

Families and States in Western Europe

Edited by

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4 Germany

Adam Tooze

In his programmatic essay of 1995 Paul Ginsborg sets out a choice to be made by those studying the modern European family and its relationship to politics.¹ The choice, he argued, is between a dichotomous model descending from Aristotle and a tripartite model deriving from Hegel. The Aristotelian model revolves around a set of binary divisions between *oikos* and *polis*, between household and political sphere, a set of distinctions that derive ultimately from Aristotle's dualistic description of man as a 'political animal', both political and animal, that is. This dualism, Ginsborg argues, is too simple to capture the complex position of the family in modernity. Instead, he prefers a Hegelian tripartite scheme, which distinguishes between family, civil society and state. The state is constituted by law, the family by a bond of love. The economy, relegated by Aristotle to the household, is assigned by Hegel to a third sphere of civil society. Ginsborg does not rest here. In keeping with modern usage he makes a further distinction. Whereas in Hegel the economy and associational life are intermingled in the sphere of civil society, Ginsborg removes the economy to its own sphere and defines civil society essentially as what Habermas has taught us to call the 'public sphere'. As Ginsborg makes clear, what is at stake in these differing models are fundamental conceptions of the social order. The way in which the relationships between the private sphere of the family and the public realm are conceptualised is fundamental to how we address the most basic questions of order and freedom.

One might quibble whether a model in which the economy has been removed from the primary triad of state, family and civil society can be described as truly Hegelian. But that is beside the point for present purposes. Ginsborg's histories of Italy since 1945 have amply demonstrated the utility of his tripartite schema.² Furthermore, one can only agree with Ginsborg's contention

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¹ Ginsborg 1995. ² Ginsborg 1990, 2001.

that the triadic conception of the relationship between state, civil society and the family has been fundamental to the organisation of most West European societies in the modern period. Certainly, the reconstruction of West Germany in the era of the Cold War was organised around a vision of the social order much like that which Ginsborg describes for Italy.³ The philosophy of Konrad Adenauer's economics minister Ludwig Erhard centred on the restructuring of the relationship between civil society on the one hand and a more tightly circumscribed state on the other. Mediating between state and market, the consuming household unit was an essential building block of the social market economy.⁴ But for the post-war Christian Democratic parties the family was more than that. It was a source of warmth, stability, human relations in a broken world. Marriage was a bond sanctioned by the highest authority, a relationship to be protected by the state and not to be instrumentalised by politics, whether for purposes of ideological indoctrination, surveillance or national demographic priorities.

But the Hegelian tripartite model as Ginsborg applies it to the Italian case is not merely descriptive. It is critical. It frames Ginsborg's critique of the narrow familialism and corrupt clientelism, which have dogged Italy's history since 1945. The family has been the nuclear unit of the economy, the driving force behind Italy's dramatic economic development. But, as Ginsborg makes clear, in post-war Italy it has also stood in chronic tension with the demands of the law and the wider public sphere. In the age of Berlusconi what is at stake is nothing less than the rule of law, the bedrock of the Rechtsstaat. Such tensions of course exist everywhere to some degree. In Germany, as well, cases of corruption are unfortunately not rare. But, unlike in Italy, in the Federal Republic corruption remains a scandal. The Rechtsstaat is not in question. Whilst Italy languishes in sixty-third place, the fact that Germany ranks 'only' in fourteenth place in Transparency International's global survey of corruption is a cause for anxious public comment.⁵

But if the tension between the family and the rule of law has not been a fundamental feature of the recent history of Germany, there is nevertheless a sense common to both countries that the Christian Democratic model of family politics inherited from the post-war era has reached its limit. Over the last twenty years family policy has become one of the most hotly debated areas of German politics. In the 2002 election campaign Gerhard Schroeder as the head of the Red-Green coalition was the first chancellor ever to make family policy a central part of his personal election platform.⁶ Schroeder's successor Angela

³ Moeller 1993; Kuller 2004. ⁴ Carter 1997.

⁵ The table for 2009 is at www.transparency.de/Tabellarisches-Ranking.1526.0.html, accessed 12 August 2009.

⁶ Pini 2001.

Merkel and her dynamic minister for family affairs Ursula von der Leyen have promised nothing less than a radical transformation of the state's relationship to the German family.

The driving force in the German debate about the family is demography. The problem of ageing common to all European societies is exacerbated in the German case by an exceptionally low rate of fertility. Earlier than in any other Western country, in 1972, centuries of demographic growth in Germany went into reverse. Ever since, the native-born population has been in decline. Since 2001 the issue has been discussed with remarkable breadth and intensity.⁷ And there is a broad though by no means complete consensus on the basic cause of the problem.⁸ German women seeking to resolve the contradictions between an unsupportive, conservative family policy, the demands of the workplace and their aspirations to greater education and equality have dramatically restricted their fertility. The average age of first pregnancy is now around 30. But the most important driver of Germany's low fertility is not the choice for one-child families, but the decision by an ever larger minority of women to have no children at all. Of those born in 1965, almost a third have remained childless.⁹ Amongst university-educated women the percentage is considerably higher. Amongst professional women in their forties the share of the childless rises from 40 per cent amongst doctors and university-trained economists to 67 per cent amongst those working in PR.¹⁰ In the second volume of his history of modern Italy, Ginsborg highlights very similar trends in Italy.¹¹ And there is reason to think that these common symptoms are indicative of problems inherent in the Christian Democratic model of family policy. Gøsta Esping-Andersen certainly groups Germany and Italy together in his category of conservative-familial welfare states.¹² Whilst Christian Democracy celebrated marriage and maternity, the rejection of the Fascist legacy barred any overt state support for natalism. There is an instructive contrast in this respect between West Germany where family policy revolved around the institution of marriage, and France, where policy targeted fertility directly.¹³ At the same time, anti-socialism informed an approach to welfare founded on employment-based insurance rather than direct state provision. And deep-seated social conservatism and hostility to demands couched in feminist language led to a refusal to honour even basic constitutional commitments to gender equality. The result, despite Christian Democracy's ideological commitment to the family and maternalism, was a lop-sided tax, benefit and employment structure, which left women bearing a grossly disproportionate share of the burden of reproductive labour.

⁷ For this particular dating by one of the most vigorous contributors to the debate, Herwig Birg, see 'Der Lange Bremsweg', in *F.A.Z.*, 4 March 2005, Nr 53 / Seite 37.

⁸ Deutscher Bundestag, 7. Familienbericht (2005), Drucksache 16/1360.

⁹ Birg 2001, p. 75. ¹⁰ Kirchhof 2006, p. 176. ¹¹ Ginsborg 2001, pp. 68–93.

¹² Esping-Andersen 1999. ¹³ Kuller 2004, p. 14.

So Italy and Germany have much in common. The fascination of the German case is that since the 1990s, faced with what is viewed as an imminent demographic crisis, three powerful currents have converged to break open the Christian Democratic stalemate: the powerful process of social and cultural liberalisation set in motion in the 1960s and continuing into the present; the removal of Cold War taboos through the collapse of Communism and the absorption into the Federal Republic of Germany (FRG) of the radically different model of family policy developed by the Communist regime of East Germany; finally the emergence of a powerful strand of judicial activism, which has called the legislature to account for its flagrant failure to honour explicit constitutional commitments to the protection of the family and equal treatment of all citizens. The result is that over the last twenty years Germany has witnessed an unprecedentedly open-ended debate about demography and family policy, which has overturned the parameters of the post-war, Christian Democratic model.

And this in turn has conceptual implications. Given the centrality of demographic questions to the current German debate it would seem positively perverse not to make use of the insights provided by the diverse body of literature that addresses itself to what has come to be known as the biopolitical. This, however, takes us back to the fork in the intellectual road map outlined by Ginsborg in his 1995 article. The one thing that unifies the biopolitical literature is that it is rooted not in Hegel's tripartite distinction between family, state and civil society, preferred by Ginsborg, but in the dualistic Aristotelian model and its supercharged distinctions between the public and the private, the political and the natural.¹⁴ Despite their many differences, an idea common to thinkers such as Hannah Arendt and Michel Foucault is that one of the central dynamics of modernity is the erasure of the Aristotelian distinction between the public and the private, the political sphere on the one hand and the biological and economic spheres of the household on the other.¹⁵ Arendt in *The Human Condition* describes the emergence of 'the Social' as the site of this blurring.¹⁶ In the realm of 'the Social', formerly private matters of procreation and household management are raised to the status of national political concern. On the other hand, politics is reduced to a bartering over family allowances and childcare vouchers. For Arendt this erasure of the fundamental Aristotelian distinctions has potentially drastic consequences for political freedom. As Ginsborg notes, the Platonic appeal to the family as a model of unity in contrast to the divisions of the political sphere, the temptation to erase distinctions against which Aristotle protested, is one of the fundamental inspirations of modern dictatorship.¹⁷

¹⁴ Arendt 1958; Foucault 2008. ¹⁵ Dolan 2005. ¹⁶ Arendt 1958, pp. 38–49.

¹⁷ Ginsborg 1995, p. 256; Ginsborg 2000.

And in the German case, it is of course tempting to make a straightforward juxtaposition along Cold War lines. On the one hand, there was West Germany with its constitution of liberty founded on the trinity of family, civil society and the law-bound state. On the other hand, there was the biopolitical totalitarian nightmare of Communist Eastern Germany, the German Democratic Republic (GDR), in which everything – law, love and private property – was collapsed into an amorphous totality, not a state properly speaking, but an amorphous regime of power with the Socialist Unity Party (Sozialistische Einheitspartei Deutschlands, SED) and its chairman at its apex. Even in May 1989 such Cold War stereotypes could be mobilised by the right wing of the Christian Democratic Party (CDU) against modest reform proposals mooted by Helmut Kohl's family minister Ursula Lehr.¹⁸

In practice, the biopolitical regime of the GDR fell far short of the totalitarian standard set by Maoist China with its one-child policy, state monitoring of menstrual cycles and widespread campaign of forced sterilisation.¹⁹ But it was nevertheless amongst the most comprehensive and far-reaching ever seen in Europe. One can, after all, hardly ask for a more brutal and basic measure of population policy than the 'anti-fascist protective wall', which from 1961 containerised the population of the eastern state. Furthermore, the GDR was the first German state explicitly committed not only to the principle of gender equality, but to its realisation through the means of the state.²⁰ And because this was state socialism in the Stalinist mode, that equality was to manifest itself first and foremost through the universal enrolment of all women in the workforce. From the 1960s the GDR underpinned this with a dramatic expansion of female education at all levels. Unlike family policy in the West, the East German state's pursuit of biopolitical efficiency was radically consistent.²¹ If one aimed to maximise both productive and reproductive output, it was essential for the burden of child rearing to be socialised. So from the early 1970s the GDR enormously expanded state-funded childcare, offering comprehensive cover for under-threes, kindergarten age children and pre- and after school facilities for those of school age. The regime trained tens of thousands of care workers according to a manual personally authorised by Margot Honecker and equipped thousands of facilities.²² They thus ensured a comprehensive, not to say totalitarian, enmeshing of biological existence and family life with the priorities of the regime. By 1989 the difference in childcare enrolment and female labour market participation between West and East Germany was spectacular.²³

¹⁸ 'Nicht gewachsen', *Der Spiegel* 21/1989 22 May 1989, pp. 27–31.

¹⁹ Greenhalgh 2003.

²⁰ Flockton, Kolinsky and Pritchard 2000; Kolinsky and Nickel 2003.

²¹ Gerlach 1996. ²² Pritchard 2000. ²³ Reyer and Kleine 1997.

Childcare provision FRG–GDR, percentage of age group covered

	1970	1980	1989
Nursery (0–3 years)			
FRG	1	1	2
GDR	29	61	80
Kindergarten			
FRG (vast majority half-time)	39	78	79
GDR	65	92	95
After school care			
FRG	2	4	4
GDR	47	75	81
Activity rate, women 16–60			
FRG	50	53	60
GDR	66	73	78

In retrospective estimates it appeared that the GDR had managed to socialise no less than 85 per cent of the total cost of child rearing; by comparison, in the early 1990s less than a quarter of the total costs of a child were covered by the West German state.²⁴ Not surprisingly, therefore, unlike in the West virtually all East German women had at least one child in their twenties and at the same time virtually all adult women worked. Of women born in the late 1950s no more than 7 per cent remained childless in the GDR, whereas the figure in the FRG exceeded 20 per cent already for these cohorts.²⁵ Whereas choices with regard to children became increasingly polarised in West Germany, the concentrated system of state intervention in the GDR created remarkably homogeneous biographies. With housing allocation directly linked to parenthood, half of all East German women had their first child by the age of 22. Early cohabitation was commonplace. There were few obstacles to divorce, more often than not initiated by the female partner.

Share of selected family types in population 16–65, GDR and FRG, 1990

	GDR	FRG
Couple, children <16, both full-time employed	32	3
Couple, no children, both full-time employed	12	6.5
Couple, children >16, both full-time employed	8	2.5
Couple, children <16, man full-time, woman not employed	7	14.5
Single, full-time employed	5	11
Couple, no children, both non-working	4	10.5

²⁴ Gerlach 2000a, p. 130. ²⁵ Birg 2001, p. 75.

There is no question, therefore, that the GDR did manage to reshape its population in a most dramatic way.²⁶ But whilst it may be tempting to map conceptual schemes on to the fault lines of the Cold War – to assign Ginsborg’s tripartite, Hegelian scheme to an analysis of West Germany, whilst reserving the Aristotelian nightmare of modern biopolitics for the study of the GDR – to do so would be to miss the point. If we take the theorists of biopolitics seriously then we cannot confine their critique only to the overtly dictatorial regimes. The point that Arendt, Foucault et al. were making was that this blurring of the public and private in the sphere of ‘the Social’ was a generic feature of modernity, silently underpinning liberal regimes as well as the more overtly dictatorial forms of polity. Christian Democratic West Germany may have had inhibitions about speaking the language of eugenics, but it was nevertheless the Federal Republic, founded as it was on the triumphant Deutschmark, that for Foucault served as the example par excellence of a regime based on the pure biopolitical logic of economic development.²⁷

Furthermore, the notion of the emergence of biopolitics as the central arena of modernity need not necessarily be shaded in the bleak colours preferred by Arendt. Where Arendt saw the emergence of the realm of ‘the Social’ annihilating everything that might be authentically described as either politics or privacy, for Foucault the biopolitical arena offered a multiplication of possible sites of political contestation.²⁸ Indeed, it was precisely in the biopolitical sphere that two of the major emancipatory projects of modernity – socialism and feminism – were articulated. As Malcolm Bull has recently pointed out, it is no coincidence that another of the influential bodies of social theory recently to draw on the dualistic Aristotelian framework has been the ‘capabilities approach’ of Amartya Sen and Martha Nussbaum.²⁹ They think of themselves as updating the emancipatory promise of the young Marx.³⁰ And if to include this under the rubric of biopolitics seems far-fetched, it is worth recalling that Marx’s vision of an unalienated existence was that of the full realisation of ‘species being’. Another way of describing that same outcome was the transformation of politics from the exercise of power by one person over another to the administration of things. For Marx, thus, the full realisation of human nature was coupled to the end of politics. And one might add to Bull’s remarkable map of convergence a further vector, which is that of feminist social theory, for which the intersection of the body and the political is an utterly indispensable reference point. Arendt herself acknowledged this rootedness of both Marxism and feminism in the biopolitical sphere in the following fabulously backhanded remark: ‘The fact that the modern age emancipated the working classes and the women [sic] at nearly the same historical moment must certainly be counted

²⁶ Mayer and Schulze 2009. ²⁷ Foucault 2004, pp. 41–212. ²⁸ Dolan 2005.

²⁹ Bull 2007. ³⁰ Nussbaum 1992, p. 175.

among the characteristics of an age which no longer believes that bodily functions and material concerns should be hidden.³¹

Against this conceptual backdrop, this chapter revisits the choice offered by Ginsborg in his 1995 essay. In the era of the Cold War Ginsborg is surely right to insist that the conservative tripartite model of family politics espoused by Christian Democracy held at bay the more radical biopolitical impulses of modernity across much of Western Europe. With the end of the Cold War, however, these restraints have largely collapsed. In Germany at least, the fall of the Wall brought not the victory of the Christian Democratic model, but rather the lifting of those inhibitions which previously constrained the frank discussion of the underlying logic of modern family policy. The result has been to unleash a singularly wide-ranging debate squarely situated on the ambiguous terrain of the biopolitical.

Not surprisingly, immediately after reunification, triumphant voices in West Germany sought to discredit the GDR's system of family policy. Only a last-minute intervention by the Bundestag secured any financial support in the transition treaty for the elaborate and expensive childcare infrastructure in the eastern states.³² The Bundestag enquiry into the Communist dictatorship denounced the GDR's comprehensive network of pre-school education as ideological manipulation. Right wingers called for the scrapping of the entire system. Left Freudians conjured up images of entire cohorts of authoritarian personalities scarred by Stalinist potty training. Early in 1993 Angela Merkel, then as youth minister a rising star in Kohl's cabinet, presided over a Koenigswinter conference at which these theses were given an influential airing.³³ In the anxious debate about teenaged criminals and skinheads in the new eastern states it was widely argued that their anomie derived from the deprivation of motherly love. Seizing on the apparent homogeneity of GDR life courses, West German sociologists managed to convince themselves that East German family patterns reflected conformist social pressures and a lack of self-reflexive individuation, which they contrasted to the supposedly pluralistic, post-industrial lifestyles of the West.

In fact, the evidence suggests the opposite. Rather than being the passive recipients of the imprint of the regime's biopolitical energies, East German women and men appear very consciously to have fashioned their biographies around both the opportunities and constraints that faced them.³⁴ Once the regime that had conditioned these choices began to disintegrate in the last months of 1989 they showed no sign whatsoever of any 'cultural lag'. On the contrary,

³¹ Arendt 1958, p. 73.

³² 'Fuehrungscharme gefragt', *Der Spiegel* 33/1990 13 August 1990, p. 16b.

³³ 'Hingehen und Zuhören', *Der Spiegel* 2/1993 11 January 1993, pp. 36–41.

³⁴ Trappe 1995.

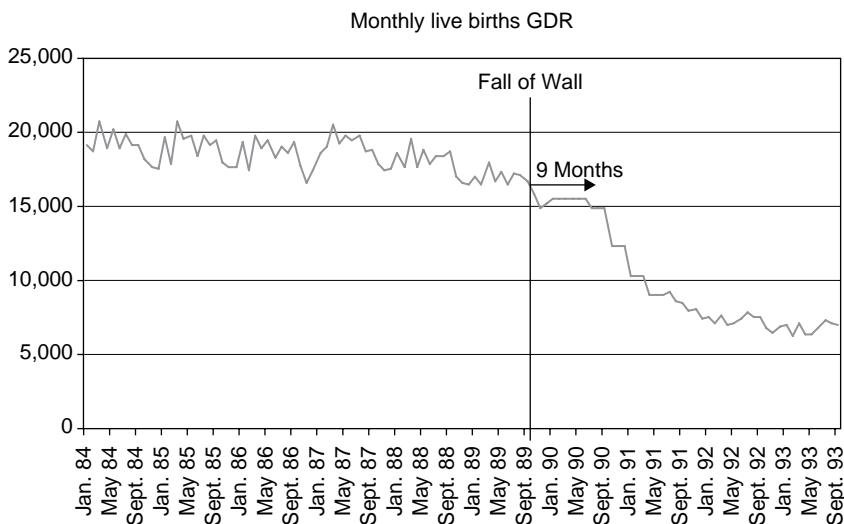


Figure 3

Sources: Monthly data from Statistisches Bundesamt, *Sonderreihe mit Beiträgen fuer das Gebiet der ehemaligen DDR* Heft 32 V (Berlin, 1999), and successive issues of *Wirtschaft und Statistik*.

their command of their fertility was nothing short of virtuoso.³⁵ Exactly nine months after the fall of the Wall, in the summer of 1990, the number of live births in what was destined soon to become the former GDR began to plunge. In the process of German unification demographic variables that we normally think of as belonging to the realm of the *longue durée* took on the properties of business-cycle indicators. The adjustment was so rapid that it is necessary to track fertility rates on a monthly time scale, as we do fluctuations in the stock market or the dole queue.

But again, one should be careful not to fall into the trap of imagining that the biopolitical logic operated only in a ‘top down’ manner, with causality running one way, from the state to the family. What is even more striking is how, despite the stark financial constraints facing regional governments in the East, grass-roots mobilisation has served to sustain key elements of the GDR’s family policy regime. Under pressure from their constituents East German politicians recast elements of the GDR system in the rights-based language of the Western Rechtsstaat. Childcare was established as a legal right in many of the eastern states. By the mid-1990s opinion pollsters were finding that distinctive

³⁵ Kreyenfeld 2002; Niephaus 2003.

attitudes towards the issues of gender equality and childcare had become a symbol of East German identity.³⁶ The Christian Democratic administration of the south-eastern state of Thuringia was buffeted by an unprecedented popular mobilisation in defence of nursery and kindergarten provision.³⁷ Though large parts of the GDR's state-provided nursery system were dismantled in the course of the *Wende*, the percentage of East German children covered remained dramatically higher than in the West. If we combine the demographic data with the data for childcare provision it would seem as though a precarious kind of equilibrium was being maintained, in which, as the ability of their collective political institutions to sustain childcare dwindled, the East Germans shrank the number of children they produced.³⁸

	West Germany			East Germany		
	1990	1994	1998	1990	1994	1998
Number of places 000						
Nursery (0–3)	38	47	59	353	103	109
Kindergarten	1,552	1,919	2,152	888	552	335
After school	128	146	179	818	285	271
Number of children						
0–3	2,144	2,143	2,095	626	250	298
3–6	1,981	2,251	2,110	785	473	253
6–10	2,565	2,846	3,027	930	833	569
Percentage cover						
Nursery (0–3)	2	2	3	56	41	37
Kindergarten	78	85	102	113	117	132
After school	5	5	6	88	34	48

With the GDR's family model proving surprisingly resilient, in the 1990s it was the contradictions and dysfunctionality of West Germany's model of family policy that came under the spotlight.³⁹ In 1994, the attempt to harmonise East and West German expectations with regard to childcare forced the Christian Democratic government to concede a legal right for West German families to a kindergarten place for all children over the age of 3. But little practical action followed. Impatient for assistance, a rash of parental self-help initiatives sprang up across major Western cities.⁴⁰ Between 1990 and 2002 the

³⁶ Schlegel 2000/2004.

³⁷ See the documentation at www.bessere-familienpolitik.de, accessed 6 January 2011.

³⁸ Hank, Tillmann and Wagner 2001; Kreyenfeld 2004.

³⁹ 'Glaubenskrieg ums Kind', *Der Spiegel* 9/2008 25 February 2008.

⁴⁰ 'Waldwichtel im Bauwagen', *Der Spiegel* 1/2002 30 December 2002.

number of autonomously organised childcare places for children under 3 rose in the state of Hesse from 4,000 to 20,000 and in Bavaria from a few thousand to 18,500. And since much of the Kindergarten movement had its roots in the radical urban sub-cultures of the 1970s it was only logical that it was the Red-Green coalition of 1998 that finally broke the West German deadlock.⁴¹

The Bundestag elections of 1998 delivered a parliament containing 30 per cent women deputies and appeared to mark a breakthrough for women in German politics.⁴² The Red-Green coalition government headed by Gerhard Schroeder, whose widowed mother had supported him after the Second World War by working as a farm labourer, had five female members out of a cabinet of fifteen. Following the resolutions of the UN women's conference in Beijing in 1995 and the resolutions of the EC on gender mainstreaming, Schroeder's cabinet became the first West German government to commit itself explicitly to the promotion of women's work outside the home. As its first priority the Red-Green coalition attempted to impose a new gender equality law on private sector employers, only to find the powerful employers' associations insisting that there could be no real progress for women and mothers in the workplace unless the public authorities ensured the provision of more adequate childcare facilities.⁴³ In 2001, both the Social Democratic Party (SPD) at its Nuremberg party conference and the Red-Green coalition raised the question of increased female labour market participation backed by publicly provided childcare to the top of the political agenda.⁴⁴ Chancellor Schroeder took a leading role, denouncing the existing situation of childcare in West Germany as befitting a 'developing country'.

Returned to power on the back of a strong majority of women's votes, the Red-Green coalition finally attempted to address the acutely sensitive issue of national subsidies for local childcare infrastructure.⁴⁵ This produced criticism from left feminists who objected to the way in which a project of emancipation was being recast to meet the needs of the labour market.⁴⁶ But the main opposition, predictably enough, came from the Christian Democrats. In Germany's federal political system, the member states jealously guard their rights with regard to educational policy. The entrenched regional power bases of the Christian Democrats in West Germany and in particular their conservative 'sister party' the Christian Social Union (CSU), which dominates Bavarian politics, stood solidly against any dramatic action on childcare by a Red-Green national government.⁴⁷ To allow large-scale funding to be channelled directly

⁴¹ Authors Collective 1970; Reyer and Kleine 1997.

⁴² Mushaben 2004, pp. 183–4. ⁴³ Maier 2005.

⁴⁴ Opielka 2002; *Der Spiegel* 4/2001 22 January 2001; 'Mehr Krippenplaetze' and 'Teuere Auszeit', *Der Spiegel* 46/2004 8 November 2004, p. 74.

⁴⁵ Gerlach 2004. ⁴⁶ Jansen 2002.

⁴⁷ 'Kampf um die Krippen-Quote', *Der Spiegel* 45/2002 4 November 2002, p. 44.

from Berlin towards building new kindergarten and crèches in West Germany required nothing short of a constitutional compromise. Significantly, however, whilst the Bavarian CSU backed by elements in the Catholic church hierarchy continued to cling to the shibboleths of the Adenauer era, the national leadership of the Christian Democrats dominated by Angela Merkel, herself a childless East German science Ph.D., had already begun to shift position. Though the overtly feminist language of the Red-Green coalition would always be alien to the CDU and though their top priority was to provide tax breaks to middle-class households in which the mother opted out of paid employment, on the childcare issue there was to be no retreat to the stand pat conservatism of the Kohl era.

The result of the closely fought election of 2005 in which family issues were again unusually prominent, was a grand coalition of CDU and SPD headed by Merkel, who chose as her family minister the photogenic Western power-Frau Ursula von der Leyen. Apart from her c.v., which includes a successful family of seven children on top of degrees in both economics and medicine and time spent at the London School of Economics and Stanford, what recommended von der Leyen to the coalition was her willingness to continue the radical family policy agenda of Schroeder's government. With the majority of the national CDU behind her, von der Leyen has made herself into the figurehead of a national drive for the expansion of infant childcare. She surged to huge national popularity after announcing a target of 750,000 nursery places. In so doing, she courted vicious antagonism from the diehard conservative wing of her own party, but carried with her roughly two-thirds of the electorate.⁴⁸ Reversing earlier arguments about the disastrous effects of the GDR's extensive childcare provision, von der Leyen mobilised international research results, notably from the US, to argue that public childcare facilities had a crucial role particularly in supporting socially disadvantaged households, many of which of course were in the former GDR and amongst West Germany's Turkish minority.⁴⁹ In the spring of 2008 on behalf of the CDU-SPD grand coalition von der Leyen pushed through the Bundestag the Child Promotion Law (*Kinderfoerderungsgesetz*). In an unprecedented break with Christian Democratic taboos, the law committed the West German government to providing childcare for 35 per cent of infants under the age of 3.

It is indicative of the changed terms of the debate twenty years after the Fall of the Wall that it was the Western states not the states of the former GDR that were held up as deficient. In the West in 2008 less than 10 per cent of children

⁴⁸ 'Kulturkampf um Kinder in der Union', www.spiegel.de/politik/deutschland/0,1518,466611,00.html, accessed 6 January 2011, and 'Gebaemaschinen-Schelte', www.spiegel.de/politik/deutschland/0,1518,468031,00.html, accessed 6 January 2011 and 'Familienkrach', *Der Spiegel* 9/2007 26 February 2007, p. 42; Rita Suessmuth in 'Ich habe geglaubt, dass die Union weiter ist', www.spiegel.de/politik/deutschland/0,1518,478935,00.html, accessed 6 January 2011.

⁴⁹ 'Glaubenskrieg ums Kind', *Der Spiegel* 9/2008 25 February 2008, p. 40.

under 3 have access to day-care. By 2013, 750,000 additional places are to be provided and from that date all children under the age of 3 are to have a legally mandated right to childcare. Childminders are to be brought within the system of state subsidy and paid at national rates. No less than 12 billion euros are to be invested in new childcare centres with the federal authorities providing a third of the costs. A continuing federal subsidy of 770 million euros towards the childcare system is to be financed by a permanent shift in the distribution of sales tax revenues between the federal coffers and the states. Controversially, those parents, overwhelmingly mothers, who choose not to take advantage of the system will be provided with off-setting federal subsidies. The CDU thus clings to elements of its traditional agenda of maternalism. But the overwhelming priority is clearly to free mothers for labour market participation and to bring Germany into line with what UNICEF in early 2008 proclaimed as the 'global childcare transition'.⁵⁰ Currently in the UNICEF's global comparison, Germany ranked just ahead of Italy and just behind the UK in the inadequacy of its childcare provision, whilst all three lagged far behind France and the Scandinavian leaders.

And Minister von der Leyen has made clear that she is banking on more than electoral support from the German population. In a remarkably literal fashion she seems to expect the example set by the East German population in 1989–90 to be followed in the West – this time in reverse. In response to the dramatic shift in the German state's attitudes towards the dilemmas of child rearing, she expects an immediate increase in the birth rate. In the spring of 2008 von der Leyen announced to a stunned press conference that she was staking the vindication of the government's new family policy on the latest batch of demographic data to be announced that summer.⁵¹ And the numbers did indeed reveal 2007 to have been the best year for German births since reunification. But in seeking in this literal-minded fashion to provide direct empirical evidence for the success of her policies, von der Leyen has politicised Germany's demographic data to a quite unprecedented extent. Data that were once relegated to little noticed statistical year books are now being put out by the federal statistical office on a quarterly basis amidst a storm of media comment.⁵² And each new publication poses a test of the government's openly natalist agenda. In the spring of 2009 von der Leyen found herself in an embarrassing situation when the federal statistical office first announced that the upward trend of 2007 had continued into 2008 reporting a figure of 690,000 births, only for this figure to undergo technical correction to 682,534. This was a minor and statistically insignificant adjustment. But it forced von der Leyen to abandon

⁵⁰ UNICEF 2008.

⁵¹ www.spiegel.de/politik/deutschland/0,1518,547660,00.html, accessed 14 December 2009.

⁵² www.spiegel.de/spiegel/print/d-66360385.html, accessed 6 January 2011.

her naïve insistence on an upward trend. And in August 2009 her minute attention to the numbers came back to haunt her once more when the European Community released a study of European demographic performance which placed the number of live births in Germany at only 675,000. This produced an angry response from von der Leyen who accused the European Community of using out-of-date figures. The furore over a discrepancy of 0.07 per cent was not enough, however, to distract attention from the major finding of the EC survey. An enormous gap remains between Germany with a net population loss of 168,000 in 2008, Italy with a nearly static population and their far more dynamic neighbours, notably the UK and France where births exceeded deaths by 215,000 and 291,000 respectively.⁵³

Placing Minister von der Leyen's activities at the centre of our analysis, we might arrive at the conclusion that family policy in Germany has morphed since 1990 from an arena dominated by fundamental value judgements into a strange new arena of technocratic, biopolitical fine-tuning. But this would be to underestimate the ideological heat that the topic is still capable of generating and it would fail to do justice to the radical strand of thinking introduced into the argument over the family by the German Constitutional Court.⁵⁴ The Bundesverfassungsgericht potentially occupies a position of power within the FRG akin to the US Supreme Court and in recent decades, believing itself to be acting in line with the undercurrent of public opinion, it has begun to flex its muscles in earnest on issues concerning family policy. Since 1990 in an unprecedented bout of judicial activism the court has delivered a series of rulings which have called into question the entire structure of the German fiscal system and welfare state in their relation to the family.⁵⁵ As its lever, the court has used provisions in the 1949 constitution for the special protection of the family, combined with the even more basic provision of the equality of treatment of all citizens. And it combines these with a more or less explicit biopolitical commitment, which requires the German state not only to abide by its formal constitutional obligations, but to secure the renewal of the German nation in a literal sense. Already in 1984, faced with the family-unfriendly pension reform plans of the Kohl government, the then president of the Constitutional Court, Wolfgang Zeidler, attracted attention with an interview given to the weekly *Der Spiegel* in which he made the extraordinary comment that 'in every wolf pack it counts as an obvious instinctual rule that the raising of the young is a priority task for all. But our highly organised and civilised state lacks even the understanding of a wolf pack.'⁵⁶ Though he was aligning himself with the Catholic church hierarchy in demanding better pensions for stay-at-home

⁵³ Data available from www.spiegel.de/media/0,4906,21309,00.pdf, accessed 9 December 2009.

⁵⁴ Gerlach 2000b. ⁵⁵ Nees 2005.

⁵⁶ 'Die Laufen ins offene Messer', *Der Spiegel* 10 December 1984, www.spiegel.de/spiegel/print-d-13511243.html, accessed 6 January 2011.

mothers, Zeidler was a social democrat who took an aggressive view of redistributive justice.

In recent years the rhetoric has been hardly less dramatic, most notably perhaps from former Constitutional Court justice, judicial activist and sometime Merkel-adviser Paul Kirchhof. In an oft-cited speech Kirchhof asked the question: 'Do we wish to be a society dying at the workplace, or living vitally through its children?'⁵⁷ Expanding his argument, Kirchhof has drawn on the proposition by the German legal theorist and Constitutional Court judge Ernst Boeckenfoerde that a 'free and secularized state lives on preconditions which it cannot itself guarantee'. Freedom, therefore, is a wager.⁵⁸ Boeckenfoerde, who was heavily influenced by Carl Schmitt, was referring to the problem of securing civic virtue in a secular society. Kirchhof's concerns, by contrast, are more starkly biopolitical. Germany's current predicament highlights the fact that the reproduction of the state in the most basic biological sense also depends on the free choice by men and women to marry and procreate. Just as citizens may abdicate their right to vote, they may opt out of the biological reproduction of the body politic. Nor does Kirchhof shrink from the conclusion that decisive state action may be necessary to restore the proper balance and to save German society from the biological perils of freedom.⁵⁹

But though Kirchhof, who served on the Second Senate of the Constitutional Court, is perhaps the most radical voice, the agenda of judicial activism on family policy was shared by many members of the court who did not necessarily subscribe to his brand of Catholic social conservatism. The first of the court's dramatic judgements was delivered in May 1990 by the First Senate and concerned tax allowances for families.⁶⁰ Against the backdrop of the massive financial demands of reunification, the Constitutional Court declared that the German state was responsible for securing a minimum income for all its citizens including children. To meet this target required either a huge increase in child benefits or the exemption of a large part of parental income from direct tax. Two years later in the summer of 1992 it was again the First Senate of the court that delivered the so-called Rubble Women (*Truemmerfrauen*) verdict. *Truemmerfrauen* are the iconic female figures, bereft of their menfolk, who rebuilt Germany in the immediate aftermath of the Second World War. After doing their bit amidst the ruins, many women in this cohort had withdrawn from the workplace to raise the young workers who sustained the economic miracle into the 1960s and continue to provide the contributions necessary to finance Germany's lavish, pay-as-you-go occupational pension system. In the

⁵⁷ Kirchhof 2005.

⁵⁸ Boeckenfoerde 1976, p. 60; www.taz.de/1/politik/bundestagswahl/artikel/1/1%5Cfreiheit-istansteckend%5C/, accessed 6 January 2011.

⁵⁹ Kirchhof and Schmidt 2004.

⁶⁰ Gerlach 2000b; Sans 2004.

1980s the Kohl government had made a first attempt to take account of the contribution made by these women, by allowing a minimum pension calculated on the basis of one year of child rearing per child. However, the inadequacy of this provision was made clear by the case brought before the Constitutional Court concerning a mother who had raised no less than ten children through the hard post-war years. In the early 1990s she was receiving a monthly pension of 347 DM whilst her offspring were paying a monthly total of 8,500 DM into the national pension pot. This, the judges opined, exposed a fundamental lack of equity in a welfare state, which socialised the risk of old age through the pension system and yet treated child rearing as a private cost. And it repeated this argumentation in 2001 with regard to the new system of long-term care insurance. In the 1950s, the German welfare state had left behind the once strictly enforced contributory insurance principle in favour of a far more generous pay-as-you-go system. This rested explicitly on an intergenerational bargain, which could only be secured through the succession of generations. The labour of child rearing was thus no less fundamental to the long-term viability of the system than financial contributions by paid members of the workforce. Since the benefits of the new care insurance system were to be paid independently of individual contributions, the court argued that those who had taken on the extra cost of rearing large families should be provided with adequate compensation through a reduction in their contribution liability.

Dissatisfied with the progress made in the 1990s, in November 1998, only weeks after the election of the Red-Green coalition government, the Second Senate of the court, with Kirchhof leading the way, delivered the most dramatic judgement to date. Extending its demands of the early 1990s, the court called for an even larger share of family income to be exempt from taxation and mandated that if no legislative action was taken in response, then as of 1 January 2002 taxation of this minimum income would be devoid of legal basis. Furthermore, as the Red-Green coalition began to formulate its new approach to reconciling the demands of work and family life, the court delivered a stunning judgement of its own. To meet the requirements of the constitution it was an obligation on the German state to ensure that parents had a 'truly free choice' between different modes of child rearing. Whether women chose to continue working and to make use of publicly provided childcare or whether they instead chose to leave the labour market temporarily, it was the state's responsibility to ensure that they suffered no material disadvantage, including any long-term damage to their career prospects.

If fully implemented, the judgements of the court since 1990 would involve redistribution between German households on a truly spectacular scale. The child benefit and tax threshold judgements alone, which effectively mandated the end of child poverty, were costed at 33 billion euros. The social insurance judgements were no less dramatic in their implications. And the implications

of attempting to neutralise the effects of different choices with regard to child rearing in labour law would have been astonishingly far-reaching. Not surprisingly, despite the increasingly aggressive timeline set by the justices, successive German governments have struggled to comply with the court's full demands. Indeed the conflicts over 'family policy' have become so routine that they have prompted some commentators to speculate about an incipient constitutional crisis, as the court and the executive branch and legislature find themselves fundamentally at odds over the possibility of honouring the court's radical agenda.

Nor are the pro-family activists content merely with an ex post judicial rectification of family-unfriendly legislation. The systematic failure of the legislature properly to take into account the needs of families suggests, to some, the need for more fundamental constitutional change. Jochen Borchert, a vocal adviser to the CDU government of Hesse, for instance, has argued that, as the demographic and age balance in German society begins to shift, only electoral reform can ensure that the voices of families are properly heard.⁶¹ Otherwise, since children are not entitled to vote, politicians are bound to listen to the people who are, namely the old and childless.⁶² Given that what is at stake is nothing less than national extinction, the solution for this contradiction between family life and democracy is to call for a modification of the electoral system, to enfranchise all children at birth, to allow parents to exercise their children's votes until the age of 18 and thus to give households a voice in proportion to their true importance.⁶³ In the early 2000s the idea of Familienwahlrecht gathered considerable momentum, finding support amongst others from Roman Herzog, former president of the Constitutional Court and president of the Federal Republic itself, who since retirement has become an outspoken critic of an increasingly self-serving 'pensioners democracy'. To prevent the retired from holding working tax payers to ransom he suggested that serious consideration should be given to a radical lowering of the voting age.⁶⁴ The German Family Association (Familienverband) assembled a heavyweight memorandum on the issue which opened with a historical survey pointing out the very recent history of the now normal adult franchise. At every stage since 1871 the extension of voting rights to further groups of Germans had been dismissed as unimaginable radicalism.⁶⁵ Seen against this backdrop, enfranchising parents on behalf of their children was simply the next step in

⁶¹ C. Rath, 'Freund der Familie', *Tageszeitung* 3 April 2001.

⁶² Van Parijs 1998.

⁶³ Hessische Staatskanzlei 2003, p. 96.

⁶⁴ See Herzog warnt vor 'Rentner-Demokratie', www.spiegel.de/politik/deutschland/0,1518,546690,00.html, accessed 10 December 2009.

⁶⁵ www.deutscher-familienverband.de/fileadmin/DFV/Bund/Dokumente/aktionsleitfaden.pdf, accessed 10 December 2009.

the ongoing development of democracy. In September 2003, a motion to modify the constitution to allow family voting was put to the Bundestag, not by a maverick loner but by a substantial multiparty coalition of forty-seven deputies headed by the speaker of the Bundestag Wolfgang Tierse backed by Green and Liberal (FDP) deputies.⁶⁶ A similar motion was repeated in June 2008, again with cross-party backbench backing.⁶⁷

The advocates of the family as the fundamental unit of an 'order of freedom' have thus injected a considerable new energy into one of the oldest causes of modern conservatism. But the terrain of the biopolitical remains nevertheless extremely ambiguous in political terms, as is revealed by an interesting new strand in the argument, which has the potential to turn the entire discussion on its head.

One of the most radical ideas to emerge from the debate that followed the election of 2002 was for the creation in Berlin of a new super-ministry. The incapacity of the political system to respond adequately to the challenges of national demography was parallel, it was argued, to its incapacity to respond to the emerging ecological challenge. The solution was a new ministry which would twin family and youth policy not with education or the economy, but with the environment.⁶⁸ A super-ministry for long-run biopolitical challenges should address itself to both. The very idea may seem far-fetched. But we should not be parochial. In the neo-Malthusian scenarios that haunt the Intergovernmental Panel on Climate Change or the United Nations Development Programme, it is already a matter of course to draw connections between demography, the question of women's education and the global problems of economic development and the environment. And it is very striking that the key buzzword in German family policy since 2003 has not been von der Leyen's growth-orientated boosterism, but the term *Nachhaltigkeit*, which translates into English as sustainability.⁶⁹

However, the full implications of that term for family and population policy in Europe do not yet appear to be realised. At the climate change talks in Vienna in August 2007 a senior Chinese Foreign Ministry official announced to the world's press that China's coercive one-child policy had prevented the birth of 300 million children whose carbon output would have been 1.3 billion tons. This he pointed out was equivalent to the carbon produced by the 82 million inhabitants of the FRG.⁷⁰ In other words, if the nightmare of Kirchhof et al. came true and the irresponsible exercise of individual freedom by the

⁶⁶ 'Mehr Demokratie Wagen durch ein Wahlrecht von Geburt an', Deutscher Bundestag, 15. Wahlperiode Drucksache 15/1544 11 September 2003.

⁶⁷ www.sueddeutsche.de/politik/587/315478/text/, accessed 10 December 2009.

⁶⁸ Hessische Staatskanzlei 2003, p. 124.

⁶⁹ Deutscher Bundestag, 16. Wahlperiode Drucksache 16/1360; Ristau 2005.

⁷⁰ 'China says one-child policy helps protect climate', www.reuters.com/article/environmentNews/idUSL3047203920070830, accessed 6 January 2011.

affluent citizens of Germany led to their nation's biological extinction, it would have the same beneficial impact on the global environment as China's draconian biopolitical regime. In light of equations such as this, how long can it be before we find ourselves in the midst of a truly holistic discussion, in which the peculiar trajectory of the European family and its implications for demography are enmeshed with questions of resource use, environmental impact and economic equity on a global scale?