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Law, Marriage and Illegitimacy in Nineteenth-Century Germany*

JOHN KNODEL

No civilized land grants complete freedom of marriage to those within its jurisdiction. Legal stipulation of a minimum age and restriction of the permissible degree of blood relationship between the two contracting parties have been established practically everywhere. However, the scope of the restrictions which the state or community imposes on those wishing to marry can vary considerably. One relatively modern example of an extensive and strict system of legal marriage restrictions is provided by several German states in the nineteenth century. These laws aroused a great deal of contemporary comment and controversy and were given some subsequent attention as well by historians, jurists and demographers. William Langer mentions them in connection with Europe's nineteenth-century population explosion.¹ David Glass and Ludwig Elster both give considerable attention to this legislation in tracing some of the political consequences of Malthus's writings.² The effects of these laws on nuptiality, illegitimacy (a principal point in comment at the time) and overall fertility are of interest both to social historians and demographers. The possibility of finding causal relations between these variables and the restrictions is enhanced by the fact that the period in which the restrictive legislation was greatly weakened and then essentially repealed is one in which there was virtually complete registration of births (by legitimacy) as well as accurate and frequent census counts of the population by marital status and age. Surprisingly enough, these high-quality data have not previously been systematically analysed to determine the extent to which the marriage restrictions affected behaviour. Such analysis is the purpose of this study.

LEGAL RESTRICTIONS ON MARRIAGE IN NINETEENTH-CENTURY GERMANY

Marriage restrictions had a long tradition in many German states extending back to the seventeenth and eighteenth centuries, a period when the governments of these states were striving to foster population growth in the belief that an augmentation in numbers led to an increase in power and wealth. Many measures were taken to gain this end. Marriage, large families and immigration were encouraged, while celibacy and emigration were discouraged. Such policies, however, were not

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¹ William L. Langer, 'Europe's initial population explosion', *American Historical Review*, 69 (October 1963), pp. 10, 11.

² D. V. Glass, 'Malthus and the limitation of population growth', in D. V. Glass, *Introduction to Malthus* (London, 1953), pp. 38-47; Ludwig Elster, 'Bevölkerungslehre und Bevölkerungspolitik', in *Handwörterbuch der Staatswissenschaft*, 4th ed. (Jena, 1924), pp. 770-773.

unqualified. Concern about growing pauperism and the dependence of the impoverished on public support led to special regulations directed against the increase of the poor. Among these were restrictions on marriage.³

In the beginning of the nineteenth century this legislation was repealed or greatly relaxed in most of the German states as a result of the increasing spread of liberalism.⁴ However, the relative freedom did not last long. Due to inefficient methods in peasant agriculture and increasing fragmentation of agricultural holdings, the number of impoverished and landless persons, despite emigration, grew rapidly. The pressure on public relief for the poor increased accordingly. Under such circumstances it was easy for Malthusian ideas to gain rapid acceptance within educated circles.⁵ In addition to fears of overpopulation, the increasing numbers of poor were seen by the legislators as creating a threat of revolution.⁶ Thus during the third decade of the nineteenth century restrictive legislation began to be reinstated in southern and middle German states, sometimes stipulating even stricter requirements for marriage than had existed before.⁷

Outside the Prussian territories the local community rather than the state was usually responsible for granting relief to impoverished residents within its boundaries. Hence marriage restrictions were frequently imposed through local ordinances rather than state laws.⁸ In addition, in order to prevent an influx of indigent people through migration many areas legislated regulations limiting the right of residents of other regions or towns to settle within their territory. Such laws made marriage between two persons from different communities difficult and narrowed the range of economic opportunities open to those wanting to establish a family.⁹

Marriage restrictions were not uniform among the different German states nor among the various localities within any particular state.¹⁰ However, these regulations were often similar in spirit in that they were directed against those people who were considered to be in an unfavourable economic situation or otherwise socially undesirable. The prospective groom, in order to gain

³ Ludwig Elster, *op. cit.*, pp. 742 ff., 770; D. V. Glass, *op. cit.*, pp. 43, 44; Wilhelm Roscher, *Grundlagen der Nationalökonomie*, 22nd ed. (Stuttgart, 1897), pp. 802, 803.

⁴ Karl Martin Bolte and Dieter Kappe, *Beiträge zur Wirtschafts- und Sozialkunde. Reihe B. Struktur und Wandel der Gesellschaft. Heft 2. Struktur und Entwicklung der Bevölkerung* (Opladen), p. 25.

⁵ Malthus's basic ideas were soon adopted by such influential writers of the times as Heinrich Luden, K. H. Rau and Robert von Mohl. Von Mohl was one of the foremost supporters of marriage restrictions. More radical measures were also advocated. Karl A. Weinhold suggested the extreme measure of mass infibulation, to be applied especially to those men too poor to support any children. L. Elster, *op. cit.*, pp. 768–770; D. V. Glass, *op. cit.*, pp. 39–41.

⁶ D. V. Glass, *op. cit.*, pp. 39–45.

⁷ Such legislation was not unique to Germany. Austria, as well as several Swiss cantons, had similar laws. Elster, *op. cit.*, p. 773.

⁸ Elster, *op. cit.*, pp. 770–771.

⁹ Medicus, 'Niederlassung, Freizügigkeit', in J. Blumthchli and K. Brater, *Deutsches Staats-Wörterbuch*, Band 7 (Stuttgart and Leipzig, 1862), pp. 298–315; Friedrich Bitzer, *Das Recht auf Armenunterstützung und die Freizügigkeit* (Stuttgart, 1863).

¹⁰ For a detailed description of some of the laws and the states in which they existed, see Friedrich Thudichum, *Über unzuverlässige Beschränkungen des Rechts der Verehelichung* (Tübingen, 1866); cf. Elster, *op. cit.*, pp. 770–773. For a description of the laws in Hohenzollern, see Adolf Hodler, *Das particuläre Zivilrecht der Hohenzollernschen Lande* (Frankfurt am Main, 1893), pp. 56–57.

permission from the local authorities to marry, was required to produce evidence of having sufficient wealth or property, a secure income, or assured stable employment opportunities. A person who in recent years had received public financial support or had been a professional beggar could be refused marriage permission. A prospective wife from another community was often required to show proof of adequate wealth, to pay a considerable fee for permission to settle in the community, or both. The bride and groom frequently needed to provide evidence that their characters and morals were beyond reproach. Those who had a record of police convictions for fraud or theft, or who had reputations as vagrants, loafers, drunkards, or even as bad housekeepers, were often denied permission. In some communities negligence in church or Sunday school attendance was a bar to marriage.

Another common restriction was a high minimum age of marriage. Men might be forbidden to marry before 25 or even higher ages without special dispensation. The minimum age for women was generally somewhat lower.

On the basis of the contemporary literature, the German states can be categorized according to the severity of the marriage restrictions exercised within them.¹¹ The areas having the most comprehensive and restrictive marriage legislation during the mid-nineteenth century include the southern German states of Württemberg, Bayern (excluding the Pfalz), Baden, and Hohenzollern (a small province, which in 1849 was made Prussian, but retained much of its own legal system); the middle German states of Kurhessen and Nassau (which after 1866 were united and became Prussian to form the major part of the province of Hessen-Nassau), Hessen-Darmstadt, Schwarzburg-Sonderhausen, Sachsen-Weimer, Sachsen-Altenburg and Sachsen-Coburg; and the north German states of Hannover (which after 1866 was made a Prussian province) and Mecklenburg.¹² Other areas of Germany which during this period had legal obstacles to marriage, but in a milder form, include Oldenburg, Braunschweig, Lübeck and Hamburg.¹³ Minimal restrictions existed in Königreich Sachsen and Schleswig-Holstein (which was made a Prussian province in 1866), the Pfalz and the small state of Anhalt-Dessau (which in 1863 annexed Anhalt-Berenberg to form the state of Anhalt). The freest of all the German regions from marriage restrictions was the large area made up of the old Prussian provinces (i.e. excluding Hohenzollern and the areas annexed in 1866).¹⁴ Legislation restricting freedom of movement and the right to settle down and establish

¹¹ Throughout this study the German names of the states will be used. Thus Prussia is Preussen, Bavaria is Bayern, the Bavarian Palatinate is the Pfalz, Saxony is Sachsen, Brunswick is Braunschweig, etc.

¹² See footnote 10.

¹³ Oldenburg, Statistisches Bureau, *Statistische Nachrichten über das Grossherzogtum Oldenburg*, Heft 11 (Oldenburg, 1870), p. 144; Braunschweig, Statistisches Bureau des Herzoglichen Staatsministeriums, *Beiträge zur Statistik des Herzogtums Braunschweig*, Heft IV (Braunschweig, 1885), pp. 11–12; Lübeck, Statistisches Bureau des Stadt- und Landamtes, *Statistik des Lübeckischen Staates*, Heft II (Lübeck, 1873), pp. ix, x, xxx; Hamburg Statistisches Bureau der Deputation für direkte Steuer, *Statistik des Hamburgischen Staates*, Heft III (Hamburg, 1871), p. 6.

¹⁴ Thudichum, *op. cit.*, p. 30; cf. Lorenz Stein, *Die Lehre von der Innenverwaltung* (Stuttgart, 1866), p. 153.

residence was frequently connected with the restrictive marriage legislation and thus existed in the same areas.¹⁵

By the second half of the nineteenth century concern about the high illegitimacy assumed to be resulting from the restrictive marriage legislation, as well as the arbitrariness with which the laws had been applied, led to pressure for their repeal. In addition, economic conditions had changed. Emigration alleviated some of the pressures in the rural areas. Industrialization was beginning to proceed rapidly and required greater territorial and occupational mobility.¹⁶ Thus restrictions on marriage and residence establishment began to be weakened through legislative action during the beginning of the 1860's and were dealt a severe blow between 1867 and 1870 when in all states the principal restrictive provisions were repealed.¹⁷ The last remains of the marriage restrictions were finally eliminated by a Reich Law in 1919 establishing a uniform legal right to marriage for all parts of Germany.¹⁸

STATISTICAL EVIDENCE CONCERNING CHANGING GERMAN MARRIAGE PATTERNS

The decade of the 1860's, when marriage restrictions were being eliminated, is the very period in which many German states began to tabulate and publish census age distributions cross-classified by sex and marital status. These data provide a detailed quantitative record of the changes in marriage patterns that occurred at that time. The main body of relevant evidence is the recorded proportion ever married by five- and ten-year age intervals for men and women between ages 15 to 39. These data are presented in Table 1 for all German states which had such distributions available for at least one census before 1871. To facilitate comparisons among all the states the proportions ever married above age 20 are given only for ten-year age intervals.

It is clear from Table 1 that in no area of Germany during the period under consideration was marriage below the age of 20 frequent. Indeed, for men it appears to have been practically non-existent, and for women the proportion ever married at ages 15-19 was rarely much more than 2%, except in the Prussian provinces of Posen and Westpreussen where a relatively large part of the population was Polish-speaking and had a Polish ethnic background.¹⁹ Even in these two

¹⁵ Such legislation was present in some of the other German states as well. For example, Königreich Sachsen, which was noted for its relative lack of marriage restrictions, had a rather elaborate set of laws governing the establishment of a new household or residence See Medicus, *op. cit.*, pp. 305-307; H. Rehm, 'Eheschliessung, die polizeilichen Beschränkungen derselben', in *Handwörterbuch der Staatswissenschaft*, 2nd ed., Vol. III (Jena, 1899).

¹⁶ Glass, *op. cit.*, p. 46.

¹⁷ Elster, *op. cit.*, p. 773; Württemberg, Königliches Statistisches Topographisches Bureau, *Württembergische Jahrbücher für Statistik und Landeskunde*, Jahrgang 1876, Heft IV (Stuttgart, 1877), pp. 159-160; Baden, Statistisches Bureau, *Beiträge zur Statistik der Inneren Verwaltung des Grossherzogtums Baden*, N.F., Heft 3 (Karlsruhe, 1890), p. xlv; Cramer, *Das Hohenzollernsche eheliche Güterrecht* (Wiesbaden, 1885), p. 11; H. Rehm, 'Freizügigkeit', in *Handwörterbuch der Staatswissenschaft*, Band III (Jena, 1892), pp. 672-678. Cf. references given in footnote 13.

¹⁸ Elster, *op. cit.*, p. 773.

¹⁹ According to the 1890 census, 60% of the population in Posen and 30% in Westpreussen declared the Polish language as their mother tongue. On the basis of the Versailles Treaty these two provinces were ceded to Poland in 1919 forming the Polish Corridor. In comparing eastern and western European marriage patterns, Hajnal indicates the distinctly lower age of marriage among eastern Europeans. See John Hajnal, 'European marriage patterns in perspective', in D. V. Glass and D. E. C. Eversley, *Population in History* (London, 1964).

TABLE 1. *Proportions ever married in German states, 1845-1880**

	Total population in 1871	Men			Women		
		15-19	20-29	30-39	15-19	20-29	30-39
I. States with highly restrictive marriage laws							
Bayern (excl. Pfalz) (a)	4,236,991						
1867		0.001	0.160	0.606	0.009	0.266	0.623
1871		0.000	0.167	0.664	0.008	0.305	0.700
1875		0.000	0.235	0.720	0.013	0.368	0.752
1880		0.000	0.222	0.735	0.009	0.360	0.774
Prov. Hannover (b)	1,961,437						
1867		0.002	0.194	0.748	0.013	0.384	0.827
1871		0.003	0.199	0.763	0.014	0.396	0.839
1880		0.002	0.241	0.788	0.015	0.454	0.865
Württemberg	1,818,539						
1861		0.000	0.148	0.716	0.006	0.283	0.709
1867		0.001	0.181	0.706	0.008	0.312	0.698
1871		0.000	0.209	0.754	0.008	0.351	0.740
1875		0.001	0.254	0.799	0.011	0.420	0.781
1880		0.000	0.219	0.803	0.007	0.389	0.804
Baden	1,461,562						
1864		0.000	0.164	0.669	0.009	0.300	0.668
1867		0.000	0.177	0.711	0.006	0.325	0.699
1871		0.000	0.210	0.736	0.012	0.367	0.727
1875		0.000	0.231	0.764	0.011	0.398	0.760
1880		0.000	0.218	0.793	0.009	0.405	0.796
Hessen-Nassau (b)	1,400,370						
1867		0.002	0.233	0.768	0.016	0.381	0.766
1871		0.002	0.236	0.801	0.013	0.392	0.798
1880		0.001	0.268	0.843	0.013	0.435	0.839
Hessen-Darmstadt	852,894						
1864		0.000	0.181	0.747	0.009	0.315	0.755
1867		0.000	0.210	0.780	0.010	0.355	0.775
1871		0.001	0.235	0.809	0.013	0.411	0.810
1875		0.001	0.274	0.844	0.015	0.467	0.843
1880		0.001	0.249	0.829	0.013	0.454	0.851
Mecklenburg- Schwerin	557,897						
1867		0.001	0.149	0.752	0.012	0.316	0.772
1871		0.000	0.179	0.787	0.012	0.362	0.809
1875		0.000	0.222	0.819	0.018	0.414	0.833
1880		0.000	0.235	0.819	0.015	0.439	0.845
Hohenzollern	65,558						
1867		0.001	0.172	0.659	0.007	0.281	0.675
1871		0.001	0.182	0.689	0.007	0.312	0.699
1880		0.003	0.213	0.777	0.007	0.371	0.776

(Continued)

TABLE I—*continued*

	Total population in 1871	Men			Women		
		15-19	20-29	30-39	15-19	20-29	30-39
II. States with moderate marriage restrictions							
Oldenburg ^(b)	314,777						
1855		0·001	0·169	0·740	0·012	0·336	0·815
1858		0·000	0·168	0·740	0·011	0·338	0·815
1861		0·000	0·180	0·755	0·011	0·351	0·823
1864		0·000	0·195	0·755	0·010	0·361	0·824
1867		0·001	0·201	0·744	0·012	0·375	0·819
1871		0·001	0·207	0·746	0·008	0·367	0·826
1875		0·001	0·224	0·772	0·017	0·401	0·837
1880		0·001	0·244	0·781	0·015	0·440	0·848
Hamburg ^(b)	338,974						
1867		0·000	0·142	0·666	0·015	0·306	0·717
1871		0·001	0·208	0·725	0·017	0·365	0·767
1875		0·000	0·226	0·754	0·022	0·413	0·797
1880		0·000	0·265	0·772	0·019	0·430	0·814
Lübeck ^(c)	52,158						
1862					0·015	0·304	0·751
1867		0·000	0·189	0·785	0·012	0·326	0·746
1871		0·001	0·222	0·802	0·013	0·358	0·776
1875		0·000	0·236	0·803	0·016	0·402	0·785
1880		0·000	0·272	0·822	0·019	0·430	0·823
III. States with minimal marriage restrictions							
Prussian Provinces							
(a) Ostpreussen ^(b)	1,822,934						
1867		0·001	0·288	0·839	0·026	0·410	0·836
1871		0·002	0·256	0·829	0·019	0·369	0·814
1880		0·002	0·297	0·854	0·019	0·390	0·829
(b) Westpreussen ^(b)	1,314,611						
1867		0·001	0·289	0·849	0·034	0·475	0·865
1871		0·003	0·286	0·846	0·033	0·457	0·858
1880		0·002	0·306	0·862	0·028	0·482	0·863
(c) Posen ^(b)	1,583,843						
1867		0·007	0·312	0·864	0·049	0·506	0·856
1871		0·004	0·319	0·865	0·046	0·504	0·864
1880		0·002	0·329	0·887	0·038	0·508	0·873
(d) Brandenburg ^(b) (including Berlin)	2,863,229						
1867		0·001	0·202	0·788	0·014	0·398	0·842
1871		0·001	0·198	0·785	0·013	0·392	0·838
1880		0·001	0·248	0·815	0·014	0·433	0·847
(e) Pommern ^(b)	1,431,633						
1867		0·003	0·253	0·838	0·017	0·411	0·856
1871		0·002	0·251	0·829	0·014	0·396	0·843
1880		0·001	0·273	0·842	0·015	0·432	0·849

(Continued)

TABLE I—continued

	Total population in 1871	Men			Women		
		15-19	20-29	30-39	15-19	20-29	30-39
(f) Schlesien (b)	3,707,167						
1867		0.003	0.246	0.824	0.017	0.392	0.814
1871		0.001	0.255	0.837	0.018	0.402	0.814
1880		0.001	0.275	0.853	0.015	0.414	0.830
(g) Prov. Sachsen (b)	2,103,174						
1867		0.001	0.244	0.825	0.013	0.431	0.869
1871		0.001	0.249	0.826	0.012	0.441	0.872
1880		0.001	0.309	0.851	0.015	0.501	0.893
(h) Westfalen (b)	1,775,175						
1867		0.002	0.209	0.735	0.013	0.394	0.814
1871		0.002	0.211	0.741	0.015	0.416	0.818
1880		0.001	0.258	0.783	0.016	0.477	0.866
(i) Rheinland (b)	3,579,347						
1867		0.002	0.201	0.717	0.011	0.359	0.782
1871		0.001	0.196	0.727	0.011	0.361	0.783
1880		0.001	0.228	0.760	0.012	0.401	0.812
Schleswig-Holstein (e)	995,873						
1845		0.001	0.198	0.751	0.011	0.343	0.818
1855-1860		0.001	0.198	0.744	0.008	0.348	0.810
1864		0.000	0.212	0.759	0.007	0.344	0.808
1867		0.003	0.199	0.746	0.011	0.360	0.804
1871		0.002	0.199	0.754	0.011	0.366	0.809
1880		0.001	0.259	0.789	0.015	0.438	0.842
Königreich Sachsen (d)	2,556,244						
1864		0.000	0.262	0.824	0.007	0.404	0.835
1867		0.000	0.269	0.817	0.012	0.416	0.834
1871		0.000	0.294	0.837	0.011	0.436	0.849
1875		0.000	0.350	0.858	0.020	0.502	0.866
1880		0.000	0.354	0.869	0.013	0.493	0.875
Pfalz (a)	615,035						
1867		0.001	0.278	0.844	0.015	0.401	0.813
1871		0.000	0.265	0.841	0.011	0.425	0.832
1875		0.000	0.361	0.863	0.021	0.518	0.857
1880		0.000	0.337	0.859	0.017	0.510	0.870
Anhalt	203,437						
1867		0.000	0.252	0.862	0.000	0.439	0.889
1871		0.001	0.260	0.857	0.010	0.439	0.892
1875		0.001	0.341	0.869	0.018	0.506	0.889
1880		0.001	0.348	0.881	0.013	0.526	0.908

NOTES: * The figures are based on census data published in the official statistical publications of the individual states as well as the official publications of the Statistisches Reichsamt.

(a) The figures for 1867 refer to the civilian population for both men and women. The 1871 figures exclude the Bavarian occupational army in France. The figures for 1875 and 1880 for men refer to the civilian population.

(b) The 1871 figures are exclusive of the military troops in France.

(c) The censuses of 1867, 1871, 1875 and 1880 are inclusive of the ship and military population. Since the 1862 census excludes the ship population, only the data for women are given here as the statistics for the male population are not comparable with those of later censuses.

(d) The 1864 and 1867 figures do not include the divorced in the proportions ever married.

(e) The 1855-60 figure refers to the average of the proportions ever married found in the 1855 and 1860 censuses. The 1864 census figures exclude the Herzogtum Lauenburg. The 1871 figures are exclusive of the troops in France.

provinces the proportions ever married among men are negligible and for women remain under 5%. Thus in considering changes in proportions ever married, we can limit ourselves to those occurring above age 20.

In 1867 (the first year for which appropriate data are available for all states) the areas with the least restrictive marriage laws had, in general, markedly higher proportions ever married at ages 20–29 and 30–39 than areas with moderate or extreme restrictions.

A summary of the changes in proportions ever married is presented in Table 2. Between 1867 and 1871 – the period when the repeal of restrictions occurred – all areas which previously had restrictions on marriage show increases in proportions ever married (with the sole exception of women aged 20–29 in Oldenburg). This is in sharp contrast with the states having minimally restrictive marriage laws, which, with the exception of Königreich Sachsen and to a lesser extent the Pfalz, show either declines or only very moderate increases. This contrast suggests that the repeal of restrictions led directly to increases in proportions ever married. The increases experienced in Königreich Sachsen are perhaps attributable to the repeal of the laws restricting residence establishment.²⁰ The assertion that the increases in marriage between 1868 and 1871 were generally in response to the repeal of the marriage restrictions gains further support from the examination of the data from censuses before 1867. Oldenburg experienced little change in marriage patterns between 1855 and 1858, but registered increases in the proportions ever married starting with the 1861 census. The 1861 census in Oldenburg took place at the end of the year, and thus these increases are readily explained by the repeal of a substantial part of Oldenburg's legal marriage restrictions that occurred earlier that same year.²¹ Since a large part of the restrictions in Oldenburg were already repealed in 1861, the general repeal in 1868 did not have a great impact. Baden, Württemberg and Hessen-Darmstadt all display some increases in the proportions ever married prior to the 1867 census. In each case these increases occur after legislation in the early 1860's relaxed the restrictions.²² In contrast, Schleswig-Holstein, which had no significant marriage restriction laws, shows relatively constant proportions ever married between 1845 and 1871.

Braunschweig provides another example of the response of marriage patterns to the repeal of restrictive laws. In 1864 the minimum age at which a man could marry without special consent was reduced from 27 to 25, and in 1868 further reduced to 21. Although census distributions by age, sex and marital status are not available for Braunschweig during this period, the marriage registration data which are presented in Table 3 show clearly the effect of these legal changes.²³

Between 1871 and 1880 all areas of Germany experienced a pronounced increase in proportions ever married. In some cases this is in part a continued response to the removal of the restrictive

²⁰ See footnote 15.

²¹ Oldenburg, Statistisches Bureau, *op. cit.*, p. 144.

²² Baden, Statistisches Bureau, *op. cit.*, p. xlv; Württemberg, Königliches Statistisches Topographisches Bureau, *op. cit.*, pp. 159–160; Hessen, Grossherzogliche Zentralstelle für die Landesstatistik, *Beiträge zur Statistik Hessen*, Band 10, p. 276.

²³ Braunschweig, Statistisches Bureau des Herzoglichen Staatsministeriums, *Beiträge zur Statistik des Herzogtums Braunschweig*, Heft 1, pp. iv–vii.

TABLE 2. *Changes in proportions ever married between 1867 and 1880*

	Increase* in PEM 20-29		Increase* in PEM 30-39	
	Men		Men	
	1867-71	1871-80	1867-71	1871-80
I. States with highly restrictive marriage laws				
Bavaria (without Pfalz)				
Hannover	0.007	0.055	0.058	0.071
Württemberg	0.005	0.042	0.015	0.025
Baden	0.028	0.010	0.048	0.049
Hessen-Nassau	0.033	0.008	0.025	0.015
Hessen-Darmstadt	0.003	0.032	0.033	0.042
Mecklenburg-Schwerin	0.025	0.014	0.029	0.020
Hohenzollern	0.030	0.056	0.035	0.032
	0.010	0.031	0.030	0.088
II. States with moderate restrictions				
Oldenburg	0.006	0.037	0.002	0.035
Hamburg	0.066	0.057	0.059	0.047
Lübeck	0.033	0.050	0.017	0.020
III. States with minimal restrictions				
Prussian provinces				
(a) Ostpreussen	-0.032	0.041	-0.010	0.025
(b) Westpreussen	-0.003	0.020	-0.003	0.016
(c) Posen	0.007	0.010	0.001	0.022
(d) Brandenburg (including Berlin)	-0.004	0.050	-0.003	0.030
(e) Pommern	-0.002	0.022	-0.009	0.013
(f) Schlesien	0.009	0.020	0.013	0.016
(g) Prov. Sachsen	0.005	0.060	0.001	0.025
(h) Westfalen	-0.002	0.047	0.006	0.042
(i) Rheinland	-0.005	0.092	0.010	0.033
Schleswig-Holstein	0.000	0.060	0.008	0.035
Königreich Sachsen	0.025	0.060	0.020	0.032
Pfalz	-0.013	0.072	-0.003	0.018
Anhalt	0.008	0.088	-0.005	0.024

* The increase in proportions ever married is found by subtracting the proportion ever married for the earlier census from the proportions ever married for the later census.

TABLE 3. *Distribution of first marriages by age in Braunschweig, 1854-57*

	Percentage of first marriages occurring in a given age group						
	Men			Women			
	-24	25-29	30+	-20	21-24	25-29	30+
1854-57	4.31	49.25	46.44	8.29	28.86	38.80	24.05
1858-62	4.48	52.77	42.75	8.93	32.02	37.29	21.76
1863-67	7.22	57.05	35.73	9.82	35.56	36.28	18.34
1868-72	17.83	53.20	28.97	13.36	38.71	33.93	14.00

marriage laws. But since this increase is shared as well by the states which had minimal restrictions throughout the preceding several decades, other factors must also be at work.²⁴ The period of prosperity and economic optimism following the German victory in the Franco-Prussian War in 1870 and the founding of the second German Reich in 1871 are cited in the commentaries of various statistical bureaux at the time as the causes of the relatively high marriage rates. For example, the Prussian statistical Bureau writes:

'A sudden industrial and general economic boom followed the conclusion of peace. Although it lasted only a few years, it surpassed all past experiences and gave rise to many marriages, which under normal circumstances would have been concluded, if at all, only at a later time and under better individual financial conditions. It is an old observation that not just an actual increase of goods, i.e. the wealth of the nation, but also the mere hope of a favourable change of the existing economic circumstances causes many people to marry.'²⁵

The proportions ever married in several areas stopped increasing by 1875, but in others continued several years more. However, as is seen in data on the proportions ever married for the entire German Reich in Table 4, this increase in marriage did not continue past 1880.²⁶

TABLE 4. *Proportions ever married in German Reich*

	Men			Women		
	1871	1880	1885	1871	1880	1885
15-19	0.001	0.001	0.001	0.015	0.015	0.015
20-24	0.056	0.077	0.074	0.219	0.257	0.246
25-29	0.419	0.478	0.479	0.586	0.641	0.628
30-34	0.726	0.765	0.761	0.773	0.810	0.811
35-39	0.840	0.864	0.861	0.837	0.864	0.865

²⁴ Although there was some reduction of the military forces after the Franco-Prussian War, at least in Preussen, and hence an increase in the men free to marry, this factor was not large enough to make much difference. For Preussen the number of active military men in 1880 was 252,007 as compared with 264,108 in 1871.

²⁵ Preussen, Königliches Statistisches Bureau in Berlin, *Preussische Statistik*, Band XVIII A (Berlin, 1879), pp. 136. See also Sachsen, *Zeitschrift des Königlichen Sächsischen Statistischen Bureaus*, Band XXII (Dresden, 1876), p. 313; Oldenburg, *op. cit.*, Heft 22, p. 15.

²⁶ Based on Deutschland, Statistisches Reichsamt, *Statistik des Deutschen Reichs*, 1st Reihe, Band 57, and Neue Folge, Band 32 and 44.

ILLEGITIMACY AND THE MARRIAGE RESTRICTIONS

Many critics of the marriage restriction legislation urged its repeal on the grounds that such restrictions served only to encourage a high incidence of illegitimacy rather than limit the reproduction of the poor. During debates in the Parliament of the North German Confederation in 1868, proponents of the Bill which led to the repeal of marriage restrictions in many German states repeatedly referred to the high illegitimacy rates in the areas where marriage restrictions applied.²⁷ If, in fact, there was a causal association between illegitimacy and marriage restriction laws, then we should expect to find a noticeable decline in illegitimacy following the repeal of these laws in the 1860's.²⁸ To test this hypothesis a relatively simple index of illegitimate fertility is used. The index, which will be called the general illegitimate fertility rate, is the ratio of the number of illegitimate births (including stillbirths) to the number of single, divorced and widowed women 15-49 years old. This measure is superior to the more commonly employed ratio of illegitimate births to total births as a measure of illegitimacy, since it takes account of changes in the proportions of married women of fertile age. Nevertheless, it remains a relatively crude measure and caution must be exercised in its interpretation. For example, because of differentials in age-specific illegitimate fertility rates, shifts in the age distribution of non-married women between 15 and 49 would affect the rate.

Table 5 presents general illegitimate fertility rates for the German states during the period under consideration. In 1866-68, the first years for which these rates can be calculated for all the states, with a few exceptions the areas with marriage regulations show higher values than the other areas. A much clearer pattern emerges, however, when we compare the *changes* which occurred in these rates during the 1860's and 1870's as presented in Table 6. The states which had had highly restrictive marriage laws experienced sharp declines in illegitimate fertility. In contrast, the other states, with the exception of the Pfalz, show only minor decreases or even minor increases in illegitimacy during this period. Note that the states with moderate marriage restrictions shared the pattern of constant illegitimacy present in the states with minimal restrictions.

If it is true that the increase in nuptiality in the 1870's within the states which had previously had minimal restrictions on marriage was largely in response to the economic boom after 1871, this would indicate that the lower proportions ever married during the preceding years represented a voluntary suppression of nuptiality in response to an adverse economic outlook. In contrast, in the states having highly restrictive marriage regulations before the 1870's, the lower proportions ever married of the earlier years were partially due to abstention on the part of those who in the absence of the legal restrictions would have married. The differential trends in illegitimacy between

²⁷ Glass, *op. cit.*, p. 46.

²⁸ As early as 1843, F. Rivet attempted to show statistically that the strengthening of the marriage limitation laws and residence establishment restrictions in Bayern during the 1820's and 1830's led to an increase in illegitimate births. See 'Über die ausserehelichen Geburten insbesondere in Baiern' in *Archiv der Politischen Ökonomie- und Polizeiwissenschaft*, Neue Folge, Band 1, 1843, pp. 1-48.

TABLE 5. *General illegitimate fertility rates in selected German states**

	1841-50	1854-56	1857-59	1860-62	1863-65	1866-68	1869-73 ^(a)	1874-77	1878-82
I. States with highly restrictive marriage laws									
Bayern (excluding Pfalz)									
Hannover						0.057	0.049	0.047	0.046
Württemberg				0.042		0.026	0.020		0.020
Baden					0.038	0.042	0.038	0.032	0.030
Hessen-Nassau						0.036	0.031	0.022	0.023
Hessen-Darmstadt						0.027	0.020		0.016
Mecklenburg-Schwerin					0.043	0.038	0.028	0.025	0.022
Hohenzollern						0.044	0.036	0.038	0.038
						0.037	0.033		0.025
II. States with moderate marriage restrictions									
Hamburg						0.026	0.024	0.027	0.026
Oldenburg		0.013	0.015	0.014	0.015	0.015	0.013	0.014	0.015
Lübeck				0.024 ^(b)		0.021	0.018	0.022	0.022
III. States with minimal marriage restrictions									
Prussian provinces									
(a) Ostpreussen						0.029	0.029		0.032
(b) Westpreussen						0.030	0.029		0.030
(c) Posen						0.025	0.025		0.025
(d) Brandenburg (including Berlin)						0.034	0.034		0.035
(e) Pommern						0.033	0.033		0.035
(f) Schlesien						0.034	0.034		0.033
(g) Prov. Sachsen						0.033	0.032		0.036
(h) Westfalen						0.010	0.009		0.010
(i) Rheinland						0.010	0.010		0.011
Schleswig-Holstein	0.022		0.022 ^(c)			0.028	0.026	0.027	0.027
Königreich Sachsen					0.051	0.050	0.049	0.050	0.048
Pfalz						0.030	0.026	0.021	0.020
Anhalt						0.037	0.030	0.035	0.034

NOTES: * General illegitimate fertility rate=live and still illegitimate births/single, widowed, and divorced women 15-49.

(a) Excluding 1871, when births were abnormally depressed due to the Franco-Prussian War of 1870/71.

(b) 1860-64.

(c) 1855-59.

TABLE 6. *Changes in general illegitimate fertility rate*

	Changes* in GIFR between		
	1866/68– 1869/73	1869/73– 1878/82	1866/68– 1878/82
I. States with highly restrictive marriage laws			
Bayern (excluding Pfalz)	–0.008	–0.003	–0.011
Hannover	–0.006	0.000	–0.006
Württemberg	–0.004	–0.008	–0.012
Baden	–0.005	–0.008	–0.013
Hessen-Nassau	–0.007	–0.004	–0.011
Hessen-Darmstadt	–0.010	–0.006	–0.016
Mecklenburg-Schwerin	–0.008	0.002	–0.006
Hohenzollern	–0.004	–0.008	–0.012
II. States with moderate marriage restrictions			
Oldenburg	–0.002	0.002	0.000
Hamburg	–0.002	0.002	0.000
Lübeck	–0.003	0.004	0.001
III. States with minimal marriage restrictions			
Prussian provinces			
(a) Ostpreussen	0.000	0.003	0.003
(b) Westpreussen	–0.001	0.001	0.000
(c) Posen	0.000	0.000	0.000
(d) Brandenburg (including Berlin)	0.000	0.001	0.001
(e) Pommern	0.000	0.002	0.002
(f) Schlesien	0.000	–0.001	–0.001
(g) Provinz Sachsen	–0.001	0.004	0.003
(h) Westphalen	–0.001	0.001	0.000
(i) Rheinland	0.000	0.001	0.001
Schleswig-Holstein	–0.002	0.001	–0.001
Königreich Sachsen	–0.001	–0.001	–0.002
Pfalz	–0.004	–0.006	–0.010
Anhalt	–0.007	0.004	–0.003

* The change presented represents the difference in GIFR found by subtracting the GIFR of the later period from the GIFR of the earlier period.

the two groups of states indicate, then, that those people who postponed or abstained from marriage voluntarily due to less favourable economic conditions were prepared to give up cohabitation as well as marriage. Among those people, however, who were legally barred from marriage, many responded by forming pre-marital sexual liaisons, as indicated by the incidence of illegitimacy, but especially by its reduction when restrictions on marriage were lifted.

Two approximate evaluations of the effects of marriage restriction on fertility can be made from the data at our disposal. One is the extent to which the intent of the law – to reduce the fertility of persons not meeting the legal qualifications for marriage – was thwarted by births out of wedlock that resulted from the laws, and the other is the extent to which the laws reduced fertility for the population as a whole.

The effect of the law on the fertility of persons against whom it was directed can be estimated by the following steps:

- (1) Determine the approximate additional number of women who would have been married during the restrictive period if post-restrictive proportions married had prevailed.
- (2) Assume that in the absence of the laws, these women would have experienced the prevalent legitimate fertility rates. The ratio of the total legitimate births (including stillbirths) to married women between the ages of 15-49 is used in this step.
- (3) Assume that the other non-married women (who would not have been married even without restrictive legislation) would have had the post-liberalization illegitimate fertility rates (the general illegitimate fertility rate for 1869-73 is used), and that the higher pre-liberalization illegitimacy rates resulted from illegitimate births to the women who would have married, but were unable to gain permission.
- (4) Compare the estimated extra legitimate births that would have occurred under the more liberal laws with the estimated number of extra illegitimate births that the laws produced.

The results of the calculations are presented in Table 7 for Württemberg, Baden and Hessen-Darmstadt. These three states were chosen because they had strict marriage restrictions and also published census distributions by age, sex and marital status for years in the first half of the decade of the 1860's, the time when the liberalization began.

TABLE 7. *Comparison of the estimated illegitimate births that were induced by marriage restrictions and the estimated additional legitimate births that would have occurred in the absence of restrictions for three German states*

	Württemberg 1860-62	Baden 1863-65	Hessen-Darmstadt 1863-65
A. Estimated illegitimate births due to marriage restrictions	1,511	1,945	2,145
B. Estimated additional legitimate births liberalization would have produced	2,877	3,535	2,291
C. A/B	0.525	0.550	0.936

Although these estimates are not precise, they clearly indicate that a considerable part of the legitimate births which were suppressed due to the marriage restrictions was compensated for by the higher incidence of illegitimacy created by these restrictions. Note that the extra illegitimate births range from 53% (Württemberg) to 94% (Hessen-Darmstadt) of the extra legitimate births that liberalization would have produced.

MARRIAGE RESTRICTIONS AND OVERALL FERTILITY

The extent to which the marriage restrictions reduced fertility for the population as a whole can be calculated using the estimates presented in Table 7 above. The total number of births which these laws prevented is equal to the difference between the additional number of legitimate births which liberalization would have produced (B in Table 7) and the extra illegitimate births which resulted from suppressing marriages (A in Table 7). Table 8 compares the estimated number of prevented births with the actual number of total births in Württemberg, Baden and Hessen-Darmstadt.

TABLE 8. *Comparison of the estimated births prevented by marriage restrictions and the actual total births for three German states*

	Württemberg 1860-62	Baden 1863-65	Hessen-Darmstadt 1863-65
A. Estimated births prevented by marriage restrictions	1,366	1,590	146
B. Actual average annual total births	67,998	55,106	31,116
C. A/B	0.020	0.029	0.005

Note that even in Württemberg and Baden the births thus estimated are less than 3% of the total.

CONCLUSIONS

As a method to impede general overpopulation, legislation restricting marriage to those considered by local authorities as financially and morally capable of raising families was relatively in effectual. Even as a means to limit the increase of the poor, the marriage restrictions may have created more problems than they solved. The restrictions resulted in raising illegitimacy substantially above the level at which it would have been under more liberal conditions. Although the laws apparently did succeed in preventing some births among the more impoverished people, the added burden to society created by illegitimate births may well have offset whatever gains had been achieved. It is possible, however, that certain unrecognized positive effects resulted from the restrictive legislation and the discussions it generated. For one thing, it is conceivable that it helped to instil a more prudent and responsible attitude among the general population concerning marriage at a time when family planning within marriage was relatively unknown.

Just how relevant the German experience in the nineteenth century is for other populations at other times is difficult to judge. If, however, this experience is generalizable, it would have

unfavourable implications for countries which plan to reduce fertility through enforced postponement of marriage. Calculations showing the large reductions in fertility and growth accompanying a rise in the age at marriage cannot be construed as showing the presumed effect of an increase in the legal age at marriage, if the effect of restrictive legislation were to parallel the German experience.²⁹ For such laws to achieve their goals, apparently more stringent controls are necessary than existed in Germany. Perhaps only extreme measures such as separation of the sexes through conscription are assured of success.

²⁹ One recent set of such calculations has been made by Leasure. See J. William Leasure, 'Malthus, marriage, and multiplication', *The Milbank Memorial Fund Quarterly*, October 1963, 41, Part I, No. 4, pp. 419-425.