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## Religious Crisis and Civic Transformation

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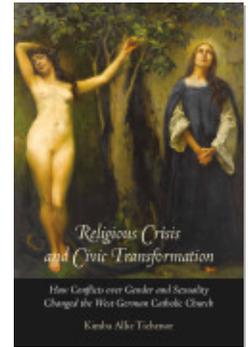
Published by Brandeis University Press

Tichenor, Allie.

Religious Crisis and Civic Transformation: How Conflicts over Gender and Sexuality Changed the West German Catholic Church.

Waltham: Brandeis University Press, 2016.

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## *The Abortion Debate*

### *Hidden Tensions and New Directions*

In 1969, the newly elected SPD-FDP coalition government announced plans to reform Paragraph 218, the law that regulated women's access to abortion. This announcement prompted a public debate in West Germany on the state's obligation to protect unborn life—a debate that continues today in reunified Germany. In analyzing key events in that debate between 1969 and 1989, this chapter makes a twofold argument. First, it argues that despite West Germany's increasingly secular orientation, the Catholic Church exercised significant political influence with respect to abortion policy throughout the history of the Federal Republic. Second, it argues that the West German Church's participation in these debates exposed deep rifts within the Catholic community, which in turn contributed to the formation of a smaller, more activist, and conservative Church. By the early 1980s, this smaller Church began developing new arguments, strategies, and issue-specific alliances in response to Germany's changed social, cultural, and political climate.

This transformation of the Catholic community did not take place overnight, nor did all Catholic leaders embrace the need for change at the same time. Catholic women's organizations, painfully aware of women's growing alienation from the Church because of its stance on issues such as birth control and abortion, led the charge. They introduced new strategies for protecting unborn life as part of a larger campaign to expand women's roles in the Church. However, the episcopate and the ZdK initially resisted these efforts. In 1988, Archbishop Johannes Dyba of Fulda went so far as to suggest that the kfd had "nothing against the mass killing of children," because it changed its magazine title from *Frau und Mutter* (Woman and Mother) to *Frau & mutter*. With this accusation, the debate on abortion and on women's place in the Church reached a new crescendo, and the exodus of women from the Church accelerated. Given women's greater engagement in the Catholic community than that of their male counterparts, the Church could

not indefinitely ignore women's growing disillusionment. It also could not ignore that the CDU's position on the defense of life no longer coincided with that of the Church. If the Church wanted to remain politically relevant, it would have to cultivate new political allies, as well as new tactics. This awareness first translated into political success in the context of the debate on NRTs and embryonic research in the late 1980s; however, it was the new stance taken by CDU women and the kfd leadership on abortion in 1984 that created the space in which new strategies and new alliances with political actors other than the Christian parties could develop.

### **The Theological and Legal Framework of the Debate**

Although most West Germans equated the Catholic position on abortion with a unilateral condemnation, the theological framework in which Catholics approached abortion reform in 1969 was much more complex. In fact, many Catholics, including several prominent theologians, numbered among the early supporters of abortion law reform. In supporting reform, they did not repudiate Catholic doctrine; they drew upon it, catalyzing a heated theological and political debate that polarized the West German Catholic community and had long-term consequences for reproductive politics in Germany.

#### *The Theological Context*

The Catholic Church has always considered abortion immoral; however, it has not always considered all abortions murder. In fact, for centuries two theological traditions on abortion coexisted—one that advocated a limited pro-choice position and one that supported a rigid condemnation. Only with the publication of the 1917 Code of Canon Law did the latter tradition achieve complete dominance in official Vatican teachings.<sup>1</sup>

As with contraception, the Bible provides little guidance on the subject of abortion. The most explicit biblical condemnation of abortion concerns miscarriages in cases of violence: "When men have a fight and hurt a pregnant woman, so that she suffers a miscarriage, but no further injury, the guilty one shall be fined as much as the woman's husband demands of him. . . . But if injury ensues, you shall give life for life."<sup>2</sup> In AD 100 the Didache, one of the earliest Church documents, made no distinction between the killing of an unborn child and the murder of a living child. However, by the fourth century, the Church fathers offered differing views on whether abortion was equivalent to murder.<sup>3</sup> Consequently, in some early Church documents, the

Church fathers emphasized the sins of fornication and adultery over the sin of abortion. For example, the Synod of Elvira in AD 306 addressed abortion only in cases of adultery, and in the eighth century the Irish canons declared sterilization a more serious offense than abortion, except in cases where the fetus was fully formed. Since sterilization permanently broke the connection between procreation and sexual relations, the penitent had to fast for seven years, whereas only three years of fasting were required for abortion.<sup>4</sup> Similarly, the *Decretum Gratiani* (1151), the first comprehensive code of canon law accepted as authoritative by the Church, concluded that abortion was homicide “only when the fetus was formed.”<sup>5</sup> Many Catholic theologians at this time endorsed a delayed hominization theory, according to which the fetus did not possess a rational soul at the time of conception and consequently did not yet constitute a human life. Augustine of Hippo, Jerome, and Thomas Aquinas all propagated this view. According to Aquinas, the fetus is first endowed with a vegetative soul, then an animal soul, and finally a rational human soul. The fetus acquired a human soul once it reached full development—approximately forty days after conception for a male and eighty days for a female.<sup>6</sup>

In addition to concerns about the moment of ensoulment, early theologians grappled with the question of therapeutic abortion. In the fifteenth century, Antoninus of Florence, later canonized by the Church, approved early abortions in order to save a mother’s life. And in the sixteenth century, Antonius de Cordoba argued that the mother could take abortive medication even late in pregnancy if required for health, insisting that the woman had a *jus prius*.<sup>7</sup> As late as 1872, the Vatican refused to give a definitive answer when consulted about an abortion requiring dismemberment of a formed fetus in order to save the mother’s life.<sup>8</sup>

Yet in 2009 the Catholic Church excommunicated Sister Margaret McBride, an administrator at a Catholic hospital in Phoenix, Arizona, for approving an abortion in order to save a woman’s life and rescinded the excommunication only after she agreed to serve penance for her transgression.<sup>9</sup> That same year the Church became entangled in controversy when a Brazilian archbishop excommunicated the doctors who performed an abortion on a nine-year-old girl who had been raped by her stepfather. The archbishop also excommunicated the mother, who approved the procedure in order to save her child’s life. Neither the child nor the rapist was excommunicated.<sup>10</sup>

Like the limited pro-choice position, this unilateral condemnation also had a long history in the Church. In 1220, the Decretals of Gregory IX treat-

ed contraception and abortion as homicide. In 1588, Pope Sixtus rescinded the distinction made in the Gratian Code between aborting an animated and a nonanimated fetus; all abortions were designated homicides, and no exception was made for therapeutic abortion. Similarly, the 1917 Code of Canon Law implicitly endorsed immediate hominization and prescribed excommunication for the mother and any person who abetted an abortion. From this point forward, the official Church moved in the direction of rejecting delayed hominization, declaring abortion a sin against life.<sup>11</sup> In 1974, the CDF acknowledged in *On Procured Abortions* that the point of ensoulment could not be established definitively, but emphasized the human potentiality of the fetus: "From a moral point of view this is certain: even if a doubt existed concerning whether the fruit of conception is already a human person, it is objectively a grave sin to risk murder: 'The one who will be man is already one.'"<sup>12</sup>

Yet this seemingly clear-cut condemnation is more complicated than it first appears to be. The Church permits some therapeutic abortions, based on the distinction it draws between direct and indirect abortion. The former is illicit and the latter is licit. A direct therapeutic abortion is defined as the intentional killing of the fetus in order to save the mother's life. An indirect abortion is one in which the death of the fetus is an unintended secondary effect. The acceptability of the latter is based on the principle of double effect (explained in Chapter 2). A woman diagnosed with aggressive uterine cancer or an ectopic pregnancy may have an abortion because treatment requires the removal of a diseased uterus or fallopian tubes or both. The removal of the uterus or fallopian tubes is not intended to bring about the death of the infant; death is an unintended side effect of removing the diseased organ, albeit a known one.<sup>13</sup> However, the decision to abort was that of the doctor, not the pregnant woman. The West German Catholic feminist theologian Uta Ranke-Heinemann noted in 1988 with reference to the 1976 German bishops' directive, which stated that they would respect the doctor's decision in cases where the mother's life was in jeopardy: "This letter is directed to the physicians. . . . The mothers are simply shifted from one alien jurisdiction to another. The decision about their life or death is transferred from the almighty gentlemen in black to the almighty gentlemen in white."<sup>14</sup> Yet even this concession deviated from the Vatican position; it implied that the German bishops would not take action against physicians who in good conscience performed a direct therapeutic abortion when the mother's life was in jeopardy. When on June 29, 1986, ZDF aired a program

suggesting that the German bishops supported direct therapeutic abortion, the DBK chair immediately clarified their position, stating that respecting the doctor's decision should not be conflated with approving it.<sup>15</sup>

Because Catholic teachings emphasized safeguarding the unborn child's soul and motherly sacrifice, they potentially placed the mother's physical well-being in jeopardy. As late as 1961, Bernhard Häring argued that willingness to die in childbirth defined motherhood: "The very essence of motherly love and of the maternal spirit of sacrifice demands that the mother be willing to forfeit her own life rather than presume to intervene in the life of her child."<sup>16</sup> Ensuring the baptism of the dying child also took precedence over safeguarding the mother's health: "If there is no other way to save the life of the child, above all no way to ensure its baptism, the mother is obliged to submit to an operation of this kind. In cases where the child is in extreme danger, the surgeon is permitted to perform a cesarean section without her consent in order to rescue the child in its 'necessity.'"<sup>17</sup> These types of statements led Uta Ranke-Heinemann in 1988 to conclude acerbically that "the only good mother is a dead mother, for the only mother who does not 'betray her conscience' is the one who is ready to go under with the fetus."<sup>18</sup>

Yet despite the prominence of the "right-to-life" argument in twentieth-century Catholicism, some Catholic theologians defended the morality of direct abortion in certain circumstances. These theologians took one of three approaches—that of delayed hominization based on modern scientific knowledge about fetal development; the relational approach; or a broader interpretation of the principle of double effect.<sup>19</sup> Modern proponents of delayed hominization, such as Joseph Donceel, argued that since the nervous system and the cortex of the brain were not fully formed in early pregnancy, the fetus was not yet a person. Although the fetus deserved consideration because it was in the process of becoming human, it could not command the same respect as fully formed life; consequently, in some limited circumstances abortion might be permissible. Other proponents of this view simply insisted that theologians could not presume to know the point of hominization. In 1962, Karl Rahner wrote: "It cannot be inferred from the Church's dogmatic definitions that it would be contrary to faith to assume that the leap to spirit-person happens only during the course of the embryo's development. No theologian would claim the ability to prove interrupting pregnancy is in every case the murder of a human being."<sup>20</sup> The relational approach emphasized the centrality of the parents' acceptance of the child. By their acceptance of the fetus, particularly by naming it, the

parents gave the fetus its place in the world. The fetus did not become a child until its parents accepted it as such. If this relationship did not exist, one had a duty to discuss the legitimacy of continuing the pregnancy. Anton Antweiler, a Swiss theologian teaching in Germany, endorsed this view in a 1971 *Stern* article, which then received prominent coverage in *Der Spiegel*.<sup>21</sup> Finally, some theologians supported a broader interpretation of the principle of double effect. They argued that direct abortion to save the mother's life should be allowed if the fetus was not viable and failure to remove it would result in serious injury or death for the mother. Bernhard Häring (after 1968) and Franz Böckle endorsed this view.<sup>22</sup>

Additionally, many Catholics considered the Church's unconditional condemnation of birth control and abortion hypocritical because of the Church's role in Germany's Nazi past and its postwar support of rearmament. The inferior status assigned to illegitimate children by canon law until 1983 also made the Church vulnerable to accusations of hypocrisy. The canon law expert Horst Hermann noted that the Church demanded that the state extend protection to unwanted illegitimate children, while the Church itself did not guarantee such children equal rights. The 1917 Code of Canon Law, in effect until 1983, dictated that an illegitimate child could not join a religious order or become a priest without receiving dispensation from the official Church. Nor could an illegitimate child inherit property.<sup>23</sup> Although some critics highlighted Church hypocrisy in the early debates on abortion, this viewpoint did not dominate media coverage until the late 1970s, when the moral credibility and authority of the Church came under heavy attack.

Abortion's status as a moral and political issue also reopened the theological and political debate on the separation of church and state. At Vatican II (1962–1965), the council fathers emphasized the separation of church and state, as well as the freedom of lay Catholics to formulate their own political opinions, albeit with Christian principles in mind: "It is very important, especially where a pluralistic society prevails, that there be a correct notion of the relationship between the political community and the Church, and a clear distinction between the tasks which Christians undertake, individually or as a group, on their own responsibility as citizens guided by the dictates of a Christian conscience, and the activities which in union with their pastors they carry out in the name of the state."<sup>24</sup> The council fathers did not rule out all political interventions, but they disavowed the close association of church and state that typified the Adenauer era (1949–1963), when Catholic priests held prominent political positions in the CDU-CSU,

and many bishops explicitly told the faithful how to vote. In 1969, the DBK reaffirmed its commitment to nonintervention in the political sphere unless “the foundations of our democracy are at risk.”<sup>25</sup> For conservative West German Catholics, the proposed liberalization of Paragraph 218 constituted such a threat. However, as we shall see, most German Catholics disagreed and interpreted the institutional Church’s interventions in the political debate on abortion as a violation of the spirit of Vatican II—a violation for which West German Catholics had little tolerance, especially after the 1968 papal condemnation of artificial contraception. Increasingly, West German Catholics, even some who rejected abortion law reform, disapproved of the Church’s intervention into the political debate on abortion.

### *The Legal Context*

Like the ecclesial/theological debate on abortion, the legal debate on abortion in West Germany had a long history, predating the formation of the German state in 1871. The 1871 penal code defined abortion as a felony punishable by up to five years’ imprisonment. By the late nineteenth century, feminists and some social reformers demanded support for unwed mothers, recognition of women’s right of self-determination, and the removal of restrictions on abortions. These efforts occurred in the context of a broader movement to put contraception, population control, and women’s rights on the political agenda. In 1926, the Weimar government approved revisions that decriminalized abortions performed to save the mother’s life. The National Socialist government introduced two new provisions that reflected the distinction it drew between worthy life and “life unworthy of life” (*Lebensunwertes Leben*). The 1935 Law for Hereditary Health approved abortion and enforced sterilization for members of so-called alien races and inferior persons, while the 1943 amendment to Paragraph 218 made abortion a capital offense for Aryan women.<sup>26</sup>

In 1949, determined to distinguish itself from its predecessor, the new Federal Republic of Germany adopted the Grundgesetz, which established a hierarchy of rights—the most important of which was the government’s duty to safeguard “human dignity” and the “right to life.”<sup>27</sup> It also reinstated the Weimar Criminal Code, including the 1926 version of Paragraph 218.

Although revisions of Paragraph 218 had been proposed in the 1950s, efforts to reform the West German Criminal Code did not take off until the late 1960s and early 1970s. As Dagmar Herzog noted in *Sex after Fascism*, the post–World War II abortion reform movement became possible only

because of fundamental shifts in social and political perspectives: "In the re-configured social and political climate of the late 1960s, under the quadruple impact of the 'sex wave,' the Social Democrats' ascension to participation in power in the Grand Coalition (1966–1969), the rise of the student movement, and the growing popular conviction that the morality of the Christian churches was hypocritical, there was a far greater willingness across the political spectrum to liberaliz[e] sex-related law."<sup>28</sup>

In 1969, the SPD in coalition with the FDP defeated the CDU-CSU coalition. For the first time in the history of the Federal Republic, the Christian parties did not control or share control of the federal government. Almost immediately, the new coalition government announced its intentions to reform Paragraph 218. A commission appointed by the government presented two proposals. The majority of commission members recommended the *Fristenlösung* (term solution) that decriminalized abortion during the first trimester after the woman had received counseling. A minority of the commission recommended the *Indikationslösung* (indication or legal justification solution) that prohibited abortion unless there was a justification for it, such as rape. The two reform models quickly spurred a heated public debate in which the West German media, secular feminist groups, the political parties, the two Christian churches, the medical community, and the general public became embroiled.

The abortion reform battle was by no means limited to West Germany. The West German debate occurred in the context of widespread efforts to liberalize or abolish abortion laws throughout Western Europe and the United States.<sup>29</sup> Moreover, in 1972, East Germany quietly legalized abortion in the first trimester.<sup>30</sup> Proponents of reform employed multiple rationales for liberalizing or abolishing abortion laws: the inefficacy of criminal punishment, class inequities in the application of the law, the danger that illegal abortion posed to women's health, women's right to self-determination, and the right to privacy. However, the choice of rationales as well as the emphasis placed on different rationales and the discursive frame in which they were presented varied from one nation to another. Both reformers and their opponents adapted their approach to the cultural and political traditions of each nation in order to garner widespread support. For example, the idea that women possessed a special competency to speak on abortion had wide acceptance in Germany. Consequently, German feminists utilized this frame to publicize problems with the existing law in the 1970s and to demand additional reforms in the 1990s. In contrast, feminists in the U.S. abortion

debate strategically chose to downplay the gender dimension. Instead, they underscored the right to privacy, taking advantage of American mistrust of government intervention in the private sphere.<sup>31</sup> Thus, despite the international scope of the debate, the articulation was decisively national. However, this should not be taken to mean that nations acted in isolation. Not only were transnational actors involved in national debates, opponents and proponents of abortion reform closely followed developments in other nations and tried to use these developments to their advantage.

### Early Interventions: Frauenaktion 218, the Vatican, and Cardinal Höffner

The altered social and political climate of the late 1960s and early 1970s did not translate into an easy victory for proponents of abortion law reform; instead, reformers confronted stiff resistance from the Christian churches and the medical community. On December 10, 1970, a group of Catholic and Protestant writers published a thirty-page brochure, "Das Gesetz des Staates und die sittliche Ordnung," with a foreword coauthored by the chair of the DBK, Cardinal Julius Döpfner, and the chair of the Council of the BDK, Bishop Hermann Dietzelbinger. The document condemned abortion as an immoral act that required criminal prosecution: "Not every infringement of a moral obligation requires criminal prosecution. However, the commandment against killing human life as a moral axiom is of such fundamental significance for the human community that it must likewise be anchored in the law of the state."<sup>32</sup> In 1970–1971, the DBK, ZdK, and BDKJ also issued condemnations.<sup>33</sup>

The medical community joined the churches in opposing reform. On June 24, 1971, the Association of Established Doctors in Germany (Verband der niedergelassenen Ärzte Deutschlands) declared that "every abortion is a destruction of new life and thus an act of killing." It warned that an abortion should not be likened "to the removal of an appendix or blastoma."<sup>34</sup> Similarly, the president of the Professional Association of Gynecologists (Berufverband der Frauenärzte) wrote, "In our opinion, the obligation of the doctor to weigh meticulously the risks (i.e., the justifications) must be preserved; in accordance with this obligation is the right of professional freedom, which can never be qualified or coerced."<sup>35</sup>

Although the liberal press and some prominent Protestant and Catholic theologians criticized these interventions, government officials and politicians reacted cautiously. With national elections fast approaching, they

were reluctant to antagonize either the churches or the medical community. In 1971, Justice Minister Gerhard Jahn (SPD) withdrew his support for the *Fristenlösung*, as did some SPD legislators. Immediately, the editor in chief of *Der Spiegel*, Rudolf Augstein (a former Catholic), attacked Jahn and the Christian churches, particularly the Catholic Church: "But whether a two-month-old embryo is a 'someone' who already has the right to its nascent life is now the controversial question, which the minister, at least, has decided in agreement with the pope."<sup>36</sup> Augstein also accused Jahn and other politicians of pursuing selfish interests at the expense of the concerned women—both parties, he contended, wanted to control the outcome of the upcoming 1972 Bundestag elections.<sup>37</sup>

Efforts by politicians to place abortion law reform on the back burner until after 1972 failed. On June 3, 1971, a coalition of three grassroots feminist organizations from West Berlin, Frankfurt, and Munich (Sozialistischer Frauenbund Westberlin, Frankfurter Frauenaktion 70, and Münchener Weiberrat) launched a national campaign of self-incrimination modeled on a similar 1970 French campaign; 374 women, many of them celebrities, announced in *Stern* that they had aborted illegally: "Women with means can abort without danger in Germany and in foreign countries. Paragraph 218 forces women without means onto the kitchen tables of quacks. It stamps them as criminals and threatens to imprison them for up to five years. Nevertheless one million women abort under degrading and life-threatening circumstances. I am one of them."<sup>38</sup> Liselotte Funcke, the FDP vice president, numbered among the signers. That evening, Funcke and Maria Henze (CDU) debated abortion reform on national television.<sup>39</sup> Shortly thereafter, the "Infratest-Politikbarometer" printed the results of a survey on German Catholic attitudes toward abortion. Of the 2,000 Catholics polled, 51 percent said they believed women should have the right to terminate a pregnancy. The number rose to 70 percent if extenuating social or economic circumstances existed. It increased to 80 percent if it was highly probable the child would be born with serious mental/physical disabilities and to 84 percent if the mother's life was in jeopardy. Despite official Church condemnation, most West German Catholics supported broader parameters for legalized abortion (see Appendix H).<sup>40</sup> German feminists had captured the undivided attention of the West German public. Within one month of publication of the *Stern* article, feminists had collected 90,000 signatures of those supporting the abolition of Paragraph 218.<sup>41</sup> However, the feminist movement in West Germany, unlike that in the United States, had no

national-level organization; without centralized leadership, the movement could not create sufficient organized political pressure to influence legislative proceedings.<sup>42</sup> Instead, the political parties, the Constitutional Court, and interests groups, such as the Catholic Church and the medical community, with strong national-level organizations determined the direction of reform.

Pro-life Catholic organizations immediately launched a counteroffensive in response to the feminist campaign. In July 1971, the Association of Young Christian Workers (Christliche Arbeiterjugend, CAJ) and the Münster Youth Community (Münster Junge Gemeinschaft) published an open letter that criticized the “dishonest and manipulative methods” of *Stern*, *Der Spiegel*, and Aktion 218.<sup>43</sup> Similarly, in North Rhine-Westphalia, the CAJ distributed flyers attacking *Stern* for “celebrating a series of celebrities as saints because they killed human beings.” The CAJ also wrote the federal chancellor and the leaders of the CDU, SPD, and FDP to declare their opposition to reform.<sup>44</sup> Several kfd chapters also pursued letter-writing campaigns and petition drives, as did smaller Catholic groups such as The Lady of All Nations (Die Frau aller Völker).<sup>45</sup>

The German bishops and the Vatican also entered the fray. In a pastoral letter, Cardinal Jaeger of Paderborn characterized efforts to abolish Paragraph 218 as the “new euthanasia program.”<sup>46</sup> Cardinal Döpfner of Munich admonished the SPD for prioritizing women’s interests over the life of the unborn child.<sup>47</sup> No Catholic intervention generated as much controversy, however, as those of *L’Osservatore Romano* and of Joseph Cardinal Höffner of Cologne.

On February 12, 1972, the *L’Osservatore Romano* published an article on the proposed liberalization of West German abortion law. The article began by reiterating remarks made by Paul VI on January 12, 1972, in connection with the Italian abortion debate: “It is only a small step from legalized abortion to sterilization and from there to the elimination of unworthy life.” It then suggested that the West German government had placed “indirect and direct pressure” on some individuals to be sterilized.<sup>48</sup> That same weekend, German newspapers reported that the Milanese Catholic newspaper, *Avvenire*, had made similar claims in an article entitled “Worse Than Hitler.” The article charged, “The hospitals that performed abortions then were called Auschwitz, Dachau, and Mauthausen. It seems to us a unique schoolhouse for socialists and social democrats.”<sup>49</sup>

The apostolic nuncio in Bonn quickly issued a disclaimer stating that

the comments represented the views of the author, not the Vatican. The German press challenged the disclaimer. The Hamburg newspaper *Die Welt* pointed out that the statement appeared without a byline. The most likely author, therefore, was the chief editor of the Vatican newspaper, who answered directly to the Vatican state secretary.<sup>50</sup> *Die Welt* also reprinted the *L'Osservatore Romano* article in German translation. Other German editorial columns lambasted the Vatican for stooping to such low tactics and questioned the appropriateness of any religion that would make a political intervention in a pluralist society.

On February 21, 1972, Cardinal Joseph Höffner added more fuel to the fire. In an interview with the KNA, Höffner described any legislator unwilling to safeguard the sanctity of life, including that of an unborn fetus, as unelectable by observant Catholics. The Düsseldorf state secretary, Dr. Ulrich Klug (FDP), called Höffner's comments "an attempt at political coercion."<sup>51</sup> Bundestag member Lenelotte von Bothmer (SPD) described them as "a despicable undemocratic incitement."<sup>52</sup> Heinz Kühn, the SPD minister of North Rhineland-Westphalia and a former Catholic youth group member, accused the bishop of trying to exercise undue influence over the political decisions of Catholics.<sup>53</sup>

Höffner's comments placed the Church on the defensive. The newly elected president of the ZdK, Bernhard Vogel, attempted damage control. In an interview with *Der Spiegel*, Vogel reassured the West German public that Catholics were free to vote for whomever they chose: "Cardinal Höffner holds a high office in the Catholic Church and Catholic Christians expect bearers of high office to state positions when fundamental issues are concerned. Höffner has done so. Catholic Christians are free to accept this position or have a different opinion for reasons of conscience. But it is also the obligation of the cardinal of the Roman Church to express his opinions clearly on decisive issues."<sup>54</sup> While Vogel did not condemn Höffner's statement, he made it clear that he did not think it was a "good idea when the Church, even the Catholic Church, recommend[ed] a particular party to voters."<sup>55</sup> Other prominent Catholics issued stronger statements. In an interview with the journal *konkret*, Norbert Greinacher, a Catholic priest and professor of theology at the University of Tübingen, described Höffner's remarks as symptomatic of the Church's centuries-old negative attitude toward sexuality. He also called Cardinal Höffner's unconditional defense of life hypocritical, alleging that in 1959 Cardinal Höffner wrote a paper supporting the use of the atomic bomb against Japan. The Arbeitsgemeinschaft

der Priester- und Solidaritätsgruppen in der Bundesrepublik Deutschland, with approximately two thousand members, condemned Höffner's statement, as did Dr. Lengsbach, a professor of moral theology at the University of Münster, who actively campaigned for the SPD's reform initiative.<sup>56</sup>

Not all prominent Catholics took offense at Höffner's statements, however. Otto Roegele, an editor of the international Catholic journal *Communio*, contended that Höffner's only crime was holding an unpopular position. He pointed out that no one had accused Lengsbach or Greinacher of meddling when they campaigned for the SPD wearing clerical garb. Roegele also characterized *konkret* as a "political-pornographic magazine."<sup>57</sup>

The results of the 1972 election demonstrated that most Catholics did not feel obliged to honor the cardinal's recommendation. The CDU-CSU coalition did not regain power, and voter patterns revealed an upsurge in Catholic defections from the CDU-CSU. In the city of Kleve in North-Rhine Westphalia—where 45.5 percent of Catholics attended mass every Sunday and one SPD legislator once joked, "Even the potatoes are Catholic"—the SPD experienced a 6.6 percent increase in votes.<sup>58</sup> Defections from the CDU were equally dramatic among women voters. In the 1950s and 1960s, women overwhelmingly cast their ballots for the two Christian parties. In the 1969 national election, 10 percent more women than men voted for the CDU (see Appendix L). In 1972, the "woman bonus" dropped to 3 percent, prompting some CDU officials "to explore changing the party's stance on women's issues."<sup>59</sup> Elisabeth Noelle-Neumann, an executive at the Allensbach Institute of Demography, attributed the 1972 SPD victory "primarily to Catholic women" who defected from the Christian parties.<sup>60</sup>

The Vatican's intervention and Cardinal Höffner's remarks divided the German Catholic community; they also obfuscated a complicated and nuanced debate within the Catholic Church. Most Catholic leaders did not endorse such extreme tactics. Although many feared that the liberalization of abortion law would set a dangerous precedent given Germany's National Socialist past, they recognized that drawing such analogies marginalized the Church and alienated many West German Catholics. Not one speaker at the 1973 public rally "Für das Leben," organized by the Consortium of Catholic Associations in Germany (Arbeitsgemeinschaft der katholischen Verbände Deutschlands) in conjunction with the ZdK, referred to Germany's Nazi past.<sup>61</sup> In fact, when quoting a British doctor who opposed abortion reform in England, speakers at the rally excised the doctor's references to parallels between Nazism and contemporary British support for

abortion.<sup>62</sup> No speaker recognized the legitimacy of abortion except in cases of an imminent danger to the mother's life, of course, but all stressed that both church and state had a duty to provide assistance to pregnant women in crisis. Several underscored the need to end discrimination against unwed mothers within the Church and to hold fathers accountable.<sup>63</sup>

The 1972 election exposed the growing isolation of the institutional Catholic Church on abortion. It also generated concerns among some prominent Catholics about the West German Church's future. In *Strukturwandel der Kirche*, Karl Rahner asserted that if the Church continued down its current path, it would become "a historically and socially meaningless sect."<sup>64</sup> Rahner argued that "the Church should be a church that courageously and clearly defends morality, but without moralizing."<sup>65</sup> The Catholic Church, he declared, needed to embrace pluralism—in West German society and within Catholicism. Although he did not refer to Höffner by name, Rahner made apparent his disapproval of the cardinal's positions: "It is not so clear where the boundaries for open Communion lie; it is not clear that remarried divorced persons should not be allowed the sacraments in every case. . . . It is also not clear what possibilities exist for a Christian conscience with reference to the state penal code on the termination of pregnancy. . . . It is not so simple to say that a party is no longer electable for a Christian or a Catholic."<sup>66</sup> For Rahner, issuing unilateral moral condemnations did not serve the best interests of the Church or its members. Instead, the Church needed to foster a moral framework where Catholics could learn to make responsible decisions of conscience.<sup>67</sup> Rahner worried that the institutional Church would opt for a "comfortable traditionalism and pseudo-orthodoxy," noting that many Church leaders did not regret the "drifting of restless and questioning people from the Church, because then peace and order could be restored and everything in the Church could be as it was previously."<sup>68</sup>

In fact, the seeming unity and lack of stormy protests at the 1974 Catholic Congress, noted with optimism by many conservative Catholic commentators and some German bishops, concealed a mass exodus from the Church. In the *Stuttgarter Zeitung*, Hannes Burger called attention to the decline in the number of Catholics participating in congress forums. Although the very young and the old were well represented, college students and the middle generations seemed almost completely absent. Burger noted wryly that in their critical engagement with the Church, high school students lacked "the frustration and aggression of the 20- to 30-year-olds who had been strongly represented at Essen [the 1968 congress] and whose anger had been

palpable because all discussions about reform in the Church have hardly changed anything.”<sup>69</sup> Many reform-minded Catholics, Burger concluded, had simply given up: “Above all more and more Catholics, particularly the middle generations, make their own arrangements on issues of faith and life problems, such as on marital morality and ecumenical contact in the community, and no longer bother struggling with the Church.”<sup>70</sup> The decline in Catholic protest actions did not result from a resolution of the issues; instead, it resulted from the resignation of reformers and moderates, which in turn created a smaller, more conservative West German Church.

### The Bundestag, the Constitutional Court, and Reaction to the *Indikationslösung*

On April 26, 1974, the Bundestag passed the Fifth Statute to Reform the Penal Law, endorsing the *Fristenlösung*. The vote was so close that individual votes had to be tallied for the first time in the Bundestag’s history (247–233). Given the intensity of the debate leading up to the vote, the initial reaction of opponents was relatively mild. The two most outspoken opponents—the Catholic Church and the German Medical Association—expressed only mild regrets about the parliamentary decision. A few Christian opponents, such as the former president of the Evangelical Congress, Heinz Zahrnt, worried that the vehemence of the two churches’ campaign may have been counterproductive—and thus garnered support for the opposition.<sup>71</sup>

A more likely explanation for the mildness of the response was that opponents of the *Fristenlösung* knew that for the measure to become law, it required the approval of the Bundesrat, the legislative body that represented the ten German states (*Länder*) at the federal level. In 1974, representatives of the Christian parties dominated the Bundesrat; opponents thus believed the bill had little chance of becoming law. As expected on May 10, 1974, the Bundesrat rejected the *Fristenlösung* approved by the Bundestag and called for the mediation committee (*Vermittlungsausschuß*) to negotiate a compromise. The SPD-FDP coalition government led by Helmut Schmidt now faced a decision. As the *Frankfurter Allgemeine Zeitung* explained, “Whether it comes down to an effort at a compromise in the mediation committee or a confrontation essentially depends on how the Schmidt government appraises the issue of abortion, whether it is appropriate to demonstrate flexibility or whether it is an occasion to demonstrate the will of the new government to prevail even against the Bundesrat.”<sup>72</sup>

To pass the *Fristenlösung* without Bundesrat approval, supporters needed

an absolute majority in the Bundestag, meaning that at least two of the eighteen SPD legislators who previously supported the *Indikationslösung* had to change their votes. When efforts at compromise with the Bundesrat failed, a new vote on the *Fristenlösung* was scheduled in the Bundestag for June 15, 1974. With nine of the eighteen SPD supporters of the *Indikationslösung* switching sides, supporters of the *Fristenlösung* now had an absolute majority (260–218).<sup>73</sup>

Catholic opponents reacted vehemently to the new vote. The ZdK president, Bernhard Vogel, declared, “We accept the challenge, as so often in the past, we will tirelessly fight and advocate with all available means, so that the current decision of the German Bundestag is countermanded.”<sup>74</sup> Cardinal Döpfner vowed that the Church “never will resign itself” to the *Fristenlösung*.<sup>75</sup>

Catholic conservatives had not accepted defeat. On June 21, 1974, *Die Zeit* reported that Hans Filbinger, a committed Catholic and the prime minister of Baden-Württemberg, announced that his government would file an injunction to prevent the new law from going into effect before the German Constitutional Court could rule on its constitutionality.<sup>76</sup> The court granted the injunction; however, it did not recommend reverting to the status quo. Instead, it stipulated that Paragraph 218b and Paragraph 219 of the new statute, which imposed the *Indikationslösung* for late-term abortions, apply to all abortions. In addition to the two justifications recognized by the new statute for late abortions (medical and eugenic), the court stipulated a third justification (rape).<sup>77</sup>

Concomitant with the action of the government of Baden-Württemberg, 193 CDU-CSU Bundestag members submitted an application for an abstract control of norms (*abstrakte Normenkontrolle*) to the Federal Constitutional Court.<sup>78</sup> The state governments of Bavaria, the Saarland, Baden-Württemberg, Schleswig-Holstein, and the Rhineland-Palatinate submitted similar motions. According to Article 14 of the Federal Constitutional Court Act, the First Senate had jurisdiction; unlike the Second Senate, judges affiliated with the two Christian parties held the majority of seats.<sup>79</sup> In mid-November 1974, the court began hearing oral arguments.

The primary issue at stake was the legal status of unborn life: Was it entitled to protection under Articles 1 and 2 of the Basic Law? If so, did the state’s duty to safeguard fetal life include protecting it from actors other than the state (e.g., the mother)? Legal representatives for the CDU-CSU argued that the word “everyone” (*Jeder*) found in Article 2, Paragraph 2, Sentence

1 of the Basic Law allowed no exceptions; the state could not distinguish between prenatal and postnatal life.<sup>80</sup>

Speaking for the federal government, the minister of justice did not dispute the state's constitutional obligation to protect unborn life; he instead argued that the new law, in conjunction with other measures, protected unborn life by providing counseling and social assistance to pregnant women and families in crisis. This form of protection, the minister contended, was more effective than criminal punishment.<sup>81</sup>

The legal representative for the Bundestag, Dr. Horst Ehmke, took a different approach, questioning the legal status of unborn life. In the court verdict reiterating the oral arguments made by all parties, Ehmke's position was represented as follows: "The use of the word 'everyone' speaks against the acceptance of a fundamental right for unborn life, since both in colloquial speech and in legal parlance a human person clearly is identified with 'everyone.' Also in the legal sense, personhood begins at birth. Thus it is not yet decided whether and to what extent unborn life represents a legal good protected under Article 2, Paragraph 2, Sentence 1 of the Basic Law."<sup>82</sup> Ehmke turned the tables on his Catholic opponents and supported his claim by underscoring the Catholic Church's past acceptance of delayed hominization: "According to Church law up until the end of the nineteenth century, only the aborting of an 'animated' fetus was punishable; in practice the eightieth day after conception was recognized as the point in time of animation."<sup>83</sup> He added that in recognizing the potential validity of justifications other than a threat to the mother's life, his opponents implicitly acknowledged a distinction between prenatal and postnatal life.<sup>84</sup>

On February 25, 1975, the court ruled by a vote of six to two that the new statute was unconstitutional. In rejecting the arguments made by representatives of the federal government and parliament, the court emphasized the history and origins of the Basic Law. It pointed out that the inclusion of a provision acknowledging "the self-evident right to life" was a "reaction to the extermination of 'life unworthy of life'" under National Socialism. In affirming a right to life, the Basic Law distinguished the new state from the old. The court argued, moreover, that current scientific knowledge did not support a clear demarcation between prenatal and postnatal life.<sup>85</sup> "Everyone" included developing life:

Contrary to the objection that "everyone" in colloquial speech and legal language denotes a "completed" human person and that a pristine interpretation

of the wording therefore speaks against the inclusion of unborn life in the scope of Art. 2, Par. 2, Sentence I of the GG [Basic Law], it should be stressed that in any case, the meaning and purpose of this provision of the Basic Law require that the protection of life extends to developing life. The security of human existence against state encroachment would be incomplete if it did not also comprise the preliminary stage of unborn life.<sup>86</sup>

The court also noted that the authors of the Basic Law advanced a definition of life that included unborn life.

The court did not deny women's constitutional right to self-determination; the Basic Law established a hierarchy of values that gave precedence to the fetus's right to life over the mother's right to self-determination: "The opinion expressed in the Bundestag during the third reading of criminal law reform, which underscored the primacy of the woman's right to self-determination derived from human dignity over [the right] of all others for a certain time period, including the child's right to life, is not compatible with the constitutional order of values."<sup>87</sup> The court did not claim that abortion was acceptable only if the pregnancy endangered the mother's life; the legislature could establish an *Indikationslösung* balancing the constitutional claims of the mother against those of the unborn child.<sup>88</sup> Abortion could not be decriminalized, however. Independent of the actual effectiveness of criminal sanction, "the unjust character" of the act demanded "legal condemnation."<sup>89</sup>

The judgment incensed feminists and the liberal media. Feminists were furious that the court had not unequivocally affirmed women's right to make decisions concerning their bodies. They staged mass protests at Catholic churches in Berlin, Munich, and Frankfurt<sup>90</sup> and organized bus tours to the Netherlands, where no legal restrictions were placed on abortions during the first trimester of pregnancy.<sup>91</sup> The liberal media charged that the decision owed its reasoning to Catholic natural law; some critics even alleged a Vatican conspiracy. In an editorial in *Die Zeit*, Hans Schueler described the verdict as an "apodictic shibboleth from the command post on high (*Feldherrnhügel*) of natural law."<sup>92</sup> A headline in the *Frankfurter Rundschau* rechristened the decision "the Karlsruhe Encyclical."<sup>93</sup> Rudolf Augstein accused the CDU of exercising undue control over the Constitutional Court's composition.<sup>94</sup>

Although West German allegations of a Vatican conspiracy had no factual foundation, equally erroneous was the 1976 assessment of the U.S. legal expert John D. Gorbey, who claimed that religion played no role in the

decision. The reasoning of the verdict, as well as the history of the Basic Law to which it alluded, indicated that Christian moral principles, particularly Catholics ones, shaped the decision. In the dissenting opinion, Justices Helmut Simon and Wiltraut Rupp-von Brünneck (the only female justice) objected to the court's insistence on an independent ethical condemnation: "Our essential objection is directed against the fact that the majority did not demonstrate from where they constitutionally derived a requirement of condemnation as an independent duty. In our opinion, nowhere does the Constitution stipulate that ethically objectionable or criminal behavior must be condemned per se with the help of statutory law without regard to its desired effect. In a pluralist, ideologically neutral and free democratic community, it remains entrusted to the forces of society to determine postulates of ethics."<sup>95</sup> In effect, the majority decision inserted an absolute moral value into a modern criminal code; in doing so, the decision recalled earlier West German court decisions that explicitly affirmed a theory of supraconstitutionality and prescribed criminal sanctions for all moral offenses. For example, in its decisions on the redrawing of borders between the southwest states in October 1951 and on the equality of husband and wife within marriage in December 1953, the Constitutional Court declared that the court had a duty to strike down any law that contradicted higher principles.<sup>96</sup> A decision of the Federal High Court of Justice (Bundesgerichtshof, BGH) in 1958 specified that natural law established the limits of state law.<sup>97</sup>

By referring to the Parliamentary Council debates, the court incorporated earlier defense-of-life arguments that drew on natural law. In the immediate post-World War II era, natural law theory experienced a revival in Europe, particularly in Germany. As Gottfried Dietze explained in 1956, "The negative revolution of 1945 was negative indeed . . . insofar as it was mainly a reaction against juristic positivism, which under the dictatorships had been carried to extremes. Quite naturally refuge was sought in natural law, which promised to assure the restoration of human dignity."<sup>98</sup> This receptivity to natural law and concomitant disillusionment with legal positivism placed the Christian parties at a distinct advantage in promoting their vision of the new West German Constitution.<sup>99</sup> In discussions of Article 2, conservative Christian leaders, such as Hans-Christoph Seebohm and Helene Weber, pressured for including the defense of "germinating life" in the right to life clause.<sup>100</sup> The 1975 decision noted that Theodor Heuss (FDP) had agreed that life included prenatal life; however, he also argued that the topics of prenatal life and the death penalty belonged in the criminal code,

not the Constitution. The verdict also acknowledged that Dr. Heinrich Greve (SPD) objected to extending the right to life to prenatal life. Still, the court concluded that irrespective of political affiliation, most constitutional authors believed that the right to life extended to unborn life, since only one objection appeared in the minutes.<sup>101</sup>

The court's assessment was accurate up to a point; with the exception of Greve, SPD members made no objections to this understanding of the right to life during plenary discussions. But as Michael Gante pointed out in § 218 *in der Diskussion*, the Constitutional Court referred only to plenary discussions. The court did not mention the discussions of the main committee of the Parliamentary Council. By the time of the plenary discussions, the SPD had abandoned its earlier objections, recognizing that the prevailing consensus within the population with respect to values made it inopportune to pursue its previous position.<sup>102</sup> Strategic silence, not consensus across the political spectrum, explained the absence of objections in 1949. This silence came back to haunt the SPD in 1975; the Christian political parties had won an important, albeit qualified, victory in the abortion debate. In framing all future discussions of abortion, opponents would have to acknowledge the right to life of the unborn fetus.<sup>103</sup>

On learning of the decision, Catholics celebrated. Bernhard Vogel, the president of ZdK, announced, "Now the legislators must revise the criminal stipulations on abortion in accordance with the limits imposed by the Federal Constitutional Court—a revision that is in accord with the Basic Law and that excludes a blanket approval of abortion."<sup>104</sup> But the celebration proved short-lived. The revised law recognized four justifications—medical, eugenic, criminal, and social. Opponents attacked in particular the new social justification that allowed women with a doctor's approval to have an abortion during the first trimester if for financial or psychological reasons they were unable to care for the child.

Many Catholic organizations, including the BDKJ, kfd, and ZdK, condemned the new law, as did the German bishops. On March 13, 1976, the KNA quoted Cardinal Döpfner: "The Church will not accept the new abortion law and will do everything in its power to ensure that the law is revised."<sup>105</sup> On May 7, 1976, the DBK published its official condemnation. It also released two directives—one addressed to pastoral care providers and religious instructors and one directed to the Catholic medical community.

In the directive to pastoral care providers and religious instructors, the bishops emphasized the importance of providing religious instruction that

underscored the immorality of abortion. The bishops also advocated creating a climate of openness and understanding toward women in crisis.<sup>106</sup> The directive to the Catholic medical community assumed a more negative tone, focusing on the moral and contractual obligation of Catholic hospitals and doctors to enforce Catholic values. Doctors at West German Catholic hospitals could perform an abortion only if the pregnancy jeopardized the mother's life. The directive also clearly stated that this restriction applied to Catholic doctors and nurses working at non-Catholic facilities.<sup>107</sup> In response, the federal minister of justice, Hans-Jochen Vogel—a member of SPD, a Catholic, and brother of the former ZdK president, Bernhard Vogel<sup>108</sup>—expressed his regrets that the German bishops focused on Paragraph 218 to the exclusion of all other reforms introduced by the government intended to create a family-friendly environment in West Germany: “It remains regrettable that the German bishops have passed over in silence such praiseworthy laws like the reform of the penal system, the victim compensation law, the reorganization of adoption and the tenancy law.”<sup>109</sup> On June 21, 1976, the new law went into effect, and proponents and opponents settled into an uneasy truce.

But conservative Catholics, who viewed the new law as indicative of the nation's moral collapse, found the truce intolerable. The Militia Sanctae Mariae pleaded with the ZdK to petition for another constitutional review: “The declaration concerning the new formulation of § 218 made by Cardinal Döpfner in the name of the German bishops at the national press conference remains empty rhetoric if all means for changing this law are not employed.”<sup>110</sup>

Other conservative Catholics, frustrated by the failure of the ZdK and the German bishops to block reform, resorted to personal attacks or lashed out against a liberal Catholic conspiracy for which they held Vatican II responsible. One Catholic doctor wrote Bernhard Vogel, “Until now, I believed that you were different from your SPD brother, who disloyally turned his back on his family.”<sup>111</sup> A priest complained that the ZdK had lost its credibility as a Catholic organization because two ZdK members serving in the Bundestag voted for the *Fristenlösung*.<sup>112</sup> Another Catholic linked the Church's failure to block abortion law reform to its failure to support the traditionalist, Archbishop Marcel Lefebvre:

For many Catholics, Lefebvre is perhaps the Church's only hope today. No one defends the faith like him; no one sustains the Church like him. . . . Do you not

see where the present path of the Church leads? Into the abyss! Do you not see the destruction everywhere? Can you tell me just one thing that has improved in the Church since the Council [Vatican II]?

One more thing, declarations like the one on Lefebvre will not improve the CDU's electoral prospects. If we conservatives no longer have a home in the CDU because liberals like you dominate it, then we will stay home on Election Day.<sup>113</sup>

Given the strong objections of conservative Catholics and changing West German moral norms, the truce had little chance of long-term success.

### International Year of the Child (1979) and Escalating Tensions

Conservative Catholics saw the "International Year of the Child" as the ideal occasion for renewing their campaign against legalized abortion. On January 22, 1979, the Standing Council of the DBK drafted a declaration that presaged the upcoming antiabortion campaign:

For some years a trend has existed toward the consciously chosen childless marriage and even toward a community of man and woman living out of wedlock, in which, without exception, the child has no place. Contrary to this attitude, the Christian understanding of the sexual community between man and woman stresses the complete turning of both partners to one another in a valid marriage and, at the same time, the shared devotion of both spouses to the children—the gift and the task of their encompassing love.<sup>114</sup>

Three years after the *Indikationslösung's* passage, the institutional Church had not admitted defeat. Instead, government statistics showing an almost 30 percent increase in the number of abortions revitalized Catholic resistance.

On February 10, 1979, the *Abendzeitung München* printed a declaration by the Catholic group Cartell Rupert Mayer: "The 'Year of the Child' begins with numerous news reports about the number of abortions registered last year. After examining these appalling numbers, one asks whether the 'Year' should more appropriately be called the 'Year of Killing Unborn Life.'"<sup>115</sup> The national Catholic newspaper *Neue Bildpost* ran a banner headline that read, "For murder, large sums of money exist! Government—how you lied to us!" The first allegation referred to the 200 million German marks expended annually on abortions by the federal health insurance program. The second alluded to the government's claim at the time of passage that the new law would reduce the number of abortions in West Germany.<sup>116</sup>

Beyond these editorial charges, several German bishops, including Cardinal Höffner, chair of the DBK (1976–1987), condemned the development of an “abortion mentality” in their Easter sermons. Höffner labeled it “scandalous” that in a welfare state like the Federal Republic, 67 percent of abortions fell under the “social justification.” He called for a constitutional review of the new law. Höffner’s Easter sermon received widespread coverage in the secular media, such as the *Süddeutsche Zeitung*, *Die Zeit*, *Die Welt*, and the *Westdeutsche Allgemeine Zeitung*.<sup>117</sup>

The conservative reaction to statistics indicating a significant increase in abortions placed the federal government and the SPD on the defensive.<sup>118</sup> In response, Johannes Rau, chair of the SPD in North Rhineland-Westphalia, launched a counteroffensive, denying allegations made by Cardinal Höffner against the SPD: “It is completely indisputable and must remain indisputable that pregnant women who find themselves in an economic crisis should and must be economically and financially supported in order to remedy this financial emergency.” He also refuted Höffner’s claim that the SPD endorsed a “right to abortion”:

I would like to assure you that the Social Democratic Party does not and will not support this ethically and legally untenable and false formulation. There is no “right to abortion.” According to the law, an induced pregnancy termination is fundamentally illegal. Only if certain legal conditions are met, specifically the existence of a specific justification, is that not the case. That is the position of the law from which the Social Democrats will not deviate. . . . The SPD holds strictly to the law, however—a law that also recognizes the social justification.<sup>119</sup>

Rau ended the letter with a veiled attack on Cardinal Höffner’s motives: “My party and I are prepared to search for improvements and to this end engage in pertinent discussions with the churches and social welfare associations; but surely the individual needs of pregnant women are not appropriate topics for controversy or polemical debates in the public sphere.”<sup>120</sup>

The West German political climate had changed substantially since the abortion debate began in the early 1970s. Since then, the SPD-FDP coalition had grown more confident of public support for the reformed Paragraph 218. Unlike the situation in 1971, when some SPD officials abandoned the *Fristenlösung* because they feared antagonizing the Church, now SPD-FDP government officials no longer wavered, perhaps because they recognized

that the abortion debate was a greater political liability and source of strife for the CDU-CSU and the Catholic Church than it was for them.

In fact, the CDU-CSU coalition had been deeply divided on abortion even in the early 1970s. Party members could not agree on the validity of the social and eugenic justifications or on the appropriate punishment for illegal abortions. Unable to resolve its differences, the Christian coalition submitted two reform proposals in 1974. The following year, the CDU-CSU remained divided and thus offered no counterproposal to the *Indikationslösung* proposed by the SPD. High-ranking Catholic leaders such as Bernhard Vogel worried that the CDU's "listlessness" on Paragraph 218 reform might alienate Catholics.<sup>121</sup>

In sum, the abortion debate exposed deep rifts in the CDU-CSU coalition, between the Catholic Church and the CDU, and between the CDU and women. In the 1976 Bundestag elections, the CDU experienced another drop in the "woman bonus." Only 1.6 percent more women than men voted for the CDU. Women's issues, such as abortion, had become a liability for the Christian parties, alienating their core constituency—women (see Appendix L). For conservative Catholic and Protestant women voters, the indecision of the CDU-CSU signaled the betrayal of traditional Christian values: "I sent a letter to our party, the CDU/CSU stating: 'If you keep delaying and cannot reach agreement on such important things, then you will never hold power again.'<sup>122</sup> Conversely, for women influenced by the feminist movement, the party's stances on women's issues were no longer attractive. As Sara Elise Wiliarty noted, in the 1970s the CDU "found itself caught between loyal voters who preferred the party's traditional stance on women's issues and an emerging constituency with different policy preferences."<sup>123</sup>

These heated exchanges over Paragraph 218 marked only the beginning of a stormy year centered on the abortion debate. On July 14, 1979, Hartwig Holzgartner, the Catholic chair of the CSU's Working Committee for Health Policy (Gesundheitspolitischer Arbeitskreis der CSU), made national headlines when he stated, "The National Socialists killed the Jews, and International Socialists kill the unborn. What is taking place among our people is precisely the way back to Auschwitz." The SPD and FDP charged that Holzgartner had sunk to an "unsurpassable level of political squalor."<sup>124</sup> The CSU general secretary dismissed SPD reactions as "sanctimonious retorts."<sup>125</sup>

As he had in 1972, Cardinal Höffner added fuel to the fire, ensuring that the abortion debate dominated media coverage of the 1980 national elections. In late July 1979, Deutschlandfunk invited Cardinal Höffner and

Ingrid Mathäus-Maier, an FDP member of the Bundestag, to comment on Holzgartner's statements and the revised Paragraph 218. Although Höffner did not repeat Holzgartner's Nazi comparison, his remarks suggested that he sympathized with it: "Yes, I can understand why the Munich physician Dr. Holzgartner called abortions brutal mass murders—not the actual occurrences [of abortion] in the Federal Republic—but if abortion is murder, then 73,000 abortions is likewise mass murder."<sup>126</sup>

Höffner's remarks produced an immediate reaction that illustrated just how much the West German social and political climate had changed since the early 1970s. In 1972, the parliamentary secretary of state in the Justice Ministry, Alfons Bayerl, expressed "shock and concern" about the Vatican newspaper's statements, but made no accusations about the Church's Nazi past. Even Rudolf Augstein, known for his antagonistic relationship with the Catholic Church, had refrained in 1972 from attacking the Church's record under National Socialism. In the 1980s, the same rules no longer applied. On Deutschlandfunk, Matthäus-Maier responded to Höffner's remarks by attacking the Catholic Church's record under Nazism: "I must say that I find this comparison to mass murder committed during the Third Reich particularly astounding, given, for example, that the Catholic Church under the Nazi dictatorship did not likewise castigate such mass murders as it now thinks it must do for a reform reached through democratic processes."<sup>127</sup>

If Matthäus-Maier's 1980 remarks exemplified the erosion of political deference accorded the Catholic Church, Hans-Jochen Vogel's response illustrated the changed relationship between Catholics and the West German episcopate. Vogel—minister of justice, SPD party member, and practicing Catholic—spoke out against Höffner's intervention in an open letter:

I am deeply disturbed by this situation, but considered whether it should be overlooked. . . . such silence seems to me dishonest and even irresponsible. Dishonest, because I have known you, Cardinal, for a long time and also respected you when we have represented different viewpoints. . . . Irresponsible, because by invoking you and the authority of your spiritual office, others have taken control of this topic and exploited it in gravely intolerable ways with the result that antagonism and hate have taken the place of serious discussion.

So I decided on this letter. I write it not as federal minister of justice for the government. I write it as a Catholic member of the Bundestag who agrees with the existing version of § 218 StGB and is therefore responsible for its standards

and consequences. I write as a Social Democrat who finds it unbearable to be named in the same breath with the initiators of Auschwitz.<sup>128</sup>

Vogel's response was personal, political, and unabashedly Catholic. He spoke of his moral responsibility for the consequences of the revised law, for which he would have to answer to God. He acknowledged his disappointment with 1978 statistics that indicated an increase in abortions. He refused to abandon the current law, however, and argued that the focus should be "on further improvements to the system of counseling and assistance."<sup>129</sup> He warned against equating the social justification with financial need: "In truth, the social justification includes a large number of complex conflicts that cannot be resolved with money."<sup>130</sup> Vogel ended by suggesting that Cardinal Höffner emulate the example of Cardinal König of Vienna: "Therefore I urgently request, Cardinal, that you rescind your avowal of understanding for an immoderate statement and instead caution prudence to those who due to blind fanaticism challenge the foundations for cooperation in our society. Cardinal König has provided an example of how discussion about the defense of nascent life can be led with great engagement but without reciprocal aberrances and demonization. I ask you: Follow this example."<sup>131</sup> Hans-Jochen Vogel's letter differed significantly from his brother's 1972 interview with *Der Spiegel*. Although disquieted by Höffner's intervention, his brother had avoided confrontation, stating that he was "no censor of cardinals." Seven years later, Hans-Jochen Vogel did not hesitate to advise a bishop on how to behave.

Although Höffner denied that he or any other bishop had ever accused Hans-Jochen Vogel "personally or the SPD in general of consciously choosing to rob the unborn child of adequate protection," he refused to rescind his assessment of abortion as murder, asserting, "If from the beginning a person grows inside the mother's womb, then the intentional killing of this unborn person must by definition be characterized legally as murder, as well as according to medical and biological reasoning."<sup>132</sup>

Höffner's second political intervention produced an even stronger reaction than the initial one, receiving coverage in major U.S. media outlets, such as the *New York Times* and the *Washington Post*.<sup>133</sup> The greater media attention reflected Cardinal Höffner's changed status within the Church hierarchy. In 1972, Höffner had not been chair of the DBK. His predecessor, Cardinal Döpfner, also condemned the revised law; however, Döpfner had refrained from intervening directly in electoral campaigns, never condemn-

ing a specific party platform or endorsing a particular political candidate in the post-Vatican II era. In contrast, Höffner had a long history of transgressing the boundary between church and state.<sup>134</sup>

No one should have been surprised, therefore, by the 1980 pre-election pastoral letter endorsed by the DBK under the leadership of Cardinal Höffner. Although the letter did not explicitly endorse Franz Josef Strauss, the CDU-CSU candidate for the chancellorship, its condemnation of current SPD-FDP government policy on abortion and divorce law, as well as its fiscal policies, left little room for conjecture; the DBK wanted Catholics to support the CDU-CSU coalition.

The 1980 pastoral letter deviated significantly from those issued by the DBK prior to the 1972 and 1976 federal elections, when Döpfner chaired the DBK. According to *Der Spiegel*, Bishop Hemmerle drafted a letter modeled on earlier election pastoral letters. His letter advised Catholics to vote in accordance with Christian beliefs but did not condemn any specific policies; thus, it did not give the impression of endorsing any particular political party. The DBK, however, had taken a conservative turn since the deaths of two influential moderates—Cardinal Döpfner in 1976 and Bishop Tenhumberg in 1979. Commission IV of the DBK (responsible for social and charitable issues) rejected Hemmerle's version and asked Anton Rauscher, a professor of Christian social teachings at the University of Augsburg, to revise it. Rauscher had close ties with Franz Josef Strauss and was an active member of the CSU's advisory committee on matters of church and state. *Der Spiegel* claimed that Josef Homeyer, secretary of the DBK, in conjunction with Rauscher strategically bypassed the Bonn leader of the Commissariat of German Bishops, Paul Bocklet, who in recent years had spearheaded efforts to improve the West German Catholic Church's relationship with the SPD.<sup>135</sup> In any case, the partisanship of the final pastoral letter ensured controversy in an otherwise dull election campaign. Chancellor Helmut Schmidt (SPD) reacted angrily: "A bishop or priest who wants to make policy should first take off his cassock."<sup>136</sup>

Catholic voters also reacted negatively to the letter. Catholic youth in the Diocese of Regensburg issued a six-page statement criticizing Höffner's partisan stance.<sup>137</sup> A survey of one thousand Catholics conducted by the Bielefeld-Emnid Institute for *Der Spiegel* showed that only 30 percent approved of the pastoral letter. The survey also noted that 32 percent of Catholics supported the existing abortion law, while 41 percent thought the current law was not liberal enough. In short, approximately 70 percent of West German

Catholics rejected the Church's position on birth control and Höffner's actions.<sup>138</sup> In all likelihood, the pastoral letter did more damage than good for the CDU-CSU's electoral prospects. As the sociologist Gerhard Schmidtchen noted, "The stronger the conflicts of value with the Church are, the more attractive the Social Democratic Party becomes for the churchgoer as well as for those who have distanced themselves from the Church."<sup>139</sup>

Although Höffner's actions were by no means the only reason for Franz Josef Strauss's failed bid for the chancellorship, his loss—one of the worst in the history of the West German Christian parties—made it clear that the CDU-CSU could not take an exclusionary approach; it had to pursue an alliance with the FDP. An alliance with the FDP necessitated establishing more distance between itself and the Catholic Church on the issue of abortion.

### Christian Women, the Abortion Debate, and a New Call for Equality (1984)

With the CDU-CSU's return to power in 1982, the secular media immediately predicted a cultural turn (*Wende*), anticipating that the CDU-CSU would pursue a policy of legal and moral restoration. Nowhere was the expectation stronger than in the arena of abortion politics, and feminist groups reacted to the CDU-CSU victory by staging nationwide demonstrations in favor of women's right to self-determination.<sup>140</sup> Feminists' reaction was predictable. But what caught many by surprise was the emergence of Christian Democratic women as major actors in the abortion debate and their concerted opposition to the efforts of conservatives to turn back the legislative clock.

In the 1970s Christian women (Catholic and Protestant) within the CDU had been deeply divided on abortion and consequently exercised no significant influence on the political debate on Paragraph 218. Although most did not support feminist demands concerning abortion, the feminist movement had influenced CDU women. Prior to 1969, the Women's Union of the CDU (Frauen Union, FU) focused exclusively on organizing charity events and social functions; it did not address political issues. In 1969, the FU passed a new statute, announcing the group's intention to take political stances on issues concerning women. After Helene Wex (Protestant) became president of the FU in 1971, the organization slowly evolved into a serious political player in the CDU.<sup>141</sup>

However, the FU did not align with the feminist movement; instead, in the 1970s, it endeavored to provide women with an alternative to political feminism. It did so by championing programs intended to recognize the

value of women's labor not only in the workforce but also in the home. For example, the group championed a work-family policy that would provide a parent with a small allowance to stay at home, the assumption being that this would be the mother, since she was more likely to have the lower salary. Unlike the SPD plan, the CDU plan would make funds available to both mothers in the workforce and stay-at-home mothers. Although this policy reinforced traditional gendered divisions of labor, it recognized the importance of parenting and thus assigned a higher value to women's conventional labor in the home. It also represented a tacit acknowledgment that not all children lived in traditional two-parent families. The debate on abortion had made it clear that many single mothers had abortions for financial reasons; CDU women believed that the child allowance would curtail such abortions. The policy also had the advantage of aligning with demands by feminist journals such as *Courage* that women be paid for housework. Yet despite the plan's emphasis on a gendered division of labor, conservatives within the party resisted for ideological and financial reasons. Some argued that women should not be paid to do what was their moral duty; others believed that the policy was too expensive. In the end, the FU succeeded in having its child allowance proposal incorporated into the 1975 CDU party platform.<sup>142</sup>

By 1982, when the CDU-CSU in conjunction with the FDP returned to power, the FU leadership was united in its support for the existing abortion law. Since the 1970s, the profile of its members and its officers had experienced significant change. The typical female CDU-CSU officer was no longer either a single woman or an older woman in her late fifties or early sixties. Instead, she was more likely a young, married, and educated career woman—a doctor, a lawyer, a journalist, or an academic. In 1984, only two CDU Bundestag members were housewives and more than half were under the age of forty-five.<sup>143</sup> These career women did not feel obligated to defer to their male colleagues, especially on issues that had a direct impact on women. When in November 1983 seventy-four male, conservative CDU-CSU Bundestag representatives sponsored an initiative abolishing federal funding for socially justified abortions, eighteen CDU women spearheaded the opposition. The CDU parliamentary leader, Ingrid Roitzsch, expressed her frustration with renewed discussion of Paragraph 218: "It is terribly irrelevant. Men have no knowledge, but they exert pressure."<sup>144</sup>

At the 1984 CDU Party Congress in Stuttgart, CDU women went on the offensive. Roitzsch and her supporters argued that the changes proposed by the seventy-four men would not prevent abortions; instead, they would

unfairly penalize poor women. Susanne Rahardt, a member of the CDU Hamburg executive board, and Editha Limbach underscored that women with financial means would continue to have socially justified abortions in private clinics, while poor women would have to resort to other means that placed their health in jeopardy. Both women argued that creating a more family-friendly environment in West Germany held the key to reducing the number of abortions in Germany.<sup>145</sup>

The FU in conjunction with the FDP and 190 of their more moderate male colleagues in the CDU created a commission responsible for drafting legislation that provided women with short, intermediate, and long-term assistance. Rowitha Verhülsdonk, chair of the Rhineland-Palatinate Women's Union and a Catholic, defended this alternative approach by drawing on the experience of Catholic counseling centers:

The annual reports provide us with information on the counseling practices of the various counseling centers. It is very interesting and impressive that it is precisely the Church counseling centers—here I refer particularly to Catholic ones—that repeatedly note that they succeed in changing the path of desperate women who come to the center wanting an abortion only if they are able to provide not only assistance for having the child, but also psychological and material support well beyond this point in time.<sup>146</sup>

Since the 1970s, the position of CDU women had come to more closely approximate that of women in the SPD and FDP. Although they rejected the *Fristenlösung*, the FU leaders resisted efforts by their conservative colleagues to abolish federal funding for abortion. They even rejected the demands of more moderate colleagues, like Hermann Kroll-Schlüter and Peter Schröder, for a precise legal definition of “social emergency.” Ingrid Roitzsch explained, “An emergency is a subjective perception. I do not want to play judge.”<sup>147</sup> Finally, FU leaders argued that abortion law must recognize diverse values. Editha Limbach noted: “Personally, for reasons of conscience, I believe that abortion is justified only if it serves to save another life, namely that of the mother. But I accept that other women may examine their conscience and reach a different conclusion. I believe that we must respect different decisions of conscience and that in our policy we must take into account these differences.”<sup>148</sup> The FU and its allies defeated their conservative colleagues. In doing so, they preserved the CDU-CSU alliance with the FDP, without which the CDU could not have maintained its hold on power.<sup>149</sup>

Like the FU, the kfd reconsidered its position on Paragraph 218. On May

24, 1984, the kfd national leadership announced its support for the FU initiative, stating that criminal punishment was not the best way to reduce the incidence of abortion. The kfd's new orientation reflected its growing awareness of the flight of young women from the Church. In an effort to counteract this trend, the kfd's national leadership in the 1980s championed equality for women in church and society, as well as a more moderate approach to questions of sexual morality. As noted in Chapter 2, many local kfd chapters did not welcome this new orientation. When the national kfd leadership repudiated the initiative of CDU-CSU conservatives, which was enthusiastically supported by the West German bishops, kfd members at the grassroots level expressed outrage. A priest in his capacity as spiritual adviser to the St. Joseph-Sythen parish chapter accused the kfd of defying the bishops: "I want to point out that Cardinal Höffner, in the name of the German Bishops' Conference, expressly welcomed the legal initiative of the 74 CDU/CSU Bundestag members. He deeply regretted the behavior of the 18 female CDU/CSU Bundestag members. If Catholic women's organizations do not speak out clearly for change, they are at odds, if not in confrontation, with the German bishops on this fundamental question."<sup>150</sup> The kfd's support for the FU position also placed the organization in conflict with the ZdK, which in 1982 had launched a lobbying campaign to end federal funding of abortion.<sup>151</sup>

The proposed revisions of Paragraph 218 figured prominently at the 1984 Catholic Congress held in Munich in early July 1984. The congress ended with a mass rally supporting the defense of unborn life. At the rally, which was attended by 65,000 Catholics, the ZdK president, Hans Maier, condemned the apathy toward unborn human life while many "cry out for baby seals." Maier's assertion that West Germany placed a higher value on baby seals than unborn human life was not without foundation. In February 1984, the *Rheinische Merkur/Christ und Welt* and the *Süddeutsche Zeitung* published the results of an Allensbach Institute survey that asked West Germans to rank a list of moral transgressions from most offensive to least offensive. A majority of Germans chose the following order: child abuse, cruelty to animals, world hunger, the killing of baby seals off the coast of Canada, the use of chemical pesticides, an abortion by an otherwise healthy woman, deceptive statements by a politician, noisy mopeds, and giving up a newborn child for adoption.<sup>152</sup>

The survey revealed the chasm between the moral values of West Germans and those of the institutional Church. Even more disturbing for

Church authorities, this gap also applied to Catholics. In a letter to the *Süddeutsche Zeitung*, a German Catholic woman attacked Maier's speech at the Catholic Congress: "To overlook cruelty to animals and, in particular, the murder of seals because abortion exists—does that even qualify as religion? My spontaneous reaction was to leave a church that does not value the entirety of creation."<sup>153</sup> Although this reaction was atypical, the disenchantment of many women with the Catholic Church was real. At the forum "Women in Church and Society" held during the 1984 Catholic Congress, Hanna-Renate Laurien, a member of the ZdK and a CDU politician, expressed her disappointment with the Church's continued silence on women's issues:

Where does she [the Church] address the double standard employed by men? Where does she discuss the fact that today women are disenfranchised by means of their uterus, while men, as always, express their sexuality without consequences? Where is it discussed that the revolt against one's own corporality is often nothing other than a response to the historic contempt for women[?] . . . Our Church, which advanced the human dignity of the servant, the poor, the woman, does not now venture to set an example on the matter of women and to recognize the consequences of its statements.<sup>154</sup>

Women's relationship to the Catholic Church was changing—a fact that did not go unnoticed by the secular or religious press. In the *Süddeutsche Zeitung*, Heidrun Graupner described the reception of Hanna-Renate Laurien's presentation:

The presentation had, in any case, a catalytic effect on the audience, which applauded enthusiastically and at length. Some were unhappy with the proposed policy of small steps, and demanded a revolution—a female priesthood. The questions ranged from family politics on divorce, remarriage, and abortion to the different concepts of chasteness applied to men and women. Clearly there was touchiness about the many slights to women. . . . Yet many women turned to Hanna-Renate Laurien with perplexed statements like "I am happy as a full-time housewife and mother; I don't understand this presentation."<sup>155</sup>

Given women's greater engagement in the Catholic community than that of their male counterparts, the Church could not afford to ignore this changing relationship. The abortion debate placed Catholic women in conflict with the institutional Church and with male-dominated lay organizations, such as the ZdK. It also placed them in conflict with each other.

### *Mutter with a Lowercase “m”*

In January 1988, the kfd introduced a change in the graphic design of the title page of its magazine, *Frau und Mutter*; the title now read *Frau & mutter*. This seemingly innocuous change instigated a polemical debate within the West German Catholic Church that touched on the interrelated subjects of abortion, motherhood, women’s role in the Church, and the emergence of a smaller, more conservative West German Church.

In September 1988, Archbishop Johannes Dyba of Fulda published a statement in the diocesan newspaper *Bonifatiusbote* in which he expressed his concerns about the implications of the new title and called on women in his diocese to resist this change:

The small “m” is not simply an orthographic error, but a conscious directional indicator about which women and mothers should be concerned. In an age in which every third child in our population is murdered in the mother’s womb . . . we write Mother in the lowercase. In an age in which the achievements of mothers, who through their children secure the future of our culture, people, and church, are violated, we write Mother in the lowercase. Motherhood is intrinsic to womanhood, and where it does not reach fruition, an emotional crippling begins; the degeneration in church, culture, and people begins.<sup>156</sup>

Dyba’s letter received widespread distribution via the KNA; intense public interest in Dyba’s statement was prompted in part by rumors that the pope planned to make Dyba a cardinal. The kfd national leadership responded immediately. The general secretary, Anneliese Lissner, released a statement that challenged Dyba’s patriarchal understanding of womanhood: “Are women basically mothers? Are men basically fathers? Certainly, the latter has never been the societal or ecclesial position. Periodically, albeit not in all historical eras, women have been defined solely as mothers. Their world was limited to husband, house, and children. That is over and cannot be restored through incantation and suppression.”<sup>157</sup> The *Frau & mutter* editors, Barbara Leckel and Anneliese Knippenkötter, also released a statement to the press; they attacked what they perceived as the letter’s subtext:

A Catholic association is totally against women if it uses a lowercase “m.” It has no problem with killing unborn life; it has nothing against “every third child in the mother’s womb” being murdered; and it disregards the “achievements of mothers, who secure the future of culture, the people, and the Church.” That

is implied and it is demagogu . . . the *Frau & mutter* editorial staff do want to support Dyba's statement that "the age calls for motherliness." Indeed, it does, but we want to make a fine distinction: The age calls for the motherliness of women and men.<sup>158</sup>

Increasingly, Catholic women rejected the Church's notion of motherhood and refused to suffer insults in silence.

The cult of motherly sacrifice, which defined womanhood in terms of a mother's willingness to sacrifice all for her children, was losing its sway over West German Catholic women. The Münster chapter of the kfd wrote the central office: "We are hurt and angered by Archbishop Dyba's statement, especially since this is not the first time that he has made such defamatory remarks. We believe that 'the Church as a model of living together in partnership—acted upon by men and women' should publicly, at least, attempt to interact fairly with women."<sup>159</sup> Ursula Männle, a kfd member and CDU parliamentarian, wrote Dyba directly. She accused him of trying "to mobilize women against the kfd"<sup>160</sup> and underscored the hypocritical, authoritarian, and misogynist character of his statements:

If motherhood is intrinsic to woman, then fatherhood should be intrinsic to manhood. Yet neither our society nor our Church makes this claim; Pope John Paul I once said: "God is mother and father," and I found this comforting. But from your letter, I experience neither the paternal nor maternal dimension of God; I sense only the authoritarian magistracy. You want to mandate what womanhood is. Women are indeed different from men in that they have been blamed for every evil in the world.<sup>161</sup>

Another kfd member wrote the pope directly: "I fear that if Bishop Dyba is made cardinal of Cologne, many women and young people will take offense. It would not surprise me if they not only quietly but also officially left the Church."<sup>162</sup>

But the negative reactions of kfd members should not be overemphasized. In fact, most members rejected the national leadership's position. On October 4–5, 1988, the kfd central office reported forty-six responses to date—twelve supporting the kfd position, twenty-two rejecting it, and twelve "unclear."<sup>163</sup> This negative grassroots reaction underscored the increasingly conservative makeup of those who remained active in church life. For conservative women, the kfd's new title signaled an erosion of Christian values: "What has gotten into these women who deny the most beautiful and

happiest dimension of their essence? Is it because Mary is so little venerated today? Is it because youth education in our Church does not stress purity? Does Catholic bridal and marriage counseling now mislead the conscience on contraception?"<sup>164</sup> For the kfd national leadership and for those women who wanted to redefine women's traditional relationship to the Church, these types of responses underscored the uphill battle that they faced—not only must they change the consciousness of the male hierarchy, they must foster a new understanding of womanhood among their conservative core constituency. In the form letter sent to supporters of the kfd position, the national leadership explained: "It aggrieves us how many women do not recognize that they are being manipulated when they allow their personhood to be reduced to motherhood. If their self-worth is determined by motherhood alone, then the inevitable separation from their children and the diverse lifestyles of other women becomes a profound injury. Some responses to our dispute with Archbishop Dyba can be understood only thus."<sup>165</sup> The kfd national leadership could not assume that its increasingly conservative base desired a new relationship between women and the Church hierarchy. Consequently, it tried to steer a middle course, which often proved unsatisfactory to women on both sides of the debate.

The national kfd leadership also could not assume the unconditional support of the ZdK. As in the 1984 legal debate on abortion, the ZdK did not unilaterally agree with the kfd. Although many in the ZdK, including the ZdK vice president, Dr. Walter Bayerlein, believed the kfd's reaction to Dyba's letter was justified and that Dyba intentionally suggested a connection between the kfd and mass killing of unborn children, the ZdK president, Hans Maier, did not. And it would be the more conservative Maier who acted as liaison between the kfd and Archbishop Dyba in a dispute that never reached a satisfactory resolution.<sup>166</sup>

Five years later, Archbishop Dyba served as chair of a meeting between representatives of the DBK and Catholic women's organizations. The meeting was prompted by the results of the 1993 Allensbach Institute survey commissioned by the DBK. The survey on women in the Church showed that 77 percent of Catholic women between the ages of sixteen and twenty-nine felt the Church did not understand them.<sup>167</sup> However, the survey also indicated that the women most active in the church were deeply committed to the values emphasized by the hierarchy (see Appendixes H and I). To the chagrin of the representatives of the women's organizations, Dyba described this small group of women who had no tolerance for "newfan-

gled stuff” as embodying the future of the Church.<sup>168</sup> The smaller, more conservative Church predicted by Karl Rahner in the early 1970s was fast becoming a reality, but it was not one without significant political influence.

. . .

This chapter has focused on a select group of catalytic moments in the abortion debate and the events they set in motion. It has argued that the political influence exercised by Catholic politicians in the 1950s had long-term ramifications for political debates on abortion in the 1970s. The Constitutional Court drew on Christian principles, particularly Catholic ones, in reaching its decision in 1975 that the state had an obligation to protect prenatal life, even from the mother. This verdict gave the Catholic Church and other opponents of abortion law reform a significant discursive advantage in all subsequent debates on the defense of unborn life.

This advantage did not end with the fall of the Berlin Wall. The push for reunification reignited the legal and theological debate on abortion. In the former East German state, women from the Independent Workers’ Association did not want West Germany’s more conservative abortion law to become the law of the new unified state. Fearing the abortion issue might derail reunification, the unification treaty, signed in October 1990, postponed discussion, assigning future responsibility to the Bundestag for a law “that better guarantees the protection of unborn life and the constitutionally acceptable management of a conflict situation for women than is now the case in either part of Germany.”<sup>169</sup> The treaty affirmed a fetus’s right to life; however, it did not mention women’s right to self-determination. Thus, it ensured that West German framing of the issue took precedence over East German framing in subsequent discussions. In June 1992, the new Bundestag approved a bill that required mandatory counseling and a waiting period but left the decision about whether to have an abortion in the first trimester to the woman. In May 1993, the Federal Constitutional Court overturned the new law in response to a suit brought by 249 Christian Democrats. They argued that abortion must remain a felony (with a penalty of one to three years in prison) unless extenuating circumstances existed—rape, incest, or endangerment of the mother’s life. In June 1995, the Bundestag reached a compromise that maintained the illegality of abortion while providing for conditions of non-prosecution.<sup>170</sup>

But this discursive advantage came at a price for German Catholicism. As we saw in this chapter, the 1970s abortion debate failed to galvanize and reunite a Catholic community deeply divided by the 1968 papal encyclical

cal, *Humanae Vitae*. The Catholic milieu was not restored as conservatives had hoped. Instead, the institutional Church became increasingly isolated in its condemnation of abortion as the abortion debate progressed. In the mid-1970s, the EKD broke with the Catholic Church, supporting a social-medical justification that took into consideration the pregnant woman's overall well-being rather than just her physical health. The CDU became reluctant to reopen a debate that proved a political liability. Young Catholic women turned their backs on Catholic pregnancy counseling centers and increasingly turned their backs on the Church.

In an effort to stop women's exodus from the Church, the national kfd leadership adopted in 1979 a new mission statement that placed greater emphasis on women's equality in church and society. In 1984, the kfd leadership defied the DBK and the ZdK by supporting the *Indikationslösung*. Like the FU, the kfd leadership argued that social assistance rather than legal sanctions provided the best means for protecting unborn life. This argument met with stiff resistance from the episcopate, male-dominated Catholic lay organizations, and even some local chapters of the kfd.

In fact, the issue of how best to protect unborn life—by means of social assistance or legal sanction—continues to divide Catholics. In September 1999, the pope condemned the German Catholic Church's involvement in a counseling program entitling women to non-prosecuted abortions. The German bishops tried to reach a compromise with the Vatican. However, John Paul II rejected all compromise proposals and pressed for compliance. In November 1999, the DBK acquiesced to the Vatican's demands, and the Church withdrew from the counseling process. However, Bishop Franz Kamphaus of Limburg refused to comply, stating, "No woman frivolously comes to a Catholic counseling center; no woman comes to pick up a license to kill."<sup>171</sup> German lay Catholics also rebelled, establishing Donum Vitae, an independent organization aimed at continuing Catholic involvement in the counseling process.

The Vatican responded swiftly to this open rebellion. In 2002, John Paul II stripped Bishop Kamphaus of his authority over the counseling center in his diocese.<sup>172</sup> The CDF demanded that the German bishops prohibit Catholics working for Donum Vitae from holding office in any official Church organization. In 2006, the DBK gave in to CDF demands.<sup>173</sup> Since Donum Vitae's staff consisted overwhelmingly of Catholic women who also held offices in Church-sponsored organizations, such as Caritas and Sozialer Dienst katholischer Frauen, the group's female staff now faced a choice be-

tween continued involvement in official Catholic organizations or working for *Donum Vitae*.<sup>174</sup> The Church's ultimatum undoubtedly exacerbated the ongoing departure of German women from the Catholic Church. A 1993 survey showed that approximately two-thirds of German Catholic women believed the Church's teachings on celibacy, divorce, contraception, and abortion were too rigid (see Appendix I).<sup>175</sup>

Yet it would be a mistake to view these developments only through the lens of decline. As the Church became smaller, those who remained faithful to the Church redoubled their efforts to protect unborn life. Recognizing the Church's altered position in German society and its loss of influence in the CDU, German Catholics sought out new alliances and strategies. These efforts first bore fruit in the context of debates on NRTs and genetic engineering. Confronted with this new threat to unborn life, German bishops overcame past differences with the EKD and embraced new arguments; the kfd formed an alliance with radical feminists affiliated with the Green Party. As we shall see in the next chapter, these efforts had an important influence on the Bundestag's decision to adopt stiffer regulations than those recommended by the Christian Democratic government. The arguments made in this debate would later be applied to the abortion debate. In 2009, Catholic parliamentarians garnered sufficient votes from women in the Green and Social Democratic Parties to mandate a three-day waiting period in late-term abortions when a fetal disability had been diagnosed. They did so by linking the traditional pro-life argument to a new argument that abortion violated the rights of the disabled—an argument the Church first embraced in the battle against NRTs. Slowly, a smaller Catholic Church was developing a new theological and political identity for a postsecular age.