RIVAL ENLIGHTENMENTS

Civil and Metaphysical Philosophy in Early Modern Germany

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Contents

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.)

<div align="right">Ludwig Wittgenstein</div>

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 com-
mitted to the reality of a single process or project of Enlightenment,
even if this is something that has to be synthesised from diverse intellec-
tual 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 illuminat-
ing 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' enlighten-
ments. 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 court-rooms 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 neo-scholasticism (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-

Protestant variant among the 'diversities of Enlightenment'. This was a variant whose moderate Arminian theology grounded a strategy for limiting the civil power of the clergy in order to avert the catastrophe of religious civil war (Pocock 1995). Even closer to our present concerns is an earlier essay on the conditions of early modern religious toleration; for here Pocock sees the 'desacralisation of politics' arising from an alliance between 'latitudinarian' Protestantism and 'Erastian' politics, held together by their common rejection of political 'enthusiasm' and sacerdotalism (Pocock 1988). Finally in this vein, we may mention James Tully's important introduction to his new edition of Pufendorf's *De Officio* and Richard Tuck's study *Philosophy and Government 1572–1651*, whose discussion of Grotius and Hobbes integrates the perspectives of civic humanism and natural law (Tuck 1993a; Tully 1991). These works may be seen as signs of the degree to which the Cambridge school's initial focus on the civic republican sources of a 'civic consciousness' is being expanded through attention to the role of jurisprudence and natural law.

This book, however, is also indebted to a distinctively German recovery of an early modern civil philosophy and political thought, one in which the disciplines of natural and political law (*Naturrecht*, *Staatsrecht*) play a central role. Perhaps the leading and certainly the most controversial representative of this school is Carl Schmitt, whose work is significant for our present concerns in a number of regards. First Schmitt provides an important account of the historical significance of political or 'public' law – 'European *jus publicum*' – whose restriction of sovereignty to the purely worldly domination of a territory he regards as effecting a fundamental 'detheologisation' of politics (Schmitt 1950, 111–86). Next, his discussion of the 'autonomising of politics' undertaken by the early modern political jurists – their separation of the 'security state' from the spheres of morality and economy – offers a further pointer to the central difference between the civil and metaphysical enlightenments (Schmitt 1996). Finally, Schmitt's work is also symptomatically significant, for the way in which it continues the 'intellectual civil war' between civil and metaphysical philosophy. Here, Schmitt deliberately targets post-Kantian 'political Romanticism' for its treatment of historical politics as the manifestation of transcendental–subjective categories, thereby reducing the contestation between political enemies to an a-political debate over the good life (Schmitt 1986). Similar themes reappear in the work of Schmitt's former student, Reinhart Koselleck. Koselleck argues that the detheologisation of politics brought

about by early modern natural law and political jurisprudence meant that the state developed a 'reason' for its existence – the preservation of social peace – that floated free of the moral reason of its theological and philosophical elite. He thus treats the advent of the *Aufklärung* as indicative of cultural and political 'crisis'. This is a crisis in which the state's focus on worldly security renders it incapable of claiming a broadly acceptable moral legitimacy, and in which the Enlightenment intelligentsia's pursuit of moral perfection pushes it beyond the detheologised political sphere. From here arises the anti-political enclave politics of the *Aufklärung*, dedicated to the moral delegitimation of the state (Koselleck 1988). In its treatment of early modern 'statist' jurisprudence as an autonomous and indispensable cultural response to the catastrophe of religious civil war, and in its uncompromising rejection of all post-Kantian attempts to 'resacralise' politics by turning it into rational debate over the good, Schmitt's and Koselleck's work is an important precondition of the present book.

Adding a distinctively French perspective to the history of natural and political law, Blandine Kriegel has argued the need to renew political history through a recovery of early modern doctrines of law and sovereignty, as the only ones capable of dealing with the reality of the state (Kriegel 1995). Drawing on French work on the history of political thought, including studies by Michel Foucault, François Furet, and Alain Besançon, Kriegel's work contains a timely polemic. She argues against social theories of the political – theories whose sociological character is a thin disguise for their moral zeal – and in favour of grounding political thought in the history of political institutions: the institutions of administration, law, and sovereignty. Despite her apparent antipathy to Schmitt, Kriegel's work intersects with his on several axes: first, in her insistence that the political-juristic (Bodinian) concept of territorial sovereignty is a modern doctrine, developed as a weapon against the church, the Empire, and the estates; next, in her argument that this concept can only be understood through early modern political jurisprudence itself, which permitted power to be juridified (secularised and historicised) and the law to be turned into the key form in which sovereign power was exercised; and finally in her vivid polemic against the German Romantics. Like Schmitt, Kriegel regards the Romantics' anti-political and anti-juridical conceptions of society – as united by love not law, and governed by the people not the state – as secularisations of religious mysticism and eschatology, leading to a divinisation and totalisation of the state. We have already glimpsed these proto-Romantic views in

Jacobi's claim that it was the 'ceaseless striving of reason' – rather than law and state – that put an end to religious civil war.

Finally I should mention the work of a group of German historians of political, juridical, philosophical, and religious thought which, while not officially dedicated to the recovery of an early modern civil philosophy or civic consciousness, has nonetheless proved helpful to my own efforts in this regard. While I presume this group to be assembled more by the needs of this book than by any objective affiliation, their specialist studies can be brought into a productive relation to the more general theses of Schmitt, Koselleck, and Kriegel. Like Blandine Kriegel, Horst Dreitzel stresses the (early) modernity of seventeenth-century theories of 'absolute sovereignty'. Far from being throwbacks to feudalism or the *ancien régime*, these theories, Dreitzel argues, responded to a distinctively early modern set of circumstances: the need to defend the emergence of the 'princely territorial state' against the Empire above and the estates below. Dreitzel's emphasis however falls more on the politicisation of law than the juridification of politics, particularly in his ground-breaking study of neo-Aristotelian political science (Henning Arnisaeus) (Dreitzel 1970). Here, it is the 'scientific' objectification of politics that plays the key role in the desacralising and instrumentalising of sovereign power. Despite his tendency to understate the role of natural and political law in this process, Dreitzel's essays on this theme represent a decisive challenge to Habermasian attempts to locate a socio-moral basis for politics, in the debating contests of middle-class *Öffentlichkeit* (Dreitzel 1971; Dreitzel 1973; Dreitzel 1980; Dreitzel 1988; Dreitzel 1995b).

There is no understatement of the juridical in the work of Martin Heckel, the leading historian of that particularly German discipline, *Staatskirchenrecht*, or the political jurisprudence of church law. In a series of indispensable studies, Heckel has argued that the secularisation of politics in early modern Germany was not the reflex expression of an epochal philosophical breakthrough or general rationalisation of society. Rather, it arose when, under the circumstances of religious civil war, Protestant jurists, working within the framework of the Imperial legal apparatus, developed a series of crucial political–legal doctrines. The most important of these were civil parity between the three main confessions; primacy of the secular prince in religious affairs; and indifference to religious and moral truth in political settlements to confessional conflicts (Heckel 1963; Heckel 1968). These doctrines – embodied in the Peace of Augsburg in 1555 and reiterated more successfully in the Treaty of Westphalia in 1648 – made worldly political power

supreme in all matters pertaining to social peace. They nonetheless pre-
served a free space for transcendent religions and philosophies inside the
envelope of civil security, which now lay beyond their moral and theo-
retical reach (Heckel 1983; Heckel 1984; Heckel 1992). Although he does
not speak of a jurisprudential or civil enlightenment, Heckel's work
clearly suggests that the core 'liberal' rights of religious freedom and tol-
eration did not arise from a rationalist philosophy of intellectual self-
clarification and self-governance. They emerged instead from the
juridical desacralisation of politics, carried out in the domain of positive
Staatsrecht and subsequently surfacing in practical philosophy as the
'modern theory of natural law' – Grotius, Pufendorf, Thomasius.

Something like this view seems to inform Christoph Link's treatment
of the right to religious freedom as a right created by the state's politi-
cal–jurisprudential pacification of society in the seventeenth century.
According to Link, it was not until the end of the eighteenth century –
when its origins had been actively repressed by Kantian theories of ina-
lienable subjective rights – that religious freedom came to be seen as a
right of 'society' or the individual against the state (Link 1987). In this
light, Jacobi, Kant, and the other philosophers of the 1780s appear less
like intellectual architects of the desacralised liberal state and more like
belated political theologians seeking this state's resacralisation. Writing
in a similar vein, Diethelm Klippel takes us back to our point of depar-
ture, arguing that the eighteenth century witnessed the overlapping of
two kinds of natural law and two conceptions of enlightenment: one
associated with Pufendorf and Thomasius which operated through the
enlightenment (juridifying and secularising) of the prince or state; and
the other associated with Kant which came to see state power itself as
the problem, relocating enlightenment in individual reason and freedom
(Klippel 1990). Significantly, and unusually, Klippel argues that both of
these conceptions of enlightenment passed into the nineteenth century,
which means that if we are to avoid suppressing one or the other of them
we must give up the idea of a single German *Aufklärung* (Klippel 1995).

Our initial sketch of a 'civil enlightenment' – pre-dating the philo-
sophical *Aufklärung* by a century or more, and arising from sources quite
other than the 'work of thought' – would therefore seem to find its moor-
ings in a substantial body of historical work. Here, there is a significant
consensus that a civil enlightenment – that is, the first moves to establish
religious toleration, detheologise politics, separate civil society from
religious community – emerged as a response to the devastation of relig-
ious civil war. Further, despite significant disagreement over the primacy

of law or politics in the process, and notwithstanding some unresolved questions regarding the contribution of 'moderate' Protestantism, there is broad agreement that the desacralisation of politics was formulated through an ensemble of 'civil sciences' – 'modern' natural law, political law, neo-Aristotelian and neo-Stoic political sciences, civic republicanism – rather than through university metaphysics or moral philosophy. Finally, although we might lose some members of the Cambridge school at this point, there is some agreement that this civil enlightenment, with its 'juristic civic consciousness', was grounded in something quite other than the self-governing individual or the moral community: namely, in the measures by which early modern political jurists sought to put an end to religious civil war, by restricting the ends of the state to security.

From this broad body of works and themes this book thus draws important pointers to the historical autonomy of early modern civil philosophy. From here we learn that the pacification of the war-torn German states, and the appearance of the first liberal freedoms, were not the result of a politics grounded in the 'ceaseless striving of reason' or the sheer 'work of thought'. The state envisaged by Pufendorf and Thomasius was one that pursued external security through diplomacy and war, and internal security through the development of a novel and powerful double strategy. This strategy required the state's indifference to the transcendent values of its constituent moral communities – an indifference they would experience as civil freedom – and its readiness to suppress all conduct threatening social peace, no matter what its source. In proposing to return the civil enlightenment to the centre of our historical concerns and civic imaginations – and in treating it as a culture autonomous of and rival to the metaphysical *Aufklärung* – this book will thus be centrally concerned with Pufendorf and Thomasius as inheritors of the political-juristic desacralisation of politics.

Given the *prima facie* existence of such a civil enlightenment, documented and discussed in a sizeable and diverse secondary literature, we must now confront the striking fact that it either remains largely invisible in post-Kantian intellectual historiography, or else appears there in a scarcely recognisable form. This historiography remains transfixed by the image of a single philosophical *Aufklärung* whose unity is secured through Kant's philosophy of the subject, and whose central characteristic is the normative extension of rationally self-governing subjecthood into all areas of 'society' – religious, moral, political. Clearly, a self-governing society grounded in reason would have little need for a political

state grounded in security, which, according to post-Kantian anti-politics, should be left to 'wither away'. There can be little doubt that this image of the progressive social expansion of philosophical reason dominates arguments for and against 'the Enlightenment' in the humanities academies of Europe and America, forming one of the chief reasons why, in Kriegel's words, 'the history of political institutions must continually fight uphill battles against hostile attitudes' (Kriegel 1995, 12).

In the Anglophone scholarly world this conception of a philosophical or metaphysical enlightenment has provided the framing principle for such standard works as Henry Allison's *Lessing and the Enlightenment* and Lewis White Beck's *Early German Philosophy* – aptly subtitled *Kant and His Predecessors* (Allison 1966; Beck 1969). It continues to inform recent work composed in the register of American Kantianism, such as J. B. Schneewind's *The Invention of Autonomy: A History of Modern Moral Philosophy* (Schneewind 1998). In Germany, the immediate context for Hinske's conception of a philosophical *Aufklärung* is provided by such scholars as Michael Albrecht, Wilhelm Schmidt-Biggemann, Werner Schneiders, and others now grouped around the journal *Aufklärung* (Albrecht 1994; Schmidt-Biggemann 1988a; Schmidt-Biggemann 1994; Schneiders 1974; Schneiders 1990). But this work leads back, via such early-twentieth-century neo-Kantians as Heinz Heimsoeth and Max Wundt, to their nineteenth-century predecessors Kuno Fischer and Karl Rosenkranz (Fischer 1852–77; Heimsoeth 1924; Heimsoeth 1956a; Rosenkranz 1840; Wundt 1924; Wundt 1939; Wundt 1945). From here it is a short step to the philosophical histories of Kant's contemporaries – J. G. Buhle, W. G. Tennemann, and C. F. Stäudlin – which, as Hochstrasser has argued, were the first to erase civil philosophy from the historical map, replacing it with the Leibniz–Wolff–Kant canon (Hochstrasser 2000, 206–12).

This is the line through which today's post-Kantian intellectual history has inherited its characteristic conception of a philosophical *Aufklärung*: the notion of enlightenment as the transcendental self-clarification of an intellectual being whose recovery of spontaneous rational self-governance forms the basis of a free society under moral laws (Ritzel 1952). Given the evident conflict between this conception and the prima facie existence of a very different civil enlightenment – grounded in juridical pacification rather than metaphysical self-clarification, and in the sovereignty of a morally indifferent state rather than that of a morally self-governing people – post-Kantian intellectual history has adopted two strategies, those of exclusion and assimilation.

In seeking to exclude civil philosophy from their story of 'Enlightenment philosophy', post-Kantian intellectual historians have argued that it belongs to the history of law and politics. Wundt thus classifies Pufendorf's work as 'jurisprudence' while Beck treats it as 'politics', both writers admitting the great natural jurist to their work only fleetingly, as the precursor of Thomasius, whose work they can more easily treat as philosophy (Wundt 1945, 25–6; Beck 1969, 247–8). The effect of this, of course, is retrospectively to transform the history of philosophy into the history of metaphysics. 'Philosophy' comes to signify the particular line of metaphysical philosophy that runs from Leibniz through Wolff to Kant, and from Kant through the Romantics and Hegel into modern metaphysics, dialectics, and 'critical theory'. The problem with this strategy is that in early modern German universities what was to count as *philosophia* – typically translated as *Weltweisheit* – was itself a matter of explicit and bitter contestation. We have already seen Thomasius warning his students off the intellectualist anthropology of university metaphysics, on the grounds that its pursuit of transcendent rationality is wholly unsuited to the formation of those destined for legal and political careers. Conversely, we shall see that in defending the metaphysical conception of natural law – as the transcendent recovery of the pure concept of justice – Leibniz's 'philosophy of law' is no less a polemical attempt to capture the terrain of philosophy than Thomasius'. For modern historians to describe the civil sciences and their enlightenment as non-philosophical – in order to preserve the unity of a philosophical *Aufklärung* – is thus itself both anachronistic and polemical, symptomatic in fact of the continuing struggle to capture and configure the terrain of philosophy.

It is, however, the tactics of assimilation employed by post-Kantian intellectual and philosophical history that are of more immediate concern to us. There are three of these, the first and most important of which is the dialectical method itself. By positioning metaphysical and civil philosophy as mutually opposed and mutually deficient 'theories' – intellectualism versus empiricism, rationalism versus voluntarism – this method uproots the conflicting intellectual cultures from their historical circumstances, transforming them into subjective 'ideas', and preparing them for absorption into Kant's discovery of the transcendental grounds of subjectivity. If this method is definitive of the classic studies by Wundt and Beck, then it remains powerfully present in the most recent historiography of the *Aufklärung*, particularly in the work of Werner Schneiders, Wilhelm Schmidt-Biggemann, and many of the writers associated with the journal *Aufklärung*.

For Schneiders, it is Thomasius and Wolff who are the bearers of the opposed styles of philosophy. Treating him as the harbinger of German *Bürgerphilosophie*, Schneiders characterises Thomasius as developing an ethical and existential style of philosophy, by limiting philosophy to knowledge beneficial to man's civil life, and by grounding it in a practical knowledge of the good rather than a speculative knowledge of the truth (Schneiders 1985b, 62–8; Schneiders 1990, 112–26). Wolff, on the other hand, is (not inaccurately) treated as renewing the scholastic metaphysical conception of philosophy – as the recovery of the intelligible forms underlying empirical things – which he modernises using Leibniz's 'Scotist' construction of possibility in terms of non-contradictory concepts. Wolff thus treats merely 'historical' (empirical) knowledge as vulgar, while regarding philosophy as a rational science of 'the possible as possible' (Schneiders 1985b, 68–73; Schneiders 1990, 126–34). Again, the mutually deficient philosophies are destined for reconciliation, at first in the *Popularphilosophen* – who mix Thomasian civics and Wolffian metaphysics without transcending them – and then in Kant, who transcends the oppositions by turning history itself into the ground of rational possibility (Schneiders 1985b, 75–89). At first sight, Schmidt-Biggemann's version of this history would seem closer to our own; for he treats the metaphysics of Leibniz and Wolff and the *Bürgerphilosophie* of Thomasius as indicative of rival conceptions of *Aufklärung*, the one oriented to intellectual self-clarification, the other to social improvement (Schmidt-Biggemann 1988a, 7–57). Such is the power of the dialectical method, however, that Schmidt-Biggemann is forced to treat these philosophies as mutually deficient – the former failing to ground reason in history, the latter failing to ground historical reform in reason – pointing towards Kant's reconciliatory conception of history as the arena for reason's unfolding in time.

If the first tactic of assimilation thus involves converting civil philosophy into a subjective theory destined for absorption by the Kantian dialectic, then the second involves the deployment of an epochal periodisation based on this supersession. This periodisation identifies the leading figures of civil philosophy, Pufendorf and Thomasius, as representatives of the 'early' Enlightenment (*Frühaufklärung*) – rather than of a rival enlightenment – hence as destined to be eclipsed by or folded into an evolving mature, high, or late Enlightenment, identified with the advent of Kantian philosophy. In Schneiders' standard version, the supposed dominance of Thomasian voluntarism in the first two decades of the eighteenth century characterises the *Frühaufklärung*. The

eclipse of Thomasius' *Bürgerphilosophie* by Wolffian rationalism in the 1730s marks the onset of a middle Enlightenment, which peters out into the melding of Thomasian and Wolffian perspectives in mid-century *Popularphilosophie*. Finally, the 'high' or late Enlightenment emerges with Kant's definitive reconciliation and transcendence of all prior opposed philosophies in the 1780s (Schneiders 1985b). Schmidt-Biggemann has recently improvised on this dialectical periodisation in order to provide a schema for the evolution of knowledge in the early modern German university, treating the sixteenth-century university as dominated by theology and the seventeenth by political jurisprudence (Schmidt-Biggemann 1996). Following the standard dialectical schema, however, Schmidt-Biggemann treats the reciprocal deficiencies of these disciplines – theological dogmatism on one side, political utilitarianism on the other – as destining them for eclipse by the philosophical university of the eighteenth-century *Aufklärung*.

The post-Kantian assimilation of civil philosophy is completed by a third tactic: the doctrine that in recovering the transcendental conditions of experience, Kantian philosophy floats free of historical conditions altogether, and represents in fact the transcendental conditions of historical reality. For, if Kantian philosophy has indeed recovered the forms of experience prior to the manifestation of experience as history, then we must accept Hinske's claims that this philosophy depends on no historical mythos or ethos; that, as the pure 'work of thought itself', it is the only true vehicle of enlightenment; and that the theological and civil sciences are themselves only empirical outworkings of Kantian philosophical concepts.

It would of course be foolhardy to doubt the assimilative power of post-Kantian dialectical historiography, backed as it is by the widely held belief that Kant actually uncovered the transcendental conditions of subjectivity, or at least prepared the way for Hegel's historicised version of them. Yet Thomasius' attack on the intellectualist image of man contained in early modern metaphysics – his stigmatisation of the doctrine 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' – already provides us with an historical anchor-point from which to preserve civil philosophy against its dialectical assimilation. For Thomasius' polemical rejection of it enables us to formulate a fundamental conjecture regarding this intellectualist anthropology: namely, that this anthropology is central not just to early modern university metaphysics, but also to post-Kantian dialectical historiography. After

all, in purporting to pre-empt pre-Kantian civil philosophy by positing Kant's recovery of the conditions of subjectivity as such, it would seem that this historiography is also committed to the metaphysical image of man – as an intelligible being capable of pre-empting empirical history through transcendental self-reflection.

We will return to this conjecture below. For the moment, we can use it to shed some light on the three tactics of assimilation just outlined. First, its indebtedness to this anthropology helps to explain the dialectical character of post-Kantian philosophical history. For in the fundamental oppositions required and imposed by this historiography, it is possible to discern a projection of the divided lineaments of the metaphysician's *homo duplex*. Through its fundamental positing of man as a being of pure reason temporarily mortgaged to the experiences and inclinations of his sensible nature, university metaphysics sought to programme an ethos of intellectual self-purification and clarification. It is the normative lineaments of *homo duplex* that show through in the dialectical historians' exemplary oppositions: between a pure intellectualism cut off from empirical experience, and a brute empiricism lacking insight into its transcendental conditions; between a pure rationalism incapable of providing sensible man with motivating norms, and an impure voluntarism incapable of providing such norms with a rational basis. Not only does this clarify why dialectical historiography is driven to treat metaphysical and civil philosophy as reciprocally deficient theories, it also illuminates the 'subjectivising' tendency of this historiography. For, in making the rival academic cultures go proxy for the intellectual and sensible natures of *homo duplex*, this method treats them as open to reconciliation 'in thought' – in fact in Kant's thinking of the transcendental conditions of the empirical. We may propose, then, that in treating civil and metaphysical philosophy as reciprocally deficient theories, destined for reconciliation in the Kantian moment, post-Kantian dialectical historiography is less an account of the history of the rival cultures and more a practice of metaphysics by other means.

There is thus good reason to suspend our commitment to the epochal periodisation based on this historiography. If civil and metaphysical philosophy are related not as reciprocally deficient 'ideas' but as independent cultural movements, then their history will not be a series of stages on the way to Kantianism. This applies no less to Schneiders' division of eighteenth-century 'enlightenment philosophy' into an early, middle, and late *Aufklärung*, than it does to Schmidt-Biggemann's allocation of theology, jurisprudence, and philosophy to the sixteenth, seventeenth,