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The Enlightenment on Trial: Autonomy, the State  
and the Public Sphere in Eighteenth-Century  
Prussia

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## Abstract

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*Prussia's Edict on Religion of 1788 forbade sermons that undermined popular belief in the Holy Trinity and the Bible. Historians have evaluated this edict with respect to the German Enlightenment's defense of autonomy: the edict's opponents supported greater autonomy and, hence, were enlightened; the edict's supporters wanted to limit autonomy and were counter-enlightened. This article holds, however, that autonomy in the eighteenth century was constructed to be limited. Using two court cases related to the Edict, it reveals how the service elite used State power to enforce enlightened discipline, even as they opposed the Edict itself. Autonomy's practical meaning was, therefore, much different from that we have taken from the famous What is Enlightenment? debate. In practice the Prussian elite took a middle position, opposing absolute freedom for both the populace and the State. In this context, the Edict on Religion was consistent with the general tenor of public discussion, as it was meant to keep order among ordinary people. The Edict's opponents were, in fact, angry because the new law constrained their autonomy. As for the people, they could wait.*

## Resumen

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*El Edicto sobre Religión emitido en Prusia en 1788 prohibía los sermones que mermaran la creencia popular en la Santísima Trinidad y la Biblia. Los historiadores han evaluado este Edicto en relación con la defensa de la autonomía durante la Ilustración germana: quienes se oponían al Edicto estaban en favor de una mayor autonomía y eran, por lo tanto, ilustrados; quienes apoyaban el Edicto querían limitar la autonomía y eran contra-ilustrados. Este artículo sostiene, sin embargo, que la autonomía del siglo XVIII fue construida para ser limitada. Mediante dos casos que llegaron a la corte, relacionados con el Edicto, el presente trabajo revela cómo el servicio de élite utilizó el poder del Estado para imponer la disciplina ilustrada, aun cuando se opuso al Edicto en sí. El significado práctico de la autonomía fue, entonces, muy diferente de lo que habíamos rescatado del famoso debate ¿Qué es Ilustración? En la práctica, la élite prusiana se situó en una posición media y se opuso a la libertad absoluta, tanto para el pueblo, como para el Estado. En este contexto, el Edicto sobre Religión fue consistente con la tendencia general de la discusión pública, ya que pretendía mantener el orden entre la gente ordinaria. De hecho, los opositores del Edicto se molestaron porque la nueva ley restringía su autonomía. En cuanto a la gente, ésta podía esperar.*

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## Introduction

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On July 9, 1788, the Prussian government promulgated its infamous Edict on Religion, which forbade the distribution of heterodox religious ideas, such as Unitarianism, from the pulpit. The enlightened elite across Germany responded with a flood of pamphlets that branded the edict a counter-enlightened attack on reason.<sup>1</sup> Historians of the German Enlightenment have understood the edict in the normative terms originally sketched out in the late eighteenth century.<sup>2</sup> The edict that represented the Counter-Enlightenment is, however, a myth—one that has persisted, because historians see the German Enlightenment as a rational, progressive movement toward greater individual freedom—.<sup>3</sup> Against this backdrop the edict inevitably became a clash between enlightened autonomy and counter-enlightened social control.

In this essay I consider the opposition to the edict via the theme of autonomy. Scholars have approached autonomy ahistorically, crediting enlightened opponents of the edict with a benevolent desire to expand freedom, while relegating the edict's supporters to an obstinate conservatism.<sup>4</sup> Yet, by embedding the edict's critics in an abstract debate about autonomy, scholars have overlooked the concrete political and social interests that motivated the elite.<sup>5</sup> Germany's enlightened were often State servants, which situated them between powerful States and masses of less than enlightened

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<sup>1</sup> A large collection of the relevant primary source texts is available in D. Kemper, *Missbrauchte Aufklärung? Schriften zum preussischen Religionsedikt vom 9. Juli 1788* (Hildesheim, 1996).

<sup>2</sup> See P. Schwartz, *Der erste Kulturkampf in Preussen um Kirche und Schule (1788-1798)* (Berlin, 1925); F. Mehring, *Zur deutschen Geschichte von der Zeit der Französischen Revolution bis zum Vormärz (1789-bis 1847)* (Berlin, 1976), 424-428; K. Schleunes, "Enlightenment, Reform, Reaction: The Schooling Revolution in Prussia", *Central European History* 12 (1979), 315-342; and T. Saine, *The Problem of Being Modern, or the German Pursuit of Enlightenment from Leibniz to the French Revolution* (Detroit, 1997), 280-309.

<sup>3</sup> Classics in this tradition are Ernst Cassirer, *The Philosophy of the Enlightenment* (Princeton, 1968); Peter Gay, *The Enlightenment: an Interpretation*, 2 vols. (New York, 1968); and Paul Hazard, *European Thought in the Eighteenth Century, from Montesquieu to Lessing* (Gloucester, 1973).

<sup>4</sup> See, especially, S. Lestition, "Kant and the End of Enlightenment in Prussia," *Journal of Modern History* 65 (1993), 57-112; and Saine, *The Problem of Being Modern*.

<sup>5</sup> H. Brunschwig, *Enlightenment and Romanticism in Eighteenth-Century Prussia* (Chicago, 1974); J. Knudsen, *Justus Möser and the German Enlightenment* (Cambridge, 1986); and H. Gerth, *Bürgerliche Intelligenz um 1800 / Zur Soziologie des deutschen Frühliberalismus* (Göttingen, 1976); all explore the social and historical roots of the structures that I see at work in the eighteenth century. Lewis Hinchman has identified the same problem I am discussing, though from a philosophical perspective. He holds that modern conceptions of autonomy are different from eighteenth-century ones, although he concludes that they remain related. See L. Hinchman, "Autonomy, Individuality and Self-Determination", in J. Schmidt, ed., *What is Enlightenment?: Eighteenth-Century Answers and Twentieth-Century Questions* (Berkeley, 1996), 488-516.

people.<sup>6</sup> Moreover, these people accentuated their sense of difference by meeting in exclusive social clubs, the most famous examples of which were Berlin's *Mittwochsgesellschaft* and *Montagsklub*, as well as its various salons.<sup>7</sup> The tensions from being betwixt and between manifested themselves in the bureaucracy's daily work: feeling threatened by both the State and the populace, the service elite sought to control both.

The struggle for autonomy was inseparable from the practical battle for political and social power.<sup>8</sup> Yet, the German Enlightenment's pursuit of power within State and society is muted in scholarly discussion, particularly in the case of the *What is Enlightenment?* debate. Too much of the discussion has been celebratory, as scholars have portrayed the debate as the Enlightenment articulating for itself a program of emancipation.<sup>9</sup> Take, for example, Rüdiger Bittner, who although critical of Kant's definition of enlightenment still concludes: "What enlightenment in particular promises is an open world: freedom".<sup>10</sup> There is some truth to this position, provided that we emphasize the abstract ruminations of Kant and Mendelssohn in the *Berlinische Monatsschrift*. Yet, even these famous men present a problem, as their contributions expressly supported limits on freedom. We can attribute these concerns to the fear of State repression, as some scholars have done.<sup>11</sup> I do

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<sup>6</sup> H. Beck, "The Social Policies of Prussian Officials: The Bureaucracy in a New Light", *Journal of Modern History* 64 (1992), 263-98; H. Beck, *The Origins of the Authoritarian Welfare State in Prussia: Conservatives, Bureaucracy, and the Social Question, 1815-70* (Ann Arbor, 1995); G. Birtsch, "Der Preussische Staat Unter Dem Reformabsolutismus Friedrichs II, Seine Verwaltung und Rechtsverfassung", in K. von Aretin, ed., *Friedrich der Grosse: Herrscher zwischen Tradition und Fortschritt* (Gütersloh, 1985); T. C. W. Blanning, "Frederick the Great and Enlightened Absolutism", in *Enlightened Absolutism: Reform and Reformers in Later Eighteenth-Century Europe*; H. M. Scott, ed., (Ann Arbor, 1990); H. Johnson, *Frederick the Great and His Officials* (New Haven and London: Yale University Press, 1975).

<sup>7</sup> On Berlin's salons, see D. Hertz, *Jewish High Society in Old Regime Berlin* (New Haven, 1988).

<sup>8</sup> On this question, see H. Rosenberg, *Bureaucracy, Aristocracy and Autocracy; the Prussian Experience, 1660-1815* (Cambridge, 1958).

<sup>9</sup> See, for example, H. B. Nisbet, "'Was Ist Aufklärung?': The Concept of Enlightenment in Eighteenth-Century Germany", *Journal of European Ideas* 12 (1982), 77-95. Wolfgang Albrecht has noted the social limitations that the German Enlightenment confronted. Where I disagree with him is the idea that these limitations were simply externally imposed. See W. Albrecht, "Aufklärung, Reform, Revolution, oder 'Bewirkt Aufklärung Revolutionen?' Über ein Zentralproblem der Aufklärungsdebatte in Deutschland", *Lessing Yearbook* 22 (1990): 3. James Schmidt's "The Question of Enlightenment: Kant, Mendelssohn, and the Mittwochsgesellschaft", *Journal of the History of Ideas* (1989), 269-91, notes that the "What is Enlightenment?" discussion has removed much of the politics from the debate's history. I believe that we must also add the German Enlightenment's social aspects to our discussion of this world.

<sup>10</sup> R. Bittner, "What is Enlightenment?" in Schmidt, ed., *What is Enlightenment?*, 357.

<sup>11</sup> John Laursen argues that Prussia's political situation encouraged Kant to develop a muted political rhetoric that made his philosophy subversive over the long term. J. Laursen, "Kantian Politics 3: The Subversive Kant / The Vocabulary of Public and Publicity", *Political Theory* 14 (1986), 584-603. Anthony LaVopa ["The Politics of Enlightenment: Friedrich Gedike and German Professional Ideology",

not dismiss this position, but hold instead that we must take the German Enlightenment's conservative aspects into account as an integral part of its worldview. Kant may have feared State repression, but he was no man of the people either. A product of a rigorous educational system and a professor at the University of Königsberg, he had an elite background to defend, which meant that his vision of autonomy—and that of his contemporaries—was *situated*. That is, autonomy was constructed with reference to multiple social and political contexts and, hence, also limited by them.

Perhaps the clearest example of autonomy's *situatedness* is the German Enlightenment's opposition to *Enthusiasm*. Political concerns about *Enthusiasm* were general across Europe.<sup>12</sup> Enthusiasts were eighteenth-century Gnostics who put the believer in direct communion with God and whose religious practices emphasized the pursuit of religious ecstasy. Such an approach was inherently dangerous for the eighteenth-century elite, because it undermined all aspects of their authority. *Enthusiasts* did not need anyone to interpret Scripture for them and did not emphasize reason in their theology, to the extent that they had one. Moreover, *Enthusiasts* were not shy about proselytizing, which merely accentuated the elite's fears that people were pursuing God outside of constituted politico-religious authority. In this context, it is significant that of the two preachers who were dismissed in Prussia under the Edict on Religion, one of them was an *Enthusiast*.<sup>13</sup>

Reevaluating the Edict on Religion sheds light on two neglected aspects of the *What is Enlightenment?* debate. First, sixteen texts that responded to the *What is Enlightenment?* question were written in direct response to the Edict on Religion, and only one of these—Andreas Riem's, *On Enlightenment* (1788)—is regularly included in document collections.<sup>14</sup> Second, a majority of these sixteen texts (62.5%) *supported* the edict, usually out of a concern for order.<sup>15</sup> Hence, looking at the debate with these things in mind suggests that

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The Journal of Modern History 62 (1990), 130-159] notes that the political situation made Prussian Aufklärer politically timid by comparison to their counterparts in France. I would argue that since these men feared unrest as much as oppression that their timidity had social roots as well.

<sup>12</sup> L. Kreimendahl and N. Hinske, *Die Aufklärung und die Schwärmer* (Hamburg, 1988); A. LaVopa, "The Philosopher and the Schwärmer: On the Career of a German Epithet from Luther to Kant", *Huntington Library Quarterly* 60 (1999), 85-115; J. G. A. Pocock, "Enthusiasm: The Antiself of Enlightenment", *Huntington Library Quarterly* 60, no. 1&2 (1999), 7-28.

<sup>13</sup> P. Schwartz, "Die Beiden Opfer des Preussischen Religionsediktes vom 9. Juli 1788: J.H. Schulz in Gielsdorf und K.W. Brumbey in Berlin," *Jahrbuch für Brandenburgische Kirchengeschichte* 27, 28 (1932, 1933), 102-155, 96-122.

<sup>14</sup> Kemper's *Missbrauchte Aufklärung?* identifies the sixteen texts. (See Kemper's breakdown of the various categories in the introduction, p. 14-59.) Andreas Riem's *Über Aufklärung. Ob sie dem Staate - der Religion - oder überhaupt gefährlich sey, und seyn könne? Ein Wort zu Beherzigung für Regenten, Staatsmänner und Priester. Ein Fragment* (Berlin: Königl. Preuss Akad. Kunst- und Buchhandlung, 1788) is one example. See, for example, W. Albrecht, "Religionsedikt und Riemsche Fragmente," *Weimarer Beiträge* 36 (1990), 793-804.

<sup>15</sup> Based on my reading of the exchanges, ten of the sixteen texts (62.5%) supported the edict.

when the public debate became entangled in practice, stability became central to the discussion. Moreover, as I will argue below, discipline was at the core of enlightened practice, which was also why the debate about the Edict was more divided than one would expect. Traditionally scholars have read the *Enlightenment's* approach to the Edict via the abstractions articulated by the likes of Kant and Mendelssohn. The inclusion in "What is Enlightenment?" document collections of Andreas Riem's, *On Enlightenment*, which was a critical response to the Edict, has merely augmented this approach by obscuring that there was, in fact, a vigorous debate about this specific policy.<sup>16</sup> Whatever enlightenment may have been in theory, if there was a program for expanding autonomy, there was also a competing one that feared autonomy's practical effects. We must be aware of both, even if we do not like them equally today.

The resulting tensions are clearest in Prussia, from which much of the evidence in this discussion is drawn. The Prussian service elite was in a difficult middle position, for its members wanted to "enlighten" the State, while keeping the populace under control. (Stein and Hardenberg's "revolution from above" was, in many ways, the final end of a revolution from the middle.)<sup>17</sup> The Prussian Enlightenment was thoroughly integrated into the State apparatus, and as a result the service elite—whether liberal or conservative on autonomy—shared a common concern for order.<sup>18</sup> For example, during the 1780s the enlightened Anton Friedrich Büsching, who had taught at the University of Göttingen before coming to Berlin to direct a gymnasium, tried twice unsuccessfully to have the rationalist preacher Johann Heinrich Schulz fired for preaching heterodox doctrines to his congregations. It was, however, only in 1792 that the conservative minister Johann Christoph Woellner, who wrote the Edict on Religion, finally succeeded in doing so, and under the Edict's auspices. Still, in the common understanding of the period Büsching is seen as enlightened, while Woellner is not. Based on this juxtaposition, it seems that some skepticism toward the Enlightenment/Counter-enlightenment collision is warranted, particularly with reference to autonomy. With this in mind, and using the struggle over the Edict on Religion as a foil, I argue that the main issue between the various actors was not whether all Germans should be autonomous—free of any outside discipline—but who should do the disciplining and of whom.

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<sup>16</sup> See, for example, Schmidt, *What is Enlightenment?*, which includes Riem's text.

<sup>17</sup> On the Prussian Reform Period, see T. Nipperdey, *Deutsche Geschichte, 1800-1866: Bürgerwelt und starker Staat* (Munich, 1983), 33-69.

<sup>18</sup> On this question, see Brunschwig, *Enlightenment and Romanticism*; A. LaVopa, *Grace, Talent, and Merit: Poor Students, Clerical Careers and Professional Ideology in Eighteenth-Century Germany* (Cambridge, 1988); and A. LaVopa, "The Politics of Enlightenment".

## *The State, the elite and the Enlightenment*

The enlightened opposition to the Edict on Religion had a complicated background and identity. In most of Germany State power suffused the intellectual elite's world, making public debate a difficult dance between defining what enlightened freedom was and establishing who was qualified to enjoy it.<sup>19</sup> Were one, however, to go by the historiography of "What is Enlightenment?" debate, it would appear that the German Enlightenment's members were unified in their desire to expand human freedom.<sup>20</sup> The picture is more complex. Moses Mendelssohn, the celebrated Berlin *Aufklärer* (literally: enlightener) and contributor to the great debate, articulated a strikingly conservative approach to enlightenment. After noting in his "What is Enlightenment?" that social rank (*Stand*) and profession (*Beruf*) determined each person's rights and duties, he wrote:

But they require of each individual—in accord with his social rank and profession, theoretical insights, and the skills necessary for reaching the same—a different level of Enlightenment.<sup>21</sup>

With these words, Mendelssohn spoke for many *Aufklärer*, though by no means all. (Germany did have radicals like Carl Friedrich Bahrdt.) In general, the German Enlightenment perceived enlightenment as Man's natural right, while also believing that it must be limited in accordance with each man's social position and natural abilities.<sup>22</sup> Mendelssohn's conservatism had its own roots, of course. He was not a State employee, but a notable in Berlin's Jewish community. He had his own enlightened mission, including ensuring that the members of his community behaved themselves. The muted and—for this essay—crucial aspect of this position was that a person's level of enlightenment determined the extent of his freedom, particularly the freedom to publish.

Public debates in print were an elite affair, in which the enlightened sought control over both the State and the populace. It is true that the fear of a government crackdown was always present. Nonetheless, the fear of

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<sup>19</sup> The classic statements on the promise and limits of enlightenment are I. Kant (1784), "Beantwortung der Frage: Was ist Aufklärung?", *Berlinische Monatschrift* 2: 481-494; M. Mendelssohn (1784), "Ueber die Frage: was heißt aufklären?", *Berlinische Monatsschrift* 2: 193-200.

<sup>20</sup> See, for example, Nisbet, H. B. (1982), "Was ist Aufklärung?" The Concept of Enlightenment in Eighteenth-Century Germany", *Journal of European Ideas* 12: 77-95; Schmidt, J. (1989), "The Question of Enlightenment: Kant, Mendelssohn and the Mittwochsgesellschaft", *Journal of the History of Ideas*: 269-291.

<sup>21</sup> Mendelssohn, "Ueber die Frage", 196.

<sup>22</sup> I use the masculine pronoun deliberately here. On Mendelssohn, David Sorkin has also noted: "Political thought was dependent on circumstance: the type of government and the individual's political status conditioned, if not determined, the individual's ability to think or write about politics". Sorkin, *Moses Mendelssohn and the Religious Enlightenment* (Berkeley, 1996), 109.



popular unrest was just as widespread, and the result was a broad emphasis on reform without revolution. This interest in managed change highlights one of the German Enlightenment's more peculiar aspects: it was often as conservative as it was liberal. Where the Prussian philosopher Immanuel Kant exhorted all people to enlighten themselves by daring to know, Johann Stuve, an educational reformer in the Duke of Braunschweig's employ, called for the *State* to ensure the spread of enlightenment through a system of public education.<sup>23</sup> Kantian moral freedom came only after the inculcation of stabilizing virtues, or as the theologian and educational reformer Johann Ludwig Ewald put it: "In short: one turns them into better people, and they are won for the Enlightenment".<sup>24</sup>

The German Enlightenment presents us, therefore, with an uneasy relationship between a liberal and optimistic humanism and a conservatism of ability and merit.<sup>25</sup> Karl Leonhard Reinhold, the *Popularphilosoph* and first holder of a chair in Critical Philosophy at the University of Jena, provides a good example of the tensions that were involved, even within one mind. In "Thoughts on Enlightenment" he argued that so many among the rabble (*Pöbel*) were unenlightened, because they lacked access to education and instruction. The resolution to this problem was clear: a concerted effort to educate the unenlightened. Reinhold then went on to note, however, that an enlightened person is a, "person whose reason [*Vernunft*] rises above the average."<sup>26</sup> We can read this statement in two ways. On the one hand, it undermined the old-regime *Ständestaat* (Society of Orders) in which one was born into a social station and remained there always. On the other hand, it justified the creation of a new elite, since the number of people who could rise above the average was limited. Thus, a conservative intellectual trajectory emerged, for only those above the average—the enlightened elite—could teach the masses responsibly, or as Reinhold put it, "the philosopher teaches; the rabble learns."<sup>27</sup> The result was a socially rooted campaign for controlled autonomy—a thing quite different from what the modern mind may imagine.

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<sup>23</sup> J. Stuve, "Ein Vorschlag zur Verbreitung wahrer Aufklärung unter allen Ständen", *Berlinische Monatsschrift* (1785), 474.

<sup>24</sup> J. L. Ewald, *Ueber Volksaufklärung: Ihre Gränzen und Vortheil. Den menschlichen Fürsten gewidmet* (Berlin, 1790), 5.

<sup>25</sup> Anthony LaVopa calls Germany's enlightened elite a clerisy, see A. LaVopa, A. J. (1988), *Grace, talent, and merit: poor students, clerical careers, and professional ideology in eighteenth-century Germany*, Cambridge England; New York, Cambridge University Press; LaVopa, A. J. (1990), "The Politics of Enlightenment: Friedrich Gedike and German Professional Ideology", *The Journal of Modern History* 62(1): 34-56.

<sup>26</sup> Reinhold, K. L. (1784), "Gedanken über Aufklärung", *Der Teutsche Merkur* 3: 3-22; 122-133; 232-245.

<sup>27</sup> Reinhold, "Gedanken", 128.

Below I pursue the ambiguities that the German Enlightenment's integration into the State created by considering two legal cases in Prussia that stemmed from the Edict on Religion. The first case involved an author who wrote a book critical of the Edict on Religion and then angered the king by mailing the text directly to him. The second case resulted from an attempt by a Prussian censor to use the courts against the Edict on Religion by having himself put on trial for *not* censoring a book. These cases provide us with a glimpse into the middle position that I outlined above, because the court system mirrored eighteenth-century Prussia's limitations and contradictions.<sup>28</sup> One of the eighteenth-century's central problems was how to discipline the populace effectively. Gerhard Oestreich and Marc Raeff have argued separately that disciplining the populace became the early-modern State's basic impulse already in the seventeenth century, even if the goal was not achieved.<sup>29</sup> By the eighteenth century, however, the State's disciplinary mission had been modified through the appearance of a vigorous public sphere. Now discipline could be discussed fully, to ensure that it would be effective when applied.

Much has been written about the eighteenth-century public sphere's emancipatory potential.<sup>30</sup> According to the general argument, it created a new realm of intellectual freedom, in which criticism of authority multiplied until the old regime finally collapsed. My point, however, is that the public sphere in eighteenth-century Germany also provided the tools for further disciplining, because it deliberately excluded the majority of Germans on the basis of education. The most obvious element of this disciplining was that the service elite itself determined what the masses could read and say in public, while reserving the print world for enlightened speculation. In 1784, Ernst Ferdinand Klein, a jurist, professor at Halle, and legal reformer in Berlin, offered a general outline of this system:

When, for that reason, Prussia's ruler wants the censor to suppress writings against the State; he understands only those [writings] which attack the State itself, betray it to its enemies, free its subjects from the duty to obey, and which cause to civil unrest, but not [those that are] modest evaluations [Urtheile] of rules made by the prince or his servants.<sup>31</sup>

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<sup>28</sup> On the Prussian courts, see W. Hubtsch, *Frederick the Great: Absolutism and Administration*, P. Doran, trans. (London, 1973), 211-220.

<sup>29</sup> Oestreich, G. (1982), *Neostoicism and the Early Modern State*, Cambridge; New York, Cambridge University Press; Raeff, M. (1983), *The Well-Ordered Police State: Social and Institutional Change through Law in the Germanies and Russia, 1600-1800*, New Haven, Yale University Press.

<sup>30</sup> The best review article on this literature is A. LaVopa, "Conceiving a Public: Ideas and Society in Eighteenth-Century Europe", *Journal of Modern History* 64 (1992), 98-115. For a useful reminder of the limitations in Habermas' theory, see H. Mah, "Phantasies of the Public Sphere: Rethinking the Habermas of Historians", *Journal of Modern History* 72 (2000), 153-182.

<sup>31</sup> E. F. Klein, "Ueber Denk- und Drukfreiheit. An Fürsten, Minister, und Schriftsteller" *Berlinische Monatsschrift* (1784), 328.

Klein highlights a theme that ran through German discussions. The public sphere had to be kept stable, if it was to achieve its dual goals of maintaining stability while expanding freedom. In Prussia the service elite was central to this process, and this is why there was no great outcry against censorship *per se*; as a practical matter, the censors often were the enlightened elite.<sup>32</sup>

Prussia's court system combined disciplining power *with* publicity. David Bell has argued that in eighteenth-century France, the legal system competed with the French crown for influence and encouraged the development of new (modern) forms of political authority that delegitimized the State.<sup>33</sup> The idea is that in speaking on behalf of France against royal authority, the French legal community developed a political rhetoric that allowed one part of French society to speak for an abstract whole. Prussia followed a different path.<sup>34</sup> The law was no less important to the articulation of a public sphere there, but in Prussian eyes the law brought the order that made daily life possible. As Klein put it:

I do not believe that I am mistaken, when I presume that the character of the Prussian government until now has consisted in the awakening and the guidance of an active nature and the love of order for [the benefit of] the common weal, while avoiding a compulsion that is not absolutely necessary for each person.<sup>35</sup>

The law kept those people in line that needed guidance, while the educated, having moved beyond this need, merited only that compulsion that was absolutely necessary for maintaining order. Thus, Prussian jurists, as members of an exclusive club, stood between the State and the populace, overseeing a disciplined public while fashioning a disciplined State.

Characterizing the public sphere through stability may appear odd, given that historians have seen the public sphere as a subversive element in early-modern Europe.<sup>36</sup> The public, so the story goes, subverted traditional

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<sup>32</sup> On attitudes toward censorship in eighteenth-century Germany, see E. Hellmuth, "Aufklärung und Pressefreiheit. Zur Debatte der Berliner Mittwochsgesellschaft während der Jahre 1783 und 1784", *Zeitschrift für Historische Forschung* 9 (1982), 315-45.

<sup>33</sup> Bell, D. A. (1992), "The Public-Sphere, the State, and the World of Law in 18th-Century France", *French Historical Studies* 17(4): 912-934; Bell, D. A. (1994), *Lawyers and citizens: the making of a political elite in Old Regime France*, New York, Oxford University Press.

<sup>34</sup> Gestrich, A. (1994), *Absolutismus und Öffentlichkeit: politische Kommunikation in Deutschland zu Beginn des 18. Jahrhunderts*, Göttingen, Vandenhoeck & Ruprecht. Gestrich's approach is applicable to Prussia, as well.

<sup>35</sup> E. F. Klein, "Ueber die Ausbildung des National-Geistes durch Gesetze", *Annalen der Gesetzgebung und Rechtsgelehrsamkeit* 21 (1801), 327.

<sup>36</sup> Nathans, B. (1990), "Habermas' Public-Sphere in the Era of the French-Revolution." *French Historical Studies* 16(3): 620-644; Jacob, M. C. (1991), *Living the Enlightenment: freemasonry and politics in eighteenth-century Europe*, New York, Oxford University Press; Jacob, M. C. (1991), "The

authorities by setting the people up as an alternate authority. Yet, the cases I discuss below suggest a different arrangement. Court cases were public matters, with the results being published for the literate to read. A good example is Klein's *Annalen der Gesetzgebung und Rechtsgelehrtsamkeit* (*Annals of Law Making and Legal Erudition*), which appeared between 1788 and 1809. For over two decades, Klein reviewed major court decisions, the passage of new laws, and important legal texts.

The political implications of academicizing the legal public sphere were far-reaching, as print debate became both a method for both projecting State power and integrating the educated into the State. Klein's *Annalen*, for example, evaluated laws and court decisions, extending in the process Prussia's tradition of public commentary while also cultivating educated readers who enjoyed public discussion. The idea was to create space in which the educated could critique responsibly. As Klein put it in the *Berlinische Monatsschrift*, "Writers! If you want to be humanity's teachers, prove that you deserve this exalted title. Remove all suspicion of base intentions, or hasty passion."<sup>37</sup> Nothing encapsulates the relationship between the State and the educated more neatly than the title of Berlin's venerable journal *Königlich privilegirte Zeitung von staats- und gelehrten Sachen* (*Royally Privileged Newspaper on State and Educated Matters*), which appeared under that name from 1785 until 1911! With power and reason joined together, the service elite not only justified the use of State power but also created a sense of itself as a distinct social and intellectual group. The impulse toward discipline was as much a product of the enlightened elite's perception of itself, as it was of external factors that it feared.

### *Court Discipline*

On November 13, 1788, six months after his arrival in Berlin, police arrested and jailed Johann Heinrich Würzer for openly criticizing the Edict on Religion in his book *Comments on the Prussian Edict on Religion of July 9., along with a Supplement on Freedom of the Press*.<sup>38</sup> After a four-week investigation and trial, the Aulic Court sentenced him to six weeks in jail plus court costs. This silencing of another voice raised in defense of liberty seems to confirm Lessing's oft-quoted dictum that Prussia was the most slavish country in

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Enlightenment Redefined: The Formation of Modern Civil Society", *Social Research* 58(2): 475-495; Outram, D. (1991), "'Mere Words': Enlightenment, Revolution and Damage Control", *The Journal of Modern History* 63(2): 327-340; Goodman, D. (1992), "Public Sphere and Private Life / Toward a Synthesis of Current Historiographical Approaches to the Old Regime", *History and Theory* 31(1): 1-20; LaVopa, A. J. (1992), "Conceiving a Public: Ideas and Society in Eighteenth-Century Europe", *Journal of Modern History* 64(March): 98-115.

<sup>37</sup> Klein, "Ueber Denk- und Drukfreiheit", 329.

<sup>38</sup> Würzer, J. H. (1788). *Bemerkungen über das Preussische Religionsedikt vom 9ten Julius, nebst einem Anhang über die Pressfreyheit von Heinrich Würtzer, Doctor der Philosophie*. Leipzig.

Europe. One anonymous commentator's judgment gives us cause, however, to reconsider Lessing's verdict. In 1789, this nameless author wrote:

Everybody agrees on two points: First, they wish the steps the government took against the author of "Remarks on the Edict on Religion" had never happened. Second, at the same time they see the sentence the Aulic Court [Kammergericht] handed down as a masterpiece...<sup>39</sup>

That the author expressed his regret over the trial is understandable; calling it a masterpiece is, however, surprising. How are we to understand this apparent contradiction? We can approach this problem by recognizing that a fundamental conflict played itself out in the trial. That is, calling a guilty verdict in an unjust trial a masterpiece is a sign that the German Enlightenment's association of autonomy with order had created tensions that needed to be worked through in public. The decision provides, thus, an excellent opportunity to consider power and autonomy together.

Würzer had arrived in Berlin on May 10, 1788, after completing his studies in Göttingen. Two months later, the conservative Prussian Minister Johann Christoph Woellner promulgated the Edict on Religion, which forbade sermons that undermined popular belief in the Holy Trinity and the truth of the Bible. The literary skirmishing began immediately, and Würzer joined the fray with his *Comments on the Prussian Edict on Religion*.<sup>40</sup> Prussian authorities denied him the imprimatur, so he looked for a publisher in other German principalities. After being rejected in Wittenberg, the text was approved finally in Leipzig, where the censor only required minor changes before approving its publication.

Würzer's activities were no different from any other young writer starting a career. The Leipzig publisher, Ernst Martin Gräff, gave him an honorarium of 50 Talers and twenty-one copies of the book. Had nothing more happened, Würzer would be one of many who commented on the edict. He distinguished himself, however, by mailing a copy of the text, directly to Frederick William II. The gesture was not appreciated. In a letter to the Johann von Carmer, president of the Aulic Court, Frederick William wrote:

The shameless author goes so far in his frenzy as to dedicate the book to me publicly in print, and to mail it to me. I must emphatically make an example of him.<sup>41</sup>

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<sup>39</sup> Anonymous (1789). *Erkenntnis des Koenigl. Kammer-Gerichts zu Berlin in der bekannten Sache des D. der Philos. Heinrich Wuertzer, mit Anmerkungen. Als ein Beytrag zu den merkwuerdigen Rechtsfaellen*. Frankfurt and Leipzig, 4.

<sup>40</sup> Würzer, J. H. (1788). *Bemerkungen über das Preussische Religionsedikt vom 9ten Julius, nebst einem Anhang über die Pressfreyheit von Heinrich Würtzer, Doctor der Philosophie*. Leipzig.

<sup>41</sup> Geheimes Staatsarchiv Preussischer Kulturbesitz (PK, G. "I. HA Rep. 96, Nr 222B Eigenhaendiger Schriften Woellners in Geistlichen Angelegenheiten, Vol. I. 1788-1796 (M)."

Frederick William ordered an investigation. After looking first in Leipzig, the government found the offender living in Berlin, and von Carmer had him arrested.

The ensuing investigation was thorough. Agents inventoried Würzer's apartment and interviewed everyone with whom he had spoken. Among those deposed were Jacques Wirth, Würzer's landlord, J. H. W. Würzer, the defendant's uncle, Ernst Wilhelm Würzer, the defendant's cousin, and Erich Biester and Marcus Herz, the Berlin literati. After completing the investigation, the government filed the following charges: 1) attacking the King (*lèse majesté*), 2) damaging the State's security, and 3) insulting the King's ministers.

Würzer cooperated completely with the authorities. In a series of sworn affidavits, he admitted to having written the book in question and to having mailed it to the King.<sup>42</sup> He denied, however, the substance of the government's charges, claiming only that the government was misreading his work. This was a standard rhetorical tool many writers used to defend themselves against people of equal or higher social status. Rooted in a traditional understanding of personal honor, this tactic allowed writers to debate their critics without attacking them personally.<sup>43</sup> However, in lapsing into a traditional mode of discourse Würzer highlighted two questions of general interest. First, how far could the State regulate academic debate? Second, within academic debate, what respect did the participants owe not only to each other but also to the system?

Würzer's prosecution calls our attention to a problem that was particularly acute in Prussia, the uneasy relationship that the public sphere had with sovereign authority. Ambivalence toward power was a legacy of Prussian absolutism, and the general sense of unease ran through the eighteenth century.<sup>44</sup> Frederick William I had little respect for scholars, and Frederick II, for all his interest in the Enlightenment, spoke mostly French and lived in Potsdam, leaving Berlin's intellectual scene to burghers such as Friedrich Nicolai and Moses Mendelssohn. Moreover, Frederick did not tolerate political debate outside his parlor. His favorite response to people who contradicted him was "don't argue!" When Frederick William II came to the throne in 1786, it was against the backdrop of royal indifference if not

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<sup>42</sup> Würzer, J. H. (1793). *Wuerzers Prozess von dem Koeniglichen Kammergerichte zu Berlin, nebst desselbigen Appellation an das aufgeklaerte Publikum. Von ihm selbst hereausgegeben, und auf eigne Kosten gedruckt*. Altona.

<sup>43</sup> On the development of a polite language of academic dispute, see Gierl, M. (1997). *Pietismus und Aufklärung: theologische Polemik und die Kommunikationsreform der Wissenschaft am Ende des 17. Jahrhunderts*. Göttingen, Vandenhoeck & Ruprecht.

<sup>44</sup> For a perspective on southwestern Germany that has implications for my position on Prussia, see Wegert, K. (1981), "Patrimonial Rule, Popular Self-Interest, and Jacobinism in Germany, 1763-1800", *The Journal of Modern History* 53(3): 440-467; Wegert, K. (1991), "Contention with Civility: The State and Social Control in the German Southwest, 1760-1850", *The Historical Journal* 34(2): 349-369.

outright hostility to the intellectual world, which meant that speaking truth *directly* to power was an unfamiliar enterprise at best.

Although educated Prussians prided themselves on the high level of academic debate in their country, there was no tradition of debating (or criticizing) the sovereign. There is no greater example of public debate's ambivalent relationship to political power than Immanuel Kant's complicated logic in "What is Enlightenment?" where he inverted public and private in order to make room for debate among the educated.<sup>45</sup> In this context Würzer's case challenged the Prussian public sphere's fundamentals: an "enlightened" writer had impugned the sovereign and, thereby, endangered public debate. It was to be expected that people watched to see whether chaos or oppression resulted.

Prussia's historical situation reflects directly on our anonymous commentator's judgment that the conviction was a masterpiece. Johann von Carmer wrote the decision, and his conviction of Würzer, "for comments against the Edict on Religion...made in a disrespectful and derisive tone" is a complicated maneuver in which acquittal and conviction flow through the text simultaneously.<sup>46</sup> Carmer convicted Würzer for failing to show proper respect. Yet, if we consider his decision with reference to the actual charges, it is clear that by convicting Würzer of a lesser crime—one with which he had not even been charged—Carmer also acquitted him of the more serious crime of *lèse majesté*. The tension-filled nexus that Prussia's enlightened elite occupied is revealed: Würzer had committed a crime; it was, however, different from the one the government had prosecuted.

Carmer's personal background offers additional perspective on the conviction. In many ways, he was a typical Prussian State servant.<sup>47</sup> A noble by birth, he had studied law at Jena and Halle between 1739 and 1743, before pursuing a bureaucratic career that extended through the reigns of three kings. Carmer distinguished himself while on assignment in the Prussian provincial capital of Breslau, where he came to the attention of the Prussian reformer Samuel Cocceji, who supported his career.<sup>48</sup> He was also a friend of another reformer, Karl Gottlieb Svarez, with whom he worked closely on the *Allgemeine Landrecht* (1794), and which has become famous as a hybrid beast that rationalized Prussian law without removing noble privileges.<sup>49</sup> Thus, if

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<sup>45</sup> Kant, I. (1784). "Beantwortung der Frage: Was ist Aufklärung?" *Berlinische Monatschrift* 2: 481-494.

<sup>46</sup> *Vollstaendige Sammlung aller bisher ergangenen Entscheidungen der Koenigl. Preussischen Gesetz Commission. Berlin, Matzdorff (1794)*, 134-158; *Vollstaendige Sammlung aller bisher ergangenen Entscheidungen der Koenigl. Preussischen Gesetz Commission. Berlin, Matzdorff (1795)*, 60-81.

<sup>47</sup> Liliencron, R. W., F. X. v., Wegele *et al.* (1875), *Allgemeine deutsche Biographie*, Leipzig, Duncker & Humblot; Schieder, T. (2000), *Frederick the Great*, London, Longman, 217-18.

<sup>48</sup> Johnson, H. C. (1975). *Frederick the Great and his Officials*. New Haven and London, Yale University Press. 259-60.

<sup>49</sup> On the history of the ALR, see Koselleck, *Preussen zwischen Reform und Revolution*.

Carmer's decision straddled uneasily the contrary forces in Prussian public life, his own life encompassed many of the same contradictions.

Carmer's acquittal-conviction provides a glimpse of the foundations of Prussia's political idiom. Whereas, we think in terms of an abstract individual with particular rights that cannot be infringed, in early-modern Prussia individuality was based in conscience.<sup>50</sup> The distinction is significant. Born in German Protestant denigration of the Papacy and the Inquisition, the Protestant idea of conscience held that everyone had the right to *believe* differently about religious issues, no matter what the State said. The corollary was, however, that the same dissenting subject had to tolerate being told what to do in most other areas of daily life. This construction became fundamental to the German Enlightenment. Much of the eighteenth-century discussion aimed to create a safe place within the individual for contrary opinions, though without detriment to domestic tranquility. Moreover, with political rights beginning in conscience, freedom's progress came to be defined through the State's gradual withdrawal from successfully disciplined areas, beginning, of course, with religion.<sup>51</sup> People who had learned to believe differently without rising up in rebellion could be left to their own devices. These trends intersected in the educated elite (*Gebildeten*), who remained behind to monitor the newly free realm, ensuring that no one got out of control.

The conscience-laden subject was inscribed on Prussian politics through Prussia's system of religious instruction, which balanced the right to believe freely with the State's right to keep order. In theory, preachers, who were public officials, taught the people to plumb their consciences with the goal of becoming better and happier subjects. Tutored felicity is not, however, autonomy, and the people were allowed freedom only within the space set by their consciences. The State and the Enlightenment monitored the people and ensured that public behavior stayed within acceptable bounds, with great vigilance directed toward any sign of *Enthusiasm*. Conscience functioned, therefore, as a limit on both the individual and the State, locking the two together in an uneasy relationship that, during the eighteenth century, was mediated through the public sphere.

Thus, in approaching this case, Carmer had access to a powerful political language that was rooted in his country's historical experience. Prussia's tradition of opposition to papal tyranny allowed him to define a sphere of free thought, while the Prussian Enlightenment's social distinctions served as rules of order. In this context, Würzer had to be both acquitted and

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<sup>50</sup> On conscience in German history, see Kittsteiner, H. D. (1990), *Gewissen und Geschichte: Studien zur Entstehung des moralischen Bewusstseins*, Heidelberg, Manutius; Kittsteiner, H. D. (1992), *Die Entstehung des Modernen Gewissens*, Frankfurt am Main and Leipzig, Insel Verlag.

<sup>51</sup> Humboldt, W. v. (1960), "Ueber Religion", *Wilhelm von Humboldt: Werke in Fuenf Baenden*; A. F. a. K. Giel. Stuttgart, J. G. Cotta'sche Buchhandlung. I: 1-32.



convicted. Carmer began Würzer's conviction with a defense against the first two and most serious charges, exonerating the accused by emphasizing the purity of his intentions:

Anyway, the accused insists that eagerness for humanity's benefit in general and especially in the Prussian states drove him not only to write this pamphlet, but also to dedicate it and send it to the lawgiver.<sup>52</sup>

Würzer's supposed desire to improve humanity was rhetorical insulation. If his reform program were abstract and general, then the sovereign could not, in fact, have been attacked, even if Würzer's mailing the text to the King had been an insult. In addition, Carmer also noted that Würzer had exhorted Prussian subjects to obey rightful authority, and that he believed himself to have been working in humanity's best interest:

In fact, one must assume that it was not his intention to tread too closely to the King's honor, since he believed it was possible for the King to err in the educated controversy over the symbolic books' value without damage to his royal virtues.<sup>53</sup>

This moment is important, for Carmer used Würzer's conscience both to defend the accused and to prescribe the proper boundaries for public debate. To believe that the king could err in an educated controversy was not an attack on the king's honor, but was an attempt to see the issue from all sides, a process that could only aid the State. Würzer was, therefore, not guilty, because he had had Prussia's interests at heart and had called for people to respect political authority. (If Würzer had actually called for the King's downfall, then Carmer would, no doubt, have reached a much different conclusion.)

Having insulated Würzer from the most damaging charges, Carmer now had two additional tasks. First, he had to absolve Würzer of the last charge of insulting the King's ministers. Second, he had to justify a conviction on an altogether different charge. Carmer began by noting that Würzer's contribution was formally legal.<sup>54</sup> He insisted (rightly) that judging the State's edicts and evaluating the reasoning behind them was well established within Prussian law. Thus, he found that Würzer had not insulted the ministers, since his actions had followed standard academic practice. The real problem lay in the danger that Würzer's tone would undermine civilized debate. As Carmer wrote:

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<sup>52</sup> (1794). *Vollstaendige Sammlung aller bisher ergangenen Entscheidungen der Koenigl. Preussischen Gesetz Commission. Berlin, Matzdorff.*, 138.

<sup>53</sup> *Ibid.*, 144.

<sup>54</sup> *Ibid.*, 141.

In his criticism of the edict, the accused used not only derisive but also harsh comments. Under the concept harsh comments are understood to be ones that either express the critic's indignation against the one being criticized, or are intended to arouse indignation in the teacher or listener against the one criticized. However, that the accused ventured to express his indignation against his Royal Majesty personally cannot be established.<sup>55</sup>

Würzer's work was not intrinsically dangerous, as it threatened only to encourage others to disrespect authority. Still, even the threat of disrespect held danger. Prussia was an agrarian society and had not yet created a police force that could keep order, especially in the countryside.<sup>56</sup> Since the elite were part of State authority, Carmer had an interest in keeping public disrespect of all lawmakers to a minimum.

Carmer disciplined Würzer while establishing freedom's proper boundaries. He did this by making the conviction social rather than legal—one *Gebildeter* had accused another of recklessness—. Carmer's accusatory stance was also reflected in his attempts to insulate the Enlightenment from the affair. He noted that Würzer worked alone on his book and had received no outside help, expressly citing testimony of Johann Erich Biester and Marcus Herz, members of the enlightened circle in Berlin, that they had no knowledge of the book. By explaining how Würzer had worked without aid and counsel, Carmer exonerated both Würzer and Berlin's enlightened elite from the government's charges.

The inescapable conclusion was that Würzer was guilty of having taken insufficient instruction from the Enlightenment. He had thoughtlessly mailed his book to the King, because he did not know any better, and Carmer added:

Mind you, this thoughtlessness was more punishable through his dedicating the book to the King and by his speaking to the monarch directly. Anyone who addresses another person is required through the act of speaking to display greater respect than he would otherwise be.<sup>57</sup>

With this quote we return to the Prussian public sphere's ambivalence toward power. Power's relationship to publicness was a touchy subject, since the king could, if he wished, limit freedom of the press. Hence, the public sphere functioned as a realm of disinterested interestedness, in which debates worked at level of generality sufficient to avoid giving insult to the power center, while highlighting actual or even potential abuses of power.

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<sup>55</sup> *Ibid.*, 144.

<sup>56</sup> On the development of policing in Prussia, see Lütke, A. (1982). "Gemeinwohl", *Polizei und "Festungspraxis"*. *Staatliche Gewaltssamkeit und innere Verwaltung in Preussen, 1815-1850*. Goettingen, Vandenhoeck & Ruprecht.

<sup>57</sup> (1794). *Vollstaendige Sammlung aller bisher ergangenen Entscheidungen der Koenigl. Preussischen Gesetz Commission*. Berlin, Matzdorff. 155.

However, in noting that the defendant had been unaware of the enormous responsibility that came with the right to argue freely and openly, Carmer also made room for the next part of his decision, the conviction.

Carmer's work constituted a Prussian definition of polite enlightenment.<sup>58</sup> On the one hand, Carmer made clear that the king was not to be touched in the public sphere. This was an enlightened position. The eighteenth-century public sphere was no place for harsh words, whether directed at the king or another *Gebildeter*, since both were creatures of honor with clear social standing. On the other hand, making the case *for* politeness shifted the attention away from Würzer's wounding of the king's honor and transformed the offense into a transgression of the rules of propriety. The Prussian Enlightenment wanted greater room for free debate, but abhorred debate unfettered by rules. Thus, the King ceased being the accuser, only to be replaced by an offended elite.

In charging Würzer with not being aware of the rules, Carmer brought his argument full circle. Würzer could not have had evil intentions, because no one had taught him how to behave. Much like his enlightened brethren, Carmer held that people engaging in public discourse must learn to keep that discourse civilized.<sup>59</sup> The social underpinnings of this position become clear in Carmer's response to a potential obstacle: Würzer's uncle had, indeed, warned him not to send his book to the king. This inconvenient fact threatened Carmer's exculpation of Würzer's conscience and could have undermined Carmer's artifice. Carmer responded with social marginalization. He wrote:

That he [Würzer] ignored the warnings from the uneducated gardener Würzer [the uncle] cannot make his actions more punishable.<sup>60</sup>

Carmer revealed, thus, how exclusive the enlightened club in Germany was. One may expect that to ignore a warning proves both knowledge and intent, and ought to be grounds for a harsher sentence. In this case, however,

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<sup>58</sup> For other views of polite enlightenment see: Klein, L. E. (1994), *Shaftesbury and the Culture of Politeness: moral discourse and cultural politics in early eighteenth-century England*, Cambridge and New York, Cambridge University Press; Pocock, J. G. A. (1985), "Clergy and Commerce: The Conservative Enlightenment in England", *L'Eta dei Lumi*, Naples, Jovene, 1: 525-562. See also Sher, R. B. (1985), *Church and university in the Scottish Enlightenment: the moderate literati of Edinburgh*, Princeton, N.J., Princeton University Press.

<sup>59</sup> Teller, W. A. (1788), *Wohlgemeinte Erinnerungen an ausgemachte aber doch leicht zu vergessende Wahrheiten auf Veranlassung des Koenigl / Edicts die Religionsverfassung in den Preussiscgen Staaten betreffend und bey Gelegenheit einer Introductionspredigt von D. Wilhelm Abraham Teller*, Berlin, August Mylius; Hellmuth, E. (1982), "Aufklaerung und Pressefreiheit / Zur Debatte der Berliner Mittwochgesellschaft waehrend der Jahre 1783 und 1784", *Zeitschrift fuer Historische Forschung* 9(2): 315-345.

<sup>60</sup> (1794). *Vollstaendige Sammlung aller bisher ergangenen Entscheidungen der Koenigl. Preussischen Gesetz Commission*. Berlin, Matzdorff, 155.

the warning came from a gardener —someone definitely not in the enlightened club— which allowed Carmer to dismiss it. Indeed, Würzer was exonerated by *not* listening to a gardener's counsel, since such a person had no standing before an enlightened court.

If we consider the difficulty of Carmer's position, his decision does seem a masterpiece. Carmer could not acquit the defendant, because the King was watching closely. Yet he could not convict Würzer harshly either, because the enlightened were watching, too. Convicting Würzer of lesser charges, and for social reasons, is the decision's masterstroke. By allowing all sides to read some kind of victory into the decision, Carmer could convict and not convict at the same time. The beauty of this ambiguity is evident in his sentencing Würzer to six weeks in jail plus a fifty Taler fine. The fine covered the honorarium Würzer had received for his book, erasing any profits from his impudence. Moreover, since Würzer had already spent six weeks in jail, the sentence was equally convenient; with credit for the time already served, Würzer was granted an immediate release.

A man of the Enlightenment and a State servant, Carmer integrated competing and to a degree incompatible goals. The German Enlightenment called for more autonomy, but its autonomy went hand-in-hand with maintaining order. For that reason, Carmer's text represents an attempt to guarantee the freedom of educated individuals to debate responsibly. This is the real import of Carmer's use of conscience. Würzer had the freedom to believe differently from everyone, but the State (and the Enlightenment) had the right to ensure that the tone of his dissent was appropriate to his political and social context. In this case, the Prussian public sphere's structure mandated a legal acquittal that was wrapped in a social conviction.

### *Disciplining the State*

Just as Würzer's trial was ending, another scandal erupted in Berlin. It began on December 17, 1790, when the publisher Johann Friedrich Unger posted a newspaper advertisement for a book by the Berlin preacher, J. B. Gebhardt, entitled *Scrutiny of the Reasons Given in Support of His Opinion by the Author of the Little Text "Is a Universal State Catechism Necessary?"*<sup>61</sup> As the title indicates, Gebhardt's book was a response to another scholar's work, the title of which is *Is a Universal State Catechism Necessary, and How Must it Be Procured?*<sup>62</sup> On its surface, this appears to be another in the pulsing stream of books German academics published on matters that meant a great deal to them at the time. It is, therefore, not surprising that Unger received the imprimatur from the censor, Johann Friedrich Zöllner, with these words: "I

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<sup>61</sup>J. B. Gebhardt, *Prüfung der Gründe, welche der Verfasser der kleinen Schrift: Ist ein allgemeiner Landeskatechismus nöthig? zur Behauptung seiner Meinung beygebracht hat* (Berlin, 1790).

<sup>62</sup>C. F. Herzlieb, *Ist ein allgemeiner Landeskatechismus nöthig, und wie muß er beschaffen sey?* (Züllichau, 1790).

can find nothing in this little book, on account of which the imprimatur should be denied."<sup>63</sup>

This little book became a political issue, nonetheless. The day after the article appeared in the newspapers, Unger received a letter from the head of the Department of Ecclesiastical Affairs (*Geistliches Departement*), Johann Christoph Woellner, dated January 4, 1791, who ordered him not to sell any of the books under threat of a 100 Ducat penalty. Seven days later, Woellner sent a letter to the President of the Superior Consistory (*Oberkonsistorium*), Thomas Philipp von der Hagen, charging that the book:

openly practices punishable criticism of our most highly decreed introduction of a general catechism for the Christian religion, and, thus, its content runs counter to our official intentions.<sup>64</sup>

Poor Unger seems to have had the bad luck to publish a book that criticized one of Woellner's pet projects. On closer inspection, however, things are not so simple.

The dispute became a legal issue because property was at stake. Woellner's intervention left Unger with 500 copies of a book that had been approved, but could not be sold. Woellner could have avoided the ensuing mess had he simply paid for the books out of the government's coffers. Instead, Woellner informed von der Hagen that Zöllner should compensate Unger. Unger, in turn, sent his friend Zöllner a bill that could not have covered the costs that he had incurred. Zöllner wrote back that the bill was such a piddling amount as to be an insult (*Beleidigung*), which left him no choice but to demand that the case go to court. He wrote:

Since I will never decide to pay this request, except in accordance with a legal decision, so I leave it to you to sue me before the Royal Aulic Court [Kammergericht]. Moreover, since your acts have insulted me, by seeking to mitigate your full legal due out of consideration for me, I strongly beseech you to enforce your full legal rights against me.<sup>65</sup>

Unger and Zöllner could now use the State's structures to indict the author of an unpopular policy. What ensued was an elaborate legal case in which Zöllner avidly defended himself, while blaming the whole problem on Woellner, whose name went conveniently unmentioned.

Woellner's conspicuous absence from the text highlights the essential point for understanding the dispute: it was a sham. Zöllner was not defending

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<sup>63</sup> J. F. Unger, *Prozess des Buchdrucker Unger gegen den Oberkonsistorialrath Zöllner in Censurangelegenheiten wegen eines verbotenen Buchs. Aus den bei einem Hochpreissl. Kammergericht verhandelten Akten vollständig abgedruckt* (Berlin, 1791), 1.

<sup>64</sup> Unger, *Prozess*, 2.

<sup>65</sup> *Ibid.*, 6.

himself against Unger, but Woellner. It is difficult to believe that Unger did not know about the new catechism, since it had been in discussion for a while. Yet, were we to give Unger the benefit of the doubt, we can be certain that Zöllner, a preacher and a censor in Berlin, knew of Woellner's plans. For his part, Woellner believed that Zöllner understood the stakes, since he accused him of it in a letter.<sup>66</sup> Moreover, since Zöllner and Unger were friends, it is safe to conclude that Unger knew exactly what the publication of the book meant.<sup>67</sup> Thus, although Zöllner and Unger stood on opposite sides of the State/public divide, they joined forces to stifle the programs of a powerful minister. The bureaucratic middle was, in effect, disciplining the top.

The actual progress of the case need not concern us here, though Unger did lose his bid for compensation from Zöllner. What is important is that the Prussian court system became a public forum for embarrassing one of the government's ministers. Confronted with a lawsuit, Zöllner had the right, as a Prussian subject, to read his defense into the court record, which under Prussian law made everything publishable, as later happened when Unger published all the relevant documents in *Trial of the Publisher Unger against the Councilor to the Superior Consistory Zöllner in Censorship Matters over a Forbidden Book* (1791).<sup>68</sup> Everything Zöllner said in his own defense must, therefore, be seen a part of a multi-layered strategy to use the power of the State to discipline a rival (Woellner) via the public sphere.

Much as Carmer did, Zöllner avoided the thrust of the State's charges by reframing the question. He said in his defense that the case was not about the losses Unger had incurred, but whether he, Zöllner, had acted appropriately. He posed four questions as a way of approaching the problem of right action: 1) Did he err in approving the book? 2) If so, was the error large enough to assign liability to him personally? 3) Were he liable, ought he then to compensate Unger not only for costs but also for lost profits? 4) Was Unger's accounting of costs and lost profit correct? Zöllner only concerned himself with the first two questions, arguing that the second two were only relevant in the event of a conviction on the first two.

Zöllner's questions connected the elite's corporate interests directly to general issues. Consider his response to Unger's charge:

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<sup>66</sup> Woellner wrote: "da, wie Supplikant selbst am besten weiß, dieses allgemeine Lehrbuch bereits in der Arbeit ist, und bald öffentlich bekannt machen werden soll", Unger, *Prozess*, 4.

<sup>67</sup> Unger was an important person in Berlin's social life. As a successful publisher, he knew everyone worth knowing. In addition, he was a member of the Royal Prussian Academy of Arts, and his home was often a center for social gatherings. For a contemporary assessment of Unger's public role, see J. W. von Archenholz, "Ungers Tod", *Minerva* 1 (1805), 175-180; and von Archenholz, "Zur Geschichte des deutschen Bücherwesens", *Minerva* 7 (1793), 186-192.

<sup>68</sup> Unger, *Prozess*. (See n. 63 above.)

As for the publisher Unger's claim that the Department of Ecclesiastical Affairs' order obliges me to reimburse him for his losses, I do not see the slightest legal justification for it. The plaintiff will be hard pressed to cite a law from which it follows that the authority of the order's author [Woellner] gives someone a right to a third party's property. No trace of such a law is to be found in the Royal Prussian States. Moreover, with as little historical knowledge as I have acquired, I believe, nonetheless, that in no State in the world where departmental orders and property exist, can such a law be found, because the concept of property itself excludes the arbitrary control of a stranger over my [things].<sup>69</sup>

Two elements of Zöllner's position are notable. First, none of the questions put the censor's role as censor in doubt. In fact, their central thrust was to justify his actions in office. (We must keep this in mind, later, when judging the public response to the case.) Second, this case could have set a dire legal precedent. Since many educated Germans worked for the State, a decision that held State servants personally liable for decisions made on the job would have made their middle position untenable.<sup>70</sup>

By emphasizing law as protection from arbitrary actions, Zöllner alluded to a subject that was dear to his educated contemporaries. He would have known their concerns well, since in addition to being a preacher in Berlin's *Marienkirche*, he was also a member of the *Mittwochsgesellschaft* and had ties to the *Berlinische Monatsschrift*. It was especially during the late eighteenth century that Germans identified their governmental system with law, believing that power was legitimate if it was exercised rationally, that is legally. Zöllner expressly pointed out that academics had discussed the *Allgemeine Landrecht* as a service to the State:

And these [discussions] were in no way forbidden as contrary to the laws, but were accepted gratefully as a contribution for illuminating an important issue from all sides.<sup>71</sup>

Indeed, Zöllner said nothing truly new here, as his audience had long believed that academic discussion was the cornerstone of good law. In their view, Academics had the right to evaluate laws, because they could be relied upon to argue responsibly. Zöllner even noted that this right had been enshrined once again in Prussian law by Carmer's verdict on Würzer.<sup>72</sup> As educated members of the State and the public, both Zöllner and Carmer had an interest in using the State's power to protect their vision of autonomy.

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<sup>69</sup> Unger, *Prozess*, 63.

<sup>70</sup> Concerns about the bureaucracy's position within the Prussian State were not new. See David M. Luebke, Frederick the Great and the Celebrated Case of the Millers Arnold (1770-1779): "A Reappraisal", *Central European History* 32 (1999), 379-408.

<sup>71</sup> Unger, *Prozess*, 70.

<sup>72</sup> *Ibid.*, 74.

Zöllner's willingness to cite Carmer highlights how the bureaucratic elite used State power to pursue a political agenda. This court case was an attempt to embarrass Woellner so that power could remain in the bureaucrats' hands. Consider Zöllner's legal analysis:

The Edict on Censorship does not say with any words that the censor must judge whether a text could cause damage under certain conditions; such a requirement would ostensibly end all scholarship. Every text can cause damage and every censor can imagine conditions under which damage would occur. Whereas one person, by virtue of a *Logica Probabilium*, sees nothing but damage everywhere, another expects a greater sum of good.<sup>73</sup>

The Edict on Censorship was a companion edict to the Edict on Religion. In 1790, Woellner promulgated it to aid in enforcement of the Edict on Religion. In claiming that this edict left room for personal judgment, Zöllner deliberately excluded Woellner from bureaucratic practice. Moreover, the text also used social marginalization through the reference to *Logica Probabilium*. This term was a brilliant cheap shot, because it referred to form of reasoning invented by Jesuits to soften the Catholic doctrine of sin. By mentioning Jesuit logic in his own defense, Zöllner accused his real opponent, Woellner, of being a Jesuit—at the time, a byword for religious fanaticism—.<sup>74</sup> Thus, to impinge on the bureaucracy's legitimate work was to act like a Catholic.

We can understand how this case was received by considering the *Allgemeine deutsche Bibliothek's* (*ADB*) review of Unger's *Trial of the Publisher Unger*.<sup>75</sup> The review followed a standard method, which consisted of a summary of the book's contents followed by a few comments. The summary was scrupulously fair, offering a description of both sides' position, including a long discussion of the pending catechism. The review's significance lies in the way it underscored its readers' concerns. It quoted the court's decision in its entirety:

Since the censor... cannot be faulted for anything more than approving a text for publication that counseled against a policy favored by the government, it is clear that the same carried out his duty completely and cannot be convicted in accord with the plaintiff's complaint. Moreover, the defendant

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<sup>73</sup> *Ibid.*, 81.

<sup>74</sup> The Jesuits were an important public issue in Prussia, during the late eighteenth century. After the Pope disbanded the Jesuit Order in 1773, many of the dispossessed found refuge in Frederick II's Prussia. One irony among many here is that some of Berlin's most enlightened men were ridiculously vigilant against the possibility of a Jesuit takeover. Friedrich Nicolai earned the ironic title Jesuit Sniffer (*Jesuitenriecher*) from colleagues who thought his war on the Jesuits was irrational.

<sup>75</sup> "Proceß des Buchdrucker Unger gegen den Oberkonsistorial-Rath Zöllner in Censurangelegenheiten wegen eines verbotenen Buchs. Aus den bey einem hochpreißl. Cammergericht verhandelten Akten vollständig abgedruckt", *Allgemeine deutsche Bibliothek* 113 (1793), 61-66.



has earned public thanks for having rendered his opinion as a conscientious and sensible civil servant and without ulterior motives...<sup>76</sup>

Then it added coyly, “Happy the country where justice is administered by men who think as these do!”<sup>77</sup> As I noted above, there was no real tradition in Prussia of criticizing the State directly for fear of offending the monarch. Instead, Prussians used allies within the State and magnified bureaucratic comments with which they agreed.<sup>78</sup> The point was that the Prussian elite could feel secure, since their territory was well governed.

The *ADB*'s review throws into relief three practices that shaped Prussia and Germany's public. First, the print aspect of the debate deferred to State authority. It had to do so, since the State made the public sphere itself possible. Second, there was often no need to print harsh criticisms when the service elite's own critiques could be reprinted anyway. It could not have gone unnoticed that the Aulic Court announced that Zöllner was due public thanks for his work. Finally, the German States' political diversity was an essential component of the public sphere. The *ADB*'s review ended with the helpful hint that anyone who needed more information about the larger case could read an anonymously published collection of documents that appeared under the title *Scrutinizing Notes on Herzlieb's Writing: Is a Universal State Catechism Necessary & Together with Gebhard's Still Frowned upon Response: a Compendium of the Disputed Records from the Unger-Zöllner Censorship Trial* (Rinteln and Leipzig: Bahrtdt, 1792).<sup>79</sup> This book was published outside Prussia but it could be read and discussed by any member of the German public sphere. One suspects that Zöllner had exactly such an outcome in mind, when he encouraged his friend to file suit against him.

If freedom were to advance, both the State and the public sphere had to be policed. In this case, Zöllner arranged to have the highest levels of the government come in for scrutiny. We should keep in mind, however, that for Zöllner, the real danger to freedom in Prussia was not the State, but a displeasing minister. He never attacked censorship as such, and made no call for greater autonomy. In fact, Zöllner had already articulated his concerns over the dangers of public debate in an article that appeared in 1785 in the *Berlinische Monatsschrift* under the title “On Learned Lies and Errors:

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<sup>76</sup> *Ibid.*, 65.

<sup>77</sup> *Id.*

<sup>78</sup> Another good example is the anonymously published article “Merkwürdige Erklärung des Königlichen Preussischen Departements des auswärtigen Affären”, *Braunschweigisches Journal* 2, no. 6 (1791), 245-52, which quoted liberally from a different court decision that had gone against Woellner before adding that one could not read this particular decision often enough and then launched into a discussion of the *Bürger*'s rights in matters of religion.

<sup>79</sup> *Prüfende Anmerkungen zu der Herzlieb'schen Schrift: ist ein allgemeiner Landescatechismus nöthig & Nebst der Gebhard'schen in Berlin noch immer verpönten Gegenschrift: ein Auszug aus dem Ungerisch-Zöllnerschen Censurprocess verhandelten Acten* (Rinteln und Leipzig, 1792)

Suggestions for Limiting the Harmfulness of the Same".<sup>80</sup> After lamenting that lies and untruths often made their way from print into common speech, he also added in a footnote that even some truths were best left unspoken:

it seems that a very large segment of our writers does not know what discretion is. Hence, it happens that so much that is certainly true in and of itself, but would best remain unspoken, is so easily written into the public sphere.<sup>81</sup>

The general public was not prepared for every form of truth. Zöllner then turned back to the problem of untruths and concluded:

All of this has for a long time inspired in me the wish that some prince would found an academy that would make its primary purpose merely to determine the reliability of new reports, observations and experiments, and to separate true from false, doubtful from certain.<sup>82</sup>

Zöllner demonstrated this concern for the dangers of untruth three years before the Edict on Religion appeared. And his solution to the problem back then was elite oversight of the print world.

The distance from this position to actually being a censor was not great, and there was no inherent contradiction in Zöllner's dual role as both writer and censor. If the writers could be directed without being exactly controlled, so could the State. Zöllner's battle as a censor and *through* the Prussian court system is an example of how the power of the State could be turned upward. Zöllner's belief in the virtue of critical debate did not lead to a divorce from the State, since its power had uses. The battle was over who would make and enforce the rules.

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<sup>80</sup> J. F. Zöllner, "Ueber gelehrten Lügen und Irrthümer, nebst Vorschlägen, die Schädlichkeit derselben zu vermindern", *Berlinische Monatsschrift* (1785), 248-76.

<sup>81</sup> *Ibid.*, 267.

<sup>82</sup> *Ibid.*, 274-75.

## Conclusions

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I have argued that autonomy was an embedded concept in eighteenth-century Germany. When Kant called for greater freedom for man, he meant greater freedom for educated man. Hence, the State would withdraw from an area of public life, only if the people were capable of maintaining order without State interference. Until that time came, however, State oversight would be not only an unfortunate but also a necessary component of the Enlightenment. Kant's famous argument in *What is Enlightenment?* that Frederick II supported enlightenment by tolerating free religious debate was based on the knowledge that an army of preachers and philosophers kept the populace under control. The German Enlightenment's didacticism (not to mention its pedantry) was an outgrowth of this bedrock association between freedom and social control. The State would provide the enlightenment with the tools for maintaining order. In exchange, the enlightenment would provide the State with educated and orderly people. I hold that this arrangement was anchored not simply in the fear of State power, but also in the certainty that the masses could easily get out of control. State interference was only unjust in those cases where it was unnecessary. The enlightened elite was not intrinsically opposed to State interference in public life; it only insisted that the State not interfere with people who *merited* freedom. As Humboldt wrote in his unpublished response to the Edict, "One should not judge an action before one has examined exactly the physical, intellectual and moral capacities of the actor".<sup>83</sup>

Humboldt's emphasis on the actor's moral capacities reveals again how Germany's long encounter with conscience shaped this particular political idiom: the defense of the individual against State control was couched in terms borrowed from religious debate. When an individual was confronted with State power, his level of merit determined his rights and freedoms. The more meritorious a person—or people—became, the less the State would need to intervene in what had become a matter of conscience.

In Germany, this State and its concomitant public existed in a complicated, symbiotic relationship. At one moment, the most enlightened could call for discipline for those who threatened the elite's freedom, while at another favor freedom for themselves. Johann Fichte provides a good example. In 1788, he wrote a text in support of the Edict on Religion, arguing that Frederick William II was only acting as a father to his people.<sup>84</sup> Fichte

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<sup>83</sup> Humboldt, *Werke*, I, 16.

<sup>84</sup> J. G. Fichte, "Zuruf an die Bewohner der preussischen Staaten veranlasst durch die freimüthigen Betrachtungen und ehrerbietigen Vorstellungen über die neuen preussischen Anordnungen in geistlichen Sachen", in Fichte, *J. G. Fichte-Gesamtausgabe der Bayerischen Akademie der Wissenschaften*, R. Lauth and H. J. Lauth, eds. (Stuttgart-Bad Cannstatt, 1964), II, 186-197. (Hereafter cited as *GA*.)

never published the text, but three years later he put out a revised version in which he took the opposite position, holding that Europe's princes were limiting freedom of thought.<sup>85</sup> What happened? Anthony LaVopa has argued plausibly that Fichte was angered by the Saxon State having censored one of his works.<sup>86</sup> It was one thing to keep the people in their place, it was quite another to impugn the honor of a *Gebildeter*. Fichte had *standing*, after all.

Fichte's about-face highlights the deep tensions within the German Enlightenment's project. Autonomy and State tutelage went hand-in-hand in the eighteenth century, and the public debate was really about how the two should be entangled—not whether they should be—. In Göttingen, Johann. G. Schlosser put the case thus in *On Book Censorship and Publicity*:

I believe that the only means through which this freedom can be maintained is if we make our writings as useful as they can be for our age; and the most certain means for losing it, is when we misuse it.<sup>87</sup>

He added, though with a touch of irony: "There are remains, perhaps, nothing other than for the good writers to lower themselves, at least for some time, to being the censors for the bad ones."<sup>88</sup> Schlosser exhibited some weariness at the constant threats to free thought in the eighteenth century. Still, his underlying position was traditional: good publicity improved both the people and the State, and that the only way to guarantee further progress through public debate was to maintain discipline. Those who misused the right to publish guaranteed the destruction of the very system on which their rights were founded.

Contextualizing autonomy along these lines suggests two conclusions. First, the Edict on Religion did not represent *the end* of the Enlightenment, but was *an end*. That is to say, controlling the populace through State power was a legitimate outcome of themes deeply buried within the "enlightened" worldview. The issue between the Edict's supporters and opponents was over when this particular means of control was proper.

Second, those who criticized the Edict most harshly were not reacting against the Counter-Enlightenment, but were in fact breaking with many of the German Enlightenment's traditions. By the late 1780s, the marriage between autonomy and order was coming to an end, and it was the very process of the Enlightenment that was itself to blame.

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<sup>85</sup> J. G. Fichte, *Zurückforderung der Denkfreiheit von den Fürsten Europas, die sie bisher unterdrückten*, (Heliopolis: n.d.) (Reprinted in GA, I.)

<sup>86</sup> LaVopa, A. J. (2001). *Fichte: the Self and the Calling of Philosophy, 1762-1799*. Cambridge, Cambridge University Press.

<sup>87</sup> Johann Georg Schlosser, "Ueber Büchercensur und Publizität", *Deutsches Museum* (1788), 251.

<sup>88</sup> *Ibid.*, 252.

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