Introduction

> I now believe that it would be right to begin my book with some remarks on metaphysics as a kind of magic . . .
>
> For, when once I began to speak of the 'world' (and not of this tree or table), what did I wish if not to conjure something of the higher order into my words . . .
>
> Of course, here the elimination of magic itself has the character of magic.
>
> Work in philosophy – like work in architecture in many respects – is really more work on oneself. On one's own conception. On one's way of seeing things. (And what one asks of it.)
>
> Ludwig Wittgenstein

Despite the recognition of different national, cultural, and religious enlightenments, and regardless of recurrent doubts about the utility of the concept itself, a dominant form of intellectual history remains committed to the reality of a single process or project of Enlightenment, even if this is something that has to be synthesised from diverse intellectual expressions, institutional settings, and historical locales. Horst Stuke offers a classic instance of this historiography in his *Begriffsgeschichte* of *Aufklärung*, written for that great encyclopedia of German conceptual history, the *Geschichtliche Grundbegriffe* (Stuke 1972). Despite his illuminating sketch of a variety of different forms of enlightenment – ranging from the Pietists' doctrine of spiritual rebirth to the Wolffian conception of conceptual self-clarification – Stuke's history is one of the progressive unification and conceptualisation of these 'programmatic' enlightenments. The key stages on the way are Kant's 'formalisation' of the concept of *Aufklärung* – which treats it as human reason's recovery of its own intellectual and moral laws – and Hegel's dialectical historicisation of the concept, which allows reason's self-clarification to occur in time,

as the transcending reconciliation of a series of fundamental historical oppositions.

Not the least remarkable aspect of Stuke's discussion is the manner in which it transforms the retrospective unification of early modern enlightenments into a methodological and theoretical imperative. For *Begriffsgeschichte* regards dialectical reconciliation and conceptual formalisation as the condition of human reason's own historical self-clarification – the latest episode of which is in fact Stuke's article. If, however, we wished to recover the early modern enlightenments in their full programmatic diversity – and were we to contend that two of the most important forms of enlightenment remain as unreconciled today as they did in early modernity – then our discussion would have to move in the opposite direction to Stuke's. We would have to strip the Kantian formalisation and Hegelian reconciliation of *Aufklärung* from our historical imaginations, and plunge into the turbulence of bitterly opposed programmes for the cultivation of human reason.

Norbert Hinske also presumes the existence of a single Enlightenment, arguing that the German *Aufklärung* was unified by a small number of 'fundamental ideas'. According to Hinske, the fundamental character of these ideas means that they arose not from an historical ethos or mythos, an ideology or faith – and not from the theological, pedagogical, jurisprudential, and political disciplines in which they occasionally found expression – but from the 'work of thought' itself: philosophy (Hinske 1990, 410). This philosophical *Aufklärung*, Hinske argues, is characterised by three programmatic ideas. First is the idea of *Aufklärung* itself which, despite its varied formulations, is rooted in the doctrine of intellectual clarification – the recovery of the concepts underlying historical experience. This doctrine was formulated by Descartes and Leibniz, systematised by Wolff, and then given its definitive 'critical' form by Kant. Next comes a group of concepts – eclecticism, thinking for oneself, and maturity (*Eklektik*, *Selbstdenken*, *Mündigkeit*) – which finds its unity in the fact that those possessing enlightened intellects make their own judgments, thereby restricting the tutelage of the state to the provision of external security. Finally, there is the notion of perfectibility which, despite its several uses in various reform agendas, found its original expression in the Leibniz–Wolff doctrine of intellectual and moral perfection, and its final form in Kant's conception of the never-ending pursuit of intellectual and moral purity. Hinske concludes his explication of a philosophically unified *Aufklärung* by arguing that its basic ideas

'are not simply a result of the great technical discoveries and improvements of modernity, or a mere consequence of the economic, social, political or religious changes, even if presumably the division of the confessions in Germany, with their irreconcilable controversies, contributed not a little to their articulation' (Hinske 1990, 434). Instead, all of the programmatic ideas are grounded in a single basic idea, the idea of a universal anthropology – the end or destiny of man (*Bestimmung des Menschen*) – which, in its turn, is identified with a universal human reason. From this notion of human being as rational being – the notion of a reason that is self-grounding and self-acting in all spheres of life – Hinske derives what he regards as the fundamental rights and duties of a rational society: the right to publish one's thoughts (*Öffentlichkeit*, press-freedom), and the duty to respect the judgments of others (liberality, tolerance).

Hinske's conception of a philosophical *Aufklärung* certainly finds an historical correlate in the 1780s' debate over 'What is Enlightenment?', which had been sparked by articles in the *Berlinische Monatsschrift*, and selections from which have been republished by Hinske and James Schmidt (Hinske 1977; J. Schmidt 1996a). But this correlation arises because only the philosophical contributions to this debate are now treated as significant, allowing the contributions of jurists and statesmen to drop from historical sight. The central doctrine of F. H. Jacobi's intervention – that political and moral freedom have a common grounding in man's spontaneous intellectual being – is typical of the philosophical essays, especially those by Kant, Reinhold, Tieftrunk, and Bergk. The conclusions that Jacobi draws from this doctrine are also broadly representative: 'Where there is a high degree of political freedom in fact, not just in appearance, there must be no less a degree of moral freedom present. Both are grounded exclusively in the rational nature of man, and their power and effect is thus to make men ever more human, ever more capable of self-government, of ruling their passions, of being happy and without fear' (Jacobi 1782, 210). No less significant in this regard is Jacobi's Kantian affirmation that human reason and morality are realised through freely self-imposed laws. His adherence to Kantian autonomy means that Jacobi regards 'externally' prescribed laws – laws formulated by jurists and statesmen – as intrinsically corrupting of humanity. Displaying an uncanny gift for rewriting history in accordance with the Kantian spirit of his times, he asserts that it was not law and the state that put an end to the destructive wars of religion but 'the ceaseless striving of reason' (203). Finally, in concluding his defence of

society as a self-regulating organism of individual rights and duties, Jacobi pays a back-handed compliment to the monstrous mechanical states designed by Machiavelli and Hobbes; for they at least honestly show the political consequences of viewing man as a creature of passions requiring external juridical and political governance.

The success of this rewriting of history can be measured not just in Hinske's assumption of an anti-statist philosophical *Aufklärung*, but also in James Schmidt's comment that Jacobi's essay should be interpreted as part of a 'liberal' critique of enlightened absolutism (J. Schmidt 1996b, 13). So well had the Kantian philosophers of the 1780s done their work – burying all signs of the role of law and state in achieving a liberal settlement to the religious civil wars – that their descendants of the 1980s no longer have to bother with any other enlightenment. It is, however, just this success of the philosophical *Aufklärung* in rewriting history in its own image that makes it unsuited to understanding a different conception of enlightenment, one which had emerged a century earlier and had never gone away.

Christian Thomasius' *Institutiones Jurisprudentiae Divinae* had been published in 1688, with the German translation appearing in 1709 under the title *Drey Bücher der Göttlichen Rechtsgelahrtheit* (*Three Books of Divine Jurisprudence*), which is the edition I have used. In his Foreword to this translation, 'On the Obstacles to the Spread of Natural Jurisprudence', Ephraim Gerhard was also convinced that he stood on the threshold of a new enlightened epoch; yet his conception of the source and direction of enlightenment differs markedly from that of the philosophers of the 1780s and their modern descendants: 'We live in a time when, over the last several years, things in the empire of scholarship have so altered, that from now onwards those who served in it a hundred years earlier would scarcely find their right way – so different is the shape that the sciences have assumed since then . . . I believe, though, that this kind of transformation is to be remarked not just in the zones of philosophy, as some like to imagine, but also and in fact principally in our jurisprudence' (*IJD*, Fwd, § 1). For Gerhard it is not philosophy – in the line that would run from Leibniz through Wolff to Kant – that is responsible for enlightenment, but the rebirth of jurisprudence and natural law, which he ascribes to a different intellectual trio: 'Certainly those possessing a somewhat enlightened understanding [*aufgeklährtern Verstand*] could only take pleasure in the lights which Grotius, Pufendorf, Thomasius and others have displayed for us through their industry; because through this the true ground of all laws has been revealed to us much more clearly

than before' (§ 3). In fact, Gerhard regards philosophy as impeding the spread of the new jurisprudence through the universities and courtrooms of Germany; for the academic moral philosophers teach the discipline of natural law in such a subtle and abstract manner that it becomes all but useless for the affairs of the state and the needs of daily life (§§ 7–8). This problem, Gerhard argues, is compounded by the university's curricular and faculty structure. In compelling law students to study moral philosophy before beginning their legal studies, this structure leads many to misunderstand the specific nature of the law, bringing forth instead 'either mere philosophical and abstractive chimeras or a mish-mash of moral philosophy, decorum, and even theological principles' (§ 9).

Gerhard's Foreword belongs to the genre of 'histories of morality'. As Timothy Hochstrasser has shown, this genre was intended to support the spread of the new doctrines of natural law – those of Grotius, Pufendorf, and Thomasius – by making them central to overturning Protestant neoscholasticism (Hochstrasser 2000). In his own *Preliminary Dissertation* to the *Institutiones* – another instance of this genre – Thomasius spells out the enlightening role of jurisprudence and natural law in more detail than Gerhard and with greater élan. Treating his own enlightenment as symptomatic of the new path, Thomasius recalls that during his student years at the University of Leipzig his theology and philosophy professors – Valentin Alberti in particular – had attempted to keep him in the dark, teaching their own metaphysical version of natural law, and warning him off the works of Samuel Pufendorf, whom they branded an innovator and heretic. Thomasius read Pufendorf anyway, and his account of the effect this had on him is worth quoting in full:

> At that time I began to dispel some of the dark clouds which had previously obscured my understanding. Before then I had imagined that all things commonly defended by the theologians were purely and simply good theological matters, which an honorable man must by all means hold in respect, so that no-one would brand him as a heretic or innovator, honorifics which then amounted to the same thing. After I had rightly considered how theology differs from philosophy though, and also read with greater care that which was written about politics and political law [*Fürsten Recht*] (*jus publicum*), I learned to recognise that commonly all kinds of things were unanimously defended by the theologians which have nothing to do with theology, but belong in ethics or jurisprudence. But these things were commonly passed off as theology because the philosophers make do with the number of their eleven Aristotelian virtues and the jurists with their glossing. And the theologians – first in fact the Catholics and then our [Lutheran] ones – gave cause and opportunity [for this], because no-one took

responsibility for claiming this noble area of wisdom, just as if a thing had no owner. [I also recognised] that the power and right of someone to declare another a heretic belonged to no private person – even if they were great and famous – but only to the prince. Finally [I saw] that an innovator is no heretic, and that this title, like the name heretic, had suffered great misuse. And I saw that through these propositions Pufendorf convinced his opponents, who had not the slightest hope of basing their victory on their false principles.

I therefore began to hesitate and to hold the moral philosophy of the academics [*Sittenlehre der Schul-lehrer*] in contempt. (*PD*, §§ 10–11, 5–6)

Thomasius' sketch of his 'civil' enlightenment makes two points which are in fact symptomatic of a fundamental parting of the ways in the academic culture of early modern Germany. In the first place, Thomasius records that through his reading of politics and political jurisprudence (*Fürstenrecht*, *Staatsrecht*, *jus publicum*) he discovered that theologians and Christian natural jurists were guilty of mixing theology and 'philosophy' – that is, revealed and natural knowledge. In mixing revealed biblical truths and the naturally known truths of jurisprudence, ethics, and politics, they obscured the autonomy of jurisprudence and intruded on intellectual domains that were none of their business. We shall see that Thomasius laid this miscegenation of revealed and natural knowledge squarely at the door of university metaphysics – a discipline offering philosophical explication of religious doctrine and transcendent foundations for philosophical concepts, to the detriment of both faith and knowledge. Next, says Thomasius, he realised that, in laying the charge of heresy, university theologians like Alberti were claiming to exercise civil power on the basis of their religious capacity. This was completely unacceptable to Pufendorfian natural law and *Staatskirchenrecht* (the political jurisprudence of church law). For Pufendorf holds that all civil power and right belong solely to the prince – that is, to the secular state – and may on no account be shared with or exercised on behalf of the church.

In Thomasius' case, therefore, the divergence between *Schulphilosophie* and the civil sciences was marked not just by intellectual differences, but by his sense of their mutually opposed roles in the cultural politics of early modern Germany. Through his reading of Pufendorf's natural law and political jurisprudence, Thomasius had come to a conclusion that would prove decisive for his whole intellectual outlook: namely, that the mixing of theology and philosophy in university metaphysics was complicit with the disastrous mixing of religious and civil authority in the confessional state (Döring 1993b, 164). For such neoscholastic opponents

as Alberti, the synthesis of theology and the civil sciences (ethics, politics, jurisprudence) in university metaphysics provided the institutional–intellectual basis for the church's participation in civil authority. For this made it possible to argue that political power should be exercised to defend the purity of the moral community as well as to guard the security of the civil community. Conversely, the radical separation of moral theology from politics and law in Pufendorfian natural law was premised on the intellectual and institutional destruction of *Schulmetaphysik*. Nothing less was required if religion was to be denied all competence in the civil domain – to be transformed into a matter of private faith rather than public knowledge – thereby allowing the state to emerge as a desacralised exercise of sovereign power, concerned exclusively with the security of the citizen.

The jurisprudential or civil enlightenment of the 1680s thus differs in almost every regard from the (Kantian) philosophical enlightenment of the 1780s which, in the 1980s, Hinske characterises in terms of its philosophical basis; its subjection of politics, law, and theology to universal reason; and its absorption of mythos and ethos into the universal anthropology of rational being. In the first place – once we have set aside the question-begging claim that all knowledge is philosophical in the sense of being based on transcendental concepts – it is clear that Thomasius' enlightenment is not grounded in a new form of philosophy (Leibniz–Wolff–Kant) but in a new 'civil science'. This science is Pufendorf's natural law, with its component sciences of political jurisprudence (*Staatsrecht*), political history, and statist sovereignty doctrine. As we shall see (2.4), Thomasius was familiar with the new rationalist metaphysics, particularly in its Cartesian and Wolffian forms. But he regarded the notion of intellectual enlightenment – through recovery of the pure forms of thought – as committing the same cardinal error as scholastic metaphysics: the mixing of theology and philosophy. For Thomasius, synthetic metaphysical reflection on the intellectual forms had been discredited by its use in the defence of rival confessional theologies. It had to be replaced by the differentiated ('eclectic') mastery of specific civil sciences.

Next we can observe that while Thomasius may be regarded as an eclectic and *Selbstdenker*, his conception of intellectual independence is not based on a notion of the primacy of the individual's universal reason over the specific 'reasons of state'. On the contrary, Thomasius' Epicurean anthropology and statist (Bodinian–Pufendorfian) conception of sovereignty mean that he regards individuals as incapable of

rational self-governance and sees the state as governing on the basis of reasons irreducible to those held by private individuals. For Thomasius, the state finds its limits not in the absolute moral and intellectual judgments of free rational beings – judgments whose democratic expression it might one day become – but in the fact that it cultivates a systematic neutrality with regard to such judgments. Despite Jacobi's claim that it was not law and state but 'the ceaseless striving of reason' that had created a sphere of religious toleration and moral freedom, Thomasius was acutely aware that this domain had indeed been constructed by the state. Moreover, he knew that the state had secured this domain only by declaring itself indifferent to the private moral strivings of its citizens, thereby expelling religion from the political sphere. This transformation of political culture demanded intellectual independence in the sense that it required jurists and *politici* to detach themselves from all those 'sectarian' philosophies that insisted on unifying morality and politics, church and state, within a single moral philosophy.

Despite Hinske's claims to the contrary, it thus becomes clear that Thomasius' civil enlightenment was indeed wedded to a particular ethos – the ethos of a caste of confessionally neutral political jurists – and, moreover, that he was developing this ethos precisely to cope with the circumstances of confessional division and religious civil war. For Thomasius and Pufendorf, the period of confessional conflict was something quite other than a theatre of the intellect in which reason could display its transcendence of historical conditions and passions. It was instead a theatre of social warfare, fuelled in part by a reason whose passion for transcendence made its claims non-negotiable (Koselleck 1988). This meant that the forms of reasoning themselves had to be modified in order to meet the catastrophic historical circumstances in which they participated. This is what animated Pufendorf's and Thomasius' attack on university metaphysics and drove their elaboration of a new intellectual ethos for jurists and statesmen.

Finally, for this reason, Thomasius' jurisprudential enlightenment is not based in a universal anthropology assimilable to a universal human reason – the notion of man as a rational being (*Vernunftwesen*). On the contrary, Thomasius vehemently rejects the doctrine that human being is rational or intelligible being, correctly identifying this doctrine as a scholastic improvisation on Aristotelian and Platonic metaphysics, and regarding it as wholly unsuited to modelling the intellectual deportment of jurists and statesmen. For many of today's intellectual historians, the metaphysical doctrine of man as a free rational being – refurbished in

Leibniz's monadology, systematised in Wolff's metaphysics, and passed on to us in the form of Kant's conception of autonomous reason – lies close to the process and goal of history as such. They therefore overlook the degree to which this doctrine was both highly polemical and itself the object of historical contestation. So conscious was Thomasius, though, of the intellectualist ethos contained in this doctrine, that he made it the central focus of his attack on 'sectarian philosophy' or *Schulmetaphysik*. In fact a curricular programme-statement of 1699 – the *Summarischer Entwurf der Grundlehren, die einem Studioso Iuris zu wissen und auf Universitäten zu lernen nötig sind* (*Summary Outline of the Basic Doctrines Necessary for a Student of Law to Know and Learn in the Universities*) – he explicitly warns his students against the intellectualist anthropology, itemising its central doctrines for elimination:

> Regarding the first principles of all or most sectarian philosophy: (1) That God and matter were two co-equal principles. (2) That God's nature consists in thinking. (3) That man's nature consists in thinking and that the welfare and happiness of the whole human race depends on the correct arrangement of thought. (4) That man is a single species and that what is good for one [person] is good for another. (5) That the will is improved through the understanding. (6) That it is within human capacity to live virtuously and happily. (*SEG*, 47–8)

In other words, far from pointing towards a single German philosophical *Aufklärung* that would eventually subsume Thomasius himself, the intellectualist anthropology of early modern metaphysics was something that Thomasius targeted for elimination, as inimical to the civil enlightenment that he sought to bring to his students. This enlightenment required a quite different anthropology, the Epicurean image of man as a dangerous creature of his uncontrollable passions. This is the anthropology that Thomasius deemed necessary to model the self-restrained intellectual deportment of those charged with clearing the confessional minefields.

In seeking to comprehend the historical autonomy and ethical dignity of civil philosophy – in proposing to treat it as the unreconciled cultural rival and alternative to an anti-political and anti-juridical metaphysical philosophy – this book must find its place in a complex field of works moving in a broadly similar direction. In the world of Anglophone scholarship, Richard Tuck was one of the first to call for a renewed attention to the 'modern theory of natural law' – Grotius, Hobbes, Pufendorf – in order to overcome its marginalisation and assimilation in post-Kantian philosophical history (Tuck 1987; Tuck 1993a; Tuck 1993b).

This call has in part been answered by important surveys undertaken by Knud Haakonssen and J. B. Schneewind, and by the work of a new generation of scholars, including Timothy Hochstrasser, Thomas Ahnert, and Peter Schröder (Ahnert 1999; Haakonssen 1996; Hochstrasser 2000; Schneewind 1998; Schröder 1997). It has also been answered by some revealing specialist studies, such as Steven Lestition's account of the teaching of jurisprudence and natural law at Königsberg during the eighteenth century. Lestition's study is particularly germane to this book as it reaches for a broad heuristic concept capable of capturing the cultural and political significance of early modern natural and political jurisprudence, finding this in the notion of a 'juristic civic consciousness'. This term, says Lestition, 'will be understood to refer to the way in which important elements of the educated and governing classes of 17th and 18th century Germany were able to derive a highly developed intellectual orientation, professional or corporate identity, and set of norms for their social and political behaviour, self-representation and self-understanding from their training or work as learned "jurisconsulates"' (Lestition 1989, 30). We have already glimpsed the broad outlines of this orientation and identity, in Thomasius' demand for an intellectual ethos suited to the jurists and *politici* of the desacralised state.

Lestition sources this notion to J. G. A. Pocock and Quentin Skinner. Closely identified with the 'Cambridge-school' history of political thought, their work provides the context for Tuck's reinstatement of 'modern' natural law, although Pocock and Skinner typically tie early modern civic consciousness to a non-juristic 'political' tradition of civic republicanism and civic virtue, rather than to 'continental' natural law (Pocock 1985, 37–50; Skinner 1978). Hence, while Skinner's studies of Hobbes treat his natural law as developing a 'civil science' in opposition to incendiary confessional political theologies, they derive the secular–pacificatory character of this science from humanistic–rhetorical sources rather than political–jurisprudential ones (Skinner 1993; Skinner 1996). In this regard, Donald Kelley's jurisprudential genealogy of an early modern civil philosophy – which focuses on the non-theological construction of civil life offered by Roman or civil law – may be regarded as a counterbalance to Skinner and Pocock's stress on non-juristic civic humanism (Kelley 1987; Kelley 1976; Kelley 1991).

Nonetheless, Pocock's recent work on Edward Gibbon is suggestive of the ways in which the present work intersects with the Cambridge school's approach. For Pocock treats Gibbon's anti-Platonic, anti-enthusiast civil history of religion as indicative of a distinctively English-