic equal status and rights.”¹⁴² Weber illustrated her example by citing military service as an example of an area where “the nature of women should accomplish only a little of what we expect from men.”¹⁴³ For Weber and many women of her generation who supported relational feminism, natural gender differences determined different duties of both sexes in the economy, society, and politics. According to her, the military—although only hypothetical, since Germany was demilitarized after the war—was a special arena in which women were unequal with men. At the same time, she confirmed her commitment to furthering equality in all legal areas. She qualified this statement by saying: “I express the hope that we all adopt a

¹⁴¹ “Zweiundvierzigste Sitzung des Hauptausschusses 18. Januar 1949,” in *Der Parlamentarische Rat, 1948-1949: Akten u. Protokolle*, 1310.

¹⁴² *Ibid.*, 1311.

¹⁴³ *Ibid.*

formulation of this paragraph that should fulfill and can unify what is befitting of women in the family and professional life.”¹⁴⁴ Like her colleague Walter Strauß, Weber never questioned the gendered division of labor and voiced any doubt that women alone had to deal with the double burden of work and nurturing, but she at least acknowledged that an expansive equality clause could help them better accomplish their duties in these roles.

Elisabeth Selbert interjected to criticize Weber and Strauss, stating that the Council, the CDU in particular, had to stop with the “yes, but” statements and commit to an “unconditional yes.” She emphasized that the public supported the SPD position and cited several of the above referenced letters, in particular those from the 40,000 trade union workers, the Women’s Circle, the South German Women’s Working Group, and the female delegates of all the state parliaments. She took a jab at the Bavarians, noting that they were the only state parliament without any female representatives. She attacked the Council for fearing that Western *Gleichberechtigung* would closely resemble Soviet zone equality. She even acknowledged her own stance that men and women were not inherently equal. At the same time, she argued that treating *Gleichberechtigung* as “equalization” of the sexes was unsubstantiated.¹⁴⁵

After these attacks, Selbert shifted her attention to the problem of a narrow definition of equality. For her, the old call “equal rights and duties,” which the SPD had supported in the Weimar Republic, had wider implications. She argued that such framing allowed marriage and marital property laws to continue to privilege men and oppress women in terms of alimony and inheritance, because it assumed that men and women had different and

¹⁴⁴ “Zweiundvierzigste Sitzung des Hauptausschusses 18. Januar 1949,” in *Der Parlamentarische Rat, 1948-1949: Akten u. Protokolle*, 1311.

¹⁴⁵ *Ibid.*, 1312-14.

particular duties in these arenas. It also permitted the unequal treatment of housewives and working women, who both contributed in important ways to their households. As a KPD member added, it prevented equal wages for men, women, and youth. Helene Wessel of the Center Party supported the SPD as well, stating that she no longer saw “civic” duties, the formulation of the Weimar constitution, as an acceptable compromise for the millions of women who had struggled through and after the war. Their arguments, plus the pressure of public opinion, were effective. By the end of the session, the Council unanimously voted in favor of the SPD’s formulation (“Men and women have equal rights”).¹⁴⁶

On 8 May 1949, the Parliamentary Council approved the final version of the Basic Law, which included the following provisions as part of Article 3:

- 1) All people are equal before the law.
- 2) Men and women have equal rights. The state supports the effective implementation of the equality of men and women and will act to remove disadvantages.
- 3) No one may be advantaged or disadvantaged due to gender, national origin, race, language, heritage, beliefs, and religious or political opinions. No one may discriminate based on disability.

This article, however, was constrained by Article 6, which devised that “marriage and family stand under special protection of the state.” Finally, the Basic Law included Article 117, which stipulated that all laws contradicting Article 3, especially those in the German Civil Code that had been in place since 1900, had to be changed by 31 March 1953.

Over the course of five months, the Parliamentary Council’s formal definition of *Gleichberechtigung* had changed dramatically. At the beginning of the Council, women had no civil equality, but a promise of equal wages. By the end of the Council, women had full equality, no guarantee of equal wages, and a promise that marriage and the family would be protected by the constitution. A combination of factors shaped this outcome. First, it became

¹⁴⁶ “Zweiundvierzigste Sitzung des Hauptausschusses 18. Januar 1949,” 1315-1317.

evident in their discourse that Parliamentary Council members wished to divorce themselves from the Weimar and Nazi past and, in the context of the rising Cold War conflict, from the Soviet zone. Second, female activists relied on the problematic and outdated Civil Code in their discourse as a reason to give women more constitutional equality. Finally, protests from society, especially women's organizations and the independent trade unions, played a significant role in swaying the Christian conservative coalition within the Parliamentary Council to adopt a broader equality clause.

The Soviet Zone's Reactions to the Western Parliamentary Council

As the Western Parliamentary Council concluded its proceedings, the Eastern People's Council was also in the process of wrapping up its debates. Despite publishing the draft of the constitution in October 1948, the SED could not formally approve it until the next People's Congress, planned for May 1949. In the meantime, the West prepared to approve its own Basic Law in May 1949. According to legal expert Inga Markovits, as late as March 1949 the East still reached out to the West to settle the larger dispute over the constitution, but were unsuccessful.¹⁴⁷

In particular, the equality clause earned further attention from the People's Council in February 1949. As outlined above, in January 1949, the Parliamentary Council in the West decided to adopt the SPD's proposal to change the Basic Law's equality clause to say: "Men and women have equal rights." The news soon reached the People's Council, who had not only been keeping close tabs on the developments in the West, but had constantly and publicly denigrated the Western Parliamentary Council's decisions. As shown above, the

¹⁴⁷ Markovits, "Constitution Making after National Catastrophes," 1316-1317.

Soviet zone media had depicted the West as the losers in the debate over equal rights since 1946, even before the formal division of Germany.¹⁴⁸ Not only had the West beaten the East to a new constitution, but had stolen one of the People's Council's and SED's main arguments: that sexual equality was a hallmark of socialism, not capitalism or liberal democracy, which only served to oppress women.

Despite public proclamations that the West had fallen behind in terms of women's rights, behind the scenes, the People's Council was less confident. Internal protocols reveal the delegates' anxiety about and unwillingness to negotiate on the topic of equal rights with the West. By early February 1949, the People's Council possessed copies of the West German Basic Law.¹⁴⁹ Members of the constitutional committee responded with different degrees of consternation over the text as a whole, because they had staked their claim to legitimacy on their ability to pass a new constitution first. Some stressed that the very existence of the Basic Law was the major problem, namely because it ruined their claims to represent all of Germany. Committee chairman Otto Grotewohl assured the People's Council that their version was better, stressing the importance of socialism for Germany's future and asserting that socialism would win, in the end.¹⁵⁰

One of the most problematic areas, the delegates determined, was the Bonn constitution's treatment of *Gleichberechtigung*. Their delegates clearly resented losing a battle that they had set themselves up to win since late 1946. The committee designated three female members to work with the legal committee to determine how to implement the equal

¹⁴⁸ Käthe Kern, "Deutscher Verfassungsplan oder „Auftrag aus fremder Hand“?" *Die Frau von heute*, September 1, 1948, 10; Käthe Kern, "Grundrechte: der Bürger und der Frauen," *Die Frau von heute*, October 1948; Kern, "Bonn gegen Frauenrechte," *Die Frau von heute*, January 1949.

¹⁴⁹ Grundgesetzentwurf, February 10, 1949, DA 1/157, Bl. 73-129, BArch Berlin.

¹⁵⁰ Verfassungsausschuss, 13. Sitzung, February 18, 1949, DA 1/157, Bl. 37, BArch Berlin.

rights clause to ensure that “equality exists not only in constitutional text, but to stipulate concrete consequences in an appendix.”¹⁵¹ When the People’s Council understood that the Western sectors had swept the rug out from under them by using the same wording, they had little choice but to look ahead to the next step: reforming the Civil Code as quickly as possible.

This section has demonstrated that the Eastern People’s Council intentionally shaped its own future political moves in response to the Western Parliamentary Council’s decision to adopt full equality for men and women as a constitutional right. The SED had always maintained that its socialist model would prevail. One way socialism would improve the future of Germany, they argued, was through its egalitarian treatment of men and women in all areas of society, politics, the economy, and home life, a promise that was validated by the constitution. In its public rhetoric, the ruling party had always set up the West, especially in terms of leading Christian conservatives’ views on women’s equal rights, as a foil. After February 1949, upon the discovery of the West’s adoption of a broadly worded equality clause, the SED and the People’s Council no longer relied on just rhetoric. Rather, they propelled forward reforms of the Civil Code as a direct response to the West’s promise of equality in order to demonstrate that they led the more progressive German state.

Conclusion

This chapter has shown the path dependencies of the equality clauses in the Soviet and Western occupation zones, which was determined by several intersecting political, economic, cultural, and social factors. First, social and cultural conceptions of gender and the

¹⁵¹ Sitzungsschlussbericht der 13. Sitzung, February 18, 1949, DA 1/157, Bl. 25, BArch Berlin. They selected Käthe Kern, Helene Beer, and Dr. Hildegard Heinze.

family played into the debates on constitutional equality. Christian conservatives and some liberals had held up the male breadwinner and female homemaker model, based on the idea of natural sexual difference, as the ideal family model since the late nineteenth century. This model was consistently challenged by Communists and Social Democrats—who often agreed with the idea of sexual difference and the ideal of the male breadwinner/female homemaker, but recognized the impossibility of this model for many families—in the late empire and the Weimar Republic. After World War II, it endured: Christian conservative and Free Democratic politicians, media pundits, and some individuals stressed that the traditional family model could once again stabilize Germany. Even the SED in the Soviet zone did not contest including its own family protection clause for numerous reasons. For one thing, they followed the Stalinist model, which strongly emphasized the family as the cornerstone of socialist society and a pillar of postwar stability. Furthermore, much of the Soviet zone still adhered to Protestantism, meaning they still clung to Christian ideas about marriage and the family, and the SED did not want to upset a large portion of its population.

Second, the new German states inherited several laws and institutions from imperial, Weimar, and Nazi Germany that created high degrees of path dependency for equal rights of men and women after 1945. This strong path dependency was especially evident in West Germany, where, in the context of postwar reconstruction of liberal democracy in the wake of Nazism's destruction and the burgeoning Cold War, Christian conservative politicians were more willing to replicate the Weimar constitution's equality and family protection clauses. They were also more disposed to leaving the Civil Code intact indefinitely. Path dependency was less strong in the East, where the SED and the Soviets, in the context of founding an antifascist and socialist Germany, were more willing to abandon the Weimar

template and the Civil Code. Moreover, their constitution included guarantees of equal wages and equal status for illegitimate children. Still, elements of the old legal structure, such as the family protection clause, reappeared without controversy in the SED's new constitutional drafts. As a result, competing notions of equal rights were prevalent in politics, society, and the media in both Germanys.

Third, political factors, in particular different political cultures, played significant roles in shaping politicians' decisions on the equality clauses on each side as well. The SED and the Soviets' desire for political dominance in the Soviet zone manifested itself in the introduction of the equality clause in the Soviet zone in late 1946, since they saw equal rights as a way to entice women to Communism, fulfill socialist emancipation goals, and out-do the West. Meanwhile, in the West, the tug-of-war between the Christian Democrats and the Social Democrats for political control and the Western occupiers' relatively hands-off approach to the Basic Law delayed approval of the equality clause. The Christian conservative coalition in the Parliamentary Council fought to keep the old Weimar formulation, which they believed would maintain the "natural order" of the sexes as they rebuilt the West. They opposed the Social Democrats' proposals for a broader equality clause and a related mandate to ensure the overhaul of the Civil Code. Unlike the East, where civil society was fairly limited, in the West, it was beginning to bloom. The collective efforts of women's associations, trade unions, and individuals pushed the Parliamentary Council in the West to change course, approve the equality and family protection clauses, and mandate reforming the Civil Code before 31 March 1953.

Fourth, economic considerations factored into their negotiations and decisions as well. Equal rights clauses played important roles in the context of reconstructing the postwar

economies, which had depended heavily on female labor in the earliest postwar years. In the East, female activists and other politicians saw the equality clause as a way to bolster other rights and policies, such as equal wages for equal work, to help women gain economic independence and actively participate in the Soviet-style planned economy. In the West, Christian conservatives and some Free Democrats saw the equality clause and state protection of the family as opportunities to empower male breadwinning and reduce women to homemakers and part-time workers. In addition, the Christian conservatives and some Free Democrats rejected the KPD's proposals for equal wages for men and women in order to preserve men's places as chief breadwinners in the family and to avoid resembling the East, where women were more integrated into the workforce.

Finally, the burgeoning Cold War influenced debates about constitutional equality on both sides. The competition with the Western zone pushed the SED and the People's Council to press for complete equal rights of men and women in the economy, politics, society, and marriage and the family. The same conflict urged Western politicians to initially reject the same model of equality, instead focusing on the male breadwinner family model. The competing equality clauses were key markers of difference between the two Germanys in the Cold War. Moreover, this conflict was not just discursive, but affected the negotiations on both sides, especially the Soviet zone. When the East German People's Council realized the magnitude of this decision and its consequences for their own conception of equality, they pushed to overhaul the Civil Code in the East immediately. The next chapter outlines how these debates unfolded in the early 1950s as the two sides formally separated and broached their own reforms of the marriage and family law sections of the Civil Code.

CHAPTER FOUR

MISSED OPPORTUNITIES AND LEGAL INEQUALITIES: THE FAILED REFORMS OF MARRIAGE AND FAMILY LAW IN EAST AND WEST GERMANY, 1949–53

On 9 March 1950, the West German Chancellor, Konrad Adenauer, received a letter from Frau C. of Cologne, North Rhine-Westphalia, who observed: “As of late, no one hears anymore if the law for the equality of women has been adopted or not.”¹ Across the Iron Curtain, a few months later, on 14 August 1950, Herr L. of Kretzschau, Saxony-Anhalt penned a one-sentence letter to the East German Ministry of Justice that asked simply: “When will the new family law finally arrive?”² Herr L. and Frau C.’s letters were part of a surge of correspondence from East and West German citizens to their respective governments regarding the forthcoming reforms to marriage and family law provisions of the Civil Code (*Bürgerliches Gesetzbuch*, BGB) and the 1946 *Ehegesetz*. The letters expressed a range of reactions, from mere curiosity to outright desperation. Governmental representatives in both Germanys assured citizens that new laws to replace the old BGB and the 1946 *Ehegesetz* were imminent.

These legal reforms stemmed from the mandates in the May 1949 West German Basic Law and the October 1949 East German constitution requiring legislators in the German Democratic Republic (GDR) and the Federal Republic of Germany (FRG) to

¹ Carnott an Adenauer, March 9, 1950, B141/2018/11, BArch Koblenz.

² Lück an MdJ, August 14, 1950, DP 1/7198, Bl. 29, BArch Berlin.

overturn all existing legislation opposing equality. The diverging political, social, and economic paths of the two German states in the early years of the Cold War, however, complicated reforming the Civil Code. By the end of 1950, for instance, the SED in the GDR had approved its first Five-Year Plan, started political purges, and reformed labor laws, including legislation aimed at protecting working women and mothers. Meanwhile, in the FRG, the leading Christian conservative CDU/CSU coalition was setting up a social market economy, pursuing Western integration policies, and had declared its goal of implementing Christian conservative social policy, for which a male breadwinner and female homemaker family model was a cornerstone.

By the time Herr L. and Frau C. wrote in 1950, politicians, society, and the media in both postwar German states were also mired in discussions of new family law provisions of the Civil Code. In late 1949, the Ministry of Justice of the GDR (*Justizministerium der DDR*, MdJ), drafted a new family law that allowed, for example, men and women to make mutual decisions regarding their children, or to adopt either spouse's surname. In the West, under order from the Bundestag, the Federal Ministry of Justice (*Bundesministerium der Justiz*, BdJ) formulated a new law allowing mutual decision-making among spouses and equal property ownership, among other changes. Despite having drafted new laws by 1952, neither state passed the legislation as originally planned. The GDR ended up with partial reforms, encased in the 1950 "Law for the Protection of Motherhood and Children and the Rights of Women," but did not address major sections of the old law such as divorce regulations or property rights, the adjudication of which then fell to the courts. Similarly, the FRG passed no reforms before its constitutionally mandated 31 March 1953 deadline, leaving marriage and family law up to judges.

In the following I use the approach of path dependency to explain what first facilitated and then ultimately prevented reforms to family law in both postwar Germanys between 1949 and 1953. I demonstrate that several interlinking factors—the complexities of state-building, competing interests among the leading political parties in both states, resistance from social organizations (especially the Protestant and Catholic churches), strong cultural norms, and the different social, political, and economic agendas of the two postwar German governments—alternately urged and hindered progress toward new legislation, despite the best efforts of legislators, Ministry officials, and leading party members in both states to push through reforms. The particular climate of the early Cold War years, when tensions and the hope for reunification were highest, shaped the competition between the two sides in this period. Policymakers’ inability to pass the reforms they desired created momentum for larger reforms later in the 1950s and the early 1960s, when it became increasingly apparent to contemporaries that the Cold War division of the Germanys was more permanent than they had initially assumed.

A central part of the examination of the factors that enabled and prevented reforms on both German states, is the analysis of the multiple and co-existing discourses on the parallel legislative drafts by politicians, leaders of social organizations, and newspaper editors in both Germanies, where the frontlines were astonishingly similar. On the one side, Christian conservatives, much like they had before 1945, defended the 1900 Civil Code’s paternalistic provisions as a resolution to high levels of instability in politics, society, and the economy, because it restored the “natural” gender order in a society defined by postwar calamity. On the other side, Communists, Social Democrats, and liberals emphasized the previous limitations on women’s rights in Weimar and Nazi Germany, the burdens women had borne

for Germany during and after World War II, and the postwar crisis of the family as compelling reasons to alter the longstanding legislation. After 1949, in the context of the burgeoning Cold War, Christian conservatives, Social Democrats, liberals, and Communists in both postwar Germanys increasingly shifted toward comparisons and contrasts with the “other Germany” in their discourses on family law.

This chapter uncovers the history of the first period of debates over marriage and family law reforms in both states from 1949 to 1953. The first section focuses on the East German Ministry of Justice’s creation of the first draft of a new family law in the GDR between 1948 and 1950. The second section examines the West German Ministry of Justice’s first steps toward a new family law in the FRG between 1949 and early 1952. The third section explores how and why East German politicians revived discussion of family law after 1950, but were unable to pass any reforms by 1953. Finally, the fourth section analyzes how politicians, society, and the media in West Germany assessed the potential Equal Rights Act and what ultimately prevented the Bundestag from reforming the law between March 1952 and December 1953.

Creating and Propagating a New Family Law in the GDR, 1948–1950

In late 1948 and early 1949, while formulating the new constitution of the GDR, the Soviet zone People’s Council and the German Justice Administration had already begun discussing reforms of the Civil Code. In January 1949, the People’s Council Legal Committee produced a series of proposals for future legislation, called the “Theses on the General Rules of Marriage,” which privileged “the principle of equality of the sexes at

utmost consequence.”³ As a result, some old regulations remained, like the guarantee of spousal obligation, but in theory would take on a new character under Communism, allowing, for example, the right to work and live separately, seen as necessities in a production-driven, socialist economy.⁴ At the same time, the “Theses” made several large changes, undermining the masculine privilege embedded in the preceding legislation. For example, couples and their children would have the same family name, but it could be the husband’s, wife’s, or a combination. In addition, both spouses would have the right to decide on important matters, a stark change from the old BGB’s *Stichentscheid*, which allowed only men to make decisions. Furthermore, each partner would have the right to contribute to the support of the household, either through domestic labor or employment outside the home. Women were no longer required to lead the household. If living separately, each spouse would have to support him- or herself. The right of spousal support could be reduced or repealed through the payment of an equal contribution. If one spouse refused to contribute to the common household, he or she would lose all rights to alimony. If living separately, each spouse had the right to demand objects from the household (regardless of property relations) that would facilitate leading separate households.⁵

To be sure, the “Theses” only addressed parts of the family law and did not cover divorce law or marital property law. Still, the proposals hinted at the People’s Council’s—and by extension, the SED’s—desires to make family law more egalitarian in the future. One

³ Hans Nathan later published the “Theses” in *Neue Justiz*, the organ of the German Justice Administration (the precursor to the Ministry of Justice). Hans Nathan, “Zur Neugestaltung des Familienrechts,” *Neue Justiz*, Nr. 5, May 1949, 104.

⁴ *Ibid.*, 104.

⁵ *Ibid.*, 103.

reason for the dramatically altered “Theses” was the personalities in the Legal Committee, namely Hilde Benjamin and Hans Nathan. Benjamin had already established a name for herself as the Director of the German Justice Administration and a founding member of the DFD, while Hans Nathan had a less prominent public profile. Born in 1900, Nathan briefly had served in the military in 1918, before receiving his law degree. He worked as a public defender for the Communist-affiliated *Rote Hilfe*, the German affiliate of the International Red Aid for political prisoners, before joining the Weimar-era left-liberal German Democratic Party (*Deutsche Demokratische Partei*, DDP; later the *Deutsche Staatspartei* in 1930). In 1933 he had to flee to Prague, where he joined the Communist Party in 1938.⁶ After the occupation of Czechoslovakia in October 1938 by Nazi Germany, he had to go into exile in England because of his Jewish ancestry and political activities. He returned to Berlin in 1946 and took up a position in the German Justice Administration, and later, as an academic assistant at the Humboldt University in Berlin. He gained a more prominent public profile in the Soviet zone by serving on the People’s Council Legal Committee alongside Benjamin and other well-known jurists. Benjamin and Nathan’s background as lawyers, their ardent Communist conviction, their memories of Weimar and the Third Reich, and work in the Soviet zone informed their approaches to the “Theses.”

Benjamin and Nathan, in fact, frequently cited historic precedent as an important influence on the “Theses.” For one thing, Nathan emphasized that the People’s Council delegates had looked back to the Weimar constitution for inspiration on topics such as equal rights for women and equal legal status for out-of-wedlock births. As the last chapter

⁶ Dirk Breithaupt, “Nathan, Hans,” in: *Neue Deutsche Biographie* 18 (1997), 745. <https://www.deutsche-biographie.de/gnd13867647X.html#ndbcontent>

showed, the People's Council had used and then rejected Weimar as an example of what not to do regarding women's rights at an early stage. While the People's Council Legal Committee explicitly linked their work to Weimar, Nathan refrained from mentioning the Third Reich, although it was almost certainly a second historical influence. But there were reasons for this omission. The SED were avowed antifascists and refused to be seen as the successors to the Third Reich, two salient points that grounded Communist claims to a legitimate state.⁷

In addition, the earlier activities of women's committees and the German Justice Administration left their imprint on the "Theses." As the second chapter showed, women's committees and the DFD had already worked on proposals for the new Civil Code, to which Benjamin and Nathan attributed their ideas for the reforms. For example, months before, in August 1948, Benjamin praised the DFD's work on new provisions of family law.⁸ In addition, Nathan cited DFD proposals as the basis of the "Theses."⁹ These references shed some light on the relationship between the DFD and the People's Council. As the women's mass organization in the Soviet zone and the GDR, the DFD's prime purpose was to represent women's interests. On the one hand, the Council's appropriation of their work—which in turn stemmed from the earlier women's committees—can be read in a positive light: the Council valued the DFD's contributions. On the other hand, the Council's heavy reliance on women's committees gave it an easy out: they did not have to figure out their own

⁷ Mary Fulbrook, *Anatomy of a Dictatorship: Inside the GDR, 1949-1989* (Oxford and New York: Oxford University Press, 1995), 24-25.

⁸ Benjamin an Volksrat, 4. Tagung, August 3, 1948, DA 1/5, BArch Berlin.

⁹ Nathan, "Zur Neugestaltung des Familienrechts," 102-3. See also "Wirkungen der Ehe im allgemeinen," 1949, DA 1/110, BArch Berlin.

solutions, since the DFD did it for them.

Finally, the imminent division of Germany informed Benjamin's and Nathan's approaches to the "Theses." According to historian Mary Fulbrook, "the issue of separation from the West was of overriding concern to SED leaders," which reflected in their discussions of family law.¹⁰ On several occasions, Benjamin and Nathan referred to the possible effects of East and West German separation and the potential for reunification. At one point, responding to the commencement of the Western Parliamentary Council and recognizing how it might affect the legality of their own initiatives, Benjamin stated: "There must be ways to come quickly to a unified and more progressive structuring of this law."¹¹ She also warned the People's Council to tread carefully because of the Western Parliamentary Council.¹² At another point, noting that the earliest discussions of *Gleichberechtigung* occurred "not only in the Eastern zone," Nathan asserted that it was important for the future GDR "that our new family law obtains legitimacy in all of Germany."¹³ Even at this stage, Nathan expressed anxiety about their version of family law being taken seriously by the West in the future. Furthermore, he asserted that "the West has all reason to enter the discussion," because its states were already doing so on a regional level, although ultimately, the West never joined the East in such discussions.¹⁴

Benjamin's and Nathan's suggestions for a new Civil Code remained hypothetical

¹⁰ Fulbrook, *Anatomy*, 93.

¹¹ Benjamin an Volksrat, 4. Tagung, August 3, 1948, DA 1/5, BArch Berlin.

¹² Ibid.

¹³ Nathan, "Zur Neugestaltung des Familienrechts," 102-3.

¹⁴ Ibid., 103.

until the fate of the German question was resolved, when the Western Allies approved the Basic Law on 23 May 1949 and the People's Council declared the GDR on 7 October 1949. The People's Council then turned into a provisional parliament (*Volkskammer*) and government, planning elections for the end of 1950 to confirm their power. Although former Social Democrat and Minister-President Otto Grotewohl and Communist and President Wilhelm Pieck nominally helmed the East German government, SED chairman Walter Ulbricht was the actual power behind the scenes. Ulbricht had long been on the rise to power. He had been an early convert to Communism in 1920, spent the war years in Moscow, and then one of the first German Communists to return to Germany with the Red Army to set up a socialist state.

Under Ulbricht, the SED “attached itself to extant currents in postwar Germany, such as antifascism, fear of war, and the desire for national unity” which “provided the GDR with a mantle of legitimacy.”¹⁵ The ruling party maintained that the West was the illegitimate state, because of its separatism, rejection of East German constitutional proposals, approval of the Basic Law in May 1949, and allowance of former Nazis in the new government. The West, for its part, claimed that without free elections, the East was illegitimate.¹⁶ Over the course of the early 1950s, Ulbricht steered the state toward a Stalinist model.¹⁷ Like the Soviets, the SED aimed to implement a planned economy, which, according to Communist

¹⁵ Donna Harsch, *Revenge of the Domestic: Women, The Family, and Communism in the German Democratic Republic* (Princeton: Princeton University Press, 2007), 61.

¹⁶ Robert Grünbaum, *Deutsche Einheit: Ein Überblick 1945 bis heute* (Berlin: Metropol, 2010), 13.

¹⁷ For biography of Otto Grotewohl, see: Dierk Hoffmann, *Otto Grotewohl (1894-1964): Eine Politische Biographie* (Munich: Oldenbourg, 2009); for biography of Wilhelm Pieck, see: Hermann Weber, “Pieck, Wilhelm,” in *Neue Deutsche Biographie* 20 (2001), 421-422, <https://www.deutsche-biographie.de/gnd118594273.html#ndbcontent>; for biography of Walter Ulbricht, see: Mario Frank, *Walter Ulbricht: Eine Deutsche Biografie* (Berlin: Siedler, 2001).

thinking, would erase class and gendered inequalities.

In addition to promoting the GDR as the more progressive and legitimate Germany for its antifascist and more egalitarian economic policies, the SED considered itself the leading force in “women’s emancipation” in postwar Germany. SED leaders frequently cited their party program and the constitutional mandate that overhauled any legislation prohibiting *Gleichberechtigung* as evidence of the party’s progressiveness.¹⁸ At the same time, the constitutional mandate’s immediate invalidation of family law posed certain obstacles for the ruling party and other members of the East German government. When Benjamin took up the post of Vice President of the Supreme Court of the GDR in December 1949, it fell to Nathan, as head of the Legislation Department (*Hauptabteilung Gesetzgebung*) of the new Ministry of Justice of the GDR, to spearhead the Civil Code reforms. Drawing from the aforementioned “Theses,” a similar list of proposals from Benjamin, and the DFD’s suggestions, Nathan completed the “Bill for the Reordering of Family Law,” in early 1950.¹⁹

The proposed 1950 law restructured and replaced the old BGB regulations on marital unions, marital property, adoption, and the rights of children born in- and out of wedlock.²⁰ The new legislative draft departed from the old BGB in stating that couples had the right to

¹⁸ “Gleichberechtigung vor dem Gesetz,” *Die Frau von heute* 6, 1950, 6; “Otto Grotewohl antwortet den Frauen,” *Für Dich* 11, 5, March 12, 1950, 3; Socialist Unity Party Program, April 1946, http://www.cvce.eu/de/obj/politisches_programm_der_sed_berlin_21_und_22_april_1946-de-d9c5faf7-5c39-43fa-aa3f-88d5431e3746.html

¹⁹ Hilde Benjamin, *Vorschläge zum neuen deutschen Familienrecht* (Berlin: Deutscher Frauen Verlag, 1949).

²⁰ Gesetz zur Neuordnung des Familienrechts, 1950, DP 1/8028, Bl. 2-3, BArch Berlin. As they noted on page 2 of the document, they did not intend to change provisions regarding engagement (§§1297-1302), custody (Vormundschaft, §§1773-1921), and the 1946 marital law (Kontrollratsgesetz Nr. 16). They explain that these provisions were not necessarily disruptive to *Gleichberechtigung* and were practical in everyday life.

live separately if it advanced their education or careers.²¹ Neither were permitted to abuse their right, and both were expected to come to mutual agreements.²² In addition, spouses were now permitted to agree on a family name, whether it be the man's, the woman's, or a hyphenated name.²³ Both spouses could work in the business of the other.²⁴ They both had the obligation to support the household income (*Unterhalt*).²⁵ In the case that the spouses lived separately, they each had the right and duty to support themselves unless one was incapable; then he or she could rely on the other for support.²⁶ Regarding marital property, the law proposed that property inherited before and after marriage would remain in the authority of the receiving spouse, but was subject to adjustment.²⁷

At the same time, there were BGB provisions Nathan and the Ministry of Justice intended to keep intact. The first provision, for example, stated that “spouses are obligated to one another in matrimony”²⁸—phrasing directly lifted from the old Civil Code. This clause bound both spouses to not only remain faithful, but to take actions designed to promote marital union. As another example, all provisions regarding engagement could remain

²¹ §1, Gesetz zur Neuordnung des Familienrechts, 1950, DP 1/8028, Bl. 5, BArch Berlin.

²² §2, Gesetz zur Neuordnung des Familienrechts, 1950, DP 1/8028, Bl. 6, BArch Berlin.

²³ §3, Gesetz zur Neuordnung des Familienrechts, 1950, DP 1/8028, Bl. 6, BArch Berlin.

²⁴ §4, Gesetz zur Neuordnung des Familienrechts, 1950, DP 1/8028, Bl. 6, BArch Berlin.

²⁵ §6, Gesetz zur Neuordnung des Familienrechts, 1950, DP 1/8028, Bl. 8, BArch Berlin.

²⁶ §7, Gesetz zur Neuordnung des Familienrechts, 1950, DP 1/8028, Bl. 8, BArch Berlin.

²⁷ §10-11, Gesetz zur Neuordnung des Familienrechts, 1950, DP 1/8028, Bl. 10, BArch Berlin. Accruals would not include the spouses' separate property (earned by inheritance), items not included in the marital contract, property acquired after separation, or property acquired (due to an adjustment) before separation.

²⁸ §1, Gesetz zur Neuordnung des Familienrechts, 1950, DP 1/8028, Bl. 5, BArch Berlin. This provision echoes §1353 of the original BGB.

because they “play a minor role in practical life” and there was no reason to remove them.²⁹

Additionally, they argued that the structure of the custody court demanded simplification, in accordance with the economic changes since 1900, but did not call for its complete overhaul.

Finally, they saw no urgent reason to change the 1946 Allied Control Council law, namely because “the legal unity between the GDR and West Germany must remain undisturbed.”³⁰

As the second chapter showed, however, the 1946 law reified parts of the old BGB, meaning the old Civil Code was technically still in effect in the GDR after all. Although Nathan and the Ministry promoted some major changes to the BGB, they also saw practical and political reasons for retaining parts of existing laws. They furthermore used discourse about unity with the West to justify their suggestions for family law.

Throughout early 1950, the SED disseminated information about the new family law via its mass media, particularly the radio and the national newspapers *Neues Deutschland* and *Berliner Zeitung*, which served as mouthpieces for the regime to exercise its “opinion monopoly.”³¹ The print media and broadcasts on the radio not only served to inform readers about the new law’s provisions, but also to propagate the law.³² As authors editorialized, they

²⁹ §§1297-1302, Gesetz zur Neuordnung des Familienrechts, 1950, DP 1/8028, Bl. 2, BArch Berlin.

³⁰ Gesetz zur Neuordnung des Familienrechts, 1950, DP 1/8028, Bl. 2, BArch Berlin.

³¹ Anke Fiedler and Michael Meyen, *Fiktionen für das Volk: DDR-Zeitungen als PR-Instrument: Fallstudien zu den Zentralorganen Neues Deutschland, Junge Welt, Neue Zeit und Der Morgen* (Münster: LIT Verlag, 2011), 7, 9.

³² In early 1950, for instance, the two papers ran series of articles by the jurist Heinrich Löwenthal and Hanna Keusch explaining the proposed changes to the regulations on family name, parental authority, marital property, and age of majority. For bio of Heinrich Löwenthal, see Hermann Wentker, *Justiz in der SBZ/DDR 1945-1953: Transformation und Rolle ihrer zentralen Institutionen. Veröffentlichungen zur SBZ-/DDR-Forschung im Institut für Zeitgeschichte* (Oldenbourg: Oldenbourg Verlag, 2001), 445; for various articles, see: “Welchen Namen soll in die Zukunft die Frau führen?” *Berliner Zeitung*, January 11, 1950, 6; “Elterliche Gewalt oder Elterliche Sorge?” *Berliner Zeitung*, February 21, 1950, 6; “Herabsetzung des Volljährigkeitsalters,” *Neues Deutschland*, February 26, 1950, 4; “Ein neues eheliches Güterrecht ist nötig,” *Berliner Zeitung*, March 10, 1950, 6; “Gleichberechtigung vor dem Gesetz,” *Die Frau von heute* 6, 1950, 6.

drew on several common themes, such as comparison with the West. Hans Nathan, for instance, penned an article for *Neues Deutschland* in April 1950 that insisted a new family law was necessary in the East because the old one “corresponded to a primitive economic order,” and because the West had not, and would not, move past Weimar.³³ As another example, the *Berliner Zeitung* published an article titled “Women treated ‘preferentially,’” a comparison of women’s rights in the workplace in the two Germanys. The author, Wilhelmine Schirmer-Pröscher, a member of the East German Liberal Democratic Party of Germany (LDPD) and deputy chairwoman of the DFD, claimed that during a recent trip to Hamburg, she was appalled to see so many unemployed women. She criticized the “forces in West Germany” that worked to keep women at home, unlike in the GDR.³⁴ In both articles, the editors of the East German media framed the West, especially its capitalist system and outdated notions of rights, as the cause of gendered inequalities.

The SED’s media campaign prompted a number of individuals and representatives of interest groups and state-level ministries to write to the Ministry of Justice to inquire about the forthcoming legislation. Some expressed fervent support for the new legislation. In January 1950, for instance, the DFD Brandenburg formulated and forwarded a resolution in support of the law and asked that the Ministry ensure that women had equal rights in their property.³⁵ Other respondents were clearly more ambivalent. Herr R. of Nauen, in Brandenburg, for example, indicated in response to a radio broadcast that he supported women’s choice to keep their maiden name because he favored *Gleichberechtigung*. He

³³ Hans Nathan, “Um die Neugestaltung,” *Neues Deutschland*, April 9, 1950, 5.

³⁴ Wilhelmine Schirmer-Pröscher, “Frauen “bevorzugt” behandelt,” *Berliner Zeitung*, April 23, 1950, 4.

³⁵ Protokoll öffentliche Frauenversammlung des DFD am 30.1.50 Kreisverband Wittenberge, January 30, 1950, DP 1/8038, BArch Berlin.

wanted, however, to see equality elsewhere too, where it discriminated against men, like in alimony payments.³⁶ Finally, some respondents disagreed fervently with expanding women's rights. As one example, Herr J., a retiree from Waren (Müritze) in Mecklenburg-Vorpommern explained that, as a man who had been married four times, he would find it confusing if each of his children took both parents' names. He stated, "A woman who does absolutely not want to submit herself to the will of the husband should remain alone and not establish an unhappy family, then she [best] serves all of humanity!"³⁷ These types of responses gave the SED some insight into the population's varied reactions to the legislative draft. Many more citizens never wrote to the Ministry or the media, indicating that they perhaps feared the ruling party or were indifferent. Nevertheless, the SED used these reactions by groups and individuals to monitor their progress and adjust their promotion of the proposed legislation.

This section has shown how numerous political, economic, social, and cultural factors intersected and informed the initial momentum behind family law reforms. As they drafted the new family law for the GDR, the legal experts in the People's Council and the Ministry of Justice took into consideration historic precedents as well as the Cold War competition with the West. Even in the face of potential resistance from society, the Ministry of Justice seemed confident that the *Volkskammer* was planning to pass the new family law by the end of 1950. In fact, according to numerous letters from Hans Nathan to others, the Ministry of Justice intended to send the new family law to the East German Parliament (*Volkskammer*) in

³⁶ Lieber Rundfunk!, February 5, 1950, DP 1/8038, Bl. 79, BArch Berlin.

³⁷ An den Berliner Rundfunksender, February 7, 1950, DP 1/8038, Bl. 76, BArch Berlin.

April 1950, with the goal of implementing it on 1 July 1950.³⁸ That never happened. The final section will show how this process was continually delayed and finally disappeared completely from the agenda of the SED leadership and the *Volkskammer* in late 1950 before reappearing in mid-1952. In the meantime, as the next section shows, the West began its own set of reforms in late 1949, the initial discussions for which lasted until early 1952.

Inciting Controversy Over A New Civil Code in West Germany, 1949–50

The East German Ministry of Justice got a head start on family law reforms, but the West German government and legislature were not far behind. Female activists such as Elisabeth Selbert, the Social Democratic lawyer best known for urging the inclusion of the equal rights clause in the Basic Law, had already raised the issue of a new Civil Code in the Parliamentary Council, but the matter could not gain traction until the declaration of the Federal Republic of Germany and the outcome of its first Bundestag elections on 14 August 1949. Following a close election, the CDU/CSU eked out a narrow victory over the SPD with 31 percent of the vote to the latter's 29.2 percent.³⁹ As the majority in the Bundestag, the Christian Democrats then rejected a grand coalition with the SPD in favor of an alliance with the FDP and DP.⁴⁰ On 15 September 1949, by a narrow margin, the Bundestag selected the pro-Western, Catholic, Christian Democratic Union chairman Konrad Adenauer as

³⁸ See for example: An die Landesregierung Sachsen – Justizministerium – in Dresden, February 29, 1950, DP 1/8038, Bl. 41. BArch Berlin. As another letter from Nathan to the *Zentralverband landwirtschaftlicher Genossenschaften Deutschlands* from March 13, 1950 already indicated, the process had been delayed until the end of the summer. See: Nathan an Zentralverband landwirtschaftlicher Genossenschaften Deutschlands, March 13, 1950, DP 1/8038, Bl. 45. BArch Berlin.

³⁹ Thomas Biedermann, *Deutschland in der Nachkriegszeit 1945-1949: Restauration oder Neubeginn?* (Verlag Thomas Biedermann, 2011), 62.

⁴⁰ Dennis L. Bark and David Gress, *A History of West Germany*, 2nd ed. (Oxford, UK; Cambridge, USA:

Blackwell, 1993), 325; Konrad H. Jarausch, *After Hitler: Recivilizing Germans, 1945-1995* (Oxford; New York: Oxford University Press, 2006), 136.

Chancellor over his opponent, Social Democratic leader Kurt Schumacher. A few days later, in a speech to the Bundestag, Adenauer laid out his agenda for the Federal Republic. For one thing, he embraced a social market economic system, in contrast to the planned economy Schumacher wanted and the Soviets already had.⁴¹ Currency reform and the introduction of the American Marshall Plan in 1948 had provided a vital boost to the faltering economy of the Western zone.⁴² The same year, British zone Minister of Economics, Ludwig Erhard, introduced the social market economy, defined by a delicate balance of social welfare provisions and a market free of governmental intervention except when “needed to ensure competition.”⁴³ As Adenauer’s Minister of Economics from 1949–1963, Erhard implemented these policies, to which contemporaries credited West Germany’s “economic miracle” during this period.⁴⁴

Adenauer and Erhard’s reticent attitudes toward planned economies were intrinsically linked to their stances on Western integration and reunification with the East. Adenauer pursued *Westbindung* as a matter of practical politics and firm belief that Western orientation was best for the future of Germany.⁴⁵ He rejected the idea of an inner-German ministry,

⁴¹ Verhandlungen des Deutschen Bundestages [1.] Deutscher Bundestag, 5. Sitzung, September 20, 1949, 22. According to Weitz, as a liberal capitalist, Adenauer was not entirely supportive of the social market economy at first but the competition with the East pushed the FRG to embrace some welfare provisions. Eric D. Weitz, “The Ever-Present Other: Communism in the Making of West Germany,” in *The Miracle Years: A Cultural History of West Germany, 1949-1968*, ed. Hanna Schissler (Princeton: Princeton University Press, 2001), 219-220.

⁴² Mark E. Spicka, *Selling the Economic Miracle: Reconstruction and Politics in West Germany, 1949-1957* (New York: Berghahn Books, 2007), 27.

⁴³ Ibid., 28.

⁴⁴ Ibid., 33.

⁴⁵ Ronald J. Granieri, *The Ambivalent Alliance: Konrad Adenauer, the CDU/CSU, and the West, 1949-1966* (New York: Berghahn Books, 2003), 31-33.

ostensibly on the grounds that the Allied Control Council prohibited the new republic from having any type of foreign office.⁴⁶ It is more likely that he opposed it for fear that such an office would legitimize the existence of the Soviet zone. Additionally, Adenauer maintained that the lack of free elections in the East had “forced East Germans into a Communist dictatorship.”⁴⁷ While he made some public calls to consider reunification, a position supported by his opponent Kurt Schumacher of the SPD, in practice he did not act on them.⁴⁸ Adenauer instead sought sovereignty for the FRG supported by its rearmament and participation in Western international defense (North Atlantic Treaty Organization, NATO) and economic communities (European Coal and Steel Community, ECSC).⁴⁹

In addition to his pro-Western and anti-Communist policies, Adenauer also had plans to transform Germany via social policy. As historians such as Robert G. Moeller, Eric Weitz, and Merith Niehuss have shown, for the CDU/CSU, the guiding force behind all (or most) social policy was the re-Christianization and “re-familialization” of the Federal Republic.⁵⁰ As such, Adenauer promoted the idealized vision of the “traditional” male

⁴⁶ Verhandlungen des Deutschen Bundestages [1.] Deutscher Bundestag, 5. Sitzung, 20. September 1949, 23.

⁴⁷ Grünbaum, *Deutsche Einheit*, 13.

⁴⁸ VDBT, 5. Sitzung, 20. September 1949, 22. In his address to the CDU Bundesparteitag in 1950 Adenauer referred to “Soviet Russia” as “not European but rather a Bolshevik power.” See Hans Edgar Jahn, *Die deutsche Frage von 1945 bis heute: der Weg der Parteien und Regierungen* (Zarrentin am Schaalsee: v. Hase und Koehler, 1985), 139; Henry Ashby Turner, *Germany from Partition to Reunification* (New Haven: Yale University Press, 1992), 118.

⁴⁹ Granieri, *The Ambivalent Alliance*, 38; Emil Kirchner and James Sperling, *The Federal Republic of Germany and NATO: 40 Years After* (New York: Springer, 2016), 4.

⁵⁰ Robert G. Moeller, *Protecting Motherhood: Women and the Family in the Politics of Postwar West Germany* (Berkeley: University of California Press, 1993); Merith Niehuss, *Familie, Frau und Gesellschaft: Studien zur Strukturgeschichte der Familie in Westdeutschland 1945-1960* (Göttingen: Vandenhoeck & Ruprecht, 2001); Weitz, “The Ever-Present Other”; see also Lukas Rölly-Alkemper, *Familie im Wiederaufbau: Katholizismus und Bürgerliches Familienideal in der Bundesrepublik Deutschland 1945-1965* (Paderborn: Schöningh, 2000).

breadwinner/female homemaker (and later female part-time worker) family.⁵¹ This image stood directly counter to the social reality of the “surplus of women,” which Adenauer attributed to the “consequences of war and the displacement of men.”⁵² As mentioned in chapter 2, there were 7 million more women than men in Germany after World War II and politicians viewed the demographic imbalance as part of the “crisis of the family.” They therefore attempted to respond to these issues early on through legislation aimed at recreating the “traditional” male breadwinner family model. In an address to the Bundestag, Adenauer called for the creation of jobs and training opportunities for women as one solution to their “unavoidable spinsterhood.”⁵³ Adenauer’s remarks conveyed that he supported women’s equal rights *only* because of the irreparable demographic imbalance. Without men, Adenauer implied, women had no choice but to work, and the CDU/CSU would support them as necessary until the FRG’s “surplus of women” righted itself. In the meantime, if a conflict arose between women’s rights and family protection, Adenauer and his party would defer to the latter because of their Christian conservative political beliefs.⁵⁴ He stated that the federal government would form a “women’s department” (*Frauenreferat*) to tackle these problems.

In November 1949, the oppositional SPD and KPD made the first proposals to the Bundestag to implement *Gleichberechtigung* in all legislation; create a department for

⁵¹ For a study on women’s part-time work, see Christine von Oertzen, *Teilzeitarbeit und die Lust am Zuverdienen: Geschlechterpolitik und Gesellschaftlicher Wandel in Westdeutschland 1948-1969* (Göttingen: Vandenhoeck & Ruprecht, 1999).

⁵² Verhandlungen des Deutschen Bundestages [1.] Deutscher Bundestag, 5. Sitzung, 20. September 1949, 26.

⁵³ VDBT, 5. Sitzung, 20. September 1949, 27.

⁵⁴ VDBT, 5. Sitzung, 20. September 1949, 26.

women in the federal government; and ensure equal wages for equal work.⁵⁵ The last proposal from the KPD gained no more traction in the Bundestag than it had the Parliamentary Council. In fact, from this point forward, the CDU/CSU, FDP, and SPD excluded the KPD from internal Ministry discussions of Civil Code reforms and other legislation because of strong anti-Communist sentiments in the West that limited available political space.⁵⁶ In addition, the federal government established a “women’s department” in the Ministry of the Interior in the fall of 1950, as a result the Bundestag did not pursue any legislation or further discussions of this idea. It was the SPD/KPD’s proposal from November 1949 to incorporate *Gleichberechtigung* in all legislation that remained in limbo. In the ensuing debates on 1 and 2 December 1949, representatives from the CDU/CSU made their position clear: that *Gleichberechtigung* meant equal, but different, and that any radical legal changes would interfere with, as Protestant lawyer and CDU member Robert Lehr put it, the “God-willed order of creation...especially in the fulfillment of marriage as a life union.”⁵⁷

The oppositional SPD persisted in its efforts despite warnings from Christian

⁵⁵ Antrag der Fraktion der SPD, Drucksache 176, Verhandlungen des Deutschen Bundestages [1.] Deutscher Bundestag, 3. November 1949; Antrag der Fraktion der SPD, Drucksache 177, Verhandlungen des Deutschen Bundestages [1.] Deutscher Bundestag, 8. November 1949; Antrag der Abgeordneten Renner und Genossen, Drucksache 206, Verhandlungen des Deutschen Bundestages [1.] Deutscher Bundestag, 15. November 1949.

⁵⁶ Nathanius an die Herren Bundesminister, April 26, 1950, B141/2055/43, BArch Koblenz; Dehler an Ilk, August 3, 1950, B141/2055/48, BArch Koblenz; Ilk an Dehler, September 1, 1950, B141/2055/49, BArch Koblenz. In their correspondence regarding a committee on family law, neither side recommended or mentioned Communist Party members, although the party had more representatives in the Bundestag than the Center Party and comparable numbers to other parties such as the DP and the Bayern Party. The Ministry’s reluctance to engage with Communists on the issue reflected its leaders’ ambivalence about the party.

⁵⁷ VDBT, 20./21. Sitzung, 2. December 1949, 626. Lehr was born in 1883, joined the Weimar-era DNVP, and studied law. He entered politics in the post-1945 period as the governor of the North Rhine region under the British occupation. See Kurt Düwell, “Robert Lehr,” last accessed December 31, 2016, <http://www.kas.de/wf/de/37.8217/>

conservatives that their proposals might disturb natural and preternatural meanings of gender roles. Frieda Nadig—selected by her party to speak because of her strident advocacy for Article 3 in the Parliamentary Council—asserted that the Bundestag must restructure all areas of economy, politics, and society to include *Gleichberechtigung*.⁵⁸ She assured the Bundestag that the huge undertaking before them was necessary, given that men were still patriarchs of the family and women still had the property rights of “patronized children.”⁵⁹ For Nadig and her SPD compatriots, equality did not override the importance of marriage and the family, but rather deserved to be incorporated into these institutions.

Outside the Bundestag and the federal government, the West German media was instrumental in the public discussion of the suggested new family law through a series of articles. The new liberal-conservative daily the *Frankfurter Allgemeine Zeitung*, founded in November 1949, for example, stated that it could not “fix the powers [embedded] in the BGB,” but it could outline the “prominent points on the legal situation of women.”⁶⁰ The paper’s use of “rights” in scare quotes as they discussed limits, for example, on marital property indicated that perhaps the editors were skeptical of maintaining the BGB’s treatment of women. The liberal newspaper *DIE ZEIT*, meanwhile, ran an article in January 1950 that featured anecdotes designed to demonstrate the complexity of the current legal situation for married couples. For example, there had been cases of men and women remarrying, under the impression that their husbands and wives had been killed in battle or by approaching troops, only to learn later that their spouses were alive. To whom, then, were they legally

⁵⁸ VDBT, 20./21. Sitzung, 1. December 1949, 566.

⁵⁹ VDBT, 20./21. Sitzung, 2. December 1949, 566.

⁶⁰ “Wie sieht der Gleichberechtigung der Frau aus?” *Frankfurter Allgemeine Zeitung*, November 23, 1949, 9.

married?⁶¹ At other points, the West German media informed about the developments in the East. In March 1950, for example, the *Frankfurter Allgemeine Zeitung* reported that new provisions of family law such as the surname clause and marital property were to be changed in the GDR.⁶² These examples demonstrate that, at an early stage, West German newspaper editors mediated debates on family law by offering readers a variety of perspectives.

The Bundestag decided to send the matter of family law to the Federal Ministry of Justice, where a lower level official named Maria Hagemeyer took on the reforms. Hagemeyer had studied law in Bonn and, after a brief stint in the Berlin Justice Ministry, became the first female judge in Germany in 1927.⁶³ After 1945, she was a district attorney in Bonn before being appointed to the Federal Ministry of Justice.⁶⁴ In 1951, Hagemeyer published a memorandum (*Denkschrift*) with proposals for new family law provisions in the BGB and the 1946 Allied Control Council marriage law. Although Hagemeyer emphasized reform above all, she also argued that parts of the old law did not conflict with the Basic Law. Hagemeyer stated, for example, that the age of marriage could remain different for men and women because “women mature earlier than men” and different ages did not present a

⁶¹ Alfred Thoß, “Eherecht und Ehetragik,” *DIE ZEIT*, January 19, 1950, <http://www.zeit.de/1950/03/eherecht-und-ehetragik/seite-3>

⁶² “Gleichberechtigung der Frau,” *Frankfurter Allgemeine Zeitung*, March 2, 1950, 3.

⁶³ “Jung und anmutig,” *Die ZEIT*, July 10, 1987, 1.

⁶⁴ According to *Der Spiegel*’s obituary, she was so well-known for her work on the *Denkschrift* that she was nicknamed “Gleichberechtigung-Marie.” “Gestorben,” December 9, 1991, *Der Spiegel* 50 <http://www.spiegel.de/spiegel/print/d-13491790.html>. Not much is known about her political affiliation. Robert Moeller indicates that she was Catholic but party association is not clarified. See Moeller, *Protecting Motherhood*, 253.

legal disadvantage.⁶⁵ In addition, she supported keeping the clause which “obligated spouses to a marital life community.”⁶⁶ She also retained the paternal family name on the grounds that it was important that children have the same name as the parents, but she offered hyphenation for mothers as an option.⁶⁷

She determined, however, that other provisions prioritizing male authority did not align with the principle of equality. The right of men to make all decisions, or the *Stichentscheid*, for instance, was one. Hagemeyer stated that it must be replaced with a clause that guaranteed equal decision-making, but she acknowledged the possibility of indecision and the necessity of third-party intervention.⁶⁸ Relatedly, she argued that the clause that forced women to live with their spouses must be overturned.⁶⁹ Furthermore, she asserted that the BGB’s prescription of women as the head of the household was against the Basic Law. In addition, Hagemeyer pointed out that the *Schlüsselgewalt* clause supposedly disadvantaged men.⁷⁰ Regarding legal transactions, both spouses would have the same obligation to the other, except in “circumstances when the matter should not be handled equally in the name of the other spouse.”⁷¹ Only those who abused their rights would have them removed by the Guardians’ Court. If spouses lived apart, they were obligated to support the other. In some

⁶⁵ Maria Hagemeyer, “Denkschrift über die Anpassung des geltenden Familienrechts an den Grundsatz der Gleichberechtigung von Mann und Frau (Art. 3 Abs. 2 GG) erforderliche Gesetzesänderungen,” Teil I, 5, B106/43313, BArch Koblenz.

⁶⁶ Hagemeyer, “Denkschrift,” Teil I, 7.

⁶⁷ Ibid., 14-15.

⁶⁸ Ibid., 9-10.

⁶⁹ Hagemeyer, “Denkschrift,” Teil I, section 10.

⁷⁰ Ibid., 15.

⁷¹ Ibid., 26.

regards, Hagemeyer's proposals represented significant departures from the old BGB, enforcing more egalitarian relations between spouses. In fact, on many subjects, her suggestions closely matched Nathan's suggestions in the East. In other areas, however, Hagemeyer adhered more closely to the old Civil Code, provided its regulations did not overtly contradict Article 3 of the Basic Law.

To some degree, Hagemeyer's proposals were a product of the two predominant juridical interpretations of the clause that had arisen in the past year in legal journals and important meetings of the judicial profession, such as the 1950 Jurists' Congress, or *Juristentag*, in the West.⁷² The first strain of thought, derived from texts by several liberal and Social Democratic legal experts, maintained that Article 3 of the Basic Law "normalized complete equality of women and that biological sexual difference allows no differential treatment in legal relations."⁷³ The second view, held by Christian conservative legal experts, was that "an 'equalization' cannot be in the essence of Article 3, but rather the physiological and functional differences of the sexes must be observed."⁷⁴ Hagemeyer explained that the cause for these prevailing differences of opinion was that the Basic Law did not define *Gleichberechtigung*. This particular circumstance arose, she asserted, because of the history of the Weimar constitution's equality clause, the discussions in the Parliamentary Council,

⁷² Robert Moeller's *Protecting Motherhood* outlines this meeting's discussions, 82-86. See also Christine Franzius, *Bonner Grundgesetz und Familienrecht: die Diskussion um die Gleichberechtigung von Mann und Frau in der westdeutschen Zivilrechtslehre der Nachkriegszeit (1945-1957)* (Frankfurt am Main: Klostermann, 2005), 59-60. Franzius explains that the *Deutscher Juristentag* agreed to remove the *Stichentscheid* and that courts could intervene when disagreements over children arose. The issue of the surname remained unclarified. For a transcript of Erna Scheffler's speech and Ulmer's rebuttal, see *Leitsätze zum Referat Landesverwaltungsgerichtsrätin Dr. Scheffler*, B411/5, Bl. 30-31, BArch Koblenz.

⁷³ Hagemeyer, "Denkschrift," Teil I, 3.

⁷⁴ *Ibid.*, 3.

and the constitutions of individual states within the FRG that had adopted their own equality clauses.⁷⁵ The consequence, she implied, was that the concept remained open to interpretation and offered little guidance for going forward.

Another strain of argumentation present in Hagemeyer's *Denkschrift* concerned the recent division of Germany and the increasingly tense Cold War relations between the two German states. First, Hagemeyer explained that individual state constitutions as well as the constitution of the GDR guaranteed that "men and women have equal rights." Second, she noted that, in stark contrast to the FRG, "in the Eastern zone, as far as one can see, [there are] no differences of opinion over the meaning and the extent of the concept of equality."⁷⁶ She also compared the Soviet Union's 1936 constitution and Article 7 of the GDR's 1949 constitution as a way of drawing correlations between the two texts. Finally, she observed that the East German constitution's immediate overhaul of all laws opposing *Gleichberechtigung* in the GDR and Article 117's 31 March 1953 deadline posed potential "legal insecurity," because both states would no longer follow the same laws.⁷⁷ Each of these statements engaged with the issue of equality and family law in the East, but in different ways. On the one hand, Hagemeyer implied that women's equality did not have to be that contentious—after all, many Germans across all four occupation zones already settled on it. On the other hand, she warned readers that the East was veering too close to the Soviet model and it could jeopardize German unity. Each of her points added to one larger argument: potential long- and short-term legal consequences for married men and women and their

⁷⁵ Ibid., 3.

⁷⁶ Ibid., 4.

⁷⁷ Hagemeyer, "Denkschrift," Teil I, 5.

families on both sides of the German-German border.

Related to her analysis of East Germany, Hagemeyer also used contemporary comparative law to point out possible paths for the West to take.⁷⁸ As a lower-profile Ministry official and legal expert, Hagemeyer was not bound by the politics of the ruling CDU/CSU or other parties and therefore could appropriate or consider ideas from other legal traditions as she saw fit. At times, for instance, she referred to other Western states, such as France, Belgium, or Spain, as well as Scandinavia. Regarding the husband's right to decide, for instance, she contrasted the patriarchal provisions of the Netherlands with those of Swedish, Soviet, and Chinese (Maoist) laws, which gave partners the equal right to decide, implying that perhaps other models existed.⁷⁹ Interestingly, Hagemeyer also extolled the Soviet Union for its progress in certain areas. Regarding the choice of men to decide the domicile, for example, Hagemeyer praised the Soviet zone's dismissal of the provision, though she ultimately rejected their version on the grounds that in West Germany, spouses could come to mutual decisions.⁸⁰ Comparative law, references to the East, and acknowledgment of different strains of thought in West Germany were all major influences on Hagemeyer's text.

Discussions in West German Society

As a memorandum, Hagemeyer's *Denkschrift* was limited to some extent because it was not legally binding, but it nevertheless stimulated discussion in society, which in turn

⁷⁸ Moeller does not give Hagemeyer's *Denkschrift* much attention, which is rather surprising given how much controversy it sparked in the FRG.

⁷⁹ Hagemeyer, "Denkschrift," Teil I, 9.

⁸⁰ Hagemeyer, "Denkschrift," Teil I, 13.

helped the Ministry of Justice gauge reactions on the ground level. Throughout 1951, the Ministry of Justice sent out copies to the major political parties and their women's committees and independent women's associations, requesting their opinions on the text.⁸¹ Some, mainly the political parties and groups that had already earlier supported a reform of the Civil Code before, responded favorably. Even the Protestant Church of the Rhineland—one of the factions comprising the larger Protestant Church in Germany (EKD)—offered tacit approval.⁸² Others, like the *Weltorganisation der Mütter Aller Nationen* (W.O.M.A.N.), an international women's organization affiliated with the peace movement, agreed with the spirit of the *Denkschrift*, but nevertheless offered their own suggestions for different provisions.⁸³ Perhaps most significantly, this camp included independent women's associations, other professional organizations, and some major political parties, such as the *Club der berufstätigen Frauen Hamburg*, the *Deutsche Akademikerinnenbund*, the *Deutscher Anwaltverein*, and the SPD.⁸⁴ To make their voices stronger and to coordinate their activities for women's equality, in the end of 1951, fourteen independent women's associations—confessional, trade unions, and professional—had formed an umbrella organization, the *Deutscher Frauenrat*, in the tradition of the pre-1933 *Bund Deutscher Frauenvereine*

⁸¹ Karsten an Frauenorganisationen, March 1951, B106/43313, BArch Koblenz; Woodsmall an Hagemeyer, B141/2017, Bl. 11, BArch Koblenz; Einladung zur Tagung des D.A.B. in Nürnberg vom 28.-30. Juli 1951, B141/2017, BArch Koblenz. Many of these organizations and even the Office of the United States High Commissioner for Germany invited Hagemeyer to speak on the subject of family law

⁸² Vorschlag zur Neugestaltung des Rechtes im Sinne der Gleichberechtigung von Mann und Frau, Evangelische Kirche im Rheinland, October 18, 1951, B141/2057/8-15, BArch Koblenz.

⁸³ Stellungnahme der Weltorganisation der Mütter aller Nationen, June 11, 1951, B141/2028/69, BArch Koblenz. The Archive of the German Women's Movement in Kassel describes W.O.M.A.N. as part of the peace movement. They saw motherhood and nurturing as the cornerstone to world peace. See "W.O.M.A.N. (1948-2010)," last accessed December 26, 2016, <http://www.addf-kassel.de/dossiers-und-links/dossiers/woman/>

⁸⁴ Stellungnahme des Deutschen Akademikerinnenbundes e.V., April 7, 1952, B141/2029/60, BArch Koblenz; Stellungnahme des Deutscher Anwaltvereins, March 13, 1952, B411/481, BArch Koblenz.

(BDF).⁸⁵ Funded by the American government, the *Deutscher Frauenrat* formed the Information Service for Women's Issues and began publishing the newsletter *Information for Women (Informationen für die Frau, IfF)* in April 1952.⁸⁶ The *Deutscher Frauenrat* and its newsletter became also an important voice in the debate about the draft of the Equal Rights Act.

Although Hagemeyer had her supporters, her *Denkschrift* also provoked opposition, namely from the Catholic and Protestant church leadership, who represented 43 percent and 51 percent of the population, respectively.⁸⁷ Especially fierce was the opposition from Catholic side. In February 1952, Catholic bishops warned Adenauer and the federal government that they had "serious concerns" about Hagemeyer's proposals.⁸⁸ Catholic Church leaders thereafter maintained firm opposition to the Ministry's work on family law. Protestant leaders took a slightly softer line, but nevertheless stressed their commitment to the family before equal rights. In March 1952, for instance, Otto Dibelius, the Chairman of

⁸⁵ The original fourteen included: *Arbeitsgemeinschaft der Wählerinnen, Arbeitsgemeinschaft für Mädchen und Frauenbildung, Arbeitsgemeinschaft Katholischer Frauen, Deutsche Angestellten-Gewerkschaft, Deutscher Akademikerinnenbund, Deutscher Frauenring, Deutscher Gewerkschaftsbund, Deutscher Hausfrauenbund, Deutscher Landfrauenverband, Deutscher Verband Berufstätiger Frauen, Evangelische Frauenarbeit in Deutschland, Jüdischer Frauenbund, Staatsbürgerinnenverband, and the Verband weiblicher Angestellter.*

⁸⁶ According to Denise Tschardt, the British occupation government refused to fund independent women's organizations, in contrast to the American occupation government, which not only funded women's associations immediately after the war, but continued to purchase subscriptions to *IfF* long after occupation funding ceased in order to finance the associations. See Denise Tschardt, *Re-Educating German Women: The Work of the Women's Affairs Section of British Military Government 1946-1951* (Frankfurt am Main; New York: P. Lang, 2003), 171; Angela Icken, *Der Deutsche Frauenrat: etablierte Frauenverbandsarbeit im gesellschaftlichen Wandel* (Opladen: Leske & Budrich, 2002), 57; Informationsdienst fuer Frauenfragen e.V., November 15, 1954, B106/48585, BArch Koblenz.

⁸⁷ These percentages remained unchanged since 1950. "Decline in Religious Observance among Catholics and Protestants (1960-1989)," *Datenreport 1992. Zahlen und Fakten über die Bundesrepublik Deutschland*, ed. Federal Office of Statistics, trans. Allison Brown (Bonn: Statistisches Bundesamt, 1992), 190-91. http://www.germanhistorydocs.ghi-dc.org/sub_document.cfm?document_id=846

⁸⁸ "Katholische Bischöfe zur Familienrechtsreform," February 21, 1952, *Frankfurter Rundschau*, 44. B141/2051/003, BArch Koblenz.

the Council of the Protestant Church in Germany, wrote to Hagemeyer. On the one hand, he agreed with Hagemeyer that married women could control their own property. On the other hand, he emphasized that his first priority was to ensure that “the new rules of the subjective rights of men and women” did not maintain the “presently endangered institutions of marriage and the family.”⁸⁹ For these reasons, the EKD supported the retention of measures that helped the family, such as the paternal surname and the *Stichentscheid* in cases of indecision.

In addition, the Ministry of Justice also received opinions from individuals. Whereas social organizations had focused primarily on the wording or legality of specific provisions, and church leaders had emphasized restoring the family, individuals homed in on other issues, often based on personal experiences and anecdotal evidence. For instance, men typically wrote to the Ministry with a range of requests that both helped and indicted former spouses. For example, Herr G. wrote in February 1952 that he had read in the last edition of *Der Spiegel* about the reforms and was curious to know about the right of spouses to inherit the property of the other upon death.⁹⁰ Some were less supportive of the proposals. A Herr M., a rector from Bavaria, wrote to the Ministry in March 1952. He asked rhetorically in his letter: “But how will it stand with the equal duties [emphasis original] of women? Will women, especially civil servants, also be held to contribute her part to the support of the family and herself?”⁹¹ He then elucidated his own story. Pronounced the guilty party in his divorce proceedings because his former spouse was unable to support herself, he had been

⁸⁹ Der Rat der Evangelischen Kirche in Deutschland an den Bundesminister der Justiz, March 22, 1952, B141/2057/59, BArch Koblenz.

⁹⁰ Gussmann an Hagemeyer, B141/2019/237, BArch Koblenz.

⁹¹ Rektor Chr. Müller an Dehler, B141/2020/10, BArch Koblenz.

paying her alimony, despite his remarriage and support of another woman. Their children were grown. How could it happen, he asked, “that a woman never never must rise up for her own support?”⁹² Herr M.’s letter highlighted that some men struggled against the old Civil Code because it forced them into difficult financial and personal positions.

For the women who wrote to the Ministry of Justice in overwhelming numbers, any expansion of rights was welcome. In October 1951, Frau W. from Frankfurt am Main wrote that her husband of 28 years had been “tormenting her mercilessly” because she refused to hand over half of her property in a divorce.⁹³ Since marrying, she recounted, she had to “stand behind the counter and watch, powerless, like an expensive piece of furniture, after the other wanders to this felling area and she herself is utterly withheld from him.”⁹⁴ She would consent to the divorce if she had the chance to divide the house and property.⁹⁵ Similarly, one recently divorced woman from Rottorf am Winsen, who had had trouble getting alimony from her ex-husband, pleaded for the Ministry to pass a law that would protect the family, not leave it to “a man to allow a family to go into misery and destitution.”⁹⁶ Another described her difficulties raising a family and working full time—in her case, through two wars—and wanted to know if the new law would help women’s economic status.⁹⁷ Yet another, a Frau M., expressed in February 1952 that she found it

⁹² Rektor Chr. Müller an Dehler, B141/2020/10, BArch Koblenz.

⁹³ Wieland an Dehler, October 17, 1951, B141/2019, Bl. 26, BArch Koblenz.

⁹⁴ Wieland an Dehler, October 17, 1951, B141/2019, Bl. 34-36, BArch Koblenz.

⁹⁵ Rottorf, B141/2019, Bl. 34-36, BArch Koblenz.

⁹⁶ Tegeler an Hagemeyer, B141/2020/109, BArch Koblenz. She wrote again in May 1952 to plead her case. See Tegeler an Dehler, B141/2020/133, BArch Koblenz.

⁹⁷ Wilhelma Fechnig an Bundesjustizministerium, B141/2020/113, BArch Koblenz.

shameful that as a married woman she had no rights to property or her own bank account or to keep her name. Moreover, she found it ridiculous to argue that the circumstances of the BGB were different, when women had always worked in agriculture or industry, and even bourgeois women who stayed at home were “busy from early until late.”⁹⁸ She ended by encouraging the Ministry “to listen to women [emphasis original], not churches.”⁹⁹

Other individuals harnessed the language of comparison to East Germany and the Eastern bloc in their letters. Some correspondents used reluctant praise of the East to pressure the Ministry to alter certain regulations. Herr M., for example, lauded the Soviet Union’s removal of alimony payments to support his own case, though he qualified that he was “no [emphasis original] Communist!”¹⁰⁰ Others picked up on the problem of legal unity. In an article in the *Aachener Nachrichten*, the first licensed anti-Nazi newspaper in postwar Germany, one author pleaded that “one foresees from the other problematic side [that] the thing is, legal development in the other half of Germany has progressed further than in the Federal Republic and that the demands of our time are taken into account.”¹⁰¹ Here, the author urged the Ministry to move quickly with their reforms in order to keep pace with the East. In both cases, the authors tried to use the progress in the East to pressure the West German federal government to pursue more expansive reforms.

This section has shown that momentum for a new family law—whether it reified the old law or offered a new vision—was building up in the West between November 1949 and

⁹⁸ Müller an Dehler, February 20, 1952, B141/2028/151, BArch Koblenz.

⁹⁹ Ibid.

¹⁰⁰ Rektor Chr. Müller an Dehler, March 6, 1952, B141/2020/10, BArch Koblenz.

¹⁰¹ *Aachener Nachrichten*, November 26, 1951, B141/2019/73, BArch Koblenz.

early 1952. From the start, the Bundestag was divided between left and liberal proponents of women's equality and Christian-conservative defenders of the "traditional" family based on "natural" gender roles. When Hagemeyer put together a list of proposals for forthcoming reforms to family law, she tried to balance these two, competing sides. What Hagemeyer's *Denkschrift* ultimately provoked was a society-wide debate—one that utilized a range of arguments, from the legality of the current regulations, the preservation of the traditional family, and the situation in the East—over the future of the Civil Code. As the Ministry worked to turn these myriad suggestions and critiques into a legislative draft, internal divisions threatened to derail the reforms of family law in the GDR.

Resisting and Revising Family Law in the GDR, 1950–53

At the same time that the SED and the Ministry of Justice created and propagated a new family law, the ruling party addressed other issues confronting women, especially mothers, in the workplace. The GDR already theoretically promised equal wages to men and women, a policy set down by the Soviets in 1946 and further encased in the 1949 constitution as a basic right of the new socialist state. In addition, on 19 April 1950, the *Volkskammer* passed the "Labor Law for the Promotion and Care of Manpower, the Increase of Productivity, and the Further Improvement of the Material and Cultural Situation of Workers and Employees."¹⁰² The law guaranteed every citizen the right to work "according to his capabilities." It also outlined how to increase productivity and the role of the trade unions. Furthermore, its regulations were supposed to promote the empowerment and training of

¹⁰² Gesetz der Arbeit zur Förderung und Pflege der Arbeitskräfte, zur Steigerung der Arbeitsproduktivität und zur weiteren Verbesserung der materiellen und kulturellen Lage der Arbeiter und Angestellten, 1950, <http://www.verfassungen.de/de/ddr/gesetzderarbeit50.htm>

women, though its provisions on this front were rather scant, other than stating that age and gender were not supposed to impede equal wages for equal work (and studies of practice show that gender often did interfere).¹⁰³ Additionally, one provision offered pregnant women time off before and after giving birth. Finally, the law did not regulate health codes for women or youth, only guaranteeing that such definitions were forthcoming.

These provisions aimed at women became the “Law for the Protection of Motherhood and Children and for the Equality of Women,” or the *Mutterschutzgesetz*. This law had been in the works since late 1949 in the Ministry of Labor and Health under the watchful eye of the well-known SED functionary and DFD leader Käthe Kern, who led the “Mother and Child” department.¹⁰⁴ Maternity protection laws, however, predated the GDR, going back to the late nineteenth century as a result of the labor movement and Chancellor Otto von Bismarck’s social welfare reforms.¹⁰⁵ Over the years, the imperial, Weimar, and Nazi governments made critical changes to the legislation, reducing women’s work hours, increasing wages, and upping maternity leave.¹⁰⁶ In the immediate postwar period, the Allies suspended these payments to working mothers and decided that the new German government could determine what regulations it preferred. Now that Germany was divided, GDR

¹⁰³ See as one example Karin Zachmann’s study *Mobilisierung der Frauen: Technik, Geschlecht und Kalter Krieg in der DDR* (Frankfurt am Main; New York: Campus, 2004).

¹⁰⁴ Gesetz der Arbeit zur Förderung und Pflege der Arbeitskräfte, zur Steigerung der Arbeitsproduktivität und zur weiteren Verbesserung der materiellen und kulturellen Lage der Arbeiter und Angestellten, 1950, <http://www.verfassungen.de/de/ddr/gesetzderarbeit50.htm>

¹⁰⁵ Moeller, *Protecting Motherhood*, 155.

¹⁰⁶ Grete Schmalz, “Gesetzlicher Mutterschutz Gestern und heute,” *Friedrich Ebert Stiftung*, <http://library.fes.de/gmh/main/pdf-files/gmh/1950/1950-06-a-282.pdf>; Ute Gerhard, *Frauen in der Geschichte des Rechts: von der frühen Neuzeit bis zur Gegenwart* (München: C.H. Beck, 1997), 753. See also Marc Buggeln and Michael Wildt, *Arbeit im Nationalsozialismus* (Berlin: Walter de Gruyter, 2014), 41; Moeller, *Protecting Motherhood*, 155-156.

politicians chose to reinstate welfare provisions in order to support and entice their largely female population to the workplace and the socialist planned economy.

On 21 September 1950, the Ministers' Council—the executive branch of the GDR—sent the “Law for the Protection of Motherhood and Children and for the Equality of Women” to the *Volkskammer*, who met a few days later to discuss and approve the *Mutterschutzgesetz*, a catch-all piece of legislation designed to promote what historian Dagmar Herzog calls “the triple burden” of work, housework, and political activity.¹⁰⁷ The law simultaneously provided state aid to working mothers, recriminalized abortion, gave women more rights in their partnerships and families, and opened doors to them in politics and the workplace. In addition to job training and political participation, this legislation reformed parts of the old BGB. The new law declared that “a healthy family is the cornerstone of a democratic society.”¹⁰⁸ Its text further stated that the equal standing (*Gleichstellung*) of men and women necessitated equality in family law, and reiterated that any laws opposing women's equality in marriage or the family were overturned. Thus, the man's right to decide was overturned explicitly in this provision and couples were mandated to make decisions together. Furthermore, marital status could also no longer prevent women from pursuing employment. Both parents would be expected to care for the children. Finally, illegitimate children would no longer be considered “a stigma.” The legislation promised that the Ministry of Justice would produce a corresponding and expansive law by the end of the

¹⁰⁷ Herzog, *Sex after Fascism*, 193. The East German media reported on this decision. See “Frauenrechte vor der Volkskammer,” *Nacht-Express*, September 22, 1950; “Gesetz über neues Familienrecht,” *Berliner Zeitung*, September 22, 1950.

¹⁰⁸ §12, Drucksache Nr. 142, *Protokolle der Provisorische Volkskammer der DDR* (Berlin: Volkskammer, 1950), 232-233.

year.¹⁰⁹ At the same time, the law did not change marital property regulations, divorce, or any number of other provisions that restricted women's equality with men. The central point of the law was to provide social aid to working mothers in order to incentivize and support their work under the Five Year Plan. It did not provide the extensive revisions that the old BGB required.

In their discourse surrounding the new law, members of the National Front—a coalition of Communist and non-Communist parties and mass organizations in the *Volkskammer*—voiced their support for the law by praising the Soviet Union as a model of pronatalist population policy, denigrating the preceding Nazi model, and emphasizing that the patriarchal Western model across the border dangerously limited women's emancipation.¹¹⁰ At the end of the meeting, the *Volkskammer* voted unanimously to adopt the law. Historians debate why the *Mutterschutzgesetz* turned out this way. One explanation is offered by Gesine Obertreis, who theorizes that “the central planning of all economic and social processes made it quite possible to abruptly break and initiate a new direction.”¹¹¹ To some degree, Obertreis's suggestion is logical, given that the SED-controlled Ministry of Justice and the *Volkskammer* had so easily been able to create and pass legislation with the unanimous support of approximately 466 representatives. She overlooks that compromises on the part of the SED several months beforehand were at play as well. Outside the government ministries, mass organizations like the DFD propagated their own version of a law for women's rights at home and in the workplace. On 7 March 1950, at the International

¹⁰⁹ §12-18, Drucksache Nr. 142, *Protokolle der Provisorische Volkskammer der DDR* (Berlin: Volkskammer, 1950), 232-233.

¹¹⁰ *Protokolle der Provisorische Volkskammer der DDR* (Berlin: Volkskammer, 1950), 524, 525, 526, 538.

¹¹¹ Gesine Obertreis, *Familienpolitik in der DDR: 1945-1980* (Opladen: Leske und Budrich, 1986), 114.

Women's day celebration, the DFD met with Minister-President Otto Grotewohl to offer their proposals for the new "women's law," or *Frauengesetz*. Above all, the DFD wanted to work toward the "strengthened inclusion of women in economic life," which, they argued, would require increasing the numbers of employed women and offering them the chance to earn higher qualifications in fields like optics and engineering.¹¹² Women would also need to receive better benefits and protection in the workplace. They furthermore called for greater civic participation of women. Finally, they stated that family law would have to be reformed. Not long after this meeting, on 18 April 1950, the Politbüro of the SED issued an official statement that it would pursue a law meeting the DFD's demands.¹¹³

Publicly, the SED was very much in favor of the *Frauengesetz*, because the party touted itself as the deliverer of women's emancipation. Behind the scenes, however, the DFD faced an uphill struggle. On 8 June 1950, Grotewohl met with several leading DFD members (who were also members of the SED Central Committee), the Minister of Justice, and other prominent SED officials. He reported that the Soviet Control Commission refused to allow the law as it was, claiming it was "a declaration, not concrete provisions."¹¹⁴ Moreover, he asserted that the SED had to contend with changing notions of socialism and women's equality. He argued that the SED's "perceptions were outdated" because August Bebel was "obsolete."¹¹⁵ This statement was in line with contemporary Soviet thinking, which had

¹¹² "Vorschläge des DFD," March 7, 1950, DY30/IV 2/17/30, 0024, BArch Berlin. See also Käthe Kern, "Die DDR sorgt für Mutter und Kind," *Tägliche Rundschau*, March 28, 1950.

¹¹³ "Das Politbüro der SED an die Frauen," *Neues Deutschland*, April 19, 1950.

¹¹⁴ Niederschrift über Besprechung des Entwurfs eines Gesetzes über die gesellschaftliche Stellung der Frau am 8.6.1950, June 8, 1950, DY30/IV 2/17/30, BArch Berlin.

¹¹⁵ Niederschrift über Besprechung des Entwurfs eines Gesetzes über die gesellschaftliche Stellung der Frau am 8.6.1950, June 8, 1950, DY30/IV 2/17/30, BArch Berlin.

initially favored women's liberation before reversing in the 1930s to support more traditional family structures—hence re-outlawing abortion, making divorce more difficult, and again requiring legal registration of marriage. One major aim of this change was during and after the Second World War a pro-natalist policy that attempted to address the vast population losses.¹¹⁶ In the end, Grotewohl, DFD, and SED members decided to spend the next week reworking the law under the auspices of the State Administration department of the Politbüro of the SED.¹¹⁷ The next time the law appeared was before the Ministers' Council in September 1950. In the interim, the SED settled on a compromise measure: merging the *Mutterschutzgesetz*, the *Frauengesetz*, and parts of the proposed family law, which is how elements of each piece of legislation ended up in the final version of the “Law for the Protection of Motherhood and Children and for the Equality of Women.”

To be sure, the SED recognized that media propagation was a crucial part of the success of the 1950 legislation. After the *Volkskammer* passed the *Mutterschutzgesetz* in September 1950, all of the major papers, such as the *Berliner Zeitung* (BZ), printed the law for all East Germans to read, proclaiming that “women [were] finally equal” in the GDR.¹¹⁸ Evincing this claim, *Neues Deutschland* later ran an article explaining how working women at the synthetic fiber factory in Premnitz benefited from the law's mandated “social

¹¹⁶ Wendy Z. Goldman, *Women, the State and Revolution: Soviet Family Policy and Social Life, 1917-1936*, 337; see also O. M. Stone, “The New Fundamental Principles of Soviet Family Law and Their Social Background,” *The International and Comparative Law Quarterly* 18, no. 2 (1969): 392–423, 394–95. Stone suggests that divisions in Soviet hierarchy prevented them from reforming their own 1944 family law until the 1960s.

¹¹⁷ Niederschrift über Besprechung des Entwurfs eines Gesetzes über die gesellschaftliche Stellung der Frau am 8.6.1950, June 8, 1950, DY30/IV 2/17/30, BArch Berlin.

¹¹⁸ “Gesetz über den Mutter- und Kinderschutz und die Rechte der Frau,” *Berliner Zeitung*, September 28, 1950, 4; see also Käthe Kern, “Gleichberechtigung der Frau wird verwirklicht,” *Neues Deutschland*, September 27, 1950, 2; “Gesetz über den Mütter- und Kinderschutz und die Rechte der Frauen,” *Bauern-Echo*, September 28, 1950; “Gesetz über die Rechte der Frau,” *Neues Deutschland*, September 28, 1950.

facilities”—in this case, a laundry, a kindergarten, and a children’s clinic, among other things.¹¹⁹ In addition, *BZ* emphasized the law’s efforts to increase the role of women in social and cultural life and balance out the surplus of women to men.¹²⁰ Furthermore, *BZ* used women’s voices to reiterate the law’s surefire impact on the West. One *BZ* article quoted a woman from the Western side of Berlin asking about the law.¹²¹ Another woman, a trade union representative, was cited as saying that the *Mutterschutzgesetz* would show West German women “how to fight for such profits.”¹²² These examples demonstrated a clear strategy by the paper’s editors to show that the East was more progressive than the West, who would learn from their example.

The *BZ* editors also employed the voices of men in their reporting to demonstrate how the law affected men and women. On 7 October 1950, for instance, the paper ran an article titled “For Some, the Women’s Law is a Hard Nut [to Crack].” The article quoted East German men who openly supported the law and West Berlin men who opposed it. One man described how his wife went to a DFD meeting and came back “crazed” about the *Mutterschutzgesetz* in the East.¹²³ He told the paper, “These people in the East are totally mental!”¹²⁴ With these excerpts, the East German media contrasted “more civilized” Eastern men with less sympathetic Western men.

¹¹⁹ “Das Recht der Frau wird verwirklicht,” *Neues Deutschland*, November 14, 1950.

¹²⁰ “Gesetz über den Mutter- und Kinderschutz und die Rechte der Frau,” *Berliner Zeitung*, September 28, 1950, 4.

¹²¹ “Wir wollen diesem Gesetz Ehre machen!” *Berliner Zeitung*, September 30, 1950, 6.

¹²² Ibid.

¹²³ “Gesetz der Frau für manche eine harte Nuß,” *Berliner Zeitung*, October 7, 1950, 6.

¹²⁴ “Gesetz der Frau für manche eine harte Nuß,” *Berliner Zeitung*, October 7, 1950, 6.

Another common theme in the media was the reactions of married men to the new legislation. *Neue Zeit*—the organ of the East-CDU, which was increasingly falling into line with the SED—printed an article on 29 September 1950 that relayed the story of a “Herr Wegner,” who attempted to exercise his right to a final decision on his teenage son’s education. The paper reported that his wife stepped in with a copy of the morning edition, pointed out to him that his legal rights had changed, and he subsequently altered his perspective.¹²⁵ A *BZ* comic from the same date depicted a man taken out on a stretcher by medical orderlies. The caption explains that he had opposed his wife’s right to work, and now she was his superior at work, which shocked him.¹²⁶ These messages were meant to push male readers to adopt more progressive positions on women’s rights in marriage and the family.

The media’s presented the law as a victory for women’s economic and civil rights. The SED leadership hoped that this argument would win female voters the upcoming elections in October 1950 and thus pressed for the quick passage of the law. In general, according to historian Mary Fulbrook, elections served in the GDR, “as a means of mass mobilization, presenting candidates and issues to the public, and advertising policies which had already been decided upon elsewhere.”¹²⁷ This observation also applied to the new family law and *Mutterschutz*. The ruling party had already decided on the parameters of the law and used its incentives for working women and mothers to attract their votes in the upcoming elections.

¹²⁵ “Herr Wegner lernt von seiner Frau,” *Neue Zeit*, September 29, 1950, 3.

¹²⁶ “Nach §15 des Frauengesetzes,” *Berliner Zeitung*, September 29, 1950, 2.

¹²⁷ Mary Fulbrook, *A History of Germany, 1918-2014: A Divided Nation* (Chichester, West Sussex, UK; Malden, MA, USA: Wiley Blackwell, 2014), 203.

According to the *Mutterschutzgesetz*, the Ministry of Justice was slated to pass larger family law reforms by the end of 1950, but it did not. Although newspaper articles in early 1951 promoted the new family law¹²⁸, the Ministry set aside the reforms until July 1952, when the SED Party Congress (*Parteikonferenz*) resurrected the matter of the old Civil Code as part of its forthcoming “building of socialism (*Aufbau des Sozialismus*)” initiative.¹²⁹ To create a new socialist family law, the Ministry of Justice convened a Legislative Commission (*Gesetzgebungskommission*) in December 1952. In her opening address to the Commission, committee chairwoman Hilde Benjamin attributed the legislation’s delayed passage to “many causes.”¹³⁰ One key factor, she acknowledged, was that the 1950 *Mutterschutzgesetz* had already removed some of the most controversial regulations of the former family law, such as husbands’ rights to make decisions for their wives and restrict their rights to work.¹³¹

A second possible factor was that the legislation did not really have a champion within the Ministry at the time. Benjamin had largely stepped out of the picture because of her role on the Supreme Court administering a series of show trials between 1950 and 1952.¹³² Under her watch, roughly 78,000 people were convicted of crimes in 1950 alone.¹³³ Hans Nathan, meanwhile, divided his time between the Ministry and the Humboldt University. Finally, building socialism—a process that included abolishing states in the

¹²⁸ Hans Nathan, “Frauengesetz und die Familienrechtsreform,” *Tägliche Rundschau*, January 6, 1951.

¹²⁹ Obertreis, *Familienpolitik*, 130.

¹³⁰ Gesetzgebungskommission, Dec. 2, 1952, DP 1/VA 6483, BArch Berlin; also in DP 1/7893/2, BArch Berlin.

¹³¹ Gesetzgebungskommission, Dec. 2, 1952, DP 1/VA 6483, BArch Berlin.

¹³² Franz-Josef Kos, “Politische Justiz in der DDR. Der Dessauer Schauprozeß vom April 1950,” *Vierteljahrshefte für Zeitgeschichte* 44, no. 3 (1996): 395-429, 396.

¹³³ Jeffrey Herf, *Divided Memory: The Nazi Past in the Two Germanys* (Boston: Harvard, 1997), 108.

GDR, enforcing their own version of *Gleichschaltung* of the educational and judicial systems and religious groups, and cracking down on political dissent—was beginning to occupy much of the SED’s attention.¹³⁴ With the most urgent provisions of family law taken care of in the *Mutterschutzgesetz* and the attention of the SED functionaries in the Ministry of Justice diverted elsewhere, family law reforms were momentarily delayed.

When the Legislative Commission finally reopened debates on family law in late 1952, the stakes of their work had changed. This time, Benjamin, as chairwoman, asserted to the Commission that the work set out before them was no longer just about women, but about the “entire complex of family law, including divorce, custody, and so forth.”¹³⁵ Letters to the Ministry of Justice and recent court decisions underscored the very issues that Benjamin raised about divorce and other sections of the law. One correspondent, for instance, explained that he had been separated from his wife for 20 years, divorced for 10, and was still paying her alimony. He wanted to know how long this would continue in the GDR, given that the 1950 legislation did not address divorce.¹³⁶ Others wrote to inquire about adoption and custody rights.¹³⁷ Court decisions highlighted the ongoing dilemma. Without a law, judges had to rely on the “equality principle” to guide their decisions, which was open to interpretation, depending on the issue. In matters of property, for instance, the decision was

¹³⁴ Gary Bruce, *Resistance with the People: Repression and Resistance in Eastern Germany (1945-1955)* (Lanham, MD: Rowman and Littlefield, 2003), 159; see also Christian Ostermann, *Uprising in East Germany 1953: the Cold War, the German Question, and the First Major Upheaval Behind the Iron Curtain* (Budapest: Central European University Press, 2011), xxxi.

¹³⁵ Gesetzgebungskommission, Dec. 2, 1952, DP 1/VA 6483, BArch Berlin.

¹³⁶ Rudolf Brumme an MdJ, March 12, 1950, DP 1/8038, Bl. 57, BArch Berlin.

¹³⁷ Nathan an Thiele, April 15, 1950, Bl. 71, DP 1/8038, BArch Berlin. See also Erich Thiele an MdJ, April 5, 1950, DP 1/8038, Bl. 70, BArch Berlin.

rather straightforward: women were entitled to their own.¹³⁸ Other issues presented more complex problems. In the case of divorce, because men and women were granted the equal right to work, “the right to alimony was negated.”¹³⁹ One expert even ruled that “a divorce is ‘no license for a divorced woman to lead an idle life, speculating for the alimony of the husband’.”¹⁴⁰ At the same time, courts had to take into account what women contributed to the home, in the case they did not work. After all, in the early 1950s, it was not unusual for women to leave the workforce as men returned from POW camps.¹⁴¹ Thus, one of the outcomes of the “legal chaos” of this time was that Communist judges became so focused on creating equality between men and women in divorce settlements that they overlooked how the removal of alimony would disadvantage women, especially housewives.

In response to these issues, the *Gesetzgebungskommission* finally tackled this complex of laws. In contrast to the unified and enthusiastic front the SED put on for the public, the internal work was sometimes contentious and more often tedious. While some topics attracted little attention—no one disagreed, for example, that marriages should be forbidden between relatives and that bigamy should be outlawed—others proved more controversial and demonstrated the difficulties Communists faced in implementing socialism. The family surname was one. The commission had to decide if it prioritized unifying the family under one name or women’s individual rights and claims to self-identity (especially in professional life). In the end, they left it up to the discretion of the marrying partners to

¹³⁸ Obertreis, *Familienpolitik*, 118.

¹³⁹ Ibid., 119.

¹⁴⁰ Ibid., 119.

¹⁴¹ Harsch, *Revenge*, 51, 210.

choose what they preferred as a surname. Property posed another challenge for the SED, which considered “life partnership (*Lebenskameradschaft*) as a progressive social aim.”¹⁴² If one of the spouses purchased something with money he or she earned *before* marrying, did it become communal marital property? Did entitlement to communal marital property change if a woman stayed home and contributed no income, but offered her domestic labor instead? For a state that absolved to get rid of bourgeois notions of individual property, marital property law presented a complex dilemma. It was up to the *Gesetzgebungskommission* to figure out how to balance the conflicting priorities of the SED regime with the realities facing East German citizens.¹⁴³ While their efforts eventually resulted in a new legislative draft, its approval was pushed aside in favor of other more pressing issues to the regime and the Ministry of Justice, such as reforming the judicial system and clamping down on political opposition.¹⁴⁴ Moreover, in March 1953, the death of Joseph Stalin, the de-Stalinization of East Germany, and then the 17 June 1953 uprisings shook up the GDR and consumed the SED’s attention.

Throughout the early 1950s, the official discourse on family law in the GDR presented the draft legislation as a symbol of progress. SED officials within the government and those running the East German media presented the law as a victory over Weimar- and Nazi-era restrictions on women’s rights. Moreover, they situated their legislation, in many ways, as modeling the Soviets’. Finally, they depicted the law as the winner in the contest with the West for women’s emancipation. At the same time, SED leaders such as Nathan and

¹⁴² Gesetzgebungskommission, Dec. 2, 1952, DP 1/VA 6483, BArch Berlin.

¹⁴³ Ibid.

¹⁴⁴ Klaus Schroeder, *Der SED-Staat: Geschichte und Strukturen der DDR 1949-1990* (Köln: Böhlau, 2013), 116, 120-121.

Benjamin confronted objections from its own citizens, the reluctance of members of the ruling party, and uncertainty in court rulings. Furthermore, at some points during these debates, the Ministry of Justice focused its attention elsewhere. As a result, while family law took a few steps forward in this period, it was ultimately hindered by the SED's reticence to pursue more radical reforms.

Negotiating Equal Rights for Men and Women in West Germany, 1952–53

In March 1952, the West German Minister of Justice, Thomas Dehler, debuted a new legislative draft based on Hagemeyer's memorandum, the resulting responses from women's organizations and churches, and opinions from other federal ministries.¹⁴⁵ Dehler, born in 1897, fought in the First World War before earning a law degree and joining the liberal German Democratic Party in 1920. After 1945, he became a district attorney in Bamberg and then represented the American zone in the Parliamentary Council as an FDP member. When Adenauer took office as Chancellor, he appointed Dehler to the post of Minister of Justice.¹⁴⁶

Dehler's personal experiences and convictions as a liberal politician in a new, Western-oriented government informed his approach to the new legislation. One of the FRG's goals, according to Dehler, was "to adapt the current law to the principle of equal rights of the sexes"—a goal, incidentally, that superficially resembled that of the GDR's family law. In comparison to the GDR, however, the very concept of equality was more contested in the FRG. Furthermore, he stated that the Ministry's second goal was to "restore

¹⁴⁵ See B141/2060, BArch Koblenz for correspondence between the Ministry of the Interior and the Ministry of Justice.

¹⁴⁶ Udo Wengst, *Thomas Dehler: 1897–1967. Eine politische Biographie* (Munich: R. Oldenbourg Verlag, 1997).

legal unity in the area of family law.”¹⁴⁷ Unlike the East Germans, who emphasized all-German unification, West German politicians did not explicitly focus on the legal unity with the East, but rather the “entire federal territory (*Bundesgebiet*),” meaning all of the Western sectors.¹⁴⁸ This approach allowed them to avoid legitimizing the East while also promoting an image of unifying Germans in the early years of the Federal Republic.

Although Dehler argued that his proposed law promoted equality and unity, in reality, it represented ambivalence and compromise. In certain regards, his legislative draft did not fundamentally change the old Civil Code. For instance, he retained the BGB’s guarantee of equal obligation to the matrimonial community. His draft also kept the paternal family name, but allowed women to hyphenate with their maiden names.¹⁴⁹ In addition, Dehler maintained that women must have the right to work, but they must also uphold their domestic duties.¹⁵⁰ At the same time, his version changed many parts of the old law. For instance, he removed the *Stichentscheid* unequivocally. He decided that the *Schlüsselgewalt*, formerly the right of women only, had to extend to both spouses.¹⁵¹ In addition, his version allowed both parents (not just the father) to determine when a child was of age.¹⁵² The age of marriage—to which mothers *and* fathers had to consent—would be the same for men and women (18 years of

¹⁴⁷ Begründung zu dem Entwurf eines Gesetzes über die Gleichberechtigung von Mann und Frau auf dem Gebiete des bürgerlichen Rechts und über die Wiederherstellung der Rechtseinheit auf dem Gebiete des Familienrechts, April 21, 1952, B106/43313, BArch Koblenz.

¹⁴⁸ *Idem*, April 21, 1952, B106/43313, BArch Koblenz.

¹⁴⁹ §1355, Änderung des Bürgerlichen Gesetzbuches, Bl. 33, B106/43313, BArch Koblenz.

¹⁵⁰ §1356, Änderung des Bürgerlichen Gesetzbuches, Bl. 33, B106/43313, BArch Koblenz.

¹⁵¹ §1357, Änderung des Bürgerlichen Gesetzbuches, Bl. 34/35, B106/43313, BArch Koblenz.

¹⁵² §4, Änderung des Bürgerlichen Gesetzbuches, Bl. 11, B106/43313, BArch Koblenz.

age).¹⁵³ In addition, out-of-wedlock children no longer had to live with their fathers, but could share either parent's domicile.¹⁵⁴ Dehler determined that spouses no longer had to live together, a provision that had previously disadvantaged women.¹⁵⁵ Under the new regulations, men and women would be responsible for support (*Unterhalt*) of the household and family.¹⁵⁶ He furthermore overhauled the old marital property system, proposing that spouses would have control over their own property, would manage shared property, and would benefit from an "equalization of gains" clause.¹⁵⁷ Regarding parental rights, Dehler stated that the old BGB's regulations were decidedly against equality and therefore parents had to share authority over the children, including the right to make decisions.¹⁵⁸

Although parts of Dehler's legislation garnered positive responses from the public, such as women's organizations and female party representatives, he endured more negative feedback from Protestant and Catholic Church leaders and the Christian conservative Adenauer administration. At a meeting in April and May 1952, pastors, bishops, and other Catholic and Protestant public figures made it clear to Dehler that they did not believe individual rights could endanger the familial community.¹⁵⁹ The Catholic faction took an especially hard line on this issue, supporting the retention of the *Stichentscheid* in spousal

¹⁵³ §1303, 1305, Änderung des Bürgerlichen Gesetzbuches, Bl. 16/17, B106/43313, BArch Koblenz.

¹⁵⁴ §11, Änderung des Bürgerlichen Gesetzbuches, Bl. 14, B106/43313, BArch Koblenz.

¹⁵⁵ §10, Änderung des Bürgerlichen Gesetzbuches, Bl. 13, B106/43313, BArch Koblenz.

¹⁵⁶ §1360, Änderung des Bürgerlichen Gesetzbuches, Bl. 37/38, 38/39, B106/43313, BArch Koblenz.

¹⁵⁷ Änderung des Bürgerlichen Gesetzbuches, Bl. 49, B106/43313, BArch Koblenz.

¹⁵⁸ Änderung des Bürgerlichen Gesetzbuches, Bl. 151-161, B106/43313, BArch Koblenz.

¹⁵⁹ Aktenvermerk über eine Besprechung mit Vertretern der evangelischen und der katholischen Kirche, April 4, 1952, B141/2057/97, BArch Koblenz.

and parental relations. Protestants took a softer line on this front; they supported the removal of the *Stichentscheid* in marriage, but not parental authority. In an effort to please his opponents, Dehler chose “a middle line: on the one side he left the claims of the Catholic Church unconsidered and stuck to Hagemeyer’s proposal to allow both spouses to decide. On the other side he left the right to decide to the father, diverging from the *Denkschrift* and holding to the line of the Protestant Church.”¹⁶⁰

Compromise, as Dehler soon discovered, was not the correct solution in the eyes of the Adenauer administration. He confronted discord while meeting with the Federal Cabinet on 27 June 1952. Although most of the Cabinet agreed that men and women were mutually obligated to contribute to the marital community, they also supported retaining measures that reinforced male authority, such as the *Stichentscheid*, which Dehler had opposed.¹⁶¹ They took this stance, Adenauer argued, because they believed that Articles 3 and 6 of the Basic Law could not be interpreted in isolation of one another. While Dehler and Adenauer agreed that a man could have the final decision in cases regarding the children, they stood at odds over the place of the *Stichentscheid* in marriage. Dehler defended himself by noting that his draft had garnered approval from Catholic and Protestant leaders, but it was not enough to convince the other Christian conservative Cabinet members.¹⁶²

¹⁶⁰ Franzius, *Bonner*, 61.

¹⁶¹ 1. Entwurf eines Gesetzes über die Gleichberechtigung von Mann und Frau auf dem Gebiete des bürgerlichen Rechts und über die Wiederherstellung der Rechtseinheit auf dem Gebiete des Familienrechts (Familienrechtsgesetz), BMJ, 230. Kabinettsitzung am 27. Juni 1952, Die Kabinettsprotokolle der Bundesregierung. Present at this meeting were Dehler and his deputy Strauss, Adenauer (Chancellor), Fritz Schäffer (Finance Minister), Lenz (Staatssekretär), Hans Lukaschek (Minister for Refugees’ Affairs), and Anton Storch (Labor Minister).

¹⁶² Ibid.

Although Dehler tried to fight the Federal Cabinet¹⁶³, under duress from the Federal Chancellor and other Ministers, he reinstated the controversial *Stichentscheid* provision. His opponents argued that Article 3's guarantee of equality did not apply to measures such as the *Stichentscheid* in marriage. In addition, he agreed to change other regulations, allowing now, for example, that women could only work if it was "reconcilable with her duties in marriage and the family."¹⁶⁴ Furthermore, under this version of the law, a woman would contribute to the household via domestic labor and would only seek employment outside the home if her husband's income was not sufficient. To drive these points home even more, Adenauer wrote to Dehler on 2 September 1952 to remind him that prohibiting women from following decisions that went against their well-being would only endanger the marriage and therefore opposed the goals of the Federal Cabinet.¹⁶⁵

The Bundesrat, the representation of the Länder at the national level, received the federal government's draft in September 1952. On most issues, such as the family name, the Bundesrat did not challenge the Federal Cabinet. On other matters, however, it opposed the federal government. Regarding the *Stichentscheid* in marriage, for instance, the Bundesrat responded that it would not accept "a one-sided right of the man to decide during differences of opinion between spouses," stating that it would only "deepen the conflict."¹⁶⁶ The federal government ultimately rejected this proposal, in order to "promote indeed the best for the

¹⁶³ On July 4, 1952, Dehler wrote to the Staatssekretär of the Bundeskanzleramts and the other Federal Ministers to explain again his reasoning for the new law. See Dehler an Staatssekretär, July 4, 1952, B136/540/123-129, BArch Koblenz.

¹⁶⁴ Dehler an Adenauer, July 10, 1952, B136/540, BArch Koblenz.

¹⁶⁵ Adenauer an die Herren Bundesminister, 2. September 1952, B136/539/288-9, BArch Koblenz.

¹⁶⁶ Änderungsvorschläge des Bundesrates zum Entwurf eines Gesetzes über die Gleichberechtigung von Mann und Frau, September 26, 1952, B136/540/360, BArch Koblenz.

family.”¹⁶⁷

The federal government’s prescriptions for what was best for the family ultimately divided society. On one side were Christian conservatives, who largely supported the Adenauer administration, although to different degrees. Catholic leaders fell completely into line with the Federal Cabinet, supporting a family model in which men still made major decisions for their wives and families, controlled all marital property, used the patriarchal family name, and relied on female caretakers in the home. One Catholic publication justified its position by arguing that “wives and mothers are the center of the home, which is an inviolable foundation of Judeo-Christian family order.”¹⁶⁸ Protestants took a more moderate position, but nevertheless stressed their commitment to “God’s order.”¹⁶⁹ For this reason, they continued to support a family model in which women took their husbands’ surnames and men could still make all decisions for the children, while they rejected male authority in marital decision-making and male control over marital property.

In addition, the conservative press expressed its support of the Adenauer administration through a number of different strategies. Journalist Winfried Martini of the *Münchener Merkur* compared the Civil Code reforms to the aftermath of the French Revolution, stating that then, the “sacramental character” of marriage was “robbed” and “degraded to a bourgeois legal contract.”¹⁷⁰ He went on to call *Gleichberechtigung*

¹⁶⁷ Stellungnahme der Bundesregierung zu den Änderungsvorschlägen des Bundesrates zu dem Entwurf eines Gesetzes über die Gleichberechtigung von Mann und Frau auf dem Gebiete des bürgerlichen Rechts, September 30, 1952, B136/541/28, BArch Koblenz.

¹⁶⁸ “CND,” September 1951, B106/43313, Bl. 94, BArch Koblenz.

¹⁶⁹ Dibelius an Dehler, March 22, 1952, B106/43313, BArch Koblenz.

¹⁷⁰ “Winfried Martini,” last accessed December 9, 2016, <https://www.munzinger.de/search/portrait/Winfried+Martini/0/6581.html>

“satire.”¹⁷¹ Meanwhile, the conservative *Frankfurter Neue Presse* warned readers that *Gleichberechtigung* was the work of “a minority” and that women could not be expected to serve in the military or work in mines or furnace—veiled references to East Germany and the Soviet Union, which employed women in industrial jobs in much higher numbers than in the West.¹⁷² Finally, others focused on the draft’s passage through the government. The CDU organ *Union in Deutschland* vaguely alluded to the controversies over the law, stating simply that Dehler’s version “did not find the full agreement of the federal cabinet.”¹⁷³ All of these articles attempted to undermine Dehler’s proposals and support the Adenauer administration’s alterations to the law.

These Christian conservative positions differed from those of the independent women’s associations, trade unions, professional organizations, and more left and liberal leaning media pundits in West German society. In their petitions to the federal government, groups such as the *Deutscher Frauenring*, the *Deutscher Gewerkschaftsbund*, and the *Deutscher Anwaltverein* laid out their visions of future German families. What they imagined, in contrast to the old BGB and the Adenauer administration’s proposals, were marriages in which women had mutual say in important decisions, could retain some individual identity by hyphenating their surnames, were no longer the legally designated caretakers, had the right to work outside the home without their husbands’ permission, and

¹⁷¹ Winfried Martini, “Gleichschaltung der Ehe,” *Münchener Merkur*, June 27, 1952, B141/2050/007, BArch Koblenz.

¹⁷² Ernst Wahl, “Gleichberechtigung von Mann und Frau?” *Frankfurter Neue Presse*, July 12, 1952, B141/2050/009, BArch Koblenz.

¹⁷³ “Das Familienrechtsgesetz und der Bundestag,” *Union in Deutschland* 77, September 27, 1952, 2.

could control their own property.¹⁷⁴ This reimagined family model, while elevating the status of married women, also necessarily took certain key rights away from married men.

One newspaper that emphasized its opposition to the Adenauer administration were the Western Allied-run *Die Neue Zeitung*. One of its articles did not mince words when it bluntly reported that the removal of “the dictatorial capabilities of the husband” had caused strife in the Federal Cabinet.¹⁷⁵ The typically more conservative *Rheinische Post* took a more neutral stance, reporting on the “problematic marriage law draft” and noting that the *Stichentscheid* remained an “unresolved” issue.¹⁷⁶ One of the more popular national newspapers, the liberal-conservative *Frankfurter Allgemeine Zeitung*, emphasized that the Bundestag was reticent to grant primacy to men in matters of decision-making, a matter they labeled “undoubtedly legally unclear.”¹⁷⁷ The *Frankfurter Allgemeine Zeitung*’s main competitor, the more left-liberal *Frankfurter Rundschau*, meanwhile, reported simply that the

¹⁷⁴ Denkschrift des Deutschen Frauenrings zum Kabinettssentwurf eines Gesetzes über die Gleichberechtigung von Mann und Frau auf dem Gebiete des bürgerlichen Rechts und über die Wiederherstellung der Rechtseinheit auf dem Gebiete des Familienrechts, December 23, 1952, DGB-Archiv 2414450102, Archiv der sozialen Demokratie, Bonn; see also Else Ulich-Beil an den Herrn Bundeskanzler, September 1, 1952, B136/540/282, BArch Koblenz; Dora Hansen-Blancke an den Herrn Bundeskanzler, Frauenring Hamburg, September 18, 1952, B136/540/343, BArch Koblenz; Fränkischer Frauenarbeitskreis and Frauenring Südbayern an die Mitglieder des Deutschen Bundestages, September 15, 1952, B136/540/354, BArch Koblenz; Stellungnahme des Deutschen Gewerkschaftsbundes, November 25, 1952, Archiv der sozialen Demokratie, Bonn; 7. Sitzung der Bundesfrauenausschuss der CDU mit dem Thema der Familienrechtsgesetzes, July 7, 1952, B136/540/174, BArch Koblenz; Ev. Frauenarbeit, June 1, 1951, B106/43317, BArch Koblenz; Stellungnahme zur Denkschrift der Frau Oberlandesgerichtsrätin Dr. Hagemeyer, 1951, B106/43317, Bl. 5, BArch Koblenz; Deutscher Anwaltverein Stellungnahme, March 13, 1952, B411/481, Bl. 5, BArch Koblenz; Stellungnahme zur Denkschrift der Frau Oberlandesgerichtsrätin Dr. Hagemeyer, B 106/43317, Bl. 5, BArch Koblenz; Deutscher Anwaltverein Stellungnahme, March 13, 1952, B 411/481, Bl. 6, BArch Koblenz; Entwurf eines Gesetzes zur Anpassung des Familienrechts an Art. 3, Abs. II GG, July 1952, 51, Archiv der sozialen Demokratie, Bonn.

¹⁷⁵ Meinungsverschiedenheiten im Kabinett über die Gleichberechtigung der Frau, *Die Neue Zeitung*, July 1, 1952, B141/2050/005, BArch Koblenz.

¹⁷⁶ “‘Mitbestimmung’ für die Frau,” *Rheinische Post*, June 26, 1952, B141/2050/012, BArch Koblenz.

¹⁷⁷ “Gegen die Vorrangstellung des Mannes,” *Frankfurter Allgemeine Zeitung*, September 27, 1952, B141/2050/45, BArch Koblenz.

Bundesrat's resolution was "far-reaching."¹⁷⁸ Another article in the *Frankfurter Rundschau* was less neutral, praising the "wisdom" of the Bundesrat, but noting the uncertainty that its proposals would remain.¹⁷⁹ Each of these newspapers alluded to the problematic nature of the Federal Cabinet's draft and the in-fighting among government officials as a way of expressing their disdain, or at least reticence, for the Adenauer administration's draft legislation.

By October 1952, the onslaught of correspondence and the media coverage made Adenauer and his cabinet well aware that they had little support from the Bundesrat, nonparty women's organizations, party-affiliated women's committees, trade unions, other independent professional associations, and interested individuals. Even women in their own party could not agree on the fate of controversial regulations such as the *Stichentscheid*. Catholic women, for instance, butted heads over the provision's removal, while Protestant women expressed their dissent to bishops like Dibelius.¹⁸⁰ Still, the Adenauer administration disregarded all of their opposition and honored only the opinions of the male Catholic and Protestant Church leaders.

On 23 October 1952, the federal government sent the final version of the drafted "Law about the Equal Rights of Men and Women in the Area of Civil Law and Restoring Legal Unity in the Area of Family Law (Family Law)" to the Bundestag. The legislative draft offered several minor changes from the original BGB but nevertheless reified the male

¹⁷⁸ "Änderungswünsche zum neuen Eherecht," *Frankfurter Rundschau*, September 27/28, 1952, B141/2050/47, BArch Koblenz.

¹⁷⁹ "Die gute Ehe," *Frankfurter Allgemeine Zeitung*, September 27, 1952, B141/2050/52, BArch Koblenz.

¹⁸⁰ Arbeitsgemeinschaft der katholischen deutschen Frauen an den Herrn Bundeskanzler Dr. Adenauer, July 7, 1952, B136/540/186, BArch Koblenz; Ev. Frauenarbeit an Dibelius, July 16, 1952, EZA 99/638, Evangelisches Zentralarchiv, Berlin (EZAB).

breadwinner/female homemaker family model. For the *Stichentscheid*, for example, the federal government proposed to give the man the right to decide in the case that an agreement could not be reached, and decisions made without consultation with the wife or that opposed her interests were not considered valid. Historian Christine Franzius characterizes this ruling as “just rhetorically weakened,” meaning that it did not really help married women.¹⁸¹

Regarding surnames, women would still be required to take their husbands’ names, but could hyphenate with their maiden names. Women could work if it was “reconcilable with their duties in marriage and family.”¹⁸² Both spouses were considered responsible for supporting the family (*Unterhalt*), though the court could intervene in cases of abuse of this right. Women could fulfill their part through domestic work, and were only required to work if their husbands’ salaries alone could not support the family. In the case of separation, if one spouse was unable to support him- or herself, the spouse could demand a monthly support payment from the other.¹⁸³

A month later, on 27 November 1952, the Bundestag met to discuss and vote on the law. At this point, parliamentarians were well aware of the societal opposition to the law. Additionally, they knew the 31 March 1953 deadline was fast approaching. Pushing his colleagues toward compromise, Thomas Dehler (FDP), the Minister of Justice, reminded the Bundestag that they had a responsibility to coordinate Articles 3 and 6 of the Basic Law as peacefully as possible. Despite his calls for cooperation, Dehler also displayed his reluctance about keeping certain provisions such as the *Stichentscheid*, or the husband’s right to decide.

¹⁸¹ Franzius, *Bonner*, 62.

¹⁸² Drucksache 3802, Verhandlungen des Deutschen Bundestages [1.] Deutscher Bundestag, 6.

¹⁸³ The proposed law was much more extensive, but these were the chief provisions that came up frequently in political discourse on the topic.

Dehler acknowledged that with children, there were a number of issues—names, confession, education, and medical emergencies—that necessitated decisions that were beyond the scope of a court ruling. In these matters, he agreed that a man’s right to decide should be upheld, though with careful consideration of the mother’s side, and she would be given the right to appeal to the court. In matters affecting only the spouses, however—in a public display of dissent against the ruling CDU/CSU government—he called for the dismissal of the *Stichentscheid*. He furthermore advocated giving women equal rights in household support and supported the legal separation of their property from their husbands’.¹⁸⁴

In the ensuing debate over the BGB, two competing visions of marital partnership, the family, and their places in German law and society emerged. A large part of their discourse revolved around defining the very meaning of equality. Luise Rehling, a Protestant pastor’s wife and member of the ruling CDU/CSU faction, for instance, succinctly outlined her party’s position by stating that: “Marriage and family are not classified as natural or an administrative union [...] but rather a godly structure, a piece of God’s creation.”¹⁸⁵ Moreover, she asserted that “men and women can best develop their given characteristics to the best of their ability from their biological and functional differences in the service of the small community, with which they serve the welfare of the larger community.”¹⁸⁶ Emmy Meyer-Laule, a functionary of the oppositional SPD, however, interpreted the place of marriage and family differently. In her purview, it was a “totalitarian state”—an allusion that

¹⁸⁴ VDBT, 239. Sitzung, November 27, 1952, 11052.

¹⁸⁵ VDBT, 239. Sitzung, November 27, 1952, 11058. For Rehling’s biography, see Ulrike Hospes, “Luise Rehling,” last accessed December 10, 2016, <http://www.kas.de/wf/de/37.8289/>. Rehling was born in 1896 and married a pastor. They resisted the Nazis as part of the Confessing Church and joined the CDU after the war.

¹⁸⁶ VDBT, 239. Sitzung, November 27, 1952, 11059.

worked for the Third Reich or the Communist dictatorship next door—that controlled the inner structures of marriage. She asserted that the FRG had a responsibility to ensure that all citizens had equal human rights; as long as women were subordinate in marriage, this basic right would remain unfulfilled.¹⁸⁷

Additionally, each side justified their interpretations of marriage and the family by referring to social crisis and change. According to the CDU/CSU, the return to a patriarchal family structure would provide stability to a radically changed society. As an example of “the crisis of the family,” Rehling (CDU) cited statistics that “90% of juvenile delinquents come from destroyed families.”¹⁸⁸ She furthermore called the rising number of divorces “unnatural.”¹⁸⁹ SPD members, however, believed that the law had to change to reflect altered circumstances for women. Since 1900, the number of employed women had increased significantly, and the two World Wars had had a significant impact on marriage, divorce, and reproductive patterns. What Meyer-Laule (SPD) proposed was a law that not only freed married women from subordination, but granted more equality to unmarried women and mothers.¹⁹⁰

To be sure, their differing interpretations of the postwar social crisis did not denote absolute positions on either side. Meyer-Laule (SPD) recognized that many women, if given

¹⁸⁷ VDBT, 239. Sitzung, 27. November 1952, 11060. For Meyer-Laule’s biography, see Rudolf Vierhaus, “Emmy Meyer-Laule,” in *Biographisches Handbuch der Mitglieder des Deutschen Bundestages 1949-2002* (Munich: Saur, 2002), 562; see also Gisela Notz, *Frauen in der Mannschaft: Sozialdemokratinnen im Parlamentarischen Rat und im Deutschen Bundestag 1948/49–1957* (Bonn: Dietz, 2003), 374-386. Born in 1899, Meyer-Laule joined the SPD in circa 1918 and later became active in women’s issues. Her career is listed as “party functionary.”

¹⁸⁸ VDBT, 239. Sitzung, 27. November 1952, 11058.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid., 11060.

the choice, would choose motherhood over the alternative of paid work outside the home.¹⁹¹ For the time being, however, when many women had to bear the double burden of breadwinning and raising the family, the SPD maintained that the law had to change to fit the contemporary situation. Helene Wessel of the Center Party, the Catholic social worker who had supported women's equality as one of the four "Mothers of the Basic Law," supported the SPD's proposals for a more egalitarian marriage and family law.¹⁹² So did select members of the FDP, despite earlier support during the Parliamentary Council for the CDU/CSU.

In addition to the "crisis of the family" and sociological change, Bundestag members used the language of legal unity. Dehler, for instance, raised the issue of legal unity, which in the FRG meant the unification of various regional statutes passed between 1945 and 1949, as well as the 1946 *Kontrollratsgesetz*, but it did not necessarily include the GDR. He proposed removing §48 of the 1946 *Ehegesetz*, which required a three year-long separation and dire cause in order for the spouses to ask for a divorce.¹⁹³ The CDU/CSU rejected his proposal. Not only did they disagree with the notion of overhauling the three year-long separation, they argued that the Bundestag simply did not have enough time to change the BGB *and* deal with extensive changes to divorce law.¹⁹⁴ As a result, the Bundestag postponed divorce law revisions until a later date (through the 1976 "First Law for the Reform of Marriage and Family Law") and chose to focus on rest of the BGB.

¹⁹¹ Ibid.

¹⁹² "Helene Wessel," in *Biographisches Handbuch*, ed. Rudolf Vierhaus, 942.

¹⁹³ *Kontrollratsgesetz* Nr. 16 (*Ehegesetz*) (February 20, 1946).

¹⁹⁴ VDBT, 239. Sitzung, 27. November 1952, 11056.

The SPD pointed out that any discussion of legal unity was incomplete without consideration of the East. Frieda Nadig (SPD) argued that adopting this version of the law would create “greater legal insecurity and inequality and would deepen the rift between East and West.”¹⁹⁵ The Christian conservative members of the Bundestag, however, were unconvinced and remained focused on the differences of women’s status in the GDR. Rehling (CDU) cited §12 of the GDR’s 1950 *Mutterschutzgesetz*, which named the family as the “cornerstone of a democratic society” and promised state protection. According to Rehling, this only meant that women were “freed as far as possible from their duties in marriage and family so they can place their powers at the disposal of economic and social reconstruction.”¹⁹⁶ The merit of the FRG’s proposal, she asserted, was that it would not place this double burden on women.

Without mentioning legal unity, the KPD encouraged the rest of the Bundestag to look to the East for examples of “real and realizable” *Gleichberechtigung*.¹⁹⁷ At this point, the KPD in the West was on a rapid decline due to strong anti-Communist sentiments in- and outside the parliament.¹⁹⁸ Historian Patrick Major suggests that the KPD suffered further losses by “self-destruction from within” because “Communists’ understanding of democracy was in fact deeply hostile to parliamentary norms.”¹⁹⁹ Communist Bundestag members’ defense of the East in the context of family law did not help the party’s profile. For example,

¹⁹⁵ VDBT, 239. Sitzung, 27. November 1952, 11061.

¹⁹⁶ VDBT, 239. Sitzung, 27. November 1952, 11059.

¹⁹⁷ Ibid., 11069.

¹⁹⁸ Major, *The Death of the KPD*, 109, 111.

¹⁹⁹ Ibid., 114.

Gertrud Strohbach—a longtime Communist from Stuttgart who later migrated to the GDR—pointed out that in the GDR, *Gleichberechtigung* went into force with the approval of the constitution and then through the *Mutterschutzgesetz*—neither of which most West German politicians considered legitimate.²⁰⁰ She cited the East German law’s guarantee that marriage was not an automatic restriction of women’s rights. Finally, she cited scholars such as Justus Wilhelm Hedemann (who drafted the Nazi *Volksgesetzbuch*), who “have explained that this side of the legal development in the GDR has stimulating value.”²⁰¹ With this statement, Strohbach implied that not all elements of East German law were legitimate or valuable, but its treatment of women’s rights was one area that deserved mimicry.

Other delegates refused to engage with the idea of the GDR’s family law reforms and attempted to turn the Bundestag’s attention westward. Walter Menzel, an SPD member from Dortmund, stated that in Sweden, Norway, Denmark, the United States, and England, women had “full mutual authority” in marriage.²⁰² Furthermore, he cited the UN Declaration of Human Rights’ Article 16, which guaranteed equality in marriage. With these points, Menzel attempted to steer the conversation away from comparisons to the GDR and toward the West, a tactic that appealed to the proponents of Western integration in the Bundestag and diverted accusations that the SPD wanted to resemble the East.

The Bundestag’s debate of family law displayed several co-existing discourses. First and foremost, these were conflicts over gender roles and the partial redistribution of rights

²⁰⁰ Vierhaus, “Gertrud Strohbach,” in *Biographisches Handbuch*, 858.

²⁰¹ VDBT, 239. Sitzung, 27. November 1952, 11069.

²⁰² VDBT, 239. Sitzung, 27. November 1952, 11070. Menzel was born in 1901 and studied and practiced law before his dismissal by the Nazis in 1934. He rejoined the SPD after 1945 and became a Bundestag representative in 1949. For Menzel’s biography, see Vierhaus, “Walter Menzel,” in *Biographisches Handbuch*, 553.

from men to their wives. Christian conservatives resisted efforts to change the status quo of unequal rights between men and women in marriage and the family. Second, the discussions reflected larger queries about state intervention in private life and the relationship of the church to the state. To some degree, these were issues that far predated the founding of the Federal Republic. Catholics had been fighting state regulations of marriage and the family since the nineteenth century. The tremendous events of the early twentieth century only exacerbated these tensions. After all, state intervention in marriage and the family was a pillar of Nazi racial policy. “Racially unfit” individuals such as Jews, Roma/Sinti, or mentally or physically disabled were barred from marriage, forced to divorce their “Aryan” partners, and sterilized to prohibit reproduction. This recent history no doubt informed their understanding of the power of the BGB.

While state intervention was obviously a point of contention among Christian conservatives and their socialist opposition, the November 1952 debate revealed a critical omission: the Third Reich’s treatment of marriage and family policies and laws. For all their talk of the *Kaiserreich*, the Weimar Republic, both world wars, and the changing status of women, the Bundestag rarely mentioned the Nazis overtly. In fact, the only one who mentioned the Nazi years directly was Strohbach, a Communist, when she cited Hedemann, who had spearheaded the Nazis’ *Volksgesetzbuch* efforts. The Third Reich was no doubt an implicit guiding force; the Bundestag’s intensive debates over state intervention and the dangers of totalitarianism hinted at anxieties of repeating a difficult past. At the same time, the parliamentarians steered away from explicitly mentioning the Third Reich, which indicated that they were as equally reticent to associate themselves with the Nazis as they were the Communist dictatorship in East Germany.

Indeed, while the Bundestag rarely mentioned the Third Reich, they did discuss the other prominent German dictatorship next door. The CDU/CSU held up the GDR as an example of what not to do, while the Communist faction extolled the East German legal system for its treatment of women's rights. But it was the SPD that brought up the elephant in the room: that this particular law held the potential to further divide the two states. The extent to which their law would resemble the GDR's *Mutterschutzgesetz* was inconsequential. The Adenauer administration had already made its anti-Communist stance clear, and even the SPD was unwilling to venture as far as the SED had. The issue of legal unity, however, was more potent. New laws on both sides of the Iron Curtain had the potential to leave indelible marks on German legal history, and more importantly, Germans.

With all of these considerations in mind, the SPD proffered the following changes to the government's draft. First and foremost, they opposed the retention of the *Stichentscheid*. Frieda Nadig (SPD) argued that "despite [the draft's] wordiness, the husband's right to decide is fully and completely anchored in it." Such a provision was not only "anti-family and unconstitutional," she asserted, but un-Christian. Nadig stated that "in the Bible, God gave man a companion, not a subject." On the same grounds, she opposed the retention of the father's right to decide. Regarding maintenance payments (*Unterhalt*), she criticized the ambiguous wording and argued that it only solidified women's double burdens in law.²⁰³

In the end, the Bundestag did not come to an agreement on the law. The CDU/CSU insisted that the Parliament "had gone as far as possible with *Gleichberechtigung* already" and should pass the law and move on. They furthermore claimed that the CDU/CSU would work with the Parliament to revise the law before the 31 March 1953 deadline. To the

²⁰³ VDBT, 239. Sitzung, 27. November 1952, 11062.

CDU/CSU's outrage, the SPD, the KPD, and some FDP members refused to approve the legislation.²⁰⁴ The Bundestag elected instead to send the law to a special parliamentary committee, which would revise it before the 31 March 1953 deadline.

Meanwhile, the West German media reported on the legislation's failure with differing degrees of dismay. A few weeks before the Bundestag debate, the *Deutsche Zeitung* ran an article titled "Family Law between Two Fires," which explained how the entire structure of marriage and the family changed through the law.²⁰⁵ After the debate, the conservative-liberal *Frankfurter Allgemeine Zeitung* reported that the law received an "honorable burial" in the first round of *Bundestag* debates. The same article furthermore remarked that the CDU/CSU had "gone too far" while the SPD/FDP went "too little."²⁰⁶ Meanwhile, the conservative *General-Anzeiger* reported that the debate had displayed not conflicts among parties, but among men and women. The author warned readers that although men and women were legally equal, they were also "essentially different by nature...and must have different duties and rights."²⁰⁷ The American-backed *Neue Zeitung* was more neutral, offering a play-by-play of the meeting with little editorializing.²⁰⁸ The Western media's display of a plurality of opinions reflected its editors' various styles and differed significantly from the Eastern media, which was largely controlled by the SED.

²⁰⁴ Ibid., 11056.

²⁰⁵ "Familienrecht zwischen zwei Feuern," *Deutsche Zeitung*, November 12, 1952, B141/2050/69, BArch Koblenz.

²⁰⁶ "Wenn Mann und Frau uneinig sind," *Frankfurter Allgemeine Zeitung*, November 29, 1952, B141/2050/63, BArch Koblenz.

²⁰⁷ "Die dritte Instanz," *General-Anzeiger*, November 29-30, 1952, B141/2050/64, BArch Koblenz.

²⁰⁸ "Parlamentsaussprache über die Gleichberechtigung," *Die Neue Zeitung*, November 28, 1952, B141/2050/66, BArch Koblenz.

With the March deadline looming, a Parliamentary committee took on the law, though their work ultimately resulted in a political stalemate. In response, the CDU/CSU proposed extending the deadline another two years, meaning that the Civil Code would stay in place and the constitutional guarantee of equality would remain compromised.²⁰⁹ The SPD, the FDP, and numerous women's organizations protested and successfully defeated the extension. Although the absence of a new law before 31 March 1953 offered the risk of *Rechtschaos*, or legal chaos, it also meant that West Germans, especially married women and mothers, could finally claim their constitutional right to equality in court cases concerning marriage and family law.

The West German media offered several different responses. For instance, the women's magazine *Constanze* cynically asked its readers in April 1953: "Do you look at your husband—if you have one—differently than before? No? [...] Do you find that hardly anything has changed since 31 March 1953 at midnight, when you became equal with your husband and all other men according to the *Grundgesetz*?"²¹⁰ According to other publications, circumstances had changed. The *Frankfurter Allgemeine Zeitung* reported, without much editorializing, that the separation of marital property was now the "legal status."²¹¹ The CDU organ *Union in Deutschland* expressed the party's trepidation about the changed legal circumstances, but vowed that "1953 is the year of marriage and the family."²¹² Meanwhile, the SPD women's newsletter *Gleichheit* proclaimed that "the hour of

²⁰⁹ Their only support came from the Deutscher Familienverband. See Umstaetter an den Herrn Bundeskanzler, April 13, 1953, B136/541/107, BArch Koblenz.

²¹⁰ "Liebe Constanze-Leserin!" *Constanze*, April 8, 1953.

²¹¹ "Gütertrennung ist Rechtsstand," *Frankfurter Allgemeine Zeitung*, April 25, 1953, 6.

²¹² "Kein 'Rechtsfreier' Zustand in Familienrecht," *Union in Deutschland*, April 10, 1953, 2.

equal rights for men and women has arrived.”²¹³

In actuality, 1953 became the year of equality *and* marriage and the family. After 1 April 1953, the interpretation of marriage and family law turned over to the courts. Sometimes, judges adjudicated according to the principle of equality. In one case, a refugee from East Germany was told that he could not, by West *or* East German law, force his wife to join him by claiming a right to the *Stichentscheid*.²¹⁴ Had he attempted to do so before 31 March 1953, he might have succeeded. In other cases, the courts did not appeal to the woman’s interests and continued to privilege men and fathers. One Catholic woman tried to baptize her child in her faith without the permission of the child’s Protestant father. The court proclaimed that she had no right to claim equality, and in this case, the judges ruled in favor of the father.²¹⁵ The fate of average Germans ultimately rested on local judges’ personal interpretations of equality and the place of the family. After several months of conflicting court decisions, the Federal Constitutional Court, the highest court in the FRG, ordered the federal government to draft a new law.²¹⁶

This section has shown that it was never inevitable that the Federal Republic would adopt a male breadwinner/female homemaker family model. In fact, initially, when Dehler and the Ministry of Justice drafted a new law, they rejected that model in favor of one that barred men from making decisions for their wives and allowed greater equality in marital property and household management and support. Dehler, however, buckled under pressure from the Catholic and Protestant Churches and the Christian conservative government and

²¹³ “Gleiches Recht für Mann und Frau,” *Gleichheit*, May 1953, 145.

²¹⁴ Moeller, *Protecting Motherhood*, 188.

²¹⁵ Moeller, *Protecting Motherhood*, 190.

²¹⁶ *Ibid.*, 183.

changed the draft legislation to reflect their views. This move enraged party-based and nonparty women's organizations, trade unions, and individuals, who petitioned the federal government to change its mind. The Adenauer administration ignored their pleas and pushed through its version to the Bundestag, demonstrating the pseudo-authoritarian nature of the Christian conservative government in the early 1950s. After all, in the purview of the Adenauer administration and its parliamentary arm, listening to women and workers on the left would destroy natural order and bring the law dangerously close to the SED's *Mutterschutzgesetz* in the GDR. As the Bundestag debates indicated, other forces, namely memory of Germany's legal treatment of women before 1945 and legal reforms in the GDR, were at play as well. The combination of social activism within the FRG and the problem of the GDR ultimately halted the Bundestag from passing the legislation by its constitutionally mandated deadline of 31 March 1953.

Conclusion

As this chapter has shown, between 1949 and 1953, the path dependencies of the parallel family law reforms in the GDR and FRG were shaped by numerous legal, political, social, cultural, and economic factors. First, the legal and institutional frameworks in both states informed their separate paths. In the West, in the context of constructing a post-fascist and anti-communist liberal democratic state, path dependency was particularly strong. Christian conservative politicians and Protestant and Catholic Church leaders willingly touted the merits of the old Civil Code as a stabilizing force, even in spite of a constitutional mandate to overturn it. The examples of both German dictatorships—the Third Reich and especially the GDR dictatorship next door—only deepened their desire to reinstitute the old

Civil Code. Their opponents in the independent women's associations, trade unions, Free Democratic Party, Communist Party, and Social Democratic Party, meanwhile, picked up the earlier struggle to change the law. Path dependency was less strong, but still evident in the East in the context of building a socialist state. The Ministry of Justice (and by default, the SED) were willing to abandon the Civil Code in principle, but found opposition from party members and citizens who found parts of the old law useful and practical, or conversely, too difficult to change.

Second, the political climate of each state shaped the paths of family law reforms. In the GDR, the ruling SED, in the process of building socialism, continued to narrow available political space. On the one hand, the SED's de facto control of the state and alignment with the Soviets enabled the party to alter and quickly push through legislation such as the *Mutterschutzgesetz*. On the other hand, the ruling party's internal divisions and its alternating fears of disapproval from its citizens and longing for their endorsement halted it from initially going too far with family law reforms. On the other side of the German-German border, the political competition between the CDU/CSU and the SPD continued to mark the political atmosphere of the FRG. This time, however, unlike during the earlier Parliamentary Council proceedings, when the CDU/CSU was less conservative and less rigidly controlled by Konrad Adenauer, opposition from society was not enough to convince the Adenauer administration to change course. Citing their support from the Catholic and Protestant churches, the ruling CDU/CSU coalition pushed back, insisting on legislation that reinforced a male breadwinner/female homemaker family model. This maneuver resulted in further dividing the Bundestag and society, creating a political stalemate that prevented reforming the law by the mandated 31 March 1953 deadline.

Third, the economic and labor policies and situations in the two states shaped these debates and decisions. In the GDR, overhauling the provisions in the old Civil Code that limited women's economic rights served ideological and pragmatic purposes for Communists. For one thing, the GDR needed female labor to keep its production-based economy going in a situation of chronic labor shortage. For another, long-held beliefs about women's economic emancipation through equal wages and access to employment combined with the SED's desire to attract women's votes before the October 1950 elections. When full-scale family law reforms were not possible, the SED pursued incremental reforms through legislation such as the 1950 *Mutterschutzgesetz*, meant to help women become equal in the workplace, at home, and in the political sphere. Although this law did not change all of the old BGB provisions, it gave key civil rights to women in the home in order to support their work outside the home. The Adenauer administration in the West reacted to similar labor shortages by pushing married women and mothers back into the home and favoring their husbands' breadwinning. Christian conservatives in particular masked used language about natural order and duties to support these discriminatory practices, while Social Democrats argued that changing sociological circumstances, such as the "surplus" of women, many of whom had to earn money for their families, necessitated changing rights in the workplace and at home.

Fourth, notions of the gender order and hegemonic cultural ideas played important roles in these parallel debates as well. The SED always put forward a public image of itself as the most progressive and aggressive supporter of women's rights in all of Germany—East or West. Its family law proposals and the section of the 1950 *Mutterschutzgesetz* attempted to create more egalitarian marital partnerships that granted women equal rights in the

workplace, politics, and their families. The Ministry of Justice's internal debates, as well as letters from citizens, however, demonstrated that changing longstanding ideas about gender and cultural norms was more difficult than the ruling party anticipated. In the West, Christian conservatives, Free Democrats, and Social Democrats all cited changing demographics as reasons for defending or opposing retaining the old Civil Code's regulations. On the ground level, citizens in both Germanys expressed concerns about too much equality for men and women and what reforms to the Civil Code might do to their families, while others supported retaining the old law in the name of postwar stability and order. Yet others supported reforms and hoped for more egalitarian familial structures. These enduring social and cultural norms were strong enough to give each of the ruling parties pause in their reform processes.

Finally, the Cold War competition informed the debates over family law between 1949 and 1953. Even before the GDR was established, the People's Council had already begun formulating proposals for a new Civil Code, expressing alternating motivations. On the one hand, they wanted to hurry and beat the West to the reforms. On the other hand, they noted that legal disunity could result from moving too fast. Throughout their subsequent debates, the SED, members of the Ministry of Justice, and the media denigrated the perceived lack of progress in the West over women's equal rights in the economy and at home. In comparison, West German politicians made fewer overt references to the East, but still at times expressed reservations about resembling the GDR or creating legal confusion between the two Germanys. The following two chapters show how each state finally accomplished family law reforms in 1957 (in the West) and 1965 (in the East). Furthermore, these final chapters show how family law reforms were shaped by the further divergence of the two German states from one another in the mid-to-late 1950s and early 1960s.

CHAPTER FIVE

“THE INEQUALITY OF MEN AND WOMEN IS COMPLETE”: THE WEST GERMAN EQUAL RIGHTS ACT, 1954–68

On 12 March 1957, Frau K. sent a letter to Eduard Wahl, a Christian Democratic member of the West German Bundestag from Heidelberg, describing the circumstances of her seventeen-year-old son's death.¹ In 1941, her husband signed the boy's enlistment papers for the German Navy. Not long after their son went off to war, his submarine was sunk off the coast of Scotland. In her letter, Frau K. did not explicitly fault Nazi warmongering or Allied troops for her son's early demise. Rather, she blamed her husband, who by exercising his right under the German Civil Code to make all decisions for his wife and children (*Stichentscheid*), sent their only son to an early grave. The background of this story remains unknown and is not discussed in her letter. It is evident, however, that Frau K. believed the root of the problem was the discrimination against mothers and wives embedded in the Civil Code. If the laws were different, if they gave mothers the same rights over their children, she argued, the boy might have lived.²

When Frau K. delivered her cautionary tale to Eduard Wahl, West German politicians had been debating reforms of the Civil Code for nearly eight years. Despite a series of fits and starts that had previously halted reforms, the ruling federal government coalition of the

¹ “Eduard Wahl,” last accessed January 13, 2017, http://www.leo-bw.de/web/guest/detail/-/Detail/details/PERSON/wlbbblb_personen/118770799/person. Wahl was born in 1903 and served as a jurist and law professor in Heidelberg before becoming a Bundestag member, representing the CDU, in 1949.

² Frau K. an Eduard Wahl, March 12, 1957, NL Eduard Wahl, 01-237-026/2, Archiv für Christlich-Demokratische Politik-Sankt Augustin.

Christian Democratic Union and Christian Socialist Union was confident it would win this time, namely because it controlled the government and the legislature. The September 1953 election saw the CDU/CSU's popularity skyrocket when they earned 45.2 percent of the vote over the SPD's 28.8 percent.³ Voters credited Chancellor Konrad Adenauer's leadership and the CDU/CSU with the "economic miracle" of the postwar society, made possible by American Marshall Plan money and the social market policy of Economic Minister Ludwig Erhard (CDU).⁴ In addition, the political shift towards the right was fostered by the heating Cold War. The CDU/CSU labeled "the Social Democrats as the party that would open the gates for the Communists," an accusation that harmed the SPD's reputation in the 1950s and resulted in a polarization of West German political culture. The Communist Party in West Germany was not allowed any longer in August 1956. Its members were persecuted. The other smaller parties flocked to the right and supported the CDU/CSU government.⁵ As historian Christoph Klessmann asserts, anti-Communism "played a deciding role" in the Federal Republic in the 1950s.⁶ As a result of these factors, the CDU/CSU gained a much larger majority than it had in the previous election and Adenauer firmly secured his place as Chancellor of the FRG. His leadership appealed to voters who were still struggling to come to terms with democratization and sought out a strong, authoritarian leader.⁷

³ Dennis L. Bark and David R. Gress, *A History of West Germany*, 2nd ed. (Cambridge: Blackwell, 1993), 325.

⁴ Eric Weitz, "The Ever-Present Other: Communism in the Making of West Germany," in *The Miracle Years: A Cultural History of West Germany, 1949-1968*, ed. Hanna Schissler (Princeton: Princeton University Press, 2001), 225.

⁵ Weitz, "The Ever-Present Other," 220; and Bark and Gress, *History*, 325.

⁶ Christoph Klessmann, *Zwei Staaten, Eine Nation: Deutsche Geschichte 1955-1970* (Göttingen: Vandenhoeck & Ruprecht, 1988), 59.

⁷ According to Torsten Oppelland, the transition from dictatorship to democratization would have been untenable if not for Adenauer's authoritarian leadership. See Torsten Oppelland, "Domestic Political Developments I: 1949-1969," in *The Federal Republic of Germany since 1949: Politics, Society and Economy before and after Unification*, eds. Klaus Larres and Panikos Panayi, 1st ed. (Abingdon-on-Thames: Routledge, 1996), 82.

One of the priorities of the Adenauer administration after 1953 was social reforms, including family law. When Frau K.'s letter arrived in March 1957, politicians, leaders of social organizations, and the media were still in the midst of debating the new Equal Rights Act, which was under review by a special Bundestag committee. By this point, the committee had chosen compromise. On the one hand, they determined that married women could control their own property and that their husbands no longer had the right to decide all matters in marriage. On the other hand, the committee still required that women adopt their husbands' surnames, only take on work outside the home if it could be balanced with their domestic responsibilities, and that they obey their husbands' decisions regarding their children. In the end, despite protests from the ruling CDU/CSU Bundestag faction, who favored a more conservative version of the law that continued to limit women's rights, the Bundestag signed the 1957 Equal Rights Act into law on 18 June 1957. The law went into effect on 1 July 1958. Although the law was ultimately a compromise that never went as far as the more conservative wings of the CDU/CSU or the progressive wings of the SPD, FDP, and women's associations had hoped, the 1957 law signified important changes for married women's rights. At the same time, the limits of the 1957 legislation left the door open for the SPD, FDP, and the 1968 New Women's Movement to instigate further reforms in the 1960s and early 1970s.

In this chapter I use the approach of path dependency to examine how and why the FRG finally passed the 1957 Equal Rights Act, and the subsequent fallout of these reforms in the 1950s and 1960s. I show that numerous related factors—the political, economic, and social agenda of the Adenauer regime, political competition and compromise among the leading political parties, and resistance from below (in particular, women's organizations)—

shaped the final form of the 1957 Equal Rights Act in West Germany. Furthermore, the atmosphere of the Cold War in the late 1950s, when the Federal Republic pursued the Hallstein Doctrine and refused to formally recognize the GDR, informed these debates as well.⁸ In the end, policymakers chose to compromise on the legislation, a move that alternately signified progress after years of limits on married women's rights and provided momentum for further series of reforms in the late 1960s and early 1970s.

An important part of my examination of the factors that finally facilitated the approval of the 1957 Equal Rights Act is the analysis of the multiple discourses by legislators, media pundits, and social organization leaders over the competing legislative drafts in the Federal Republic. On the one side, Christian conservatives continued to defend the old Civil Code's regulations as the ticket to keeping Germany stable. Moreover, they thinly veiled references to the Nazi past and the GDR dictatorship in language about the dangers of totalitarianism and state control over the family. In addition, going further into the 1950s, politicians' focus gradually shifted from the past to the present threat of the GDR in the East. Finally, they began to emphasize that these debates were no longer about women, but rather about men's rights in and duties to the Federal Republic. On the other side, Social Democrats and liberals stressed that the Bundestag had a legal and moral imperative, especially in the postwar environment, to help women by changing the law. In the context of strong anti-Communism spurred by the Cold War, Christian conservatives, Social Democrats, and liberals continued to emphasize the similarities and differences with East Germany's Family Code and treatment of women in the discourses over their own reforms.

⁸ For more on German-German diplomacy and isolationism, see William Glenn Gray, *Germany's Cold War: the Global Campaign to Isolate East Germany, 1949-1969* (Chapel Hill: University of North Carolina Press, 2003).

This chapter is structured in four sections. The first section examines the 1954 Bundestag discussion and the subsequent critiques from members of the parliamentary opposition and extraparliamentary social organizations, especially women's organizations that eventually pushed the Bundestag to compromise, passing the law in 1957 and enacting it in 1958. The second section explores the FRG's interactions with and responses to the developments of family law in the GDR and argues that anti-Communism played a large part in the West German government and legislature's approaches to their own family law reforms. The third section analyzes the final round of Bundestag committee and Bundestag plenary debates and the fallout of passing the Equal Rights Act on 18 June 1957 and implementing the new law on 1 July 1958. Finally, the chapter ends by exploring the revitalized power of the SPD and FDP and their new quest for further reforms of marriage and family law in the 1960s and early 1970s.

Contesting the Family in the Federal Republic, 1954–55

The major political parties anticipated that family policy, gender policy, and family law reforms would return to the fore after the September 1953 election. According to historians Dennis L. Bark and David R. Gress, once Adenauer secured victory in 1953, he was determined to pursue social reforms in order to provide “social welfare and individual freedom at home,” as part of the ideology of the social market economy, and attract East Germans to the West.⁹ One of the ways Adenauer jumpstarted the process of social reforms was by creating the Federal Ministry of Family Issues in October 1953—a longtime demand of Catholic lay organizations such as the *Familienbund der Deutschen Katholiken*—and

⁹ Bark and Gress, *History*, 396.

appointing the conservative Catholic Franz-Josef Wuermeling as its Minister.¹⁰ Born in 1900 in Berlin, Wuermeling served in the German navy near the end of World War I before pursuing a law degree. In 1945, he joined the CDU and represented Rhineland Palatinate in the Bundestag.¹¹ Despite coming under fire from women's organizations, such as the German Female Academics' Association (*Deutscher Akademikerinnenbund*), who argued that a Family Ministry was unnecessary with the already-existing Women's Department (*Frauenreferat*) in the Ministry of the Interior, Adenauer persisted.¹²

Wuermeling's appointment as the first Federal Minister of Family Issues further solidified the influence of political Catholicism on the federal government. Political Catholicism, specifically in the form of the Center Party, formed in the nineteenth century in order to represent Catholic interests, first in individual Protestant-dominated German states and then, after 1871, in the German Empire. It grew stronger in response to Chancellor Otto von Bismarck's *Kulturkampf* and remained an important political force until 1933, when the Nazis took over and expelled other political parties from power. After 1945, most former Center Party members migrated to the newly founded, interconfessional Christian Democratic Union, which maintained close ties to the Catholic Church. In fact, some Catholic bishops such as Josef Frings even briefly joined the party, which inspired many Catholics to follow. The old Center Party (which still existed in some areas of Germany in the 1950s) and the new CDU/CSU proclaimed themselves the political representatives of the 43 percent of the population that was Catholic (although Catholics also comprised the ranks

¹⁰ Lukas Rölli-Alkemper, *Familie im Wiederaufbau: Katholizismus und bürgerliches Familienideal in der Bundesrepublik Deutschland 1945-1965* (Paderborn: Schöningh, 2000), 473.

¹¹ Stefan Marx, "Franz-Josef Wuermeling," last accessed December 26, 2016, <http://www.kas.de/wf/de/71.9969/>

¹² Entwurf Gethmann eines Briefes an den Herrn Bundeskanzler, NL 1151/225, BArch Koblenz.

of the SPD, FDP, and DP).¹³

At the core of political Catholicism was the idea that the state had a responsibility to protect religious belief and that Catholics must use the state to pursue Catholic social teaching.¹⁴ Pope Pius XI argued in texts such as the 1930 Papal encyclical “*Casti connubii*,” that “governments can assist the Church greatly in the execution of its important office, if, in laying down their ordinances, they take account of what is prescribed by divine and ecclesiastical law.”¹⁵ This idea became popular again among Catholic clergy and lay organizations (especially the *Familienbund der Katholiken*) in the late 1940s and 1950s as a response, on the one hand, to the memories of the Nazi regime’s persecution of Catholic clergy who opposed Hitler, and on the other hand, the increasing secularization of the East German state next door. Regarding the latter, at one point, Adenauer argued that the traditional family was a priority of his administration “so the natural manner of the perils that appear for the nation from the present situation are controlled.”¹⁶ In other words, Christian conservatives considered secular Communism and the way it employed women outside the home as a threat to the homeostasis of the Christian family, which they identified as the cornerstone of (West) German society.

Specifically, as historian Lukas Rölli-Alkemper states, “The protection and promotion of marriage and the family belong to the central political concerns of the Church in the postwar period.”¹⁷ When it came to family law, the most conservative Catholics were

¹³ “Decline in Religious Observance among Catholics and Protestants (1960-1989),” last accessed February 17, 2017, http://germanhistorydocs.ghi-dc.org/sub_document.cfm?document_id=846

¹⁴ Rölli-Alkemper, *Familie im Wiederaufbau*, 415.

¹⁵ Pope Pius XI, “On Christian Marriage,” December 31, 1930, <http://www.papalencyclicals.net/Pius11/P11CASTI.HTM>

¹⁶ VDBT, [2.] Deutscher Bundestag, 3. Sitzung, 20. Oktober 1953, 18.

¹⁷ Rölli-Alkemper, *Familie im Wiederaufbau*, 415.

outspoken about the state's right to protect marriage and the family. Traditionally, Catholic teaching held that marriage and the family were the cornerstones of society and the state. By their teachings, the division of labor in marriages and families were determined by God, not society, and the state had a responsibility to protect Christian families. As a result, Catholic clergymen and Catholic lay leaders in organizations such as the *Familienbund der Deutschen Katholiken* (founded in 1953) and even some members of the Catholic German Women's League argued for the retention of the provisions of the old Civil Code, such as the *Stichentscheid*, on the grounds that any changes would undermine the traditional Christian family and parents' rights to raise their children.¹⁸

Wuermeling's work in the Family Ministry fell into a series of policies and proposals aimed at easing the burden of mothers. For Christian conservatives, the solution to women's "double burden" of paid labor outside the home and domestic care was male breadwinning, which they proposed supplementing through two measures: the family wage (in effect a higher male wage) and family/child allowances. According to some advocates, the family wage would be enough to provide for a wife and two children.¹⁹ Ultimately, the CDU/CSU and the FDP in the Bundestag shied away from mandating a male wage, preferring to leave decisions about wage levels to employers.²⁰ To supplement the male family wage, Christian Democrats, Social Democrats, and Free Democrats suggested the introduction of family compensation (*Familienlastenausgleich*), which included a monthly stipend compensating women for staying home and prevent them from being "forced" to pursue paid labor outside

¹⁸ Rölli-Alkemper, *Familie im Wiederaufbau*, 107, 416-487.

¹⁹ Oertzen, *Pleasure of a Surplus Income*, 51. See also Hanna Schissler, "German and American Women between Domesticity and the Workplace," in *The United States and Germany in the Era of the Cold War, 1945–1990: Volume 1, 1945–1968*, eds. Detlef Junker, Philip Gassert, and Wilfried Mausbach (Cambridge: Cambridge, 2004), 564.

²⁰ Moeller, *Protecting Motherhood*, 114.

the home to supplement their husband's wages.²¹ Although reticent to be associated with the National Socialist system of family allowances, legislators saw the advantages in granting families a monthly sum to help cover costs for children.²² Many mostly male parliamentarians from the CDU/CSU and SPD saw allowances as a way to honor Article 6 of the Basic Law's promise of protection of the family, but both parties differed in one major point: the CDU/CSU wanted to pay the family allowances to the father, the SPD intended to pay it directly to women, who, as mothers, often controlled the household, regardless of marital status. Only a small number of mainly female Social Democrats and Free Democrats, argued that a family model reduced wives to dependent status and left little space for other family structures.²³ Merely the Center Party offered an alternative to the family allowances. It suggested taxes on unmarried individuals and married couples with no or only one child would make up the difference for larger families.²⁴ Finally, with the support of the *Familienbund der Katholiken*, the CDU/CSU proposed a separate piece of legislation mandating child allowances for the third child (*Kindergeldgesetz*) in 1954 and reformed the law in 1961 and again in 1964.²⁵

Most contemporaries assumed that the "traditional" family was a male breadwinner and stay-at-home wife and mother. Many families, however, did not fit this mold because of the devastating impact of the two world wars on the family. In other words, as Heineman frames it, the law existed "to improve the health of children born to parents who could not meet this ideal," which meant many working wives and mothers, working single women,

²¹ Moeller, *Protecting Motherhood*, 113; Rölli-Alkemper, *Familie im Wiederaufbau*, 419, 445, 460.

²² Moeller, *Protecting Motherhood*, 111-112.

²³ Ibid., 116.

²⁴ Ibid.

²⁵ Rölli-Alkemper, *Familie im Wiederaufbau*, 472-473.

widows, childless married women, or unmarried mothers.²⁶ Indeed, many women did not fit the idealized image of the unemployed homemaker and mother dependent on a male breadwinner. For instance, married women's employment (which included those with children) rose from 36 to 50 percent between 1950 and 1962.²⁷ Trends were similar among widows with children.²⁸ Then, in the mid-1950s, part-time work for married women and mothers became more accepted in light of a labor shortage.²⁹ Still, the emphasis on and toleration of part-time female labor indicated that the federal government had not entirely relinquished the idealized image of men working outside the home while women took on the "double burden" of household labor and employment.

If some mothers and married women must work, the SPD argued, they must be protected by law. In the prior legislative period, the Social Democrats, aided by some liberals, Christian Democrats, and Communists, had pushed through reforms to help working women and mothers. The 1952 Law for the Protection of Motherhood (*Mutterschutzgesetz*), for instance, offered several protective measures, such as preventing expecting female workers from performing heavy or dangerous labor or taking night shifts. In addition, breastfeeding mothers were granted pauses every four-and-a-half to five hours, and mothers received twelve paid weeks away from work.³⁰ Additionally, after heated debate for two years, the Civil Service Law (*Beamtengesetz*) of 1953 removed the provision that forced

²⁶ Heineman, *What Difference*, 157.

²⁷ Heineman, *What Difference*, 218.

²⁸ Heineman, *What Difference*, 219. Heineman notes that 34 percent of widows with older children worked while 60 percent with younger children under the age of six worked.

²⁹ Oertzen, *Pleasure of a Surplus Income*, 15, 17.

³⁰ "Gesetz zum Schutze der erwerbstätigen Mutter," *Bundesgesetzblatt* 5, January 30, 1952; see also Moeller, *Protecting Motherhood*, 155; Heineman, *What Difference*, 156-157.

women to leave their posts if their husbands held secure employment.³¹ At the same time, the CDU/CSU coalition had prevented the implementation of an equal wages constitutional clause and later a related wage policy. Legal protections for working wives and mothers expanded slightly during the early 1950s, although not to the extent that some Social Democratic, Communist, and Free Democratic advocates imagined.

In addition to these laws and the proposals for the male family wage and the family allowance, contemporaries saw family law as a key way to confront the sociological changes brought on by the war. The experience of the last round of debates between 1949 and early 1953 left the CDU/CSU painfully aware that the SPD, FDP, numerous social organizations, and some newspaper editors opposed its plans for marriage and family law. But then the balance of power tipped heavily in the CDU/CSU's favor after the September 1953 election. The Christian conservative coalition in the Bundestag, taking advantage of its majority, reintroduced an earlier defeated proposal to extend the constitutional deadline to 31 March 1955. This time, the strength of the CDU/CSU and its smaller allied parties (the conservative German Party and the parliamentary newcomers, the All-German Bloc/League of Expellees and Deprived of Rights) in Bundestag granted the Christian Democrats the two-thirds majority they needed to approve the extension.³² Independent women's groups, trade unions, the SPD, the FDP, and their respective constituencies, however, immediately opposed the

³¹ Regarding the *Beamtengesetz*, see Curt Garner, "Public Service Personnel in West Germany in the 1950s: Controversial Policy Decisions and their Effects on Social Composition, Gender Structure, and the Role of Former Nazis," in *West Germany under Construction: Politics, Society, and Culture in the Adenauer Era*, ed. Robert G. Moeller (Ann Arbor: University of Michigan Press, 1997), 140-141. See also Bark and Gress, *History*, 255-256, for a general description of civil law reforms. They do not mention women or gender. See also Udo Wengst, *Beamtentum zwischen Reform und Tradition: Beamtengesetzgebung in der Gründungsphase der Bundesrepublik Deutschland 1948-1953* (Düsseldorf: Droste Verlag, 1988) for a more comprehensive study of all civil service reform in the immediate postwar period.

³² "Die Gleichberechtigung wird vertagt," *Frankfurter Allgemeine Zeitung*, November 23, 1953, 3.

proposal.³³ Then, the Federal Constitutional Court in Karlsruhe rejected the postponement and ordered the federal government to address the issue.³⁴ The CDU/CSU had little choice but to surrender.

Under pressure from the Federal Constitutional Court, the CDU/CSU-led government reopened the debate over family law in January 1954. The Bundesrat, the federal representation of the *Länder* governments, reviewed competing drafts submitted by the federal government (in effect the CDU/CSU), the SPD, and the liberal FDP. The last time the Bundesrat criticized the Adenauer administration's plans for family law reforms in 1952, the Chancellor and his Federal Cabinet ignored their critiques. Still, as a matter of process, the Bundesrat had to be involved, because it had to consent to all laws affecting state competences; furthermore, all constitutional changes required its consent.

A month later, on 12 February 1954, the Bundestag gathered to discuss the three competing legislative drafts from the SPD, FDP, and CDU/CSU. In the roughly year-long

³³ See, for example, Hildegard Meissner an Lüders, November 11, 1953, NL 1151/224, BArch Koblenz; Harmuth an alle Bundestagsfraktion, November 28, 1953, B211/25-1, BArch Koblenz; Gundlach und Eske an Dehler, November 27, 1953, N1-3000, Archiv des Liberalismus-Gummersbach; Diemer an Dehler, November 26, 1953, N1-3000, Archiv des Liberalismus-Gummersbach; Riegger an Dehler, N1-3000, November 26, 1953, Archiv des Liberalismus-Gummersbach; Beckmann an Dehler, November 26, 1953, N1-3000, Archiv des Liberalismus-Gummersbach; Martin an Dehler, November 26, 1953, N1-3000, Archiv des Liberalismus-Gummersbach; Siegel an Dehler, November 25, 1953, N1-3000, Archiv des Liberalismus-Gummersbach; Fahlberg an Dehler, November 24, 1953, N1-3000, Archiv des Liberalismus-Gummersbach; Blume an Dehler, November 28, 1953, N1-3000, Archiv des Liberalismus-Gummersbach. Blume asked Dehler to oppose the "dictatorial conduct of the CDU" regarding the forthcoming law; Erstmann-Vockrodt an Ilk, November 23, 1953, N2-6, Archiv des Liberalismus-Gummersbach. See also Thea Harmuth an alle Bundestagsfraktionen, November 28, 1953, B211/25 (1), BArch Koblenz; Rühl, Antrag der Fraktionen der CDU/CSU, November 28, 1953, B141/2073/24, BArch Koblenz; Erich Steinhilb, November 24, 1953, Parlamentsarchiv-Berlin; Gethmann an Neumaier, November 30, 1953, B141/2073/13-16, BArch Koblenz; Club berufstaetiger Frauen Stuttgart an Neumaier (Telegramm), November 25, 1953, B141/2073/26, BArch Koblenz. Some groups did want to extend the deadline, although there were fewer of them. See Teuffert an Ilk, April 2, 1953, N2-6, Archiv des Liberalismus-Gummersbach.

³⁴ "Verhandlung über die Gleichberechtigung," *Frankfurter Allgemeine Zeitung*, November 26, 1953, 3. This issue was widely reported in the West German media, see B141/2053, BArch Koblenz, which contains clippings from regional and local papers such as *Deutsche Zeitung*, *Frankfurter Rundschau*, *Neue Presse*, *Rheinische Post*, *Frankfurter Neue Presse*, *Mannheimes Morgen*, *Rhein-Neckar-Zeitung*, *Rhein-Zeitung*, *Braunschweiger Zeitung*, *Stuttgarter Zeitung*, *Heidelberger Tageblatt*, *Süddeutsche Zeitung*, and *Westdeutsche Allgemeine*.

period between the last Bundestag debate and the federal court decision, the leading parties' positions had changed little. The CDU/CSU-led federal government, its parliamentary counterparts, and its coalition partners still saw the potential of a new family law to further protect and boost the male breadwinner/female homemaker family model. The SPD and the FDP, especially their female members—many of whom can be classified as relational feminists—did not necessarily disagree with the idea of sexual difference or differentiated social roles for men and women. They determined, however, that the *legal* preference of male authority and limitations placed on wives and mothers (especially unmarried) was what endangered families.

Ascertaining what threatened the family was further complicated by the fact that Bundestag representatives had little consensus on what defined a family. The major parties' legislative proposals made it clear that they imagined the family quite differently. The CDU/CSU's version privileged male authority at the expense of women's equal rights. They imagined a family structure in which a husband made all decisions for his wife and family on the grounds that further marital strife would come from indecision; women took their husbands' surnames (although they could hyphenate); and the household was the domain of the wife, who could only work if it was reconcilable with her domestic duties.³⁵ The FDP's version largely aligned with the CDU/CSU's, although they were more liberal in certain regards, such as overturning the husband's right to decide in marriage but upholding it for children and designating both spouses as supporters of the household.³⁶ In contrast to the

³⁵ Entwurf eines Gesetzes über die Gleichberechtigung von Mann und Frau auf dem Gebiete des bürgerlichen Rechtes, [2.] Deutscher Bundestag, Drucksache 224, January 29, 1954, 5-6.

³⁶ See Entwurf eines Gesetzes über die Gleichberechtigung von Mann und Frau auf dem Gebiete des bürgerlichen Rechtes, [2.] Deutscher Bundestag, Drucksache 224, January 29, 1954, 5-6; Antrag der FDP, [2.] Deutscher Bundestag, Drucksache 112, December 2, 1953, 6.

CDU/CSU and FDP, the SPD supported a marital and familial model that gave both spouses the right to come to a mutual agreement; permitted either spouse to take the other's name or hyphenate; refused to designate women head of the household or restrict their right to work outside the home and gain economic independence; and identified both spouses as responsible for supporting the household.³⁷

Despite fundamental dissimilarities, the CDU/CSU, FDP, and SPD's respective proposals overlapped on several issues. For one thing, all the major parties supported abolishing men's rights to control their wives' property, agreeing instead to allow the separation of marital property, although the CDU/CSU qualified that it was "in the interest of the family" not to divide property holdings.³⁸ Additionally, all parties agreed that men could no longer terminate their wives' legal contracts. Finally, all the major parties agreed to overturn the regulation that forced women to share a domicile with their husbands.³⁹ Although the major political parties were divided on some issues, they found common ground on others, namely matters that did not stem from beliefs about sexual difference. Their proposals also made it clear that these discussions were, above all, about married women's rights in their marriages and families, and did not pertain to other large groups of women in postwar West Germany, such as unmarried or widowed women and mothers.

³⁷ VDBT, [2.] Deutscher Bundestag, 12. February 1954, 486; Antrag der SPD, [2.] Deutscher Bundestag, Drucksache 178, January 13, 1954, 1.

³⁸ See Entwurf eines Gesetzes über die Gleichberechtigung von Mann und Frau auf dem Gebiete des bürgerlichen Rechtes, [2.] Deutscher Bundestag, Drucksache 224, January 29, 1954, 5-6; Antrag der FDP, [2.] Deutscher Bundestag, Drucksache 112, December 2, 1953, 1; Antrag der SPD, [2.] Deutscher Bundestag, Drucksache 178, January 13, 1954, 1.

³⁹ See Antrag der FDP, [2.] Deutscher Bundestag, Drucksache 112, December 2, 1953, 1; Antrag der SPD, [2.] Deutscher Bundestag, Drucksache 178, January 13, 1954, 1; Entwurf eines Gesetzes über die Gleichberechtigung von Mann und Frau auf dem Gebiete des bürgerlichen Rechtes, [2.] Deutscher Bundestag, Drucksache 224, January 29, 1954, 5-6.

In defending their proposals, the leading political parties relied on several different discourses. One strategy the CDU/CSU employed was invoking Germany's occidental tradition, both in terms of the political support of the Catholic and Protestant Churches and theological understandings of marriage and the family. Karl Weber, a Catholic lawyer from Koblenz, and Wuermeling, the Family Minister, cited earlier letters from Catholic and Protestant leaders that opposed the expansion of women's rights.⁴⁰ One letter from the Catholic Fulda Bishops' Conference declared that legislators had a duty to "keep inviolable the essential order of the home, which is endowed through a higher than human, namely godly authority and wisdom."⁴¹ Leading Protestant authorities issued a warning based on the same premise: that it could lead to "destruction of life."⁴² Furthermore, the CDU/CSU used notions of natural law drawn from Catholic and Protestant theology to defend its support of provisions such as the *Stichentscheid*. The CDU/CSU and some liberals argued that the patriarchal Civil Code followed "the natural order of the family."⁴³ Furthermore, Neumayer asserted, in "healthy, normal marriages, such a regulation is hardly necessary."⁴⁴ The CDU/CSU not only emphasized theological arguments about "natural" and God-given gender roles, but it invoked the major churches' support as a threat to its opponents and evidence of its political power in the FRG.

Despite pressure from the CDU/CSU, other members of the Bundestag did not find the ire of the churches or religious doctrine convincing enough reasons to abandon reforms.

⁴⁰ For biography of Karl Weber, see: "Weber, Karl," last accessed January 14, 2017, <http://www.munzinger.de/document/00000010949>. Weber was born in 1898 and studied law. He joined the CDU after World War II and became a Bundestag representative for Koblenz, Rhineland Palatinate in 1949, serving until 1965, when he became the Minister of Justice.

⁴¹ VDBT, [2.] Deutscher Bundestag, 12. February 1954, 480.

⁴² Ibid.

⁴³ Ibid., 474.

⁴⁴ Ibid., 474.

Thomas Dehler (FDP), Minister of Justice from 1949 to 1953, told the assembly: “The legislator does not govern the Christian, godly world, he does not disturb it, he only rules the material world through law.”⁴⁵ Furthermore, Social Democrat Ludwig Metzger, a Protestant lawyer from Darmstadt, reminded the Bundestag that not all Christians—including himself—followed such rhetoric.⁴⁶ He cited letters from the Protestant Women’s Aid Organization (*Evangelische Frauenhilfe*) as evidence that Christian women did not necessarily believe in subordination to their husbands, and reminded his audience that Christians were part of his party too.⁴⁷ CDU member and prominent leader of a Protestant women’s group, Elisabeth Schwarzhaupt, aided Metzger by professing her own opposition to her party’s proposed legislation.⁴⁸ Born in 1901 to two teachers, Schwarzhaupt earned her law degree in 1930 in Frankfurt am Main and joined the liberal German People’s Party (DVP). An active opponent of the Nazis during the Third Reich, she found employment as a legal aide in the Protestant Church of Germany in Berlin, where she continued to work after the war. After 1945, she joined the CDU and led the reestablished Protestant Women’s Association (*Evangelische Frauenarbeit*) until 1953, when she entered the Bundestag.⁴⁹ Now, she found herself in opposition to her chosen party, telling them that “it is neither not confessional difference [...] nor is it sexual difference [...] nor generational,” but rather the Bundestag members’ willingness to cooperate that mattered most for women’s rights.⁵⁰

⁴⁵ Ibid., 483.

⁴⁶ “Ludwig Metzger,” last modified December 16, 2016, <http://www.lagis-hessen.de/pnd/118581570>. Born in 1902, Metzger, a practicing Protestant himself, joined the SPD in 1930. He entered the Bundestag in 1953.

⁴⁷ VDBT, [2.] Deutscher Bundestag, 12. February 1954, 498.

⁴⁸ Ibid., 499.

⁴⁹ “Elisabeth Schwarzhaupt,” last accessed December 26, 2016, <http://www.kas.de/wf/de/37.8331/>

⁵⁰ VDBT, [2.] Deutscher Bundestag, 12. February 1954, 502.

In addition to citing churches and natural law, the CDU/CSU argued that their version was more pragmatic. CDU representative Karl Weber argued, for instance, that “there are things in marriage that cannot remain undecided.”⁵¹ Even Dehler, agreed, asserting that it simply was not legally possible to have no final authority (especially in medical emergencies), and for this reason, he suggested the intervention of a Custody Court when the parents did not agree on the father’s decision. For their opposition, patriarchy for the sake of pragmatism was not a compelling reason to uphold the outdated provision. According to Frieda Nadig (SPD), the “legally anchored lesser rights of married women” through provisions such as the *Stichentscheid* did not solve problems, it *caused* them.⁵² She criticized the federal government’s attempts at conciliation by allowing women to contest the decision if “it did not correspond to the welfare of the family.”⁵³ Nadig pointed out that women could disagree, but they had no way to fight the decision. A woman could press the case in court, but she stood the risk of taking on “the role as destroyer” in her marriage.⁵⁴ For this reason, the SPD wanted to codify equal decision-making on the parts of both spouses, which simultaneously encouraged equal partnership while discouraging the reification of patriarchal family structures, even for the sake of practicality. Nadig furthermore observed that it was, in fact, impractical for men to be given such a right when it was typically the mothers who made these decisions every day and especially in the postwar years.⁵⁵

Nadig’s argument supplemented another topic of the Bundestag’s debate: protecting the rights of mothers who had endured the double burden of employment and raising

⁵¹ Ibid., 480.

⁵² VDBT, [2.] Deutscher Bundestag, 12. February 1954, 485.

⁵³ Ibid., 486.

⁵⁴ Ibid., 485.

⁵⁵ Ibid., 486.

families. For representatives like Karl Weber (CDU), it was only natural that men worked outside the home and women stayed inside it.⁵⁶ He found the CDU/CSU's formulation of the maintenance provision, that women fulfilled their obligation to support through domestic labor and men theirs through work outside the home, perfectly acceptable.⁵⁷ Here, the SPD took a more ambivalent position. On the one hand, as representatives of the labor movement, they opposed ordering that women could work outside the home only if it was reconcilable with their household duties.⁵⁸ On the other hand, the SPD saw the utility of such a regulation, because without it, women's equality might actually become more limited if they had to take on "an unnecessary double burden" of work and childrearing.⁵⁹ To balance out these conflicting beliefs, the SPD demanded that women's domestic work received total recognition as equal to men's work outside the home. If women did work outside the home, the SPD wanted them to receive equal wages for their labor.⁶⁰

Another argument, which the Bundestag had used before in 1952, was the fear of totalitarianism. Wuermeling warned the Bundestag to be wary of the abuse of the individual for the purposes of "state socialism" and "the goals of the omnipotent state."⁶¹ Here, he drew on three examples to evince his point. First, he mentioned the conscription of "healthy young girls, as we experienced under National Socialism," as evidence of the state's overreach, although the enlistment of young women in the *Bund Deutscher Mädel* and the labor force

⁵⁶ Ibid., 480.

⁵⁷ §1360, Entwurf eines Gesetzes über die Gleichberechtigung von Mann und Frau auf dem Gebiete des bürgerlichen Rechtes, [2.] Deutscher Bundestag, Drucksache 224, January 29, 1954, 4.

⁵⁸ VDBT, [2.] Deutscher Bundestag, 12. February 1954, 487.

⁵⁹ VDBT, [2.] Deutscher Bundestag, 12. February 1954, 487.

⁶⁰ Ibid.

⁶¹ Ibid., 488.

under the Third Reich had little to do with family law.⁶² Second, he argued that the Soviet Union's evolving family policies evinced the danger of too much state intervention. Under Stalin, women entered the workforce in much higher numbers and had access to daycare, which facilitated their work. Christian conservatives in the West considered such state aid as a major contributing factor behind the destruction of the family.⁶³ Finally, Wuermeling pointed to the dictatorship next door as evidence. He cited verbatim the 1950 Law for the Protection of Motherhood as an example of legislation that had gone too far in expanding women's rights, particularly in the work force, to a point of abusing the principle of equality. He stated that the law's emphasis on bringing women into production and industry "is an equality which has necessary consequences, if one understands the equality of men and women as isolated from the worth and essence of women and from the natural order of marriage and the family."⁶⁴ Each case he cited suggested that drawing women out of the home for work or to serve the state was ultimately harmful to the family, because it separated children from their parents and indoctrinated them with particular agendas.

In addition to fears about totalitarianism destroying the family, Christian conservatives also voiced concerns about it destroying masculinity. At one point, Wuermeling acknowledged that "an orderly society is not possible without authority."⁶⁵ He argued that just as states did not have to have total control over their populations, neither did fathers—but the ability to wield authority was always there.⁶⁶ Authority, he asserted, was

⁶² Ibid.

⁶³ Lewis A. Coser, "Some Aspects of Soviet Family Policy," *American Journal of Sociology* 56, no. 5 (1951): 424–37.

⁶⁴ VDBT, [2.] Deutscher Bundestag, 12. February 1954, 493.

⁶⁵ Ibid.

⁶⁶ Ibid.

“care and responsibility for the welfare of the family, and surely more of a duty than a right.”⁶⁷ He implied that it was, to some degree, a burden and a duty, but without some form of control, society would falter. In short, Wuermeling attempted to turn the discussion on its head. Rather than focusing on women’s rights, he made the debate about masculine duty and privilege, constructing an image of *men* as the overburdened members of postwar West German society. In the postwar period, reconstructing masculinity was important in the wake of Nazi militarism and the humiliation of defeat, and paralleled discussions of reinterpreting women’s roles. Men had to relearn how to be peaceful providers for their families and recreate themselves as consumers and citizens in postwar Germany.⁶⁸

The opposition in the Bundestag was just strong enough to prevent approval of the CDU/CSU’s version of the law. In the end, the Bundestag sent the three competing drafts from the CDU/CSU, FDP, and SPD to the Committee on Legal and Constitutional Matters, who would ultimately decide on the legal reforms.⁶⁹ The Committee formed a subcommittee for family law, whose seventeen members met seventy-seven times between 1954 and 1956.⁷⁰ The committee, generally comprised of six CDU members, four SPD, one FDP, and several federal government representatives, prepared the formulation of a final version of the law carefully.⁷¹ It combed through the SPD’s, the FDP’s, and the federal government’s drafts

⁶⁷ Ibid.

⁶⁸ Robert G. Moeller, “Heimkehr ins Vaterland: Die Remaskulinisierung Westdeutschlands in den Fünfziger Jahren,” *Militär-geschichtliche Zeitschrift* 60 (2001): 403–36; Biess, *Homecomings*.

⁶⁹ The committee included ten representatives from the CDU/CSU; six from the SPD; two from the FDP; one from the GB/BHE; nine from the federal government; and two from the Bundesrat.

⁷⁰ VDBT, [2.] Deutscher Bundestag, zu Drucksache 3409, 2.

⁷¹ The protocols of the “Familienrechtsgesetz” subcommittee typically listed the attendees at each meeting. From the CDU were Elisabeth Schwarzhaupt, Helene Weber, Ernst von Bodelschwingh, Alfred Seidl, Karl Weber, Friedrich Welskop, and Josef Rösing. SPD members were Lucie Beyer, Ludwig Metzger, Frieda Nadig, Schröter, and Karl Wittrock. Marie-Elisabeth Lüders represented the FDP. Fritz Czermak represented the GB/BHE. The DP had no representatives. Different members of the federal ministries attended. On occasion,

and debated the competing provisions on marital property, spousal relations, and parental authority. In addition, it called on legal experts to advise them. On 12 July 1954, for example, law professors Günther Beitzke, Hans Dölle, and Friedrich Wilhelm Bosch offered presentations with different interpretations of marital property law.⁷² Furthermore, it studied the relevant legal periodicals for marriage and family law, such as *Ehe und Familie im privaten und öffentlichen Recht: Zeitschrift für das gesamte Familienrecht*, a journal published since 1954 by a panel of legal experts with Friedrich Wilhelm Bosch, a conservative Catholic law professor at the University of Bonn, who was trained like so many of his peers during the Third Reich.⁷³ The journal featured court cases and opinions from legal experts on the adjudication of the Civil Code. Finally, the committee reached out to civil society, asking organizations such as the *Deutscher Bauernverband* (German Farmers' League) and the *Deutscher Landfrauenverband* (Rural Women's League) to advise them on the intricacies of marital property for rural couples.⁷⁴ As usual in the West German parliamentary system, the Bundestag committee relied not only on its own legal expertise, but also asked for advice and opinions from other experts and the relevant civil society organizations to make its provisional resolutions.

As the Bundestag committee began its proceedings, the West German press updated the public on the new family law as well as other issues related to equal rights, according to

members of other parties, such as the GB/BHE (the party of expellees from the East) attended, usually when the subject involved property rights or applying family law among agricultural communities.

⁷² VDBT, [2.] Deutscher Bundestag, zu Drucksache 3409, 2. For more on how civil law scholars addressed the law, see Franzius, *Bonner Grundgesetz*, 28-54, 66-128, 140-170.

⁷³ *Ehe und Familie im privaten und öffentlichen Recht: Zeitschrift für das gesamte Familienrecht* was a legal journal in the FRG between 1954 and 1962. The first issue claimed the journal would address the laws in the Soviet zone as well, but it rarely did. According to Karl Weber, the subcommittee received free copies of the journal. See VDBT, zu Drucksache 3409, 1.

⁷⁴ VDBT, [2.] Deutscher Bundestag, zu Drucksache 3409, 3.

their own worldview. The more conservative papers often interpreted the debate as favoring the Christian Democrats. The *Union in Deutschland. Informationsdienst für aktive Parteimitglieder*, the information service for members of the CDU published by the party headquarters, of course, defended its own party position and emphasized that the CDU/CSU wanted to protect the family and preserve its “natural” and “Godly order.”⁷⁵ At the same time, it admitted that there was even divisions among CDU members in some matters.⁷⁶ The conservative *Frankfurter Allgemeine Zeitung* (FAZ) supported the CDU/CSU position, as usual, and published an article on 13 February 1954 titled “A More Vigorous Struggle for the Rights of Women,” which described the conflict in the Bundestag and explained Wuermeling’s arguments about totalitarianism and authority in the family and the SPD and FDP’s opposition to the CDU/CSU’s arguments about natural order.⁷⁷ Another FAZ article from the same issue sided even more clearly with the CDU/CSU, noting that the SPD and FDP “do not deny the possibility...of harming children and increasing the vulnerability of their parents” while praising the CDU/CSU’s recognition that men would likely listen to their wives before making decisions.⁷⁸ Even though the FAZ tended to support the CDU/CSU position, its editors knew that its readers were more divided in this matter and thus printed readers’ letters that exposed different opinions. One woman, for example, wrote that since men were the ones who typically harmed women, it made no sense for the administration to uphold a law conveying them more authority.⁷⁹

⁷⁵ “Gleichberechtigungsdebatte vor dem Bundestag,” *Union in Deutschland* 14, February 17, 1954, 4.

⁷⁶ “Gleichberechtigung in parlamentarischer Sicht. Meinungen innerhalb der Fraktionen geteilt,” *Union in Deutschland*, March 5, 1954, 1-4.

⁷⁷ “Scharfer Kampf um die Rechte der Frau,” *Frankfurter Allgemeine Zeitung*, February 13, 1954, 1.

⁷⁸ “Charaktersache,” *Frankfurter Allgemeine Zeitung*, February 13, 1954, 1.

⁷⁹ “Briefe an die Herausgeber: Gleichberechtigung,” *Frankfurter Allgemeine Zeitung*, February 22, 1954, 2.

More liberal and left-leaning party organs and newspapers seized the moment to reemphasize the Left's commitment to women's equality with men. Articles in the SPD newspaper *Neuer Vorwärts. Zentralorgan der Sozialdemokratischen Partei Deutschlands* (founded in 1949) called the Bundestag's decision an "overdue change" and reiterated the SPD's commitment to "full civil equality of married women."⁸⁰ An article in the monthly SPD women's newsletter *Gleichheit*, meanwhile, assured readers that "the SPD has never vacillated in its ninety-year existence from the issue of the equality of men and women."⁸¹ The SPD's position was supported, as in the past, by liberal papers, like the weekly *DIE ZEIT*. In October 1955, in *DIE ZEIT*, one author warned in an article titled "Problem Child 'Family Law'," readers that no matter what form of marriage the parliament chose—"partner-like" or "patriarchal"—"the other [form of marriage] is placed in opposition to the law."⁸² At the same time, the author labeled the committee's resolutions on property law as "progressive" and called for the recognition of marriage as a "free space" where religious and secular beliefs could be implemented.⁸³ Surprisingly, *Der Spiegel* remained silent on the debates at this point in time. In contrast to the conservative press, which had portrayed the CDU/CSU's version as natural and less disruptive to families, the more liberal and left-leaning newspapers depicted the reforms as a necessary break in historical tradition and a shift that would not harm families, but rather, granted them more freedom.

This section has shown that for much of the second legislative period in the FRG, family law reforms remained in limbo for a number of reasons. The power struggle between

⁸⁰ "Gleichberechtigung – ein überfälliger Wechsel," *Neuer Vorwärts*, February 19, 1954, 4; Herta Gotthelf, "Gleichberechtigung – keine 'Gleichmacherei'," *Neuer Vorwärts*, February 5, 1954, 1.

⁸¹ Charlotte Walner-von Deuten, "Der Kampf um die Gleichberechtigung," *Gleichheit*, January 1954, 1.

⁸² E.W.H. Arnold, "Sorgenkind 'Familienrecht'," *DIE ZEIT*, October 27, 1955, 2.

⁸³ Arnold, "Sorgenkind 'Familienrecht'," 2.

the CDU/CSU and the oppositional parties in the Bundestag and society was one main factor. For this reason the ruling CDU/CSU initially tried to avoid addressing the reforms and proposed an extension of the constitutional mandate, but was defeated by the Federal Constitutional Court and protests from society. The power struggle also resulted in the inability of Bundestag legislators to find middle ground at this point. The polarization between the political camps during the 1950s in Cold War West Germany prevented the Bundestag from reaching its reforms in 1954. As the next section shows, anti-Communism was an important matter that swayed the path of family law reforms in the FRG in the mid-1950s.

The Effects of Increasing Anti-Communism on Family Law, 1954–1956

Anti-Communism—the “legitimation ideology” of the FRG—also played an important role in the development of German family law.⁸⁴ First, the persecution and ban of the KPD, its members, and everyone who was supposedly a Communist was one factor. Since the inception of the Federal Republic, the KPD, led by Max Reimann, had been a minority party.⁸⁵ During the Parliamentary Council, Communists had allied with the Social Democrats on issues of gender equality, though this coalition crumbled in the early years of the republic as the SPD drifted away from Marxism and distanced itself from the SED in the East. The KPD had tried in vain to introduce equal wages and other measures, which were

⁸⁴ Patrick Major, *The Death of the KPD: Communism and Anti-Communism in West Germany, 1945-1956* (Oxford: Oxford, 1997), 257; Christoph Klessmann, *Die doppelte Staatsgründung: Deutsche Geschichte 1945-1955* (Göttingen: Vandenhoeck & Ruprecht, 1982), 251.

⁸⁵ For biography of Max Reimann, see “Max Reimann,” last accessed January 13, 2017, http://www.bundesarchiv.de/cocoon/barch/0000/z/z1961z/kap1_5/para2_29.html;jsessionid=AA5E6B25C23DC06935908E89BA435723?highlight=true&search=%22Reimann,%20Max%22&stemming=false&field=all#highlightedTerm. Reimann was born in 1898 and was an early convert to Communism in 1919. When the SED was barred in West Germany after 1946, he reformed the KPD and migrated to the GDR after it was barred in West Germany.

Social Democratic demands since the Wilhelmine Empire, but in the heated Cold War climate after 1945, these old socialist aims too closely resembled the politics of the SED on the other side of the Iron Curtain. In the 1949 election, the KPD barely cleared the 5 percent barrier to earn representation in the Bundestag. Four years later, in the 1953 Bundestag election, the KPD only gained 2.2 percent of the vote, not reaching the minimum 5 percent to maintain its spot in the Bundestag. Increasingly, Communist and other leftist critics of the Adenauer government were persecuted after 1949. In September 1950, for instance, the CDU/CSU-controlled government adopted the so-called “Adenauer-Decree.” This order requested loyalty to the West German Basic Law (*Verfassungstreue*) from all employees in public service and with this outlawed the membership in any organization that was perceived as disloyal to the constitution. Many Communists lost their positions in public service as a result. In November 1951, the Adenauer government requested that the Federal Constitutional Court investigate the *Verfassungstreue* of the KPD and its organizations. After a lengthy trial, the Court decided in August 1956 that the KPD was anti-democratic and unconstitutional. The Court banned the KPD, which had at this point in time around 6,000 to 7,000 members. The Adenauer government responded immediately by implementing this ban, which also prohibited so-called “substitute” organizations. Afterward, thousands of KPD members were brought to court and imprisoned and thousands of Leftists were persecuted.⁸⁶ Additionally, the international context was important. In 1955, the Adenauer government adopted the Hallstein doctrine, which stated that the FRG “was the sole legitimate representative of the German nation in the international community and the legal

⁸⁶ Rolf Gössner, *Die vergessenen Justizopfer des Kalten Krieges* (Berlin: Aufbau Taschenbuch Verlag, 1998), 26.

successor to the German Reich... West Germany would not grant diplomatic recognition” to East Germany or any country recognizing it.⁸⁷

The persecution and ban of the KPD and its members, supporters, and “sympathizers” (*Sympathisanten*) had the effect of removing a potential ally for the SPD, one that would have advocated a more egalitarian family law and related policies. One of the targeted so-called “substitute” organizations was the West German branch of the Democratic Women’s League of Germany (*Demokratischer Frauenbund Deutschlands*, DFD), which had grown 22,000 members strong by 1950.⁸⁸ By 1954, the DFD had become quite outspoken about the forthcoming family law reforms. On 24 December 1953, for instance, the organization sent a letter to the CDU Minister of the Interior, Gerhard Schröder, to voice opposition to the federal government’s plans.⁸⁹ Then, in July 1954, the organization held a conference in Cologne to formulate their own version of a new family law, arguing that “the federal government’s bill does not correspond to the wishes of the majority of women.”⁹⁰ The DFD clearly had reservations about the federal government’s proposed legislation and offered an alternative to sympathetic Germans, which drew heavily from the parallel legal reforms in the GDR. The DFD proposals closely resembled (nearly verbatim) sections of the 1950 East

⁸⁷ Young-Sun Hong, “‘The Benefits of Health Must Spread Among All’: International Solidarity, Health, and Race in the East German Encounter with the Third World,” in *Socialist Modern: East German Everyday Culture and Politics*, eds. Katherine Pence and Paul Betts (Ann Arbor: University of Michigan Press, 2008), 186.

⁸⁸ Major, *The Death of the KPD*, 215.

⁸⁹ Demokratischer Frauenbund Deutschland an den Minister des Inneren Herrn Dr. Schröder, December 24, 1953, SPD-Parteivorstand/Frauen Referat 0241, Archiv der sozialen Demokratie-Bonn. For more on Schröder, see Torsten Oppeland, *Gerhard Schroeder (1910-1989): Politik zwischen Staat, Partei und Konfession* (Düsseldorf: Droste, 2002). Schröder had joined the liberal German People’s Party in 1932 before becoming a member of the Nazi Party in 1933. He remained a NSDAP member until 1941 and then joined the CDU after the war. He then entered the Bundestag before being appointed to the Ministry of the Interior.

⁹⁰ Demokratischer Frauenbund Deutschlands Vorstand Westdeutschland, Entwurf einer Gesetzesvorlage über die Gleichberechtigung von Mann und Frau (Düsseldorf: Hans Appelbaum, 1954), 1, 5/DGAR000869, Archiv der sozialen Demokratie-Bonn.

German *Mutterschutzgesetz* and the Family Code, or *Familiengesetzbuch*, the final version of the family law drafted in the GDR between 1949 and 1954. They suggested, like their East German counterparts, fostering “the equality of men and women in state, economic, and social life.”⁹¹ Furthermore, they proclaimed that “marriage has for women no limitations or impairments of their rights to consequence,” nor would it curtail a woman’s right to work or help make decisions for the family.⁹² The DFD hoped that these proclamations would sway some West Germans to their interpretation of a new family law, but in the context of Cold War-era anti-Communism, they did not.

All West German parties and their supporters—of course, with the exception of the KPD—automatically rejected everything coming from the SED-controlled Germany on other side of the Iron Curtain. Even before the official adoption of the Hallstein Doctrine, the CDU/CSU-led government reacted only very reluctantly—if at all—to GDR initiatives. This was also the case regarding family law. After the GDR government had suggested a new Family Code in the summer of 1954, the West German federal government, major political parties, and the media kept close tabs on its progress, but refused any collaboration with the East. On 26 July 1954, for instance, the East German Minister of Justice Hilde Benjamin reached out to her West German colleague Fritz Neumayer (FDP), proposing that politicians and legal experts from East and West meet for an “Academic Conference on Questions of Family Law in Germany” in Leipzig on 13-14 November 1954. Neumayer refused to answer her letter, instead publishing a press release condemning the reform of family law in the

⁹¹ Ibid.

⁹² Ibid.

GDR.⁹³ Supporting Neumayer's reticent attitude, the anti-Communist People's League for Peace and Freedom (*Volksbund für Frieden und Freiheit*), founded in 1950 in Hamburg as an anti-DDR propaganda and news organization, contacted all jurists in the FRG to warn them against participating in the conference. According to the anti-Communist League, the SED would use the attendance of Westerners as propaganda for their own "party-political interpretation" of the law.⁹⁴ The extent to which Western lawyers were convinced by this particular argument is unclear, but in the climate of heated Cold War anti-Communism and fear of persecution, Neumayer and the anti-Communist People's League got their wishes. Fewer than 20 Westerners attended the conference.⁹⁵ Those who did, such as Waldemar and Hildegard Wolle-Egenolf, a married Social Democratic couple who practiced family law and published a booklet on West German family law reforms in 1952, tended to have a more left-leaning independent position or sympathized with the GDR.⁹⁶ Some jurists at least expressed their regrets in letters to Kurt Büttner, a Director of the German Institute of Legal Science (*Deutscher Institut für Rechtswissenschaft*), one of the main organizers of the GDR conference. They refrained from attending because of ideological reasons, illness, family obligations, or old age.⁹⁷ Others, like a professor from the law faculty at the University of

⁹³ Maria Hagemeyer, *Der Entwurf des Familiengesetzbuches der „Deutschen Demokratischen Republik“* (Bonn: Bundesministerium für gesamtdeutsche Fragen, 1955), 24. The former Minister of Justice, Thomas Dehler, was more open to the idea. See Resume einer Besprechung mit Dr. Th. Dehler, DP 1/7892, Bl. 332, BArch Berlin.

⁹⁴ Antikommunistischer Volksbund für Frieden und Freiheit e.V. an alle Juristen, November 3, 1954, DP 1/7889, Bl. 447, BArch Berlin.

⁹⁵ According to a list of participants, only 13 West German participants had RSVPed by October 16, 1954, with another 5 indicating "maybe." See Liste der westdeutschen Teilnehmer, October 16, 1954, DP 1/7892, Bl. 385, BArch Berlin.

⁹⁶ Waldemar and Hildegard Wolle-Egenolf, *Der Gleichheitsgrundsatz von Mann und Frau (Art. 3 Abs. 2 d. Bonner Grundgesetzes) im neuen deutschen Familienrecht* (Bonn: Gesellschaft z. Gestaltung öffentl. Lebens, 1952).

⁹⁷ See, for example, W. Bergemann an den Herrn Direktor des Deutschen Instituts für Rechtswissenschaft Herrn H. Büttner, October 8, 1954, DP 1/7889, Bl. 5, BArch Berlin; Beitzke an Herr Büttner, October 8, 1954, DP

Hamburg asked for more materials on the GDR law to become better informed.⁹⁸ But the majority of legal experts in the West simply ignored the event.

One main aim of the West German federal government, specifically the Inner-German Ministry, was to discredit the GDR's Family Code in the public. For this reason they published a brochure by Maria Hagemeyer—the same Ministry of Justice associate who had provided proposals for the new West German family law—titled “Regarding Family Law in the Soviet Zone” (*Zum Familienrecht der Sowjetzone*) in 1955. Hagemeyer explicitly condemned the tendency of the GDR law to supposedly force women into production and raise children under the direction of the state and Bolshevism.⁹⁹ The bulk of her brochure was an in-depth and incisive critique of each section of the East German Family Code. According to Hagemeyer, provisions such as the right to independent surnames meant the GDR did not value familial unity.¹⁰⁰ Other regulations, she argued, proved that “a proper family life with shared mealtimes and shared free time is not the ideal of the Soviet administration.”¹⁰¹ Removing the right to alimony in divorce would “lead to an obvious worsening of the position of women under the cloak of equality.”¹⁰² In addition, she disapproved of the GDR's shared marital property, claiming it would further disadvantage women when their husbands could use common property for personal uses.¹⁰³ Finally, she denounced the GDR's

1/7889, Bl. 8, BArch Berlin; Borger an Büttner, October 12, 1954, Bl. 7, BArch Berlin; Ebel an Büttner, October 2, 1954, DP 1/7889, Bl. 9, BArch Berlin; Erler an das Deutsche Institut für Rechtswissenschaft, October 2, 1954, Bl. 10, BArch Berlin. Bl. 15-43, 46, 49, 51, 53 all express regrets. Kuhn an Toeplitz, September 26, 1954, DP 1/7892, Bl. 335, BArch Berlin.

⁹⁸ Würdinger an Herr. Dr. Toeplitz, October 18, 1954, DP 1/7889, Bl. 52, BArch Berlin.

⁹⁹ Hagemeyer, *Zum Familienrecht der Sowjetzone*, 8, 19-21.

¹⁰⁰ *Ibid.*, 11.

¹⁰¹ *Ibid.*, 10.

¹⁰² *Ibid.*, 11.

¹⁰³ Hagemeyer, *Zum Familienrecht der Sowjetzone*, 18.

proclamation of equality between legitimate and illegitimate children as a sham, because the child only took its mother's name and the father had few rights.¹⁰⁴ Hagemeyer critiqued every provision that the SED considered radical and progressive for supposedly destroying women's equality and endangering the family.

Beyond trying to convince readers that equality did not truly exist in the GDR, Hagemeyer's brochure had a second purpose: to undermine the SED's assertions about German unity. She criticized Hilde Benjamin's opinion that "the draft of the Family Code has a pan-German meaning" and praised the response of her West German counterpart Fritz Neumayer, who bluntly rejected an all-German debate about family law. For Hagemeyer, the GDR draft "endangered the structure of the German family" and the law and the 1955 relaxation of divorce regulations in the GDR would "lead to the dissolution of the family."¹⁰⁵ These sentiments reverberated around the Federal Republic at a number of meetings. At a *Mütterdienstagung* (Mothers' Service Conference) in Stein near Nürnberg, organized by the Evangelical Diakonie, presenters supported Hagemeyer's rhetoric, calling the "difference of juridical formulations" a "huge danger" for reunification.¹⁰⁶ Hagemeyer presented her position to the public as often as possible. One event was a women's conference with the telling title *Gleichberechtigung der Frau als Aufbau- oder Zerstörungsprinzip* (Women's Equality as a Principle of Construction of Destruction) in March 1956 in Bad Sooden-

¹⁰⁴ Ibid., 26.

¹⁰⁵ Ibid., 29.

¹⁰⁶ Familienrecht in der Sowjetzone, Vortrag bei der Mütterdienstagung Ende Juni 1955 in Stein bei Nürnberg, I-048-013/4, Archiv für Christlich-Demokratische Politik-Sankt Augustin.

Allendorf, organized by the *Deutscher Frauenring*, where she concluded in her keynote that women's equality and family law would hinder German reunification.¹⁰⁷

The Protestant Church of Germany was also an active mediator in the East-West debates over family law. The Protestant Church stood in the somewhat unique position of being one of very few organizations that remained structurally unified across the German-German border in the 1950s and 1960s. Accordingly, EKD leaders on both sides of the Iron Curtain corresponded about family law throughout 1955.¹⁰⁸ Additionally, the Protestant press produced articles on the competing legislative drafts in the FRG and the GDR. In February 1956, for example, Elisabeth Schwarzhaupt published an article comparing and contrasting the two drafts. She stressed that the FRG honored "familial community" while the GDR "placed individual freedom...in the foreground."¹⁰⁹ Furthermore, she emphasized the differences between marital property models, namely that the GDR's suggested equal separation of property would be detrimental to women.¹¹⁰ Schwarzhaupt intended both examples to demonstrate that the GDR's new family law would in fact harm and not help German families.

¹⁰⁷ Gleichberechtigung der Frau als Aufbau- oder Zerstörungsprinzip, March 13-16, 1956, B211/22-2, BArch Koblenz. Gisela Naunin is listed in the protocols as one of the organizers/stenographers of the conference. Her obituary states that she had been an active member of the *Deutscher Frauenring* in Westphalia. See "Der Deutsche Frauenring e.V. trauert um Dr. Gisela Naunin, geboren 3. November 1908, gestorben 22. August 2010," last accessed February 17, 2017, <http://www.deutscher-frauenring.de/aktuelles/nachrichten/der-deutsche-frauenring-e.v.-trauert-um>

¹⁰⁸ Ranke an Kracker von Schwarzenfeldt, September 23, 1955, 99/647, Evangelisches Zentralarchiv-Berlin (EZAB); Kracker von Schwarzenfeldt an Ranke, July 22, 1955, 99/647, EZAB; Ranke an Kracker von Schwarzenfeldt, June 24, 1955, 99/647, EZAB; Kracker von Schwarzenfeldt an Ranke, June 8, 1955, 99/647; Kracker von Schwarzenfeldt an Ranke, May 12, 1955, 99/647, EZAB; Ranke an Herr Präsident, April 12, 1955, 99/647, EZAB; Bosch an Ranke, July 9, 1955, 99/648, EZAB; Kracker von Schwarzenfeldt an Ranke, June 16, 1956, 99/648, EZAB.

¹⁰⁹ Elisabeth Schwarzhaupt, "Kirchliche Stellungnahmen zur Familienrechtsreform in der Bundesrepublik und in der Sowjetzone," *Evangelische Verantwortung*, February 1956, 4.

¹¹⁰ *Ibid.*, 4.

In addition, the major political parties in the West kept a close eye on the developments of family law reforms in the East. The SPD *Ostbüro*—a department within the party aimed at helping Eastern refugees and keeping intelligence among former SPD members in the East—produced a report on the public debates in the GDR in the summer of 1954.¹¹¹ Unnamed “sources” provided the SPD with insights into the public forums. They reported that a law “seldom has ... aroused so much feeling as the one presented by the Ministry of Justice and put forward for discussion.”¹¹² The other political parties had *Ostbüros* that were active in spreading information about the East and vice versa. One was the CDU Ostbüro, based in West Berlin, which organized the Christian-Democratic expellees and refugees from the GDR. It published since 1949 the newspaper *Der Tag*, which was smuggled illegally into the GDR to inform dissidents there. In the early 1950s, one key issue featured in *Der Tag* was the family law reforms in the GDR and the opposition against it.¹¹³

The West German and West Berlin media also monitored the developments in the Eastern sector. The local Berlin newspaper, *Spandauer Volksblatt*, for instance, reported on the controversial decision of the Protestant Church in Germany (*Evangelische Kirche in Deutschland*, EKD) to withdraw its support of the GDR Family Code. It stressed that Protestant leaders had revoked its earlier statements because the SED “used the marital and family life of citizens ‘to posit definite political goals.’”¹¹⁴ On 14 September 1954, the nation-wide FAZ, too, published an article titled “Critics of Family Policy in the Zone” that reported on the Protestant Church of Germany’s recent rejection of the East German Family

¹¹¹ Neues Familiengesetz, September 13, 1954, SPD Ostbüro 0247, Archiv der sozialen Demokratie-Bonn.

¹¹² Ibid.

¹¹³ “Thesen zum Familienrecht,” *Der Tag*, September 5, 1954, DO 4/2905, BArch Berlin. See also “Der Tag,” last accessed December 26, 2016, <http://www.kas.de/wf/de/71.14859/>. See also Protokoll, November 28, 1951, A45-50, Archiv des Liberalismus-Gummersbach for notes from the FDP Ostbüro.

¹¹⁴ “Ostkonzferenz äußert Bedenken,” *Spandauer Volksblatt*, October 2, 1954, DO 4/2905, BArch Berlin.

Code.¹¹⁵ Its depiction of the EKD's opinion focused similarly on the church leaders' reticence about the highly politicized nature of the law and its destruction of distinct gender roles. It notably did not mention the issue of German unification, although the EKD had also raised this as an issue in other papers.¹¹⁶ In an earlier article from 16 June 1954, the FAZ had taken a more neutral tone in presenting the key points of the East German Family Code, but emphasized in its final sentence that "political circles in Berlin have labeled the law as a new hit against the legal unity of Germany."¹¹⁷ Such a statement was designed to steer West German readers away from positive impressions of the law. Other more liberal and left-leaning media outlets also criticized the suggested new GDR Family Code and the family policies behind it as anti-democratic and totalitarian. *Der Spiegel*, in a 15 September 1954 profile of the new Family Minister Franz-Josef Wuermeling, called the policies of the Soviet Union (and by extension, the GDR) "similar to those of the National Socialist regime in Germany."¹¹⁸ However, *Der Spiegel* article also criticized the CDU family policy and titled the designated Family Minister Wuermeling a "papal guard."

This section has shown how Cold War anti-Communism informed to the debate on family law reforms in the West. First, for the advocates of reform, such as the SPD and FDP, rising anti-Communism and the constant confrontation with the East made it very difficult to articulate their own position and find support for it. Second, despite the Adenauer administration and major political parties' frequent dismissals of the GDR, they kept a close watch on the Family Code's debut in the East. They were unwilling to get too close,

¹¹⁵ "Kritik an der Familienpolitik der Zone," *Frankfurter Allgemeine Zeitung*, September 14, 1954, 3.

¹¹⁶ "Thesen zum Familienrecht," *Der Tag*, September 5, 1954, DO 4/2905, BArch Berlin.

¹¹⁷ "Familiengesetzbuch für die Zone," *Frankfurter Allgemeine Zeitung*, June 16, 1954, 4.

¹¹⁸ "Des Papstes Garde," *Der Spiegel*, 38, September 15, 1954, 10.

however, refusing to participate in open discussions with the East German Ministry of Justice. Finally, the Protestant Church, which maintained formal ties with the East, became a key player in these debates. All of these factors combined prevented a serious debate about the East German Family Code and made it harder for supporters of a reform in West Germany that aimed for equal rights to be heard.

Finalizing the Equal Rights Act, 1956–1961

By the end of 1956, the Bundestag committee had concluded its debates. On several issues, the committee found common ground. On marital property, for example, the members agreed that men and women could separately govern the use of their own belongings. All sides were willing to grant surviving spouses a greater share of inheritance. On the matter of the *Stichentscheid*, however, the committee remained divided. On 15 November 1956, by one vote, its members narrowly overturned the *Stichentscheid* of men in marriage and replaced it with a provision that promised equal decision-making by both partners.¹¹⁹ On 12 December 1956, however, by a margin of two votes (15 to 13), the committee opted to keep the “final decision” of the father. The conflicting messages of these two decisions defined the subsequent discussions of family law in civil society, the media and last but not least the Bundestag, where oppositional factions openly stated their reservations about the committee’s proposals. One place of intensive debate was the CDU/CSU faction itself, which did not respond favorably to the committee’s votes and sought to strengthen its position by quashing perceived dissidence within the party. The day after the committee elected to overturn the *Stichentscheid*, in the CDU/CSU Parliamentary fraction meeting, for example,

¹¹⁹ VDBT, [2.] Deutscher Bundestag, zu Drucksache 3409, 3.

chairman of the CDU/CSU Bundestag faction and Adenauer's confidante, Heinrich Krone, singled out Wilhelm Lotze, a CDU parliamentarian from Niedersachsen and committee member who had missed the vote on the *Stichentscheid* in marriage in order to attend another meeting. Krone chastised Lotze, stating, "It must be left to his discretion, which work he considers more urgent."¹²⁰ Krone's remark implied that Lotze was in some way responsible for the vote going awry. Moreover, he offered a subtle warning to other members of the CDU/CSU to prioritize the Equal Rights Act. At another point, in May 1957, Krone targeted Elisabeth Schwarzhaupt, who had openly opposed the CDU/CSU party leadership on the issue of the *Stichentscheid* and had led a dissenting faction within the party. He told Schwarzhaupt: "If you are of another opinion on this matter, refrain from making a motion for an amendment."¹²¹ His statement was meant to silence Schwarzhaupt and serve as a warning to other present members of the CDU/CSU who had voiced their opposition, but this did not happen, neither inside the CDU/CSU faction and the Bundestag in general, where SPD and FDP continued to pursue their oppositional agenda, nor in civil society and the media.

The major opposition came from outside the Bundestag. Earlier, when Hagemeyer debuted her first *Denkschrift* in 1951, individual women's associations had written to the Ministry of Justice to explain their views on her proposals. As the last chapter showed, many women's organizations had pressed the Adenauer administration in the summer and fall of 1952 to scale back its proposed reforms, but to no avail. Then, in January 1954, when the federal government and Bundestag took on the legislation again, the *Deutscher Frauenrat*

¹²⁰ "16.11.1956: Fraktionsvorstandssitzung," in *Die CDU/CSU-Fraktion im Deutschen Bundestag: Sitzungsprotokolle*, ed. Helge Heidemeyer (Düsseldorf: Droste, 1998), 1323-24.

¹²¹ "2.5.57: Fraktionsvorstandssitzung," in *Die CDU/CSU-Fraktion im Deutschen Bundestag: Sitzungsprotokolle*, ed. Helge Heidemeyer (Düsseldorf: Droste, 1998), 1474.

pursued a series of different strategies to disseminate information about the law and pressure the Adenauer administration and the Bundestag. For one thing, the organization used its newsletter, *Information for Women* (IfF), to communicate to its readers the existing dissent in society. Before, individual women's organizations, the two major churches, trade unions, and other professional organizations had petitioned the Ministry of Justice separately. Now, the editor of IfF, Annelise Glaser, reprinted their petitions and opinion pieces in the pages of the newsletter, an approach that already the newspaper of the BDF, *Die Frau*, had used before 1933, which is not accidental because many of the older leaders of the *Deutscher Frauenrat* were politically already active in the Weimar Republic.¹²² Publishing all the petitions side-by-side was a way of spreading information about the opposition to and support for the law. Furthermore, it allowed readers to see how widespread their protests were. The IfF continued this policy until the final decision of the Bundestag about the Equal Rights Act.

Another strategy women's associations, other professional organizations, and individuals used was letter-writing campaigns to the representatives of the political parties in the Bundestag, especially the FDP and CDU/CSU. The main message of these letters by individuals was the opposition of women against the *Stichentscheid*. One female FDP member, for example, stated in 1954 her opposition to party leader Thomas Dehler, explaining that when her husband was in a Russian POW camp, she had made all the

¹²² Not much is known about Glaser, other than she was selected by women's association leaders Nora Melle, Theanolte Bähnisch, and Dorothea Karsten over another contender. Icken, *Der Deutsche Frauenrat*, 69-70. See, for example, *Informationen für die Frau*, September 1954, Anlage A; *Informationen für die Frau*, January 1954, Anlage A; *Informationen für die Frau*, February 1954, Anlage A; *Informationen für die Frau*, May 1954, Anlage A; "Zur Reform des Familienrechts/Stichentscheid," *Informationen für die Frau*, January 1957, 7-11; "Zum Stichentscheid im Familienrecht," *Informationen für die Frau*, February 1957, 4-6; "Zum Stichentscheid im Familienrecht," *Informationen für die Frau*, March 1957, 4-6.

decisions, and she resented having that right removed again.¹²³ Another wrote Dehler in the same year that she believed the *Stichentscheid* made men into bullies.¹²⁴

In addition, individual women's organizations continued to write letters until the final decision of the Equal Rights Act. Here, especially the Bundestag's committee's decision of 1956 to uphold the *Stichentscheid* for fathers caused action by many women's organizations. The German Academic Women's Association (*Deutscher Akademikerinnenbund*), the Karlsruhe Women's Group, *Deutschen Frauenrings-Ortsring* Sinsheim/Elsenz, and the *Frauenring* Kehl, for example, all proposed in statements in January 1957 leaving decision-making to both parents, not only the father.¹²⁵ In the same month, the Protestant Women's Work (*Evangelische Frauenarbeit in Deutschland*) expressed in an opinion piece that the BGB conferred "parental (emphasis original) authority" and supported instead allowing a court to step in when parents could not come to a mutual agreement. It supported with this statement its representative in the Bundestag, CDU parliamentarian Elizabeth Schwarzhaupt.¹²⁶ The Hessian Women's Association (*Frauenverband Hessen*) too backed up in a statement from January 1957 mutual decision-making, arguing that this approach would in no way undermine "Christian marriage and Christian ethic," nor would it force non-Christian couples to adhere to subjugation of one gender to another.¹²⁷ The *Frauenring*

¹²³ Melchior an Dehler, February 1, 1954, N1-3000, Archiv des Liberalismus-Gummersbach.

¹²⁴ Erstmann-Vockrodt, January 10, 1954, N2-6, Archiv des Liberalismus-Gummersbach.

¹²⁵ Deutscher Akademikerinnenbund an das Bundesjustizministerium, January 18, 1957, NL 1151/226, BArch Koblenz; Karlsruher Frauengruppe an die Herren Vorsitzenden der Fraktionen, February 1, 1957, NL Eduard Wahl, 01-237-026/2, Archiv für Christlich-Demokratische Politik-Sankt Augustin; Frauenring Kehl an Eduard Wahl, January 26, 1957, NL Eduard Wahl, 01-237-026/2, Archiv für Christlich-Demokratische Politik-Sankt Augustin; Deutschen Frauenrings-Ortsring Sinsheim/Elsenz an Eduard Wahl, February 15, 1957, NL Eduard Wahl, 01-237-026/2, Archiv für Christlich-Demokratische Politik-Sankt Augustin.

¹²⁶ Evangelische Frauenhilfe in Deutschland, Zur Frage des Stichentscheids des Mannes in §1628 des Regierungsentwurfs zum Familienrecht, January 17, 1957, NL 1151/226, BArch Koblenz.

¹²⁷ Frauenverband Hessen an Herrn Prof. Dr. Wahl, January 15, 1957, NL Eduard Wahl, 01-237-026/2, Archiv für Christlich-Demokratische Politik-Sankt Augustin.

Baden-Baden, the *Frauenring* Wilhelmshaven, the German Protestant Women's Association, and the *Landesverband Hessen im Deutschen Hausfrauenbund* all argued that women spend more time with their children; therefore it was nonsensical to deny them equal rights as parents.¹²⁸ Finally, a local-level Social Democratic women's committee argued that it was the "harsh wartime and crisis years of our century" that granted "women and mothers their equality with men."¹²⁹ Whether approaching the subject from a juridical, Christian, or retributive perspective, there was a consensus among women's associations that the parental *Stichentscheid* unfairly favored men.

In particular, women's associations targeted the CDU/CSU and the FDP with their letter-writing campaigns. In the CDU/CSU's case, the party's staunch opposition to women's equality provoked women to write. On 14 January 1957, for example, Frau C. of Karlsruhe wrote to her CDU parliamentarian Eduard Wahl to explain that she was "deeply disappointed" and "alienated" by the Bundestag legal committee's decision to retain the father's right to decide.¹³⁰ In later correspondence, she told Wahl that keeping such a provision was reminiscent of the Nazi state.¹³¹ Similarly, Frau H. compared and contrasted war and peacetime, asserting that the wars proved women were fully capable of making

¹²⁸ Frauenring Baden-Baden an Eduard Wahl, February 22, 1957, NL Eduard Wahl, 01-237-026/2, Archiv für Christlich-Demokratische Politik-Sankt Augustin; Hedi Flitz an den Bundestagsabgeordneten, February 14, 1957, N2-10, Archiv des Liberalismus-Gummersbach; Fini Pfannes an den Herrn Bundesminister der Justiz, February 9, 1957, B141/2015/96, BArch Koblenz; Der Vorstand des Deutsch-Evangelischen Frauenbund an Merkatz, January 25, 1957, B141/2025/94, BArch Koblenz.

¹²⁹ Entschliessung, B141/2025/95, BArch Koblenz.

¹³⁰ Caroline Carl an Eduard Wahl, January 14, 1957, NL Eduard Wahl, 01-237-026/2, Archiv für Christlich-Demokratische Politik-Sankt Augustin.

¹³¹ Caroline Carl an Eduard Wahl, February 18, 1957, NL Eduard Wahl, 01-237-026/2, Archiv für Christlich-Demokratische Politik-Sankt Augustin. See also a similar letter from Lisbeth Kemmer, February 13, 1957, NL Eduard Wahl, 01-237-026/2, Archiv für Christlich-Demokratische Politik-Sankt Augustin.

decisions for the family on their own.¹³² Finally, Frau Dr. C. offered her disdain, because it “opposes Article 3, gives men ‘blank’ authority without proving themselves,” and forced women to pursue a court case when men simply had the right to decide.¹³³ In the case of the FDP, women feared the ambivalence and divisions within the party would lead its representatives to side with the CDU/CSU. One female FDP member even threatened to leave the party if “just one member votes” in favor of the *Stichentscheid*.¹³⁴

Other professional organizations and trade unions protested the proposed legislation as well. On 27 June 1955, for instance, the chairwoman of the Munich chapter of the Union for the Improvement of the Legal Rights of Illegitimate Children, Orphans, and for the Protection of Unmarried Mothers (*Verein zur Verbesserung der Rechtsstellung des ausserehelichen Kindes, der Waisenkinder und zum Schutz der unverheirateten Mutter e.V. Sitz München*) accused the Bundestag committee of maintaining “barbaric primitive conditions” for illegitimate children, particularly regarding their inheritance rights.¹³⁵ In addition, some groups such as the German Trade Union Confederation (*Deutsche Gewerkschaftsbund*) refused to issue an opinion on matters pertaining to parental authority and focused, unsurprisingly, on other issues, such as employment.¹³⁶ Meanwhile, industrial and agricultural associations stressed the important legal changes for couples’ finances. The German Conference on Industry and Trade, for instance, liked the notion of a system of “gains settlements,” but cautioned the Committee against only paying the compensatory sum

¹³² L. Horning an Eduard Wahl, February 11, 1957, NL Eduard Wahl, 01-237-026/2, Archiv für Christlich-Demokratische Politik-Sankt Augustin.

¹³³ Gertrud Carl an Eduard Wahl, February 5, 1957, NL Eduard Wahl, 01-237-026/2, Archiv für Christlich-Demokratische Politik-Sankt Augustin.

¹³⁴ Diemer-Nicolaus an Lüders, January 8, 1957, A5-51, Archiv des Liberalismus-Gummersbach.

¹³⁵ Ditsch an die Mitglieder des Familienrechtsausschusses, June 27, 1955, 2-32-3, Nachlass Weber, Katholischer Deutscher Frauenbund Archiv-Köln.

¹³⁶ Maria Weber an den Informationsdienst für Frauenfragen, January 23, 1957, B 211/26-2, BArch Koblenz.

in cash.¹³⁷ A letter from Bernhard Bauknecht, a Christian Democratic Bundestag representative and president of the German Agricultural Association (*Deutscher Bauernverband e.V.*), to the Committee on 26 March 1957 similarly praised the proposed switch to a system of “earned profits,” because it would benefit agricultural and silvicultural enterprises.¹³⁸ Although women’s associations were the primary group pushing for reform in society, other professional organizations voiced their opinions about niche issues, demonstrating that the Civil Code reforms interested a wide variety of groups in society who were perhaps less invested in women’s equality but still would benefit from its changes.

West German newspapers and party organs offered an array of opinions on the work of the Bundestag committee as well. The CDU organ *Union in Deutschland* emphasized that the state had to ease women’s burden by allowing them to stay home, rather than balancing employment outside the home and domestic care. The same article also stressed that the Bundestag did not want to repeat the policies of the Third Reich or replicate those of the GDR.¹³⁹ Some national newspapers quietly supported the CDU/CSU. On 5 January 1957, for instance, the *Frankfurter Allgemeine Zeitung* relayed to readers without further comment that the Bundestag committee had decided to uphold the father’s right to make decisions for his children.¹⁴⁰

The Social Democratic and liberal press responded to the same core issues regarding the forthcoming legislation. The SPD women’s newsletter *Gleichheit*, for instance, reminded readers that women’s work in the war justified giving them more rights, and moreover, that

¹³⁷ Frentzel an die Mitglieder des Bundestagsausschusses, May 9, 1955, II 409, B1, Parlamentsarchiv-Berlin.

¹³⁸ Bauknecht an die Mitglieder des Ausschusses für Rechtswesen und Verfassungsrecht, March 26, 1957, II 409, B1, Parlamentsarchiv-Berlin.

¹³⁹ “Dr. Wuermeling für Gleichberechtigung der Hausfrauen und Mütter,” *Union in Deutschland*, September 29, 1955, 3.

¹⁴⁰ “Schutz für müde Patriarchen,” *Frankfurter Allgemeine Zeitung*, January 5, 1957, BuZ6.

regimes with “the freedom and sovereignty of humans’ God-given rights” should not ignore women’s equality.¹⁴¹ Other newspapers communicated similar criticisms of the federal government’s plans. On 14 March 1957, for example, *DIE ZEIT* ran an article by CDU member and city councilwoman Elisabeth Kamm, who was supposed to relay the “view of a woman” on the controversial issues of the new law.¹⁴² Kamm stated that “we women were utterly disappointed” by the decision of the committee to maintain the paternal right to decide.¹⁴³ She furthermore asserted that “we were never asked if we wanted to be free of [maternal responsibility].”¹⁴⁴ By using the critical voice of a semi-prominent Christian Democratic female political leader, *DIE ZEIT* displayed the fault in the committee’s recent decisions. Other left-liberal magazines, such as *Der Spiegel*, were silent on the matter. The range of reporting methods, from the *Frankfurter Allgemeine Zeitung*’s “objective” report to *DIE ZEIT*’s more explicit conveyance of critique, demonstrated the multiplicity of media reactions to the topic of family law.

The Committee on Legal and Constitutional Matters concluded its work in April 1957. The final version of the law proposed by the committee represented a number of compromises among the major parties. Under this version, men could no longer assume control over their wives’ property.¹⁴⁵ Women’s work in the home was supposed to be valued

¹⁴¹ Gudrun Fuhrmann, “Gleichberechtigung – eine Verpflichtung,” *Gleichheit*, January 1957, 24.

¹⁴² Elisabeth Kamm, “Sind Männer so geschaffen?” *DIE ZEIT*, March 14, 1957, 1.

¹⁴³ Kamm, “Sind Männer so geschaffen?” 1.

¹⁴⁴ Ibid.

¹⁴⁵ VDBT, [2.] Deutscher Bundestag, zu Drucksache 3409, 3. The longer discussions were outlined subsequently by Franz Seidl, a CSU representative from Dorfen, who spoke on marital property; Karl Wittrock, an SPD representative from Hessen (spousal relations); and Elisabeth Schwarzhaupt, a CDU representative from Frankfurt, who spoke on parental-child relationships. They faced more difficulty defining the *Zugewinnausgleich* clause in cases of separation, divorce, or death.

the same as men's work outside the home.¹⁴⁶ Relatedly, both spouses were obligated to support each other and the family; women primarily through domestic labor, men through income earned outside the home.¹⁴⁷ Women were still expected to adopt their husbands' surnames, although now they could hyphenate. Women would also maintain the "power of the key" (*Schlüsselgewalt*) in their capacity as the head of the household. By a margin of one vote—a sign of how controversial the issue was—the committee determined that men would no longer have the final right to decide in marriage, although they maintained this right over their children.¹⁴⁸ Under this version of the legislative draft—a compromise among members of the Bundestag committee—married women could expect gains in key areas such as marital property and decisions made in marriage, but it still limited their rights in parental authority and still designated them as the primary domestic caretakers.

On 3 May 1957, the Bundestag convened for the final time to discuss the suggested Equal Rights Act. Many of the same issues that had been controversial in 1952 and 1954 arose again as sources of discontent among Bundestag members. Karl Weber (CDU) reintroduced the *Stichentscheid*, for instance, in hopes of getting the Bundestag to reverse the decision.¹⁴⁹ According to Weber, there were certain issues—domicile and permitting a relative to live with the family—that demanded "external structuring of married life" and a "regulatory provision."¹⁵⁰ He maintained that the provision was "no privilege, not a step back for women...[but] a duty, a final responsibility imposed on the husband to make a

¹⁴⁶ Frieda Nadig, "Neuordnung des Familienrechts," *Gleichheit*, April 1957, 85.

¹⁴⁷ *Ibid.*, 85.

¹⁴⁸ VDBT, [2.] Deutscher Bundestag, zu Drucksache 3409, 3.

¹⁴⁹ VDBT, [2.] Deutscher Bundestag, 206. Sitzung, 3. Mai 1957, 11768.

¹⁵⁰ *Ibid.*

decision.”¹⁵¹ When it came to household matters, however, women could take the lead because of “functional difference.”¹⁵² In addition, it was necessary to preserve the clause, Weber argued, because it upheld the constitutional promise of Article 6.¹⁵³ More broadly, he asserted, the *Stichentscheid* represented “Western culture and history.”¹⁵⁴ He cited tradition, sexual difference, and masculine duty as reasons to reinstate the right to decide.

The SPD and the FDP refuted these arguments on several grounds. Karl Wittrock, a lawyer and longtime SPD member, argued that “every marriage has and must possess an order. But this order cannot be one based on power.”¹⁵⁵ Legislators therefore had no right to intervene in the internal structure of the family. Additionally, Wittrock argued, marriage should be based on “common responsibility,” not “the principle of final responsibility that corresponds to ideas of patriarchy.”¹⁵⁶ Furthermore, he asserted that marriage was based on the equality of the sexes. Here, he pointed out that since 1 April 1953, several judges had supported the idea of marriage based on equality through their decisions.¹⁵⁷ FDP representative Herta Ilk came to Wittrock’s aid, proclaiming that if the “internal order is not litigable, then we should not try to make laws that bring such things before a court where they cannot be clarified through a decision.”¹⁵⁸ Moreover, she pointed out that “marriage questions are not only household questions,” so it made little sense to divide

¹⁵¹ Ibid., 11769.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

¹⁵⁵ VDBT, [2.] Deutscher Bundestag, 206. Sitzung, 3. Mai 1957, 11770. For Wittrock’s biography, see: “Karl Wittrock,” in *Biographisches Handbuch der Mitglieder des Deutschen Bundestages 1949–2002*, eds. Rudolf Vierhaus and Ludwig Herbst (Munich: Saur, 2002), 968. Born in 1917, Wittrock came from a Social Democratic family and became a member of the Bundestag in 1953.

¹⁵⁶ VDBT, [2.] Deutscher Bundestag, 206. Sitzung, 3. Mai 1957, 11770.

¹⁵⁷ Ibid., 11771.

¹⁵⁸ Ibid., 11772.

responsibilities.¹⁵⁹ She used as an example the case of a couple building a home together. Should they disagree on the location, why would it be a “manly function” for the husband to decide the matter?¹⁶⁰ Finally, Nadig asserted that the Bundestag must take into account the “changed sociological place of women and mothers,” especially in the absence of men.¹⁶¹ The SPD furthermore cited a statement by Free Democrat and women’s rights activist Marie-Elisabeth Lüders that a certain psychology defined motherhood.¹⁶² These arguments, however, did not prove compelling enough to most of the Bundestag.

By a narrow margin, the Bundestag voted to keep the committee’s recommended law. Although the SPD and FDP had some help from CDU members such as Schwarzhaupt, who supported their proposed amendments, they did not overhaul all of the committee’s recommendations. The final version of the law that the Bundestag approved on 18 June 1957 and went into effect on 1 July 1958 therefore can be interpreted as a series of compromises. On the one hand, it offered fundamental changes from the old law. It entirely removed the *Stichentscheid* in marriage, with no replacement provision. Men could also no longer make the sole decision on the marital home or whether their wives worked. If spouses separated, women would only be forced to take on employment if they would otherwise be expected to contribute income to the household. Marital property changed from a “marital property scheme” to a “community of accrued gain,” meaning that property held by each spouse

¹⁵⁹ Ibid.

¹⁶⁰ Ibid., 11773.

¹⁶¹ Ibid., 11786.

¹⁶² Ibid., 11786, 11777. For biography of Marie-Elisabeth Lüders, see Ludwig Luckemeyer, “Lüders, Marie-Elisabeth” in *Neue Deutsche Biographie* 15 (1987), 454-456. Lüders was born in 1878 and was a member of the Weimar Reichstag. She was one of the oldest members of the Bundestag and one of very few representatives who had been active in the women’s movement since the *Kaiserreich*. She attained a doctorate in 1912 and later had a son while unmarried.

before or acquired separately during marriage remained their private property.¹⁶³

Management of the other's property could only be undertaken with express permission. If the pair should separate under circumstances other than death, then they had to determine which accruals each had made in marriage. If one spouse's accruals were higher than the other, half the surplus amount would be awarded to the less well-off spouse. If one spouse died, a quarter of their inheritance would go to the remaining spouse.¹⁶⁴

On the other hand, it reinforced the gendered division of labor. For instance, women still retained responsibility over household affairs, although men were now legally required to assist and legally represent them. The new law maintained the *Schlüsselgewalt*—the right of the other spouse to take on dealings regarding the household with a third party—as the prerogative of the woman (in contrast to giving it to both partners). The idea behind this provision was that the “power of the keys” should remain the woman's responsibility because the household was her domain. In addition, women could now hyphenate their married and maiden names, but still had to adopt the husband's surname. Furthermore, both spouses would contribute to the household; women's domestic labor counted as their half. Finally, women could work outside the home, but only if it was reconcilable with their household work and only if it was necessary to supplement an insufficient male wage.¹⁶⁵ The 1957 Equal Rights Act went into effect on 1 July 1958.

Almost immediately after the law was approved, the West German media provided some critiques of its provisions. While some papers took a more neutral stance on the law's

¹⁶³ Bericht der Bundesregierung über die Situation der Frauen in Beruf, Familie und Gesellschaft, Deutscher Bundestag, Drucksache V/909, 15.

¹⁶⁴ Gesetz über die Gleichberechtigung von Mann und Frau auf dem Gebiete des bürgerlichen Rechts, June 18, 1957, *Bundesgesetzblatt*, June 21, 1957, 609-632.

¹⁶⁵ Gesetz über die Gleichberechtigung von Mann und Frau auf dem Gebiete des bürgerlichen Rechts, 609-632.

regulations, such as the *Frankfurter Allgemeine Zeitung*'s coverage of the new marital property scheme, some were congratulatory. The SPD women's newsletter *Gleichheit*, for instance, called the law a "significant step," at least for marital equality.¹⁶⁶ Yet others were more critical.¹⁶⁷ On 9 May 1957, for example, *DIE ZEIT* published a brief article by Justus Richter called "The Final Word of Father (*Das letzte Wort beim Vater*)."¹⁶⁸ Richter declared that the Bundestag had "allowed the fallacy to resurface...about the legal anchoring of the equality of women and mothers."¹⁶⁹ Similarly, an article in the 9 July 1958 edition of *Der Spiegel*, titled "The Future of Civil Law Notaries (*Die Zukunft der Notare*)," for example, explored the frenzy of the final weeks before the law went into effect on 1 July 1958. According to the author, "ten thousand married men and in fewer numbers married women hurried in the last weeks to their notaries" as they anticipated the forthcoming law, a result, it was implied, of its mixed outcomes.¹⁷⁰ Under the old law, men had all rights to their wives' property, and unless the pair had drawn up a marital property contract beforehand, women could not claim the same right. Under the new system of "*Zugewinnngemeinschaft*," or "accrued gains," property would be treated separately, with a few exceptions where common property required consent from the spouse.¹⁷¹ While the author praised the new property scheme, he or she denigrated the law's treatment of parental rights, as it continued to invest

¹⁶⁶ Frieda Nadig, "Neuregelung des Familienrechts," *Gleichheit* 7, July 1957, 242.

¹⁶⁷ Manfred Mielke, "Der neue Güterstand in der Ehe," *Frankfurter Allgemeine Zeitung*, BuZ6.

¹⁶⁸ "Das letzte Wort beim Vater," *DIE ZEIT*, May 9, 1957, 1.

¹⁶⁹ *Ibid.*

¹⁷⁰ "Die Zukunft der Notare," *Der Spiegel* 28, July 9, 1958, 22.

¹⁷¹ *Ibid.*, 23.

all final authority in the father.¹⁷² “The inequality of men and women,” the author asserted, “has been fully accomplished here.”¹⁷³

Unequal parental rights, as *Der Spiegel* identified, remained a point of contention in the Federal Republic. In July 1959, a year after the law went into effect, the Federal Constitutional Court ruled that men no longer had complete parental authority. The federal court’s decision can be partly attributed to the intervention of Erna Scheffler, the only female judge on the high court. Scheffler had earned a law degree in 1914, working first as a lawyer and then a judge before the Nazis expelled her from her position because of her “non-Aryan” heritage.¹⁷⁴ Scheffler’s earlier correspondence with liberal feminists like Marie-Elisabeth Lüders had further cued her into the main problems of family law reforms. The 1959 high court decision was significant because it helped married women regain some of their rights, but it still did not overturn the male breadwinner/female homemaker paradigm or the privileges married women still had over unwed mothers.

This section has shown the shifting contours of the final debates over the Equal Rights Act in the FRG. Initially, the Bundestag committee agreed to expand women’s rights and curb men’s rights in certain areas such as marital property, although they also decided to retain men’s authority in marriage and the family. The CDU/CSU did everything in its power to ensure that their own party members supported their version of the law. Resistance from society and from within the Bundestag, including members of the CDU/CSU majority, however, undermined the Christian conservative coalition’s plans for family law. As a result,

¹⁷² Ibid., 24.

¹⁷³ Ibid., 25.

¹⁷⁴ Moeller, *Protecting Motherhood*, 185.

the final version of the Equal Rights Act represented compromise. Throughout the 1960s and early 1970s, marriage and family law remained controversial.

Liberalizing Marriage and Family in the 1960s and early 1970s

While the Equal Rights Act expanded rights for married women and limited male authority in critical ways, the Bundestag still did not address all controversial aspects of the old Civil Code, such as divorce and illegitimacy, by the end of the 1950s. More dramatic changes came on 11 August 1961, when the Bundestag passed the related “Law to Reform Family Law” (*Familienrechtsänderungsgesetz*), which expanded the rights of children born after the dissolution of a marriage (a subject that was ignored in the earlier debates).¹⁷⁵ It provided further provisions for men and children to dispute legitimacy.¹⁷⁶ While the CDU/CSU proposed adding no-fault divorce to the legislation, the SPD and FDP rejected the measure in favor of larger reforms.¹⁷⁷ The 1961 legislation allowed, however, one party to sue the instigating spouse and challenge the divorce proceedings.¹⁷⁸ The new law also overturned several measures in the 1946 Allied Control Council law. For instance, those who had prior committed adultery were no longer barred from remarriage.¹⁷⁹ Additionally, women no longer had to wait ten months to remarry.¹⁸⁰ The law also granted greater authority to the custody court. For example, the court now had the authority to grant special dispensations for men and women to marry before the age of majority, or to marry people

¹⁷⁵ Buske, *Fräulein*, 234.

¹⁷⁶ “Familienrechtsänderungsgesetz,” *Bundesgesetzblatt*, August 18, 1961, 1222.

¹⁷⁷ Heineman, *What Difference*, 154-155; VDBT, [7.] Deutscher Bundestag, 147. Sitzung, 31. January 1975, 10188-10208.

¹⁷⁸ “Familienrechtsänderungsgesetz,” 1227; Heineman, *What Difference*, 154.

¹⁷⁹ §6, “Familienrechtsänderungsgesetz,” 1226.

¹⁸⁰ §8, “Familienrechtsänderungsgesetz,” 1226.

related to them by marriage or “sexual relations.”¹⁸¹ Foreigners could seek the dispensation of the court to marry without a witness from their home.¹⁸² Despite all these changes, the 1961 law left other matters unturned. For example, women were still nominally in charge of the household and illegitimacy would remain a legal disadvantage until 1970.¹⁸³

Since the 1961 law did not include illegitimacy or full-scale divorce reforms, Social Democrats and some Free Democrats maintained pressure on their Christian conservative compatriots throughout the early 1960s to continue changing family law and societal perceptions of marriage and the family more broadly. An SPD-led Bundestag committee determined in its 1963 “Survey of the Situation of Women in Professions, Family, and Society,” for instance, that contributions of housewives were increasingly seen as equal to men’s work outside the home and there was a “new understanding of marriage as partnership.”¹⁸⁴ At the same time, the report noted that “the development process is still in flux” and legal changes to the status of women had not yet upended lingering social practices.¹⁸⁵

Although the SPD and some FDP members drafted these reports, their success largely depended on the waning power of the CDU/CSU and their ability to continue gaining electoral power. The 1961 election saw the CDU/CSU lose its absolute majority in the Bundestag as the SPD and the FDP made electoral gains of 4.4 percent and 12.8 percent,

¹⁸¹ Kontrollratsgesetz Nr. 16 (Ehegesetz) (February 20, 1946); “Familienrechtsänderungsgesetz,” 1226.

¹⁸² §10, “Familienrechtsänderungsgesetz,” 1226-27.

¹⁸³ Heineman, *What Difference*, 150-151; see also Buske, *Fräulein*, 343.

¹⁸⁴ Bericht der Bundesregierung über die Situation der Frauen in Beruf, Familie und Gesellschaft, Deutscher Bundestag, Drucksache V/909, XVII, 1. The Committee for Women’s and Youth Matters discussed the proposal in 8 meetings, determining a set of requirements for the Enquete. See 1.

¹⁸⁵ *Idem*, Drucksache V/909, XVII.

respectively.¹⁸⁶ In the case of the SPD, the party's marked shift toward the center with the 1959 Godesberg Program helped its electoral prospects. Then, in 1963, Christian conservative rule furthered its rapid decline when the Chancellor, Konrad Adenauer, resigned following a year of scandals such as the *Der Spiegel* affair.¹⁸⁷ The Economics Minister, Ludwig Erhard, was appointed his successor and remained in power through the 1965 election, during which the CDU/CSU maintained a coalition with the FDP. At times, Ludwig Erhard's administration tried to acquiesce to the demands of their parliamentary opposition. In 1965, for instance, Erhard agreed to commission a two-year-long report on the status of the family in West Germany, designed to "assess the material and spiritual situation of the family" in order to "instruct a rapidly changing society."¹⁸⁸ The drafters of the report also made it clear that it was a "situational analysis rather than a performance report" on the status of the family.¹⁸⁹

Erhard only stayed in power for another year, until 1966. At this point, the economy began tanking and the FDP withdrew from the CDU/CSU-FDP coalition for the first time in nearly two decades. Then, Kurt-Georg Kiesinger, a Christian Democratic politician from Baden-Württemberg whose earlier membership in the Nazi Party drew scrutiny throughout his tenure in postwar politics, served as Chancellor between 1966 and 1969. Kiesinger formed the Grand Coalition with the FDP and the SPD. For the first time ever in West German politics, the Social Democrats held a leading position in the Bundestag.

¹⁸⁶ Bark and Gress, *History*, 472.

¹⁸⁷ *Ibid.*, 499-509.

¹⁸⁸ Bericht der Bundesregierung über die Lage der Familien in der Bundesrepublik Deutschland, Deutscher Bundestag, Drucksache V/2532, January 25, 1968, 7.

¹⁸⁹ *Ibid.*, 8.

In 1968, the West German Ministry of Justice established a Marriage Law Commission. By this point, the Ministry of Justice, which had traditionally been under the control of the FDP or the CDU/CSU, was headed by SPD member and Protestant leader Gustav Heinemann, who pushed through his party's reforms. Throughout 1970 and again in 1972—this time, under SPD member Gerhard Jahn's leadership—this Commission assembled a list of proposals for divorce law and other regulations. Although the Social Democrats had traditionally spearheaded reforms from within the Bundestag, further momentum came from outside the parliament, namely in the form of the 1968 New Women's Movement, but also from more conservative sectors of society. Legal scholar W. Müller-Freienfels notes that even many Catholics, by 1970, favored no-fault divorce.¹⁹⁰

By 1968, marriage and family law were well on their way to another major overhaul. In the early 1960s, the hegemonic power of the Christian conservative Adenauer government began to crumble amidst scandals and a declining economy. Although Christian conservative chancellors such as Ludwig Erhard and Kurt-Georg Kiesinger remained in power, their traditional opposition, the Social Democrats, began to make gains in the Bundestag again. Finally possessing a better position of power, the SPD and FDP, aided by the 1968 New Women's Movement and even some conservatives, reintroduced marriage and family law reforms in the 1960s.

Conclusion

This chapter has shown that between 1953 and 1968, the path dependency of the parallel family law reforms in the FRG was shaped by numerous legal, political, social,

¹⁹⁰ W. Müller-Freienfels, "The Marriage Law Reform of 1976 in the Federal Republic of Germany," *The International and Comparative Law Quarterly* 28 (1979), 184-210, 187.

cultural, and economic factors. First, the path of family law was informed by breaks in longstanding legal and institutional norms in the FRG. By 1953, the West had established a semi-functioning liberal democracy—albeit one defined by Adenauer’s “authoritarian power politics”—and the Christian conservatives were at the peak of their power.¹⁹¹ Going into further debates over family law in the mid-1950s, the Adenauer administration intended to use this strong position, as well as its support from the Protestant and Catholic churches, to recreate the paternalistic regulations encased in the 1900 Civil Code for the purposes of stabilizing West German society as it emerged from the lowest points of postwar destruction and as a bulwark against the perceived Communist threat in the East. The ruling party still faced opposition, however, from some of its own members, the FDP, SPD, trade unions, professional organizations, and women’s associations. Their continued resistance against the ruling party ultimately forced it to compromise, both reifying and breaking the long legal tradition at the same time.

Second, political factors shaped the outcome of the 1957 Equal Rights Act and the subsequent reforms in the 1960s. Unlike the earlier legislative period, where the SPD rivaled the CDU/CSU, the 1953 election delivered the government and the Bundestag squarely into the Christian conservatives’ hands. By 1957, when the Bundestag passed the Equal Rights Act, the CDU/CSU was on the verge of earning its largest electoral majority ever. Still, the ruling party had to compromise with its opposition to expand women’s rights in critical ways through the 1957 reforms. In the early 1960s, the hegemony of the Christian conservative coalition that had dominated West German politics since 1949 began to wane. The declining influence of the CDU/CSU opened the door for Social Democrats and Free Democrats to

¹⁹¹ Hans-Peter Schwarz, *Konrad Adenauer: From the German Empire to the Federal Republic, 1876-1952* (New York: Berghahn, 1995), 657.

press for more extensive reforms of divorce and illegitimacy, especially once they controlled the federal government and the Bundestag in the early 1970s. Moreover, the shape of extraparliamentary politics began to change in the late 1960s with the rise of the autonomous women's movement. Germany had had a long tradition of women's movements dating back to the nineteenth century. Indeed, many of the female activists of the Weimar-era, as they had before 1933, actively opposed retaining the Civil Code in the early 1950s, and their pressure on the government helped sway Bundestag members. By 1968, however, a new generation of women who had been socialized in the postwar environment where women's employment and education were more expected, rose up, and became influential in the next round of debates over marriage and family law.

Third, economic changes mattered immensely for the path of family law in the late 1950s and early 1960s. By the mid-1950s, the "economic miracle" had revived the West German economy so much that legislators confronted a labor shortage. One way they dealt with this labor shortage was enlisting the paid, part-time labor of married women. By the end of the 1960s, the married female part-time laborer was normal and even marketed to women as an enjoyable way to balance home and work life. This idea stood in stark contrast to the image the Adenauer administration hoped to continue with its family law reforms: that of a male breadwinner/female homemaker family model in which female labor was only employed under extenuating circumstances. The changes in female labor pushed legislators in the 1970s to embrace a more open and equitable form of marriage and family law.

Fourth, social and cultural factors continued to play into debates about family law. The Christian conservative Adenauer administration and the Protestant and Catholic Churches continued to emphasize the "traditional" family as the cornerstone of a stable,

postwar German society. Their family and welfare policies reinforced the idea of a male breadwinner and female homemaker. Although the New Women's Movement challenged this family model in full force after 1968, so did Free Democrats, Social Democrats, and (until 1956) Communists in West Germany in the 1950s and early 1960s. The conflict between the Christian conservatives and Social Democratic-led opposition in the 1950s over reconciling equal rights with protection of the family ultimately resulted in partial reforms that, over time, began to change West Germans' views on family and partnership.

Finally, the Cold War conflict continued to cast its shadow over family law reforms. As the 1950s went on, the two Germanys diverged more and more in terms of politics, the economy, and society. Compared to the GDR, Western politicians had always been less vocal about the East's family law reforms. Still, anti-Communism was a defining feature of the early Federal Republic, and shaped postwar politicians' different discourses and legislative decisions. Legislators had to carefully craft a law that did not resemble the Family Code, and they had to avoid appearing friendly or sympathetic to the SED in the GDR. Furthermore, earlier discussions in the Ministry of Justice and the Bundestag had raised the problem of legal unity, a problem that diminished once the Adenauer administration formally began following the Hallstein Doctrine in 1955. The federal government's formal non-recognition of the East in many ways eased the work of the Bundestag on the 1957 Equal Rights Act, because legislators no longer had to consider legal unity a possibility. As the next and final chapter shows, the divergence of the two Germanys in the late 1950s also further liberated the GDR to pursue a more radical version of its Family Code.

CHAPTER SIX

BUILDING SOCIALISM, DEFINING FAMILIES: THE NEW SOCIALIST FAMILY CODE, 1954–68

On 15 December 1954, Herr M. of Stuttgart, West Germany, wrote to the Ministry of Justice of the GDR to ask about the forthcoming East German Family Code (*Familiengesetzbuch*, FGB). He explained that his ex-wife and child live in the GDR, and he is paying 40 DM a month into a savings account in West Germany for his child. He inquired as to how he could pay the child support to an account in the GDR. A Ministry official wrote back to explain that Herr M. could not send the money, because “on principle, Western currency cannot be introduced into the GDR.”¹ On one level, his story was universal: divorced couples often face difficulties navigating child support and custody. But Herr M.’s case was complicated by the exceptionally complex and unique legal situation regarding marriage, family, and divorce in the divided Germanys. No easy resolution existed for Herr M., his former spouse, and their child because of the divisive nature of Cold War politics and the unresolved quandary of family law.

Herr M.’s letter arrived near the end of several months of intense public debate over the new family law in the GDR. In June 1954, the Ministry of Justice in the GDR debuted the drafted Family Code, designed to replace the old patriarchal Civil Code with new, socialist,

¹ Marschall an das Ministerium, December 15, 1954, DP 1/7200, BArch Berlin; Ostmann an Marschall, March 11, 1955, DP 1/7200, BArch Berlin.

and more egalitarian regulations on marriage, divorce, marital property, and parental authority. The new legislative draft had gained new momentum in 1952, when the ruling party had begun its “building socialism (*Aufbau des Sozialismus*)” initiative, which included reorganizing agricultural collectives, abolishing states, bringing educational and judicial institutions into line, and aligning all legislation, such as family law, with the goals of Soviet-style Communism. Two key events in 1953, however, disrupted the SED’s progress on these initiatives. The first was the death of Soviet leader Joseph Stalin in March 1953. His successors, seeking to “de-Stalinize” the Soviet Union and distance themselves from his legacy, announced the “New Course,” meant to scale back the terror and high production goals of the Stalin years. Then, when SED leaders refused to follow the New Course and reduce production levels, disgruntled workers rose up against the regime on 17 June 1953. The SED violently cracked down on dissenters, a decision that led to international embarrassment and forced the party to find ways to restore its reputation at home and abroad. Among other measures, the ruling party turned its attention to legal reforms such as the new Family Code to prove to their citizens that socialism was about far more than repression.

To propagate the forthcoming legislation and monitor citizens’ feedback, the Ministry of Justice published numerous newspaper articles, held public forums, and allowed citizens to write in to a formal petition system set up by the East German government in February 1953.² The forums and the petition system were meant to give the appearance of democracy and boost the SED’s reputation both at home and abroad. Instead, it backfired on the ruling

² Judd Stitzel, “Shopping, Sewing, Networking, Complaining: Consumer Culture and the Relationship between State and Society in the GDR,” in *Socialist Modern: East German Everyday Cultures and Politics*, eds. Katherine Pence and Paul Betts (Ann Arbor: University of Michigan Press, 2008), 265; Jonathan R. Zatlin, “Ausgaben und Eingaben. Das Petitionsrecht und der Untergang der DDR,” *Zeitschrift für Geschichtswissenschaft* 45 (1997): 902–17; Ina Merkel and Felix Mühlberg, “Eingaben und Öffentlichkeit,” in »Wir sind doch nicht die Mecker-Ecke der Nation«: *Briefe an das DDR-Fernsehen*, eds. Ina Merkel (Köln: Bohlau, 1998), 13.

party. While the SED expected widespread praise of its new legislation, it received an overwhelmingly negative response from its populace, especially Protestants and Catholics. Without a word to East Germans, the SED abandoned the legislative changes in November 1954. Instead, the party chose to pass some incremental reforms in 1955, but otherwise repeatedly delayed addressing the issue until 1963.

After two decades of discussion in the Soviet zone and then the GDR, the East German *Volkskammer* finally approved the Family Code on 20 December 1965, which went into effect on 1 April 1966. In stark contrast to the old Civil Code, which divested married women and mothers of equal rights and power with their husbands, the new socialist Family Code prescribed a more egalitarian family model. Earlier legislation such as the 1950 *Mutterschutzgesetz* had already removed controversial provisions such as the right of men to decide, or the *Stichentscheid*. Now, the Family Code designated both spouses as equal partners in their marriages, childrearing, and household maintenance. All property earned or bought during the marriage was common property. It allowed no-fault divorce. The law also offered other concrete changes, such as permitting married couples to take either spouse's surname. Apart from some minor revisions in 1975, the Family Code stayed valid in the GDR until August 1990.

This chapter examines several intersecting factors that informed, initially halted in 1954, and finally provided momentum for approving the final form of the Family Code in the GDR in 1965. First, I argue that the SED abandoned its reforms because of the negative feedback from its citizens. Studies of resistance against the East German regime have typically focused on the 17 June 1953 uprising or the peaceful demonstrations of 1989; in

other words, the big waves of defiance of the SED.³ Other studies, however, have conceived of resistance from the perspective of everyday life, examining complaints and petitions from East Germans to the government.⁴ The research undergirding this chapter falls into the latter category. When faced with draft legislation, many East Germans attempted to negotiate its provisions with the government.

In particular, this chapter focuses on the conflicts between the Protestant and Catholic Churches and the SED dictatorship over the Family Code.⁵ The two major churches and their various sects had had, for the most part, an antagonistic relationship with the SED-led government. According to sociologist Sabrina Petra Ramet, 1945 to 1948 was a “honeymoon” period of cooperation between Christian preachers and Communists who had experienced the torture of the Nazi concentration camps together.⁶ By 1948, when the

³ Klaus-Dietmar Henke, *Widerstand und Opposition in der DDR* (Köln: Böhlau, 1999); Karsten Timmer, *Vom Aufbruch zum Umbruch: Die Bürgerbewegung in der DDR 1989* (Göttingen: Vandenhoeck & Ruprecht, 2000).

⁴ Stitzel, “Shopping, Sewing, Networking, Complaining: Consumer Culture and the Relationship between State and Society in the GDR,” 218–252.

⁵ Regarding previous literature, Gesine Obertreis has argued that the 1953 uprisings produced a sense of insecurity in the SED, therefore making them hesitant to pass the legislation. See Gesine Obertreis, *Familienpolitik in der DDR 1945-1980* (Leske: Opladen, 1986), 130. Donna Harsch clearly assigns responsibility to the churches and conducts an excellent discursive analysis of the churches’ stances on women/gender/the family, but leaves it open-ended as to how much of an influence their protests really had. See Chapter 6 of Harsch, *Revenge of the Domestic* (Princeton: Princeton University Press, 2007), 204-210. Throughout the chapter, I use the term “churches” monolithically, though the reality was anything but. The Protestant churches were comprised of eight different branches representing the Lutheran, Calvinist, and Reformed traditions of Protestantism, but they all worked together under one umbrella organization, the Protestant Church in Germany (*Evangelische Kirche in Deutschland*, EKD). See Mary Fulbrook, *Anatomy of a Dictatorship: Inside the GDR, 1949-1989* (Oxford; New York: Oxford University Press, 1995), 87-128; Sabrina Petra Ramet, “Protestantism in East Germany, 1949-1989: A Summing Up,” in *Protestantism and Politics in Eastern Europe and Russia: The Communist and Post-Communist Eras*, ed. Sabrina P. Ramet (Durham: Duke University Press), 160-196.

⁵ Christoph Kleßmann, “Abgrenzung und Verflechtung. Aspekte der geteilten und zusammengehörigen deutschen Nachkriegsgeschichte,” *Aus Politik und Zeitgeschichte* 29-30 (1993): 30-41; see also Heinz-Gerhard Haupt and Jürgen Kocka, “Comparative History: Methods, Aims, Problems,” in *Comparison and History: Europe in Cross-National Perspective*, eds. Deborah Cohen and Maura O’Connor (London: Routledge, 2004), 33.

⁶ Ramet, “Protestantism in East Germany,” 171.

Communists had safely secured control over the Soviet zone, their positive attitudes towards Christians changed and they sought to eradicate Christianity's influence and political competition. Despite the SED's efforts, in the early 1950s, Catholicism and Protestantism, but especially the latter, were still strong in East Germany. When the socialist Family Code debuted, leaders and members of the Catholic and Protestant churches protested its deep intervention into daily life, especially childrearing, and argued it was at odds with their Christian ideas of marriage and the family. Moreover, they argued that the SED stood poised to destroy all-German unity. This chapter shows that the churches' opposition played a significant role in preventing the East German government from passing its reforms in 1954, but the diminishing strength of the churches by the mid-1960s assisted the SED in approving a new Family Code in 1965.

Finally, I show that the Cold War, both in discourse and particular policy decisions, shaped the contours of all discussions of the Family Code in the GDR in the late 1950s and early 1960s. For one thing, in the mid-1950s, the German-German borders were still somewhat permeable, creating confusing legal situations for men like Herr M. Moreover, the East German government was confronting the mass exodus of East German citizens to the West, leading the SED to fortify the German-German border, which ultimately culminated in the construction of the Berlin Wall in August 1961. With so many male laborers leaving, female labor was that much more critical to the SED. Additionally, the West forged ahead with its own family law reforms without consulting the East German government. Moreover, social and generational change had made ordinary East Germans more receptive to a new, socialist Family Code. All of these factors contributed to the East German Family Code's passage in 1965.

This chapter is divided into four main sections. The first section summarizes the political, economic, and social developments in the GDR in the early 1950s, focusing on the party's program of the "building of socialism" as its driving force during this time. The second section examines the revival of debates in the Ministry of Justice and in public over family law in 1954. In particular, this section explains how citizens, especially Christians, upended the SED's planned reforms in 1954. The third section analyzes how the SED's incremental reforms in the 1950s set the stage for the eventual approval of the 1965 Family Code and the new equality clause in the 1968 constitution. Finally, the fourth section explores the reforms to the 1968 constitution in the GDR, which not only explicitly labeled the state as a socialist republic, but in doing so, granted expanded civil rights to women.

Building Socialism Through Marriage and the Family, 1954–55

In July 1952, following a Soviet initiative, the SED announced at its Second Party Congress that the party's priority was the "building of socialism (*Aufbau des Sozialismus*)," which would require the complete "power of the state."⁷ "Building of socialism" ushered in several changes for East Germany. First, the government abolished former states, reorganizing the GDR into new districts (*Bezirke*).⁸ Second, the SED "announced special privileges for agricultural collectives."⁹ Third, educational institutions were brought in line with socialism; other forms of education, such as religious teachings, were discouraged.

⁷ Gary Bruce, *Resistance with the People: Repression and Resistance in Eastern Germany (1945-1955)* (Lanham, MD: Rowman and Littlefield, 2003), 159; see also Christian Ostermann, *Uprising in East Germany 1953: the Cold War, the German Question, and the First Major Upheaval Behind the Iron Curtain* (Budapest: Central European University Press, 2011), xxxi.

⁸ Ostermann, *Uprising*, xxxi.

⁹ Ibid.

Fourth, the GDR formally fortified the border with West Germany and formed the Barracked People's Police (*Kasernierte Volkspolizei*), the precursor to the National People's Army.¹⁰

In addition to fortifying its borders against potential foreign invasion, the SED also prepared itself to fight insurrection within the GDR. The SED thus increased its persecution of potential or perceived political dissidents or anyone who might oppose socialism. Liberal-minded judges, Christians, and independent business owners, for example, fell into these categories. "Less reliable" jurists and judges were removed from their positions.¹¹ The ruling party began to harass Christians, through measures such as forcing farm workers and laborers to report for work on Sundays; banning Bible studies; and eventually introducing the *Jugendweihe*, the secular equivalent of confirmation, in 1953.¹² Finally, the SED placed more radical family law reforms on their agenda. All of these initiatives were meant to place socialism front-and-center and undermine the influence of subversive non-socialist forces such as religion or the West.

The SED's plans for installing socialism—and by extension, changing family law—were disrupted by Joseph Stalin's death in March 1953. Immediately after the Soviet leader died, the leading members of the Communist Party Central Committee and his successors, Nikita Khrushchev, Lavrenti Beria, and Georgi Malenkov, proclaimed the New Course, a

¹⁰ Bruce, *Resistance with the People*, 159.

¹¹ Bruce, *Resistance with the People*, 160.

¹² Ramet, "Protestantism in East Germany, 1949-1989: A Summing Up," 171, 172-174. Bruce, *Resistance with the People*, 161. According to historian Gary Bruce, the SED's discrimination against Christians continued until after the announcement of the New Course. For more on the *Jugendweihe*, see: Alexander Bolz, *Jugendweihen in Deutschland: Idee, Geschichte und Aktualität eines Übergangsrituals* (Leipzig: Rosa-Luxemburg-Stiftung Sachsen, 1998). *Jugendweihe* existed among socialists since the late nineteenth century and was also practiced in West Germany, so while it was not unique to the SED or East Germany, the way they explicitly used it as a practice to drive out church influence was different from the past or Western practice.

plan to increase consumer goods, repeal terror, and reduce industrial production.¹³ When the SED did not remove the productivity quotas as promised, however, workers began leading demonstrations on 17 June 1953 in Berlin and then across the GDR. Approximately 40,000 workers in Berlin, plus thousands of others around the GDR, took to the streets.¹⁴ Under orders from the SED, the People's Police (*Volkspolizei*) and the Soviet Red Army violently suppressed the protests. The ruling party asserted that the uprisings were the work of Western espionage and infiltration.

In the months following the 17 June 1953 uprisings, two seemingly conflicting trends took place within the SED. On the one hand, the 17 June 1953 uprisings alerted the SED to the potential consequences of its draconian behavior. According to legal scholar Inga Markovits, in some regions, for example, the party continued to relax implementation of its criminal codes.¹⁵ On the other hand, paranoia urged party leaders to clamp down on potential dissent. Historian Richard Millington argues that the “ghost of the uprising of 17 June 1953 and the possibility that it might one day happen again haunted the SED regime until its demise in 1989.”¹⁶ In the years after the mass protests, the ruling party monitored its citizens and especially uncooperative party officials even more closely to quash dissidence.¹⁷ Where necessary, the SED dismissed known anti-Ulbricht members such as Max Fechner and Elli

¹³ Ostermann, *Uprising in East Germany*; Edward Taborsky, “The ‘New Course’ in the Soviet Economy,” *Southern Economic Journal*, 23, 2 (October 1956): 160; Klaus Schroeder, *Der SED-Staat: Geschichte und Strukturen der DDR 1949-1990* (Köln: Böhlau, 2013), 139.

¹⁴ Schroeder, *Der SED-Staat*, 141. See also Arnulf Baring's well-known study. Arnulf Baring, *Uprising in East Germany: June 1953* (Ithaca: Cornell, 1972).

¹⁵ Inga Markovits, *Justice in Luritz: Experiencing Socialist Law in East Germany* (Princeton: Princeton, 2010), 107.

¹⁶ Richard Millington, *State, Society and Memories of the Uprising of 17 June 1953 in the GDR* (Palgrave Macmillan, 2014), 97.

¹⁷ Millington, *State, Society, and Memories*, 97; Schroeder, *Der SED-Staat*, 142-143.

Schmidt from their positions.¹⁸ Fechner, a former Social Democrat, had served as Minister of Justice from 1949 to 1953. His public apprehension about Ulbricht's handling of the June 1953 uprisings and the persecution of political dissidents during and after led to his removal from office and expulsion from the SED in July 1953.¹⁹ Elli Schmidt was a member of the Party Executive Committee of the SED from 1946 to 1953, a member of the town council of East, and together with Käthe Kern, leader of the SED women's executive committee (SED-*Frauensekretariat*) from 1946 to 1949. In 1953 she lost her positions in the SED but was rehabilitated in 1956.²⁰

With the dismissal of the two, the supporters of family law reform lost important influence. Fechner's dismissal had especially profound consequences for family law, because it led to the appointment of Hilde Benjamin, then Vice President of the Supreme Court of the GDR, as the new Minister of Justice in July 1953.²¹ When Benjamin took over the Ministry of Justice, family law reforms had long been on her personal agenda. Since 1946, as a leader of the Central Women's Committee, founding member of the DFD, and a *Volksrat* representative, she had conducted many discussions herself regarding the future legal reforms. In the meantime, she also presided over a series of show trials in the GDR. Benjamin was responsible for bringing family law to the fore again as a part of the SED's broader program of "building socialism," which the leading party reiterated in its IV. Party

¹⁸ David Childs, *The GDR (RLE: German Politics): Moscow's German Ally* (Abingdon-on-Thames: Routledge, 1988), 38.

¹⁹ "Alle Inhaftieren kommen vor ein ordentliches Gericht," *Neues Deutschland*, June 30, 1953, 150, 5.

²⁰ "Schmidt, Elli," last accessed February 13, 2017, <https://www.bundesstiftung-aufarbeitung.de/wer-war-wer-in-der-ddr-%2363%3B-1424.html?ID=3074>

²¹ See Marianne Brentzel, "Unruhe und Aufstieg: Der 17. Juni 1953," in *Die Machtfrau Hilde Benjamin* (Berlin: Links Verlag, 1997), 213-238, for a detailed account on Benjamin's rise to power in 1953.

Congress in March 1954.²² But the publicity failure of the June 1953 uprisings inspired Benjamin to orchestrate the legislation's public debut in June 1954 very carefully.

On 30 June 1954, the Ministry of Justice under Benjamin published drafts of the law, as well as commentary on its major provisions, in the major newspapers and legal journals—namely *Neues Deutschland*, *Neue Justiz*, and *Der Schöffe*. The new Family Code's most tangible changes included fixing the age of majority to 18, replacing the guilt principle in divorce, giving women greater independence to work or live away from their spouses, and allowing partners to choose which surname they preferred.²³ The preamble to the Family Code outlined the ideological motivations behind these changes. The new law, for instance, emphasized the necessity of equality for women in marriage and society as a whole. In addition, it would govern relationships between spouses, parents, children, and other relatives “for the development and stabilization of the family and upbringing of children in the spirit of democracy, socialism, patriotism, and friendship between nations.”²⁴ Finally, the text asserted that raising children was not only the duty of parents, but of the state (represented by youth organizations and schools).²⁵ The introduction to the FGB demonstrated the SED's dual commitment to fostering *Gleichberechtigung* and building strong, properly socialist families, albeit with greater amounts of state intervention.

Citizens' Protest and Praise

²² *Protokoll der Verhandlungen des IV. Parteitages der Sozialistischen Einheitspartei Deutschlands in der Werner-Seelenbinder-Halle zu Berlin, 30. März bis 6. April 1954* (Berlin: Dietz Verlag, 1954), 37-40.

²³ Donna Harsch, *Revenge of the Domestic* (Princeton: Princeton University Press, 2007), 204-205.

²⁴ §1, “Entwurf eines Familiengesetzbuches der Deutschen Demokratischen Republik,” *Neue Justiz*, June 30, 1954, 377.

²⁵ §§2-4, “Entwurf eines Familiengesetzbuches der Deutschen Demokratischen Republik,” 377.

In the weeks leading up to and following the legislation's debut, the SED and its partners in the National Front sought to further publicize the law through the mass media. One approach the ruling party used was publishing synopses of the legislation. One unsigned article in *Neues Deutschland* from July 1954, for instance, explained to readers the changing legal expectations regarding marriage ceremony and family names.²⁶ These summaries were not without their own form of interpretation, however. The author, for instance, compared the GDR's new law to the old German and French Civil Codes, implying that old provisions such as attaching property to engagements were outdated.²⁷ Another article in *Neues Deutschland* published one month later covered marital property, especially for spouses living apart. According to the SED, alimony placed undue pressure on the working partner, who would only have to pay longer than a year if he or she had refused support before.²⁸ Property earned for the benefit of the family would be treated as shared property, while property earned before marriage would belong to the individual. The SED left some provisions for special situations, such as the cases of housewives, whose unpaid labor in the home entitled them to some of their former husbands' property after a divorce.²⁹ In addition, *Neues Deutschland* covered illegitimate birth, arguing in favor of the rights of out-of-wedlock children.³⁰ Finally, a weeks-long series of articles in the women's magazine *Die Frau von heute* published in July 1954 explained the major legal changes coming to married

²⁶ "Über die Eheschliessung und den Familiennamen," *Neues Deutschland*, July 8, 1954, 6.

²⁷ Ibid.

²⁸ "Über die vermögensrechtlichen Beziehungen der Ehegatten," *Neues Deutschland*, August 17, 1954, 6.

²⁹ "Über die vermögensrechtlichen Beziehungen der Ehegatten," *Neues Deutschland*, August 17, 1954, 6.

³⁰ "Die rechtliche Stellung des nichtehelichen Kindes," *Neues Deutschland*, August 25, 1954, 6.

women and unmarried mothers.³¹ The East German media suggested, through these articles, that East Germans could expect historically unprecedented and more egalitarian family structures when the Family Code was approved.

In addition to providing overviews of potential legal provisions, the media in the GDR emphasized that legal changes were meant to ensure citizens' privacy and individual rights. On 15 June 1954, for instance, Hilde Benjamin asserted in a *Neues Deutschland* article that the forthcoming law was not only a response to women's complaints and court rulings, but the changing currents of SED policy. She noted that after 11 June 1953, with the adoption of the New Course, the SED was actively trying to "actually ensure the personal lives and personal interests of citizens, especially before the law."³² It is more likely that the 17 June 1953 uprising and its aftermath, not merely the introduction of the New Course, spurred the SED's sudden interest in protecting its citizens' private lives. Still, Benjamin tried to steer readers toward a positive image of the SED and the GDR by depicting the new Family Code as a response to contemporary political developments and citizens' desires.

Another strategy the East German media employed was allowing public—albeit carefully vetted—displays of differing opinions, in an attempt to demonstrate that it was a true "people's democracy." *Berliner Zeitung* printed excerpts from readers' letters, for example, that covered a range of opinions on the subjects of marrying age and the guilt clause in divorce in August and September 1954. One seventeen-year-old expressed despair

³¹ "Zum Entwurf des neuen Familiengesetzbuches," *Die Frau von heute*, July 9, 1954, 10; "Zum Entwurf des neuen Familiengesetzbuches," *Die Frau von heute*, July 16, 1954, 10; "Zum Entwurf des neuen Familiengesetzbuches," *Die Frau von heute*, July 30, 1954, 6; "Zum Entwurf des neuen Familiengesetzbuches," *Die Frau von heute*, August 6, 1954, 7; "Zum Entwurf des neuen Familiengesetzbuches," *Die Frau von heute*, August 13, 1954, 13; "Zum Entwurf des neuen Familiengesetzbuches," *Die Frau von heute*, August 27, 1954, 10.

³² Hilde Benjamin, "Über den Entwurf eines neuen Familiengesetzbuches," *Neues Deutschland*, June 15, 1954, 3.

that she would have to wait to marry her fiancé.³³ An older woman stated that sixteen was too young for a girl “to make such an important decision for her life,” but if a girl was pregnant, then she should be allowed to marry.³⁴ The article’s author noted, however, that in the GDR, the “bourgeois concept of a stigma of illegitimate birth” no longer existed, so the mother did not have to rush into a marriage and could wait a few years to see if the partnership developed with the father. In addition, *Berliner Zeitung* printed opinions from readers opposing the removal of the guilt clause in divorce, who argued that without it, men would commit adultery uninhibited, “the number of unlucky and destroyed marriages would rise,” and women would be disadvantaged.³⁵ In this way, the East German media presented the SED’s reforms as improvements over past conditions. At the same time, these measures revealed a certain amount of traditionalism among readers, arguably a strategy on the part of *Neues Deutschland* and *Berliner Zeitung* to make the SED’s position seem even more progressive.

In addition to the ongoing press campaign, the SED conducted public forums to court its own citizens. The Ministry of Justice set up a number of “Justice Conversation Evenings” in localities across the GDR. In these public spaces, citizens could pose questions and comment on the law to Ministry functionaries or members of mass organizations like the DFD. On occasion, such as the meeting at the Arts and Leisure Center for Workers (*Kulturhaus der Bauarbeiter*) on Stalinallee in Berlin in August 1954, more prominent figures from the Ministry were invited to speak.³⁶ By October 1954, the Ministry had held

³³ “Mit 16 Jahren sollte man noch nicht heiraten,” *Berliner Zeitung*, August 19, 1954, 4.

³⁴ “Mit 16 Jahren sollte man noch nicht heiraten,” *Berliner Zeitung*, August 19, 1954, 4.

³⁵ “Kein ‘Schuldig’ mehr beim Scheidungsurteil,” *Berliner Zeitung*, September 2, 1954, 6.

³⁶ “Aussprache über das neue Familiengesetz begann,” *Berliner Zeitung*, August 3, 1954, 6.

6,117 “Justice Conversation Evenings” in which 313,538 GDR citizens participated.³⁷

In a typical session, SED representatives walked the participants through each part of the law. For instance, at a meeting in Reichenbach im Vogtland in Saxony, the chief justice of the nearest district court led the discussion. He spoke primarily about indemnity claims during the breaking of engagements, whether or not medical certificates were required for marriage (*Tauglichkeitszeugnis für Eheschliessende*), and the consequences of parents holding different last names from children.³⁸ Participants showed special concern about the intervention of the state in raising their children, especially the role of youth organizations like the Free German Youth (*Freie Deutsche Jugend*, FDJ).³⁹ In these spaces, the SED facilitated the debates, but the participants—recalling the limits of their power during the Third Reich—raised their objections and attempted to negotiate with the party.

Additionally, the presenters often underscored the “pan-German (*gesamtdeutsch*) meaning of the legislative draft.”⁴⁰ There were both ideological and practical reasons for employing this argument. First, the SED had always proclaimed itself the protector of German unity, in contrast to the “divisive” West. Second, the inter-German borders were still open and many Germans harbored fantasies of reunification.⁴¹ Third, the 1946 Allied Control

³⁷ Bericht über die Ergebnisse der Diskussion zum Entwurf des Familiengesetzbuches auf der Arbeitstagung im Ministerium der Justiz vom 19.10.1954, S. 1, DO 1/14398, BArch Berlin. A typical “Justice Evening” consisted of a presentation delivered by an official from the local District Court, the Ministry of Justice, members of the National Front, or a mass organization like the DFD. They attracted anywhere from fifty to 1000 participants. These estimates are drawn from reports in SAPMO-BArch Berlin, DY30/IV2/14/35, Bl. 61; DO 1/1555, Bl. 110. See also Harsch, *Revenge*, 205. These meetings were also propagated in the women’s press. See, for example, “In dieser Woche besuchten wir: Minister Dr. Hilde Benjamin,” *Die Frau von heute*, June 25, 1954, 2.

³⁸ Protokoll über eine Justizaussprache, 24.8.54, DY30/IV2/14/35, Bl. 61-62, SAPMO-BArch Berlin.

³⁹ Ibid., Bl. 62-63.

⁴⁰ Ibid., Bl. 61.

⁴¹ Mary Fulbrook states that “in the 1950s reunification ranked as one of the most important problems for West Germans” and that it represented “constant aspirations for large numbers of East Germans.” See Mary

Council marriage law still technically governed both Germanys. On the one hand, highlighting the pan-German implications of the law allowed the SED to portray itself as the German state that unite German families in opposition to its Western counterpart. On the other hand, the pan-German argument demonstrated that the SED was fully aware of the looming consequences of the law's imminent approval and sought to head off accusations that it led the divisive Germany.

The East German mass media predictably presented the public discussions in a positive light. The author of one article praised the forums for "clearly showing what a real democracy is."⁴² To further evince the success of East German democracy, the media printed myriad opinions by forum participants. One report on a meeting in Berlin showed that male and female attendees supported the removal of the guilt clause. In addition, surnames were a topic of heated discussion. One female participant complained, for example, that despite having the right to select her own surname, she still had no choice in retaining her citizenship when marrying a foreigner. Meanwhile, one man opposed the freedom of choice of surnames, claiming that prestige was passed along via the last name and hinting that he was not ready to relinquish masculine privilege in this regard.⁴³ Through these excerpts of the forums, the media aimed to depict the SED as a democratic state willing to listen to and respond to its citizens' reservations.

The East German media's presentation belied a more complicated reality. The SED quickly found that its public forums, designed and carefully controlled to reinforce the

Fulbrook, *Anatomy of a Dictatorship: Inside the GDR, 1949-1989* (Oxford: Oxford, 1995), 136. Konrad H. Jarausch notes that over time, reunification rhetoric failed. See Konrad H. Jarausch, *After Hitler: Recivilizing Germans, 1945-1995* (Oxford: Oxford, 2006), 66.

⁴² "Aussprache über das neue Familiengesetz begann," *Berliner Zeitung*, August 3, 1954, 6.

⁴³ "Berliner diskutieren das neue Familiengesetz," *Berliner Zeitung*, August 11, 1954, 4.

party's aims, were turning into spaces for voicing complaints about the new law's provisions. In addition, the correspondence from private citizens to the Ministry of Justice displayed a population that was confused at best and severely discontented at worst about the proposed family law. Over the course of the summer of 1954, the Ministry of Justice received hundreds of letters and petitions from curious and dissatisfied citizens on all types of issues related to the Family Code. Although writers sometimes mentioned tangential issues such as prostitution, more commonly, they emphasized problems related to property and inheritance rights, alimony for spouses and children, family names, the legitimacy of children, women's working rights, adultery, and divorce. These letters often described problems of everyday life that the new family law posed to some East Germans; typically, writers inquired about circumstances unanticipated by the SED. Many East Germans in the early 1950s tended to be more conservative—often because of strong religious beliefs—than the ruling Communist regime. According to historian Felix Mühlberg, they saw their petitions as “an instrument for solving conflicts,” which in this case stemmed largely from differing conceptions of marriage and the family.⁴⁴

Property and inheritance rights were one area that provoked much confusion among East Germans. The law's provisions stated that any property acquired during the marriage for the support of the family was to be divided equally in divorce. As one case from Zeulenroda, Thuringia demonstrated, such regulations were not so easily enforced. A local lawyer wrote in on behalf of his clients, a divorcing couple whose assets were invested primarily in livestock, extracted from both spouses' money but primarily the husband's livelihood. To

⁴⁴ Felix Mühlberg, *Bürger, Bitten und Behörden: Geschichte der Eingabe in der DDR* (Berlin: Karl Dietz Verlag, 2004), 9.

make it more difficult, the animals had reproduced.⁴⁵ The couple and their lawyer wanted to know how the proposed law handled such situations. As another example, one man wrote to the Ministry to ask about spousal property rights.⁴⁶ If one spouse died and the widowed spouse sold the family home, for example, how would that affect the children's inheritance?⁴⁷ These examples demonstrated to the Ministry of Justice that equality in property rights was simple in theory, but difficult to apply in a state that was still in the midst of transitioning from a bourgeois to a socialist society and economy.

Another common complaint from correspondents was the equal treatment of illegitimate children. The rights of out-of-wedlock births were already safeguarded by the 1949 constitution and the 1950 *Mutterschutzgesetz*. The 1954 Family Code's reiteration of the SED's stance on illegitimacy nevertheless attracted hostility from some citizens who spotted its potential for disrupting their families and personal lives. For instance, Frau F. from Badersleben, Saxony-Anhalt, explained that in her town, there was a case of a young woman who seduced a married man, became pregnant, and attempted to ruin the family. In her opinion, the woman had no right to demand money from the man and his family. The Ministry of Justice informed her that children born out-of-wedlock had equal rights.⁴⁸ Another writer, Herr M., proposed refusing out-of-wedlock children the right to inherit, because "females are the origin of illegitimate children...if illegitimate children are given

⁴⁵ Strobel an das Kreisgericht Zeulenroda, July 30, 1954, DP 1/23655 (2), Bl. 31, BArch Berlin.

⁴⁶ Scheffler an das Ministerium der Justiz, August 15, 1954, DP 1/23655 (2), Bl. 32, BArch Berlin.

⁴⁷ Ibid., Bl. 33. According to Dr. Ostmann's response on Bl. 34, the wife's property would be legally inheritable by her children if she died. He furthermore told Scheffler that he misunderstood the use of "common property."

⁴⁸ Fröhlich an das Ministerium der Justiz, August 19, 1954, DP 1/23655, Bl. 12, BArch Berlin; Ostmann an Fröhlich, Oktober 1, 1954, DP 1/23655, Bl. 13, BArch Berlin.

inheritance rights, it will just encourage sinful women.”⁴⁹ The regime largely ignored these pleas on the grounds that birth status was not an impediment to social or economic status. In pursuing this path, the SED not only elevated the legal status of out-of-wedlock children and mothers (a long-time demand of the women’s movement and something that the West did not do until the 1960s), but it diminished the alleged fathers’ rights to distance themselves from and disinherit their illegitimate children. Still, overcoming the social norms that had long privileged men and disadvantaged their mistresses and out-of-wedlock progeny posed a major obstacle for the ruling party.

Another controversial area, as indicated by the petitions, was the family surname. The proposed law stated that both spouses could keep their names or they could take the other’s name. The children would have to take the name of one or the other, but all offspring had to have the same name. This provision was designed to allow both spouses individual identities, especially in the workplace, but also to foster some sense of familial unity, which was still important to leading Communists. In some petitions, citizens did not necessarily oppose the provision, but offered exceptions or expansions to the text. One woman from Döbeln, Saxony, for instance, criticized the draft FGB for being too restrictive in its family name provisions. Why must spouses be restricted to either the man’s name or individual names, she asked? What about hyphenation as an option, like the 1944 Soviet law?⁵⁰ Another asked why, after leaving an abusive husband and father, it was not possible for her child to take her maiden name.⁵¹ Men were particularly keen to find out if they could change their surnames,

⁴⁹ Müller an das Ministerium der Justiz, August 16, 1954, DP 1/23655, Bl. 14, BArch Berlin.

⁵⁰ Stroppe-Viehrig an das Ministerium der Justiz, July 10, 1954, DP 1/23655 (1), Bl. 27, BArch Berlin.

⁵¹ Ebert an das Ministerium der Justiz, July 10, 1954, DP 1/23655 (1), Bl. 31, BArch Berlin. A similar letter came from Edith Lange of Freiberg, who wrote Hilde Benjamin on August 11, 1954 to explain that she was raising her two children alone, her former husband was not paying his child support on time, and she wished to

but typically only if the last name was especially embarrassing. One man asked if he could change his last name to his wife's, because his long Polish surname "causes [him] again and again problems in public life."⁵² A Herr Ficker made a similar request.⁵³ Other writers opposed the SED's proposals altogether on the grounds of protecting the family. One man, for instance, wrote to express his opinion that men and women should have the same name, for the sake of "the smallest unity in the state, the family."⁵⁴ A woman similarly supported one shared family name, but for different reasons. She argued that with different names, no one would know who was married to whom, which "would lead to much unpleasantness."⁵⁵ The petitions regarding surnames exposed the SED to a wide variety of opinions from their citizens that ranged from mostly positive to outright opposition.

Another common topic among correspondents was how the law dealt with infidelity, which had been largely overlooked in the draft legislation. On several occasions, concerned citizens wrote to ask about the fallout of adultery under the new family law. Some wished to see adulterers punished. For instance, a woman from Karl-Marx-Stadt, Saxony, wrote in July

change the children's names to her maiden name. The husband had remarried, and she "found it dumb" that he should have to support two families and that she should continue to live with his name through her children, which produced bad memories. See Lange an Benjamin, August 11, 1954, DP 1/23655 (2), Bl. 43, BArch Berlin. The Ministry's response on Bl. 42 explained that this was not possible, because the other parent had a right to the children as well.

⁵² Wojciehowski an Benjamin, DP 1/23655 (1), Bl. 166, BArch Berlin. Without expressly saying so, Wojciehowski's letter implied that he had faced discrimination for his Polish last name. He listed on the bottom of the letter that he had been born in Berlin-Neukölln in 1926. In a letter dated August 3, 1954 (Bl. 165), the Ministry of Justice assured him that as long as he had been married after 1945, he could do so; if the law did not pass, he could still petition the court in Leipzig for a name change.

⁵³ Wächtler an Ficker, March 9, 1955, DP 1/7200, BArch Berlin.

⁵⁴ Limpert an das Ministerium für Justiz, DP 1/23655 (1), Bl. 41, BArch Berlin. See also Goltz an die Regierung der Deutschen Demokratischen Republik, December 10, 1954, DP 1/7200, BArch Berlin. Goltz defended the patriarchal name as well, but the Ministry's response said they prioritize "the personal right" of choosing one's name.

⁵⁵ Fritze an die Frau von heute, DP 1/23655 (1), Bl. 43, BArch Berlin.

1954 that “a woman who serves a different married man...year-long in her apartment and grants him every wish may not under any circumstances be exempt from punishment in our state...these people must be educated in morality and discipline according to the law.”⁵⁶ As another example, a woman from Görlitz, Saxony, called adultery “the worst crime” and asserted that the criminalization of adultery would curb high divorce rates, lead to “happy marriages,” and assist with the “upbringing of children.”⁵⁷ Yet another woman from Oberschöneweide, Berlin, proposed punishing the third party as well.⁵⁸ These calls for the criminalization of adultery reflected a certain adherence to longstanding ideas of monogamy and marital fidelity, which reemerged from a chaotic wartime and postwar environment in which adultery had been more common.

Related were the petitions regarding anxiety about “free love.” Herr W. wrote in September 1954 to the State Broadcasting Committee (*Staatliche Rundfunkkomitee*) to clarify the issue of “open marriage.”⁵⁹ Helmut Ostmann of the Ministry responded that “the Family Code does not recognize the concept of companionship or the so-called ‘free marriage’.”⁶⁰ He furthermore cited the Nazi restrictions on marriage law for certain individuals as the reason why the GDR saw “registered marriages” as the foundation of the state.⁶¹ Ostmann told another writer that to equate lifelong companionship, or the “anarchistic form of the

⁵⁶ Kothe an Benjamin, DP 1/23655 (1), Bl. 163, BArch Berlin.

⁵⁷ Kuhnt an das Ministerium der Justiz, July 12, 1954, DP 1/23655 (1), Bl. 39, BArch Berlin.

⁵⁸ Neesemann an Deutsche Kulturgemeinschaft, September 1954, DP 1/23655 (1), Bl. 277, BArch Berlin.

⁵⁹ Weist an das Staatliche Rundfunkkomitee, September 1954, DP 1/7200, BArch Berlin.

⁶⁰ Ostmann an Weist, December 12, 1954, DP 1/7200, BArch Berlin.

⁶¹ Ibid.

promotion of free love” with marriage “opposes the goals of the constitution of the GDR.”⁶²

These responses made it clear that the Ministry of Justice and the SED still valued heterosexual, monogamous, state-sanctioned marriages over alternative forms of life partnership as the cornerstone of East German families and society.

Another major point of contention for petition writers was the subject of alimony after divorce. In July 1954, the women’s newspaper *Die Frau von heute* printed a letter from a Frau G. in Birkenwerder, Brandenburg, who advocated keeping the guilt clause in divorce.⁶³ Her letter resonated with many female readers who saw its removal as a burden on women and an exoneration for men. One subscriber, for instance, wrote to the magazine to say she agreed with Frau G., because “it would definitely no longer be a problem for the men’s world then, to still look at their ‘marriage’ as complete.”⁶⁴ Another agreed that it would create “a hell” for “a poor mother with multiple children, who has to fight for her daily bread, while the man lives with a bad woman, earns enough money, and because he has no guilt, he doesn’t need to pay the former wife alimony and he can bribe (*bieten*) the children with more money.”⁶⁵ At the same time, Frau G.’s opinion fomented opposition. Another respondent stated that she saw guilt as a consequence of the actions of both spouses, and that women who sought to blame their husbands for leaving did not reflect enough on their own damaging actions.⁶⁶ A male reader called Frau G. “anti-man (*Männerfeindlich*)” and stated

⁶² Ostmann an Hauß, December 22, 1954, DP 1/7200, BArch Berlin.

⁶³ See “Erna Gerling,” *Die Frau von heute*, 1954.

⁶⁴ Elfriede Knöchel an die Redaktion “Die Frau von heute,” August 28, 1954, DP 1/23655, Bl. 263, BArch Berlin.

⁶⁵ Marta Kerl an “Frau von heute,” August 2, 1954, DP 1/23655, Bl. 265, BArch Berlin.

⁶⁶ Gerda Radtke an die “Frau von heute” Leserbrief, August 26, 1954, DP 1/23655, Bl. 264, BArch Berlin.

that he saw both sides as responsible for the breakdown of marriages.⁶⁷

In addition to the law's provisions and potential legal loopholes, correspondents also used references to Germany's division as a form of argumentation. Sometimes, writers were literal. In July 1954, for instance, Heinrich Heydemann, a lawyer from Rostock, urged the Ministry "not to range too far from the Germans west of the Elbe" in terms of the new law, especially since "the approaching unity of our Fatherland is in motion."⁶⁸ Other times, writers used Germany's division as a metaphor. One male writer used an analogy of German reunification to make a point about individual surnames, stating that for spouses to have separate names "is as wrong as wanting to call both halves of Germany the GDR and the Federal Republic after reunification."⁶⁹ These writers invoked the West as a way of conveying their anxieties about individual provisions as well as the greater international consequences of passing the new Family Code.

The aforementioned correspondence offers several insights into citizens' responses to the new legislation. For one thing, it highlighted specific controversial issues stemming from the draft legislation, namely property rights, naming rights, and the fallout of adultery and divorce. The 1950 *Mutterschutzgesetz* had already removed many of the provisions (such as the right of men to make all decisions) that women's rights activists had traditionally opposed (and were still fighting against in the West). Thus, correspondents, who were often less versed in socialist theory than the functionaries drafting the legislation, focused on how outstanding problems, such as divorce and property law, affected their everyday lives. In

⁶⁷ Fritz Lehmann an die Redaktion der "Frau von heute," August 28, 1954, DP 1/23655, Bl. 270, BArch Berlin.

⁶⁸ Heydemann an die Regierung der Deutschen Demokratischen Republik, DP 1/23655 (1), Bl. 127, BArch Berlin.

⁶⁹ Limpert an das Ministerium für Justiz, DP 1/23655 (1), Bl. 41, BArch Berlin.

addition, these petitions hint at perceptions of gender and the family in the GDR. For instance, many writers blamed women for marital breakdown, illicit trysts, and unexpected pregnancies. These writers, especially men, were unwilling to trade the privileges marital status granted to ensure equality for unmarried mothers. Others were willing to forgo individual identities for the integrity of the family. It is important to note, however, the silence of others. Those who wrote in did so in order to find solutions to their own problems or to attempt to sway the SED. Many more, however, chose not to correspond with the SED, indicating apathy, contentment with the law, or on the other extreme, perhaps fear of outing themselves to the regime.

Protestant and Catholic Resistance

In addition to the provisions themselves, the issue of German unity quickly developed into one of the major points of the 1954 Family Code public discussions, where the SED stressed the pan-German nature of the law. The issue of German unity became a rallying cry for the SED's largest opposition: members of the Protestant and Catholic churches. The SED had been implementing "de-Christianizing" measures for years, but still recognized the influence of the churches. In fact, SED leaders courted and attained the Protestant leadership's favorable opinion on the new family law in March 1954, months before the Ministry debuted the draft of the Family Code.⁷⁰ Still, Christians on the local level started to protest the law in the summer of 1954. Historian Donna Harsch has convincingly shown that their petitions and discussions sought to undermine the SED by labeling "the law as anti-

⁷⁰ Entschließung der Synode der Evangelischen Kirche in Deutschland zu Fragen der Ehe und Familie, 19. März 1954, 99/639, Evangelisches Zentralarchiv Berlin (EZAB); see also Harsch, *Revenge*, 205.

Christian and as forcing women to work and abandon their children.”⁷¹ In addition to their arguments about their religious rights, they often underscored their assertions about gender, the family, and religious rights with arguments about German reunification. On 24 August 1954, for example, at a “Justice Conversation Evening” in Reichenbach, attendees objected to the notion “that caring for children is the law, rather this is the natural right [emphasis original] of parents.”⁷² They defended this idea on the grounds that “this formulation has a meaningful pan-German character,” because Article 6 of the West German Basic Law guaranteed that caring for children was a natural right.⁷³ They invoked the West to undermine the SED’s position.

Picking up on the unrest of their parishioners, the governing body of the Eastern churches, the Ecclesiastical Eastern Conference of the Protestant Church in Germany (*Kirchliche Ostkonferenz der Evangelische Kirche in Deutschland*, KO-EKD), issued an official opinion to the Ministry of Justice on 1 September 1954. Their statement employed a distinct rhetorical change from an earlier Synod resolution, which had emphasized namely that in Christianity, “marriage and parenthood are endowed by God.”⁷⁴ Now, the Ecclesiastical Eastern Conference added another compelling reason to stymie the FGB: the parallel developments in the West. They called for the SED to halt the passage of the law on the basis that it was creating “an artificial cleft in cultural cohesion.”⁷⁵ The law, they

⁷¹ Harsch, *Revenge*, 206.

⁷² Protokoll über eine Justizaussprache, August 24, 54, DY30/IV2/14/35, Bl. 62, SAPMO-BArch Berlin.

⁷³ Ibid.

⁷⁴ Entschliebung der Synode der Evangelischen Kirche in Deutschland zu Fragen der Ehe und Familie, 19. März 1954, 99/639, EZAB.

⁷⁵ Stellungnahme der Kirchlichen Ostkonferenz zu dem Entwurf eines Familiengesetzbuches der Deutschen Demokratischen Republik, September 1, 1954, 99/639, 1, EZAB.

asserted, must be considered for and by all Germans, especially in the case of future reconciliation.⁷⁶ With such arguments, the Ecclesiastical Eastern Conference simultaneously appropriated the SED's own rhetoric about desiring a unified Germany while criticizing the East German government's efforts to keep their nation divided on the basis of marriage, family, and culture.

The EKD disseminated its message that the new FGB endangered both Christian beliefs and all-German unity in its weekly newsletter *DIE KIRCHE*. An unsigned article from 26 September 1954 titled "About Marriage and Family" noted the similarities between the equality and family protection clauses of the East German constitution and the West German Basic Law. Furthermore, the author argued that "divergent developments in this area in the still separated parts of Germany would only lead to deep regret."⁷⁷ The article encouraged readers to follow the official church opinion issued a few weeks before, which said to avoid anything that created "an artificial rift in unified German cultural relations."⁷⁸ The author then went on to explain the dogmatic reasons why the Protestant Churches could not support the FGB: that it opposed the Christian idea that marriage came from God and that parents had the right to raise the children in the church (not under socialist indoctrination). It ended by stating that "the overwhelming majority of the German population in East and West belong to a Christian church," reminding readers that their strength lie in numbers and that they belonged to a unified Christian community in spite of the Iron Curtain.⁷⁹

⁷⁶ Ibid.

⁷⁷ "Um Ehe und Familie," *DIE KIRCHE*, September 26, 1954, DY 30/IV2/14/35, Bl. 75, SAPMO-BArch Berlin.

⁷⁸ "Um Ehe und Familie," *DIE KIRCHE*, September 26, 1954, DY 30/IV2/14/35, Bl. 75, SAPMO-BArch Berlin.

⁷⁹ Ibid., Bl. 77.

Protestants in the GDR clearly took this call seriously, because their petitions flowed into the Ministry of Justice between September 1954 and February 1955. Some clearly stated their stance. In January 1955, for example, a pastor from Schulzendorf, Brandenburg, argued that the Ministry should not pass the law, because “what aggravates a reunification of Germany it is to be avoided on all sides.”⁸⁰ Others wrote to express agreement with the EKD’s official opinion from 1 September 1954, without overtly mentioning the point that the law might hinder German reunification.⁸¹ Still, the local churches’ express agreement with the opinion piece signaled implicit support for all of the EKD leadership’s arguments against the FGB. In addition, the Ministry received petitions from parishes around the GDR simply stating that they and their fellow parishioners opposed the law.⁸² Yet others played up their commitment to the goals of the GDR, perhaps in an attempt to gain the SED’s favor. One Protestant men’s group in Auerbach assured the participants of their public forum that they supported “the struggle for German unity, the prevention of the remilitarization of West Germany, and the retention of peace,” in spite of their opposition to the FGB.⁸³

For some protestors, Christian belief and legal unity were indivisible. For instance, at an illegal meeting of a Protestant congregation in Bautzen on 8 November 1954, the pastor spoke to approximately 450 participants about the issue of “legal unity (*Rechtseinheit*)

⁸⁰ Gemeindekirchenrat Schulzendorf an den Stellvertreter des Ministerpräsidenten Herrn Otto Nuschke, January 3, 1955, DO 4/1555, BArch Berlin.

⁸¹ For the group from Magdeburg, see DY30/IV2/14/35, Bl. 122, SAPMO-BArch Berlin. This petition, accompanied by a long list of signatures, came from “the men and women of the Evangelischen Frauenhilfe in der Kirchenprovinz Sachsen,” a signal to the SED that both sexes were invested in the issue.

⁸² DO 4/1555, BArch Berlin, contains petitions from Pritzwalk, Bautzen, Wildberg, Neuruppin, Falkensee. See, for example, Evangelischen Gemeinden der Ev. Kirche Berlin-Brandenburg an den stellvertr. Ministerpräsidenten, Herrn Otto Nuschke, 24.11.1954. DO 4/1555, BArch Berlin; Entschliessung, January 17, 1955, DO 4/1555, Bl. 114, BArch Berlin; Evangelisch-Lutherische Landeskirche Mecklenburgs, December 7, 1954, DO 4/1555, BArch Berlin.

⁸³ Bericht des Kreisgerichts Auerbach, DY30/IV2/14/35, Bl. 100, SAPMO-BArch Berlin.

between East and West.”⁸⁴ He observed that both states had made a mutual commitment to *Gleichberechtigung* in 1949, yet neither side had passed new legislation, though the GDR was close to doing so. He then stated that “the church must reject it, that separate laws will be made and that only family relations will be regulated in the GDR.”⁸⁵ Finally, he asserted that: “Legal unity and legal security are holy and where they are split, there the Bible and belief in God are much holier than the law.”⁸⁶ He not only condemned the SED for deepening the rift between East and West on a legal basis, but a spiritual one. He called on Christians to pursue another form of dissent by honoring God’s law above the man-made laws of the regime.

Although the majority of the petitions came from Protestant ministers and their parishes, the Catholic Church formally opposed the new Family Code as well. On 28 August 1954, the Catholic bishop of Berlin, Wilhelm Weskamm, wrote to Otto Grotewohl, the Minister-President (prime minister) of the GDR, on behalf of the other Catholic bishops in the East.⁸⁷ Weskamm did not mention the developments in the FRG, but was nevertheless highly critical of the SED. Calling the FGB “very radical and momentous,” he critiqued the law’s intervention in family life.⁸⁸ He also stated that the law had “only an economic-social function” and as such, “abused the natural order that basically assigns married women and

⁸⁴ Bericht über die Versammlung der evangelischen Kirchengemeinde Bautzen am 8.11.1954, DY30/IV2/14/35, Bl. 107, SAPMO-BArch Berlin. According to this document, 450 people attended. Another document on the same meeting from DO 4/1555 states that 500 people attended. This document also indicates that the pastor was informed ahead of time that his meeting was not to be held, but he chose to have it anyway.

⁸⁵ Bericht über die Versammlung der evangelischen Kirchengemeinde Bautzen am 8.11.1954, DY30/IV2/14/35, Bl. 107, SAPMO-BArch Berlin.

⁸⁶ Ibid.

⁸⁷ For biography of Wilhelm Weskamm, see Bernd Schäfer, “Weskamm, Wilhelm * 13.5.1891, † 21.8.1956 Katholischer Bischof,” in *Wer war wer in der DDR?* (Berlin: Ch. Links Verlag, 1992). Weskamm was born in 1891, appointed Bishop of Berlin in 1951, and died in 1956. For biography of Otto Grotewohl, see “Otto Grotewohl,” last modified February 19, 2016, <https://www.hdg.de/lemo/biografie/otto-grotewohl.html>

⁸⁸ Wilhelm Weskamm an Otto Grotewohl, August 28, 1954, DY30/IV2/14/35, Bl. 1, SAPMO-BArch Berlin.

mothers their places within the family.”⁸⁹ Moreover, he asserted, it moved family life “into the state’s sphere of power without allowing human figures space for their peculiarities.”⁹⁰ Weskamm’s arguments emphasized Catholic dogma and protection of the private sphere from state (especially Communist) intervention. Unlike his Protestant counterparts, he avoided any mention of the West, but other Catholics alluded to its specter in their petitions. In January 1955, for instance, the priest of the Catholic Church in Limbach-Oberfrohna, Saxony, wrote to the SED to express concern that “this legislative draft poses a new obstacle for all of us who have longed for a reunified Germany.”⁹¹

Although the Catholic Church opposed the new Family Code on the basis of dogma and reunification, its impact on the SED was largely inconsequential. Historian Konrad H. Jarausch suggests that in the GDR, “There were too few Catholics to have any political impact,” which was part of it.⁹² Compared to Protestants, who comprised roughly eighty percent of the GDR’s population in the 1950s, Catholics were only about twelve percent of the population.⁹³ Another historian, Donna Harsch, asserts that the Catholic Church never mobilized at the grassroots level like the Protestant parishes.⁹⁴ Both factors contributed to the Church’s relatively minor role and SED’s general negligence of the Catholic Church. After all, the SED had not sought out the Catholic leadership for an opinion on the law the way it

⁸⁹ Ibid., Bl. 2.

⁹⁰ Ibid., Bl. 1.

⁹¹ Limbach-Frohna an den Stellvertreter des Ministerpräsidenten, Volkskammerabgeordneten und Vorsitzenden der Christlich-Demokratischen Union Deutschlands Herrn Otto Nuschke in Berlin, January 2, 1955, DO 4/1555, BArch Berlin.

⁹² Jarausch, *After Hitler*, 193.

⁹³ Bernd Schäfer, *The East German State and the Catholic Church, 1945-1989* (New York: Berghahn, 2010), 32.

⁹⁴ Harsch, *Revenge*, 205-206.

had the Protestant churches. In one letter responding to the EKD and Catholic opinion pieces, Benjamin referred to the Protestant Church leadership's abrupt change of heart from its earlier positive position. She only added in Catholics as an afterthought, indicating that she was more concerned about the Protestant majority.⁹⁵ Protestants had the numbers and a different set of strategies to rile up Benjamin and the SED in a way that Catholics did not.

Benjamin's consternation over the Protestants and not the Catholics indicated that she knew from early on that she was facing a formidable opponent. In fact, within a few days of the issuance of the EKD's *Stellungnahme*, the SED drew up an anonymous report responding to the churches. The report lamented that the church leadership had many possibilities to critique the law's provisions or offer proposals. The SED might have been open to these suggestions, because "one can make do with a short explanation."⁹⁶ Instead, the author expressed indignation that the churches chose to point out the consequences for reunification. He or she stated:

Such a step can lead to very difficult outer and inner shame in our people, who are so strong in family ties, despite political division. The church must expect, that everything [in the law] that can deepen the cleft between both parts of Germany is omitted. We strongly see this hazard as a given.⁹⁷

The dogmatic rifts between Communism and Christianity—namely the aforementioned issue of state intervention in the family and childrearing—did not appear to cause the writer much concern. Nor would have proposals for new provisions. Despite his or her clear annoyance with the EKD, the author conferred a certain amount of respect on the church leadership for pointing out the issue of a divided Germany, stating, "In conclusion it is indeed not

⁹⁵ Benjamin an Plenikowski, DY30/IV2/14/35, Bl. 46, SAPMO-BArch Berlin.

⁹⁶ Aufzeichnung, September 6, 1954, DO 4/2095, BArch Berlin.

⁹⁷ Ibid.

unimportant, but also does not come directly in the central question.”⁹⁸ The best way that the SED could momentarily brush off the criticism of the churches was to claim that reunification was not much of an issue. The SED’s sudden reluctance to discuss unity conflicted with the party’s explicit emphasis on the pan-German significance of the law since its introduction.

Western Opposition

The SED’s anxieties about internal dissent were furthermore compounded by the perceived developments in the West. As shown in the last chapter, the Federal Republic, at the time, was in the midst of formulating its own reforms to family law, of which Hilde Benjamin and the East German Ministry of Justice were well aware. In fact, in August 1954, Benjamin and the West German Minister of Justice, Fritz Neumayer (FDP) engaged in a brief tussle, which ended when Neumayer issued a press release condemning Benjamin and the FGB for only deepening the divide between West and East through its thorough societal restructuring.⁹⁹ The SED seized the opportunity to declare Neumayer the divisive one on the pages of its newspapers *Berliner Zeitung* and *Neues Deutschland*, as well as the Christian Democratic organ *Neue Zeit*, but the damage was done.¹⁰⁰ Aware that Neumayer’s rejection would incite problems in the public forums, Benjamin warned the courts and regional justice

⁹⁸ Aufzeichnung, September 6, 1954, DO 4/2095, BArch Berlin.

⁹⁹ Maria Hagemeyer, *Der Entwurf des Familiengesetzbuches der „Deutschen Demokratischen Republik“* (Bonn: Bundesministerium für gesamtdeutsche Fragen, 1955); Benjamin an den Bundesminister der Justiz Herrn Neumayer, July 26, 1954, DP 1/7892, Bl. 230, BArch Berlin; For biography of Hilde Benjamin, see “Hilde Benjamin 1902-1989,” last modified February 3, 2016, <https://www.hdg.de/lemo/biografie/hilde-benjamin.html>

¹⁰⁰ “Ein “Nein?, das wackelt,” *Berliner Zeitung*, August 7, 1954, 2; “Gedankenaustausch über Familiengesetz von Bonn abgelehnt,” *Neues Deutschland*, August 7, 1954, 2; “Bonn wünscht keine Verständigung,” *Neue Zeit*, August 7, 1954, 2.

administrations to emphasize the importance of “the implementation of the principle of equality in all of Germany and that it serves the fight for unity and stabilization of peace.”¹⁰¹ The West’s rejection of the SED’s Family Code signified more than just ideological disagreements over the status of women and the family. It represented the fact that the West would not legitimize the East’s existence by engaging with its political leaders and foremost legal experts on the topic of family law.

The problem of the West’s reforms continued to haunt Benjamin. For example, on 5 October 1954, Hilde Benjamin wrote to Anton Plenikowski, then in charge of the State Administration department of the SED Central Committee.¹⁰² Her letter, citing information from Wilhelm Karl Gerst, a West German Communist and journalist, indicated some apprehension that the West German Bundestag would pass its own family law reforms before East and West German jurists had a chance to meet to discuss the laws.¹⁰³ The press release that accompanied her letter portrayed the West as uncooperative and preventing its own citizens from discussing the laws, stating that:

Neither the rejection of the Bonn Minister of Justice Neumeier [sic] to meet with the Justice Minister of the GDR, Dr. Benjamin, nor the lies and attempts at destruction can prevent [the fact] that numerous citizens and jurists in West Germany recognize the meaning of the draft and were prepared [to join] the pan-German conversation in the area of law in the manifestation of its different forms.¹⁰⁴

The language of the press release relied on the image of willing and eager West Germans to

¹⁰¹ Benjamin an die Justizverwaltungen und die Gerichte der DDR, August 14, 1954, DP 1/7889, BArch Berlin.

¹⁰² “Anton Plenikowski,” last accessed December 23, 2016, <http://www.bundesstiftung-aufarbeitung.de/wer-war-wer-in-der-ddr-%2363%3B-1424.html?ID=2671>

¹⁰³ Benjamin an Plenikowski, October 5, 1954, DY30/IV2/14/35, Bl. 70, SAPMO-BArch Berlin. Her intel was either faulty or the Bundestag’s plans changed, because the law did not go up for a vote until 1957. “Karl Wilhelm Gerst,” last accessed December 23, 2016, <https://www.munzinger.de/search/portrait/Wilhelm+Karl+Gerst/0/4186.html>

¹⁰⁴ Benjamin an Plenikowski, October 5, 1954, DY30/IV2/14/35, Bl. 71, SAPMO-BArch Berlin.

depict the West German government as the problem. The letter, however, demonstrated that Benjamin saw herself in a bind. If the West went forward with its reforms and completely ignored the East, then the GDR would appear as a failure.

The Ministry of Justice paused to take stock of the public forums and protests in August and October 1954. According to a circular (*Rundschreiben*), sent by Hilde Benjamin to the leaders of the local justice ministries and court directors on 27 August 1954, the purpose of the meeting was to “formulate a final version of the draft from the opinions of the colleagues of justice administrations, especially judges.”¹⁰⁵ In addition, their report acknowledged the ambivalence of East German citizens. On the one hand, the Ministry praised the public for its positive reactions to the laws. In their October report, the Ministry lauded East Germans for recognizing “that there can be no democracy in the state ... if the subordination of women in the family and the marital principle ‘he should be your patriarch’ are not eliminated.”¹⁰⁶ Furthermore, the public found “decisive agreement” on the preamble of the Family Code, which defined the aims of the new law.¹⁰⁷ They also largely agreed on issues such as the removal of the *Stichentscheid* and reforms to marital property law.¹⁰⁸

On the other hand, the public forums had exposed the SED to direct criticisms from their citizens. In their correspondence, when reproached, Ministry representatives bristled

¹⁰⁵ Benjamin an all Leiter der Justizverwaltungsstellen und Direktoren der Bezirksgerichte der Deutschen Demokratischen Republik, August 27, 1954, DP 1/7889, Bl. 235-236, BArch Berlin.

¹⁰⁶ Bericht über die Ergebnisse der Diskussion zum Entwurf des Familiengesetzbuches auf der Arbeitstagung im Ministerium der Justiz vom 19.10.1954, 2-3, DO 1/14398, BArch Berlin.

¹⁰⁷ Bericht über die Ergebnisse, 2.

¹⁰⁸ Ibid., 9-11.

and did not hesitate to tell writers they were wrong.¹⁰⁹ In their internal meetings, the Ministry of Justice dismissed most of these critiques as the consequence of “misunderstandings and unrecognition of the law and an insufficient understanding of its practical effects.”¹¹⁰

Moreover, they blamed the Western press for propagating “incomprehension and insufficient explanation of definitions.”¹¹¹ Among some of the misunderstood issues that the Ministry identified were the legal marrying age, the process of the marriage ceremony, prohibitions on marriage, the right of spouses to live separately, and naming rights.¹¹² Criticism from the public only pushed the SED to further clarify their goals for the law and to get the speakers to express “not only their personal opinions but rather the unified position of the judges.”¹¹³

Obtaining unity among their own cadres, however, sometimes proved difficult for the SED. In September 1954, for instance, a representative of the Halle Ministry of the Interior wrote to the Ministry of Justice to propose revisions to the provisions on legitimation of children, defining illegitimacy, and handling civil marriage ceremonies.¹¹⁴ In a report from the Leipzig district administration (*Bezirksverwaltung*), another functionary explained that the citizens were most interested in the marriage allowance of men and family names.¹¹⁵ The

¹⁰⁹ See as one example the response to Heinz Jurischke, written by Dr. Ostmann, in DP 1/23655 (2), Bl. 48, BArch Berlin. “Sie sind jedoch im Irrtum, wenn Sie meinen, dass der Entwurf des Familiengesetzbuches (§29) scheidungsfeindlich sei und Scheidungen fast unmöglich mache.”

¹¹⁰ Bericht über die Ergebnisse, 3.

¹¹¹ Ibid., 32.

¹¹² Ibid., 2-11.

¹¹³ Ibid., 4.

¹¹⁴ Salfemeier an die Regierung der Deutschen Demokratischen Republik, September 27, 1954, DO 1/14398, BArch Berlin.

¹¹⁵ Vogel an die Regierung der Deutschen Demokratischen Republik, September 6, 1954, DO 1/14398, BArch Berlin.

colleague from Erfurt called for clarity on issues such as declaration of death (especially for those remarrying) and alimony.¹¹⁶ In October 1954, the leader of the district administration of Dresden wrote to the Ministry with a long list of proposals for the forthcoming law. He prioritized the common family name above individual names, for instance.¹¹⁷ These regional-level functionaries communicated the desires of their constituents, but to the effect of demonstrating further disunity among party leaders, which is precisely what Benjamin and other higher officials hoped to avoid.

Furthermore, the SED faced opposition from the West, in particular its Protestant church leaders. On 20 November 1954, Gustav Heinemann penned a letter to Otto Grotewohl, the Minister-President of the GDR. Heinemann, born in 1899, had gotten a law degree, joined the anti-Nazi Confessing Church during the Third Reich, and eventually became mayor of Essen under the British occupation. After 1949, he became leader of the Synod of the Protestant Church in Germany.¹¹⁸ He wrote: “For every German, who doesn’t want to give up hope of the reunification of our people [...] from this perspective of pan-German responsibility, allow me to ask you, Mr. Minister-President, to impede on the initiated changes to family law in the GDR.”¹¹⁹ He furthermore argued that the GDR’s reforms would “intervene in the personal relations” of their citizens and disrupt the “basis of order that was already valid in Germany and will be continued in its Western part.”¹²⁰ This

¹¹⁶ Auszugsweise Abschrift aus dem Protokoll der Arbeitsberatung der erforter Standesämter am 29. Juli 1954, July 29, 1954, DO 1/14398, BArch Berlin.

¹¹⁷ Neubert an das Ministerium der Justiz, Oktober 20, 1954, DO 1/14398, BArch Berlin.

¹¹⁸ “Gustav Heinemann,” last accessed December 23, 2016, <https://www.hdg.de/lemo/biografie/gustav-heinemann.html>.

¹¹⁹ Heinemann an Grotewohl, November 20, 1954, DP 1/243, BArch Berlin.

¹²⁰ Ibid.

order was, as West German women's rights activists alleged, the continuation of the old, bourgeois, and patriarchal Civil Code. As the leader of the EKD, which at the time was structurally unified with the West, Heinemann's words carried extra weight. While based in the West, his reach extended to the East. When he wrote to Grotewohl, indicting the GDR for deepening the rift between the two Germanys on the basis of women and the family, he did so as a representative of German Christian interests, but one that the SED could not touch.

The petitions and public forums, the protests of East German churches, the rejection of the Western government, and the intervention of West German religious leaders shook Benjamin and other Ministry of Justice officials. In November 1954, the ruling party closed discussion of the FGB. In January and again in April 1955, Benjamin forwarded petitions from the churches to Erich Mielke, then lieutenant-general (second-in-command) of the Stasi.¹²¹ Her letters did not explicitly ask the secret police to watch and inform on church members, but it might be inferred that this was her intent. While it is not obvious exactly which routes the Stasi pursued to observe the leaders and members of the protesting churches, it is more obvious what conclusions they drew. In 1956, the Stasi produced an internal report chronicling its activities between 1 September 1954 (the same date the EKD issued its opinion piece) and 1 September 1955. The report labeled the churches' work as representative of "the policy of aggression" of the West.¹²² In particular, the author singled out Otto Dibelius, a leading Protestant bishop in Berlin, for "opposing the democratic institutions of our republic [...] against the regulations of our government, for example

¹²¹ Benjamin an Mielke, April 15, 1955; January 21, 1955, DP 1/243, BArch Berlin. For biography of Erich Mielke see: "Erich Mielke," last accessed December 23, 2016, <https://www.hdg.de/lemo/biografie/erich-mielke.html>.

¹²² Auskunftsbereich Nr. 3 über die Situation und Tätigkeit der evangelischen Kirchen in Deutschland vom 1.9.1954 bis 1.9.1955, MfS JHS 001 Z 9/56, BStU 0003, Der Bundesbeauftragte für die Unterlagen des Staatssicherheitsdienstes der ehemaligen Deutschen Demokratischen Republik.

against the Law of Equal Rights of Women, against the youth confirmation, against the family law, etc.”¹²³ The Stasi’s report ultimately blamed the West for the churches’ rebellion over women’s legal rights and the family.

This section has shown that civil unrest in the GDR over family law reforms deeply unsettled the SED, leading the ruling party to abandon the reforms. The regime initially seemed willing to respond to and negotiate with citizens over parts of the law. What, then, halted the SED in their path? I have argued here that citizens’ protests were one major factor. An even greater factor were the churches—long the perceived enemy of the SED—succeeded largely because they appropriated the ruling party’s rhetoric about German reunification as a way of criticizing the state.¹²⁴ During the 1950s, Germans on both sides of the Iron Curtain considered reunification to be one of the most significant issues facing them, especially because they yearned to reunite their families.¹²⁵ By constructing the SED as the foremost destroyer of German unity, the churches struck at a vulnerable point of the party. Moreover, the churches remained structurally unified with their Western counterparts, a factor that made the churches all that more dangerous to the SED. The vocal opposition of Western church leaders and politicians only exacerbated the issue. As a result, the SED retreated and did not broach the reforms for another decade, suggesting, as historian Jürgen

¹²³ Ibid.

¹²⁴ Christoph Kleßmann, “Abgrenzung und Verflechtung,” 30-41; see also Heinz-Gerhard Haupt and Jürgen Kocka, “Comparative History: Methods, Aims, Problems,” in *Comparison and History: Europe in Cross-National Perspective*, eds. Deborah Cohen and Maura O’Connor (Routledge, 2004), 33.

¹²⁵ Mary Fulbrook states that “in the 1950s reunification ranked as one of the most important problems for West Germans” and that it represented “constant aspirations for large numbers of East Germans.” See Fulbrook, *Anatomy of a Dictatorship*, 136. Similarly, Konrad H. Jarausch notes that over time, reunification rhetoric failed. See Jarausch, *After Hitler*, 66.

Kocka has stated, that “the dictatorship’s rule was more limited than assumed by theories of totalitarianism.”¹²⁶

Incremental Steps Toward Approving the 1965 Family Code

The disappearance of the Family Code did not escape public notice. Throughout 1955 and early 1956, the SED still received petitions and letters from East Germans inquiring about the status of the law. One woman pleaded that “many people await the resolution,” but the Ministry’s reply that the law was under further review did not assuage her concerns.¹²⁷ Those who wrote with explanations of personal problems typically received more detailed responses, but were nevertheless stuck in limbo until a new law passed.¹²⁸ The SED also continued to receive petitions from individual churches.¹²⁹ Some expressed skepticism of the regime’s attempts to respond to individual petitions. In early 1956, one writer noted that the Ministry of Justice had recently passed a decree on marriage and divorce processes, but he wondered “if and how far [his] contribution to the discussion about the restructuring of family law was evaluated and found resonance.”¹³⁰

¹²⁶ Jürgen Kocka, *Civil Society and Dictatorship in Modern German History* (Hanover: University Press of New England, 2010), 39.

¹²⁷ Kaschka an das Ministerium, February 1, 1955, DP 1/7200, BArch Berlin. See also Meyer an das Ministerium, February 7, 1955, DP 1/7200, BArch Berlin; Schröder an das Justizministerium der Deutschen Demokratischen Republik, April 30, 1955, DP 1/7200, BArch Berlin; Rödiger an das Ministerium für Justiz, June 21, 1955, DP 1/7200, BArch Berlin; Schodlok an das Ministerium der Justiz, July 30, 1955, DP 1/7200, BArch Berlin; Musculus an das Ministerium der Justiz, August 18, 1955, DP 1/7200, BArch Berlin.

¹²⁸ Deutschbein an das Ministerium, March 1, 1955, DP 1/7200, BArch Berlin.

¹²⁹ Kirchenkreis Zeitz an das Ministerium, March 7, 1955, DP 1/7200, BArch Berlin.

¹³⁰ Schönberg an das Ministerium für Justiz der Deutschen Demokratischen Republik, February 6, 1955, DP 1/7200, BArch Berlin.

The SED's muted propagation of the Family Code in 1955 coincided with major changes in economic and foreign policy that unintentionally had consequences for the law. West Germany earned its sovereignty from the Western occupation powers, rearmed itself, and joined the North Atlantic Treaty Organization (NATO) in 1955.¹³¹ In response, in May 1955, the GDR joined the Warsaw Pact, the Soviet Union's answer to NATO, and formed its own National People's Army (already in the works from 1950 with the introduction of the *Volkspolizei*). The Soviet Union proclaimed the GDR a sovereign state on 20 September 1955. The declaration of sovereignty by the USSR represented an important shift in GDR-USSR relations. The nominal regression of Soviet influence meant that Allied Control Council laws no longer had to be enforced, although the USSR still required consultation about overturning the legislation.

Leading GDR government officials like Hilde Benjamin took advantage of the dissolution of the Allied Control Council laws. Unable to make the Family Code the SED's priority or overcome public discontent with the proposed reforms, she aimed for partial solutions. With the permission of the Soviet Union, the SED sought to replace the 1946 *Kontrollratsgesetz*.¹³² Benjamin, reflecting on this decision later, stated that the GDR simply "needed legal definitions for divorce."¹³³ On 24 November 1955, the Ministry released the "Decree on Marriage and Dissolution of Marriage (*Verordnung über Eheschließung und*

¹³¹ For studies on West German rearmament see Friederike Bruehoefener, "Defining the West German Soldier: Military, Masculinity and Society in West Germany, 1945-1989," (PhD Diss. University of North Carolina at Chapel Hill, 2014); David Large Clay, *Germans to the Front: West German Rearmament in the Adenauer Era* (Chapel Hill: University of North Carolina Press, 1996), 234.

¹³² "Die neue Verordnung über die Eheschließung und -auflösung," *Neues Deutschland*, December 8, 1955, 3.

¹³³ Protokoll über die Beratung einer Kommission über Fragen des Familiengesetzbuches der Deutschen Demokratischen Republik am 25.5.1959, DY 30/IV 2/12/106, Bl. 8, BArch Berlin. The connection between East German sovereignty and the FGB comes up in a Ministers' Council report on the development of family law. See also Konzeption für das Familiengesetzbuch, October 24, 1963, DC 20/I/4/834, Bl. 65, BArch Berlin.

Eheauflösung).¹³⁴ The decree established that men and women could marry at the age of eighteen. Bigamy, incest/adoptive relations, and marrying disabled persons were prohibited. Marriages could be dissolved by death. If a spouse declared dead reappeared, the remarried spouse could only honor the earlier vows once the second marriage was divorced. Divorce could also be granted “for serious reasons” and if “the marriage had lost its purpose for the spouses, children, and society.”¹³⁵ Courts got to decide who would have custody of the children. Divorced partners could revert to their former names. If one was unable to support him- or herself, the other was obligated to provide alimony for a limited period of time. On 7 February 1956, the Ministry of Justice updated the previous year’s *Verordnung* with the new “Directive to the Adaptation of the Regulations on the Process in Matters of Marriage in the Order on Marriage and Divorce – Marriage Process Order.”¹³⁶

Additionally, on 29 November 1956, the Ministry of Justice followed up by issuing a decree defining the rules of adoption of children. The goal of the order was to unite differing interpretations of the rules of adoption and “ease and promote the adoption of a child.”¹³⁷ The decree ordered that children had to be a minor and their adoptive parents over the age of majority. The adoption contract had to be approved by the local education department (*Abteilung Volksbildung*). Adoptions could only go through with the willing consent of the other marital partner. Except for special circumstances, the child would take its adoptive

¹³⁴ “Verordnung über Eheschließung und Eheauflösung,” *Gesetzblatt der Deutschen Demokratischen Republik*, November 24, 1955, Teil I, Nr. 102 (Berlin, 1955), 849ff.

¹³⁵ “Verordnung über Eheschließung und Eheauflösung,” 850.

¹³⁶ “Anordnung zur Anpassung der Vorschriften über das Verfahren in Ehesachen an die Verordnung über Eheschließung und Eheauflösung – Eheverfahrensordnung (EheVerfO),” *Gesetzblatt der Deutschen Demokratischen Republik*, February 7, 1956, Teil I, Nr. 16 (Berlin, 1956), 145-148.

¹³⁷ “Verordnung über die Annahme an Kindes Statt. Vom 29. November 1956,” *Gesetzblatt der Deutschen Demokratischen Republik*, November 29, 1956, Teil I, Nr. 109, (Berlin, 1956), 1326.

parents' names. The child would have equal rights with its siblings and relatives. If for some reason the parents' circumstances came to endanger the child's welfare, the courts could intervene and rule on the matter.¹³⁸ The divorce and adoption decrees signaled incremental steps toward regulating more pressing aspects of family law in the mid-1950s.

Even with the 1955 and 1956 decrees on the books, the Family Code did not disappear from the Ministry's agenda. Historians such as Donna Harsch and Elizabeth Heineman have suggested that the reforms simply disappeared and later reappeared in other decrees.¹³⁹ Historian Gesine Obertreis similarly claims that the 1955 decree silenced the matter until the 1963 *Parteitag*.¹⁴⁰ I argue that the matter is more complicated than that. The decrees issued did cover many of the major issues the SED hoped to address (like divorce regulations), but the party still aimed to overturn the Civil Code as a sign of its radical social restructuring. Prompted by a request by Walter Ulbricht at the Fifth Party Congress in 1958, the Ministry's officials still produced several new drafts of the Family Code and circulated them among the various other ministries of the government.¹⁴¹ According to Benjamin, the Politbüro ordered her to complete the reforms and send them to the *Volkskammer*, a sign that

¹³⁸ "Verordnung über die Annahme an Kindes Statt," 1326-27.

¹³⁹ Heineman, *What Difference*, 192; Harsch, *Revenge of the Domestic*, 210.

¹⁴⁰ Obertreis, *Familienpolitik*, 232.

¹⁴¹ For the May 12, 1955 version of the "Einführungsgesetz zum Familiengesetzbuch der Deutschen Demokratischen Republik," see DP 1/23655, Bl. 234-244, BArch Berlin. For the May 11, 1955 version of the "Durchführungsverordnung zum Familiengesetzbuch der Deutschen Demokratischen Republik," see DP 1/23655, Bl. 246-270, BArch Berlin. For the April 5, 1955 version of the "Entwurf des Familiengesetzbuches der Deutschen Demokratischen Republik," see DP 1/23655, Bl. 271-312, BArch Berlin. For the June 10, 1955 version, see DO 1/14398, BArch Berlin. For the June 10, 1955 version of the "Einführungsgesetz zum Familiengesetzbuch der Deutschen Demokratischen Republik," see DO 1/14398, BArch Berlin. In DO 1/14398, there are also undated drafts of the FGB and the Einführungsgesetz. For the March 17, 1958 version of the FGB, see DO 1/14397, BArch Berlin. DO 1/14397 also contains undated versions of the Einführungsgesetz. See also Inga Markovits, "Civil Law in East Germany. Its Development and Relation to Soviet Legal History and Ideology," *The Yale Law Journal* 78, 1 (1968), 1-51.

the SED leaders were prepared to pass the new law.¹⁴² The new drafts were reviewed and produced by a group of academics under the guidance of Benjamin, who then circulated their recommendations among the other governmental ministries.¹⁴³

For the most part, the other ministries had few complaints, but they nevertheless offered criticisms. In May 1958, for instance, the leader of the Department of Internal Affairs proposed that the Ministry allow any child born during a marriage—regardless of whether the parents separated or if the father was declared dead before the child was born—to be considered legitimate. He cited the unfairness of the BGB’s discrimination against illegitimate children.¹⁴⁴ Incidentally, the constitution and the 1950 *Mutterschutzgesetz* awarded legitimate and out-of-wedlock children the same status, but he implied that more needed to be done in this area. Meanwhile, Richard Dombrowsky, the leader of the *Volkspolizei*, expressed concerns about name changes, citing potential fraud as a reason. He wrote in May 1958 that it must be required by law to register with the police when a name is changed and “it is solely about the question of marriage under a false name and how far under the oversight of §10 a rule will be made.”¹⁴⁵ Finally, another cadre wrote in December 1958 that the law needed further revisions to make it “more comprehensible and corresponding to our socialist conditions.”¹⁴⁶ The East German media reported on the internal reviews of the law as well, keeping the public in the loop on important Ministry

¹⁴² Benjamin an Maron, April 22, 1958, DO 1/14397, BArch Berlin.

¹⁴³ Benjamin an Maron, April 22, 1958, DO 1/14397, BArch Berlin.

¹⁴⁴ Bergmann an Ministerium der Justiz, May 19, 1958, DO 1/14398, BArch Berlin.

¹⁴⁵ Dombrowsky an Ehrhardt, Einführungsgesetz zum Familiengesetzbuch, May 30, 1958, DO 1/14398, BArch Berlin; Dombrowsky an Ehrhardt, Entwurf des Familiengesetzbuches, May 20, 1958, DO 1/14398, BArch Berlin.

¹⁴⁶ Sonntag an Jendretzky, December 6, 1958, DO 1/26466, BArch Berlin.

decisions about parental custody, adoption rights, declaration of paternity, and property rights.¹⁴⁷

Their internal discussions also reflected that government officials were contending with the problem of the West. The ongoing Bundestag committee debates in 1955–56 and the subsequent approval of the Equal Rights Act in the FRG in 1957 presented a new set of problems for Benjamin and the Ministry of Justice. At this point, with the division of family law realized, and not by their own doing, the SED and the Ministry of Justice had to reconsider their position and language. For instance, Benjamin noted in a letter to Karl Maron, the Minister of the Interior, on 30 April 1958, that the “existence of two sovereign states in the territory of Germany” posed “the question of [if] the applicability of West German law must be regulated the same way as the relationship of laws to other states.”¹⁴⁸ She further asserted that the laws were incompatible, as the GDR did not uphold discrimination based on race, sex, or religion, like “capitalist societies.”¹⁴⁹

In response, by 1959, the Ministry of Justice had made further attempts to prioritize the Family Code. The Politbüro, for its part, issued a formal resolution to pass the Family Code, its introductory act, and the “Code of Procedure for Families (*Familienprozessordnung*).”¹⁵⁰ The latter especially occupied the attention of Benjamin at this point in time. The introduction of a new Seven-Year Plan in 1959 accelerated

¹⁴⁷ “Neues zum Entwurf des Familiengesetzbuches,” *Neues Deutschland*, May 1958, 3.

¹⁴⁸ Benjamin an Maron, Anlage Begründung zum Einführungsgesetz des Familiengesetzbuches, April 30, 1958, DO 1/14397, BArch Berlin. For biography of Karl Maron, see “Gestorben: Karl Maron,” *Der Spiegel*, February 10, 1975, 132.

¹⁴⁹ Benjamin an Maron, Anlage Begründung zum Einführungsgesetz des Familiengesetzbuches, April 30, 1958, DO 1/14397, BArch Berlin.

¹⁵⁰ Vorlage für das Politbüro, April 7, 1959, DY 30/IV 2/13/106, Bl. 22, BArch Berlin.

agricultural collectivization and nationalization of key industries, which led to a spike in defections.¹⁵¹ The increasing numbers of East Germans heading westward forced Benjamin and the Ministry of Justice to confront a brutal reality: that their citizens and their families were divided. They had to readdress their earlier stance that West German family law was illegitimate and incompatible. In response, they needed to provide “clear boundaries of the responsibility of the courts of the GDR and the West German courts.”¹⁵² The “Code of Procedure for Families” determined that East German courts could adjudicate all matters related to the family, even if the other party resided in West Germany or West Berlin.¹⁵³ For example, there was the matter of support for children and “easing the execution of requirements against the party liable for alimony in the Western zone or West Berlin.”¹⁵⁴ This decree was one step toward addressing one of the fundamental quandaries facing the Ministry of Justice and East German judges.

The dilemma of adjudication across borders was short-lived, although contemporaries could not have foreseen the possibility that East Germany would close off its borders entirely. In 1952, East German officials had formally closed the German-German border, making it more difficult, but not impossible, for their citizens to flee. The special status of Berlin, however, meant that East Germans could still escape to the West there. By 1956, defections to the West had risen significantly. On 12 August 1961, Walter Ulbricht signed the order to close off East Berlin from the West via the Berlin Wall. This move divided families, halted East Berliners from going to work in the West, and stopped the refugee

¹⁵¹ Harsch, *Revenge of the Domestic*, 236.

¹⁵² *Ibid.*, Bl. 22-23.

¹⁵³ *Ibid.*, Bl. 22.

¹⁵⁴ *Ibid.*

drainage to the West. With very limited numbers of East Germans crossing the border after 1961, the Ministry officials' and judges' concerns about implementation of any procedures concerning marriage or families diminished.

It was not until 1963 that the SED finally revived the subject of the long abandoned Family Code. Most contemporaries later credited the renewed interest in the Family Code to Walter Ulbricht's speech at the VI. SED Party Congress, held 15-21 January 1963. This Party Congress was particularly significant because it was the meeting at which Ulbricht introduced the New Economic System (NES) to the GDR. The New Economic System set aside the Five-Year Plans and "deemphasized central planning and placed more power in the associations (VVB) of socialized industries (VEB)."¹⁵⁵ In addition to economic reforms, Ulbricht insisted that it was "urgent to improve the legal standards, which rule the economic-organizational and cultural-educational activity of the state and economic organs...new legal codes for civil, criminal, and family law will be developed."¹⁵⁶ The Ministers' Council followed up on Ulbricht's proposal in April 1963 with a resolution and formed a commission to draft a new family law in October 1963.¹⁵⁷

The new commission began its work in January 1964. It was headed by Benjamin and comprised of members of the government, mass organizations, academics, and "members of

¹⁵⁵ Charles S. Maier, *Dissolution: The Crisis of Communism and the End of East Germany* (Princeton: Princeton University Press, 1999), 87.

¹⁵⁶ Protokoll des VI. Parteitages der sozialistischen Einheitspartei Deutschlands, 15. bis 21. Januar 1963 (Berlin: Dietz Verlag Berlin, 1963), 371.

¹⁵⁷ Beschluss zur Konzeption und zum Massnahmeplan zur Ausarbeitung eines neuen Familiengesetzbuches, November 25, 1963, DC-20-I/4/834, Bl. 63, BArch Berlin; see also Protokoll über die konstituierende Sitzung der Grundkommission zur Ausarbeitung eines neuen Familiengesetzbuches vom 25. Januar 1964, February 20, 1964, DY34/2319, BArch Berlin.

the collectives of the workers.”¹⁵⁸ In a concerted effort to demonstrate equality, the Ministers’ Council insisted the committee contain equal numbers of men and women.¹⁵⁹ According to a report by the Ministers’ Council in May 1964, the ongoing discussions by the commission were proceeding apace.¹⁶⁰ Their progress ended in October 1964, however, when the Ministry of Justice’s Women’s Working Group and its department of State and Law intervened and issued an opinion piece that asked the SED not to pass the new law yet. The opinion piece stated that the law did not go far enough in “delivering and stabilizing marital and familial relationships and the further development of socialist conduct and lifestyle.”¹⁶¹ They wanted the draft to explain in more detail what the family meant for socialism and especially raising the next generation under socialism. Accordingly, the working group argued that the draft focused too much on *Gleichberechtigung* of women and not enough on the family. In an even more drastic turn, the working group alleged that the draft did not “overcome the reflecting commercialization of family relations characteristic of bourgeois families and in bourgeois family law,” especially when it came to property law.¹⁶² Finally, they attacked the language of the law, explaining that it was too juridical and difficult for average citizens to understand.¹⁶³

¹⁵⁸ Massnahmeplan zur Ausarbeitung eines neuen Familiengesetzbuches, October 24, 1963, DC20/I/4/865, Bl. 77, BArch Berlin.

¹⁵⁹ Ibid.

¹⁶⁰ Bericht über den Stand der Gesetzgebungsarbeiten am Familiengesetzbuch, May 21, 1964, DC20/I/4/965, Bl. 41-48, BArch Berlin.

¹⁶¹ Stellungnahme der Abteilung Staats- und Rechtsfragen und der Arbeitsgruppe Frauen zur Vorlage des Ministeriums der Justiz – Entwurf des Familiengesetzbuches, October 6, 1964, DA5/487, BArch Berlin.

¹⁶² Ibid.

¹⁶³ Ibid.

The opinion piece must have had some effect on the SED. The original plan to conduct a public discussion from October 1964 to January 1965 was postponed and the legislative drafts changed drastically between September and December 1964.¹⁶⁴ On 18 March 1965, the steering committee of the Ministers' Council of the GDR approved and published the "final" draft of the new FGB. The resolution passed by the steering committee outlined specific guidelines for the conduct of the public discussions to come between April and July 1965.¹⁶⁵ The discussions would be led by the National Front (the compendium of political parties in the GDR), the FDGB, the DFD, the Union of Democratic Jurists of Germany (*Vereinigung Demokratischer Juristen Deutschlands*), and the Society for the Dissemination of Scientific Knowledge (*Gesellschaft zur Verbreitung wissenschaftlicher Kenntnisse*), with help from social welfare organizations.¹⁶⁶ Their aim was to educate the masses on the role of marriage and the family for all citizens (not only women) in their socialist society. The purpose of the discussions was to inform the public on the status of marriage and family law in West Germany.¹⁶⁷

Furthermore, the ruling party conspired to set up public discussions, much like it had in 1954.¹⁶⁸ Like before, regionally-based jurists, judges, attorneys, and lawyers would be

¹⁶⁴ Beschluß-Entwurf über die öffentliche Diskussion des Familiengesetzbuch-Entwurfs, 1964, DA 5/487, BArch Berlin; see "Entwurf Familiengesetzbuch der Deutschen Demokratischen Republik," September 2, 1964 and December 21, 1964, DY34/2316, BArch Berlin.

¹⁶⁵ Beschluß über die öffentliche Diskussion des Entwurfs des Familiengesetzbuches, March 18, 1965, DC 20/I/4/1091, Bl. 118-123, BArch Berlin.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ Plan gemeinsamer Maßnahmen der Rechtspflegeorgane zur Durchführung der öffentlichen Diskussion des Entwurfs des Familiengesetzbuches, March 1965, DP 2/1509/154-157, BArch Berlin.

briefed ahead of time on the FGB and its underlying sentiments.¹⁶⁹ The Agitation Commission of the SED (its propaganda department) sent out special documents (the Ministers' Council resolutions and a report on the family from the German Academy of Sciences) on the FGB to the chief editors of all the media organs.¹⁷⁰ Special seminars would be held for lawyers in various locales around the GDR, so that they could lead the public forums. This time, however, the SED intended to keep tighter control on the forums.

A month later, on 14 April 1965, the SED held an international press conference where it formally introduced the new FGB to the public. In her opening address, Hilde Benjamin observed that the struggle for a new family law had its roots in the antifascist sentiments of the immediate postwar period, especially because the Nazis had actively tried to destroy families with their racist rhetoric and policies.¹⁷¹ According to Benjamin, the new FGB would join the ranks of other labor laws, collectivized agriculture, and youth laws to complete the "unified socialist system."¹⁷² She then outlined the importance of the law for women's economic independence, stressing that unlike the capitalist laws that preceded the FGB, this law would provide job and educational opportunities without presuming conflicts between personal and public life.¹⁷³ Finally, she emphasized the moral basis of the new law for raising children.¹⁷⁴

¹⁶⁹ Plan gemeinsamer Maßnahmen der Rechtspflegeorgane zur Durchführung der öffentlichen Diskussion des Entwurfs des Familiengesetzbuches, March 1965, DP 2/1509/154-157, BArch Berlin.

¹⁷⁰ Rudi Singer an alle Chefredaktionen, March 26, 1965, DE 1/52952, BArch Berlin.

¹⁷¹ Internationale Pressekonferenz des Presseamtes beim Vorsitzenden des Ministerrates, April 14, 1965, DC 9/373/1, Bl. 4, BArch Berlin.

¹⁷² Ibid., Bl. 6.

¹⁷³ Ibid., Bl. 9-10.

¹⁷⁴ Ibid., Bl. 12-13.

Beyond the goals of the SED for the family in its socialist republic, Benjamin also acknowledged the significance of the competition with West Germany for a new family law. According to Benjamin, “such a law as we have here in this draft is neither imaginable under the circumstances in West Germany, nor under the present circumstances could a genuine discussion among the people be conducted.”¹⁷⁵ She furthermore attacked the FRG’s recent policies toward women. She asserted, for example, that the West German conscription of women into the civil service would endanger the family and that despite CDU member Elisabeth Schwarzhaupt’s appointment as head of a Federal Ministry and the founding of the European Economic Community, West Germany was merely full of “empty promises.”¹⁷⁶ Finally, she credited the pronouncement of women’s rights as a Social Democratic goal at the 1964 SPD Party Conference as a reaffirmation that the GDR was “an entire historical epoch ahead of the West in the area [of equality].”¹⁷⁷

Following Benjamin’s address, the SED opened the floor to questions by the press, notably non-German and non-Communist journalists. They asked: how progressive were East Germans compared to West Germans when it came to women’s rights? What do Christians have to say about the new law? Was it true, what the West German press said, that families would forfeit raising their children to the socialist state?¹⁷⁸ Civil law expert Anita Grandke fielded their questions. Born in 1932, Grandke spent her formative years in the Soviet zone and the GDR. She studied law at the HU in the early 1950s and then wrote her

¹⁷⁵ Internationale Pressekonferenz des Presseamtes beim Vorsitzenden des Ministerrates, April 14, 1965, DC 9/373/1, Bl. 20, BArch Berlin.

¹⁷⁶ Internationale Pressekonferenz des Presseamtes beim Vorsitzenden des Ministerrates, Bl. 21.

¹⁷⁷ Ibid., Bl. 22.

¹⁷⁸ Ibid., Bl. 23, 28.

thesis on property law in a socialist state under the direction of Prof. Hans Nathan, who taught Civil and Family Law and Criminal Law at the Humboldt University in East Berlin. She later became professor of civil and family law at the HU herself. Grandke elucidated to the press the ways the GDR had outpaced the FRG in terms of sex equality. She proclaimed that the GDR's law "took seriously the complete development of a woman's personality," allowed women to work, and gave men and women equal childrearing duties.¹⁷⁹ In contrast, West German women by law could only seek employment if it was reconcilable with their duties as mothers and wives. Regarding the question about whether the state would take childrearing duties away, Grandke assured the press that the law was meant to "increase and further develop the parental influence in the development of spouses and before all the children."¹⁸⁰ Her colleague similarly refuted the claims by the Christian population that claimed socialism destroyed the family.¹⁸¹ According to him, Christians had fallen victim to anti-Communist propaganda; if one looked at the law, one would see that these claims were unsubstantiated.¹⁸²

The following day, 15 April 1965, the East German press exploded with news about the new Family Code. *Berliner Zeitung*, *Neue Zeit*, and *Neues Deutschland* all printed articles and/or drafts of the new law.¹⁸³ Historian Dagmar Herzog suggests that the GDR in the late 1950s and early 1960 combined "a period of sexual conservatism" and "elements of

¹⁷⁹ Internationale Pressekonferenz des Presseamtes beim Vorsitzenden des Ministerrates, Bl. 23.

¹⁸⁰ Ibid., Bl. 24, 28.

¹⁸¹ Ibid., Bl. 26.

¹⁸² Ibid., Bl. 26.

¹⁸³ "Entwurf des Familiengesetzbuches der Deutschen Demokratischen Republik," *Neues Deutschland*, April 15, 1965, 9; "Ehe und Familie," *Berliner Zeitung*, April 15, 1965, 3; "Entwurf des Familiengesetzbuches," *Neue Justiz*, April 15, 1965, 259-271.

liberality,” which certainly applied to the Family Code.¹⁸⁴ While the GDR’s Family Code may have outpaced the FRG in certain areas, such as divorce reform, the new legislation no doubt placed the heteronormative, dual-parent family model, childrearing, and mothers’ reproductive capabilities at its core. The law emphasized the “recognition and appreciation of the accomplishments associated with the birth, upbringing, and care of children.” Additionally, it proclaimed that the equality of men and women was vital to “the character of the family and the socialist society,” setting down in law that both spouses must support one another. Parents also had the right and duty to work closely with society to ensure a healthy upbringing for the children.¹⁸⁵ The state, in turn, was obligated to help families.¹⁸⁶

If anything, compared to earlier versions of the family law, the new Family Code put even more emphasis on establishing stable and long-lasting partnerships that would produce an abundance of children. The new provisions dictated that upon marriage, men and women over the age of 18 “establish a closed community for life, based on mutual love, attention, fidelity, understanding, trust, and selfless help.” The ability of the partner to do so was supposed to be assessed before marriage. It was expected that children would come out of the marriage. All ceremonies would be conducted at the magistrate’s office. Couples were free to take either spouse’s last name or keep their own, but the child must have one or both of the parents’ names—a stark change from earlier drafts that allowed couples to hyphenate or keep their own names. Bigamy, incest, or marriage to a disabled person were expressly prohibited. Spouses were encouraged to live together and run a household together—another key change

¹⁸⁴ Herzog, *Sex after Fascism*, 193.

¹⁸⁵ “Entwurf des Familiengesetzbuches der Deutschen Demokratischen Republik,” 3.

¹⁸⁶ *Ibid.*, 4.

from the earlier 1950 and 1954 versions, which allowed spouses to live separately. Spouses had equal rights to legal representation of the other. Both parents had equal obligations to raise the children and contribute to the household. If one partner got a new job or decided to pursue further training, the other was expected to support him or her. Unemployed spouses' domestic work was considered equal. Family members living outside the home and the property of children could be contributed to the support of the household. Property or income earned during the marriage became common property; property acquired beforehand was personal.¹⁸⁷

The new law, despite its obvious promotion of marital harmony, necessarily had to address the end of marriage as well. Marriages were considered over in four circumstances: death, divorce, annulment, or if one spouse was declared dead. No-fault divorces were now permitted and the law did not designate a separation period for the couple. At the same time, divorce was still considered a grave matter and could only be completed "for serious reasons...when the marriage has lost its meaning for the spouses, children, and society."¹⁸⁸ Divorce would be decided by a court, which would rule with the child's best interests in mind. The court would decide which spouse would care for the children, after consultation with youth welfare services. Parents were obligated to not allow their personal disputes to interfere with their parental childrearing duties. After the divorce, spouses could revert to their former names. If one spouse fell ill, the other could take over parental responsibilities and support for an interim period. Marriages could be annulled in a court of law if conducted

¹⁸⁷ "Entwurf des Familiengesetzbuches der Deutschen Demokratischen Republik," 4-5.

¹⁸⁸ Ibid., 6.

under a forbidden circumstance (such as bigamy).¹⁸⁹ Couples were clearly encouraged to stay together, and the new law mandated state intervention to assess post-marital life for both spouses and their children.

The new Family Code also highlighted that raising children, especially in the name of socialism, was a paramount goal of the SED-led government. State-run bureaus would help families provide for, raise, and educate their children. Youth welfare services could step in to help make important decisions if parents lived separately. Parents were obligated to make all decisions regarding children mutually, unless one fell ill and was unable to contribute. If the parents were not married at the time of birth, mothers were given sole responsibility for the child, though men were obligated to provide support. In the case of unwed parents, the father could either declare himself or be named the father by a court. Fathers were considered whoever had lain with the woman during the conception period, defined as one hundred and eighty one days. Children could be adopted with official approval.¹⁹⁰

Finally, the new law defined who a relative or an in-law was by the degree of their relation to the family. The socialist state would provide support for ailing citizens, but those in the direct line (parents or grandparents) could request support from their relations. Grandparents were only required to support grandchildren if the parents were unable to support the underage child. In the fifth part, custody of children without parental care was determined by the youth welfare services. In most cases, custody would go to the next of kin, but if no one was able, another would be chosen based on “his or her characteristics and

¹⁸⁹ “Entwurf des Familiengesetzbuches der Deutschen Demokratischen Republik,” 6-7.

¹⁹⁰ Ibid., 8-12.

relationship to the child.”¹⁹¹ If an adult was unable to care for him- or herself, he or she could be placed in the custody of another. The sixth and final part of the law defined the statute of limitations for alimony claims.

The preamble of the 1965 Family Code explained the multiple reasons behind the provisions of the new Family Code. First and foremost, the SED considered the family as the “smallest cell of society” whence the building of socialism came. Socialism, the preamble reminded citizens, would free them from the “falsifications” of bourgeois society. The new Family Code would ensure “free creative work, comradely relations among people, the equal place of women in all areas of life and educational opportunities for all citizens.” The SED believed that “harmonious relationships in marriage and the family have a huge influence on the character building of the next generation and on the personal luck and life- and work happiness of the people.” The law’s emphasis on social organization with the family at the center would help the SED achieve these goals.¹⁹²

Much like 1954, the SED spent the next several months conducting public forums to discuss the law. Documents from the Stasi archive indicate that this time around, the SED kept a closer eye on the development and running of these discussions.¹⁹³ Corroborating reports, recorded biweekly, from the *Bundesarchiv* confirms that the SED took careful notes on the participants. By July 1965, more than 400,000 East Germans had attended the public

¹⁹¹ “Entwurf des Familiengesetzbuches der Deutschen Demokratischen Republik,” 12-14.

¹⁹² *Ibid.*, 13.

¹⁹³ Beschlussentwurf über die ersten Massnahmen zur Durchführung der öffentlichen Diskussion des Entwurfs des Familiengesetzbuches, April 2, 1965, MfS HA XX 5244, BstU 000002, Bundesbeauftragte für die Unterlagen des Staatssicherheitsdienstes der ehemaligen Deutschen Demokratischen Republik, Berlin.

forums—more than the entire total of the discussions a decade earlier.¹⁹⁴ The SED tracked which issues concerned Germans the most, discovering that the majority of their questions were about contracting a marriage (*Eheschließung*), marital property, divorce, the basic principles of the law, and miscellaneous issues (such as procedural law).¹⁹⁵

It was also during this time that other political parties and mass organizations in the GDR offered up their opinions and official endorsements of the law. The Free German Trade Union Confederation (*Freie Deutsche Gewerkschaftsbund*, FDGB) praised the law as a “convincing manifestation of socialist democracy in the GDR” and committed the participation of trade unions to the public discussions.¹⁹⁶ The Liberal Democratic Party of Germany (*Liberal-demokratische Partei Deutschlands*, LDPD) stated that the FDGB’s “fundamentals and definitions” supported the “efficacy over the last twenty years of our new socialist social order.”¹⁹⁷ The East CDU expressed overwhelming support for the draft as well. Their official *Stellungnahme* compared the goals of the GDR with a papal encyclical that declared the family the central cell of society, and proclaimed that the draft was quite

¹⁹⁴ Information über den Verlauf der öffentlichen Diskussionen zum Entwurf des Familiengesetzbuches, Stand 17.7.1965, July 24, 1965, DP 1/8186, BArch Berlin. See also reports from July 9, June 26, June 19, October 1965 in the same file.

¹⁹⁵ Information über den Verlauf der öffentlichen Diskussionen zum Entwurf des Familiengesetzbuches, Stand 17.7.1965, July 24, 1965, DP 1/8186, BArch Berlin; Information über den Verlauf der öffentlichen Diskussionen zum Entwurf des Familiengesetzbuches, August 3, 1965, DY 31/1075, Bl. 42-43, BArch Berlin.

¹⁹⁶ Empfehlungen des Präsidiums des Bundesvorstandes des FDGB an die Vorstände und Leitungen der Gewerkschaften zur Teilnahme an der Diskussion des Entwurfs des Familiengesetzbuches, April 15, 1965, DY 34/2319, BArch Berlin.

¹⁹⁷ LDPD Zentralvorstand, May 1965, L4-126, Bl. 78, Archiv des Liberalismus-Gummersbach.

reconcilable with Christianity.¹⁹⁸ Finally, in September 1965, the DFD confirmed its overwhelming support for the new legislation.¹⁹⁹

Some members of the National Front professed their support for the law because of its potential to combat Western influence—language that certainly appealed to SED leadership. According to National Democratic Party of Germany (NDPD) deputy chairman Heinrich Homann, the 24,000-plus party members who gathered to discuss the law supported it as a form of resistance against the “antinational and anti-humanitarian crisis dictatorship of West Germany.”²⁰⁰ LDPD member Gerhard Lindner argued that the East German FGB would help fight the “state monopolistic capitalist-dictated living conditions.”²⁰¹ Lindner furthermore selected quotations from the 1957 West German *Gleichberechtigungsgesetz*, such as the right of women to work only if it was reconcilable with household duties, as evidence of the regression of the FRG.²⁰² Finally, the East CDU asserted, the FGB proved “the superiority of our socialist social order over the imperial West Germany.”²⁰³

Despite their general affinity for the law’s goals, especially its anti-capitalist and anti-Western bent, different parties in the National Front nevertheless maintained certain reservations about the law. The NDPD, for example, opposed the marrying age and held

¹⁹⁸ Stellungnahme des Präsidiums des Hauptvorstandes der CDU zum Entwurf des Familiengesetzbuches, July 1965, DP 2/1509, Bl. 75, BArch Berlin.

¹⁹⁹ Stellungnahme des DFD zum Entwurf des Familiengesetzbuches, September 2, 1965, DY 31/1019, Bl. 32-36, BArch Berlin.

²⁰⁰ Homann an die Vorsitzende der zentralen Kommission, July 31, 1965, DP 1/23791, BArch Berlin.

²⁰¹ Lindner an LDPD Zentralvorstand, May 1965, L4-126, Bl. 81, Archiv des Liberalismus-Gummersbach.

²⁰² Ibid., Bl. 83.

²⁰³ Stellungnahme des Präsidiums des Hauptvorstandes der CDU zum Entwurf des Familiengesetzbuches, July 1965, DP 2/1509, Bl. 79, BArch Berlin.

differing views on marital property.²⁰⁴ The LDPD pointed out that “absolute equality” of men and women might interfere with other laws on the books, such as the *Hausarbeitstag*.²⁰⁵ The East CDU relayed a few points that had been raised in public forums, namely reinstating an engagement period, naming rights, and recognition of unpaid labor in the home.²⁰⁶ The other major parties did not openly resist the SED’s proposed legislation, but they did offer subtle critiques of its provisions.

The CDU’s official endorsement of the FGB did not necessarily reflect the views of all the Christians they represented. As they had in 1954, church leaders rose up against the FGB. In April 1965, Alfred Bengsch, the Catholic archbishop of Berlin, wrote on behalf of the Catholic bishops and bishop commissioners to Willi Stoph, the Prime Minister of the GDR and a leading member of the SED, to express their reluctance about the new law.²⁰⁷ Bengsch stated: “The overall tendencies of this draft...allows the recognition of a worldview constriction in the sense of the primacy of Marxism-Leninism, which as a binding law is impermissible for all citizens.”²⁰⁸ Much like the Catholic Church leadership had done in 1954, Bengsch argued that the new law replaced the “intimate space of the family” with

²⁰⁴ Homann an die Vorsitzende der zentralen Kommission, July 31, 1965, DP 1/23791, BArch Berlin.

²⁰⁵ Kurz-Information für die Mitglieder des Politischen Ausschusses des Zentralvorstandes, June 2, 1965, L2-120, Bl. 5, Archiv des Liberalismus-Gummersbach. See also Carola Sachse’s monograph on the *Hausarbeitstag* in East and West Germany. Carola Sachse, *Der Hausarbeitstag. Gerechtigkeit und Gleichberechtigung in Ost und West 1939–1994* (Göttingen: Wallstein-Verlag, 2002).

²⁰⁶ Stellungnahme des Präsidiums des Hauptvorstandes der CDU zum Entwurf des Familiengesetzbuches, July 1965, DP 2/1509, Bl. 82, BArch Berlin

²⁰⁷ For Bengsch’s biography, see “Alfred Bengsch,” last accessed January 14, 2017, <https://www.bundesstiftung-aufarbeitung.de/wer-war-wer-in-der-ddr-%2363%3b-1424.html?ID=200>. Bengsch was born in Berlin in 1921 and was briefly in the Wehrmacht before becoming an American prisoner-of-war. He was ordained in 1950 and chosen as Bishop of Berlin in 1961.

²⁰⁸ Bengsch an Stoph, April 1965, Ost-CDU VII-013-924, Archiv für Christlich-Demokratische Politik, Sankt Augustin.

atheistic state intervention.²⁰⁹ Much like the earlier period, Catholic leaders protested on behalf of their citizens. Furthermore, Bengsch's letter focused primarily on the goals of Christians to raise their children a particular way, indicating that other potential arguments (such as reunification) no longer carried the same weight as they had in 1954.

Protestant leaders took a different tack than their Catholic counterparts. They formed committees and printed handouts for their members to use. One that caused the SED particular consternation was the "10 Questions" handout, which the church leadership encouraged its members to use as guidance for provoking public discussions.²¹⁰ On 22 April 1965, Hans-Jürgen Behm, head of the Protestant chancellery in East Berlin, sent out a list of ten provocative questions to the leaders of the member churches of the EKD. Some of the questions were direct critiques of the FGB, such as: "Is the term 'socialist'...to be understood in the direction of a political-ideological objective and relationship of marriage and family? Can it be the 'utmost task' of Christian parents to raise their children for the building of socialism?" Others were less polemical in nature and aimed to elucidate confusing provisions, such as ascertaining who would make a decision if the spouses could not agree, or the role of the youth welfare services, which did not yet exist. The handouts clearly had an impact on lower-tier church leaders. A letter from a pastor from Schwarzenberg to the members of the *Volkskammer* echoed the language of the first question, asking them "to

²⁰⁹ Bengsch an Stoph, April 1965, Ost-CDU VII-013-924, Archiv für Christlich-Demokratische Politik, Sankt Augustin.

²¹⁰ Evangelisches Konsistorium, May 28, 1965, MfS HA XX 465, BstU 000160, Bundesbeauftragte für die Unterlagen des Staatssicherheitsdienstes der ehemaligen Deutschen Demokratischen Republik, Berlin.

explain the term ‘socialist’” and why the law had to be understood as “materialist and atheist.”²¹¹

The SED and especially the Stasi were alarmed by the handouts. By June 1965, the Stasi was keeping close watch on church leaders. Stasi informants reported that on 16 June 1965, the leaders of the eight *Landeskirchen* planned to draft a letter to the government, though it never panned out. One member, Friedrich-Wilhelm Krummacher, the regional bishop of Pomerania, opposed such a step because it would weaken the churches’ positive assessment of the law.²¹² He furthermore argued that under the constitution, the churches had no rights to demand religious education, only worship, so their potential to intervene was weak. The only member of the meeting who appeared sympathetic to the SED was Moritz Minderheim, the regional bishop of Thüringia. According to the Stasi, Minderheim opposed passing out handouts or writing a formal petition because “in far-reaching Christian circles the Family Code will be affirmed,” meaning that he recognized that many churchgoers would not oppose the law.²¹³

The SED conducted public discussions until 30 September 1965. According to the SED’s estimates, 752,671 citizens gathered in 33,973 locations to discuss the law, which coupled with readers’ and radio listeners’ letters, amounted to a total of 23,737 proposals for

²¹¹ Ev.-Luth. Pfarramt, July 5, 1965, BStU 000154, MfS HA XX 465, Bundesbeauftragte für die Unterlagen des Staatssicherheitsdienstes der ehemaligen Deutschen Demokratischen Republik, Berlin.

²¹² For biography of Krummacher, see “Friedrich Wilhelm Krummacher,” last accessed January 14, 2017, <https://www.bundesstiftung-aufarbeitung.de/wer-war-wer-in-der-ddr-%2363%3b-1424.html?ID=1934>. Krummacher was born in 1901 and joined the NSDAP in 1933. He eventually ended up in a Soviet prisoner-of-war camp and helped Walter Ulbricht and the Soviets. He became the Pomeranian bishop in 1955.

²¹³ Die Stellung der Evangelischen Kirche in Deutschland (EKD) zum Wehr- und Wehersatzdienst und zum Familiengesetz-Entwurf, June 30, 1965, MfS ZAIG N2. 1074, BStU 000006, Bundesbeauftragte für die Unterlagen des Staatssicherheitsdienstes der ehemaligen Deutschen Demokratischen Republik, Berlin.

the new law.²¹⁴ As before in 1954, the proposals covered a wide range of opinions. Forums in Schleiz, Freital, and Lichtenberg in May 1965, for instance, garnered requests to up the legal marrying age to 21 and to allow men to press paternity suits in court.²¹⁵ The legal right to change one's name seemed pointless to some participants, because "all citizens are satisfied with the former regulation."²¹⁶ Participants in Erfurt asked if the draft prohibited combining marital property.²¹⁷ The Intelligenz-Klub in Freital (an extension of the Kulturbund) inquired about the possibility of inheritance rights for out-of-wedlock children.²¹⁸ Others wanted to know why the draft was appearing now.²¹⁹

Throughout this period, the mass media and the women's press in the GDR propagated the new legislation as well. The May 1965 issue of *Für Dich* featured an article on "intact marriages," which explored the inner happiness of one Berlin couple, the Karls.²²⁰ Their family was happy and she could pursue her career, Gisela Karl maintained, because her daughter, husband, and mother all pitched in around the home. In addition, in June 1965, the women's magazine *Für Dich* published an article by Inge Lange, then the chairwoman of the Women's Commission of the SED Central Committee, who told readers that if the GDR

²¹⁴ Begründung des Entwurfes des Familiengesetzbuches, November 15, 1965, DA 5/486, BArch Berlin. See also Begründung des Entwurfes des Familiengesetzbuches, November 15, 1965, DC 20/I/4/1220, Bl. 55, BArch Berlin.

²¹⁵ Fragen einer FGB-Diskussion in einer CDU-Mitgliederversammlung in Lichtenberg am 18.5.1965, May 18, 1965, DP 2/1509, Bl. 99, BArch Berlin; Fragen auf einem FGB-Forum in Schleiz am 20. Mai 1965, DP 2/1509, Bl. 100, BArch Berlin; Fragen zum FGB auf der Aussprache im Intelligenz-Klub Freital am 14.5.1965, DP 2/1509, Bl. 104, BArch Berlin.

²¹⁶ Fragen auf einem FGB-Forum in Schleiz am 20. Mai 1965, DP 2/1509, Bl. 100, BArch Berlin.

²¹⁷ Fragen auf dem FGB-Forum in Erfurt am 13. Mai 1965, DP 2/1509, Bl. 101, BArch Berlin

²¹⁸ Fragen zum FGB auf der Aussprache im Intelligenz-Klub Freital am 14.5.1965, DP 2/1509, Bl. 105, BArch Berlin.

²¹⁹ Fragen auf dem FGB-Forum in Erfurt am 13. Mai 1965, DP 2/1509, Bl. 101, BArch Berlin.

²²⁰ "Intakte Ehe – Interessant?" *Für Dich*, May 1965, 16-17.

wanted to accomplish full equality, then the onus was on men to change their expectations of marital life, fatherhood, and women's employment.²²¹ Finally, in July 1965, the same magazine printed a roundtable discussion with leading legal experts in the GDR, who focused on the parallel West German reforms as a way of fostering support for their own legislation. They called the West German Equal Rights Act "a farce" and stated that it reinforced the "three big K's" and the regulations of the old Civil Code.²²² Each of these publications delivered the same general message to readers: that the GDR's reforms were incomparable and the best step toward changing social and economic disparities.

On 11 November 1965, the Ministers' Council of the GDR issued their approval and sent the legislative draft to the *Volkskammer*, where in early December, various subcommittees met to finalize the draft of the Family Code. In support of the legislation, the Committee for Labor and Social Policy suggested supplementing the new Family Code with housing policies to encourage "child-abundant families," better child-care facilities, better promotion opportunities for working women, and further aid for single parents.²²³ The Committee furthermore repeated in their meeting the SED's desire to out-do the West. The chairman stated: "The sense is not—as in bourgeois family law—to establish an abundance of complicated juridical formulations for marriage, in which a conflict may occur...but rather a way of behavior for the people with the disposition for marriage, a responsibility that springs from a high moral position that the marriage has in a socialist society."²²⁴ With this

²²¹ "Das Gleichgewicht," *Für Dich*, June 1965, 11.

²²² "Ehe Arbeit Notstandsfolgen," *Für Dich*, July 1965, 16.

²²³ Sitzung des Ausschusses für Arbeit und Sozialpolitik der Volkskammer der Deutschen Demokratischen Republik, DA 1/6422, BArch Berlin.

²²⁴ Ibid.

statement, the chairman made a subtle critique of the West while lauding the new morality of the East. The committee acknowledged, however, the continuous conflict between the GDR and FRG, asking Benjamin to reiterate “how much bigger the interest must be, if West German women had such a law...the national meaning may not be abstract, but rather must be concretely defined.”²²⁵

The idea of a unified legal system reappeared in the discussions of the Constitutional and Legal Committee of the *Volkskammer* a few days later. At one point, Benjamin proclaimed: “One can justifiably say that it is an example for future German legislation,” unlike the Western version, which she argued “failed to regulate existing daily problems of the family” and deserved “to replace the BGB in museums.”²²⁶ Additionally, the idea of unification mitigated national unity and instead concerned unifying socialist law. When Benjamin spoke to her fellow parliamentarians, she emphasized family law as kin to the Legal Code of Labor, the Law for LPGs, and education law. It was a “deciding cornerstone in the construction of the institutions of [their] socialist law” in their “state development.”²²⁷ In other words, she reiterated the idea of the new Family Code as progressive while the Western law was archaic.

In December 1965, the *Volkskammer* finally met to approve the new Family Code. Several themes characterized the session. One of the points *Volkskammer* representatives reiterated was the importance of the Family Code to the SED’s agenda for the GDR. In her address to the *Volkskammer*, Hilde Benjamin asserted that the new Family Code would

²²⁵ Sitzung des Ausschusses für Arbeit und Sozialpolitik der Volkskammer der Deutschen Demokratischen Republik, DA 1/6422, BArch Berlin.

²²⁶ Stenografisches Protokoll: Beratung des Verfassungs- und Rechtsausschusses der Volkskammer, December 10, 1965, DA 1/4614, BArch Berlin.

²²⁷ Ibid.

support the “economic and social development, [and] the unified socialist legal system,” in a state where “socialist production relations have prevailed...the lives of our population are richer, nicer, and more full of culture from year to year.”²²⁸ Furthermore, transforming the law necessitated abandoning the old BGB. Benjamin hailed the new law as “the first cohesive codification of family law. It overhauls the fourth book of the BGB, the old regulations of the family law of bourgeois society in Germany.”²²⁹ Sharing these sentiments, Roberta Gropper, the representative of the Committee for Work and Social Policy and DFD/FDGB member, stated that the new Family Code was important because it would expand women’s equality in the workplace to their families and had potential “for the development of a new, socialist moral.”²³⁰ Both comments made it clear that the SED saw the GDR’s economic changes as a triumph and could now turn its attention to social, legal, and moral transformations using the family as its vessel.

The transformation of the GDR’s family law with the aim of “building socialism” came about with a constant eye toward the West. Benjamin pointed out that the Western family law (passed in 1957) perpetuated the old capitalist and patriarchal structures of the BGB. The Western law “unilaterally restricts the lobby of the woman by means of the law and upholds the hegemony of men in the family.”²³¹ Her colleague Ingeburg Lange took it a

²²⁸ *Stenographische Protokolle der Volkskammer der Deutschen Demokratischen Republik* (Berlin: Volkskammer, 1965), 521.

²²⁹ *Ibid.*, 521.

²³⁰ *Ibid.*, 529. For biography of Roberta Gropper see: “Roberta Gropper,” last accessed December 23, 2016, <http://www.bundesstiftung-aufarbeitung.de/wer-war-wer-in-der-ddr-%2363%3b-1424.html?ID=4386>. Gropper was born in 1897 and joined the KPD in 1919. She eventually immigrated to the USSR during the war, where she was imprisoned for “anti-Soviet” activities. She returned to Berlin in 1947, joined the SED, and became active in women’s issues.

²³¹ *Stenographische Protokolle der Volkskammer der Deutschen Demokratischen Republik*, 521.

step further, condemning the “men of the bourgeois monopoly in the Bonn cabinet, the ideologues of the CDU/CSU and their employees in the editorial and radio stations beyond the Elbe” for spreading false information about the new Family Code in the GDR.²³² She moreover stated that the Family Code attracted “huge attention in the West German public sphere,” causing “West German families to compare our law with the West German reality and [they] can recognize, which state efforts exist for a healthy, stable family.”²³³ Finally, the language of unification came into force here again. Lange asserted that it was the “reactionary forces in West Germany that already destroy the division of Germany.”²³⁴ The members of the *Volkskammer* not only relied on comparison with the West to garner support for the new Family Code, but insisted that it was the West, not the East, that divided family law and disparaged women’s status in society. The law went into effect on 1 April 1966.

In the decade since the Family Code’s previous failure to pass, the SED pursued several paths toward a new family law. In 1955 and 1956, the Ministry of Justice created some decrees to regulate divorce and adoption. The Ministry also continued to discuss among its colleagues potential revisions to the Family Code, demonstrating that the issue never completely disappeared from the party’s agenda. Throughout the various levels of debate, the West loomed large in the SED’s language. The party’s emphasis on the West, however, was not merely rhetorical. The ever-tightening border control posed a physical obstacle for a regime that did not want to acknowledge its bourgeois, capitalist neighbor. Once the West passed its own law and the Berlin Wall went up, the SED no longer had to fret about the legal

²³² *Stenographische Protokolle der Volkskammer der Deutschen Demokratischen Republik*, 534.

²³³ *Ibid.*, 535.

²³⁴ *Ibid.*, 535.

situation of the family. The SED recognized the opportunity: they could implement an even more radical, more socialist, and less bourgeois version of the Family Code in 1965 because they no longer considered the West competition and their citizens could not escape as easily. Furthermore, the regime knew to circumvent opposition from churches. As a result, despite seemingly similar circumstances as in 1954, the SED had a much easier time passing the law in 1965.

Reconstituting Women's Equality in 1968

1968 marked the final turning point for the equal rights of men and women in the GDR. At the 1967 Party Congress, Walter Ulbricht proclaimed the need for a new constitution that accurately reflected the historical progression of the GDR since 1949. He appointed a commission in December 1967 to formulate a new constitution. On 9 April 1968, after weeks of public discussion and a plebiscite, the new constitution went into effect. The 1968 constitution made a significant departure from the 1949 text. The earlier document had represented somewhat of a compromise for the SED between Sovietization and pursuing a "German road to socialism." Thereafter, although the SED was in control of the state, it still put up a front of democratic pluralism. The 1968 document abandoned this façade. It formally designated the GDR "as simply 'a socialist state of workers and farmers'".²³⁵ It explicitly forbid democratic structures such as political parties (besides the SED and those in the National Front) and was far more Stalinist than its 1949 predecessor.²³⁶

²³⁵ Childs, *The GDR*, 124.

²³⁶ Peter E. Quint, *The Imperfect Union: Constitutional Structures of German Unification* (Princeton: Princeton, 1997), 23.

One area in which the Stalinist model was evident was the equal rights clause. In the 1949 constitution, men and women were granted equal rights; marriage and the family were protected by the state; and unmarried mothers and their children received elevated legal statuses. The 1949 text's treatment of women's rights had represented a compromise between the Weimar and the 1936 Soviet constitutions. Article 20 of the 1968 version was much more reminiscent of the earlier Soviet document. The new clause promised: "Men and women are equal and have the same legal status in all areas of social, public (*staatlich*), and personal life. The promotion of women, especially in professional qualification, is a social and state goal."²³⁷ At the same time, the 1968 constitution continued to uphold state protection of marriage and the family. The new text, however, qualified that it was the *socialist* state that protected mothers and children, promising "pregnancy leave, special medical care, and material and financial support will be granted through birth and child allowances (*Kindergeld*)."²³⁸

By and large, the East German media, especially the women's press, propagated the new 1968 constitution's expansion of equal rights for men and women as a positive development. One 1968 article in the women's magazine *Für Dich* titled "Four Constitutions in a German Woman's Life" detailed the different constitutions under which many women had lived in the past century. The article credited the 1949 GDR constitution with "forming new human relationships in society that come inherently from the manifestation of equal partnership in marriage." The new constitution, however, would "ensure girls and women

²³⁷ Verfassung der Deutschen Demokratischen Republik, April 6, 1968, <http://www.documentarchiv.de/ddr/verfddr.html>

²³⁸ Verfassung der Deutschen Demokratischen Republik, April 6, 1968, <http://www.documentarchiv.de/ddr/verfddr.html#KAPITEL 1-2>

equality at a higher level.”²³⁹ Another article in *Für Dich* proclaimed the new 1968 constitution as “the dream of Clara Zetkin realized.”²⁴⁰ Finally, the same magazine printed readers’ letters praising the new equal rights clause. One writer declared her support for it because it guaranteed her “personal security,” while another argued that compared to the West, where “equality is just on paper,” the East had real equality.²⁴¹

As this section has shown, SED leaders in the GDR were eager for their constitution to better reflect their established socialist state than the 1949 version. One key way they accomplished this goal was by making the equal rights clause even more expansive. The amended version of the constitution, approved in 1974, maintained the same language of the 1968 constitution. The 1968/1974 constitutions thus assured men and women equality in this form until the demise of the GDR in 1990. The 1965 Family Code, apart from a minor change in 1975, remained intact as well, supporting the constitutional guarantee of protection of the family.

Conclusion

Several different political, economic, social, and cultural factors steered the path of the GDR toward a decidedly different Family Code in 1965. First, the 1954 and the 1965 Family Codes broke with several legal and institutional norms present before 1953. The persecution of Communists under the Third Reich, the holdout of Christian conservatives in West Germany, and the strength of the Soviets in the early Cold War had emboldened the

²³⁹ “Vier Verfassungen im Leben Deutscher Frauen,” *Für Dich*, February 1968, 17-25.

²⁴⁰ “Traum von Clara Zetkin verwirklicht,” *Für Dich*, February 1968, 2-3.

²⁴¹ “Die Diskussion ist im Gange,” *Für Dich*, February 1968, 15.

SED to change course on nearly every area of politics and society, including marriage and the family. The decision to “build socialism” in the early 1950s signaled the SED regime’s goal to formally dissolve its legal and institutional ties to pre-1945 Germany. In its internal party discussions and public forums, however, the SED confronted the social and political difficulties of breaking longstanding traditions. In 1954, these sentiments were strong enough to delay the ruling party’s reforms. Once the West adopted the Equal Rights Act in 1957 and Ulbricht ordered the construction of the Berlin Wall in 1961, the SED was ready to completely abandon the old legal traditions and adopt a socialist family law that reflected the aims of the regime. Later on, in 1968, the SED bolstered these sentiments when they approved a new constitution that established a socialist republic, not a faux democracy, and recommitted themselves to women’s full equality with men in all areas of society, politics, and domestic life.

Second, political factors played a significant role in shaping the 1965 Family Code. By the mid-1950s, the GDR was in effect a one-party dictatorship, albeit one that remained cognizant of its citizens’ approval and its international reputation, especially following the 17 June 1953 uprisings. The regime’s desire to keep the peace in the GDR informed its decision to abandon family law reforms in the face of criticism from Christians. In the late 1950s and early 1960s, the regime worked tirelessly to quash subversion, undermining the work of churches, expanding secret police monitoring, and finally, constructing the Berlin Wall in 1961 to prevent more citizens from leaving. When the SED finally debuted an updated Family Code in 1965, the regime was fully prepared to defend it at all costs.

Third, economic factors continued to matter in family law reforms. By the late 1950s, the GDR faced a shortage of male workers, mostly because of westward migrations, and

called upon women of all backgrounds to fill in the gaps. By the early 1960s, Walter Ulbricht and the SED began to shift from focusing on a production-based to a more consumer-friendly socialist economy. They nevertheless continued to emphasize in their rhetoric how instrumental women were to the economy and that the GDR needed civil rights to accompany the economic rights it granted women. While the new Family Code set up a family model based on equal partnership, parental authority, and breadwinning, it did not overturn old expectations that women take on domestic duties and nurturing as primary roles as well. The new 1968 constitution, however, set the stage for the onset of the “welfare dictatorship” phase of East Germany’s development, which finally sought to ease employed married women’s burdens at home.²⁴²

Fourth, cultural factors played a key role as well. Many East Germans, especially those in the Protestant and Catholic Churches, still believed that the parents and the family were the primary space for raising children. They rejected the notion of state intervention in marriage and the family. Initially, Christians’ protests were enough to prevent the SED from going forward with its reforms in 1954 as it had planned, setting the ruling party on a path of small, incremental reforms until the early 1960s. In the early 1960s, however, when the SED dictatorship was more established, the influence of Christians in the GDR had waned, and the German-German division was considered permanent, the ruling party was emboldened to move forward with more radical reforms. Still, its final legislation revealed that the ruling party still clung to the idea of marriage and nuclear families—albeit dual-earner families in

²⁴² Konrad H. Jarausch, “Care and Coercion: The GDR as Welfare Dictatorship,” in *Dictatorship as Experience: Towards a Socio-Cultural History of the GDR* (New York: Berghahn, 1999), 60. See also Harsch, *Revenge*, 10, 304-320; Monika Mattes, “The Time Policy of the East German Children and Primary School System,” in *Children, Families, and States: Time Policies of Childcare, Preschool, and Primary Education in Europe* (New York: Berghahn, 2011), 345.

which husbands and wives, fathers and mothers were supposedly equal in their partnerships—as the basis of their socialist society. Even when the SED shifted emphasis from the old patriarchal family model to a more egalitarian one, they did not challenge the utility of the heteronormative nuclear family.

Finally, the Cold War context continued to matter immensely in a number of different ways. First, in 1954, Protestants and Catholics resisted the SED regime's reforms by employing language about the destruction of all-German unity. Second, the permeable (although increasingly less so) German-German borders in the mid-to-late 1950s posed particular logistical and legal issues regarding marriage, families, and divorce. Third, once the FRG passed its own reforms and the Berlin Wall went up, the SED was inspired to implement much more expansive reforms, because the regime no longer had to combat the problems of legal uncertainty or the mass exodus of citizens. In their official discourse, even until the late 1960s, the SED continued to laud the GDR's egalitarian family policies while denigrating the Western male breadwinner/female homemaker family model. At the same time, in their internal discussions, it was evident that legal disunity unnerved the SED, who only really moved forward with far-reaching reforms once the West had passed its own legislation and the borders had been closed. Despite the ruling party's proclamations, it never really let go of the West as it constructed its own version of a new, socialist Family Code.

CONCLUSION

By the late 1960s, the state of married women's civil rights in the two Germanys had changed dramatically. In the early 1970s, under pressure from society, East and West German politicians decided to revise marriage and family law again. In 1973, for instance, the West German Bundestag reviewed the initial draft of the "First Act for the Reform of Family Law" (*Erstes Gesetz zur Reform des Ehe- und Familienrechts*)—the successor to the 1957 Equal Rights Act. The legislation, proposed by the government of Social Democratic Chancellor Willy Brandt—sympathetic to the cause as an illegitimate child raised by a single mother—strengthened the old law's commitment to "spousal community;" allowed couples to decide which surname they preferred (as long as it was the same); made both spouses responsible for the household income; and no longer restricted married women's right to employment.¹ More significantly, the legislative draft introduced no-fault divorce and new regulations on filing and subsequent judicial procedures.² In the Bundestag's debate on 11 December 1975, Social Democrats assured Christian conservatives that they did not intend to "ease or complicate divorce," but rather to aid divorces with "emerging problems."³

Some Christian conservatives, such as Bundestag representative Paul Mikat (CDU), were already on board with the SPD. Born illegitimate to an unwed mother and raised

¹ Gesetzentwurf der Bundesregierung Erstes Gesetz zur Reform des Ehe- und Familienrechts (1. EheRG), Deutscher Bundestag 7. Wahlperiode Drucksache 7/650, June 1, 1973, 6-7.

² Ibid., Drucksache 7/650, June 1, 1973, 7-11.

³ VDBT, 209. Sitzung, December 11, 1975, 14406-407.

Catholic by his adoptive parents, Mikat became a theologian and jurist before entering the Bundestag.⁴ In the context of discussing reforms to divorce law, Mikat—in a surprising turn for a devout Catholic—agreed that allowing couples to divorce because of irreconcilable marital breakdown might be better for the children. Furthermore, he invoked the example of the GDR, where, he noted, divorce because of irreconcilable breakdown had been allowed for much longer. Mikat’s allusion to the GDR’s divorce law was striking. In contrast to the political discourse in the early years of the FRG, his reference contained no animosity or denigration of the Communist dictatorship next door. In fact, he seemed to offer faint praise for the GDR’s foresight on divorce reforms two decades before the FRG.

Although the GDR had introduced no-fault divorce and expanded women’s rights in other critical ways far beyond what West German women had in the 1950s and 1960s, East German women still struggled in their daily lives to be considered fully equal with men. In response, in 1975, the SED initiated reforms to the 1965 Family Code in the GDR. The “Introductory Act to the Civil Code of the German Democratic Republic” (*Einführungsgesetz zum Zivilgesetzbuch der Deutschen Demokratischen Republik*) from 19 June 1975 altered some key passages, namely concerning inheritance and parental authority, in the 1965 legislation. Furthermore, the new SED General Secretary and chairman of the Ministers’ Council of the GDR, Erich Honecker, began to introduce welfare measures in response to both women’s demands within the GDR and pressure from the Soviet Union to change course and help workers.⁵ By this point, the SED’s and many East Germans’ notions of the

⁴ “Paul Mikat,” last accessed December 5, 2016, <http://www.kas.de/wf/de/37.8255/>

⁵ For biography of Erich Honecker, see Regina Haunhorst and Irmgard Zündorf, “Biografie Erich Honecker,” in *LeMO-Biografien*, Lebendiges Museum Online, Stiftung Haus der Geschichte der Bundesrepublik Deutschland, <http://www.hdg.de/lemo/biografie/erich-honecker.html>. Honecker was born in 1912 and joined a Communist youth organization at the age of ten. He was imprisoned by the Nazis in 1937 before being liberating by the Red Army in April 1945. He led the Communist youth organization, the Free German Youth

ideal family and partnership had begun to change as they embraced single motherhood and more state aid for childrearing and reproduction under Honecker's "welfare dictatorship." Honecker and the SED accepted pro-natalist policies in order to restore the declining birth rate and assist their economic shifts toward consumerism.⁶

By 1977, in both states, no-fault divorce, the freedom to reject the paternal surname, and the unconditional right of women to work outside the home were written into law. Unexpectedly, despite all the efforts of politicians in both Germanys, the two family laws in both states came closer to resembling each other than they ever had in the first two decades after World War II. Major political and economic changes within each state, as well as the recent easing of tensions between the two Germanys, the crowning achievement of Social Democratic Chancellor Willy Brandt, in many ways facilitated these new reforms in the 1970s. Throughout the late 1960s, Brandt had pursued his policy of *Ostpolitik*, aimed at easing tensions between the East and West.⁷ On 11 May 1973, the Bundestag finally approved the Basic Treaty, which formally established relations between the two Germanys. By 1975, when the "First Law" was under scrutiny by the Bundestag and the new *Einführungsgesetz* was approved in the GDR, the Cold War struggle that had for so long marked the discourse and decisions regarding marriage and family law in both Germanys was thawing. At the same time, East and West German politicians still accepted the existence of two different models of marital and family life in the postwar Germanys.

(Freie Deutsche Jugend, FDJ), between 1946 and 1955 before rising up as Ulbricht's successor. See also Harsch, *Revenge*, 308, 312-313, for her discussion of the effects of Honecker's maternalist policies.

⁶ For a longer discussion of the term, see Konrad H. Jarausch, "Care and Coercion: The GDR as Welfare Dictatorship," in *Dictatorship as Experience: Towards a Socio-Cultural History of the GDR*, ed. Konrad H. Jarausch, trans. Eve Duffy (New York: Berghahn Books, 1999), 47-72, 62-65.

⁷ For more on Willy Brandt's *Ostpolitik*, see Hélène Miard-Delacroix, *Willy Brandt: the Life of a Statesman* (London and New York: I.B. Tauris, 2016), 113-142.

This moment of acceptance was a long time coming. My dissertation has sought to explain the interplay of several political, economic, and social factors that initially prevented and then facilitated the approval of two new, parallel marriage and family laws in East and West Germany in the first two decades after World War II. Other scholars have examined marriage and family law in both Germanys, but usually in only one state or the other without fully examining how the “entangled and demarcated” relationship of the two German states in the Cold War played into debates in politics, society, and the media over the new legislation. Using path dependency, I have shown that the tensions caused by the Cold War conflict alternately drove forward, and at times halted, the parallel reforms of marriage and family law in the 1950s and early 1960s.

The changing ideas of marriage, divorce, parenthood, and the family in the FRG and the GDR can be mapped against the dramatically changing political, economic, and social circumstances surrounding the divided Germanys between 1945 and 1968. Initially, Germans after 1945 faced dire circumstances. In May 1945, Germany and most of Europe lay in ruins after World War II ravaged the European continent. Across Europe, contemporaries firmly believed that the traditional family was the cornerstone to rebuilding German and European societies.⁸ Although Germans’ desires to restore the family were in line with pan-European trends, Germany was exceptional because it was the only state in postwar Europe that shared a common legal tradition and history, but was divided by the forces of the Cold War.

The victorious Allied Powers and the Germans under their control initially faced

⁸ Shana Penn and Jill Massino, *Gender Politics and Everyday Life in State Socialist Eastern and Central Europe* (New York: Palgrave, 2009); Paul Betts and David Crowley, “Introduction: Domestic Dreamworlds: Notions of Home in Post-1945 Europe,” in *Journal of Contemporary History* 40, 2, (2005), 213-236; Joanna Regulska, *Women and Gender in Postwar Europe: from Cold War to European Union* (Abingdon; New York: Routledge, 2012).

similar sociological and demographic conditions in the immediate postwar environment, but the intensifying contest between the Soviets and the Western Allies ultimately placed each state on simultaneously different and yet similar paths regarding women's rights in marriage and the family. According to contemporaries in both Germanys and Eastern and Western Europe, World War II had fundamentally changed gender roles. Indeed, in overwhelming numbers, women, especially those who were married with children, took on the double burden of childrearing and breadwinning while their husbands were away at war. In addition, the demographic imbalance—some 7 million more women than men—did not escape contemporaries' attention. On top of that, there was the mass destruction of millions of homes, high rates of illegitimate births, and a massive refugee crisis comprised primarily of women and children. If men returned home from the front, they were shocked by their wives' newfound independence and equally dismayed to discover that their mental and physical condition made them unemployable and undesirable. In response, divorce rates rose significantly in the very early postwar years and especially conservatives determined that the family was in crisis.

Contemporaries became divided over the matter. Some of them in the Christian conservative parties and the Protestant and Catholic Churches spoke of masculinity in crisis and wanted to revert to a more traditional family model as outlined in the Civil Code to restore honor and authority to men. Others, especially female activists, Social Democrats, Communists, and some liberals, saw an opportunity to expand rights for married women in the postwar years, but they faced logistical and political obstacles from the beginning. The 1946 Allied Control Council law, for instance, reinforced several regulations from the old Civil Code, thus imposing limitations on the rights of married women again. For the next two

decades, discussions about marriage and the family revolved around the rights of married women in the FRG and the GDR. What resulted were two competing models. In the East, the dual male/female earner and female caretaker family became an integral part of constructing a socialist state with a planned economy and an effectively one-party government led by Ulbricht and the SED. Ostensibly egalitarian, in practice, women often bore significantly more household duties than their partners. In the West, the male breadwinner/female homemaker—and since the 1960s its “modernized” version the female part-time worker—family model was at the center of a semi-liberal, multi-party democratic state with a social market economy led by the pseudo-authoritarian, Christian conservative Adenauer administration.

These competing models emerged in response to several economic, political, social, and legal changes over the course of the late 1940s and early 1950s. First, changing international relations between the two Germanys in the early Cold War fundamentally shaped the final forms of the new Equal Rights Act in the West and the Family Code in the East. From the very beginning, the division (and potential reunification) of Germany factored into the East German People’s Council and the West German Parliamentary Council’s discussions about equal rights and the family in the 1949 provisional constitution of the GDR and the Basic Law of the FRG. The fate of the old Civil Code thereafter was contingent on the fragile legal situation of the two states and could not be resolved fully until the “German question” was partially settled in 1949. After the parallel constitutions, the next major break was the pronouncement of the Hallstein Doctrine in 1955 in the FRG, which declared that the West would not formally recognize or hold diplomatic ties with the East. In the meantime, East Germans could still flee via Berlin, although it was growing increasingly difficult for

them to do so. Cross-border migrations and the approval of the 1957 Equal Rights Act in the FRG placed undue stress primarily on the SED leadership, namely Minister of Justice Hilde Benjamin, who wanted to refuse recognition of the West, but had to address the fact that the laws now differed on both sides. Her situation eased in August 1961 with the construction of the Berlin Wall, which stanching the outward flow of East Germans to the West. These various moments signified points where the Cold War competition intervened and redirected the parallel family law reforms in the 1950s and 1960s.

The changing political climates and domestic policies between the late 1940s and the early 1960s also drove forward these analogous reforms. In the East, the SED-led dictatorship, intent on “building socialism” in the early 1950s, began to eradicate much of its political opposition and intended to start a social revolution by radically restructuring marital and familial models. Still, the SED dictatorship was neither all-powerful nor insusceptible to criticism in the early 1950s. Where necessary, the leading party bowed down to demands from society, especially the Protestant (and to a lesser degree) the Catholic Churches, in order to appear more democratic and benevolent to its own citizens and critics abroad. By 1965, however, the political climate had changed in the GDR. While the Protestant and Catholic churches were still the SED’s primary political opponents, the ruling party had severely diminished the churches’ influence through Stasi supervision and persecution of leading pastors and bishops. In addition to undermining their political enemies, the SED entrapped their own citizens in 1961 with the construction of the Berlin Wall. The expansion of the SED dictatorship by the early 1960s therefore facilitated the party’s more successful attempt at passing the Family Code in 1965. The party then ramped up its commitment to socialism by debuting the 1968 constitution, which firmly supplanted the previous faux

democratic model of governance with an avowed promise to create a socialist republic—one complete with the total equality of men and women in all areas of society, politics, and the economy.

Meanwhile, West Germany was subject to its own political shifts over the course of the 1950s and 1960s that shaped the final form of the Equal Rights Act. In 1949, the CDU/CSU barely edged out the Social Democrats to take the Bundestag and elect a Christian conservative Chancellor, Konrad Adenauer. For the duration of the first legislative period, the Christian conservative government endured pushback from women's associations, trade unions, independent professional organizations, the media, and their Parliamentary opposition on the matter of family law. Then, in 1953 and again in 1957, the CDU/CSU won big in the elections, securing their majority in the Bundestag for eight years and control of the government for ten years. Furthermore, with the prohibition of the Communist Party in 1956, the SPD lost a potential ally for the family law reforms. Despite the CDU/CSU's clear majority and Adenauer's authoritarian style of governing, resistance in society and the Bundestag were strong enough to force the ruling party to compromise on certain key provisions in the Equal Rights Act, such as removing the husband's right to decide. Then, in the 1961 and 1965 elections, the SPD and FDP regained some power (in light of economic downturns and restlessness with Adenauer's iron-fisted style of rule) and began to press for more far-reaching reforms of marriage (especially divorce) and family law in the 1960s.

Second, economic reconstruction and changing economic policies were major driving forces behind the new marriage and family laws. In the East, the Soviets and the SED set out early on—even before the two sides formally divided—to establish a planned, production-based economy in the Soviet zone, and later, the GDR. For pragmatic and ideological

purposes, the SED sought out female labor, initially from single women and later from married women, to support its Five Year plans for its socialist “workers’ and peasants’ state.” As a result, the dual breadwinner/female homemaker family model became the norm in the GDR. Throughout the 1950s, the SED continued to introduce new Five Year plans to stimulate production. By the early 1960s, however, failures of the Five Year Plans forced Ulbricht and the SED to shift direction and introduced the New Economic System, which was designed to increase production and consumer goods. This system, however, flopped almost immediately because it did not find a good balance between consumerism and socialism. Throughout these changing economic policies, the SED emphasized that they wanted to reward married and unwed mothers with expanded civil rights via a new Family Code was a way of upholding Communist theories of the success of planned economies and achieving “women’s emancipation” through economic independence in the fraught early postwar decades. Ideological imperative aside, they also desperately wanted women to continue supporting the Communist regime through their political activity and labor.

Across the border, the Western Allies and the leading CDU/CSU responded to the massive postwar economic and social upheavals differently. Adenauer and his administration acknowledged the postwar “surplus of women,” but were reluctant to normalize it because of firmly held beliefs about sexual difference. When the Christian conservative government created a social market economy, it privileged male labor outside the home and only valued female labor in the home. Adenauer’s government wanted family law to match its other policies that supported a male breadwinner/female homemaker family model. The Adenauer administration’s own economic policies, however, disrupted these plans, because they resulted in the “economic miracle.” By the mid-1950s, the West German economy was

booming so much that policymakers had to permit female part-time labor partly to fill in the gap, but mostly to aid consumerism by boosting German families' financial status. Reluctant to let go of its idealized image of the family, legislators settled on a "temporary" solution that only allowed married women to work part-time, giving way to a new model comprised of a male breadwinner and female homemaker/part-time worker. The increasing prevalence of this model in the FRG in the 1960s forced legislators to reconsider marriage and divorce law in the early 1970s.

In addition, social and cultural changes both enabled and prevented reforms of family law in both states as well throughout the 1950s and 1960s. In the East, the SED regime initially encountered societal resistance to its reforms. Many East Germans, especially Catholics and Protestants, did not want the law to disrupt well-established marital relations and familial structures. They also were afraid of state intervention in childrearing. Given the state's track record of subverting the practice of Christianity, they had further reason to fear that family law was another way for the SED to clamp down on them. By 1965, when the Family Code came out, the SED had succeeded in muting its Christian opposition. Furthermore, a new generation of men and women who had been socialized under the GDR dictatorship were entering the workforce, marrying, and starting their own families. The relative lack of opposition in 1965 compared to 1954 indicated that the SED had accomplished social alongside political and economic changes in the GDR.

In the West, social and cultural expectations changed too over the course of the 1950s and 1960s. Initially, the wartime destruction pushed many Germans in the Western zones of occupation toward desiring the male breadwinner family as a source of stability. Adenauer and his Christian conservative administration were more than happy to oblige the groups in

society, especially Protestants and Catholics, who demanded policies that fostered this family model. Over time, however, the CDU/CSU's vision of the ideal family—male breadwinner/female homemaker—had to be “modernized” in the face of major economic changes, political forces in- and outside the FRG, and societal opposition from women's organizations, trade unions, independent professional associations, and some media outlets. Policymakers decided to use part-time work for mothers in order to keep the breadwinner family intact but at the same time allow women to earn the surplus-income desired by many families to allow more consumerism. Furthermore, by the end of the 1960s, a new generation of women who had been raised in West Germany began to challenge the gendered norms under which they had been socialized and no longer fit the economic and political circumstances they were entering into as young adults in 1968 and were influenced by the ideas of the rising New Women's Movement.

Legal and institutional legacies also enabled and informed the different paths of family law reforms in the GDR and FRG. Both states inherited the same law that dated back to 1900, but they dealt with its legacies quite differently. In the GDR, path dependency was strong in certain regards, but weak in others. For political and economic reasons tied to the Cold War, the SED willingly abandoned the Weimar template for equal rights in the constitution early on. At the same time, the SED never objected to state protection of the family as a fundamental constitutional right, meaning that certain continuities from the Weimar Republic existed in the GDR. When it came to reforming the Civil Code, the SED attempted to balance its commitments to the family and women's equality with men. In certain ways, the new Family Code's emphasis on egalitarian marriages was a radical departure from the 1900 Civil Code. Still, the new Family Code in 1965 emphasized long-

term partnerships with abundant children as the key to building a socialist, antifascist postwar state. The SED was more willing to break with legal tradition because it staked its legitimacy on its claims that it was forging a new, post-fascist, socialist, postwar German state with no ties to pre-1945 Germany.

The FRG shared a legal tradition with the GDR, but its path dependency was much stronger. Unlike the GDR, the FRG staked its own claims to legitimacy on the notion that it was a liberal democracy—albeit new and improved—in line with German tradition, and that the preceding twelve years were an aberration in the German *Rechtsstaat*. From the beginning, Christian conservative politicians and legal experts in the West wanted to keep the old Civil Code's regulations on marriage and the family, believing that different civil rights were commensurate with sexual difference. Later on, they remained reluctant to change the Civil Code, arguing that its prescriptions for a patriarchal family structure would help the social and cultural reconstruction of (West) Germany. They finally were forced to agree to compromises that reformed the constitutional and legal tradition under immense pressure from Social Democrats, Free Democrats, Communists (until 1956), trade unions, women's associations, and professional organizations.

In both Germanys throughout the 1950s and 1960s, the parallel reforms of marriage and family law, at their cores, were about expanding the legal rights of married women and mothers and contracting the rights of married men and fathers. The 1957 Equal Rights Act, although not as far reaching as Free and Social Democrats had hoped, reified the traditional male breadwinner/female homemaker family model by “modernizing” and reforming it. In certain regards, the law finally gave married women some autonomy in decision-making for their marriages and families while continuing to limit their ability to work outside the home.

At the same time, then, the Equal Rights Act took away rights from men in some regards while allowing them the authoritative position in the home and their partnerships. The 1965 Family Code in the GDR pursued a much more radical overhaul of the old law, making partners completely equal in every regard. Still, the law did not challenge conceptions of the heteronormative, nuclear family. In the everyday life of the GDR, married women continued to be burdened with most domestic labor as they took on full-time jobs outside the home in the GDR's planned economy. The parallel reforms of the marriage and family law in the 1960s and 1970s in the GDR and FRG catalyzed further discussions of altering the gendered division of labor and rethinking marriage and family models in the 1970s, which are ongoing today.

As these overarching political, economic, social, and legal changes took place, different actors in politics, social organizations, and the media in both Germanys employed a number of conflicting discourses to both defend and denigrate legal reforms. For one thing, discourses about gender images and gender relations as the foundation of social order resonated throughout West and East Germany. In the West, Christian conservatives, echoing earlier pre-1945 arguments, proclaimed the patriarchal family model as set out in the Civil Code as a vessel for stabilizing calamitous postwar conditions and restoring (West) Germany to its "natural" social and gender order. Their Social Democratic, Free Democratic, and for the first half of the 1950s, Communist opposition argued that family law had to change with the times and adapt to a wholly different demographic reality and economic structure. The SED in the East, meanwhile, emphasized stability in its own way, focusing on how bourgeois, capitalist social and economic orders had contributed to Germany's destruction. Marriages and families that were more egalitarian, their logic followed, would prevent such

instability from ever gracing Germany's territory again. Their opponents in the major churches, however, stressed that the Family Code disrupted natural order and intercepted Christians' rights to raise their families as they pleased.

These same actors relied on rhetoric about historic memory as well. At times, they reached back far in the historic vault to the late nineteenth and early twentieth century. Some Christian conservative and Free Democratic politicians, for example, extolled previous governments' interpretations of women's status and roles in the family. Meanwhile, some Social Democratic, Free Democratic, Communist, and independent female activists in both Germanys proclaimed that past regimes had not done enough to ensure equal rights for men and women. Additionally, just about all policymakers of all political persuasions in both Germanys agreed that the Third Reich offered a negative example of state intervention in marriage and the family.

Above all, on both sides of the German-German border, the Cold War loomed large in political discourse, although in different ways. In the East, a constant theme from the late 1940s well into the mid-1950s was the problem of legal unity. The SED desperately wanted to beat the West to reforms, but they hesitated at times because they feared further dividing Germany (while simultaneously arguing that their version of the law would unite all Germans). West Germans spoke of legal unity as well, but only in reference to their own states. In both states, politicians stressed how family law reforms on the other side of the Iron Curtain were detrimental to all Germans, although again, these discourses tended to be employed more heavily by the SED.

In the end, the 1957 Equal Rights Act in the West and the Family Code in the East created similar patterns in both states. Neither law challenged the idea that the

heteronormative family was the cornerstone of German society, although they imagined the relations within the family quite differently. Moreover, in practice, similar gendered divisions of labor existed on both sides of the German-German border, meaning that women typically bore the brunt of domestic labor, even when the law promised them equal partnership. Still, the differences between the two sides were critical and obvious. Different responses to the imbalanced gender ratios, economic circumstances, political systems, and diverging social and cultural norms set the two states on separate paths regarding family law and gender roles by the mid-1960s.

In exploring the political, economic, social, and cultural factors that shaped the discourses and decisions surrounding marriage and family law in the GDR and the FRG in the 1950s and early 1960s, this dissertation makes a fundamental contribution to the existing literature on gender and the family in the divided Germanys and postwar Europe more broadly. This study has demonstrated that the postwar environment and the ensuing Cold War competition pushed East and West Germans to firmly reassess their positions on the family and women's rights. In other words, centering this study of family law reforms in the historical context of the early Cold War helps illuminate sociologist Ruth Lister's notion of civil rights as the last frontier for women, as opposed to men, who typically receive civil rights first.⁹ It furthermore highlights other feminist historians' calls to situate social justice and civil rights movements as historically contingent.¹⁰ At the same time, this study offers a

⁹ Ruth Lister, *Citizenship: Feminist Perspectives*, 2nd ed. (New York: New York University Press, 2003), 70.

¹⁰ Karen Hagemann, "Civil Society Gendered: Rethinking Theories and Practices," in *Civil Society and Gender Justice: Historical and Comparative Perspectives*, eds. Karen Hagemann, Sonya Michel, and Gunilla Budde (New York: Berghahn Books, 2008), 17-42, 32; Regina Wecker, "Dilemmas of Gender Justice: Gendering Equity, Justice and Recognition," in *Civil Society and Gender Justice: Historical and Comparative Perspectives*, eds. Karen Hagemann, Sonya Michel, and Gunilla Budde (New York: Berghahn Books, 2008), 43-56.

unique glimpse into the “entangled and demarcated” German-German relationship as it has traced how politicians, media pundits, and members of society used family law to distance themselves from each other—both within each state and between the two Germanys—in the early years of the Cold War. Despite their efforts, similar patterns of behavior, especially the gendered division of labor, continued to exist on both sides of the Iron Curtain well after 1968. Germans in both states saw great progress in the first two decades after World War II, but nevertheless faced certain social and cultural barriers that still remain strong among former East and West German women today as they continue to strive toward equality and work-home life balance.

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N2-6 Nachlass Herta Ilk
L4-126 LDPD Zentralvorstand
L2-120 LDPD Politischer Ausschuss
A45-50 FDP Ostbüro

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DA 1 Volkskammer der DDR
DP 1 Ministerium der Justiz
DY30/IV Sozialistische Einheitspartei Deutschlands
DO 4 Staatssekretär für Kirchenfragen
DO 1 Ministerium des Innern
DC 20 Ministerrat der DDR
DY34 Bundesvorstand des Freien Deutschen Gewerkschaftsbundes
DC-20-I/4 Beschluss- und Sitzungsreihe des Präsidiums des Ministerrates
DA5 Staatsrat der DDR
DP 2/ Oberstes Gericht der DDR
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