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**EUGENICS AND FEMINISM: THE REFLECTIONS OF TWO  
IDEOLOGIES IN THE REPRODUCTIVE POLICIES OF THE NAZI  
REGIME, THE REUNIFICATION PERIOD, AND PRESENT-DAY  
GERMANY**

Sydney Reil

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Honors Thesis

EUGENICS AND FEMINISM: THE REFLECTIONS OF TWO IDEOLOGIES IN THE  
REPRODUCTIVE POLICIES OF THE NAZI REGIME, THE REUNIFICATION  
PERIOD, AND PRESENT-DAY GERMANY

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Submitted to Brigham Young University in partial fulfillment of graduation requirements  
for University Honors

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Brigham Young University  
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## ABSTRACT

### EUGENICS AND FEMINISM: THE REFLECTIONS OF TWO IDEOLOGIES IN THE REPRODUCTIVE POLICIES OF THE NAZI REGIME, THE REUNIFICATION PERIOD, AND PRESENT-DAY GERMANY

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Bachelor of Science

German abortion law is restrictive for a Western European nation of strong economic standing and with relatively liberal social policy. Additionally, Germany is one of few Western European nations without an embryopathy indication, which allows for exceptional abortions in cases of fetal defects. The law (as it stands in 2024), has been immeasurably shaped by two ideologies, eugenics and feminism, and by modern Germany's consideration of both the ideologies themselves, and of how they influenced the reproductive policies of the twentieth century. The purpose of this study is to demonstrate the influences of eugenics and feminism on German reproductive law in the Nazi and Reunification periods and in Germany today, and thereby explain the unique state of German reproductive law. Analysis of primary and secondary source material revealed that eugenic ideology has less influence on German reproductive policy today than in either the Nazi or Reunification periods, however, recently developed prenatal testing technologies have made selective abortions both possible and prominent under German law, which can be considered an application of eugenic thought. The influence

of feminism on shaping reproductive law is stronger today than in earlier periods, however, the liberalization efforts by feminists are resisted by Germany's fear of repeating the problematic (and eugenic) reproductive policies of Nazi Germany and, to a lesser extent, West Germany. A key implication of this study is that Germany must strike a balance between abandoning eugenic policies, and further liberalizing its abortion law to meet the demands of a growing body of German feminists.

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## TABLE OF CONTENTS

Title.....	i
Abstract.....	ii
Acknowledgments.....	iii
Table of Contents.....	v
 I. Introduction.....	 1
 II. Eugenics.....	 3
1. Background of Eugenic Ideology.....	4
2. Eugenics and Reproductive Policies in Nazi Germany.....	8
3. Eugenics and Abortion in East, West, and Reunified Germany.....	19
4. Eugenics and Abortion in Modern Germany.....	25
 III. Feminism.....	 33
1. Influence of Women's Liberation on Support for Nazi Abortion Policy.....	33
2. Feminism and Abortion in East, West, and Reunified Germany.....	44
3. Feminism and Abortion in Modern Germany.....	56
 IV. Conclusion.....	 60
 Works Cited.....	 66

## I. Introduction

“Those who cannot remember the past, are condemned to repeat it.”

George Santayana<sup>1</sup>

When the past is forgotten, we are *condemned* to repeat it. The word “condemned” makes this statement an ominous warning, a frightening inevitability; it is a wise adage as it applies to the failures and mistakes of the past, however, recreating the past successes and triumphs of our predecessors, remembering and repeating with intention, can be an asset in the present. To reinvent the sentiments of Santayana, those who cannot remember the past do not *learn* from the past, neither the failures, nor the successes. In an effort to learn from the past, this thesis will analyze the interactions of (1) eugenic ideologies<sup>2</sup> and (2) feminism<sup>3</sup> with German reproductive policies<sup>4</sup> in both the Nazi Period (roughly 1933 to 1945) and the Reunification Period (roughly 1989 to the mid-1990s) and demonstrate how these ideologies continue to influence contemporary German reproductive policy in similar and different ways. Through this research and

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<sup>1</sup> George Santayana, et al., *The Life of Reason or the Phases of Human Progress. Book One, Introduction and Reason in Common Sense*, The MIT Press (2011), 172.

<sup>2</sup> The term “eugenics” refers to the theory of improving the genetic traits of human populations through selective breeding. This theory, by its nature, created distinctions between the desirable and undesirable human traits, and in practice, created hierarchical cultures of superior versus inferior human life based on genetic desirability. In the context of this thesis, “eugenic ideologies” will include any ideologies that are either expressly labeled as eugenic or any ideologies which expressly reflect eugenic concepts, such as those which include concepts of genetic superiority and inferiority.

<sup>3</sup> Feminism will include any movements and ideologies aimed at the emancipation and authority of women in society, which, for the purposes of this thesis, fall between 1918 and 2024. In this thesis, this term will include the movements for female emancipation in Weimar and Interwar Germany, the feminist movements of West Germany and Reunified Germany, and the feminist movements of modern-day Germany.

<sup>4</sup> Note: While this thesis will briefly mention reproductive policies not connected with abortion, the majority of these policies are abortion policies and regulations. Thus, “reproductive policies” and “abortion policies” will be used interchangeably.

analysis, it will be demonstrated that German reproductive policy reflects both learning from and disregard for the country's past.

Current German abortion law is, in part, the product of both past and present eugenic ideas and feminist efforts. According to the current version of the *Strafgesetzbuch* (StGB; German Criminal Code) Section 218, abortion is illegal, punishable by fine or up to three years imprisonment.<sup>5</sup> Elective abortion is generally exempted from punishment, however, if the procedure is performed within 12 weeks of conception, is performed by a licensed physician, *and* the pregnant woman has undergone mandatory “pro-life”<sup>6</sup> counseling at least three days prior to the procedure. In exceptional cases, late-term abortions may go unpunished if an unlawful act, such as rape, has been committed against the pregnant woman, if the termination is deemed medically necessary to avert present or future danger to the life or health of the pregnant woman, or if the woman is found to have been in distress at the time of the procedure. This abortion law, which does not concede that any abortion is legal but nonetheless offers broadly applicable exceptions to the rule, is itself a liberalized version of West Germany's abortion law and the result of much feminist lobbying during the Reunification Period. Today, feminist activists and politicians continue the liberalization effort, with more widespread support and more influence over reproductive policy than ever before in German history. However, German abortion law still changes slowly and with much resistance, and the many steps required before an unpunishable (but still illegal) abortion may be procured add difficulty to the process and infringe upon female autonomy and

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<sup>5</sup> Germany. Federal Ministry of Justice. German Criminal Code Section 218. [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html) (Accessed June 4, 2024).

<sup>6</sup> “Pro-life” refers to arguments and opinions that oppose abortion.



choice. Though improvements have been made, there remains today a control over reproduction, contrary to the desires of many women, which reflects the controlling policies of both the Nazi and Reunification periods. Additionally, note that German abortion law, unlike those in other northern and western European countries such as France, Sweden, Spain, and Great Britain, does not have an explicit late-term abortion exception in the case of fetal defects. Germany is distancing itself from its torrid history of eugenic policy through the absence of such an exception. However, at the same time, the vague qualification for exceptional abortions in conjunction with the loose interpretation and enforcement of the law in practice, has inadvertently given way to selective abortions, that is, abortions undertaken because of some quality of the fetus (often because of fetal defects). This exceptionalism for abortion of fetuses with “defects,” cannot be entirely segregated from the eugenic rhetoric of Nazi Germany. Both women’s liberation movements and eugenic ideologies have impacted modern German reproductive law; through this thesis, the connection of these movements and ideologies to the laws of Nazi Germany and during the Reunification Period, and their evolution from these formative 20th century periods to the abortion laws and debates of modern-day Germany, will be thoroughly demonstrated.

## **II. Eugenics**

The primary focus of academic literature on eugenics is the racial hygiene ideologies of Nazi Germany, used as justification for committing mass genocide. The Nazi period abused eugenic ideologies to a previously unheard-of degree, but such ideologies were not confined to Nazi Germany, neither during the Nazi Period when

eugenic theories and policies were developed in nations throughout the western world, nor today, as elements of eugenic thought permeate modern German reproductive policy and discourse. There has been extensive research on eugenics,<sup>7</sup> and some research on eugenic abortions during particular time periods,<sup>8</sup> but little research is available demonstrating the progression of eugenic ideology's role in abortion discourse and policy from the Nazi period, through Reunification, and up to present-day Germany. This section will introduce eugenics and the history of eugenic thought in Germany, explore the role of eugenics in reproductive policy through the Nazi and Reunification periods, and will thereby demonstrate how the eugenic ideas developed during these periods have influenced contemporary German reproductive policy both as a deterrent against certain provisions and conversely, as a continued ideology.

## **1. Background of Eugenic Ideology**

Despite our current association of eugenics with the Nazi Regime, eugenics originated decades prior to the Nazis, primarily in Great Britain and the United States. Both the term “eugenics” and many of its concepts were coined by British polymath Sir Francis Galton in the 1870s,<sup>9</sup> though in fact, the foundational idea for eugenics—hereditary selection in human society—dates back to the philosophical writings of Plato and Aristotle.<sup>10</sup> Though not a wholly original (or very scientific) theory, Galton deserves the credit for defining, popularizing, and validating the eugenic theory in his generation.

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<sup>7</sup> See, for example, Paul 567–590, Garver and Garver 1109–1118, and Kelves 45–49.

<sup>8</sup> See, for example, David, et al. 81–112, Beck 181–186, and Hubbard 227–242.

<sup>9</sup> Ruth Hubbard, “Eugenics and Prenatal Testing,” *International Journal of Health Services* (1986), 229.

<sup>10</sup> For discussion of ancient eugenic philosophies and ethical implications of eugenics, see Raanan Gillon, “Eugenics, Contraception, Abortion and Ethics,” *Journal of Medical Ethics* (1998), 219.

In an essay published in the well-reputed *American Journal of Sociology*, Galton defined eugenics as “the science which deals with all influences that improve the inborn qualities of a race,” or in more modern terminology, that which fosters the genetic “improvement” of a population.<sup>11</sup> Note that this essay was published in the *American Journal of Sociology*; its presence in this particular publication is in and of itself evidence of the presence of eugenics outside of Germany and of the merit eugenics was given by the academic world. Additionally, it was not only eugenic *ideas* that were found outside of Germany; numerous eugenic *policies*, such as legalization of compulsory sterilization, were already found in those countries where eugenics was a popular theory. Harvard University’s Dr. Ruth Hubbard, in a project interviewing German women about the availability of prenatal testing in Germany,<sup>12</sup> asserts that “the first sterilization law was enacted in Indiana in 1907, and by 1931 some thirty states had compulsory sterilization laws on their books”.<sup>13</sup> Additionally, Laura Robson-Mainwaring of the UK National Archives explains the numerous eugenic bills brought before the British Parliament, such as the Mental Deficiency Bill in 1912, which contained an “amendment that would prohibit the marriages between those deemed ‘feeble-minded’”; the amendment was removed before the bill was passed, but it was not the last attempt to limit the reproductive liberties of genetically “inferior” British citizens.<sup>14</sup> Thus, sterilization policies and other manifestations of eugenic prejudice, made *infamous* by the Nazis, did

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<sup>11</sup> Francis Galton, “Eugenics: Its Definition, Scope, and Aims,” *American Journal of Sociology* (1904), 1.

<sup>12</sup> Note that the portions of these interviews discussing opinions of German women on prenatal testing will be further discussed at a more relevant point in this thesis.

<sup>13</sup> Hubbard, “Eugenics,” 230.

<sup>14</sup> Laura Robson-Mainwaring, “The National Archives - Improving the Nation’s Stock for ‘Great and Greater Britain’: Eugenics in the 1920s,” *The National Archives Blog*, <https://blog.nationalarchives.gov.uk/20speople-improving-the-nations-stock-for-great-and-greater-britain-eugenics-in-the-1920s/> (Updated March 30, 2022; Accessed June 1, 2024).

not originate in Nazi Germany, and at least at the time of their genesis, were not markedly distinct from the ideologies priorly developed in the UK and US. The rooted foundation of eugenics in other powerful nations pre-Hiter is worth noting, for the question that many posed after the horrors World War II, the question still asked today, almost 80 years later, is how these German eugenic policies, which were not hidden from the world,<sup>15</sup> were allowed to develop in Germany with little objection from the international community. The full answer to this query is complex and does not fall within the scope of this thesis, but part of the answer is that pre-war Nazi Germany's eugenic policies were not new, uncommon, or inherently problematic in many powerful nations across the globe. To reiterate, at the time eugenics was being adopted in practice in Nazi Germany, it was treated as a scientific topic of study, held in high esteem by academics of multiple disciplines,<sup>16</sup> and integrated into discourse and even policy in nations such as the United States and Great Britain earlier than in Nazi Germany. Thus, in line with the science and the policies so normalized at the time, Nazi Germany primed the nation for incoming genocide, and for the control of its subjects' reproductive rights. The connections between international support for eugenic policies and ideas and the role of eugenics in German reproductive policy will be further explored in upcoming sections.

There is not any lone factor that contributed to the popularity and development of eugenics. Different countries with different social issues and environments had diverse motivations for accepting the ideology. In the United States, for instance, eugenic policies were targeted early on at limiting both interracial marriages (and children) and

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<sup>15</sup> An example of international awareness of Nazi Germany's eugenic policies is Karl Loewenstein, "Law in the Third Reich," *The Yale Law Journal* (1936), 798.

<sup>16</sup> This can be seen, for example, in the fields of biology and sociology.

restricting the influx of poor southern and eastern European immigrants. The American Immigration Restriction Act of 1924, which decreased immigration by limiting the number of immigrants allowed from each country, was passed by Parliament expressly for the purpose of increasing the stock of Northern European, British, and American genetics in the American population, and limiting the population of less genetically favorable ethnicities.<sup>17</sup> No nation's eugenic discourse was exactly like another, however, as the majority of eugenic policies in the majority of nations were responses to their own prevalent social "issues," including criminality, prostitution, mental illness, mental and physical disabilities, poverty, alcoholism, and other related concerns.<sup>18</sup> Hubbard posits that these issues were not only perceived to be more prevalent in Western societies than ever before, they were also considered heritable traits that would continue to percolate through the next generations if no intervention was made.<sup>19</sup> The general idea of heritability and traits passing on to subsequent generations theory is not entirely unscientific; mental illnesses, certain physical and mental disabilities, and alcoholism have heritable bases proven by modern research. The issue with eugenics, in these cases, lies not in the falsehood of their heritability, but in the treatment of these conditions as social problems, and the people with these conditions as inferior, unworthy of respect or self-determination. Furthermore, the other issues listed, those of prostitution, poverty, and criminality, are not heritable in a genetic sense; they may appear to "run in families," as the cycle of each, once a family or individual has fallen into the cycle, is hard to escape from, but the idea that such issues can be eliminated from society through selective

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<sup>17</sup> Hubbard, "Eugenics," 230.

<sup>18</sup> Henry David, et al., "Abortion and Eugenics in Nazi Germany," *Population and Development Review* (1988), 89.

<sup>19</sup> Hubbard, "Eugenics," 231.

breeding is entirely unfounded. Rather than treat the illnesses, care for the disabled, aid the poor, and rehabilitate the criminals, all of which require slow progression and great social welfare cost, eugenics presented a more easily attainable solution. In particular, the great social welfare cost bolstered the eugenic solution in comparison with the aid and rehabilitation solution, specifically in light of the economic recession plaguing post-World War I Germany.<sup>20</sup> Additionally, the recession and the poverty it created likely increased the prevalence of these social issues in German society, so the assumption of increased prevalence of social issues was likely due to an actual increase in poverty, criminality, prostitution, and so on. Both the cost of welfare and the increased prevalence of heritable (and non-heritable) social concerns contributed to the eugenic rhetoric and arguments of the ever-growing National Socialist Party. Eugenics as a solution to widespread social concerns is a major difference in the eugenic ideology of Nazi Germany and modern Germany, which is justified on an individualistic basis. Eugenics, while ever-present, is not employed with the same motivations as it once was; this difference will also be discussed at length in upcoming sections.

## **2. Eugenics and Reproductive Policies in Nazi Germany**

Eugenics' strong basis in Germany began in the 19th Century, predating the Nazi Regime. Medical historian Paul Weindling writes that, when Hitler was elected chancellor in January 1933, German citizens of many backgrounds including clinical physicians, biologists, anthropologists, and statisticians were already strong supporters of eugenics, which can be largely credited to the propagation of "racial hygiene" theories

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<sup>20</sup> Hubbard, "Eugenics," 231.

posited by German physician Alfred Plötz.<sup>21</sup> As in neighboring nations, eugenics was heralded as a science, a legitimate source of academic study, and, bridging political divides, as empirical evidence for both conservative and liberal positions. Weindling<sup>22</sup> explains that, on the conservative side of the Weimar political spectrum, the eugenic support was rooted in the desire for social improvement and strengthening of the race through propagation of the German *Volk*.<sup>23</sup> Ann Taylor Allen states that the eugenic supporters from the liberal parties, particularly the radical feminist supporters, did not condone the racist and antisemitic uses of eugenics, but appreciated potential liberalization of abortion law eugenic policies might afford, and “were as impressed with the claims of science as other progressives of their era”.<sup>24</sup> Both liberal and conservative supporters of eugenics in Germany had specialized resources for eugenic study and discussion, including the conservative *Gesellschaft für Rassenhygiene* (Society for Racial Hygiene), founded by Plötz, and the society’s journal, the *Archiv für Rassen - und Gesellschaftsbiologie* (Archive of Racial and Social Biology).<sup>25</sup> Plötz’s society was closed to socialists and feminists and forwarded the superior heredity rhetoric of eugenics; the society of the liberal women’s rights activists, called the *Bund für Mutterschutz* (BfM; League for the Protection of Mothers), took a different approach.<sup>26</sup>

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<sup>21</sup> Paul Weindling, “The ‘Sonderweg’ of German Eugenics: Nationalism and Scientific Internationalism,” *The British Journal for the History of Science* (1989), 321.

<sup>22</sup> Weindling, “The ‘Sonderweg,’” 328.

<sup>23</sup> The concept of the “German Volk” refers to the German people, including their culture, language, land, and ethnicity. Though it predates the Nazi Regime, this terminology was widely used by Hitler and Nazi leadership to promote the superiority of the German people, the Volk. It has become associated with the radical nationalism and antisemitism of Nazi Germany. For a detailed history and evolution of this concept, see Brian Vick, “The Origins of the German Volk: Cultural Purity and National Identity in Nineteenth Century Germany,” *German Studies Review* (2003), 241–256.

<sup>24</sup> Ann Taylor Allen, “Feminism and Eugenics in Germany and Britain, 1900-1940: A Comparative Perspective,” *German Studies Review* (2000), 479.

<sup>25</sup> Allen, “Feminism,” 480.

<sup>26</sup> Allen, “Feminism,” 480.

The BfM was not acknowledged or supported by most of the German feminist community, however, the society included many prominent feminists of the day, and was built on a platform of inclusivity, open to women, men, socialists and women's rights activists (a given for most members), and other political radicals, and aligned "sexual radicalism" with prevailing eugenic thought.<sup>27</sup> The relationship of early feminism and eugenics will be further explored in the coming section on women's liberation movements, but for now, this relationship demonstrates that support for eugenic theory was broad-based, including support by liberals and conservatives, women, men, and academics in a variety of fields, which aided the quick translation of Nazi eugenic rhetoric to policy. The Nazis would just as quickly go on to use eugenic policies to sterilize, brutalize, murder those under their dominion, and, though less emphasized in the literature, to subjugate women from every class, race, and situation.

Nazi eugenic policies were introduced to Germany at a rapid speed. On July 14, 1933, mere months after Hitler won the chancellorship, the *Gesetz zur Verhütung erbkranken Nachwuchses* (Law for the Prevention of Offspring with Hereditary Diseases) was introduced, to take effect in January of 1934. The law prohibited voluntary sterilization (specifically, the voluntary sterilization of healthy women who the Nazis believed could produce healthy offspring for the Reich) and legalized eugenic sterilization, which included any sterilization of one "suffering" from congenital feeble mindedness, schizophrenia, manic depressive insanity, hereditary epilepsy, Huntington's chorea, hereditary blindness, hereditary deafness, severe hereditary physical deformities and/or severe alcoholism, to prevent the propagation of these conditions through the

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<sup>27</sup> Allen, "Feminism," 480.



German *Volk*.<sup>28</sup> Those with any of the conditions on the aforementioned list would be sent before the newly established *Erbgesundheitsgerichte* (Genetic Health Courts), where their condition would be analyzed. Sterilization would almost invariably be ordered, and though there was the possibility to appeal the case before the Supreme Genetic Health Courts, Hubbard writes that “during the entire Nazi period only about 3 percent of lower court decisions were reversed”.<sup>29</sup> Thus, when the Nazi-run courts deemed a person unfit for reproduction, compulsory sterilization was a near guarantee. The courts were also liberal in sentencing innocents to sterilization; a historical analysis by Henry David et al. remarks that by 1937, over 225,000 people were sterilized for eugenic purposes.<sup>30</sup> This means that in roughly four years, Nazi Germany performed nearly ten times the amount of eugenic sterilizations performed in the United States since the country’s first sterilization law in 1907.<sup>31</sup> The sterilization policy quickly evolved into the killing of born children and adults with disabilities, in what was known as the euthanasia program. In their 2002 article on the intersection between reproductive liberty and disability, Liz Sayce and Rachel Perkins write that “people considered ‘useless eaters’ and ‘unworthy of life’ were gassed in ex-psychiatric hospitals, or killed by lethal injection, or shot” and that “at least 250,000 people with mental or physical impairments were killed in these programs from 1939 onwards in Germany and its occupied territories”.<sup>32</sup> This Nazi law marked the transition from eugenic discourse about selective breeding to actual eugenic

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<sup>28</sup> Amir Teicher, “Why Did the Nazis Sterilize the Blind? Genetics and the Shaping of the Sterilization Law of 1933,” *Central European History* (2019), 290.

<sup>29</sup> Hubbard, “Eugenics,” 232.

<sup>30</sup> David, et al., “Abortion,” 92

<sup>31</sup> David, et al., “Abortion,” 92

<sup>32</sup> Liz Sayce and Rachel Perkins, “‘They Should Not Breed’: Feminism, Disability and Reproductive Rights,” *Off Our Backs* (2002), 19.

policy, policy which disregarded both inherent human value and personal autonomy in the name of social health, and the quick progression from compulsory sterilization to mass murder shows how quickly discriminatory codifications could get out of hand. Additionally, though this fixation on human population genetics was unique to the eugenic ideals of the Nazi period, the devaluation of human life will remain a constant in the selective abortion policies of the Reunification Period and of modern-day Germany.

The progression from the *Gesetz zur Verhütung erbkranken Nachwuchses* to mass murder was swift, and the reach of the law's reproductive control was broad, extending, for instance, even to couples wishing to marry. In describing the laws of the Third Reich as of 1936, Karl Loewenstein writes that any couples wishing to marry were required to submit certificates of health, obtained from a public health officer, to the local registrar, "to the effect that they are not afflicted by mental or bodily disease which would prevent healthy offspring".<sup>33</sup> If a certificate was not granted, the "defective" persons would have also been sent before the Genetic Health Courts, which inevitably ended in compulsory sterilization; the marriage would only be approved after the sentenced sterilization had been performed. This is an example of Nazi eugenic policy's reach in controlling reproduction; even marriage, as it may result in reproduction, was monitored to prevent the propagation of "undesirable" traits. Not only the rights of reproduction and bodily autonomy, but even the right to marry as one wishes were infringed upon by this eugenic law. There are three specific aspects of the *Gesetz zur Verhütung erbkranken Nachwuchses* that I want to particularly emphasize: First, this law began the official and codified Nazi discrimination between the genetically "superior" and those people

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<sup>33</sup> Loewenstein, "Law," 797.

“unworthy of life” (or of giving life): Second, the sterilizations were not officially race- or ethnicity-based at this stage in Nazi eugenic policy: Third, though not remotely comparable, both “superior” and “inferior” individuals were subject to some violation of reproductive liberty in the name of eugenics. The first point of emphasis requires little explanation; genetic discrimination is foundational to eugenics in general, but was exacerbated under the Nazi Regime, and created a hierarchical culture of superior, or genetically valuable, versus inferior, or genetically valueless, citizens. To further explain the second, while the *unofficial* eugenic persecution of “undesirable” ethnicities was present from the onset, the *official* Nazi definitions of “superior” and “inferior” persons, based on the letter of this particular law, reveal that Nazi eugenic policies began with ableism<sup>34</sup> and discrimination against psychiatric conditions. Not only does this clarification show a direct connection between early Nazi eugenics and the discriminatory, even ableist, selective abortion practices of the modern day, it is important to note that disability and mental illness cross all barriers of race and all divisions of class. What this then shows is that “undesirables” in Nazi Germany came from all subgroups, from the racially privileged “Aryans” to the Jewish communities, and this understanding is vital for the third and final point of emphasis, which is that even the “superior” races were subject to the reproductive control of the Nazi regime. As stated best by historian Dr. Gisela Bock, the Nazis were as bent on increasing the number of healthy childbearing women as they were with excluding women (and men) from begetting children via sterilization.<sup>35</sup> Thus, while once again incomparable, healthy

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<sup>34</sup> Ableism is discrimination against people with disabilities, or discrimination in favor of able-bodied people.

<sup>35</sup> Gisela Bock, “Racism and Sexism in Nazi Germany: Motherhood, Compulsory Sterilization, and the State,” *Signs* (1983), 403.

German men and women were forced to maintain their fertility, as their “inferior” counterparts were forced to forgo theirs. It is the lack of bodily autonomy that unites the Nazi-defined “inferior” and “superior” subgroups; no subject of Nazi Germany was given leave to determine, through their choice alone, their own reproductive rights.

The codification of legal eugenic sterilizations was followed shortly by the legalization of eugenic abortions. Abortion had been restricted quickly when the Nazi Party came to power, an attempt to reverse the low birthrate of Interwar Germany. However, illegal *eugenic* abortions had been performed in secret since at least 1934 (with Hitler’s approval), and following a legal ruling in July of 1935, the legalization of eugenic abortions for women already destined for sterilization was officially codified. David et al. describes how “abortions were permitted on the basis of an implied ‘racial indication’ consistent with Nazi ideology” under this new law.<sup>36</sup> Applying and being granted permission for a legal abortion became increasingly difficult for healthy German/Aryan women carrying healthy, Aryan babies, and considerably less so for members of “undesirable” racial backgrounds. To begin this analysis of Nazi abortion law, it is important to note a point made by Dr. Elizabeth Heineman of the University of Iowa, who states that “aside from sterilization, we still know next to nothing either about enforcement of legislation restricting women’s reproductive autonomy or about practices of getting around the law—and we can assume that contraceptive use and illegal abortions continued”.<sup>37</sup> The majority of what is known about abortion practices and enforcement of abortion law is from recorded history such as hospital and court records, thus, without

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<sup>36</sup> David, et al., “Abortion,” 94.

<sup>37</sup> Elizabeth Heineman, “Gender, Sexuality, and Coming to Terms with the Nazi past,” *Central European History* (2005), 61.

much concrete evidence of off-record abortion practices, this analysis of abortion policy in Nazi Germany has its limitations. However, though the records are incomplete, there is some insight into the illegal abortion practices of the day; citing a Nazi-era gynecologist, Dr. Bock states that in 1939, he “counted 220,000 miscarriages in hospitals, of which he estimated 120,000 to be abortions”.<sup>38</sup> This is further evidence of the subjugation of genetically favored women in Nazi Germany under eugenic ideology, those who were most limited by abortion restrictions; these were the women most often driven to underground, unsafe, illegal abortions. The differences in exceptional abortions based on genetic “favorability” is still reflected, as will soon be demonstrated, in the selective abortion practices in Germany today. Additionally, evidence for the differential treatment of the reproductive practices of “superior” and “inferior” citizens in the Nazi era lies in the Nuremberg Law. Through the (Nuremberg) *Gesetz zum Schutze des deutschen Blutes und der deutschen Ehre* (Law for the Protection of German Blood and German Honor), established on September 15, 1935, the official list of “genetic impurities” grew. From this date forward, marriage and any form of sexual relations between Jews and “Aryans” was made illegal, as Loewenstein writes, for the purpose of “diminishing the stock of Jewish blood in the German population”.<sup>39</sup> Rather than being not punished, or in addition to punishment for disobedience to the law, women would more likely be granted approval for a legal abortion if the father of their baby was deemed genetically unsuitable, for instance, if he was Jewish.<sup>40</sup> Thus, official genetic discrimination was extended to

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<sup>38</sup> Bock, “Racism,” 411.

<sup>39</sup> Loewenstein, “Law,” 797.

<sup>40</sup> Heineman, “Gender,” 62.

ethnocultural groups, particularly to the Jewish community, and the Nazi devaluation of human beings worsened.

The number of requests decreased exponentially as regulation of abortion tightened, regulation which included the complete destruction of confidentiality between doctor and patient in all matters of fertility. Based on physician guidelines circulated by the Nazi Party in 1936, doctors were required to report any and all cases of induced abortion, premature birth, and miscarriages within three days of discovery; in cases where the circumstances were suspicious, the incident would be investigated.<sup>41</sup> The Nazi government had introduced yet another eugenic policy to regulate the reproduction of its people; under the 1933 *Gesetz zur Verhütung erbkranken Nachwuchses*, the Nazis prevented the reproduction of genetically “inferior” individuals, under the 1936 *Gesetz zum Schutze des deutschen Blutes und der deutschen Ehre*, they added explicit prevention of interracial marriage and reproduction, and with the advent of this reporting requirement, not only were safe, legal abortions controlled entirely, the Nazis were limiting female access to medical care even in the event of uncontrollable circumstances such as miscarriage under the threat of investigation and possible punishment. The violations of personal autonomy are clearly characterized by extreme and swift escalation. In addition to the new reporting requirement for doctors, investigations were also launched by the Gestapo’s *Reichszentrale zur Bekämpfung der Homosexualität und Abtreibung* (Bureau to Fight Against Homosexuality and Abortion), which increased the restraints on physicians and patients alike. David et al. posits that terror of the Bureau culminated in 1937, when 9 times as many abortionists than the year before faced

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<sup>41</sup> David, et al., “Abortion,” 93.

criminal charges.<sup>42</sup> No one was spared by eugenic abortion regulation; even those adjacent to the procedure, the performing physicians, were threatened and punished to further the extent of Nazi control over reproduction.

When World War II began, regulation of abortion in the “inferior” races went from forced sterilizations and thoughtless abortion application approvals to no regulation at all; as the Nazis were committing racial genocide, the abortion practices of their victims were of little consequence. A publication by George M. Weisz and Konrad Kwiet describing the maintenance of pregnancy in concentration camps through the stories of two Jewish doctors denotes how pregnant Jewish women, regarded as unfit for labor and as carriers of “racially valueless” progeny, were often sent to the gas chamber immediately upon arrival at concentration camps.<sup>43</sup> For those women able to hide their pregnancy until birth, “their newborn babies were killed either by lethal injection or by drowning”.<sup>44</sup> Thus, to save themselves from a certain death sentence and their infants from Nazi euthanasia, many women in the camps performed secret and unsafe abortions on themselves and on each other, as recalled by a gynecologist imprisoned at Auschwitz.<sup>45</sup> Their hands were forced, given the available alternatives. The forcing of unsafe abortions under the threat of death is but one of the innumerable inhumane injustices inflicted on the Jews during the Nazi regime.

Where Jewish women were forced to abort to preserve their lives in concentration camps, racially favored women were forced to deliver every possible pregnancy, to

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<sup>42</sup> David, et al., “Abortion,” 94.

<sup>43</sup> George M. Weisz and Konrad Kwiet, “Managing Pregnancy in Nazi Concentration Camps: The Role of Two Jewish Doctors,” *Rambam Maimonides Medical Journal* (2018), 2.

<sup>44</sup> Weisz and Kwiet, “Managing Pregnancy,” 2.

<sup>45</sup> Weisz and Kwiet, “Managing Pregnancy,” 3.

preserve theirs. The anti-abortion efforts in racially favored circles continued to intensify during the war years, culminating in an amendment to German Penal Code section 218, which made abortions which hindered the progression of the German *Volk* punishable by death.<sup>46</sup> Death as penalty for aborting fetuses of “racial value”; this was the eugenic subjugation of the German woman and those who aided them. In fact, surviving court records reveal that the death penalty was enforced more often for *female* physicians, midwives, and layman abortionists than for those women receiving the procedures, who more often faced imprisonment. Examples highlighted by David et al. include the 53-year-old married housewife with a sixth-grade education executed in Mannheim for performing abortions, or the 66-year-old practical nurse in Innsbruck, with a record of 21 or more abortions, executed in 1944.<sup>47</sup> It seems that the performers of abortions, being involved in more abortions considered detrimental to the German *Volk*, were perhaps the most guilty and worthy of capital punishment in the Nazi view. Though not by any means comparable, the death penalty amendment makes clear that the eugenic ideologies of genetic superiority and inferiority impacted the reproduction of women in each group in extreme and cruel ways. This is not meant to induce undue sympathy for the favored race of Nazi Germany; but the truth is that genetically favored women were stripped of reproductive and bodily autonomy in the name of eugenics. As stated by Heineman, a lack of bodily autonomy means “a lifetime of physical, economic, and psychic stress for women who were simply too overburdened to have another child, physical injury, even death in childbirth or following a botched abortion”.<sup>48</sup> Death as punishment for a

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<sup>46</sup> Germany. Federal Ministry of Justice. German Criminal Code Section 218 (In effect as of 1943). <https://lexetius.com/StGB/218.9> (Accessed June 2, 2024).

<sup>47</sup> David, et al., “Abortion,” 98.

<sup>48</sup> Heineman, “Gender,” 62.



successful and perhaps necessary abortion should be added to Heineman's list; such was the subjugation of German women. All possible measures, no matter how prejudiced, violating of autonomy, or devoid of human decency, were taken to make sure the propagation of the German *Volk* was protected.

Eugenic policies in Nazi Germany aimed to control the reproduction of all peoples under Nazi dominion. That control came in the form of forced sterilization and forced abortion for the "genetically valueless," strict abortion regulation for the genetically favored, and extreme punishments, even death, for noncompliance. Nazi eugenics were the most extreme eugenic policies in recent history. However, though less extreme and different in both implementation and in the underlying motivations, eugenic thought and control of reproduction is not obsolete in modern Germany, and the ableism that motivated early Nazi reproductive policies remains as a common thread between the Nazi policies and those of modern-day Germany. Additionally, as will be soon analyzed, the support for eugenics and selective abortions by Interwar women's liberation activists and certain feminist arguments of the modern day are also intimately connected, and perhaps have more impact on reproductive policy today than in Nazi Germany. At the same time as support for subtle eugenic policies is growing, the progression is slow and stifled by acute awareness of their Nazi eugenic past. It is a complicated relationship, and one which I will further examine in the upcoming section on eugenics in current German reproductive policy.

### 3. Eugenics and Abortion in East, West, and Reunified Germany

The Reunification Period is a fascinating point in the history of German reproductive policy. It is characterized by intense debates over the consolidation of East German and West German abortion laws, and it shows a transitory point between the harsh and dehumanizing eugenic policies of Nazi Germany with the subtle, indirect, and limited eugenic practices of modern-day Germany. This subsection will first explain some of the key divergences of the East and West German policies, the role of eugenics (if any) in each and reveal how eugenic policies carried over into reunified Germany and on to the present day.

The reproductive policies, from abortion to welfare benefits for mothers and families, were markedly different in East and West Germany at the time of Reunification. East German abortion law followed a “time-limit model,” which meant that abortion was allowed for any reason up to the end of the first trimester.<sup>49</sup> Given that all first trimester abortions were elective and the motivations behind abortion are difficult if not impossible to determine, any eugenic practices in the East remain fairly elusive. West German reproductive policy was more conservative, and also had more visible eugenic influence. By Reunification, abortion was only legal in West Germany after mandatory pro-life counseling *and* when justified by one of the following: medical need, pregnancies resulting from criminal activity, incurable genetic defect in the child, and/or poor social circumstances which would adversely affect pregnancy, as codified in the German Criminal Code Section 218 of 1975/76.<sup>50</sup> The West German reproductive law shows clear

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<sup>49</sup> Albin Eser, “Abortion Law Reform in Germany in International Comparative Perspective,” *European Journal of Health Law* (1994), 15.

<sup>50</sup> Germany. Federal Ministry of Justice. German Criminal Code Section 218 (In effect as of 1976). <https://lexetius.com/StGB/218,3> (Accessed June 2, 2024).

divergences from its Nazi counterpart. Firstly, West Germany's revised Section 218 applied to all women, of every race, class, or any other factor. Furthermore, as posited by political scientist Lee Ann Banaszak, the strictness of the law compared with that in East Germany was largely based on the religious demographics of East and West Germany, which had been present long before East/West separation.<sup>51</sup> The Catholics, who took a strong anti-abortion position, were concentrated in West Germany, while the Protestants, who were altogether more liberal in their abortion stance, were overwhelmingly concentrated in East Germany.<sup>52</sup> Additionally, the West saw a far lesser decrease in religious membership and self-identification with religion than the East. Thus, it is likely that both higher populations of Catholics and increased levels of religiosity were the predominant contributors to the stringent West German abortion law, rather than any eugenic ideals or population policies.

In significant ways, West German reproductive law was distanced from the Nazi iterations, however, there are also key similarities that must be addressed. As relayed by German jurist Albin Eser, both Nazi Germany and West Germany followed the "indication model" of abortion regulation, meaning, abortion is banned unless there is indication of extenuating circumstances.<sup>53</sup> As in Nazi Germany, certain conditions had to be met for women to obtain an abortion; abortion was not selective, but based on externally determined assessments of a woman's need. This does not necessarily mean abortions were deterred; a statistical analysis showed that, despite the religiosity of West Germany and the strictness of the abortion law, women in West Germany obtain as many

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<sup>51</sup> Lee Ann Banaszak, "East-West Differences in German Abortion Opinion," *The Public Opinion Quarterly* (1988), 547.

<sup>52</sup> Banaszak, "East-West," 548.

<sup>53</sup> Eser, "Abortion Law Reform," 15.

abortions as women in the East per capita per year.<sup>54</sup> The amount of abortions is proof that the enforcement of West German laws was either relaxed, ineffective, or both, for not only were illegal and punishable abortions performed at a steady rate, but Karen Crabbs of the University of Florida suggests that “many women satisfactorily convince[d] their West German doctors of a social or medical need for an abortion and, thus, [were] not penalized”.<sup>55</sup> In this relaxed enforcement of the law, West German abortion law differed greatly from the violent policing of abortion in the Nazi era. However, the fact that the strict law was codified is significant, no matter the level of enforcement. The codification of the eugenic sterilization law opened the door for Nazi euthanasia. Furthermore, as will be discussed in upcoming sections, the codification of a ban on abortion advertising from the Nazi era was left in the Criminal Code until 2022, and though it went unenforced for decades, the late 2010’s saw renewed enforcement of the law that led to the prosecution of German abortion laws. Codification means that a law is enforceable, and, if a law is not already significant, it can become so with increased enforcement. Additionally, a significantly enforced and codified law can lead to escalation and more extreme policies.

One codification, and perhaps the most significant overlap between Nazi and West German abortion policy, is the West German law’s embryopathy indication.<sup>56</sup> This exception harkens back to the ableism of early Nazi eugenic policies, showing that remnants of eugenics were carried over into post-War Germany. Crabbs posits that the

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<sup>54</sup> Karen Crabbs, “The German Abortion Debate: Stumbling Block to Unity,” *Florida Journal of International Law* (1991), 221.

<sup>55</sup> Crabbs, “The German,” 223.

<sup>56</sup> In the “indication model” of abortion regulation, the “embryopathy indication” is the exception to the abortion ban in the case of incurable fetal defects.

vagueness of the criterion means that a wide range of fetal defects might qualify under the indication,<sup>57</sup> from Down Syndrome to quadriplegia. Fetal defects come in a range of severity and having a “defect” does not guarantee a poor quality of life. To offer exceptions to abortion law based on the genetics of the fetus implies, to a degree, makes a judgment over whose lives are worth living; that judgment is that the potential lives of “defective” fetuses, relative to genetically standard fetuses, are worth less, and justify an otherwise legally unjustifiable abortion. Supporters of selective abortion argue, as summarized by Raanan Gillon, “that abortion of fetuses with genetic defects such as Down Syndrome or neural tube defects in no way devalues people with these defects... it is a measure carried out in the belief that such people—equally valuable with all other people—nonetheless have undesirable disabilities that result from their genetic condition”.<sup>58</sup> But then, to counter this claim, even if a condition is subjectively labeled an “undesirable” disability, the condition does not make someone less worthy of life than someone without that disability. A general (meaning, not specifically German) feminist explanation in support of such abortion is that it gives women more choice,<sup>59</sup> and more bodily autonomy. Perhaps, when taken with the other indications together, this is true. The embryopathy indication offers one more route to be taken by women who, writes Crabbs, need to convince their doctors of a social or medical need.<sup>60</sup> However, the autonomy under this specific exception is offered on a discriminatory basis, only for women who are carrying a certain kind of fetus, namely, a genetically “defective” fetus. This was a choice not offered to women carrying genetically standard fetuses. While this

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<sup>57</sup> Crabbs, “The German,” 220.

<sup>58</sup> Gillon, “Editorial: Eugenics,” 220.

<sup>59</sup> Gillon, “Editorial: Eugenics,” 220.

<sup>60</sup> Crabbs, “The German,” 223.

discriminatory autonomy is problematically afforded by all the indications, the other indications are not dealing with the faultless genetics of the unborn and knowing the potential of codified law to escalate discrimination, this is the indication that requires scrutiny in light of Germany's eugenic past.

The judgments of German legislation on who is worthy of bodily autonomy and on the worth of human life were unacceptable to many Germans on both sides of the wall. Through the Reunification process, when the abortion law of West Germany was adopted (along with the rest of the West German constitution and laws), feminist activists in particular campaigned heavily for its amendment. A compromise plan was brought forth by the Free Democratic Party, to which many feminists belonged, and the plan ushered in the 1992 *Gesetz zum Ausbau der Hilfen für Schwangere und zur Regelung der vertraulichen Geburt* (Act for Assistance to Pregnant Women and Families), which, among other vital amendments, removed the explicit embryopathy indication from the Criminal Code.<sup>61</sup> Dr. Reinhard Dettmeyer states that this was “done to avoid giving the impression that the expectation that the infant would be disabled was a sufficient justification for terminating a pregnancy”.<sup>62</sup> The feminists who supported this reform did not consider the elimination of the embryopathy indication to limit a woman's autonomy. Their reasoning is best consolidated in the sentiments of a disabled British feminist, quoted by Sayce and Perkins; “we want the right to choose—not the right to pick and choose”.<sup>63</sup> Many German feminists and women shared this thought, and given their

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<sup>61</sup> Crabbs, “The German,” 229.

<sup>62</sup> Reinhard Dettmeyer, et al., “Termination of Pregnancy for Medical Indications under Sec. 218a Para. 2 of the German Criminal Code – Real-Life Data from the ‘Gießen Model.’” *Geburtshilfe Und Frauenheilkunde* (2017), 356.

<sup>63</sup> Sayce and Perkins, ““They Should Not Breed,”” 23.

awareness of their country's Nazi eugenic past, they had additional reservations about selective abortions—hence, the amendment to the West German abortion law during reunification. When a compromise between opposing sides of the abortion debate was reached in 1995 via the Compromise Act, the embryopathy indication remained ousted from the German Criminal code. Nonetheless, eugenic ideologies were carried into reunified Germany through different means, prenatal testing, for example. Prenatal testing for genetic defects existed in Germany pre-Reunification. Through her discussions on prenatal testing with West German women in the 1980s, Hubbard found that German women were “profoundly suspicious” of such testing, because some of “the physicians and genetic counselors who are advising about them and performing them... are the same people who designed and implemented the eugenic programs of the Nazi period or their former co-workers or students”.<sup>64</sup> The women of West Germany were not only suspicious of prenatal genetic discrimination because of their knowledge of Germany's eugenic past, but because those same doctors involved in eugenic practices during the Nazi era were connected to the prenatal testing of their own time. Such tests have continued to develop into modern day Germany and may offer more possibility of selective abortion than ever before; the question remaining is whether the German suspicion of prenatal testing has also persevered into the present. The embryopathy indication of West German abortion law carried with it elements of Nazi eugenic ideology, and though the indication was removed from the German Criminal Code after Reunification, some elements of eugenics have persisted into modern day Germany.

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<sup>64</sup> Hubbard, “Eugenics,” 239.

#### 4. Eugenics and Abortion in Modern Germany

Today, Germany does not punish abortions obtained within 12 weeks of pregnancy, as long as the pregnant woman has gone through mandatory pro-life counseling and a mandatory waiting period. Comparing Germany to neighboring countries, this law remains relatively conservative; France and Spain, for example, do not require mandatory counseling or waiting periods, and abortion is legal up to the 14th week of pregnancy. In addition, in early 2024, France explicitly codified the right to abortion in its Constitution.<sup>65</sup> The German Constitution, by contrast, maintains that abortion is illegal, though *unpunishable* when obtained under the aforementioned conditions. Germany adds to its divergence by being one of the few “liberal countries” without an embryopathy indication. Nations such as France and England list fetal anomaly as a valid reason for late-term abortion at any point in gestation, while Germany abolished this exception as of 1995.<sup>66</sup> The removal of this indication, to reiterate a point from the previous section, was motivated by the fear of appearing genetically discriminatory, or of making implied judgments on whose lives are worth living; in other words, German lawmakers wanted to distance themselves from the eugenic abortion laws of the Nazi Regime. This caution has extended into modern policies governing prenatal testing, which is under scrutiny both for the direct genetic discrimination that may result from widespread availability of these tests, and for the potential of such testing to give way to population screening.<sup>67</sup>

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<sup>65</sup> George Wright, “France Makes Abortion a Constitutional Right,” *BBC News*, <https://www.bbc.com/news/world-europe-68471568> (March 4, 2024; Accessed June 1, 2024).

<sup>66</sup> Tamar Nov-Klaiman, et al., “Negotiating severity behind the scenes: prenatal testing in Germany,” *European Journal of Human Genetics* (2024), 1.

<sup>67</sup> Population screening is “a systematic offer of medical examinations for a specific disease to a population of apparently healthy, asymptomatic individuals” (Netherlands. National Institute for Public Health and the



To address these concerns, multiple laws have been enacted, including the *Schwangerschaftskonfliktgesetz* (Pregnancy Conflict Act),<sup>68</sup> which requires pregnant women to receive counseling specifically related to prenatal diagnoses before a pregnancy may be terminated,<sup>69</sup> and the *Gendiagnostikgesetz* (Genetic Diagnostics Act),<sup>70</sup> which regulates genetic testing. This latter act allows such testing only for medical purposes, prohibits disclosure of the fetus's sex until the 12th week of pregnancy, prohibits tests that diagnose adult-onset conditions, and requires pregnant women to receive counseling prior to any genetic screening. It must be noted that these acts specifically aim to limit those "screening programmes targeting a specific genetic condition"; this includes the combined-first trimester screening (CFTS) and the non-invasive prenatal testing (NIPT), which can identify an increased chance of trisomies T21 (Down Syndrome), T13 (Patau Syndrome) and T18 (Edwards Syndrome).<sup>71</sup> These tests were originally limited based on cost and lack of public funding, as they were expensive (on the high end, approximately 1,000 Euros) and were not covered by public health insurance.

As of 2022, however, these tests have become more accessible. Not only have the costs of the tests decreased significantly (150 to 300 Euros),<sup>72</sup> making them more

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Environment. Population Screening Programmes. <https://www.rivm.nl/en/population-screening-programmes#:~:text=A%20population%20screening%20programme%20is,of%20apparently%20healthy%2C%20asymptomatic%20individuals> (Accessed June 6, 2024)).

<sup>68</sup> Germany. Federal Ministry of Justice. Pregnancy Conflict Act (In effect as of 2014).

<https://www.gesetze-im-internet.de/beratungsg/BJNR113980992.html> (Accessed May 30, 2024).

<sup>69</sup> Hilary Bowman-Smart, et al., "Non-Invasive Prenatal Testing in Germany: A Unique Ethical and Policy Landscape," *European Journal of Human Genetics* (2023), 563.

<sup>70</sup> Germany. Federal Ministry of Justice. Genetic Diagnostics Act (In effect as of 2010).

[https://www.gesetze-im-internet.de/gendg/\\_1.html](https://www.gesetze-im-internet.de/gendg/_1.html) (Accessed May 30, 2024).

<sup>71</sup> Nov-Klaiman, et al., "Negotiating Severity," 1-2.

<sup>72</sup> Ivana Kottasová, "'I Am Worried There Will Be Fewer of Us,' Says Campaigner Against Down Syndrome Test," *CNN*, <https://edition.cnn.com/2019/09/19/health/germany-down-syndrome-test-intl-grm/index.html> (September 19, 2019; Accessed May 31, 2024).

available to those paying for the tests privately, but the Federal Joint Committee (which determines the procedures that will be covered by public health insurance in Germany) finally succeeded in its effort to have NIPT reimbursed via public health insurance—provided, however, *only* in those cases where the testing was deemed medically necessary. Nov-Klaiman et al. explains that medical necessity may only be determined after “intensive counseling,” where both doctor and patient must evaluate the necessity of the test based on the individual circumstances (personal, socioeconomic, medical) of the pregnant woman.<sup>73</sup> Though limited by selective funding and intensive counseling, prenatal testing is more accessible in Germany today than at any point in the last decade, however still less so than most neighboring nations. Once again, aware of the Nazi eugenic policies of the past, German lawmakers are often wary of prenatal genetic testing and selective abortions in addition to the embryopathy indication, and thus, they err on the side of conservatism when regulating such procedures. At the same time, the growing international support of such testing and codifications of embryopathy exceptions bolster Germany’s steps toward test accessibility. Thus, despite the direction many other nations have gone in terms of prenatal testing, Nazi eugenics strongly impacts abortion policy today, as in the Reunification period, by giving German lawmakers caution when making abortion and prenatal testing laws.

Lawmakers are not alone in their concern for the potential eugenic parallels of prenatal testing. The fact that prenatal tests are now covered by medical insurance in *any* case is a cause for concern for many German disability activists. In 2019, when the Federal Joint Committee first put forth the decision to offer free NIPT for women with

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<sup>73</sup> Thomas Liehr, et al., “Non-Invasive Prenatal Testing in Germany,” *Diagnostics (Basel)* (2022), 5.

high risk pregnancies (the decision required approval from the Federal Ministry of Health, thus, was not yet finalized), thousands of disability activists marched in protest of the decision and its eugenic implications. In her 2019 CNN report of the protests, Ivana Kottasová quotes Dr. Elzbieta Szczebak, managing director of the German Down Syndrome InfoCenter, who declares, “It is not social progress if the life of unborn children is questioned prenatally due to their genetic characteristics...In times of inclusion it is a social step backwards”.<sup>74</sup> Indeed, there can be parallels drawn between prenatal testing and Nazi eugenic ideologies. While modern Germany no longer allows late-term abortions based on infant genetics, as was done in both the Nazi Period and in West Germany, prenatal testing still has the potential for widespread genetic discrimination as was seen in Nazi Germany. This potential discrimination will be discussed in greater detail, but first, the nature of this modern genetic discrimination must be discussed.

Prenatal testing is not forced, it is not compulsory, and it can only be undertaken at the request and potentially at the expense of the pregnant woman. The pregnant woman has the ultimate say in whether to carry her pregnancy to term, to determine, if she so chooses, whether the life of her potential child is worth living or not. The question then becomes, does genetic discrimination by the individual carrying the fetus rather than discrimination mandated and codified by the state fall under the umbrella of eugenics? Eugenics, being defined as the science of improving a human population by selective breeding, does not seem applicable to individual women making individual decisions about their pregnancy. However, when a group of women in a society have abortions,

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<sup>74</sup> Kottasová, ““I am worried...””.

seemingly for the same reason, and when that reason is the genetic quality of their fetuses, perhaps, the term could loosely apply; this is what is observed in Germany today.

It should be noted that the abortion rate did not increase in Germany due to the introduction of prenatal testing. The 2022 review by Liehr et al. revealed that the (recorded) abortion rate has actually decreased significantly since the test was made available (falling from 13.34 percent in 2012 to 10.28 percent in 2021)<sup>75</sup> as use of NIPT in Germany has increased (from less than 30 percent to 50-75 percent in 2022).<sup>76</sup> However, since the test became selectively reimbursable in 2022, the abortion rate *has* increased, over 9 percent from the rate in 2021.<sup>77</sup> It is interesting how the increased availability of NIPT and the increased abortion rate have correlated in the last two years; however, no direct relationship can be drawn between the availability of prenatal testing and the rate of pregnancy termination. In addition, adding nuance to their own data, Liehr et al. presents the possibility that the NIPT tests have not increased the abortion rate because they offer women “a false ‘feeling of security’ after getting a normal NIPT result”.<sup>78</sup> Indeed, a separate meta-analysis by Liehr found that 95-99 percent of NIPT results are negative, or “normal”.<sup>79</sup> Thus, the high proportion of “normal” NIPT results over the last decade likely aided in the maintenance of the abortion rate.

Using Down Syndrome as a case study, current abortion rates for abnormal NIPT results reveal what may happen to the German abortion rate under such circumstances.

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<sup>75</sup> Liehr, et al., “Non-Invasive,” 7.

<sup>76</sup> Liehr, et al., “Non-Invasive,” 6.

<sup>77</sup> Germany. Federal Statistical Office. Births. [https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Bevoelkerung/Geburten/\\_inhalt.html](https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Bevoelkerung/Geburten/_inhalt.html) (May 2024; Accessed May 24, 2024).

<sup>78</sup> Liehr, et al., “Non-Invasive,” 6.

<sup>79</sup> Thomas Liehr, “False-Positives and False-Negatives in Non-Invasive Prenatal Testing (NIPT): What Can We Learn from a Meta-Analysis on > 750,000 Tests?,” *Molecular Cytogenetics* (2022), 5.

Kottasová notes that statistics from Denmark and the UK “show that a majority of women who get a Down Syndrome diagnosis in the early stages of pregnancy opt for a termination”.<sup>80</sup> An earlier statistical analysis by Boyd et al. revealed that roughly 88 percent of European women who get a Down Syndrome diagnosis abort their pregnancy.<sup>81</sup> In Germany specifically, there were 23 prenatal diagnoses of Down Syndrome between 2002-2004, and 22 of those pregnancies were terminated.<sup>82</sup> Germany, along with much of Europe, has a history of high-abortion rates of Down Syndrome fetuses even before the introduction of condition-specific tests like NIPT. This trend remained into the 2020s; Polish politician Izabela-Helena Kloc states that over 90% of Down Syndrome fetuses were aborted in Germany as of 2020.<sup>83</sup> The high selective abortion rate of Down Syndrome fetuses implies that, if there were greater prevalence of trisomies such as Down Syndrome in the German population, it is likely that the high abortion rate of abnormal fetuses may have more of an impact on overall abortion rate.

The disparity between the overall and Down Syndrome fetus abortion rates is evidence of selective abortion in Germany, despite the removal of the codified embryopathy indication. However, this evidence is not without holes. As these tests can detect genetic defects in the first trimester (when elective abortions are unpunishable under German law), selective abortions may be obtained under the protection of the unpunishable abortion period. Additionally, as explicit reasoning for abortion is not

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<sup>80</sup> Kottasová, “I Am Worried...”.

<sup>81</sup> P.A. Boyd, et al., “Survey of Prenatal Screening Policies in Europe for Structural Malformations and Chromosome Anomalies, and Their Impact on Detection and Termination Rates for Neural Tube Defects and Down’s Syndrome,” *BJOG: An International Journal of Obstetrics & Gynaecology* (2008), 690-692.

<sup>82</sup> Boyd, et al., “Survey,” 693.

<sup>83</sup> Izabela-Helena Kloc, “Parliamentary Question | Situation of Persons with Down’s Syndrome | E-003055/2020,” *European Parliament*, [www.europarl.europa.eu/doceo/document/E-9-2020-003055\\_EN.html](http://www.europarl.europa.eu/doceo/document/E-9-2020-003055_EN.html) (May 18, 2020; Accessed May 15, 2024).

required before 12 weeks of pregnancy, it is nearly impossible to make an accurate judgment on the reasons for these abortions. Statistics such as those mentioned by Boyd et al. and Kloc show how many abnormal prenatal test results are followed by termination of pregnancy, and the correlation is strong; but whether all these terminations were obtained *because of* the test results cannot be determined with absolute certainty. Additionally, as women have the prerogative to abort their pregnancies without reason, does it matter if that reason is their fetus's genetic defect? There would be no ethical or legal way of stopping such abortions, so perhaps the point is entirely moot.

An additional point is that the Down Syndrome diagnosis abortion rate only includes those who choose to undergo prenatal testing. What may happen if those who did not seek out NIPT were forced to undergo fetal screening? It is possible that the overall abortion rate would, under this further condition, be altered. Those concerned by the increased availability of prenatal genetic testing are also worried that availability will continue increasing, until they are, as stated by Bowman-Smart et al., “de facto available to anyone who wants the test” which “could result in the implementation of NIPT, in practice, resembling the first-tier screening model used in countries such as the Netherlands or Belgium”.<sup>84</sup> In other words, the fear is that increased availability of NIPT increases the future possibility of population screening, as has been the natural progression for other nations. Germany approaches such a prospect with caution, both for the potential of population screening to overrule individual choice for the sake of society, and for the widespread eugenic implications of such screening. For now, Germany maintains the right of pregnant women to forgo compulsory testing; should this change,

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<sup>84</sup> Bowman-Smart, et al., “Non-invasive,” 565.

the eugenic parallels would be inarguable. However, the support for individual choice must, as stated by Dr. Hubbard, also include supporting those who choose not to terminate their pregnancies, who choose to birth children with genetic anomalies.<sup>85</sup> To have true and full freedom of choice, such individuals require a world that offers a full and supportive life for them and their children. German society must ensure, through the protection and support of born disabled people, that this true freedom of choice is maintained.

I want to make clear that the attempt to uncover the hidden eugenics of modern German reproductive law does not imply any sort of pro-life or anti-abortion stance on my part. I support female autonomy and the prerogative of women to terminate their pregnancies; this thesis aims not to discredit female rights but simply to draw connections between the influence of eugenics on Nazi reproductive policy, on policy during Reunification, and on modern-day reproductive policy. German reproductive laws and policies have come a long way from the eugenic policies of Nazi Germany and the embryopathy indication at the onset of Reunification; nonetheless, the impact of eugenics can still be seen today. Germany's lack of embryopathy indication for late-term abortions, hesitancy to make prenatal genetic testing widely available, and relatively stringent regulation of genetic testing likely connect to Germany's understanding of its complex and troubled history with eugenics. However, Germany's abortion rate for Down Syndrome diagnoses is far greater than the overall abortion rate; subtle eugenic ideologies may persist in the selective abortion practices, which discriminate against fetuses with defects.

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<sup>85</sup> Hubbard, "Eugenics," 240.

### **III. Feminism**

As reproductive policies and practices are inherently intertwined with women as the bearers of children, it is necessary to discuss the impact of women's movements and feminist ideology in determining German abortion law. Feminism predated and impacted the Nazi period, contributed immensely to policy during the heated debates of the Reunification Period, and continues to impact policy in modern Germany. This section will demonstrate how, both in addition to and interwoven with eugenics, women's liberation movements have impacted reproductive policies and politics in 20th century and modern-day Germany.

#### **1. Influence of Women's Liberation on Support for Nazi Abortion Policy**

Women's liberation movements during the Nazi period are difficult to identify. Under the totalitarian Nazi Regime, organizations not affiliated with the state were persecuted and disbanded; and as the majority of feminist principles directly opposed Nazi gender doctrine, there were also no state organizations to further the cause. The lack of official movements does not mean that activism for female emancipation and liberation ceased to exist during the Nazi period, but it does mean that such activism is difficult to study with any significant degree of accuracy. This section will therefore focus on the women's movements from the Weimar Republic and the factors that weakened and divided the Weimar feminists and turned some feminists (and German women in general) towards Nazism, and how the sexual liberation of women in



conjunction with the prevalent societal problems of the period contributed both to the Nazi rise to power and their subjugation of female reproduction.

The Weimar Republic is considered a crucial period for female emancipation, the result of feminist and political party efforts, and of World War I. German feminism was in a weakened state going into the Weimar Republic; Claudia Koonz writes that, “with the outbreak of World War I, most feminists de-emphasized their campaign altogether and dedicated themselves to the war”.<sup>86</sup> Nonetheless, despite de-emphasizing of feminist efforts, the war itself increased opportunities for women immensely, aligning with the feminist agenda—partly because, with nearly 1.7 million German soldiers having been killed in the war, there were over 2 million more women than men in Interwar Germany.<sup>87</sup> With so few men available, there was more job availability for women, and as such, women (who remained unmarried for much longer, also connected to an insufficient number of available men) flocked to cities to join the workforce.<sup>88</sup> Job opportunities also came for both men and women with the rapid industrialization of Germany, contributing to the spike of female workers. The influence of the new, democratic post-war government, the Weimar Republic, was also crucial for female emancipation; in 1918, German women were granted the right to vote, in 1919 the Weimar constitution guaranteed the equality of men and women, and between 1919 and 1933, 112 women served in the National legislature, representing all of Germany’s

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<sup>86</sup> Claudia Koonz, “Conflicting Allegiances: Political Ideology and Women Legislators in Weimar Germany,” *Signs* (1976), 665.

<sup>87</sup> Tim Mason, “Women in Germany, 1925–1940: Family, Welfare and Work. Part I,” *History Workshop* (1976), 77.

<sup>88</sup> Mason, “Women in Germany,” 77.

political parties except the National Socialist, or “Nazi”, Party.<sup>89</sup> This participation, says Claudia Koonz, is “one indication of the importance accorded to women’s issues at [the] time”.<sup>90</sup> Of course, the influence of feminist movements on the situation of women, which resumed efforts for emancipation after the war, cannot be overlooked. Feminists challenged societal gender roles by championing the “new woman” ideal; these new women were equal to their male counterparts (supported by the new constitution), they undermined feminine beauty ideals by chopping their hair in the page-boy style and wearing straight cut dresses, they participated in sports and contributed to legislation. Most importantly, as Joshua Adair writes, “economic independence, or at least the opportunity to achieve it, was very important to the new woman”.<sup>91</sup> Thus, the participation of the “new woman” in the workforce was vital, so the feminists believed, for the emancipation of their sex. This is an idea that would be carried into East German gender policies and would impact East German abortion law.

In addition to newfound economic opportunity, women found liberation in sex and reproduction, culminating in a period known as the “sexual revolution” of the 1920s. Sex was more openly discussed and diverse sexualities were more accepted relative to the intolerance of pre-Weimar periods. The female body was more liberated, not only by this openness of sexuality, but also by the less restrictive fashion of the time, by the increasingly widespread use and availability of contraceptives, and most significantly for this thesis, by the increased bodily autonomy afforded by a more liberalized abortion

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<sup>89</sup> Joshua Adair, “Dawn of the New Women in Sports, Fashion, and Employment: Challenging Gender Roles in the Weimar Republic,” *Legacy* (2015), 24.

<sup>90</sup> Koonz, “Conflicting Allegiances,” 664.

<sup>91</sup> Adair, “Dawn,” 27.

law.<sup>92</sup> Indeed, abortion was an important part of the sexual revolution. Referencing an account by Attina Grossman, Rosalind Petchesky writes that “feminists... emphasized ‘women’s right to sexual pleasure and control of their bodies,’” and that “the abortion struggle... united feminists, socialists, and communists” alike.<sup>93</sup> Though the communist left viewed abortion as a class issue, the restriction of which being oppressive to the lowest classes of society,<sup>94</sup> motivations aside, the indirect result was communist and socialist support for female autonomy and reproductive choice. The broadness of the support for abortion rights is reflected in the abortion and child-bearing habits of the day, particularly in the Weimar Republic’s leftist cities such as Berlin. Mason says of the city, “as if it were not enough that the capital city should be a stronghold of the political left, the cosmopolitan centre of liberal and socialist journalism and of radical modern experiments in entertainment and the arts, Berlin was *the* city where bright young women went out to work and demonstratively enjoyed themselves”.<sup>95</sup> In conjunction with the demonstrative enjoyment, these bright, young, “new women” of Berlin were giving birth at the lowest rate in the country, and getting divorced at the highest rate.<sup>96</sup> Thirty-five percent of married couples were childless in 1933, a statistic closely connected to the high number of (mostly illegal, but unpunished) abortion procedures taking place in Berlin at the time.<sup>97</sup> Thus, particularly in Berlin, but also to varying extents throughout Germany, the Weimar women tasted emancipation through newfound sexual freedom,

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<sup>92</sup> Richard J. Evans, “German Women and the Triumph of Hitler,” *The Journal of Modern History* (1976), 134.

<sup>93</sup> Rosalind Pollack Petchesky, “Reproductive Freedom: Beyond ‘A Woman’s Right to Choose,’” *Women: Sex and Sexuality* (1980), 678.

<sup>94</sup> Petchesky, “Reproductive Freedom,” 678.

<sup>95</sup> Mason, “Women in Germany,” 82.

<sup>96</sup> Mason, “Women in Germany,” 82.

<sup>97</sup> Mason, “Women in Germany,” 82.

including reproductive freedom. This sexual and reproductive freedom would be demonized by conservatives and some liberal parties, and blamed for the social issues that plagued Weimar Germany.

The sexual (and economic) liberation of women was criticized by both conservatives and liberal parties alike. Conservative critics treated the sexually liberated “new woman” as a “sexual criminal”. Barbara Hales writes that in both the scientific community and in the mass media, the women were portrayed as “instinctual monsters,” who, wrote one Weimar critic, through sexual pleasure, can “manipulate man into saying and doing things that are to her liking, even force him into criminal deeds on her behalf”.<sup>98</sup> The media referred to Berlin, the epicenter of sexual freedom, “as a whore (or the Whore of Babylon)” and portrayed Berlin women as sexually aggressive predators and prostitutes.<sup>99</sup> Grossly exaggerated portrayals such as these painted the emancipated women as criminals and prostitutes, essentially blaming emancipation for these growing social problems. Harkening back to the previous section on eugenics, we see an overlap in those social issues which inspired Nazi eugenic policy, and social issues which led to the demonization of women’s liberation; according to conservative rhetoric, the modern woman, and inferior genetics, caused the Babylonian state of Weimar Germany. The liberal parties were not concerned about the sexual freedom of women, as it applied to the prostitution and the liberalized sex culture; they were, however, concerned with the reproductive practices of the “new woman,” in light of a declining birthrate, a point on which conservatives and liberals found common ground. There is some correlation

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<sup>98</sup> Barbara Hales, “Woman as Sexual Criminal: Weimar Constructions of the Criminal Femme Fatale,” *Women in German Yearbook* (1996), 103, 106.

<sup>99</sup> Hales, “Woman,” 107.

between the abortion rate, which included a large number of illegal abortions, and the birthrate decline, however, abortion is but one of many mitigating factors. World War I contributed to lowered birthrate, with so many German men having died in the trenches and so many German women left widowed or unable to marry due to the shortage of eligible husbands. The depression of the early 1930s and the poverty that thereby afflicted Germany also contributed to the lowered birthrate, as evidenced by the usual birthrate trends in many countries during economic recession. Nonetheless, the recession, one of the great causes of the birthrate decline, ironically led German liberal parties to join the conservatives in blaming the modern woman ideology, rather than blaming the recession itself. As the birthrate became a “female problem,” it was only fitting that the solution would be to fix female behavior, namely, through reproductive policy, abortion restriction, and a return to traditional gender roles, such as those proposed by the Nazi Party. Koonz writes that “as the Depression brought economic chaos to the nation, the Social Democrats (but not the Communists) joined their liberal and conservative colleagues in sponsoring traditional views of women and the family”.<sup>100</sup> Not only did such sponsorship condemn the reproductive practices and promiscuity of modern women, it also involved “discriminatory legislation against employed women”.<sup>101</sup> Berghaus discusses that, beyond shirking their reproductive duties, the depression led socialists to disapprove of female laborers because they were “competitors who took jobs away from men and depressed their wages”.<sup>102</sup> As noted later in this section, many Weimar women were ousted from their jobs by incoming male workers and forced into more “feminine”

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<sup>100</sup> Koonz, “Conflicting Allegiances,” 683.

<sup>101</sup> Koonz, “Conflicting Allegiances,” 683.

<sup>102</sup> Günter Berghaus, “Girlkultur: Feminism, Americanism, and Popular Entertainment in Weimar Germany,” *Journal of Design History* (1988), 196.

jobs, and were both paid less in their positions and had very little job training with which to move beyond basic, unskilled positions. Nonetheless, despite the realities of women in the workforce, women were villainized for their newfound sexual liberties and for being employed (in other words, for “stealing jobs” from German men rather than taking their traditional role in the home and caring for their offspring). Even liberal parties like the Social Democrats, once supportive of these liberties, shifted to conservative views on female emancipation as economic depression exacerbated Germany’s social issues. The emancipated woman became a social villain of the right and left, and her villainization only bolstered the Nazi rhetoric about female reproductive duties and the importance of gender roles. Thus, the reaction of the German public to women’s liberation garnered support for Nazi reproduction and family policies.

Despite being received with great animosity from liberal and conservative parties, the actual emancipation of Weimar women was limited and underwhelming. German women found themselves with new liberties, liberties should not be discounted, as they were appreciated by many and condemned by many others, but German women also faced new roadblocks that contributed to their further subjugation by a male-dominated government. For instance, as stated by Brian Peterson, the “revolutionary government granted women the right to vote in November 1918, but then ousted many women from their wartime jobs with the assistance of the trade unions and factory councils,” thus pushing women from agriculture and other “masculine” jobs and into shops, clerical positions, and domestic labor.<sup>103</sup> Additionally, while it was more acceptable to be a single, financially-independent woman than in earlier decades, if such a woman married,

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<sup>103</sup> Brian Peterson, “The Politics of Working-Class Women in the Weimar Republic,” *Central European History* (1977), 87.

her economic freedom ended; Mason explains that German family law “gave the husband almost exclusive rights over his wife’s property and their children,” a law which “remained unchanged in the 1920s”.<sup>104</sup> Women also had positions in Parliament for the first time, but as Koonz states, “women legislators experienced divided loyalties when their parties advocated antifeminist positions,” and as small minorities, they had little sway over their party’s overall vote.<sup>105</sup> Koontz quotes a Catholic Center Party delegate of the time, who lamented, “What shall I represent? The interests of my party or my sex?”.<sup>106</sup> Thus, these female parliamentarians, in making such a choice, may have occasionally contributed to their own subjugation by voting against their own feminist interests. Even abortion law, liberalized mostly in the sense that it was not as strictly enforced as in previous periods, “was not materially relaxed” in terms of the letter of the law.<sup>107</sup> A large part of the issues with emancipation stemmed from the fact that women were trying to force their way into a male system that was not welcoming and did not make adequate space for them. Koonz gives the example of the female legislators, who, “to represent feminine interests... needed to develop skills commonly thought of as masculine”; in debates, writes Koonz, “women spoke less often than their male counterparts and, when they did, they felt that the very style of the debates remained alien to them”.<sup>108</sup> In sum, female emancipation was deeply flawed and limited, largely by its opponents. Female emancipation was given far too much credit by opponents for the “damage” it had on German society, and those opponents did not give themselves enough

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<sup>104</sup> Mason, “Women in Germany,” 82.

<sup>105</sup> Koonz, “Conflicting Allegiances,” 666.

<sup>106</sup> Koonz, “Conflicting Allegiances,” 666.

<sup>107</sup> Mason, “Women in Germany,” 84.

<sup>108</sup> Koonz, “Conflicting Allegiances,” 674.

credit for their success in limiting this emancipation. Neither proponents nor opponents of the emancipation of women were pleased with the progress made: fascinatingly, the frustration of many women due to their limited emancipation, and the frustration of opponents due to their perceived over-emancipation of women, each contributed to a shared desire for something new, a different government that would bring about a new Germany.

Rüdiger Graf argues that “the Weimar Republic seemed to be the realization of hardly anyone’s optimistic expectations of the future. At most, it was seen as the beginning of something that still had to be realized, but for the extremists on the political right and left who expected a fundamental renewal in the near future, the Republic was rather an impediment that had to be overcome”.<sup>109</sup> Feminists suffered from nearly universal dissatisfaction, and in their dissatisfaction, were roughly divided into Graf’s categories: those who saw the Republic itself as the imperfect beginning of a better world for women, and those so disillusioned by their reality that they advocated for a complete upheaval of the current system. For some women, this meant abandoning their liberal, feminist ideals, which many felt did not create a better world for them and shifting towards conservatism. The central feminist collective of Germany, the *Bund Deutsche Frauenvereine* (BDF; Union of German Feminist Organizations),<sup>110</sup> as it expanded to include a wider array of women’s right organizations such as women’s labor unions, became increasingly conservative, and support for conservatism was followed by increasing female support for Nazism.<sup>111</sup> Koonz explains that generally, female support

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<sup>109</sup> Rüdiger Graf, “Anticipating the Future in the Present: ‘New Women’ and Other Beings of the Future in Weimar Germany,” *Central European History* (2009), 652–653.

<sup>110</sup> Adair, “Dawn,” 21.

<sup>111</sup> Berghaus, “Girlkultur,” 196.



for the Nazis, though minimal in the 1920s, grew greatly in the early 1930s, during the economic depression and correlated with the generally increasing distaste for socialist policies.<sup>112</sup> From 1929 on, several BDF leaders, some even former feminists, officially formed ties with the Nazi Party, according to Berghaus.<sup>113</sup> Further clarifying the surprising shift of female voting patterns, Helen Boak writes that “Women chose to vote NSDAP [Nazi Party] for the same reasons men voted for the party—out of self-interest, out of a belief that the party best represented their own idea of what German society should be, even if they may have disagreed with the party’s stand on individual issues”.<sup>114</sup> By July 1932, the Nazi Party “was receiving proportionately equal shares of the male and female vote in Protestant areas,” and near equal shares in Catholic areas.<sup>115</sup> The shift of many German women to supporting Nazism can be considered a direct result of the ineptitude of women’s emancipation, emancipation which was intrinsically tied to the women’s liberation efforts and the development of the “new woman”. To clarify, Weimar feminism and its efforts are not at fault for creating female Nazi supporters. The rejection of emancipatory efforts by a male-dominated society combined with a low birthrate and economic depression caused the failure of women’s emancipation, and this failure, rather than being blamed on the true causes, was blamed on the reproductively and economically liberated “new women” and all they stood for. Thus, support for the Nazi Party, undermining the “new women” with its traditional gender ideology, proposals for strict reproductive laws, and promises to undo the “damage” caused by female

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<sup>112</sup> Claudia Koonz, “Nazi Women Before 1933: Rebels Against Emancipation,” *Social Science Quarterly* (1976), 553.

<sup>113</sup> Berghaus, “Girlkultur,” 196.

<sup>114</sup> Helen L. Boak, “‘Our Last Hope’: Women’s Votes for Hitler: A Reappraisal,” *German Studies Review* (1989), 303.

<sup>115</sup> Boak, “‘Our Last Hope,’” 294.

emancipation, grew in response. This is the first connection between Weimar feminism and reproductive policy.

There is another interesting point that connects Weimar feminism and Nazi reproductive policy: support for eugenics. As stated in the previous section, support for eugenics was not universal, and was characteristic of more radical feminists, and was also deeply connected to feminist arguments for gender equality and female liberation. Such arguments included that of Lily Braun, who argued that the subjugation nature of marriage caused the weakest and most subservient women to be the “mothers of the race,” and that the “equalization of the status of women within marriage and the liberalization of divorce laws would operate eugenically by encouraging capable and independent women, now justifiably repelled by domestic slavery, to marry and reproduce”.<sup>116</sup> Another such argument was the assertion “that the refusal or limitation of motherhood could be a responsible response to social conditions that condemned many children to poverty, illness, and death,” thus, eugenics became a route for women to determine, for themselves, to have children or to abstain.<sup>117</sup> Allen denotes arguments by famous German feminists of the period, including Helene Stoecker and Marie Stritt, who asserted that abortion at any stage should be legal under all circumstances, medical, social, or otherwise, and that the quality of the incoming generations would be improved not by treating women as childbearing machines, but by allowing them to have complete freedom over their reproduction, a greater responsibility, and greater individual happiness.<sup>118</sup> However, there existed another strain of thought in feminist eugenics,

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<sup>116</sup> Ann Taylor Allen, “German Radical Feminism and Eugenics, 1900–1908,” *German Studies Review* (1988), 38.

<sup>117</sup> Allen, “Feminism,” 482.

<sup>118</sup> Allen, “German Radical,” 42.

which was that perhaps the mainstream eugenicists were right. Perhaps it was necessary for those most capable of childbearing, the healthy, well-situated women, to produce children for the strength of the incoming generation. Even Helene Stoecker, supporter of abortion under “any” circumstances, did not actually support abortions performed out of “selfishness”.<sup>119</sup> Thus, overlap between mainstream and Nazi eugenics is observed in the joint push for increasing the birth rate and specifically pushing the healthy and well-situated women into the maternal role. There are, of course, key differences in the Nazi and Feminist eugenic schools of thought; the feminists, for the most part, wanted liberalized abortion laws, and saw eugenics as the key to sexual liberation. Nazi Germany wanted a bolstered Aryan race, no reproductive freedom for Aryan women carrying healthy Aryan children and forced eugenic abortions and sterilizations for non-Aryan persons. However, the declining birth rates and concerns for social health create an overlap in the motivations behind both schools of eugenic thoughts.

## **2. Feminism and Abortion in East, West, and Reunified Germany**

After World War II, as Germany was divided into the capitalist West and socialist (or communist) East, feminism developed separately and quite distinctly in each country. Christine Lemke, summarizing common academic opinion, writes that “women’s policies in West Germany inherited concepts favored and designed by the ‘bourgeois’ women’s movement, while East Germany (also known as the German Democratic Republic or GDR) followed up on the traditions of the ‘socialist modernization’”.<sup>120</sup> Lemke continues

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<sup>119</sup> Allen, “German Radical,” 45.

<sup>120</sup> Christine Lemke, “Beyond the Ideological Stalemate: Women and Politics in the FRG and the GDR in Comparison,” *German Studies Review* (1990), 87.

on to write that “these two prominent traditions in the German women’s movement seemed to have come to a rest by the formation of the two separate German states with contrasting political orders”.<sup>121</sup> Thus, from two pre-existing branches of German feminism, the capitalist West and Soviet East developed the branch which aligned most with their political orders; and as these orders, as Lemke highlights, varied drastically, so too did the types of feminism each order fostered, and so too did the contributions of feminism to reproductive policy in each state. This section will explore both the similar and different ways that feminism contributed to the reproductive policies in East and West Germany, and how feminists from both nations impacted the abortion law of reunified Germany.

The feminism in East Germany is reflected almost exclusively in East German policy and is intrinsically bound to the socialist ideologies of the Soviet Union. Feminism was only possible through policy, for, as Ann Taylor Allen notes, “neither feminist movements nor women’s studies were possible before 1989” in East Germany.<sup>122</sup> Thus, for the entire length of the Cold War, East German women “[did not] even have an organization to represent their interests,” write Christel Sudau and Biddy Martin.<sup>123</sup> Given the authoritarian regime governing the GDR, the creation of non-state organizations such as organized feminist groups and movements was, Sudau and Martin continue, “unthinkable”.<sup>124</sup> This same phenomenon was observed in Nazi Germany, and shows that authoritarianism is not conducive to true feminism, by women and for women.

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<sup>121</sup> Lemke, “Beyond,” 87.

<sup>122</sup> Ann Taylor Allen, “The March through the Institutions: Women’s Studies in the United States and West and East Germany, 1980–1995,” *Signs* (1996), 154.

<sup>123</sup> Christel Sudau and Biddy Martin, “Women in the GDR,” *New German Critique* (1978), 80.

<sup>124</sup> Sudau and Martin, “Women,” 80.

It does not matter if that authoritative government is fascist or socialist, the resulting state of feminism is the same. However, Myra Marx Ferree notes that the GDR nonetheless had its own “particular version of women’s emancipation” and that, “compared to other Eastern European countries, the GDR was both relatively affluent and more committed to direct action on behalf of women”.<sup>125</sup> The GDR’s “particular version” of furthering the position of its women was closely connected to socialist ideas about workforce participation. Lemke writes that the direct action taken involved the “enrollment of women in the labor force and the improvement of their job qualifications, thus significantly and steadily increasing the number of working women,” which was considered the best way to bring about equality of the sexes “according to the political ideology of Marxism-Leninism in the GDR”.<sup>126</sup> This is quite similar to the socialist feminism of Weimar Germany, which greatly emphasized women’s economic freedom as the key to their emancipation. Implemented gradually from the 1940s to the 1970s, the employment-oriented “emancipative” measures included official employment rights, affirmative action to give women occupational training, free childcare and kindergarten services, multiple years of paid maternity leave, and, the latest implementation, elective first-trimester abortions (further discussed in the coming paragraphs).<sup>127</sup> These policies were certainly effective at involving women in the workforce, for “by 1989, 91 percent of East German women of working age were employed, and 87 percent had completed formal occupational training and thus were officially ‘skilled workers’”.<sup>128</sup> Labor

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<sup>125</sup> Myra Marx Ferree, “The Rise and Fall of ‘Mommy Politics’: Feminism and Unification in (East) Germany,” *Feminist Studies* (1993), 91.

<sup>126</sup> Lemke, “Beyond,” 87.

<sup>127</sup> Ferree, “The Rise,” 89–94.

<sup>128</sup> Ferree, “The Rise,” 92.

participation and occupational training, in combination with resources for working parents and liberalized abortion law, certainly seemed—to both the Western women looking in from across the wall and to many of the Eastern women who, placated by policy, were told that they were liberated<sup>129</sup>—like an embodiment of feminist rhetoric. However, appearances and truth rarely, if ever, align in practice.

As with the “emancipation” of Weimar women, the emancipation of East German women was imperfect and incomplete. Describing the social and demographic policies of Nazi Germany, East Germany, and other authoritarian regimes, French author Jean-Claude Chesnais posits that “to a varying degree, each involved the collectivization of children and an absence of respect for the free choice of individuals, especially of women”.<sup>130</sup> Indeed, appearances aside, the realities of East German emancipation involved infringing upon the free choices of women. While women were offered more educational and occupational opportunities in the GDR than in the West, with “81.5 % of all working women [having] a degree as skilled workers, from Facharbeiter to university PhD” in the GDR by 1990 according to Lemke, women in the GDR faced a massive gap between their level of education and their position in the workforce, and generally, never reached the prestigious positions that men with the same qualifications attained.<sup>131</sup> Freedom of choice is limited, thus, by the limitation of opportunity. Additionally, this gap further limited choice by creating a wage gap. Donna Harsch writes that women in the GDR earned, on average “25% to 30% less than men,”<sup>132</sup> meaning that women could not

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<sup>129</sup> Sudau and Martin, “Women,” 80.

<sup>130</sup> Jean-Claude Chesnais, “Fertility, Family, and Social Policy in Contemporary Western Europe,” *Population and Development Review* (1996), 734.

<sup>131</sup> Lemke, “Beyond,” 90.

<sup>132</sup> Donna Harsch, “Between State Policy and Private Sphere: Women in the GDR in the 1960s and 1970s,” *Clio. Women, Gender, History* (2015), 102.

attain the level of economic independence attained by men, further limiting their freedom of choice. Furthermore, though equal *participation* of women in the workforce was achieved in East Germany, this did not mean equality in the domestic sphere of life. East German home life remained highly gendered. Harsch writes that “women workers testified not only that they performed the overwhelming bulk of housework and childcare but that their husbands held them to a high standard of domestic labor and expected protection from the frenetic schedule and disarray of the two-earner family”.<sup>133</sup> Some of the policies enacted by East Germany, which offered gender-specific benefits, greatly reinforced the gendered home. These policies, such as paid time off work for women to complete their housework, or the year to three years of paid maternity leave (while offering no paternity leave), reinforced the duty of motherhood, forcing new mothers into the home and new fathers back to work; Ferree and other critics have dubbed such policies “mommy policies” for their reinforcement of women’s maternal role.<sup>134</sup> Mommy policies disregarded the freedom of choice of mothers *and* fathers to determine for themselves how housework and childcare would be divided. Furthermore, though the theme of the mommy policies was said to be the “compatibility of motherhood and paid employment,”<sup>135</sup> mommy policies and the gender roles they enforced further hindered women in the workforce. Ferree writes that “discrimination in employment and promotion was increasingly widespread and rationalized as the legitimate cost women had to pay for their ‘special benefits,’”<sup>136</sup> “benefits” which both allowed women to participate in the economy while strongly reinforcing their gender roles. The very

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<sup>133</sup> Harsch, “Between,” 93.

<sup>134</sup> Ferree, “The Rise,” 93–95.

<sup>135</sup> Ferree, “The Rise,” 94.

<sup>136</sup> Ferree, “The Rise,” 95.

policies which allowed them to work began to hinder their progression in the workforce, the price of their special “mommy” benefits. The inequalities of the mommy policies were not lost on East German women, and though frustrating for many East Germans, the policies helped spark interest in and support for an independent (and illegal) feminist movement. The interest in feminism had long since been developed in East German women, particularly in academia; Allen describes, for instance, how East German scholars would gather, rather secretly, in locations such as Humboldt University in Berlin to discuss West German feminist literature and ideologies.<sup>137</sup> However, it was increasing disillusionment with the false emancipatory quality of the GDR, combined with the weakening Soviet hold on East Germany, that ultimately sparked East German feminist movements of the 1980s. Unlike women in the Weimar Republic, who somewhat blamed feminism for the disappointing realities of their emancipation, the East German women blamed their patriarchal government for such realities, which led these women *toward* feminism and organized movements.

Refocusing on the mommy policies, it must be noted that beyond promoting women workers, there was an additional motivation at play, which further undermined the emancipatory nature of East German policies. These policies were motivated by the ever-declining birthrate faced by both East and West after World War II; citing an analysis by Büttner and Lutz, Peter McDonald writes that these policies increased the birthrate anywhere from 15 to 20 percent between 1977 and 1987.<sup>138</sup> This was up to 20 percent more infants that would be at home with their mothers, the only parent offered

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<sup>137</sup> Allen, “The March,” 157.

<sup>138</sup> Peter McDonald, “Low Fertility and the State: The Efficacy of Policy,” *Population and Development Review* (2006), 501.



leave to be child caretakers. Even the legalization of first-trimester abortions, hailed as a victory in female emancipation by the Western feminists, was introduced far later than the other “emancipatory” policies because “it feared a decline in the birth rate and its consequences for a country already poor in labor power”.<sup>139</sup> Sudau and Martin posit that liberalized abortion law was only introduced in the 1970s because it became economically necessary to keep women in the workplace, and as women were already limiting pregnancy before abortion became liberalized, the restrictions did little for increasing the population of laborers.<sup>140</sup> Abortion rights in East Germany, were a concession out of economic need rather than an act of feminist fervor for reproductive autonomy. In addition, the idea of abortion as serving a social purpose rather than being an important vehicle for female autonomy is an idea that directly connects East German abortion policy with that in Nazi Germany. While the East German policy was not motivated by population genetics, it was motivated by the proportion of laborers in East Germany society; this motivation led first to abortion restriction, then to liberalization, when restriction proved ineffective. As in the Nazi period, abortion rights in East Germany were manipulated based on social needs, supporting the female labor in a way both distinct from and connected to the GDR’s mommy policies. Despite the manipulative nature of this abortion law, elective abortions nevertheless remained important to the lives of East German women, and a right that East and West German feminists alike would fight for during Reunification.

West German feminism came into fruition in a more conservative and less authoritarian regime, thus, while the West did not offer the social welfare benefits and

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<sup>139</sup> Sudau and Martin, “Women,” 70.

<sup>140</sup> Sudau and Martin, “Women,” 70.

“emancipatory policies” developed in Soviet East Germany, Western women did have the freedom to develop feminist movements, protests, organizations, and academia independently and openly. There were some difficulties in providing a strong, united, feminist front, as West German feminist movements were not always united. Prue Chamberlayne noted that “bitter divisions between liberal, socialist and radical feminist approaches” divided West German feminists throughout the Cold War.<sup>141</sup> Nevertheless, all branches of feminism were united on “such basic equal rights issues as equal pay, abortion and equal opportunities”<sup>142</sup>. In 1969, the radical feminist branch grew in size, support, and dominance, and became the prevailing movement of West Germany. Additionally, this feminism took a separatist approach from the 1970s on, meaning, they sought the creation of a women’s culture separate from mainstream society.<sup>143</sup> These separatist ideologies resulted largely from the lack of support shown for West German feminism in both liberal and conservative circles. An example of a liberal critic, writes Allen, was the male-dominated student Left,<sup>144</sup> which used “Marxist ideology to justify hostility to feminism, which it dismissed as a mere distraction from what student activists termed the ‘main contradiction’ of the class struggle”.<sup>145</sup> Even universities left little room for feminist thought from an academic standpoint, and as they were shunned from radical and academic circles, West German feminists felt that they were not and would not soon be welcome in the institutions of society.

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<sup>141</sup> Prue Chamberlayne, “The Mothers’ Manifesto and Disputes over ‘Mütterlichkeit,’” *Feminist Review* (1990), 9.

<sup>142</sup> Chamberlayne, “The Mothers’ Manifesto,” 9.

<sup>143</sup> Allen, “The March,” 155.

<sup>144</sup> The student Left, as defined by Ann Taylor Allen, was a leftist group of university students working towards university reform.

<sup>145</sup> Allen, “The March,” 155.

The push for liberalized abortion legislation in 1971 further aided the separatism of the West German feminist movements, as it became clear how easily the conservative-minority in the West German government could erase their progress. Initiatives against the restrictive abortion law began with a self-incrimination campaign, where activists admitted to having had illegal abortions; their stories showed up in magazines, newspapers, they held national conferences, marches and gatherings.<sup>146</sup> They showed both their awareness of and their disdain for their lack of autonomy and choice, and claimed that “roles considered ‘natural’ and biological were socially constructed and that women must free themselves from subjugation to the needs of others”.<sup>147</sup> The radical feminists mobilized under this common cause, with an independent power and unity not possible in East Germany. The political parties composed of or supportive of feminism, including the Social Democrats, tried to capitalize on the powerful pro-choice rhetoric of the day to bring about abortion law reform. Teresa Kulawik describes how, after much “parliamentary bargaining in 1974, the majority of Social Democrats and liberals adopted a revised abortion law that guaranteed free abortion during the first three months after conception,” mirroring the “time limit” model adopted in East Germany a few years prior.<sup>148</sup> It was a victory for the feminist movement, unfortunately, short lived victory; the Christian Democrats, a minority in Parliament, quickly brought the amended law before the Federal Constitutional Court. In 1975, the court ruled that the new law violated the constitutional rights of the unborn, and as such, the law was essentially reversed to the

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<sup>146</sup> Teresa Kulawik, “Autonomous Mothers? West German Feminism Reconsidered,” *German Politics & Society* (1991), 71.

<sup>147</sup> Chamberlayne, “The Mothers’ Manifesto,” 10.

<sup>148</sup> Kulawik, “Autonomous,” 72.

restrictive pre-1974 law, and became a highly restrictive version by 1976.<sup>149</sup> Skepticism towards the state and its politics and institutions was at an all-time high; the failure of this attempt to grant the West German women bodily autonomy through government channels led to a push for group autonomy, and though it was beneficial for the movement itself through the attention it brought to the movement and the new spaces it created for feminist exchange, widespread support for the movement was still minimal. Kulawik noted that the Christian Democrats demonized the feminist abortion activists as murderers and compared abortion to the Holocaust.<sup>150</sup> Their comparison of abortion activists to Nazis disregards the fact that part of Nazi reproductive policies, beyond euthanasia and forced sterilization and abortion, also involved the stringent restriction of abortion for certain kinds of women. West German law, with its indication model, also restricted abortion for certain kinds of women carrying certain kinds of fetuses and allowed abortion for others. The law that Christian Democrats believed to be more moral had more in common with Nazi abortion policy than they acknowledged. Even the Social Democrats, who “advocated a liberalization of abortion legislation as well as other reforms to improve women’s societal status...did not go so far as to accept women’s own organizations”.<sup>151</sup> The pattern extending from Nazi Germany to both East and West Germany is that in each case, female autonomy has not been supported by the German state. The Nazi’s rejection of female emancipation, the East German mommy policies, and the West German conservatism have all prevented feminist efforts towards female

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<sup>149</sup> Kulawik, “Autonomous,” 72.

<sup>150</sup> Kulawik, “Autonomous,” 74.

<sup>151</sup> Kulawik, “Autonomous,” 74.

body autonomy. This pattern will continue to reflect in the joint feminist effort for liberalized abortion policy during German reunification.

In the early months of 1990, after the collapse of the GDR, Chancellor Helmut Kohl of the Christian Democratic Party announced the government's intention to reunify Germany.<sup>152</sup> This proposed reunification meant that East Germany would be annexed, and the relatively conservative West German Basic Law and government would extend to East Germany. The extension of West German abortion law, Section 218 of the German Criminal Code, led to particularly heated debate and proved a massive roadblock on the path to unification. While German feminists during the Reunification period were by no means unified or monolithic in their ideologies, all branches of Cold War feminism joined together against the introduction of the law to East Germany, and the continuation of the oppressive law in West Germany. As the terms of Reunification were being debated, German feminist activists and legislators campaigned to maintain the East German abortion law. The effort was demonized in the media as an obstruction and division as the nation was trying to unify, the feminist efforts did not subside. The feminists did not get enough legislative support to adopt the East German law in the reunified state; as written by Andrea Wuerth, "their joint efforts exposed government efforts to deny women rights in the name of national unity".<sup>153</sup> The intense opposition did, however, afford East Germany an interim period, allowing it to retain its liberal abortion-on-demand law until at least 1992".<sup>154</sup> Feminist groups were not satisfied with the concession. They asserted "that Section 218 has merely symbolic character and is ill-

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<sup>152</sup> Andrea Wuerth, "National Politics/Local Identities: Abortion Rights Activism in Post-Wall Berlin," *Feminist Studies* (1999), 601.

<sup>153</sup> Wuerth, "National Politics," 602.

<sup>154</sup> Chauncy D. Harris, "Unification of Germany in 1990," *Geographical Review* (1991), 180.

suited to protect unborn life,”<sup>155</sup> thus, it is a law with great potential for female subjugation and little actual impact on the abortion rate in West Germany. Truly, despite the differences in codified law, Harris writes that “the rate of abortions in the two areas had not been striking different: about one pregnancy in four in East Germany in 1989 and an estimated one in five or six in West Germany”.<sup>156</sup> There seemed, at least to feminist opponents of Section 218, to be little point in keeping this element of West German law. Feminist protests broke out in the streets, one of the largest and most influential being in April 1990. With the continued lobbying of women in parliament and civil society, and the eventual proposal of the Compromise Agreement by a coalition of women from East, West, and three different political parties, the abortion law finally changed; the Compromise Agreement was passed (narrowly) by the Bundestag on June 25, 1992.<sup>157</sup> The compromise was a true compromise, both sides sacrificing many of their convictions and hopes for the law. Under the Compromise Agreement, abortion would be legal if obtained before the 12th week of pregnancy (within the first trimester, as was the case in East Germany), only after under mandatory pro-life counseling (as was the West German standard). The agreement, though passed, faced additional amendment due to the “legal challenge by the conservative [Christian Democratic Union] parliamentary faction,” which brought the agreement before the Federal Constitutional Court.<sup>158</sup> The Court “ruled against several aspects of the law in 1993, demanded tighter regulations on the consultations, and, most importantly, classified abortion as *straflos* (without punishment)

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<sup>155</sup> Margarethe Nimsch, “Abortion as Politics,” *German Politics & Society* (1991), 130.

<sup>156</sup> Harris, “Unification,” 179.

<sup>157</sup> Wuerth, “National Politics,” 606.

<sup>158</sup> Alexej Ulbricht, “Who Can Talk About Abortion? Information, Offense, Freedom of Speech, and the Advertising Ban in Germany,” *Politics* (2024), 28.

rather than *nicht rechtswidrig* (not contrary to law)".<sup>159</sup> Thus, abortion went from legal in the first trimester to unpunishable in the first trimester, among other amendments. The law became enforceable as of 1995. Wuerth writes that, despite the continued illegality, at the very least "the new law left the final decision in the hands of women".<sup>160</sup> There was much feminist frustration at the lack of self-determination, but the decision about their pregnancy was, in the first trimester, largely in their hands. Nevertheless, still unsatisfied with partial fulfillment of their rights, German feminists continued protesting vigorously against Section 218,<sup>161</sup> and continue protesting in present-day Germany.

### 3. Feminism and Abortion in Modern Germany

Abortion in Germany remains illegal, as it has been, technically, since the Weimar republic. To reiterate, the current law, section 218, is the amended Compromise Agreement of 1992-1995, which states that abortions will go *unpunished* if obtained in the first 12 weeks of pregnancy, if mandatory counseling and waiting period requirements are adhered to, and if the procedure is performed by a physician. That being said, the role of feminism in influencing enforcement of the codified law, and in the change of abortion-related laws, is greater in modern Germany than ever before.

Through examination of feminist movements and rhetoric and their popularity and influences on abortion law, it is clear that feminist ideology and fervor has shown progression opposite to that of eugenic ideology. Eugenic ideology faded in German abortion rhetoric over time, while feminist influence over abortion discourse and policy

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<sup>159</sup> Ulbricht, "Who Can Talk," 28.

<sup>160</sup> Wuerth, "National Politics," 606.

<sup>161</sup> Katharina Karcher, *Sisters in Arms: Militant Feminisms in the Federal Republic of Germany since 1968*, Berghahn Books (2020), 75.

has grown. Feminism had the weakest impact on reproductive law as Germany transitioned into the Nazi period, a stronger effect and more unified feminist support in Reunified Germany, and as this final subsection will reveal, the strongest impact on such policy today. A major reason for this increased influence is that feminism also has a stronger basis than ever before, and involves more members both of the voting public and of parliament and other political offices. Feminist movements were not large or unified enough in the Nazi or Cold War periods to enact their desired societal changes. The women of pre-Nazi Germany, with little support or say in legislation, and with little historical basis of feminist success that might have bolstered them in their cause, were divided and buried by Nazi ideology. The women of East Germany, though benefiting from the economically motivated abortion law in their nation, did not have organized feminism to cling to, nor did they have significant sway or choice in the implementation of the reproductive policy. The West German feminist movement, fighting for abortion reform, found their effort's temporary success overruled by an unsupportive parliament and unsympathetic Parliamentary Court. Even the Compromise Act of Reunification was a measure of great concession for the united front of East and West German feminists. In the modern day, we see similarities to the past in the dismissal of feminist cries for change, and differences from the past in the prevalence of feminist proclivities integrated into society—a Pew Research Center analysis calculated that 84 percent of Germans today believe that abortion should be legal in all or most cases.<sup>162</sup> There is more acceptance for abortion than ever before, more belief in the necessity of female autonomy

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<sup>162</sup> Janell Fetterolf and Laura Clancy, "Support for legal abortion is widespread in many places, especially in Europe," *Pew Research Center*, <https://www.pewresearch.org/short-reads/2024/05/15/support-for-legal-abortion-is-widespread-in-many-countries-especially-in-europe/> (May 15, 2024; Accessed June 8, 2024).



than ever before, and this has contributed, if not to the change of the actual law, to the change of enforcement of the law and to the change in the policing of female reproductive practices. This should not be discounted; it shows the increased influence of feminist rhetoric.

An example of this newfound feminist strength is the 2022 repeal of German Criminal Code Section 219a. This section, originally added to the Criminal Code during the Nazi Regime, “[made] it illegal to ‘offer, announce, promote, or explain’ the provision of services leading towards an abortion where this is done in a grossly offensive manner or for the purpose of personal enrichment”.<sup>163</sup> The law, as written, was intended to restrict access to abortion information and access to proper abortion services. In fairness, though only just removed, the law was rarely enforced, and advertising physicians were rarely penalized for their violations; that is, until the late 2010s. In 2017, a German doctor named Dr. Kristina Hänel was found guilty of violating Article 219a. According to Ulbricht, “the advert that she was charged for” was a part of her website that “gives a list of the procedures that Hänel carries out. Included on that list is the entry ‘termination of pregnancy’. If you click on this you are taken to a form where you can provide your email if you want to be sent information about abortions. If you do, you are sent a PDF file with general information about abortions”.<sup>164</sup> Hänel argued that she was merely providing information, and the Court responded that the very nature of that information violates the “advertising ban” of 219a, as does her listing abortion as a service she provides. The stringency of the law and the widespread reports of the verdict created an uproar in “both grassroots groups and politicians,” demanding the reform or

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<sup>163</sup> Ulbricht, “Who Can Talk,” 28.

<sup>164</sup> Ulbricht, “Who Can Talk,” 29.

abolishment of 219a. One feminist protest movement, which made itself “heard in Parliament,” gained popularity through social media, with the hashtag #wegmit219a (“away with 219a”), which “captures the movement’s overall goal: the abolition of paragraph 219a of the German penal code”.<sup>165</sup> In addition to the widespread popularity of feminism and the widespread support for abortion rights, the availability of modern technology has clearly aided the mobilization of the feminist masses, adding to their effectiveness in bringing about social change.

Abortion rights and regulations in present-day Germany do not perfectly fit the feminist vision. That abortion is still technically illegal is a point of major concern for feminists, as German reproductive policy history is proof that the codified law can be powerful in furthering discrimination with the right interpretation. However, going beyond discussion of their discontentment, feminists continue to protest in the streets, online, and in academia, and as Damien McGuinness of BBC News related in an April 2024 article, a “government-appointed expert commission has called on Germany to legalise the termination of a pregnancy within the first 12 weeks”.<sup>166</sup> Though the government is not required to take the recommendation of the commission, there is a new possibility that there will be a period of legal abortion in Germany, rather than a period of unpunishable abortion. Additional issues with the current state of abortion is the difficulty of accessing safe abortions. In 2020, BBC News reported on the lack of abortion procedure education in medical schools, a direct result of the illegal status of abortion. This has left Germany with few formally educated abortionists, and leaves

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<sup>165</sup> Veza Clute-Simon, “Take to the Streets on March 8!,” *Deutsches Historisches Museum Blog*, <https://www.dhm.de/blog/2018/03/08/take-to-the-streets-on-8-march/> (Accessed June 8, 2024).

<sup>166</sup> Damien McGuinness, “Legalise Abortions in First Trimester, German Commission Says,” *BBC News*, <https://www.bbc.com/news/world-europe-68816693> (April 15, 2024; Accessed June 1, 2024).

German women without accessible abortion care, which leads both to unsafe and unobtainable international abortions.<sup>167</sup> As both Nazi Germany and East and West Germany proved, abortions still occur, restricted by the law or not; the law merely infringes autonomy and is a roadblock to the abortions which will inevitably, nonetheless, be obtained. Moreover, the required pro-life counseling requirement is considered by many feminists to be a restriction to full female autonomy. Ulbricht writes that “the discouragement of abortions remains the principal intent of the law” which “can be seen in regard to the mandatory consultation...the law specifies that the consultation ‘serves the protection of unborn life’ (§219 *Abs. 1 Satz 1 StGB*) – it is guided by the aim of encouraging pregnant women to continue with the pregnancy”.<sup>168</sup> Autonomy is not achieved when the law is intended to discourage a particular choice, even the abortion is occurring *within* the selective abortion period. Dr. Cemil Yaman, quoted by *Politico*, says that “psychological counseling is an additional burden that makes a difficult situation even worse for women”.<sup>169</sup> There are still many roadblocks to the feminist vision for abortion rights.

#### IV. Conclusion

Both eugenic ideologies and feminism impact German reproductive policies; this was true for the Nazi Period, for the Reunification Period, and continues to be true in

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<sup>167</sup> “The German Medical Students Who Want to Learn about Abortion,” *BBC News*, [www.bbc.com/news/stories-53989951](https://www.bbc.com/news/stories-53989951) (September 25, 2020; Accessed June 1, 2024).

<sup>168</sup> Ulbricht, “Who Can Talk,” 28.

<sup>169</sup> Akmaljon Akhmedjonov, “Europe’s Growing Abortion Nightmare,” *POLITICO*, <https://www.politico.eu/article/europes-growing-abortion-nightmare/> (July 1, 2023; Accessed May 20, 2024).

Germany today, though the way and extent to which eugenics and feminism influence such policy has shifted with each period.

The influence of eugenic ideology on German reproductive policy decreased from the Nazi Regime to Reunification and to the present-day, but some traces of eugenic ideologies remain. The Nazi eugenic policies created a culture of discrimination based on genetic superiority or inferiority. Both superior and inferior groups were subject to reproductive control in different ways, with the genetically favored citizens stripped of abortion rights and forced to carry each pregnancy to term, while genetically unfavored citizens were forcibly sterilized, encouraged or forced to have abortions, and became victims of mass genocide. While the discrimination became overwhelmingly race-based, Nazi eugenic policies began with ableism. The notion that people who are physically or mentally disabled are genetically inferior is clearly indicative of Nazi eugenic ideology, however, this ableism persisted through Reunification, and into modern day Germany.

Though the eugenic influence on abortion law decreased massively after World War II, the embryopathy indication in West German abortion law showed that eugenic ableism was not obsolete. While the indication model of West Germany was open to interpretation, and indications given by women were largely approved by their physicians as being sufficient for an abortion (making it easier to obtain abortions than the law allowed), the fact that an embryopathy indication was codified, means that under the law, women were allowed to abort fetuses solely based on their genetic make-up. The eugenic implications of this exception were not lost on West Germans, and when West German law was to be extended to East Germany through the Reunification process, German

women on both sides of the former wall lobbied to remove this indication through the Compromise Act.

Due to an acute awareness of their eugenic past, Germany is cautious of making any implied judgments on whose lives are worth living, and whose lives are not, particularly in comparison with neighboring countries. Germany is one of the few Western European nations without an explicit embryopathy indication today. Nonetheless, though minimal and subtle, eugenic practices still exist in Germany in the introduction and increasing availability of genetic prenatal testing. Germany has issued multiple acts intended to limit the eugenic scope of such testing however, as of 2022, prenatal testing technologies, such as NIPT have become more accessible, being covered, in certain cases, by public German health insurance. The issue of genetic testing has caused a conflict between disability activists, who believe that the life of unborn children are being questioned prenatally due to genetic characteristics and some feminists who believe that such genetic testing allows women to obtain abortions at their discretion, and with all the applicable information. Whether this testing can itself be defined as eugenic or not, it is not insignificant that almost 90% of Down Syndrome fetuses are aborted in Germany. The fear, then, is that population screening may result from these now limited tests, and that these tests will become compulsory. German history is proof that discriminatory reproductive laws and practices can expand and worsen. The selective abortions caused by the advent of prenatal genetic testing has the potential for widespread genetic discrimination, a potential worth considering. Germany is uniquely cautious and conscious of codifying any implied judgments on whose lives are worth living, and whose lives are not; nonetheless, the caution has not removed all elements of eugenics

from modern German abortion practice, and the implications of widespread prenatal testing may be cause for concern.

The influence of feminism on German reproductive policy has increased from the Nazi period to Reunification and to the present, following the opposite trend of eugenics. Nevertheless, feminist ideology still does not have the influence it should have, given the impact of reproductive policy on the majority of German feminists, namely, German women. In the Weimar Republic and leading into the Nazi era, women attained new liberties and freedoms, including sexual liberation, and, most valued by these early feminists, economic liberation and increased participation in the German workforce. The sexual and economic liberation of women, imperfect and certainly not fully fulfilling of the feminist vision for emancipation, coincided unfortunately with economic recession and a lowered birth rate. The reproductive emancipation of German women became the scapegoat for the birth rate problem, and led German citizens to support the Nazi ideologies of abortion restriction and traditional gender roles. Additionally, the disappointment of the realities of emancipation caused women themselves, some even former feminists, to break off from feminist movements, and turned towards more conservative parties. The surge of female Nazi votes during the 30s greatly aided the Nazis takeover of Germany.

East Germany, being an authoritarian regime like the Nazi regime, prevented the formation of organized, independent, non-state feminist groups, however, it has been argued that East German feminism was present in the GDR's emancipatory policies. These policies were designed to primarily keep women participating in the workforce, which is reminiscent of the socialist, feminism scene in Weimar, Germany, however, as

the birthrate was still in decline after World War II, these “emancipatory” policies also served to foster motherhood and reproduction and reinforce gender roles. Abortion rights in East Germany were a concession caused by a labor shortage of workers, and though feminist in its effect, was implemented to bolster the workforce.

Western feminism was allowed to develop, which was important in a society that did not offer the same welfare and abortion benefits as East Germany. There was a lack of support in west Germany for feminist ideology which led largely to the separatist anti-government sentiments of western feminism. The separatist sentiment solidified in with the abortion reform debacle of 1974-1976, the “time limit” model of East Germany was adopted and almost immediately reversed in West Germany. During reunification West German women wanted, and East German women wanted to keep, East Germany’s liberalized abortion law. Their efforts failed to convince reunified Germany to adopt eastern law, but the protesting and lobbying of women in the streets and in parliament, garnered a compromise, which allowed for a “time limit” model as in the East, but required counseling and a mandatory waiting period as in the West. Still unsatisfied, feminism has continued protesting section 218 into the modern day.

The modern-day influence of feminism is complicated; abortion law changes slowly in Germany, resisted at every turn, and yet there is more widespread support for abortion and for feminism than ever before in German history, from laymen and politicians alike. The prevalence of feminist ideology in Germany today brings it an influence unseen in either the Nazi or Cold War periods. However, across all periods, we see similarities in the dismissal and resistance to feminist abortion opinion by the German government. Part of this can be attributed to caution on the part of the government, as

was seen with the removal of the embryopathic indication. Germany, all too aware of its past, takes great caution in altering laws that deal with human life, or potential human life. However, at the same time, such caution can be seen as a resistance to the opinions and desires of German women, the group which reproductive policy impacts the most.

This thesis began with an adage about remembering the past, so that the past may be learned from. In various ways, Germany has both learned from and disregarded its past. Germany has intentionally removed the embryopathy indication from the current abortion law, which shows remembrance and avoidance of problematic Nazi and West German eugenic policy. At the same time, the increasing accessibility of prenatal testing may be passively allowing eugenic abortions to take place today. Feminism and women's movements play have more influences in the reproductive policies which impact women, which shows an acceptance and respect for women's liberation never before seen in German history, however, there is still much resistance to the expansion of abortion laws, even in changing the language of the law from "unpunishable abortions" to "legal/allowable abortions". Part of the resistance comes from Germany's understandable caution, rooted in the fear of repeating the reproductive policy mistakes of Nazi Germany, though this caution may also be infringing upon the rights and demands of German women. It is a complicated, difficult balance to strike. Germany's remembrance of the past is thus both an admirable asset and a hindrance.



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