



Volume 5. Wilhelmine Germany and the First World War, 1890-1918

Ernst Goldmann on the Legal Status of Women and a Husband's Right to Punish His Wife (1904)

As in every European nation in the nineteenth century, men dominated German society. The subordinate role of women was starkly captured in their legally sanctioned positions vis-à-vis their husbands. In marriage, men had the legal discretion to circumscribe the freedom of their wives. These rights included corporal punishment.

I. Obstacles on the Road to a Postal Proxy (1904)

Some time ago, a wife whose husband was abroad wanted to vest me with a postal proxy.

When I submitted the same to the appropriate post office, I was told that the Senior Postal Administration was demanding that the proxy in question also be signed by the husband.

Thereupon, to ascertain the facts, I turned directly to the Imperial Senior Postal Administration for information; I pointed out that the matter was of fundamental importance and that I, as someone knowledgeable about the law [*Rechtskundiger*], was not aware of the regulation upon which this demand was based.

I received a response from the Imperial Senior Postal Administration, dated March 12, 1904: "The fact that post offices demand the co-signature of the husband on proxies issued by the wife is based on an official regulation that was issued by the Imperial Postal Service." The Imperial Senior Postal Administration did not indicate any other reasons to me.

I regard this regulation as illegal, on the grounds that the Postal Service is obligated to hand over all the mail given to it under the address of the wife to the addressee without being allowed, for example, to demand the receipt from the husband – and indeed, that is exactly what the Postal Service does.

If an addressee has the right to demand that mail sent to him be handed over, he must logically also be entitled to appoint a third party who may accept this mail on his behalf.

I believe that this simple reflection already suffices by itself to make clear that the position of the Reich Postal Office is untenable.

To this we must add, however, that a wife undoubtedly has the right to grant proxies without her husband's permission. This proxy would be insufficient for the person to whom it was given only if it involved legal matters concerning the assets the wife brought into the marriage, in other words, matters involving the husband's right of administration and usufruct, a right that must be

legally assumed to exist. The regulation from the Reich Postal Office sounds as though it dated to a time when a woman was not assumed to be a person with legal capacity, but stood under her husband's guardianship.

Source: [Ernst Goldmann], "Zuschrift eines 'bekanntem, für die Frauensache sehr interessierten Berliner Rechtsanwalts'" ["Letter from a 'Well-Known Berlin Lawyer with a Strong Interest in Women's Matters'"], in *Die Frau. Monatsschrift für das gesamte Frauenleben unserer Zeit* [*Woman: Monthly Magazine for all Aspects of a Woman's Life in our Times*], 11 (1904), p. 500.

II. Physical assault (1904)

In wide circles, even in educated circles, there is the opinion that the husband still has the right to punish his wife within the bounds of moderation. This opinion was voiced to the author in various places and by persons from various circles of the population. Some time ago, a female teacher turned to the editors of this journal and asked for advice on how to help a worker's wife who was being continually abused by her husband; she, too, held the view that the husband had the legal right to beat his wife. We must conclude from these experiences that the belief in the husband's right to punish still has a great many followers and that a lot of women silently put up with treatment that finds no justification in the law. Therefore, it is necessary for us to note that, according to the law as it applies to all of Germany, the husband is *not* authorized to beat his wife or apply other means of punishment against her, not even within the bounds of moderation, and by raising this point we hope to help enlighten wide circles. Our Civil Code contains no sentence from which a husband's right to punish could be deduced. Rather, one can infer from paragraphs 1352 ff. that the German wife stands alongside the husband as a co-equal and as a person who is equal before the law. To be sure, the right of decision-making is granted to the husband on matters pertaining to their shared life, and within these boundaries the wife must obey the husband's will. But she is not obligated to follow the husband's decision if it represents an abuse of his right. Moreover, the husband may not on any account use physical coercion to enforce his will. The means of punishment that parents are entitled to with respect to their children don't apply to spouses, for the simple reason alone that the husband is not raising and educating the wife. So even if the wife resists the husband's wishes and commands, even if she leads a dissolute life or violates her marital obligations in some other way, the husband does not have the right to beat her. Any assault by the husband on the wife is a violation of the law; the body and honor of the wife are as much under the protection of the law as the body and honor of all other people. That is why a wife who has been beaten by her husband can demand that he be punished for premeditated battery and assault. Unfortunately, such complaints are rarely lodged at this time, and if so then only in cases where repeated and intolerable acts of abuse have already taken place: after all, a woman must fear her husband's revenge if he is punished in response to her complaint. If such punishment occurred more frequently, the lot of many women, especially in the lower strata of the population, would improve significantly. But perhaps the clarification alone that the husband has no right to beat his wife – and that he is criminally liable if he does so anyway –, may lead to a diminishment of the abuse that is unfortunately still so prevalent in the city and the countryside. That is why everyone should regard it as his duty to thoroughly root out the fable of the husband's right to punish!

Source: Ernst Goldmann, "Das Züchtigungsrecht des Ehemannes" ["A Husband's Right to Punish his Wife"], in *Die Frau: Monatsschrift für das gesamte Frauenleben unserer Zeit* [*Woman: Monthly Magazine for all Aspects of a Woman's Life in our Times*], 11 (1904), pp. 461-62.

Original German versions of the above texts appear in Jens Flemming, Klaus Saul, and Peter-Christian Witt, eds. *Quellen zur Alltagsgeschichte der Deutschen 1871-1914*. [*Source Materials on Everyday Life in Germany 1871-1914*]. Darmstadt: Wissenschaftliche Buchgesellschaft, 1997, pp. 105-07.

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