

EQUALITY AND DIFFERENCE:
Political Debates on “Gender Equality” in West Germany, 1949-1958

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Abstract

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Gleichberechtigung, or “the equality of men and women,” became a controversial issue in the public political debates of post-war West Germany. This discussion already had started before the founding of the Federal Republic of Germany (FRG) in May 1949 with the conflict over Article 3 in the Basic Law, the provisional constitution of the FRG that stated “men and women are equal” and demanded the implementation of this principle in all legislation. In the context of the Cold War, the confrontation with East Germany, and the needs of the political, economic, and social reconstruction of the FRG following World War II, this debate gained increasing importance during the 1950s and resulted in the passing of the *Gleichberechtigungsgesetz* (Equal Rights Act) in June 1957, which came into effect in July 1958. The aim of the MA thesis is to analyze the political debate over “the equality of men and women” in the two major parties – the ruling Christian Democratic Party (CDU) and the oppositional Social Democratic Party (SPD) and their women’s organizations – and in the *Bundestag*, the West German parliament. I will interpret it as a conflict over highly gendered definitions of social, political, and civil citizenship rights.

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CHAPTER I

Introduction

In December 1948, Elisabeth Selbert asserted, “‘Men and women are equal.’ This version [of Article 3 of the Basic Law] creates clear connotations and obligates future legislation to finally implement the equality of men and women.”¹ Selbert, a Social Democrat and jurist who had been active in the Weimar women’s movement, reflected here on the debates within the Parliamentary Council, which met from 1948-1949 to draft the Basic Law (*Grundgesetz*), the provisional constitution of the Federal Republic of Germany (FRG). One of the many issues the delegates discussed was *Gleichberechtigung*, or “the equality of men and women.”² It was one of the most controversial topics in the debate between Social Democratic and Christian Democratic delegates over the definition of “basic rights” (*Grundrechte*) in the new Basic Law.

The result was a compromise between the two major parties in the Parliamentary Council. On May 8, 1949, it 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 are equal. The state supports the effective implementation of the equality of men and women and will act to remove disadvantages.

¹ Elisabeth Selbert, “Um die Gleichberechtigung der Frau!” December 1948, 0128 Rundschreiben, SPD-Parteivorstand-Frauenreferat, *Archiv der sozialen Demokratie der Friedrich-Ebert-Stiftung*, p. 1. In the original German, the text reads: “‘Männer und Frauen sind gleichberechtigt.’ Diese Fassung schafft klare Vorstellungen und legt der kommenden Gesetzgebung die Verpflichtung auf, die Gleichberechtigung endlich zu verwirklichen.” Brackets added by translator.

² See Barbara Böttger, *Das Recht auf Gleichheit und Differenz: Elisabeth Selbert und der Kampf der Frauen um Art. 3.2* (Münster: Verlag, 1990).

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.³

This article, however, was constrained by Article 6, which devised that “marriage and family stand under special protection of the state.”⁴ To push for a realization of Article 3, 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 March 31, 1953.

In August 1949, when the first government of the FRG came to power, the question of how to implement gender equality remained contested in West German politics. Parliamentary (*Bundestag*) representatives continued to dispute how to resolve labor, family, and gender equality. The first step was in May 1953 when the Bundestag passed a civil service reform law (*Beamtenrechtsgesetz*), which granted married women the right to be appointed as civil servants. Yet by March 31, 1953, the majority of laws contradicting Article 3, particularly those regarding marital and family law from the Civil Code (*Bürgerliches Gesetzbuch*), remained unchanged.⁵

Without new legislation to change the Civil Code, the interpretation of Article 3 de facto turned over to the courts, who judged how men and women were equal in matters such

³ **“Artikel 3**

(1) Alle Menschen sind vor dem Gesetz gleich.

(2) Männer und Frauen sind gleichberechtigt. Der Staat fördert die tatsächliche Durchsetzung der Gleichberechtigung von Frauen und Männern und wirkt auf die Beseitigung bestehender Nachteile hin.

3) Niemand darf wegen seines Geschlechtes, seiner Abstammung, seiner Rasse, seiner Sprache, seiner Heimat und Herkunft, seines Glaubens, seiner religiösen oder politischen Anschauungen benachteiligt oder bevorzugt werden. Niemand darf wegen seiner Behinderung benachteiligt werden.”

Bundestag, “Grundgesetz,” May 1949.

http://www.bundestag.de/dokumente/rechtsgrundlagen/grundgesetz/gg_01.html.

⁴ Bundestag, “Grundgesetz.” The German text reads, “Ehe und Familie stehen unter dem besonderen Schutz der staatlichen Ordnung.”

⁵ Specifically, these provisions regulated marital law, family law, and marital property law.

as divorce and family rights. When it was clear that the courts were “not operating with the same scales of justice” for men and women in their decisions, the need for an additional Equal Rights Act (*Gleichberechtigungsgesetz*), especially as part of family law, thus became evident.⁶ In the debates in the parties and the Bundestag over the law, the two main goals already formulated in Article 3 of the Basic Law—gender equality and the protection of the family—were often played off against each other. Bundestag members had to decide how to reconcile gender equality, women’s labor, and the role of the family. The conflicts of delivering equal rights to women, yet protecting their roles as mothers and wives, were at the center of all Parliamentary debates that finally led to the passing of the Equal Rights Act in June 1957. The law was implemented on July 1, 1958, although “gender equality” was far from realized.

The following study explores the important role that these two political groups—the CDU and SPD functionaries in the parties and the Bundestag—played in shaping public policy on gender equality between 1949 and 1958. I am interested in understanding the ways that these two groups not only engaged in political debates over gender equality, but also how and to what extent these discussions, in moving from the party level to the Parliament, influenced legal change. I argue that these debates must be understood as a conflict over highly gendered definitions of social, political, and civil citizenship rights in the newly established democracy of the FRG.⁷ Furthermore, these debates must be examined in the context of the political culture of the Cold War in the 1950s, which determined how West German politics operated as a counter-model to the Communist German Democratic

⁶ Robert G. Moeller, *Protecting Motherhood: Women and the Family in the Politics of Postwar West Germany* (University of California Press, 1993), p. 196.

⁷ Definitions of citizenship will be explained further in the historiography and methodology sections.

Republic (GDR) in the east, and as part of a coalition with the Western Allies (primarily the United States). My analysis begins in May 1949 with the final incorporation of gender equality as a “basic right” in the Basic Law, and ends with the implementation of the Equal Rights Act in July 1958. My paper covers these years because they are the formative period in the FRG for defining *Gleichberechtigung*. My geographic focus is West Germany, especially the national debates, due to source and space availability.

The analysis follows four lines of inquiry. *First*, how did representatives of the two major parties (the CDU and SPD) define “gender equality” in the political debates in the *Bundestag* as well as the national party congresses and women's meetings and how did their definitions differ and change in the debates between 1949 and 1958? What were the major lines of conflict among party members, particularly between the members of the women’s organizations and the parties? *Second*, which political, economic and social issues did party representatives inside and outside the *Bundestag* relate to the theme “gender equality” in their debates and in which ways did the parties differ here? What parts of the debates were lost or gained as they moved from the party to the Parliament? *Third*, what did party functionaries and parliamentarians define as the major goals of gender policy, and how did they hope to reach them? *Fourth*, to what extent did Weimar discourses carry over into postwar debates over *Gleichberechtigung*?

Although political science, historical, sociological, and legal scholarship have explored extensively the role of *Gleichberechtigung* in the early FRG, such work has suffered from two major limitations. On the one hand, while some have critically analyzed the legal interpretations of Article 3 of the *Grundgesetz* in court rulings and Parliamentary debates from the 1940s-1980s, they have paid less attention to the role of the 1957 Equal

Rights Act as a response to such rulings.⁸ These scholars each conclude that the law served only to discriminate against women, but this reflects a sense of presentism that does not contextualize the discourses surrounding the development of the law. Other works have focused more specifically on family policy, but have not considered extensively other legislation involving Article 3.⁹

My analysis also engages historiography on women's political participation in Germany. The earliest scholarship from the 1950s and 1960s focused on the role of women as voters, parliamentarians, and as party functionaries.¹⁰ More recently, historians have probed even deeper into women's participation in the leading political parties (CDU and SPD), especially regarding *Gleichberechtigung*, from the late 1940s through the 1950s.¹¹

⁸ Ines Reich-Hilweg, *Männer und Frauen sind gleichberechtigt: d. Gleichberechtigungsgrundsatz (Art. 3 Abs.2 GG) in d. parlamentar. Auseinandersetzung 1948-1957 u. in d. Rechtsprechung d. Bundesverfassungsgerichts*. (Frankfurt/Main: Europäische Verlagsanstalt, 1979). Ute Sacksofsky, *Das Grundrecht auf Gleichberechtigung: eine rechtsdogmatische Untersuchung zu Artikel 3 Absatz 2 des Grundgesetzes*, 1st ed. (Baden-Baden: Nomos, 1991). Ute Frevert, "Frauen auf dem Weg zur Gleichberechtigung – Hindernisse, Umleitungen, Einbahnstraßen," in *Zäsuren nach 1945: Essays zur Periodisierung der deutschen Nachkriegsgeschichte*, ed. Martin Broszat, *Schriftenreihe der Vierteljahrshefte für Zeitgeschichte* (München: Oldenbourg, 1990), pp. 113-130. Sociologist Ute Gerhard focuses primarily on Article 3, though she turns her attention to Parliamentary debates. See "50 Jahre Gleichberechtigung eine Springprozedur," *Bundeszentrale für politische Bildung*, pp. 3-4.

⁹ The first extensive study on family law reform was Robert Moeller's *Protecting Motherhood: Women and the Family in the Politics of Postwar West Germany*. More recently, Christine Franzius in *Bonner Grundgesetz und Familienrecht: die Diskussion um die Gleichberechtigung von Mann und Frau in der westdeutschen Zivilrechtslehre der Nachkriegszeit (1945 - 1957)*, *Studien zur europäischer Rechtsgeschichte 178* (Frankfurt am Main: Klostermann, 2005) has provided a thorough study of how civil law scholars interpreted *Gleichberechtigung*, particularly regarding its provisions on family policy.

¹⁰ For a more general overview of the research on women/gender and politics in Modern German history, see 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, 2007), pp. 107-127. Davis suggests that women became politically active beyond political parties, especially because they tend to be in movements rather than "politics in power" (108). See 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). Bremme focuses on Weimar and the early years of the Federal Republic of Germany, entirely skipping the Third Reich. See also Gabriele Sandmann-Bremme and Mechthild Fülles, *Die Frau in der Politik* (Köln: Verlag Wissenschaft und Politik, 1969).

¹¹ Gisela Notz, *Frauen in der Mannschaft: Sozialdemokratinnen im Parlamentarischen Rat und im Deutschen Bundestag 1948 49 bis 1957: mit 26 Biographien* (Bonn: Dietz, 2003); Petra Holz, *Zwischen Tradition und*

While acknowledging the importance of this scholarship for outlining the development of the law in different arenas over the course of the 1950s, some of its major advocates, and relationship to family policy in the FRG, my thesis builds on these previous works by bringing together debates in the Parliament and the major parties to understand how these highly gendered discussions defined the contemporary understanding of social, political, and civil citizenship rights.

My method combines approaches from political, cultural, and gender history to analyze these debates. The two major categories of analysis framing this argument are “citizenship” and “gender.” I follow sociologist Ruth Lister’s definition of citizenship as membership in a community, which depends on “the relationship between individuals and the state and between individual citizens within that community.”¹² Critiquing Thomas Marshall’s definition of a chronological order of the implementation of civil, political, and social citizenship, she argues like other feminists that this order applies only for middle and upper class men in Western societies, not for women and other disadvantaged groups, who often acquire equal civil rights later than political rights. For them, moreover, social rights (giving equal weight to earning and caring) are a necessary precondition to reach full civil (individual freedoms) and political rights.¹³ The distinctions between civil, political, and social rights are very important for my research because they enable me to differentiate among forms of citizenship.

Furthermore, historian Kathleen Canning’s suggestion to study citizenship from a

Emanzipation: CDU-Politikerinnen in der Zeit von 1946 bis 1960 (Königstein: U. Helmer, 2004); See also Birgit Meyer, *Frauen im Männerbund: Politikerinnen in Führungspositionen von der Nachkriegszeit bis heute* (Frankfurt: Campus, 1997), for a specific case study of Baden-Württemberg’s female political leadership since the 1940s.

¹² Ruth Lister, *Citizenship: Feminist Perspectives*, 2nd ed. (New York, 2003), p. 3.

¹³ Lister, *Citizenship*, pp. 10, 17, 167.

variety of historical perspectives, which include “the experiential, subjective level of citizenship,” is productive for my own research. By this, she means how historical actors “became subjects in their encounters with citizenship laws, rhetorics, and practices.” Her approach allows me to look at the different political groups that produced the discourses on gender equality in the parliament, the political parties and the press. Such an examination, which I plan to do in the next step, provides a more open analytical framework that incorporates the press and popular culture, among others, as part of the formation of citizenship.¹⁴

Gender is the second important category of analysis for my research. As a starting point, I follow historian Joan Scott’s established 1986 definition of gender as “a constitutive element of social relationships based on perceived differences between the sexes, and...a primary way of signifying relationships of power.”¹⁵ Scott and others have more recently critiqued this approach, arguing that “gender continues to be useful only if it goes beyond that approach...to think critically about how the meanings of sexed bodies are produced in relation to one another, how these meanings are deployed and changed.”¹⁶ As Scott herself observes, “the theory posits no fixed definition for masculine/feminine or for the differences between them; rather it requires analysis to get at what they mean.”¹⁷ This suggests considering how male and female identities and bodies took on socially constructed gendered meanings in particular historical contexts. I deconstruct how social, political, and civil rights

¹⁴ Kathleen Canning, “The Order of Terms,” in *Gendering Modern German History: Rewriting Historiography*, eds. Karen Hagemann and Jean H. Quataert (New York: Berghahn, 2007), p. 139.

¹⁵ Joan Scott, “Gender: A Useful Category of Analysis.” *American Historical Review* 91, no. 5 (Dec., 1986), p. 1067.

¹⁶ Joan Scott, “Gender: Still a Useful Category of Analysis?,” *Diogenes* 57, no. 1 (February 1, 2010): p. 10.

¹⁷ Scott, “Gender: Still,” p. 13.

were attributed to men and women in the postwar years and show that these rights were not applied uniformly, but were based on changing gender roles.

My sources can be categorized into two major groups. *First*, I analyze the protocols of the national party congresses (*Parteitage*) of the CDU and SPD and the protocols of the national meetings of their women's organizations (*Frauentage*). Furthermore, I study the special magazines of the two major political parties for their female members and functionaries: *Die Genossin* (1947-1950) and *Gleichheit. Organ der arbeitenden Frau* (1950-1958) of the SPD and *Union in Deutschland/Frau und Politik* (1949-1958) of the CDU.¹⁸ *Second*, I examine the protocols and supplements of the *Bundestag* from 1949 to 1958. I use these sources to analyze how the CDU and SPD in the Parliament debated "gender equality," which economic, political, and social issues they associated with the term, and their major goals.

The thesis is structured chronologically. Following a brief explanation of the background context, the first section explains the development and inclusion of gender equality in the Basic Law of the FRG. The second section focuses on the first period (1949-1953) of debates over the implementation of "gender equality" in labor legislation. The third section examines the debates from 1952-1958, primarily over family law, which led to the final reforms of the Equal Rights Act, implemented in 1958. I then conclude my thesis by analyzing the significance of the development of "gender equality" for citizenship and political culture in 1950s West Germany. Within each section, my analysis develops thematically first from the debates within the party, to those in the *Bundestag*.

¹⁸ Until 1955, *Union in Deutschland* published a small section specifically devoted to women's issues. After 1955, *Frau und Politik* subsumed this role.

CHAPTER II

Party Histories and Structures

Upon the defeat of Nazi Germany in World War II in 1945, the Western Allies (France, Great Britain, and the United States) aimed to reestablish German democracy. As a starting point, they looked to the historical precedent of the parliamentary democracy of the Weimar Republic (1918-1933). Both the Western Allies and German officials wanted to invoke the democratic spirit of Weimar, but make significant political and structural changes to prevent another Third Reich. The postwar devastation served as a daily reminder of the Nazis' destructive politics. Moreover, the increasing tensions of the Cold War added new pressures as the policies of the Soviet-occupied Eastern zone diverged from those of the three zones of the Western Allies. While the Western sectors went democratic, the Eastern sector turned Communist, reflecting the struggles of the American and Soviet superpowers overseeing them. The convergence of these three contexts created the political culture and structures that were crucial for restoring West German society.

Reforming the German political party system was an essential step toward reestablishing German parliamentary democracy, albeit under certain conditions. The Western Allies and German officials foremost feared the emergence of another extremist small party like the National Socialists.¹⁹ The splintered political culture of Weimar had in

¹⁹ See Daniel Rogers, *Politics after Hitler: The Western Allies and the German Party System* (New York: NYU Press, 1995), for a longer discussion of how the Western Allies reestablished the party system in West Germany

many ways facilitated the rise of the Nazis, and they wanted to ensure that postwar politics would not function the same way. Before 1933, politics had been divided among six main political parties: the Social Democratic Party (SPD) and the Communist Party of Germany (KPD) on the left, and the Center Party (Z), German Party (DP), German Unity Party (DVP), and the German National People's Party (DNVP) on the right. Many of these disparate factions separated into two dominant parties representing the left and right after 1945.

The major party on the left was the SPD. It was established in 1875 as a socialist and working-class party and had been the largest party in Weimar. The party had made a significant political shift during this time from “a proletarian class party to a leftist catch-all party,” and increasingly separated itself from the Communist Party of Germany (KPD).²⁰ In 1933, the Nazi Party banned the SPD, forcing many of its members into exile abroad. In 1945, it reemerged as the major party on the left, led by Kurt Schumacher, who promoted a working-class and socialist platform. During the 1950s, however, the SPD moved gradually from its socialist roots toward a center-left position because it was reluctant of comparisons to the Communist SED (Socialist Unity Party of Germany) in the GDR. The SPD's political shift became official in 1959 when the Godesberg program changed the party from a socialist to a social democratic platform.

During Weimar, the SPD was not only the largest party, but had the highest percentage of female participation. Sociologist Gabriele Bremme estimates that the number of female SPD representatives in the Weimar Parliament (*Reichstag*) varied between 11.1

following World War II.

²⁰ Karen Hagemann, *Frauenalltag und Männerpolitik: Alltagsleben und gesellschaftliches Handeln von Arbeiterfrauen in der Weimarer Republik* (Bonn: J.H.W. Dietz, 1990), p. 512.

and 13.6 percent from 1919-1930.²¹ Although several women returned to politics after World War II, the female representation within the SPD never reached the same levels. Its overall female membership decreased from 228,278 to 115,348 over the course of 1930-1953.²² Female representation in the Bundestag was slightly lower than in Weimar, increasing only from 10 percent in the 1949 election to 11 percent in the 1953 election.²³ The party set up an official Women's Office (*Frauenbüro*) in 1946 to mediate its work on women's issues and adopted an official stance in 1947 that women did not need "a special women's movement, but rather [are] part of the SPD."²⁴ Regardless, only a small contingent of committed members (16 female and 5 male) participated actively in the national women's organization, the *Ausschuss für Frauenfragen*.²⁵ Although its work demonstrated the SPD's commitment to issues related to the "women's question," its members' individual opinions were often not considered in the Bundestag, as will be shown later.

The SPD's main opposition, the Christian Democratic Union and its Bavarian sister party the Christian Social Union (CSU), was founded in 1945 as a trans-confessional Christian party, designed to bring together the disparate conservative Protestant and Catholic political factions that had existed in Weimar. It initially formed regionally within each of the Western Allied sectors. In 1949, the party finally established itself nationally under the leadership of Konrad Adenauer, the former mayor of Cologne and a devout Catholic. The

²¹ Bremme, *Die politische Rolle der Frau in Deutschland*, p. 124.

²² Bremme, p. 177.

²³ *Ibid.*, p. 137.

²⁴ *Ibid.*, p. 184.

²⁵ My own observations of the protocols of the *Ausschuss für Frauenfragen* meetings convey that the committee met every 3-4 months and typically had no more than 10 representatives present per meeting, despite having 21 members. See Bremme for a more detailed discussion of the structures of the different regional women's committees, pp. 182-183.

CDU's overarching goals were to reshape West Germany through Christianization and a return to "traditional" societal roles.²⁶ The party thus distanced itself easily from both the politics of the Nazi regime and the Communist GDR because it rejected the ideology of both.

Female participation was no less important for the CDU than it was for the SPD. During Weimar, women from the Center, DVP, DNVP, and DP formed between 4 and 9 percent of the representatives of their respective parties.²⁷ These small percentages may have divided them during Weimar, but still meant a large contingent of conservative women served in the *Reichstag*. Many of these women, particularly from the Center, joined the CDU/CSU after 1945. Women made up roughly 25 percent of the CDU's entire membership.²⁸ In the Bundestag, female CDU representatives made up 7.9 percent in 1949 and 7.4 percent in 1953.²⁹ Some of the more politically active women in the CDU established their national women's organization (*Bundesfrauenausschuss*) in 1951 and began to publish the women's newspaper *Frau und Politik* after 1955.³⁰ Like the SPD, however, only a small group of conservative women (and occasionally men) made up the membership of the CDU's *Bundesfrauenausschuss*. Like the SPD's women's committee, the *Bundesfrauenausschuss* often disputed how to resolve women's issues, yet their opinions rarely factored into the legal changes enacted by the Bundestag.

Despite the differences between the two parties, their approaches to the "women's

²⁶ Moeller, *Protecting Motherhood*, p. 43.

²⁷ Bremme, *Die politische Rolle der Frau in Deutschland*, p. 124.

²⁸ *Ibid.*, p. 154.

²⁹ Although the percentages decreased, this only represents that the entire party increased the number of seats it held in the Bundestag. The CDU had the same number (18) of female representatives as the SPD in 1953. See Bremme.

³⁰ Holz, *Zwischen Tradition und Emanzipation*, p. 89. The national women's organization was formed from several regional ones which met prior to 1951.

question” were in many ways quite similar. Scholars such as Irene Stoehr have rightly argued that the women’s movement before and during Weimar believed that “organized motherhood” was their way to “participate equally in the developments and privileges of masculine culture without having to give up their feminine identity.”³¹ The postwar debates between the SPD and CDU reflected similar perceptions on both sides that men and women were equal, yet different. The main difference was that the political stakes, in the context of restoring German sovereignty and society, were much higher than in Weimar. Whereas the CDU saw an opportunity to Christianize and stabilize West Germany, and therefore demanded stricter gender roles, the SPD saw a chance to break down some of the barriers that had precluded women from equal participation in Weimar. The Parliamentary Council, held from 1948-1949, was the first major display of the contestations between the two parties over how to define gender equality.

³¹ Irene Stoehr, “Organisierte Mütterlichkeit.” Zur Politik der deutschen Frauenbewegung um 1900,” in *Frauen suchen ihre Geschichte*, ed. Karin Hausen (Munich: Verlag C.H. Beck, 1983), p. 222.

CHAPTER III

“Gender Equality” in the Basic Law of the New Federal Republic, 1948-1949

By 1948, both the Western Allies and the West German officials in their three sectors were ready to write a provisional constitution (the Basic Law) as the last step towards establishing West Germany as a federal republic.³² Drafting the constitution was the task of the Parliamentary Council, whose 65 delegates were selected from the 10 federal states under Western Allied occupation. Defining the equal rights of men and women was one part of the Council’s many debates. The development of this concept in the Parliamentary Council is crucial for analyzing the later discourses surrounding the Equal Rights Act in the 1950s.

On September 1, 1948, the delegates assembled in Bonn to begin their task. On the one hand, their aim was to write a constitution that would correct the historic failures of Weimar democracy. As historian Robert Moeller observes, they “sought to invoke the democratic tradition embodied in the Weimar Republic while avoiding the structural weaknesses of the Weimar constitution, which had made it possible for the Nazis to seize power.”³³ On the other hand, they also had to respond to the early postwar situation. The “surplus” of an estimated 7 million more women than men had resulted in a disproportionately larger female workforce made up of increased numbers of single and

³² Although the Federal Republic was officially established on May 23, 1949, the Allied occupation remained in West Germany until 1955 when it joined the North Atlantic Treaty Organization.

³³ Moeller, *Protecting Motherhood*, p. 40.

unmarried mothers.³⁴ Just as significantly, the growing tensions with the Soviet-occupied East meant that the Basic Law had to guarantee West Germans the rights denied to their Eastern counterparts.³⁵ These problems influenced the delegates as they drafted the new constitution.

Although the 65 delegates represented several parties, the conflicts between the SPD and CDU determined the proceedings of the Council. As the largest parties, each side had 27 voting members, whereas the smaller parties had 2-5 representatives.³⁶ Yet the equal distribution of votes between the two major parties only somewhat guaranteed a balance of power. The Council leaned more to the right, as most of the smaller parties, such as the Free Democrats (FDP), voted alongside the CDU, whereas only the Communist Party (KPD) voted with the SPD.³⁷

Although the Parliamentary Council was comprised of 65 delegates, only four were women.³⁸ They became outspoken proponents for the implementation of an article of the Basic Law that guaranteed gender equality. In particular, SPD member Elisabeth Selbert,

³⁴ Elizabeth Heineman, *What Difference Does a Husband Make? Women and Marital Status in Nazi and Postwar Germany* (Berkeley: University of California Press, 1999), p. 3.

³⁵ Moeller, *Protecting Motherhood*, p. 40.

³⁶ The smaller parties included the Free Democrats, Liberal Democrats, and German Unity Party, who each had 5 votes, while the Communist Party, German Party, and Center Party each had 2. See Kurt Georg Wernicke, Hans Booms, and Walter Vogel. *Der Parlamentarische Rat, 1948-1949: Akten U. Protokolle*. (Boppard am Rhein: Boldt, 1975-).

³⁷ Eleven delegates had been members of the *Reichstag* during the Weimar Republic; three had helped draft the Weimar constitution. Other delegates were in state parliaments, and had even contributed to drafting new state constitutions after 1945. Accordingly, the two major parties each received 27 votes in the plenary sessions. See Kurt Georg Wernicke, Hans Booms, and Walter Vogel. *Der Parlamentarische Rat, 1948-1949: Akten U. Protokolle*. (Boppard am Rhein: Boldt, 1975-).

³⁸ Representation of men and women was unbalanced in part because of the Nazi dismissal of women in public roles; the numbers of women unassociated with the Third Reich and qualified legally and politically were limited. See Kurt Georg Wernicke, Hans Booms, and Walter Vogel. *Der Parlamentarische Rat, 1948-1949: Akten U. Protokolle*. (Boppard am Rhein: Boldt, 1975-).

a jurist who had received a doctor's degree in 1930 and was already active in the Weimar SPD, was a vocal advocate of this aim.³⁹ She did not struggle alone. Selbert, fellow Social Democrat Friederike Nadig, CDU member Helene Weber, and Center Party member Helene Wessel became known as the "four mothers" of the Basic Law.⁴⁰ Although these women supported "gender equality," their definitions of the concept differed. While Nadig and Selbert supported equal legal rights of men and women in all areas of the economy, politics, and society, including marriage and family, without any exceptions, Wessel and Weber aimed for laws that secured "equality" based on the assumption of natural differences between the sexes and their gender specific tasks in all areas. Despite these ideological differences they came together in support of integrating "gender equality" as one important basic right in the provisional constitution.⁴¹ Their positions reflected the basic ideas of the parties on the "women's question."

Defining the basic rights was the first major goal of the Parliamentary Council and the task of the Committee on Basic Issues (*Ausschuss für Grundsatzfragen, AfG*).⁴² On September 21, 1948, SPD member and professor of politics Ludwig Bergsträsser compiled

³⁹ 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 a/M: Eichborn, 1999), p. 90.

⁴⁰ Petra Holz, *Zwischen Tradition und Emanzipation: Politikerinnen in der CDU in der Zeit von 1945 bis 1957* (Königstein: Ulrike Helmer Verlag, 2004), p. 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*, p. 46.

⁴¹ The Civil Code had mandated since 1900 that men had control over the family and marriage; that the wife and children must take the husband's and father's name, and men had all control over children's rights. See 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/M.: Vittorio Klostermann, 2005), pp. 21-22.

⁴² The Parliamentary Council was divided into several subcommittees. Each subcommittee (such as the *AfG*) drafted a portion of the constitution and submitted it to the steering committee (*Hauptausschuss*), which then reviewed the entire draft of the constitution. Once this committee agreed on the draft, it was brought before the plenary for final debates and voting. See Kurt Georg Wernicke, Hans Booms, and Walter Vogel. *Der Parlamentarische Rat, 1948-1949: Akten U. Protokolle*. (Boppard am Rhein: Boldt, 1975-).

and presented the Catalog of Civil Rights, a list of proposed basic rights that included the following provision on gender equality: “Men and women have the same political rights and duties.”⁴³ Bergsträsser took this formulation nearly verbatim from Article 109 of the Weimar constitution, which read, “Men and women have the same fundamental political rights and duties.”⁴⁴ Memories of the Third Reich’s destruction of equal political and civil rights for men and women only further justified its inclusion in the Basic Law.⁴⁵ Despite agreeing that the right was necessary, members of the committee soon began to dispute its formulation.

Early *AfG* debates on gender equality centered on women’s rights to employment and the protection of the family. The SPD and KPD proposed a basic right to equal employment for men and women, but it was tabled. The CDU’s proposal to protect the family was considered more critical, particularly for the restoration of the German state post-1945. They based their original formulation on the Weimar constitution’s Article 119 that read, “Marriage stands as the basis of family life and the preservation and proliferation of the nation is under the special protection of the constitution, which is based on the equality of both sexes.”⁴⁶ Their proposal later became Article 6 of the Basic Law, due to the pushing of

⁴³ These rights were picked and chosen from state constitutions, as well as international constitutions. See Kurt Georg Wernicke, Hans Booms, and Walter Vogel. *Der Parlamentarische Rat, 1948-1949: Akten U. Protokolle*. (Boppard am Rhein: Boldt, 1975-). See Fritz Sängler, *Handbuch des deutschen Bundestages*; [4. Aufl.]. (Stuttgart, E. Klett [1957]: E. Klett, 1957), p. 229, for biography of Bergsträsser.

⁴⁴ “Die Verfassung des Deutschen Reichs,”
http://www.documentarchiv.de/wr/wrv.html#ERSTER_ABSCHNITT02

⁴⁵ “Katalog der Grundrechte 21. September 1948,” Kurt Georg Wernicke, Hans Booms, and Walter Vogel. *Der Parlamentarische Rat, 1948-1949: Akten U. Protokolle*. (Boppard am Rhein: Boldt, 1975-), p. 16; “Dritte Sitzung 21. September 1948,” Kurt Georg Wernicke, Hans Booms, and Walter Vogel. *Der Parlamentarische Rat, 1948-1949: Akten U. Protokolle*. (Boppard am Rhein: Boldt, 1975-), p. 51. In the original German, the text reads, “Männer und Frauen haben dieselben staatsbürgerlichen Rechte und Pflichten.” Bergsträsser’s formulation reads almost identical to Article 109 of the Weimar Constitution, which read, “Männer und Frauen haben grundsätzlich dieselben staatsbürgerlichen Rechte und Pflichten.”

⁴⁶ “Die Verfassung des Deutschen Reichs.”
http://www.documentarchiv.de/wr/wrv.html#ERSTER_ABSCHNITT02. The original German reads, “Die Ehe steht als Grundlage des Familienlebens und der Erhaltung und Vermehrung der Nation unter dem besonderen

the CDU and supporting outliers from the smaller parties such as Wessel.⁴⁷

SPD representative Nadig, a former welfare worker during Weimar, did not support the CDU's proposal. She protested that it lacked "the legal equality of the sexes" and that family law (according to the Civil Code from 1900), too, had to be adapted to fit this principle.⁴⁸ Dismissing Nadig's call, CDU representative Adolf Süsterhenn claimed that changing the Civil Code meant only changing marital property law.⁴⁹ What could not be changed, he argued, were "the natural functions of gender," and accordingly, maintained that "different rights and duties arise from the different natures of men and women."⁵⁰ Süsterhenn's and Nadig's exchange demonstrates the main ideological differences among CDU and SPD members on gender equality. For Nadig, the CDU's proposal did not account for the drastically altered societal status of women and was thus outdated.⁵¹ For Süsterhenn, no matter how the constitution was worded, nothing would change the fact that men and women were not equal at the very basic level of biology.⁵²

Thus, the Council had to decide how to reconcile these differences for the sake of the constitution. They chose to reword the clause to encompass broader meanings of gender equality. On November 30, 1948, both sides offered their interpretations. Hermann von Mangoldt, a CDU member and jurist, presented the original formulation, "Men and women

Schutz der Verfassung. Sie beruht auf der Gleichberechtigung der beiden Geschlechter."

⁴⁷ See Robert Moeller, *Protecting Motherhood*, for a more complete explanation of the development of Article 6.

⁴⁸ "Vierundzwanzigste Sitzung 23. November 1948," Kurt Georg Wernicke, Hans Booms, and Walter Vogel. *Der Parlamentarische Rat, 1948-1949: Akten U. Protokolle*. (Boppard am Rhein: Boldt, 1975-), p. 642-643.

⁴⁹ Ibid.

⁵⁰ Ibid., p. 643.

⁵¹ Ibid. See Notz, *Frauen in der Mannschaft*, p. 56.

⁵² "Vierundzwanzigste Sitzung 23. November 1948," p. 643.

have the same rights and duties,” but Nadig proposed, on behalf of the SPD, to change the wording to “Men and women are equal.”⁵³ For some committee members, this wording was problematic. For example, Thomas Dehler, a jurist from the FDP, argued that this formulation would make the Civil Code unconstitutional and in fact pushed for almost a complete reversion to the Weimar formulation in Article 109: “Men and women have fundamentally equal political rights and duties.”⁵⁴ The CDU, however, dismissed Dehler’s proposal because the rest of the equal rights clause took care of most of his concerns about the Civil Code.⁵⁵

If they had the rest of Article 3, then why was it so important to the delegates to change the second paragraph? The main point of contention was over the meaning of “staatsbürgerlich,” or “political” in the article’s formulation. Mangoldt claimed that the equal rights clause, as a whole, already put the FRG far ahead of the rest of Europe in terms of granting equal political rights.⁵⁶ Nadig responded that the formulation did not change anything, as women already had equal political rights.⁵⁷ She was concerned that such guarantees often worked against women in practice, and thus pushed the SPD’s formulation in order to qualify a promise of equal legal rights in all areas.⁵⁸ At the end of the meeting, the SPD did not win the support it needed, and the proposal was tabled.

⁵³ “Sechszwanzigste Sitzung 30. November 1948,” Kurt Georg Wernicke, Hans Booms, and Walter Vogel. *Der Parlamentarische Rat, 1948-1949: Akten U. Protokolle*. (Boppard am Rhein: Boldt, 1975-), p. 747.

⁵⁴ *Ibid.*, p. 748. The Civil Code (*Bürgerliches Gesetzbuch*) from 1900 was still upheld in the Federal Republic of Germany. This included provisions that regulated men’s and women’s roles in marriage and family. “Weimarer Verfassung,” <http://www.documentarchiv.de/wr/wrv.html>

⁵⁵ “Sechszwanzigste Sitzung 30. November 1948,” Kurt Georg Wernicke, Hans Booms, and Walter Vogel. *Der Parlamentarische Rat, 1948-1949: Akten U. Protokolle*. (Boppard am Rhein: Boldt, 1975-), p. 748.

⁵⁶ “Sechszwanzigste Sitzung 30. November 1948,” p. 748.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

On December 3, 1948, the steering committee (*Hauptausschuss*) reviewed the first draft of the basic rights that the *AfG* had proposed a few days before. The debates over the equal rights clause transferred to their meetings and Selbert had the chance to push the SPD's proposal in hopes of reformulating the equal rights clause. As she argued to her fellow delegates, the Weimar tradition and postwar experience of women guaranteed them equal rights in all areas, not only civic duties.⁵⁹ She insisted that their task was urgent, but she acknowledged that immediate enactment would be difficult to accomplish. Instead, it was most important to change the wording of the constitution first, and then focus on changing civil and family law.⁶⁰ Selbert therefore suggested instead that the Council could stipulate through a separate provision (Article 148d, later to become Article 117) that all changes be made to the Civil Code by March 31, 1953. Here, she specifically cited family law as an example of a part of the Civil Code that had to be changed. Yet her argument went beyond mere political compromise. If changes were not made, she argued, the leading women in the public sphere would protest and endanger the acceptance of the constitution.⁶¹

Mangoldt then interjected, arguing that he and fellow members of the *AfG* valued the equality of men and women too. Their reservations lay in the potential "legal consequences that could not be foreseen" in implementing the changes to civil law.⁶² Other members of the CDU and CSU agreed. Wilhelm Laforet (CSU) argued that it was the role of the legislators,

⁵⁹ "Siebzehnte Sitzung des Hauptausschusses 3. Dezember 1948," Kurt Georg Wernicke, Hans Booms, and Walter Vogel. *Der Parlamentarische Rat, 1948-1949: Akten U. Protokolle*. (Boppard am Rhein: Boldt, 1975-), p. 510.

⁶⁰ *Ibid.*, p. 510.

⁶¹ *Ibid.*, p. 511. Reich-Hilweg discusses briefly the women's organizations protesting, but she only mentions the names, such as the *Deutscher Frauenring*, and their support of *Gleichberechtigung*, without much analysis of their movement. See Reich-Hilweg, *Männer und Frauen sind gleichberechtigt*, pp. 21-22.

⁶² *Ibid.*

not a constitutional article, to change the Civil Code. Their colleague, Helene Weber, too, asserted that the *AfG* did not oppose it. In fact, she believed that a separate article mandating the implementation created a loophole on the issue that deserved a second look.⁶³ Weber had founded a school for girls, worked in welfare administration, and had been part of the women's movement in Weimar.⁶⁴ She was therefore more receptive to Selbert than other members of the CDU. Other Council members, such as Max Becker, a jurist in the FDP, however, were less amenable and criticized the feasibility of Selbert's proposal.⁶⁵ Despite Selbert's insistence, at the end of the meeting, the proposal was defeated.

On January 18, 1949, the *Hauptausschuss* reviewed the entire Basic Law for the second time.⁶⁶ Facing opposition from the public at this point, the CDU began to compromise with the SPD.⁶⁷ Walter Strauss (CDU), for example, invoked the image of the "women of the rubble" (*Trümmerfrauen*), noting that women were not only employed in the postwar period and took on tasks almost more difficult than men's, but that they also ran households and cared for their children.⁶⁸ He also asserted that the CDU had viewed gender equality as a legal, not political, issue.⁶⁹ Helene Weber (CDU) echoed Strauss' sentiment. Although the *AfG* originally found its proposal sufficient, in light of the public's response, they would vote

⁶³ "Siebzehnte Sitzung des Hauptausschusses," p. 512.

⁶⁴ Fritz Sanger, *Handbuch des deutschen Bundestages*; [4. Aufl.]. (Stuttgart: E. Klett, 1957), p. 356.

⁶⁵ "Siebzehnte Sitzung des Hauptausschusses," pp. 512-513. See Fritz Sanger, *Handbuch des deutschen Bundestages*; [4. Aufl.]. (Stuttgart, E. Klett [1957]: E. Klett, 1957), p. 228.

⁶⁶ There was a tangential debate over whether or not to shorten the deadline to 1951, which Elisabeth Selbert proposed. She was unsuccessful in this attempt and the *Hauptausschuss* resumed its debates on *Gleichberechtigung*.

⁶⁷ Other authors have alluded to the public outcry as well. See Reich-Hilweg's brief discussion of the women's organizations and trade unions protesting, pp. 21-22.

⁶⁸ "42nd Sitzung des Hauptausschusses 18. Januar 1949," Kurt Georg Wernicke, Hans Booms, and Walter Vogel. *Der Parlamentarische Rat, 1948-1949: Akten U. Protokolle*. (Boppard am Rhein: Boldt, 1975-), p. 1310.

⁶⁹ *Ibid.*, p. 1310.

for a different formulation.⁷⁰ Although she had earlier defended a woman's place in the family, she finally agreed here that gender equality should apply to not only the Civil Code, but to all areas of law.⁷¹

Selbert, in a response to Weber, clarified the misconceptions between the two parties over meanings of *Gleichberechtigung*, pointing out instead the similarities of the two parties' positions. According to Selbert, "Equality is based on equal worth, which acknowledges difference," and on this basis, the SPD did not deny differences between the sexes.⁷² Such recognition only demanded further reform to ensure equal rights in spite of biological difference. She then urged the Council to adopt the SPD's formulation, arguing that the CDU's stance that "Men and women have the same rights and duties" faltered in cases such as those of unemployed mothers, whose work at home would not be classified under equal rights, even though it was of equal value.⁷³ Adopting the broader "Men and women are equal" meant recognizing all contributions of men and women and in the final vote, the members accepted this version.⁷⁴

On May 8, 1949, the Parliamentary Council approved the final version of the Basic Law, which included in Article 3, paragraph 2: "Men and women are equal." The meaning of the equal rights clause differed and changed dramatically throughout the debates. The CDU clung to a formulation that closely resembled the Weimar clause, both in its language and in its meaning. Their wording would only guarantee equal political rights and not consider the

⁷⁰ "42nd Sitzung des Hauptausschusses 18. Januar 1949," p. 1311.

⁷¹ Ibid.

⁷² Ibid., p. 1314.

⁷³ Ibid., p. 1315-16.

⁷⁴ Ibid., p. 1323.

contributions of men and women in all areas equal. The SPD never denied the natural differences between men and women, but sought a formulation that would declare them equal before the law. Although the delegates eventually compromised on the formulation of Article 3, the tensions between the parties and Bundestag legislators only intensified throughout the 1950s as they struggled to finally implement gender equality in all pertinent legislation.

CHAPTER IV

“Gender Equality” and the *Beamtengesetz*, 1949-1953

Shortly afterwards on May 23, 1949, the Western Allies approved the Basic Law, thus preparing the FRG for its first parliamentary elections in August 1949. The recently formed CDU, with 31 percent of the vote, emerged only marginally victorious over the long-established SPD's 29.2 percent.⁷⁵ There is a consensus among historians that the outcome reflects a sense of ambivalence among West Germans towards the new democracy in the FRG. Regardless, political tensions among the “minority of committed democrats” were fueled by the urgent need to build the political, economic, and social foundations of the FRG quickly, especially after October 1949, when the Soviets established the Communist GDR.⁷⁶ Restructuring the labor force on all levels, especially as it related to the restoration of the family, was central to the process of constructing West Germany. The political debate over restructuring the civil service (*Beamtentum*)⁷⁷ represented an attempt to determine equal social rights by defining lines among earning, advancement, and caring for men and women.

⁷⁵ Dennis L. Bark and David Gress, *A History of West Germany*, 2nd ed. (Oxford, UK; Cambridge, USA: Blackwell, 1993), p. 325.

⁷⁶ Konrad H. Jarausch, *After Hitler: Recivilizing Germans, 1945-1995* (Oxford; New York: Oxford University Press, 2006), p. 136.

⁷⁷ Although “*Beamtentum*” translates directly as “civil service,” the term does not carry the same meaning in German as it does in English. In addition to governmental jobs, *Beamtentum* included teachers, public law, and nationalized institutions like the Postal Service and railway system. Some German scholars, such as Curt Garner, have translated it as “public service,” whereas American scholars have translated it as “civil service.” See 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 (University of Michigan Press, 1997), pp. 140-141.

The Basic Law already stipulated the reform of areas of the public sector such as the *Beamtentum*, the German bureaucracy, demonstrating its importance to West Germany. Article 131 stated that federal legislation had to determine the legal status of those who had left the service for reasons unrelated to civil service regulations.⁷⁸ The provisions of Article 3 together with Article 131 thus forced legislators to integrate men and women equally in the labor force. The *Beamtentum*, however, posed a unique challenge compared to other sectors of the labor market. The German system had a hierarchy of *Arbeiter* (manual laborers) at the lowest level, *Angestellte* (salaried employees) in the mid-level, and *Beamte* (civil servants) at the highest level. *Beamte* differed from *Angestellte* because their positions demanded higher certifications and could only be obtained by appointment. Once instated, they could not be dismissed.⁷⁹ The competition between the male and female *Beamte* was thus stronger because they performed the same tasks, whereas those of the *Angestellten* and *Arbeiter* tended to be more gender-segregated. Still, men severely outnumbered women. A 1950 survey counted 444,484 male versus 10,609 female *Beamte*.⁸⁰ Debates over civil service reform, particularly the rights of married female civil servants (*Beamtinnen*), therefore demonstrated a struggle to preserve a “male-breadwinner” model in an area of the public

⁷⁸ See 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. The article read: “The legal status of those persons, including the refugees and displaced, who were part of the public service on May 8, 1945, who left the public service for reasons other than civil service regulations or collective bargaining and have not yet been reinstated are to be regulated by federal law. The same applies to those who were entitled to pensions and other related services and no longer receive them because of civil service regulations or collective bargaining. Until a federal law is implemented no regulation can be enacted.” See “Grundgesetz.” <http://www.bundestag.de/dokumente/rechtsgrundlagen/grundgesetz/index.html>

⁷⁹ Garner, “Public Service Personnel,” pp. 140-141.

⁸⁰ *Ibid.*, p. 191.

sector where gender played little role in the actual labor performed.⁸¹

Much of the debate surrounding the *Beamtengesetz* dated back to the Weimar Republic. In 1932, the *Reichstag* passed the “Reich Law on the Legal Status of Female Civil Servants,” which allowed the dismissal of married female civil servants in the federal government. In 1933, the Nazi regime reinterpreted this measure by dismissing all women in all levels of civil service, and passed another law in 1937 to truly enforce the action. The structures of the *Beamtentum* remained unchanged. In 1949, the federal government chose to resurrect the 1937 law, with nearly all of its original provisions intact, in order to reinstate the *Beamtentum* quickly.⁸² The law had two main parts aimed at women: §28, which only allowed the appointment of female civil servants later than their male counterparts (age 35 versus 27) and §63, that married women had to be dismissed from their appointments if their husbands held secure employment.⁸³ Although the Bundestag Committee on Civil Service originally voted to remove the latter provision, interventions by federal ministers led to a compromise: that married women *could* be dismissed, if their employers saw it necessary, but it was not mandatory.⁸⁴

The SPD sought to protect the legal equality of men and women both in the

⁸¹ See Hanna Schissler, “Social Democratic Gender Policies, the Working-Class Milieu, and the Culture of Domesticity in West Germany in the 1950s and 1960s,” in *Between Reform and Revolution: German Socialism and Communism from 1840 to 1990*, eds. David E. Barclay and Eric D. Weitz (New York: Berghahn, 1998). She discusses the “male-breadwinner/female housewife model” in labor policies.

⁸² Proposed legislation can come from three sources: within the Bundestag, from the federal government, or from the Bundesrat (following approval from the federal government). The bill is then discussed within the Bundestag, as well as the appropriate subcommittee. Typically, bills go through three revision periods, where they transfer back and forth from the Bundestag and subcommittees, before they become law. See http://www.bundestag.de/htdocs_e/bundestag/function/legislation/grafik_gr.jpg

⁸³ Wengst, *Beamtentum zwischen Reform und Tradition*, p. 123.

⁸⁴ Garner, “Public Service Personnel in West Germany in the 1950s,” pp. 176-177. The civil service had a long and complicated history pre-1945. The 1937 German Civil Service Law codified this interpretation in §63, although they relaxed the measures during World War II in order to replace the men fighting on the front.

workplace and at home. Although they had taken a similar position in Weimar, after 1945 they were more adamant that women should not only be able to have jobs, but have longer careers. They therefore proposed to uphold Article 3 by removing provisions that prohibited the advancement of *Beamtinnen* to higher positions. On December 1st, 1949, for example, when the bill came before the Bundestag, the SPD opposed it. Representatives such as Nadig (SPD) found problems with the law's provisions and its future consequences. As she noted, appointing women as *Beamtinnen* only at the age of 35 went against Article 3. The implication of this measure was that by the age of 35, both married and unmarried women would be beyond child-bearing years and could thus hold a career uninterrupted by maternal duties. Moreover, it was necessary to provide "equal opportunities for advancement" for employed women, especially since the SPD's other goals like equal wages were unlikely to be enacted.⁸⁵

The CDU's expectation of gender equality in the *Beamtentum* was more ambiguous. They recognized women's contributions to the labor force, but only in certain capacities. During the Bundestag meeting on December 2nd, 1949, for instance, Helene Weber (CDU) agreed with Nadig (SPD) that fulfilling Article 3 was an important task of the Bundestag, especially because women had professional- and labor-related responsibilities beyond their families and marriages.⁸⁶ Yet she stressed the natural differences of men and women, explaining to the plenary that "equality is not forced conformity or equalization" but rather "considers the differences of men and women."⁸⁷ Whereas Nadig (SPD) had emphasized equal advancement opportunities, Weber focused on how "the polarity of men and women"

⁸⁵ VDBT, [1.] Deutscher Bundestag, 19. Sitzung, 1 Dezember 1949, pp. 566-567.

⁸⁶ VDBT, [1.] Deutscher Bundestag, 20. und 21. Sitzung, 2 Dezember 1949, p. 624.

⁸⁷ Ibid., p. 624.

working together in the civil service would only complement and make “men’s work richer and more fruitful.”⁸⁸ She supported the equality of men and women in all areas of civil service, including the upper echelons of government (namely the Federal Ministry of Justice, or *Bundesministerium für Justiz*) because she believed that the differences between men and women would benefit the administration.⁸⁹ At the end of the debate, the Bundestag elected to further discuss the issue within its committees.

Outside of the Bundestag, at the party level, SPD members agreed that advancement for *Beamtinnen* was a necessary step for ensuring “the social and economic equality of women.”⁹⁰ For this reason, the age limit for *Beamtinnen* was one of the major issues discussed within the SPD women’s organization (*Ausschuss für Frauenfragen*). Lisa Albrecht, a former physical education teacher who had been active in the SPD since 1928, was part of the Bundestag Committee on Civil Service. On February 5, 1950, she reported to the *Ausschuss für Frauenfragen* that the Bundestag committee had been unresponsive to the SPD’s proposals to change §28. They had justified the retention of the measure because “*Beamtinnen* are more often absent from work than men.”⁹¹ But as she pointed out, §28 only shortened the amount of time women could work, and in a time when so many other changes were happening for women, it was unfair to restrict their rights to equal employment.⁹²

The dismissal of married women, as regulated by §63, was the second issue discussed

⁸⁸ VDBT, [1.] Deutscher Bundestag, 20. und 21. Sitzung, 2 Dezember 1949, p. 624.

⁸⁹ Ibid.

⁹⁰ “Für die Rechte der Frauen,” *Gleichheit* 13 (1950), p. 2.

⁹¹ “Protokoll der Sitzung des Ausschusses für Frauenfragen am 5.2.50 in Bonn,” February 5, 1950, 0133 Rundschreiben, SPD-Partei Vorstand-Frauenreferat, *Archiv der sozialen Demokratie der Friedrich-Ebert-Stiftung*, p. 4.

⁹² “Gleichberechtigung für die Beamtin,” *Gleichheit* 1950, p. 67.

in by female SPD representatives. As Nadig had alluded in the Bundestag meeting, equal wages for men and women were a frequent topic of debate in the party and the women's committee. But as one SPD member in a 1950 article in *Gleichheit* argued, equal wages were not enough; rather, equality could be accomplished by "really freeing the path to the leading positions and careers."⁹³ Lisa Kerspeter (SPD) echoed the sentiment that women deserved the same opportunities as men in civil and governmental jobs. She pointed out as well that women deserved these opportunities in all areas, not only those in which female participation was densest. As a former textile worker and chairwomen of the trade union's women's committee, a welfare worker for German youth in Weimar, and then a housewife, Kerspeter was uniquely qualified to comment on the spheres in which women deserved equality.⁹⁴ Beyond welfare work (where female participation was highest), she claimed, it was important to implement Article 3 in "all other ministries in which women want to contribute decisively and responsibly."⁹⁵

But even SPD members felt an equal desire to protect women's employment rights as well as their feminine duties as mothers. Elsbeth Weichmann, a prominent SPD member, maintained that women carried a "double burden" of career and family, particularly raising young children. They therefore deserved equal rights that would accommodate their extra duties, but not force a "mechanical equality" on men and women.⁹⁶ A workers' party, she argued, "is keen to expand for women a place in family law and secure the right to care through marriage and at the same time prepare for greater equality in public and economic

⁹³ "Für die Rechte der Frauen," p. 3.

⁹⁴ See Notz, *Frauen in der Mannschaft*, pp. 304-306.

⁹⁵ "Für die Rechte der Frauen," p. 3.

⁹⁶ "Um die Gleichberechtigung," p. 144.

life.”⁹⁷ The SPD therefore wanted to protect and expand the equal rights of men and women in both employment and family life.

The CDU, in contrast, wanted to protect the position of the male breadwinner and therefore restrict the advancement of *Beamtinnen*. On February 7, 1950, the CDU/CSU-Fraktion met to prepare for the upcoming Bundestag meeting, where they would discuss civil service reform. Josef Kleindinst, a Catholic CSU member and former municipal official for Augsburg, explained the party’s stance that “a woman’s tasks lie in the family.”⁹⁸ The CDU feared that changing the policies of dismissal based on marital status could endanger the positions of male civil servants, and “destroy the natural order of the family.”⁹⁹ Their rhetoric thus became framed more in terms of the family and less in terms of the rights of working women.

Bundestag debates throughout February and March 1950 demonstrated little change in opinion from the parties to the Parliament. Kleindinst (CSU), representing the Committee on Civil Service, still believed that resurrecting the 1937 law (albeit without certain Nazi provisions) would speed up the process of reinstating the civil service. He and the committee wanted especially to retain the dismissal of married women from the civil service at the discretion of their employers. Without explicitly framing their argument in such terms, they found this provision necessary to protecting men’s roles as the “male breadwinners.” They justified dismissing married women from the civil service and salaried appointments because they had a source of economic security via their husbands—and thus blocked the

⁹⁷ “Um die Gleichberechtigung,” p. 144.

⁹⁸ “7. Februar 1950: Fraktionsvorstandssitzung,” in *Die CDU/CSU-Fraktion im Deutschen Bundestag: Sitzungsprotokolle*, ed. Helge Heidemeyer (Düsseldorf: Droste, 1998), p. 203. “Die Volksvertretung 1946-1972,” *Kommission für Geschichte des Parlamentarismus und der politischen Parteien, e.V.* <http://www.kgparl.de/online-volksvertretung/pdf/mdb-k.pdf>

⁹⁹ *Ibid.*, p. 204.

employment of other women, such as widows, who needed jobs. The CDU therefore attempted to preserve a male breadwinner, except in cases where that was not an option. Franz-Josef Wuermeling, for example, claimed that it was their responsibility to protect “the highest female profession...the occupation of motherhood” in order to keep the family intact.¹⁰⁰ In order to do so, the CDU proposed to continue the practice of dismissing married women, but instate a family wage to ensure its economic security.¹⁰¹ The SPD protested that it was unconstitutional to retain §63. The Bundestag tabled it, however, and while the measure was not approved in 1950, it remained a viable option.¹⁰²

Beyond differing conceptions of gender equality, larger political, social, and economic issues shaped the opinions held by the SPD and CDU. For example, in 1950, West Germany still felt the aftermath of World War II in a number of ways, but one of the biggest political and economic issues that party representatives emphasized in relation to the *Beamtentum* was repatriating expellees and refugees from Eastern Europe. Moreover, millions of former soldiers returned to Germany between the years of 1945-1955, and legislators had to determine what to do with them. Male unemployment was a major concern. Pushing women out of the labor force was one way to combat this problem, but it proved difficult. The SPD argued numerous times throughout the debate that the 1937 law’s provisions on marital status interfered with women’s rights.¹⁰³ In their eyes, women’s service to Germany in two world wars more than justified their equal worth in West German

¹⁰⁰ VDBT, [1.] Deutscher Bundestag, 15.-16. Februar 1950, p. 1290.

¹⁰¹ VDBT, [1.] Deutscher Bundestag, 15. Februar 1950, p. 1297.

¹⁰² VDBT, [1.] Deutscher Bundestag, 15.-16. Februar 1950, p. 1277.

¹⁰³ Ibid., p. 1484.

society.¹⁰⁴ Those women whose husbands did not return from war constituted another problem. As Kleindinst argued, incorporating Article 3 fully into civil service law would legalize “double earners” (*Doppelverdiener*) and thus prohibit young war widows from being able to work in the civil service. The problem of “double earners” dated back to Weimar and women had been forbidden, at that time, from manual labor as part of demobilization attempts to free up positions for men.¹⁰⁵ Here, Bundestag members defined the idea of the “double earner” in different terms that applied to the *Beamtentum* as well as manual labor.

For some members of the Bundestag, the major social issue was how to treat marital status. Lisa Albrecht (SPD) asserted, for example, that it was unfair to make women choose between marriage and their careers. For others, the boundaries were more complex. According to Helene Wessel (Center), it was a question of placing married women in opposition to unmarried women. She thought that unmarried women could be appointed earlier than age 35. Even though she considered that married women had a double burden of holding a career as well as their familial and marital responsibilities, she also reflected that they had the security of marriage and thus an advantage over unmarried women.¹⁰⁶ Despite the efforts from the SPD and its supporters in smaller parties, however, the proposal for women’s equal employment in the *Beamtentum* was tabled again.

On May 13, 1953, the Bundestag discussed civil service reform for the final time. The majority of the CDU still supported the dismissal of married women, provided that they extended the male wage to provide for the entire family. As they saw it, a career demanded a

¹⁰⁴ VDBT, [1.] Deutscher Bundestag, 44. Sitzung, 2. März 1950, p. 1482-1483.

¹⁰⁵ See Hagemann, pp. 441, 446-465.

¹⁰⁶ VDBT, “44. Sitzung,” p. 1490.

woman's full attention, but so did maternity and spousal duties.¹⁰⁷ But this did not only serve individual families. As Helene Weber (CDU) argued, "Our Germany can only be rebuilt if families are rebuilt."¹⁰⁸ For the CDU, the family always preceded the equal rights of *Beamtinnen*. Although they wanted women to find employment as teachers, social workers, or other professions, they believed that a career in the civil service would be detrimental to raising children.¹⁰⁹ As long as married women had the economic security of their husbands, then the CDU wanted them to relinquish their careers in favor of family. Albrecht (SPD), however, responded that such sentiments only served to punish married women, when in fact the Basic Law called for their equality.¹¹⁰ Moreover, she challenged the CDU's assertion that employers could determine the economic security of families. In particular, she drew upon an example of a married woman whose husband died six weeks following her dismissal from the postal service. Other SPD members offered examples of men who had been mentally and physically hurt in World War II and depended on their wives for support.¹¹¹ The CDU's proposal assumed the stability of a male breadwinner and his income that often did not exist.

Divisions within the CDU strengthened the SPD's cause. Else Brökelschen, a teacher who had been in the DVP during Weimar, supported the SPD because as a woman with "a double career as housewife and a secondary school teacher," she understood the difficulties of being compared to unmarried women in her career.¹¹² Brökelschen held an appointed

¹⁰⁷ VDBT [1.], Deutscher Bundestag, 266. Sitzung, 13. Mai 1953, p. 13051.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid., p. 13052.

¹¹¹ Ibid., p. 13053.

¹¹² Ibid., p. 13055.

teaching position in a *Gymnasium*. If dismissed, she observed, then she would be forced to take up a position (which were not appointed) teaching young children.¹¹³ She found this unfair. According to Helene Weber (CDU), however, the CDU's proposal did not refer to *Beamtinnen* such as Brökelschen, but rather those in "shortage occupations [*Mangelberuf*]" such as the postal service.¹¹⁴ The SPD responded that the law must apply equally, not to individual occupations. In the end, the Bundestag voted in the majority to remove §63. It was implemented on September 1, 1953.

From 1949-1953, the representatives of the CDU and the SPD disputed how to define gender equality for married *Beamtinnen*, and by dismissing §63, they ultimately assigned new gendered meanings to the civil service that had not existed before 1945. When they dismissed §28, they opened equal opportunities for both unmarried and married women. Certain discussions from Weimar, such as that of female laborers as "double earners," became part of the debates over the place of *Beamtinnen*. The postwar context, however, prompted a redefinition of equal citizenship rights. For example, the debate over the status of *Beamte* demonstrated concern not only for the economic equality of men and women, but for the opportunity for married women to hold and advance in their careers at the same rate as men. They could still be mothers, devoted to the family, but could also participate on the same footing in the labor force. The CDU, however, wanted to allow women to focus on being mothers, and therefore advocated opening the *Beamtentum* to other women without the same economic security of marriage, such as widows. The debate demonstrated how the representatives of the SPD and CDU in the parties and Bundestag attempted to redefine gender roles in the *Beamtentum*, and in doing so, defined equal social rights for both sexes.

¹¹³ VDBT, "266. Sitzung," p. 13056.

¹¹⁴ *Ibid.*, p. 13057.

CHAPTER V

Toward the *Gleichberechtigungsgesetz*, 1952-1958

After finally reconciling Article 3 and civil service law, the next step for SPD and CDU party functionaries and Bundestag members was to revise the Civil Code that regulated all areas of private law, especially family policy, and had remained unchanged since 1900. As legal scholar Christine Franzius suggests, even the Western Allies had refused to change it, despite overturning all related Nazi legislation.¹¹⁵ Amending the law that had regulated Germans' civil affairs for fifty years therefore presented a challenge for the two major parties. The CDU wanted to restore the family and authority of men in an effort to stabilize West German society. The SPD recognized that the Civil Code was outdated; since 1900, gender roles and the rights of men and women had changed dramatically. Moreover, they were in a tense political gridlock. Bundestag elections had to take place by the end of 1953. The CDU was rapidly gaining support and it was in their favor to stall until the start of the new legislation period, when they stood a better chance of gaining the majority over the SPD. The debate between the SPD and CDU over the Civil Code demonstrated an attempt to define the parameters of equal civil rights for men and women.

¹¹⁵ Franzius, *Bonner Grundgesetz und Familienrecht*, p. 21-23.

In 1951, Maria Hagemeyer, a Catholic legal expert in the Federal Ministry of Justice (*Bundesministerium für Justiz*) published a memorandum on the necessary changes to the Civil Code, primarily the provisions on family law.¹¹⁶ For example, she called for the removal of §1354, or the *Letztentscheidung*, which granted husbands the “final say” in all major decisions concerning marriage and the family. Hagemeyer proposed that all couples reach decisions collaboratively. Similarly, another section (§1628) granted men the right to decide all matters involving their children. Additionally, §1358 granted men control over whether or not their wives could be employed. She called for an absolute dismissal of this provision.¹¹⁷ Although both parties had been aware that the Civil Code would have to be changed, it was Hagemeyer’s memorandum that sparked the major debate within the parties and the Bundestag on family law.

In the months following Hagemeyer’s memorandum, representatives of both the SPD and CDU began to define more explicitly their stances on the definition and implementation of gender equality in the Civil Code. The postwar discourses of the SPD reflected the maternalist position prevalent in Weimar. SPD representatives, particularly those active on the party level, wanted to protect women’s special roles as mothers while recognizing their equal contributions both at home and in the workplace. For example, district judge Nora Platiel (SPD) asserted in the January 1952 issue of *Gleichheit* that the SPD wanted “a reform of marital and family law that concedes to women a natural recognition of their huge tasks as care-takers, companions, co-breadwinners and often the only breadwinner, a fact that has

¹¹⁶ The Federal Ministry for Justice oversees all matters related to the administration of justice. Its ministers are selected by the Chancellor. See Manfred G. Schmidt, *Political Institutions in the Federal Republic of Germany* (Oxford; New York: Oxford University Press, 2003), p. 28. See also Moeller, p. 253, for a biography of Maria Hagemeyer.

¹¹⁷ See 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: Vittorio Klostermann, 2005), p. 60.

been denied until today.”¹¹⁸ The SPD’s Women’s Office Party Secretary, Herta Gotthelf, took a similar position in her address to the SPD-*Parteitag* in May 1950. She had been active in the SPD during Weimar, and following exile in Great Britain during the Third Reich, returned in 1946 to head the Women’s Office for the SPD.¹¹⁹ She asserted that the changed circumstances of women after World War II forced them to reevaluate what gender equality meant. “In contrast to the old feminist generation...today we have a completely different estimation of women as housewives and mothers. We recognize that here, the ‘otherness’ of their tasks are absolutely equal.”¹²⁰ Thus, having equality in all areas did not only mean in the “public” arenas of politics and the economy, but also in the “private realm.”¹²¹

The CDU was more divided within the party on how to change the Civil Code. Some CDU members wanted to maintain a strict division between the roles of men and women. As Eduard Hemmerle, the editor of the *Kölnische Rundschau*, asserted in the January 1952 issue of *Union in Deutschland*, a natural and Christian order endowed men with “a special authority” within marriage and the family.¹²² He claimed that Hagemeyer’s memo did not uphold Christian values and ignored “the natural inequalities and special functions of men and women.”¹²³ It was therefore “grotesque,” according to him, to call for reforms that would

¹¹⁸ “Zur Ehrechtsreform,” *Gleichheit* 15 (1952), p. 12.

¹¹⁹ “Vor 40 Jahren...13.05.1963: Herta Gotthelf gestorben,” *Archiv der sozialen Demokratie*. Last modified November 25, 2008. http://www.fes.de/archiv/adsd_neu/inhalt/stichwort/gotthelf.htm

¹²⁰ Sozialdemokratische Partei Deutschlands, *Protokoll der Sozialdemokratischen Parteitage [serial]*. (Berlin: J.H.W. Dietz., 1952), p. 188.

¹²¹ *Protokoll der Sozialdemokratischen Parteitage*, 1952, p. 188.

¹²² “Gleichberechtigung der Frau – aber wie?,” *Union in Deutschland*, p. 3.

¹²³ *Ibid.*, p. 3.

give men and women equal weight in their decisions as a married couple.¹²⁴ Hemmerle's rhetoric closely resembled the language employed by much of the CDU in their broader party and Bundestag meetings.

Changing the Civil Code was more contested, however, within the CDU women's organization (*Bundesfrauenausschuss*). In July 1952, the *Bundesfrauenausschuss* held an important meeting in Königswinter to discuss whether they agreed or disagreed with the government's proposals to reform the Civil Code. At this particular meeting, they debated extensively how to apply gender equality through such measures such as §1354. Some committee members disagreed with the provisions, arguing that the state lacked the right to give husbands the "final say." For other members, the problem was enforcing the provision, as husbands could abuse their right. For instance, if a woman wanted to visit her parents once a week, her husband could intervene and only allow her to visit them monthly.¹²⁵ It was Helene Weber, however, who had the last word in this part of their discussion. She in no way wanted to retain §1354, yet she hesitated to dismiss it entirely. Her reasoning derived from the CDU's general stance on the natural differences between the sexes. As she argued,

We demand for Article 3, 'Equal must be equal, inequality must be treated differently'... We do want not a mechanical, but rather a natural equality of the sexes. How one evaluates equality, and where one demands it, yes, where one can demand it, depends on what one understands as equality.¹²⁶

Weber was the only member present at this *Bundesfrauenausschuss* meeting who served in the Bundestag. Their meeting suggests that some CDU members wanted to grant equal civil rights to men and women. Yet only Weber's opinion carried over to the Bundestag.

¹²⁴ "Gleichberechtigung der Frau – aber wie?", p. 3.

¹²⁵ "Bericht über die Tagung in Königswinter," 5.-6. Juli 1952. IV-003-Frauenbewegung/Frauen-Union/EFU. *Archiv für Christlich-Demokratische Politik*, p. 8.

¹²⁶ "Bericht über die Tagung in Königswinter," p. 14.

As the CDU-*Fraktion* prepared itself for the approaching Bundestag discussion of the Civil Code reforms in November, they laid out two significant points. First, all debate within the Bundestag had to focus on the actual meaning of gender equality, not on equality before the law. Second, distinctions between spousal relationships and marriages had to be clear. For example, in the CDU's opinion, consummating a marriage changed the nature of the spousal relationship and in many ways meant the subjugation of individual rights in favor of contributing to the marriage and family.¹²⁷ The CDU-*Fraktion* meeting reflected little of the debates from the *Bundesfrauenausschuss*, thus reflecting that their members did not have a significant influence on the party beyond that of individual members like Weber.

Despite high levels of contestation within both parties and their women's organizations, their discourses rarely carried over to the Bundestag. Historian Hanna Schissler argues that, at least in the SPD's case, women's issues were secondary to most of the greater party concerns and many of the active female SPD members felt complacent about their place in the party.¹²⁸ CDU women faced similar attitudes and were further hindered by the late establishment of the *Bundesfrauenausschuss* as a national group in 1951. Moreover, there was a fundamental division between the work of the party and the Bundestag. These may have been factors that explain why, despite the high level of debate within the women's organizations and newsletters, their opinions rarely carried over to the Bundestag.

On November 27, 1952, the *Bundestag* met to review the first draft of the Equal Rights Act, as well as a proposal from the CDU for family law reform

¹²⁷ "24.11.52: Fraktionsvorstandssitzung," in *Die CDU/CSU-Fraktion im Deutschen Bundestag: Sitzungsprotokolle*, ed. Helge Heidemeyer (Düsseldorf: Droste, 1998), p. 633.

¹²⁸ Schissler, "Social Democratic Gender Policies," pp. 514-515.

(*Familienrechtsgesetz*). The author of the bill, Thomas Dehler, an FDP member and the Federal Minister of Justice (*Bundesminister für Justiz*), introduced the task at hand: how to align Articles 3 and 6 regarding marriage, parental authority, household management, and marital property law. Moreover, he reminded the representatives that the 1953 deadline loomed ahead of them.¹²⁹

The CDU opened the debate and subsequently controlled its proceedings. The CDU and SPD contended over whether gender equality meant “egalitarianism [leveling]” or total equality without recognition of difference.¹³⁰ Additionally, the degree to which gender equality attempted to accomplish “egalitarianism” depended on its relationship to Article 6. According to the CDU, gender equality should in no way be understood as “egalitarianism.” For example, Karl Weber, a jurist from Koblenz, argued that this meaning resulted from an “isolated” interpretation of Article 3, when in fact it could only be understood in conjunction with Article 6’s protection of the family. His colleague Luise Rehling added that they needed to guarantee a “legal foundation in which men and women can develop, to the best of their abilities, qualities based on their biological and functional differences” that would serve not only the “small community” (i.e. the family) but society as a whole.¹³¹ For the SPD, however, gender equality was not merely a matter of sexual difference. While Liesel Meyer-Laule (SPD) hesitated to call it “egalitarianism” because she did recognize inherent biological differences, she emphasized the need to adapt the law to changing social and political circumstances.¹³² Her colleague Nadig (SPD) agreed, stressing that the drastically

¹²⁹ VDBT [1.] Deutscher Bundestag, 239. Sitzung, 27. November 1952, p. 11053-11055.

¹³⁰ Ibid., p. 11056. The original word used was “Gleichmacherei.”

¹³¹ VDBT [1.] Deutscher Bundestag, p. 11059; Fritz Sängler, *Handbuch des deutschen Bundestages*, p. 327.

¹³² Meyer-Laule had worked in the men’s clothing industry and had been a secretary in a textile trade union. See

altered social conditions for women necessitated changes to the Civil Code. The two parties agreed that gender equality did not erase natural sexual difference, but they disagreed on the degree to which men and women could have the same civil rights.

The historical precedent of Weimar played an important role in their debate. Representatives such as Helene Weber (CDU), who really pushed for different legal treatment of men and women, noted that they had been placed in a similar situation in Weimar. She even admitted that the circumstances had changed since fifty years before. Women were in a “struggle for survival,” but so was marriage and family.¹³³ She argued that, like in Weimar, “if one does not understand the word ‘equality’ correctly and does not give it the right meaning, then marriage and family can be endangered.”¹³⁴ Weber stressed that in Weimar, family and gender equality were inherently linked, especially for Christians. It was along this strain of thought that the CDU wanted to remake postwar West German society.

Contemporary political, social, and economic issues informed their debate over gender equality as well. For example, a major political issue between the two parties was how to treat the rise of the GDR and its gender policies. In 1950, the GDR passed “The Law for the Protection of Motherhood and Children, and the Equality of Women,” which was meant to facilitate the employment of women, particularly of mothers.¹³⁵ Rehling (CDU) condemned this law because it ignored “the stabilization of the family as one of the most

Sänger, *Handbuch des deutschen Bundestages*, p. 282.

¹³³ VDBT, “239. Sitzung,” p. 11071.

¹³⁴ VDBT, “239. Sitzung,” p. 11071.

¹³⁵ See Donna Harsch, *Revenge of the Domestic: Women, the Family, and Communism in the German Democratic Republic* (Princeton, N.J.: Princeton University Press, 2007) for a longer discussion on women and gender in East Germany.

important tasks of the state.”¹³⁶ In her opinion, mothers should serve the state by staying home because their employment (thus, absence from the home) could potentially inflict psychological damage on her children. Nadig (SPD), however, disagreed. To her, retaining the Civil Code’s provisions not only posed potential consequences for implementing gender equality within the FRG, but also had international political implications that could potentially “deepen the rift between East and West.”¹³⁷ Although she did not dwell on the issue, Nadig’s comment demonstrates a significant political issue: in 1952, reunification with the East still remained a viable, if increasingly unlikely, option. Most scholarship agrees, however, that the push towards integrating with the West was too strong for the FRG to take reunification seriously at this point.¹³⁸ Thus, each state’s pursuing radically different gender policies complicated the chances of a smooth reunification.

The representatives of the Bundestag also related economic issues to gender equality. For example, Meyer-Laule (SPD) explained that since 1900, wartime and postwar experiences had fundamentally changed the familial and economic roles of women. More women worked than when the Civil Code was written, and their numbers were increasing. The percentage of married women in the labor force alone rose from 36 to 50 percent from 1950-1962.¹³⁹ Although she noted that “this double burden is difficult on marriage and family,” she also recognized that “the existence of families depends on this work” completed

¹³⁶ VDBT [1.] Deutscher Bundestag, 239. Sitzung, 27. November 1952, p. 11058.

¹³⁷ Ibid., p. 11061.

¹³⁸ Jarausch observes that in spite of the efforts by the SPD’s Chairman Kurt Schumacher to reunify with the East, most of the government and West German public did not support this idea, particularly because of implications for the balance of power in the Cold War. See *After Hitler*, p. 116. Axel Schildt also suggests that “Westintegration” was a key part of postwar political culture, particularly for the ruling coalition of the CDU/CSU/FDP/DP. See Schildt, “Modernisierung im Wiederaufbau,” in *Die Kultur der fünfziger Jahre*, ed. Werner Faulstich (Munich: Wilhelm Verlag, 2002), pp. 17-18.

¹³⁹ Heineman, *What Difference Does a Husband Make?*, p. 218.

by many women.¹⁴⁰ Heineman suggests, however, that the economic boom of the 1950s produced ample employment opportunities and while most families benefited from two incomes and greater access to consumer goods, they were not dependent on women's labor.¹⁴¹ Indeed, the wages earned by women—for example, *Arbeiter* earned only 59 percent of their male counterparts' wages—demonstrated that their work was valued less.¹⁴² The SPD had struggled, rather unsuccessfully, to guarantee equal wages for men and women. What Meyer-Laule stressed, then, was not so much the equality of work outside the home, but within it. She acknowledged that many women, if they had enough economic stability, would gladly give up their jobs in order to fulfill maternal duties. But in her opinion, the state had no right to bar women from performing both tasks. Furthermore, the current family law disadvantaged married women by subjugating them to their husbands, and therefore made their rights unequal to those of unmarried women.¹⁴³ For the SPD, the long trend of rising employment for women had proven their ability to juggle both work and family. Granting civil rights for married women that allowed equality to exist within their marriages and families would further support the political and social rights they already exercised.

The different political and economic circumstances also meant changed social conditions. As Menzel (SPD) pointed out, it would be “disastrous” if the Bundestag did not consider how gender equality developed and played out in daily life. Citing statistics from a poll conducted in northern Germany, he claimed that only a small percentage (11-17%)

¹⁴⁰ VDBT [1.] Deutscher Bundestag, 239. Sitzung, 27. November 1952, p. 11060.

¹⁴¹ Heineman, *What Difference Does a Husband Make?*, p. 218.

¹⁴² *Ibid.*, p. 160.

¹⁴³ VDBT [1.] Deutscher Bundestag, 239. Sitzung, 27. November 1952, p. 11060.

supported Civil Code provisions such as §1354, whereas 55-73% did not.¹⁴⁴ He attempted to demonstrate to the Bundestag that the public did not support retaining the outdated Civil Code and argued that denying equal rights would only lead to increased divorces rates.¹⁴⁵ The divorce rate had jumped 80 percent from 1946-1948, and even when the numbers dwindled after 1950, still created a genuine uneasiness for West German legislators who, by and large, wanted to restore the stability of the family as a social unit.¹⁴⁶ As Menzel (SPD) pointed out, such trends only undermined the principles laid out in Article 6. Comparisons with the East, the rise of women's employment, and diverting social trends such as high divorce rates were some of the major political, economic, and social issues influencing the SPD's and CDU's different interpretations of gender equality. Unable to reach a conclusion, they elected to further discuss the issue within the Bundestag committees.

The committees came to no firm conclusions, and the issue did not come before the Bundestag again, despite the approaching March 31st deadline designated by Article 117. On March 26, 1953, the Bundestag met again, this time to review a draft to extend Article 117. Already within the party and Bundestag debates, members of the CDU and SPD disagreed that the deadline should be extended. According to the CDU, the implementation of Article 3 already in labor legislation and civil service law left only family policy to be resolved, so an extension of the deadline would give legislators more time to do so.¹⁴⁷ As Nadig (SPD) argued in response, however, extending the deadline would result in curtailing Article 3 in

¹⁴⁴ VDBT [1.] Deutscher Bundestag, 239. Sitzung, 27. November 1952, p. 11070.

¹⁴⁵ Ibid.

¹⁴⁶ Heineman, *What Difference Does a Husband Make?*, pp. 122-123.

¹⁴⁷ VDBT, "239. Sitzung," p. 11061.

favor of pushing family law reform through the *Bundestag*.¹⁴⁸ Without a majority to pass the proposal, Article 117 remained intact. When March 31, 1953 arrived, the changes to the Civil Code had not taken place.

On April 1, 1953, the jurisdiction of Article 3 was turned over to the courts. Nearly two months later at the national SPD women's conference (*Frauenkonferenz*) in May 1953, representatives expressed a momentary sense of relief that the "prophesied chaos" in the courts had not taken place.¹⁴⁹ According to Günther Rabus (SPD), some judges were even "equality friendly" in their decisions.¹⁵⁰ So what meaning did gender equality take on for the SPD in this context, considering that the matter was temporarily out of the hands of the Bundestag?

While Article 3 rested in the hands of the courts, representatives of the SPD continued to stress their commitment to gender equality. Both Martha Schanzenbach and Herta Gotthelf (SPD) asserted that while equal rights in employment should be upheld, women should not be forced into employment by economic necessity. Schanzenbach believed that if an alternative form of economic support through marriage existed, then a woman should be free to choose whether she worked or not. For those women without a stable form of support, she suggested that welfare such as child support should be provided by the state.¹⁵¹ Schanzenbach's opinion was informed by her prior work during Weimar in

¹⁴⁸ VDBT [1.] Deutscher Bundestag, 239. Sitzung, 27. November 1952, p. 11062.

¹⁴⁹ "Diskussionsrede von Dr. Gotthardt," May 29-31, 1953. 28 Rundschreiben 1953. *Archiv der sozialen Demokratie der Friedrich-Ebert-Stiftung*, p. 4.

¹⁵⁰ "Diskussionsrede von Dr. Günther Rabus auf der SPD-Frauenkonferenz in Köln vom 29.-31.5.1953," May 29-31, 1953. 28 Rundschreiben 1953. *Archiv der sozialen Demokratie der Friedrich-Ebert-Stiftung*, p. 2.

¹⁵¹ Sängler, *Handbuch des deutschen Bundestages*, p. 291; "Auszug aus dem Referat von Martha Schanzenbach (SPD-Frauenkonferenz in Köln 29.-31.5.53) über die sozialpolitische Forderung unseres Aktionsprogramm," May 29-31, 1953. 28 Rundschreiben 1953. *Archiv der sozialen Demokratie der Friedrich-Ebert-Stiftung*, p. 2.

welfare administration, primarily for youth, although she was dismissed in 1933. Gotthelf, too, reflected on the role of women as mothers. Echoing similar language as Schanzenbach, she stated,

We do not underestimate that for the majority of women, motherhood is the most beautiful task and fulfillment of their lives. We are of the opinion that no mother should be forced out of economic necessity to go to work...it does not oppose the recognition of women as mothers and guardians of the family if we are for the full equality of women in all areas of social, political, and economic life.¹⁵²

She in no way denied that some women defined their own gender roles by choosing motherhood over employment. For Gotthelf, Article 3 was supposed to defend women's rights to become mothers, laborers, or both, if they desired. Both representatives advocated a family wage so that women could stay home with their children; if a male wage was unavailable, then the welfare state should provide support to mothers. The "economic necessity" of women's labor was discussed by the CDU *Bundesfrauenausschuss* as well. From July 18-19, 1953, the *Bundesfrauenausschuss* met in Königswinter, where they discussed "the underlying conditions for a healthy social order."¹⁵³ According to its members, a woman's employment outside the home was an "inevitable consequence of economic necessity," but motherhood was really her natural duty.¹⁵⁴ There was some agreement among the active female members of both parties that mothers should not be forced to work, so to some extent, they saw women's social rights in the same light.

The need for additional legislation, however, became increasingly evident as many state-level courts did not uphold Article 3. For example, a court in Bad Kreuznach,

¹⁵² Sozialdemokratische Partei Deutschlands, *Handbuch sozialdemokratischer Politik* (Bonn, 1953), pp. 80-81.

¹⁵³ "Die Grundlage für eine gesunde Gesellschaftsordnung – Referat gehalten in Königswinter am 18./19. Juli 1953," July 18-19, 1953. IV-003-002/1. Bundesfrauenausschuss Tagungsmaterial 1953-1955. *Archiv für Christlich-Demokratische Politik*.

¹⁵⁴ *Ibid.*

Rhineland-Palatinate ruled that a Catholic mother could not baptize her child in her faith without her Protestant husband's permission because Article 6 protected the order of marriage and family.¹⁵⁵ Additionally, the recent elections on September 6, 1953—this time with greater losses for the SPD, at 28.8 percent of the vote versus the CDU's 45.2 percent—placed the CDU at an advantage for reinterpreting gender equality as a protection of the natural differences between the sexes, especially in conjunction with Article 6.¹⁵⁶ By December 1953, the Federal Constitutional Court (*Bundesverfassungsgericht*) faced allegations from lower courts that the Parliamentary Council had never held the authority to impose a deadline for changing the Civil Code.¹⁵⁷ The Federal Constitutional Court determined that the lower courts must uphold the principles of Article 3 “while lawgivers continued to strive for consensus.”¹⁵⁸

On February 12, 1954, Fritz Neumayer, the new Federal Minister of Justice from the FDP, reintroduced bills of the Equal Rights Act from the federal government, FDP, and SPD to the *Bundestag*. Here, Neumayer reflected on the basic positions already established by each party. For the federal government, recognition of “functional differences” between the sexes and protecting marriage and the family were crucial.¹⁵⁹ More specifically, Neumayer reiterated the key sections of the draft, namely a husband's/father's right to decide (§§1354 and 1628), leadership of the household (§1356), and marital property law.¹⁶⁰

¹⁵⁵ Moeller, *Protecting Motherhood*, pp. 190, 282n26.

¹⁵⁶ Bark and Gress, *A History of West Germany*, p. 325.

¹⁵⁷ Moeller, *Protecting Motherhood*, p. 183.

¹⁵⁸ *Ibid.*, p. 184.

¹⁵⁹ VDBT [2.] Deutscher Bundestag, 15. Sitzung, 12. Februar, 1954, p. 474.

¹⁶⁰ BT-Drucks. 3409.

The debate in February 1954 in many ways resembled that of November 1952. For instance, the representatives of the Bundestag still contended over whether or not gender equality meant “egalitarianism” and consequently, how to define the relationship of Article 3 to Article 6. Karl Weber (CDU) reiterated his statement from the November 1952 meeting that the two articles must go together. Wuermeling (CDU) claimed that gender equality in no way meant “egalitarianism”; rather, it meant “equal is equal and unequal is unequal.”¹⁶¹ His words bore a striking resemblance to those uttered by Helene Weber (CDU) during the 1952 *Bundesfrauenausschuss* meeting. As Weber herself added, Article 3 did not mean a “schematic equalization,” but rather an acceptance that men and women were “functionally different and have different tasks in marriage and family.”¹⁶² SPD representatives responded that the CDU’s definition subjugated Article 3 to Article 6. Other members of the SPD stated that they did not desire “schematic” or “formal” gender equality.¹⁶³ At the same time, they wanted in no way to impose restraints on the rights of West Germans. Rather, they wanted to have a more open legal framework in which men and women could determine their own gendered balance within their marriages, families, and employment. The two parties both understood that gender equality recognized natural differences, but they did not agree on how to balance the implementation of Article 3 and Article 6.

In many ways, the political, economic, and social issues that the Bundestag representatives related to gender equality were echoes of the debates waged a year and a half earlier. Politically, the juxtaposition with the GDR remained a major issue, as an exchange between Wuermeling (CDU) and Herta Ilk (FDP) shows. According to Wuermeling (CDU),

¹⁶¹ “15. Sitzung, 12. Februar, 1954,” p. 489.

¹⁶² *Ibid.*, p. 512.

¹⁶³ *Ibid.*, p. 494-495.

the GDR demonstrated the best example of the “ultimate consequences of total equality.”¹⁶⁴ Referring back to the 1950 “Law for the Protection of Motherhood and Children, and the Equality of Women,” he argued that the East German version had the “necessary consequence” that it “isolated the essence and dignity of women and the natural order of marriage and family.”¹⁶⁵ Furthermore, he wanted to protect women from such reforms, which included the right to divorce and promoted the full rights of women in the labor force.¹⁶⁶ Although Ilk challenged whether West Germany would follow the same path toward gender equality, Wuermeling asserted that it would depend on the extent to which the FRG preserved the protection of the family.

In opposition to the GDR, the West German solution to contemporary social and economic problems was to construct a male breadwinner/female housewife family model. As mentioned before, women’s participation in the labor force had increased with the West German “economic miracle” of the 1950s. But the improving economy also meant that women did not have to work out of necessity. Even the women’s organizations of both parties had agreed that if economic security was ensured by marriage, then women could stay home to raise their children. In the Bundestag, both parties agreed that women’s work within and outside of the home should be considered equal. The division of labor, however, was more difficult to define and its impact on the family more difficult to predict. According to the CDU, as long as the husband “creates the material means of existence for himself and his family” then his wife’s “work in the household and raising children” was equal.¹⁶⁷ The SPD

¹⁶⁴ “15. Sitzung, 12. Februar, 1954,” p. 493.

¹⁶⁵ *Ibid.*, p. 492.

¹⁶⁶ *Ibid.*, p. 492.

¹⁶⁷ “15. Sitzung,” p. 482.

drew less stringent boundaries, although they certainly preferred if women could remain at home. As I interpret it, this ongoing debate demonstrates the different ways in which the two major parties wanted to apply different citizenship rights. Even when they agreed that gender defined lines between earning and caring (social rights), they did not agree that civil rights applied the same way. At the end of the debate, the issue went back to the Bundestag special committees for further discussion.

The debate continued in the parties as the Bundestag committees reviewed the Equal Rights Act. The SPD continued to stress the importance of equal civil rights. For example, Charlotte Walner-von Deuten asserted strongly in a *Gleichheit* article from 1954, “The decree of husbands or fathers, as the expression of his right, belong as a practice in the past.” Referring to §1354, she claimed that men and women should reach decisions together, and she had some optimism that it could be adjudicated equally as well. She drew upon an example of a man who immigrated to Luxembourg, but his wife refused to join him, asserting her right to contribute to decisions on where the family could live. The court ruled in her favor. Walner-v. Deuten made a similar argument for §1628. This is one case where the SPD demanded equality in the exercise of civil rights, but rhetorically, men and women were still “equal but different.” For example, in March 1957, the *Ausschuss für Frauenfragen* planned its discussion of the theme “Frau und Familie.” They stressed the “importance of special ‘feminine elements’ in social coexistence.” Furthermore, they stated, “Women today are beginning to understand, that external equality in areas of politics, economics, and society are absolutely compatible with all characteristics, that she, as a woman, accounts for life in the community.”¹⁶⁸ This debate reflects similar sentiments to the Weimar “maternalist”

¹⁶⁸ “Protokoll der Sitzung des Ausschusses für Frauenfragen am 9. März 1957,” March 9, 1957. 167
Frauenausschuss 1957. *Archiv der sozialen Demokratie der Friedrich-Ebert-Stiftung*, p. 1.

position, emphasizing the importance of femininity, but also a strong commitment toward achieving equality in the economy and society.

From 1954-1957, the CDU remained more divided on the party level. It is telling that the March 1954 *Union in Deutschland* article was titled, “Gender Equality in Parliamentary Terms: Opinions Split within the Faction,” conveying to its readers the tensions within the party.¹⁶⁹ Although some members, like Schwarzhaupt, leaned more toward the SPD’s version of gender equality, much of the party did not. For example, the discussion in the May 1954 federal party caucus (*Bundesparteitag*) demonstrated the CDU’s continuing preoccupation with defining women as either wives or mothers or as professionals, but not as both.¹⁷⁰ An article in *Union in Deutschland* published a year later conveyed a similar stance from Wuermeling that the state had “the obligation to do everything to facilitate the job of women as housewives and mothers.”¹⁷¹ Furthermore, he claimed it was his duty as Family Minister to ensure “that the work of women in the family must be seen as entirely equal to other work.”¹⁷² According to Wuermeling, “Gender equality is not only for women in general, but rather exists for mothers in particular.”¹⁷³ As a whole, these opinions dominated the larger Bundestag debate, although the preceding party discussion demonstrates contestation among the CDU.

¹⁶⁹ “Gleichberechtigung in parlamentarischer Sicht. Meinungen innerhalb der Fraktionen geteilt,” *Union in Deutschland*, March 1954, pp. 1-4.

¹⁷⁰ 5. *Bundesparteitag*, 28.-30. Mai 1954, Köln, p. 152.

¹⁷¹ “Dr. Wuermeling für Gleichberechtigung der Hausfrauen und Mütter,” *Union in Deutschland*, September 1955, p. 3.

¹⁷² *Ibid.*, p. 3.

¹⁷³ *Ibid.*

On May 2, 1957, the CDU-*Fraktion* met to prepare for the forthcoming Bundestag session. Several CDU members were in fact against limiting civil rights for women by upholding parts of the Civil Code. Karl Weber (CDU) claimed that despite the preservation of §1353, the *Letztentscheidung* proved more difficult to maintain. Some members, such as Schwarzhaupt and Hellmuth Heye, found that §1354 created a poor position for women, but other measures regarding parental control over children could compensate by strengthening the mother's authority. Others emphasized the collaboration of Articles 3 and 6. Else Brökelschen (CDU), for example, did not see it as a "contract" only between married couples, and thus found it necessary to designate a third party to intervene, should decisions remain unmade. Gisela Praetorius was for a common decision between spouses, whereas Helene Weber was not.¹⁷⁴ The CDU Bundestag faction, particularly its members who were also involved with the *Bundesfrauenausschuss*, had divided opinions over which parts of the draft supported equal rights for men and women. Most agreed that §1354 unfairly limited married women's rights, yet supported other provisions like §1628 that gave mothers greater civil rights. Even though representatives like Schwarzhaupt spoke on their behalf, they remained in the minority of CDU members who did not support the family law reform. Representatives such as Wuermeling, particularly because of his role in the Family Ministry, had more influence than those involved with the women's organization or at the lower tiers of political leadership in the CDU.

On May 3, 1957, the *Bundestag* reviewed the Equal Rights Act for the third and final time. Karl Weber (CDU/Koblenz), representing the Committee of the Judiciary (*Ausschuss für Rechtswesen*), and Bundestag Vice-President Carlo Schmid (SPD) opened the debate. In

¹⁷⁴ "2. Mai 1957: Fraktionsvorstandssetzung," in *Die CDU/CSU-Fraktion im Deutschen Bundestag: Sitzungsprotokolle*, ed. Helge Heidemeyer (Düsseldorf: Droste, 1998), pp. 1469-1473.

the preceding debates and within the parties, representatives of the Bundestag had already established their definitions of gender equality, and thus focused here more exclusively on the proposed changes to the Civil Code. Their positions had not changed much, although individual members were more outspoken, perhaps in an attempt to demonstrate their dissent from party opinion. For example, Elisabeth Schwarzhaupt (CDU) wanted to remove §1354 because it placed a woman at a disadvantage, particularly in instances where she disagreed with her husband, but had to abide by his decision for the welfare of the family. She justified upholding other provisions, such as §1628 (paternal authority over children) and giving women control over the management of the household, because these were areas where “absolutely unequal designations for men and women [existed] because of different natural functions.”¹⁷⁵ Schwarzhaupt and her supporters from the CDU—Brökelschen, Praetorius, among others—therefore wanted to ensure equal civil rights in some parts of the Civil Code, but were reluctant to extend them to all parts related to marriage- and family policy. The dissenting CDU members saw the family in terms of a gendered division of labor, and in their eyes, individual rights did not extend equally to men and women in family policy as they did in marriage law.

The discussion over family law and equal rights was part of a broader debate in the Bundestag over the extent to which the state could intervene in civil matters. According to the CDU, the state had a right to protect marriage and family. The state could only intervene if marriage or family in some way opposed it. The CDU wanted to define explicitly the parameters of marriage and family policy in the Civil Code so that the state knew when to intervene. That is why, for example, Karl Weber wanted to preserve the “final say” of the

¹⁷⁵ VDBT, [2.] Deutscher Bundestag, 206. Sitzung, 3. Mai 1957, p. 11773.

husband. If there came a point where two spouses did not agree and a court had to choose one side or the other, then §1354 already specified the husband.¹⁷⁶ The SPD, however, did not believe that Article 6 gave the state the right to intervene in civil affairs if it meant undermining Article 3. The SPD did not deny that an order existed within a marriage, but they still opposed an “order of power.”¹⁷⁷ Ludwig Metzger (SPD), a jurist from Darmstadt, argued that the state’s role was to give each spouse equal consideration to improve women’s places in their marriages and families.¹⁷⁸ There was certainly justification for this argument. When the courts were charged with interpreting Article 3 after 1953, many judges ruled in favor of women, as the example of the wife’s refusal to move to Luxembourg from the 1954 *Gleichheit* issue demonstrated. Defining how the state controlled its citizens was significant not only for keeping West German democracy stable, but as a counterpoint to the perceived rights abuses being committed by the neighboring GDR.

Several *Bundestag* members from the FDP and CDU supported the SPD, but the final vote tipped in the CDU’s and they passed the Equal Rights Act on June 18, 1957. The SPD only achieved a minor victory when the majority voted to remove §1354. Most of the provisions concerning family law remained. The “paternal final say” codified in §1628 was upheld, as were other provisions on marital property and marriage law.¹⁷⁹ The Equal Rights Act was then implemented on July 1, 1958. The CDU reveled in its political victory over the SPD, but the passage of the law did not end the public debate over gender equality. On July 9, 1958, only a week after the enactment of the law, the left-liberal political magazine *Der*

¹⁷⁶ VDBT, [2.] Deutscher Bundestag, 206. Sitzung, 3. Mai 1957, p. 11769.

¹⁷⁷ “206. Sitzung,” p. 11770.

¹⁷⁸ *Ibid.*, p. 11775.

¹⁷⁹ Franzius, p. 154.

Spiegel published the following critique: “The inequality of men and women was accomplished here,” referring to the provisions of marriage law and family law.¹⁸⁰ For example, the article criticized specifically the law’s provisions on a father’s rights over children, which stated that although men must take into consideration their wives’ opinions, the final decision in matters over their children remained the fathers’. After nearly ten years of debate, the CDU may have finally ensured the legal protection of the family, but the law remained subject to public criticism. The Equal Rights Act resulted from a series of debates over highly contested notions of gender equality throughout the long 1950s, and its final implementation only further fueled these tensions.

¹⁸⁰ “Die Zukunft der Notare,” *Der Spiegel*, July 09, 1958. Volume 28.

Conclusion

From 1949-1958, members of the two major political parties and the Bundestag debated how men and women could contribute and participate politically, economically, and socially in West Germany. Many of the CDU and SPD representatives had been politically active during Weimar and often invoked their prior experiences with gender equality during postwar debates. As in Weimar, most SPD and CDU members recognized that natural differences existed between the sexes, but clashed over how to legally implement gender equality. These conflicts were influenced significantly by the changing political culture in the FRG, marked by a lessening ambivalence towards democracy and a growing fear of the GDR. In the 1950s, West German politicians employed highly gendered meanings of political, social, and civil rights to construct definitions of full membership in the West German community.

During Weimar, political rights were the extent of the legal equality of men and women. After 1945, the SPD fought to expand the rights of men and women beyond mere civic duties, but were only somewhat successful. The Basic Law guaranteed that men and women were equal, but did not define the parameters of their political rights. On the one hand, West German men and women to some extent participated equally, as they had in Weimar, by joining political parties, voting, and running in elections. On the other hand, the marginal influence of the *Ausschuss für Frauenfragen* in the SPD and the

Bundesfrauenausschuss in the CDU demonstrated the constraints on the full extent of political citizenship for men and women. Committed male and female members of the two major parties spoke liberally within their own spaces—in the newspapers and committee meetings—on changing gender policy, yet rarely enacted major changes on the federal level of legislation.

In spite of somewhat limited political rights, members of the SPD and CDU achieved some success in expanding the equal social rights of men and women. For example, by changing the age limit and prohibiting the dismissal of married women, the Bundestag opened equal advancement opportunities for women in the *Beamtentum*. The SPD never managed to enact equal wages for male and female laborers, who therefore faced greater economic inequality. The 1953 *Beamtengesetz* provided a more equal economic footing for *Beamtinnen* by allowing them greater earning and advancement opportunities. The CDU's proposal to retain the dismissal of married women and instead provide a family wage would have privileged women's roles as caretakers in exchange for some of their economic and professional independence. Equal social rights therefore had different implications for different groups of men and women, depending on marital and professional status.

The provisions of the Equal Rights Act of 1957 both extended and limited equal civil rights for men and women in the FRG. By dismissing the right of a husband to have the final decision, the Bundestag granted women more individual freedom within their marriages. The debates over §1354 demonstrated a high level of contestation over the ways in which a state could intervene in its citizens' private affairs, particularly their marriages. In the end, the majority of Bundestag members voted to remove §1354, therefore granting greater civil rights to married women. Yet other sections of the law did not provide the same expansion.

For example, §1628 still privileged a father's ultimate authority to make decisions about the children. Women therefore did not have the same rights as their husbands in family policy. The CDU's goal was to protect the family by privileging male authority, but at the expense of some civil rights for women, particularly mothers.

Historical analysis of the development of the Equal Rights Act thus exemplifies Ruth Lister's observation that women were often accorded equal civil rights much later than equal social and political rights. Unlike the Weimar constitution that granted only equal political rights to men and women, the Basic Law had a more encompassing equal rights clause. The implementation of Article 3 expanded some social rights and limited some civil rights. The political culture of West Germany was a significant factor that accounted for these changes. Unlike Weimar's splintered political culture, politics in West Germany during the 1950s were confined primarily to the two major parties. During the writing of the Basic Law and the early years of the FRG, the SPD and CDU were on more equal footing and thus more amenable to compromise with each other. As a result, the SPD's conceptualization of gender equality became Article 3, and their arguments proved successful for granting equal rights through the *Beamtenengesetz*. By the election in 1953, the SPD had lost a considerable amount of the electorate's support, especially women's votes, to the CDU. Moreover, the abolishment of the Communist Party in 1956 meant that the SPD lost one of its allies in the Bundestag. The anti-Communist sentiment of the Cold War created little space for the leftist SPD to maneuver and gain support. Politically, the cards were stacked in the CDU's favor because of these two factors. Although the SPD achieved a minor victory in expanding civil rights in the Equal Rights Act, the rest of the law was passed more or less as the CDU wanted it.

Some have called the implementation of the Equal Rights Act a critical point that solidified gender roles and served to discriminate against women.¹⁸¹ Yet this presentist view fails to recognize the many discourses within the parties and the Bundestag over the concept and application of *Gleichberechtigung*, and in doing so, ignores that the law's advocates and detractors conducted important debate over the extent to which men and women deserved equal citizenship, understood here as the right to membership within a community, based on the relationships of individuals to each other and the state. Yet this discussion did not occur only in the political parties or the Bundestag. Several of their debates alluded to non-partisan women's organizations, trade unions, and church organizations that all pressed the party and Bundestag members to amend legislation in ways that would fit their goals. Moreover, the legal implementation of equal rights for men and women in East Germany served as a powerful counterpoint to the West. Further research into these areas will round out current understandings of the development of *Gleichberechtigung* in the 1950s in both German states.

¹⁸¹ See historiography in introduction.

Glossary

CDU/CSU – Christian Democratic Union/Christian Social Union

SPD – Social Democratic Party of Germany

FDP – Free Democratic Party

Z – Center Party

KPD – Communist Party of Germany

FRG – Federal Republic of Germany

GDR – German Democratic Republic

AfG – Ausschuss für Grundsatzfragen

BFA - Bundesfrauenausschuss

AFF – Ausschuss für Frauenfragen

Bibliography

Primary Sources

I. Archival Sources:

Archiv der sozialen Demokratie der Friedrich-Ebert-Stiftung

Bestand: SPD-Partei Vorstand, Frauen-Referat

Bestand: SPD-Bundestagsfraktion

Archiv für Christlich-Demokratische Politik, Konrad-Adenauer-Stiftung

Bestand: IV-003-Frauenbewegung/Frauen-Union/EFU

Bestand: 01-048-Elisabeth Schwarzhaupt

II. Published Primary Sources:

Amtliches Handbuch des Deutschen Bundestages. Bonn, 1949ff.

Hans Booms, Bundesarchiv (Germany), Germany (West). Bundestag, Walter Vogel, and

Kurt Georg Wernicke. *Der Parlamentarische Rat, 1948-1949: Akten u. Protokolle.*

Boppard (am Rhein): Boldt, 1975-.

Bundestag, "Grundgesetz." May 1949.

http://www.bundestag.de/dokumente/rechtsgrundlagen/grundgesetz/gg_01.html

Bundestag. *Verhandlungen des Dt. Bundestages.* München: C.H. Beck, 1949-1958.

Das Bürgerliche Gesetzbuch für das Deutsche Reich [electronic resource]: nebst

Einführungsgesetz; Text-Ausgabe mit ausführlichem Sachregister. Weisbaden: Rud.

Bechtold & Comp., 1896.

Christlich-Demokratischen Union Deutschlands. *Parteitagprotokolle.* Konrad-Adenauer-

Stiftung. 1949-1958.

Frau und Politik. Christlich-Demokratischen Union Deutschlands. 1949-1958.

Die Genossin. Sozialdemokratische Partei Deutschlands. Hannover, 1947-1950.

Gleichheit. Organ der arbeitenden Frau. Sozialdemokratische Partei Deutschlands.

Hannover, 1950-1958.

Handbuch für die Bundesrepublik Deutschland. Köln: C. Heymanns Verlag, 1953, 1954,
1957.

Heidemeyer, Helge. *Die CDU/CSU-Fraktion im Deutschen Bundestag: Sitzungsprotokolle.*

Düsseldorf: Droste, 1998.

Politisches Jahrbuch der CDU/CSU. Frankfurt am Main: K.G. Lohse, 1950, 1953, 1957.

Sozialdemokratischen Partei Deutschlands. *Jahrbuch der Sozialdemokratischen Partei*

Deutschlands. Bonn: Vorwärts Verlag, 1946-1958.

Sozialdemokratischen Partei Deutschlands. Protokolle über die Verhandlungen der Parteitage
der Sozialdemokratischen Partei Deutschlands. 1949-1958.

Union in Deutschland. Christlich-Demokratischen Union Deutschlands. 1949-1958.

Vorwärts: sozialdemokratische Wochenzeitung. Sozialdemokratische Partei Deutschlands.

Hannover: "Neuer Vorwärts"-Verlag, 1949-1958.

Secondary Sources

Methodology

- Canning, Kathleen. "The Order of Terms: Class, Citizenship, and Welfare State in German Gender History." In *Gendering Modern German History: Rewriting Historiography*, edited by Karen Hagemann and Jean H. Quataert, 128-146. New York: Berghahn, 2007.
- Davis, Belinda. "The Personal is Political: Gender, Politics, and Political activism in Modern German History," in *Gendering Modern German History: Rewriting Historiography*, edited by Karen Hagemann and Jean H. Quataert, 107-127. New York: Berghahn, 2007.
- Hagemann, Karen. "Civil Society Gendered: Rethinking Theories and Practices." In *Civil Society and Gender Justice: Historical and Comparative Perspectives*, edited by Karen Hagemann, Sonya Michel, and Gunilla Budde, 17-42. New York: Berghahn, 2008.
- Lister, Ruth. *Citizenship: Feminist Perspectives*. 2nd ed. New York: New York University Press, 2003.
- Scott, Joan Wallach. "Gender: Still a Useful Category of Analysis?." *Diogenes* 57, no. 1 (February 1, 2010): 7 -14.
- Scott, Joan Wallach. "Gender: A Useful Category of Analysis." *American Historical Review* 91, no. 5 (Dec., 1986): pp. 1053-1075.

Weimar and post-1945 History

- Abelshausen, Werner. *Die langen fünfziger Jahre: Wirtschaft und Gesellschaft der Bundesrepublik Deutschland, 1949-1966*. 1st ed. Düsseldorf: Schwann, 1987.
- Bänsch, Dieter. *Die Fünfziger Jahre: Beiträge zu Politik und Kultur*. Tübingen: G. Narr, 1985.
- Bark, Dennis L, and David Gress. *A History of West Germany*. 2nd ed. Oxford, UK; Cambridge, USA: Blackwell, 1993.
- Boettger, Barbara. *Das Recht auf Gleichheit und Differenz: Elisabeth Selbert und der Kampf der Frauen um Art. 3 II Grundgesetz*. Muenster: Westfal. Dampfboot, 1990.
- Bremme, Gabriele. *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.
- Drummer, Heike and Jutta Zwilling. *Ein Glücksfall für die Demokratie: Elisabeth Selbert (1896-1986), die große Anwältin der Gleichberechtigung*. Hessische Landesregierung, 88-105. Frankfurt a/M: Eichborn, 1999.
- Faulstich, Werner. *Die Kultur der fünfziger Jahre*. München: Fink, 2002.
- Franzius, Christine. *Bonner Grundgesetz und Familienrecht: Die Diskussion um die Gleichberechtigung von Mann und Frau in der westdeutschen Zivilrechtslehre der Nachkriegszeit (1945-1957)*. Frankfurt am/M: Vittorio, 2005.
- Frevert, Ute. "Frauen auf dem Weg zur Gleichberechtigung – Hindernisse, Umleitungen, Einbahnstraßen." In *Zäsuren nach 1945: Essays zur Periodisierung der deutschen Nachkriegsgeschichte*, edited by Martin Broszat, 113-130. München: R. Oldenbourg Verlag, 1990.

- Frevert, Ute. "Frauen zwischen Beruf und Familie im Wirtschaftswunderland." In *Frauen Geschichte: zwischen bürgerlicher Verbesserung und neuer Weiblichkeit*. 1st ed. Frankfurt am Main: Suhrkamp, 1986.
- Fülles, Mechthild. *Frauen im Partei und Parlament*. Köln: Verlag Wissenschaft und Politik, 1969.
- Gerhard, Ute. "50 Jahre Gleichberechtigung – Eine Springprozeession," in *Aus Politik und Zeitgeschichte* 24-25 (2008).
- Hagemann, Karen. *Frauenalltag und Männerpolitik: Alltagsleben und gesellschaftliches Handeln von Arbeiterfrauen in der Weimarer Republik*. Bonn: J.H.W. Dietz, 1990.
- Harsch, Donna. *Revenge of the Domestic: Women, the Family, and Communism in the German Democratic Republic*. Princeton, N.J.: Princeton University Press, 2007.
- Heineman, Elizabeth. *What Difference Does a Husband Make? Women and Marital Status in Nazi and Postwar Germany*. Berkeley: University of California, 1999.
- Helwig, Gisela. "Gleichberechtigung als Grundrecht," *Bundeszentrale für politische Bildung*. http://www.bpb.de/publikationen/2FD0S4,0,0,Gleichberechtigung_als_Grundrecht.html
- Holz, Petra. *Zwischen Tradition und Emanzipation: CDU-Politikerinnen in der Zeit von 1946 bis 1960*. Königstein: Ulrike Helmer Verlag, 2004.
- Jaraus, Konrad H. *After Hitler: Recivilizing Germans, 1945-1995*. Oxford: Oxford University Press, 2006, pp. 156-181.
- Klessmann, Christoph. *Die doppelte Staatsgründung: deutsche Geschichte 1945-1955*. Göttingen: Vandenhoeck & Ruprecht, 1982.

- Klessmann, Christoph. *Zwei Staaten, eine Nation: deutsche Geschichte 1955-1970*.
Göttingen: Vandenhoeck & Ruprecht, 1988.
- Kuller, Christiane. *Familienpolitik im föderativen Sozialstaat: die Formierung eines Politikfeldes in der Bundesrepublik 1949-1975*. München: Oldenbourg, 2004.
- Meyer, Birgit. *Frauen im Männerbund: Politikerinnen in Führungspositionen von der Nachkriegszeit bis heute*. Frankfurt/M.: Campus Verlag, 1997.
- Moeller, Robert. *Protecting Motherhood: Women and the Family in the Politics of Postwar West Germany*. University of California, 1993.
- Niehuss, Merith. *Familie, Frau und Gesellschaft: Studien zur Strukturgeschichte der Familie in Westdeutschland 1945-1960*. Göttingen: Vandenhoeck & Ruprecht, 2001.
- Notz, Gisela. *Frauen in der Mannschaft: Sozialdemokratinnen im Parlamentarischen Rat und im Deutschen Bundestag, 1948/49-1957*. Bonn: Verlag D.H.W. Dietz, 2003.
- Notz, Gisela. "50 Jahre Gleichstellung: Ein permanenter Verfassungsbruch — Der Freitag," July 6, 2007, <http://www.freitag.de/2007/27-28/07282201.php>.
- Oertzen, Christine von. *Teilzeitarbeit und die Lust am Zuverdienen: Geschlechterpolitik und gesellschaftlicher Wandel in Westdeutschland 1948-1969*. Göttingen: Vandenhoeck & Ruprecht, 1999.
- Reich-Hilweg, Ines. *Männer und Frauen sind gleichberechtigt: d. Gleichberechtigungsgrundsatz (Art. 3 Abs. 2 GG) in d. parlamentar. Auseinandersetzung 1948-1957 u. in d. Rechtsprechung d. Bundesverfassungsgerichts*. Frankfurt/Main: Europäische Verlagsanstalt, 1979.

- Rupp, Hans Karl. “ „Wo es aufwärts geht, aber nicht vorwärts...“ Politische Kultur, Staatsapparat, Opposition.“ In *Die fünfziger Jahre: Beiträge zu Politik und Kultur*, edited by Dieter Bänsch. 27-36. Tübingen: Gunter Narr Verlag, 1985.
- Sacksofsky, Ute. *Das Grundrecht auf Gleichberechtigung: eine rechtsdogmatische Untersuchung zu Artikel 3 Absatz 2 des Grundgesetzes*. 1st ed. Baden-Baden: Nomos, 1991.
- Schildt, Axel, and Arnold Sywottek. *Modernisierung im Wiederaufbau: die westdeutsche Gesellschaft der 50er Jahre*. Aktualisierte und ungekürzte Studienausgabe. Bonn: J.H.W.Dietz Nachf., 1998.
- Schildt, Axel, .“Modernisierung im Wiederaufbau: die westdeutsche Gesellschaft der fünfziger Jahre.“ In *Die Kultur der Fünfziger Jahre*, edited by Werner Faulstich. 11-22. München: Wilhelm Fink Verlag, 2002.
- Schissler, Hanna. “ ‘Normalization’ as Project: Some Thoughts on Gender Relations in West Germany during the 1950s.” In *The Miracle Years: A Cultural History of West Germany, 1949-1968*, edited by Hanna Schissler, 359-375. Princeton: Princeton, 2001.
- Schissler, Hanna. “Social Democratic Gender Policies, the Working-Class Milieu, and the Culture of Domesticity in West Germany in the 1950s and 1960s.” In *Between Reform and Revolution: German Socialism and Communism from 1840 to 1990*, edited by David E. Barclay and Eric D. Weitz, 507-29. Providence: Berghahn, 1998.
- Schmidt, Manfred G. *Political Institutions in the Federal Republic of Germany*. Oxford: Oxford University Press, 2003.

Stoehr, Irene. "Organisierte Mütterlichkeit." Zur Politik der deutschen Frauenbewegung um 1900," in *Frauen suchen ihre Geschichte*, ed. Karin Hausen. Munich: Verlag C.H. Beck, 1983.

"Die Volksvertretung 1946-1972." *Kommission für Geschichte des Parlamentarismus und der politischen Parteien, e.V.* <http://www.kgparl.de/online-volksvertretung/pdf/mdb-k.pdf>

"Vor 40 Jahren...13.05.1963: Herta Gotthelf gestorben." *Archiv der sozialen Demokratie.* http://www.fes.de/archiv/adsd_neu/inhalt/stichwort/gotthelf.htm