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## The German Abortion Debate: Stumbling Block to Unity

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## THE GERMAN ABORTION DEBATE: STUMBLING BLOCK TO UNITY\*

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### I. INTRODUCTION

Prior to 1989, no one would have guessed that communist East Germany would reunite with democratic West Germany;<sup>1</sup> and no one could have guessed the speed with which reunification would come about.<sup>2</sup> Indeed, Germans themselves, particularly those in East Germany, were amazed at the rapid changes in their lifestyles, freedom and laws.<sup>3</sup>

Political changes in other European countries<sup>4</sup> convinced East and

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1. Michael G. Mattern, *German Abortion Law: The Unwanted Child of Reunification*, 13 LOY. L.A. INT'L & COMP. L.J. 643, 644 n.5 (1991). Following World War II, Germany was occupied by the Allies. Each Ally was assigned a particular area of authority. After disagreements among the four Allies, the United States, Great Britain and France formed the Federal Republic of Germany (Bundesrepublik Deutschland or BRD) and the Soviet Union formed the German Democratic Republic (Deutsche Demokratische Republik or DDR). This situation existed until 1989. *Id.* See also Werner F. Ebke, *Legal Implications of Germany's Reunification*, 24 INT'L LAW. 1130 (1990).

2. Mattern, *supra* note 1, at 644.

3. Manek Regel, *German Unification: Brandenburg Gate Summit*, WARSAW VOICE, Sept. 9, 1990, at 1. Polls done in Berlin and Leipzig showed that the majority of East Germans wanted unification. Seventy-one percent, however, felt it had come about too quickly. *Id.*

4. Peter E. Quint, *The Constitutional Law of German Unification*, 50 MD. L. REV. 475, 485 (1991). In 1985, Soviet President Gorbachev came to power. Within a few years, he began his massive economic and political reform movement of perestroika and glasnost. Other countries

West Germany that they might be able to reunite.<sup>5</sup> Thus, the two Germanies signed the first reunification treaty on July 1, 1990.<sup>6</sup> This first reunification treaty created one economic system using the West German mark.<sup>7</sup> East Germans were allowed to exchange their East German currency for West German marks.<sup>8</sup> Also, the first reunification treaty permitted free travel and trade between East and West Germany.<sup>9</sup> Then a second reunification treaty was signed on October 3, 1990 which reunified other aspects of the two Germanies (hereinafter Reunification Treaty).<sup>10</sup>

Since East German law was not appropriate for the new nation's legal system,<sup>11</sup> the West German Constitution, or "Basic Law," provided the constitutional basis for reunification.<sup>12</sup> The Basic Law was written on the premise that East and West Germany would reunite

soon followed suit, dismantled their communist regimes, and set up democracies. Since these countries were no longer willing to police their borders, some of which East Germany relied upon in order to keep its own citizens at home, the DDR's power began to weaken. *Id.* There followed a political awakening; demonstrations began on a regular basis. Hundreds of thousands of people took to the streets in protest or crossed the border to freedom. On October 18, 1989, Erich Honecker resigned his post as General Secretary of East Germany's Communist Party. Further reform followed with the election of Hans Modrow and the resignation of the entire DDR government. Upon observing these events, West German Chancellor Helmut Kohl approached East Germany with a plan for cooperation between the two countries. Prime Minister Modrow was receptive, and Kohl then proposed outright reunification. *Id.* at 486. *See also* Quentin Peel & Charles Hodgson, *Gorbachev Makes Plea for Political Reform at Stormy Conference*, THE FINANCIAL TIMES LIMITED, July 1, 1988, at 1.

5. Jutta Brunnee, *The Reunification of Germany: Comments on a Legal Maze*, 13 LAHOUSIE L.J. 725, 733 (1991).

6. Mattern, *supra* note 1, at 646.

7. *Id.* at 646-47.

8. *Id.* at 646.

9. *Id.* at 647.

10. *Id.*

11. East Germany's laws were based upon the socialist system implemented by the Soviet Union. Brunnee, *supra* note 5, at 729. The stepping-stone for German reunification was the Soviet Union's own governmental reforms. *Gorbachev Says Economic Turn-Around Has Begun*, REUTERS, Jan. 13, 1988.

12. Brunnee, *supra* note 5, at 733. The Basic Law allowed for two methods of reunification: "Other parts of Germany" could accept the Basic Law and join the BRD. Otherwise, representatives from all parts of Germany could formulate a new Constitution, in which case the Basic Law would be revoked. Mattern, *supra* note 1, at 649. Because of East Germany's rapid economic deterioration, speed was required. Thus, the method of unification was not debated and the Basic Law was adopted. Fred L. Morrison, *Constitutional Mergers and Acquisitions: The Federal Republic of Germany*, 8 CONST. COMMENTARY 65, 67 (1991).

in the future.<sup>13</sup> The Basic Law contains clear language which includes "those Germans to whom participation was denied" (i.e., the East Germans).<sup>14</sup>

Despite agreement on the method of reunification and the appropriate Constitution, the two Germanies failed to resolve other issues as quickly or smoothly.<sup>15</sup> Major differences still remained between East and West Germany.<sup>16</sup> Certain provisions of the Reunification Treaty caused protests and demonstrations throughout the new Germany.<sup>17</sup> In particular, disagreement remained over the disposition of six million secret police files maintained by the East German government.<sup>18</sup> Also, many Germans expressed a desire to annex former German land now occupied by Poland.<sup>19</sup> Numerous other issues threatened the peaceful reunification.<sup>20</sup> However, the most problematic and emotional issue which hampered negotiations and dominated the political arena was the abortion issue.<sup>21</sup>

For over forty years, East German women possessed the right to an abortion while their Western counterparts, with some exceptions, faced criminal prosecution for aborting a pregnancy.<sup>22</sup> Not only are East and West Germans, as a whole, pitted against each other with

13. Mattern, *supra* note 1, at 649. The Basic Law stated that it applied to the eleven West German states "for the time being" only and that it would apply to any German lands which acceded to the BRD in the future. *Id.* at 649 n.30.

14. MARY ANN GLENDON *et al.*, *COMPARATIVE LEGAL TRADITIONS* 66 (1985).

15. Regel, *supra* note 3.

16. *Id.*

17. *Thousands Join Women's Anti-Unification Protest in Berlin*, REUTERS, Sept. 29, 1990. Approximately sixteen thousand women marched through Berlin protesting the unification of the Germanies. They believed there would be a decrease in human rights, in particular the East German right to have an abortion. *Id.* These protests have been ongoing, and more recently Chancellor Kohl was even hit with eggs by demonstrators in East Germany. Rolf Soderline, *Chancellor Kohl Hit by Eggs, Plummeting Opinion Poll Ratings*, REUTERS, May 12, 1991.

18. *Bonn, GDR Sign Unification Treaty*, THE WEEK IN GERMANY, Sept. 7, 1990 [hereinafter *Bonn*]. The Reunification Treaty provides that the secret police files will remain in the GDR until the Parliament decides what to do with them. A GDR resident will be appointed to oversee the files. *Id.*

19. Alan Ferguson, *Church Bells Won't Peal Out to Celebrate German Unity*, TORONTO STAR, Sept. 17, 1990, at A2.

20. Regel, *supra* note 3. Remaining problems included guarantee of equal rights for both sides, lack of East German political officials, East Germany's foreign debt (rumored from twenty-one billion to ninety billion dollars and now inherited by West Germany), and the restructuring of East Germany's industry. The latter will cost about fifteen billion marks, and it is estimated that around sixty percent of East German businesses will go bankrupt. *Id.*

21. *Germany Still Split on Abortion*, TORONTO STAR, Apr. 2, 1991, at F3.

22. *Id.*

each side maintaining both pro- and anti-choice proponents,<sup>23</sup> but there are deep rifts between and within political parties.<sup>24</sup> In order to pass the Reunification Treaty, political parties were forced to compromise.<sup>25</sup> The compromise, however, merely postponed the decision whether certain East German laws, which include the abortion law, would be eliminated. Thus, East German abortion law remains in effect along with West German abortion law until the end of 1992.<sup>26</sup> Until then, the German Parliament will debate the abortion issue and review various proposals for a reformed abortion law.<sup>27</sup>

Clearly, problems and strong feelings regarding the abortion issue remain.<sup>28</sup> This article will discuss these problems and how the various political parties stand on the abortion issue. In this context, this article will examine the history of East and West German abortion law. In conclusion, the author will discuss abortion law proposals and discuss each proposal's popularity and political feasibility.

## II. HISTORY OF GERMAN ABORTION LAW

German law stems from the Roman civil law tradition.<sup>29</sup> This civil law tradition viewed a fetus as part of woman's body and, therefore, not yet a human being.<sup>30</sup> Furthermore, this civil law tradition protected the father's rights.<sup>31</sup> A husband could prosecute his wife for having an abortion without his consent.<sup>32</sup>

In contrast, the Roman Catholic Church believed abortion to be a sin only after the fetus had developed a soul.<sup>33</sup> Originally, the Roman

23. *Mein Bauch West, Mein Bauch Ost*, BUNTE, Aug. 30, 1990, at 92-93. In a poll taken by Der Spiegel, twenty-three percent of West Germans and forty-three percent of East Germans felt that the right to abortion should be a woman's choice and not punishable under the law. Further, twenty-nine percent of West Germans felt that abortion should only be allowed for medical reasons or "bad social circumstances," while only fifteen percent of East Germans agreed. Finally, thirteen percent of West Germans thought abortion should only be allowed if a woman's life was in danger, while only four percent of the Eastern population felt this way. Tamara Jones, *Wall Still Divides Germany on the Abortion Question*, L.A. TIMES, Oct. 19, 1991, at A3.

24. *Das zerreit die Partei*, DER SPIEGEL, May 13, 1991, at 18.

25. *Bonn*, *supra* note 18.

26. *Id.*

27. *German Abortion Debate Flares Ahead of Coalition Peace Talks*, REUTERS, May 7, 1991.

28. *Id.*

29. Mattern, *supra* note 1, at 653.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

Catholic Church thought fetus' developed souls eighty days after conception.<sup>34</sup> The Roman Catholic Church later amended this view by holding that a fetus developed a soul when the fetus first began to move.<sup>35</sup>

Although Germany is, as a whole, a civil law country, it contains many different, often antagonistic subjurisdictions.<sup>36</sup> Each of these subjurisdictions approaches abortion law somewhat differently.<sup>37</sup> While some jurisdictions allow abortion during the first half of pregnancy, other jurisdictions do not, but do make punishment for abortions during the first half of the pregnancy less stringent.<sup>38</sup>

In 1871, Bismarck unified Germany for the first time in modern history.<sup>39</sup> Prussia became dominant, and, accordingly, abortion became illegal.<sup>40</sup> Although there were attempts to modify the law, no significant changes were made until 1927 when the German Supreme Court decided to allow abortion if a woman's health was in danger.<sup>41</sup> When Adolf Hitler and the Nazi party<sup>42</sup> came to power in 1933, the prohibition of abortion was strictly enforced<sup>43</sup> for reasons inherent in the Nazi movement.<sup>44</sup> The Nazi abortion law was finally repealed in 1945 at the end of World War II.<sup>45</sup>

### A. *West German Abortion Law*

Although the German people desired postwar reunification,<sup>46</sup> the

34. *Id.* For male children, it was believed by some to be after the fortieth day. *Id.* at n.54.

35. *Id.* at 653.

36. Brunnee, *supra* note 5, at 727.

37. Mattern, *supra* note 1, at 654.

38. *Id.*

39. ERICH EYCK, *BISMARCK AND THE GERMAN EMPIRE 187* (1958). The end of the Thirty Years War splintered Germany into hundreds of individual ruling sections. Under Bismarck, Germany was united and became as large as Spain until World War I when it lost some of its territory to France and Poland. Brunnee, *supra* note 5, at 727.

40. Mattern, *supra* note 1, at 654. Prussia wanted to increase its population and therefore criminalized abortion. *Id.*

41. *Id.* at 655. Reduction of abortion penalties was proposed in 1909, 1919 and 1922. Finally, in 1926, the prison sentence for a woman who obtained an abortion was reduced. *Id.* at 655 n.75.

42. KOPPEL PINSON, *MODERN GERMANY 488* (2d. ed. 1966). Hitler sought to create a pure Nordic population known as "Aryans" to rule the world. He instituted many procedures to build up his blue-eyed, blond-haired race, including the prohibition of abortion. *Id.* at 487-90.

43. *Id.*

44. PINSON, *supra* note 42, at 456.

45. Mattern, *supra* note 1, at 655.

46. John A. Zohlman, *The German Question of Reunification: A Historical and Legal Analysis of the Division of Germany and the 1989 Reform Movement in the German Democratic Republic*, 8 DICK. J. INT'L L. 291, 295 (1990).

superpowers exercised control over the area and failed to agree on how reunification should come about.<sup>47</sup> The United States and its Western allies began to rehabilitate "their area" (West Germany), which included the development of a legal system.<sup>48</sup> The Soviet Union did the same with "its area" (East Germany).<sup>49</sup> Eventually, the Federal Republic of Germany was formed in 1948.<sup>50</sup>

The drafters of the German Constitution, or Basic Law, borrowed many concepts from the United States Constitution.<sup>51</sup> For example, the Basic Law is the supreme law of the land and protects individual rights and liberties.<sup>52</sup> However, unlike the United States, West Germany has a Federal Constitutional Court which deals only with constitutional issues.<sup>53</sup> The Constitutional Court can declare any law or lower court decision unconstitutional if it conflicts with the Basic Law.<sup>54</sup> In contrast with the United States Supreme Court, the Constitutional Court is not limited by justiciability requirements of standing, mootness or ripeness.<sup>55</sup> The Constitutional Court's only requirement is a possible constitutional conflict.<sup>56</sup>

From 1948 to 1969, the pre-Nazi view of abortion became part of the Basic Law in West Germany (abortion was a crime unless the mother's health was in danger).<sup>57</sup> In 1969, West Germany amended the Basic Law to lessen the punishment for abortions, but incarceration was still the form of punishment.<sup>58</sup> West German abortion law was consistent with the then ruling Christian Democrat Party's (CDU)

47. *Id.* Both the United States and Russia wanted to implement their own laws in Germany. *Id.*

48. *Id.* Although the West German Constitution or Basic Law was drafted by the United States, Great Britain and France, it most closely resembled the United States Constitution with emphasis on civil rights and liberties. Any governmental acts curtailing these rights were subject to judicial review by the Federal Constitutional Court. *Id.* at 296-97.

49. *Id.* at 298.

50. Mattern, *supra* note 1, at 656.

51. GLENDON et al., *supra* note 14, at 65.

52. Zohlman, *supra* note 46, at 296-97.

53. *Id.*

54. *Id.* at 297.

55. Mattern, *supra* note 1, at 662. There is no "cases and controversies" requirement in West Germany like there is in the United States. *Id.*

56. *Id.*

57. *Id.* at 656.

58. *Id.* Originally, the amended law which was proposed by the Federal Ministry of Justice allowed abortion in cases where the pregnancy was criminally induced, where the woman had some type of handicap such as incapacity or unconsciousness or where the woman's life was in danger. Only the last exception was included in the final draft which was enacted. *Id.* at 657.

philosophy.<sup>59</sup> In the 1970s, however, the Social Democrats (SDP), whose name, like the Christian Democrats, describes their respective political and social alliances,<sup>60</sup> formed a coalition with the third largest party, the Free Democrats (FDP).<sup>61</sup> Although considered moderately conservative, and often aligning themselves with CDU,<sup>62</sup> the Free Democrats joined the SDP in amending the Criminal Code.<sup>63</sup> This amendment was called the Abortion Reform Act of 1974.<sup>64</sup> The Act enabled women to obtain an abortion within the first three months of pregnancy.<sup>65</sup> The CDU and other groups wasted no time in challenging the Act in the Constitutional Court.<sup>66</sup>

### 1. Federal Constitutional Interpretation of Abortion

Article 2(2) of the Basic Law provides that a person's right to freedom and pursuit of the "development of [his or her] personality" is of utmost importance.<sup>67</sup> Under the Constitutional Court's interpretation, a fetus is a person and, therefore, has the same rights under Article 2(2) as the mother.<sup>68</sup> The Constitutional Court found the fetus to be continuously growing, and, therefore, no time table for cutting

59. The Christian Democrats are affiliated with religious groups who are opposed to abortion. Morrison, *supra* note 12, at 71.

60. Where CDU is known to be to the "right" of the political scale, SDP is to the left. Tom Heneghan, *Facing Crucial Abortion Row, Bonn Wants to Pay "Baby Bonus,"* REUTERS, Sept. 10, 1991.

61. Morrison, *supra* note 12, at 70. FDP and CDU have had a nine-year alliance. Heneghan, *supra* note 60.

62. The FDP is in fact currently aligned with the CDU in a coalition government. Quint, *supra* note 4, at 570 n.342.

63. *Id.*

64. Mattern, *supra* note 1, at 660.

65. *Id.* at 662. Like the United States Supreme Court's decision in *Roe v. Wade*, 410 U.S. 113 (1972), pregnancy was divided into three periods. During the first trimester, a woman was allowed to have an abortion at will if she received counseling first. From the fourth through the sixth month, abortion was only allowed if the woman's health was in danger or the child was deformed. During the final three months of pregnancy, only very serious health hazards were adequate grounds for termination. *Id.*

66. Mattern, *supra* note 1, at 662. See also *supra* notes 51-56 and accompanying texts.

67. Mattern, *supra* note 1, at 665. An individual's right to freedom of development must not, however, conflict with someone else's right of development under the Basic Law. Using this rationale, one can agree that an abortion by a woman would violate the fetus' constitutional rights. This view was the approach taken by the Constitutional Court in its 1975 decision striking down the Abortion Reform Act of 1974. *Id.* at 666. See also *infra* notes 68-80 and accompanying texts.

68. Mattern, *supra* note 1, at 666. For a translation of this case, see GLENDON *et al.*, *supra* note 14, at 86-106.

off that life was feasible.<sup>69</sup> In other words, the Court rejected the trimester or "periodic solution" adopted by the United States Supreme Court in *Roe v. Wade*.<sup>70</sup> The Constitutional Court also held that the fetus' right to life and the government's duty to protect that right through criminal sanctions outweighed a woman's right to freedom of choice.<sup>71</sup> Because of this interpretation, the Constitutional Court held the 1974 Abortion Reform Act to be unconstitutional and adopted an "indication solution."<sup>72</sup> The indication solution subsequently was codified in 1976 in Paragraph 218 of the Criminal Code.<sup>73</sup>

Paragraph 218 is the abortion rule of law in West Germany today.<sup>74</sup> Paragraph 218 allows abortion only when one of four "indicators" exist.<sup>75</sup> As always, abortion is allowed in cases where the woman's health is endangered by the pregnancy.<sup>76</sup> Other indicators include 1) pregnancies which result from criminal activity,<sup>77</sup> 2) an "incurable defect" in the unborn child<sup>78</sup> and 3) overall poor social conditions which would adversely affect pregnancy.<sup>79</sup> However, the latter two indicators are somewhat ambiguous<sup>80</sup> since the Constitutional Court had not defined an "incurable defect" or a "poor social condition."<sup>81</sup> Depending

69. Mattern, *supra* note 1, at 664. One of the main arguments between pro- and anti-abortion factions focused on *when* the embryo becomes a human being. "*Weder Tot noch Lebendig*," DER SPIEGEL, May 13, 1991, at 23. Scientific experiments have given much credibility to the periodic scale used in *Roe v. Wade*. For instance, it is unlikely that a fetus experiences any feeling during the first twenty weeks. Between the twenty-sixth and thirtieth weeks, the fetus has minimal awareness and probably begins to "feel" at this point. *Id.*

70. 410 U.S. 113 (1972).

71. Mattern, *supra* note 1, at 666.

72. *Id.* at 666-67.

73. Morrison, *supra* note 12, at 71 n.21.

74. "*Ich habe Angst vor Abtreibungstourismus*," BUNTE, June 7, 1990, at 110.

75. Mattern, *supra* note 1, at 666-69.

76. *Id.* at 667. Although a fetus's right to protection outweighs a woman's right to have an abortion, the government cannot force a woman to put her own life in danger. *Das zerreit die Partei*, *supra* note 24, at 19.

77. Mattern, *supra* note 1, at 668. "Criminal acts include sex with a minor, rape, or sex with an incapacitated or incompetent woman." *Id.*

78. *Id.* at 667-68. The defect, although not specifically defined by the Constitutional Court, must be incurable and severe. *Id.*

79. *Id.* at 668-69. Adverse social conditions justifying abortion under this "social indication category" include such things as the financial burden of already having too many children, the need to finish an education, mental incapacity or physical handicaps. *Id.*

80. *Id.* Because of the ambiguity as to what constitutes a social indication, eighty percent of all abortions in West Germany have been performed under this exception to Paragraph 218. *Id.* at 668.

81. *Id.* at 667-68.

on how a woman or doctor feels about abortion, the operation could be justified by a relatively small showing of need (a woman wanting to finish her education) or require an extremely serious justification (the child would be born quadriplegic).<sup>82</sup> Thus, prosecution seems to depend on the doctor who performed the abortion, the geographical area where the abortion was performed, and the "seriousness" of the defect of the child or social condition of the mother, despite the fact that abortions are criminally punishable by West German abortion law.

## 2. The Reality of West German Abortion Law

Despite Paragraph 218, statistics indicate that West German women obtain as many abortions as East German women for whom abortion is legal.<sup>83</sup> Therefore, the fact that abortion is a crime for West German women does not deter them from obtaining abortions.<sup>84</sup>

The ease of satisfying social or medical indication requirements for abortion under Paragraph 218 depends upon where one lives.<sup>85</sup> West German women who live in northern Germany,<sup>86</sup> which is predominantly Lutheran, are often able to find a doctor willing to perform the abortion.<sup>87</sup> However, women who live in southern Germany,<sup>88</sup> which is traditionally Catholic, are often unable to find a doctor willing to perform an abortion.<sup>89</sup>

82. *Id.* at 668-69.

83. *Das zerreit die Partei*, *supra* note 24, at 20. In the DDR, 74,000 abortions are performed per year. In the BRD, the number is 200,000 which, on a *per capita* basis, is approximately the same amount. *Id.*

84. *Id.*

85. Each individual German state is responsible for enforcing federal German law. How the state's citizens and government officials view the law, however, will determine whether it is enforced. Quint, *supra* note 4, at 79.

86. Hessen is an example of a liberal German state, and an abortion clinic is, in fact, located there. Ian Murray, *Opposing Camps Dig in for German Battle over Abortion*, *TIMES*, May 14, 1991 [hereinafter *Opposing Camps Dig in*].

87. Marcus Kabel, *Kohl's Cabinet Faces Storm over United German Abortion Law*, *REUTERS*, May 13, 1991.

88. Bavaria and Baden-Wurtemberg are two areas in which abortion laws are strictly enforced. *Das zerreit die Partei*, *supra* note 24, at 19-20. Many doctors in these areas recommend that their patients drive to another part of Germany for an abortion. The doctors fear criminal prosecution to such an extent that they do not perform abortions even when there may be a valid social or medical reason for it. *Betrachtung vor Ort*, *DER SPIEGEL*, Mar. 4, 1991, at 64. For instance, one Bavarian woman visited nine doctors before she found one willing to give her the papers with the required "indication" for a legal abortion. *Id.* In fact, limited abortion clinics exist in southern Germany. The very first abortion clinic in Stuttgart is now being opened after four years of argument between city and state government officials. *Id.* at 67.

89. *Betrachtung vor Ort*, *supra* note 88, at 67.

Not surprisingly, the more liberal SDP is strongest in the north<sup>90</sup> along with smaller liberal parties such as the Greens.<sup>91</sup> Accordingly, the conservative CDU is stronger in the southern regions.<sup>92</sup> The CDU's "sister party,"<sup>93</sup> the Christian Social Union, dominates Bavaria and is particularly opposed to abortion.<sup>94</sup> The reason for this staunch opposition is the Catholic Church's anti-abortion stance and belief that moral standards of society are eroding.<sup>95</sup> The Church attributes the erosion of moral standards partially to abortion.<sup>96</sup>

However, a German woman who is unable to find a doctor in her area to perform the abortion<sup>97</sup> may drive to a more liberal part of the country or, for that matter, may obtain an abortion in another country.<sup>98</sup> Statistics indicate that approximately 100,000 German women per year obtain abortions in countries with more liberal abortion laws (i.e., the Netherlands).<sup>99</sup> However, out-of-country abortions remain illegal for West Germans unless the woman received a "Beratungsschein" or consultation certificate from a West German doctor prior to the abortion.<sup>100</sup> The certificate is required under Paragraph 218.<sup>101</sup> Adding fuel to the abortion-debate fire, German customs officials may now perform a gynecological examination on women when they return to Germany to determine whether they have had an illegal abortion.<sup>102</sup>

90. *Das zerreit die Partei*, *supra* note 24, at 19.

91. *Planned Abortion Reform Stirs Row in Germany*, AGENCE FRANCE PRESSE, Sept. 4, 1991.

92. *Id.*

93. Kabel, *supra* note 87. CDU and CSU have traditionally formed an alliance in Parliament and have similar policies and stances on issues. Heneghan, *supra* note 60.

94. *Das zerreit die Partei*, *supra* note 24, at 19.

95. *Id.*

96. Many Catholics see abortion as a manifestation of the selfishness of people who no longer have a sense of family. Heneghan, *supra* note 60. The Catholic Bishop from Fluda, Johannes Dyba, calls abortion a "children's Holocaust." *So teuer wie die Einheit*, DER SPIEGEL, May 13, 1991, at 24. Another reason many Germans are against abortion lies in their personal history. The contempt shown by Nazis for human life makes many people wary of any similar devaluing of it now. Heneghan, *supra* note 60.

97. Having to receive permission from a doctor is seen by many women as degrading. Quint, *supra* note 4, at 79.

98. Jones, *supra* note 23, at A3.

99. *Id.* That does not include the two hundred thousand abortions which are legally performed within West Germany. *Id.*

100. *Betrachtung vor Ort*, *supra* note 88, at 67.

101. *Id.*

102. Olivia Ward, *German Anger at Abortions Check*, DAILY TELEGRAPH, Mar. 5, 1991, at 10.

The actual number of women that customs officials test is small,<sup>103</sup> but if a woman tests positive, she may be found to have violated Paragraph 218 and face up to three years imprisonment.<sup>104</sup>

Perhaps the most ironic and infamous case is that of "Kathrin K."<sup>105</sup> Kathrin was forced to undergo a gynecological examination after border guards discovered "incriminating evidence" of an illegal abortion in her car at the German border town of Gronau in North Rhine-Westphalia.<sup>106</sup> After the examination confirmed the guards' suspicions, Kathrin was criminally charged with violating Paragraph 218 and now awaits trial.<sup>107</sup> As noted above, Kathrin could be imprisoned up to three years.<sup>108</sup> However, the irony of the situation is that Kathrin is from East Germany.<sup>109</sup> She moved to West Germany less than three years before the incident to build a better life for herself.<sup>110</sup> Had Kathrin remained in East Germany, she would not have been subjected to criminal prosecution for her abortion.<sup>111</sup>

Kathrin K. illustrates the harsh penalties which women face under West German abortion law. Yet, many women satisfactorily convince their West German doctors of a social or medical need for an abortion and, thus, are not penalized. The reality of West German abortion law is that almost 300,000 West German women have abortions each year.<sup>112</sup>

103. *Id.* Around eighty women have reportedly been stopped and orally questioned in the last ten years. Of those eighty, only ten women have been required to undergo further examination. However, Dr. Marijke Albas, medical director at an abortion clinic in Holland, estimates that around one-third of her patients come from West Germany. *Id.* The German magazine, *Der Spiegel*, has stated that police give prosecutors about ten reports per year regarding women who obtain illegal abortions abroad. *Germany Still Split on Abortion*, *supra* note 21, at F3. Usually the woman volunteers the information to the police herself. Rather than be accused of buying illegal drugs while abroad, she offers the policeman a receipt from a foreign abortion clinic. *Betrachtung vor Ort*, *supra* note 88, at 64.

104. Olivia Ward, *Women Leaders Don't Ensure Female Gains*, *TORONTO STAR*, May 27, 1991, at A17.

105. *Opposing Camps Dig in*, *supra* note 86.

106. Jones, *supra* note 23, at A3. While looking for drugs, the border guards found sanitary napkins, a nightgown and a brochure from a Dutch abortion clinic. This evidence is apparently what made her suspect. *Betrachtung vor Ort*, *supra* note 88, at 64.

107. Jones, *supra* note 23, at A3.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

### B. *East German Abortion Law*

Although East Germany's border was set in 1945 during postwar conferences, the German Democratic Republic (Deutsche Demokratische Republik or DDR) was not formally created until 1949.<sup>113</sup> The Soviet Union developed a constitution and political system for the DDR which closely paralleled its own.<sup>114</sup> The Soviets originally allowed abortions, but in 1950 the new East German government prohibited abortions in an attempt to stimulate population growth.<sup>115</sup> East Germany maintained this law even after the majority of socialist countries had adopted the Soviet Union's more liberal 1955 abortion law.<sup>116</sup> In 1972, the DDR finally reformed its abortion law to conform to the Soviet Union's, and the abortion law remains the rule of law in East Germany today.<sup>117</sup> The DDR's abortion law is similar to the trimester model used in *Roe*. The law allows abortion in the first three months of the pregnancy (without the mandatory counseling required in the 1974 West German Abortion Act).<sup>118</sup> Thereafter, abortions are allowed only in cases of health endangerment or "other grave circumstances."<sup>119</sup> Finally, doctors are criminally penalized only if they perform an illegal abortion.<sup>120</sup>

### III. "WIEDERVEREINIGUNG" (REUNIFICATION)

With the signing of the Reunification Treaty between the two Germanies, East Germany essentially adopted West German law.<sup>121</sup> Which country's laws to adopt was not an issue during reunification negotiations, particularly in light of constitutional references to East Germans.<sup>122</sup> However, because some West German laws were not ac-

113. Zohlman, *supra* note 46, at 298.

114. PINSON, *supra* note 42, at 55. The Soviet Union believed in the teachings of Lenin which taught that there would one day be a world revolution of the working class. Because of this, the Soviet Union had no intention of coming to an agreement with the Allies with regard to a reunification of the Germany. Rather, East Germany was an acquisition to be pulled "within the orbit of the communist-dominated Iron Curtain." *Id.*

115. Mattern, *supra* note 1, at 671.

116. *Id.* at 672.

117. *Id.*

118. *Id.* at 672-73.

119. *Id.* at 672 (quoting *Gesetz über die Unterbrechung der Schwangerschaft*, 1972 Gesetzblatt der DDR [GB] I 89 (E. Ger.)).

120. *Id.* at 672.

121. Regel, *supra* note 3.

122. *Die DDR soll unser Grundgesetz übernehmen*, BUNTE, Feb. 15, 1990, at 127 (interview with West German Minister of Justice, Hans A. Englehard). The Preamble and Article 23 of

cepted, some East German laws were allowed to remain in effect until 1992.<sup>123</sup> The DDR's abortion law was one of them.<sup>124</sup> Although the ruling parties agreed to the compromise,<sup>125</sup> the debate continues.<sup>126</sup> Many proposals for a new abortion law have been submitted to the German Parliament, but none have received any clear majority of voter or party support.<sup>127</sup>

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the Constitution state clearly that it is the duty of all Germans to work toward German unity. According to West German Minister of Justice, Hans A. Englehard, a public vote on whether to use the Basic Law for all of Germany would be an offense against the Constitution and should not even be considered. *Id.* at 126.

123. *Koalition und SPD streiten weiter um Abtreibungsrecht Union will Übergangsregelung auf zwei Jahre begrenzen*, SÜDDEUTSCHE ZEITUNG, Aug., 31, 1990.

124. *Id.*

125. The abortion debate has affected a somewhat related topic, artificial insemination, which is legal under German law. A recently drafted bill makes certain experiments illegal and states the conditions under which sperm donation can take place. SDP wants to allow donation from any woman's sexual partner whereas CSU wants to allow it only in cases of married couples. While the various parties haggle over this and the abortion issue, research on artificial insemination has stopped and will not resume until the legislature enacts a law deciding the issue. Richard Seitman, *Abortion Divides Uniting Germanies*, 249 SCIENCE 1100 (July 1990).

126. *Id.* The SDP went so far as to state that it would refuse to vote for the Reunification Treaty if the present Coalition (i.e. CDU-CSU-FDP) tried to keep West German abortion law as the law of the land. *SPD will zweierlei Abtreibungsrecht verhindern*, SÜDDEUTSCHE ZEITUNG, Aug. 23, 1990. Kohl originally proposed a "Wohnortsprinzip" or principle of domicile. This proposal would have used a woman's home address as the basis for allowing her to have an abortion. However, this proposed rule has since been abandoned, and West Germans are now allowed to apply East German abortion law until such a time that a unified law is passed. Seitman, *supra* note 125, at 1100.

127. Both party leaders and their constituents continue to argue about whether a woman has the right to abortion. For instance, Angela Merkel, a woman and youth minister (and one of only three former East Germans) in the cabinet, although not condoning abortion, argues that a woman should not be punished. The conservative CSU party sees this viewpoint as a threat and through its leader, Theo Waigel, is pressuring Chancellor Helmut Kohl to adopt a hard-line approach to abortion. *Opposing Camps Dig in*, *supra* note 86. Similarly, the "Arbeitskreis Bekennder Christen," another smaller conservative party from Bavaria, feels abortion violates God's laws and should not be allowed at all. *"Bekennende Christen" gegen Synodenerklärung*, SÜDDEUTSCHE ZEITUNG, Apr. 24, 1991. Kohl, a Catholic, has indicated his support of the CSU position, but has not completely committed his party, CDU, due to inner party conflict. *Opposing Camps Dig in*, *supra* note 86. Family Minister, Hannelore Ronsch, a CDU member, believes doctors and not women themselves should be allowed to decide if a woman can have an abortion. *See German Abortion Debate Flares Ahead of Coalition Peace Talks*, *supra* note 27. But CDU Liberals, like Rita Sussmuth, advocate allowing abortion in the first twelve weeks if the woman goes through counseling. Kabel, *supra* note 87. FDP members, like General Secretary Cornelia Schmalz-Jacobsen, tend to agree. *"Ich habe Angst vor Abtreibungstourismus"*, *supra* note 74. *See also infra* discussion on proposals and solutions.

Other people in Germany who are not party officials are also debating the abortion issue. Five hundred professional women met recently in Frankfurt to discuss methods of inserting

### A. *Effect of Reunification and the Abortion Issue on German Politics*

Despite Chancellor Kohl's strong support for German reunification, the reunification has caused considerable damage to Kohl's party (CDU) and personal reputation.<sup>128</sup> Three months after his third election to office (January 1990), Kohl's popularity dropped dramatically in both East and West Germany.<sup>129</sup> Kohl blamed this on increased taxes as a result of the Gulf War and promised that the taxes would only last one year.<sup>130</sup> However, everyone believes the reunification process will require additional taxes.<sup>131</sup>

Despite Kohl's pronouncement, increased taxes are not the only reason for the lack of popularity of Kohl and the CDU.<sup>132</sup> Widespread poverty and unemployment in former East Germany has led to disillusionment with Kohl and the CDU.<sup>133</sup> Joblessness is especially disconcerting to East Germans because joblessness was unknown under the communist regime.<sup>134</sup> Some attribute increased alcohol abuse and suicide attempts to the disillusionment present in East Germany.<sup>135</sup>

greater women's rights, including a liberal abortion law, into the Constitution. They drafted a "manifesto," or alternative language and amendments, to the Constitution. *Women Seek More Rights Through New Constitution*, THE WEEK IN GERMANY, Nov. 2, 1990. Two months prior to this Frankfurt meeting, a demonstration was mounted in Berlin. Around sixteen thousand women marched through Berlin protesting what they saw as diminished rights for women due to reunification. See *Thousands Join Women's Anti-Unification Protest in Berlin*, *supra* note 17. Still only about fifty-five percent of the West German population seem to be pro-abortion, whereas three-fourths of East Germans are pro-abortion. *Das zerreit die Partei*, *supra* note 24, at 20. Yet even East and West German citizens disagree among themselves as to what the exact law should be. *Mein Bauch West, Mein Bauch Ost*, *supra* note 23. And German doctors, whether for or against abortion, proposed a law at their Hamburg Congress which would punish, if anyone, the woman and not the doctor. *Das zerreit die Partei*, *supra* note 24, at 20.

128. Heneghan, *supra* note 60.

129. *Steuerlge empord Mehrheit*, DER SPIEGEL, Mar. 11, 1991, at 32. In December of 1990, *Der Spiegel* magazine reported that approximately forty-two percent and forty-four percent of the people preferred CDU in East and West Germany respectively. By February of 1991, CDU's popularity had fallen to thirty-four percent in the East and forty-two percent in the West. In contrast, SPD's popularity had risen from approximately twenty-four to thirty-three percent in the East and from thirty-six to thirty-eight percent in the West. *Id.*

130. *Id.* at 33.

131. Regel, *supra* note 3. The Chancellor has stated that there is no doubt of tax increases in order to build up former East Germany's economy and that Germans can afford higher taxes. *Id.* Aware of his recent unpopularity, Kohl has also not made any public appearances this year. Tom Heneghan, *Kohl Slims as Challenges Grow Heavier*, REUTERS, Mar. 23, 1991.

132. *Feuerwasser der Weisen*, DER SPIEGEL, May 11, 1991, at 62.

133. *Id.*

134. Heneghan, *supra* note 131.

135. *Feuerwasser der Weisen*, *supra* note 132, at 62. *The German Comedy*, by Peter Schneider, is about life in East Germany after the fall of the Berlin Wall. In it, former East

Moreover, weekly demonstrations in Leipzig, similar to those which protested against communism in 1989, have begun again, but this time to protest against unemployment.<sup>136</sup>

Most Germans do not expect lower taxes in the near future.<sup>137</sup> As a result, German voters showed their displeasure in state elections. The Free Democrats received their best turnout since 1961 when they obtained eleven percent of the vote.<sup>138</sup> Likewise, the Social Democrats picked up almost as many parliamentary seats as CDU.<sup>139</sup> In sum, CDU's popularity continues to drop.<sup>140</sup>

Faced with the election results, Kohl is hesitant to adopt a firm position on abortion.<sup>141</sup> This hesitancy created havoc in Kohl's CDU/CSU/FDP coalition, and split the coalition into at least four factions.<sup>142</sup> Thus, Kohl's chances of re-election in 1994 may hinge upon the formulation of a workable compromise on a new abortion law.<sup>143</sup> The exact content of a new abortion law is actually not as important to Kohl as the compromise itself.<sup>144</sup>

### B. *Proposals and Solutions*

To date, there are several proposals for a new abortion law.<sup>145</sup> One proposal comes from parliamentary president, Rita Sussmuth.<sup>146</sup> As a liberal member of CDU,<sup>147</sup> Sussmuth advocates an "indication model" similar to Paragraph 218 of the West German abortion law. However,

Germans ask each other: "Did we really need this?" . . . [after they] suddenly discover the downside of capitalist plenty: carpetbaggers from the West, mass unemployment, and sheer helplessness in the face of a friendly but ruthless takeover by Bonn, Inc." Josef Joffe, *The Other German Wall*, L.A. TIMES, Nov. 3, 1991, at F1.

136. Regel, *supra* note 3.

137. *Steuerlüge empört Mehrheit*, *supra* note 129, at 32. In a poll taken by *Der Spiegel* magazine, seventy-seven percent of those asked did not believe the increased taxes would be for the duration of only one year. Of those who were CDU members, sixty-five percent did not believe that the taxes would be lowered after one year. Eighty-eight percent of the SPD voters agreed. *Id.* at 33.

138. Richard Murphy, *German Coalition Parties Say Negotiations Make Progress*, REUTERS, Dec. 6, 1990.

139. *Steuerlüge empört Mehrheit*, *supra* note 129, at 33.

140. *Id.*

141. *Das zerreit die Partei*, *supra* note 24, at 25.

142. Kabel, *supra* note 87. See also discussion on proposals and solutions.

143. *Das zerreit die Partei*, *supra* note 24, at 27.

144. *Id.*

145. *Id.* at 20.

146. *Id.*

147. *Babylonische Verwirrung*, DER SPIEGEL, Apr. 29, 1991, at 29.

Sussmuth's proposal contains some major differences:<sup>148</sup> 1) a woman must receive mandatory counseling prior to the operation; and 2) the final decision is left to the woman and not the doctor.<sup>149</sup> In addition, the woman must wait three days after counseling to have the operation,<sup>150</sup> and there is no criminal punishment for illegal abortions.<sup>151</sup> Rather, women would be given more counseling and help from the government on sex and child-rearing.<sup>152</sup> However, Sussmuth's proposal received little support since many felt that it gave too little protection to the fetus.<sup>153</sup>

Hannelore Ronsch, a conservative member of CDU and the Minister of Family, offers another proposal.<sup>154</sup> Ronsch's proposal gives the doctor, not the woman, the decisionmaking power and makes the doctor criminally liable if the doctor does not emphasize the importance of the child's birth to the woman.<sup>155</sup> Naturally, this proposal received strong protests from doctors in both East and West Germany.<sup>156</sup> In addition, Ronsch's proposal does little to change Paragraph 218, which was shown not to be a deterrent to a woman if she wanted an abortion.<sup>157</sup>

A more paternalistic proposal comes from Paul Hoffacker, a member of the conservative CDU-CSU faction.<sup>158</sup> Hoffacker's proposal requires a woman to go before a commission of specialists to argue her reasons for needing an abortion.<sup>159</sup> The commission would then decide whether the woman would be allowed to have an abortion.<sup>160</sup> However, Hoffacker's proposal received little support.

A group of 98 parliamentary representatives proposed that the West German "indication model" be completely abandoned. This group advocates that abortions be allowed only in the case of medical emergency.<sup>161</sup> Furthermore, this group advocates that doctors and

148. *Id.*

149. *Id.*

150. Mattern, *supra* note 1, at 693 n.426.

151. *Babylonische Verwirrung*, *supra* note 147, at 28.

152. Mattern, *supra* note 1, at 693 n.426.

153. *Id.*

154. *Babylonische Verwirrung*, *supra* note 147, at 28.

155. *Id.*

156. *Das zerreit die Partei*, *supra* note 24, at 20.

157. *See infra* discussion on the reality of West German abortion law.

158. *Das zerreit die Partei*, *supra* note 24, at 20.

159. *Id.*

160. *Id.*

161. *Id.*

women who perform or have an abortion in violation of this law be criminally penalized.<sup>162</sup>

There is little chance that the parliamentary group's proposal will be passed, particularly since that proposal bans abortion even in the case of rape.<sup>163</sup> Another problem with the parliamentary group's proposal is the cost of child care, due to the increased birth rate, which will result from such a harsh law.<sup>164</sup> Experts maintain that people who are in favor of such a draconian law must dig deep into their pockets to help care for all the additional children.<sup>165</sup> The experts argue that women generally do not seek abortion based on a whim but rather because of some economic or other need.<sup>166</sup> This position is supported by the fact that abortion adversely affects most women psychologically.<sup>167</sup> If the Catholic Church's statistic of 300,000 abortions per year is correct, the cost of governmentally subsidized care for the non-aborted children will equal the cost of a small reunification.<sup>168</sup>

Perhaps the most popular and feasible proposal comes from the Free Democratic Party.<sup>169</sup> The FDP's proposal is supported by the Social Democrats.<sup>170</sup> The FDP's proposal allows abortion during the first twelve weeks of pregnancy if the woman has had counseling.<sup>171</sup> In this sense, the FDP's proposal is based upon the periodic model used in *Roe* rather than the indication model used in Paragraph 218.<sup>172</sup> The FDP, while not wanting to make abortion a crime, attempts to make abortion obsolete. The FDP places strong emphasis upon the fetus' right to live while still recognizing the woman's right to freedom and pursuit in developing her own "personality."<sup>173</sup> The FDP proposes a system of governmental support and education which reduces a woman's need to have an abortion.<sup>174</sup>

Thus, the FDP proposes to lessen the burdens placed upon working parents. Under the FDP proposal, women have greater access to birth

162. *Id.*

163. *Id.*

164. *So Teuer wie die Einheit*, DER SPIEGEL, May 13, 1991, at 24.

165. *Id.*

166. *Das zerreit die Partei*, *supra* note 24, at 26.

167. *Id.*

168. *So Teuer wie die Einheit*, *supra* note 164, at 24.

169. Mattern, *supra* note 1, at 690.

170. *Das zerreit die Partei*, *supra* note 24, at 27.

171. Mattern, *supra* note 1, at 691-92.

172. *Id.* at 691.

173. *Id.*

174. *Id.*

control<sup>175</sup> and sex education,<sup>176</sup> the cost of which would be covered by health insurance.<sup>177</sup> The FDP also proposes greater access to day-care, three-year leaves of absence with guaranteed job security for new parents, financial aid to single parents, and tax breaks to families with children.<sup>178</sup> Such measures greatly lessen the burden of being a parent.<sup>179</sup> Unfortunately, the FDP's proposal is costly, which presents its only major obstacle.<sup>180</sup>

However, the FDP's proposal may be the most palatable alternative to a reunified Germany since 1) the Constitutional Court and the German people place a high value on the fetus' life<sup>181</sup> and 2) the periodic<sup>182</sup> and indication models have failed to present a workable compromise.<sup>183</sup> In addition, the FDP proposal may be the only proposal which can fend off a constitutional challenge in the Constitutional Court.<sup>184</sup> The FDP proposal provides a compromise between pro- and

175. If the FDP proposal is adopted, the way might be paved for methods of birth control which would have been rejected in the past. For instance, in France, for about fifty-five dollars, a woman can buy a steroid which she swallows to induce a miscarriage. This method eliminates surgery completely and alleviates long hospital stays. A woman has only to stay in the hospital a couple of hours. The cost is also significantly lower than the surgical procedure. Finally, the moral aspect of abortion could possibly be lessened since the drug must be taken early in the pregnancy.

On the other hand, such a product will probably not be marketed in Germany for a long time since the drug, Roussel-Uclaf, is banned in countries where abortion is controversial, even if legal. David Israelson, *Abortion Pill Sparks New Debate*, TORONTO STAR, Dec. 15, 1990, at A2.

176. Mattern, *supra* note 1, at 692.

177. *Id.*

178. *Id.* In line with FDP's proposal, Women's Minister, Angela Merkel, has proposed a solution which would keep East Germany's liberal abortion law but would provide an incentive for them to keep the child by paying 1,000 marks for every child not aborted. The West German government already offers families 50 marks a month as added incentive to raise families. *German Minister Wants Baby Premiums to Discourage Abortion*, REUTERS, May 24, 1991. The problem with Merkel's proposal is that it would add 1.7 billion marks to the government's already over extended budget. It also tends to remind people of the pro-birth campaigns of the Nazi era. Heneghan, *supra* note 60.

179. Mattern, *supra* note 1, at 691.

180. *So Teuer wie die Einheit*, *supra* note 164.

181. *See supra* notes 68-81 and accompanying texts.

182. *Id.*

183. *See supra* notes 84-111 and accompanying texts. Many West Germans felt that Paragraph 218 was, although on the books, not enforced. This feeling was due to the vagueness surrounding the conditions under which a woman could receive an abortion under the indication model. The latter was based on geography and church affiliation and, therefore, not uniformly applied. *Das ungeborene Kind — Wehrlos*, BUNTE, Oct. 13, 1988, at 212.

184. The process of constitutional review may take years, however, since unification has put the East German courts into a difficult position. Although less than half of them have been

anti-abortionists and appears, therefore, to be the most likely to become Germany's new abortion law.

The Parliamentary Commission will make the final decision after review of all proposals at the end of June 1991.<sup>185</sup> The Commission may adopt any of the proposals. However, the result will probably be a compromise crafted from the various proposals to satisfy the various factions in Parliament.<sup>186</sup>

#### IV. CONCLUSION

At this time, no proposal appears to be capable of winning a majority of the German Parliament.<sup>187</sup> Even if all FDP and SPD members of Parliament joined together and voted on one proposal, that proposal still would not receive the 332 votes necessary to sustain a majority.<sup>188</sup> However, if a few CDU members also voted for the FDP proposal, the proposal would pass.

The CSU, or anyone dissatisfied with the new law, could then challenge the new abortion law in the Constitutional Court.<sup>189</sup> And, the Constitutional Court could not use justiciability issues to refuse to hear these challenges as the United States Supreme Court can.<sup>190</sup> However, after exposure to abortion laws, which vary from Nazi's prohibition to contemporary periodic and indication models, the Constitutional Court may uphold a new abortion law which places strong emphasis upon the fetus' right to live while still recognizing the woman's right to freedom and pursuit in developing her own "personality."<sup>191</sup> The FDP proposal attempts to do just that.<sup>192</sup> Finally, things need not necessarily come to a constitutional confrontation if the political parties can adopt a proposal that meets the needs of both East and West Germans as well as women and unborn children — which is a tall order indeed.

*Karen Y. Crabbs*

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retained, the remaining judges must all learn new laws, creating an incredible backlog of cases. Philip Sherwell, *West Casts off Eastern Legacy*, DAILY TELEGRAPH, Oct. 2, 1990, at 13.

185. *Das zerreit die Partei*, *supra* note 24, at 20.

186. *Id.*

187. *Id.* at 27.

188. *Id.* There are seventy-nine FDP members and two hundred and thirty-nine SPD members currently in Parliament which together would form only two hundred and eighteen of the three hundred and thirty-two votes needed for a majority. *Id.*

189. *See supra* notes 51-56 and accompanying texts.

190. EDWARD L. BARRETT *et al.*, CONSTITUTIONAL LAW 92 (8th ed. 1989).

191. Mattern, *supra* note 1, at 694.

192. *Id.*

