

**THE GENDERING OF GOVERNANCE
AND THE GOVERNANCE OF GENDER:
Abortion Politics in Germany and the United States¹**

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The different conceptions of injustice offered by Nancy Fraser's recognition and redistribution paradigms in her lead essay in this volume include alternative notions of the collectivities who suffer injustice. In her redistribution model, class, race, gender or other groups are, like Marxian classes, situated in relation to a political economy and have some distinctive relation to the production of goods and people in society. In her recognition model, these same groups are more like Weberian status groups.¹ The status issue, the lack of respect and prestige within the culture, places some persons by virtue of their group identities in a stigmatized or marginalized position in relation to others. This status inequality, like inequality in economic resources, is regarded as a fundamental social injustice, not because it causes specific psychic harms but because status is an important dimension of ordered social life. Important as these two dimensions of inequality and injustice are, we wonder whether they exhaust the important dimensions on which groups may be seen as politically arrayed.

Taking the connection that Fraser makes to Weber seriously, we raise the question of whether class and status alone define the dimensions of inequality. In the classic Weberian model there is a third dimension, that of power. We suggest that abortion conflict is a useful arena in which to examine the implications of justice conceptualized in such power terms. We take injustices of power, and struggles over power, to contain within them moments of both recognition and redistribution, but not to be wholly reducible to them. Thus, in our conclusion, we attempt to suggest how both recognition and redistribution remain entangled in the politics of abortion above and beyond what our analysis of the power dimension can reveal.

We approach the issues of equality and justice from the standpoint of feminist critiques of conventional stratification models. Such critics have pointed to the need to widen the lens on stratification to include more than inequality and injustice expressed in differential access to and control over economic resources, to look at the dimensions of autonomy (freedom to make life choices and freedom of movement) and power (participation in decisions concerning the social group) (Agassi 1989, Ferree and Hall 1996). Both autonomy and power as defined above (i.e., as participation in political authority) would fall within the broader domain of power with which Weber was concerned. We therefore think it useful to split the concept of power into its two elements, autonomy and authority. Power, whether expressed as authority or autonomy, is a third dimension that we suggest should join Fraser's two dimensions of redistribution and recognition as a model for understanding justice relations.

From a Weberian perspective, autonomy reflects power as experienced at the level of the individual, power as the expression of self-determination. Thus an ability to act for or express oneself, without or despite constraints from others in the community, is the heart of autonomy. Autonomy can be exercised in resistance to or with the support of society and the state. Familiar limitations on autonomy based on gender include cultural stereotypes defining certain feelings or actions as gender-inappropriate as well as societal and state assaults on bodily integrity (legally allowing marital rape or punishing women who violate the family's honor by their conduct). The positive dimension of power manifested as autonomy often appears discursively as

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Authority is the second dimension of power. Such power involves actual participation in decisions concerning the common life in any society. The exercise of authority is seen in the

ability to define the nature of the common good, and also reflects the ability to share in and exercise collective authority in and over the community as a whole. Limitations on authority based on gender include such familiar state exclusions as the denial of the right to vote or to serve on juries, but restrictions of authority may also be informal and social rather than institutionalized as formal political rules. Informal limits on women=s authority can be seen, for example, in the social reluctance to place women in positions where they would be supervising men or in the deference given to husbands as family decision-makers. Although denial of authority may be based in issues of cultural value or status (recognition) or lack of economic resources (redistribution), it compounds both with a further injustice of its own.

Both personal autonomy and collective authority reflect Weber=s conceptualization of power as relational, as a matter of politically determining how the community and individual relate. The nature of this political relationship between individual and community is itself subject to examination in moral terms as just or unjust. Because we see the political relationship between individual and community as not wholly subsumed in Fraser=s understanding of recognition and redistribution, there remain distinctive issues of justice to be considered with regard to struggles over autonomy and authority. These are *power* struggles, and they have implications for both recognition and redistribution.

Using women as the relevant group for our analysis, we suggest that autonomy is about the governance of gender, or the ways in which society and states control the self-determination of women and men as individuals, and authority is about the gendering of governance, or the access that men and women have to making decisions that regulate the common life of social groups, including states and nations. To understand power struggles as such, we need to look

both at the political process, how authoritative decisions are reached, as well as at the substantive outcomes of the decision-making process. In relation to this process, contests over the justice of how collective authority is exercised raise distinctive issues about the gendering (or racializing, etc.) of governance. In relation to outcomes, struggles over the justice of the decisions produced include contests over rules governing the collective meaning of gender (or race, etc.), which we here refer to as the governance of gender.

The limitations placed on autonomy and authority have obvious consequences for how systems create and maintain economic injustices. Indeed, power and material injustice are often linked in the concept of political economy. Yet, we believe that it is better to keep the distribution of power and the distribution of goods and services analytically independent. To blur power issues into the distribution of economic resources obscures the extent to which political structures engage not only in the regulation of production but also directly in the regulation of persons and personality. Foucault's conception of disciplinary power diffused through a variety of social institutions reveals more of the political dynamic in which autonomy is contested, and in so doing, highlights the multiplicity of forms of limitations on autonomy that may be considered injustices (such as surveillance, emotional manipulation, and indoctrination).

With regard to the formation of persons who are dichotomized as male and female and regulated both *de jure* and *de facto* as such, we can speak of the *governance of gender* as an arena in which injustice may be experienced directly in regard to autonomy (Brush, 1999, building on Foucault, 1979). In parallel fashion, the structuring of political systems based on social compacts among men, patriarchal assumptions about natural hierarchy, and authoritarian practices grounded in analogies with kinship systems can be seen as expressions of the *gendering*

of governance, constructing the state itself as a gendered social institution (Brush 1999, Smith 1974).

Both the governance of gender and the gendering of governance connect the actions of the state to the experiences of collective and individual injustice against which people struggle. To define such struggles as being about recognition, as Fraser does, appropriately highlights the extent to which the stakes of the struggle involve personhood and personality. Of course, a group's increasing participation in the polity implies their greater recognition as people entitled to a share in collective power. But contesting the power of the state to make determinations of collective will without the full participation of all its members is also about the redistribution of substantive authority, and this is a form of redistribution of material benefits, even if not of narrowly defined economic goods. Conversely, the issue of autonomy can be viewed as a matter of legal rights, subject to state redistribution, even as it is obviously also about the cultural recognition of people as having full status as members of society. Neither recognition nor redistribution can be realized without power, and both autonomy and authority are required to articulate what recognition would encompass and redistribution entail.

Thus, although we are suggesting power as being a third dimension of inequality that would be analytically useful, we do not want to separate it entirely from the other two. As Fraser argues, treating these as lenses or paradigms for viewing the same struggles rather than as discrete classifications for different issues is helpful. Bringing recognition and redistribution together as factually intertwined, as Fraser suggests we should, allows for an examination of the variety of forms that particular contests over gender relations may take in the actual struggles over autonomy and authority in the polity. Similarly, taking recognition and power as

interwoven suggests both how status and value in the community permit the exercise of authority and protect autonomy.

In this paper, we look at the discursive contest over legal abortion in Germany and the United States from 1970 to 1994 as a comparative case study of the governance of gender and the gendering of governance. Abortion regulation by the state is a direct expression of the governance of gender through the limitations it places on the autonomy of the female person (Bordo 1995, Maleck-Lewy 1995). The participation of women and men as speakers and actors in the political debate over regulation is also a manifestation of the gendering of governance, expressed in the gender inequality of participation in collective decision-making about important social issues. Women's under-representation in politics generally is made particularly unjust in the matter of legally regulating abortion since it is a matter that differentially affects women and men.

We see the power questions in the abortion debate in both countries as having implications both for recognition of women collectively as political actors and of women individually as full persons and for redistribution of positions of political and moral authority and of legal and practical autonomy to make a deeply personal choice. Since this is a book about recognition struggles, we focus here primarily on how recognition is intertwined with women's authority and autonomy. We separate recognition into two parts, corresponding with our dual focus on the gender of governance and the governance of gender. In regard to the former, the gender of governance, recognition implies the extent to which women as a group are acknowledged as having a special stake in the abortion decision and have a greater collective voice in the debate over abortion. Recognition struggles in this case are also power struggles

about the collective exercise of authority. In the second instance, the governance of gender, recognition struggles are about limitations of autonomy and self-realization imposed on the individual by the construction and maintenance of stereotyped and limited conceptions of the person. In this latter case, recognition struggles are also power struggles about autonomy.

We argue that German women have achieved greater recognition of abortion as a gendered issue, in this case, as an issue that primarily concerns the full personhood and citizenship of women rather than being about religion or medical care or anything else. They have in this way also achieved greater legitimacy as political actors and speak with greater authority than US women on this issue. They have, in effect, more successfully challenged the gendering of governance, at least within the domain of abortion. However, we also argue that the success of German women in being recognized as speakers in the debate is tempered by state limitations placed on their autonomy as individual decision-makers. American women, by focusing on the pregnant woman as an autonomous individual, have succeeded more than German women in breaking boundaries of what womanhood necessarily entails and thus challenging the governance of gender. Although women in both countries are struggling over recognition of gender as politically meaningful, the alternative forms that their successes have taken illustrates the importance of considering these recognition struggles also as power struggles.

The political context of abortion in Germany and the US

The choice of Germany and the US for this analysis reflects a comparison of two countries that are both similar and different in important ways.² Fundamentally, both are modern, industrial democracies with a federal structure, independent judiciaries with powers of

judicial review, and privately owned, politically independent newspapers. In Germany, there was a lively debate about abortion in the early part of the century that came to an end when the Nazis came to power, while in the US there was a century of silence on the abortion issue that only gradually ended in the 1960s (Luker 1984). In both countries, the issue of abortion surfaced on the national political agenda in the early 1970s. The political developments from that point both diverged in substance but paralleled each other in timing for the next twenty-five years. This period from 1970 to 1994 is the focus of our attention.

In the US, the early state efforts to reform abortion law were dramatically accelerated in 1973 when the Supreme Court in its famous *Roe v. Wade* decision argued that there was a constitutional right to privacy that extended to cover the autonomous decision of a woman to terminate a pregnancy. Although recognizing the state's right to regulate abortion in the interests of women's health in the first trimester and concern for developing fetal life in the third, the court's decision swept away existing state laws and ushered in a period of experiments on the part of state legislatures as to how much regulation would be permitted. It also stimulated efforts to pass a constitutional amendment that would give the fetus the status of a child, and other protest actions to overturn or limit the court's decision.

The ensuing years were a period of intense social conflict over abortion, with significant mobilization of social movements on both sides of the issue (Staggenborg 1991, Blanchard 1994). Presidents Reagan and, to some extent, Bush lent the moral support of their office to the restrictionist forces, and in particular appointed justices to the Supreme Court who were viewed as likely to overturn *Roe*. In 1989, the Court revisited the principles of the *Roe* decision in hearing the *Webster* case. In the months around the decision, attention to abortion as a political

issue rose still further. The Court's decision in *Webster* shifted the principle from a virtually absolute protection of the autonomy of the pregnant woman to a more limited affirmation of the illegality of states imposing restrictions that place an undue burden on women's exercise of their right to decide, but it did not overturn *Roe*.

In this period also anti-abortion activists increasingly resorted to non-violent direct action (such as rescue protests aimed at closing clinics) and to violence. Since 1992, there have been six murders and numerous attempted murders, arsons, bombings and assaults on abortion providers and clinic staff. Although practical access to legal abortion became more limited, both through the action of the Court in allowing more state regulation and through the violence and intimidation directed at abortion providers by those protesting abortion rights, the principle of freedom of choice is still fundamental to American abortion politics.

In Germany, the first post-war Social Democratic government re-opened consideration of the law making abortion a criminal act, known as §218 of the Criminal Code, with the report of an expert commission in 1970. After extensive hearings, parliamentary debates, and public demonstrations, the federal legislature (*Bundestag*) passed a reform of §218 that de-criminalized abortion in the first trimester. The Constitutional Court intervened and struck down the law, finding that the general provision in the post-Nazi federal constitution (the Basic Law or *Grundgesetz*) that said that the first duty of the state was the protection of human life extended to cover fetal life as well. Unlike the American Court, which found that there was no scientific or moral consensus on when life began, the German Court explicitly considered this to be a matter on which there was no debate (Riemer 1993). The *Bundestag* rewrote its reform in 1976, permitting abortion only under special circumstances, the so-called four indications B the

life or health of the mother, a pregnancy resulting from rape or incest, fetal deformity, or Asocial need/emergency.@³

In the following decade, the Catholic Church and other anti-abortion groups attempted to close the Asocial necessity@ loophole through which approximately 90% of all legal abortions were done, while feminists and other opponents of restriction encouraged and supported women who sought abortion outside the country (so-called abortion tourism). The conflict remained relatively low-key as a national political issue, despite ongoing but sporadic prosecutions that were seen by both sides (for different reasons) as indicting the inadequacy of the social necessity exception. Attention rose in 1988 with the prosecution of a doctor in a rural and conservative area (Memmingen in Bavaria) for illegal abortion by inappropriate use of the social necessity indication. The fall of the Berlin Wall and subsequent move toward German unification forced the issue back on the agenda of the *Bundestag*. East Germans, who since 1972 had the right to legal abortion in the first trimester in their own country, strongly resisted the imposition of restrictive West German law. Given two years after unification to arrive at a new law for the unified state, the *Bundestag* in 1992 passed a modified de-criminalization of abortion in the first trimester. The law mandated counseling and a waiting period for the woman, and forbade any advertisement of or encouragement to use abortion services. This law, too, was overturned by the Constitutional Court as inadequately protecting life. Under the direction of the Court, the *Bundestag* in 1994 added provisions directing that the counseling be aimed at protecting the life of the unborn child and reaffirming the criminal nature of the act at all times (by denying insurance coverage among other things), even when the state might chose not to punish it in the

first trimester. Despite these restrictions, practical access to legal abortion was seen to have improved for West German women, since the risk of arbitrary prosecution diminished.

Thus in both countries there were essentially three chronologically parallel phases of the debate. In the first period, there were reform efforts and a landmark constitutional court decision establishing the fundamental principle defining the legal status of abortion. In the US, this principle was privacy and the rights of the autonomous individual. In Germany, the principle was the definition of the fetus as a human life subject to the protection of the state. In the second period, there was controversy over the new laws in both countries. The protests were more pronounced and public in the US, but discontent with the law was articulated in both countries and some restrictions on funding abortion appeared in both. In the third phase, the conflict escalated in both countries as, for different reasons, the constitutional courts returned to re-evaluate their fundamental principles. In both countries, the courts re-affirmed their widely variant original decisions, while practical access became more similar -- easier in western Germany and harder in the US.

The similar time periods and different trajectories of the conflict in the two countries allow us to examine the role of women as political actors in the debate under sharply different conditions. The discursive opportunity structure created by the respective constitutional court decisions favored a pro-life position in Germany and a pro-choice position in the US. Although favoring a particular side, neither framing of the issue prevented conflict from emerging in both countries. Despite recurrent protests and other actions, the abortion issue never left the legislative and judicial arena in Germany although overall coverage of and attention to the issue ebbed substantially in the second phase. In the US, social movement mobilization of both sides

of the issue was considerably greater, and the media's attention to abortion as a political issue grew steadily from the 1970s to the 1990s. Social movement actors play a correspondingly larger role in the American abortion debate.

Women's movements in the two countries are also differently situated in the abortion conflict. In the US, feminist organizations such as the National Organization for Women and the Feminist Majority have a national as well as local structure and are represented in Washington as part of a coalition of interest groups. Other national organizations make the defense of abortion rights their central concern (such as NARAL) and some situate abortion as one of a number of fundamental constitutional rights to defend (such as the ACLU). This coalition confronts anti-abortion groups that also have a national presence independent of any church (such as the National Right to Life Committee) as well as national church groups (such as the Catholic Bishop's Secretariat for Pro-Life Activities). American feminist organizations - on abortion as well as on other issues such as welfare reform -- are thus national players in a conflict among interest groups and their legislative supporters (Peattie and Rein 1983, Spalter-Roth and Schreiber 1995).

Most German feminists, in contrast, resist forming any sort of enduring national organization (Ferree 1987, Kaplan 1992). Committed to the principle that non-hierarchical, grassroots organization is the only appropriate means to challenge patriarchy, German feminists center their organizational efforts on local projects and typically temporary networks among such local groups and projects that focus on single issues. The leadership group for feminists on the abortion issue was such a group, the Federal Network for the Repeal of §218.

However, the feminist impulse that revived internationally in the 1970s, giving rise to a plethora of new women=s movement organizations around the globe, did not only affect German women who saw themselves as feminists and who limited themselves to working in local projects. The 1970s also saw the formation of new women=s organizations within existing political parties (such as the Association of Social Democratic Women, *AsF*), while the 1980s included the involvement of feminists in forming and supporting the new Green political party and participating in campaigns for women=s influence in German and European politics. This wider women=s movement, of which local feminist groups are only a tiny part, also largely supported abortion rights. Germany=s interest group sector centers on the representatives of business and labor, who with the state, form a widely recognized Atripod@ for legitimate policy-making. There are no national level abortion pressure groups for women=s movement groups to either work with or oppose. Insofar as women seek a policy voice in Germany, the primary route open to them is the parties. Since the formation of the Green Party in 1980, which led the way in formalizing representation of women in government, all of the parties have competed to a greater or lesser extent to include visible women among their spokespeople and candidates (Mushaben 1989).

In sum, this overview of the political opportunities available to women on the abortion issue indicates that American feminists have more organization, resources and potential allies outside of the formal political structures of parties and legislatures and German women with feminist inclinations have relatively more organization, resources and allies within the parties than outside them. The abortion issue itself is more decentralized in the US, being governed by

state rather than federal law, but the women=s movement is more decentralized in Germany, being largely split into local projects and women=s groups formed within contending political parties.

Given the differences in the discursive opportunity structure and the trajectory of the abortion issue as well as these differences in institutional opportunity structure for women=s movements concerned with abortion rights, we are not likely to be able to advance any single causal argument to account for the differences in outcomes we identify. Here we hope only to be able to describe how the struggles over abortion differ in the way that gender is made relevant, that is, how women=s recognition struggles become power struggles and contribute to different problems of authority and autonomy in each country.

Data and methods.

The data we discuss here are drawn from a larger study conducted in collaboration with Jürgen Gerhards, Friedhelm Neidhardt and Dieter Rucht. The research project involved a content analysis of 1243 American newspaper articles sampled from the New York Times and Los Angeles Times and 1423 German newspaper articles sampled from the Frankfurter Allgemeine and the Süddeutsche Zeitung from the period between 1970 and 1994.⁴ In addition, we surveyed organizations involved in contesting abortion rights in the period 1989-92, collected documents from these organizations, and interviewed leaders and media directors of particularly significant groups. The project as a whole thus connects the efforts of the contending groups to use the media with their actual representation in these policy-relevant newspapers. While inclusion of other media, such as radio and television, would have been desirable to get a fuller picture of the public debate, these materials are not archived in both countries for this whole

period. In order to have a long time series and a balanced comparison between the two countries, a narrower spectrum of discourse had to be used

The newspaper articles were analyzed by means of a hierarchical coding scheme. We coded the characteristics of articles themselves, the speakers within articles, and the properties of the utterances of each speaker. We selected only articles that had abortion as a major theme. We considered a speaker to be anyone who was given an opportunity to present a view on abortion, whether or not this opportunity was used. Thus anyone who was directly quoted or paraphrased in the context of the article=s coverage of abortion was considered a speaker, even if the speaker merely said *‘‘No comment,’’* since such opportunities to present a viewpoint are themselves a recognition by the media of the speaker=s legitimate right to have an influence on public opinion. Journalists themselves were also considered speakers, but unlike other public actors, journalists were only counted as making an utterance on abortion when they used their access to the public to present a statement on what abortion meant. Opportunities to speak afforded to individuals and groups are what we consider *standing*, or the legitimate right to have a voice in the debate on an issue. There were 3,736 speakers in Germany and 4,763 in the U.S.⁵

Every utterance, or distinct speech act, by each speaker in an article was also coded for the way that abortion was framed (if it contained any framing at all). By *framing* we mean the context of meaning that was imputed to the act of abortion. We coded eight major frames of meaning in which abortion could be placed.⁶ For this paper, we consider only two of these eight frames in any detail, the framing of abortion as a matter of individual rights vis à vis the state or state rights vis à vis the individual (individual/state frame) and the framing of abortion as a matter of women=s rights or gendered roles and responsibilities (women/gender frame). Each of

these frames was further sub-divided into claims and ideas that advanced or tended to be favorable to a position of greater restriction on the availability of abortion, those that tended to support fewer restrictions and more access, and those claims that were neutral as to whether abortion should be more or less available. Every frame contained both pro-restrictionist, anti-restrictionist, and neutral ideas. For example, the individual/state frame contained arguments that abortion was a matter of individual privacy, an issue of freedom of conscience, and separation of church and state (anti-restriction), that those who opposed abortion should not have to pay for it or perform it (pro-restriction) and that decisions about abortion should be a matter of respecting a democratic majority (ambiguous/neutral, used both to support more restrictions or fewer depending on the local majority). In addition, we coded the specific nature of the particular claim within each directional frame group (thus a claim that abortion was about separation of church and state was distinguished from a claim that it was about individual privacy). Each specific different claim, called an idea element, in each utterance was coded. There were 12,323 idea elements in the US, and 6,932 in Germany.

Overall, the general distribution of standing and framing found in our data reflects the structure of both institutional and discursive opportunity discussed above. In the US, the proportion of speakers who represent a social movement organization is roughly the same as the proportion who spoke for the state in some form (about a third in either case), while in Germany about half of all speakers represent the state and social movements contribute only a tiny fraction of the discourse. In the third phase of the debate in the US, the proportion of speakers coming from the social movement sector rises while the state share remains fairly stable over time. In Germany, the social movement share falls in phase three, while the proportion coming from state

and party actors rises. But from the very beginning, social movements are not nearly as prominent in Germany as in the US, where weak parties and strong and diverse interest group organizations have long been characteristic (Clemens 1998).

The framing differences between the two countries are also consistent with the discursive opportunities presented by the courts: in Germany, the single most common frame used is fetal life (25% of all idea elements) and in the US the single most common frame is the individual and the state (23% of all idea elements). Overall, 46% of German speakers frame the issue in a way that supports a restrictionist understanding, while only 35% of American speakers do. Instead, 50% of American speakers are on balance pro-choice in their framing, compared to only 37% of German speakers. Although these differences are important for understanding the overall shape of the discourse in both countries, for our purposes, the comparison that matters is not between pro-life and pro-choice arguments or the various types of arguments offered to defend restrictionist legislation, but how the justice claim for less restriction is framed.

We therefore turn to look at the contrast between two of the frames that are most important in arguing against restrictive abortion legislation, the individual/state frame and the women/gender frame. These two different frames have quite different significance in the two countries. In Germany, the most prominent frame with a pro-abortion-rights direction is women/gender (28% of all pro-rights idea elements), which clearly overshadows arguments based on individual autonomy and freedom (12%). In the US, the reverse is the case: individual/state arguments against restriction (30%) are twice as common as women=s rights claims (15%). We turn now to consider why this more strongly gendered form of the argument

for abortion rights is so dominant in Germany and what relation it has to the voice that women have gained in the discourse of each country.

Challenging the gender of governance.

Over time, the increased global political mobilization of women is reflected in the increasing proportion of speakers in each country who are women. As Chart 1 indicates, the share of women in the discourse at least doubles in each country. It rises from about 20% in the US in the earliest days of phase one to approximately 40% of all non-journalist speakers by the mid-1990s. In Germany, the picture is a little more complicated, since women are 30% of all speakers during the earliest period, before the legislature begins debating the bills and while feminist protest activity is prominent. Women's share then sinks to only about 20% once the issue becomes a matter for the *Bundestag* and the court before rising to 50% in the 1989-92 period of renewed legislative debate and about 70% in the most recent period. There is clear evidence here that women are considered more relevant speakers on abortion now than they were two decades ago.

(Insert Chart 1 about here)

This shift in the prominence of women who are given legitimacy to speak to the abortion issue is particularly evident in Germany with regard to the visibility of women within the formal institutions of politics. Between the 1970s and the 1990s, the share of those in state and party roles with a voice in the media who are women rises dramatically in Germany but comparatively little in the US. While less than 10% of American state and party speakers on abortion were women in the early 1970s, this share climbed to just under 30% by the mid-1990s. Without any comparative data, this might seem a fairly substantial rise. Yet in Germany over the same period,

the proportion of women among the state and party speakers rises from about 20% to about 70%. Even if one just compares the two periods of most intense media debate in Germany, the periods from 1973-76 and 1989-92, the difference in women's share of the official political discourse is strongly evident. Although women were just 20% of the official speakers in the first period of legislative debate they are over half the official speakers when the legislature returns to the issue after unification.

(Chart 2 about here)

Moreover, while American women in this first period do not offer a markedly different share of the official discourse on abortion than German women do, by the time of the Webster decision the differences in standing between American and German women are profound. German women in official state and party roles enjoy much more visibility and legitimacy in speaking on the abortion question than do their American counterparts (50% vs 20%).

Some of this difference may have to do with the greater inroads that German women made in official political representation in this period. Between 1980 and 1994, for example, the proportion of members of the German federal legislature, the Bundestag, who were women rose from 8% to 26% while in the US the increase of women in the House of Representatives in the comparable period was only from 7% to 12% (and even less in the Senate). Additionally, in this period all the German political parties adopted affirmative action plans for the greater inclusion of women, including in some cases formal quotas for party offices and candidate positions. Yet it remains true that German women are particularly over-represented among the official speakers on abortion topics relative to their share of seats in the legislature or proportion

of office-holders in the executive branch (26% of legislators but 50% of state voices in the media are women).

Moreover, the gendering of governance is not only expressed by women who hold formal roles in policy-making positions. The ability to speak on this issue that the media selectively accords to some individuals and representatives of organizations is itself a form of governance that can be gendered. The nature as well as extent of women=s standing has changed in both countries. The extent to which media discourse on abortion has altered its form to give women a distinctively legitimate voice on this issue can also be captured by the way that articles have become differently constituted as public forums for the debate. To see this, we shift from looking at the shares of speakers to looking at the articles as units, the way that a reader would see them.

As Chart 3 indicates, both in Germany and in the US in the 1970s, most articles on abortion were dominated by male speakers. In the earliest period, about 60% of US articles and 70% of German articles contained only male speakers.

(Chart 3 about here)

Over time the proportion of articles in both countries that give men alone voice declines steadily until by the most recent period they account for only about a quarter of all articles. Thus the idea that men alone could speak legitimately to the regulation of abortion has eroded, and the public discourse that governs how abortion is to be understood is, as we have seen before, one in which women play an increasingly prominent role. However, the way that the gendering of public discourse governing abortion has changed is very different in the two countries. In the United States, this discourse has become less specifically gendered. It now is much more likely to include both men and women (the majority of articles have become mixed in regard to gender

and are about as likely to include more women than men as more men than women). The proportion of articles that only include men has declined, but the share of articles that contain only women has not increased. Abortion is presented as an issue in which both men and women have something legitimate to say.

This is in striking contrast to the situation in Germany. Here the proportion of articles containing only men dropped while the proportion that contain only women speakers rose dramatically, particularly in the most recent period. Half of all articles in the recent period dominated by legislative debate (1989-1992) are composed entirely (23%) or mostly (27%) of women speakers. The proportion of articles containing only women speakers is even higher (44%) in the last period, even though the total number of articles has begun to decline again. The shift from abortion being publically discussed by men to being a matter discussed only by women begins to occur even before it re-emerges as a significant legislative matter, and the trend continues in the period after the reform of the law is essentially complete. The issue of abortion in Germany is re-gendered from being a male domain to being one in which women=s voices are increasingly dominant.

Thus, to summarize the shifts in the gendering of governance of abortion, we can see that German women have succeeded more than American women in exerting a specific claim to standing on this issue. Both in terms of their role as speakers in the formal halls of government and in their position in articles that define the nature of the debate, German women have emerged in a particularly prominent position. While American women have also succeeded in obtaining more voice in the discourse, this increase in standing is not so profound among those with formal policy roles as it is in Germany. The public forum, as represented by newspaper

articles, has apparently become more de-gendered in the US as women participate more equally with men in the same discussions, while in Germany it has been re-gendered as more appropriately female than male. German women and men largely appear in separate articles, speaking as it were in separate rooms rather than as part of the same conversation. In the gendering of the process by which abortion is governed discursively, German women have won dominant and more often exclusive standing, while American women are less central among policy-making speakers. American articles on abortion show a remarkable degree of gender balance in the most recent period, but women can hardly be said to enjoy any special standing. German women have to some degree won a recognition struggle that gives them special authority as speakers on abortion, and in doing so have challenged the gendering of governance. This struggle over authority to speak is an important part, but not the entire picture, of what recognition entails.

Challenging the governance of gender.

The second aspect of power struggles we identified takes place over autonomy. This includes the practical rights of individual women to make an abortion decision, but also the recognition of the pregnant woman as a person who is not reducible either to her status of mother-to-be or to her gender alone (Bordo 1995, Sauer 1995). The diversity of women's needs and expectations become flattened into a stereotype when the discourse around abortion assumes that all women are or want to be mothers, and the autonomy of women to define their own needs and demand recognition of their own personalities is overridden by state policies that assume the government knows best. We consider the governance of gender therefore to be expressed in large

part by the relative role that personal autonomy plays in the discourse relative to the role played by claims that women need protection.

The formal nature of government abortion policy in the two countries clearly recognizes autonomy as a more central issue in the U.S. As we have seen, the Supreme Court placed abortion rights under the rubric of privacy, casting them as a matter of defending the individual from the incursions of the state in this personal domain, and American abortion discourse echoes this priority, making the individual's rights to privacy, religious freedom and personal self-determination the most common theme in the discourse overall and about 30% of all prochoice ideas. Even the American arguments that would tend to support limitations on abortion rights are often cast in terms of limits on the state (freedom of conscience not to perform or pay indirectly for abortion for example). These arguments, on both sides, are typically presented as a matter of being let alone. For example, when asked in our interview what the role of government should be in the abortion issue, one abortion rights activist said "Get the hell out of it totally! Obviously. We don't think government or religion or any group has any role."

American abortion policy as established by *Roe* and *Webster* in fact admits only such interventions that place "no undue burden" on women who are attempting to exercise such rights but also offers no support, financial or otherwise, for women who are pregnant. As feminist critics of American abortion policy have often pointed out, women who cannot support another child, or who are being pressured by their families or boyfriends to have an abortion they do not want, are offered no support to have a child and thus have little practical ability to exercise their theoretical freedom of choice. Poor women of color have often faced pressure for abortion and sterilization, for example. Reflecting such concerns, some pro-abortion-rights

organizations have adopted names that affirm their commitment to reproductive rights, at least nominally widening their scope to include both having and not having a child as a matter of choice to be defended. Thus, the leading pro-choice social movement organization, NARAL, officially changed its name in the 1980s from Abortion Rights Action League to National Abortion and Reproductive Rights Action League.

German abortion policy reflects a stronger welfare state tradition and thus is both more actively interventionist and more committed to connecting rights to the economic opportunity to exercise them. Thus, while the 1993 German court decision affirmed that abortion was always a criminal act even when it was not to be punished in the first trimester, it also held that women on welfare who choose to exercise their right to a non-punished abortion have the right to have it paid for by the state, since they would otherwise be denied in practice a freedom that others could exercise. The law regulating abortion also included provisions for expanding the state's supply of public pre-school places as part of its inducement to women to choose to bear children. At the same time, however, the court authorized mandatory counseling directed at persuading the woman to have the child, pointing out the benefits that the state provides to mothers as an inducement to do so, and enforcing significant waiting periods and repeat counseling sessions to ensure that the woman was obstinate in wanting an abortion before she can exercise her formal right to choose it. Those in the woman's immediate circle could also be punished legally for trying to persuade or coerce her to have an abortion. Thus both in terms of positive inducements and negative sanctions, the state more actively takes a role in directing women's choices in the way that it considers morally and socially appropriate, thus playing an active role in the governance of gender.

This interventionist stance is reflected in a considerably higher proportion of German than American prochoice idea elements that affirm a specific moral role for government in the abortion issue. Conversely, the argument against restriction in the US often takes the form of making a claim for privacy of the individual against the state=s intervention. In Chart 4, we compare the relative frequency of two specific clusters of idea elements in each country among pro-choice speakers who are identified as male, those who are female and those with no gender identification (e.g. institutional spokespersons and editorial writers who are not named).

(Chart 4 about here)

As one can readily see, the privacy argument is much more dominant in the US among speakers of all gender than it is in Germany, and conversely, the pro-choice argument for government taking a moral role of some sort is clearly evident in Germany and virtually invisible in the US. About a quarter of all pro-choice speakers in the US include at least one argument about privacy compared to less than 10% of German speakers. By contrast, prochoice German men especially (14%), but prochoice German women as well (9%) affirm some affirmative moral role for government in regulating the abortion decision, while virtually no pro-choice American speakers do.

Importantly, the framing of abortion as a right in Germany is also more gender-specific. As noted earlier, claims that abortion is a matter concerning women or gender are 28% of German abortion-rights discourse and only 15% of American pro-choice discourse, while claims that abortion is about an individual right vis a vis the state are 30% of all American pro-choice idea elements but only 12% of the German ones. Here we shift our level of analysis from counting the number of times a specific idea is used to consider which speakers include which

frames overall. In the chart below, we contrast the relative likelihood of a pro-choice German speaker employing any pro-choice idea from the individual/state frame and/or from the women/gender frame with the probability that an American pro-choice speaker will do so.

(Insert Chart 5 about here)

As we see in Chart 5, which looks only at pro-choice speakers using specifically pro-choice ideas, German women are by far the most likely group to use the women/gender frame for abortion. Over half of pro-choice German women use the women/gender frame, either alone (51%) or in combination with the individual/state frame. Pro-choice German men are only about half as likely as these German women to frame in gender terms alone (25% of these men do). Nonetheless, even German men are more likely than pro-choice American women to be using the gender frame alone (20% of the American women do). Rather than gender of speaker being the primary correlate of gendered framing, national context plays at least as large a role. American pro-choice speakers all strongly prefer the individual/state frame to the gendered one. Even American women, who are twice as likely as American men (20% vs. 10%) to use just a gender-based argument, are still more likely to offer only an individual rights argument (32%) than only the gender-based one (20%). American men are more than three times as likely to use just the individual rights framing than just a gender-based claim (45% vs. 10%), while German men actually offer the gender-based framing alone slightly more often than just the individual-rights one (25% vs. 18%).

It is thus clear that the gender-based definition of what abortion rights are, as something particular and special for women rather than an example of a general right that happens to apply to women in this case, is much more strongly established in Germany than in the US for pro-

choice speakers of both genders. Conversely, the general individual rights claim is far more likely to be advanced in the US by all groups of speakers than by any group in Germany. The specificity of the gender-based claim, however, seems to particularly privilege German women speakers as advocates of abortion rights. Unlike the US, where all three groups of speakers are equally likely to make these two rights claims, either separately or together, in Germany women are about 20 percentage points more likely than either men or speakers of unknown gender to do so. Since these are all pro-choice speakers, those who are not making a rights claim here are not arguing against abortion but are offering some different sort of argument against restrictions. Rather than advancing women=s autonomy, either as women or as individuals, German men and other speakers defend legal abortion on other grounds.

In order to get a better idea of what those other grounds might be, we constructed two clusters of specific framing arguments. One cluster, which we call autonomy, specifically selects individual idea elements that address the issue of self-determination, whether as women (the gendered form) or as individuals entitled to a right to privacy (the non-gendered form). The other cluster picks up those idea elements that speak of protection, whether specifically emphasizing women as needing protection (the gendered form) or more generally of the state=s need to act morally, to offer alternatives to abortion, to consider the reasons that women might have for abortion, and to attempt to address social need (the ungendered form). In other words, when abortion is framed as an aspect of the welfare state and justified in terms of helping those in need, we coded this as part of the protection cluster.

In Chart 6 we examine the relative share of autonomy claims of both autonomy and protection claims combined. Considering just how pro-choice speakers use these ideas, we see

that autonomy outweighs protection as an argument for abortion for all three groups of Americans and for German women, but not for German men or non-gender-identified speakers. Autonomy arguments are about equally dominant for all sub-groups of pro-choice American speakers, with their share being about 56% (+/-3%). By contrast, German men favor protection over autonomy by two to one (only 32% of their arguments are about autonomy compared to 68% that are about protection). German speakers for whom no gender is given, typically institutional speakers and non-bylined journalists, are also inclined to favor protection over autonomy, suggesting the extent to which German welfare state thinking is formally institutionalized, not merely a reflection of individual men's tendency to think in protectionist terms about women.

(Chart 6 about here)

In effect, German women's pro-choice arguments in favor of autonomy, which we have seen tend to be gender-specific arguments, do not carry the rest of the discourse with them. Instead, German women, influential as they are in terms of standing in the discourse, remain isolated as advocates of seeing abortion as a matter of women's autonomy rather than of help for the needy. Indeed, the Social Democratic Party, the largest single institutional advocate for reducing legal restrictions on abortion, framed its approach to abortion with the slogan "Help, don't punish," arguing that women who seek abortion are in need of the state's help rather than criminal prosecution. Thus German women's effort to challenge the governance of gender through an assertion of women's autonomy has largely not succeeded in swaying the balance of the rest of the discourse away from its emphasis on protection.

The pro-choice arguments in favor of autonomy in the US, by contrast, are equally strong among all three gender groups. American women, who we saw earlier also tend to make their argument for autonomy in non-gender-specific terms, are supported in this argument by both men and institutional speakers. In successfully making a claim for personal autonomy as a rule guiding abortion decision-making, they have challenged the governance of gender. However, this emphasis on individual autonomy also means that American women who are in fact needy and seeking help from the government, whether to have an abortion or to avoid one, are left without any specific group that represents them.

If one were to look at the entire configuration of German and American discourse, the contrast in balance in favor of autonomy in the US and protection in Germany would be even more pronounced, since as we saw earlier, German discourse on the whole is more tilted toward a pro-life framing of abortion than US discourse is. In addition, the difference between the proportions of men and women who are pro-choice is somewhat greater in Germany than in the US (26% of German speakers who are men are pro-choice on balance compared to 58% of German women, while 38% of American men are pro-choice compared to 65% of American women speakers).

What this indicates is the extent to which the overall discourse takes up autonomy and self-determination. For Americans, the autonomy theme is a very substantial part of the overall discourse, just about equaling concerns about protection for women that come from both pro-choice and pro-life speakers. In German discourse, the concern for protecting women expressed by pro-choice speakers joins with the concerns expressed for protecting women (from the dangers of legal as well as illegal abortion, from social pressure to have an abortion, etc)

expressed by the pro-life side of the debate to make concern about women=s autonomy a very minor part of all but women=s own speech. In German discourse, protection is the leading theme in the governance of gender and women=s decision-making is regulated more directly by the state in practice as well.

In sum, what we see here is a focus on the state as moral and helpful in Germany and as dangerous and intrusive in the US. This underlies the concept of the welfare state as a positive construct in Germany but a negative one in American discourse. In addition, German pro-choice speakers, especially but not at all exclusively women, tend to frame abortion as a gender-specific concern rather than as a matter of individual rights that just happen in this instance to be applicable to women. American pro-choice speakers do just the opposite, and tend to downplay the gender-specific arguments in relation to making non-gendered rights claims. The ideas of the welfare state as a benevolent force and of women as having gender-specific claims in regard to abortion then come together to advance the idea of women as being in special need of state protection rather than being autonomous moral agents. Although German women have advanced women=s claims to autonomy, largely in gender-specific language, they have found less resonance for this claim among other speakers in the discourse than American women have found for their claim that women=s autonomy is a matter of individual rights.

Thus the efforts of women to challenge the governance of gender by asserting a right to self-determination have been more successful in the US than in Germany. In the US, broad suspicion of the state and support for an individual right to privacy articulated by the Supreme Court have served to buttress women=s claims for autonomy. In Germany, women have instead

faced a discursive opportunity structure that privileges the fetus's right to life and views the welfare state positively. Within this framework, women have been more likely to be constructed as needy victims of circumstances who can be *Ahelped@* rather than *Apunished@* when they seek abortions. German women have actively contested this definition, making a distinctive plea for considering abortion a matter of women's autonomous choice. Within the welfare state framework of protection advanced by other speakers however, they have not made much headway in challenging the governance of gender.

Conclusion

The power struggles through which women have attempted to gain control over the abortion issue on their own behalf have taken different courses and led to different victories in these two countries. In Germany, there has been a dramatic change in authority as women have successfully challenged the gendering of governance on the abortion issue. Women have achieved a notable level of standing both in the media and among policy makers on this issue, and abortion is framed much more as a gendered issue there than in the U.S. But in the autonomy dimension of power -- the governance of gender -- women have been more successful in the U.S. than in Germany. All speakers in the U.S., not only women speakers, are much more likely to frame women as autonomous moral agents compared to Germany and to justify abortion in terms of an individual's right to make decisions concerning his/her own body and life.

German abortion law constructs pregnant women as needy victims whom the state is obliged to help, largely by counseling them to have the child and by pointing out the social supports the state makes available for them in that case. German discourse as a whole also follows this model, and women speakers' claims to autonomy, advocating the individual woman's right to

decide whether motherhood or abortion is the moral course of action for her, are not echoed by other speakers.

German women have succeeded more than American women in gaining access to political and social authority on the abortion issue. However, American discourse and law both grant women more autonomy in making abortion decisions. Both of these victories in struggles over gendered political power also provide important gains in recognition of women=s status and the redistribution of substantive rights. In fact, women in both countries have made progress in winning authority and autonomy in regard to abortion, even if the changes in one dimension or the other are relatively more pronounced in one country or the other. The changes that have occurred both in law and in discourse over these 25 years are significant and do reduce injustice for women in regard to social power. Yet, neither victory is without its contradictions. Redistribution and recognition remain issues of justice that are only incompletely addressed through the measurable gains in power that women have made in both countries.

Redistribution is the dominant dimension of continuing inequity in the US. The practical autonomy that American women can exercise in choosing between abortion and motherhood is limited by the endemic problems of economic maldistribution that constrain American women, particularly women of color. Women who would prefer not to have an abortion are not protected or assisted by the state in realizing that choice. The *de jure* autonomy of women=s decision-making, which both the law and the discourse support, is undercut by *de facto* financial and social constraints on women, especially poor women and teenagers, that force them into decisions that do not express their free preferences at all. Indeed, the woman who is left with no choice but to have an abortion that she deeply regrets has become a figure invoked by the anti-

abortion side of the debate, and pro-choice forces are therefore reluctant to even acknowledge her existence. The distinctively American focus on women as autonomous individuals with rights under the law has obscured the injustices of access to abortion and to mothering that real women -- especially poor women -- confront in practice. Both the stigmatization of teen motherhood and the absence of any significant material state support for motherwork in the US make abortion still a matter of injustice with regard to recognition and redistribution.

While on the recognition dimension, serious problems of stigmatization remain for some specific groups of American women, the issue of mis-recognition is a more general one in Germany. The practical authority of German women is diluted by the devaluation of all women who choose abortion as criminal and immoral actors. Abortion is still defined by the state as a crime and women who abort are thus still criminals, even though the state has decided to help rather than punish them. The state's decision not to punish women in the first trimester is legitimated by the Constitutional Court as a means of inducing women to come for counseling, the prerequisite for a certificate allowing the abortion to be performed, specifically so that state-licensed counselors can try to induce her to change her mind. Because the counseling is defined by law as directed to convincing the woman to bear the child to term, and explicitly justified as reducing the risk that she will leave the country for an abortion elsewhere, the substitution of Foucauldian manipulation and surveillance for direct use of force and punishment is relatively transparent. The coercion of women into motherhood remains legitimated as a state purpose.

In this context, the ability to speak of women as free moral actors who can legitimately choose between abortion and motherhood is greatly limited in practice, even for those women who have gained standing in the parties and in the media to address this issue. Although women

speakers in Germany are far more likely than other German speakers to affirm women's right to decide as a principle, even they are likely to disavow the woman who chooses abortion as immoral and unwomanly. Several in-depth analyses of the *Bundestag* debates themselves showed how women legislators distanced themselves from the woman who would choose an abortion and affirmed motherhood as women's true calling (Mushaben, Lennox, and Giles 1997, Sauer, 1995). Their insistence that women would never choose to have an abortion for anything less than grave reasons, because all women want their babies, specifically rebuts the pro-life arguments about the triviality and callousness of women who abort. But ultimately this argument undermines the social recognition of those women who do not want to be mothers or who make free moral choices of which one personally does not approve.

In effect, some women are mis-recognized and made invisible in both countries. In the U.S. the women who are most unacknowledged are those whose practical choices are not as free, particularly for economic reasons, as the law imagines. In Germany, the women who vanish from the discourse are those who make or wish to make free choices that conflict with the gendered perceptions of women's proper role and responsibilities. In both countries, the victories that have been won in terms of authority and autonomy are significant gains in justice for women, but in neither country has the need for further struggle for recognition and redistribution ended.

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Endnotes

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² By “Germany” we mean West Germany between 1970 and 1990 and unified Germany thereafter. While abortion law and practices in East Germany are also important, they are beyond the scope of this paper. See Ferree and Maleck-Lewy 2000 and Harsch 1997 for analyses of how abortion was debated both before and after unification in the East.

³ The German word *Not* includes need, want, misery, distress, necessity or emergency. *Ökonomische Not* is economic neediness and a *Notarztwagen* is an ambulance. The literal term in the law is *soziale Not*.

⁴ To be precise, two years from the 1960s (1962 and 1967) were included from the New York Times and the sample from the Los Angeles Times began in 1972, reflecting the different availability of indexing in the papers. See the fuller description of methods as well as reports of related findings in Ferree et al. 2002.

⁵ The statistics we report later are based on weighted numbers, corrected for sampling fraction differences between the two countries and among years. These are the actual sample sizes, which establish the weights for significance testing and indicate the statistical power of our analysis.

⁶ Briefly, the eight frames are: (1) the fetus as a human life; (2) the conflict between the fetus and the woman; (3) gender and the rights and roles of women (4) the relation between the individual and the state (5) judgments of morality (6) social consequences of legal abortion (7) the

pragmatic balance of costs and benefits of legalization; (8) social injustices in restriction for specific groups.