

Gender, Intersections, and Institutions



Intersectional Groups Building Alliances and Gaining Voice in Germany

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CHAPTER I

Throwing the Boomerang

Intersex Mobilization and Policy Change in Germany

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On 1 November 2013, a reform of the Civil Status Law came into effect in Germany, replacing the either/or male/female dichotomy with an additional choice. International media outlets from the United States to New Zealand reported on the new policy as Germany became the first European state to breach the legal gender binary and allow citizens to be registered as an “unspecified” gender. As a result, Germany was catapulted into the forefront of the list of states that legally acknowledge the existence of intersex individuals (citizens with physically intersecting male and female characteristics) as a distinguishable category of citizens.¹ How can this surprising reform be explained?

There is general agreement that (West) German politics has been marked by incrementalism regarding the extent of possible reform since 1949. Incrementalism has historically dominated German politics as a result of a number of crucial institutional factors, particularly the consensus-oriented multiparty system, well-established federalism, corporatism, and the conservative welfare state (Katzenstein 1987; Scharpf 1988; Esping-Andersen 1999; Kitschelt and Streeck 2004). In addition, in terms of political content, Germany has not had either a strong liberal party or particularly progressive or innovative gender policies. Indeed, many observers have categorized Germany as a conservative gender regime and a “laggard” when dealing with equality and inclusion in the arena of civil and social

BOX 1. Intersex People

INTERSECTION STUDIED	Male + Female Sex (Intersex)
TIME PERIOD STUDIED	2008–13
POLICY ISSUE STUDIED	Reform of Civil Status Law (Personenstandsgesetz)
INTERNATIONAL ALLY	United Nations Covenant to Eliminate All Forms of Discrimination against Women (CEDAW)
DOMESTIC INTEREST GROUP ALLIES	German Institute for Human Rights (Deutsches Institut für Menschenrechte [DIM]) National Council of German Women's Organizations (Deutscher Frauenrat [DF])

rights for women and sexual minorities (Kolinsky 1993; Esping-Anderson 1999; von Wahl 1999; Kolbe 2009).

As a consequence of the historic legacies and institutional factors leading to a cautious and incremental approach to policy reform, the question arises as to how and why German parties would pass a law introducing the possibility of a “third gender”? What can we learn from this case about the representation or “voice” of intersex individuals (see box 1)? What does the reform tell us more generally about gender, women’s interests, and intersectionality? By tracing the emergence and passage of the reform, this chapter identifies core supporters and opponents of the legal recognition of gender-variant people as a category of citizen, the arguments and claims made by both sides of the debate, and the institutions that were utilized to achieve the unlikely outcome. This chapter also describes and analyzes the mutually constitutive articulation of a new policy among local, national, and transnational advocacy networks and domestic political institutions leading to what is arguably the first instance of political visibility of intersex issues in Europe. This important reform represents the beginning of the global diffusion of challenges to the paradigm of sex dichotomy. The reform of the Civil Status Law did not result from demands by intersex advocates that worked their way up from the bottom through domestic parties and institutions, but rather represented the outcome of a transnational “boomerang pattern” and pressure from the outside and the top down.

This chapter delineates specifically how intersex issues became politi-

cized in Germany after the turn of the twenty-first century and why established political parties began to listen to demands by the small intersex community. What incentives or costs could have moved political parties in the direction of such engagement? The implausibility of the reform is further heightened by the fact that the policy change was discussed and passed under the leadership of a Christian Democratic government. Christian Democratic parties are oriented along traditional models of family, gender, and society, of which the male/female binary is a foundational bedrock.

The chapter begins with a brief review of the Civil Status Law, an overview of potential explanations for policy change, and an analysis of the specific pressures mobilized in this case. It analyzes how a marginal social movement built connections, garnered allies, framed demands, and brought pressure to bear from the top down. And, finally, it illustrates how domestic institutions and parties positioned themselves toward the demands of intersex groups and international organizations, especially the UN.

In this case, go-to explanations for why political parties adopt certain issues, such as party ideology and rational vote seeking, are largely unconvincing in regard to the revised Civil Status Law. Instead, we need to study transnational mobilization of advocacy networks and multilevel governance to explain how a marginal social movement successfully utilized UN covenants and set in motion an international boomerang pattern to pressure the German government from the top down (Keck and Sikkink 1998). Intersex social advocacy groups were crucial in reframing the physical intersection of male and female attributes from a discourse of medical correction to a human rights discourse of protection from bodily harm. With this powerful framing in hand, activists gained first access and then attention at the United Nations despite the disadvantages of the initial lack of influential allies in parliament or popular support as well as of operating under the global predominance of the gender binary.

Theoretical Considerations at the Intersection of Male and Female Sex

Intersex individuals experience the intersection of a physical male and female sex in one body. This situation can be distinguished from intersectional positions of (female) gender and race or (female) gender and class as discussed in other chapters in this volume. Indeed, the intersex experience is not obviously intersectional in the common use of the term originally

developed in reference to African American women (Crenshaw 1989). Intersex is certainly an extremely marginal and often overlooked identity and existence, especially considering that intersex individuals have always been present physically but have not—at least in twentieth-century European societies—existed as a social or legal category of citizens. Their physiological intersection is to a large extent invisible. Recent arguments claim, however, that the intersection of male/female gender with “health practices” could work as a useful intersectional lens (Combs 2013). This perspective opens constructive venues to consider the medicalization of intersex as the core problem and complements my argument about the “correction” paradigm. But are health practices alone the base of an intersectional identity of intersex people? Recent coalitions with LGBT and women’s groups indicate the possibility of other identity-related intersections.

The descriptive category *intersex* includes many individuals who self-identify or are legally identified as women as a consequence of their outward appearance and/or the effects of modern surgical interventions. I focus on these political activists in this chapter. Intersex existence and advocacy profoundly challenges our notion of who counts as “women” and “men” because it contradicts deeply ingrained binary thinking about sex/gender. Using Foucault’s idea of the power of regulation, Butler (2004) explains that the “conditions of intelligibility” and “recognizability of the human” set the stage for the medical argument that intersex bodies are in need of treatment. This dynamic has provided the basis for the correction paradigm against which intersex individuals protest. The study of the political mobilization of intersex individuals against the correction paradigm contributes valuable descriptive and theoretical insight to emerging discussions on gender variance and intersectionality by productively complicating and expanding the definition and theoretical grasp of intersectionality as an analytical tool.

Stepping back from gender theory and turning our attention to actual political processes, we ask how and why this legal reform occurred. Several traditional explanations for policy reforms in advanced democracies exist. Most studies of democratic states agree that political parties have influence on policymaking. They identify issues, articulate demands, aggregate voters’ preferences, mobilize support for changes, communicate information, and attempt to put pressure on the levers of power (Ware 1996; Dalton 2006). Research has long debated the question of what issues are taken up by political parties and why. Some of the main explanations focus on party

ideology and how it fits with the specific demands for issues that are being incorporated into party platforms. Another key explanation focuses on calculations by officeholders or office seekers to maximize votes. While the first explanation emphasizes the importance of ideas for party platforms, the second underlines political self-interest and the impact of rational decision making to maximize the chances for re/election. Both of these explanations fall flat in the case of the “third gender” law, however.

Briefly, from the perspective of party ideology, everything in this case points toward ignoring or actively opposing demands for gender variance: the governing Christian Democratic Union and the Christian Social Union have always been strong supporters of traditionally organized gender relations in all social relations. Interest in adding flexibility to the definition of gender or in the availability of other gender options cannot be discerned with Christian Democratic ideology. Considering the ongoing opposition to the rights of gays and lesbians to marry and the unforgiving law on transsexuality (*Transsexuellengesetz*, 1980), which until 2011 required the sterilization for those who wanted to transition, the Christian Democrats have continually worked to enforce an exclusively binary system. They have shown a firm adherence to the legal division of the population into two functionally defined sexes since the founding of the party and the West German state in 1949. Acknowledging any position in between (or beyond) the traditional gender/sex binary, for either transgender or intersex individuals, stands in stark contradiction to a conservative and Christian Democratic *Weltanschauung*.

Rational choice approaches argue that reforms occur when they maximize votes for the ruling party or parties (Downs 1957). However, it seems unlikely that many votes can be won for parties relative to the concerns of intersex people. First, the group affected constitutes such a numerically miniscule constituency that their votes and even those of their supporters, would not have a measureable impact on overall electoral results or for specific parties. Second, intersex people do not form a powerful minority—economic, political, or social—or otherwise wield power in a corporatist manner. Third, there is no visible or widespread public support (or even knowledge) for expanding the Civil Status Law to recognize intersex individuals. Indeed, voters might even reject parties supporting a misunderstood and often stigmatized constituency. In short, Christian Democratic support for intersex activists would seem highly unlikely as the party is still welded in many programmatic and political ways to a gender binary that is

grounded in lingering discourses of separate spheres, expressed structurally in the male breadwinner model, and religiously justified in its support of heteronormativity.

At the time of the reform of the Civil Status Law, the small liberal Free Democratic Party (FDP) was still in the governing coalition as the junior partner. The FDP generally has a more positive and modern perspective on individual liberties and choice. The party's head, Guido Westerwelle, was gay, and the FDP supported the limited extension of gay and lesbian rights. However, the FDP was also committed to neoliberal resistance against state intervention, implying a minimalist approach to antidiscrimination, affirmative action, or compensation measures. Among the other small opposition parties, both the Social Democrats and former East German Communist Party, the Left, would likely be less interested in such issues as a result of their dominant focus on class, although the Left has also taken on demands from other marginalized citizens such as LGBT groups. The Greens could be seen as potential supporters in light of their established legacy of working with various social movements to advance post-materialist and progressive environmental causes (Inglehart 1997, 2004). However, even if opposition parties had an interest in the issue of intersex rights, they would have faced an uphill battle in bringing the topic to the floor and would have run the risk of incurring electoral costs from a disinterested or even hostile public. Thus, a strong instrumental and ideological fit between any of the parties and a reform for gender variance cannot be discerned or expected.

It seems clear that neither electoral gains nor party ideologies can explain the surprising passage of the revised Civil Status Law, so another explanation is needed. Such an explanation can be found in the concept of the boomerang pattern implying pressure from the top down. This pressure was achieved by circumventing the closed national opportunity structure through the effective social mobilization of intersex individuals into national, transnational, and internationally linked advocacy groups that pressured the government from the outside and above. These groups have become part of larger transnational advocacy networks and developed alternative *diagnostic* (identifying social problems) and *prognostic* (identifying solutions) frames to shift and magnify the perception of the issue itself. The intersex advocacy network has specifically sought to reframe the issue from one of physical correction through medical intervention to one of social and legal protection, emphasizing foremost the need for safeguards against discrimination and bodily harm.

Framing processes—a concept coined by Goffman (1974), further devel-

oped by Snow and Benford (1988), and widely used in the social movement literature—are intentional strategies undertaken by social actors to construct new shared understandings of the social environment to legitimize collective action for change (McAdam 1982, 1988; Kriesi 1996; McCarthy 1996; Ferree et al. 2002). A reframing strategy would not have been politically effective, however, if intersex advocacy groups had not also taken advantage of the existing political opportunity structure of international multilevel governance structure and institutions, in particular the United Nations (for the political opportunity structure, see Kitschelt 1986; Kriesi 1995; for the UN and women, see Joachim 2003, 2007; Della Porta and Tarrow 2005; Zwingel 2005; Caglar, Prügl, and Zwingel 2013). Since 2008, intersex advocacy networks have focused their reframing efforts to establish explicit linkages between their demands and specific legal protections spelled out in five UN treaties:

1. CEDAW (Covenant to Eliminate All Forms of Discrimination against Women)
2. CAT (Covenant against Torture)
3. CRC (Covenant on the Rights of the Child)
4. ICCPR (International Covenant on Civil and Political Rights)
5. ICESCR (International Covenant on Economic, Social, and Cultural Rights)

This chapter focuses on CEDAW, which provided the gateway toward the recognition and inclusion of the intersex in further international negotiations.

Germany is deeply embedded in the international human rights regime and is a signatory to all five UN treaties. German advocacy networks have sought to use this membership to put broad pressure on the national government in a trans- and international dynamic for which Keck and Sikkink (1998) coined the widely used concept of the boomerang pattern. The fact that pressure by a group as small and marginal as intersex people has had an actual policy effect tells us at least two important things. First, the international human rights framework and discourse can offer political opportunities even to extreme outsiders. Second, the Federal Republic of Germany is quite sensitive regarding international pressure and shaming on the subject of perceived human rights violations.

Sources of Evidence

One goal of this project is to trace backward how the reformed Civil Status Law began to acknowledge the existence of gender variance in Germany

and how the intersex community gained political voice and visibility. It is a case study not only of policy reform but also of the social mobilization of the intersex community and their inspired use of multilevel governance to bring attention to their situation. The revised Civil Status Law can be traced back from its passage on 1 November 2013 through parliamentary debates among the political parties (spring 2013), to input provided by the chamber of states, to the work of the Ethics Council (2010–12), to official criticism from the UN in 2009, to the alternative report (*Intersexuelle Menschen* 2008) provided by an intersex advocacy group to the CEDAW, and finally to the social mobilization and networking in the 2000s.

I have focused on tracking down all available primary sources, specifically official documents, party proposals, debates, decisions by the German parliament, reports by the Ethics Council and its hearings, and assessments from legal and medical experts. I have also obtained newsletters and publications from intersex associations and individual accounts of survivors of nonconsensual surgeries. In addition, I have conducted interviews with policymakers, activists, and medical and legal experts.¹ The empirical section of this chapter reconstructs the frames and the strategic usage of the political opportunity structure by activists on the bases of written materials. Reconstructing the frames and their uses is aimed at understanding actors' preferences, perceptions, and strategies (Bates et al. 1998) as well as the timing and sequencing of the pressures placed on the German government. By tracing the political and legislative process, this project sheds light on how even an extremely marginalized group can gain political voice and visibility. Although UN conventions have emerged as a tool in human rights claims globally since World War II and especially since the 1970s, in this case they are utilized for the first time to address the mis/treatment of intersex individuals. The ineffectiveness of the UN human rights regime is often lamented, but in this case, it prompted a national government to react to critique and engage with the issue.

The Reform of the Civil Status Law

Problems Facing Intersex Individuals and Their Parents

Before we turn to the political process itself, it is crucial to briefly explain important terms concerning intersex as a category of people. The changing and competing terminology around intersex issues perfectly reflects the complexity of discourses and problems facing intersex individuals, their

families, advocacy groups, policymakers, and clinicians as well as sheds light on deeper matters regarding gender, power, and the role of the state in Western culture. In the past, intersex individuals were described (and pathologized) in law and medicine as hermaphrodites. Originally from the Greek, hermaphrodite marks a biological state and describes individuals who do not follow the expected physical differentiation between the sexes. The German term, *Zwitter*, comes from the word *zwei*, meaning “two” or “both.” These terms are no longer used in law and medicine as a consequence of their negative and unscientific connotations, although some radical activists appropriated *hermaphrodite* and *Zwitter* for themselves, owning the derogatory terms used against them much as the gay movement and others have done.

Today, activists, policymakers, and legal and medical experts in Germany and beyond commonly use the term *intersex*. Some parents, patients, and nonactivist intersex adults do not embrace this descriptor because they believe it connotes either a non-normative sexuality or a third or in-between gender and wish to avoid those connotations. The term *intersex* is often abbreviated by activists as *inter** where the asterisk connotes a broad and inclusive meaning of the ending, thus promoting unity among gender variant communities (a strategy also employed with *trans**).

Another term widely used, especially in the United States, is *DSD*, an acronym for “Disorder of Sex Development” that originated from a 2005 meeting of international medical experts in Chicago. It has become the nomenclature for professionals in many countries, replacing *intersex* and *hermaphrodite*. Some intersex activist groups (e.g., the Intersex Society of North America, founded in 1993) have supported this change, while others oppose it because *disorder* continues to pathologize intersex people. *DSD* also does not lend itself to function as an identity or a base of social mobilization (Davidson 2009, 76). According to the clinical understanding of the issue, extensive and routine medicalization of intersex individuals is and still should be the norm.

But disagreements about what *DSD* should stand for have emerged among activists and clinicians over the past decade, however, because some intersex advocates see the term *disorder* as discriminatory. Most significantly for this project, the meanings of all of these terms are contested and in flux, and all present specific social and medical perspectives with dis/advantages.

Intersex does not describe a sexual orientation (such as gay or lesbian), nor does it delineate the conditions of transsexuality or transgenderism (where individuals feel that their physical body does not reflect their in-

ternal sense). Identifying a simple unified category of what intersexuality is has not been possible: there are as many as four thousand chromosomal, hormonal, gonadal, and/or genital variations and combinations that could be described as intersex. For example, some infants are born with XXY chromosomes (Klinefelter syndrome), some male XY chromosomes can coexist with female genitals, and some females have unusually high testosterone levels (identified mostly through testing associated with participation in athletic competitions), which has also been categorized as a condition of intersex by some. Intersex individuals have a very large number of biological and physical variations, and opinions on who counts as intersex are extremely diverse. The exact boundaries of the category *intersex* are difficult to define and remain contested, even within the intersex community itself. Some people try to distance themselves from any of these terms and prefer to see their physical situation as a manageable and private challenge caused by a very specific disease (e.g., Turner syndrome, congenital adrenal hyperplasia, androgen insensitivity syndrome), while others claim *intersex* or *inter** as a social and political identity.

Many physical variations associated with intersex are harmless, some are unnoticeable, and many are never identified. Other conditions can be debilitating and in very rare cases fatal. However, about 95 percent of infants identified as intersex do not require immediate medical attention. Nevertheless, in Germany, by age twelve, about 87 percent of children born with visible intersex characteristics have been operated on and “corrected” (German Ethics Council 2012). Similar numbers may exist in other Western states that follow similar medical regimens.

As a consequence of the difficulties of clearly defining who qualifies as intersex, it is unclear how many children are born with intersex characteristics. The estimates vary remarkably and wildly. Some observers assert that the United States has about 1.7 intersex children per 100 newborns (Blackless et al. 2000, 159; Fausto-Sterling 2000). According to both medical researchers and the government, Germany has between eight thousand and ten thousand intersex people. Activist groups, however, put the number at as much as ten times higher (Intersexuelle Menschen 2008, 5). The wide variation of measures clearly reflects the complex and contested construction of the category.

Throughout the second half of the twentieth century, intersex individuals faced a number of severe social, medical, and legal problems. The practice of early surgical intervention that emerged in the 1950 under the leadership of John Money, a psychologist at Johns Hopkins University in

the United States, became the new medical standard in the global North. Starting in the 1960s, physical correction began to subsume intersex newborns in Germany under one or the other gender, and infants routinely experienced operations, often without their parents' consent. The powerful normalizing discourse of the sex/gender binary rendered intersex individuals legally invisible as the medical establishment developed new treatment protocols. Only since the mid-1990s have inter* individuals in Germany, the United States, and a few other states begun to step out of the shadows and organize against many odds into small self-help and advocacy groups. These groups began to protest the treatment of intersex individuals through a new political discourse (see also Pfahl and Köbsell, this vol.). Their critique was directed primarily against the practice of hormonal and surgical "adjustments"—often including the removal of internal organs and castrations—without consent. According to German intersex patients, the medicalization of their condition and resulting operations often led to lasting physical and psychological trauma, disability, reliance on lifelong hormone therapies, depression, loss of sexual sensitivity and/or drive, and the inability to connect to others or to hold a steady job (Intersexuelle Menschen 2008). Although the first intersex activist in Germany, Michel Reiter, sued unsuccessfully in court after being categorized as *Zwitter* in 2000, demands for a reform of the Civil Status Law to introduce a legal third gender were not at the forefront of activists' goals. Instead, issues related to bodily harm—involuntary sterilizations, the removal of reproductive organs, and other forms of interventionist "normalization"—were of the greatest concern.

The medical establishment plays a significant and often disturbing role in this story of diagnostics, treatment, "correction," and medicalization of nonpathological conditions and ultimately patient resistance (see Foucault 1970; Reis 2009). While political parties, international institutions, and social advocacy networks comprise the core actors of this chapter, clinical practitioners and experts are another important factor. They often resisted many of the new demands made by activists. The entanglement between legal and medical discourses is so close and the authoritative power of the latter so deep that Kolbe commented in 2009, "As long as the law refers to medicine in questions of sex and intersexuality and as long as medicine does not alter its stance, no change of the legal system will be accomplished" (162). In 2013, however, the law shifted because policymakers began listening to intersex patients and activists. The cause of this shift can be located in the reframing of the issue and in the creation of broader domestic and

transnational coalitions that provided intersex activists with institutional venues in which their concerns could be heard. Taking advantage of this window of opportunity, the intersex advocacy network boldly employed the institutional mechanisms and discursive frames of current international politics to their advantage.

The Reform Process

Germany's introduction of gender variance is part of the Civil Status Law (Personenstandsgesetz). The Civil Status Law originated in 1876, when the newly formed secular nation-state asserted its prerogative vis-à-vis the church. The law has been amended several times, most recently to allow new parents and hospitals to decline to designate a newborn as either male or female and to leave those sections blank on official identity forms. The revised paragraph 22, section 3, states, "If the child cannot be categorized as of either male or female gender, then no entry of civil status must be made into the birth registry."² The law also allows an indefinite delay in the official registration of a gender (although there is some legal disagreement on this point). These provisions apply exclusively to intersex newborns—that is, infants who, based on visible physical particularity (*Besonderheiten*) cannot be clearly designated either male or female. In that sense, a new group of citizens has officially emerged.

Official documents produced by the German federal government, the Ethics Board, courts, and various expert panels use now the term *intersexuality*. Strictly speaking, intersexuality as it is introduced here is not a third gender; rather, it implies that the gender has not yet been decided on and may not be. The new option should be more correctly described as an unspecified gender, since the law did not create an explicit third category. In any case, and regardless of how use of this designation plays out in the future, its existence represents the first legal and thus political acknowledgment of intersexuality and gender variance in modern Europe. The unspecified gender category breaks open the established and totalizing gender binary, allowing for the emergence of a new intersectional gender/sex category with significant social, legal, and political implications.

Gender Variance Activism, 2008–2013

Beginning in the mid- to late 1990s, previously isolated intersex individuals and their families in Germany built a small community and limited net-

works of activist groups and organizations (Arbeitsgemeinschaft gegen Gewalt in Pädiatrie und Gynäkologie [AGGPG], 1996–2004). Aided by the rise of the Internet, communication became easier while privacy remained relatively protected. Although the AGGPG's early attempts to affect political institutional reform failed, multiple successor intersex groups had more success.³ Although these groups have not always pursued complementary strategies, they have developed a baseline of claims that governments should address. Certain demands were also articulated in an intersectional manner, resonating with other civil society groups and nongovernmental organizations (NGOs) in the disability, human rights, and trans* community (e.g., Behindertenrechtskonvention Allianz, Forum Menschenrechte, TransMann eV). My interviews identify two of the intellectual launching pads for the reframing of intersex issues: the German Institute for Human Rights (Deutsches Institut für Menschenrechte [DIM]) and legal scholars at the Humboldt University. At the DIM, experts and legal scholars identified specific international treaty conventions as a potential political access point that could be used to push for more visibility for intersex issues. They also advised activists from XY-Frauen (XY Women) on how to take advantage of these international access points.

Crucial for access to the United Nations was a newly established connection between intersex activists and the German women's movement, specifically the national umbrella organization Deutscher Frauenrat (DF), a well-established NGO. The DF has repeatedly used the regular CEDAW reporting cycle, in which governments report to the United Nations about the actions they have taken to fulfill treaty commitments. Civil society organizations are encouraged to submit their own (often more critical) "alternative reports" (previously known as shadow reports or parallel reports). Several German women's civil society groups submitted alternative reports assessing the German government's implementation of international treaties: a broader report from the DF, a report from a trans* group, and a report from the Association of Intersex People, a small group founded in 2004 (Intersexuelle Menschen 2008). These groups thus made themselves heard on the supranational UN stage.

On 2 July 2008, under the leadership of three (self-identified) inter* women, the advocacy groups Intersexuelle Menschen e.V. and the XY-Frauen submitted a report to the UN on the situation of intersex individuals in Germany. The report was officially received by the CEDAW committee on 10 February 2009. The information from XY-Frauen was professional and well put together and more than 130 pages long. It was

clearly a product of considerable time, effort, and skill and represented to some extent the outcome of networking with the DIM and the larger German women's movement through the DF (*Intersexuelle Menschen* 2008, 6). The alternative report included a summary, a set of hard-hitting questions for the German government, extensive discussion of linkages between the concerns of intersex individuals and specific articles of the convention, recommendations, and an addendum with case studies of biographical narratives from intersex individuals, medical-ethical considerations, and more. Simultaneously, the UN received the sixth official CEDAW report from the German government, which did not even mention intersexuality.

The alternative report intentionally and directly linked the concerns of intersexual individuals and families regarding physical protection and well-being to CEDAW. Articles 1–5 of the convention cover basic principles on equality, nondiscrimination, and the obligations of states; Article 12 covers the right to health; and Article 16 addresses marriage and family and special mechanisms. The advocacy groups intentionally and convincingly linked the concerns of intersex individuals for physical protection and well-being to the articles of the existing CEDAW treaty. Ironically, of course, the treaty is designed to address the situation of women and is therefore based precisely on the sex/gender binary that has produced many of the problems. By claiming coverage as women, intersex advocates identified themselves politically as women at the same time that they highlighted their intersecting male and female physiognomy. This approach replicates a theme familiar from trans* debates: Who counts as and can speak as a woman in terms of CEDAW? While the question remains unanswered, the representatives from XY-Frauen brought the case of intersex people to the attention of the CEDAW committee.

Issues at the forefront of intersex concerns link up credibly with CEDAW's articles on equality, nondiscrimination, and right to health. In this context, the advocacy groups' main concerns were unnecessary surgeries, genital amputations, sterilizations and castrations, off-label use of medication, lack of access to health care for lifelong hormone therapy, and "medical experimentation" (*Intersexuelle Menschen* 2008, 11–16). From the activists' perspective, these routine, state-sanctioned attempts to "correct" an "anomaly" become gruesome and severe violations of basic human rights (if not exactly women's rights). My interviews found descriptions of the routine medical treatment of intersex newborns and children that were both eye-opening and quite convincing as serious violations of CEDAW.

The XY-Frauen report includes information about the historical de-

velopment and use of such medical treatments, since so little is generally known on this issue. The active re/framing process is particularly apparent here, as the description of the emergence of medical standards provides an important recontextualization. Another particularly powerful reframing moment occurs when the document points out that no information is available on intersex people born before 1945 because virtually none of them survived the Nazis' "racial hygiene" policies.

Reframing the Issue

The diagnostic frames utilized by the German advocacy groups identify widely accepted theories developed in the 1950s and 1960s by Johns Hopkins University sexologist Dr. John Money (1921–2006) (Reis 2009). Money was the main proponent of the idea of correction, meaning that the upbringing and identity of an intersex child should conform to the external sex organs (ignoring chromosomes, hormones, or gonads). Surgeries to "normalize" external sex organs thus became standard procedure throughout much of the global North. Harvard-educated, highly respected, and extensively published, Money proposed the still-practiced "time window theory," which holds that children between the age of six months and two years can be socialized into any gender role. Keeping intersex identity (or, for Money, pathology) a secret was intended to spare patients the crushing experience of gender ambiguity and improve their lives. Money and his medical team demonstrated the theory that gender was learned rather than innate with the sex reassignment of David Reimer, an identical twin who lost his penis in a hospital accident at the age of one (Preves 2002). Reimer's case became famous and led to global acceptance of sex reassignment surgery as the dominant treatment for intersex individuals. But in 1997 it was revealed that the surgery had been a failure: Reimer tried to return to his former male sex and later committed suicide, undermining Money's claim that people could be "operated into" and socialized into any gender at a very young age. The alternative report argued that such surgeries were inhumane and constituted a form of "genital mutilation" and "torture" (Intersexuelle Menschen 2008, 14).

In terms of finding alternatives to surgically invasive treatments of intersex individuals, the alternative report provided sensible prognostic frames—a list of seventeen demands by survivors that provides a basis from which to assess movement goals and achievements. Foremost is the demand for the cessation of irreversible surgical and medical treatments

on intersex people as long as the sex variations are not life-threatening. Other major concerns include consent, access to health care and one's own medical files, clarification of risks, and better education of medical personnel regarding intersex issues. The request for the "inclusion of the term intersexuality in the law" appears far down the list, at point 14 (*Intersexuelle Menschen* 2008, 19). The alternative report also included seven separate social-political demands, such as compensation payments and truth commissions (modeled on a Canadian approach to claims by indigenous people); increased social security payments; the creation of specialty health care centers; and access to better health insurance, disability payments, and job retraining (19–20).

The alternative report explicitly expressed the hope that CEDAW would pressure the German government to reform its law and regulations concerning intersex people. In addition, the report connected activists' concerns to several other UN conventions: "It is our hope that CEDAW will bring pressure [*darauf hinwirken*] on the federal government in such a way that the human rights of intersex individuals covered in CEDAW, and connected to Article 3 of CEDAW, will also be applied and instituted through other human rights treaties of the United Nations in Germany" (6). The report's demand for horizontal dissemination among other UN conventions specifically refers to (and includes copies of) the CAT, the CRC, and the ICCPR and ICESCR, all of which Germany has signed. Through the invocation of multiple human-rights-related UN treaties, political pressure was spread, multiplied, and networked for maximum impact.

CEDAW's official response to the German government, issued on 10 February 2009, addressed the concerns raised by the XY-Frauen. The CEDAW committee was especially critical of the fact that the German government had not responded to the demand for a dialogue with inter- and transsexual groups. The German government received a public reprimand and a formal request to improve the protection of the rights of intersex individuals and to provide a prompt response to this specific issue. This result surprised even the most optimistic of the activists.

On 18 August 2011 the German government declared that the national antidiscrimination office, a minor office of the Ministry for Family, Seniors, Women, and Youth, had conducted a number of activities to support the rights of *transsexuals* (see *Deutscher Ethikrat* 2012, 10n2). This weak reply failed to even address the *intersex* issues raised by CEDAW. In addition, the antidiscrimination office has little political or legal clout (von Wahl 2011). But the announcement indicated that the government

was sensitive to CEDAW's critique and had responded to address its concerns. In December 2010, the government had asked the high-ranking German Ethics Council (via the federal Ministry for Education and Research and the Ministry of Health) to consider the case of intersex individuals and to begin a conversation with intersex representatives and their self-help groups.

The parliamentary Ethics Council consisted of twenty-six highly regarded individuals (among them legal and medical scholars, administrators, politicians, theologians, and philosophers) and spent two years conducting extensive research on intersex conditions. The Council produced a seventy-four-page report that included discussions of medical indications, diagnosis and therapy, and national and international law as well as specific recommendations. As CEDAW requested, the Council held a public hearing, reaching out to intersex individuals and advocacy groups. It also started the first online survey and web blog to expand its outreach to affected groups (BT-Drucksache 17/9088, 5). Two years later, on 14 February 2012, the Ethics Council sent its report to the German parliament (BT-Drucksache 17/9088, 14.02.12); on 23 February, the Council presented its findings to the public.

The Ethics Council medical recommendations included the establishment of qualified and interdisciplinary centers of excellence for intersex conditions and independent consultation and underscored that decisions about irreversible surgeries had to be made by the affected person, not by medical personnel. In many instances, the report reflected the interests articulated by the alternative report and the intersex community, but it did not recommend outlawing medical correction, a top priority for inter* activists.

The legal recommendations were geared toward allowing intersex individuals (but in practical terms, their parents) to opt out of registering as either male or female at birth, thus removing some of the immediate pressure to select a sex for the child. In addition, the recommendations emphasized that intersex persons should be able to decide when to report their gender and allowed to change their gender designation. Furthermore, the Council asked the government to address the possibility of marriage and/or civil unions for persons with no officially designated gender.

The matter subsequently moved to the German parliament. On 6 June 2012, the Bundesrat (the upper and less powerful state chamber) issued recommendations in line with those of the Ethics Council's (BR-Drucksache 304/12, 25.05.12) and thus with the demands of the intersex activists. The

representatives of the *Länder* (states) requested that the parliament examine the extent to which the suggested changes could be considered in the current draft bill of the Civil Status Law. On 25 June, parliament held its first public hearing involving intersex representatives; according to my interviews, their testimony profoundly impressed lawmakers.

So, to return to my original question, did the unlikely passage of the new gender option result from party ideology, decision makers' interest in obtaining votes, or transnational social movement activism? Primary sources and interviews illustrate that this social movement gained traction through transnational mobilization but also that the influence of transnational actors receded after the boomerang returned. At this point, the dynamics of the legislative process took over, and active interparty negotiation and competition began, triggering processes that are deeply connected to the political opportunity structure of a proportional and multiparty system. As we would expect, intersex advocacy groups were less present in the final stages of the policy cycle, although at this juncture their concerns had gained engaged allies and supporters in several parties on the left. At this stage, the explanation for the reform centered on activism weakens and traditional arguments about party competition and ideology gain strength.

One of the many proposals to be discussed at the parliamentary debate on 17 January 2013 included the first reading of the revised Civil Status Law, which was not prominently featured on the agenda (BT-Plenarprotokoll, 17/217, 17.01.13). In this first reading, the ruling Christian Democratic/FDP coalition put forward a number of mostly technical changes and updates but did not include the provision for intersex newborns. The opposition parties responded quite critically to what they perceived as the government's avoidance of the Ethics Council's recommendation. At precisely this moment, the political jockeying among the parties intensified. Gabriele Fograscher from the Social Democrats, for example, criticized the conservative government on the floor of the parliament:

Unfortunately this draft bill is limiting itself to technical and formal questions and ignores the people who have problems with the Civil Status registration. The German Ethics Council provided an assessment in February 2012 on the topic of "Intersexuality." . . . The governing coalition declares, "A solution to the complex problems, especially in light of the medical aspects, cannot be found quickly at such a late stage." This statement is a disappointment for those affected [*Betroffenen*]. . . . The government obviously is not taking seriously

the problems and concerns of the affected. ((BT-Plenarprotokoll, 17/217, 17.01.13, 26940-41)

The smaller opposition parties, the Greens and the Left, also criticized the ruling coalition for omitting the Ethics Council's recommendations. In fact, the Greens had already produced a separate document that supported the Ethics Council's recommendations (BT-Drucksache, 17/5528, 13.04.11). The Left also supported the inclusion of the Ethics Council's recommendations in the revised Civil Status Law.⁴ But the ruling coalition resisted these jabs.

On 31 January 2013, however, the revised Civil Status Law, now including a provision to break the gender binary, suddenly passed the Bundestag with unanimous support, a rare occurrence (BT-Drucksache 17/12192, 31.01.2013). What caused this dramatic shift by a conservative government? A closer reading of the parliamentary debate reveals (1) that parties on the left strongly supported the reform; (2) that FDP members of parliament claimed that they had already privately considered accepting the recommendations; (3) that even Christian Democrats spoke in support of the law (BT-Plenarprotokoll 17/219, 31.01.13, 27221); and (4) that a surprising and possibly strategic bundling of unrelated topics occurred that seems to have helped parties on both the right and on the left. When the legislators summarized the core aspects of the new law before the final vote, they cited adding gender variance for intersex individuals (less prominent), changing the rules for adoption (medium relevance), and, most prominently allowing miscarriages of newborns weighing under 500 grams (*Sternenkinder*, or "Children of the stars") to officially be registered as children (BT-Plenarprotokoll 17/219, 31.01.13). Thus, the unexpected and last minute inclusion of gender variance may have been achieved by linking a broadly supported and largely symbolic pro-life issue to the addition of revised gender categories affecting only a small number of people. The debates featured several competing topics involving social questions and family issues; all parties wanted to capitalize on those issues.

Between March and April 2013, the reform received several other amendments by the various opposition parties and individual legislators, most of which sought to improve the situation of intersex individuals and pressure the government to act. The amendments that came from parties on the left reflected the demands that surfaced in intersex activists' report to the UN and referred explicitly to CEDAW, the CAT, and ICESCR. The opposition parties therefore linked the unusual demand for gender

variance to their own agenda, thereby upstaging the government and underscoring the influence of international pressure on the issue of human rights on German politics.

The reform of the Civil Status Law unanimously passed parliament on 7 May 2013 and went into effect on 1 November 2013 as Paragraph 22 of the Personenstandsgesetz (PStG). The process formally introduced the option of being neither male nor female under German law.

Conclusion

This study presents one of the first analyses from the field of political science on the issue of intersex identity and mobilization. It also demonstrates that Keck and Sikkink's theoretical work can be applied beyond the gender binary. The marginal intersex network and its allies have been effective advocates for change. They have begun to reframe existing perspectives on the medicalization of intersexuality and have utilized a multilevel governance approach to promote their national agenda. Devising an unlikely but valuable international boomerang pattern, social advocacy groups have shifted the discourse from one of medical correction to one of human rights protection. With the support of civil society allies, German advocacy groups have called on various UN institutions and mechanisms to achieve domestic goals and pressure the government from above. The German government's assessment of the issue supported many of the social movement's claims, and opposition political parties then joined the bandwagon. Such a seismic shift is possible in a state with a multiparty system that is keenly aware of its past crimes against humanity and accustomed to a long political discourse on reparations.

Can the reform be described as a paradigm shift—away from a practice and paradigm of correction to one of protection? Does the reform move the deeply entrenched gender binary toward something more fluid or even queer? Will gender variance for intersex people become accepted as many LGBT demands have been? Or is the opposite true—is the change in fact rather limited, has the media overstated its implications, and does it even address activists' main concerns? Advocacy groups have responded with a wide range of reactions, from outright rejection of a mere symbolic act with no material effect to optimism this is the first step in a process of recognizing the voices and needs of intersex people, including an identity and existence beyond the simple male/female binary. Regardless, there can be no doubt that the intersex community has gained a political voice and

visibility through the astute use of a multilevel governance approach. By actively building alliances and brilliantly reframing and using various political opportunities, the intersex have politicized their concerns in constructive ways and brought them into a public sphere that is generally receptive to human rights arguments. Nevertheless, no moves toward an official third gender category have occurred, and in 2016, the Bundesgerichtshof (the highest civil court) rejected *inter* or *divers* as a new category, arguing that *unspecified* suffices for describing intersex. Activists have now moved the case to the supreme court.

Activists' most critical concern remains unaddressed: bringing to an end the continuing interventionist surgeries, involuntary sterilizations, and lifelong treatments of intersex people. The government has not addressed this concern, and activists have been disappointed by the lack of action to rein in the practices and power of the medical field.

What can this case teach us more generally about the empowerment of intersectional and/or marginalized groups in Germany and beyond? The legislative achievement of intersex advocacy points to the rising availability of and opportunity to conduct domestic politics in a multilevel system of governance, even for severely stigmatized groups. If movements' demands can connect transnationally and concerns can be framed in terms of internationally binding treaties through powerful discourses such as human rights, a boomerang pattern can be employed to exert top-down pressure. However, as many other examples demonstrate, where allies are lacking or weak and political parties disinterested, where shaming does not work, and where networks fade, mobilization by marginal groups cannot be sustained.

What makes the Germany a more susceptible target? Germany is not only a signatory to most human rights treaties but also more susceptible to international pressure on human rights issues than other states. As a perpetrator of enormous human rights violations during the Nazi regime, Germany is more easily shamed than other countries and is more responsive to calls for measures of transitional justice and the recognition of offenses. As a general rule, Germany avoids the glare of international attention mostly through norm compliance. The country has a vibrant domestic civil society, and intersex advocacy groups have recently developed supportive networks with the women's movement and with lesbian, gay, and queer groups (although not with transgender groups). The proportional multiparty system that prevails in many parliamentary states produces competitive pressures that can also help bring marginalized issues to the decision-making table.

Democracies in Europe and elsewhere where intersex people are mar-

ginalized and the practice of corrective surgery is widespread share many of these characteristics. Intersex advocates and their allies will likely employ the strategy pioneered by the XY-Frauen, using transnational social mobilization and discursive tactics to gain voice and visibility. Intersex activists will attempt to exert a completely new degree of influence that may challenge the broadly established gender binary and propel debates regarding gender variance from the margin toward the center.

NOTES

Earlier versions or sections of this chapter were presented between 2014 and 2016 at the American Political Science Association, the German Studies Association, and the European Consortium for Political Research. I am grateful for the comments of the anonymous reviewers, conference participants, and the editor.

1. The extensive interview material garnered between the summer of 2015 and 2016 is not presented here but is part of a larger ongoing project on transnational intersex mobilization.

2. "Kann das Kind weder dem weiblichen noch dem männlichen Geschlecht zugeordnet werden, so ist der Personenstandsfall ohne eine solche Angabe in das Geburtenregister einzutragen" (all translations by the author).

3. In the 1990s individual connections were established between with the American organization ISNA (Intersex Society of North America, founded in 1993) and the AGPG. In the meantime ISNA has distanced itself from its earlier radicalism and criticism of medicalization and the AGPG dissolved.

4. The Left's precursor, the Party of Democratic Socialism, was the first to pick up on the activist critique.

PARLIAMENTARY AND OTHER GOVERNMENTAL RECORDS

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BT-Drucksache, 17/5528, 13.04.11.

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BT-Drucksache 17/9088, 14.02.12.

BR-Drucksache 304/12, 25.05.12.

BT-Plenarprotokoll, 17/217, 17.01.13.

BT-Plenarprotokoll 17/219, 31.01.13.

BT-Drucksache 17/12192, 31.01.2013.

WEBSITE

OII Deutschland, 2013: Pressemitteilung der Internationalen Vereinigung Intergeschlechtlicher Menschen (IVIM)—Deutschland, 7.2.2013. <http://intersexualite.de/pm-mogelpackung-fur-inter-offener-geschlechtseintrag-keine-option/>

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