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## Religious Crisis and Civic Transformation

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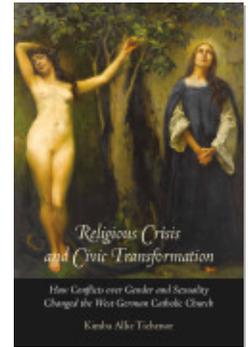
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*Assisted Reproduction  
Changing Bedfellows*

Father and mother, is quite out of fashion.  
I've shown up pretty well that idle pothor—  
The thought of child by no means implies mother:  
The tender point from which life sprang and started  
Is gone—clean gone—the glory all departed . . .  
No doubt the old views may still for the brute beast  
Answer, but man, high-gifted man at least,  
Will have a higher, purer form of birth.<sup>1</sup>

Johann Wolfgang von Goethe penned these lines more than one hundred years before the birth of the first test tube baby. Although we are accustomed to thinking of assisted reproduction as a relatively new phenomenon, artificial insemination (AI) was introduced as a treatment for human infertility more than two hundred years ago. In 1785, a Scottish doctor, John Hunter, advised a man suffering from hypospadias to collect his semen and have his wife inject it into her vagina; the woman later gave birth to a healthy child.<sup>2</sup> This first documented report of successful human AI quickly captured public attention and the imagination of European authors; the encroachment of science and the state on the sphere of human reproduction became a common trope in utopian and dystopian accounts of humanity's future.<sup>3</sup> Experts in medicine, law, and theology almost immediately began debating the acceptability and implications of these incursions.

This chapter offers a comparative analysis of three German debates on assisted reproduction—one that commenced in 1905, a second in 1958, and a third that began in earnest in 1984. The first and third debates witnessed intense public engagement. The second debate was largely confined to experts. Only the third debate resulted in changes in the German legal code. As this chapter will show, neither technological innovation nor an increase in the practice of assisted reproduction can account for the results of the third debate. In fact, unless one factors in the broader cultural, social, and political context, the timing of these debates makes little sense.

The chapter highlights continuities and discontinuities among the three debates with reference to framing, arguments, actors, and context. It demonstrates that secular and religious discourses on assisted reproduction actually became more entangled over time, despite Germany's growing secular orientation. This increased entanglement, I argue, resulted from the dynamic interplay of changes taking place in the Catholic Church and in German society.

As discussed in the preceding chapter, by the mid-1970s a growing awareness existed in the Church that traditional arguments on the defense of unborn life and on marital morality no longer resonated with the general public or with West German Catholics. In addition, the interests of the Catholic Church no longer always coincided with those of the two self-identified Christian parties. New arguments and new strategies were needed in order for the Church to remain a relevant actor in debates on NRTs and more generally in German debates on the defense of life. Against this backdrop, a new Catholic political and theological identity for a post-secular age slowly began to take shape in Germany. This smaller and more activist Church would achieve its first victory in 1990, when the Bundestag passed the Embryo Defense Act banning embryological research, egg donation, surrogacy, and preimplantation genetic diagnosis (PGD).

### **Moral Scruples in the Early Medico-Legal Debate on Artificial Insemination (1905)**

In 1905, the German judicial system confronted its first case involving artificial insemination. In December 1904, a German husband challenged the legitimacy of a baby girl born to his wife on August 7, 1904. He claimed that he and his wife of six years had been unable to have sexual relations despite multiple attempts earlier in their marriage. Between October 10, 1903, and February 8, 1904, no attempt at sexual relations occurred. Consequently, the child could not be his. The wife denied having had any extramarital sexual relations. She explained that unbeknownst to her husband, she had "scooped up fresh semen ejaculated on the bedclothes" and used it to impregnate herself.<sup>4</sup> The case would make its way from the District Court in Koblenz (Landgericht Koblenz) to the Cologne Regional Appellate Court (Oberlandesgericht Köln) and finally to the Supreme Court of the German Reich (Reichsgericht).

The medico-legal issues were as follows: (1) Was AI medically possible? (2) If so, was the child born in this manner legitimate? (3) Did the husband's

ignorance of the insemination mitigate his responsibility for the child? (4) Could doctors who performed AI, including female physicians, be sued for paternity? (5) Did homologous insemination (i.e., artificial insemination by the husband's sperm, AIH) violate the dignity of marriage? (6) Had advances in the medical sciences made existing paternity laws obsolete? To answer the first question, the courts sought out expert medical opinion, only to discover that German doctors disagreed on AI's feasibility. Professor Doutrelpont of Bonn, who testified at the first trial, implicitly accepted AI; rather than question the plausibility of the woman's account, he focused on determining the husband's virility. On the basis of his conclusion that the husband was not sterile, the court affirmed the child's legitimacy.

At the second trial, Professor Fritsch of Bonn testified that in his expert opinion AI was not medically feasible.<sup>5</sup> His viewpoint represented that of most German doctors, and in fact the second trial prompted several doctors to publish accounts of their failed attempts at AI as proof of its infeasibility, or at least its extreme rarity.<sup>6</sup> Given contemporary knowledge about human reproduction, it is not surprising that German doctors doubted the procedure's efficacy. Since the contemporary medical consensus was that ovulation coincided with menstruation, doctors performed inseminations at the least optimal point in the woman's cycle (immediately before or after ovulation).<sup>7</sup>

The procedure's low success rate was not the only reason that German doctors shied away from recommending AI to infertile couples. Although technically speaking AI was not difficult, it was logistically complex, since experts believed that insemination had to take place immediately after intercourse; the woman's sexual arousal, it was believed, facilitated fertilization. The German physician and sexologist Hermann Rohleder explained: "To my mind the absence of alkaline secretion in the cervix is the first unfavorable or retarding factor in artificial impregnation. In order to call forth such secretion in the woman artificially it would be necessary to excite her sexually, a step which no responsible physician would take. But of course, this excitation can be produced naturally by the husband through cohabitation (or at least attempts in case he should be suffering from impotence) a few moments before the entrance of the physician."<sup>8</sup> The procedure, therefore, was performed either at the doctor's home or in the patient's house with the doctor waiting outside the bedroom. After having sexual relations, the husband delivered the condom to the doctor, who aspirated sperm from it with a syringe. Accompanied by the husband, the doctor entered the bed-

room and injected the sperm into the woman's uterus. Although in France and the United States, masturbation quickly replaced condom coitus as the preferred means of sperm collection, German doctors disavowed the practice for aesthetic, moral, and medical reasons. Catholic doctors often cited the Church's condemnation of masturbation; other physicians posited that masturbation decreased the potency of the sperm and thus lowered the chances of successful insemination. Alternatively, they opined that the method was too humiliating for the husband.<sup>9</sup>

In fact, moral discomfiture with the procedure rather than either its low success rate or the logistical issues involved accounted for AI's unpopularity in Germany. Walter Stoeckel, one of the founding fathers of gynecology in Germany, characterized the procedure in the early 1920s as a "perversity of thought, feeling, and action" and warned doctors "not to besmirch their hands with it."<sup>10</sup> In his 1921 history of AI, Hermann Rohleder countered this negative assessment by pointing to the role played by Italian Catholic doctors in developing AI and by emphasizing Catholic theology's emphasis on fecundity: "Now if the strictly observing Catholic physicians do not have moral scruples against artificial fecundation, then certainly no objections need be raised by the Protestant Church."<sup>11</sup> But few German doctors seemed to find this argument convincing; out of 35,000 doctors practicing in Germany, Rohleder estimated, perhaps 10 performed AI.<sup>12</sup>

Yet despite the medical community's overwhelming disavowal of AI, the Cologne court sustained the lower court's decision in 1907. For jurists, the fundamental question was not the feasibility of the procedure but the legitimacy of the child conceived via AI. According to Paragraph 1591 of the German Civil Code (*Bürgerliches Gesetzbuch*), marital cohabitation during the period of conception constituted a precondition of legitimacy. Did AIH meet the legal standard for marital cohabitation, and if so, should the courts treat paternity cases involving AI in the same way they dealt with cases involving alleged extramarital sexual relationships? In short, should the burden of proof remain on the husband challenging the child's legitimacy, or in cases of alleged AI should the burden of proof shift to the woman? By ignoring Dr. Fritsch's testimony and ruling in the wife's favor, the appellate court suggested that the same legal standard applied. Despite the improbability of the procedure, the child was deemed legitimate because the husband failed to present convincing evidence of his wife's infidelity.<sup>13</sup>

The Cologne court's decision prompted intense discussion in medical and legal journals, with critics of the decision interjecting moral arguments

into legal and medical ones. In the *Deutsche Medizinische Wochenschrift*, Dr. Th. Olshausen opined:

German legislators established strict criteria for challenging the legitimacy of the child for good reason; the relinquishment of the conjugal character of a child born within wedlock must be avoided if possible. The procedure followed by the appellate court, nevertheless, is unacceptable. It does not matter whether one finds artificial insemination medically feasible or treats it with skepticism, as most German experts do. When transferred from the realm of science into the realm of practice, artificial insemination is incompatible with the dignity of marriage.<sup>14</sup>

Dr. J. Schwalbe's rebuttal appeared in the same issue of *Deutsche Medizinische Wochenschrift*. Schwalbe questioned Olshausen's formalistic understanding of the law: "I do not wish to believe that the legislators placed as much emphasis on a literal interpretation of cohabitation as Mr. Olshausen supposes."<sup>15</sup> In the law journal *Das Recht*, Dr. Traumann took a similar position: "Not the state-sanctioned *copula carnalis*, but the certainty of filiation to the parents, who are joined in the bond of marriage, is the legal standard for paternity."<sup>16</sup> Others, such as Hermann Rohleder, countered Olshausen's moral argument with their own: "It seems to me that I have already demonstrated sufficiently that it is incompatible with the physician's dignity to refuse to alleviate the suffering caused by sterility."<sup>17</sup>

In June 1908, the decision of Germany's highest court superseded that of the Cologne appellate court. The Reichsgericht upheld the child's legitimacy; however, it shifted the burden of proof from the man to the woman. In cases of alleged AI, the court ruled that the woman must provide explicit testimony as to how the artificial fertilization occurred. On a case-by-case basis in consultation with medical experts, the court would rule on the feasibility of the particular insemination and decide the child's legitimacy accordingly.<sup>18</sup>

The German courts never addressed whether the husband's ignorance of the procedure mitigated his responsibility for the child. Yet in professional journals and in public lectures, doctors and lawyers debated the issue at length. Hermann Rohleder argued that the woman's subterfuge had to be taken under advisement, but legal experts, such as Eugen Wilhelm and Dr. Traumann, thought differently. Wilhelm acknowledged that the subterfuge was a moral offense, but it was not a criminal one.<sup>19</sup> Taking a natural law approach, Traumann reasoned, "Even in natural procreation, the will of the

procreator often is not directed to procreation, but on the contrary strives most earnestly against it. When nature triumphs over the will of her subjugated people, they must surrender and acknowledge the legal consequences that they attached to the natural process."<sup>20</sup> For the purpose of establishing legitimacy, the husband's consent was inconsequential; however, the woman's consent was required.

The debate among the experts also touched upon whether a doctor who performed AI (with or without the consent of the woman) could be sued for paternity. Schwalbe argued that the method of impregnation was irrelevant to the determination of paternity: "The filial relationship of the child to the couple is determined only by whose ovum and whose sperm have supplied the germinal material. If it were possible to spawn a homunculus in a test tube by bringing together the ovum and the spermatozoon, even then the man and the woman who supplied the materials would have to be considered the child's parents."<sup>21</sup> The doctor facilitated the birth; he or she did not sire the child.

The experts avoided applying this rationale to artificial insemination by donor's sperm (AID). In fact, most jurists and physicians made no reference to AID. Doctors who did mention it mainly recounted the desperate pleas of childless women, whom they rebuffed for their willingness to transgress moral boundaries in their desperate pursuit of motherhood.<sup>22</sup> Even Hermann Rohleder expressed moral reservations about AID, although he did not rule it out: "I would undertake this step only where the sterility had engendered grave psychic disturbances and dangerous depressive states which threatened to become severe and incurable psychoses, or to eventuate in suicide or at least divorce."<sup>23</sup>

Practical considerations also more than likely informed the medical community's reluctance to engage the unpopular topic of AID. At the time of the trial, the German medical community was involved in a heated battle with the state over medical fees and doctors' rights. In an effort to safeguard the profession's autonomy, the Hartmann League organized doctors' strikes in which German physicians refused to treat any patient paying with state funds.<sup>24</sup> For a profession trying to maintain unity within its ranks while fending off an imminent challenge to its autonomy by the state, broaching the taboo topic of AID would have been a poor strategy.

The German AI debate was enmeshed in a broader transnational debate on population politics, racial hygiene, gender, and national identity. Childlessness—intended or unintended—was perceived as a symptom of an un-

healthy gender system, moral degeneration, and national decline. Authors such as Hans Blüher and Paul Möbius in Germany, Edward C. Clarke in the United States, Émile Zola in France, and H. B. Marriot Watson in Great Britain railed against the masculinization of women and the emasculation of men, predicting civilization's collapse if the situation were not reversed. Access to educational and career opportunities, they maintained, impaired, limited, or destroyed women's reproductive organs. Women's growing independence, they argued, threatened the virility of men and of the nation.<sup>25</sup>

Against this backdrop, infertility and AI as a treatment for it captured the public imagination, which meant that eugenics and the preservation of gender hierarchies formed the persistent subtext of the debate. Medical treatises cautioned doctors against performing the procedure for couples with a familial history of disorders that they believed to be hereditary, such as alcoholism, tuberculosis, and mental defects. A few German doctors endorsed AI as a tool for improving the human race. A 1915 article in *Zeitschrift für Sexualwissenschaft* described AI as a "eugenic blessing."<sup>26</sup> However, most eugenicists expressed doubts about AI, warning that its use might lower the quality of offspring. According to Alfred Ploetz, the German physician who coined the term "racial hygiene," AI cut short the race of the spermatozoa to the egg, thereby increasing the chances that damaged or weak sperm would survive to fertilize the ovum.<sup>27</sup> Others feared that medical manipulation compromised the integrity of the sperm, increasing the risk of birth defects. Thus, most supporters acknowledged that the technique required refinement: "Regarding animals, artificial insemination is used with healthy individuals aiming at an amelioration of the race. With humans, it is used to bridge a pathological gap in the processes normally leading to conception. To use it for eugenic purposes is not yet possible."<sup>28</sup>

Experts also offered differing opinions on AI as a means of restoring the gendered order. AI's proponents argued that allowing an impotent man to father children would restore the self-confidence and virility of German men.<sup>29</sup> Opponents saw AI as part of a feminist conspiracy to eliminate men from the reproductive process. In German and Austrian journals, such as *Die Gegenwart* and *Die Fackel*, commentators warned of man's obsolescence and of the self-reproducing woman.<sup>30</sup> In response to these charges, lawyers and doctors tried to reassure the public of the rarity of the practice and thus its social, cultural, and legal insignificance: "The practical side of the matter is certainly of very little significance. The cases reported by reliable authors

can be enumerated on one's fingers, and even with some of these reports an experienced critic still could raise doubts."<sup>31</sup>

Meanwhile, a parallel debate was taking place among Catholic theologians. In 1897, the Holy Office (today, the CDF) had issued a terse "non licere" in response to the following question: Can artificial fecundation be performed on a woman?" Almost immediately a theological debate erupted: What did the Holy Office mean? Did it mean that AI was immoral? Or was the Holy Office condemning only the means of sperm collection in this particular case—that is, masturbation? Some Catholic theologians in Germany and elsewhere in Europe argued the latter, prompting a very graphic debate on potentially licit methods of sperm collection.<sup>32</sup> This theological debate continued unabated until 1951, when Pope Pius XII left no doubt that regardless of the means of sperm collection, any form of artificial insemination violated the dignity of marriage: "To reduce the cohabitation of married persons and the conjugal act to a mere organic function for the transmission of gametes would be to convert the domestic hearth, sanctuary of the family, into nothing more than a biological laboratory."<sup>33</sup>

These two debates—one secular and one Catholic—on assisted reproduction had few points of intersection in the early 1900s. While lawyers and doctors made vague references to religious and moral reasons for condemning AI, Catholic theologians did not even mention the ongoing secular debate. As Charles Curran, a Catholic moral theologian and author of *Catholic Moral Theology in the United States: A History* explained, Catholic moral theology in Europe at the turn of the twentieth century operated in a world apart. Moral theologians wrote manuals in Latin aimed at guiding priests in their capacity as judges in the sacrament of penance. These manuals did not engage in secular thought; instead, they detailed a catalog of sins and provided extensive citations of past theologians to demonstrate precedence.<sup>34</sup> Those few European theologians who tried to accommodate or initiate a dialogue with the modern world were censured; on July 3, 1907, the Holy Office released *Lamentabili Sane* (Syllabus condemning the errors of modernists), detailing sixty-five "propositions to be condemned and prescribed," and on September 8 of that same year, Pius X issued the encyclical *Pascendi Dominici Gregis* censuring the doctrine of the modernists.<sup>35</sup>

Like German Catholic theologians, German Protestant theologians did not take part in this first debate; in fact, no Protestant treatises on the topic appeared until the 1950s. As late as 1954, John Francis Fletcher, a pioneer of Protestant bioethics, lamented in the preface of his *Morals and Medicine* the

failure of Protestant theologians to develop an “ethics of medicine,” in contrast to the “well-turned one, both explicit and implicit, in Catholic moral theology.”<sup>36</sup> Thus, his 1954 text, which included a chapter on AI, represented one of the first efforts, if not the first, to develop a systematic Protestant theological approach to bioethics.

This lack of engagement in the first debate by the two largest religious communities in Germany meant that the question of AI’s morality was only vaguely addressed. With the onset of World War I, the German public turned its attention to more pressing concerns, and the German Reich introduced no changes in its paternity law. Although AI continued to be discussed in medical journals throughout the 1920s and 1930s, the German public showed little interest. In 1923, Rohleder lamented, “If we waited until sterile mates demanded it, we could strike this technique from the tables of medical practice.”<sup>37</sup>

### Artificial Insemination and Penal Code Reform (1958)

On February 14, 1958, three members of the Bavarian Party and Dr. Sönning of the Christian Social Union (CSU) proposed to the Bavarian State Parliament (Bayerischer Landtag) the creation of a new law regulating AI: “In order to address the concerns of the Christian churches and the German medical community, artificial insemination of married women with foreign sperm is to be forbidden so that the right of children to know their familial lineage is safeguarded. The artificial insemination of unmarried women is prohibited categorically so as to prevent the artificial fabrication (*künstliche Erzeugung*) of illegitimate children.”<sup>38</sup> They also requested that the Bavarian government push for federal regulation. The Social-Political Committee of the Bavarian State Parliament submitted a request to the federal government. On March 8, 1959, the Grand Commission on Penal Law (Große Strafrechtskommission)—created by the Federal Ministry of Justice in 1954 and charged with the task of drafting a new, more modern criminal code—addressed the question of AI. This discussion led to the commission’s recommending legal sanctions.

Paragraph 203 of the 1960 and 1962 draft penal codes identified AID as a “crime against the moral order” and made it punishable by up to three years’ imprisonment. Both drafts also imposed a minimum sentence of six months’ imprisonment for anyone who performed artificial insemination (AIH or AID) without the woman’s consent. AIH, performed by a doctor with a married couple’s consent, was not subject to criminal prosecution. Both

the CDU-CSU government and the Catholic Study Group for Penal Reform (Katholische Arbeitskreis für Strafrechtsreform) supported this formulation. The latter pointed out that although AIH might be morally reprehensible, it did not warrant criminal sanctions, since it jeopardized neither the marital community nor the child's well-being.<sup>39</sup>

Initially, a general consensus existed across the political spectrum that AID should be banned.<sup>40</sup> However, by the mid-1960s, support for Paragraph 203 had diminished substantially. At the Ninth International Criminal Law Congress held at The Hague in 1964, West German representatives received a strong reminder that the proposed ban was out of step with the international legal community.<sup>41</sup> Concomitantly, SPD and FDP members developed strong reservations, claiming that inclusion of the ban in the new criminal code would constitute the incorporation of a Christian category of sin into this secular document.<sup>42</sup> Even some members of the CDU-CSU began expressing doubts about the state's encroachment into such an intimate sphere.<sup>43</sup>

The German Medical Association (Bundesärztekammer) saw legal regulation as a threat to the profession's autonomy.<sup>44</sup> On March 8, 1958, at the 62nd Medical Assembly, the German medical community established professional guidelines for the practice of AI. The guidelines described AIH as a treatment of last resort and explicitly condemned AID on "moral grounds."<sup>45</sup> Self-regulation, the German Medical Association argued, made legal regulation "unwarranted."<sup>46</sup> The German Society for Forensic and Social Medicine (Deutsche Gesellschaft für gerichtliche und soziale Medizin) also supported self-regulation: "We believe that legal regulation is harmful. . . . It concerns a most delicate matter of the intimate sphere, which should be confidentially discussed and decided by the immediate participants, namely the wife, the husband, and the doctor."<sup>47</sup>

By the mid-1960s, the sense of legal urgency had passed. At a meeting of the Cologne CDU in 1967, Max Güde, chair of the Grand Commission, stated that he had no objections to abandoning Paragraph 203 if a majority of the Bundestag supported this action.<sup>48</sup> One year later, Güde acknowledged in an interview with *Der Spiegel* the unlikelihood that any ban on AI would be included in the final version of the revised criminal code.<sup>49</sup> Paragraph 203 disappeared from subsequent drafts; AID remained free of legal regulation.

Multiple parallels existed between the first and second debates. In the second debate, as in the first, contemporary understanding of gender relations informed medical discussions. In keeping with public discourses on

domesticity and motherhood, doctors in the early 1960s emphasized a vulnerable and irrational feminine psyche in need of protection. For example, the German Association of Women Doctors (Deutscher Ärztinnenbund) warned, "There exists in fact the danger that the mother will seek out the unknown donor or embrace the known donor," thereby destabilizing the marital community.<sup>50</sup>

Like their early-twentieth-century counterparts, legal experts focused on the challenges A1 posed to the legal understanding of paternity, legitimacy, adultery, and informed consent. Wilhelm Geiger, president of the Second Senate of the Constitutional Court, argued that biological parenthood was the determining factor for establishing paternity: "It is the woman who gave birth to the child and the man whose sperm made the child that determine parenthood. The method of impregnation—cohabitation, with medical assistance, by artificial insemination, within marriage or outside of marriage, or by a third party—is completely irrelevant."<sup>51</sup> Geiger also asserted that failure to obtain the consent of the biological mother or father for the insemination did not negatively affect the legitimacy of the child. In paternity/legitimacy cases involving allegations of A1D, Geiger contended that the child's legitimacy must be upheld unless "strong evidence exists that the mother could not have been impregnated by the husband."<sup>52</sup>

However, this second debate's focus on A1D did introduce two new issues: incest and male adultery. Doctors and lawyers feared that donor children might later unwittingly violate Paragraph 4 of the German Civil Code outlawing marriage between close blood relatives.<sup>53</sup> Jurists also asked whether a husband who had donated his semen for the impregnation of a woman other than his wife had committed adultery. Justice Geiger worried that donor insemination created a new category of adultery: "Are sexual relations really the only violation of fidelity? Is not marital fidelity also injured when the man deceives the woman or the woman deceives the man by pursuing insemination *ab alieno*?"<sup>54</sup> Consequently, he argued that the legal definition of adultery should be amended so that it included "insemination *artificialis ab alieno*."<sup>55</sup> Although Geiger recognized that by necessity "injustice and criminal injustice are two circles lacking congruence," he believed that A1D required legal regulation in order to safeguard the sanctity of the marital community.<sup>56</sup>

The second debate also differed from the first in its overt incorporation of religious arguments. This reflected fundamental shifts in German society and in the German theological community. As noted in earlier chapters, the

Catholic Church gained considerable influence in postwar Germany. Authorities of the Allied occupation supported the active involvement of the Christian churches in the reconstruction of Germany, so that the democratization of Germany went hand in hand with efforts at re-Christianizing the nation. Moreover, with the division of Germany, Catholics lost their minority status, and in the early years of the Federal Republic, they occupied most leadership positions in the CDU-CSU.<sup>57</sup>

Numerous CDU-CSU government officials embraced Christian principles as the foundation of German law and maintained close connections with Catholic lay organizations. Thus, in arguing for a ban on AI, CDU-CSU officials often made explicit religious references. For example, Dr. Helene Große-Schönepauck, the only high-ranking female official in the Ministry of Family Affairs, argued before the Bundestag: "It is essential that the legislature support the federal government's initiative for regulation . . . so that man—the crown of God's creation—is not reduced to technological product. Rightly a Swiss moral theologian recently explained that this development is morally depraved and irreconcilable with the model of faith found in the New Testament."<sup>58</sup> Two pages of her speech were devoted to Pius XII's 1949 condemnation of AI.<sup>59</sup> Große-Schönepauck sent a copy of the speech to the leadership of the kfd and provided the organization with updates on legislative developments.

Religious arguments also found their way into German public discourse on AI via the active engagement of a new actor in contemporary moral-political debates—professional theologians, particularly Catholic theologians. The failure of the German Catholic Church to combat National Socialism had a profound impact on the direction of German theology. German theologians argued that the concept of the Church as standing above and separate from human societies (*societas perfecta*) had hindered the Church's efforts to provide moral leadership in resisting Nazism. Determined not to repeat this mistake, Catholic theologians in Germany championed social justice and dialogue with the secular world as critical elements of theology.<sup>60</sup> The move away from Latin as the language of moral theology, which had begun in the late 1920s, was now complete, and German Catholic theologians no longer hesitated to enter public discourses on political topics with moral implications.

Theologians such as Johannes Stelzenberger, Bernhard Häring, and Karl Rahner not only published theological treatises on AI intended for a general audience; they contributed essays to edited volumes that included

perspectives from non-Catholic experts in the fields of science, medicine, law, and Protestant theology. Although Stelzenberger's contribution to the debate was limited to detailing prewar theological debates and postwar papal pronouncements,<sup>61</sup> Bernhard Häring's and Karl Rahner's contributions embodied the German Catholic theological community's new commitment to dialogue with the modern world, ecumenism, historicity, and an understanding of moral theology that moved beyond identifying and hierarchically ordering categories of sin.

Bernhard Häring first addressed AI in his 1954 three-volume manual of morality, *Das Gesetz Christi*, which received international acclaim for its conscious move away from a legalistic approach to morality and for its emphasis on Christian morality as a dialogue between God and man.<sup>62</sup> In rejecting AIH and AID, Häring did not quibble over means of sperm collection or draw distinctions between venial and mortal sins. Instead, he underscored two issues. First, he criticized the procedure's separation of the unitive and procreative aims of sexual intercourse, noting, "For marriage is a perfect fellowship of love, not merely a partnership of convenience for the production of offspring regardless of method or techniques."<sup>63</sup> AI robbed the child of his or her right to be born from "parents bound to each other by marriage."<sup>64</sup>

Häring also deplored the dehumanizing effects of the technology: "In its frightfully rapid diffusion, in part with state approval, it is a symptom of perverted nature, which dreads attachment and submission in love and abandons itself to the fascination with technique. In this nuclear age technical man has fashioned a weapon in the atomic bomb capable of destroying the human race by force from without. Artificial insemination, the substitute for fruitful marital love through technical fertilization, exposes his inner impoverishment."<sup>65</sup> He would later modify his position on AI. In 1972, Häring published *Heilender Dienst: Ethischer Probleme der Modernen Medizin*, in which he offered qualified support for AIH: "There are no convincing arguments to prove either the immorality of ejaculation by the husband in view of fatherhood nor the immorality of introducing that sperm into the wife's uterus."<sup>66</sup>

Like Häring, Karl Rahner drew attention in his treatment of assisted reproduction to the rapid transformation of society wrought by new technologies. Between 1966 and 1967, he wrote and revised two essays on the technological manipulation of human life—"Experiment Mensch: Theologisches über die Selbstmanipulation des Menschen" and "Zum Problem der genetische Manipulation aus der Sicht des Theologen." In the first essay,

Rahner warned against many of the self-manipulations so vividly depicted in Huxley's *Brave New World*—sperm banks of desirable genetic stock, mass brainwashing, and governments controlled by a genetically engineered *Übermenschen*. Christians must “oppose with utter resoluteness those kinds of self-manipulation which are the most recent form of barbarity, slavery, the totalitarian annihilation of personality and formation of a monochrome society.”<sup>67</sup> However, he also cautioned the Catholic Church against rejecting all technological and genetic interventions: “But it would be symptomatic of a cowardly and comfortable conservatism hiding behind misunderstood Christian ideals and maxims . . . to simply condemn the approaching age of self-manipulation as such; to break out into lyrical laments on the theme of degrading barbarity, the cold, technological rationalism, the destruction of what is ‘natural,’ the rationalisation of love, . . . the levelled-down mass society, the end of history in a faceless fellahin society without a history, etc.”<sup>68</sup> For Rahner, a direct correlation did not necessarily exist between the technical and the artificial, on the one hand, and dehumanization and alienation, on the other.

In the second essay, Rahner explicitly addressed the morality of AID, leaving no doubt that he did not consider it among the harmless self-manipulations that he outlined in the first essay. In disavowing AID, his second essay offered a much more negative assessment of genetic manipulation than his first: “What, in fact, is the driving force behind genetic manipulation? Who is driven to it? One would answer: hate for one’s destiny; the person who, at the most profound level of his being, is in despair that he cannot dispose of his existence. In genetic manipulation such a man clearly oversteps every boundary between legitimate eugenic precautions and the realm, in which the desperate fear of destiny rules tyrannically.”<sup>69</sup> Genetic manipulation, he opined, opened boundless possibilities to humanity, while at the same time closing off the possibility of transcendence: “This is clearly to be seen in our case, since the concrete genetic manipulation is ruled by the desire to eradicate the *fatum* from existence at a decisive point. Although this plan does not entirely succeed, it is contrary to the original desire, for this desire hates destiny and can only love—as the product of its own free action—what it has calculated and planned. It no longer desires to say, ‘I have come by man from the Lord’—from *God*, who cannot be manipulated, who must be concretely present in man’s existence.”<sup>70</sup>

Rahner also reiterated Häring’s concern about the harm done to a marriage and to a child when procreation occurred outside its proper context:

“Genetic manipulation, however, does two things: it fundamentally separates the procreation of a new person as the permanent manifestation of the unitive love of the married couple; and it transfers procreation, isolated and torn from its human matrix, to an area outside the intimate sphere of humanity to which sexual union properly belongs, and which at the same time implies the fundamental readiness of the marriage partners to allow their unity to manifest in the child.”<sup>71</sup> This harm extended to society as well. Although in 1954 Häring vaguely alluded to broader social ramifications, Rahner detailed what he believed were the inevitable eugenic applications of reproductive technologies: “A *partial* genetic manipulation furthermore would create two new ‘races’ of mankind if it became recognized as normal practice in the public consciousness: technologically manipulated, super-bred ‘test-tube humans,’ who inevitably would have a special status in society, and ‘ordinary,’ unselected, mass-produced humans, procreated in the old-fashioned way.”<sup>72</sup>

Rahner did not explicitly mention Germany’s recent National Socialist past; nevertheless, his description left no doubt about the parallels and dangers of repeating that past. He ended the essay with a call to action: “Thus, here, as in many of cases in moral theology, we are faced today with a new, additional question of great importance: How can this no [to genetic manipulation] be established in modern society as society’s own maxim, its own inner attitude and ‘instinct,’ in the face of society’s pluralism?”<sup>73</sup>

German Protestant theologians tentatively entered the debate as well; as Dieter Giesen noted in his 1962 monograph on the German debate, “A Protestant ethics scarcely exists that comments in detail on artificial insemination.”<sup>74</sup> The few Protestant theologians who did enter the fray usually distinguished between AIH and AID.<sup>75</sup> They described AIH as morally acceptable so long as it supported the marital community and was not used to circumvent conjugal relations. AIH, they argued, should be left to the discretion of the married couple. In 1960, Fedde Bloemhof wrote: “The married couple must make the decision together. . . . Christian ethics cannot establish general rules here if it wants to remain a Christian ethics, that is to say, an ethics that does not decrease their freedom and responsibility for making the decision themselves but that always underscores anew that freedom and responsibility belong to the couple.”<sup>76</sup>

Although most Protestant leaders accepted AIH, there were at least two important exceptions: Otto Dibelius, bishop of Berlin and Brandenburg, and Hermann Dietzelbinger, bishop of Munich. Dibelius characterized AI

as dehumanizing and linked its development to communism and American capitalism: "If artificial insemination were to gain the upper hand, the vilification of man to brute creature would be complete. It makes one think of the praise of artificial insemination that is being reported both from Communist Hungary and from the American world."<sup>77</sup> Protestant and Catholics agreed that AID was morally reprehensible.<sup>78</sup>

The concern expressed by Häring, Rahner, and Dibelius about the rapid transformation of society and its negative impact on the moral order found a receptive audience in Germany. Increased material prosperity and the emerging culture of mass consumption in late 1950s West Germany generated widespread fears about decadence and loosening morals.<sup>79</sup> Germans blamed these unsavory developments (whether real or imagined) on the "Americanization" of German culture. On a daily basis, Germans confronted a mental and physical landscape profoundly transformed by American influences. Building designs, advertisements, fashion styles, and music all pointed to the ubiquitous U.S. invasion of German consciousness. Admittedly, West Germans desired the prosperity that accompanied these transformations, but they also associated them with a threat to German identity and autonomy.<sup>80</sup> This cultural panic over "American capitalist disorder" and its threat to German values in the late 1950s, as Michael Geyer has convincingly argued, found "a political outlet with the mobilization against the atomic bomb."<sup>81</sup> Although West Germany's chancellor, Konrad Adenauer, and other members of the CDU-CSU leadership supported rearmament, the German populace, including CDU sympathizers and West German Catholics, had strong reservations.<sup>82</sup> Fear of "nuclear death" and concern about the United States' ability to safeguard German security resulted in the resurfacing of "cultural memories that had been repressed and frozen."<sup>83</sup> Lingering resentment of the Allied occupation, denial and self-pity about the National Socialist past, as well as dreams of *Heimat* and "the cult of noble Indians (and their good German friends)" found new life, as the clash over nuclear weapons and other technologies reached a crescendo between 1958 and 1962.<sup>84</sup>

Only against the backdrop of cultural panic and German fear of "nuclear death" does the apocalyptic and anti-American tone of the German experts' debate on AID make sense, since at the time of the proposed ban, the procedure had little or no support within the German medical, legal, or theological community. In fact, German doctors remained reluctant to recommend the procedure to their patients. At the time of the proposed ban, experts

estimated that only 1,000 children living in Germany had been conceived by means of artificial insemination. In contrast, experts estimated that 100,000 children had been conceived by AI in the United States, 4,200 in Britain, and between 1,000 and 20,000 in France.<sup>85</sup> Although there are no statistics indicating how many of those 1,000 German children may have been conceived with donor sperm, experts agreed that the conservative German medical community did not share the U.S. and British acceptance of AID.<sup>86</sup>

In fact, German press coverage of foreign developments in reproductive medicine up until the time of the proposed ban verged on hostile. For example, *Der Spiegel* carried headlines such as “Test Tube Babies—Test Tube Adultery” and “The Anonymous Adultery.”<sup>87</sup> The Hamburg newspaper *Die Zeit* opted for a more creative outlet for its disapproval. In 1949, it reprinted Goethe’s account of the homunculus in *Faust, Part II* prefaced by a reference to scientific advancements in reproductive medicine and to George Bernard Shaw’s *As Far as Thought Can Reach: A.D. 31,920*, the fifth of five plays in his *Back to Methuselah (A Metabiological Pentateuch)*. In the play, Pygmalion is murdered by the two seemingly perfect artificial human beings he created.<sup>88</sup> Thus, rather than addressing any immediate legal or medical challenge, the debate on legal sanctions against AI in the late 1950s and early 1960s seemed to serve as a discursive space onto which social conservatives and their opponents could displace fears of “nuclear death” and anti-American sentiment without betraying party alliances. A 1958 Allensbach survey indicated that 70 percent of CDU sympathizers supported a plebiscite on rearmament and that 54 percent of these sympathizers would not have supported the CDU position. Moreover, 62 percent of Catholic churchgoers and 67 percent of Protestant ones said they opposed nuclear weapons.

Both conservative Christian supporters of the ban and representatives of the liberal German press in the late 1950s and early 1960s depicted AI as a foreign invasion, a threat to the German moral order, and a looming disaster comparable to nuclear war. Like Häring, Rahner, and Dibelius, Margarethe Albrecht, chair of the Federation of German Women Doctors (*Deutscher Ärztinnenbund*), linked the inherent immorality of AI to the Cold War: “In the end, it is about whether we, as doctors, are of the opinion that in this much-praised, highly developed technological world with its atom bombs and moon rockets, artificial fabrication of humans is one of the corresponding requirements of the times, or whether we believe that this intervention in the mystery of creation is incompatible with our culture, with the dignity of humanity, and with our medical ethics.”<sup>89</sup>

West Germans perceived advances in reproductive technologies, like those in nuclear weapons, as a foreign invasion from which West German society must be protected. At a 1962 meeting of the CDU, Professor Hirschmann explained: "We must at once begin to defend ourselves against these things. We already have seen the helplessness of Italian authorities in Padua. In the United States all along there have been experiments in which human and animal sperm have been mixed with one another."<sup>90</sup> While Hirschmann only implied U.S. responsibility for these heinous developments, the liberal German press was far less circumspect in its accusations. In a 1963 article entitled "Fatherhood: From the Freezer," *Der Spiegel* attributed the emerging "Brave New World" not to Aldous Huxley, but to American scientists.<sup>91</sup> In particular, *Der Spiegel* singled out the U.S. Nobel Prize winner Hermann J. Muller, who at a 1962 conference organized by the Ciba Foundation called for the creation of sperm banks in which the genetic material of geniuses would be preserved so that superior human offspring might result.<sup>92</sup> In outlining Muller's vision, *Der Spiegel* repeatedly highlighted not only the eugenic dimensions of Muller's plan but its relationship to a future nuclear holocaust: "Soldiers could preserve their genetic material in radiation-proof vaults before going off to a nuclear war."<sup>93</sup> Another U.S. scientist, Dr. Jerome Sherman, *Der Spiegel* explained, recently had taken steps to make Muller's dream a reality; Sherman announced at the 11th International Congress for Genetics the birth of two "deep-freeze children."<sup>94</sup> The father's sperm had been stored at -196 degrees Celsius, which according to *Der Spiegel* was the "same temperature at which some rocket fuels were preserved."<sup>95</sup> Two years previously, in response to an article by Muller on the same topic published in the journal *Science*, *Die Zeit* minced no words, labeling his futuristic vision "icebox fornication" (*Eisschrank-Unzucht*).<sup>96</sup> The line between immorality, nuclear apocalypse, and American culpability could not have been more blurred.

For Germans, AI represented an area in which Germans could assert their autonomy from and moral superiority over their former U.S. occupiers. For example, in explaining the proposed ban of AI to an American audience, Eduard Dreher, an officer of the Justice Ministry, underscored the moral and cultural differences between the two nations: "We had anticipated that the American critics would be opposed to the punishment provided in the Draft Code for artificial insemination (§ 203), which is widely practiced in the United States of America. Such a completely different judgment is traceable, I believe, to deep-seated differences in psychic makeup. Replacing

love's mystery with medical intervention is more repulsive to us than adulterous lust."<sup>97</sup> At least for some West Germans, Paragraph 203 demarcated a distinct German legal and moral identity.

In taking the moral high ground on AI, some Germans also underscored that the Americans and the British, unlike the Germans, had failed to learn from National Socialism. Undoubtedly, the 1962 Ciba Foundation symposium gave some credence to this claim. The symposium, intended to facilitate communication between scientific communities across the globe, gained notoriety for the eugenic recommendations of several of the symposium's most prominent U.S. and British participants—including the already mentioned Nobel Prize winner Hermann J. Muller, Julian Huxley, Francis Crick, Albert Szent-Gyorgyi, Joshua Lederberg, Gregory Pincus, and J. B. S. Haldane. German and Austrian scientists, philosophers, and theologians immediately expressed harsh criticism of the eugenic proposals. For example, the Austrian biologist M. Klein equated Muller's approach to biology with that practiced under Hitler: "We have an example in the biology taught in Germany during the Hitler régime. . . . We must be very careful in teaching biology, and especially in teaching eugenics, not to teach a directed biology like that of Muller."<sup>98</sup> Following the 1966 publication of the German edition of *Man and His Future*,<sup>99</sup> the German geneticist Friedrich Vogel denounced the suggestion of the British Nobel Prize laureate Francis Crick that the state require couples to obtain licenses to reproduce: "The proposal, submitted by a leading natural scientist of the younger generation . . . shows a shocking naïveté and inner apathy (*innere Unbetroffenheit*) about what we all have learned about the human capacity for inhumanity from the history of this century."<sup>100</sup> In a 1969 volume protesting the Ciba symposium, the German sociologist Friedrich Wagner warned against inaugurating a "new era of euthanasia," and Wilhelm Kütemeyer, a pioneer in medical anthropology, lamented, "Apparently National Socialism is only a precursor to what is now threatening to dictate the entire world."<sup>101</sup>

But by 1969 linking advances in human genetics to moral collapse, nuclear death, and National Socialism no longer prompted legal or medical sanctions against reproductive technologies; the CDU-CSU government had abandoned the campaign for legal regulation, recognizing that most Bundestag legislators no longer supported it. Four years later, at the 73rd Medical Assembly, West German doctors reversed their 1958 moral condemnation of AI, stating that it did not contradict professional ethics, although they did not go so far as to recommend the procedure, owing to unresolved le-

gal issues.<sup>102</sup> One prominent Catholic moral theologian, Franz Böckle, now offered an even more positive reassessment of AID. At the 1970 Marburger Forum Philippinum, he stated: "I consider less critical the issue of heterosexual insemination in a childless marriage. At least it is wrong here to speak of adultery, precisely because a breach in the intimate sexual community (*Geschlechtsgemeinschaft*) does not exist."<sup>103</sup>

The emergence of more moderate stances on AID in West Germany coincided with diminishing fears about imminent nuclear annihilation and the concomitant upsurge in West German support for the German–American alliance. The construction of the Berlin Wall in 1961 and the peaceful resolution of the Cuban Missile Crisis in 1962 increased German confidence in the United States' ability to safeguard West German security, leading to a much more positive assessment of the West German alliance with the United States by 1965.<sup>104</sup> As fears of a nuclear apocalypse receded in the German imagination, advances in science and technology met with a more positive reception. In 1966, polls showed that 72 percent of Germans now had a favorable view of science and technology.<sup>105</sup> Admittedly, entangled fears of genetic manipulation, nuclear war, moral degeneracy, and Americanization never completely disappeared. However, by the mid-1960s most West Germans were content to pursue the good life, no longer actively protesting nuclear rearmament or reproductive technologies. Not until the late 1970s and early 1980s, when new actors joined old ones, would both issues resurface and reproductive technologies become subject to state regulation.

### Protests: Catholics, Environmentalists, and Radical Feminists (1980s)

#### *In Vitro Fertilization: A Brave New World*

On July 25, 1978, the ten-year anniversary of *Humanae Vitae's* publication, Louise Brown—the first test tube baby—was born in England. In vitro fertilization/embryo transfer (IVF/ET) is defined as the fertilization of the egg outside the mother's womb; the fertilized egg is then surgically implanted in the woman's uterus. IVF/ET created the possibility of a new type of surrogacy—gestational surrogacy, in which the fertilized egg of one woman is implanted in the uterus of another woman. IVF/ET and gestational surrogacy raised a plethora of interlocking medical, legal, and ethical issues, of which AID had only scratched the surface.

First, the two interrelated procedures called into question traditional definitions of parenthood. They allowed lesbian and gay couples to have

children without engaging in any heterosexual activity. Moreover, gestational surrogacy created a scenario in which a child could potentially have five parents—the intended or social parents, the egg and sperm donors, and the gestational surrogate. Overnight, the issues of paternity, legitimacy, and liability had become more complex. Did the gestational surrogate have a right to keep the child if she decided that she did not want to relinquish it? Did the social parents have a legal responsibility for the surrogate mother and her family if she developed serious complications or died during the pregnancy? Alternatively, who assumed legal and financial responsibility for the child if the child was born with a serious physical or mental disability?

Second, IVF gave the embryo, at least temporarily, an existence independent of the mother, raising several questions: What was the legal status of the extracorporeal embryo? Did it constitute a human life guaranteed protection under the law? If legislators took steps to safeguard the extracorporeal embryo's right to life, what were the implications for abortion law? Would this necessitate more stringent legal protection of the in utero embryo, effectively eliminating women's access to abortion? Since IVF treatment routinely involves stimulating hyperovulation (through the administration of drugs), more eggs are produced than can be implanted. Could these so-called surplus embryos be used for research purposes, or did they have a right to life?

Third, IVF and concomitant advances in preimplantation genetic diagnosis (PGD) and recombinant DNA technology opened the door to forms of eugenic selection that previously existed only in the realm of science fiction. PGD screening made it possible to identify extracorporeal embryos exhibiting signs of genetic disorders, the assumption being that these embryos would not be implanted. What should be the fate of damaged embryos, and did parents have a right to a "perfect child"? Did the pursuit of the "perfect child" infringe upon the rights of the disabled? Similarly, advances in recombinant DNA technology suggested that soon scientists would be able to manipulate genes in order to correct genetic disorders or create designer babies (selection of sex and eye color, genetically enhanced intelligence, etc.). Should scientists and patients be free to make such choices, or as the Austrian-born biochemist Erwin Chargaff alleged in 1987, did such choices represent the path to a "molecular Auschwitz"?<sup>106</sup>

Finally, the high cost and low success rate of IVF complicated matters further.<sup>107</sup> Beyond the question of medical insurance coverage, IVF's high cost and its use in conjunction with gestational surrogacy created numerous possibilities for coercion and exploitation of poor women acting as surro-

gates for those who could afford the procedure. As demand for egg donors and surrogates increased, international traffickers in domestic and sexual services moved quickly to fill the demand. IVF and gestational surrogacy created an international infertility industry that highlighted the inadequacy of national regulations and underscored the persistence of colonial relationships between the First and Third Worlds.

### *A Slow Start to the German Debate*

As daunting as these issues were, the West German public at first showed little interest in the topic. Between 1978 and 1984, the German debate on the regulation of NRTs and genetic research remained largely confined to experts.

In response to news of Louise Brown's birth, the West German Federal Ministry of Research and Technology (Bundesministerium für Forschung und Technik, BMFT) created the Central Commission for Biological Security (Zentrale Kommission für Biologische Sicherheit, ZKBS) in 1978; it issued the first guidelines for experiments involving in vitro recombined nucleic acid. The guidelines were not legally binding and applied only to federal research institutes and private research projects receiving government funds.<sup>108</sup> That same year, the BMFT also drafted legislation outlining laboratory protocol and safety procedures for genetic engineering research. But the bill never passed; the scientific community blocked enactment by arguing that the proposed restrictions violated its constitutional right to conduct research free from state interference.<sup>109</sup>

The German public remained indifferent, prompting the ZKBS chair to comment to F. Cramer, a scientist at the Max Planck Institute, "The public certainly is unpredictable. It is inclined either to repression or to hysteria."<sup>110</sup> Even the provocative coverage of IVF in newspapers such as *Der Spiegel* and *Die Zeit* between 1978 and 1984 failed to spark widespread public interest.<sup>111</sup> For example, immediately following Louise Brown's birth, *Der Spiegel's* cover showed a gloved hand pulling a fully formed baby by its feet from a test tube; the caption read: "Test Tube Children: Progress or Sacrilege (*Frevel*)?"

The accompanying article carried the headline "A Step in the Direction of Homunculus." The article highlighted the scientific community's trepidation and the procedure's commercial aspects. The reporter disdainfully noted that the doctors had sold the story's exclusive rights to the highest bidder—the *Daily Mail*.<sup>112</sup> In 1982, *Die Zeit* printed a story titled "Respect Down the Drain," in which the author quoted extensively from British news



Figure 5.1. “Test Tube Children: Progress or Sacrilege?” *Der Spiegel*, July 31, 1978. Used with the permission of SPIEGEL-Verlag. © 1978 DER SPIEGEL.

stories about the creation of “surplus children who are cannibalized in favor of other children” in the “chamber of horror” of the British physiologist Robert Edwards—the doctor in the Louise Brown case.<sup>113</sup>

Like the general public, German Catholics initially showed little interest, and West German Catholic organizations, such as the kfd, seemed reluctant to discuss either involuntary childlessness or advances in fertility treatment. In October 1979, a woman wrote a letter to the editors of *Frau und Mutter* asking when the organization planned to break its “deadly silence” on the topic; the woman reported that she had undergone “numerous medical procedures” for infertility but remained childless and felt isolated within the kfd.<sup>114</sup>

For Catholics, IVF/ET posed difficult questions. On the one hand, it seemed to align with Catholic theology’s emphasis on procreation; given the

Church's understanding of women's primary role as mother, might IVF/ET represent a viable solution for Catholic women who, like the kfd reader just mentioned, felt isolated in their communities because they could not have children? On the other hand, the separation of procreation from the unitive function of marriage contradicted Catholic theology, as did the production of surplus embryos that never had the chance to achieve personhood.

Although Catholic lay organizations at first remained silent on the topic, German bishops and theologians did not. On July 29, 1978, three days after Louise Brown's birth, the moral theologian Franz Böckle spoke out in favor of IVF in a radio interview for the North German Radio Station series *Christianity in This Age* (*Christentum in dieser Zeit*); he argued that IVF merely represented a "shift in the site" of fertilization; therefore, it was not immoral.<sup>115</sup> On August 4, 1978, the Munich moral theologian Johannes Gründel echoed this assessment in a published essay.<sup>116</sup> Outraged, Cardinal Höffner, chair of the DBK, released a statement denouncing IVF and the misinformation provided by "certain" theologians. He noted that Pius XII explicitly had condemned any manipulation of human reproduction on multiple occasions. Höffner also enumerated four reasons IVF violated Christian morality: (1) The ends did not justify the means; countless embryos had been sacrificed in order to bring about the first test tube baby. (2) The eugenic implications of IVF made it a threat to humanity comparable to National Socialism. (3) It eroded the marital bond; a child created in the laboratory could never trust his or her paternity. (4) It separated the unitive and procreative purposes of the conjugal act.<sup>117</sup>

But neither the secular media's outrageous headlines nor Höffner's condemnation elicited much reaction from the German public or Catholics. Even the birth on April 16, 1982, of Oliver—the first German test tube baby—failed to generate any sustained public reaction, and the BMFT made no additional efforts to institute regulations. In fact, two years passed before the Justice Ministry established the Benda Commission (1984), tasked with assessing whether NRTs and genetic engineering required regulation. Concomitantly, the SPD and the Green Party demanded the creation of a Parliamentary Enquête Commission on Genetic Engineering. In calling for the commission, the two political parties had very different motives. The Green Party, particularly its female members, wanted to push for a unilateral ban on NRTs and genetic engineering. The SPD preferred a more neutral focus on the risks and benefits of genetic engineering; however, it too had strong reservations about new reproductive and genetic technologies.<sup>118</sup>

The creation of the two commissions opened the door for a much broader discussion of NRTs and genetic engineering, one in which the German public soon became embroiled. On November 25, 1985, the Benda Commission published its recommendations. Like the Grand Commission for Penal Code Reform in the 1960s, the Benda Commission saw no reason to regulate AIH. The report reminded physicians of their responsibility to consider the best interests of the future child before recommending AIH/IVF to infertile couples. The commission also underscored that physicians were under no legal obligation to provide this treatment; as with abortion, they could refuse treatment for reasons of conscience.

The Benda Commission asserted that every effort must be made to prevent the creation of surplus embryos. Doctors should harvest and fertilize only the number of eggs that could be implanted during one IVF treatment. If they did not implant all harvested eggs, they should be required to explain to the local medical board why they failed to do so. Although the commission expressed strong reservations about AID, it did not advise a unilateral ban; rather, AID procedures should be approved on a case-by-case basis. In AID procedures, the sperm donor had no right to anonymity; doctors should maintain detailed records on donors, and donor children on reaching the age of sixteen should be given access to these records. The commission recommended banning egg and embryo donation as well as gestational and traditional surrogacy. It also recommended that unwed couples and single women not have access to these procedures, although it did provide for some exceptions to this rule.

The Benda Commission was much more divided on embryological research, and the final report reflected the differing views of its members. A clear majority spoke out against the creation of embryos specifically for research purposes, arguing it violated human dignity since these embryos had never had the opportunity to realize personhood.<sup>119</sup> Although some members demanded a unilateral ban on embryological research, the commission recommended strict guidelines: "Experiments with human embryos are defensible only insofar as they serve the detection, prevention, or cure of a disease in the concerned embryo or advance a clearly defined and significant medical finding."<sup>120</sup> Prenatal diagnosis, the commission advised, should be used only if concrete reasons existed for suspecting disease or hereditary damage.<sup>121</sup> The CDU-CSU government drafted legislation in 1985 that closely adhered to the Benda Commission's recommendations.<sup>122</sup>

The 1985 proposed bill closely approximated a proposed bill before the

British Parliament at that time. The two bills had only one significant difference. The British draft allowed research on all embryos up to the fourteenth day after fertilization. The West German draft allowed research only on surplus embryos and banned the creation of embryos specifically for research purposes. If the Bundestag had passed the bill, both England and Germany would have been on the liberal end of the regulation spectrum in Europe. However, the German bill did not pass; instead, in 1989, West Germany amended its Adoption Placement Act (*Adoptionsvermittlungsgesetz*) to make gestational and traditional surrogacy illegal.<sup>123</sup> The following year, a newly reunified Germany adopted the Embryo Protection Act (*Embryonenschutzgesetz*, ESchG). The ESchG unconditionally banned all forms of research on embryos. Although the new law did not go so far as to transfer the regulation of IVF from the medical community to the state, it prohibited the harvesting of more eggs than could reasonably be implanted during one IVF cycle, outlawed the freezing of embryos, and criminalized egg/embryo donation, surrogate motherhood, postmortem insemination, nonmedical sex selection, and PGD. However, it left the regulation of AID to the medical community.<sup>124</sup> The two laws placed Germany on the conservative end of the European policy spectrum—alongside traditionally Catholic nations such as Austria, Italy, Ireland, and Portugal.

### *Catholic Politics in a Postsecular Age: The Unholy Alliance*

Why did West Germany end up adopting stricter regulations than those originally proposed by the conservative CDU-CSU government? Why did Germany's path diverge from that of England, given that initially it was following a parallel track? Why did the regulation of reproductive technologies succeed now, when previous efforts had failed? And why did the call for regulation intensify rather than dissipate with the passage of time, as had been the case in the two previous debates? Germany's conservative turn does not make sense unless we take into account three developments: (1) renewed public hostility to science and technology; (2) the heterogeneity of the anti-research/NRT lobby; and (3) the new strategies and alliances pursued by Catholics. Political scientists and jurists such as Nicole Richardt and John A. Robertson have emphasized the importance of the first two developments.<sup>125</sup> But what scholars have left largely unexplored is the third. Christian conservatives, radical feminists, and disability rights activists did not just tolerate each other; they shared information and strategies. At times, they even coordinated protest actions. In short, an issue-specific alliance

formed between these groups. This “unholy alliance”—as contemporary proponents of NRTs, such as the FDP legal expert Detlef Kleinert, labeled it—provided an additional impetus for strict regulation.<sup>126</sup> It also had long-term consequences for women’s access to abortion in a reunified Germany and points to the emergence of a postsecular Catholic identity in Germany.

By the mid-1970s, Germans’ distrust of science and technology was on the rise. The 1973 oil crisis had prompted the West German government to pursue nuclear power as the answer to economic decline, rising inflation, and energy supply.<sup>127</sup> This policy was not welcomed by most Germans. Having lost the economic security of the Miracle Years and seen the destruction done to the environment by years of unchecked economic growth, they responded by renewing their protests against nuclear weaponry and power. This hostility found expression in the German secular media. If one looks again at the 1978 *Spiegel* cover announcing Louise Brown’s birth (see Figure 5.1), one sees a second headline concerning Klaus Traube, a West German engineer and former manager of a nuclear power plant, who became an outspoken critic of nuclear power and was the subject of an illegal wiretap by the Federal Office for the Protection of the Constitution (Bundesamt für Verfassungsschutz). The article criticized the unchecked power of the government and of the scientific community.<sup>128</sup> Beyond the cover, *Der Spiegel* made no direct connections between authoritarianism, nuclear technology, environmental destruction, and NRTs. But the juxtaposition of the two headlines foreshadowed the future strategy of Green Party feminists.

The Green Party had not existed at the time of the two earlier debates; it emerged in the late 1970s from citizen initiatives protesting nuclear energy and advocating environmental protection. By 1979, there were more than fifty thousand of these citizen initiative groups, and their total membership rivaled that of registered political party members (1.6 million). Leaders of these initiatives envisioned the founding of a new political party focused on environmental protection that would transcend the traditional conservative–liberal divide. These “green” parties formed first at the regional level and had a variety of orientations. Some were conservative, others were liberal, and some were even Marxist. For example, Herbert Gruhl, a former member of the CDU, founded the conservative environmental group Green Action Future (Grüne Aktion Zukunft). In October 1978, leftist radicals formed the Alternative List for Democracy and Environmental Protection (Alternative Liste für Demokratie und Umweltschutz).<sup>129</sup>

Joseph Beuys, Petra Kelly, Ossip K. Flechtheim, and Rudolf Bahro want-

ed to incorporate regional green parties from both sides of the political spectrum into one national green party. They tried to bridge the left–right divide among environmental activists, but their efforts ultimately failed. At the first Green Party platform convention in March 1980, conservatives, moderates, and radicals clashed on several issues. One of the most divisive issues was abortion. Conservatives wanted the party platform to advocate protecting unborn life; radicals wanted to eliminate Paragraph 218 from the criminal code. By the summer of 1980, conservative environmentalists, such as Herbert Gruhl, who had been instrumental in organizing the national Green Party, had resigned.<sup>130</sup> With the exodus of conservatives, moderates lost some influence in the party, and the Green Party’s identity shifted farther to the left. In 1982, the Green Party adopted a list of eight conditions for any coalition with the Social Democratic Party. Among these were the stipulations that the SPD support the immediate shutdown of all nuclear power plants and that a ban be enforced on the installation of NATO cruise missiles and Pershing 2s on West German soil.<sup>131</sup> A new generation of Germans believed that the end of the world was near. According to a 1981 Al-lensbach survey, 76 percent of Green Party members anticipated the world’s end through atomic warfare.<sup>132</sup>

By 1984, the Green Party’s environmental and antinuclear politics had developed a new dimension, as feminists gained increased prominence within the party.<sup>133</sup> In addition to advocating for the abolition of Paragraph 218, Green women parliamentarians denounced reproductive and genetic technologies, linking their objections to environmental protection and fears of nuclear destruction. When in 1985 the Parliamentary Enquête Commission opted for a costs-benefits approach to NRTs and genetic research, Green Party women adjusted their strategy, augmenting their legislative campaign with a media campaign intended “to break the organized silence about genetic and reproductive technology” and to mobilize the public.<sup>134</sup>

In April 1985, Green Party women in conjunction with a local feminist group in Cologne organized the first national congress against reproductive and genetic technologies—Frauen gegen Gentechnik und Reproduktionstechnik. The congress adopted the motto “The Exploitation of Nature, Women, and the Third World” and aimed at catalyzing grassroots international opposition to NRTs and genetic engineering.<sup>135</sup> As Maria Mies made clear in her opening speech, the congress assumed the undesirability of these technologies: “We did not organize this congress in order to lead a pluralist discussion about the advantages and disadvantages of new repro-

ductive technologies for women. . . . The aim of this congress is in fact to call on women for a discussion of and campaign against these newest inventions of the techno-patriarchy.”<sup>136</sup> An estimated two thousand women from Germany and abroad attended.<sup>137</sup>

At the congress, Green feminists and members of the autonomous feminist movement outlined four reasons for condemning reproductive and genetic technologies. First, they contended that NRTs were inherently sexist, because the technologies forced women to relinquish control of their bodies to a male-dominated scientific community that showed little regard for women’s health; they also reinforced the notion of womanhood as inextricably linked to motherhood. This exploitation of women they connected to the “techno-patriarchal” exploitation of the environment. Erika Hickel, a Green parliamentarian, explained, “My two years’ experience in the Bundestag with commission experts has taught me the meaning of fear: It was a horror cabinet, exemplifying how human dignity is equated again and again with men’s dignity, how fantasies of total domination over nature and over women prevail, how contempt for nature descends into contempt for women.”<sup>138</sup> Thus, participants rejected the genetic manipulation of crops, animals, and humans. Dorothy Liers posited a link between rising infertility rates and destruction of the environment: “Of course, a connection exists between the increasing infertility of women and rising environmental contamination as a result of high doses of radioactive materials.”<sup>139</sup>

Second, speakers at the congress revived the 1960s eugenics argument that associated assisted reproduction with National Socialism and U.S. capitalism. Maria Mies described NRTs as a “new eugenics on a global scale” that would make Hitler’s racial politics seem like mere “child’s play.”<sup>140</sup> In the same talk, she criticized developments in the United States: “The genetic manipulation of animal and plant life is also about the same principle of selection and destruction. Life, even human life, should be adapted to the needs of the industrial system. What we have learned from the United States about developments in this area is sufficient to recognize the connection between sexism, racism, and these techniques.”<sup>141</sup>

Third, the speakers viewed IVF as a threat to women’s right to abortion because it reinforced equating womanhood with motherhood. Marina Steinbach explained: “Women who call for abortion are characterized in our society as antisocial, egoistic, etc., because they do not behave in a role-appropriate manner, while reproductive technologies are justified because they meet the demands of women and their need to beget children. With

both arguments it is about the definition of woman as mother; it is about establishing the primary role of women, in which motherhood either is coerced or is made possible."<sup>142</sup>

Finally, the participants emphasized the colonial and class dimensions of NRTs. Promoting NRTs in the First World, they argued, represented one side of an international population policy that sought to control women's fertility in the Third World: "This technology is necessarily racist. We must take into account that practitioners support 'the right' of white women in rich nations 'to have a biological child' while using the same technologies to make Third World women sterile or at least subject them to rigid controls."<sup>143</sup>

The Catholic rationale for rejecting NRTs differed substantially from that of radical feminists. The Catholic rationale stemmed from its objections to abortion. Catholics believed that NRTs threatened the sanctity of life and of marriage. They argued that human life began at the moment of conception; thus, the extracorporeal embryo constituted a human life, and the West German state under Article 1 of the Basic Law had a positive duty to safeguard its life. This duty, they claimed, followed logically from the 1975 German Constitutional Court decision on abortion, which stated, "The life developing in the mother's womb has an independent legal value that stands under the protection of the Constitution."<sup>144</sup>

Given the different rationales and the fact that the ZdK banned the Green Party from the 1984 Catholic Congress, an alliance between Catholics and Greens seemed unlikely. Yet in the autumn of 1987, Marianne Dirks, the first postwar kfd president, made contact with several secular feminists of the Green Party, including Maria Mies, Mechthild Höflich, Brigitte Dorst, and Helga Fischer.<sup>145</sup> This unprecedented correspondence was prompted by the news that the American surrogacy broker Noel P. Keane had set up shop in Frankfurt. Keane planned to match childless West German couples with American surrogates; adoption of the resulting children would take place in the United States. Dirks believed that blocking Keane required the coordinated efforts of all opponents, and she convinced kfd leaders and radical feminists of the same. In October 1987, Anneliese Lissner, then the general secretary of the kfd, wrote Mechthild Höflich, "The kfd also has not been inactive in this matter. . . . In this initial round we seemed to have blocked it, but I will pursue further moves in this direction, and I am aware that in you I have found a sister-in-arms (*Mitstreiterin*)."<sup>146</sup>

This newly forged bond between Catholic women and radical feminists

makes sense only if one recalls the staunch resistance of the Women's Union of the CDU and of the kfd in 1984 to the efforts of male conservatives in the CDU-CSU to impose stricter regulations on abortion (discussed in Chapter 4). In standing up against their conservative male colleagues, Catholic women leaders had demonstrated their independence and their more moderate stance on abortion. Their changed perspective created space for dialogue with secular feminists on shared concerns such as surrogacy, NRTs, and genetic engineering.

In addition, points of overlap did exist between Catholic and feminist arguments on NRTs. Both posited a slippery slope, with NRTs leading to a "new eugenics on a global scale."<sup>147</sup> Both emphasized the need to protect human dignity, even though they disagreed on whose dignity was being violated. Feminists claimed it was the woman's dignity, while Catholics considered it the dignity of the embryo. Still, in emphasizing "human dignity"—whether that of the woman or the embryo—Catholics and Green parliamentarians succeeded in shifting the terms of the debate from utilitarian arguments (cost-benefit analysis) to deontological ones. The utilitarian risk-benefit arguments of the early debate gave way to deontological arguments in the late 1980s.<sup>148</sup> The new emphasis on the ethics of NRTs meant that Germany's National Socialist past now figured prominently. This younger generation of protesters, having never lived under National Socialism, showed no hesitation in pointing out not only ideological similarities but also continuities in personnel.<sup>149</sup> Sara Jensen, a West German Green parliamentarian and scientist, asserted, "In the organizations that support pre-implantation genetic diagnosis, there is some continuity in personal [*sic*] with Nazi biological and racial hygiene programs."<sup>150</sup> These types of charges placed supporters of NRTs and embryological research on the defensive.

Nor was it just Catholic women who showed themselves capable of bridging ideological differences to advance a shared goal. West German bishops also demonstrated a new flexibility in the debate on NRTs and embryological research. To be sure, German bishops did not enter into an alliance with the Green Party. However, they made compromises and endorsed new arguments so that the German Christian communities could unite in their opposition. On November 30, 1989, chair of the DBK, Karl Lehmann, approved a 112-page joint declaration on the defense of life, *Gott ist ein Freund des Lebens*.

This ecumenical document, coauthored by Catholics and EKD members and endorsed by thirteen other Christian communities, differed in two key

respects from previous declarations made by the West German Catholic Church. First, neither the German bishops nor the Vatican had ever linked the protection of unborn life to environmental protection, although German bishops and theologians had compared its impact to that of nuclear war. But the ecumenical declaration made the connection explicit: "What we need is a comprehensive joint effort by all to defend life. This is the guiding principle of the declaration of the churches. We need a comprehensive effort: therefore a declaration that addresses the challenges and responsibilities in protecting the living space of the earth as well as defending human life."<sup>151</sup> Given the vociferous reaction of West German Catholic officials to a 1983 Allensbach survey showing that Germans considered the killing of baby seals a more serious moral offense than abortion,<sup>152</sup> their willingness to advance an argument that tried to bridge the gap between abortion opponents and environmental activists constituted a fundamental departure.

Second, the German bishops had never framed their objection to abortion in terms of a violation of the rights of the disabled. Instead, they had underscored the need to protect the dignity of all life. In 1986, they wrote: "Every human is destined to give shape to his own life under the most varied of circumstances. This implies at the same time that the life of each is worth the same, regardless of one's social status, education, ability, economic situation, or even health."<sup>153</sup> In contrast, *Gott ist ein Freund des Lebens* specifically highlighted the negative impact that PGD had on the rights of the disabled: "Finally, we cannot overlook the mentality that could develop concerning the life of disabled persons and their acceptance by society as a result of the coupling of prenatal diagnosis and abortion. . . . Society could reach a point where it no longer accepts disabled children. They need not have been born. For the self-image of the disabled, the consequences would be incalculable, given such an assessment by the world around them."<sup>154</sup>

The united front of Christian communities, the resistance of radical feminists, and the alliance that formed between West German women with very different religious and political orientations resulted in substantial pressure being placed on the CDU government to change its position on NRTS and embryological research. On November 11, 1988, Bavaria introduced the Reproductive Medicine Bill (Fortpflanzungsmedizinengesetz, FMG) in the Bundesrat; the bill proposed transferring regulatory authority from the medical community to the states, as well as banning all embryological research. Fearing a loss of professional autonomy as well as fundamental changes in the medical insurance system, the medical and scientific com-

munities now adopted a defensive strategy. The Assembly of German doctors decided that unmarried couples should have access to NRTs, only if an ethics board gave them special permission. Additionally, the Max Planck Institute and the German Research Society (Deutsche Forschungsgemeinschaft) retreated from their earlier support for embryological research; they now called for a moratorium on such research. The final bill adopted by the Bundestag in 1990 represented a compromise between the more lenient legislation initially proposed by the CDU government and the FMG bill proposed by Bavaria.<sup>155</sup> For the moment, the “unholy alliance” had succeeded in limiting the practice of NRTs in Germany and in banning embryological research.

. . .

The battle did not end in 1990. Since then the pro-research lobby has succeeded in introducing several revisions to the 1990 law. In 2002, the Stem Cell Act (Stammzellgesetz) established criteria that allowed researchers to conduct some embryological research using stem cells imported from foreign countries.<sup>156</sup> In 2011, the Law for the Regulation of Pre-implantation Diagnosis (Gesetz zur Regelung der Präimplantationsdiagnostik) approved the use of PGD in cases where there is a high risk of severe genetic disease in the embryo owing to the genetic disposition of one or both parents. It can also be performed if there is a high probability of miscarriage or of stillbirth because of severe damage to the embryo.<sup>157</sup>

These modifications reflect a breakdown in the late 1980s coalition that transcended the left–right ideological divide. Since the 1990s, German women have become less united in their opposition to reproductive technologies as arguments favoring personal autonomy have gained supporters among female parliamentarians and in feminist circles.<sup>158</sup> Still, opponents of NRTs and embryological research continue to thwart some proposals of the pro-research lobby. The Embryo Defense Act has not been overturned; therefore, stem cells from surplus embryos created by IVF procedures performed in Germany may not be used for research purposes. Moreover, PGD cannot be utilized as a standard diagnostic test.<sup>159</sup> In sum, opponents have succeeded in keeping Germany on the conservative end of the European policy spectrum.

But the legacy of the “unholy alliance” extends beyond Germany’s strict policy on NRTs and embryological research. In 2009, conservative Catholics applied the connection drawn between disability rights and reproductive medicine in the context of the debate on NRTs to the abortion debate. By

doing so, they gained substantial support among Social Democrats and Greens, particularly female members, for a mandatory three-day waiting period for late-term abortions (i.e., after twenty-two weeks of pregnancy) when a fetal disability had been diagnosed. Green Party and Social Democratic women did not want to be seen as opponents of disability rights.

Catholic parliamentarians' successful appeal to disability rights in the debates on NRTs and on abortion is a victory that neither historians of Germany nor historians of gender can afford to ignore, because it points to an important development within political Catholicism. Out of the crisis years of the 1970s, a more activist, albeit smaller, Catholic Church emerged. This activist minority has proved both resilient and flexible, slowly developing new strategies for promoting the Church's message in a pluralist society. This learning process has not proceeded in a linear fashion, nor to date has it influenced all debates in which the Catholic Church is embroiled. Moreover, it has not meant abandoning Catholic doctrine on the defense of life championed by the Vatican. Rather, for Catholic leaders it has entailed a subtle shift from the promotion of the feminized piety of the nineteenth century aimed at filling the pews with women to a strategic deployment of an ideology of gender intended to safeguard contemporary Church teachings and mobilize a politically engaged, conservative core constituency. Fueled by significant financial resources and international connections, an insurgent German Catholic minority has experienced some political successes by stitching together political and cultural alliances for a postsecular world.