

MORAL REASONING IN THE WAKE OF MASS MURDER: DISABILITY AND REPRODUCTIVE RIGHTS IN 1980S-1990S GERMANY

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We cripples will not let ourselves be used as propaganda objects!
... The abortion opponents chose this spot in order to defame and
to criminalize women who undergo an abortion, by putting the
mass extermination of the disabled on the same level as abortion
today. ... This shameless equation is the reason we are appearing
here and condemning the trivialization of the inhuman National
Socialist murders.

Members of the Federal Association of Disabled and
Crippled Initiatives in a counterdemonstration at an anti-
abortion rally at the former killing center of Hadamar,
1986

In point of fact, a systematic and “legalized” murdering of the dis-
abled has existed only under the Nazis, and they, simultaneously,
punished abortion severely. In countries in which abortion has
been liberalized, the disabled and the elderly and marginalized
groups are generally treated with respect. There is no indication
that abortion has or ever had anything to do with the killing of
human beings.

Reproductive-rights activist Susanne von Paczensky,
1989

Almost a decade ago, in the midst of another project, I encountered both Protestant and Catholic theologians’ affirmative — and expressly theologically formulated — defenses of liberalized abortion access in various Western European countries in the 1960s-1970s (including Italy, France, the UK, West Germany, and Switzerland). As I did that research, I — unexpectedly — also noted a plethora of references to disability — among opponents of the legalization of abortion and among both religious and secular proponents of liberalized abortion access. As I discovered, the debates of the 1960s-1970s over abortion rights in western European nations had indeed been saturated

1 This essay is a revised version of chapter 2 in *Unlearning Eugenics: Sexuality, Reproduction, and Disability in Post-Nazi Europe*, by Dagmar Herzog, pp. 42-69. Reprinted by permission of the University of Wisconsin Press. © 2018 by the Board of Regents of the University of Wisconsin System. All rights reserved. For further information on the book, please visit <https://uwpress.wisc.edu/books/5719.htm>

by references to disability, although this fact had not been incorporated into scholarship on the era.² Moreover, the Nazi mass murders of the disabled — often called “euthanasia” murders — were an overt negative reference point. This was especially so in France, of all places, where a commitment to *laïcité* meant that religious arguments against abortion were less likely to be invoked by parliamentarians hostile to abortion rights. But also the possibility of abortion on grounds of fetal disability — the “eugenic indication” — turned out to be a major focus of discussion (not least, but not only, because of the early 1960s scandal over the birth defects caused by the sedative and antinausea pregnancy medication Thalidomide, called Contergan in German). And while many comments had a disdainful, unempathic tone, treating disability as a tragedy for families and a burden for societies, it is also crucial to register that vast majorities found the so-called eugenic indication to be completely morally acceptable (e.g. in West Germany in 1971, 80 percent of Catholics surveyed approved of abortion on grounds of fetal anomaly).³

Meanwhile, however, the very centrality of (what we can retrospectively see as problematic) assumptions about disability-as-tragedy to the success of abortion liberalization in Western Europe in the 1960s-1970s has turned out to have major negative implications for abortion rights more generally in the twenty-first-century present. This is because right-wing NGOs (an understudied but important phenomenon) and other antiabortion groups in Western Europe — and now also with increasing alacrity and creativity in postcommunist Eastern Europe — have seized on the tactic of presenting their opposition to abortion as a major advance for disability rights. This right-wing disability rights strategy is arguably the biggest challenge facing defenders of abortion access in Europe today (and it has also made inroads now in at least four U.S. states).⁴ All of this led me to wonder how it happened that the radical disability-rights movement, especially in Germany, which had grown out of the New Left of the 1970s, ended up deciding to be passionately opposed to abortion on grounds of fetal anomaly — even though, as late as 1986, radical “cripple” activists had rejected antiabortion activists’ overtures.

The answer takes us into the history of post-Nazi Germany just as the Cold War was coming to a close and has, it turns out, a considerable amount to do with the originally Australian (and now Princeton University-based) philosopher Peter Singer, albeit in indirect, ricocheting ways, as the evolving present of the 1980s-1990s brought

2 Dagmar Herzog, “Abortion and Disability: Western Europe, 1960s-1970s,” *Unlearning Eugenics: Sexuality, Reproduction, and Disability in Post-Nazi Europe* (Madison, 2018), 15-41.

3 “Infratest-Befragung, March/April 1971,” reprinted in Harald Pawlowski, *Krieg gegen die Kinder? Für und Wider die Abtreibung mit einer Dokumentation* (Limburg, 1971), 146-49.

4 Neil Datta, “Keeping it all in the family: Europe’s Antichoice Movement,” *Conscience* 34, no. 2 (2013): 22-27; Christopher McCrudden, “Transnational Culture Wars,” *International Journal of Constitutional Law*, April 1, 2015: 434-62.

recalibrated understandings of the national past of the 1940s-1950s. But above all, the answer involves a complex, multifactoral conjunction of overdetermination and contingency. The short version is: Almost as soon as abortion had been partially decriminalized across much of the Western world in the course of the 1970s, a conservative backlash developed, especially in West Germany, slowly at first but then with gathering momentum. While the activists driving that backlash initially made no mention whatsoever of disability, a major national controversy over the lessons of the Nazi past — triggered by Singer — caused a consequential reconfiguration in the terms of discussion over reproductive rights to be consolidated.

I. The Singer Affair

“Thou shalt not kill. That is not divine law, that’s a Jewish invention.”⁵ So said Eugen Stähle, head of the Division of Health within the Württemberg Ministry of the Interior, when confronted in 1940 by Protestant religious leaders’ protests against the first phase of the mass murders of the disabled that he was co-coordinating at that very moment. In this first phase, the meant-to-be-secret — but by that point no-longer-so-secret — program later called “Aktion T4” (in reference to Tiergartenstrasse 4, the address at which this program was planned), 70,273 individuals with psychiatric illnesses or cognitive deficiencies were, between January 1940 and August 1941, murdered with carbon monoxide in six specially designed gas chambers within what had been, previously, with the exception of one of the buildings, facilities for healing and care. Ultimately, due to unrest in the populace and further religious protest — especially the prominent Catholic bishop Clemens August von Galen’s sermon of August 1941 decrying the killings — Hitler ordered the program officially stopped. It continued on nonetheless in a second, decentralized phase that lasted even beyond the end of the war in May of 1945. Ultimately, 210,000 individuals with intellectual or psychological disabilities in the German Reich and a further 80,000 in occupied Poland and the Soviet Union were killed through deliberate medication overdose, poisoning, or systematic starvation. Meanwhile, the approximately 120 personnel that had gotten their training and practice in murdering the disabled in the T4 facilities, along with their now field-tested technology of carbon monoxide gas chambers, were moved to Poland to turn their attention to the mass murder of European Jewry — in the Operation Reinhard death factories of Belzec, Sobibor, and Treblinka.⁶

5 Eugen Stähle quoted in Ernst Klee, *“Euthanasie” im NS-Staat: Die “Vernichtung lebensunwerten Lebens”* (Frankfurt/Main, 1983), 16.

6 Sara Berger, *Experten der Vernichtung: Das T4-Reinhardt-Netzwerk in den Lagern Belzec, Sobibor und Treblinka* (Hamburg, 2013).

The Stähle quote — “Thou shalt not kill. That is not divine law, that’s a Jewish invention” (in other words: Moses just fabricated the Ten Commandments, and no self-respecting Nazi need concern himself with these) — was brought to the attention of West German readers of the weekly *Die Zeit* in the summer of 1989 by Ernst Klee, a prominent investigative journalist and advocate for the rights of the disabled in the context of Klee’s vehement and eloquent repudiation of the theories of the Australian philosopher Peter Singer.⁷ Singer had been invited to West Germany by an organization called *Lebenshilfe* (Life-Assistance), the premier association of parents and caregivers of disabled children, in the expectation that he would address a scheduled conference in Marburg on “Biotechnology — Ethics — Mental Disability”; he had in addition been invited by the special-education expert Christoph Anstötz, a professor at the university in Dortmund, to speak there on the subject “Do severely disabled newborn infants have a right to life?” Singer’s own short answer to this question was No, as the second sentence of his then recently-published book, *Should the Baby Live?* (1985), co-written with the philosopher Helga Kuhse, stated clearly: “We think that some infants with severe disabilities should be killed.”⁸ It was not — the organizers later said — the outpouring of indignant letters from across the land but rather the announced threat that there would be demonstrations and public disruptions of the proceedings that caused both invitations to Singer to be withdrawn.

Only in one German town, Saarbrücken, was Singer able to participate in a public discussion with his local hosts, the philosophers Georg Meggl and Christoph Fehige, and that event also began with a half-hour of ear-piercing whistles and shouts demanding “Fascist out!”. In Saarbrücken, the audience was able to learn, among other things, that Singer was the son of Jewish refugees from Vienna, that three of his grandparents had been murdered in Nazi concentration camps, and that he resolutely defended his conviction that since passive killing of severely disabled newborns by withholding treatment was already quietly being practiced in hospitals across Germany and elsewhere in the western world, active mercy-killing by doctors to shorten their agony should be permitted as well, within strict limits. Moreover, Singer noted that he was of the opinion that, certainly, conditions for already-living individuals with disabilities should be better.⁹ Singer’s critics, however, were far from mollified.

Massive media coverage had accompanied the controversy from the start — with *Die Zeit*, for instance, titling one early contribution

7 Ernst Klee, “Von Menschen und Tieren: Eine Kritik der praktischen Ethik,” *Die Zeit*, June 30, 1969, 58.

8 Helga Kuhse and Peter Singer, *Should the Baby Live? The Problem of Handicapped Infants* (New York, 1985), v.

9 Hans Schuh, “Lässt sich Euthanasie ethisch begründen?” *Die Zeit*, June 16, 1989; Georg Meggle, “Schwierigkeiten der Medien mit der Philosophie,” *Telepolis*, March 22, 2005, <http://www.heise.de/tp/artikel/19/19722/1.html>.

“Can Euthanasia be defended on Ethical Grounds?” Indeed, the paper’s own tilt toward answering with “Yes” — although explicable within its own terms — was part of what had caused Klee to write his countervailing piece. Over the following months and into the next year, the ramifications kept expanding.¹⁰ Local and regional papers wrote about “Parallels to Nazi Theories,” “Fury and Outrage at the University: Protest against ‘Academic Chairs for Euthanasia,’” and “We are afraid for our children.”¹¹ The Green Party issued a statement referring to Singer’s theories as an “incitement to murder.”¹² Foreign observers from the U.S. and UK expressed their appallment that civil conversation about ideas was, apparently, impossible. The whole thing, depending on how you looked at it, turned out to be a fiasco for the would-be hosts or, as Singer’s defenders argued, a sign that a tiny minority of over reactive extremists — who had not even read Singer closely — could shut down rational debate for an entire country. Singer himself, piqued, wrote a piece in the *New York Review of Books*, “On Being Silenced in Germany.”¹³ And Anstötz, who had originally hoped to host Singer in Dortmund (but instead had faced livid protesters — from religious representatives to the main AIDS organization — with banners declaring “Boycott Anstötz’s Murder-Seminar,” “No murder of babies, the elderly and disabled,” and “For Anstötz and Singer, disabled newborns are human vegetables”), subsequently co-published a collection of documents about the confrontations — *Peter Singer in Deutschland* — whose subtitle announced that it concerned “The Endangerment of Freedom of Discussion in Scholarship.”¹⁴

Over and over, the very fact that there had been mass murder of people with disabilities in the nation’s past was put forward by Singer’s defenders as a main explanation for (what was asserted to be) the immaturity of moral reasoning abilities in West German society in comparison with the rest of the West, a lamentable and inappropriate oversensitivity which led to “thought- and discussion-taboo[s],” an incapacity to confront the genuine and inescapable challenges brought by technological advances and crises of extremity of suffering at either end of life.¹⁵ For Anstötz, moreover, it was the critics’ refusal to let Singer speak that was best compared to the Nazis’ “burning of books.”¹⁶ He and his co-authors contended that the very characteristics Nazis had ascribed to Jews (“sly outfoxing reasoning,” “analyzing, distanced, holds nothing sacred ... emphasizes logic”) — characteristics that the Nazis had been determined to “exterminate” (*ausrotten*) — were still, sadly, lacking decades later. On this basis,

10 Schuh, “Lässt sich Euthanasie ethisch begründen?”

11 Christoph Anstötz, “Peter Singer und die Pädagogik für Behinderte: Der Beginn der Singer-Affäre,” *Analyse & Kritik* 12 (1990): 131-148, here 137.

12 Quoted in Reinhard Merkel, “Der Streit um Leben und Tod,” *Die Zeit*, June 23, 1989.

13 Peter Singer, “On Being Silenced in Germany,” *New York Review of Books*, August 15, 1991.

14 Christoph Anstötz, Rainer Hegselmann, Hartmut Kliemt, eds., *Peter Singer in Deutschland: zur Gefährdung der Diskussionsfreiheit in der Wissenschaft: eine kommentierte Dokumentation* (Frankfurt am Main, 1995).

15 Merkel, “Der Streit.” Cf. Cornelia Filter, “Das Affentheater,” *Emma* (March/April 1994), 68-73.

16 Anstötz, “Peter Singer,” pp. 136, 141.

in turn, they concluded: “Conversely: It becomes clear how urgently we need precisely that spirit of reflection, of clarity, of analysis, of differentiation and of tolerance that is embodied by Peter Singer.”¹⁷ And Georg Meggle, who had hosted Singer in Saarbrücken, wrote that Singer’s critics were promulgating “a new form of antisemitism,” charging the critics with assuming that “if a Jew thinks like Singer thinks, then he must be sick.”¹⁸ Singer, too, weighed in, writing in *Bioethics* in 1990 that “[p]erhaps what really was instrumental in preparing the Nazi path to genocide, and has not yet been eradicated in the modern Germany, is not the euthanasia movement at all, but the kind of fanatical certainty in one’s own rectitude that refuses to listen to, or engage in rational debate with, anyone who harbours contrary views.”¹⁹ Nonetheless, the critics would have the last word. As a radical disability-rights newspaper, *Die Randschau*, declared also in 1990: “The ‘tolerance for debate’ that the philosophers are demanding for Singer’s theses is the same as one which would permit the discussion of the thesis of the ‘superiority of the Aryan race.’ But in both cases, the fundamental will to treat human beings as unequal must be combatted.”²⁰ This was to remain the general tenor of what would become a broadly propounded official anti-Singer stance. It would be a full fifteen years before Singer delivered another lecture in Germany.

II. Post-Nazi politics and historiographical frames

I began with Klee’s and others’ stinging rebukes to Singer — or rather, with what came to be called “the Singer affair” — for several reasons. One reason is that the Nazi doctor Stähle’s quote — which the historian Klee had uncovered as he was researching the Nazi murders of the disabled for his magnum opus *“Euthanasia” in the NS-State* — captures with unintentional transparency the intimate interconnections between antisemitism, on the one hand, and contempt for individuals with disabilities, on the other. One of the great and consequential dramas of the 1980s and 1990s, in scholarship internationally and in activism within Germany alike, would be the determined effort to elucidate the multiple links — in staffing, in gassing technology, but also in the attitude toward “lives unworthy of life” — between the murder of individuals with disabilities and the Holocaust of European Jewry. Indeed the quote, and Klee’s use of it, brings into view just how very important the invocation of these two interrelated mass murders in the nation’s past would be for advancing the cause of disability rights

17 Christoph Anstötz, Rainer Hegselmann, and Hartmut Kliemt, “Einführung,” in Anstötz, Hegselmann, and Kliemt, *Peter Singer in Deutschland*, 6-8. The Nazi text cited is Raymund Schmidt, “Das Judentum in der Philosophie,” *Handbuch der Judenfrage*, 38th ed. (1935).

18 Meggle, “Bemerkungen,” 33.

19 Peter Singer, “Bioethics and Academic Freedom,” *Bioethics* 4, no. 1 (January 1990): 33-44, here 42.

20 “Wider den tödlichen philosophischen Liberalismus,” *Die Randschau* 5, no. 1 (January-April 1990): 24.

in the 1980s. It is hard to remember now, but crucial to our understanding of the dynamics at the time, that contempt for and cruelty toward the physically and cognitively disabled lasted well into the 1980s, and even beyond. The postwar years had seen a (in hindsight truly stunning, then simply devastating) breadth of popular support for the perpetrators, and ongoing shaming of the victims and their families.²¹ Few of the perpetrators ever faced justice but instead had illustrious postwar careers. The very statements I earlier asserted as facts — that the mass murder of the disabled was the precursor to and continued to be entangled with the Holocaust — were not generally obvious in the 1980s. Indeed, initially, connections had been made more by intuitive emotional analogy than by specifying literal links.²²

This was a connection that still needed to be solidified and concretized in the public mind; the Singer affair provided a major occasion for doing so. Singer himself, in his widely used textbook of 1979, *Practical Ethics* (translated into German in 1984) had argued strenuously — and in this he was in accord with the assumptions animating much late-1970s scholarship — that there was no connection: “If euthanasia somehow leads to the Nazi atrocities that would be a reason for condemning euthanasia. But is euthanasia — rather than, for example, racism — to be blamed for the mass murders the Nazis carried out?” Singer’s own answer to the question, as he framed it, was No. For him, hostile or lethal treatment of the disabled simply did not count as racism.²³ It was precisely this presumption of a categorical gulf between the two major Nazi murder programs that, it was felt, needed to be challenged. And over the course of the 1980s, through sustained research and advocacy work, the links were starting to be established. Increasingly, moreover, a second tie was forged: conceptual and empirical connections were elaborated between the 400,000 coercive “eugenic” sterilizations of individuals with disabilities enacted under the rubric of the July 1933 “Law for the Prevention of Hereditarily Diseased Offspring” and the 200,000-plus “euthanasia” murders.²⁴

21 Carol Poore, *Disability in Twentieth-Century German Culture* (Ann Arbor, 2007); Stefanie Westermann, et al., eds., *NS-“Euthanasie” und Erinnerung: Vergangenheitsaufarbeitung —*

Gedenkformen — Betroffenenperspektiven (Münster, 2011); Sascha Topp et al., eds., *Silence, Scapegoats, Self-Reflection: The Shadow of Nazi Medical Crimes on Medicine and Bioethics* (Göttingen,

2014); Ralf Forsbach, “Die öffentliche Diskussion der NS-Medizinverbrechen,” in Stephan Braese et al., eds., *NS-Medizin und Öffentlichkeit: Formen der Aufarbeitung nach 1945* (Frankfurt/Main, 2016).

22 See Klaus Dörner et al., *Der Krieg gegen die psychisch Kranken: Nach ‘Holocaust’ erinnern, Trauern, Begegnen* (Rehburg-Loccum, 1980).

23 Peter Singer, *Practical Ethics* (New York, 1979), 154–56.

24 Margaret Hamm, “Zwangssterilisierte und ‘Euthanasie’-Geschädigte: ihre Stigmatisierung in Familie und Gesellschaft,” in Maike Rotzoll et al., *Die nationalsozialistischen ‘Euthanasie’-Aktion ‘T4’ und ihre Opfer: Geschichte und Konsequenzen für die Gegenwart* (Paderborn, 2010), 358–63; Sascha Topp, *Geschichte als Argument in der Nachkriegsmedizin: Formen der Vergegenwärtigung der nationalsozialistischen Euthanasie zwischen Politisierung und Historiographie* (Göttingen, 2013).



Figure 1. Demonstrator in a wheelchair wearing a yellow star with a wheelchair symbol inside at the first nationwide West German disability rights demonstration in Frankfurt am Main, 1980. Demonstrators also carried a banner declaring: “Don’t pity the disabled person; pity the society that rejects him.” Photo © 1980, 2020 by Walter H. Pehle. Reproduced by permission.

As it happened, the postwar West German government had continuously refused to acknowledge the harm done to victims of coercive sterilizations — rejecting their claims to being “persecutees of the Nazi regime” deserving of any recognition, much less of financial recompense, and relying on the opinion of experts, some of them perpetrators, in declaring the sterilization legislation to have nothing to do with “National Socialist racial laws.”²⁵ Protestant church leaders had not offered a countervailing moral position either. Instead, eager to advance their own version of a sexually conservative “personal eugenics” in the postwar years and instrumentally invoking their unabashed pride in having resisted, however ineffectually, the murders in order to advance their own advocacy for “voluntary” sterilizations, worked hard — and successfully — to keep “eugenics” and “euthanasia” analytically distinct.²⁶

It was *against* these trends of the first three postwar decades that a historiography arose, over the course of the 1980s, that reframed the Third Reich in such a way that eugenics and euthanasia alike would come to be seen as central rather than marginal aspects of what was finally, by 1991, shorthanded (in historians Michael Burleigh and Wolfgang Wippermann’s book title) as “The Racial State.” Burleigh and Wippermann, building on a decade of pioneering scholarship, expressly identified the Nazi goal as “the ‘purification of the body of the nation’ from ‘alien,’ ‘hereditarily ill,’ or ‘asocial’ ‘elements’” and thus focused their account on “all those whose lives or reproductive capacity were ended as a result of Nazi racial policy,” including “Jews, Sinti and Roma, and members of other ethnic minorities categorized as ‘alien,’ as well as the ‘hereditarily ill,’ ‘community aliens,’ and homosexuals.” Indeed, they said, “there is much evidence to suggest that race was meant to supplant class as the primary organizing principle in society.”²⁷ The debates around Singer had finally made this kind of summary statement seem incontrovertible, as major news outlets had taken the critics’ cues and had begun in 1989, in text and in

25 Hans Nachtshiem, “Das Gesetz zur Verhütung erbkranken Nachwuchses aus dem Jahre 1933 aus heutiger Sicht,” *Ärztliche Mitteilungen* 59 (1962): 1640. See Svea Luise Hermann and Kathrin Braun, “Das Gesetz, das nicht aufhebbar ist: Vom Umgang mit den Opfern der NS-Zwangssterilisation in der Bundesrepublik,” *Kritische Justiz* 43 (2010): 338–352, here 344.

26 Uwe Kaminsky, “Eugenik und ‘Euthanasie’ nach 1945: Historiografie und Debatten am Beispiel der

Evangelischen Kirche,” in Rotzoll et al., *Die nationalsozialistische ‘Euthanasie’-Aktion ‘T4’*.

27 Michael Burleigh and Wolfgang Wippermann, *The Racial State: Germany 1933–1945* (Cambridge, UK, 1991), 3–4.

accompanying imagery, to center the murder of the disabled at the heart of the Third Reich, and to register that “eugenic thinking” needed, on a regular basis, at least formally to be repudiated as immoral.²⁸ (Only since the turn of the millennium has the newest research led to the prospect of once more decoupling eugenics from euthanasia and to the prospect of de-biologizing the Third Reich more generally.)²⁹

My second purpose in revisiting the fall-out from the Singer affair and situating it in its various overlapping contexts is that doing so helps us to understand not only the particular shape taken by radical disability-rights activism in West Germany in the 1980s-1990s and the ardent investments the movement developed, but also their ricocheting consequences. For it was, of all people, Singer, whose convoluted mix of mundanely sensible and traumatizingly obscene lines of moral reasoning, coming at the historical juncture that he did, created the opportunity for radical disability activism in West Germany to erupt into mainstream public view, garnering the attention — and respect — of major media outlets and government officials alike and thus becoming a political force to be reckoned with. But no less significant is the impact of the debates about Singer’s theses on the terms in which women’s rights to access abortion could be defended — rights that were, coincidentally, at that very moment in 1989 under renewed attack from conservative forces and about to be yet more fully reconfigured after the collapse of communism just a few months later. For in the wake of the Singer affair it would become impossible for any mainstream German politician frankly to defend abortion on grounds of (what had been called) the “eugenic” or “embryopathic” indication. By the early 1990s politicians had backed away from any language that might possibly be construed as suggesting a diminished respect for disabled life — and so, too, had many feminists. There was a rush to outdo one another in declaring that the state should not and would not ever prefer non-disabled over disabled life. Disability activists were key players in this reorientation. This particular fall-out was not inevitable, but it was overdetermined.³⁰

What was it that had so alarmed the protesters against Singer? Initially, the mainstream media had been nonplussed at the uproar. His *Practical Ethics* seemed pertinent to deliberations that had been already ongoing in West Germany for the prior ten to fifteen years involving dilemmas surrounding technological advances in end-of-life care as well as patient requests for assisted suicide. His suggestion that permitting doctors to provide active killing rather than extending a severely disabled new-

28 See the summary in Meggle, “Bemerkungen.”

29 Maïke Rotzoll et al., “Die nationalsozialistische ‘Euthanasie’-Aktion ‘T4’ und ihre Opfer: Von den historischen Bedingungen bis zu den Konsequenzen für die Ethik der Gegenwart: Eine Einführung,” and Marion Hulverscheidt, “Zusammenfassung der Podiumsdiskussion: ‘Die Selektion: Neue Erkenntnisse?’” both in Rotzoll et al., eds., *Die nationalsozialistischen ‘Euthanasie’-Aktion ‘T4’*; Herwig Czech, “Nazi Medical Crimes, Eugenics, and the Limits of the Racial State Paradigm,” Devin O. Pendas, Mark Roseman, and Richard Wetzell, eds., *Beyond the Racial State: Rethinking Nazi Germany* (New York, 2017).

30 See Aviad Raz, “‘Important to test, important to support’: attitudes toward disability rights and prenatal diagnosis among leaders of support groups for genetic disorders in Israel,” *Social Science and Medicine* 59 (2004): 1857-66; Yael Hashiloni-Dolev and Aviad E. Raz, “Between social hypocrisy and social responsibility: Professional views of eugenics, disability and repro-genetics in Germany and Israel,” *New Genetics and Society* 29.1 (2010): 87-102; Tsipy Ivry, “The predicaments of koshering prenatal diagnosis and the rise of a new rabbinic leadership,” *Ethnologie française* 45.2 (2015): 281-292.

born's torment through passive letting-die (for example, in cases of inoperable spina bifida), though instinctively repellent to and immediately repudiated by many, at least seemed discussable. Furthermore — though it took a while for the major newsmagazines and newspapers to make much of this — Singer was a staunch advocate for animal rights and, although the vast majority of West Germans were meat-eaters, there were also numerous dog-lovers, and there were certainly broad sectors of the populace that would be receptive to, or at least not agitated about, arguments for the humane treatment of animals.

The trouble lay in the way Singer joined his various areas of interest. Singer could easily have argued that animals — nonhuman sentient beings — deserved far better treatment than humans normally meted out to them, and left it at that. But, instead, Singer repeatedly evinced a (almost obsessively reiterated) preoccupation with denigrating the cognitively disabled, stating that severely cognitively disabled individuals lacked “personhood” and hence had *less* value and less right to life than animals (many of whom he thought *did* have the “personhood” the cognitively disabled were lacking). Thus, for instance, in an essay from 1983 entitled “Sanctity of Life or Quality of Life?” Singer had stated: “If we compare a severely disabled human child with a nonhuman animal, for example a dog or a pig, we will frequently find that the animal demonstrates higher capacities with respect to comprehension, self-consciousness, communication and many other things.”³¹ And in *Practical Ethics* Singer had argued that even if someone belonged to the human species, he or she was “not a person,” if “rationality, autonomy and self-awareness” were absent. Or, connecting the dots more explicitly: “Some members of other species are persons: some members of our own species are not. No objective assessment can give greater value to the lives of members of our species who are not persons than to the lives of members of other species who are. On the contrary, as we have seen there are strong arguments for placing the lives of persons above the lives of nonpersons. So it seems that killing, say, a chimpanzee is worse than the killing of a gravely defective human who is not a person.”³² These were the kinds of comments that made his critics apoplectic.

Klee, in his brilliant rejoinder to Singer, homed right in on what he called the “bizarre nexus of animal rights and euthanasia” in Singer’s work, and regaled his readers with examples of *Nazis* who had linked their enthusiastic embrace of animal rights both with antisemitism and lethal antidisability sentiment.

31 Peter Singer, “Sanctity of Life or Quality of Life?” *Pediatrics* 72.1 (July 1983).

32 Singer, *Practical Ethics*, 97. In his 2011 revision, Singer persisted with this point: “We should reject the doctrine that killing a member of our species is always more significant than killing a member of another species. Some members of other species are persons; some members of our own species are not.... So it seems that killing a chimpanzee is, other things being equal, worse than the killing of a human being who, because of a profound intellectual disability, is not and never can be a person.” Peter Singer, *Practical Ethics* (Cambridge, UK, 2011), 101.



Figure 2. “Eine Kulturtat,” *Kladderadatsch*, September 3, 1933. The somewhat sarcastic title could be translated as “A Great Achievement” or “A Great Deed of Civilization.” This cartoon from the (since the early 1920s increasingly rightwing) satire magazine *Kladderadatsch* gently spoofs Hermann Göring for passing the first anti-vivisection law in the world (in Prussia, on August 16, 1933) as the now-spared rabbits, frogs, mice, and dogs gratefully salute him. Göring had announced that “an absolute and permanent ban on vivisection is not only a necessary law to protect animals and to show sympathy with their pain, but it is also a law for humanity itself” and threatened with imprisonment in a concentration camp all who “still think they can continue to treat animals as inanimate property.” Animal rights were indeed a major obsession for Hitler and his followers, and in November 1933 a further law was passed which announced that “It is forbidden to unnecessarily torment or roughly mishandle an animal” (breathtaking as a legal priority not least in view of Nazi treatment of humans). Caricature by Arthur Johnson. *Kladderadatsch*, September 1933. Universitätsbibliothek Heidelberg.

As Klee reminded his readers, according to avid Nazis, Hitler was the “savior” of animals from “Jewish-materialistic” “animal torture” like vivisection. At the same time, the disabled had been openly and pitilessly denigrated. The SS-journal *Das schwarze Korps*, for example, had declared with regard to “mercy killing”: “A child born as an idiot has no value as a person ... He is less aware of his existence than an animal”.³³

Franz Christoph, one of the cofounders of the radical “cripple-movement” (*Krüppelbewegung*) launched in the 1970s, in his own extended rebuttal to Singer in the pages of the newsmagazine *Der Spiegel*, also made the comparison to Nazism. Christoph, a polio survivor, had already made a name for himself in 1981, when he had the audacity to strike the federal president, Karl Carstens (a former Nazi), with a crutch at the occasion of paternalistic government festivities in Düsseldorf organized in keeping with the UN declaration that 1981 should be the “Year of the Disabled.”

Invoking Singer’s opinion that “The killing of a disabled infant is not morally equivalent to the killing of a person. Very often it is no injustice at all,” Christoph observed curtly: “In connection with any other group of people Singer’s thesis would be in danger of being rejected as fascistic thinking — without any scholarly dialogue.”³⁴

For Christoph, the most urgent task was to respond to Singer’s pronouncement to the effect that “We cannot condemn euthanasia just because the Nazis did it, any more than we can condemn the building of new roads for this reason.” Christoph was intent on putting forward a *different* interpretation of how the Nazi past mattered — not, as Singer’s proponents claimed, because it caused German conversations to be out of step with international trends regarding assisted suicide and related matters, but rather to articulate why *talk* could be so offensive. It was, Christoph said, “precisely these kinds of scholarly discussions and discourses that were precursors of what came to be, beginning fifty years ago, the extermination of ‘life unworthy of life.’” The trouble was the way that a question was being established as even legitimately posable, the very act of asking “‘Euthanasia for severely disabled newborns?’ that then could be answered with a Yes as well as with a No.” Christoph’s conclusion was thus that it was “specifically because of the historical experience, although social service bureaucrats apparently cannot relate to this” that “for those who are affected, any and all discourse about

33 Quoted in Klee, “Von Menschen und Tieren.”

34 Franz Christoph, “(K)ein Diskurs über ‘lebensunwertes Leben’!,” *Der Spiegel*, June 5, 1989, 240-42.

the reintroduction of the concept of ‘life unworthy of life’ seems like a menace to their right to live.” *Der Spiegel* took the cue, and accompanied Christoph’s piece not only with a photograph of a sit-in to disrupt a rehab experts’ conference on the topic of assisted suicide in Karlsruhe the year before (where Christoph and others had worn blue garbage bags — replete, in Christoph’s case, with a sign around his neck declaring “I am unworthy of life”), but also with a photograph of the distinctive gray buses that had brought the disabled to their deaths in the Nazis’ T4 program, and with a copy of Hitler’s order, backdated to the start of the war on Poland in September 1939, that permitted the beginning of the calculated murder of 5000 disabled children.³⁵ (Singer later took particular umbrage at the magazine’s decision to use these supplemental images.)³⁶ The tide of mainstream consensus was suddenly but manifestly turning — after an excruciatingly long delay of four postwar decades — in favor of radical disability activists’ views on the proper lessons to be drawn from the Nazi past.

III. Abortion vs. infanticide

Although the broader potential implications of what had initially seemed like a side note in Singer would not become apparent until several years later, Singer had used as a springboard for his own causes something that had actually been an achievement of feminist and sex rights activism just a few years before his book was published. This was the fact that across the Western world, abortion had — due to vigorous women’s rights advocacy — been at least partially decriminalized and had come to be seen as morally acceptable by broad popular majorities that Singer used as his entry-point for theorizing the acceptability also of active infanticide (again, with frequent interpositions making comparisons with animals). Over and over, he had made a case for seeing the similarity, rather than the difference, between “killing the late fetus” and “killing the newborn infant.” Thus for instance — speaking about all newborns, not just disabled ones — Singer expressly built his argument on the basis of the only just recently established greater moral acceptability of abortion: “If the fetus does not have the same claim to life as a



Figure 3. Disability rights activist and polio survivor Franz Christoph strikes West German President (and former member of the NSDAP) Karl Carstens with one of his crutches, June 18, 1981, in the context of wider protests by disability rights activists disrupting the proceedings at the “REHA ’81” convention in Düsseldorf launching German festivities for the United Nations’ “Year of the Disabled.” Photo by Wilhelm Leuschner/Picture Alliance via Getty Images. Reproduced by permission.

35 Christoph, “(K)ein Diskurs.”

36 Singer, “On Being Silenced.”

person, it appears that the newborn baby does not either,” he began one sentence, going on from there to assert once more that “and the life of a newborn baby is of less value than the life of a pig, a dog, or a chimpanzee.” But the difference *between* newborns had to do with parents’ desires for them, and Singer assumed that parents desired the disabled less. Moreover, then, in Singer’s view, since not all disabilities were evident prenatally — some indeed might be caused in the birth process — in cases of disability (and he was ambiguous about what counted as severe) sometimes active infanticide should be permitted, perhaps up to “a month” after birth. While Singer would, in the ensuing controversies in Germany keep insisting that he had *never* argued for the killing of already-living disabled individuals older than infants, readers could be forgiven for thinking that he actually had: “For simplicity,” he had written in *Practical Ethics*, “I shall concentrate on infants, although everything I say about them would apply to older children or adults whose mental age remains that of an infant.”³⁷

This insistence on not drawing the line either at birth or at viability but instead actively blurring the boundary between abortion and infanticide was to have tremendous consequences — not just for the reception of Singer in that summer of 1989, but for the reconfiguration of women’s access to abortion that was, after the collapse of communism just a few months later, shortly to ensue. In the complex back-and-forth between constituencies that followed, feminists would lose the ability to retain the — morally crucial — distinction between an abortion on grounds of anticipated disability and an infanticide. As repelled as most activists on behalf of disability rights as well as women’s rights were by Singer, many appear to have accepted his terms of debate.

The antiabortion movement in West Germany had been trying, since at least the early 1980s, to involve disability rights groups in their assault on the 1976 version of article 218 of the German Penal Code, which had carved out four exemptions under which abortions, which remained generally illegal, could be legally performed: the so-called “medical” indication (threats to the life or health of the mother), the “criminological” indication (pregnancy as the result of sexual violence), the “eugenic” or embryopathic indication (expectation that the child would be disabled), and the “social” indication (cases in which the pregnancy would impose undue hardship, placing the mother in a “soziale Notlage”).

37 Singer, *Practical Ethics* (1979), 126, 131.

Floating once more the time-honored maxim (used as early as 1946) that abortions were somehow comparable to Auschwitz, West German antiabortion groups also tried to make the link between abortions and the murder of the disabled — focusing specifically on the “eugenic indication” for abortion as a reason for disability-rights activists to join them. They also spoke of the “thousandfold killing of unborn disabled babies” and of how “the so-called amniocentesis provides the ammunition for the fatal shot.”³⁸ Among other things, a group calling itself “Movement for Life” had managed to organize individuals with disabilities in an affiliate called the “Helen Keller Circle.” And at least one young disabled man had written an open letter to the President of the Federal Republic criticizing the way “amniocentesis differentiates between ‘worthy’ and ‘unworthy’ life” and comparing the “eugenic indication” for abortion to Hitler’s 1939 directive to begin the euthanasia killings.³⁹

Initially, radical disability groups spurned these overtures. In 1981, when prompted by a Heidelberg-based Catholic antiabortion student association calling itself “Working-Group for Life” and condemning abortion under the slogan “Thou shalt not kill,” the “Action Group against the UN Year of the Disabled” (“against” because the group was disgusted by what it took to be self-congratulatory but condescending and repressive charity efforts sponsored in that “UN Year”) responded: “On the basis of our experiences as cripples and as nondisabled but concerned individuals in our society, we do not presume to condemn women who decide against a disabled child.”⁴⁰ In 1983, and again in 1985, when the antiabortion group “Action for Life” reached out to the Federal Association of Disabled and Crippled Initiatives “with an alliance-proposition,” the “Cripple Group Bremen” reacted negatively. Although the Bremen activists concurred that abortion on grounds of fetal disability was a problem for them (“we are ... opposed to ... the eugenic indication”), they rejected the campaign to criminalize all abortions. “To get rid of Paragraph 218 [i.e. to get rid of the penal code’s exemptions allowing for legal abortion in some cases] ... would change nothing in the life-reality of cripples in our society. We would continue to be disenfranchised and separated out Thus we see our immediate task in improving the life-conditions of those already living and we would welcome it greatly if organizations like yours would also engage themselves in this direction.” Moreover: “We have no desire to let ourselves be instrumentalized for your battle against §218 [i.e. the provisions al-

38 For 1946, see Dagmar Herzog, *Sex after Fascism: Memory and Morality in Twentieth-Century Germany* (Princeton, 2005), 75-76. “Thousandfold killing” is in the press release of the Bewegung für das Leben, December 12, 1984, reprinted in *Die Randschau* 1, no. 3 (August-September 1986): 13.

39 Helen Keller Kreis in the press release of the Bewegung für das Leben; and Ulrich Ochs, letter to Federal President Philipp Jenninger, no date (presumably 1985), both in *Die Randschau* 1, no. 3 (August-September 1986): 13. The letter included the statement: “I can see no difference between the racial ideology of Hitler and the ‘criminal code reform’ of the abortion paragraph 218. Through the so-called ‘eugenic indication’ the disabled are sent a second time to a ‘modern Auschwitz.’” See Nina Job, “Handicap-Familie: ‘Was Besseres konnte uns nicht passieren.’ *Abendzeitung* (Munich), January 18, 2016, <http://www.abendzeitung-muenchen.de/inhalt.mutter-und-vatermit-behinderung-handicap-familie-was-besseres-konnte-uns-nicht-passieren.ff70e512-e3fa-4998-a0de-a50039dab9d3.html>.

40 The Catholic antiabortion flyer and the response of the Action Group are reprinted in Franz Christoph, *Krumpelschläge: Gegen die Gewalt der Menschlichkeit* (Reinbek, 1983), 34.

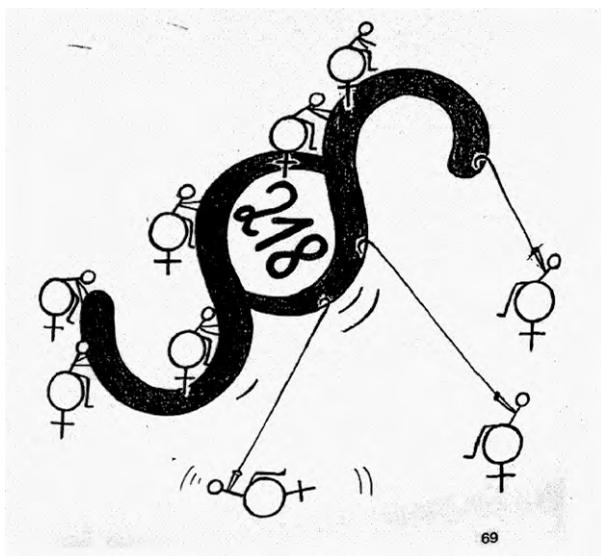


Figure 4. Drawing of women in wheelchairs dismantling Paragraph 218—the paragraph that regulates abortion. Source: Silke Boll et al., *Geschlecht: Behindert, besonderes Merkmal: Frau* (1985).

lowing for legal abortion]. We find the comparison drawn ... between §218 and Auschwitz conspicuously tasteless.”⁴¹

In 1985, when feminist members of the “cripple-movement” compiled a book of essays on the particular difficulties confronting women with disabilities, the book, *Geschlecht: Behindert, Besonderes Merkmal: Frau* (Gender: Disabled, Special Characteristic: Woman) had included an illustration indicating how women in wheelchairs were working to abolish Paragraph 218 in order to legalize all abortions.⁴²

As late as 1986, when the antiabortion group “Action for Life” had not only decided to hold its annual demonstration at Hadamar — one of two out of the former six Nazi killing centers that were on West German soil — but also to invite disability activists to join them, the radical cripple activist Gisel Hermes published an incensed response in *Die Randschau*. Hermes explained to its readers the right-wing, gender-conservative, and anti-foreigner racist values animating the hard core of the antiabortion movement and denounced the way “we so apparently are being used as show-pieces for an action that trivializes the fascist crimes against the disabled.”⁴³ Also the Federal Association of Disabled and Crippled Initiatives announced: “We cripples will not let ourselves be used as propaganda objects!”⁴⁴

41 And in addition: “Aside from the fact that ‘euthanasia’ did not take place in Auschwitz, we find this comparison to make a mockery of the victims and survivors of the concentration camps.” Krüppelgruppe Bremen, September 20, 1985, responding to a letter from Michael Drayss of the Bewegung für das Leben, reprinted in *Die Randschau* 1, no. 3 (August-September 1986): 14.

42 Silke Boll et al., *Geschlecht: Behindert, Besonderes Merkmal: Frau — Ein Buch von behinderten Frauen* (Munich, 1985).

43 Incredibly — and while 300 counter-demonstrators, including Hermes herself along with many other individuals with disabilities and representatives of feminist groups, had shown up at Hadamar the

day of the demonstration in order to offer a different interpretation of the lessons of that place at which, during the Third Reich, 15,000 individuals had been murdered by gas and by poison — an agitated antiabortion activist woman had screamed at Hermes (who was there in a wheelchair): “Why don’t you kill yourself, you are not worthy of living. Under Hitler something like this would not have hap-

pened!” Gisel Hermes, “Mensch achte...,” *Die Randschau* 1, no. 3 (August-September 1986): 11-12.

44 On the day of the demo and counter-demo, the group spoke out about how “the abortion opponents chose this spot in order to defame and to criminalize women who undergo an abortion, by putting the mass extermination of the disabled

on the same level as abortion today.” They rejected “this shameless equation,” pointing out further how the same conservative politicians who were working to erode abortion rights were also cutting funding for the very social services the living disabled so badly needed. “Sind die Abtreibungsgegner noch zu retten?” *Die Randschau* 1, no. 3 (August-September 1986): 14-15.

Yet that same year, 1986, other feminists within the radical cripple movement were already reporting on their dismay and anger at what they saw as too many nondisabled feminists' refusal to join in with a critique of the "eugenic indication." "A wall goes up," Swantje Köbsell and Monika Strahl explained, "they block off and refuse to engage with the actual problematic," "they accuse us of being opponents of abortion ... but we are not against abortion per se, only against the aborting, as a matter of course, of fetuses that have been declared as 'defective' and therefore undesired."⁴⁵ This was the compromise position that would come to define the feminist disability movement.⁴⁶ Abortion on any grounds aside from anticipated disability would be adamantly defended; abortion because of anticipated disability would be rigorously, righteously rejected. Activists called on women to boycott prenatal screenings as though to do so was in itself a moral imperative. In contrapuntal tandem with the antiabortion movement they otherwise despised, then, disability activists would come to develop — and would do so even more emphatically in the aftermath of the tumult over Singer — a historically wholly new singling-out for special condemnation of abortion on grounds of fetal abnormality, extending their repulsion at the proposal for active infanticide backwards into the pregnancy.

Already before Singer hit the news, in a roundtable published in the New Left journal *Konkret* in April 1989, the well-known feminist journalist and cofounder of a family planning clinic in Hamburg, Susanne von Paczensky, discussed the newly perceived impasse between disability rights and women's rights with Christoph and with three other women: Green feminist Adrienne Goehler, feminist author Katja Lehrer, and Hannelore Witkofski, a member of the Disability Forum. Von Paczensky saw through the emergent conundrums. Indeed, she was convinced that the existence of the "eugenic indication" was in fact a sign of how "extremely hostile to the disabled" German law and culture were. But she also thought the animus against women who sought prenatal diagnostics — and then in "1-2 percent" of cases went on to choose abortion — was inappropriate and overwrought. She held fast to her conviction that whether a woman had an abortion because she did not like children, or did not want one at a particular moment in her life, or whether it was because she did not want a disabled child, "that is okay We are not authorized to judge on what grounds women abort." Witkofski, by contrast, openly charged that "cripples are

45 Swantje Köbsell and Monika Strahl, "Recht auf behindertes Leben: Humangenetik, die 'saubere Eugenik' auf Krankenschein," *Die Randschau* 1, no. 3 (August-September 1986): 9-10.

46 Swantje Köbsell, "'Unwertes Leben' darf abgetrieben werden — Bevölkerungspolitik in der BRD," in *DIE GRÜNEN im Bundestag, Arbeitskreis Frauenpolitik, Bevölkerungspolitik und Tötungsvorwurf: Dokumentation zweier Foren der GRÜNEN Frauen im Bundestag....* 21. Nov. 1988 ... 5. Dez. 1988 (Bonn, 1989), 30.

being selected away before birth,” that this represented an attack “on my own life,” and — when challenged — said explicitly that, “Yes,” she was in favor of a “compulsory birthing of cripples.” Goehler, in reaction, noted that she found it “unbelievably brutal” for someone like Witkofski to say that a woman who was deciding against carrying a pregnancy with a disabled fetus to term was somehow thereby implying that she was “trying to get rid of all cripples in the world” — as “though people also wanted, after the fact, to abort you.” And: “We cannot solve the problem of a cripple-hostile society on the backs of individual women.” Witkofski, however, was adamant. Women who aborted what she in furious sarcasm referred to as “that cripple-stuff” were, in her view, “perpetrators.” Only von Paczensky, who was half-Jewish and had survived the Third Reich not least because her non-Jewish mother had refused to divorce her Jewish father and she had thus counted as a “mixed” individual, a *Mischling*, and thereby avoided deportation, pointed out that only the Nazis had murdered disabled people — and simultaneously they had punished abortion severely. Moreover, she noted, “in countries in which abortion has been liberalized, the disabled and the elderly and marginalized groups are generally treated with respect.” Her bottom line: “There is no indication that abortion has or ever had anything to do with the killing of human beings.”⁴⁷ But this would prove to be a losing position.

In general, nondisabled feminists were ill equipped to respond to the conservative attacks on abortion once the flap over Singer had exacerbated the situation.⁴⁸ Increasingly, the New Left (or what was left of it in the “alternative scene,” as well as the Green party, its partial offshoot) was on the defensive for having displayed a hugely disability-insensitive preoccupation with “healthiness” — since already before, but especially in the wake of the nuclear reactor explosion at Chernobyl in 1986, New Left and feminist periodicals had published some extraordinarily offensive images which lampooned disability as a likely outcome of technology run amok.⁴⁹ Meanwhile, although they had occasionally argued with disability rights activists over abortion rights, a majority of feminists of the era shared with disability rights activists a reflexive distrust of reproductive technologies — these

47 All quotes from the roundtable published as “Krüppelschläge: Wie weit reicht das Selbstbestimmungsrecht der Frau?,” *Konkret* 4 (1989): 41–48.

48 The one major feminist venue which ran an essay defending Singer and also defending abortion on grounds of fetal disability — the magazine *Emma* — would find its offices the object of a rampage when women in monkey-face masks destroyed 100,000 DM worth of office equipment and spray-painted the walls with “Emma engages in selection!,” “Enough with the racism!,” and “Euthanasia is violence.” See “Islamismus: Der Überfall,” *Emma* (July/August 1994). *Emma*’s counter-charge of “Islamism” was

an (obviously racially inflected) barb directed at the intruders to convey what *Emma* saw as their fundamentalism and intolerance. The original of-fending article was Filter, “Das Affentheater.”

49 The New Left journal *Konkret* was the most of-fensive (although the Berlin-based daily *tageszeitung* was not far behind, and also a well-known feminist cartoonist contributed to the derogatory

representations of disability). See Udo Sierck, *Das Risiko nichtbehinderte Eltern zu bekommen: Kritik aus der Sicht eines Behinderten* (Munich, 1989), 72, 77; Köbsell and Strahl, “Recht.”

(as they were called) “newest inventions of the technopatriarchy.”⁵⁰ Already by the fall/winter of 1988, when Green party feminists held hearings about abortion in the Bundestag — urgently trying to collect arguments *against* the accusation that abortion was murder — they had also invited the disability activist Swantje Köbsell to address them and, moreover, concurred, as though it was self-evident, that reproductive technologies were profoundly immoral.⁵¹ By January 1990, dozens of feminist anti-reproductive technology groups, antifascist collectives, and prominent post-New Left journalists — including the editor of *Konkret* — had signed a declaration published in the leftist Berlin daily, *die taz*, against Singer’s right to speak.⁵²

IV. Conclusion: changing the law

But how did *lawmakers* come to adopt the compromise formation first formulated by feminists in the cripple-movement? In the wake of the decision to unify in 1990, Western feminists had hoped that the accession of the former Eastern states, where first-trimester abortions had been decriminalized since 1972, would lead to the adoption of a more liberalized handling of abortion also in the West. But Western and Eastern feminist hopes were dashed. Although in 1992 the Bundestag promulgated a law which decriminalized an abortion when it could be shown “to prevent a danger to the life or physical or mental health of a pregnant woman,” this law was voided by the Constitutional Court the following year on the argument that abortion *must* officially remain criminalized because of the Basic Law’s guarantee of “protection of life,” and that indeed women, in almost all circumstances, had “an obligation to carry pregnancies to term” (*Pflicht zur Austragung*).⁵³ Yet the Court signaled that, not least in view of the unmistakable evidence

50 The quote is from Maria Mies, who — notably evincing a different kind of insensitivity — went on to argue that reproductive technologies represented a “new eugenics on a global scale” that would make Hitler’s racial politics seem like mere ‘child’s play.’ Quoted and discussed in Kimba Allie Tichenor, *Religious Crisis and Civic Transformation: How Conflicts over Gender and Sexuality Changed the West German Catholic Church* (Lebanon, NH, 2016), 202. On some non-

disabled Green feminists’ extraordinary commitment to sensitivity and solidarity with disabled feminists, see Verena Krieger, “Selbstbestimmung der Frau — eine grundsätzliche Debatte,” in DIE GRÜNEN, *Bevölkerungspolitik*, 9-13; Verena Krieger, “Die neue Abtreibungsdebatte in der Frauenbewegung,” *Blätter für deutsche und internationale Politik*, 3 (1989), Sonderdruck nr. 365, 3-10. And as became clear at the latest in the protests against Singer, there were already in existence dozens

of feminist organizations with such names as “Rhein-Main Rats Against Gen- and Reprod-Nonsense,” “Women Against Genetic and Reproductive Technology” (from Darmstadt, Frankfurt, and Mainz) along with “Mixed[-Gender] Group Against Genetic and Reproductive Technology”, and the “Cripple Women Group Against Genetic and Reproductive Technologies and Eugenics West-Berlin.” See “Wider den tödlichen philosophischen Liberalismus.”

51 Köbsell, “Unwertes Leben”; Kristen Loveland, “Feminism against Neoliberalism: Theorising Biopolitics in Germany, 1978-1993,” *Gender & History* 29, no. 1 (April 2017): 1-20.

52 “Wider den tödlichen philosophischen Liberalismus.”

53 Constitutional Court decision and accompanying commentary, BVerfGE 88, 203 — Schwangerschaftsabbruch II, http://groups.csail.mit.edu/mac/users/rauch/nvp/roe/bv088203_nonav.html; “Das Bundesverfassungsgericht erlässt einstweilige Anordnung gegen die Fristenlösung: Zweiter Senat gibt den Anträgen Bayerns und von Abgeordneten der Union statt,” *Frankfurter Allgemeine Zeitung*, August 5, 1992; Barbara Duden, “Nachwort zum Karlsruher Urteil: ‘Das Leben’ als Entkörperung,” in *Der Frauenleib als öffentlicher Ort*, 2nd ed. (Munich, 1994), 147-163.

that women's reliance on abortion apparently continued to be quite pervasive, it would permit the development of a law which, while maintaining the *criminality* of abortion, would simultaneously allow an abortion to go *unpunished*, if certain conditions were met.

The task now fell to the political parties, and then to the Bundestag as a whole, to propose new versions of the law. Revealingly, the new law proposed by the ruling CDU/CSU coalition still included, as though self-evidently necessary, references to the need for an embryopathic indication⁵⁴ — a sign that the bone of contention for Christian Democrats had all along been the so-called “social indication” (the most widely used one, and the most contested because perceived by antiabortion forces to be inexcusably elastic), which was no longer mentioned in the proposed legislation at all.⁵⁵ Ultimately, however — and whether we read this as a matter of complete contingency or of multifactor causation — in the final hashing-out by a cross-party committee of the various party proposals — a committee that included the Christian Democrat Hubert Hüppe, father of a disabled son and a staunch opponent of all abortions, the embryopathic indication disappeared entirely (to be absorbed, quietly, into the maternal-medical indication). In the small print of commentary on the finally published law, it was explained, tersely, that “for ethical reasons the embryopathic indication has been struck, in order to prevent any misunderstanding to the effect that an anticipated disability of a child could be a legitimating basis for a termination.”⁵⁶

And so it was that a hardcore antiabortion conservative ended up being the one to give the radical disability-rights movement the law that it wanted. Despite this manifest victory, moreover, Hüppe's group continued to fret that, potentially, “in the expanded medical indication, terminations on grounds of the disability of an unborn child could be camouflaged” — and it served notice to the legislature and the executive, via a formal inquiry in 1996, that it continued to be concerned about how the implementation of abortion law was meeting the concern that disabled lives must be valued equally with the nondisabled.⁵⁷ In 2009, these efforts bore fruit. The Bundestag, after prior attempts in 2001 and 2004 had been stalled, formally set yet further restrictions, including a three-day waiting period for “reflection” as well as heightened fines for any doctor discovered to be providing later-trimester abortions because of fetal disability without sufficient proof that bearing the child could definitively be construed as a threat

54 “in cases of medical, embryopathic and criminological indication, termination of pregnancy is in accordance with the law” -

55 “Beschlussempfehlung und Bericht des Ausschusses für Familie, Senioren, Frauen und Jugend (13. Ausschuss), zu dem 1. Gesetzentwurf der Fraktion der CDU/CSU — Drucksache 13/285 — Entwurf eines Schwangeren- und Familienhilfeänderungsgesetzes (SF-HÄndG), 2. Gesetzentwurf der Fraktion der SPD — Drucksache 13/27 — ...” Deutscher Bundestag, 13. Wahlperiode, Drucksache 13/1850 (June 28, 1995), 16. <http://dip21.bundestag.de/dip21/btd/13/018/1301850.pdf>.

56 “Beschlussempfehlung,” 18; cf. 25-26.

57 “Beschlussempfehlung,” 19; “Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Hubert Hüppe et al.,” Drucksache 13/5364, July 29, 1996, <http://dipbt.bundestag.de/doc/btd/13/053/1305364.pdf>. In another evolving subplot, while antiabortion activists have repeatedly attempted to use the compromise achieved in 1996 under which first-trimester abortions after counseling are “illegal albeit unpunished” for targeted harassment of physicians who provide terminations, an important decision by the Constitutional Court in 1998 clarified that physicians act legally and in no way criminally when they provide terminations in accordance with the 1996 law. See https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/1998/10/rs19981027_1bvr230696.html.

to the woman's mental health. Christian Democrats had garnered the needed support of Social Democrats and Greens by specifically presenting these amendments to the law as once more an advance for disability rights.⁵⁸ From 2009 to 2013 Hüppe served as Chancellor Angela Merkel's Federal Commissioner for Disability Issues. And from this position, he has advocated against both stem cell research and preimplantation diagnostics in case of in vitro fertilization.⁵⁹ The insight that "NS-Euthanasia" was "The Trial Run for the Holocaust" is part of his self-presentation.⁶⁰ From 2012 on he lent his support to the Europe-wide "One of Us" movement — a transnational rightwing NGO that is the most formidable of the closely coordinating network of organizations working against not just abortion but also LGBT rights in the EU today.⁶¹

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60 Kay-Alexander Scholz, "NS-Euthanasie: Der Probelauf zum Holocaust," *DW*, February 1, 2013, <http://www.dw.com/de/ns-euthanasie-der-probelauf-zum-holocaust/a-16569574>.

61 On One of Us, see: <https://oneofus.eu/news-articles/family/>; Elsa Hedling and Anna Meeuwisse, "The European Citizens' Initiative Stage: A Snapshot of the Cast and Their Acts," in *EU Civil Society: Patterns of Cooperation, Competition and Conflict*, ed. Håkan Johansson and Sara Kalm (New York, 2015), 210–28; Jürgen Liminski, "Teuscher: Initiative 'Einer von uns' wird in Brüssel ernst genommen," *Deutschlandfunk*, September 28, 2013, https://www.deutschlandfunk.de/teuscher-initiative-einer-von-uns-wird-in-bruessel-ernst.694.de.html?dram:article_id=263386; "Resolution on Sexual and Reproductive Health and Rights (1): The LGBTI (2) and Pro-abortion Lobby Thwarted by European Citizens," *Généthique*, October 1, 2013, <http://www.genethique.org/en/resolution-sexual-and-reproductive-health-and-rights1-lgbti2-and-pro-abortion-lobby-thwarted-61881>.

58 Tichenor, *Religious Crisis*, 206–207; for related dynamics in Austria, see "Spätabtreibungen: Debatte über Fristverkürzung," *Der Standard*, February 9, 2015, <http://derstandard.at/2000011464441/>

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59 Hüppe has among other things argued that the (partial) legalization of pre-implantation diagnostics in Germany is in contradiction to the UN

Convention on the Rights of Persons with Disabilities. See "Behindertenbeauftragter kritisiert PID-Regelung," *Stoppt PID* website, http://www.stoppt-pid.de/beitraege/behindertenbeauftragter_kritisiert_pid-regelung.