

## Morals on Trial: State-Making and Domestic Violence in the East German Courtroom

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In 1973 Frau Petrov<sup>1</sup> went to the Berlin Stadtgericht to appeal her previously rejected divorce application.<sup>2</sup> The court of first instance had dismissed the Petrov's marital issues as "teething problems" and denied the divorce on the basis that Herr Petrov wanted to rectify his "mistaken behavior" and reconcile with his wife. On appeal, we learn from Frau Petrov's testimony that these problems included her husband verbally abusing her and coming after her with a hatchet and a knife, acts the court of first instance referred to as "somewhat serious violence." In making the final decision, the appeal court determined that the dissolution of the marriage was not the result of abuse on the part of Herr Petrov, but was instead due to his failed socialist consciousness, evidenced by

"his repeated changes in employment and absences from work ... his negative attitude towards work that resulted in his instant dismissal ... on top of which, the respondent's jealous and uncontrolled behavior led to verbal abuse and serious violence."

1 Names changed from the original.

2 LAB, C Rep 301/3769 (1973), Case 109 BFB 77.73, 18.6.1973.

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This decision underscores not only the pedagogical processes at work within the socialist legal system, but also the impact this approach had on addressing domestic violence and protecting women from harm. By placing domestic abuse alongside other 'socialist failings', such as a poor work ethic, the court demonstrated that it was less concerned with the violence itself than what it signified for the adoption of socialist values in the private sphere. In awarding Frau Petrov a divorce, the Stadtgericht was acting as much to end a marriage, as it was to censure Herr Petrov's anti-socialist behavior. The question of Frau Petrov's safety, however, remains unanswered.

This intersection, between judicial decision making and the effect of this process, forms the focus of this article. Based on a study of all available divorce cases from the Berliner Stadtgericht from 1970 to 1975 (837 cases total),<sup>3</sup> an era when gender politics was being re-examined under the new leadership of Erich Honecker, I argue that the divorce court system in East Germany addressed domestic violence in a way that sought to create ideal socialist citizens and legitimize socialist rule. However, the effect of this process was gendered and the courts' approach to domestic violence had an uneven impact on men and women. As feminist scholars have argued, notions of citizenship are gendered, and despite claiming to promote equality, the primary effect of many legal decisions was actually to concretize patriarchal gender hierarchies and male dominance within the private sphere, which often came at the expense of women's sexual freedom and their personal safety.<sup>4</sup> For women facing abuse, it was largely those deemed 'moral' socialists who were seen to be worthy of legal protection; they had to be good mothers and wives, only having sexual relations with their husbands. Furthermore, this interpretation of violence worked to legitimize the system. Making domestic

violence an issue of a failed socialist consciousness allowed the court to frame abuse as a problem arising from capitalist gender relations, which only worked to silence open discussion on private forms of violence. This obfuscation of domestic abuse played into the self-definition of East Germany as a gender equal, socialist state – an image that was increasingly important following the implementation of new policies aimed at reconciling gender imbalances under Honecker.<sup>5</sup>

### **Marriage under socialism**

Thought to signify the success of socialism, transforming marriage from a patriarchal institution to a commitment between two equal partners was of vital importance to the East German socialist regime.<sup>6</sup> Ensuring gender equality in marriage was of central concern as the 1965 Family Law made clear that "equality between men and women crucially defines the character of the family in socialist society."<sup>7</sup> These new socialist marriages, then, were an important part of establishing and legitimizing socialism in East Germany, not only because according to Marxist thought gender equality was an indicator of the overall success of socialism, but also because happy and healthy marriages between equals were a sign that the private sphere had been successfully transformed and that men and women were embodying the new system and values.

The legal system, in particular family law, was an important part of this process and it was explicitly aimed at creating moral citizens, a task all the more important given the rising divorce rates during the 1960s and 1970s.<sup>8</sup> Alongside a network

5 Monika Schröttle, *Politik und Gewalt im Geschlechterverhältnis: eine empirische Untersuchung über Ausmaß, Ursache und Hintergründe von Gewalt gegen Frauen in ost-deutschen Paarbeziehungen vor und nach der deutsch-deutschen Vereinigung* (Bielefeld: Kleine Verlag, 1999); Birgit Bütow, "Gewalt gegen Frauen im 'anderen Deutschland,'" in *Dokumentation: Fach forum Frauenhaus in Bewegung vom 20-22.11.1996 in Berlin*, 27–37.

6 Hans Nathan, "Familienrecht und Moral in der sozialistischen Gesellschaft," *Neue Justiz* (1961): 626–33.

7 *Familiengesetzbuch* (DDR, 1965), para. 2.

8 Nathan; SAPMO-B-Arch, DY/30/24946, "Statistische Information über die Entwicklung der Familienrechtsachen

3 Initial divorce applications were heard at the Stadtbezirkgericht (district court). If the application was rejected or one of the parties wanted to appeal the decision, they would be referred to the Stadtgericht.

4 Carole Pateman, *The Sexual Contract* (Cambridge: Cambridge University Press, 1988); Sylvia Walby, "Is Citizenship Gendered?" *Sociology* 28, no. 2 (1994): 379–95.

of organizations and state institutions, including marriage counseling centers and work collectives, the family court system was set up to prevent divorce and intervene in the shaping of relationships, through enshrining socialist values – such as a strong work ethic, equality between men and women, and critical self-reflection – in the family.<sup>9</sup> To do this, the court exercised an *erzieherische Funktion*, or ‘educative role’, a task explicitly aimed at using legal proceedings to create better citizens and perpetuate socialism through the maintenance of the family unit.<sup>10</sup> The 1965 Family Law Code introduced divorce based on a ‘dissolution principle’. Distinct from both fault and no-fault divorce, East German courts were tasked with determining whether the marriage had been dissolved, which meant evaluating whether the marriage still held value for the couple, their children and, in turn, socialist society.<sup>11</sup> To do so, they examined the couple’s marriage – had they been faithful, had there been abuse or ill-treatment, did they have a functioning sex life, and what were they like as parents. In making these determinations, the court was given the latitude to perform its educative function by making pronouncements about the morality of the parties’ actions delineated along socialist lines. Of particular importance to the adjudication of divorce decisions was the value of gender equality, making any behavior thought to detract from this equality, such as the “uncontrolled” actions of Herr Petrov, immoral in the eyes of the law.

By focusing on the immoral actions of the parties, the effect of the *erzieherische Funktion* in

im Jahre 1976”; Josie McLellan, *Love in the Time of Communism: Intimacy and Sexuality in the GDR* (Cambridge: Cambridge University Press, 2011).

<sup>9</sup> Annette Timm, *The Politics of Fertility in Twentieth-Century Berlin* (Cambridge: Cambridge University Press, 2010).

<sup>10</sup> Nathan.

<sup>11</sup> *Familiengesetzbuch* (DDR, 1965), para. 24.

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matters involving domestic violence was often to concentrate attention on socialist failings of the parties, a process which had an uneven impact on men and women. While this often meant focusing on the abusive man and his failings as a socialist, as in the Petrov case, in cases where women had been unfaithful or had otherwise broken the code of socialist morality, the pedagogical role of the court often worked to solidify male authority over women and within the private sphere. This meant that in and of itself, domestic violence was not necessarily thought to be problematic. What made it significant, however, was that it indicated the level to which socialism had been taken up in the private lives

of (male) citizens, leaving the question of women’s safety as a secondary matter – an approach that resulted in the toleration of violence, if not also the tacit legitimation of it.

### **Domestic violence in the courts**

Since the first case of divorce on the basis of partner violence occurred at the Karl-Marx-Stadt Bezirksgericht in 1956, the legal system was one of the main official venues for the discussion of partner abuse in East Germany.<sup>12</sup> Although there was no specific law criminalizing partner violence, domestic abuse could be used as a ground for divorce<sup>13</sup> and Paragraph 115 of the Criminal Code was used to charge abusive husbands with assault.<sup>14</sup> In this first case the applicant, Frau T., requested a divorce on the basis that her husband frequented too many pubs, spending the family’s money on alcohol. When drunk he would abuse his wife and son, culminating in a physical attack on Frau T. after a Carnival party in 1956. The district court rejected

<sup>12</sup> *Neue Justiz*, 1956, 543–44.

<sup>13</sup> *Ibid.*

<sup>14</sup> LAB, C Rep 301/3289 (1963), Case 102d BSR 4.63, 30.1.1963.

Frau T.'s initial application on the basis that she had not provided sufficient grounds for divorce. Instead it suggested that her husband spend less time in bars and should give his wife enough money to support the family. At the same time, Frau T. was chided for not affording her husband the "necessary understanding" and was told that she should not reproach him when he did not meet his family duties. On appeal, the court overturned the initial ruling and Frau T. was granted her divorce, with the court making a clear statement that verbal and physical abuse hurts "the mutual love and care" on which marriage is built.

These kinds of mixed messages were common in the divorce process up until the mid-to-late-seventies, especially in cases where abuse was present. Lower courts would often refuse an application, only to have it be overturned at a higher level. Couples could also be denied a divorce at both levels, even when there were allegations of abuse. Indeed, the discourse on domestic violence arising from the courts was far from cohesive – it was often contradictory and swung between harshly condemning violence and tolerating it as an unavoidable outcome of family life. What drew these discussions together, however, was that each decision was shaped within and by a system that was a site for the construction of socialist citizens and the legitimization of socialism in the face of postwar division. As the following case from the Berliner Stadtgericht outlines, this process of shaping citizens had a gendered impact, as women's safety and women's voices were dismissed in favor of prioritizing male authority.

While Herr Petrov was censured for his inability to meet socialist expectations, it was often the case that a husband's abuse was measured against the actions of his wife in a way that had an uneven impact on husband and wife. This was certainly the case for Frau Brettorf, whose initial divorce application was rejected on the basis that her 12-year marriage was too significant to dissolve. Further, the court reprimanded her for having an affair and accused her of selfishly wanting a divorce because of her husband's lack of education. The couple were then sent home and told to work on

their trust issues.<sup>15</sup> On appeal to the Stadtgericht, Frau Brettorf claimed that "through recurring abuse the respondent [her husband] disregarded her dignity. Initially his behavior was influenced by alcohol abuse. ... On February 1 in the presence of her 4-year-old son, he hit her. In the presence of another he called her a 'whore'." In Herr Brettorf's defense he claimed that "he only slapped her when there were other men on the scene."

This was clearly an argument the court found convincing, and their determination on the matter reflects a balancing of socialist morality, where Herr Brettorf's drinking and abuse were weighed against Frau Brettorf's affair, both actions that were seen as immoral.<sup>16</sup> The effect of this balancing, however, was to downplay the seriousness of domestic abuse and to concretize patriarchal gender roles. After outlining in detail Frau Brettorf's affair with a younger man, the court declared that "the infidelity of the applicant triggered the conflict, which resulted in the abuse of the respondent. This reaction of the respondent is not morally acceptable, but understandable in the situation." Such statements are repeated throughout the decision, where the husband's abuse is reprimanded, yet the blame is ultimately laid at the feet of Frau Brettorf for breaking the bond of trust and for eschewing her role as obedient wife and mother. In this way, Herr Brettorf's actions are upheld, not only at the expense of Frau Brettorf's personal safety, but also in a way that confirms traditional gender roles by reiterating Herr Brettorf's authority in the home and by confining Frau Brettorf's sexuality to marriage and reproduction. This moral regulation had a tangible effect on women's lives following divorce, as it was used in the determination of custody, as the courts considered which parent was the most 'moral' and thus the best role model for the children. Although in this instance Frau Brettorf was granted custody, this is only because "the moral failings of the applicant ... did not endanger her care for the children."<sup>17</sup>

15 LAB, C Rep 301/3760 (1971), Case 3BF 29.71, 10.5.1971.

16 See: LAB, C Rep 118/865, Bekämpfung des Alkoholmissbrauchs, 1955–1956.

17 See also: LAB, C Rep 301/3774 (1974), Case 109 BFB

This case, alongside the Petrov divorce, reveals the high stakes that were at risk when women applied for a divorce from an abusive husband, underscoring that socialist morality and the *erzieherische Funktion* were much more ominous than perhaps previously thought. The discourse on domestic violence arising out of the East German courts emphasized singular acts of violence, over more systemic analyses of partner abuse and gendered power imbalances. Domestic violence was understood as a single cause-and-effect incident, not as a pattern of behavior, meaning that long-term abuse was often overlooked in favor of a single violent outburst, as in the Brettorf case.<sup>18</sup> Women were required to prove that violence had taken place, a task often made more difficult by a society unwilling to listen to women's claims of abuse.<sup>19</sup> In one case, not only did a woman's neighbor refuse to get involved and call the police, but both the police force and her doctor deferred to her husband's version of events (that she had fallen down the stairs), causing her divorce application to be denied for lack of proof.<sup>20</sup> The courts further emphasized domestic violence as something that was perpetrated by individual 'bad' men, as in the Petrov case, where men's violence was seen as resulting from a failure to adopt socialist values of equality. Abusive men were

65.74, 10.6.1974. In this case, despite allegations of abuse and rape, the initial divorce was denied. On appeal, a divorce was granted and the mother retained custody, because although she had an affair, she was attempting to improve her skills in running a household.

18 Schröttle.

19 Gabriela Eßbach and Vera Fünfstück, *Frauen mit Gewaltterfahrung in der ehemaligen DDR: Wahrnehmungszugänge und Bewältigungsstrategien. Eine Untersuchung aus dem Blickwinkel autonomer Frauenhausarbeit in Sachsen* (Diplomarbeit, Evangelischen Fachhochschule für Sozialarbeit Dresden, 1997).

20 Ibid.

thought to be out of tune with socialism, and to represent an older, bourgeois form of masculinity. At the level of the state, this was connected with a widespread silence on the issue of spousal violence, and when it was discussed it was framed as a 'capitalist' issue resulting from patriarchal gender relationships.<sup>21</sup> When women did enter the discussion of violence in the family it was often to censure their 'immoral' extra-marital behavior, in a way that only served to concretize patriarchal male authority under the guise of equality. The safety of women, meanwhile, remained a peripheral issue in the face of the court's pedagogical task.

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What this article highlights is that, as historian Josie McLellan has argued, there needs to be a re-thinking of the liberatory narratives of sexuality under socialism.<sup>22</sup> Women's well-known sexual liberation under socialism needs to be rethought to take into account the way

this freedom may have exposed them to physical and institutional forms of violence, as the court system required couples to remain married despite allegations of abuse. It also suggests that the 'sexual evolution' was perhaps slower than has previously been periodized. The pinnacle of anxieties about family and marriage, placed by historians Donna Harsh and Paul Betts in the 1960s, continued well into the 1970s, as women's sexuality was still being tightly regulated in a way that had alarming consequences.<sup>23</sup>

For many women interpersonal violence

21 See: "Blick in andere Länder: Westberlin braucht zweites 'Frauenhaus,'" *Neue Zeit* 16 (February 1978).

22 McLellan.

23 Donna Harsch, *Revenge of the Domestic: Women, the Family, and Communism in the German Democratic Republic* (Princeton: Princeton University Press, 2007); Paul Betts, *Within Walls: Private Life in the German Democratic Republic* (New York: Oxford University Press, 2010).

was a part of everyday life under socialism, as the state, through the legal system, tolerated and even legitimated domestic abuse as a way of regulating women and refining socialist male citizenship. Through examining divorce trials, we can see how socialism framed the way abuse was defined, and how this definition was used to perpetuate socialism through creating better socialist citizens. Violence signified a failure to take up socialism in everyday life, and by adjudicating divorce cases with this socialist moral framework in mind, the court often prioritized male citizenship and male authority over women's safety and sexual autonomy. The courts may have claimed to be safeguarding equality in the family, but the approach taken to address

domestic violence was gendered, unfairly impacting women's citizenship rights. These insights into women's lives highlight the gendered implications of the renegotiations taking place under socialism in the 1970s, as the private sphere and sexual autonomy took on increasing importance. Although a more straightforward divorce process may have improved formal paths for leaving violent partners under Honecker, the private sphere and the abuses that occurred there remained largely shrouded in silence. These tensions reflect a broader need to include daily forms of violence into both our narratives of life under socialism, but also in the way we discuss gender.