

Trials and Clemency Cases of Abortionists in Germany, 1926-1932

by

Katherine Margaret St Arnaud  
B.A. (Honours), Simon Fraser University, 2020

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We acknowledge and respect the lək̓ʷəŋən peoples on whose traditional territory the university stands and the Songhees, Esquimalt and W̱SÁNEĆ peoples whose historical relationships with the land continue to this day.

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**Supervisory Committee**

Dr. Thomas Saunders, Supervisor  
Department of History

Dr. Kristin Semmens, Departmental Member  
Department of History

## **Abstract**

The falling birth rate and rising estimates of illegal abortions during the Weimar Republic fueled fears about the decline of the German people. The movement to abolish Paragraph 218, the section of the penal code criminalizing abortion, was broadly based and transcended class. There is ample research on the movement to abolish Paragraph 218. However, little attention has been paid to the perspectives of the justice system and how clemency decisions were made. The first part of this study assesses the judiciary's stance on whether to pardon abortionists in six clemency cases from Berlin. These cases suggest that clemency decisions were based on the convicts' social class, whether the outcome of the abortion resulted in death, and the popular opinion in the media of the abortion case. There is also evidence that while doctors and lay abortionists competed for patients, they also collaborated to provide abortion care to women. The second part of this study assesses the criminal case of Else Kienle, the sex reformer and woman doctor, in the conservative town of Stuttgart. Kienle's published writings from during and after her imprisonment on abortion charges provide a unique opportunity to understand the perspective of an abortionist on trial. Additionally, while Kienle is generally accurately represented in the historiography, I emphasize that she drew on Communist arguments in her writings on abortion. Furthermore, I argue that while Kienle fits the characterization of maternalist feminist in some respects, her views also diverge from that set of values and beliefs.

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## Dedication

*For H. David Woodward, my wonderful grandad.  
Thank you for always supporting my dreams and believing in me.*

*For Patricia Woodward, my dear Gran.  
She was a modern woman who instilled and shared my love of history.  
She always believed I would finish, and I wish she were here to see it.*

## Introduction

This thesis primarily concerns criminal and clemency trials of abortionists in Weimar Germany between 1926 and 1932. The first chapter explores the historiography on abortions, gender anxieties, the decline of the German birth rate, and criminal justice. I first discuss the dynamic role of women and how it changed in the late nineteenth century and the early twentieth century, bringing many changes to women's lives, particularly after the First World War. These changes included the ability to control reproduction with contraceptives, to vote, and to work in a broader range of occupations. The birth rate had been declining in Germany since the nineteenth century, and this, combined with the German defeat in WWI, fueled debates about the social role of women.<sup>1</sup>

The second chapter of this thesis analyzes clemency cases of abortionists in Berlin between 1926 and 1931. This sheds light on the positionality of the courts and the judges. I aim to understand how the judges determined sentencing and pardoning, what factors swayed them to be lenient or harsh, and how they reconciled their personal beliefs with the laws in the penal code. The Weimar political system was characterized by turbulence and division between different parties and even within parties. The courts and judiciary remained essentially unchanged in the transition to the Republic; they were staffed from the “right” social classes, loyal to the monarchy, and were largely divorced from the lives and struggles of average Germans.<sup>2</sup> Class was one crucial variable in the sentencing of the convicted. During the Republic, there was a *Vertrauenskrise der Justiz*, a crisis of trust in justice, in which the working class held great animosity towards the

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<sup>1</sup> Catherine Dollard, *The Surplus Woman: Unmarried in Imperial Germany, 1871-1918* (New York; Oxford: Bergahn Books, 2009), 68.

<sup>2</sup> Benjamin Carter Hett. *Death in the Tiergarten: Murder and Criminal Justice in the Kaiser's Berlin* (Cambridge, Mass.: Harvard University Press, 2004), 1, 225.

judiciary. They believed the judiciary was out of touch with the Republic's current economic and social conditions.<sup>3</sup> The cases I have selected are the six files from the Department of Criminal Law and Correctional Services in the holdings of the Prussian Ministry of Justice which are specific to trials in Berlin. The cases represent defendants of various social classes. I compare the treatment of each abortionist, demonstrating that class played an important role in determining whether a convict would be pardoned. This chapter also explores the varying sentences and evaluates possible explanations for their differences.

The third chapter of this thesis will explore the life and views of the doctor and sex reformer Else Kienle, who was charged and imprisoned under Paragraph 218 in Stuttgart, Württemberg, in 1931. Stuttgart was primarily Catholic and conservative, unlike Berlin, which was known for its liberalism. Kienle's trial offers an opportunity to compare the sentencing of abortionists in a conservative context to those in a more liberal context. Kienle was a prominent figure within the sex reform movement, and her trial for abortion crimes was highly publicized. I will analyze her published works which include an article, "The Kienle Case," that she published after her release from prison, her published prison diary *Frauen: Aus dem Tagebuch einer Ärztin, Women: From the Diary of a Doctor*, and her autobiography *Woman Surgeon*.<sup>4</sup> These works offer a unique opportunity to examine the viewpoint of an abortionist on trial. This chapter will first compare the Kienle case with the case files reviewed in the second chapter to indicate how her case typifies responses to doctors charged with abortion crimes. Secondly, I will explore the viewpoint of an abortionists on trial. Lastly, I will examine Kienle's views as they intersect with various factions

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<sup>3</sup> Warren Rosenblum, "Welfare and Justice. The Battle over Gerichtshilfe in the Weimar Republic," in *Crime and Criminal Justice in Modern Germany*, ed. Richard F. Wetzell (New York and Oxford: Berghen Books, 2018), 165.

<sup>4</sup> Else Kienle, "The Kienle Case," (1931) in *The Weimar Republic Sourcebook*, eds. Anton Kaes, Martin Jay, and Edward Dimendberg (Berkeley and Los Angeles: University of California Press, 1994), 213-216; Else Kienle, *Frauen: Aus dem Tagebuch einer Ärztin*, second edition (Stuttgart: Schmetterling Verlag, 1989); Else K. La Roe, *Woman Surgeon* (London: Panther Books, 1959).

of the sex reform movement. Kienle is characterized differently within the historiography, as she resists alignment with a particular political party and a single faction of the sex reform movement.<sup>5</sup> I argue that Kienle's views echo many of the *Kommunistische Partei Deutschlands*' (KPD), the Communist Party of Germany, arguments about abortion. Furthermore, I argue that she was not a maternalist feminist as portrayed in the historiography; instead, I suggest that she used maternalist feminist ideas to appeal to a broader demographic in the abortion debates.

In Weimar Germany, the estimates of abortions gradually increased from 250,000 to 500,000 per year in the 1920s to one million during the Great Depression.<sup>6</sup> Abortion was widespread among women as a method of birth control, despite its illegality under Paragraph 218, for several reasons. It made economic sense as it was cheaper to get an abortion than to pay for contraception. It also allowed women control over their fertility; unlike other methods of contraception, such as *coitus interruptus* and condoms, it did not require their partner's cooperation. Working-class women usually sought help from their communities, preferring lay abortionists<sup>7</sup> to doctors because they shared the same values as working-class women and were cheaper.<sup>8</sup> However, both doctors and lay practitioners of medicine performed abortions frequently.

Although much work has been done to explore abortion in Weimar Germany, there is a gap in the literature regarding the criminal justice system and the courts. Historian Cornelia Usborne, the leading scholar of the field, has researched extensively on the cultures of abortion and offers a comparative analysis of doctors and lay practitioners, a dimension less appreciated in the literature

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<sup>5</sup> Katherine E. Calvert, "Making the Case Against Paragraph 218: Narrative and Discursive Strategies in Else Kienle's *Frauen: Aus Dem Tagebuch Einer Ärztin*," *German Life and Letters* 75, no. 1 (January 2022): 41.

<sup>6</sup> Cornelia Usborne, "Abortion for sale! The competition between quacks and doctors in Weimar Germany," in *Illness and Healing Alternatives in Western Europe*, eds. Gijswit-Hofstra, Marijke, Marland, Hilary, and de Waardt, Hans (London: Taylor & Francis Group, 1997), 185; Robert Heynen, *Degeneration and Revolution: Radical Cultural Politics and the Body in Weimar Germany* (Leiden, The Netherlands and Boston: Brill, 2015), 554.

<sup>7</sup> For a detailed explanation of the term 'lay abortionist', see pages 20-21 of this thesis.

<sup>8</sup> Cornelia Usborne, "Rhetoric and Resistance: Rationalization of Reproduction in Weimar Germany," *Social Politics: International Studies in Gender, State & Society* 4, no. 1 (March 1997): 72, 76, 79.

is the perspectives of those who handed down convictions. One key question is how and why lay practitioners were treated differently in the criminal justice system. Early in my research, my supervisor suggested I limit my focus to one city in Germany to make it more manageable for the size of this project. We agreed on the city of Berlin because it was a liberal city, there was ample research on Weimar Berlin, and the archives were easily accessible. The case files used in the second chapter of this thesis are from the Ministry of Justice holdings at the Prussian Privy State Archives in Berlin-Dahlem. While searching for trials of abortionists in Berlin, I came across files of clemency cases and convictions of abortionists. The clemency cases are appeals by convicted abortionists to be pardoned or to reduce their sentence. These files feature full descriptions of the case, documentation of public responses via letters to the Ministry and newspaper articles about the trial, and letters between various officials in the Ministry of Justice discussing the cases, thus allowing insight into the process of clemency cases and why treatment of abortionists by the criminal justice system varied.

## **Chapter 1 Historiography and Historical Context of Abortions in Weimar Germany**

The historiography of abortions in Weimar Germany is expansive. Though attention has been paid to criminal trials for abortions in several works, little has been done by way of investigating how the courts and justice system made decisions on prosecution, sentencing, and clemency. In the following chapter, I will outline the historiography of abortions and criminal justice in Weimar, Germany. First, I will consider the *Frauenfrage*, concern about women's changing role in society in Imperial Germany from the late nineteenth century until the end of the First World War, as a vital context for population debates in the twentieth century: the origins of fears of population decline, the modernized woman, and population politics. The second section of this chapter focuses on the historiography of abortions in Weimar Germany, and the history of Paragraph 218, the section of the German legal code that criminalized abortions. The last section explores criminal justice and the courtroom in the Weimar Republic. I will also outline how my research fits in this historiography and how it will allow a deeper understanding of criminal justice in abortion trials in this period.

### **The *Frauenfrage* and Modernity**

A type of feminism emerged during Imperial Germany called “maternalist feminism.” Maternalist feminists leveraged their gender differences from men to gain equality; they argued that women brought their maternal and nurturing values from the private sphere into the public sphere in a way men could not. Part of this new feminist perspective argued that the new ways of understanding sexuality changed women's ideals in life. They rejected the idea that they had to choose between their personal fulfillment, motherhood, and professional development and instead

regarded motherhood and child-rearing with more ambivalence.<sup>9</sup> Feminists in the late nineteenth and early twentieth century also made waves in the campaign for reproductive choice, but it was an extremely divisive issue. They attempted to balance women's right to bodily autonomy with women's responsibility to produce children for the nation. In this way, reproduction was both private and public. Maternalist feminists adhered to the motherhood eugenics consensus, in which motherhood is women's most natural and desirable instinct, and they needed to be encouraged to bear healthy offspring. They wanted to reconcile the modern new woman with traditional motherhood; they advocated for women's rights while emphasizing women's duty to reproduce for the nation.<sup>10</sup>

Eugenics is a term to define “the science of breeding a better race”; eugenics movements aimed to affect reproductive behaviour through the application of theories of heredity.<sup>11</sup> The state and sex reformers established sex and marriage counselling centres to help nurture marriages to produce healthy and racially fit children.<sup>12</sup> Sexual compatibility and assisting couples in leading pleasurable private lives were integral to the purpose of counselling. They believed that showing Germans how to lead healthy, satisfying sex lives would create a happier marriage, lead to children, and increase the birth rate.<sup>13</sup> German-speaking radicals called for reforms or repeals to the abortion laws. Communist feminists argued for the legalization of abortions and drew on the Soviet Union,

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<sup>9</sup>Ann Taylor Allen, *Feminism and Motherhood in Germany, 1800-1914*. (New Brunswick, New Jersey: Rutgers University Press, 1991), 150-153.

<sup>10</sup>Claudia Koonz, *Mothers in the Fatherland: Women, the Family, and Nazi Politics* (New York: St. Martin's Press, 1987), 36; Leng, *Sexual Politics and Feminist Science*, 219.

<sup>11</sup>Paul Weindling, “The History and Historiography of Eugenics,” in M. R. Dietrich et al. (eds.), *Handbook of the Historiography of Biology*, (Springer Nature Switzerland, 2021), 128; Philippa Levine and Alison Bashford, “Introduction: Eugenics and the Modern World”, in *The Oxford Handbook of the History of Eugenics*, eds. Alison Bashford and Philippa Levine, online edition, (New York: Oxford University Press, 2012), 4-5.

<sup>12</sup>Melissa Kravetz, *Women Doctors in Weimar and Nazi Germany: Maternalism, Eugenics, and Professional Identity*, (Toronto: University of Toronto Press, 2019), 23; Annette Timm, *Politics of Fertility in Twentieth Century Berlin* (New York: Cambridge University Press, 2010), 83-84.

<sup>13</sup>Eric D. Weitz, *Weimar Germany: Promise and Tragedy* (Princeton and Oxford: Princeton University Press, 2013), 298.

where abortions were legal, as an example to follow. Social Democrat women's organizations generally opposed total decriminalization, though many followed the motherhood-eugenics consensus and advocated for abortions to be legalized for social, medical, and eugenic reasons.<sup>14</sup>

The fears about the German people's decline, fueled by the declining birth rate, were not new to the Weimar era after Germany's defeat in World War I. German authorities began to monitor the population decline in 1910; their fears escalated as the decade continued because of the perceived ties between population and national strength. Live births dropped from 35.6 per thousand in 1899 to 27.5 in 1913.<sup>15</sup> Women's movements in Europe were tied to demography because the fears of declining birth rates fueled debates about women's societal role. There was not a large discrepancy between the numbers of men and women. Germany's population in this period was on trend with the rest of Europe, where women usually outnumbered men. The *Frauenüberschuß*, female surplus, was an issue that demographers and eugenicists feared. The population of women in Berlin rose from 400,000 in 1871 to above one million in 1910, this visibility of population growth fueled fears. This increasing number of marriageable women helps explain the sense of urgency in the surplus problem, despite the lack of evidence.<sup>16</sup> Scholar Catherine Dollard notes that "the female surplus was a demographic imaginary, but it was one that held deep cultural meaning."<sup>17</sup> In the context of eugenic thought and a declining birth rate, the single woman of marriageable age and presumably childless was threatening.<sup>18</sup>

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<sup>14</sup> Ann Taylor Allen, *Feminism and Motherhood in Western Europe, 1890-1970* (New York: Palgrave Macmillan, 2005), 163-164.

<sup>15</sup> Ute Frevert, *Women in German History: From Bourgeois Emancipation to Sexual Liberation*, (Oxford: Berg, 1989), 159, 231.

<sup>16</sup> Catherine Dollard, *The Surplus Woman: Unmarried in Imperial Germany, 1871-1918*, (New York, Oxford: Bergahn Books, 2009), 66-92, 85, 88.

<sup>17</sup> Dollard, *The Surplus Woman*, 88.

<sup>18</sup> Dollard, *The Surplus Woman*, 68.

The *alte Jungfer*, the old maid, emerged in the late nineteenth century and assumed new characteristics that “transformed archaic anxieties about the old maid into contemporary threats to the greater social order,” categorizing them as a new deviant in the age of transition.<sup>19</sup> The *alte Jungfer* and most unmarried women of marriageable age were classified as sexually deviant and an idle burden because they did not wish to marry or have children. Reproduction and child-rearing were believed to be at the heart of femininity; their refusal to marry alongside their presumed celibacy meant they could not fulfill their destinies of being mothers.<sup>20</sup> These portrayals are critical, as they reappear in force during the Weimar era to pathologize women who did not wish to have children. The modern single woman predated the Weimar period. More importantly, the modern single woman shows the importance of marriage and maternity to the social role of women.

Historian Detlev Peukert highlights the intersections of a society struggling to maintain its population and their fears of the decline of the German race. At the same time, they grappled with modernity and the social changes that it encompasses. He writes,

[The] new demographic structure in the Weimar Republic was one of rising life expectancy (or falling mortality), a falling birth rate, a new ideal of the two-child family, partial removal of the reproductive burden from women and a more pronounced segmentation in the age make-up of the overall population.<sup>21</sup>

Modern social values and forms of social behaviour, especially sexuality and contraception, had far-reaching consequences on the population.<sup>22</sup> Women entered the labour market during the First World War to replace men who had gone to fight, and once the war was over, they maintained their presence in the workforce. While the percentage of employed women rose slightly, from 31.2 per

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<sup>19</sup> Catherine Dollard, “The *alte Jungfer* as New Deviant: Representation, Sex, and the Single Woman in Imperial Germany,” *German Studies Review* 29, no. 1 (February 2006): 107-108.

<sup>20</sup> Dollard, “The *alte Jungfer*,” 108, 113-115.

<sup>21</sup> Detlev J. K. Peukert, *The Weimar Republic: The Crisis of Classical Modernity*, trans. Richard Deveson (New York: Hill and Wang, 1989), 9.

<sup>22</sup> Peukert, *The Weimar Republic*, 7-9.

cent in 1907 to 35.6 per cent in 1925, the types of employment changed. Between 1907 and 1925, the share of women industrial workers rose from 18.3 per cent to 23 per cent. The figures rose from 6.5 per cent to 12.6 per cent in white-collar work and public employment.<sup>23</sup> There was also a decrease in women employed in domestic positions from 16.1 to 11.4 per cent and in farming from 14.5 to 9.2 per cent. The apparent shift in the gender-based division of labour affected perceptions of the social role of women. Alongside women's gains in employment, the number of children born during the war years was half that of 1910. Though there was an increase in births during the first three postwar years, it did little to shift the demographic pattern.<sup>24</sup> The visibility of women in the public sphere and the decline in births exacerbated fears that modern women were rejecting motherhood and that the German nation was in danger of decline.

The effects of WWI on the population exacerbated fears of the decline of the *Volk*, the German people. Between 1.7 and 1.8 million men were killed during WWI, approximately 15 per cent of men between 20 and 40 years of age. In 1925, a census reported the ratio to be 30,196,823 men versus 32,213,796 women.<sup>25</sup> This discrepancy further fueled anxiety about the birth rate. The falling birth rate in Germany resulted from industrialization and was not isolated to Germany alone. Still, contemporaries believed it was a sign of moral decline, weakness, and the degeneration of the *Volk*. The state made efforts to increase the population's quality in this period and to prevent “unfit” people from reproducing; their actions were premised on the belief that reproductive decisions and the birth rate were primarily public concerns. The aim was to raise the birth rate, apply eugenic theories to increase offspring quality, and prevent infertility among specific “high-quality” populations. The rapid spread of venereal disease during WWI prompted public health

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<sup>23</sup> Peukert, *The Weimar Republic*, 96.

<sup>24</sup> Peukert, *The Weimar Republic*, 88.

<sup>25</sup> Atina Grossmann, *Reforming Sex: The German Movement for Birth Control and Abortion Reform, 1920-1950*, (New York: Oxford University Press, 1995), 6.

laws that were part of encouragement to maintain rates of marriage and birth.<sup>26</sup> Individual choices about family size and sexual partners were now emphasized as a duty to the nation. Sex reformers, doctors, and both Left- and Right-wing politicians argued for the legalization of abortion to prevent “undesirable” births. Ultimately, it remained criminal because they believed it would lead to the decline of the German people. Furthermore, some Left-wing feminist reformers argued that women did not have the right attitudes towards reproduction and did not understand that not having children was damaging the nation.<sup>27</sup>

Sex reformers were united in the belief that sexuality was better regulated than repressed and could be managed to reverse the birth rate decline. It is important to note that “sex reformers” refers to a broad and heterogenous group of activists, doctors, politicians, and more who were usually on the political Left. Reformers sought to increase access to birth control services and state-regulated contraceptive production; this ran at odds with efforts to increase the birth rate. This effort was supported by the belief that increased access to contraception would allow married couples to achieve sexual pleasure and a happier marriage by removing the stress of a possible unwanted pregnancy, thus leading to children later within the marriage when the timing is right for them.<sup>28</sup>

The movement to remove Paragraph 218, the law that criminalized abortions, from the Criminal Code was full of ambiguities. The KPD was the only party that argued for the complete decriminalization of abortions, as they saw that people were too impoverished to afford to have large families. The KPD used abortions to show the differences in class experience, arguing that while bourgeois women could pay to have a doctor terminate their pregnancy discretely, working-

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<sup>26</sup> Annette F. Timm, *The Politics of Fertility in Twentieth-Century Berlin*, (New York: Cambridge University Press, 2010), 72-73.

<sup>27</sup> Timm, *The Politics of Fertility*, 81-82, 86-87, 96-97.

<sup>28</sup> Grossmann, *Reforming Sex*, 22; Weitz, *Weimar Germany: Promise and Tragedy*, 302.

class women turned to quacks to have dangerous abortions. Many communist reformers believed that the revolution would meet the material needs of larger families and that women would begin having more children.<sup>29</sup> Therefore, women would again bear children when they could provide for them.

All political parties, besides the KPD, were steadfast in their belief that abortion was a crime. However, there were varying levels of acceptability. For example, the *Sozialdemokratische Partei Deutschlands* (SPD), the Social Democratic Party of Germany, supported limited reforms to the abortion paragraph, such as changing the charge from a felony to a misdemeanour as legislated in 1926. They argued for legalization during hyperinflation and the depression as a temporary measure because Germans could not support large families due to economic instability and crises. The SPD reformers were less radical than the KPD, as they had to maintain coalitions with the Catholic Centre Party, known as the Centre. The Centre represented the majority of German Catholics from all social classes.<sup>30</sup> The Centre opposed abortion reform and condemned all abortions, even those performed to save the life of the mother.<sup>31</sup> While some Social Democrats argued for the decriminalization of abortion, the primary party rhetoric was that it should remain illegal except for particular circumstances for socio-economic, eugenic, and medical reasons.<sup>32</sup> However, a fundamental and common goal about the abortion issue existed across parties and groups: returning women to their position as mothers. As historian Atina Grossmann notes, the

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<sup>29</sup> Grossmann, *Reforming Sex*, 21; Atina Grossmann, "Abortion and Economic Crisis: The 1931 Campaign Against Paragraph 218," in *When Biology Became Destiny: Women in Weimar and Nazi Germany*, 66-86, edited by Renate Bridenthal, Atina Grossmann, and Marion Kaplan, (New York: Monthly Review Press, 1984) 70-71, 74, 77.

<sup>30</sup> Peukert, *The Weimar Republic*, 147.

<sup>31</sup> Osborne, *Cultures of Abortion*, 7.

<sup>32</sup> Ben Fowkes, *The German Left and the Weimar Republic: A Selection of Documents*, (Leiden, The Netherlands: Koninklijke Brill, 2014), 243-245.

KPD believed in the “magic of motherhood and the tragedy of its denial” like other sex reform, feminist, conservative, and Social Democratic groups.<sup>33</sup>

### **Abortions in Weimar Germany**

This thesis will engage with numerous works by historian Cornelia Usborne on abortion in Weimar Germany. Her first book, *The Politics of the Body in Weimar Germany: Women's Reproductive Rights and Duties*, explores social reform and women's emancipation through the themes of maternity, sexuality, contraception, and abortion. Usborne argues that the introduction of contraception meant that women had new attitudes towards family life and society; women could separate sexuality and reproduction, challenging the “traditional double standard of sexual morality.”<sup>34</sup> The new government approach was influenced by eugenic theory, meaning they wanted to encourage higher quality children rather than a higher quantity. Moral eugenicists believed that the role of sex was exclusively for reproduction and not pleasure. Comparatively, positive eugenicists attributed the degeneration of the race to sexual repression. They encouraged racially fit people to continue having desirable births, whereas negative eugenicists prioritized preventing certain people from reproducing.<sup>35</sup>

The political Left and Right had different approaches to combatting the decline in birth rates, though there was overlap in beliefs about sexual morality and family ideology because “many representatives of the Left shared the anxiety over the future of the family and the ‘excesses’ of sexual freedom.”<sup>36</sup> However, there were differences in their approaches to the population issue. The Left favoured sex education and early marriage to prevent “unwholesome” practices, whereas

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<sup>33</sup> Grossmann, “Abortion and Economic Crisis,” 77.

<sup>34</sup> Cornelia Usborne, *The Politics of the Body: Women's Reproductive Rights and Duties*, (London: Palgrave Macmillan Ltd, 1992) 1, 20.

<sup>35</sup> Kirsten Leng, *Sexual Politics and Feminist Science: Women Sexologists in Germany, 1900-1933*, (New York: Cornell University Press and Cornell University Library, 2017), 194; Timm, *Politics of Fertility*, 86.

<sup>36</sup> Usborne, *The Politics of the Body*, 71.

the Right advocated for restriction and control over sexuality. The political Right also argued for a return to traditional values and gender roles, mainly returning women to the home as mothers and wives. It was particularly concerned about the role of single women, who represented both a social and moral problem: unmarried and without children, they increased competition in the labour market and highlighted the threat of extramarital sex. In combination with women's new role in the public sphere, later marriages, and fewer children within the confines of marriage, Osborne argues there were more profound anxieties about power relations between men and women at play.<sup>37</sup> Osborne demonstrates that abortion reforms were fought in the interests of party politics and professional interest. She argues that Leftist parties benefited from the publicity of successful reforms; the medical profession gained control over abortions from lay practitioners of medicine, such as lay abortionists and wise women; and the state benefited from control over women's reproductive decisions.<sup>38</sup> The economic situation was ideal for the Left to demand abortion reforms and gain working-class support. The Left recognized that the law did not deter women from having abortions and, more importantly, that it was class discriminatory because it punished poor women who could not afford to pay for a more discreet operation with a doctor.<sup>39</sup> Osborne's work lays an essential foundation for my research as she explores the political debates surrounding abortion reform and the legal history of the abortion paragraph.

Osborne's monograph *Cultures of Abortion in Weimar Germany* focuses on the lived experiences of women who sought abortions. Osborne outlines the history of Paragraph 218. She notes that for the first time in legal history, abortion was punishable under the 1871 penal code of the newly unified Germany under Paragraphs 218 to 220.<sup>40</sup> Paragraph 218 dictated that a pregnant

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<sup>37</sup> Osborne, *The Politics of the Body*, 30, 71, 81-82.

<sup>38</sup> Osborne, *The Politics of the Body*, 156.

<sup>39</sup> Osborne, *The Politics of the Body*, 159-160, 161-162.

<sup>40</sup> Cornelia Osborne, *Cultures of Abortion in Weimar Germany* (New York: Berghahn Books, 2007) 4.

woman who has an abortion or destroys her fetus in her uterus should be sentenced to up to five years in penal servitude. However, mitigating circumstances for the abortion could reduce this to a minimum of six months imprisonment. The same law applied to those who helped a woman with the woman's consent. Paragraph 219 dictated that anyone who helped procure an abortion for money could be sentenced to penal servitude for up to ten years. Paragraph 220 stated that a person who procured an abortion without the woman's consent should be sentenced to penal servitude for at least two years. If the abortion resulted in death, the minimum sentence of ten years to life would be applied. Attempts to procure or have an abortion were also punishable by the same prescribed punishments.

In 1926, an amendment consolidated Paragraphs 218-220 under the new Paragraph 218, which outlined that a woman who had an abortion or permitted someone to procure one would be punished by imprisonment. The same applied to any person who helped. Those who procured an abortion for money or without consent would be punished with penal servitude. This also applied to anyone who supplied abortifacients for money. Mitigating circumstances modified the penalty to reduced imprisonment of a minimum of three months. Osborne notes that though the reforms in 1926 aimed to increase the prosecution of commercial abortionists, evidence suggests that sentences were not harsher.<sup>41</sup> In 1927, the Supreme Court liberalized the law further by permitting therapeutic abortions for pregnancies that endangered the person carrying.<sup>42</sup>

During the nineteenth century in Europe and North America, there was a process of professionalizing vocations that were specialized and usually academically trained. In Germany,

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<sup>41</sup> Osborne, *The Politics of the Body*, 214-215. Detailed information on abortion legislation, penal drafts, and penal reform from 1871 to 1976 can be found in *The Politics of the Body* Appendix 1, 214-216.

<sup>42</sup> Osborne, *Cultures of Abortion*, 5, 103-104.

professionalization rested on state-prepared and standardized education.<sup>43</sup> German doctors had worked to monopolize health care since early in the nineteenth century. Between 1800 and 1871, doctors formed a uniform professional group. They partially liberated themselves from state control. Though they were still regulated by state examinations, registrations, and supervision, they won the freedom to choose their patients instead of being forced into compulsory caregiving and gained status as free entrepreneurs. However, doctors had to compete with lay practitioners in the healthcare market, so they worked to remain a “free profession” while trying to gain a monopoly on medicine.<sup>44</sup> Doctors campaigned to outlaw lay practitioners and found some success in the twentieth century. These lay practitioners were often accused of quackery. The meaning of quackery changed depending on the time and place of use. But with academically trained doctors becoming increasingly common in the late eighteenth and early nineteenth century, lay practitioners began to acquire negative connotations. Quackery began to be applied to people who gave commercial treatment that was illegal or outside their training.<sup>45</sup> For example, nurses or midwives who were trained professionals but provided treatment outside their training, such as abortions, would be called quacks.<sup>46</sup>

During WWI, lay treatment of venereal diseases and supplying contraceptives was outlawed. This law persisted in the Weimar Republic because it made state-regulated control of reproduction easier. Doctors continued to campaign against lay practitioners throughout this period, mainly because, during economic hardship, people turned to those who charged less. This

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<sup>43</sup> Jürgen Kocka, *Industrial Culture and Bourgeois Society: Business, Labour, and Bureaucracy in Modern Germany* (Berghahn Books: New York, 1999), 202.

<sup>44</sup> Alfons Labisch, “From Traditional Individualism to Collective Professionalism: State, Patient, Compulsory Health Insurance, and the Panel Doctor Question in Germany, 1883-1931,” in *Medicine and Modernity: Public Health and Medical Care in Nineteenth- and Twentieth-Century Germany*, eds. Manfred Berg and Geoffrey Cocks (Cambridge: Cambridge University Press, 1997), 35-36.

<sup>45</sup> Osborne, *Cultures of Abortion*, 95.

<sup>46</sup> Osborne, *Cultures of Abortion*, 94-95.

is especially important regarding abortions. Osborne also argues that members of the medical profession made efforts to legalize abortions on medical grounds in their campaign to monopolize healthcare.<sup>47</sup> Doctors wanted therapeutic abortions, that is, terminations of pregnancies that threatened the health of the woman carrying, to become legal to increase their number of patients and income and to extend their control over healthcare. They emphasized cases of abortions that ended in tragedy by lay practitioners to secure their authority over reproductive health and demonized lay abortionists as the reason for the high rate of maternal mortality.<sup>48</sup> However, doctors did not necessarily perform safer abortions. Osborne notes that rates of mortality from abortions were broadly similar, and doctors were often not trained to perform abortions because they were illegal. Also, women often preferred lay abortionists because they were people from their social class who shared similar ideals and values. They were treated as clients, not patients, which gave them some authority in their abortions.<sup>49</sup> Of significant importance for this thesis, Osborne's study found that the courts convicted lay abortionists at a greater rate than doctors. She notes that even when doctors were tried, they were often acquitted. The judiciary treated medical professionals leniently, and medical professionals wielded significant influence in the courts.<sup>50</sup>

Osborne's discussions of those charged legally under Paragraph 218 are most important to my study. Osborne's *Cultures of Abortion in Weimar Germany* is of particular relevance. She cautions that the veracity of the defendant always needs to be questioned because of their desire to be acquitted. Regarding women's perceptions of their abortions, Osborne argues that historians must problematize their scientific knowledge about reproduction to understand women's perceptions of their pregnancies and abortions fully. Osborne's study introduces essential concepts

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<sup>47</sup> Osborne, *Cultures of Abortion*, 94-95.

<sup>48</sup> Osborne, *Cultures of Abortion*, 94-99.

<sup>49</sup> Osborne, *Cultures of Abortion*, 122-126.

<sup>50</sup> Osborne, *Cultures of Abortion*, 77.

and instructions on how to understand abortion in this period better and, importantly, how to read criminal cases against the grain to understand how context influences the source. I will apply this critical lens in analyzing court records. It will be helpful when researching the justice system, its judges and prosecutors, and how these addressed and provided reasons for punishment or pardon.

### **Courtrooms and Criminal Justice in the Republic**

In addition to relying on the literature on abortion history in Weimar Germany, this thesis also uses the history of criminal justice and the legal system. Richard F. Wetzell's edited volume *Crime and Criminal Justice in Modern Germany* examines the history of crime and criminal justice from 1871 to the 1950s and connects this history to broader themes in social, economic, and political history. In 1920, Prussia authorized judges to suspend sentences at their discretion for those capable of rehabilitation. In 1923 the *Geldstrafengesetz*, the law on fines, allowed the replacement of prison sentences with monetary fines; this led to an increase in the use of monetary fines. Wetzell also notes that penal reforms made progress in changing the goal from punishment to rehabilitation, though this only succeeded in a few prisons with reform-minded wardens. The penal reform movement altered the relationship between welfare and criminal justice; there was a shift of focus from the offence to the offender, which necessitated a deeper understanding of the offender's background and personality. Finally, Wetzell addresses how Berlin reporters changed court reporting into a journalistic genre, a significant feature in the daily press. Whereas Weimar's criminologists focused on the relationship between genetics and criminality, reporters focused on social factors as the cause of crime.<sup>51</sup> Wetzell's study provides context for understanding the workings of the German legal system and its understanding of criminals, which in turn aids in my knowledge of court decisions in clemency trials.

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<sup>51</sup> Richard F. Wetzell, *Crime and Criminal Justice in Modern Germany* (New York: Berghahn Books, 2014), 8-12.

Barnet Hartston and Daniel Siemens detail the importance of court reporters in their respective articles “Closing the Courtroom: Press Restrictions and Criminal Trials in Late Nineteenth Century Germany” and “Explaining Crime: Berlin Newspapers and the Construction of the Criminal in Weimar Germany.” The newly unified German government wanted to move toward becoming a *Rechtsstaat*, a state founded on the rule of law, which Hartston defines as “a nation whose administration was based on values of uniformity, regularity, and certainty in decision-making.”<sup>52</sup> Hartston describes how the courtrooms valued *Öffentlichkeit*, meaning public participation and openness, and *Mündlichkeit*, relying on oral rather than written testimony for transparency. Hartston notes that “the public” went beyond the bourgeoisie and now included the proletariat.<sup>53</sup> The growth of the press in Imperial Germany impacted the criminal justice system and vice versa because it sensationalized crime for more sales of newspapers. However, it also threatened the justice system because of the “corruptive power of the press on the legal processes.”<sup>54</sup> Despite this, courtroom reporters continued to write on criminal trials in the press, a trend that continued into the Weimar era. Siemens explores the connection between the criminality debate and the courtroom journalists writing for newspapers. Court reporting was part of the criminal discourse in Weimar society. Siemens argues that “courtroom journalists often interpreted criminal acts as legitimate self-defence against a hostile environment.”<sup>55</sup> Crime reporters maintained that the root cause of crime was stress-related psychological problems and poor living conditions. Reporters usually used only information gathered in the court that they took as the truth without further background research or interviews.<sup>56</sup> Wetzell, Hartston, and Siemens’ studies will

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<sup>52</sup> Barnet Hartston, “Closing the Courtroom: Press Restrictions and Criminal Trials in Late Nineteenth Century Germany,” *Law and History Review* 35, no. 1 (February 2017) 201-202, 205, 207.

<sup>53</sup> Hartston, “Closing the Courtroom,” 202, 205.

<sup>54</sup> Hartston, “Closing the Courtroom,” 207-208.

<sup>55</sup> Daniel Siemens, “Explaining Crime: Berlin Newspapers and the Construction of the Criminal in Weimar Germany,” *Journal of European Studies* 39, no. 3 (2009): 340.

<sup>56</sup> Siemens, “Explaining Crime,” 336-338.

be helpful in this thesis as I analyze newspaper reports related to abortion trials in Berlin, particularly in providing the context of how the information was gathered and used. Furthermore, I suggest that their treatment of social causes for crime helps understand how journalists at the time write about abortion trials and contrast the sentences in such trials.

Though much work has been done to explore abortion in Weimar Germany, there is a gap in the literature regarding the criminal justice system and the courts. While Grossmann outlines the sex reform movement and the movement for the legalization of abortion and Osborne has done significant work on the cultures of abortion and a comparative analysis of doctors and lay practitioners, a dimension less appreciated in the literature is the perspectives of those who handed down convictions. The next chapter of this thesis will analyze six case files of abortion trials, which contain submissions from the courts to the justice minister to investigate the justice system's workings in the sentencing of abortionists. This, in turn, will shed light on the positionality of the courts and the judges. Because the courts were arguably an extension of politics, the Weimar political system was characterized by turbulence and division between different parties and even within parties. I aim to understand how the judges determined sentencing and pardoning, what factors swayed them to be lenient or harsh, and how they mediated their personal beliefs with the laws dictated in the penal code.

## **Chapter 2 “Wild abortionists must be stopped, and that can only be done by making them feel the full rigours of the law.”: Clemency Decisions in Trials of Abortionists in Berlin, 1926-1931**

### **Introduction**

Given the concern of the state, sex reformers and politicians across the political spectrum about population decline and the rise in abortions after the First World War, the justice system generally sought to punish abortionists harshly. Yet, as this chapter will indicate, abortionists were not treated uniformly. Despite state efforts to make abortionists “feel the full rigours of the law,” as one district judge argued, the clemency cases of abortionists show considerable variation in outcome. Using clemency cases of abortionists in Berlin from 1926 to 1931, this chapter considers the types of abortions and abortionists and then details the history of grace and pardoning in Germany, childlessness in Berlin, and medical confidentiality in the courtroom. It investigates how the court determined clemency in the trials of abortionists, addressing divergence in sentencing practices and clemency decisions.

### **Types of Abortions and Abortionists**

There were several classifications of abortions and of abortionists in this period. *Lohnabtreiber*, meaning commercial abortionist, describes abortionists who performed abortions for financial gain.<sup>57</sup> *Engelmacherinnen* referred to back-street abortionists and literally translates as ‘women who make angels.’<sup>58</sup> The term abortionist is inherently negative in this context because of its association with the criminal act of taking advantage of women. Therapeutic abortion refers to abortions performed on strict health grounds when the pregnancy endangered the health or life of the woman carrying—this type of abortion needed to be certified by two state-registered

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<sup>57</sup> Osborne, “Abortion for Sale!,” 186.

<sup>58</sup> Cornelia Osborne, “Women Doctors and Gender Identity in Weimar Germany (1918-1933),” in *Women and Modern Medicine* 109-126, eds. Anne Hardy and Lawrence I. Conrad, (Leiden, the Netherlands: Brill, 2016), 122.

physicians. A quack abortion was an abortion performed illegally by a lay person without academic medical training. The abortions within the six case files of this study were generally referred to as *gewerksmäßige Abtreibung*, commercial abortion, or simply *Abtreibung*, abortion. *Gewerbsmäßige Abtreibung* was an abortion performed for money or material goods; this abortion was the most harshly viewed because of popular opinion, and the courts believed it preyed on desperate women. The epithet quack could also apply to trained professionals who performed treatments outside of their training, such as nurses or midwives who performed abortions.<sup>59</sup> Lay abortionists referred to abortionists who were not academically trained in medicine. This also applied to midwives and nurses who performed abortions. The term lay abortionist was consistently used negatively because it signified a layperson performing a medical procedure without proper training. Lay abortionists were also called quack abortionists, wild abortionists, or rabid abortionists, all terms indicating illegality with negative associations.

### **The History of Grace**

Offences against the Reich Criminal Code came in three forms: *Verbrechen*, a major offence; *Vergehen*, a medium offence; and *Übertretung*, a minor offence. *Verbrechen* were offences punishable by death or imprisonment. Imprisonment could be in a *Zuchthaus*, a penitentiary, where prisoners were subjected to hard labour and solitary confinement for one to fifteen years or in a *Festung*, fortress, for more than five years. *Vergehen* were offences punishable by custody in a *Gefängnis*, the second most serious form of prison, for less than five years or a fine. *Übertretungen* were offences punishable by custody in *Haft*, police cells, or a fine up to 150 marks. In cases of major and minor offences, fines began at 1 Mark and had no general maximum, though there were provisions for a maximum fine in some specific cases. Fines were permitted as an alternative to

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<sup>59</sup> Usborne, *Cultures of Abortion*, 65, 77-79, 94-95.

custodial sentences, usually when there were mitigating circumstances.<sup>60</sup> *Bedingte Begnadigung*, conditional pardoning, entered into the Reich Criminal Code through a Prussian decree in 1895, thus providing young first offenders with the possibility of a suspended sentence.<sup>61</sup>

Historian James Q. Whitman writes, "The issuance of pardons is usually regarded as the definitional exercise of mercy."<sup>62</sup> A pardon is the release from the punishment; a conditional pardon means that the offender must fulfill a condition in order to maintain their release from punishment for the crime. In Imperial Germany, judges were taught to ignore the details in a case and follow the law strictly; their duty was to uphold justice by punishing the criminal act. However, social changes in the twentieth century caused an increasing hostility towards the judiciary. Judges were criticized for being ignorant of the changes in society and economy; critics argued that they were biased and practiced "class justice." Moderate socialists and liberals argued that political crimes from the right were treated more leniently than crimes from the Left. In contrast, radical Socialists argued that the judiciary favoured bourgeois interests over working-class interests.<sup>63</sup> This criticism led to reforms in the justice system. The movement for *Soziale Gerichtshilfe*, social court assistance, was central to Weimar criminal policy reforms. It began in Bielefeld under a coalition of reformers before WWI, though Judge Alfred Bozi is largely credited with its implementation in the justice system. Under this practice, welfare auxiliaries known as "court assistants" worked to produce a comprehensive portrait of the accused. They drew from records and files from welfare associations, government agencies, and medical and psychological

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<sup>60</sup> Hett, *Death in the Tiergarten*, 20-22.

<sup>61</sup> Andreas Fleiter, "Punishment on the Path to Socialism: Socialist Perspectives on Crime and Criminal Justice before World War I," in *Crime and Criminal Justice in Modern Germany*, ed. Richard F. Wetzell (Berghan Books, 2018), 73

<sup>62</sup> James Q. Whitman, *Harsh Justice: Criminal Punishment and the Widening Divide between America and Europe* (New York: Oxford University Press, 2005), 36.

<sup>63</sup> Warren Rosenblum, *Beyond the Prison Gates: Punishment and Welfare in Germany, 1850-1933* (University of North Carolina Press: Chapel Hill, 2008), 169-170

examinations to create a social diagnosis and prognosis that could be used for sentencing and pardoning decisions and guidelines for probation or parole. There was considerable tension in the courts regarding this new practice, as prosecutors argued that they should be in charge of such information and stressed that the purpose was to assist the court rather than to help the accused. Meanwhile, proponents of public welfare hoped that this movement would spur a transformation of justice to merge justice and social policy for judges to work with prison wardens, doctors, and welfare officials to discuss and decide criminal cases. Judges and attorneys feared that socializing the courts would prevent justice and that welfare for criminals would become a right rather than a privilege.<sup>64</sup> Gustav Radbruch, a lawyer, legal philosopher, and Minister of Justice in the early 1920s, championed individualization of the law and advocated for grace. In his terms, “the legal institution of grace signifies the undisguised acknowledgement of the doubtfulness of law, of the tense relationships between law and other ideas, such as ethical and religious.”<sup>65</sup> He argued that grace meant the acknowledgement that there are values that exist alongside and sometimes in opposition to those of the law and that grace acknowledged and provided the opportunity for those values to be realized.<sup>66</sup> Historian Warren Rosenblum explains that originally the *Gnade*, a pardon, was an act of mercy in which the sovereign intervened in justice and often occurred in celebration of a monarch’s birthday. However, it could also be denied without explanation. Rosenblum notes that more recently, mercy had been bureaucratized and, theoretically, given based on individual justice and public concerns of fairness.<sup>67</sup>

Between 1919 and 1923, the new Prussian government made sweeping reforms in criminal justice. In 1920, Prussian Minister of Justice Hugo am Zehnhoff, a lawyer from the Catholic Centre

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<sup>64</sup> Rosenblum, “Welfare and Justice,” 158-159, 163, 165-167; Rosenblum, *Beyond the Prison Gates*, 165-166.

<sup>65</sup> Gustav Radbruch, as quoted in Whitman, *Harsh Justice*, 146-147.

<sup>66</sup> Whitman, *Harsh Justice*, 147.

<sup>67</sup> Rosenblum, “Welfare and Justice,” 163.

Party, focused on integrating the pardon process into regular court practices. Reforms gave judges the authority to suspend sentences and probation in some instances if offenders agreed to place themselves under welfare supervision. The suspended sentence was set at the discretion of the judge and was not based on the seriousness of the crime. Judges would grant a total pardon if offenders demonstrated satisfactory behaviour during their probation. However, “it was still up to the state judicial authorities to make the final, official decision of whether to grant a pardon.”<sup>68</sup> Zehnhoff continually defended his judges from accusations that they were out of touch with the current conditions of the working class. He also maintained that this new system would give judges more insight into social conditions through the social diagnosis process.

In 1926, the Prussian Ministry of Justice called for all defendants to be socially diagnosed; this essentially meant the court had to assess any social reasons for the crime, such as the personality of the defender, their economic situation, and the impact of punishment on the offender and any family relations. The judge also set the probationary period, independent of the crime's seriousness. Despite these reforms in suspended sentencing and conditional pardons, the state judicial authorities made the ultimate decision of whether to grant a pardon.<sup>69</sup> Judicial concern for public opinion often determined who was prosecuted and received clemency in trials.<sup>70</sup> As discussed in the first chapter, the press sensationalized criminal justice and the courtrooms. Judges and other criminal justice officials worried about their public image and, therefore, could be swayed by public opinion.

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<sup>68</sup> Richard F. Wetzell, “Introduction: Crime and Criminal Justice in Modern Germans,” in *Crime and Criminal Justice in Modern Germany*, ed. Richard F. Wetzell, 1st ed., 1–28, (Berghahn Books, 2018), 5; Rosenblum, “Welfare and Justice,” 165-166, 170.

<sup>69</sup> Hett, *Death in the Tiergarten*, 223.

<sup>70</sup> Hett, *Death in the Tiergarten*, 223.

The judiciary and their advocates were highly critical of this meddling in judicial affairs by penal reformers and supporters of welfare in criminal justice, especially considering the decreasing conviction rates in favour of fines and pardons.<sup>71</sup> Courts in Wilhelmine Germany were staffed by the “right” classes, loyal to the monarchy, who were largely divorced from the reality of the lives of average Germans. The judiciary remained largely unchanged in the transition to the Republic; judges carried their conservative, authoritarian values into the Republic.<sup>72</sup> A study of Prussian legal trainee origins spanning 1922 to 1930 indicates that 95 per cent of the cohort came from upper, upper-middle, and middle-class families. There was parallel stratification within the courts; lower-level judges were more likely to have a lower and middle-class background, whereas senior-level judges were more likely to be from the upper and upper-middle classes.<sup>73</sup> The pervasive conservatism in the judiciary played an important role in the views of the judiciary and judicial officials in the case files examined here. The aforementioned judges did not favour this modernized concept of the law; they believed that socializing the courts would ruin the essential principles of criminal justice. They feared that consideration of the welfare of criminals would become a right rather than a privilege, undermining their efforts to hold offenders responsible.<sup>74</sup> They worried about the *Verweichlichung der Justiz*, the softening or weakening of justice.<sup>75</sup>

The *Vertrauenskrise der Justiz*, the crisis of justice, is a term coined in the Weimar period and stemmed from broad social distrust in the class and political bias of the criminal justice system, as well as the remoteness of the judiciary from everyday Germans’ lives and from important social and economic changes. The working-class, in particular, viewed the judiciary with considerable

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<sup>71</sup> Rosenblum, “Welfare and Justice,” 165-167, 170-171.

<sup>72</sup> Hett, *Death in the Tiergarten*, 1, 225.

<sup>73</sup> Anthony McElligott, *Rethinking the Weimar Republic: Authority and Authoritarianism, 1916-1936*, (London; New Delhi; New York; Sydney: Bloomsbury, 2014), 101.

<sup>74</sup> Rosenblum, *Beyond the Prison Gates*, 165-166

<sup>75</sup> Rosenblum, “Welfare and Justice,” 172.

animosity.<sup>76</sup> Critics argued that the judiciary practiced class justice, meaning that judges “favoured bourgeois interests against the working-class.”<sup>77</sup> “Class justice” generally referred to the class distinction in trial outcomes. Outcomes of political trials saw offenders from the Left punished more harshly than those on the Right. This was such a common occurrence that Emil Julius Gumbel, a Heidelberg statistician, coined the phrase “Easy on the right, hard on the Left” in response to court decisions on cases of political murder.<sup>78</sup> These critiques of the justice system had existed before the establishment of the Republic, as Social Democrats in Imperial Germany argued that “just as law could not exist independently of the existing social order... judges could not issue verdicts independently of their class background.”<sup>79</sup> This discrimination can be seen in other aspects of criminal justice, including, as this chapter will demonstrate, in clemency trials of abortionists.

### **Medical Confidentiality in the Courtroom**

Another controversial consideration was the role of medical confidentiality; whether doctors were legally required to report cases of illegal abortions to authorities was a contentious issue. As they are today, doctors were also expected to maintain the confidentiality of their patients’ medical history, though many exceptions have been made to the rule. The main issue with medical confidentiality was whether doctors could be required to give evidence in court about their patients’ health conditions or experiences. Scholar Andreas-Holger Maehle writes on the Imperial German case, noting the tension between “the state’s claim on medical information for the prosecution of criminal offences and doctors’ obligation of confidentiality.”<sup>80</sup> Since before unification in 1871,

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<sup>76</sup> Rosenblum, “Welfare and Justice,” 165.

<sup>77</sup> Rosenblum, *Beyond the Prison Gates*, 169-170

<sup>78</sup> Hett, *Death in the Tiergarten*, 1,

<sup>79</sup> Fleiter, “Punishment on the Path to Socialism,” 72.

<sup>80</sup> Andreas-Holger Maehle, *Contesting Medical Confidentiality: Origins of the Debate in the United States, Britain, and Germany*, (Chicago, IL: University of Chicago Press, 2016), 1, 3, 7.

the legal code of Germany maintained sections to protect the confidentiality of patient records. Despite legal provisions that protected the confidentiality of patients, section 139 of the criminal code stipulated that breaches of confidentiality were allowed in instances of the prevention of serious crimes. The question then was whether abortion should be considered a serious crime.<sup>81</sup>

In 1914, the German Supreme Court confirmed during an appeal process for criminal abortions “that doctors were entitled to give incomplete evidence on the grounds of their legal duty of confidentiality.”<sup>82</sup> This view prevailed during the Weimar Republic.<sup>83</sup> As this chapter will show, however, maintaining the confidentiality of patients was often disregarded. Though there are instances where the women having the abortion remain unnamed, more frequently, their right to privacy was not upheld. I will use the initials of women who had abortions or attempted abortions to protect their privacy in this study. While their full names are included within the case files, I believe it is important to preserve their anonymity for such a personal decision. The names of the abortionists, whether a trained doctor or lay healer, will appear since they are named in the digitized holdings of the *Geheimes Preussische Staatsarchiv*, the Prussian Privy State Archives.

### **Childless Berlin**

This chapter will focus on cases exclusively from the city of Berlin. Berlin was different from rural Germany during this period.<sup>84</sup> As outlined in the introduction, Germans believed that rates of fertility signalled a nation’s strength. Therefore, the falling birth rates combined with their defeat in WWI signalled the end of Germany’s position among the European powers and the world.<sup>85</sup> Between 1871 and 1880, Berlin’s birth rate was 43.1 per 1000 population. However, in

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<sup>81</sup> Maehle, *Contesting Medical Confidentiality*, 86

<sup>82</sup> Maehle, *Contesting Medical Confidentiality*, 89.

<sup>83</sup> Maehle, Andreas-Holger, and Sebastian Pranghofer, “Medical Confidentiality in the Late Nineteenth and Early Twentieth Centuries: An Anglo-German Comparison / Ärztliche Schweigepflicht im Späten 19 und Frühen 20. Jahrhundert: Ein Deutsch-Englischer Vergleich,” *Medizinhistorisches Journal* 45, no. 2 (2010): 209-211.

<sup>84</sup> Osborne, *The Politics of the Body*, 75.

<sup>85</sup> Osborne, *The Politics of the Body*, 32, 71, 81-82.

the early twentieth century, Berlin was noticeably childless.<sup>86</sup> In 1925, Berlin's percentage of married couples without children was 45.2 per cent compared to rural couples and those from smaller towns, with figures of 12.4 per cent and 20.3 per cent, respectively.<sup>87</sup> In 1924, Berlin had the lowest birth rate in the world at 9.4 per 1000. Berlin typified the hysteria surrounding the birth rate, going so far as being described by contemporaries as "sterile Berlin," making it an ideal case study of clemency trials of abortionists.<sup>88</sup>

The Weimar economy was turbulent. After staggering hyperinflation that peaked in 1923, the country saw a brief period of economic stabilization between 1924 to 1928. However, Germans suffered again when the Great Depression hit the world economy. The economic crisis in 1929 sharpened the focus on the birth rate and the abortion issue. As Grossmann notes, the issue of the birth rate and abortions appeared to represent a question of survival. Women managed their reproduction during more challenging economic times because they simply could not afford larger families. Especially hard hit by unemployment, women were more likely to be cut off from employment insurance than men and also more likely to be wage labourers in an uninsured industry. For many women, the dual burden of work and reproduction became unmanageable. Abortion became a tactic in reproductive strategy to limit births and ensure the survival of the woman and the family.<sup>89</sup>

The increasing rates of abortion concerned political officials and doctors as they watched figures climb while birthrates fell. Abortion figures ranged widely because they were essentially estimates; abortions were underreported because of their illegality. After 1900, there were

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<sup>86</sup> Grossmann, *Reforming Sex*, 4.

<sup>87</sup> Christina Benninghaus, "'No, Thank You, Mr Stork!': Voluntary Childlessness in Weimar and Contemporary Germany," *Studies in the Maternal* 6, no. 1 (2014: 1-36), 5.

<sup>88</sup> Grossmann, *Reforming Sex*, 4.

<sup>89</sup> Peukert, *The Weimar Republic*, 61-66; Grossmann, "Abortion and Economic Crisis," 68-70.

estimated to be 100,000 abortions per year. In the 1920s, illegal abortions were estimated at 250,000 annually, though some estimates went as high as 500,000. During the Great Depression, they were estimated to be around 1 million per year.<sup>90</sup> Osborne argues that the variation in medical estimates of abortion deaths suggests the estimates are often more of ideological than medical value. They show how experts perceived the problem.<sup>91</sup> Additionally, miscarriages treated in hospitals were suspect. Max Hirsch, a prominent sexologist and gynecologist, asserted that in Berlin, 78 per cent of all miscarriages in married women were illegally induced. Ernst Bumm from the Berlin University Hospital for Women claimed it to be 89 per cent.<sup>92</sup> Abortionists were increasingly blamed alongside the aborting women. Medical discourse painted lay abortionists as threatening to society because they exploited and endangered the lives of women in precarious and desperate situations. Lay abortionists were also held responsible for the high maternal mortality rate, though doctors accused lay abortionists to obscure the fact that obstetrics and gynecology needed improvement.<sup>93</sup>

Because doctors aimed to monopolize the healthcare industry, they painted non-academic healers as incompetent and dangerous.<sup>94</sup> Doctors may have argued that abortions were safe when they performed them, but in reality, fatalities and injuries frequently happened because many medical doctors did not receive comprehensive training in performing abortions. They argued that all medical terminations carried risks. Osborne's research indicates that even when medical doctors were tried, they were often acquitted despite having shown incompetence, negligence, or

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<sup>90</sup> Osborne, "Abortion for Sale!" 185; Robert Heynen, *Degeneration and Revolution*, 554.

<sup>91</sup> Cornelia Osborne, "Women Doctors and Gender Identity," 122.

<sup>92</sup> Osborne, *The Politics of the Body*, 186-187.

<sup>93</sup> Osborne, "Abortion for sale!" 184-186; Patricia Stokes, "Pathology, Danger, and Power: Women's and Physicians' Views of Pregnancy and Childbirth in Weimar Germany," *Social History of Medicine* 13, no. 3 (2000): 361.

<sup>94</sup> Willem De Blécourt and Cornelia Osborne, "Women's Medicine, Women's Culture: Abortion and Fortune-Telling in Early Twentieth-Century Germany and the Netherlands," *Medical History* 43, no. 3 (1997): 381.

malpractice. Even when doctors were found guilty of criminal abortion, they were sentenced more leniently than lay abortionists.<sup>95</sup> Furthermore, judges “tended to overlook improper indications for terminations because medical practice differed substantially from legal theory.”<sup>96</sup>

### **The Doctor and the Midwife**

The following case from 1926-1927 is an example in which a doctor was pardoned despite killing a woman during an illegal abortion, thus demonstrating how the courts treated doctors more leniently than lay abortionists. This case concerns the German general practitioner Dr. Martin Michaelis and the midwife Frau Nielsen from Berlin. Michaelis was forty years old at the time, married, and had one child. He became a doctor in 1913 and was a senior physician on reserve during WWI.<sup>97</sup> The case of Michaelis and Nielsen is an example in which a midwife worked *with* a doctor in the field of women’s health. Osborne and other historians depict doctors and lay abortionists in competition with one another, and other scholars have noted that doctors in this period sought to monopolize healthcare and outlaw lay medicine.<sup>98</sup> This case is particularly interesting because not only does it involve a doctor and midwife working together, but it also demonstrates the protectiveness of doctors of their colleagues within the court system. Additionally, it includes a letter in defence of Michaelis from Erich Kuttner, a legal expert and member of the Prussian Parliament.<sup>99</sup> The case also includes clear indications of the beliefs of the district councillor, grace attorney, and other personnel within the *Landsgericht* by way of unfavourable descriptions of Michaelis, which will be explored in this section.

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<sup>95</sup> Osborne, *Cultures of Abortion*, 76-78.

<sup>96</sup> Osborne, *Cultures of Abortion*, 78.

<sup>97</sup> GStA I. HA Rep. 84A, Nr. 57815, 4. All translations from the case files used in this thesis are my own.

<sup>98</sup> See Osborne. “Abortion for sale! The Competition Between Quacks and Doctors in Weimar Germany,”; Labisch, “From Traditional Individualism to Collective Professionalism: State, Patient, Compulsory Health Insurance, and the Panel Doctor Question in Germany, 1883-1931.

<sup>99</sup> GStA I. HA Rep. 84A, Nr. 57815, 18.

Michaelis was charged with two crimes: the first was a negligent homicide at work. Nielsen brought a woman, Frau S., to Michaelis for an abortion without her husband's knowledge. Nielsen had rinsed out Frau S.'s vagina and brought her to be examined by Michaelis, who found the fetus in her vagina. Michaelis determined they needed to remove it, and Nielsen helped anesthetize her. This resulted in profuse blood loss, and she suffered a "spasm." Nielsen wanted to stop the bleeding and take her to the hospital, but Michaelis refused. He then took the afterbirth out with forceps and was worried he had pierced the uterus because the forceps had slipped. Afterwards, he lay Frau S. on the couch in his office, then Frau S.'s sister and Nielsen took her home. Michaelis visited her later and prescribed ice packs; he also told her to call Dr. Lüpmann in the area if her pain increased. After she repeatedly called on him for increasing pain, Dr. Lüpmann ordered her transferred to the hospital. She died on the way. The death certificate stated the cause of death was heart failure resulting from a miscarriage. A later autopsy revealed that she bled to death from a pierced uterus.<sup>100</sup>

The second charge was against Nielsen for helping to attempt an abortion. Unfortunately, the proceedings for Nielsen are not available within the case file, though it notes that proceedings against her had to be held separately due to her illness. Nielsen confessed that she had brought many women who believed they were pregnant to Michaelis for a fee and helped him use anesthetic during the procedures. They also performed abortions on women they knew were not pregnant to make more money, continuing to use the curettage method that doctors were known for using.<sup>101</sup> The judge first convicted Michaelis on one count of abortion from 1921, in which Nielsen took a woman who suspected she was pregnant to Michaelis, who proceeded with the abortion.<sup>102</sup>

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<sup>100</sup> GStA, I. HA Rep. 84A, Nr. 57815, 4, 6-8.

<sup>101</sup> Osborne, *Cultures of Abortion*, 124.

<sup>102</sup> GStA, I. HA Rep. 84A, Nr. 57815, 4, 6-8.

Originally, Michaelis was charged with violating paragraph 222 and sentenced to one year in prison for the negligent homicide of Frau S. In addition, he was charged under paragraphs 218, 43, 47, and 49 and sentenced to one year and six months for performing a professional abortion.<sup>103</sup> The sentence was then stayed pending clemency proceedings which illustrate many issues referenced in the literature on abortion, from professional doctors defending colleagues despite significant evidence against them and class bias within the court. It also indicates the communication between various levels of court officials to determine appropriate sentencing. In this case, the opinions of various court officials and expert witnesses varied and were often at odds. This case file thus also offers an opportunity to explore how officials negotiated in clemency proceedings when the opinions of witnesses and officials were divided.

The court ruled the severity of the offence gave no grounds for a pardon; the public prosecutor agreed, given the nature and severity of the crimes. The grace attorney recommended not pardoning Michaelis on both counts. In the case of the negligent killing, he argued that the actions of Michaelis demonstrated his criminality. The grace attorney maintained that despite the expectation of such complications after the medical procedure, Michaelis' actions were criminal. He wrote that "the convicted person, as a doctor and as a person, has a bottomless lack of conscience.... He is a criminal."<sup>104</sup> As for the second crime of commercial abortion, the grace attorney did not consider the convicted worthy of a pardon. He said,

I am convinced that he did not carry out the abortion out of pity for the unfortunate pregnant woman but only out of greed. While I personally hold that overpopulation is our worst enemy and that it would be desirable for legislation to encourage abortion to the widest extent possible, this personal view cannot prevail over the law for the reason that an amendment to this law is not to be expected given the forthcoming change in criminal legislation.<sup>105</sup>

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<sup>103</sup> GStA, I. HA Rep. 84A, Nr. 57815, 4, 6-7.

<sup>104</sup> GStA, I. HA Rep. 84A, Nr. 57815, 4-5.

<sup>105</sup> GStA, I. HA Rep. 84A, Nr. 57815, 4-5.

In this instance, the grace attorney revealed his belief that abortion should be legal and that he opposed the abortion law. Furthermore, the grace attorney distinguished between types of abortionists, indicating that he accepted abortion practices that care for the “unfortunate pregnant woman” while rejecting those that take advantage of such women.<sup>106</sup>

The judge’s fear of overpopulation is unusual here, since contemporary debates, as outlined above, generally focused on the falling birth rate. His concern about overpopulation likely stemmed from the nineteenth-century fear that the “quality” of people was declining due to population growth, as the population in Germany more than doubled between 1800 and 1900 from almost 25 million to over 56 million. While fears of overpopulation were still present during twentieth-century population debates, the focus increasingly fell on declining birth rates. Certainly, fears of overpopulation of the wrong type of people remained, such as those in the working-class, alcoholics, and other people deemed undesirable to have children, but there was a noticeable effort to increase the birth rate for healthy and high-quality Germans. If anything, this comment speaks to the age of the judge and confirms that the judiciary was out of touch with social conditions during the Republic, as public debates were dominated by increasing the birth rate and encouraging the “right” type of people to have children.<sup>107</sup>

In abortion case prosecutions, doctors often protected their own, even when there was clear evidence of malpractice. This case file contains a letter from an expert witness defending the actions of Michaelis. Professor Dr. Kohlrausch, a professor at the University of Berlin and an expert witness, attested that the complications of medical terminations, such as a pierced uterus, were often unavoidable. Kohlrausch attempted to argue that the negligent killing was not caused by the operation but rather because Michaelis did not subsequently send the woman to the hospital.

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<sup>106</sup> GStA, I. HA Rep. 84A, Nr. 57815, 5.

<sup>107</sup> Osborne, *The Politics of the Body*, 1-2.

Kohlrausch insisted that there was no way to know that the woman would have survived if she had been transferred to a hospital, going so far as to say that Michaelis' recognition of the perforated uterus did not mean that he knew it would be fatal without hospital treatment.<sup>108</sup> Kohlrausch's defence of Michaelis is unsurprising; patients' experiences and views were placed below the need to protect doctors from the law and the medical disciplinary body.<sup>109</sup>

A letter from the politician Erich Kuttner advocating for Michaelis was an anomaly in this case. Kuttner, a member of the Prussian parliament for the SPD, advocated for clemency on grounds similar to those advanced by Kohlrausch, writing that "the court assumed the negligent homicide because Dr. Michaelis failed to take the patient to the hospital after the perforation of the uterus had taken place."<sup>110</sup> Furthermore, Kuttner claimed "that the court completely disregarded the statement of the expert when it was extremely doubtful whether the patient could have been saved."<sup>111</sup> He concluded that he was convinced that Michaelis was "a personality whose character and way of thinking can be described as absolutely deserving of clemency."<sup>112</sup> Kuttner did not say that Michaelis was not guilty, but he argued that his character made him worthy of a special pardon to be issued in 1928 in celebration of the Republic's president Paul von Hindenburg's eightieth birthday. Two hundred prisoners were recommended for pardons by the Ministry of Justice, mostly communist political prisoners who participated in the 1923 riot in Hamburg and elsewhere in Germany. Additionally, each German state put forth a list of prisoners they recommended for

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<sup>108</sup> GStA, I. HA Rep. 84A, Nr. 57815, 18, 26

<sup>109</sup> Osborne, *Cultures of Abortion*, 92.

<sup>110</sup> GStA, I. HA Rep. 84A, Nr. 57815, 18.

<sup>111</sup> GStA, I. HA Rep. 84A, Nr. 57815, 18.

<sup>112</sup> GStA, I. HA Rep. 84A, Nr. 57815, 18.

pardon.<sup>113</sup> In Prussia alone, more than 12,000 prisoners were freed or had their terms commuted to expire before Christmas 1927.<sup>114</sup>

Kuttner's stance is also peculiar because it does not line up with his party's belief about the abortion paragraph. As noted in the introduction, the SPD was involved in reforms to the abortion paragraph, though their coalitions with the Catholic Centre Party, who adamantly opposed the legalization of abortion, meant that they could only go so far in this regard. The SPD wanted abortion to remain illegal but to allow it in certain socio-economic, eugenic, and medical situations.<sup>115</sup> The abortion laws at the time of this court proceeding targeted commercial abortionists, especially those that preyed on women in desperate circumstances. Kuttner was the SPD's expert on judicial process and reform and played a prominent role in the debates on the *Vertrauenskrise der Justiz* in 1926 and 1927. His letter advocating for clemency on behalf of Michaelis still stands out, especially because several court and justice officials were convinced of Michaelis' unworthiness and guilt. Kuttner's generally critical stance toward the justice system may therefore explain his defence of Michaelis despite the severity of the crimes committed and the opposition from other officials to a pardon.<sup>116</sup>

The court ruled the severity of the offence meant Michaelis did not deserve to be pardoned. However, a letter dated April 8, 1927, from a district councillor advocated for one-year probation and a fine of 3000RM. This was not for legal reasons but "solely out of sympathy for the convict with a weak character."<sup>117</sup> The councillor remarked that if the courts decided to deny Michaelis his

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<sup>113</sup> "500 Germans to get Hindenburg Amnesty: Political Prisoners Will Benefit President's Eightieth Birthday—Waiters Plan Strike," *The New York Times*, September 30, 1927.  
<https://timesmachine.nytimes.com/timesmachine/1927/09/30/issue.html>, page 4.

<sup>114</sup> "12,000 Get Amnesty in Prussia," *The New York Times*, January 15, 1928, page 53,  
<https://timesmachine.nytimes.com/timesmachine/1928/01/15/94121464.html?pageNumber=53>.

<sup>115</sup> Fowkes, "The Question of Gender and Sexual Politics," 243, 245.

<sup>116</sup> Conversation with Dr. Thomas Saunders, February 8, 2023.

<sup>117</sup> GStA, I. HA Rep. 84A, Nr. 57815, 13.

medical license, he would be pushed into quackery. The *Landgericht* argued for probation because he was an “unsteady person who could succumb to the temptations of the big city.”<sup>118</sup> The wide range of opinions demonstrates that multiple factors came into play when court officials determined whether to extend clemency. It also reflects the willingness of doctors to protect their own, as the letter of Kohlrausch advanced questionable arguments about Michaelis’ actions and attempted to poke holes in the evidence of guilt. Eventually, the sentence against Michaelis was suspended with a probationary period until October 31, 1930. Michaelis was convicted of the crime but did not serve a prison sentence. Instead, he was issued a fine of 3000RM. His case is an example of the justice system privileging a doctor over the rights of the woman who died because of his negligence.<sup>119</sup>

### **Convictions and Clemency in Trials of Lay Abortionists**

In the case of the masseuse Anna Engelhardt, arrested for performing multiple abortions, the judges showed a clear inclination to convict. In 1922, Engelhardt assisted patient E.H. in an abortion by referring her to a fellow abortionist who gave E.H. an injection. Engelhardt was sentenced to ten months imprisonment, and her appeal was thrown out by the Supreme Court. In another case of the same year, Engelhardt performed abortions on two separate occasions and received compensation. Her sentence for these crimes is unclear in the records. In a third instance, Engelhardt referred a patient to Dr. Mayer, who later performed the abortion in surgery and was sentenced to nine months in prison. In a final case, Engelhardt performed an abortion on patient M.P. for a fee. In total, Engelhardt was sentenced to two years and eleven months in prison, and her appeals for clemency were denied on all charges. Engelhardt had a criminal record; she performed three abortions in the period of 1922 to 1923 for which she was compensated, and she

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<sup>118</sup>GStA, I. HA Rep. 84A, Nr. 57815, 5-6.

<sup>119</sup> GStA, I. HA Rep. 84A, Nr. 57815, 40-41.

referred two women to other abortionists, one being a doctor. Engelhardt also had a prior conviction of cronyism.<sup>120</sup>

The district judge presiding over the case argued that since the applicant had been convicted of five abortion charges as well as of cronyism, “there [was] no reason for a show of clemency.”<sup>121</sup> The judge’s inclusion of the prior conviction is important to consider insofar as he noted the “criminal inclination” of the convicted.<sup>122</sup> This phrase aligns with eugenic beliefs relating to racial hygiene and social class, as some people believed that people of the working class were genetically predisposed to commit crimes. Her sentence for violating paragraph 218 was relatively severe, though she was released on probation after serving only a small part of her sentence.<sup>123</sup>

An aspect of this case worthy of note is the evidence it offers of a community network to support women seeking abortions in working-class communities, as it demonstrates midwives referring women to other abortionists.<sup>124</sup> In this instance, there is also more evidence of the connection and cooperation between doctors practicing abortions and lay abortionists such as midwives, despite previous claims that they were always in competition with one another.<sup>125</sup> When considering why midwives referred women to doctors when they were in competition, one must consider the risks and repercussions for lay abortionists as compared to doctors. All abortions carried risks for the patient in this period. Although practitioners’ methods of performing abortions varied, it seems probable that lay abortionists referred their clients to professional colleagues in cases where there was a higher risk of complications or of being found out. As this chapter

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<sup>120</sup> GStA, I. HA Rep. 84A, Nr. 57817, 4-5.

<sup>121</sup> GStA, I. HA Rep. 84A, Nr. 57817, 5.

<sup>122</sup> GStA, I. HA Rep. 84A, Nr. 57817, 4.

<sup>123</sup> GStA, I. HA Rep. 84A, Nr. 57817, 2.2.

<sup>124</sup> Compare Osborne, “Rhetoric and Resistance,” 72, 76, 79.

<sup>125</sup> See Osborne, *Cultures of Abortion*.

indicates, doctors were sentenced more leniently than lay abortionists, even in otherwise similar circumstances.

As a point of comparison, a private tutor and daughter of a court secretary Pelagia Manthev was charged with paragraphs 218 and 219 and sentenced for acting as an assistant in abortions performed by Drs. Mayer and Kolm. Manthev met her accomplice, Dr. Mayer, in 1911 when he was training to be a doctor. Manthev hoped they would eventually marry. After the war, Mayer became a licensed doctor; he ran a women's health clinic and became well-known in gynecologists' circles and with midwives who would refer women who wanted abortions. Manthev was assumed to have acted as an assistant in these abortions. A second doctor, Dr. Kolm, acted in this case, though his suicide on conviction meant his testimony was excluded. Manthev was also involved in a previous criminal trial with another Dr. Meyer. Together they performed abortions in her apartment, though Dr. Meyer committed suicide after he had been arrested.

Manthev was sentenced to a year and a half in prison and a loss of civil liberties for three years, but she was pardoned. The discussion of clemency in her case went very differently from that of Engelhardt. Despite her involvement in more abortion crimes, the courts treated Manthev more leniently than Engelhardt. Both a state prosecutor and grace attorney argued that they did not support clemency for Manthev, likely because of her criminal record, but the district judge granted her clemency. He wrote,

She is a pitiable person who has apparently become severely hysterical as a result of the preceding criminal proceedings [...] I remember she came to see me during the previous clemency trial and seemed downright pathetic. I consider her worthy of the favour she has been asked for, and I also consider it advisable so that her emotional confusion as a result of this punishment, which she feels to be bitter injustice, does not become even greater.<sup>126</sup>

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<sup>126</sup> GStA, I. HA Rep. 84A, Nr. 57817, 8.

This rationale indicates traditional ideas of gender differences at the court; women were believed to be ruled by their emotions and to be passive and submissive.<sup>127</sup> The district judge made the following assessment of Manthev,

The condemned woman came to me repeatedly; she makes an almost pathetic impression, looks like a very old woman, and behaves so strangely that even as a layman, one would like to assume that this affair in connection with the long investigation has completely wrecked her mentally. I do not consider her to be as guilty as it appears because I am of the opinion that she was much more subject to the deceased doctor's servitude than the courts assumed and that evidently, she even then, as a result of the repeated disappointed hopes of marriage, had become severely hysterical.<sup>128</sup>

His description betrays patriarchal assumptions. He argued that she would not have committed the crime had it not been for her hopes to marry Mayer, implying her emotions governed her behaviour. Manthev, a woman, was thus assumed to have been under the control of Mayer, a man. Her unmarried status and childlessness, which could have caused the court officials to perceive her as deviant, were used by the district judge to excuse and explain her crimes because of her old age. Furthermore, her father was a court secretary, which may have influenced the decision to fully pardon her.

The case of abortionist Fanny Hoffmann demonstrates that personal character figured in abortion trials and sentencing as well. Hoffmann was a 47-year-old widow, homeopathic healer, and writer. She had a criminal record with four convictions for assisting in abortion and for attempted abortion. She also had a history of giving lectures and writing articles advocating for the abolition of penal provisions in abortion cases. On April 11, 1929, Hoffmann performed an abortion on a young woman who was two or three months into her pregnancy for 46 RM. Hoffmann injected a toxic liquid into her uterus, and the young woman miscarried the next day.

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<sup>127</sup> Osborne, *Cultures of Abortion*, 135.

<sup>128</sup> GStA, I. HA Rep. 84A, Nr. 57817, 6.

On April 21, 1929, the young woman died of blood poisoning. The court convicted Hoffmann for commercial abortion combined with negligent homicide and sentenced her to two years in prison. Hoffmann appealed for clemency, but the senior public prosecutor did not support the appeal.<sup>129</sup> The case went before the district judge, who advocated for the conversion of the time in a penitentiary into prison. He wrote,

Viewed in light of the sentence as a whole, there is only one previous conviction on her criminal record. She profited only minimally from her actions. Her previous crime can also reasonably be seen as one of personal conviction, as evidenced by her call for the abolition of the abortion laws. Against this, what she did carries a high public risk and resulted in the loss of life. Taking into account the favourable reports from the penal institution, which suggest the prospect of future good behaviour, I do not oppose the conversion of her sentence.<sup>130</sup>

The district judge outlined his views clearly. Despite the accused having only one relevant prior conviction, Hoffman's killing of the young woman and work in reforming the abortion paragraph meant the court should deny full clemency. Despite the penal institution's favourable reports of Hoffmann's character and the unlikely prospect of her recommitting, he concluded that she deserved prison time. Hoffmann's writing and lectures on the abolition of penal sentences were another contributing factor to her prison sentence. She evidently believed in providing abortion care regardless of the consequences.

Judgment in the case of Albertine Lüdecke in 1931 contrasts starkly with that of Hoffmann. Despite having committed similar acts as Hoffmann, Lüdecke received much more lenient treatment. Lüdecke was a 53-year-old seamstress, married to a car mechanic, and had no criminal record. In November 1929, she aborted a woman's pregnancy in the sixth month with an injection of a Lysol solution. A termination so late in the pregnancy was unusual, as most abortions took

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<sup>129</sup> GStA, I. HA Rep. 84A, Nr. 57861, 5.

<sup>130</sup> GStA, I. HA Rep. 84A, Nr. 57861, 5.

place in the first months of pregnancy. The woman subsequently died “in pain.”<sup>131</sup> Usborne speculates that Lüdecke was either overconfident in her practice, eager to help, or that the woman was so desperate to be rid of the unwanted child that she concealed how far along she was in the pregnancy.<sup>132</sup> Lüdecke was sentenced to nine months in prison and then appealed for clemency. She had the support of the clemency authorities, who advocated for parole for the remainder of her sentence of about five months; she served time in remand from February 14, 1930, to June 4, 1930, when her trial took place. However, the district judge rejected her plea for clemency. In his words:

The supporters of the abolition of Article 218 of the Criminal Code justify their point of view, among other things, with the fact that it must be avoided that people without any training and experience carry out this dangerous operation. Apparently, the convict did not dilute the Lysol solution enough. From every point of view, however, wild abortionists must be stopped, and that can only be done by making them feel the full rigours of the law.<sup>133</sup>

The district judge evidently took the position of the moderate Left, which viewed abortion as permissible only in situations related to the health of the mother and when carried out by an academically trained doctor. The clemency appeal went to the Minister of Justice, who agreed that Lüdecke did not deserve clemency. Since Lüdecke and Hoffmann were both working-class women, it appears Hoffmann’s criminal record made the difference in her sentence, as she was viewed as a habitual criminal and therefore received a longer sentence. The meagre earnings of Lüdecke for her service arguably also swayed the judge to view her more favourably. There was indication that she was inclined to help women in unfortunate situations rather than take advantage of them for significant financial gain.

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<sup>131</sup> GStA, I. HA Rep. 84A, Nr. 57854, 2.

<sup>132</sup> Usborne, *Cultures of Abortion*, 112.

<sup>133</sup> GStA, I. HA Rep. 84A, Nr. 57854, 2.

### A Tale of Two Quacks

The abortion trial of the writer Berg and the sanatorium owner Bergel, who were both charged and convicted of negligent homicide and incitement to have an abortion, is illuminating with respect to the appeal process of Berg.<sup>134</sup> It also provides a case study of public outcry in response to the death of a young woman and its potential role in influencing judicial officials' decisions on the appeal. In 1927, Bergel employed a nineteen-year-old woman as his medical assistant and maid who became pregnant by him. Bergel sent her to his friend, "Doctor" Berg, when she was seven months pregnant. Therapeutic abortions were permitted to protect the life of the person carrying, but they still required two doctors to sign off on the medical necessity.<sup>135</sup> Berg and Bergel lied to her by claiming she had a heart and lung disease, which protected her from Paragraph 218, thus getting her consent to perform the abortion. Berg performed the abortion, in which he pierced her uterus with a sharp instrument and perforated the abdominal cavity. Bergel drove her to a private clinic far away instead of the nearby hospital, and she died shortly afterward. On June 11, 1928, Berg was sentenced to one year and six months in prison for abortion and negligent homicide, while Bergel was sentenced to nine months for inciting abortion. Berg's verdict was final, but Bergel appealed.<sup>136</sup>

The Ministry of Justice monitored the public outcry in response to the sentencing of Berg and Bergel by documenting articles in various Berlin newspapers, making it a useful case for understanding whether officials considered public perceptions of crime and criminal justice in an appeals process. On June 14, 1928, the newspaper *Der Abend* published an article by Dr. Hermann Hieber from the Social Democratic Press Service, which criticized the light sentences of Berg and

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<sup>134</sup> Unfortunately, the first names of both Berg and Bergel are unavailable within the case file.

<sup>135</sup> Osborne, *Cultures of Abortion*, 70.

<sup>136</sup> GStA, I. HA Rep. 84A, Nr. 57842, 7-8.

Bergel. The original judgement from the court sentenced Bergel to only six weeks in prison. Hieber argued that “brave, conscientious physicians, who kill off a fetus out of humanity, get three times as much.”<sup>137</sup> Hieber’s comparison of such lay abortionists to academically trained doctors is important, as it shows that abortion discourse was entangled with the professionalization of medicine and debates about who could perform healing services. Furthermore, it indicates Hieber’s approval of abortions only if performed by doctors. Hieber also advocated for abortions on compassionate grounds, indicating that his viewpoint was in line with others of the period who viewed abortions as acceptable for women only in desperate situations. Hieber went so far as to call the Ministry of Justice to complain that the sentence against Bergel was too light and to inquire about whether there would be a second hearing in the appeals court.<sup>138</sup>

Another issue raised by the press was the significance of both abortionists using titles illegally, thus allowing the two abortionists to deceive their clientele. An article by Karl Tschuppik on June 18, 1928, criticized the use of official titles by lay people, especially titles awarded by German princes. Tschuppik noted that before the founding of the Republic, German princes bestowed orders and titles at their own behest. Despite losing their thrones, some continued to award titles in exchange for money in the Weimar period. Tschuppik revealed that the Duke of Sachsen-Coburg-Gotharechtmäßig awarded the title “Professor” to Bergel by “decree of November 9, 1918” and that this enabled him to pose as a medicine man, attracting gullible people and betraying their trust.<sup>139</sup> The bestowal and use of the official title “Professor” by Bergel was, in fact, illegal according to Article 109 of the German Constitution.<sup>140</sup> Tschuppik’s article argued like Hieber insofar as he was critical of Berg and Bergel’s use of titles because the titles allowed

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<sup>137</sup> GStA, I. HA Rep. 84A, Nr. 57842, 8.

<sup>138</sup> GStA, I. HA Rep. 84A, Nr. 57842, 5

<sup>139</sup> GStA, I. HA Rep. 84A, Nr. 57842, 6.

<sup>140</sup> GStA, I. HA Rep. 84A, Nr. 57842, 6.

them to mislead patients. Though Tschuppik's article is more critical of Bergel's use of the title than the actual sentence, it still drew negative attention to the Ministry of Justice and its sentencing practices, thus warranting its inclusion in the case file.

These newspaper articles figured in Bergel's appeal process insofar as they spurred court and justice officials to try to influence the appeals process. Various justice officials kept the Prussian Minister of Justice updated on the Bergel file. On October 5, 1928, the Prosecutor's Council wrote to the Prussian Minister of Justice,

On October 4 of this year, the appeal of the public prosecutor's office and the accused Bergel was scheduled for the main hearing before the criminal court here. The prosecutor's appeal was dismissed. Upon the appeal of the accused Bergel, the first judgment was changed insofar as Bergel was only sentenced to 6 weeks in prison for assisting in an abortion, which has been served through the detention on remand. I have appealed the verdict.<sup>141</sup>

Another senior public prosecutor appealed the verdict, but the Prussian Minister of the Interior withdrew the appeal because he found the judgement did not violate the law. Despite public outcry, the Chairman of the Berlin-Schöneberg Court of Lay Judges reduced the sentence even further; he decreed that the execution of Bergel's remaining sentence be suspended for three years with the prospect of a future pardon on November 26, 1928. However, on November 25, 1929, the Reich Court dismissed the revised sentence for the accused Bergel.<sup>142</sup> They did not provide a reason for the dismissal of the revised sentence for the accused. In sum, it appears that various justice officials attempted to intervene in the sentence of Bergel because of public outcry in the media. However, it had little effect on the result. A note within the case file indicates that Hieber called the Ministry of Justice on June 16, 1928 to inquire about whether there would be a second hearing in appeals court; in said phone call, he argued that the sentence for Bergel was "too

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<sup>141</sup> GStA, I. HA Rep. 84A, Nr. 57842, 11.

<sup>142</sup> GStA, I. HA Rep. 84A, Nr. 57842, 13-15, 21

light.”<sup>143</sup> Bergel’s sentence remained light compared to other lay abortionists, especially considering his illegal and inaccurate use of the title “Professor.” Bergel’s sentence continued to be reduced and eventually suspended, despite evidence that others who assisted were handed significantly longer sentences. As mentioned previously, Manthev’s sentence for assisting in abortions was three years. However, the chief prosecutor withdrew the appeal to lengthen the sentence, arguing that the sentence did not violate the law.

### **The Case of Frau Sprenger**

A commercial abortion by Martha Sprenger in Berlin is another case that attracted media attention. Sprenger was accused of having an abortion and of carrying out abortions on many women between 1928 and 1930. She was fifty or so years old, married to a porter with grown children, and she had a criminal record. She had five previous convictions for performing commercial abortions in 1903, twice in 1910, 1919, and 1927; she had served two years in prison. Sprenger’s mother, a ‘wise woman,’ taught her how to perform abortions.<sup>144</sup> Sprenger was a well-known abortionist; she often allowed alternative forms of payment, such as books or household chores, in place of money, which added to her popularity. She insisted that her fortune-telling cards told her she needed to help unfortunate women.<sup>145</sup>

The public response to Sprenger’s arrest was to criticize the state and describe Sprenger’s actions in a positive light. On February 26, 1930, *Die Welt* described Sprenger’s practice as a place with a good reputation that was cheap, noting that she carried out her interventions according to the law despite being a lay abortionist. Her defence lawyers stated that she did not have the spirit or the will to resist helping her customers.<sup>146</sup> An article in the *Berliner Tageblatt* from March 3,

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<sup>143</sup> GStA, I. HA Rep. 84A, Nr. 57842, 5.

<sup>144</sup> GStA, I. HA Rep. 84A, Nr. 57862, 5, 26-27.

<sup>145</sup> GStA, I. HA Rep. 84A, Nr. 57862, 5, 6.

<sup>146</sup> GStA, I. HA Rep. 84A, Nr. 57862, 6.

1930, detailed how police watched Sprenger because she had many young girls visit her in the evening hours. The police did several searches but could only find evidence of her practice as a card reader. During their last search, they found extensive customer lists with the names of hundreds of women, leading to lawsuits against several hundred women.<sup>147</sup> The article fueled a public outcry that went beyond the critique by the newspaper to the Ministry of Justice. In a further article from March 3, 1930, *Die Welt* reported that the Medical Councillor Dr. Duhrenfurth said Sprenger's technique was medically flawless and hygienic and that her monetary claims were far below what doctors charge in such cases. The article concluded that the case gave reason "to attack Paragraph 218 again with all force at the second reading of the penal code reform," which took place shortly afterward.<sup>148</sup>

A letter to the editor of the *Berliner Tageblatt* and to the Minister of Justice by Friedrich Volkmann criticized the reporting of the case and the Ministry of Justice, respectively. Volkmann expressed beliefs about abortion rights common on the Left. In his letter to the Minister, Volkmann argued that the abortion paragraph forced parents to birth children they could not support because the state could not ensure that everyone was taken care of. It was, therefore, unjust to continue prosecuting for violations of paragraph 218. He asserted that "in today's social and economic circumstances, this law is tantamount to the most terrible physical and psychological tortures of the Middle Ages."<sup>149</sup> Volkmann pointed to the reality of the lives of many working-class Berliners. They did not have the economic or material resources to have large families. Parties on the Left argued that it was immoral to make families suffer by having a child they could not afford. Volkmann referenced this in saying that the children would suffer and comprise a weakened

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<sup>147</sup> GStA, I. HA Rep. 84A, Nr. 57862, 5, 6.

<sup>148</sup> GStA, I. HA Rep. 84A, Nr. 57862, 9.

<sup>149</sup> GStA, I. HA Rep. 84A, Nr. 57862, 4.

generation, expressing eugenic fears pervasive in population politics in this period. In another letter to the editor, Volkmann argued that the newspaper article that dealt with Sprenger did not mention the anti-social and demoralizing effects of the abortion paragraph on women. That paragraph may have been justifiable when it was first created but was no longer under current conditions. Volkmann judged the position of the press irresponsible, incorrectly claiming that ten million Germans<sup>150</sup> were unemployed and receiving welfare and two million families unhoused.<sup>151</sup>

Public support for Sprenger and critiques of the Ministry of Justice by newspapers did little to lighten Sprenger's sentence. A court official recognized that "there are cases where the women who had abortions did it for "serious reasons so their guilt appears small," but this did not appear to benefit Sprenger.<sup>152</sup> She performed far too many abortions illegally for her to be released without serving time. Sprenger was sentenced to serve two years in prison, minus six months served during investigation and trial, and the loss of civil liberties for three years.<sup>153</sup> Several applications for clemency were denied. The prison reported:

Based on her previous life and the impression gained from her personality, for example, with regard to the criminal liability of her crimes, she is still considered unworthy of clemency by the local civil servants' conference, and the approval of the present application is therefore again unanimously rejected.<sup>154</sup>

The clemency attorney wrote: "In view of the poor information given by the penal institution, the seriousness of the crime and the sentence, I too do not consider mercy to be appropriate."<sup>155</sup> The court also declined to grant a conditional sentence for the same reasons.

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<sup>150</sup> The figure cited in Volkmann's letter is incorrect; the figure is closer to four million unemployed Germans in 1930. See Grossmann, *Reforming Sex*, 79.

<sup>151</sup> GStA, I. HA Rep. 84A, Nr. 57862, 4.

<sup>152</sup> GStA, I. HA Rep. 84A, Nr. 57862, 13.

<sup>153</sup> GStA, I. HA Rep. 84A, Nr. 57862, 26.

<sup>154</sup> GStA, I. HA Rep. 84A, Nr. 57862, 26. The date of the report is unfortunately unavailable within the case file.

<sup>155</sup> GStA, I. HA Rep. 84A, Nr. 57862, 26.

Compared to other lay abortionists in this study, Sprenger committed far more illegal terminations of pregnancies, though she did so without any deaths recorded, unlike Engelhardt, Manthev, Hoffmann, Lüdecke, and Bergel. In this instance, the court had to make an example for her because of the sheer volume of terminations and her clear views that her actions were just. Furthermore, the numerous newspaper articles published on her case, as well as the thirty-five women charged in connection to it, meant that the government was under pressure to take a clear stance. Commercial abortionists, especially one running an extensive practice like Sprenger, had to face the full vigour of the law.

### **Conclusion**

Sentencing and clemency practices for lay abortionists varied greatly. Sentencing of abortionists came largely at the presiding judge's discretion, resulting in drastically different sentences for each case. In the case of Michaelis and Nielsen, Michaelis' status as a doctor protected him. Despite clear indications of medical malpractice, another expert witness rushed to his defence, arguing that Michaelis could not have known the consequences of perforating a uterus despite the midwife Nielsen stating that the patient needed to be rushed to hospital.<sup>156</sup> Moreover, Michaelis' professional status allowed him to pay a large fine of 3000 RM instead of serving time in prison, something that a working-class abortionist almost certainly could not afford.<sup>157</sup> Michaelis made 1000 to 1200 marks monthly, averaging an annual income of 12,000 to 14,400 marks; a worker's average weekly net income in 1927 was 33.63 marks, making a yearly income of around 1750 marks.<sup>158</sup>

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<sup>156</sup> GStA, I. HA Rep. 84A, Nr. 57815, 5-6, 18.

<sup>157</sup> GStA I. HA Rep. 84A, Nr. 57815, 4; Gerard Bry, *Wages in Germany 1871-1945* (Princeton: Princeton University Press, 1960), 58. For further information on wages see Gerard Bry, *Wages in Germany 1871-1945*.

<sup>158</sup> Bry, *Wages in Germany*, 58.

In the four cases involving the death of the patient, the sentences varied from nine months to two years so that the outcome of the abortion, such as death, appears to have played a significant role in determining the sentence. Engelhardt was sentenced to two years and eleven months, significantly longer than Lüdecke at nine months, Hoffmann at two years, Berg at one year and six months, and Michaelis at one year and six months. While Sprenger did not have any fatal outcomes recorded, her sentence was on the heavier side at two years and six months. This is likely because of the scale of her service, with evidence of her performing hundreds of abortions. A shorter sentence would have failed to send the right message. Additionally, clemency decisions appear to have been determined by the size of the operation and the outcomes of abortions. The cases that resulted in death were those that were not granted clemency, aside from Michaelis', indicating that a fatal outcome was associated with harsher treatment.

In the case of Manthev, despite the state prosecutor and the clemency attorney arguing that she did not deserve clemency, the district judge granted it because he viewed her as a pitiable person under the control of the doctor she wanted to marry.<sup>159</sup> Because Manthev was a court secretary's daughter, I think it is possible this also influenced the decision to release her. Manthev had prior convictions for abortion crimes, just like many other lay abortionists, but she was ultimately released from her sentence. She was not described as having a criminal inclination like Engelhardt, likely because she acted as an assistant to a male doctor and had indicated her wish to marry him. This, combined with her elevated social status, made her a more sympathetic character worthy of clemency.

Engelhardt and Hoffmann both had similar criminal records and committed similar crimes. While Engelhardt and Hoffmann were sentenced to two years and eleven months and two years in

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<sup>159</sup> GStA, I. HA Rep. 84A, Nr. 57817, 8.

prison, respectively, Engelhardt was released after she served a small portion of the sentence. While officials granted Manthev clemency from her conviction due to her character and distress, Engelhardt and Hoffmann were sentenced more harshly. This indicates that class and court connections possibly played a role in sentencing and clemency practices.

The case of Berg and Bergel suggests a role for media, and indirectly popular opinion, in clemency decisions. The response of the officials to public outcry indicates that media response could impact the decisions of justice officials. Yet efforts of several justice officials to increase the sentence were ultimately defeated because the sentence was deemed legal by other officials. Bergel's sentence of six weeks diverged dramatically from that of Manthev, who was sentenced to three years in prison though she ultimately did not serve time.<sup>160</sup> Sprenger's case is another one in which the media arguably had some influence. It was highly publicized and generated criticism of the Ministry of Justice. While Sprenger did not negligently kill any of her clients, and a medical official testified her techniques were hygienic and safe, the large number of clients she had performed abortions on meant that the Ministry had to prosecute and deny clemency to set an example for other commercial abortionists.

From this admittedly limited sample, I speculate that doctors and midwives worked together more frequently than is usually assumed by historians.<sup>161</sup> The frequency of referrals to other abortionists demonstrates the community network for women to seek care for abortions. The examples of Nielsen and Dr. Michaelis; Manthev, Dr. Kolm, and Dr. Mayer; Engelhardt and Mayer indicate that doctors were not only included in these networks, but that not infrequently lay abortionists referred their cases to doctors. Collaboration between doctors and lay abortionists in

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<sup>160</sup> GStA, I. HA Rep. 84A, Nr. 57815, 57817.

<sup>161</sup> See Osborne, "Abortion for sale! The Competition Between Quacks and Doctors in Weimar Germany,"; Labisch, "From Traditional Individualism to Collective Professionalism: State, Patient, Compulsory Health Insurance, and the Panel Doctor Question in Germany, 1883-1931.

procedures and referring patients may be disguised by lack of available evidence. As other scholars have suggested concerning abortion statistics, many cases come to light because of the death of the patient or intervention by police. Much the same may apply to doctors and lay abortionists working together. Without denying that doctors and lay abortionists competed for the abortion market, there is evidence to suggest that they also collaborated.

The six cases of abortionists on trial examined in this chapter offer evidence for the role of class in the courtroom. Non-working-class defendants were treated with greater leniency than working-class abortionists, indicating grounds for charging class justice in these trials. Furthermore, while this chapter demonstrates that the sentencing practices of the judges varied widely, the case files also show that decisions for clemency of abortionists can be related to the outcomes of the illegal abortions, i.e., whether the patient survived or not. This contributes to the existing historiography by demonstrating the role of class justice in clemency trials of abortionists, in that doctors and members of the upper class were privileged in cases. This chapter also suggests that while doctors and lay abortionists competed, the frequency of referrals and cooperation between them indicates more frequent collaboration between the two groups than previously suspected.

The subsequent chapter will focus on the sex reformer and doctor Else Kienle, who was charged and imprisoned under Paragraph 218 in Stuttgart, Württemberg, in 1931. Kienle is a prominent figure within the sex reform movement, and her trial for abortion crimes was highly publicized. Württemberg and its courts were known for their conservatism at the time, thus offering an opportunity to explore whether the outcome of the trial would differ substantially from that in a liberal city like Berlin. This chapter will compare the result of the Kienle case with those of the six cases in Berlin. Kienle is characterized differently within the historiography, as

she resists alignment with a particular political party and a single faction of the sex reform movement.<sup>162</sup> It will also examine several of Kienle's published works to assess her views on abortion and the justice system.

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<sup>162</sup> Calvert, "Making the Case," 41.

## Chapter 3 “How infinitely wide are law and life...”: The radical reformer Else Kienle

### Introduction

Women doctors used the sex reform movement to inhabit newly gendered spaces in the Weimar Republic; they claimed they were better suited to provide marriage, sex, and birth control counselling because of their dual experience as women and physicians.<sup>163</sup> While many German women doctors defended women’s right to birth control, they still believed in traditional ideas about sex and pleasure within a marriage. Therefore, women doctors mixed progressive and traditional ideas towards women’s sexuality.<sup>164</sup> Else Kienle, one such woman doctor, emerged as a prominent figure in the abortion reform debates because of her 1931 arrest alongside the Communist doctor Friedrich Wolf in Stuttgart in the conservative state of Württemberg. Kienle’s contributions are assessed and discussed in the historiography of the sex reform movement; these are generally limited to the events leading up to and surrounding her arrest in 1931. Historians characterize Kienle’s actions and ideology diversely in the historiography. While some scholars view her as a communist, others simply see her as a non-partisan socialist. There is a consensus amongst historians that she was a maternalist feminist. I aim to offer a different reading of Kienle through an analysis of her writings. This chapter will explore Kienle’s experiences during her trial for performing commercial abortions and her beliefs about abortions through works published after the trial: her article “The Kienle Case”; her published prison diary *Frauen: Aus dem Tagebuch einer Ärztin* [*Women: From the Diary of a Doctor*]; and her autobiography *Woman Surgeon*.<sup>165</sup>

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<sup>163</sup> Grossmann, *Reforming Sex*, 66; Kravetz, *Women Doctors in Weimar and Nazi Germany*, 4; Grossmann, “German Women Doctors from Berlin to New York,” 69.

<sup>164</sup> Grossmann, *Reforming Sex*, 19, 66-70.

<sup>165</sup> Else Kienle, “The Kienle Case,” (1931) in *The Weimar Republic Sourcebook*, eds. Anton Kaes, Martin Jay, and Edward Dimendberg (Berkeley and Los Angeles: University of California Press, 1994), 213-216; Else Kienle, *Frauen: Aus dem Tagebuch einer Ärztin*, second edition (Stuttgart: Schmetterling Verlag, 1989), translations from this text are my own. Else K. La Roe, *Woman Surgeon* (London: Panther Books, 1959).

Kienle was arrested and imprisoned in Stuttgart, Württemberg, a rural state known for its conservatism, whereas the cases in the previous chapters were in the liberal city of Berlin, Prussia. This offers an opportunity to compare the outcomes of abortion trials in both a liberal and conservative context. This chapter will also investigate the viewpoint of a Weimar doctor on trial for abortions. Cornelia Osborne rightly points out that the voices of abortionists are generally lost or mediated within case files because of the circumstances of their testimonies.<sup>166</sup> Kienle's case offers a rare opportunity into the viewpoint of a commercial abortionist, thanks to her published writings. I will then explain where Kienle intersects with and diverges from factions of the sex reform movement. While Kienle has many similar beliefs to maternalist feminists, I propose that her views are too progressive and radical to be confined to that assessment. In some respects, Kienle fits into the characterization of a maternalist feminist, but there are notable variances in her beliefs. Furthermore, although Kienle did not identify with any political party openly, I concur with Osborne that her thoughts echo many of those of the KPD and other communists.

### **Kienle in the Historiography**

Else Kienle was born June 26, 1900, in Heidenheim to Otto Kienle and Elisabeth Kienle, née Zeller. Kienle grew up surrounded by science and medicine. As a young girl, Kienle was interested in medicine; she would hide in her Uncle Albert's study to watch as he treated patients. Later, her maternal grandfather nurtured her interest in science through his experiments in agriculture and breeding livestock. Kienle entered her *gymnasium*, high school, as the only girl in the school. While she was at school Germany entered WWI. After sneaking onto a train to France with prisoners of war, she volunteered her services at a hospital and observed surgeries. This experience determined that she would become a doctor. Kienle graduated as the valedictorian of

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<sup>166</sup> Osborne, *Cultures of Abortion*, 127-129.

her school and proposed the idea of becoming a doctor to her father. Despite his objections, her grandmother advocated for her medical education, and she entered medical school in October 1918.<sup>167</sup> At the time, she was able to spend time at different universities in different German towns and cities. She studied in Tübingen, Munich, and Kiel and graduated with her doctorate in medicine Heidelberg in 1923.<sup>168</sup> After graduating from university, Kienle worked in a venereal disease clinic as a dermatologist. In this position, she became aware of the misery of the lower classes through her interactions with prostitutes, and she recognized the connection between illness and social hardship.<sup>169</sup>

In 1928, Kienle opened a private hospital, Edenhall, with the financial help of her first husband, the Jewish banker Stefan Jacobowitz. After their subsequent divorce, Kienle continued working in her hospital and devoted more time to the sex reform movement. She volunteered in a counselling centre and gave informational lectures for the Reich Association for Birth Control and Sexual Hygiene.<sup>170</sup> Furthermore, she worked alongside her fellow doctor Evelyn Dauber in the *Deutsche Frauens Freiheits Partei* (DFFP), *German Women's Pacifist Party*. The DFFP was an organization created to unite women to oppose the rising National Socialists and advocate for women's rights.<sup>171</sup>

On February 10, 1931, Kienle was arrested for performing commercial abortions and imprisoned until March 28, 1931, when she was released after a ten-day hunger strike. Kienle

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<sup>167</sup> Birgit Knorr and Rosemarie Wehling, eds., *Frauen im deutschen Südwesten* (Stuttgart: Verlag W. Kohlhammer, 1993), 270; Else K. La Roe, *Woman Surgeon*, 6-9, 10-14, 22-32.

<sup>168</sup> Maja Riepl Schmidt, "Else Kienle (1900-1970): die Verteidigung der Frauen gegen das Gesetz und das Gericht der Männer," in *Frauen im deutschen Südwesten*, eds. Birgit Knorr and Rosemarie Wehling (Stuttgart: Verlag W. Kohlhammer, 1993), 271.

<sup>169</sup> Katja Patzel-Mattern, "Das 'Gesetz der Frauenwürde'. Else Kienle und der Kampf um den Paragraphen 218 in der Weimarer Republik," in *Bad Girls: Unangepasste Frauen von der Antike bis heute*, ed. Anke Väh. (Konstanz: UVK, 2003), 185.

<sup>170</sup> Florence Hervé and Ingeborg Nödinger, *Lexicon der Rebellinnen*. (Dortmund: Ed. Ebersbach, 1996), 139; Knorr and Wehling, *Frauen im Deutschen Südwesten*, 269-271.

<sup>171</sup> La Roe, *Woman Surgeon*, 115-116.

moved to Frankfurt later in 1931 and continued performing abortions; among them was one recorded death. In 1932, the judiciary warned her that she would be arrested for continuing to perform abortions, which likely spurred her decision to escape to France that year.<sup>172</sup> Shortly after she arrived in France, the Nazis branded her a traitor, seized her personal assets and those of Edenhall, and placed a warrant for her arrest of 100,000 Marks. In France, she met and married an American businessman, Henry La Roe, and then emigrated to New York. She did not resume her work as an activist and abortionist but practiced cosmetic surgery. Kienle passed away in 1970 in New York.<sup>173</sup>

Grossmann characterizes Kienle as a politically unaffiliated specialist in dermatology and venereal diseases; she also carefully notes that Kienle was unknown and therefore unprotected by the KPD, nor was she a member.<sup>174</sup> Grossmann notes that Kienle tied the necessity of abortions to women's and family needs. Grossmann's analysis reveals the complexity of Kienle's feminism, as she notes that Kienle challenged mainstream bourgeois feminism by openly discussing sexuality and reproduction in relation to women's emancipation. She interprets Kienle's prison diary *Frauen* to mean that Kienle believed women could only be truly fulfilled by motherhood while maintaining their right to sexual pleasure and control over their bodies. Therefore, Grossmann asserts that Kienle was a maternalist feminist because she stressed women's inherent differences from men. She emphasized the need for equality in the public sphere and women's right to sexual pleasure and bodily autonomy.<sup>175</sup> Similarly, Osborne notes that Kienle was a feminist who advocated for a new code of ethics enshrined in law to guarantee equality between men and women in control over

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<sup>172</sup> Patzel-Mattern, "Das 'Gesetz der Frauenwürde'", 192.

<sup>173</sup> La Roe, *Woman Surgeon*, 114, 115, 151, 157-58, 159-160.

<sup>174</sup> Grossmann, "Abortion and Economic Crisis," 130.

<sup>175</sup> Grossmann, *Reforming Sex*, 83, 88

their reproduction and sexuality.<sup>176</sup> Their views differ insofar as Grossmann asserts Kienle is a socialist. By contrast, Osborne highlights Kienle's role as a communist doctor who advocated for the repeal of all laws that hindered access to contraceptives.

Osborne's characterization of Kienle as a Communist is novel. Additionally, few associate Kienle with the KPD and categorize her as a non-partisan socialist. Katherine E. Calvert's recent article "Making the Case Against Paragraph 218: Narrative and Discursive Strategies in Else Kienle's *Frauen: aus dem Tagebuch einer Ärztin*" analyses the 1932 text published after Kienle's arrest. Calvert notes that *Frauen* is largely neglected in works about abortion in Weimar Germany, despite the arrests of Kienle and Wolf regularly being featured.<sup>177</sup> Calvert situates *Frauen* in contemporary discourses, arguing that it "resists alignment with one particular strand of the campaign and calls into question the polarisation of positions in the Weimar feminist landscape."<sup>178</sup> Calvert characterizes Kienle politically as combining feminist perspectives with socialist views, though she resisted associating with political parties.<sup>179</sup> Calvert concurs with Grossmann that Kienle is a maternalist feminist. Kienle used her gender to support her authority on abortion and implied that she was better suited to understand her women patients. Calvert argues that Kienle "conflates women's capacity for childbirth with their psychological predisposition to mothering."<sup>180</sup>

Politically, Kienle's rhetoric is clearly that of the Left. She criticized the economic system for exploiting the working class, though she did not explicitly denounce capitalism, and she spoke positively about the Soviet Union's rationale for abortion which permitted abortions performed by

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<sup>176</sup> Osborne, *Cultures of Abortion*, 215; Osborne, *The Politics of the Body*, 196.

<sup>177</sup> Calvert, "Making the Case Against Paragraph 218," 41.

<sup>178</sup> Calvert, "Making the Case Against Paragraph 218," 41.

<sup>179</sup> Calvert, "Making the Case Against Paragraph 218," 45.

<sup>180</sup> Calvert, "Making the Case Against Paragraph 218," 44, 57.

qualified and experienced doctors.<sup>181</sup> Calvert concludes that while Kienle argues for women's rights to control their reproduction, her medical, psychological, and social analysis in her journal *Frauen* maintains the expectation of women's desire to have children.<sup>182</sup>

### **The Kienle Case**

In December 1930 Kienle learned that an anonymous colleague denounced her for performing abortions. Eight weeks later, all of her case files were confiscated. Her published article detailing her case notes that her colleague was permanently employed at a hospital and likely had "no idea of the needs of the poor and the poorest."<sup>183</sup> Despite the advice of colleagues and lawyers, she refused to change any details on the files or destroy them. She maintained that "there was not a single case in which I terminated a pregnancy without undertaking a thorough and complete examination of the patient."<sup>184</sup> She continued to argue that "[she] did not perform a single termination without the certification of a second doctor."<sup>185</sup> She was arrested on February 20, 1931, a day after her colleague Friedrich Wolf, who belonged to the KPD and was an activist for abortion rights. Though the original warrant was for 100 cases between 1928 and 1931, the inquiry expanded to 210 cases.<sup>186</sup>

Kienle writes in her article that "after [her] arrest such a wave of smut washed over [her] that even one of [her] defence attorneys believed that it would be years before [she] saw the light of day."<sup>187</sup> The court-appointed physician interrogated her six to eight hours daily in the following weeks; Kienle defended herself in every case. She remained in a women's prison from her arrest until March 28, 1931, when they released her after she almost collapsed from a ten-day hunger

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<sup>181</sup> Calvert, "Making the Case Against Paragraph 218," 54; Osborne, "Abortion for Sale!," 185.

<sup>182</sup> Calvert, "Making the Case Against Paragraph 218," 54, 58.

<sup>183</sup> Kienle, "The Kienle Case," 213.

<sup>184</sup> Kienle, "The Kienle Case," 214.

<sup>185</sup> Kienle, "The Kienle Case," 214.

<sup>186</sup> Patzel-Mattern, "Das 'Gesetz der Frauenwürde'," 189.

<sup>187</sup> Kienle, "The Kienle Case," 214.

strike which she undertook in protest of the expansion of the inquiry to include additional outpatient cases. She was released because her health was too poor for her to be detained. While the courts accused Kienle of performing over three hundred abortions, the trial, discussed below, came to nothing.<sup>188</sup>

Kienle first published her article “The Kienle Case” on April 14, 1931, in *Die Weltbühne*, a weekly Left-leaning but non-partisan journal. The article detailed her thoughts, opinions, and experiences of the criminal case, from her denunciation to her release from prison after her hunger strike.<sup>189</sup> Kienle began her book *Frauen: Aus dem Tagebuch einer Ärztin* as a prison diary and published it in 1932. It interweaves patient case files, Kienle’s conversations with the interrogator, and her thoughts on abortions to present a compelling case for the abolition of Paragraph 218. In it, Kienle depicts a broad range of women needing abortions, citing cases of women from all classes and situations to argue the necessity for women to control their reproduction.<sup>190</sup>

As a published diary *Frauen* gives the abortionist a particular voice and shapes the story in a unique way. As Calvert suggests, while Kienle anonymizes each case and presents it as authentic, it is possible that the stories may be fictionalized, and the details altered. Kienle’s narration also becomes omniscient by commenting on the women’s motivations and desires.<sup>191</sup> Calvert argues that *Frauen’s* conversational and narrative style suggests that Kienle intended to reach a broad audience. The original publication by Gustav Kiepenheuer Verlag, a famous Left-leaning publisher that published playwright Bertolt Brecht, also attests to the belief that the book

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<sup>188</sup> Kienle, “The Kienle Case,” 215-216.

<sup>189</sup> Kienle, “The Kienle Case,” 214-216.

<sup>190</sup> Kienle, *Frauen*.

<sup>191</sup> Calvert, “Making the Case,” 46.

would garner significant public interest. However, the book appeared to have little impact, as the campaign against Paragraph 218 lost momentum after 1931.<sup>192</sup>

Kienle's autobiography, *Woman Surgeon*, spans her life from early childhood, her experiences in medicine throughout university and as a practicing doctor in Germany, and her work to oppose the rise of the National Socialists. While she discusses contraception and women's rights throughout the book, her work in the sex reform movement as an abortionist and her time in prison remain largely untouched. Katja Patzel-Mattern attributes her lack of discussion surrounding her work alongside the KPD and abortions in her autobiography *Woman Surgeon* to the time and place of publication. The fear of Communism and the illegality of abortions in America in 1958 are likely factors in their exclusion.<sup>193</sup>

### **Comparing Case Outcomes: Kienle and Other Abortionists**

Kienle's writing reveals a complex and multifaceted view on abortions, women's rights, and reproduction. Her experience offers a comparison in case outcomes from a German city to that of Berlin. The state of Württemberg was primarily Catholic and conservative with, as Kienle notes, a conservative judiciary. While all parties participated in the Württemberg government, the Catholic Centre Party maintained popularity throughout the Republic. Unlike other German states, the SPD regularly received fewer votes in Württemberg.<sup>194</sup> Although it had a full social class spectrum like other rural areas in Germany, Württemberg tended to be more agrarian.<sup>195</sup> Osborne notes that the economic interrelationship between town and countryside resulted in the imposition of norms of civil society onto village life. Medical, political, moral, and juridical discourse at the

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<sup>192</sup> Calvert, "Making the Case," 43-46.

<sup>193</sup> Patzel-Mattern, "Das 'Gesetz der Frauenwürde'," 193.

<sup>194</sup> Jürgen Mittag, "The Social Democratic Party of Württemberg during the Republic of Weimar: An Analysis of the Members of Parliament," *Historical Social Research / Historische Sozialforschung* 22, no. 3/4 (83) (1997): 129-130.

<sup>195</sup> Roger Chickering, *Imperial Germany and the Great War, 1914-1918*, 3rd ed., (Cambridge, UK: Cambridge University Press, 2014), 5-6.

national level entered village life by way of media and was also mediated by members of professional classes.<sup>196</sup> Additionally, historian Elizabeth B. Jones writes that Weimar agricultural experts and political economists perceived the New Women to be as present in the countryside as in large cities such as Berlin.

In the minds of many Weimar agricultural experts and political economists, New Women were just as omnipresent in the countryside as they were in Berlin, Hamburg, or Leipzig. They warned that the postwar generation of rural female youth, both farm daughters and hired hands, embraced many of the dangerous habits and expectations of their urban sisters.<sup>197</sup>

Kienle's legal treatment can be usefully compared to two of those discussed in the previous chapter, that of Michaelis and Sprenger, who ran an extensive lay abortion practice. Her response to the interrogations demonstrates her privilege as a member of the upper class. Her status as a doctor likely played a role in her winning her freedom. Most importantly, she persuaded the court that her abortions were all medically necessary and, therefore, she walked free. Significantly, while many of the cases she performed were purely for medical reasons, many fell outside of such parameters and were performed because of social concerns, such as poverty. She convinced the interrogator that these cases demonstrated a medical need for abortion. Her expertise on the subject because of her advanced education allowed her to justify her actions. Ultimately, Kienle benefitted from her status as a doctor and member of the upper class.

The outcome of Kienle's prosecution is typical of other abortion trials of academically trained medical doctors. Despite being accused of performing more than three hundred abortions, Kienle was acquitted, indicating how the law favoured medical professionals.<sup>198</sup> Like Michaelis, who performed an abortion alongside the midwife Nielsen and killed a woman after sending her

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<sup>196</sup> Osborne, *Cultures of Abortion*, 181.

<sup>197</sup> Elizabeth B. Jones, *Gender and Rural Modernity: Farm Women and the Politics of Labor in Germany, 1871-1933* (London: Routledge, 2016), 14.

<sup>198</sup> Kienle, "The Kienle Case," 215

home with a punctured uterus, Kienle was ultimately not convicted. Michaelis faced only a 3000M fine. Kienle was accused of many more abortion crimes in her 1931 trial, but these did not result in any known deaths. She did not face charges for the one abortion related death she was accused of after her trial.

It is noteworthy that Kienle received no support from the Württemberg Physicians' Council until she was released. By contrast, Michaelis received a letter from an expert witness supporting his plea for clemency. He additionally received support from SPD legal expert Erich Kuttner. Their difference in genders likely played a role in why Kienle received less collegial support. Women abortionists were mythologized as deviant, going against their feminine nature to be "maternal, nurturing, and life-giving."<sup>199</sup> Additionally, the fear of the New Woman as a threat to men in the labour market applied in the medical profession. The medical profession was overcrowded, with men returning from war and women entering medicine in high numbers. Moreover, the economic instability and the shortage of positions increased competition in the Republic. While men were favoured in the medical profession, be it in hospitals or universities, they still felt threatened by women entering the profession. Though women doctors were few and never surpassed 6 per cent of the medical profession in the interwar years, men felt emasculated by their presence and feared their competition.<sup>200</sup> Additionally, in the rural state of Württemberg more conservative views help explain why Kienle received less support than Michaelis. As a woman and in her persistence in the conviction she acted appropriately in terminating the pregnancies she was an outlier.

The case of the lay abortionist Martha Sprenger is helpful for further comparison. Sprenger performed several hundred illegal abortions without any deaths. An expert witness attested to the flawless technique that she used to perform the abortions. Sprenger defended her actions by

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<sup>199</sup> Osborne, *Cultures of Abortion*, 107.

<sup>200</sup> Osborne, *The Politics of the Body*, 191; Kravetz, *Women Doctors in Weimar and Nazi Germany*, 16, 121-122.

insisting she did not have the will to resist helping the unfortunate women. Sprenger and Kienle both remained steadfast in their belief that they took the correct course of action; however, in Sprenger's case, this worked against her. The prison wrote that their impression of her personality meant that she did not deserve clemency, likely because she maintained that she performed the abortions to help the women. By contrast, Kienle maintained that her terminations were medically indicated, and she argued against the interrogator to convince him of this. The main difference in outcomes in these cases can be explained by Sprenger being a lay abortionist, making her terminations illegal. Kienle followed the letter of the law by securing a second opinion and certifying her terminations, even if her decision to terminate was often because of social rather than medical reasons.

### **The Viewpoint of the Abortionist on Trial**

Kienle is not just a fascinating participant in the sex reform movement. Her published writings detail the viewpoint of an abortionist on trial. Kienle describes her many interrogations while sharing her interpretations of the justice official who interrogated her. Kienle's prison diary *Frauen* and her 1931 article "The Kienle Case" are unique primary sources because they detail the viewpoint of an abortionist tried in criminal court. Kienle's perspective on her imprisonment, interrogations, and trial gives insight into the judicial processes of abortion trials.

Kienle explains that she was not initially allowed to defend herself against the accusations. Without a hearing, she and Wolf were arrested for performing abortions for pay. She was reimprisoned on "devastating charges" at her arraignment, though Wolf was released.<sup>201</sup> She notes in her article that it was apparent that she would be made an example of because the state of Württemberg was known for "its conservative and strict administration of justice."<sup>202</sup> While Kienle

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<sup>201</sup> Kienle, "The Kienle Case," 214.

<sup>202</sup> Kienle, "The Kienle Case," 214.

does not identify her interrogator, a case file from the *Reichjustizministerium*, the Reich Ministry of Justice, names the judicial officials as the district judge Hausermann and the public prosecutor Dr. Hagedorn.<sup>203</sup> For weeks after her arrest, she was interrogated six to eight hours a day. During this time, she decided “to assist the examining magistrate in clarifying the matter through calm, expert discussion.”<sup>204</sup> Kienle clarified the details of every case and she waited until her interrogation was over to file an appeal. The criminal court denied her request; they recognized that she charged only a moderate payment for the abortions, but she remained a suspect in nineteen cases. Before the interrogations concluded, however, the courts widened their investigation to include outpatients. Fifty new cases were opened, despite Kienle protesting that she did not perform terminations on outpatients and always kept patients in-clinic for a few days post-termination. Kienle furthermore argued that the broadening of the investigation meant that the criminal court reached an impasse because they could not find substantial evidence to convict from her in-patient case files. Kienle resolved to begin a hunger strike and refused to give further testimony in protest; due to her ill health from the hunger strike she was released.<sup>205</sup>

Kienle was critical of the inequity in the courts, arguing that many women could not accurately defend themselves because they were not equipped with the information and confidence to do so. Kienle did not just practice as a doctor; she gave lectures to educate women on reproduction and to promote women’s rights. She was comfortable speaking about such intimate matters, whereas, as she notes, many women did not have such abilities. She argued that the questioning itself was an ordeal of “mental and physical torture” and that women reacted differently to interrogation after being accused of having an abortion.<sup>206</sup> Additionally, officials used

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<sup>203</sup> GStA, I. HA Rep. 84A, Nr. 57871, 5.

<sup>204</sup> Kienle, “The Kienle Case,” 215.

<sup>205</sup> Kienle, “The Kienle Case,” 213-216.

<sup>206</sup> Kienle, *Frauen*, 87

methods alternating “from gentle persuasion to more or less explicit threats.”<sup>207</sup> She argued that the women were surprised and generally under shock when interrogated, and “it is from this mood that often incomprehensible statements are made that are later revoked and corrected.”<sup>208</sup> Kienle addressed the issues in interrogating women on trial,

Many a woman who was interrogated did not really understand what was being asked of her. Every visitor to small court hearings knows this muddled state in which the judge and the accused seem to be speaking two completely different languages - not only externally in dialect. And how much more consequential was such a misunderstanding bound to have an effect when it was a matter of hidden, inherently feminine things about which very few people, even the educated, are able to express themselves clearly and unreservedly?<sup>209</sup>

Kienle asserted that these women could not explain their situations adequately nor defend themselves effectively from such accusations.

Kienle was particularly critical of the lack of expertise of the court physician on the subject of abortion and issues raised about Paragraph 218. The difference in her understanding of the law compared to that of her interrogator was considerable. She argued that her viewpoint as a doctor could not be reconciled with his views and understanding of the law. Kienle noted that the examining magistrate continuously appealed to her sense of responsibility as a doctor to protect human life and, therefore, to identify her violations of this sense of duty. Kienle acknowledged the difficulty of her responsibility,

...the terms of the doctor and the judge diverge widely here. It is not easy to assert oneself against such a schematic view of medical duty. There is no such thing as this simple, unconditional responsibility for ‘life’. There is seldom a clear, simple line of responsibility. Because responsibility means: making the right decision in the multitude of possibilities.<sup>210</sup>

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<sup>207</sup> Kienle, *Frauen*, 87.

<sup>208</sup> Kienle, *Frauen*, 87.

<sup>209</sup> Kienle, *Frauen*, 92.

<sup>210</sup> Kienle, *Frauen*, 97.

Kienle criticized her interrogator's lack of understanding of the real difficulties faced by the women she terminated pregnancies for. This is evident in the case of Anna M., a patient with pulmonary tuberculosis and other health issues related to her first pregnancy. Anna had a child out of wedlock with her partner, and they planned to marry when they could afford to. Anna became pregnant again, which exacerbated her health issues. She went to Kienle, who performed the operation but was arrested during aftercare. Kienle recounted that the magistrate asked her, "Wouldn't the girl have carried her first child healthily? And everything went well? How did it come about, then, that this second pregnancy was interrupted?"<sup>211</sup> It took a long time for Kienle to convince the interrogator that this case had a purely medical justification, despite his experience with abortion cases. Furthermore, Kienle argued that a man could not understand women's experiences. She therefore questioned his authority, asking "Can a man judge the things that are being interrogated here? Does he understand, and does he really grasp the whole depth of these sufferings – can he sympathize with them and realize them?"<sup>212</sup>

Women doctors used this tactic to secure their authority on women's reproduction by arguing that their dual experience as women and physicians made them a better choice to treat women than men.<sup>213</sup> Likewise, women doctors used their 'maternal feminine nature' to create a space for themselves in women's health. Women doctors argued that they treated women in the context of their lives. They were at the forefront of the movement to medicalize women's bodies and family life; they believed that making medicine more humane and empathetic would keep women from going to lay practitioners and quacks, whom they competed with for women

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<sup>211</sup> Kienle, *Frauen*, 86.

<sup>212</sup> Kienle, *Frauen*, 24.

<sup>213</sup> Atina Grossmann, "German Women Doctors from Berlin to New York: Maternity and Modernity in Weimar and in Exile," *Feminist Studies* 19, no. 1 (1993): 69.

patients.<sup>214</sup> They additionally, like the rest of the medical profession, viewed these lay practitioners to be dangerous. Kienle argued that her gender identity meant she had an ethos of treating the patient more entirely than a man. In her autobiography, *Woman Surgeon*, Kienle asserts that her feminine nature made her a better physician.

It seems to me a woman physician can never become as hardened to suffering as a man. By nature – or by her conditioning in our society, perhaps – she’s bound to have a deeper compassion, a deeper understanding, and therefore a more tenacious will to fight sickness and relieve pain. Especially in the field I’ve chosen, it seems to me a woman surgeon would have many advantages.<sup>215</sup>

Kienle also leveraged gender to criticize Paragraph 218. She argued that the law remained a public area where women had limited rights despite those gained elsewhere. “The judiciary in particular closes itself to the nature of these changes and makes itself the champion of antiquated concepts.”<sup>216</sup> Kienle thus used gender to reinforce her authority over women’s issues while asserting the gendered difference in the quality of care.

Many of Kienle’s arguments against the abortion law were centred around the gender of those who created the law. She was adamant that men could not determine the legality of abortions because they do not experience pregnancy. For example, in *Frauen*, she asserted:

Our law today is male law everywhere and especially in this respect. The woman feels that exactly. She defends herself against it in her own way: She circumvents the man’s law, which she can no longer regard as binding, just, or natural. The man prescribes. He wants to see the spirit, the form, the letter of his law fulfilled. The woman feels the deeper meaning behind these injunctions of the male laws against her, she not only feels it- she experiences it, she has to endure it with her body, carry it out. And if you start to doubt this sense, then the laws lose their validity for you. The man may argue a hundred times: Reverence for women and for female fertility is prescribed by the law for him. What does he know about her feelings?<sup>217</sup>

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<sup>214</sup> Grossmann, *Reforming Sex*, 19, 56, 66-70; Kravetz, *Women Doctors in Weimar and Nazi Germany*, 4.

<sup>215</sup> La Roe, *Woman Surgeon*, 70-71.

<sup>216</sup> Kienle, *Frauen*, 103.

<sup>217</sup> Kienle, *Frauen*, 82.

Building on her point that women are excluded from the creation of the law, referring to the legal code created at German unification, Kienle argues that “No one asked what the woman herself said about this exploitation and management of her body.”<sup>218</sup> In this respect Kienle was typical of many Leftist women sex reformers by maintaining that it was the woman’s choice alone in reproduction.

Though Kienle did not align with a single political party, she consistently invoked the language of the Communist movement against Paragraph 218 in her arguments. Like the KPD, Kienle argued for the economic necessity of the abortion paragraph. The depression hit working-class Germans especially hard; many could barely provide for their families, let alone a new baby. She argued that “the views and the laws of a richer and happier time still apply” and that “the right to demand that the child be carried to term can only be claimed by society that guarantees the child a simple life,” meaning the basics of existence such as housing and food.<sup>219</sup> Many socialist and communist reformers believed that under socialism, the national birth rate would naturally increase and abortion rates would fall because material needs would be met.<sup>220</sup> She furthermore argued that abortion punishment in practice usually targeted proletarian women, that it was, in short, heavily class-based.<sup>221</sup> Citing cases from years before 1932 that only four or five per cent of women from wealthy circles were punished for abortions, she argued that working-class women were far more likely to be prosecuted.

Kienle’s *Frauen* details her admiration for the system in the Soviet Union. She argued that the German system should be based on the Russian one, in which abortions were legal within the first three months of a pregnancy. Kienle noted that in the Russian case, only 0.4 per cent of

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<sup>219</sup> Kienle, *Frauen*, 80, 82.

<sup>220</sup> Grossmann, *Reforming Sex*, 21; Grossmann, “Abortion and Economic Crisis,” 70-71, 74, 77.

<sup>221</sup> Kienle, *Frauen*, 131.

abortions exceeded the three-month limit.<sup>222</sup> While Kienle echoed KPD propaganda about abortions, in her book *Woman Surgeon* she explained that her trip to the Soviet Union, “had killed any spark of sympathy [she] might have had for the Bolsheviks.”<sup>223</sup> Kienle travelled to Astrakhan in the Soviet Union in 1931 with other doctors to help treat civilians during a deadly epidemic. She was accused of poisoning hundreds of comrades while supervising treatment. She was imprisoned in Lublianka Prison for a short period before she was released and returned to Germany.<sup>224</sup>

Kienle maintained that “the law of forced motherhood is— as has already been said a few times here—mainly made by men and very clearly represents political and economic interests.”<sup>225</sup> Furthermore, she asserted that the German law of forced birth was for military reasons because “the emperor needs soldiers.”<sup>226</sup> These claims echoed critiques from both socialist and communist reformers, as many argued that the law criminalizing abortions was less to do with protecting offspring than in providing citizens to provide workers for the capitalist system and cannon fodder for the emperor.<sup>227</sup>

Kienle used different approaches to convince her readers that abortions should be decriminalized, drawing on the viewpoints of various factions in the sex reform movement. From a legal history standpoint, she argued that certain old German legal provisions only imposed a small fine on abortions. She drew on Roman and Greek societies, which were idealized in German culture, arguing that they did not punish people for having abortions, and when they did, it was only lightly. Additionally, she reiterated Aristotle’s views that recognized abortions as acceptable

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<sup>222</sup> Kienle, *Frauen*, 143.

<sup>223</sup> La Roe, *Woman Surgeon*, 136.

<sup>224</sup> La Roe, *Woman Surgeon*, 128-135.

<sup>225</sup> Kienle, *Frauen*, 137.

<sup>226</sup> Kienle, *Frauen*, 137.

<sup>227</sup> Willem Melching, “‘A New Morality’: Left-Wing Intellectuals on Sexuality in Weimar Germany.” *Journal of Contemporary History* 25, no. 1 (1990: 69–85), 76.

if the couple had more children than they could support. She used Aristotle as an example because his “social and political ideas have become the bedrock of much Christian belief down to most recent times.”<sup>228</sup> This was likely an attempt to appeal to the Catholic and Christian organizations who opposed abortion reform. She maintained that abortions were “actually not at all a sin, but a bitter necessity.”<sup>229</sup>

Kienle appealed to many factions by arguing that legalizing abortions would protect women. In her view, women were put at risk by abortions done in secret. The need to conceal the operation meant that safer techniques to perform abortions were not universally known by physicians.<sup>230</sup> She continued to argue that legal abortions done safely meant that women could have another pregnancy later when their health or economic situations improved.<sup>231</sup> Kienle’s argument for legalization also drew on views advocating for the professionalization of medicine. She indicated that almost all women who come to a doctor to terminate a pregnancy tried to do so themselves first.<sup>232</sup> By allowing doctors to perform abortions legally, women would face less risk of complications. This “would remove abortions from the realm of criminality and quackery.”<sup>233</sup> Otherwise, if the doctor did not agree to perform the termination, “the woman, exhausted by need and resolved to do whatever is necessary, goes to a quack or lays hands on herself.”<sup>234</sup>

### **Women’s Inherent Nature? Kienle’s Views on Women and Abortions**

Sex reformers held a variety of political and social beliefs. Kienle’s prison diary *Frauen* provides deeper insight into her feminist ideology. As Calvert argues, *Frauen* “resists alignment with one particular strand of the campaign and calls into question the polarisation of positions in

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<sup>228</sup> Kienle, *Frauen*, 82.

<sup>229</sup> Kienle, *Frauen*, 139.

<sup>230</sup> Kienle, *Frauen*, 142-143.

<sup>231</sup> Kienle, *Frauen*, 145.

<sup>232</sup> Kienle, *Frauen*, 97-98.

<sup>233</sup> Melching, “‘A New Morality,’” 77.

<sup>234</sup> Kienle, *Frauen*, 213-214.

the Weimar feminist landscape.”<sup>235</sup> The poles that Calvert refers to are feminists and Left-wing individuals and organizations backed by the SPD and KPD; Calvert maintains that Kienle’s positions it is not so black and white. Rather, she blends perspectives to create her argument for access to abortions. While Grossmann labels Kienle as an example of a maternalist feminist, I propose that her beliefs were too radical to warrant this label. I agree that Kienle does have views in line with the maternalist feminism of the Weimar period, but I argue that this characterization does not fully represent Kienle’s ideology and ethos. Kienle’s writings resist being categorized as maternalist or socialist or communist. She does echo maternalist feminism in this period, but her writings emphasized that women should be in control of their bodies and their pregnancies.

Grossmann and Calvert argue that Kienle fails to challenge the belief that women have an inherent maternal nature, yet this is not entirely correct.<sup>236</sup> I agree in some respects, as Kienle’s writings maintain that women are biologically predisposed to be mothers. For example, Kienle writes that women are “destined to reproduce mankind, they had to and wanted to fulfill this great task. But the time of motherhood could no longer be simply determined by the man. Being aware of this high calling, the new woman demanded that she make her own decisions about the most important hour of her existence.”<sup>237</sup> While she assigned the role of mother to all women, she did note the importance of the ability to control timing.

When writing about her experiences with the misery of women carrying unwanted pregnancies, Kienle further solidifies her belief in choice in pregnancies. For example, she writes on the struggle of women who “suffer from their fertile woman nature” because “they have been ensnared by themselves, by their own blood and being, in torments infinitely crueler than any

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<sup>235</sup> Calvert, “Making the Case,” 41

<sup>236</sup> Calvert, “Making the Case,” 56-57; Grossmann, *Reforming Sex*, 88.

<sup>237</sup> Kienle, *Frauen*, 152.

externally recognized disease.”<sup>238</sup> Furthermore, Kienle argues, “The man always sees an exception in a woman who refuses to carry the child to term. A reprehensible exception. An unnatural being. And yet she acts according to her essence and in the sense of nature tamed and ruled by human will.”<sup>239</sup> This reveals that Kienle understood that women’s ability to become pregnant was separate from their desire to carry and that some women did not want to have children. This is exemplified when she questioned, “What use was the right to vote if she was still supposed to remain a mindless breeding machine? The woman’s struggle was decided at this point: conquering the right to one’s own body. Just as there was no compulsion for the man to procreate, the woman could not be forced to give birth.”<sup>240</sup> In this passage, Kienle states that no woman should be forced to carry a child. At the same time, she asserts her authority over the subject because she is a woman. This is one of the few passages where she clearly outlines this belief.

I concur with Calvert that Kienle may have emphasized the importance of motherhood and presented abortion as a last resort to avoid accusations of immoral behaviour.<sup>241</sup> For example, Kienle argues that doctors must reject abortion as the ultimate goal and use birth control education to prevent pregnancies, thus avoiding the need for abortions.<sup>242</sup> I suspect her writing was influenced by her wish to reach a wider audience. It synthesized multiple views, combining those of radical communists and quite traditional ideas about women’s societal role.

### **Conclusion**

Kienle typifies the privileged status of the doctor on trial for abortion charges. She was ultimately released after enduring a hunger strike in protest of the new case files being added to

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<sup>238</sup> Kienle, *Frauen*, 63.

<sup>239</sup> Kienle, *Frauen*, 83.

<sup>240</sup> Kienle, *Frauen*, 153.

<sup>241</sup> Calvert, “Making the Case,” 57

<sup>242</sup> Kienle, *Frauen*, 145.

the investigation. Her education provided her the tools to counter the arguments of her interrogator successfully. Her case differs, however, in that she did not have the support of her, mostly men, colleagues, even though she benefitted from her status as a doctor and a member of the upper class. Kienle's convictions have generally been represented accurately in the historiography. As Calvert argues, Kienle bridged medical, political, and feminist perspectives in the sex reform movement.<sup>243</sup> While I agree that Kienle was a socialist based on her works, I also recognize, with Usborne, Kienle's debt to the KPD's and Leftist beliefs.<sup>244</sup> Her writings clearly drew on Communist arguments about abortion. She argued for the abortion paragraph to be decriminalized, claiming that many women, mainly from the working class, did not have the material wealth necessary to support a child. Furthermore, Kienle referenced the economic and military-based rationales to maintain the abortion paragraph, echoing Communist propaganda. The purpose of her book *Frauen* was to convince people of the inherent right of women to control their bodies. The KPD did not need to be convinced of this; they actively and consistently campaigned for the legality of abortions. From this perspective I take Kienle's beliefs to be Communist.

I disagree with the consensus that Kienle is wholly maternalist feminist. While Kienle used maternalist feminist ideas, I propose that she was doing so to appeal to the standard belief in the inherent differences in genders. Many believed that women were inherently different from men and were biologically predisposed to be maternal. Kienle agreed with this biological destiny, though her arguments focus on women's physical ability to carry children rather than their inherent desire to do so. Whatever Kienle conceded on this point, she maintained that women should have the right to terminate their pregnancies. Additionally, Kienle's writings are a valuable comparative source for the viewpoint of the abortionist on trial without the influence of the courtroom or

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<sup>243</sup> Calvert, "Making the Case," 42.

<sup>244</sup> Usborne, *Cultures of Abortion*, 215; Usborne, *The Politics of the Body*, 196.

interrogators; it is her voice, as she speaks freely after being acquitted of her charges. This reading of her writings offers a new perspective on a prominent sex reformer and the experiences of a person on trial for abortion in the criminal justice system in Weimar Germany.

## Conclusion

This thesis has assessed the perspectives of the justice system that handed down convictions in abortion crimes and examined how clemency decisions were made. It also explored the views of Else Kienle, an abortionist on trial and sex reformer, through her political and personal writings. The criminal courts in Germany convicted lay abortionists at a greater rate than doctors who performed abortions. Even when doctors were tried, they were often acquitted. The judiciary treated medical professionals leniently, and medical professionals wielded significant influence in the courts.<sup>245</sup> Lay abortionists were generally treated more harshly than doctors who performed abortions.

In Berlin cases, sentencing and clemency practices for lay abortionists varied greatly, mainly at the discretion of the presiding judge and grace attorney. Social status played a role in determining sentencing and clemency decisions in the case of Dr. Michael Michaelis. His position as a doctor protected him despite clear indications of medical malpractice resulting in the death of his patient. Another doctor defended Michaelis' decision not to rush the patient, whose uterus had been perforated during the operation, to the hospital. He thus benefited from support within his professional community. In addition, Michaelis' income allowed him to pay a large fine of 3000 RM instead of serving time in prison. A member of the working-class could not have afforded such a fine.<sup>246</sup> In the case of Pelagia Manthev, the private tutor and daughter of a law court secretary charged with assisting in abortions, the district judge granted her clemency because he viewed her as a pitiable person, as she claimed to have assisted the doctor in the abortion because she wanted to marry him. It's also possible her father's status influenced the clemency decision, as she had previous abortion charges like the others convicted of abortion crimes who were denied

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<sup>245</sup> Osborne, *Cultures of Abortion*, 77.

<sup>246</sup> GStA, I. HA Rep. 84A, Nr. 57815, 4, 5-6, 18.

clemency.<sup>247</sup> While lay abortionists Anna Engelhardt and Fanny Hoffmann committed similar crimes and had similar criminal records to Manthev, they were ultimately treated more harshly. This implies that class and court connections played a role in sentencing and clemency practices.

In the four cases involving the death of a patient, the outcome of the abortion appears to have played a significant role in determining sentences and pardon. The sentences still varied widely. Engelhardt was sentenced to two years and eleven months, compared to Albertine Lüdecke at nine months, Hoffmann at two years, Berg at one year and six months, and Michaelis at one year and six months. While Sprenger did not have any fatal outcomes recorded, her sentence was on the heavier side at two years and six months.

Additionally, the scale of the abortion practice seems to have affected the decision on whether to pardon the convicted, as Martha Sprenger performed abortions on hundreds of women for money, goods, or services.<sup>248</sup> Sprenger did not kill any of her clients, as other abortionists did, and a medical official testified that her technique was safe and hygienic. However, the sheer size of her operation meant that the Ministry of Justice had to convict and do so harshly. She was sentenced to two years and six months in prison, and her application for clemency was denied.

The cases of Sprenger and Bergel also suggest that media, and therefore popular opinion, could influence clemency decisions. Sprenger's trial was highly publicized in the newspapers, which meant that the Ministry of Justice made an example of her. In the case of Bergel, the effort of justice officials to increase the sentence came in response to criticism in the newspapers. While officials tried to increase the six-week sentence, their efforts were ultimately defeated since the verdict was within legal limits.<sup>249</sup>

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<sup>247</sup> GStA, I. HA Rep. 84A, Nr. 57817, 8.

<sup>248</sup> GStA, I. HA Rep. 84A, Nr. 57862, 5, 6.

<sup>249</sup> GStA, I. HA Rep. 84A, Nr. 57842, 8.

These cases demonstrate that while doctors and lay abortionists competed, there is evidence that they also collaborated to provide abortion care for women. The examples of Nielsen and Dr. Michaelis; Manthev, Dr. Kolm, and Dr. Mayer; Engelhardt and Mayer, indicate that doctors were included in networks of working-class women seeking abortions and that lay abortionists even referred their clients to doctors for abortions. As other scholars have suggested, abortion statistics are estimates because many cases only came to light because of the deaths of patients. In a similar vein, the lack of evidence for these networks may be because they escaped notice from the police and the criminal courts. The examples studied here suggest the possibility that midwives, lay abortionists, and doctors cooperated with one another to give abortion care to women.

The six cases of abortionists in the second chapter of this thesis also point to the role of class in the courtroom, as non-working-class defendants were treated with greater leniency than working-class abortionists. This is evidence of one form of class justice. Even as sentencing practices and clemency decisions were mainly at the discretion of the judges and grace attorneys in each case, key factors were class as well as whether patients survived the procedure.

Consideration of the sex reformer and woman doctor Else Kienle provides a unique opportunity to understand the perspective of an abortionist on trial. While the cases from the second chapter were from the liberal city of Berlin, Kienle's case took place in Stuttgart, in the conservative and rural state of Württemberg. Despite the conservatism of the state, the outcome of the Kienle case is typical of a doctor from the upper class in that she was not convicted. I attribute this to the fact that the judges across Germany were inherited from the Imperial period. They remained overwhelmingly conservative. In this respect, geographic location did not play a critical role in these cases. Kienle's views have generally been accurately represented in the historiography, yet I further emphasize, like Osborne, that Kienle drew on Communist arguments

about abortions in her writings. I depart from the consensus that Kienle was a maternalist feminist, despite her use of their rhetoric in her views. Kienle used the idea of the biological destiny of women to reproduce children to appeal to the common belief in differences between men and women. However, she argued that this was related to their physical ability to become pregnant rather than an inherent biological desire to become mothers. Kienle steadfastly maintained that women should have the right to determine the timing of their pregnancies and to terminate them. This interpretation of her writings offers a new perspective on Kienle's views and position as a prominent sex reformer.

The cases explored in this thesis reflect wider themes in Weimar Germany. As discussed in the first chapter, reforms in criminal justice allowed for the use of grace and advocated for understanding the social background of the accused. However, these advances were resisted by the judiciary because they feared they would undermine criminal justice. The working-class distrusted the judicial system since they believed it was prejudiced against them on the basis of class. Inconsistencies in the treatment of convicted abortionists reflected this class bias as thematized in the contemporary discourse of the *Vertrauenskrise der Justiz*, the crisis of trust in justice.<sup>250</sup> Additionally, these cases reveal the tension between older ideals and modern values, which cut across class differences, not only in criminal justice. While the sex reform movement represented modern values, such as women's right to contraceptives and reproductive choice, the goal of increasing the birth rate by returning women to their traditional roles as wives and mothers also reflected modern theories of population control. In this regard, Kienle's writings reflect the complexities of the sex reform movement since she drew on competing arguments about abortion and reproduction.

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<sup>250</sup> Rosenblum, "Welfare and Justice," 165.

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