
Original Article

Democratic commitments are not always credible: Abortion and German reunification

Elizabeth Jahr and Chad Rector*

Marymount University Arlington, Arlington, Virginia, USA.

E-mail: crector@marymount.edu

*Corresponding author.

Abstract Can states make credible commitments to respect concessions they make as part of national reunification agreements? German leaders negotiating reunification in 1990 had to reconcile West Germany's more restrictive abortion policy with East Germany's more permissive one, and agreed in 1990 to a compromise that seemed to preserve first-trimester abortion on demand in the Eastern states. By 1993, however, that compromise had been undone and the formerly West German policy prevailed throughout the country. This history challenges the theory that commitments made by democratic regimes are credible, especially since there were a number of international and domestic factors present in this case that other scholars have identified as enhancing credibility. We investigate the trajectory of unification-era German abortion policy and make two arguments: the decision by West German leaders to undo their earlier concessions was conscious rather than accidental, and despite Western attempts to reach a compromise that Easterners would see as credible the prevailing view in the East during the negotiations was that the Western commitment was uncertain at best. We conclude with some broader speculation about reunification, and suggest that promises made by a larger partner during negotiations over national reunification have inherent credibility problems that democratic institutions cannot by themselves solve. This implies that future reunifications, for example between North and South Korea or China and Taiwan, may be even more difficult to negotiate than currently recognized.

Comparative European Politics advance online publication, 13 October 2014;

doi:10.1057/cep.2014.46

Keywords: reunification; Germany; federalism; abortion

Introduction

Despite strong public support for the principle of German reunification in 1990, there were considerable tensions over specific areas of disagreement including monetary integration and fiscal transfers, but abortion policy was a particular source of

bitterness. Although West Germany had a more restrictive set of rules governing access to abortion, within East Germany there was widespread popular support for its more permissive rules. As the deadline for final agreement neared in August 1990, West German Chancellor Helmut Kohl brokered a compromise that would permit the former East German rules to stay in effect for at least two years, with further changes to be decided by the new all-German parliament in which Easterners would be represented. Not only did the terms of the Unification Treaty promise, albeit temporarily, to respect Eastern legal traditions regarding abortion, but public statements from Kohl and from other members of his governing coalition were portrayed by Eastern and Western leaders alike as implying a longer-term commitment as well. By 1993, however, actions by Kohl's own party, in conjunction with a ruling by the High Court, reverted all of reunified Germany to the more restrictive West German standards, with a 1995 revision moving only slightly in a more permissive direction.

A number of factors might make the failure to respect Eastern abortion laws seem puzzling, especially given the advance commitment made by West German leaders in 1990. West Germany's democratic institutions, a political culture and legacy of devolution within a federal system, interest group politics, legal traditions, and the West German government's interest in maintaining a reputation for restraint are all factors that conventional theories suggest should have bolstered the West's commitment to respect Eastern preferences on abortion policy. We argue, instead, that the experience of German reunification suggests that the effects of these factors may not apply well to cases of national reunification, and that the failure of a durable compromise was both predictable.

This paper proceeds in four sections. First, we show that the politics of abortion in German reunification is a puzzle, in particular given current theories of democratic credibility. Second, we narrate the German case, highlighting the problem of commitment; we show that, despite public assurances by political leaders to the contrary, the eventual reversion to the West German policy was widely anticipated and was the result of deliberate choices by leaders including Kohl who themselves had negotiated the compromise in the first place. Third, we discuss problems of democratic credibility, in particular with respect to problems of national reunification, and speculate that national reunification processes may pose unique problems for making commitments credible. Fourth, we conclude with a discussion of applications to potential future national reunifications in Asia.

Puzzle

The Berlin Wall fell in November 1989 but it was only in March 1990 that political leaders in both East and West converged on rapid unification as a strategy. Negotiations culminated in the signing of a formal treaty of unification in August



1990, its ratification in September, and implementation in October. Abortion was one of the most politically sensitive issues handled during that period, and the one over which East German leaders were most willing to hold out, even at the risk of derailing an agreement (Prützel-Thomas, 1993, 1995; Quint, 1997, p. 154). Full economic empowerment of women had been a cornerstone of economic and social policy in the GDR (East Germany), where majorities saw permissive abortion rules – in which abortion was available on demand for women in their first trimester of pregnancy – as a cornerstone of a social compact that also included high rates of female labor force participation (Prützel-Thomas, 1993; Fisher, 2005). Interim Prime Minister Lothar de Maizière underscored the depth of commitment by telling GDR citizens throughout the summer of 1990 that protections for abortion rights were not negotiable.

In contrast, in the FRG (West Germany) a series of court rulings had rendered abortion generally illegal, with certain specified exemptions for medical or social conditions in the first trimester. Negotiations over how to reconcile the two systems dragged on, and East and West German representatives only reached a final agreement on abortion on 31 August, the night before the deadline for a final treaty, after pressure from GDR negotiators who had deferred to the FRG on nearly every other issue. The eventual compromise led citizens of the GDR, who supported their permissive abortion laws by a 7 to 1 margin, to believe they had been promised they would be able to keep them (Czarnowski, 1994; Mushaben, 1997). This in particular followed a number of public statements by newly elected East German leaders who described the unification agreement in terms favorable to the popular East Germany view on abortion.¹

Chancellor Kohl decided at the end of August, as the deadline loomed, to relax his position on abortion for the sake of getting an agreement. He instructed interior minister Wolfgang Schäuble, who had been negotiating the terms of the treaty, not to hold it up over abortion. The resulting text was widely described as entailing a unitary solution for most issues but a two-state solution to abortion (Riemer, 1993, p. 171). The compromise embodied in the treaty specified that the separate existing abortion laws would remain in effect within the West and East but required the new all-German parliament to introduce a new set of uniform abortion laws by the end of 1992. If the parliament did not pass a new law by that time then the existing separate rules would continue indefinitely (The Unification Treaty, 31 August 1990, p. 19). One of the two main blocs in the West German parliament, the opposition coalition of the Social Democrats (SDP) and the Greens, supported a move toward permissive abortion laws anyway; not only did they declare their support of a compromise permitting GDR rules to remain in place, but they threatened to block the treaty if it overruled GDR laws. In the governing coalition, the junior partner Free Democrats (FDP) also supported permitting GDR rules to continue, while the Christian Democrats (CDU/CSU) generally favored abortion restrictions and therefore opposed a compromise.

Although the treaty itself was high priority for Kohl, and its completion was the centerpiece of his subsequent reelection campaigns, he remained opposed to the



permissive abortion rules and, at best, grudgingly accepted them as necessary for the agreement (Mattern, 1991, p. 676). Still, the terms of the treaty and the politics surrounding it gave East Germans reason to think that the West German political system had made a commitment to maintain some semblance of a permissive set of abortion rules, at least in the East. A growing academic literature in political science on the nature of international commitments would have supported this view, for a number of reasons.

First, West Germany was a democracy, and a large literature in political science argues that democratic political systems make credible commitments. Democratic leaders face multiple internal checks on their decision making and as a result only produce agreements that have broad support within the political system (Martin, 2000), democratic leaders can pay a political price for abandoning commitments (Slantchev, 2006; Urpelainen, 2012; Uzonyi *et al.*, 2012), and democracies maintain their commitments even when their governing coalitions change (Leeds *et al.*, 2009). These arguments conclude that democracies have a unique ability to commit to durable agreements (Lipson, 2003; Svobik, 2006).

Second, German democracy is founded on a social and institutional commitment to federalism, in which many aspects of political authority were held by the constituent states (Ziblatt, 2008; Broschek, 2012). Indeed, although abortion policy in West Germany had been set by a 1975 High Court ruling that prohibited abortion except under certain conditions in the first trimester – conditions that included rape, medical necessity and social hardship – the enforcement of the ruling was left to the states, and those states governed by the left-leaning SPD generally made the conditions easier for women to establish (Quint, 1997, p. 155), albeit within a system that was overall more restrictive than that of other European states (Eser, 1986). The evolution of the approach to reunification simply reinforces this view, since prior to 1990 the universal assumption was that any merger would be through a confederation that preserved the existing GDR regime and legal system, while moving slowly to reform the political abuses of the East German state (Smith, 1991; Plock, 1993, p. 175). In late 1989 Kohl's plan for German unity described 'confederative structures', and Kohl and Eastern Premier Hans Modrow described their common vision for a 'community of treaties' between the two states on a variety of technical matters (Szabo, 1992, p. x). It was only in summer 1990 that ideas changed and 'reunification' came to mean an actual political merger (Hämäläinen, 1994, p. 239). In summary, the preservation of the East German legal system had been the working assumption behind reunification for almost the full year leading up to the treaty, consistent with the federal legal tradition.

Third, within West Germany strong interest groups advocated for the adoption of a more permissive abortion law. To be clear, a slight majority of Westerners supported restrictive abortion rules (Rattinger, 1994; Banaszak, 1998). Still, three major political parties (the SPD, the FDP and the Greens) and a host of nongovernmental social and lobbying organizations advocated liberalizing reforms, and the



nongovernmental groups especially saw reunification as an opportunity to liberalize abortion in the West as well. Indeed, the very fear of political diffusion westward had led some socially conservative groups in the West to oppose reunification in the first place (Szabo, 1992, p. 20). West German women's organizations had generally been incorporated into catchall political parties but still exercised influence even within the more conservative CDU (Einhorn, 1991; Wiliarty, 2010). A significant thread of research argues that countries are more likely to live up to the terms of agreements when domestic groups support the goals of the agreement, as agreements create a normative framework that domestic groups can use their own advantage (Cortell and Davis, 1996) and because agreements can help define policy benchmarks around which they can mobilize electoral support (Dai, 2006).

Fourth, the implicit Western commitment to permit the continuation of Eastern abortion law was intrinsically plausible since it was within the range of abortion policies in other demographically similar Western European democracies. In 1990, abortion on demand had been permitted for over a decade in France for women in the first 10 weeks of pregnancy, in Italy during the first 90 days, and in Austria in the first 12 weeks (Glendon, 1987). Theories centered on normative and legal diffusion suggest that Germany would have been ripe to adopt a more permissive abortion law by 1990 in any case, as it shared a similar political structure, legal system, and dominant religion as its neighbors, and it was in the process of becoming more socially and economically integrated with them – all factors associated with higher levels of regional convergence (Checkel, 1997; Simmons *et al*, 2006).

Fifth, German leaders in 1990 had a particular interest in maintaining a reputation for sincerity in commitments; they faced international audiences that were especially fearful of German revisionism and who were known to be scrutinizing Germany for any sign that it was going to break free of commitments to European norms made during the Cold War and during the negotiations over European political and economic integration (Garrett, 1993; Sandholtz, 1993; Mazzucelli, 1997); this kind of credibility is especially important since some of the ambiguous connections between European-level institutions can make clear demonstrations of national policy all the more salient (Kreppel, 2011). West German leaders would have been especially sensitive to the appearance of failing to follow through on a promise to treat with respect people who were now in a politically vulnerable position following political and economic integration. State leaders know they are being watched, so when the stakes for maintaining a reputation for sincerity are high national leaders are more likely to follow through on commitments (Sartori, 2005).

For a variety of reasons, then – in particular including the democratic character of the West German regime – conventional theories in political science would suggest that West Germany would have been likely to uphold its implicit promises to respect the regulations on abortion that had been in place in East Germany and would approach changes to East German social policy gingerly. International or other factors would, if anything, have reinforced this tendency.



Narrative

The specific history of the abortion debate in the German parliament and subsequent Constitutional Court hearing followed a pattern that highlights the puzzle about the ability of the West German political system to maintain a commitment to the East. In this section we trace abortion policy in more detail to establish two points. First, Kohl used a number of tools after unification to tacitly renegotiate the provisions of the agreement in order to implement his preferred policy across Germany. Second, during the negotiations, at a time when leaders from both the West and the East were attempting to convey to Easterners that Western concessions on abortion policy were sincere, mainstream journalists and activists in the East expressed judgments ranging from uncertainty about the Western commitment to outright skepticism. Together, these two points suggest that the eventual reversion to the West German system was a deliberate choice, rather than a historical accident, and that if there were systematic factors at work they may also have been apparent during the negotiation of the agreement, clouding the Western ability to make credible concessions.

Chancellor Kohl, the leader of the Christian Democrats and their coalition partners, had at least one source of institutional support for his preference for a relatively restrictive abortion policy: the FRG's Constitutional requirements and history. Paragraph 218 of the FRG's Basic Law contained expansive provisions protecting human life, which in 1975 the Constitutional Court used to overturn a law that permitted first trimester abortions. In East Germany, however, abortions were permitted throughout the first three months of pregnancy, accompanying social guarantees including free daycare and paid sick leave for mothers.

At a campaign rally in Alexanderplatz in March 1990, just before East Germany's first (and only) free legislative elections, voters reportedly asked candidates about the availability of abortion in a reunified Germany even before reunification itself was widely seen as likely.² The political context made the status of women a sensitive topic. Monetary union between the East and West had led to unemployment and inflation in the East; these setbacks had the largest impact on women who, despite being numerically equal in the former communist workforce, remained in lower-paying jobs and were often the first to be laid off and the least likely to be hired in a recession. As a consequence, the employment recession hit women – and especially younger women – disproportionately, leaving women 70 per cent of the unemployed. This economic situation may have contributed to a reported rise in abortions, and raised the salience of the issue in the East. At the same time, interest groups in the West hoping to seize the opportunity for a more permissive law for Germany as a whole helped organize a series of protests and letter writing campaigns demanding the retention of the right to first trimester abortions.³

By August of 1990, with an October unity date set, the West German Social Democrats (SPD) went so far as to threaten blocking the treaty, which required a two-thirds majority vote in both parliaments, over their insistence that the treaty protect



abortion rights in the East. This had already followed Kohl's decision in negotiations with Eastern leaders to permit the continuation of the East's abortion law, at least on an interim basis until reconsidered by the unified parliament. Now, Kohl relented to pressure from the SPD to guarantee that West German women would be able to cross the border to East Germany in order to obtain abortion services, despite his prior opposition to permitting 'abortion tourism'.⁴ In the interim, East Germany kept its permissive policy and West German women could legally obtain an abortion there.⁵

Although the potential framework for the new law was open ended, the possibility for a more permissive abortion law was granted in the reunification treaty. Oskar Lafontaine of the Social Democrats presented this as a major concession, explaining that he felt 'confident that the compromise we struck will result in more rights for women and a better abortion law in two years'.⁶ This decision in the treaty represents Kohl's commitment to allow the German parliament the opportunity of deciding a new law after reunification, despite Constitutional history that opposed a permissive law. With the abortion dilemma solved, at least for a time being, unification went forward as scheduled and Kohl and his coalition partners went on to win a 50 per cent majority in the election that December.⁷

The terms of the treaty specified that abortion would be considered by the reunified parliament within two years of the ratification of the unification treaty, with the separate systems in East and West staying in place if the parliament failed to reach agreement. Abortion legislation reached the Bundestag, the lower house of parliament, in February of 1992 and was debated there through June. The debates caused conflict within Kohl's new coalition government, with the left wing Free Democrats pitted against the right wing Christian Democrats and Christian Social Union.⁸ After months of debates, the Free Democrats aligned themselves with the opposition Social Democrats – outside Kohl's coalition – to promote a compromise that entailed a relatively permissive law, one closer to the Eastern system than the Western one. The law allowed women to obtain an abortion within the first three months of pregnancy, provided they first consult with a physician.⁹ Facing upcoming elections and seeking to minimize programmatic differences between his own party (the CDU, in which opinions differed) and its coalition partners (including the CSU, the CDU's partner in predominantly Catholic Bavaria, which favored more restrictions, and the Free Democrats which by now were on record favoring a more permissive policy), Kohl released his members from party discipline and allowed the compromise to come to a vote; these CDU members ultimately provided the margin needed for it to pass. Had the measure failed, the terms of the treaty would have made the interim agreement permanent, leaving the East's permissive rules in place. As it happened, the passage of the law superseded the *ex ante* Eastern system, and the terms of the Unification Treaty were satisfied.

Following passage in the lower house, the law passed in the upper house, the Bundesrat and Kohl signed the bill into law. He took both of these actions despite pressure from pro-life interest groups, the Catholic Church and its coalition



partner – the Christian Social Union.¹⁰ Kohl's actions were initially puzzling to his supporters among abortion opponents, as he had failed to enforce party discipline against, and then signed, a bill he opposed. His move, however, advanced his agenda in several respects. First, allowing the law to pass prevented further conflicts from the Free Democrats and allowed CSU members who had voted for the bill to compete in more socially liberal constituencies. Second, by voting against the bill himself he established a political record in opposition to it which proved useful for the bulk of his CSU/CDU coalition going in to elections; it also established for the Constitutional Court that the parties were divided on the issue, which gave the court the opening it needed to render a decisive judgment. Third – and critically for our argument – by passing the bill Kohl met the letter of the terms of the treaty, by having the parliament consider a bill within two years, but he also removed the issue from the treaty process entirely. Thus, when the Court stepped in later, the Court ruled on a bill passed by the parliament, something it was unambiguously competent to do under German law. Had the bill not passed, the terms of the Unification Treaty would have taken over; for the Court to restrict abortion in the East, then, it would have had to overrule elements of the treaty itself, something that was not clearly within its prerogative. As it happened, Kohl stated before signing the bill into law that he only did so because it was necessary to petition the Constitutional Court for review, which the Christian Democrats did immediately after.¹¹

The closely contested division between the parties is an important point, since the German Federal Constitutional Court has been shown to have the leeway to overrule laws only when the major parties are themselves divided; overrule is extremely unlikely when parties are united on any matter other than the conduct of elections (Landfried, 1992; Kommers, 1994; Vanberg, 1998, 2005). Kohl's move in 1992 to publicly challenge the compromise was therefore quite likely a critical precondition to the court's decision.

Facing a divided parliament, the Court found that women have a legal duty to carry pregnancies to term and reinstated the previous West German rules to apply throughout the country (Merkl, 1993, p. 176; Mushaben, 1997). After receiving the appeal in August, the court suspended the new law and allowed for the separate laws for East and West to remain until a final ruling was made.¹² In May of 1993, the court overturned the law on the same constitutional grounds as the 1975 decision. Specifically, the court held that by legalizing most abortions, Parliament violated the constitution's guarantee protecting a fetus' life, and the court required that a law be in place making most abortions illegal throughout the entire country. The ruling required the parliament to pass a new law replacing the 1992 compromise, and, until that legislation was adopted, the court required that a set of laws similar to the pre-unification West German policy be implemented nationwide. The court, in addition, set some guidelines for what kind of law the parliament would be permitted to enact. For example, although the parliament was required to pass a law maintaining abortion as generally illegal, parliament would be permitted to limit the punishments



imposed on women and physicians in certain circumstances, so that no punishment would be constitutionally required if the procedure were performed within the first 12 weeks of pregnancy and followed a waiting period and a state-approved counseling program. Financing was also limited, and neither the state nor private insurers could pay for abortions – leaving women to pay out-of-pocket, unless the woman was raped, if her life was endangered or the fetus had severe genetic deformities. Public hospitals were also banned from performing abortions, except under the conditions laid out in the ruling.¹³ In summary, action by Kohl's Christian Democrats, in conjunction with the court, ended East Germany's independent abortion policy, despite earlier apparent concessions from Kohl and a treaty mechanism in place to preserve abortion rights in the East.¹⁴

The Germany case is inherently interesting from the perspective of theories of democratic commitments. East Germans felt they had an interest in keeping the permissive abortion policy they had enjoyed under communist rule. Concessions were made to allow for a more permissive law in the reunification treaty because it demanded ratification; however, those terms were later revised once reunification was settled and Eastern leaders were no longer in a position to bargain hard for their constituents' interests. Although parliament passed a more permissive law, Kohl and his coalition partners seem to have controlled the process to ensure an eventual, successful appeal to the Constitutional Court. Owing to the adoption of West Germany's Constitution and its history in abortion policy, Kohl was in an even better bargaining position after reunification than he had been in before. Finally, after reunification, East Germans had no real options other than to accept the court's final ruling.

The history of public discussion of abortion in Germany suggests that the failure to honor concessions was not particularly surprising throughout the East. Although polling data on East Germans' expectations about the future of abortion rights in unavailable, throughout the abortion debates in Germany newspapers and interest groups made clear through their reporting and advocacy that East Germans, at least those who were following the issue, had very little confidence in West Germany and had little hopes that any aspect of their lives would be maintained after unification.

Pessimistic stories about abortion policy were featured prominently in East German media at the time. After the Christian Democrats won a majority in the East German elections, one reporter interviewed women who had recently had an abortion in an East German hospital. One noted that 'the Christian Democrats run both parts of Germany now, and they will never let a woman make decisions about her own life'. A gynecologist added that, 'The patients are saying that they are afraid of the uncertainty of unification'. Eva Rohmann of the Democratic Women's League also discussed East Germany's predicament in stating, 'What's completely normal for you in the West – to fight for yourself and your rights – is not at all part of people's way of thinking here'.¹⁵

These divisions were also evident after unification, even among those who were working for the same cause. Eva Schafer of the Independent Women's Movement in



the East stated that '(Women's movements in the West) are more aggressive. They have fundamentally different attitudes. For example, they reject parliamentary and party solutions'. She also said that women in the East, 'have not really been involved and probably won't be as long as they are preoccupied by other daily problems such as the unemployment we are facing'. She expressed fears of being swamped by the more developed movements in the West, as these groups did not exist under communist rule.¹⁶

It is also clear that East Germans felt that West Germany did not see them, or their interests, as a priority. Reflecting on the differences between East and West German women, social minister Regine Hildebrandt expressed regret that the treaty would not preserve local control of social policy in the East.

We are not interested in slogans but in tackling problems that exist. It will be a long time before we understand each other ... we did not have equality in the way they made us believe, but self-awareness was forged by participation in the work process ... in the old West Germany, women gained emancipation through discussion; we had it in practice. However, that practice is now collapsing beneath us.¹⁷

She later reflected on Constitutional decision to overturn the new law stating, 'For 20 years, in the east we had this right and used in responsibly. Now we're thrown into second-class citizenship once again'.¹⁸

Reunification and Commitment

How can we understand the unwinding of West Germany's commitment, in light of common institutional theories that imply that democratic commitments are credible? Based on this case, we speculate that national reunification bargains in which the stronger side promises concessions face unique credibility problems that democratic institutions alone cannot solve. The argument begins with several premises: people who live in states contemplating reunification have distinct interests, even if a reunification agreement makes concessions to them the agreement itself may be renegotiated, renegotiation is influenced by bargaining leverage, and weaker states lose bargaining leverage after unification.

Regimes in a divided state, and the people they represent, will have some interests in common, but they will also have at least some core interests opposed to each other that must be divided in some way. Abortion policy is fundamentally divisible in a variety of ways – a uniform policy could be set with restrictions varying based on a 'periodic' model (with a more permissive system permitting abortion during a longer period, typically specified as a number of weeks) or on an 'indication' model (with a more permissive system permitting abortion through a looser interpretation of



conditions, such as maternal or fetal health), or the policy could be divided by permitting different jurisdictions to implement different rules.

All else equal (for example, patience or diplomatic skills) the division of policies will depend on the outside option that each side has, where an outside option is what each side could get independently, without continuing to negotiate through the agreed framework. Countries, regimes or sub-national states within a country with a better ability to get what they want through other institutions (besides the negotiating framework) or through popular mobilization can win a more favorable division; they are in a better bargaining position (Bednar, 2007; Tafel, 2011; Libman, 2012).

If one side's outside option improves over time, it will be in a position to extract a better bargain from its partner. If, on the other hand, its outside options worsen, it will find itself getting a poorer and poorer division of benefits over time. Because bargaining continues even after reunification and agreements may be tacitly renegotiated, there is nothing magical that keeps reunification agreements in place after they have been implemented. A smaller state that loses bargaining leverage after unity, because of a loss of political independence following from economic or social integration, the stronger side will have the incentive and ability to alter the agreement – even if only tacitly through 'reinterpretations' in light of 'changing circumstances' – giving the weaker side a gradually diminishing division over time (Abdelal and Kirshner, 1999; Rector, 2009; Carnegie, 2014).

For a strong state to refrain from revising the unification agreement after the fact would entail considerable self-restraint. Would a democracy be more likely to engage in this kind of self-restraint? Democracies, one argument goes, are selective about which agreements they enter into. Because of broad domestic accountability and procedural hurdles in the legislative process, they only enter into those agreements they expect they will prefer to uphold in the future. This solves one kind of credibility problem, in which a state has trouble convincing a potential partner that it will be a stalwart partner. In the language of game theory, there is uncertainty about its 'type'.

However, in the situation we describe, the credibility problem does not stem from a change in the preferences of the stronger regime, but rather from a change in its ability to negotiate for itself the things that it wanted all along. Since this bargaining advantage stems from a change in circumstances rather than a change in character, arguments about the stability of preferences in a democratic regime do not apply. Democracies are just as able as nondemocracies to behave opportunistically by taking advantage of their partners' negotiating disadvantages (Gruber, 2000). Democracies have particular difficulty committing to laws that are immutable, entrenched and inflexible, and instead find even supposedly core constitutional principles redrawn in accordance with popular will (Schwartzberg, 2007).

One analogy is to the problem of regime transitions generally. Democratic governments may find it difficult to live up to commitments made to autocrats once there is little to stop them from revising their agreements, *post hoc*. Normative considerations arising from public pressure can make it difficult for regimes to refrain



from undoing transition commitments once former governments are no longer in power (Sutter, 1995). More importantly, political competition within a democracy can undermine commitments to restraint. Poland's democratic opposition, for example, made real concessions during negotiations over the transition, and the first democratic government held to those commitments; following the first partisan turnover after fully open elections in 1991, however, the regime went back on its commitment and began prosecutions of Communist officials (Elster, 2004; Murphy, 2012).

Even if democratic institutions and electoral competition do not worsen the commitment problem, they are, at a minimum, unlikely to help ameliorate commitment problems that stem from incentives to renegotiate terms after reunification. Our argument is therefore that national reunification bargains in which the stronger side promises concessions face unique credibility problems that democratic institutions alone cannot solve.

What about federalism? Why didn't West Germany's constitutional tradition of maintaining at least partial sovereignty at the state level help preserve East Germany's abortion policy? Part of the answer is simply that Kohl and most of the CDU/CSU coalition had an intrinsic ethical preference for restricting abortion everywhere, not just in some jurisdictions, and therefore felt pressure to use the tools at their disposal to limit abortion access in the East if they could. Within Germany, furthermore, there was concern that women would evade restrictions in the West by travelling to the East in order to seek abortions if abortion were subject to more permissive rules there, adding enforcement to the reasons why a federal solution would have left abortion opponents in the West dissatisfied.¹⁹

Our argument has two implications. The first, that concessions made by a stronger state during reunification negotiations are likely not to be honored after reunification, accounts for the overall pattern of German abortion policy after reunification. Promises that stronger states do make prior to reunification are more likely to reflect current political needs than long-term commitments.

A second implication is that pre-unification commitments to restraint will face credibility problems, and will be met with uncertainty at the very least. This in particular distinguishes our argument from conventional theories about democratic commitments, which rest on the finding that democracies have contracting advantages that stem from their ability to reduce uncertainty. If our theory is correct, there should have been considerable *ex ante* uncertainty about the stronger state's (West Germany's) preferences or likely strategies.

To the extent that the reversion to West German abortion policy nationwide after reunification was not especially surprising also differs from some other interpretations of post-unification abortion law which privilege the role of cultural change following the introduction of capitalism or the obscure workings of the legal system (Czarnowski, 1994; Mushaben, 1997; Quint, 1997; Rosenfeld *et al*, 2004), which imply that the change would have been impossible to foresee for epistemological reasons.



Conclusion

In general, we conclude that national reunification bargains in which the stronger side promises concessions face unique credibility problems that democratic institutions alone cannot solve. Reunification bargains in which stronger states promise restraint have credibility problems that do not stem from uncertainty about their preferences. Rather, the credibility problem stems from the fact that national reunification changes the balance of bargaining power between the constituents of the formerly separated regimes, giving the stronger state an opportunity to renegotiate terms to its advantage after unification. The failure of West Germany to make a credible commitment to preserve East Germans' ability to make abortion policy autonomously was predictable and predicted.

Our findings have important implications for problems of national unification outside of Germany as well. Consider the case of South Korea, with twice the population of North Korea and an economy 15 times as large. Within South Korea the reunification of Germany has long loomed large as a potential model for a potential reunification between North and South Korea (Shin, 2014). Although the North Korean regime is quite likely internally secure from rivals (Cha and Anderson, 2013), it is increasingly isolated from outside patrons such as China (Chung and Choi, 2013). A hypothetical reunification between North and South Korea would therefore be one in which the South Korean regime would be likely to gain leverage after unification occurs. Could South Korean leaders be able to commit, in advance, to Northern elites that the interests of influential North Koreans will be respected after unification, even when those interests conflict with South Korean values or constitutional principles?

Although advocates of reunification in South Korea argue that such assurances could be credible, these arguments often rest on claims about democratic norms and institutions generally (Choi, 2001; Ji, 2001; Woo, 2003). The experience of Germany, however, demonstrates that assurances from the stronger state are not necessarily credible, even in the presence of democratic institutions and other incentives for restraint, and even in a situation like Germany's in which the policy issue at stake is one, like abortion, that is within the normal range for democratic states.²⁰ The well-documented abuses of the North Korean political system virtually guarantee that South Koreans will face large normative incentives to roll back elements of the North Korean system as soon as they are in a position to so do, as the abuses of the North Korean regime almost certainly exceed those of the East German one (Niederhafner, 2012). Assuming that North Korean supporters of the *status quo* – of which there are many (Paik, 2013, p. 255) – are at least as capable of evaluating the credibility of pre-reunification promises as East Germans were, Korean reunification is likely to be much more difficult to realize than some observers (for example, Harrison, 2003) have argued (for extensions of this argument see Jung and Rector, 2012, 2014).



A similar problem concerns a potential Chinese unification between the PRC government on the mainland and the ROC government in Taiwan. Taiwan's leaders have been skeptical of Beijing's assurances that Taiwan would be able to preserve some sort of local control after unification under a 'one country, two systems' arrangement, with others arguing that the development of more robust democratic institutions on the mainland would be a precondition for Taiwan accepting a unification proposal (Kastner and Rector, 2008; Saunders and Kastner, 2009; Bush, 2013). Our findings, however, suggest that even more pessimism may be in order, since not even democratic institutions by themselves may be able to make promises of restraint within unification agreements credible.

About the Author

Elizabeth Jahr is a recent graduate of Marymount University with a joint degree in Politics and Theology.

Chad Rector is an Assistant Professor of Politics at Marymount University.

Notes

- 1 Seventy-seven per cent of East Germans wanted to maintain the current abortion laws while 11 per cent favored the West German laws. East German leaders who said they believed that the agreement would preserve abortion rights in the Eastern states included de Maizière and Christa Schmidt, the Minister of Health and Family ('Currency offer of one-for-one is lift for de Maiziere', *The Times*, 24 April 1990; 'A divisive issue of German unity: How to reconcile abortion laws', *New York Times*, 19 July 1990).
- 2 East Germans worry about future after vote, *The Christian Science Monitor*, 16 March 1990.
- 3 Abortion law dilemma casts shadow on german unity: women fear their interests may be sacrificed to expediency, *The Guardian*, 19 June 1990.
- 4 Abortion shifting German alliances, *The New York Times*, 26 August 1990.
- 5 Two Germanys sign treaty that will make them one, *The Toronto Star*, 9 September 1990.
- 6 Two Germanys sign treaty for unification, *St. Petersburg Times*, 1 September 1990.
- 7 Kohl sweeps to victory: Jubilant Chancellor crowns year of triumphs with success in unified Germany's historic poll, *The Guardian*, 3 December 1990.
- 8 Kohl's coalition threatened by abortion row, *The Independent*, 21 September 1990.
- 9 Germany gives women the right to abortion; end of bitter dispute is a defeat for Kohl, *The Washington Post*, 26 June 1992.
- 10 Members of the CSU and Catholic Church pledged to take the law to court before it was approved by the Bundesrat or signed by Chancellor Kohl (German row over abortion reform to go before court, *The Washington Post*, 26 June 1992).
- 11 World in brief: Abortion law signed, *The Globe and Mail*, 24 July 1990.
- 12 Granting an injunction before the law went into effect, the East and West maintained separate laws until the court could reach a final decision (German court blocks liberal abortion law, *The Washington Post*, 5 August 1992).



- 13 The Constitutional Court threw out the new law and put an interim solution in place until a new one could be renegotiated in parliament. They required counseling aimed at saving the unborn child's life and banned any state sanction except for medical complications, financial hardship and rape. The decision was broadcast on television and spurred protests immediately after (Court annuls Germany's liberal law on abortion; angry reaction as country takes a step back into Middle Ages, *The Independent*, 29 May 1993 and German court rules most abortions illegal; punishment barred for early procedures with counseling, *The Washington Post*, 29 May 1993).
- 14 Abortion laws changed again in 1995 after the CDU lost seats in the 1994 federal elections, but they remained more restrictive than those under the GDR, with abortion still technically illegal but, at the discretion of the parliament, not subject to criminal penalty for women who accept mandatory counseling sessions and a waiting period (Quint, 1997).
- 15 Abortions, unrestricted in East Germany, become unification issue, *The Washington Post*, 14 May 1990.
- 16 Germany faces abortion debate: Women in East prepare for fight to retain law West finds too liberal, *The Globe and Mail*, 8 October 1990.
- 17 United they fall; Anna Tomforde finds out how Westernisation is affect Eastern German women, *The Guardian*, 6 May 1992.
- 18 German court rules most abortions illegal; punishment barred for early procedures with counseling, *The Washington Post*, 29 May 1993.
- 19 Furthermore, federalism as an institutional principle may not be enough to prevent political elites from undermining local autonomy when they are faced with partisan pressures to win factional battles (Kollman, 2013; Tillin, 2014).
- 20 The case of German reunification also, as it happens, shows that stronger states are unrestrained on issues that are *outside* the range of what democracies typically accept. After reunification, German courts applied West German legal standards to East German border guards who had committed 'unconscionable' acts even though those acts were legal – indeed compulsory for them – at the time (Gabriel, 1999), using Western legal principles to supplement the 'ambiguities' of controlling precedent (Herdegen, 1994).

References

- Abdelal, R. and Kirshner, J. (1999) Strategy, economic relations, and the definition of national interests. *Security Studies* 9(1–2): 119–156.
- Banaszak, L.A. (1998) East-West differences in German abortion opinion. *Public Opinion Quarterly* 62: 545–582.
- Bednar, J. (2007) Valuing exit options. *Publius: The Journal of Federalism* 37(2): 190–208.
- Broschek, J. (2012) Historical institutionalism and the varieties of federalism in Germany and Canada. *Publius: The Journal of Federalism* 42(4): 662–687.
- Bush, R.C. (2013) *Uncharted Strait: The Future of China-Taiwan Relations*. Washington DC: Brookings Institution Press.
- Carnegie, A. (2014) States held hostage: Political hold-up problems and the effects of international institutions. *American Political Science Review* 108(1): 54–70.
- Cha, V. and Anderson, N. (2013) North Korea after Kim Jong Il. In: K.-A. Park and S. Snyder (eds.) *North Korea in Transition: Politics, Economy, and Society*. Lanham, MD: Rowman & Littlefield Publishers.
- Checkel, J.T. (1997) International norms and domestic politics: Bridging the rationalist–constructivist divide. *European Journal of International Relations* 3(4): 473–495.
- Choi, S. (2001) Divided states: Reunifying without conquest. In: I.W. Zartman (ed.) *Preventive Negotiation. Avoiding Conflict Escalation*. Lanham, MD: Rowman & Littlefield Publishers, pp. 91–112.



- Chung, J.H. and Choi, M.-h. (2013) Uncertain allies or uncomfortable neighbors? Making sense of China–North Korea relations, 1949–2010. *The Pacific Review* 26(3): 243–264.
- Cortell, A.P. and Davis, Jr. J.W. (1996) How do international institutions matter? The domestic impact of international rules and norms. *International Studies Quarterly* 40(4): 451–478.
- Czarnowski, G. (1994) Abortion as political conflict in the unified Germany. *Parliamentary Affairs* 47(2): 252–267.
- Dai, X. (2006) The conditional nature of democratic compliance. *Journal of Conflict Resolution* 50(5): 690–713.
- Einhorn, B. (1991) Where have all the women gone? Women and the women’s movement in East Central Europe. *Feminist Review* 39: 16–36.
- Elster, J. (2004) *Closing the Books: Transitional Justice in Historical Perspective*. Cambridge University Press.
- Eser, A. (1986) Reform of German abortion law: First experiences. *The American Journal of Comparative Law* 34(2): 369–383.
- Fisher, P. (2005) Abortion in post-communist Germany: The end of Muttipolitik and a still birth for feminism. *Women’s Studies International Forum* 28(1): 21–36.
- Gabriel, M.J. (1999) Coming to terms with the East German border guards cases. *Columbia Journal of Transnational Law* 38: 375.
- Garrett, G. (1993) The politics of Maastricht. *Economics & Politics* 5(2): 105–123.
- Glendon, M.A. (1987) *Abortion and Divorce in Western Law*. Cambridge, MA: Harvard University Press.
- Gruber, L. (2000) *Ruling the World: Power Politics and the Rise of Supranational Institutions*. Princeton University Press.
- Hämäläinen, P.K. (1994) *Uniting Germany: Actions and Reactions*. Sudbury, MA: Dartmouth Publishing.
- Harrison, S.S. (2003) *Korean Endgame: A Strategy for Reunification and U.S. Disengagement*. Princeton, NJ: Princeton University Press.
- Herdegen, M.J. (1994) Unjust laws, human rights, and the German constitution: Germany’s recent confrontation with the past. *Columbia Journal of Transnational Law* 32: 591.
- Ji, Y.-S. (2001) *Conflicting Visions for Korean Reunification*. Unpublished Paper. Weatherhead Center for International Affairs, Harvard University.
- Jung, J.K. and Rector, C. (2012) South Korea’s reunification dilemmas. *Asian Politics & Policy* 4(4): 487–505.
- Jung, J.K. and Rector, C. (2014) Pathways of national reunification in Germany, Yemen, and Korea. *Pacific Focus* 29(2): 211–236.
- Kastner, S.L. and Rector, C. (2008) National unification and mistrust: Bargaining power and the prospects for a PRC/Taiwan agreement. *Security Studies* 17(1): 39–71.
- Kollman, K. (2013) *Perils of Centralization: Lessons from Church, State, and Corporation*. Cambridge, UK: Cambridge University Press.
- Kommers, D.P. (1994) The federal constitutional court in the German political system. *Comparative Political Studies* 26(4): 470–491.
- Kreppel, A. (2011) Looking ‘up’, ‘down’ and ‘sideways’: Understanding EU institutions in context. *West European Politics* 34(1): 167–179.
- Landfried, C. (1992) Judicial policy-making in Germany: The federal constitutional court. *West European Politics* 15(3): 50–67.
- Leeds, B.A., Mattes, M. and Vogel, J.S. (2009) Interests, institutions, and the reliability of international commitments. *American Journal of Political Science* 53(2): 461–476.
- Libman, A. (2012) Sub-national political regimes and asymmetric fiscal decentralization. *Constitutional Political Economy* 23(4): 302–336.
- Lipson, C. (2003) *Reliable Partners: How Democracies Have Made a Separate Peace*. Princeton, NJ: Princeton University Press.



- Martin, L.L. (2000) *Democratic Commitments: Legislatures and International Cooperation*. Princeton, NJ: Princeton University Press.
- Mattern, M.G. (1991) German abortion law: The unwanted child of reunification. *Loyola of Los Angeles International and Comparative Law Review* 13: 643.
- Mazzucelli, C. (1997) *France and Germany at Maastricht: Politics and Negotiations to Create the European Union*. London: Routledge.
- Merkel, P.H. (1993) *German Unification in the European Context*. University Park, PA: Pennsylvania State University Press.
- Murphy, M.B. (2012) Transitional justice and democratic consolidation in Eastern Europe. Doctoral Dissertation, Political Science, University of California, San Diego.
- Mushaben, J.M. (1997) Concession or compromise? The politics of abortion in United Germany. *German Politics* 6(3): 70–88.
- Niederhafner, S. (2012) Germany's unification strategy and Korea's unification perspectives (January 26), <http://ssrn.com/abstract=2193877>.
- Paik, H. (2013) Changes and continuities in inter-Korean relations. In: K.-A. Park and S. Snyder (eds.) *North Korea in Transition: Politics, Economy, and Society*. Lanham, MD: Rowman & Littlefield Publishers.
- Plock, E.D. (1993) *East German-West German Relations and the Fall of the GDR*. Boulder, CO: Westview Press.
- Prützel-Thomas, M. (1993) The abortion issue and the federal constitutional court. *German Politics* 2(3): 467–484.
- Prützel-Thomas, M. (1995) The abortion issue since unification: Are women the losers? *Debatte* 3(2): 105–120.
- Quint, P.E. (1997) *The Imperfect Union: Constitutional Structures of German Unification*. Princeton, NJ: Princeton University Press.
- Rattinger, H. (1994) Attitudes towards the abortion law in Germany, 1990–1992: Determinants and political implications. *German politics* 3(2): 249–264.
- Rector, C. (2009) *Federations: The Political Dynamics of Cooperation*. Ithaca, NY: Cornell University Press.
- Riemer, J. (1993) Reproduction and reunification: The politics of abortion in united Germany. In: M. Huelshoff and A. Markovits (eds.) *The New Germany in the New Europe*. Ann Arbor, MI: University of Michigan Press.
- Rosenfeld, R.A., Trappe, H. and Gornick, J.C. (2004) Gender and work in Germany: Before and after reunification. *Annual Review of Sociology* 30: 103–124.
- Sandholtz, W. (1993) Choosing union: Monetary politics and Maastricht. *International Organization* 47(1): 1–39.
- Sartori, A. (2005) *Deterrence by Diplomacy*. Princeton University Press.
- Saunders, P.C. and Kastner, S.L. (2009) Bridge over troubled water? Envisioning a China-Taiwan peace agreement. *International Security* 33(4): 87–114.
- Schwartzberg, M. (2007) *Democracy and Legal Change*. Cambridge, UK: Cambridge University Press.
- Shin, J.-W. (2014) Lessons from German reunification for inter-Korean relations: An analysis of South Korean public spheres, 1990–2010. *Asian Perspective* 38(1): 61–88.
- Simmons, B.A., Dobbin, F. and Garrett, G. (2006) Introduction: The international diffusion of liberalism. *International Organization* 60(4): 781–810.
- Slantchev, B.L. (2006) Politicians, the media, and domestic audience costs. *International Studies Quarterly* 50(2): 445–477.
- Smith, H.W. (1991) Socialism and nationalism in the East German revolution, 1989–1990. *East European Politics and Societies* 5(2): 234–246.
- Sutter, D. (1995) Settling old scores potholes along the transition from authoritarian rule. *Journal of Conflict Resolution* 39(1): 110–128.
- Svolik, M. (2006) Lies, defection, and the pattern of international cooperation. *American Journal of Political Science* 50(4): 909–925.



- Szabo, S. (1992) *The Diplomacy of German Unification*. New York: St. Martin's Press.
- Tafel, H.L. (2011) Regime change and the federal gamble: Negotiating federal institutions in Brazil, Russia, South Africa, and Spain. *Publius: The Journal of Federalism* 41(2): 257–285.
- Tillin, L. (2014) Explaining territorial change in federal democracies: A comparative historical institutionalist approach. *Political Studies*, <http://onlinelibrary.wiley.com/doi/10.1111/1467-9248.12118/full>.
- Urpelainen, J. (2012) How does democratic accountability shape international cooperation? *Conflict Management and Peace Science* 29(1): 28–55.
- The Unification Treaty (1991) *The Unification of Germany in 1990*. Bonn, Germany: Press and Information Office of the Federal Government, 184S.
- Uzonyi, G., Souva, M. and Golder, S.N. (2012) Domestic institutions and credible signals¹. *International Studies Quarterly* 56(4): 765–776.
- Vanberg, G. (1998) Abstract judicial review, legislative bargaining, and policy compromise. *Journal of Theoretical Politics* 10(3): 299–326.
- Vanberg, G. (2005) *The Politics of Constitutional Review in Germany*. Cambridge, UK: Cambridge University Press.
- Wiliarty, S.E. (2010) *The CDU and the Politics of Gender in Germany: Bringing Women to the Party*. Cambridge, UK: Cambridge University Press.
- Woo, S. (2003) South Korea's search for a unification strategy. *Orbis* 47(3): 511–25.
- Ziblatt, D. (2008) *Structuring the State: The Formation of Italy and Germany and the Puzzle of Federalism*. Princeton, NJ: Princeton University Press.