Staging Justice:
Negotiating Legal Reform in German Literature and Theater of the Late 18th Century

By

Sophia Y. Clark

Dissertation

Submitted to the Faculty of the

Graduate School of Vanderbilt University

in partial fulfillment of the requirements

for the degree of

DOCTOR OF PHILOSOPHY

in

German

August 7, 2020

Nashville, Tennessee

Approved:

James McFarland, Ph.D.
Helmut Smith, Ph.D.
Alice Stašková, Ph.D.
Meike Werner, Ph.D.
Christoph Zeller, Ph.D.

ACKNOWLEDGMENTS

My sincerest gratitude to all the people who guided my academic career from its beginnings, especially Nele Hempel-Lamer and Markus Muller at California State University Long Beach for their academic and professional advice. I would also like to thank Jeffrey High at California State Long Beach for his tireless support of my development as a scholar in German Studies from my first year as a freshman German student to my continuing work today. I am grateful for all my colleagues at Vanderbilt who have made my time there stimulating and rewarding, as well as Derek Price who cheered me through this multi-year endeavor and read every word of my dissertation several times. Thank you to my committee members, James McFarland, Helmut Smith, and Christoph Zeller who offered me sound recommendations and new perspectives as I developed my thoughts on my work. I also owe a debt of gratitude to Alice Stašková, who graciously invited me to study as a guest doctoral researcher at the Friedrich-Schiller-Universität Jena, and whose Max Kade course on theater in Spring 2015 provided much of the inspiration for this project. Most of all, I would like to express my deepest thanks to my dissertation advisor, Meike Werner, for her unwavering support and excitement for my scholarly explorations. It made all the difference. Her kind words of encouragement, her revisions and recommendations, and her professional guidance were invaluable.

This dissertation was completed with support from a research grant from the German Literature Archives in Marbach, a graduate research grant from the American Friends of Marbach, an exchange grant from the Free University of Berlin, and a graduate fellowship as well as a Robert Penn Warren Fellowship at Vanderbilt University.

TABLE OF CONTENTS

Page

LIST OF FIGURES

Figure Page

INTRODUCTION: Theater in Justice — Justice in Theater

In his lecture on German theater in 1784, Friedrich Schiller declared the stage as a site of public justice for all people and transgressions, from the uneducated fool to the absolutist monarch, from hidden vices to abuses of power:

> Die Gerichtsbarkeit der Bühne fängt an, wo das Gebiet der weltlichen Geseze sich endigt. Wenn die Gerechtigkeit für Gold verblindet, und im Solde der Laster schwelgt, wenn die Frevel der Mächtigen ihrer Ohnmacht spotten, und Menschenfurcht den Arm der Obrigkeit bindet, übernimmt die Schaubühne Schwerd und Waage, und reißt die Laster vor einen schrecklichen Richterstuhl.[1]

Schiller was twenty-four years old and famous as the author of *Die Räuber* when he gave this lecture before the *Kurpfälzische Deutsche Gesellschaft* in Mannheim. He himself had fled the hand of his Duke, Carl Eugen, in order to escape a publishing ban. In his spirited speech, he pictured a stage that, like a punishing god, dragged the abuses of the powerful before the judgment of the public. This horrible fate was reserved for the ruling classes, who saw themselves as above earthly laws, such as monarchs, or who had the means to twist the law to their advantage, such as corrupt bureaucrats or the nobility. However, the Janus-faced stage was also as gentle in its instructiveness as it was vengeful: unlike the powerful, the mere fool would walk away with only mild humiliation and, most importantly, knowledge of his vice. After all, earthly laws did not govern virtue. The justice on stage, as conceived by Schiller, was new, enlightened, and reformed. Through public performance, it both instructed and avenged.

By critiquing contemporary forms of justice and imagining alternatives, Schiller stands in a long line of thinkers from the early modern period through to the present day who transformed

[1] From his lecture "Was kann eine gute stehende Schaubühne eigentlich wirken?" Schiller, Friedrich. *Schillers Werke Nationalausgabe*. Im Auftrag des Goethe- und Schiller-Archivs und des Schiller Nationalmuseums. Julius Peterson and Hermann Schneider, eds. Weimar: Hermann Böhlaus Nachfolger, 1953. Here, vol. 20, page 92. Subsequent citations as "*NA*" with volume number and page numbers.

courtrooms into theater stages, or vice versa, with either enthusiasm or suspicion.[2] But the form of justice that Schiller advanced through his plays and theoretical writings, which centered on presence, publicness, and humanity, was quite distant from the actual procedure of justice practiced in the legal systems of his time. In the late 18th century, trial procedure in the German territorial states was opaque to most people: it was non-public, secretive, and mostly carried out by legal bureaucrats through written documents. Given this fact, a question arises: why did Schiller and others see the theater as a way to rethink justice and the courtroom? And where exactly did they make this connection?

Scholars across diverse disciplines such as law, legal history, and literature have sought to analyze this "often noted" relationship between the theater and the courtroom from the early modern period through the 18th century to today.[3] My study adopts this interdisciplinary

[2] Including Johann Wolfgang von Goethe, Georg Büchner, and Hannah Arendt. For example, in Book 1, Chapter 13 of Goethe's *Wilhelm Meisters Lehrjahre*, Wilhelm witnesses the interrogation of a young woman and her lover in a local courtroom. Wilhelm compares what he sees to a scene from fiction or from a play: "Was nur in Romanen und Komödien vorzugehen pflegt, sah er hier in einer unangenehmen Gerichtsstube vor seinen Augen: den Streit wechselseitiger Großmut, die Stärke der Liebe im Unglück." Goethe, Johann Wolfgang. *Sämtliche Werke, Briefe, Tagebücher und Gespräche*. Edited by Friedmar Apel. 40 vols. Bibliothek Deutscher Klassiker 82. Frankfurt am Main: Deutscher Klassiker Verlag, 1992. Here, volume 9 pages 403-404. Subsequent citations as "*SW*" with volume and page number. In Georg Büchner's play *Dantons Tod* (1835), the moody public and jury of Georges Danton's trial before the Committee of Public Safety becomes a test of oratory talent and showmanship. Another important example is Hannah Arendt's reports for *The New Yorker* on the 1961 trial of Adolf Eichmann published later as *Eichmann in Jerusalem: A Report on the Banality of Evil.* New York: Viking Press, 1963. She describes how the trial of Eichmann was necessarily a show trial, in the sense that it was a theater show, despite Judge Landau's efforts to keep things from turning into actual theater. As Arendt gives details of the conditions of the trial, it seems that Landau did not stand a chance against the architecture of the building, which is essentially an auditorium with a stage, the presence of a live audience, and the prosecutor's "love of showmanship" (Arendt 4-5).

[3] According to Cornelia Vismann, "Das Theater des Gerichts leistet die Wiederaufführung der Tat im symbolischen Raum. Die oft bemerkte Verwandtschaft zwischen Theater und Gericht kommt hier auf dem Punkt. Niemand bestreitet, dass das Gerichthalten einem theatralen Schema folgt." Vismann, Cornelia. *Medien der Rechtsprechung*. Edited by Alexandra Kemmerer and Markus Krajewski. Frankfurt am Main: S. Fischer, 2011, 31. Subsequent citations as "Vismann, *Medien*" with page numbers. All translations are mine. Thomas Wirtz investigates the entanglements (*Verstrickungen*) of juridical procedure and the genre of tragedy in the early Enlightenment: Wirtz, Thomas. *Gerichtsverfahren: ein dramaturgisches Modell in Trauerspielen der Frühaufklärung*. Würzburg: Königshausen & Neumann, 1996, 8. In his study of French theater and legal procedure in the second half of the 18th century, Yann Robert argues that theater became a 'judicial theater' while legal actors intentionally framed and conceived of trials as dramatic events. Robert, Yann. *Dramatic Justice: Trial by Theater in the Age of the French Revolution*. Philadelphia: University of Pennsylvania Press, 2019. Henning Grunwald investigates trials in the time of the Weimar Republic, arguing that left-wing and right-wing parties used the courtroom as a political stage in

framework as a starting point and builds on a particularly fruitful line of scholarship exploring the relationship between justice and theater. Two important interventions are historian Richard van Dülmen's 1985 monograph on early modern courts and punishment titled *Theater des Schreckens* (*Theatre of Horror*)[4] and legal historian Cornelia Vismann's *Medien der Rechtsprechung* from 2011. Both scholars note the close relationship between the theater and the courtroom and offer their understandings of why justice in early modern Germany often resembled the theater. In order to contextualize my contribution to this line of inquiry, I will first explore how each of these scholars analyzes the "theater of justice" historically and interpretively.

According to van Dülmen, punishment was an essential part of the legal process in the 18th century precisely because it was theater staged for the public. This *Straftheater*, or theater of punishment, was essential, since "it was only through ritual that punishment attained legal validity."[5] It was a play of death that spread shock and trepidation, a spectacle for the people.[6] In van Dülmen's studies, the theater of justice lies in the spectacle of ritual public punishment, but not in the trial itself. At the time, inquisitorial trials was a process done behind closed doors away from the view of the public. More recently, legal historian Cornelia Vismann locates the theatrical "apparatus" of justice in the act of speech.[7] Based on legal historian Pierre Legendre's theory of the process of justice as the process of verbalization, or *Versprachlichung*, Vismann argues that the theater of the court "allows for the re-enactment of the deed [crime] in symbolic space."[8] At

order to further their ideological agendas through the legal system. Grunwald, Henning. *Courtroom to Revolutionary Stage: Performance and Ideology in Weimar Political Trials*. Oxford: Oxford University Press, 2012.

[4] van Dülmen, Richard. *Theatre of Horror: Crime and Punishment in Early Modern Germany*. Translated by Elisabeth Neu. Cambridge: Polity Press, 1990. Subsequent citations as "van Dülmen, *Theatre*" with page numbers.

[5] van Dülmen, *Theatre*, 2, 22.

[6] "ein Schauspiel des Todes" See: van Dülmen, Richard. *Kultur und Alltag in der Frühen Neuzeit*. 3rd ed. Vol. 2, Dorf und Stadt. München: C.H. Beck, 2005, 273. Subsequent citations as "van Dülmen, *Kultur und Alltag*" with page numbers.

[7] Vismann uses the term *theatralisches Dispositiv* in reference to Foucault's *dispositif* – often translated as "apparatus" as it is here.

[8] Vismann, *Medien*, 31-33.

its core, Vismann's theatrical apparatus of the court can be described as follows: "What emerges on the courtroom stage is something new, a story of that which has befallen. This transfer of an event from a real place – the scene of the crime – to the highly artificial stage of the court turns a crime into an occasion or event of speech."[9] For inquisitional trials, this process occurs during interrogations of the accused and witnesses, which court clerks record in protocols to be used for judgment later. In the early modern period, voice and writing are not opposite media. Rather, in the court, they hinge upon one another. In Vismann's assessment of inquisitional trials, then, the theatrical apparatus is not a public affair as the theater of punishment is in van Dülmen's readings. Moreover, Vismann argues that the pronouncement of judgement ends the court of theater.[10]

Two different locations of the theater with different criteria emerge. The *Straftheater* in van Dülmen's studies is located in a public space. It requires the presence of an audience who are witnesses to a ritual performance. Physical space, choreography, and the placement of actors and audience are all elements of this theater of punishment. On the other hand, Vismann's theatrical apparatus never extends to the punishment aspect of the trial. It is found in the procedure of the trial itself, in the verbalization of the deed in court. It is less about physical and public space as it is in van Dülmen's conception, and rather focused on the transformational speech act.

These two conceptions of the theater of justice lends this study on the 18th century stage its starting point of analysis. They show us two things. First, that actual trial procedure, separate from punishment, had no particular procedural resemblance to theater.[11] Second, that the theater's connection to justice was often more conceptual than obviously analogous in visual presentation,

[9] Ibid.
[10] Vismann, *Medien*, 75.
[11] Not even the omnipresent concept of *theatrum mundi* in the Baroque period would necessarily work in this case, since, by the late Enlightenment, ideas about the autonomy and subjectivity of the individual clashes with the idea that the world is a theater upon which people play their given roles according to their pre-written fates before God. Heinz, Andrea and Irmgard Schweikle. "Welttheater." In: *Metzler Lexikon: Literatur*, edited by Günther and Irmgard Schweikle. 3rd edition. Stuttgart, Weimar: Metzler, 2007, 826.

procedure, or form. Exploring the connections between theater and justice, I suggest a further interpretation focusing rather on what justice *was not*. Instead of searching for traces of the stage in the courtroom, I view the theater as representative of the qualities legal practice lacked during this time, most prominently: orality, publicness, presence (or immediacy), and consideration for human subjectivity. Authors such as Lessing, Schiller, Iffland, Goethe, and others, I argue, emphasized these differences between justice and the stage in their works. This study explores how authors promoted the basic qualities of theater performance to the law for the purpose of centering humanity in the justice system. It was not just any understanding of humanity, but rather a particular new enlightened understanding—that of human subjectivity. After all, the late 18th century was rife with calls for change by legal reformers, especially calls to "humanize" criminal law.[12] The main goal of this study is to show how the images of the stage as justice and justice as theater, as presented in art, were guiding images for the call of radical legal change and reform.

In addition, I trace how literature and drama, by presenting ideal situations and behaviors, offer practical solutions to concerns for those engaged in legal work. Through the analysis of literary and dramatic examples, I argue that legal arguments were actually played out before theater audiences and the public. In matters of legal philosophy as well as the material and practical realities of legal reform, literature and drama were often in conversation with the law. Both literary and legal writers were wrestling with shared questions: How can justice be achieved within a state? Whom or what does a justice system serve? And what are the limits of law in the pursuit of justice?

The argument of my study is in many ways engaging with the concept of the enlightenment. It was at this time, while German lands were comprised of hundreds of separate principalities and

[12] Oettinger, Klaus. "Schillers Erzählung 'Der Verbrecher aus Infamie': Ein Beitrag zur Rechtsaufklärung der Zeit." *Jahrbuch der Deutschen Schillergesellschaft* 16 (January 1972): 266–77, 267. Subsequent citations as "Oettinger" with page numbers.

kingdoms, each with its own laws and territorial government, that enlightened ideas started to permeate aspects of everyday life. A trend toward secularization coupled with calls for religious tolerance accompanied ongoing changes in the role of religion in both government and daily existence, in which the idea of God had changed: the pedagogy of the angry God of punishment gave way to that of the loving Father who punished only to improve humanity.[13] There was a strengthening of the figure of the absolutist as the center of power, resulting in a loss of official importance for the church and nobility. In science and medicine, interest in the human mind (psychology or *Seelenkunde*) and body accompanied radical shifts in the philosophical understanding of the human conscience and the individual. The human, or "Mensch," was now conceived as a rational being with an interior life, capable of self-improvement. Or, as Kant put it in "Was ist Aufklärung?" (1784) a self-determining person. His essay put into words for a whole generation this new understanding of modern subjectivity, with *Metaphysik der Sitten* (1797) as a more thorough treatment to follow in 1797. This new concept of the individual was perhaps best reflected in the growing political and social aspirations of the bourgeoisie, who, as depicted in art, held the torch of virtue before all others in feudal society.

At the same time, in art, theater reform took center stage, first in the form of strict artistic regulation and institutionalization—a concerted move away from the culture of the *Wanderbühne*—, to the embrace of French Classicism, and then the vehement rejection of French Classicism in favor of more naturalistic styles of acting and speaking with an overwhelming focus on the bourgeois sphere. With these artistic reforms came a new calling for the stage: that of an educator of an enlightened nation. In the spirit of this time, Thomas Weitin notes that theories of theater began to pick up the "Gestalt einer Medientheorie, die die 'magischen Kanäle' der

[13] Kittsteiner, Heinz D. *Die Entstehung des Modernen Gewissens*. Suhrkamp-Taschenbuch Wissenschaft 1192. Frankfurt am Main: Suhrkamp, 1995, 371. Subsequent citations as "Kittsteiner" with page numbers.

Schaubühne als zentrales Instrument zu Vermittlung aufklärerischer Ideale empfielt."[14] Indeed, apart from the church pulpit and the university lectern, and in the absence of a parliament, as Walter Hinderer argues, the stage was "the only public means of communication" that could be witnessed live in the German territorial states.[15] While the main justification for the stage was its pedagogical mission—the education of the public in virtue and vice—, it was participating also in the public discourses of many other not-so-separate fields such as philosophy, history, politics and law, theology, ethics, and the sciences. A play's distribution among theater audiences was complemented by the print version that was sold on the literature market, thus continuing interaction with the public beyond performance, albeit in a radically transformed way. Drama, literature, as well as literary and cultural journals were the popular vehicles of ideas and exchange. Additionally, the permanent theater, as opposed to the productions of wandering theater troupes, became increasingly open to the public. It was at the *Hoftheater*, or the so-called *Nationaltheater*, established by the territorial governments that many of the plays discussed in this study were staged. Furthermore, they were staged not just for the court but for the public, who also supported this institution through ticket sales.[16]

The confluence of the needs of legal reform and the readiness of authors to take up the cause of reform has to do with new views about the role, or even responsibility, of art within

[14] Weitin, Thomas. "Literatur des Kriminellen." In *Verbrechen im Blick: Perspektiven der neuzeitlichen Kriminalitätsgeschichte*, edited by Rebekka Habermas and Gerd Schwerhoff, 367–80. Frankfurt, New York: Campus-Verlag, 2009, 371. Subsequent citations as "Weitin, 'Literatur des Kriminellen'" with page numbers.

[15] Hinderer, Walter. *Schiller und kein Ende: Metamorphosen und Kreative Aneignungen*. Würzburg: Königshausen & Neumann, 2009, 212.

[16] In her discussion of the rise of the bourgeoisie as the main class depicted in plays in the 18th century, Sharpe notes: "It might thus be said that the development of a non-aristocratic theatre-going public was encouraged by and in turn encouraged the production of a repertoire that reflected the sentimental spirit of the age, which, influenced by Rousseau, elevated country over town, the rustic over the courtly, natural feeling over sophisticated manners and convention." Sharpe, Lesley. *A National Repertoire: Schiller, Iffland and the German Stage*. British and Irish Studies in German Language and Literature 42. Bern: Peter Lang, 2007, 28. Subsequent citations as "Sharpe, *A National Repertoire*" with page numbers.

society. As Steven D. Martinson points out, "In general, Aufklärer believed that through the writing and publication of literature, the staging of dramas, the showcasing of works of art, and musical performances, critical self-awareness could be put into practice, public discourse reshaped, and, even if to a small degree, humankind improved."[17] Accordingly, I argue that playwrights and authors in the 18th century were using their artworks to contribute to the debate on law *before the general public*. An insightful example of such a cross-disciplinary exchange was the theological debate between Gotthold Emphraim Lessing, a playwright and theater critic, and Johann Melchior Goeze, a Hamburg pastor in Lutheran church hierarchy, also known as the *Fragments Controversy*. Lessing occasionally responded to Goeze's charges with parables and stories, which angered the pastor, who accused Lessing of resorting to *Theaterlogik*.[18] As Friederike von Schwerin-High explains: "Lessing countered that he was accustomed to using figurative language and believed that such language represented not merely the logic of theater, but the very structure of human thought."[19] She further contends that, after Lessing was banned from publishing theological criticism, he wrote his play *Nathan der Weise* (1779) as a last contribution to this argument. Lessing's example is instructive insofar as it shows us that literature and drama, in addition to their artistic, pedagogical, and entertainment goals, were also written for the expressed purpose of participation in public discourse.

---

[17] Martinson, Steven D. *Projects of Enlightenment. The Work of Gotthold Ephraim Lessing: Cultural, Intercultural, and Transcultural Perspectives*. Vol. 11. Hermeia: Crossing Boundaries in Literary and Cultural Studies. Heidelberg: Synchron, 2013, 20.

[18] Lessing, Gotthold Ephraim. *Werke Und Briefe*. Edited by Wilfried Barner. 12 vols. Bibliothek Deutscher Klassiker. Frankfurt am Main: Deutscher Klassiker Verlag, 1985. Here, volume 9, page 121. Subsequent citations as "*LW*" with volume and page numbers.

[19] Schwerin-High, Friederike von. "Gotthold Ephraim Lessing's Religious Pluralism in Nathan the Wise and The Fragments Controversy." In *Enlightenment and Secularism: Essays on the Mobilization of Reason*, edited by Christopher Nadon, 273–88. Lanham, et al.: Lexington Books, 2013, 279. Subsequent citations as "Schwerin-High" with page numbes.

These connections between the figures of law and literature in the German-speaking world, as well as comments by figures such as Jacob Grimm on the relationship between poetry and literature, namely: "Dasz recht und poesie miteinander aus einem bette auf gestanden waren, hält nicht schwer zu glauben,"[20] has led to a continuous stream of scholarship on the relationship between law and literature around 1800.[21] After all, the disciplinary and professional boundaries between law, philosophy, medicine, and the arts were far more porous in the 18th century than in subsequent centuries, especially for the educated.[22] It was not uncommon that authors went through some legal training in their education like Friedrich Schiller, Christoph Martin Wieland, August Gottlieb Meißner, Friedrich Schlegel, Novalis, Heinrich von Kleist, while others worked within a legal capacity, the so-called *Dichterjuristen* such as Gottfried August Bürger, Johann Rautenstrauch, Johann Wolfgang von Goethe, E.T.A. Hoffmann. Often they were also state servants in close connection with ruling families.[23] Moreover, it was common practice for art and literature of the 18th century to borrow "juristische Sprechweise" as a rhetorical strategy

[20] Grimm, Jacob. "Von Der Poesie Im Recht." In *Kleinere Schriften*, edited by Eduard Ippel, Vol. 6. Berlin: Ferdinand Dümmler, 1882, 153. Originally published in: *Zeitschrift für geschichtliche rechtswissenschaft*. bd. 2. hft. 1. 1815. s. 25—99.

[21] One of the first dedicated studies was Eugen Wohlhaupter's 3-volume *Dichterjuristen* (1953-1957), which cataloged German writers with legal training.

[22] On the time that Schiller was writing *Infamie*: "Soweit war es allerdings noch nicht mit der Ausdifferenzierung von gesellschaftlichen Teilsystemen, wie die Luhmannsche Theorie sie entwickelt. Zu einer Zeit, als die Fachdisziplinen erst anfingen, sich zu etablieren, herrschte die Vorstellung eines Gesamtsystems." McCarthy, John. A. "Abermals »Sektionsberichte des Lasters« Bilaterale Reformvorstellungen in Literatur und Recht um 1800." *Internationales Archiv für Sozialgeschichte der Deutschen Literatur* 31, no. 2 (2006): 100–130, 102. Subsequent citations as "McCarthy" with page numbers.

[23] Goethe's role in the life of Duke Karl August is well-documented. Additionally, playwright and actor, August Wilhelm Iffland (1759-1814), for example, had a very close relationship with the ruling family of Leiningen since at least 1781, including a personal friendship with the Crown Prince Emich Karl. The Leiningen family often visited the Mannheim Nationaltheater, and Iffland was often a guest at their residence in Dürkheim. Wilhelm Herrmann argues that this relationship influenced Iffland's political views: "Wesentlich und bestimmend für die magnetische Wirkung der Höfe auf ihn war nicht zuletzt sein politisches Credo: der konservative Glaube an die gottgewollte Sendung der Herrscher, an den ständischen Aufbau der Gesellschaft als das einig mögliche Ordnungsprinzip oder, umgekehrt, sein unverhohlener Abscheu vor den demokratischen Tendenzen, wie sie sich in der Französischen Revolution entluden." Herrmann, Wilhelm. "August Wilhelm Iffland und die Leininger Fürsten. Sonderdruck." In *Mitteilungen des Historischen Vereins der Pfalz*, 65:208–29. Speyer: Verlag des Historischen Vereins der Pfalz E.V., 1967, 208.

to evoke the "Wirkungsmacht" of the legal sphere.[24] On the other side of the coin, those working in law made up a large part of the educated population who participated actively in artistic and literary discourse.[25] They contributed to the *Gesellschaftstheater*,[26] or published their own literary writing on crime and law as a secondary pursuit.[27] Aside from "in the air" knowledge about art among the educated classes, there is evidence of exchange between legal reformers corresponding with dramatists, mostly prominently in August Wilhelm Iffland's preface to his play *Die Jäger*, in which he thanks a *Hofgerichtsassessor* Schüßler of Hannover for sending him a case file to use as source material for his play with clear reform intent on the topic of torture in mind.[28] For the quintessential *Dichterjurist*, one not need look further than Joseph von Sonnenfels (1733-1817), who was known foremost as a legal and political reformer in Vienna, but was also an influential theater reformer, critic, and author—not to mention president of the Academy of Fine Arts in Vienna from 1810.[29]

---

[24] Weitin, "Literatur des Kriminellen," 370.

[25] Joseph von Sonnfels and Christian Gottfried Körner are two such representatives. Körner was a jurist and writer in Dresden as well as close friend to author Friedrich Schiller. Aside from his career as a jurist, he published several essays on art and aesthetics. For more on Körner's aesthetic writings, see: Krautscheid, Christiane. *Gesetze der Kunst und der Menschheit: Christian Gottfried Körners Beitrag zur Ästhetik der Goethe-Zeit*. 2 vols. Berlin: Technischen Universität Berlin, 1998; Sonnenfels is known foremost as a political reformer in Vienna. However, he was also invested in the project of reforming the Viennese theater, as evidenced by his *Briefe über die wienerische Schaubühne* (1768). Reinalter, Helmut, "Sonnenfels, Joseph Freiherr von" in: *Neue Deutsche Biographie* 24 (2010), 576-578; URL: https://www.deutsche-biographie.de/pnd118615610.html#ndbcontent

[26] Iffland's play, *Die Jäger*, for example, was first staged on a *Gesellschaftstheater* in Dürkheim by the ruling house of Leiningen. The original cast list includes Graf Heinrich Ernst von Westerburg, Herr und Frau Kammerrat Greuhm, Erbprinz Emich Karl, Kammerkekretär Mauerer, Regierungssekretär Lohbauer, among others. The actor who portrays the *Gerichtsschreiber zu Leuthal* is an actual lawyer, Herr Advokat Weißgerber. Iffland, August Wilhelm. *Die Jäger: Ein ländliches Sittengemälde in Fünf Aufzügen*. Edited by Jürg Mathes. Stuttgart: Reclam, 1976. [Originally published and stage in 1785.] Here, page 6. Subsequent citations as "Iffland, *Die Jäger*" with page numbers.

[27] Among others: Becker, Theophil Christian. *Sammlung Merkwürdiger Rechtsfälle aus Verschiedenen Theilen der Rechtsgelehrsamkeit mit ihren Entscheidungsgründen nebst einigen Schutzschriften*. Vol. 1. Eisenach: Verlag M.G. Griesbachs Söhne, 1772; Eisenhart, Johann Friedrich. *Erzählungen von Besonderen Rechtshändeln*. Vol. 1. 10 vols. Halle, Helmstedt: Hemmerde, 1767; Schäffer, Georg Jacob. *Abriss des Jauner und Bettelwesens in Schwaben*. Stuttgart: Erhard und Löflund, 1793; Wittich, Christian Friedrich. *Hannikel, oder die Räuber- und Mörderbande […]: Ein Wahrhafter Zigeuner-Roman Ganz aus den Kriminal-Akten Gezogen*. Tübingen: Heerbrandt, 1787.

[28] Iffland, *Die Jäger*, 5.

[29] Reinalter, *Neue Deutsche Biographie* (2010). See footnote 25.

Furthermore, this study builds on scholarship in the field of German Law and Literature around 1800. A main strand of this research is focused on the narrative form of depicting crimes, trials, and punishments since the early modern period in Germany for the purposes of entertainment and marketing, documentation, crime prevention, general public interest, and the creation of public values.[30] Alexander Košenina's extensive research on criminal storytelling in the mid to late 18th century, focusing most prominently on Friedrich Schiller, has paved the way for a deeper engagement with crime literature of the 18th century and legal forms of writing.[31] These studies, as well as many others on the topic of legal writing and the potential literariness of legal writing, hone in on the literary strategies and difficulties of portraying a criminal—his deed and life—on paper. Indeed, Friedrich Schiller, due to his early prose work *Verbrecher aus Infamie* (1786), is a frequent figure referred to in the field of German Law and Literature precisely on account of his careful consideration of this question. Some more recent publications have been dedicated to the author and his psychologically inflected works.[32]

---

[30] There are several essays on criminal narratives and the media from Rebekka Habermas' and Gerd Schwerhof's anthology *Verbechen im Blick: Perspektiven neuzeitlichen Kriminalitätsgeschichte* from 2009. Other sources include: Jörg Schönert, ed. *Erzählte Kriminalität: Zur Typologie und Funktion von narrativen Darstellungen in Strafrechtspflege, Publizistik und Literatur zwischen 1770 und 1920*. Studien und Texte zur Sozialgeschichte der Literatur, vol. 27. Tübingen: Max Niemeyer Verlag, 1991; John A. McCarthy. "Abermals »Sektionsberichte des Lasters«. Bilaterale Reformvorstellungen in Literatur und Recht um 1800," (Dec. 2006).

[31] Košenina, Alexander. "Schiller und die Tradition der (Kriminal)Psychologischen Fallgeschichte bei Goethe, Meißner, Moritz und Spieß." In *Friedrich Schiller und Europa: Ästhetik, Politik, Geschichte*, edited by Alice Stašková, 119–40. Beiträge zur Neueren Literaturgeschichte 238. Heidelberg: Universitätsverlag Winter, 2007; Košenina, Alexander. "Fallgeschichten. Von der Dokumentation zur Fiktion. Vorwort." *Zeitschrift für Germanistik, Neue Folge* 19, no. 2 (n.d.): 282–87; Košenina, Alexander. "Die Europäische Tradition Juristischer Pitavalgeschichten für Schillers Fragmentarische Kriminaldramen." In *Schillers Europa*, edited by Peter-André Alt and Marcel Lepper, 88–101. Perspektiven der Schiller-Forschung 1. Berlin, Boston: de Gruyter, 2017; Košenina, Alexander. "Recht - gefällig. Frühneuzeitliche Verbrechensdarstellung zwischen Dokumentation und Unterhaltung." *Zeitschrift für Germanistik. Neue Folge.* 15, no. 1 (2005): 28–47; Košenina, Alexander. "Schiller's Poetics of Crime." In *Schiller: National Poet, Poet of Nations*, edited by Nicholas Martin, 201–17. Amsterdamer Beiträge zur Neueren Germanistik 61. Amsterdam, New York: Rodopi, 2006.

[32] Among them: Yvonne Nilges' *Schiller und das Recht* from 2012, a study which creates of narrative of Schiller's dramas in relationship with the development of his thoughts on law. Nilges, Yvonne. *Schiller und das Recht*. Göttingen: Wallstein Verlag, 2012; Ebert, Udo, and Hans-Joachim Bauer. *Das Gerechte und das Schöne – Gerechtigkeit und Recht in Schillers Denken und Dichten*. Berlin: Berliner Wissenschafts-Verlag, 2006. As well as: Klaus Lüderssen's *"Daß nicht der Nutzen des Staates Euch als Gerechtigkeit erscheine": Schiller und das Recht*. Frankfurt am Main, Leipzig: Insel, 2005.

Both Bernhard Greiner and Ulrike Zeuch observe that scholarship tends to focus on literature that highlights the shortcomings of the law when faced with the individual psychologies of people. Though this aligns with my own investigation, I argue that, in addition to criticism, literary works also present concrete solutions to these perceived inadequacies. In his summary of scholarship on the 18th century, Bernhard Greiner notes a focus on the psychology and biography of the criminal individual, his reintegration into society, and the inadequateness of the application of basic juristic rules to his case.[33] Ulrike Zeuch points to additional approaches, including 1) the exploration of how literature portrays laws, as well as to what extent literature is involved in the establishment and modification of values which, in turn influences criminal law; 2) the interest in law as literature—analyzing legal texts for topical and rhetorical strategies; or 3) bringing literature into the focal point of the study rather than law while investigating the legal historical context of literary works.[34] Unsurprisingly, Zeuch indicates that many scholars come to the conclusion that

[33] Greiner, Bernhard. "Das Forschungsfeld 'Recht und Literatur.'" In *Recht und Literatur: Interdiziplinäre Bezüge*, edited by Bernhard Greiner, Barbara Thums, and Wolfgang Graf Vitzthum. Heidelberg: Universitätsverlag Winter, 2010, 17. Along this vein of research, literature scholar Peter von Matt argues that the study of literature can introduce sympathy and the better understanding of the criminal act into the study of the law. Matt, Peter von. *Recht, Gerechtigkeit und Sympathie: Über die Gerichtsbarkeit der Literatur und ihre Strategien*. Zürich, St. Gallen: Dike Verlag, 2013.

[34] Zeuch, Ulrike. "Einleitung. Recht und Literatur um 1800 im Kontext des Law and Literature Movement." Edited by Ulrike Zeuch and Ulrich Kronauer. *Schwerpunkt: Recht und Literatur um 1800*, Internationales Archiv für Sozialgeschichte der deutschen Literatur, 31, no. 1 (2006): 77–84, 78-80. The study of law and literature around 1800 has caught the attention of legal scholars as well as literature scholars. Law professors and jurists such as former *Bundesverfassungsgericht* president, Jutta Limbach; Professor of Law, Heinz Müller-Dietz; and Professor of Public Law, Bodo Pieroth have been publishing in the field. Professor of Law and President of the *Bundesverfassungsgericht* from 1994-2002, Jutta Limbach contributed to Walter Hinderer's volume on Schiller. She also sponsored the exhibit "Goethe, Götz und die Gerechtigkeit" in 1999 in Wetzlar during her tenure as president. Limbach, Jutta. "Friedrich Schillers Seelenkunde vom Verbrechen." In *Friedrich Schiller und der Weg in die Moderne*, edited by Walter Hinderer, 221–26. Stiftung Für Romantikforschung 40. Würzburg: Königshausen & Neumann, 2006. See also: *Goethe, Götz und die Gerechtigkeit*. Edited by Hartmut Schmidt and Gisela Sachse. Exhibition Catalog published by the Magistrate of the City of Wetzlar and the Society of Reichskammergerichtsforschung. Wetzlar 1999; Heinz Müller-Dietz, Professor of Law, has published several volumes of his "Literarische Spiegelungen" books on law, including: Müller-Dietz, Heinz. *Recht Und Kriminalität in Literarischen Spiegelungen*. Juristische Zeitgeschichte, Abteilung 6: Recht in Der Kunst - Kunst Im Recht 28. Berlin: Berliner Wissenchafts-Verlag, 2007. Bodo Pieroth sees his study *Recht und Literatur: Von Friedrich Schiller bis Martin Walser* (2015) as an introduction to the field of Law and Literature for the purpose of pushing for more integration of literature into law schools in Germany. Pieroth, Bodo. *Recht und Literatur: Von Friedrich Schiller bis Martin Walser*. Munich: C.H. Beck, 2015. For example, he interprets a scene between Hannah Kennedy and Mary Queen of Scots from Schiller's *Maria Stuart* as depicting a metaphorical trial procedure far ahead of its time.

"Literatur zeige, welche Wirkungen das Recht auf einzelne Menschen habe und in welcher Hinsicht es unvollkommen sei."[35]

With Zeuch's insight as a starting point, I investigate the works of late 18th century authors that thematize contemporary justice and the legal system within their legal historical and artistic contexts in which they were produced. More precisely, at the core of this study are the nodes of contact between literature, especially drama, and legal discourse through an investigation of legal historical thought, conditions, and practices, in order to argue 1) that the stage became indeed an important site of reformist legal discourse, and 2) that writers promoted the stage as a guiding image for the future of justice. As a new and powerful site of reform, authors pursued two paths: on one hand, they imagined practical improvements on the public stage, and on the other, they recommended the stage's very qualities—orality, publicness, immediacy, and the focus on humanity—as an alternative to the older procedure of justice in the German territorial states.

Chapter 1 of this study creates the context, i.e. the material conditions and characteristics of the legal systems in the German territorial states in the late 18th century, with a general focus on the duchies of Württemberg and Sachsen-Weimar-Eisenach as representative cases. The written, non-public form of trial procedure emerges as a source of practical challenges for bureaucrats working in these very justice systems. Moreover, already starting in the mid 18th century, these perceived spatial and temporal fragmentations became a source of concern for philosophers and legal writers. Over the next decades, legal reformers continued to devote themselves to exploring

[35] Zeuch, 80. To this camp belongs Theodore Ziolkowski (Professor of German and Comparative Literature), Thomas Vormbaum (Professor of Law), and Klaus Lüderssen (Professor of Law). Ziolkowski, Theodore. *The Mirror of Justice: Literary Reflections of Legal Crises*. Princeton: Princeton University Press, 1997; Vormbaum, Thomas. *Diagonale - Beiträge zum Verhältnis von Rechtswissenschaft und Literatur*. Münster: LIT Verlag, 2011; Lüderssen, Klaus. *Produktive Spiegelungen: Recht in Literatur, Theater und Film*. 2nd ed. Vol. 1. Baden-Baden: Nomos, 2002; Lüderssen, Klaus. *Produktive Spiegelungen: Recht in Literatur, Theater und Film*. Vol. 2. Berlin, Boston: Berliner Wissenchafts-Verlag, 2007; Lüderssen, Klaus. *Produktive Spiegelungen III: Recht im Künstlerischen Kontext*. Juristische Zeitgeschichte, Abteilung 6, Band 43. Berlin, Boston: de Gruyter, 2014.

the legal-philosophical tenets of orality, publicness, and immediacy. Simultaneously, at the highest levels of government, the absolutist sovereigns of German territories faced the challenge of much-needed legal reform in addition to maintaining the image of their role in the justice system—either that of a despot or a giver of mercy. Authors of dramas pick up on these tensions and spotlight the problems of current justice in surprising detail in their dramatic and literary works, most prominently August Wilhelm Iffland's *Die Jäger* (1786), Friedrich Schiller's *Der Verbrecher aus verlorener Ehre* (1786), and Ferdinand Ludwig Schröder's *Amtmann Graumann* (1778).

In Chapter 2, the issue of fragmentation in trial procedure takes center stage. It was perceived as a constantly disruptive feature of the justice system which resulted from the system's written form (*Schriftlichkeit*). Perceived negatively by reformers, writers, and critics alike, some dramatists proposed strategies of immediacy (*Unmittelbarkeit*) as potential solutions to legal fragmentation in their works. Friedrich Schiller, for example, worked most intensely with the question of fragmentation versus immediacy in his novella *Der Verbrecher aus Verlorener Ehre*, originally published as *Verbrecher aus Infamie* in 1786. He prefaces his story of the criminal, Christian Wolf, with a literary-theoretical introduction that strikes at the heart of the issue of written mediation in judgment: the psychological and emotional distance between judge and judged. In August Wilhelm Iffland's *Die Jäger* and Johann Wolfgang von Goethe's *Wilhelm Meisters Lehrjahre* (1795/1796) a centering of emotion and human feeling can be observed. While ubiquitous on the stage, these authors recommend the integration of human feeling into the realm of legal work for the sake of overcoming fragmentation as well as the distance between judge and accused. All three works present the immediacy of the stage, meaning its physical presence and its emotional and psychological directness, as a better, more just site of judgement that is worthy of emulation by the courtroom.

Chapter 3 contends with the question: from the perspective of dramatists, what made the stage especially qualified to serve as a model for justice? The answer is tied to the theater reform debates beginning in the early 18th century, which sought to improve the quality and standards of German theater whilst simultaneously aligning the theater with new enlightened ideas about education and morality. In the philosophy of Christian Wolff, this led to the establishment of the theater as a site of knowledge about virtue and vice. This idea was taken up by later theater reformers, such as Georg Sulzer, who advocated for a moralizing stage, that served the state through the education of the public. In addition to moral education, the nation-building aspirations of dramatists and theater critics such as Gotthold Ephraim Lessing and Schiller expanded the stage's influence into areas of politics and justice. Once theater is a "politische Anstalt," as Walter Hinderer describes Schiller's conception of it,[36] I argue that Schiller establishes the "courtroom stage," first as a supplementary, before making it *the* primary institution which upholds justice in society. These lofty claims nonetheless describe what authors were already doing in literature and drama: exercising judgment before the public, putting forward ideas about the purpose of justice. And in more general terms, placing "der Mensch," or the human subject, at the center of justice and trial procedure.

As the stage participates in legal reform discourse, it makes both philosophical and practical recommendations for justice. In Chapter 4, two figures emerge as the focus for modern reform: the bureaucrat (or lawyer) and the absolutist sovereign. Johann Rautenstrauch's play *Der Jurist und der Bauer* (1773) presents audiences with the figure of a lawyer who reflects upon his role as a legal actor. He delineates between "good" and "bad" bureaucrats that can be found in the legal system, as well as "good" and "bad" subjects who employ their services. This centering on

[36] Hinderer, 210.

the actions of individuals is revived in Iffland's *Verbrechen aus Ehrsucht* (1784), which posits that individual actions within the justice system can lead to better justice in the face of a system that is largely hostile to human feeling. Finally, Gottfried Immanuel Wenzel's *Verbrechen aus Infamie* (1788) imagines a radical reformer within the bureaucracy as the face of good justice: the hero bureaucrat. On the side of the absolutist sovereign, the courtroom stage focuses less on practical changes and far more on human doubt, which has the potential to weaken the image of the absoluteness of sovereign judgment. While August von Kotzebue's *Hugo Grotius* (1803) upholds the image of sovereign judgment as absolutely just, Lessing's *Nathan der Weise* (1779) and Schiller's *Maria Stuart* (1800) emphasize the need for monarchs to integrate the fact of their humanity and emotions into their understandings of their role as judge. They, too, are human despite the authority of their offices, and on stage, they are not above the judgment of their subjects, the public.

CHAPTER 1

Representations and Practices of Justice in the Late 18th Century: Literary and Legal Sources

1.1 Introduction

Far from the televisual and cinematic representations of trials as showpieces of revelatory drama, sadistic torture, or mob fury, justice of the 18th century in the German territorial states was another world entirely—a paper-based one. Indeed, to say anything about how literature and drama staged justice, in addition to literary engagement with contemporary legal reform discourse, we must first look at the characteristics and features representative of the legal systems during this time. The objective of this chapter, then, is to establish the practices and criticisms of the written, or *schriftlich*, culture of 18th century legal practice and establish the trend of critical literary and legal-reform responses to that written culture. A further objective is to argue that there are parallel moments in literature and judicial writings that define and criticize spatial and temporal fragmentation within the legal system. This tension eventually leads to the oppositional concepts of *Schriftlichkeit* and *Mündlichkeit* in legal reform literature from around 1800, which will be discussed further in Chapter 2 and onwards. Finally, always in the background of enlightened legal reform, religious justification, which once underpinned many legal practices, clashed with the attitudes of enlightened territorial sovereigns and the growing number of the educated bourgeoisie.

In order to investigate the tensions between writing and orality, fragmentation, and the secular understanding of originally religious elements of justice, I look at the writings from two fields: law and literature. I examine the representation and practices of historical justice administered by the state in specific territories and times and then read them against fictional representations of

justice. In both law and literature, which had far less 'disciplinary' separation in the 18th century than today, authors were interested in the same questions. As a scholar of literature, I put particular emphasis on the question of how authors in both fields crafted the representation of the judicial process through their writings. In my analyses, I turn to a variety of different materials: 1) legal documents included in case files, 2) official state documents, 3) writings on legal practice or legal philosophy, and 4) literary works that represent the legal system or trial procedure.

1.2 Images from Legal History

In an essay on early modern criminal history, historian Rebekka Habermas summarizes the development of the representation of what constitutes "modern" and "premodern" in law history. These images, which persist into the 21st century, she argues, are flawed. The narrative of premodern and modern can be exemplified by the reform "fantasies" around 1848 in Germany that aimed at replacing the old inquisition trial process with the *public* trial by jury.[1] For the new middle class, this change symbolically represented a move into a new free and equal bourgeois society. A consequence of these efforts, which sought to distance the reformer present from the justice of earlier centuries, was the creation of highly specific, unfavorable stereotypes, especially in museums where instruments of torture were displayed to invoke horrified fascination.

[1] Habermas, Rebekka. "Rechts- und Kriminalitätsgeschichte revisited – ein Plädoyer." In *Verbrechen im Blick: Perspektiven Neuzeitlicher Kriminalitätsgeschichte*, edited by Rebekka Habermas and Gerd Schwerhoff, Frankfurt/New York: Campus Verlag, 2009, 19-41, 19. Subsequent citations as "Habermas" with page numbers.

Fig. 1: Pieter Brueghel the Elder. "The Triumph of Death." 1562 - 1563. Oil on panel. ©Museo Nacional del Prado. Image detail of torture and execution.

Fig. 2: Screenshots from Orson Welles' *The Trial*, adapted from Franz Kafka's *Der Prozess* (1914-1915/1925). *The Trial*. Dir. Orson Welles. Paris-Europa Productions, Hisa-Film, Finanziaria Cinematografica Italiana, 1962.

Habermas suggests the following analogies to describe the images of the modern and premodern periods that legal history had come to associate with them: early modern "Brueghel" scenes[2] (fig. 1) in which the criminals and their tortures are in the foreground with the state in the background versus modern "Kafkaesque" scenes (fig. 2) in which the anonymous, secular institutions of justice overshadow everything. The humans, or more precisely, the criminals are merely specks within them.[3] The Brueghel scene can perhaps be associated with Richard van Dülmen's idea of early modern punishment as a theater of horror or with Michel Foucault's grisly account of the public torture and execution of the failed regicide Robert-François Damiens in 1757 in Paris, which serves as an example in the introduction to his path-breaking *Discipline and Punish: The Birth of the*

[2] Possibly Pieter Brueghel the Elder's "The Triumph of Death" (c. 1562) or his "Seven Deadly Sins" etchings (1558).
[3] Habermas, 27.

Prison (1975).[4] However, the focus of these examples is of course the execution of punishment, not the trial process or the system of justice as a whole. Furthermore, what they describe are sensational cases of 18th century justice, quite removed from justice in daily experience, which was, as we will see, far more bureaucratic even for criminals than Brueghel's apocalyptic representation would seem to indicate. Similar to the trajectory of punishment that Foucault describes for the period from 18th to 19th century France,[5] justice in the German states were in transition. Especially in the mid to late 18th century, the transition was due to new trends in legal philosophy and reform. As I will show, legal writing and literature dealt with, problematized, and anticipated all these different transitional strands succinctly and effectively, providing us with a more complete picture of 18th century justice.

1.3 Trial Procedure and Legal Bureaucracies

1.3.1. "Papierkram" and "Aktenhaufen: The Centrality of *Schriftlichkeit* and *Aktenversendung*

An intermediary image of justice emerges from historical accounts, which was especially characteristic of the 18th century: the legal system's seeming obsession with thick stacks of bound paper. This image makes its appearance, for example, in Johann Wolfgang von Goethe's *Dichtung und Wahrheit* (quoted below), and most recently, in a scene from the 2010 film *Goethe!* (fig. 3). In it, the young *Praktikant*, Goethe, played by Alexander Fehling, enters the stuffy, paper-filled world of the *Reichskammergericht* in Wetzlar and, once outfitted with his wig and robe, is handed a comically large stack of bound case files to work with.

[4] Foucault, Michel. *Discipline and Punish: The Birth of the Prison*. Translated by Alan Sheridan. London, New York: Penguin Books, 1991. In this description, the state is not necessarily removed to the background.

[5] The 19th century example of punishment that Foucault provides is the strict daily schedule for inmates at the Mettray Penal Colony, an institution for the rehabilitation of young male criminals. Foucault, 6-7.

Fig. 3: *Young Goethe in Love*. German Title: *Goethe!* Dir. by Phillip Stölzl. Senator Film Produktion, Deutschfilm, Warner Bros., et al., 2010.

The antithesis of the Brueghel image, we perhaps begin to approach the Kafkaesque aesthetic of stereotypical modern justice. However, it is not necessarily the individual who is lost in the shadow of the omnipresent state. Instead, it is an image in which both the state and its individual subjects are overwhelmed by the enormous *Papierkram* that the state's own bureaucracy has managed to produce. The cinematic interpretation in *Goethe!* presents an image of Wetzlar since at least 1689 when the *Reichskammergericht*, which was the highest court in the Holy Roman Empire and a model court for all the territorial courts, moved from Speyer to Wetzlar. A 1997 catalog of the current *Reichskammergericht* Museum boasts that interested parties had often to wait years before a decision was reached.[6] Goethe himself described his impression of the Holy Roman Empire's highest court of justice in *Dichtung und Wahrheit* (1811-1830/1833):

> Seit hundertundsechsundsechzig Jahren hatte man keine ordentliche Visitation zu Stande gebracht; ein ungeheurer Wust von Akten lag aufgeschwollen und wuchs jährlich, da die siebzehn Assessoren

[6] Schmidt-von Rhein, Georg. "Das Reichskammergericht in Wetzlar." In *Das Reichskammergerichtsmuseum Wetzlar. Katalog.*, 24–34. Wetzlar: Gesellschaft für Reichskammergerichtsforschung e. V., 1997, 28.

> nicht einmal im Stande waren, das Laufende wegzuarbeiten. Zwanzigtausend Prozesse hatten sich aufgehäuft, jährlich konnten sechzig abgetan warden, and das Doppelte kam hinzu.[7]

With formulations such as "ungeheurer Wust," "aufgeschwollen," "wuchs jährlich," and "zwanzigtausend Prozesse hatten sich aufgehäuft," the case files in the *Reichskammergericht* seem to qualify as a separate entity within the justice system—a gluttenous mountain of papers that haunts the shelves of the building at Domplatz.[8] But this was not only the case in the justice system. As Vismann describes in her book *Akten: Medientechnik und Recht*, these "Aktenexplosionen" correlate to the "Wissensexplosionen um 1700," which evoked from bureaucrats in all territories "ein neues Diskursgenre, die Klage über das schnelle Anwachsen von Geschriebenem."[9] What Goethe describes in *Dichtung und Wahrheit* could be read as part and parcel of the continuing "Wissensexplosion." It was also a consequence of what characterizes the 18th century legal system in the German states: *Schriftlichkeit*, or its written form, and the practice of *Aktenversendung*.

In criminal trial procedure during this time, the accusatorial process in trial procedure,[10] the cross-examinations of witnesses, and public trial by juries were completely foreign ideas. The idea of a courtroom, a space in which all involved parties were present for the main trial, did not exist.[11] Instead, the foundation of many 18th century German criminal legal systems was the

---

[7] Goethe, Johann Wolfgang. *Aus Meinem Leben. Dichtung und Wahrheit.* Edited by Walter Hettche. Vol. 1. 2 vols. Universal-Bibliothek 8718. Stuttgart: Reclam, 1991, 569.

[8] The site of the Reichskammergericht between 1756 and 1782. The *Reichskammergericht* in Wetzlar was only housed in exisiting structures, never buildings built specifically for its purpose.

[9] Vismann, Cornelia. *Akten: Medientechnik und Recht*. 3rd ed. Frankfurt am Main: Fischer Taschenbuch Verlag, 2000, 213. Subsequent citations as "Vismann, *Akten*" with page numbers.

[10] In his summary of reform ideas in the late 18th century, Alexander Ignor highlights the ideas of "die Einrichtung einer speziellen Anklagebehörde, die Einführung einer mündlichen Gerichtshandlung und die Öffentlichkeit dieser Verhandlung" and the idea that the *Anklageprozess* would replace the current system in which the judge was also the prosecutor. Ignor, Alexander. *Geschichte des Strafprozesses in Deutschland 1532-1846. Von der Carolina Karls V. bis zu den Reformen des Vormärz*. Rechts- und Staatswissenschftliche Veröffentlichungen der Görres-Gesellschaft 97. Paderborn, et al.: Ferdinand Schöningh, 2002, 180-182. Subsequent citations as "Ignor" with pages numbers. The current inquisitorial trial procedure for criminal cases resulted in the local judge, who was also in charge of the investigation, working *against* the suspect or accused.

[11] The exception to this was the "summarische Verfahren," an oral trial procedure concerning very minor civil or financial matters, for example, a first fight, that could be settled within a day or two by a local judge. Criminal trials, on the other hand, were always subject to inquisitional trial procedure. See: Scherner, Karl Otto. *Advokaten - Revolutionäre - Anwälte: Die Geschichte der Mannheimer Anwaltschaft*. Quellen und Darstellungen zur

criminal law code of 1532, the *Constitutio Criminalis Carolina*, enacted by Charles V, the emperor of the Holy Roman Empire from 1519 to 1556. As this code was integrated into local customs, two major features emerged in criminal trial procedure: 1) an inquisitional procedure for criminal trials, and 2) the practice of *Aktenversendung*. These two features produced a legal system predicated on bureaucracy and writing.

At the center of 18th century justice was the case file, or *Akte*. *Aktenversendung*, which arose from Enlightenment rationalization and professionalization of the justice system, was the process of sending case files from local courts to higher, more expert, or even foreign courts and universities for legal recommendations. Sent back to the local authorities, they functioned as *de facto* judgments. For example, in the Duchy of Württemberg, the case file for a trial investigation, once compiled by local authorities in the lower courts, usually by the office of the *Amtmann* or the *Bürgermeister*, was sent to the upper courts or other government authority. From there, the files were forwarded to the law faculty at the University of Tübingen in order to solicit their opinion. The case files went to the law faculty initially because local bureaucrats were not educated in Roman Law and required the assistance of expert legal scholars. If the duke, who was also the highest legal authority in Württemberg, accepted the law faculty's decision on the case, the opinion was then sent back to the local courts in order to be publicly announced and executed. This reliance in the justice system on writing, or *Schriftlichkeit*, emerged from the bureaucratic foundations of the justice system brought about originally by the introduction of Roman Law into the German territorial states.

In her study of the courts and punishment in 18th century Württemberg, Helga Schnabel-Schüle describes the local courts, which were usually populated by lay judges, as

Mannheimer Stadtgeschichte, Herausgegeben vom Stadtarchiv Mannheim 5. Sigmaringen: Thorbecke, 1997, 29-30. Subsequent citations as "Scherner" with page numbers.

Ermittlungsbehörden, or investigative authorities or offices, and as *Urteilsvollstrecker,* or executors of judgment, rather than the *makers* of judgment.[12] The inquisitorial process, which instructed the lower courts upon receiving an accusation, was first and foremost an information-gathering instance. This investigation of the circumstances, establishment and organization of the facts of a case, as well as securing suspects, could then transform into a prosecuting instance.[13] The lower courts and *Kirchenkonvente*, local courts for moral and religious infractions in Württemberg, could settle minor, non-criminal disputes, but otherwise the cases were sent to the law faculty at University of Tübingen.[14] Though this process varied in form across the many territories, it gave justice its face: a written, non-public affair dominated by state bureaucrats and scholars.

In Sachsen-Weimar-Eisenach, the judicial process for criminal cases was similar to that in the Duchy of Württemberg. The typical trial would proceed as follows:

- The local *Justizamt* would do the necessary investigation work and send the resulting *Akten* to the government, which would forward them also to the *Geheime Consilium*.
- The government would then send the *Akten* to the *Jenaer Schöppenstuhl*, made up of law faculty, for a verdict.
- The *Akten* and the verdict would be sent back to the local *Justizamt*, and the unopened files and verdict forwarded to the territorial state government.
- The territorial state could order the execution of the judgment or submit the judgment to the head of state, the duke, for confirmation in special cases. Special cases were usually criminal cases in which the death penalty was considered.
- The head of state would either confirm the judgment or transmute the sentence into an alternative punishment.[15]

In general, in states like Württemberg or Sachsen-Weimar-Eisenach, the process of *Aktenversendung* meant that justice was mostly not a direct experience for the accused or the other

[12] Schnabel-Schüle, Helga. *Überwachen und Strafen im Territorialstaat: Bedingungen und Auswirkungen des Systems Strafrechtlicher Sanktionen im Frühneuzeitlichen Württemberg*. Forschungen zur Deutschen Rechtsgeschichte 16. Köln, Weimar, Wien: Böhlau Verlag, 1997, 59. Subsequent citations as Schnabel-Schüle with page numbers.

[13] Schnabel-Schüle, 120.

[14] Schnabel-Schüle, 49, 110. She notes that not all territories had integrated religious courts like Württemberg did.

[15] Summarized from: Wahl, Volker, ed. *"Das Kind in Meinem Leib." Sittlichkeitsdelikte und Kindsmord in Sachsen-Weimar-Eisenach unter Carl August. Eine Quellenedition 1777-1786.* Veröffentlichungen aus Thüringischen Staatsarchiven 10. Weimar: Verlag Hermann Böhlaus Nachfolger, 2004, 9. Subsequent citations as "Wahl" with page numbers.

involved parties. In other words, justice was detached both spacially and temporally. Very few individuals would have the full picture, and the full picture was never publically revealed. "Fragmentation" is a term I propose to describe the procedures of justice in late 18th century justice in the German states to which the *Wissensexplosion* around 1700, the introduction of Roman Law, and the professional division of labor in the justice system all contributed.[16] As I will show, there was general fragmentation of knowledge, which means that the parties involved all together had bits of incomplete knowledge. There was also distance between the accused and his judges, between the location of the crime or dispute and the location of judgment, and between the bureaucratic levels that separated the deed from the judgment. This disconnectedness itself became a point of interest for authors and dramatists. It was a point that they could criticize, but also one that became a challenge to portray on stage.

In his *Vorrede* to the 1793 catalog of vice, *Abriss des Jauner und Bettelwesens in Schwaben*, Georg Jacob Schäffer, *Ober-Amtmann* zu Sulz am Neckar, reveals the consequences of *Schriftlichkeit* and *Akten*:

> Denn es ist wahrlich kein angenehmes Geschäfte im Staub von Akten zu wühlen, mehrere Bände davon durchzulesen, um einen Fund zu machen, der sich auf Eine oder etliche Seiten schreiben läßt, und aus hundert Urkunden mitten unter äusserst uninteressanten Dingen Materialien herauszuholen und zusammen zu tragen.[17]

[16] The idea of fragmentation as a result of general Enlightenment and scientific progress was already expressed during the time. One example would be in Friedrich Schiller's *Ästhetische Briefe*, in which he laments the fragmentation of labor and fields of study. In comparison to other ages, Schiller argues, modern humanity has been de-unified. From the Sixth Letter: "Ich verkenne nicht die Vorzüge, welche das gegenwärtige Geschlecht, als Einheit betrachtet und auf der Waage des Verstandes, vor dem besten in der Vorwelt behaupten mag; […] Warum qualifizierte sich der einzelne Grieche zum Repräsentanten seiner Zeit, und warum darf dies der einzelne Neuere nicht wagen? Weil jenem die alles vereinende Natur, diesem der alles trennende Verstand seine Formen erteilten. Die Kultur selbst war es, welche der neuern Menschheit diese Wunde schlug. Sobald auf der einen Seite die erweiterte Erfahrung und das bestimmtere Denken eine schärfere Scheidung der Wissenschaften, auf der andern das verwickeltere Uhrwerk der Staaten eine strengere Absonderung der Stände und Geschäfte notwendig machte, so zerriß auch der innere Bund der menschlichen Natur, und ein verderblicher Streit entzweite ihre harmonischen Kräfte. […] Auseinandergerissen wurden jetzt der Staat und die Kirche, die Gesetze und die Sitten; der Genuß wurde von der Arbeit, das Mittel vom Zweck, die Anstrengung von der Belohnung geschieden. Ewig nur an ein einzelnes kleines Bruckstück des Ganzen gefesselt, bildet sich der Mensch selbst nur als Bruckstück aus, ewig nur das eintönige Geräusch des Rades, das er umtreibt, im Ohre, entwickelt er nie die Harmonie seines Wesens, und anstatt die Menschheit in seiner Natur auszuprägen, wird er bloß zu einem Abdruck seines Geschäfts, seiner Wissenschaft." (*NA* 20, 322-324).

[17] Schäffer, Georg Jacob. *Abriss des Jauner und Bettelwesens in Schwaben*. Erhard und Löflund, 1793.

In Schäffer's description, *Schriftlichkeit* was not only unpleasant, uninteresting, laborious, dusty, and boring, it also evokes the image of the self-sacrificing scholar, hunched over dizzying stacks of dusty, forgotten case files, working tediously day in and day out for a single diamond of truth in the rough. One of the consequences of *Schriftlichkeit* was the high bar of entry to the law. As I pointed out earlier, these *Akten*, whose circulation amongst local and territorial offices was the mechanism of justice in Swabia, had very little to no accessibility to most of the population. This was especially true once one takes into account the hurdles of literacy, legal training and jargon, location, and surpluses of time and energy. Nevertheless, Schäffer, a well-off *Ober-Amtmann* with authority over local justice, believes that what he provides through his work is access to the labyrinth of jurisprudence and, in the end, truth.

1.3.2 Professionalization of the Courts

The introduction of Roman Law by the 16th and 17th centuries created a chasm between the upper and lower instances of court procedure, which in part led to the widespread practice of *Aktenversendung*, a process of executing law based on sending written documents between different courts. A major contributing factor to this bureaucratic aesthetic of *Schriftlichkeit* in the German territorial justice systems was due to the new education requirements and subsequent professionalization of legal work.[18] Schnabel-Schüle summarizes the problem in 18th century Württemberg, which had to do with the ever-more scientific and specialized orientation of law: „Das nicht rechtsgelehrte Personal trat auch im Rahmen der Strafgerichtsbarkeit immer mehr in

[18] Schabel-Schüle, 41. Additionally, Scherner reminds us that "[i]m Verlauf des 17. Jahrhunderts wurden die strafgerichtlichen Kompetenzen der Untergerichte allerorten beschränkt. Nur noch leichtere Straftaten konnten hier abgeurteilt werden, weil die Landesherrn mehr und mehr die Aburteilung der übrigen selbst übernahmen. In der Kurpfalz blieben schließlich nur die Injurien- und Schlägereisachen bei den Untergerichten. Sie wurden nach den Regeln des summarischen Prozesses verhandelt" (Scherner 30).

den Hintergrund. Richterliche Befugnisse [authority] im Sinne der Urteilsfindung waren den Stadt- und Amtsgerichten deswegen seit dem Beginn des 17. Jahrhunderts entzogen worden."[19] Access to the law, in the sense of understanding it and being able to navigate it, was limited to those who were educated in it. Not least because many legal documents included a mix of German and Latin legal jargon.[20] Additionally, the "Canzley-Stil," which was used in territorial bureaucratic wrting, with its special rhetorical forms and forms of address, increased the distance between subjects and state servants. According to Cornelia Vismann, it served in the first place as "eine Markierung der Macht."[21] Some territories, such as Prussia, banned the practice of *Aktenversendung*, but bureaucratic *Schriftlichkeit* was the all-pervasive schema of justice in the 18th century. In fact, historian Volker Wahl argues that it was primarily through writing that practical legal reforms could be realized. In the case of Sachsen-Weimar-Eisenach, he observes: "Dabei überwog der schriftliche Verkehr von Behörde zu Behörde. Daß über den Weg der Schriftlichkeit auch 'mancherlei Gedanken, Ideen und Reformpläne' gingen, die im Schoße des Geheimen Consiliums selbst aufkamen, während ihre Verwirklichung nur durch schriftlichen Befehl den Landesbehörden aufgetragen werden konnte [...]"[22] Instructional materials in particular provide evidence of the intensifying scientific, academic, and courtly-absolutist orientation of legal practice. Numerous textbooks, published during this time, instructed future legal scholars in the order of procedure during trials, the correct preparation of legal documents and how to organize them, and, most

[19] Schabel-Schüle, 45-46.

[20] On this note, Justus Claproth points out in 1778 that, as least in the realm of writing *Relationen*, it has become common practice to write entirely in German, whereas just a decade earlier legal documents would have featured of mix of German and Latin: "War bey denen vorigen beyden Ausgaben die vermischte halb teutsche und halb lateinische Schreibart noch so weit im Gebrauche, daß man nicht wohl davon abgehen konnte. Die nachherigen Jahre haben den reinen teutschen Vortrag mehr begünstiget. Deswegen sind die lateinischen Ausdrücke mit teutschen umgetauschet […]" Claproth, Justus C. *Grundsätze von Verfertigung der Relationen aus Gerichtsacten*. 3rd ed. Göttingen: Wittwe Vandenhoeck, 1778. Here: forward to the third edition. Subsequent citations as "Claproth, *Relationen*" with page numbers (when available).

[21] Vismann, *Akten*, 224.

[22] Wahl, 5.

importantly, effective writing style. Enforced through the training of young scholars, legal writing took on a distinct style, form, strategy, and aesthetic.[23]

Justus Claproth's influential textbook, *Kurze Vorstellung Des Civil-Processes* (1766), provided guidelines for the practice of legal writing. Of all his suggestions, it is Claproth's many appeals to the importance of brevity and clarity, both in handwriting and rhetorical style, that create an impression.[24] Originating in the *höfische Zeremoniell* of European absolutist courts, the "Canzley-Stil" aesthetic and rhetorical form that Claproth recommends is thoroughly organized.[25] Thus, the textbook includes strict instructions on form, word placement, spacing, pagination, etc. Not only does it instruct on tone and objectivity in official protocols and reports, it also emphasizes the importance of clarity in handwriting, the virtues of brevity and precision as well as the good practice of wrapping *Akten* together and binding them into case files. It warns against bad practices such as using too much punctuation, not defining foreign terminology, being ambiguous, using relative pronouns that lead to ambiguity, and mixing up unrelated points in a grievance or argument. The art of legal writing was to establish a clear narrative. However, actual situations or utterances in real life that fall outside these guidelines might necessarily face manipulation at the hand of a laywer or judge in order to conform to style conventions and principles. As Meyer-Krentler writes, "das Ziel von Rechtsprechung" was "eine harmonische Wirklichkeit, wirkliche

[23] As Meyer-Krentler and Schild argue, this professionalization of law practice, also led to legal writing as an art form. Schild, Wolfgang. "Relationen und Referierkunst. Zur Juristenausbildung und zum Strafverfahren um 1790." In *Erzählte Kriminalität: Zur Typologie und Funktion von Narrativen Darstellung in Strafrechtspflege, Publizistik und Literatur Zwischen 1770 und 1920*, edited by Jörg Schönert, 159–76. Studien und Texte zur Sozialgeschichte der Literatur 27. Tübingen: Max Niemeyer, 1991, 170.

[24] Claproth, Justus C. *Kurze Vorstellung des Civil-Processes*. Göttingen: Wittwe Vandenhorck, 1766. Subsequent citations as "Claproth, *Kurze Vorstellung*" with page numbers. Note: Like most textbooks of the time, this textbook was published specifically for the study of civil law, not criminal law.

[25] Vismann, *Akten*, 217. Vismann writes: "Die Tätigkeit in der Canzley um 1700 sind ebenso zeremonalisiert wie die übrigen höfischen Verrichtungen. 'Wo Theater- und Gerichtsschranken ununterscheidbar' werden, gerät auch das, was von der Canzley ausgeht, zum *theatrum juridicum*. Als ein in die Sprache verlegtes Zeremoniell treten rhetorische Mittel zur Darstellung von Recht und Herrschaft in den Vordergrund."

Gerechtigkeit herzustellen," and that "die Voraussetzung einer in logischen Zusammenhängen von Ort, Zeit und handelnen Personen funktionierenden Welt werden dadurch, daß die 'Geschichtserzählung' die Dinge entsprechend vorstrukturiert, zum Erzählprinzip."[26] In other words, the literarization or narratization of judicial writing began the moment anything was put on paper. A criticism of this very transformation can be found in Goethe's *Wilhelm Meisters Lehrjahre* to which I will turn to later in more detail.

The standardization of style was important because of the move toward centralization of justice in the individual German territories. The practice of *Aktenversendung* meant that court cases from anywhere, including rural towns were being sent to and decided upon in the central institutions of justice, for example, at the university in Tübingen in Württemberg, at the Jena *Schöppenstuhl* in Sachsen-Weimar-Eisenach, and, in the case of the Kurpfalz, *Akten* could be sent out to other territories.[27]

A standard and rational style was important because of the gravity of the tasks legal writing performed: namely, the finding and establishment of truth. According to Vismann, the facts, or *Tatsachen*, in the *Akten* were treated as truth.[28] Whatever was written down, included in a case file, and then sent off by the local *Amtmann* or authority to a higher court, served as the basis for judgment by a legal faculty or other government body. They treated what was contained in the documents as factual. The judges of higher instances could solicit additional materials from the lower courts if they found the contents of a case file unconvincing, unclear, or incomplete, but

[26] Meyer-Krentler, Eckhardt. "'Geschichtserzählungen'. Zur Poetik des Sachverhaltens im Juristischen Schrifttums des 18. Jahrhunderts." In *Erzählte Kriminalität: Zur Typologie und Funktion von Narrativen Darstellung in Strafrechtspflege, Publizistik und Literatur Zwischen 1770 und 1920*, edited by Jörg Schönert, 117–58. Studien und Texte uur Sozialgeschichte der Literatur 27. Tübingen: Max Niemeyer, 1991, 135. Subsequent citations as "Meyer-Krentler" with page numbers.

[27] In the Kurpfalz, because the land was confessionally mixed, opinions were not usually given by either the University of Heidelberg or Igolstadt (Catholic). Heidelberg was also not a *Landesuniversität*. Opinions from law faculty were gathered from universities in other territories. See: Schabel-Schüle 110.

[28] Vismann, *Medien*, 103.

their eventual judgment in the case would then cement the contents of the *Akten* as truth.[29] Moreover, legal writing, as Claproth stresses, had the power to determine justice, and should therefore be an organized endeavor with a clear system of procedure, lest a decision be subect to "einem blinden Schicksale."[30]

In the wake of the larger trends of secularization and rationalization, a further consequence of the professionalization of legal practice was that justice was no longer necessarily tethered in practice to religion and religious imagery. Some territories such as Württemberg still had *Kirchenkonvente*, local religious and moral courts. However, by the mid-18th century, there was already a theoretical separation of moral and legal justice, and the religious courts were otherwise fading in numbers and importance in Germany. In the formation of the modern conscience between the Reformation and the Enlightenment, Heinz D. Kittsteiner argued of religion's place that "as long as a God watches over the observance of foundational social duties, the conscience is never alone in the ownership of man."[31] Despite nods to Christianity and the occasional use of religious vocabulary, this is certainly no longer the understanding of the legal individual in the minds of

[29] On a similar note, there was a much earlier transition from the seeming "irrational" evidence of pre-Roman Law, for example, the outcome of a duel as God's will, to the rational search for truth through inquisitorial methods, which all ended up in written form in the *Akten*. (Schabel-Schüle, 108) Though torture was still a quasi-rational means of establishing truth in the 18th century, even that had to go through a bureaucratic process in order to be employed. Lower courts had to ask for permission from the higher courts or territorial state government in writing before using torture or the threat of torture during the interrogation process. By the mid-to-late 18th century, torture had gone fully out of favor in many German territories and was banned as early as the 1750s in certain places. As reforms took hold, torture as a tool of investigation no longer brought about truth; newer, more rational and scientific methods were needed. According to van Dülmen, torture is abolished in 1754 in Prussia, 1770 in Saxony, 1776 in Austria, 1809 in Bavaria and Württemberg, and 1828 in Gotha (van Dülmen 20-22). Even as the *Constitutio Criminalis Theresiana* (1768) re-affirmed torture as a legal method of inquisitional interrogation in Austria and Bohemia, it was later abolished in 1776, due partly to the influence of Joseph von Sonnenfels in Maria Theresia's court, who published the treatise "Ueber die Abschaffung der Tortur" a year earlier in 1775. Sonnenfels, Joseph von. *Ueber die Abschaffung der Tortur*. Zürich: Orell, Geßner, Füeßlin, 1775.

[30] On the writing of *Relationen*, or case summary lectures, Claproth warns that "Die Entscheidung einer Sache ist unter denen Händen [those who are not familiar with how to write a proper *Relation*] eines solchen Referenten einem blinden Schicksale unterworfen; es sollte die Sache von vorne vorgetragen, aus einander gesetzet und darüber votiret werden; weil dieses aber ohne System nicht anders, als durch einen Zufall, geschehen kann, so fängt er eben so leicht in der Mitte oder wohl gar da an zu votiren, wo er aufhören sollte, und so kann freylich nichts anders, als ein verkehrtes Urtheil, erfolgen" (Claproth, *Relationen*, forward to the second edition).

[31] Kittsteiner 20. Translation mine.

Enlightenment legal reformers. They saw themselves and their criminal subjects as autonomous, subjective individuals. Kittsteiner continues: "Pushes toward internalizing the conscience are always linked with enlightenment over the gods […]."[32] This advance toward the secularization of law came from both the bureaucracies run by the educated bourgeoisie as well as from absolutist monarchs. Prominent intellectuals such as Cesare Beccaria provided the rationalistic reasoning that made legal practices that were once based on religious belief seem utterly unreasonable and unfit for an enlightened state and populace.[33] Just as torture was an unreliable means of extracting truth by the late 18th century, religion, too, no longer had an official use or place in legal matters. Embracing the trend toward secularization, Meyer-Krentler further notes that local judges and officials no longer used the threat of eternal damnation or images of Judgment Day to compell the accused to confess the truth. Instead, they compelled the accused through confrontation with the coercive logic of the facts of the case.[34]

1.3.3 The Interrogation Protocol

Protocols record the physical and verbal interaction between the involved actors, the authorities and the accused or witnesses, in a court case. The interrogation protocol of a case file is not only the most visually striking part of the case file, it is also the document which initially transcribes

[32] Ibid. Translation mine. This "push for internalization" is especially apparent in the psychological crime stories and plays of the late 18th century as well as the great movements of individual feeling that marked *Sturm und Drang* and *Empfindlichkeit*. For the crime stories, see Košenina's ,"Schiller und die Tradition der (kriminal)psychologischen Fallgeschichte bei Goethe, Meißner, Moritz und Spieß" (2007). Košenina argues that the trend of internal expression as opposed to the "mere external perspective of the third person narrator" was established in 18th century prose in stories and novels, especially in the works of Friedrich Schiller, Johann Wolfgang von Goethe, Johann Jakob Engels, and Friedrich von Blankenburg (Košenina, "Schiller und die Tradition," 122-123).

[33] Along with Voltaire and Montesquieu, Cesare Beccaria, with the publication of his book *Dei delitti e delle pene* (On Crimes and Punishments) in 1764, was probably the most influential and widespread Enlightenment voice against religiously justified practices such as torture in Europe and North America. See: Beccaria, Cesare, marchese di. *An Essay on Crimes and Punishments, Translated from the Italian; with a Commentary, Attributed to Mons. de Voltaire, Translated from the French*. Translated by Anonymous. 2nd ed. London: F. Newbery, 1769.

[34] Meyer-Krentler, 135.

the "putting into speech" of the deed in question.[35] According to Vismann, the protocol was the meeting place of voice and writing.[36] She claims that the gradual split between protocol and voice as juridical media happened sometime around 1800. However, it was especially after 1806 when judges and jurists in occupied German states began studying Napoleon's *Code de Procédure Civil et Pénal*.[37] Before that, the two media were not *necessarily* separate. In the late 1780s and 1790s, Schiller and Goethe already criticize in their literary work the idea that a protocol or any functional bureaucratic document could faithfully replicate the psychological or emotional truth of a dramatic, i.e. human situation.[38] Though, in a time when the attitude towards the written word in legal practice was undergoing change, I would still argue that there are traces of the spoken word in these documents, thus speaking to the desire to represent a present moment for future readers. In protocols, we see the tension between the bureaucratic striving for order, neatness, and harmonious narrativization and the turbulence of an actual communicative exchange between two or more individuals in each other's presence.

Pictured in figure 4 (below) is page five of a protocol manuscript from the interrogation of Johann Friedrich Hezel, a barkeep from Sulz, in December 1792.[39] It is contained in a larger case file concerning him and a dyer, Friedrich Ehinger of Altenstaig. Hezel disrupted the normal proceedings of the civil case by accusing the local authorities of showing favor to Ehinger, who had previously brought a claim against him and who had won the case.[40] More precisely, he accused the *Oberamtmann*, the official conducting the interrogation, of receiving a gift from

[35] In *Medien der Rechtsprechung*, Cornelia Vismann cites Peter Legendre's idea that all trials have an "unhintergehbare theatralische Dimension" in which the criminal act is reconstituted through narrating it verbally in court (Vismann, *Medien*, 31).
[36] Vismann, *Medien*, 98.
[37] Vismann, *Medien*, 112-113.
[38] See Chapter 2, especially the analyses of Goethe's *Wilhelm Meister*.
[39] "Johann Friedrich Hezel von Sulz wegen Betrug durch Geisterbeschwörerei / 1792," 1792. Bestand A 309 / Bestell. Nr. Bü 342. Hauptstaatsarchiv Stuttgart. Manuscript.
[40] "Johann Friedrich Hezel von Sulz wegen Betrug durch Geisterbeschwörerei / 1792," pages 1-3.

Ehinger two years prior, which he claims then prompted the *Oberamtmann* him to deal with Hezel unfairly in favor of Ehinger. In the interest of discouraging copy-cats from acting obstructively like Hezel, the *Oberamtmann* finds it necessary to make sure that "dieser insolente Mann," who "stost unter anderen die meiner Amts-Ehre äuserst nachteiligen Worte vor dem ganzen Magistrat aus," is "exemplarisch bestraft."[41]

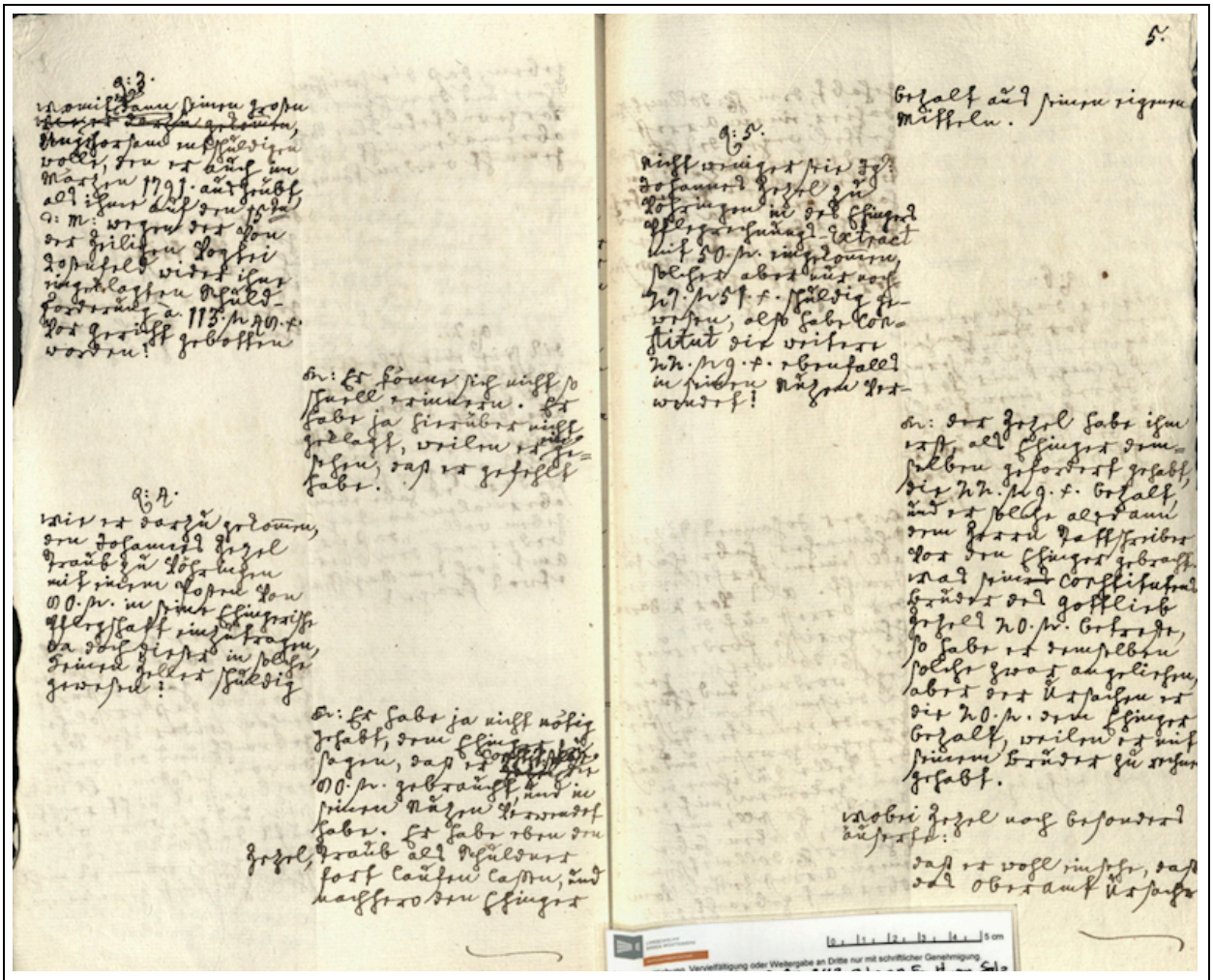

Fig. 4: "Johann Friedrich Hezel von Sulz wegen Betrug durch Geisterbeschwörerei / 1792," 1792. Bestand A 309 / Bestell. Nr. Bü 342. Hauptstaatsarchiv Stuttgart. Manuscript.

[41] Bribery was a common problem among state authorities and bureaucrats, as evidenced by the periodic publication of *General-Reskripte* and *Dekrete* against it by the office of the Duke of Württemberg in the 18th century, and the *Oberamtmann* of Sulz sees a need to refute this accusation in writing. See the list of published *Reskripte* and *Dekrete* on the topic of illegal "Geschenk-Annahme" (at least seven the 1700s) in the table of contents section of: Reyscher, Dr. A.L. *Vollständige, Historisch und Kritisch Bearbeitete Sammlung der Württembergischen Gerichts-Gesetze, Sechster Band. Enthaltend den Dritten Theil der Sammlung der Gerichts-Gesetze. Dritter Theil. Enthaltend die Dritte Reihe der Gerichts-Gesetze vom Jahr 1654 bis zum Jahr 1805.* Tübingen: Ludw. Friedr. Fues., 1835.

The manuscript contains multiple levels of information. On its most basic level, the protocol refers to the interrogation event that took place in 1792. The text relates to this event through its use of reported speech, *Konjunktiv* I, which is inherently referential, indicative of a separate time and place. In other words, protocol manuscripts were written with the knowledge that they would be later *read* by jurists in order to make their decisions. In addition, the rationality of the interrogation style is visible in so far as the disembodied fragments of speech mimick an exchange between two people, their dialog, and the separate physical spaces they occupied.

Furthermore, the manuscript features the *form* of the interrogation in ways that the clerk *constructs* them on paper for the bureaucratic purpose of information gathering. He is not recording the event itself; he is recording information from the speech act, simultaneously summarizing, editing, and editing out. Furthermore, he creases the pages so that the centerline visually separates the utterances of the interrogator (left) and the witness (right), and he spaces the text blocks vertically to indicate questions and answers in sequential order. It is the 'checkerboard' form, I argue, which promotes clarity and indicates traces of the spoken word. The reader should not mistake the utterances of the interrogator for those of the interrogated since they occupy separate columns. First and forement, as we are told by textbooks such as Justus Claproth's *Kurze Vorstellung*, judicial teachings demanded clarity. Visually, the checkerboard represents a well-ordered spoken exchange between two individuals without overlap, whose utterances occupy two distinct and separate physical spaces on the page. This representation of the ideal interrogation forces the actual event of the interrogation into the form of the two-dimensional manuscript. There are editing marks such as strikethroughs, additions, and spacing errors, as seen on this page, which hint at the inexactness and fluidity of language in a spoken exchange. Generally, however, it conforms to a strict logical structure where such mistakes appear in contrast to that structure.

In the case of the bureaucratic court system of the Duchy of Württemberg, for example, such a protocol is required in order to dispense official justice. Interrogations were supposed to be systematic processes in order to create coherent narratives out of complex life situations that would lead to true, just decisions by the court. The layout of the manuscript reflects this desire for order and coherence, whether or not this particular interrogation was actually so. After all, Friedrich Hezel was not a very cooperative interrogatee. In this sense, the court manuscript tends to draw out the emotion of the moment and the personality of the actors. It deescalates the emotion of the exchange in favor of legal clarity. Even when disruptions are recorded, for example, noting the "insolence" of the accused, the disruptions are integrated into an orderly narrative form.

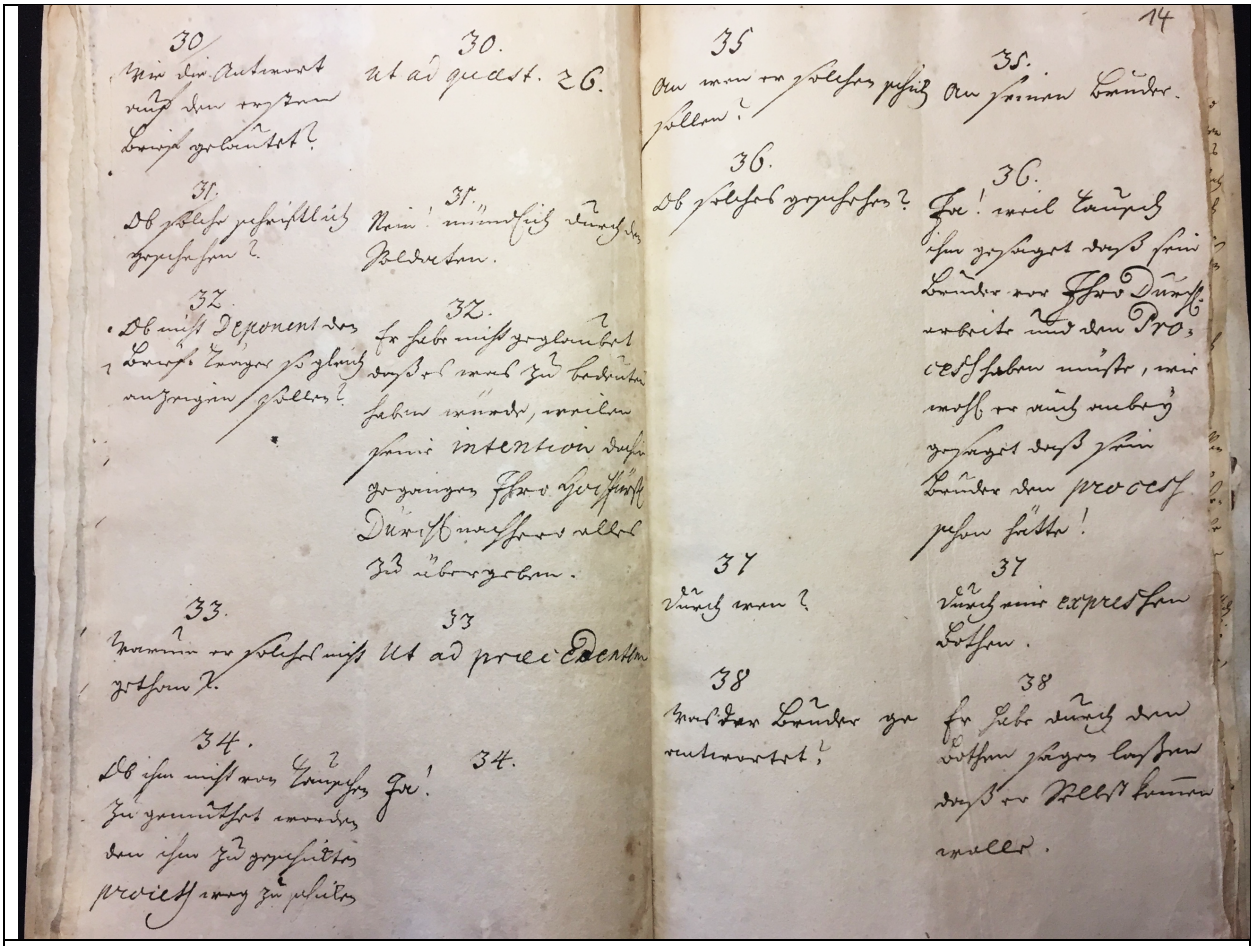

Fig. 5: "Untersuchung gegen den im Zuchthaus zu Weimar befindlichen Goldmacher Christian Friedrich Tausch aus Schönau," 1737-1742. B 2655. 6-12-3007. Landesarchiv Thüringen - Hauptstaatsarchiv Weimar. Manuscript.

The second protocol (fig. 5, above) is from 1738 in Weimar, concerning "gold-maker" or alchemist Christian Tausch. Again, the court clerk organizes the interrogation protocol into two columns, delineating the interrogator (on the left) and the interrogatee (on the right). In order to organize the protocol visually, he numbers both the questions and responses so that, for example, question "30" on the top left of the page aligns with answer "30" next to it.

What the court clerk tries to accomplish here during the interrogation is the translation of live action into drama-like prose to be read later by jurists in silence. In this act of translation, the clerk breaks down a complicated life situation into "facts", where one disembodied text block requests information and the other text block provides the information. At the same time, these documents make references to the actual interrogation, and because of these references, the manuscript is coded with dramatic signals. In a way, the manuscript itself contains dramatic potential. Just as a theater manuscript is a coded reduction of a performance that will take place on stage, or a *Lesedrama* is coded for the imagination in a public or silent reading, so too is the court interrogation manuscript coded for its legal readers.

1.3.4 The Speed of Justice: Temporal Consequences of *Schriftlichkeit*

Justice in the 18th century was characterized not only by thick stacks of case files, but also the potential of very lengthy trials. While many minor civil cases could be concluded in a day by a local court, the durations of other cases often lasted weeks, months, or even years. The prominent 17th century example is the witch case against Katharina Kepler, the mother of astronomer Johannes Kepler, in Württemberg, which lasted 6 years until her eventual release, from 1615 to 1621.[42]

[42] Sutter, Berthold. *Der Hexenprozeß gegen Katharina Kepler*, Kepler-Gesellschaft Weil der Stadt and Heimatverein Weil der Stadt, Weil der Stadt: Kepler-Gesellschaft, 1979. Katharina Kepler was released on October 7, 1621.

The reputation of justice for its crawling pace appears in criticism and parody, including treatises on how to speed up or at least how to navigate the judicial process more efficiently. For example, a short section in Claproth's *Kurze Vorstellung des Civil-Processes* (1766) admits to the often-lengthy wait times that the lower courts and lawyers might have to endure before receiving a judgment. There are, however, official intermediary steps lawyers could take to solicit results from a backlogged justice system:

> Von der Solicitation eines Urtheils oder Decreti.
>
> 1) Wenn das Urtheil oder Decret zu lange ausbleibt, so erinnert man entweder durch Solicitations-Zettul oder Gesuche *pro maturanda sententia*.
> 2) Wenn diese nicht helfen, so beschwehret man sich bei dem Ober-Richter *super protracta justitia*.
> 3) Wenn aber auch die vom Ober-Richter erlassene *mandata de administranda justitia* nichts helfen, so wird um *avocationem causae* gebethen.[43]

Recognition and critique of the problem also came from the goverments themselves. In 1781, the government of Duke Carl Eugen of Württemberg sent out a *General-Reskript*, or official communication or order, concerning the maximum possible reduction and acceleration of civil cases. The government had noticed to their "nicht geringen Mißfallen und Bedauren" that "seit einigen Jahren die Zahl der Processe gegen vorigen Zeiten sich vergrössern wolle, mithin eine Proceß-Lust einzureißen beginne […]."[44] The government diagnosis of the problem is a growing appetite for litigation amongst the population. The following solutions are proposed:

> [...] daß in Zukunft in Sachen, welche unter 50. fl. betragen, entweder gar keine gelehrte Advokaten vor Gericht zugelassen- oder doch wenigstens dieselbe zu mündlichen Vorträgen und Handlungen angehalten- die Beschaffenheit der Sache summarisch und schleunig zu untersuchen getrachtet- und anstatt in jeglicher geringfügigen Proceß-Angelegenheit einen weitläufigen Schrift-Wechsel zu gestatten [...] und eröffnet- hingegen nur in beträchtlichern Sachen, welche Unser Herzogl. Land-Recht namentlich für wichtig erklärt, ein schriftlicher Proceß gestattet werden soll.[45]

---

[43] Claproth, *Kurze Vorstellung*, 44.

[44] From the December 31, 1781 *General-Reskript* "möglichste Verminderung und Beschleunigung der Civil-Prozesse btr." In: Reyscher, Dr. A.L. *Vollständige, Historisch und Kritisch Bearbeitete Sammlung der Württembergischen Gerichts-Gesetze, Sechster Band. Enthaltend den dritten Theil der Sammlung der Gerichts-Gesetze. Dritter Theil. Enthaltend die Dritte Reihe der Gerichts-Gesetze Vom Jahr 1654 Bis Zum Jahr 1805.* Tübingen: Ludw. Friedr. Fues., 1835, 657-661. Subsequent citations as: "Reyscher, *Württembergischen Gerichts-Gesetze,* 1835" with page numbers.

[45] Ibid.

In summary, the government recommends altering the standard way of practicing law in Württemberg: trimming out the use of lawyers as well as rejecting *Schriftlichkeit* and the normal *Aktenversendung* process unless it is deemed to be important to the case. The image of justice looked at from the internal workings of government was considered one of waste and overburdened bureaucracy. Despite the *General-Reskript*'s claim that trial delays are a recent problem in Württemberg due to the so-called *Proceß-Lust*, Claproth's 1766 textbook establishes that this was an already well-documented feature of litigation in Germany. It seems that the legal trial at the time was as much a game of submitting documents and waiting, for criminal just as well as civil cases, as it is a "duel" or a grim process of interrogation as described by van Dülmen.[46] Interestingly, the bureaucrats of Württemberg were not the only ones to blame its subjects for time-wasting civil trials. In 1744, Gottlieb Wilhelm Voigt, *Amtmann* of Allstedt, wrote in a reply to the *gemeine Kanzlei* in Weimar that had inquired about a frivolous inheritance case in his jurisdiction that, by their estimation, was wasting time and money. The title page to Voigt's letter notes that he "hat selbiger den in Abschrifft hierbey gelegten unterthänigsten Bericht erstattet, und darinnen seine Unschuld wegen der […] Justiz Verzögerung so wohl, als cauhirung vergeblicher Kosten klärlich zu [?]age geleget." In his letter, Voigt then notes that "unnöthe Zänckereyen und Geldstilternde Proceße" have been a trend in the past, claiming that "ein jeder gewißenhaffter und Wahrheit liebender Unterthan" must be shown that these types of activites will not be tolerated.[47]

---

[46] van Dülmen, *Theatre*, 22.

[47] "Weisung an den Amtman zu Allstedt, Gottlieb Wilhelm Voigt, die Streitsache zwischen Christian Vollmann und Christian Liebold ohne Anstand der Justiz gemäß ab zutun und den Leuten nicht vergebliche Kosten zu machen." 1744. B 2441. 6-12-3007 Rechtspflege. Landesarchiv Thüringen - Hauptstaatsarchiv Weimar. In his defense, Voigt writes to the *Kanzlei* that fault lies with the actions and petulant characters of the involved parties: "Worauf Höchst deroselben unterthänigst nicht zu bergen daß, wir diese Sache einige Erbschaffts-Irrungen zwischen ernannten Vollmanns Weibe und gedachten Lieboldten, welche der erstere nur Kurtzlich und seit dem 9. Marti a.c. von neuen anhängig gemachet, betrifft, also ich solche, weil Vollmann ohnehin ein Blutarmen Mann zeithero ex officio und ohne bey den Theilen einige Kosten anzufordern, zu unternehmen gesuchet, mithin vielmehr, der vorhero die Interessenten verschiedene unnöthige Aus-schreih[b]ungen gemachet, und vielleicht, wo sie ja einige Unkosten

Christian Gottfried Körner, a lifelong friend Friedrich Schiller, who lived and worked as a jurist in Dresden, gives detailed insight on the problem of lengthy civil cases in 1792:

> Aus diesem Gesichtspunkte hat man die Maasregeln zu betrachten, die gegen die einzelnen Ursachen des langsamen Rechtsganges theils schon angerathen und versucht worden sind, theils annoch vorgeschlagen werden könnten. Folgende sind als die wichtigsten Ursachen bekannt, wodurch der Civilprozeß häufig verzögert wird:
>
> 1. Schriftliche Verhandlung durch Advokaten,
> 2. Verschickung der Acten an Dicasterien, [governmental department offices]
> 3. Vervielfältigung der Urthel,
> 4. Mehrheit der Instanzen, […][48]

Körner cites the "schriftliche Verhandlung," which in Germany was the standard trial process, as well as "Verschickung der Acten," which again was also standard practice in many of the territories. "Vervielfältigung" refers to the labor-intensive process of hand copying legal documents by scribes, in this case, the "Urthel". The many "instances" refer to the different hands and offices a case file might pass through before a trial is officially resolved. In short, according to Körner's initial identification of the problems, the German legal system itself was to blame for the slowness of litigation.

In all three examples of legal delay on account of the justice system's reliance on *Aktenversendung*, directness is lost. With this, we return to the idea of fragmentation. As a point of comparison, public trial by jury might have a lengthy duration, but there is generally a good

---

gehabt Hartnächigkeit und Zancksucht, in vorigen Zeilen sich geflißentlich verursachet, und zugezogen, alle ohnnöthige Weitläuffigkeiten möglichster maßen abzuschneiden getrachtet habe, auch äußersten Fleißes bemuhet gewesen bin, die Sache durch einen Vergleich in der Kürtze zu heben; […] Ew. p. p. werden also hieraus gnädigst zu erkennen geruhen, wir höchst dieselben zu milde des falls berichtet worden, wenn vielleicht ein oder der andere, ob mache man ohnnöttige Kosten vorzugeben sich nicht gescheuet. Dem zugeschereigen[?], daß ich überhängt nichts an Kosten nehme, als was in der fürst Tax-Ordnung vorgeschrieben ist. Darbey aber allezeit dass Armuts und andere Umständte derer Unterthanen mit hintansetzung alles Eigennützes, gewißenhafft conside[?]ire und mehr als die helffte ex officio und umsonst thue mir auch die Veranlassung unnöttiger Proceße mit Wahrheit nicht wird nachgesaget werden können sondern im Gegentheil ein jeder gewißenhaffter und Wahrheit liebender Unterthan bezeugen muß, daß solche unnöthe Zänckereyen und Geldstilternde Proceße der gleichen in vorigen Zeiten hier mode gewesen seyn mögen, keineswegen mehr gestaltet, auch alle Sachen, so viel mir immer möglich, wo andere Theils die Partheyen nicht selbst muthwillige Buszüge machen, theils deren Sachen Beschaffenheit nicht zuvor einen beweiß oder anders ectaircishement erfordern in der kurtze abgethan warden […]."

[48] Körner, Christian Gottfried. "Ueber die Verbesserung des Civil-Prozesses." In *Gesammelte Schriften*, edited by Adolf Stern, 254–75. Leipzig: F.W. Grunow, 1881, 257.

degree of temporal and spatial continuity. The jury members and all interested parties are directly involved in the activities of the trial in court. The inquisition process and *Aktenversendung*, on the other hand, have a very tenuous and specific relationship with continuity once the case files were sent off. There is a very clear spatial and temporal rupture. The only thing that binds different instances of the *Aktenversendung* process together, other than the content of the trial, is the activity of waiting. Not only do the interested parties have to wait for a decision, there is also a period of delay between the investigation and the instance when the case files will actually be opened again by a law faculty member. If we accept Vismann's notion of the written *Akten* as speech in the period before 1800, then the act of speech performed before officials of the lower courts during inquisitorial interrogations essentially embarks on a bit of time—as well as space—travel before reconstituting itself again before its judge. Already by the late 18th century, governments and legal professionals were already picking up on certain trends that would define early 19th century legal reform discourse: the vilification of *Schriftlichkeit* in favor of orality, or *Mündlichkeit*, and the move away from the *Aktenversendung* process toward a more local and direct—even public—trial procedure.

1.3.5 The Speed of Justice: Literary Examples

Thus far, examples from legal writing present an image of justice in which trials are often lengthy affairs, in which waiting for written replies are the main delay. If this is how justice generally functioned in the German territories, we will now look at how trial speed and length were represented in an artistic medium: plays. Unlike the examples given earlier, which were circulated exclusively or mostly amongst state bureaucrats or individuals working in the legal profession, plays, printed or staged, were a form of entertainment for the public. Since plays were bound to

certain practical and artistic conventions, temporal truncation was one of the most important strategies that went into the fictional representation of trials in a play.

The well-known potential for slowness in the judicial system, especially for civil cases, poses an interesting practical challenge for the production of legal-themed plays around 1800, which usually take place over a short period of diagetic time. Bound by Aristotles' poetics which demanded the "unity of time" and the "unity of space" for tragedies, any serious legal case presented in a play required truncation. At the same time, a typical legal case in the German territories, if a contemporary case were being dramatized, whether criminal or civil, did not provide many neat instances of action. Tragedies with historical subject matter, such as Schiller's *Maria Stuart* (1800) or Büchner's *Dantons Tod* (1835), focused therefore on the high points in the trials, such as Mary Stuart's sentencing and execution in England or Danton's public trial by jury and execution in Paris. Kleist's comedy *Der zerbrochne Krug* (1808/1811), which takes place in a rural village courthouse in the Netherlands, approaches the idea of a "courtroom drama" in a bare-bones, minimalist fashion. It is a play which follows an entire legal storyline *sans* punishment in one sitting. In this respect, it was quite unique in German theater at the time. The scope of the dispute, however, is easily contained within a single day of diagetic time.

On the other hand, there are plays in which crime, trial, and judgment are completed within a single 24-hour period with major temporal truncations between scenes. Among them are Ferdinand Ludwig Schröder's *Amtmann Graumann* (1778) and August Wilhelm Iffland's *Albert von Thurneisen* (1781). Both set in unnamed German territorial states, the former depicts a kidnapping, a trial with an instance of *Aktenversendung*, and a sentencing. The latter is concerned with a military tribunal culminating in the death sentence of the titular figure. Another strategy to which authors turn is to initiate a trial, or indicate that a trial is imminent, and then abandon the

official procedure by providing an alternative political or private solution to the conflict. This is the case in Iffland's *Verbrechen aus Ehrsucht* (1784) and *Die Jäger* (1785), both of which are set in 18th century Germany. In these plays, Iffland either simplified and accelerated the legal action, or selected specific story moments to include in the play. Regardless of genre, whether the play is a historical drama, a comedy, or a *bürgerliche Schauspiel*, truncations of time were necessary. For the purpose of better understanding the dramatic process of representing justice in terms of its temporality, I now turn to the aesthetic and practical choices of two authors, Iffland and Schröder, and the image they present of justice.

1.3.6 August Wilhelm Iffland's *Die Jäger* (1785)

Actor, director, and playwright August Wilhelm Iffland (1759-1814) began his acting career at the Gotha *Hoftheater* with Conrad Ekhof, then moved with much of his Gotha troupe to Mannheim in 1779, where he found stardom as both an actor and dramatist. He finally settled in Berlin as director of the *Nationaltheater* from 1796 until his death. His play *Die Jäger: Ein ländliches Sittengemälde in Fünf Aufzügen* (1785)[49] became one of his most popular and enduring plays. In it, two legal cases of varying duration, one civil and one criminal, are depicted. Both fictional cases also thematize the speed of justice. Iffland wrote *Die Jäger* during his time at the *Nationaltheater* in Mannheim, a city with its own judicial privilege. However, the Kurpfalz as a whole had gravitated toward a more academic centralized system of justice in the 17th century. The lower courts handled only minor criminal cases and offenses, while serious criminal trials were sent to the level of the state government, or the *Geheimen Criminalconferenz*.[50]

[49] *Die Jäger* also received a sequel in 1802 titled *Das Vaterhaus*.
[50] Scherner 30.

The first case I will turn to is described in a dialogue between the main protagonist, the honest head forester, or *Oberförster*, Warberg of Weißenberg, and his antagonist, the corrupt *Amtmann von Zeck*. The head forester invites the *Amtmann* and his daughter over for a midday meal. The *Amtmann* mentions how difficult it was to accept the head forester's invitation due to his busy schedule, which then prompts a heated conversation about the poor state of justice in Weißenberg:

> Amtmann. Ich muß wegen der Grenzstreitigkeiten mit Oberhausen noch arbeiten, ehe ich dort hingehe – die Prozeßsachen hier im Ort wollen denn doch auch gefördert sein – wie gesagt – ich mußte mich mit Mühe losreissen.
>
> Oberförster. Prozeßsachen? O Herr Amtmann, kehren Sie zurück, achten Sie nicht auf die Einladung [the head forester's invitation to lunch] – in unserm Ort sind viel Bettelleute durch langsame Justiz. Wollten Sie ihnen *heute helfen?* O, so wahr Gott ist! dann thun Sie was Bessers, als Braten essen und Wein trinken – kehren Sie zurück!
>
> Amtmann. Nicht doch – es kann Anstand haben. Es hat damit nicht so viel Eile.
>
> Oberförster. Nicht Eile? – Mordtausend Sapperment!
>
> Amtmann. Was ist Ihnen?
>
> Oberförder. Herr! dem Ludwig Grothal kostet der Prozeß – der Bettel, über den er herkömmt, ist 5 Thaler werth – kostet ihm hundert. Das Haus ist für die Gerichtskosten verkauft – das Vieh wurde herausgetrieben, indeß er auf dem Felde war. – Es war nur Vieh, aber wie ich es so in der Irre brüllen hörte, schnitt mirs durchs Herz. Die Kinder sind von der Gemeinde barmherzig aufgenommen. Er ist nach Amerika. Um Papiere, um elende Rechtsverdrehungen ist ein fleißiger Hausvater aus dem Vaterlande gejagt worden! Herr – wenn zu Ihren Tressen da – auch nur etliche Groschen von jenem Vermögen verwandt sind, so drücken sie schwer.
>
> Amtmann. Lieber, heftiger Mann – was kann ich dabei thun? Der Schlendrian ist alt – ich kann ihn nicht heben – man muß Geduld haben!
>
> Oberförster. Wie zum Teufel! soll es ein ehrlicher Mann mit seinem Gewissen machen? Wahrheit ist nicht Wahrheit. Wer klagt, wird ausgelacht. Wem der Kopf brennt über einen Schurkenstreich, ist ein Tollkopf. Drinn hauen, soll man nicht. Was *denn?* Schweigen, lügen, unbarmherzig, feig sein – oder mit stehlen und rauben, drüber und drunter?
>
> Amtmann. Mein guter Mann – das war der Welt Lauf von Anbeginn, und wirds auch wohl bleiben bis ans Ende.
>
> Oberförster. – Herr – ich glaube, Sie haben Recht.[51]

Upon finding out that his midday meal invitation has torn the *Amtmann* away from his legal work, the head forester encourages the *Amtmann* to return to work, since it is well-known in the town that many people have become beggars on account of "langsame Justiz." The causes of this are the court fees, or "Gerichtskosten," that accumulate over time for the involved parties, as the length

[51] Iffland, *Die Jäger*, 73-74. Act 3, Scene 13.

of a case extends beyond a party's financial means. It should be noted here that in many territories, including the Kurpfalz and Württemberg, small civil claims under a certain value were the sole responsibility of the lower courts, i.e. under the *Amtmann*'s full jurisdiction.[52] To return to the head forester, he cites the case of one Ludwig Grothal, whom he describes as a "fleißiger Hausvater." In order to signal the urgency of the problem in Weißenberg as well as the negative consequences that slow justice has for individual subjects and for the *Vaterland*, he points out that Grothal's family has been ruined and that Grothal has been driven from his home. Using patriotic vocabulary, his affective description of Grothal's plight is meant to appeal to the *Amtmann*'s sympathies, but also the reader's or audience's sense of fairness and justice. The *Amtmann*'s reaction to the Grothal story ("was kann ich dabei tun?") demonstrates his general dettachment from the individual human fates of the citizens of Weißenberg, for whom he is responsible in the name of the sovereign.

Both the head forester and the *Amtmann*, who assume the respective roles of the positive and negative figures, accept the head forester's premise that justice in Weißenberg is slow, and that it has led individuals to ruin. However, they present differing assessments of what can or should be done about it. The head forester offers first and foremost a practical, material solution: the *Amtmann* can help the beggars of Weißenberg today ("noch heute") by forgoing modest luxuries ("Braten essen und Wein trinken"). He can use that time instead to work on "Prozeßsachen." In this scenario, the *Amtmann*, as an individual, has the power and responsibility to bring justice in Weißenberg up to speed. At least, that is one possible reading of the head forester recommendations.

[52] This applies to summary trials. What the reader does not know, however, is whether or not multiple instances within the case have perhaps required the lower court to refer to a higher court. I think the assumption of the play is that the Amtmann has full jurisdiction over the case, but that he is behind on his work due to negligence.

The play criticizes slow justice in order to demonstrate the corruption and disinterest of the local representative of the territorial sovereign. However, in the context of contemporary legal discourse, we might read into his plight yet further demands: the desire for directness, or *Unmittelbarkeit*, and immediate concrete action in the execution of justice. As it is expressed by the head forester, he insists on helping people "noch heute." This would minimize time *and* physical space between the involved parties, the information gatherers, the case file, and the judge in a case. This desire does not necessarily address the historical reality of the trial process, since the *Amtmann* is not the only actor with authority in the judicial process, a fact he acknowledges when he says to the head forrester "was kann ich dabei thun? Der Schlendrian ist alt […]." However, the desire for a present and direct justice remains.

Returning to how the head forester and the *Amtmann* understand delays in justice, the *Amtmann*'s simply accepts the status quo of slow justice. Among his many responsibilities, the "Prozeßsachen hier im Ort wollen denn doch auch gefördert sein." Rather than urgency, the decorum of his office requires sociability and ease, and therefore "nicht so viel Eile." On the fate of Grothal, he avoids taking direct responsibility and instead claims helplessness. He attributes destructive judicial practices to the vague and abstract force of tradition: "Der Schlendrian ist alt – ich kann ihn nicht heben – man muß Geduld haben!" "Der Schlendrian" almost refers to a systemic problem, a general problem of bureaucracy, but not in any concrete way. And because it is not concrete, it is also something that cannot be addressed or solved. It remains an elusive, oppressive force that is to blame for the plodding pace of justice in Weißenberg and for the "Bettelleute" who have come out of the justice system. From the perspective of the head forester's assessment, the *Amtmann* as an individual servant of the state has the duty and ability to effect forward movement in individual legal cases in Weißenberg, whereas the *Amtmann* sees the case

file as a tiresome bureaucratic mass that must "auch gefördert sein". The head forrester's reminder of individual action turns into a resounding condemnation of the *Amtmann*'s character and outlook on his office. In making the head forester the more sympathetic character, Iffland advances the idea that individual responsibility can make a difference even in large systems. In like manner, he uses the character of the Amtmann to critique slow-moving bureaucrats who do not take responsibility for their office. In the Grothal case, Iffland's strategy for representing a trial of a long duration is to summarize the circumstances of the trial briefly in a narration, while framing it in a conversation which thematizes trial length and speed. Narratively, it also serves as a foil to the second legal case in the fifth act of the play.

At the end of the fouth act of the play, after the *Amtmann* has left the home of the head forester under disagreeable circumstances, the head forester receives news that his son, Anton, has been arrested for mortally wounding a man with a knife. In the fifth act, the *Amtmann*'s office has already interrogated Anton and interviewed witnesses. In a show of speed, he is ready to send a report to a higher court as is mandatory in serious criminal cases. However, the local pastor wishes to intercede on Anton's behalf and has a private word with the *Amtmann*. Rushing, the *Amtmann* demands:

> Amtmann. Hm! Zur Sache und kurz. Die Umstände eilen; eilen Sie auch!
> Pastor. Eilen? – Es gilt ein Menschenleben.[53]

The topic of "eilen" returns in this exchange, as well as the idea that rapidity and slowness in justice can determine the fate of an individual. In both the cases of Anton and Grothal, a person's life or livelihood are at stake. The lack of "eilen" in Grothal's trial led to ruin, whereas the *Amtmann*'s sudden determination to rush in initiating Anton's trial will presumably lead to a quicker death sentence. The "Schlendrian" of the *Amtmann*'s work has vanished. In his previous

[53] Iffland, *Die Jäger*, 102. Act 5, Scene 8.

claim, an individual *Amtmann* could do nothing against the sluggishness of his work ("ich kann ihn nicht heben"), but now, "die Umstände" have caused compulsive urgency. Curiously, in both cases, the *Amtmann* absolves himself of any responsibility in regard to the speed of his work. According to him, it is either the "Schlendrian" or "die Umstände" which dictate that. The Pastor rejects the idea that "die Umstände" are necessarily urgent, and posits the weight of a human life against hastiness. In a chiasmic figure, "eilen" is required in a trial that could result in a death sentence, where one would traditionally want to move at a slower pace. On the other hand, "eilen" is not necessary in a case where slowness has led to ruin. The *Amtmann*'s seemingly misanthropic behavior is demonstrated by his actions of rushing and delaying.

The entire action concerning the case against Anton takes place in the fifth act. By the end of the play, the case is nullified on account of another man coming forward and admitting guilt for the crime, and on account of the seemingly mortally wounded man having been not mortally wounded after all. Consequently, the second trial presented in *Die Jäger* deals with the initial information-gathering instance of a trial, the *Ermittlungsinstanz*, without any case files ever being sent out. In this way, Iffland succeeds in containing the dramatic excitement and procedures of a trial in a relatively limited space and duration. Still, he had to accelerate trial procedure off stage in order to arrive at a happy conclusion by the end of the diagetic day. According to the play's timeline, in one afternoon, the following takes place: 1) the head forester's son, Anton, encounters a man on the highway, 2) Anton is accused of wounding that man with a knife, 3) he is taken into custody, 4) the *Amtmann*'s office interrogates him and all the witnesses at the scene, 5) the *Amtmann* then writes his report and compiles all the necessary documents for the criminal case file to be sent off to a higher legal instance, 6) he brings the suspect to the head forester's home at the request of the local pastor, 7) another local man, who is the real perpetrator of the knife attack,

finds out that the forester's son had been wrongfully accused, 8) the real perpetrator surrenders himself to the authorities, 9) the victim of the knife-attack regains consciousness and confirms the real perpetrator's claims, and 10) this news is delivered to the forester's household, whereupon the head forester's son is freed. The long wait for an answer from higher courts has been avoided in this instance, but temporal truncation is still a necessary strategy for the author.

In *Die Jäger*, Iffland manipulates the duration of legal cases. His solution is to present the initiation of a criminal case with a very short duration, which is eventually voided, while also citing a lengthy ruinous civil case in a conversation. Both are in some way compacted. One is narrated, while the other is accelerated to an impossible speed off stage. Both cases are framed in a way that highlights the *Amtmann*'s corruption, which is the causal link between them. Notably, there is no strong call for official reform or change on the topic of the creeping pace of justice, only a condemnation of bureaucratic corruption and the habit of slowness in legal work. The "noch heute" passage gestures toward a desire for change, but it is also brief and hardly radical. Iffland was not a polemic dramatist, and his critique of the speed of justice seems to align with the frustrations of practicing lawyers of the time. He blames the corruption of an individual bureaucrat, the proverbial bad apple.[54] What is noteworthy about Iflland's portrayal of the speed of justice is the discussion of whether the slowness of justice is an inevitability or a state that can change. The fact that the positive figure, the head forester, advocates for a change points to the understanding that the stacks of unread case files languishing in judicial offices is no longer acceptable.

[54] Or as Anne Fleig puts it, "menschlich[e] Schwächen" and "das Fehlverhalten Einzelner," in: Fleig, Anne. "Die Jäger (1785)." In *Ifflands Dramen: Ein Lexikon*, edited by Alexander Košenina and Mark-Georg Dehrmann, 136–41. Hannover: Wehrhahn Verlag, 2009, 136. In his play, Iffland depicts subjects of an absolutist state being made beggars, seemingly without offending the sensibilities of the ruling class. In fact, the play was first performed at the "hochfürstlich Leiningischen Gesellschaftstheater" by members of the nobility and state bureaucracy. Whether or not the audience had experienced slow litigation, this was apparently not so difficult to imagine.

1.3.7 Ferdinand Ludwig Schröder's *Amtmann Graumann* (1778)

Theater director, reformer, and dramatist Ferdinand Ludwig Schröder (1744-1816)[55] began as an actor with Ackermann's wandering theater troupe. As a student of Conrad Ekhof, he was one of Germany's leading theater reformers and directors, and he held the post of director of the Hamburg Theater intermittently between 1771 and 1813. His play *Amtmann Graumann* (1778)[56] is a bourgeois piece that provides a contrasting solution to the potential lengthiness of territorial justice from that of Iffland's *Die Jäger*. Unlike Iffland, who thematizes both delay and speediness in the justice system, Schröder chooses to use temporal truncation to an extreme degree in order to avoid the question of the pace of justice altogether.

The source of action and conflict in Schröder's 4-act play is the "romantic" pursuit of the daughter of a well-respected bourgeois *Amtmann* in a rural village by a hot-headed young army officer from the nobility. The officer kidnaps the daughter while his unit is quartered in the village. Upon arrest by village farmers and officials, he is brought before the *Amtmann* for trial. A secondary plot involving the *Amtmann*'s son, a new recruit for the army, then unfolds. The *Amtmann*'s son pulls his sword on the young officer in defense of his sister, an act which implies also insubordination against a superior officer. The *Amtmann* is forced to take up his role as a judge in order to settle the conflicts, yet he agonizes over his role as fair judge, loving father, and involved party. There are several common tropes that deepen the drama: the material and class advantages of nobility vs. bourgeois virtue, military vs. civil jurisdiction, female virtue and the ruin of bourgeois family honor, the allure of military action and glory for young men, the duty of

[55] Krone-Balcke, Ulrike. "Schröder, Friedrich Ludwig." In: *Neue Deutsche Biographie* 23 (2007), 555-556. URL: https://www.deutsche-biographie.de/pnd118610813.html#ndbcontent

[56] Schröder, Friedrich Ludwig. *Amtmann Graumann, oder die Begebenheiten auf dem Marsch. Ein Schauspiel in Vier Aufzügen*. In *Dramatische Werke*, edited by Eduard von Bülow, 1. Berlin: G. Reimer, 1831, 199-244. Subsequent citations as "Schröder, *Amtmann Graumann*" with page numbers.

obedience to one's prince, as well as the well-administered household of a good, enlightened *Hausvater*. What provides a harmonious solution to all strands of conflict, however, is the trial and judgment of the involved parties, for which the *Amtmann* is responsible. The trial itself, including crime, arrest, interrogations, preparation of the case file, delivery of the case file to the king, waiting for the king's response, reading the king's verdict, and the sentencing, takes places in the last two acts of this 4-act play. Notably, it lasts significantly less than a day in diagetic time. In order to bring the plot to a close via a completed trial, Schröder eliminates the waiting times for performing judicial tasks such as interrogating, reading and writing reports, as well as corresponding via messenger.

One particular manipulation stands out in Act 3. Once the *Amtmann* has read through all the trial protocols and has written his report, he orders his court servant to send it off: "Das Paquet soll sogleich ein Bote an den König bringen; er ist nahe vor Willsdorf, eine Stunde von hier im Lager."[57] That the king is so near to the village, that the Amtmann knows exactly where he is, and that the king will read the case file immediately, is perhaps the most implausible off-stage element of the play. It is at the same time necessary because the happy ending of this class-focused and hierarchy-focused play hinges upon the king's verdict to solve the dispute. The image of justice presented here is one of swiftness, efficiency, and integrity. It is an exemplary representation of what good justice should be in an absolutist state. However, this image is also one that does not coincide with either the reality of the judicial process in the German states or even the representation of justice in legal writing amongst bureaucrats and other legal practitioners.

In *Amtmann Graumann*, the happy resolution rests on a speedy trial. The trial is one of many elements in the play, and the author manipulates it to fit within the framework of the plot.

[57] Schröder, *Amtmann Graumann*, 230-31. Act 3, Scene 9.

Waiting and languishing could be a possible source of tension in a work that sought to critique it, for example in *Die Jäger*. Here, it is not. The act of waiting is rather thematized by its ommission. The play is by no means intended to be an accurate representation of a multi-instanced criminal case. However, while choosing to bypass waiting time, Schröder does go into quite some detail describing other parts of the judicial process. One example, below, demonstrates the meticulousness of the *Amtmann*'s dedication to the correct execution of justice. He gives the following directions to his court clerk:

> Gerichtsschreiber, formire Er förmlich das Protocoll, nach allen Aussagen der Mariane, des Bahr und der übrigen Zeugen, die eidlich abgehört werden müssen. Daß ja in den Formalien Nichts gefehlt wird; und wenn mein Sohn kömmt, ihn auch abgehört, dann in Ketten und Banden in's Gefängniß mit ihm.[58]

In this passage, Schröder presents a trial with specific 'realistic' elements, such as the adherence to trial procedure. He, in fact, follows the trend of depicting "Wahrheit," or truth, in bourgeois plays, which had been long established in Germany.[59] In the play, there is also intense discussion over the jurisdiction of military versus that of civilian courts, and the abusive behavior of the military against civilian populations. These very concrete elements are claims to a 'true' presentation of bourgeois experience, despite its obvious idealization.

---

[58] Schröder, *Amtmann Graumann*, 227-228. Act 3, Scene 6.

[59] Peter Heßelmann on the "Wahrheits- und Wahrscheinlichkeitsgebot" of the *Illusionstheater* on the 18th century German stage: "Anknüpfend an Mylius' *Versuch eines Beweises, daß die Schauspielkunst eine freye Kunst sey*, stellte Ekhof 1753 die Nachahmung der Natur und das daran gekoppelte Wahrheits- und Wahrscheinlichkeitsgebot für die Schauspiele heraus und wandte sich damit gegen die Schauspieltheorie und -praxis des französischen Klassizismus." Heßelmann, Peter. *Gereinigtes Theater? Dramaturgie und Schaubühne im Spiegel Deutschsprachiger Theaterperiodika des 18. Jahrhunderts (1750-1800)*. Das Abendland: Forschung zur Geschichte Europäischen Geisteslebens., Neue Folge 31. Frankfurt am Main: Vittorio Klostermann, 2002, 340. Subsequent citations as "Heßelmann" with page numbers. On Schröder's preferred method of acting, for example, Manuel Zink writes that "als Schüler Lessings und Ekhofs setzte er sich für 'eine realistische, aber ästhetisch geformte Spielweise' ein. Die 'Illusion des Bühnengeschehens' galt als unverzichtbar." Zink, Manuel. "'Wer spielt denn sonst noch mit?' Schröders 'Privatkomödie' als Exempel für Naturwahres Schauspiel." In *Friedrich Ludwig Schröders Hamburgische Dramaturgie*, edited by Alexander Košenina and Bernhard Jahn, 177–90. Publikationen Zur Zeitschrift Für Germanistik. Neue Folge. 31. Bern, Berlin, et al.: Peter Lang, 2017, 178.

As I suggest earlier, much of 18th century justice was an experience of fragmentation. However, in place of the mounds of endlessly growing case files and extensive correspondence between lawyers, bureaucrats, and other government officials, Schröder's play depicts the legal process in his play with an extraordinary directness between a sovereign, the highest judge in the land, and his subjects who seek justice. The swiftness of his reply closes the gap between judge and the accused. Via the *Amtmann*, who is the local representative of his government, the king is close to being present. What *Amtmann Graumann* presents as the speed of justice is notable: that the ability to provide subjects with speedy trial resolutions is a positive characteristic of a good monarch with a well-functioning bureaucray. This stands in contrast to Iffland's *Die Jäger* in which the problems that arise from the speed of justice can be traced back to the *Amtmann von Zeck*, a corrupt bureaucrat. Whereas *Die Jäger* highlights fragmentation in the image of justice, *Amtmann Graumann* smooths over fragmentation, the act of waiting, and the reality of multiple instances of justice in a criminal case in favor of other narrative concerns, namely, the harmonious resolution of the play's plot.

1.4 The Image and Role of the *Landesherr* in Trial Procedure

As Schröder's *Amtmann Graumann* makes clear, the *Landesherr*, or sovereign, stood at the apex of justice in the German territorial states. He was officially the highest judge in the land. In many territories, this meant that the sovereign had the last word on any trial that came to the government. The sovereign's office was not the last stop for the *Gerichtsakt* in trial procedure, but it was the highest office in terms of authority that could affect the outcome of a legal case, especially in criminal trials. The courts would often consult the sovereign in matters such as the allowance of torture in inquisitional interrogations and in deciding the severity of recommended punishments.

More than any other judge in the justice system, the *Landesherr* had a carefully constructed image, and, in what follows, I will take a closer look at how the *Landesherr* as judge was represented in legal documents and in literary works.

That the absolutist rulers of the German territorial states were portrayed by their state apparatuses positively in their role as judge is unsurprising. As Schnabel-Schüle argues in her study of justice in Württemberg, the sovereign, though he could well be guilty of abuses of power, generally enjoyed representation as the merciful and caring "father" among his subjects.[60] This image was propagated through his ability as judge to lessen punishments and to commute sentences, while the the rhetorical form of decrees and ordinances reinforced it on an official level.[61] The sovereign's power came from their heavenly-appointed ability to grant mercy. The "landsherrliche Milde" was the ultimate expression of mercy on earth, an analogue to *Gottesgnade* in heaven.[62] Likewise, the mercy of the sovereign is most important during the course of trial procedure, while the mercy of God comes into focus when the trial transitions to punishment.

Examples of where the merciful *Landesherr* motif can most clearly be seen are in legal appeals and petitions, or *Bittschriften*, addressed directly to the sovereign. In an example from the 3rd of January 1771, Johann and Anna Becker sent a petition to the government of regent Anna Amalia of Sachsen-Weimar-Eisenach with the request of releasing their daughter, Dorothea Susanne Groß, who was charged for her third consecutive illegitimate pregnancy, from the

[60] Schnabel-Schüle writes: "Die landesherrliche Milde konnte sich so als ein wichtiges Motiv des Bildes vom gnädigen Landesvater etablieren. Nicht die Vorstellung des Landesherrn als Willkürherrscher prägte die öffentliche Meinung, ja nicht einmal Herzog Karl Eugen [Württemberg] wurde in erster Linie als absolutistischer Despot apostrophiert, wenngleich die politischen Prozesse gegen Moser, Rieger und Schubart die geschichtliche Meinung über seine Person beeinflußt haben und ebenso nicht ganz ohne Wirkung auf die Untertanen blieben" (Schabel-Schüle 79-80).

[61] An an example, a *General-Reskript* from 1734 from the government of Duke Carl Alexander of Württemberg oncludes the line, "[…] so haben Wir aus Landes-Vätterlicher Sorgfalt für die Erhaltung der gemeinen Ruhe, Sicherheit und Erbarkeit gnädigst für gut befunden […]," to generally color the tone of a new action as caring and familial. "General-Reskript, die Errichtung von Schandbühnen betreffend. Vom 15. Oktober 1734." in: Reyscher, *Württembergischen Gerichts-Gesetze,*1835, 402-403.

[62] Schabel-Schüle 79.

punishment of standing on the pillory.[63] The pillory was an *Ehrenstrafe*, or punishment of honor, and it could injure the reputation of the entire family. The supplicants address Anna Amalia's government as a mercy-granting institution, as the image of the merciful *Landesherrin* is already integrated into proper forms of address: "Durchlauchtigste Herzogin, Gnädigstregierende Fürstin und Frau! Ew. höchfürstl. durchl. ist gnädigstgefällig gewesen auf Johann Georg Beckers und deßen Eheweibes, Annen Margarethen, angebrachtes unterthänigstes und demüthigstes Gesuch […]" Then, in a recommendation from the 23rd of January 1771, the president of the *Geheime Hof- und Regierungsrat*, Johann Friedrich von Hendrich, suggests to Anna Amalia that the pillory punishment be removed in consideration of the accused's parents: "[…] wir finden auch den Erlaß der gantzen Strafe wegen der Folge sehr bedencklich, und würde sie als eine Gnade zu erkennen haben, wenn ihr die Ausstellung des Prangers in Rücksicht auf ihrer Eltern, der Supplicanten Bitten, gnädigst erlassen würde."[64] Important is the constant reference to the word "Gnade" and "gnädigst," which characterizes the act of transforming the sentence and Anna Amalia herself in her role as judge. On the 8th of February 1771, Anna Amalia signs a reply which confirms the transformation of the punishment into a 4-week prison sentence without the pillory, thus granting the "Gnade" that the Regierungsrat recommends.[65]

1.4.1 Legal Reform in Sachsen-Weimar-Eisenach and Württemberg

[63] "Supplik des Constablers Johann Georg Becker und seiner Ehefrau Anna Margarethe aus Weimar um Erlass der ihrer Tochter bzw. Stieftochter Dorothea Susanne Groß auferlegten Pranger- und Zuchthausstrafe wegen unehrenhafter Schwängerung." 1771. B 2717. 6-12-3007 Rechtspflege. Landesarchiv Thüringen - Hauptstaatsarchiv Weimar. Manuscript.

[64] Ibid.

[65] "Auchdem Wir um abgedachter Großi bey denen hierbey verwaltenden Umständen die um ihn [unclear] gesetze Strafe des Pranger stehens zu erlaßen, und die mit 4 wöchtentlicher Zuchthaus-Strafe belegen zu laßen, […]" Ibid.

Not only were the territorial sovereigns active in trial procedure in their official capacity as heads of the legal system, the power of major judicial reform, while debated publicly among intellectuals, belonged overwhelmingly to them. This lent them also the potential to be seen as progressive reformers by their bureaucracies, the public, and themselves. Read by heads of state across Europe, Cesare Beccaria's influential work, "An Essay on Crimes and Punishment," pleaded for reform.[66] Moreover, Prussia's Friedrich II, or Frederick the Great, who had quietly abolished torture in inquisitional trial procedure in 1754, served as a role model of reform for other monarchs.[67] The *Landesherr* was the one representative of law who, as a recognizable individual, could possibly effect change[68]—whether or not reforms were actually realized. The heads of state were well-educated and surrounded by well-educated advisors, separating them from much of the often illiterate and rural populations that they governed. Although this was no guarantee that any particular ruler would support progressive legal reform, it was more often the case than not. The

[66] Alexander Ignor calls Beccaria's work a "bestseller," noting that its short length and colloquial language probably contributed to its popularity (Ignor 176-177). On this work's influence on rulers, Matthias Schmoeckel notes that Karl Friedrich, Margrave of Baden-Durlach and Grand Duke of Baden, read Beccaria's book and shortly thereafter limited the use of torture in Baden in a non-public *Reskript* from 9.9.1767. Likewise, Catherine the Great of Russia also read Beccaria, and under her rule, the use of torture was restricted and reformed twice. It was finally eliminated by Czar Alxander I. Schmoeckel, Matthias. *Humanität Und Staatsraison: Die Abschaffung der Folter in Europa und die Entwicklung des Gemeinen Strafprozeß- und Beweisrechts seit dem Hohen Mittelalter*. Norm Und Struktur: Studien Zum Sozialen Wandel in Mittelalter Und Früher Neuzeit 14. Köln, Weimar, Wien: Böhlau Verlag, 2000, 66-67.

[67] Schmidt, Eberhardt. *Einführung in die Geschichte der Deutschen Strafrechtspflege*. Göttingen: Vandenhoeck & Ruprecht, 1983. Subsequent citations as "Schmidt" with page numbers. As Schmidt describes his criminal law policies, Friedrich's project for his subjects included their education in the basic tenets of humanity. He rejected theological bases for criminal law and turned instead to secularizing, rationalizing, and humanizing criminal law. The main motifs of Friedrich's concept of criminal law are deterrence (*Abschreckungsgedanken*) and general and special prevention. He supported the mitigation of punishment, which was in line with the thinking of Voltaire and Montesquieu, since brutal punishments would make brutal people. Moreover, Friedrich favored prison over the death penalty, which was highly reduced, and placed an emphasis on "Unschädlichmachung" and resocialization, especially for younger criminals. In 1756, the punishment of infamy was abolished because it made individuals "useless" and prevented them from living and earning in an honest way (Schmidt 248-249).

[68] Prussia was also a leader in new law codification, which had begun under the reign of Friedrich II and was completed by his successor, Friedrich Wilhelm II. According to Richard Evans, "The General Law Code of 1794 of Prussia was in many ways the summation of Enlightenment thinking on criminal law. It attempted to mould society and establish a set of rules for people's conduct to such a degree that it included prescriptive as well as preventative provisions. It was intended not just to prevent evil but actively to promote good. It was a classic document of the Absolutist police state." Evans, Richard J. *Rituals of Retribution: Capital Punishment in Germany, 1600-1987*. Oxford: Oxford University Press, 1996, 135. Subsequent citations as "Evans" with page numbers.

bigger challenge to reform, however, was the immense amount of work and resources that a total overhaul of the legal system would require.[69] Yvonne Nilges highlights the tension between territorial governments and their legal systems by pitting "der aufgeklärte Spätabsolutismus" against "das unaufgeklärte Recht."[70] In Sachsen-Weimar-Eisenach, for example, under the leadership of regent Anna Amalia and her son, Duke Carl August, there were a few general reform tendencies: the rejection of the use of torture, the commuting of death sentences to imprisonment, and the elimination of the *Kirchenbuße*, religious penance as official legal punishment of moral transgressions.

As evidenced by the rejection of the *Kirchenbuße*, a large part of legal reform happened in the context of progressing secularization which sought to separate moral and legal issues. With Enlightenment attitudes, the rationale of the effectiveness of the *Kirchenbuße* was viewed with rising skepticism among the ruling and educated classes, though not necessarily by all their subjects. Increasingly, the state saw its sphere of direct influence more in security and less in the moral education of its subjects.[71] Moreover, the *Kirchenbuße* was seen as an unjustified overreaching of religion into the realm of worldly affairs.[72] However, religious authorities everywhere, including in Sachsen-Weimar-Eisenach, were not eager to give up this ground. Only after much back and forth with religious leaders, including opposition from Johann Gottfried

[69] See the chapter "Kodifikationspläne, Verfassungsstreit und Justizreformen" in Markus Ventzke's *Herzogtum Sachsen-Weimar-Eisenach* for a summary of the failed major legal reform attempts during the reign of Carl August. Ventzke, Markus. *Das Herzogtum Sachsen-Weimar-Eisenach 1775-1783*. Veröffentlichungen der Historischen Kommission für Thüringen, Kleine Reihe 10. Köln: Böhlau Verlag, 2004. Ventzke attributes the difficulties to conflicts with the Church and landed nobility, in that both groups were fearful of losing legal privileges and authority if reform and updated legal codes were indeed successful. Their fears were not unfounded. The governments of German states did indeed tend toward secularization, and they did indeed want to centralize legal power under the sole head of state. Of the hopes for reform under Carl August, Vendzke ultimately concludes: "Wenn Weimar ein Modell war, dann in den Hoffnungen, die viele Intellektuelle beim Regierungsantritt des angeblich philosophisch gebildeten, kunstbeflissenen und reformfreudigen Herzogs hegten. Diese Hoffnungen waren jedoch bis Mitte des 1780er Jahre zum größten Teil verflogen" (Ventzke 494).

[70] Nilges 47.

[71] Schnabel-Schüle 161-162.

[72] Wahl 14.

Herder, the *Kirchenbuße* was officially eliminated in Sachsen-Weimar-Eisenach in 1786 under Duke Carl August.[73] However, the desire to limit the institution of the *Kirchenbuße* was already present under Regent Anna Amalia.[74] One consideration that many sovereigns and their governments had to contend with was not appearing *too secular* to their subjects. To this end, they did require the support of their consistories, or the governing bodies of churches that also functioned as religious tribunals for moral offenses.

Another reform trend was the softening of extreme corporeal interventions by the legal system, foremost torture as an interrogation technique and the death sentence as punishment. As a duke, Carl August tended to withhold the use of torture as well as to privilege sentences of imprisonment over death sentences, both of which aligned with enlightened reform thinking of the day. He likely inherited these views from his mother, Regent Anna Amalia, who acted as his custodian until his eighteenth birthday in 1775. Though Carl August led the way in rejecting the practice of torture in Sachsen-Weimar-Eisenach, he did not outright ban it until 1819.[75] As Schnabel-Schüle points out, much reform was first effected through practice, not necessarily through official decrees.[76] Official reform was oftentimes too cumbersome, lagging, and controversial. The question of torture in inquisitional trial procedure is an especially telling example. Although it persisted in the lawbooks of many German states into the early 19th century, its use had all but waned by the mid to late 18th century, following the criticisms by Montesqieu,

[73] Wahl 366.
[74] Ibid.
[75] Baldauf notes that torture was no longer practiced in Sachsen-Weimar from 1784 onward, but the official restriction did not come to pass until 1819. Baldauf, Dieter. *Die Folter: Eine Deutsche Rechtsgeschichte*. Köln, Weimar, Wien: Böhlau Verlag, 2004, 201.
[76] "Die Handhabung der Strafgerichtsbarkeit durch die Rechtsgelehrten bewirkte zudem, daß Liberalisierungstendenzen und Reformansätze nicht in spektakulären Publikationen oder öffentlichen Diskussionen erörtert wurden, sondern gleichsam unbemerkt in die konkrete Gerichtspraxis infiltriert wurden, ohne daß die geltenden Strafgesetze geändert worden wären" (Schnabel-Schüle 60).

Voltaire, and Beccaria who had painted the practice of torture as backward, barbaric, and contrary to reason.[77]

In order to understand state actions on the bodies of suspects and criminals in more detail, I now turn to a series of murder and infanticide cases in Sachsen-Weimar-Eisenach as an illustrative example of how the government of Carl August handled trials of serious crimes. These should also illuminate his reform positions and his degree of involvement in legal cases. Infanticide cases were as well-documented in the 18th century as they are in scholarship *about* the 18th century today.[78] The 'spectacular' and tragic nature of these crimes have prompted both literary production and scandal.[79] One particular controversy concerns the case of Johanna Catharina Höhn in Sachsen-Weimar-Eisenach that ended in a death sentence and her execution. Johann Wolfgang Goethe was a member of the *Geheimes Consilium* that unaminously condemned Höhn. However, his opinion, or *Gutachtung*, is now lost. The event was documented in detail by the the State Archive of Thuringia by Volker Wahl in response to a 're-discovery' of Goethe's involvement by

[77] See Beccaria's chapter "Of Torture," 57-69. Charles de Montesqieu's *De l'esprit des lois* from 1748 and Voltaire's *Treatise on Tolerance*, or *Pieces Originales Concernant la Mort des Sieurs Calas det le Jugement rendu a Toulouse*, likewise argued strongly against torture.

[78] Ulbricht, Otto. *Kindsmord und Aufklärung in Deutschland*. Munich: Oldenbourg, 1990; Koss, Thea. *Kindesmord im Dorf: Ein Kriminalfall des 18. Jahrhunderts und Seine Gesellschaftlichen Hintergründe*. Tübingen: tb-verlag, 1994; Michalik, Kerstin. *Kindsmord: Sozial- Und Rechtsgeschichte Der Kindstötung Im 18. Und Beginnenden 19. Jahrhundert Am Beispiel Preußen.* Pfaffenweiler: Centaurus Verlagsgesellschaft, 1997; Peters, Kirsten. *Der Kindsmord als Schöne Kunst Betrachtet: Eine Motivgeschichtliche Untersuchung der Literatur des 18. Jahrhunderts*. Würzburg: Königshausen & Neumann, 2001; Scholz, Rüdiger, ed. *Das Kurze Leben der Johanna Catharina Höhn. Kindesmorde und Kindesmörderinnen im Weimar Carl Augusts und Goethes. Die Akten zu den Fällen Johanna Catharina Höhn, Maria Sophia Rost und Margaretha Dorothea Altwein*. Würzburg: Königshausen & Neumann, 2004; Lendfers, Miriam. *Zum Verbrechen des Kindsmords im 18. Jahrhundert: Die Kindsmörderin aus Schiersch*. Rechtsgeschichtliche Studien 9. Hamburg: Verlag Dr. Kovač, 2005; Schrader, Katharina. *Vorehelich, Ausserehelich, Unehelich - Wegen der Grossen Schande: Kindstötung im 17. und 18. Jahrhundert in den Hildesheimer Ämtern Marienburg, Ruthe, Steinbrück und Steuerwald*. Hildesheim: Gerstenberg, 2006; Hässler, Frank, and Günther Hässler. *Eine Greuliche That: Zehn Kapitel über Kindstötungen in Mecklenburg-Vorpommern aus Vier Jahrhunderten*. Berlin: Medizinisch Wissenschaftliche Verlagsgesellschaft, 2009; Lewis, Margaret Brannan. *Infanticide and Abortion in Early Modern Germany*. The Body, Gender and Culture 19. London, New York: Routledge, 2016.

[79] Among others: Heinrich Leopold Wagner's play *Die Kindermörderin* (1776/1778), Gottfried August Bürger's poem "Des Pfarrers Tochter von Taubenhain" (1778); Friedrich Schiller's poem "Die Kindsmörderin" (1782); Johann Wolfgang von Goethe's play *Faust* (1790/1808).

scholars, including Daniel Wilson and Rüdiger Scholz.[80] My focus, however, will not be on Goethe in particular, but rather on the actions of Duke Carl August and his relationship to his legal bureaucracy.[81]

In 1783, the Jena *Schöppenstuhl* recommended the death penalty in its judgment of Höhn's child murder case, which was at the time the official legal penalty for murder and infanticide.[82] In response to the *Schöppenstuhl* opinion, the Duke consulted his *Geheim Consilium* on whether an alternative punishment to the death penalty would be more effective. The *Geheim Consilium* voted in favor of upholding the Jena *Schöppenstuhl*'s judgment. Taking their advice, the Duke did not pursue the matter further and consequently chose not to alter her sentence. Höhn was executed on November 28, 1783. Höhn's case was not the first time that Carl August requested second opinions in cases that resulted in the death penalty. In 1781, the Jena *Schöppenstuhl* recommended the death penalty for Dorothea Altwein, also convicted with infanticide. After meeting with his *Geheim Consilium*, Carl August commuted the sentence to banishment and life imprisonment in Prussia. In 1783, in the case of Maria Sophia Roth, who was suspected of child murder, Carl August rejected the *Schöppenstuhl*'s recommendation of using the first degree of torture in her interrogation, i.e. displaying the instruments of torture to a suspect in order to produce a

[80] Published in 2004, Wahl's book is titled: *"Das Kind in meinem Leib." Sittlichkeitsdelikte und Kindsmord in Sachsen-Weimar-Eisenach unter Carl August. Eine Quellenedition 1777-1786.* See also: Wilson, W. Daniel. "Goethe, His Duke and Infanticide: New Documents and Reflections on a Controversial Execution." *German Life and Letters* 61, no. 1 (January 2008): 7–32; Scholz, Rüdiger. "Goethes Schuld an der Hinrichtung von Johanna Catharina Höhn." *Neue Juristische Wochenschrift*, March 7, 2008.

[81] The the following examples provided below (Dorothea Altwein, Maria Sophia Roth, Johanna Catharina Höhn, and Valentin Schäfer) can be found in Wahl 358-365.

[82] The Schöppenstuhl zu Jena was a body of judges made up of legal scholars at the University of Jena. However, it should not be confused with the *Juristenfakultät* at the university, which was also active in providing *Gutachten* to lower courts. The Schöppenstuhl should also not be confused with the medieval *Schöffengerichte* or *Schöppengerichte*, which were populated by lay people who were sworn in as judges for local matters. *Schöffengerichte* lost much of their authority after the reception of Roman Law in the 16th century in the German states and subsequent professionalization of the justice system. See: Kriebisch, Angela. *Die Spruchkörper Juristenfakultät und Schöppenstuhl zu Jena: Strukturen, Tätigkeit, Bedeutung und eine Analyse Ausgewählter Spruchakten*. Rechtshistorische Reihe 381. Frankfurt am Main, et al.: Peter Lang, 2008, 64-84, especially the summary on 84.

confession. Ultimately, since the local *Justizamt* was unable to extract a confession from Roth, the Duke ordered per *Reskript* that Roth be sentenced to life in prison. In 1785, the government of Einsenach requested permission from the Duke to employ torture (thumb screws) in the case of Valentin Schäfer, who was suspected of being an accomplice to murder. The Duke rejected the request twice and, after failure to extract a confession, advised the government in Eisenach to put Schäfer in a *Zuchthaus*, or penitentiary. Because of the miserable conditions within prison houses, it should be noted that the punishment of imprisonment was also a very harsh sentence. That being said, it was the view of many Enlightenment reformers and rulers that the penitentiary should be a place of moral betterment, and that it was a more justifiable state action than taking a life.[83]

These examples demonstrate how Carl August chose to comport himself in his official capacity as judge in trial procedure. They also shed light on the clear division of labor between his office and the lower or government courts. For example, in the case of Valentin Schäfer, the goal of the government in Eisenach was to extract a confession, hence the turn to torture. This was the imperative of the bureaucratic *Ermittlungsinstanz*, not the responsibility of the duke's office. The Duke, on the other hand, seems to have been the instigator of re-considering the harshness of punishments and methods. Generally, though, he deferred to the opinions of his advisors in the *Geheim Consilium*. Being an enlightened and humanistically educated absolutist, Carl August's role in the justice system seems to have been that of an occasional mercy-giver.

About 300 kilometers south of Sachsen-Weimar-Eisenach was the Duchy of Württemberg, whose ruler was Duke Carl Eugen, a contemporary to Anna Amalia and Carl August. Carl Eugen reigned from 1744 to 1793. It was under his rule that author Friedrich Schiller attended the *Hohe Karlsschule* from 1773 to 1780, and it was from Carl Eugen's territory the author fled in 1782 after

[83] See especially Beccaria's chapter on the death penalty versus imprisonment, "On the Punishment of Death." Beccaria, 102-117.

the premiere and publication of his first play, *Die Räuber*.[84] As Schnabel-Schüle argues, the Duke's position made him the highest judge in the land and the only one who possessed the authority to change the decisions of the law faculty at Tübingen. This position gave him the privilege of mitigating punishment[85] and of extending very noticeable mercy to his subjects. On the other hand, Carl Eugen's despotic abuses are undisputed. The multiple cases of arbitrary imprisonment of individuals for political and petty personal reasons, especially in the prison fortress of Hohenasperg, are well-documented.[86] However, the Duke still managed to successfully cultivate the image of the merciful *Landesvater*, as did those before him.

One such example is the case of Anna Maria Ohnmaiß, who was charged with infanticide in 1784.[87] Ohnmaiß became pregnant in the town of Uhlbach after having one or more sexual encounters with her cousin. When her child was born, she hid it under the floorboards of her home. Shortly thereafter, her suspicious father found the dead infant and reported it to the town pastor, who has already been investigating the possibility of Ohnmaiß' hidden pregnancy. Interrogations were conducted, a defense was written, and a guilty verdict with a death sentence was suggested by the law faculty at Tübingen in 1785. Yet Duke Carl Eugen granted clemency in the case and changed the punishment from death to imprisonment for 10 years and repayment of all costs in the case. Execution was the overwhelming punishment for child murder at the time, detailed explicitly by a General-Reskript from March 1, 1658 under Duke Eberhard. It reads, concerning "das

[84] Because of Schiller's unexcused absence from Stuttgart to attend the premiere in Mannheim and a complaint lodged against the play by the *Bündnerischen ökonomischen Gesellschaft*, the Duke ordered Schiller's 14-day arrest as well as a publishing ban. See: Alt, Peter-André. *Schiller: Leben - Werk - Wirkung*. Vol. 1. 2 vols. Munich: C.H. Beck, 2000, 304.

[85] Schnabel-Schüle, 34-35, 79-80.

[86] See: Brandstätter, Horst, ed. *Asperg - Ein Deutsches Gefängnis. Der Schwäbische Demokratenbuckel und Seine Insassen: Pfarrer, Schreiber, Kaufleute, Lehrer, Gemeines Volk und Andere Republikanische Brut.* Haus der Geschichte Baden-Württemberg. Ubstadt-Weiher: verlag regionalkultur, 2015. Subsequent citations as "Brandstätter" with page numbers.

[87] Koss, Thea. *Kindesmord im Dorf: Ein Kriminalfall des 18. Jahrhunderts und Seine Gesellschaftlichen Hintergründe*. Tübingen: tb-verlag, 1994. Subsequent citations as "Koss" with page numbers.

abscheuliche Laster deß Kinder-Mords" that, "bey solchen Verbrecherinnin, vermittelst beschleunigung deß Proceß, die Todes-Straff wol beobachten sollen […]."[88] Most cases did end up with the death penalty, however, even prior to Carl Eugen's ascension to the throne, under the regents Carl Rudolf (1667-1742) and Karl Friedrich (1690-1761), who governed in his stead, there are cases in which the death penalty was not the final result. Waldburga Groß of Hegnach was another woman convicted of child murder who, rather than being executed, was instead sent to the penitentiary.[89]

1.4.2 The Image of the *Landesherr* in Schröder's *Amtmann Graumann* (1778)

In literature in the German states during this time, outright criticism of a sovereign's image as the merciful judge implies taking some risks. Authors such as Lessing, for example, in his *Emilia Galotti*, and Schiller, in almost every play he wrote, problematize the image of absolute power and the image of the sovereign as absolute judge. Yet in many other cases, it was just as common to find plays and literature that propagated the exemplary image of the merciful *Landesherr*. The bourgeois play, *Amtmann Graumann*, by dramatist and Hamburg theater director Ludwig Ferdinand Schröder, which has already been discussed above in the section "The Speed of Justice," is one such literary example. As mentioned before, the resolution of the conflict in the play, which takes place as a criminal trial, is a message from the king. In the trial, the *Hauptmann* von Stern, a

[88] Reyscher, Dr. A.L., and G. Zeller, eds. *Vollständige, Historisch und Kritisch Bearbeitete Sammlung der Württembergischen Gesetze, Dreizehenter Band. Enthaltend den Zweiten Theil der Samml. der Regierungs-Gesetze. Zweiter Theil. Enthaltend die Regierungs-Gesetze vom Jahre 1638 bis zum Jahre 1726.* Tübingen: Ludw. Friedr. Fues., 1842, 11-13. Subsequent citations as "Reyscher and Zeller, *Württembergischen Gesetze*, 1842" with page numbers. "G-R, das Verbrechen des Kinds-Mords btr. Eberhard, Herzog zu Württemberg, [?]c. das abscheuliche Laster deß Kinder-Mords [...] So thun Wir hierauff noch ferner, Unsere Stabhaltere, und Reichtere der Peinlichen Hals-Gericht dises Unsers Herzogthums und Landen, hiemit erinnern, daß dieselbe in solchen begebenden Fällen, jetzt angeführte Umstände reifflich erwegen, und da sich selbige so klar und umbständlich erfinden, bey solchen Verbrecherinnin, vermittelst beschleunigung deß Proceß, die Todes-Straff wol beobachten sollen, [...]"

[89] "Waldburga Groß aus Hegnach wird wegen Kindestötung zu lebenslänglichen Zuchthaus verurteilt. 1742." A 209 Bü 2060. Oberrat: Kriminalakten. Hauptstaatsarchiv Stuttgart. Manuscript.

hotheaded young captain, has been accused of kidnapping the *Amtmann*'s daughter. In the tumult to retrieve her, the *Amtmann*'s son, who had just signed up to be a soldier, drew his weapon against the Hauptmann von Stern, his superior officer, which is punishable by death. The General von Stern, father of the *Hauptmann*, who is characterized as a tempermental but dutiful nobleman, tries to intervene in order to discipline his son personally. Yet the *Amtmann* insists that justice through a civilian court will settle the matter. The *Amtmann* is presented in the play as an honest member of the rural bourgeoisie who takes on the burden of being a fair judge in a case which could mean the possible ruin of his entire family. He sends his completed *Gerichtsakte* directly to the king and faithfully awaits judgment. When they receive the verdict in Scene 7 of Act 4 near the end of the play, General von Stern reads the king's letter aloud:

> "Den Amtmann Graumann mache ich zum Direktor meines obersten Justiz-Tribunals wegen seiner bisherigen Treue, Rechtschaffenheit, und wegen seines heutigen gerechten Spruches. [...] Des Hauptmann von Stern Schicksal und Strafe soll von dem beleidigten Vater abhängen; und General von Stern soll die Strafe auf's Strengste vollziehen. [...] Dem jungen Graumann, dem sein Vater selbst, wegen dem Vergehen an seinem Hauptmann, das Leben abgesprochen hat, gebe ich Gnade, weil er als ein Mann von Ehre gehandelt; doch soll er, der üblen Folgen wegen, auf zwei Jahre in die Festung, und dann werd' ich für ihn sorgen."[90]

A faithful servant of the state, the *Amtmann*, is rewarded for his exemplary loyalty, honesty, and service to justice. Upon learning that he will be made director of the king's *Justiz-Tribunal* on account of his faithful service, he responds: "Daß der König sehr gnädig ist, und daß es eines Unterthanen erste Pflicht ist, seinem König zu folgen, so ungern ich auch hier meinen Landdienst verlasse."[91] In these passages, mercy comes up twice: the king writes that he will grant the *Amtmann*'s son "Gnade" because he is "ein Mann von Ehre," thereby demonstrating his kingly "Milde." His second characterization as merciful comes from the titular protagonist, who calls the king "sehr gnädig." It is partly this mercy shown by the king that convinces the humble *Amtmann*

[90] Schröder, *Amtmann Graumann*, 242. Act 4, Scene 8.
[91] Schröder, *Amtmann Graumann*, 243. Act 4, Scene 8.

to sacrifice his quiet, idyllic bourgeois life in the country in favor of a higher position in the king's government, which he takes "ungern."

On the fate of the *Hauptmann*, the General's son and member of the nobility, the *Amtmann* requests that his daughter marries the *Hauptmann* (her would-be rapist) in order to save her and the family's honor. Lastly, on the clemency and prison-sentence granted to the *Amtmann*'s son, the following exchange takes place:

> Graumann. (zu Karln.): Und du, mein Sohn, ertrag' deine Strafe mit Geduld, die ist gerecht.
> General: Ja, die Subordination und das böse Exempel erfordern das, sonst--
> [...]
> Karl: Ich erkenne des Königs Gerechtigkeit; wenn meine Zeit aus ist, will ich mit neuem Eifer dem Könige dienen […][92]

The characterization of the king moves from "gnädig" to "gerecht" when discussing the son's prison sentence. Sparing the son's life makes the king merciful; transforming the punishment into a prison sentence makes him just. It should be noted that the king's characterization as a "merciful" and "just" judge is entirely expected and also necessary for the resolution of the plot.

Through the course of the four acts, the protagonist (the *Amtmann*) embodies the positive image of the caring, enlightened, and dutiful *Hausvater*, as well as the image of the honest, obedient servant of the state, who, in matters of justice, is a stand-in for the king. The figure of the *Amtmann* is handled in such a way that it is clear that he has acted correctly and is correct in his opinions. Thus, since the play is not a tragedy, the king's letter is not a surprising *deus ex machina*; it is a confirmation that the play's and the audience's sense of justice aligns with that of the merciful sovereign. The king is never on stage, but he is still overwhelmingly present in the depicted trial. Again, his physical distance presents no challenge of the required unity of time-place-action in contemporary drama theory, and all possible sources of fragmentation in territorial

[92] Ibid.

justice at that time is eliminated in favor of a plot resolution. This presentation of the king can be compared so Iffland's *Jäger*, in which the *Landesherr* is referred to positively by the protagonists, yet cannot make himself present to intervene on the side of justice because he is not in Weißenberg. In *Amtmann Graumann*, the king, as the highest judge, ensures a 'happy end' to the trial and to the play.

1.4.3 The Image of the *Landesherr* in Schiller's *Verbrecher aus verlorener Ehre* (1786)

A constrasting example to Schröders positive representation of the *Landesherr* as judge comes from Friedrich Schiller's 1786 novella *Der Verbrecher aus verlorener Ehre.* This novella is perhaps best known as a sharp critique of the unfeeling justice system present in absolutist states, especially the author's home state of Württemberg, from which he drew his source material. The story is also known as a fervent plea for humanitarian consideration in matters of justice and its stiking presentation of interiority and the human psyche. The interpretations of this story of transgression tend to focus on Schiller's plea for human understanding, the great detail in the psychological description of a criminal, and its criticisms of justice. For my argument in this section, however, the criminal's appeal to mercy from the *Landesherr* is more to the point. There is one episode near the end of the novella that concerns the image of territorial sovereigns. When the robber and murderer Christian Wolf leaves his robber band, he sends a letter directly to the sovereign, in whose state he has committed many violent and costly crimes, pleading for mercy and grace:

> Wenn Ihre fürstliche Huld sich nicht ekelt, bis zu *mir* herunter zu steigen, wenn Verbrecher *meiner* Art nicht außerhalb Ihrer Erbarmung liegen, so gönnen *Sie* mir Gehör, durchlauchtigster Oberherr. Ich bin Mörder und Dieb, das Gesetz verdammt mich zum Tode, die Gerichte suchen mich auf – und ich biete mich an, mich freiwillig zu stellen. Aber ich bringe zugleich eine seltsame Bitte vor Ihren Thron. Ich verabscheue mein Leben und fürchte den Tod nicht, aber schrecklich ist mir's zu sterben, ohne gelebt zu haben. Ich möchte leben, um einen Teil des Vergangenen gutzumachen; ich möchte leben, um den Staat zu versöhnen, den ich beleidigt habe. […]

> Es ist Gnade, um was ich flehe. Einen Anspruch auf Gerechtigkeit, wenn ich auch einen hätte, wage ich nicht mehr geltend zu machen. […]
>
> Lassen Sie Gnade für Recht ergehen, mein Fürst! Wenn es in Ihrer fürstlichen Macht steht, das Gesetz für mich zu erbitten, so schenken Sie mir das Leben. Es soll Ihrem Dienste von nun an gewidmet sein. Wenn Sie es können, so lassen Sie mich Ihren gnädigsten Willen aus öffentlichen Blättern vernehmen, und ich werde mich auf Ihr fürstliches Wort in der Hauptstadt stellen. […][93]

According to the narrator, the petition remained unanswered, and "der Unglückliche" sent a second and a third letter in vain. In his disappointment, "er faßte also den Entschluß, aus dem Land zu fliehen und im Dienste des Königs von Preußen als ein braver Soldat zu sterben."[94] Wolf's petition is perhaps an impossible request for the *Landesherr* to consider, but it confirms the notion that, according to the law, the *Landesherr* has the last word in affairs of justice, even for a criminal, such as Wolf. The inclusion of the letter in the *Verbrecher* story demonstrate's Wolf's desire to return to civil society and the fact that his sense of humanity, justice, and honor are all still intact, despite his violent past. His understanding of the role of the sovereign is clear in his composition of the letter. The sovereign is set apart from the "Gesetz" and the "Gerichte," which have already damned him. The sovereign is in a position to regard Wolf with "Erbarmung." He wishes to make amends to the state which he has injured, but it is only through a "Bitte" before the sovereign's throne that this could ever be possible. The sovereign's exceptional position and role in the justice system allows for "Gnade" in cases where justice has exhausted its possibilities. The line, "Lassen Sie Gnade für Recht ergehen, mein Fürst!" articulates the merciful "Landesvater" image in its most extreme form. For the narrator, this is a great test posed by Wolf. After all, if Wolf were to be judged solely on the appearance of his criminal actions, he is entirely beyond hope. Only the godlike grace of the *Landesherr*, not the law, can save him on earth. Can he treat Wolf as a human deserving of mercy and respect in spite of his criminal characteristics and actions? That is the more difficult decision, and ultimately, the answer is no.

[93] *NA* 16, 24-25.
[94] *NA* 16, 25.

As the rest of the novella is a condemnation of authority that shows no mercy or feeling, so too is this episode a condemnation of the sovereign. However, what condemns the *Landesherr* here is not that he does not grant Wolf's request; the reader has already been told at the beginning that Wolf was justly executed for his crimes. Rather, what condemns the sovereign is that he never responds to Wolf, a subject of the *Landesherr*, whose story orbits around his desire for respect under the law. The reader will find out in just a few pages that, upon given proper respect by an official of justice, Wolf is ready to surrender himself to the law. We are then left with two images of the sovereign: one is a sovereign with the potential for great humanitarian action as constructed in Wolf's letter, the other is an unsympathetic ruler of a broken justice system who does not respond to, and thereby rejects Wolf's request for re-integration into the society he has injured. The image of the merciful sovereign propagated by official rhetoric and other media is called into question. It is telling that Wolf, after his disappointment, decides briefly to go serve the Prussian king. The end of the story coincides with the start of the Seven Years' War, which indicates that the king in question is Frederick the Great, a ruler known for his Enlightenment reforms, and whose state served as a role model for other sovereigns.

1.4.4 Carl Eugen: *Willkürherrscher* to Enlightened Absolutist?

The *Festung Hohenasperg*, a prison fortress near Ludwigsburg, can be seen from miles around, even in the present day. Originally a manned military fortress, it was transformed in the early 18th century into a prison. It stood during that time as a symbol of a *Willkürherrscher* in the justice of Württemberg, especially that of Duke Carl Eugen.[95] Political inmates during Carl Eugen's reign included courtier Joseph Süß Oppenheimer, poet Christian Friedrich Daniel Schubart, and

[95] Schabel-Schüle 79-80.

Oberamtmann Johann Ludwig Huber, who was imprisoned without trial. Imprisonment extended also to individuals who crossed the Duke personally, as was the fate of singer Marianne Pirker.[96] This is presumably also where Schiller's Christian Wolf was imprisoned during his 3-year sentence. In stark contrast to Hohenasperg, an elevated reminder of ducal power, were the prison and work houses constructed in Württemberg in the first half of the 18th century: the *Stuttgart Zucht-, Arbeits- und Waisenhauses* (Stuttgart Prison- and Workhouse and Orphanage), erected in 1710 by Duke Eberhard Ludwig and the *Zucht- und Arbeitshaus Ludwigsburg* (Ludwigsburg Prison and Workhouse) erected in 1736 by Duke Carl Alexander. Both houses were state representations of the practical steps taken by the dukes of Württemberg to pursue modern, enlightened criminal reform in service of and for the good of the people of Württemberg. The two dukes were, however, not necessarily trend-setters. They were responding to the reform projects in other territorial states, where prison and work houses were also being constructed.[97]

The fundraising for the *Stuttgart Zucht- Arbeits- und Waisenhaus* is revealing in that the *General-Reskript* that was sent out to propose the project and its funding was not only a text of practical political justification for the effort, for example, for the goals of security, order, peace and happiness of the territory. It also appealed to the moral sensibilities of those being taxed and other possible donors as a secular charity. It was presented as an enlightened, humanitarian project that would contribute to the general wellbeing of the community by fostering the economic and moral betterment of individual orphans, coming to the aid of honest individuals in financial

[96] Brandstätter 47.

[97] "General-Reskript, in Betreff der Errichtung eines Waisen-, Zucht- und Arbeitshauses, vom 8. Februar 1710" in: Reyscher and Zeller, *Württembergischen Gesetze*, 1842, 874-877. The reference to other houses reads: "Nachdem Wir Uns berichten lassen, nicht nur mit was grossem Nutzen der Kirchen, und gemeinen Wesens, von zerschiedenen Chur-Fürsten und andern Ständen des Röm. Reichs einige Waisen-Arbeit- und Zuchthäuser als zu Hall in Sachsen, Leipzig, Nürnberg, Augspurg, Darmstatt, Franckfurth und anderswo auffgerichtet worden, sondern auch, wie viele von unsern Geist- und Weltlichen Bedienten und Unterthanen, in dem Wunsch und Verlagen stehen, daß dergleichen Anordnung auch in Unseren Hertzogthummen und Landen, geschehen möchte […]"

distress, and advancing the moral correction of criminals.[98] The *General-Reskript* instructed pastors to announce the plans of the house in Stuttgart in their sermons, accompanied by a prescribed passage from the Bible, and to implore their congregations to give generously.[99] This is noteworthy because, now by design, criminals would be sent to a place that represented enlightened education, charity, and hope—not punishment. It was not a medieval fortress like Hohenasperg; it was a modern building of rationalist architecture within the confines of the city. Inmates were going to an institution with a clear mission statement, not a prison fortress, a jail tower or dungeon, or to the scaffold.[100]

Fig. 6: Matthäus Merian. "Hochen Aschberg." 1643 Etching.

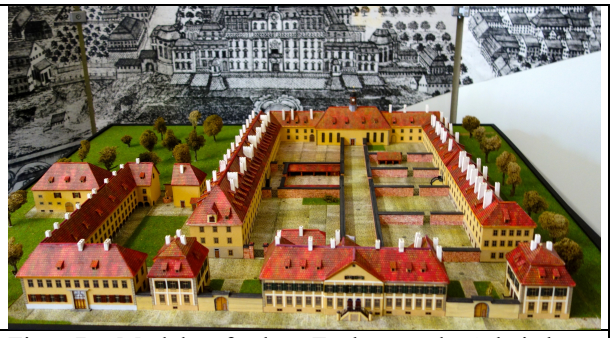

Fig. 7: Model of the Zucht- und Arbeitshaus Ludwigsburg. From the Strafvollzugsmuseum in Ludwigsburg.

The institution in Stuttgart was pitched vigorously as more of a social project than the *Zucht- und Arbeitshaus Ludwigsburg*, which, though its *raison d'etre* was for betterment, was functionally an institution of punishment and industry. The appearance of prison and work houses in the 18th century coincided with new judicidal reform ideas about the purpose and effectiveness of punishment. One of the most influential treatises during this time was Cesare Beccaria's *Essay on*

[98] Ibid.
[99] Ibid. "Ist dahero Unser Gnädigster Befehl, Ihr der Specialis wollet, samt allen Euch untergebenen Pfarrern und Diaconis dieses Unser Rescript künfftigen 23. Februar Morgens in der Früh-Predig auf der Canzel verlesen, und folgenden Tags zu gleicher Zeit dieses Unser Vorhaben auf das allernachdrucklichst- und beweglichste Euren Gemeinen, vermittelst Euch hiermit aus dem 41. Psalm, V. 1. 2. u. 3. [...]"
[100] Ibid.

Crimes and Punishment, in which the author argues against, among other things, the spectacle of the death penalty as an effective social ritual. In a chilling argument about the public utility of prison as a better preventative measure against crimes than execution, he pits the spectacle of the death penalty against the spectacle of imprisonment. Beccaria believed that the presentation of the permanent loss of freedom was a better deterrent of violent crimes than the one-time spectacle of an execution.[101] Inmates forced into a life of heavy labor would have prolonged exposure to the public that would witness their loss of freedom. In other words, the image of long-term suffering was more effective than the shock aesthetic of capital punishment.[102] As Michel Foucault writes in his history of the trajectory of criminal punishment from the early modern to modern era, the grisly public spectacle of torture (as punishment rather than an interrogation technique) and execution recedes piecemeal to the growing trend of reform and discipline.

Becarria's justifications for the existence of workhouses do not appear in the official state literature surrounding either the Stuttgart or the Ludwigsburg institutions. However, the buildings were in themselves spectacles: they were large and imposing structures within the city, built in a rationalist style quite the opposite of the Festung Hohenasperg. The inmates were visible to the public when, at certain times, they were allowed outside of the buildings. At workhouses throughout the German territories, the sight of the raggedly-dressed and smelly inmates was a thing of horror in the eyes of the public.[103] Casting doubt on whether or not calls for reform had a

[101] Beccaria 105-109.

[102] It wasn't until Cesare Beccaria's 1764 treatise on crime and punishment that any Enlightenment thinker had published a "systematic treatment of penal policy." Others such as Montesquieu and Voltaire had criticized the ancien régime justice, but had not dedicated an entire work to it (Evans 127). On Beccaria's view on cruelty, Evans writes: "It [a punishment] should gain its deterrent effect through terror, and correspondingly, offenders were to be punished not because they had done wrong, or to reform them, but in order to stop others following their example. The humanitarian principles enunciated by Beccaria were strictly utilitarian. Cruelty was condemned not as immoral but as 'useless'" (Evans 130-131).

[103] Poor conditions were due to lack of funding. The *Weimarer Zuchthaus*, for example, reduced inmates to images of pity and horror: "Die nicht selten quer durch die Residenzstadt führenden Zuchthäuslerkolonnen wurden jedoch

measurable effect on the justice system in Württemberg, Schnabel-Schüle concludes that: „Seit der Gründung des Ludwigsburger Zuchthauses (1736) entwickelte sich die zeitlich begrenzte mehrjährige Freiheitsstrafe zum Ersatz für die Todesstrafe, ohne daß es irgendeinen Hinweis auf eine intensive Diskussion über die Milderung der Todesstrafe gäbe."[104] An example would the case of the child murderess, Waldburga Groß, who was sentenced to life imprisonment in 1742, while in years before her, other child murderers were sentenced to death by beheading.[105]

When considering how the populated prison houses in Württemberg actually outwardly appeared, it is useful to look at government documents about who was imprisoned there and what problems the institutions faced. A Württemberg *General-Verordnung* "gegen Vaganten und Bettler" from October 24, 1737 provides us with an idea of the people imprisoned at the *Zucht- und Arbeitshaus Ludwigsburg*. It was a work camp for foreigners who were physically sound and for those who were considered 'undesirable' elements. They would ideally perform forced labor in Ludwigsburg's manufacturies—not usual in this agrarian state—while all the rest would be deported from Württemberg:

> Special und Vogt werden beauftragt, dafür zu sorgen, daß fremden Landstreichern, abgedankten Soldaten und dergleichen liederlichem Gesindel aus den piis Corporbus nichts mehr abgereicht werde; sodann sollen die Stabsbeamten durch öfteres Streifen dergleichen Vaganten und Bettler auffangen, die Arbeitsfähigen ohne weitere Anfrage an das Zucht- und Arbeitshaus abliefern, die Arbeitsunfähigen aber zu nothdürftiger Unterstützung in ihre Heimath weisen.[106]

auch immer mehr zu einem politischen Problem, denn die abgehärmten und zerlumpten Gestalten riefen unter den Bürgern der Stadt und bei auswärtigen Besuchern Empörung hervor" (Ventzke 443).

[104] Schnabel-Schüle 129.

[105] "Waldburga Groß." Hauptstaatsarchiv Stuttgart. See also: "Barbara Veil von Schlaitdorf wird wegen Kindestötung enthauptet." 1741. A 209 Bü 1967. Oberrat: Kriminalakten. Hauptstaatsarchiv Stuttgart; "Susanna Barbara Stattmüllerin von Tailfingen wird wegen Kindestötung zum Tode verurteilt." 1740. A 209 Bü 2047. Oberrat: Kriminalakten. Hauptstaatsarchiv Stuttgart.

[106] "General-Verordnung gegen Vaganten und Bettler, vom 24. October 1737" in: Reyscher, Dr. A.L., and G. Zeller, eds. *Vollständige, Historisch und Kritisch Bearbeitete Sammlung der Württembergischen Gesetze, Vierzehenter Band. Enthaltend den Dritten Theil der Samml. der Regierungs-Gesetze. Dritter Theil. Enthaltend die Regierungs-Gesetze vom Jahre 1727 bis zum Jahre 1805.* Tübingen: Ludw. Friedr. Fues., 1843, 205.

However, in a *General-Reskript* from 1746, Duke Carl Eugen voices his displeasure ("nicht geringen Mißfallen") that "durch Einschickung vieler zur Arbeit ganz untüchtiger Leute" to the *Zucht- und Arbeitshaus Ludwigsburg* has caused it "nach und nach vollkommen in einen Spital verwandelt zu warden."[107] He complains that the health of the inmates should be checked before they are sent in and also wonders whether the use of torture has made certain inmates "unbrauchbar."[108] We receive one image from official state literature which emphasizes the appearance of reform through work, and another which reveals the opposite: namely, that the actual population and use of the work house has transformed it into a forced labor camp and a hospital.

Despite the actual conditions, those working in the justice system apparently still considered a prison sentence to be a rational punishment for any number of transgressions. In 1784, Jacob Georg Schäffer published a volume on public nuisances and criminals titled *Sulz am Neccar. Beschreibung derjenigen Jauner, Zigeuner, Mörder, Straßen-Räuber, Kirchen- Markt- Tag- und Nacht-Diebe, Falschen Geld-Münzer, Wechsler, Briefträger, Spieler und andern herum vagirenden liederlichen Gesindels*. In the lengthy subtitle of the publication, he lists criminals who:

> […] über Zwey Jahr lang in Verhaft und Inquisition gestandenen- und statt der durch ihre aufgehäufte Verbrechen wohlverdienten Todes- einig aus besonderer Höchsten Fürsten-Gnade, Theils zu einer harten Lebenslänglichen- theils zu einer Bestimmten Zuchthaus-Strafe verurtheilten- hienach benannten Sieben Erz-Jauner und Jaunerinnen, währendem Inquisitions-Process mit großer Mühe entdeckt und beschrieben, und vor ihrer Abführung nacher Ludwigsburg wiederholter bestätiget worden sind.[109]

The author deems execution as the "wohlverdient" punishment for the criminals in his catalog, which has, however, been tempered by the "besondere" mercy of the sovereign, in this case, Duke

[107] "General-Reskript, die Benützung des Ludwigsburger Zucht- und Arbeits-Hauses, als Straf-Anstalt, btr." in: Reyscher, *Württembergischen Gerichts-Gesetze*, 1835, 481-482.
[108] Ibid.
[109] Schäffer, Jacob Georg. *Sulz am Neccar. Beschreibung derjenigen Jauner, Zigeuner, Mörder, Straßen-Räuber, Kirchen- Markt- Tag- und Nacht-Diebe, Falschen Geld-Münzer, Wechsler, Briefträger, Spieler und Andern Herum Vagirenden Liederlichen Gesindels*. Stuttgart: Cotta, 1784.

Carl Eugen. This is the typical propagated image of the enlightened absolutist. It is the Duke's privilege as the highest judge in the land to bestow mercy, and this mercy is the *Ludwigsburger Zuchthaus*.

1.4.5 The Prison and Schiller's *Verbrecher aus verlorener Ehre* (1786)

With his 1786 story *Der Verbrecher aus Verlorener Ehre*, Schiller engages directly with enlightened ideas about prison institutions being places of reform and about the actual problems and conditions that inmates possibly faced. The prison institutions of Württemberg make two appearances in Schiller's story. After being arrested a second time for poaching, the protagonist, Christian Wolf "erfährt [] die ganze Schärfe des Gesetzes" and, on account of his poverty, i.e. his inability to pay a monetary fine, "wird [] in das Zuchthaus der Residenz abgeliefert" (*NA* 16, 11). The *Zuchthaus* here refers to the Ludwigsburg institution. The historical figure, Friedrich Schwan, upon whom Christian Wolf is based, did indeed reside for a time in the prison house in Ludwigsburg.[110] It is not until Christian Wolf's third arrest and 3-year work internment "auf der Festung" that the author provides a thorough description of a prison institution through the words of an inmate, Wolf:

> Auch diese Periode verlief, und er ging von der Festung – aber ganz anders, als er dahin gekommen war. Hier fängt eine neue Epoche in seinem Leben an; man höre ihn selbst, wie er nachher gegen seinen geistlichen Beistand und vor Gerichte bekannt hat. 'Ich betrat die Festung,' sagte er, 'als ein verirrter und verließ sie als ein Lotterbube. Ich hatte noch etwas in der Welt gehabt, das mir teuer war, und mein Stolz krümmte sich unter der Schande. Wie ich auf die Festung gebracht war, sperrte man mich zu dreiundzwanzig Gefangenen ein, unter denen zwei Mörder und die übrigen alle berüchtigte Diebe und Vagabunden waren. Man verhöhnte mich, wenn ich von Gott sprach, und setzte mir zu, schändliche Lästerungen gegen den Erlöser zu sagen. Man sang mir Hurenlieder vor, die ich, ein lüderlicher Bube, nicht ohne Ekel und Entsetzen hörte; aber was ich ausüben sah, empörte meine Schamhaftigkeit noch mehr. Kein Tag verging, wo nicht irgendein schändlicher Lebenslauf wiederholt, irgendein schlimmer Anschlag geschmiedet ward. Anfangs floh ich dieses Volk und verkroch mich vor ihren Gesprächen, so gut mir's möglich war; aber ich brauchte ein Geschöpf, und die Barbarei meiner Wächter hatte mir auch meinen Hund abgeschlagen. Die Arbeit war hart und tyrannisch, mein Körper kränklich; ich brauchte Beistand, und wenn ich's aufrichtig

[110] Schott, Theodor. "Schwan, Johann Friedrich" in: *Allgemeine Deutsche Biographie* 33 (1891), 177-181. [Online-Version] https://www.deutsche-biographie.de/pnd119032112.html#adbcontent

> sagen soll, ich brauchte Bedauerung, und diese mußte ich mit dem letzten Überrest meines Gewissens erkaufen. So gewöhnte ich mich endlich an das Abscheulichste, und im letzten Vierteljahr hatte ich meine Lehrmeister übertroffen. […]'[111]

In the forefront of this description is the impossibility of honor and goodness within the walls of the prison fortress. Once inside, every element works to break down Wolf's sense of self-worth and honor: the self-replicating inmate culture, the lack of spiritual support and empathy, the abuse of the guards, and the exhausting physical labor. What reigns is a sense of hopelessness. Survival is only possible through the sacrifice of conscience, the assimilation to a criminal mindset, and participation in the fortress' culture of competitive depravity. In other words, the only things that can secure his survival are the those that are opposite of bourgeois virtues to which Wolf had once aspired. Of course, the passage above is a description of the *Festung* rather than the *Zuchthaus*, but the problems of poor conditions, the mixing of inmates, forced labor, and lack of medical care were no different.

Schiller's characterization of a Württemberg prison institution results in a rather damning image. This fictional representation contradicts the official written intentions of the state of Württemberg, for example, the fundraising *Reskript* from 1710 for the *Stuttgart Zucht- Arbeits- und Waisenhaus* that included 'enlightened' arguments. In December of 1788, an ordinance reviewing the prison house in Ludwigsburg was released by the government. On the topic of "Das Zucht- und Arbeitshauß und die darinn befindliche Zucht- und Sträflinge," the following guidelines and mission are given:

> Gleichwie der Endzweck dieser Anstalt dahin abzielet, daß lasterhafte Menschen nicht nur wegen ihrer begangenen Uebeltaten und Verbrechen bestraft- und zu solchem Ende nach Beschaffenheit derselben entweder auf Zeitlebens oder nur auf gewiße Jahre oder Monate von der übrigen menschlichen Gesellschaft abgesondert- in diesem Ort der Strafe wohl verwahrt- und unter geschmeidiger Kost zu einer bestimmten Arbeit mit Ernst und Nachdruk angehalten- sondern auch, daß selbige zugleich durch Christlichen Unterricht und ernstliche Ermahnungen zu reumütiger Erkenntnis ihrer Schand- und Lasterthaten und zu einer wahren Herzensbeßerung gebracht werden

[111] *NA* 16, 12.

> mögen: Also hat man auch in dem hierzu besonders angelegten Zucht- und Arbeitshaus eine mit diesen heilsamen Absichten übereinstimmende Anordnung zu machen vor nötig gefunden.[112]

The government of Carl Eugen has found it "nötig" to formulate the goals of the institution. This might imply a lapse in the institution's current running or a long overdue review. Either way, the government is addressing something it views as a problem. According to the order, the purpose of the *Zucht- und Arbeitshaus* is twofold: the inmates are there to pay for their crimes through work, but the institution also exists to bring about a "wahren Herzensbeßerung" in the inmates through Christian teachings and the "reumütig" recognition of their own vices. The intentions of the institution are "heilsam," both for the criminal and for the general population. However, the "nicht nur" and "sondern auch" in the passage indicate that the mission of "Besserung" mission had perhaps been neglected. The ordinance also addresses specifically the concern brought up in *Verbrecher*: that Württemberg prison institutions actually make inmates worse than they were when they came in. The government intends to police the inner workings of its institutions:

> Von dem übrigen Betragen der Sträflinge. Die Sträflinge sollen sich überhaupt die Zuchthauß-Strafe zur wahre Beßerung und Rettung ihrer Seele dienen laßen, und die viele gute Gelegenheit, das Wort Gottes zu hören [...] ferner sollen sie nichts böses, weder in der Arbeits-Zeit noch in den Ruhestunden mit einander reden, nichts böses von einander lernen, noch ihre oder andere Schandthaten, um sich noch damit zu rühmen, mit Vergnügen erzehlen, auch keine Zotten und Poßen treiben, [...][113]

The parallels between Schiller's description of the *Festung* and the Württemberg government's list of behaviors it wishes to prevent at Ludwigsburg is striking. Wolf claims that his turn to God made him the object of ridicule; here, the inmates should hear "das Wort Gottes." Wolf's fellow inmates reveled in "Lästerung" and "Hurenlieder;" here, inmates should not speak of evil or vice. Wolf eventually surpassed the vice of his "Lehrmeister;" here, the inmates should not learn "böses von einander." It is apparent that the reputation of the prison houses in Württemberg were well known. In reaction, Carl Eugen's government felt the need in 1788 to confront head-on every

[112] "Ludwigsburger Zuchthaus Ordnung" from 15. December 1788, in: Reyscher, 1835, 677-679.
[113] Ibid.

possible eventuality of negative inter-inmate influence from "Zotten und Poßen" to the telling of "Schandthaten" "mit Vergnügen" for the purposes of fame amonst prisoners.

In *Verbrecher*, the public spectacle of gruesome torture and death, or in the words of van Dülmen, *Volksspektakel,*[114] is replaced by the image of an imposing prison. There, loss of freedom and misery, sickness and injury, and physical punishment reign. According to the government of Württemberg, however, incarceration is ideally a means of mysterious "Besserung" that is allegedly the result of rational thinking in service of universal human progress. Or at least this is the argument in the justification for its usage. It is entirely possible that, like many steps toward reform, it was done more in sync with contemporary trends than a deep-seated philosophical commitment.

1.5 The Other Stage: Punishment

Thus far, this investigation has looked at many aspects of the trial concerning the inquisitional trial procedure, the case file, *Aktenversendung*, and the role of the *Landesherr*. We have begun to look at punishment in the context of legal reform, which brings us to the question: what does justice look like after this portion of trial procedure is over? This is a question I will turn to only briefly as my argument has more to do with reform in trial procedure than the punishment aspect of justice. Returning to van Dülmen and his concept of the ritualistic *Straftheater*, this was the stage of justice that most resembled the theater. If the image of the legal trial comprises written documents, case files, and bureaucrats who work behind closed doors, the resolution of the trial is the public-facing side of justice. More visible than the secretive trial process, was the announcement of the verdict and, if the judgment resulted in one, the official punishment. Punishments were multifaceted

[114] van Dülmen, *Kultur und Alltag*, 273.

events: they were meant to evoke horror and shame, but they could also be carried out with the aims of public education and betterment, and they could even be opportunities for acts of mercy.

In the early modern era, punishment was necessary in order to curb the wrath of God within a community.[115] There was a religious justification and understanding of punishment. Generally by the 18th century, the *Abschreckungsgedanke*, or the idea of deterring further criminal activity by the exemplary punishment of someone guilty of a certain crime, dominated public understanding of and state justification for criminal punishment, despite calls for reform.[116] This was done for the security of the whole or common good, that is, *Staatssicherheit*. A typical expression of this idea was the *Flugblatt*, or leaflet, that often accompanied criminal executions and were sold by private printers to attendees.[117] These leaflets included the official sentencing, the confession, a poem or song, and sometimes an illustration. Van Dülmen cites the example of the pamphlet sold at the execution of Martin and Simon Brandl in 1769:

> *Der Vater, und der Sohn*
> *Empfängt hier seinen Lohn.*
> *Sie enden durch das Schwerdt ihr bösgeführtes Leben*
> *Weil sie in ihrem herz der Mordsucht plaz gegeben.*
>
> *Nimm also diese Lehr so wohl in Herz als Ohr,*
> *Mensch was du immer thust betracht das End zu vor.* [118]

The poem has a proscriptive, clear message that both of the condemned men deserve their given punishment. There is a causal link between the "Mordsucht" in their hearts and their execution by

---

[115] According to Evans, "[a]n offence against the law was thus an offence against God. Secular authority wielded the sword of justice by divine ordinance. […] Punishment was thus directed at the criminal's body, to restore the injured sovereignty of the body politic, to purify God's order on earth by annihilating the incorporation of the Devil's purposes, to redress the balance of the divine creation by cancelling out the offence which had upset it. Punishment in early modern Germany was couched in the language of religious ritual; punishment was a Christian ceremony that signified the unity of the godly and the secular order" (Evans 41).

[116] Schmidt, 249.

[117] Bollen, Magelone. *"Urtheil und ein schönes Lied": Das Armesünderblatt (1750-1820) in der Sammlung "German Criminology Collection" der Michigan State University*. Dissertation. Michigan State University, 2013, 55-64. Subsequent citations as "Bollen" with page numbers.

[118] Quoted from: van Dülmen, *Kultur Und Alltag*, Figure 67. "Todesurteil des Martin und Simon Brandl, Fluggblatt 1769" [Bayerische Hauptstaatsarchiv, München], 273.

sword: if every action has its equal due (*Lohn*), theirs is execution. This comes from the religiously inflected *ius talionis*, which is the law of retaliation, or put another way: "an eye for an eye," which contributed to the *Vergeltungsgedanke* in German law of the early modern era. The last two lines addresses the attending public and is framed as a pedagogical warning (*Lehr*), using the *Abschreckungsgedanke* as its central message. It is the goal of public security through negative example.[119] In their descriptions of public executions, Richard Evans, Foucault, and van Dülmen all emphasize the spectacle nature of the execution. There are several elements to this aesthetic experience, which is itself a type of political *Gesamtkunstwerk* in which audience participation is critical: songs, proclamations, procession, flyers, a narrative plot, a stage, signals of authority, the witnessing and emotion from the public, the actors on stage, and the ritual event itself. This spectacle cannot function and is meaningless without a community audience present, for which the entire presentation is staged.

State authorities could be very deliberate about the way they staged justice in public. The public participated in trials through the denouncing of individuals, the resulting gossip, or by serving as witnesses. It was really the public reading of the verdict and punishment, however, that authorities were most keen to stage in a controlled manner in order to achieve the desired public understanding of justice, both legal and metaphysical. This had to do with what Schnabel-Schüle calls the

[119] According to van Dülmen, "[d]ie Vorstellung, die Welt und damit auch den Menschen generell zu verbessern, kannte die traditionelle Gesellschaft nicht, deswegen konnte sie auf die Ideen der Sühne und Abschreckung nicht verzichten. Rigoros gegen die Folter, die Ehren- und Körperstrafen, vor allem gegen die öffentliche Hinrichtung und z.T. auch gegen die Todesstrafe, wandten sich erstmals die Aufklärer" (van Dülmen, *Kultur Und Alltag*, 274). However, pamphlets like the one van Dülmen cites from 1769—already well into Enlightenment legal reform—persist in the German-speaking world well into the early 19th century (See: Bollen 55-59). In contrast to van Dülmen, Eberhardt Schmidt explains the proposed 'enlightened' purpose of the *threat* of punishment on the minds of individuals within the general public: "Die Strafdrohung soll also die Vernunft des einzelnen im Kampf mit den zum Verbrechen drängenden Motiven unterstützen, also einen psychologischen Zwang gegenüber diesen rechtfeindlichen Motiven ausüben. Zweck der Strafdrohung ist also Abschreckung der Allgemeinheit der Staatsbürger, also Generalprävention." The "Abschreckungsgedanke" persists well into the time of the "Aufklärer" in an altered form. The *threat* of punishment replaces actual punishment (Schmidt, 239).

"Aufrechterhaltung guter Polizei" or maintenance of good policing within a territorial state, which concerned not only security, but general peace and order and the moral instruction or wellbeing of its citizens.[120] To this end, however, a spectacle was not always the desired outcome of a punishment. In her study, Schnabel-Schüle delineates between punishments meant to draw public attention, such as executions, and punishments carried out for other reasons. One example comes from Württemberg, where a local man was preaching in his house while also engaging in adultery with several women from the town with the knowledge of their husbands.[121] The man was charged with a crime, but the following punishment had minimal exposure to the public so that the town would not erupt in scandal. The reason was simple: this crime would have a ripple effect that would disrupt the peace of the town and the reputations of many of its inhabitants, including the husbands of the offending women. In order to curb the crime's effects on the community, the public staging of the criminal's punishment was forgone, and very little attention was drawn to it. There was a calculation from both community officials and higher state officials that weighed the costs and benefits to the peace of the land between the staging of heavy-handed punishment versus that of a lesser one. As it turns out, "gute Polizei" also means controlling the narrative of crimes and their punishments within a community.

1.6 Conclusion

Utilizing images of justice, indeed controlling them, was, as Rebekka Habermas has pointed out, just as important to state governments of the late 18th century as it was to legal reformers in the 19th century.[122] Justice in the German states before the waves of legal change in the wake of the

[120] Schnabel-Schüle 161-162.
[121] Schnabel-Schüle 170.
[122] As mentioned in the introduction to this chapter, Habermas writes of legal historical scholarship that "Will man diesen Arbeiten zur Vormoderne und Moderne glauben, so könnte man fast den Eindruck gewinnen, als hätte es mit

dissolution of the Holy Roman Empire in 1806 was not in fact characterized by sadistic torturers, witches, and inquisitional horror. Rather, many of the issues that were considered to be problems within the German legal systems were the result of Enlightenment rationality and secularization, for example, the "Wissens- und Aktenexplosion," that emerged within—but came into conflict with—existing legal procedure. They were modern problems. Indeed, some of the basic tensions discussed in this chapter persisted well into the mid, even late, 19th century.

In order to describe the features of justice in the German states of the late 18th century, this chapter has focused on the representation of justice via an investigation of trial procedure and the actors who are involved in the execution of justice. From the examples provided, the features of the systems of justice, primarily of Sachsen-Weimar-Eisenach and Württemberg, become clearer. The criminal trial was mediated through writing (*Schriftlichkeit*) and split up into various physical locations (*Aktenversendung*), not requiring the presence of the involved parties. Everything was done behind closed doors within the state bureaucracy until the last step, the last trial day and punishment, which was a public-facing ritual. It only makes sense that, with the rise of new concepts about human subjectivity, calls for reforming this process began to mount. If, as the promoters of the Enlightenment concept suggested, man was a rational individual with rights and the responsibility to assert themselves in the world, why should they be subjected to a legal process

Beginn des 19. Jahrhunderts deutlich weniger Kriminelle und dafür weitaus mehr staatliche Rechts- und Kontrollinstitutionen gegeben, als sei an die Stelle der geradezu Breughelschen Ansammlung unterschiedlicher, teilweise recht skurriler kleiner und großer Verbrecher oder auch Verbrecherinnen das an Kafkas Strafkolonie erinnernde Bild einer oder zweier totalitäter Institutionen getreten" (Habermas 19). This is partly a leftover of the reform movements of the mid to late 19th century that had reason to differentiate themselves from previous ages: "Kurzum, die neuen Strafprozessordnungen hatten enormen Symbolgehalt und wiesen damit über ihre eigentliche Funktion, die ja in der schlichten Neuordnung der Gerichtsverfahren lag, hinaus. Sie waren mit Bildern, Hoffnungen, Ideen und Phantasien verbunden und stellten Zusammenhänge her, die nur sehr vermittelt etwas mir der Realität zu tun hatten […] Vor allem ein Zusammenhang wurde hergestellt: Der Zusammenhang zwischen einer bestimmten Staats- und Gesellschaftsform und der Rechtsverfassung. Es wurde eine Identität zwischen dem reformierten öffentlichen und mündlichen Schwurgerichtsverfahren, den politischen Konzepten der Liberalen und einer bürgerlichen Gesellschaft konstruiert" (Habermas 22).

which denied them access to the legal events that were to pronounce them innocent or guilty? Shouldn't the process of justice be more humane? These kinds of arguments were already being raised by widely read European philosophers such as Voltaire and Cesare Beccaria in the mid-18th century, who, for example, took strong moral and rational stances against the death penalty and torture. Legal reformers, including bureaucrats and rulers, understood themselves within a larger progressive movement that included whole populations of people in all aspects of their lives. There was a great sense of belonging to a particular age; one that had outpaced its current legal systems.[123] Legal practices such as torture, which was once accepted as a valid and religiously justifiable interrogation technique, became the subject of moral outrage in the writings of legal reformers like Beccaria, who once challenged his contemporaries: "Ought such an abuse be tolerated in the eighteenth century?" [124]

New understandings of human agency and subjectivity clashed with even more fundamental aspects of the German legal systems. As we saw in our examples, there were many layers of written mediation in criminal trial procedure. One result of this procedure was that the judges, who actually determined punishment, often never faced those over whom they pronounced judgment. Fragmentation emerged as an overarching antagonistic feature of justice in this time period. The deep spatial and temporal fragmentations in trial procedure that elevated the written word—interrogations protocols, reports, etc.—within a legal bureaucracy over the human subject was recognized as a major flaw by legal reformers. Yet these debates extended far beyond just those who practiced law. Art, literature, and plays addressed the need for reforms as well, and these were the media that formed images of justice in the minds of the public. It was in their works

[123] Kittsteiner cites Bernard Groethuysen when he states that by the 18th century, there were not just new philosophies, there were also new people (Kittsteiner 24).
[124] Beccaria, 59.

that authors, and even some legal professionals, found expressive forms for exploring these flaws. Schröder's *Amtmann Graumann*, Iffland's *Die Jäger*, and Schiller's *Verbrecher aus verlorener Ehre* illustrate literary engagement in and criticism of contemporary legal practices and problems. In the following chapter 2, we will see literary engagement turn fully to legal reform discourse.

CHAPTER 2

Immediacy in Literary and Dramatic Alternative Models of Justice

2.1 An Illustration to Schillers *Verbrecher aus verlorener Ehre* (1786)

Fig. 8: Kaulbach, W., and C. Gonzenbach. *Zur Erzaehlung "der Verbrecher Aus Verlorener Ehre" von Fr. Schiller. Der Sächsischen Kunstverein Seinen Mitgliedern Auf Das Jahr 1847*. Deutsches Literaturarchiv. Etching.

Wilhelm Ritter von Kaulbach's etching "Zur Erzaehlung 'der Verbrecher aus verlorener Ehre' von Fr. Schiller" (fig. 8) from 1847 is a portrayal of late 18th century justice from Schiller's novella of

the same title (1786). This depiction refers to a passage from Schiller's text about the judges who sentence the novella's anti-hero, Christian Wolf, to three years of hard labor in prison: "Die Richter sahen in das Buch der Gesetze, aber nicht *einer* in die Gemütsverfassung des Beklagten".[1]

The subject of the illustration is not an actual scene or instance in the novella, but rather a free imagining of the passage quoted above. In the background, three paintings hang on the wall: on the left, possibly the prince (*Fürst*) in his multiple roles as the merciful "Landesherr", the highest judge in the land, and the public face of justice. Opposite him is likely a portrait of his consort. In the middle between the prince and his consort is the female personification of justice, Justitia, who has apparently been beheaded by the top frame of the image. Next to the paintings, covering an entire side wall, is a shelf crammed with documents and case files. A court secretary on a ladder deposits a stack of papers onto the only remaining space left on the shelf. Beside him, another court secretary barely manages to hold a tall stack of files together with his arms and chin. In the middleground (fig. 9, detail below), jurists or scholars bustle around a lectern consulting the "Libri Terribiles," or the books of criminal law from the *Digest*, or *Pandects* of Roman Law.[2] On the right side of the image, court clerks do the tedious work of copying and organizing files. In the foreground, two impoverished subjects, who are possibly the figures of Wolf and his mother, plead before a seemingly disinterested judge whose *Richterstab* rests lazily across his left leg. A diligent court clerk records the activity, while a *Stadtknecht* looms menacingly with iron anklets behind the judge, waiting to take Wolf away to prison. The *Stadtknecht* and another man in the

[1] *NA* 16, 11-12.

[2] These books of criminal law were not accessible for the general public. The latin "Libri Terribiles" not only invokes an emotional reaction to the word "Terribilis," it also emphasizes the intentional separation between the specially trained state bureaucracy and the population. It is also worth noting that the figures in this illustration are not consulting the *Württembergische Landesordnung* from 1567, which is in part based on Roman Law via the *Constitutio Criminalis Carolina*, nor on current Württemberg ordinances.

middleground are the only figures who look directly at the pleading man and woman. The judge in the foreground, like the other judges and court clerks, face away from them.

Fig. 9: Detail view of jurists consulting the "Libri Terribiles" of the Digests (Roman Law). Kaulbach, W., and C. Gonzenbach. *Zur Erzaehlung "der Verbrecher Aus Verlorener Ehre" von Fr. Schiller.*

Temporally and spatially, Kaulbach has merged two or more separate legal instances into one illustration. First is the local apprehension of suspects or their interrogation in the foreground. This is followed by legal scholars consulting criminal law books for a criminal case, possibly at a higher court or at a university in the center middleground. Third is a scene in the background which depicts clerks copying or filing case files that will be sent to other courts via post—so, the extended bureaucratic work behind the scenes. Moreover, Kaulbach has mixed the public with the non-public. The jurists and clerks working with written case files in the background and the consultation of the judges at the lectern would have been completed behind closed doors, not before the interested parties, nor before the general public.

In order to contexualize the significance of the illustration's composition regarding public and non-public instances of trial procedure, I turn to early 19th century legal thought. Leading legal

reformer, Paul Johann Anselm von Feuerbach, explains the possible benefits of a more open, public trial procedure. In this scenario, parties may actually *see* their judges as the case is being presented, rather than judges conducting cases behind closed doors and entirely through written documents:[3]

> Und so kann denn allerdings zwischen den verschlossenen Wänden des Gerichtssaals in Abwesenheit der Partheien sehr leicht gar manches geschehen, was Schaam und Furcht unfehlbar verhüten, da wo die wachende Aufmerksamkeit der gegenwärtigen Partheien den Richtern in die Augen sieht.[4]

This passage comes from Feuerbach's 1821 *Betrachtungen über die Oeffentlichkeit und Mündlichkeit der Gerechtigkeitspflege*. It puts forward the idea that being in the actual presence of one's judges, as opposed to only having contact with the mediating authorities such as *Amtmänner*, allows involved parties to also act as a check against judicial corruption, laxness, and apathy. Central to this passage is the idea that state bureaucrats can be held accountable by the public through means of visibility and accessability. The pressure that comes with looking someone "in the eye" should function as a social corrective. It is fitting then that the judge in Kaulbach's illustration is visually the most imposing representative of justice. Yet he refuses symbolic eye contact with or even to look in the direction of the involved parties. The same can be said for the jurists in the middleground, who are working with lawbooks, yet not with the people involved. Though portrayed anachronistically, the theme of distance between the law and the territorial subject in the 18th century is one that occurs often in works on legal subjects of the time period.

[3] One of the leading figures in legal reform thought of the early 19th century and the author of several textbooks on criminal law in the early 1800s, Feuerbach was the author of the *Strafgesetzbuch für das Königreich Bayern* (1813). Feuerbach, Paul Johann Anselm (Ritter von). *Betrachtungen über die Oeffentlichkeit und Mündlichkeit der Gerechtigkeitspflege*. Gießen: Georg Friedrich Heyer, 1821. Subsequent citations as "Feuerbach, *Gerechtigkeitspflege*" with page numbers.

[4] Feuerbach, *Gerechtigkeitspflege*, 113.

Kaulbach's illustration, a collage of multiple legal instances and legal spaces, highlights the fragmentation of a judicial system that has not yet undergone the process of reform. It was printed one year before the failed Revolution of 1848/1849, during which the Frankfurt National Assembly declared that "Das Gerichtsverfahren soll öffentlich und mündlich sein."[5] This etching would be a powerful condemnation of older systems of justice, specifically, the secretive, paper-based inquisitional trial procedure and *Aktenversendung*, in favor of legal reform efforts. At this time, in the mid-19th century, legal reform in the German states meant the adoption of whole new legal codes—looking especially to post-revolutionary France and England as models, and moving somewhat away from inquisitorial trial procedure.[6] As Rebekka Habermas reminds us, 19th century legal reformers had motivation to exaggerate the negative stereotypes of justice in earlier centuries, hence the caricature-like postures of the judges huddling around the law books and the main judge's expression of utter disdain, bordering on apathy, in the presence of the poor supplicants.[7] Kaulbach's representation of 18th century justice in the old Holy Roman Empire is clear: powerless subjects in the face of apathetic or corrupt judges, inaccessible lawbooks, and mountains of paper files.

Kaulbach's illustration can be viewed as capturing many of the criticisms that legal reformers had during this time in the German states. As discussed in the previous chapter, the justice systems in the 18th century were characterized by these issues of fragmentation. Both territorial governments and their subjects recognized temporal and spatial fragmentation as

[5] Article 9, Paragraph 45 of the *Reichsgesetz.* "Gesetz, betreffend die Grundrechte des deutschen Volkes" In: *Reichs-Gesetz-Blatt.* 27 December 1848. Part 8. Frankfurt am Main: Naumann's Druckerei, 57.

[6] For the forced reception of the Napoleonic code in the German territories, the resulting major law projects, and the extent of its actual influence on 19th century legal reform, see: Härter, Karl. "The Influence of the Napoleonic Penal Code on the Development of Criminal Law in Germany: Juridical Discourses, Legal Transfer and Codification." In *The Western Codification of Criminal Law: A Revision of the Myth of Its Predominant French Influence*, edited by Aniceto Masferrer, 53–75. Studies in the History of Law and Justice 11. Cham, Swizterland: Springer, 2018.

[7] This is the main thesis of her introduction "Rechts- und Kriminalitätsgecshichte revisited – ein Plädoyer" to the anthology: *Verbechen im Blick: Perspektiven Neuzeitlichen Kriminalitätsgeschichte* (2009).

problems. The secretive process was regarded with suspicion of being corrupt. For example, individual bureaucrats could exercise exceptional influence over any given trial, where they functioned as the inquisitorial investigative authority.[8] Early 19th century critics of the largely bureaucratic justice system cited the indirectness of trial procedure as detrimental to the execution of justice, in that judges would make judgments based entirely off written summary reports, or *Relationen*, rather than being in the presence of the concerned parties.[9] *Aktenversendung*, the practice of sending case files to higher courts in order to solicit a decision, often led to lengthy trials and high costs for the involved parties. However, territorial governments generally viewed the secrecy and the discretion given to them via inquisitorial procedure favorably, as means of presereving stability and retaining control over the justice system.[10] Nevertheless, they were equally burdened with the slowness of trial procedure, the backlog of case files from pending trials, and the costliness of written trials that had multiple procedural instances.

In what follows, I focus on the responses of legal reformers to these fragmentions. I turn to Friedrich Schiller, August Wilhelm Iffland, and Johann Wolfgang von Goethe, who offer literary and dramatic means of imagining solutions to the problem of fragmentation in legal trials.

---

[8] See Chapter 1 section 1.3.4.1 "The Speed of Justice: An Example from Iffland's *Die Jäger* (1785)"; Bernd-Rüdiger Kern also notes in his study of the Kurpfälzer Landrecht of 1582 that instructions from the state were especially detailed for investigative authorities such as the Amtmann on account of this: "Am detailreichsten [instructions] ist die Durchführung der Vorverfahren durch die Amtleute geregelt. Die haben zwar nicht die Entscheidungsbefugnis, wohl aber die größte Möglichkeit der tatsächlichen Einwirkung auf die Beschuldigten und die Wahrheitsfindung. Daher galt es, ihnen besonders genaue Vorgaben zu machen." In: Kern, Bernd-Rüdiger. *Die Gerichtsordnungen des Kurpfälzer Landrechts von 1582*. Quellen und Forschungen zur Höchsten Gerichtsbarkeit im Alten Reich 23. Köln, Wien: Böhlau Verlag, 1991, 377.

[9] For example, Feuerbach concludes that one might as well not even have a trial if the Inquisition process is what governs justice: "Ein Gericht, welches über eine Partheisache auf bloßen Bericht, eines die Partheien ausschliessenden Referenten entscheidet, ohne selbst die Partheien mit ihrer Darstellung, ihrem Verlangen, ihren Ansichten und Meinungen vernommen zu haben, thut night viel weniger als ein Gericht, welches einer Parthei ganz das Gehör verweigert [...]" Feuerbach, *Gerechtigkeitspflege*, 296.

[10] Stüber, Michael. *Die Entwicklung des Prinzips der Unmittelbarkeit im Deutschen Strafverfahren*. Schriften zum Strafrecht und Strafprozeßrecht 83. Frankfurt am Main, et al.: Peter Lang, 2005, 38-39. Subsequent citations at "Stüber" with page numbers. Of the reform efforts in the early 19th century, which was much preoccupied with defeating Inquisition trial procedure, Stüber writes: "Weitergehende Reformen in bezug auf Mündlichkeit und Unmittelbarkeit wurden abgelehnt, da sonst ein Verlust von Sorgfalt und Kontrolle befürchtet wurde. Die Schriftlichkeit hingegen wurde als 'Stabilitätsgarantie' erachtet."

Though they have varying approaches, I argue that in all three cases there is a focus in their solutions on the legal concept of *Unmittelbarkeit*.

2.2 Repairing Fragmentation: The Rise of Immediacy (*Unmittelbarkeit*)

Unmittelbar (unmediated, immediate, direct) or *Unmittelbarkeit* (immediacy, directness) had, by the early 19th century, become one of the main theoretical terms of legal reform along with the rallying cries: *Öffentlichkeit* (publicness) and *Mündlichkeit* (orality).[11] *Unmittelbarkeit* had different meanings and priorities according to discipline. Aside from religious (*unmittelbare Offenbarung*) and older legal (*unmittelbare Reichsstadt, unmittelbare Lehen*) uses, Zedler's *Universal-Lexikon* defines *unmittelbar* as follows:

> Unmittelbar, immediate, sagt man von den Ursachen und Würckungen, wenn sie auf einander folgen, ohne daß eine andere Ursache oder Würckung darzwischen stehet. Wenn ich z.E. A. B. C. als Ursachen und Würckungen annehme, das also A. die Ursache von der Würckung B. und B. die Ursache von C. ist; so sagt man, daß allein B. die Würckung C. unmittelbar hervorbringe: keinesweges aber kan man von A. in Ansehung C. dergleichen behaupten, weil noch eine mittlere Ursache B. darzwischen kommt.[12]

Zedler's description makes clear the logical meaning of *unmittelbar*, in which causes and effects follow directly one upon another without intervening instances (i.e. A causes B but not C). According to Andreas Arndt, *unmittelbar* first became a philosophical term in the second half of the 18th century along with developments in transcendental philosophy that had to do with experience and knowing, citing Kant, Jacobi, and Fichte.[13] Its use in legal reform discourse in the German territories, however, was even younger. The legal use had to do with directness in the trial

[11] See also the historical overviews in: Stüber, *Die Entwicklung Des Prinzips Der Unmittelbarkeit Im Deutschen Strafverfahren* (2005) and: Geppert, Klaus. *Der Grundsatz der Unmittelbarkeit im Deutschen Strafverfahren*. Berlin, Boston: de Gruyter, 1979. Subsequent citations as "Geppert" with page numbers.

[12] Zedler, Johann Heinrich, ed. "Unmittelbar." In *Grosses Vollständiges Universal-Lexikon aller Wissenschaften und Künste*, 49:1880. Halle, Leipzig, 1754—1731. 831. www.zedler-lexikon.de

[13] Arndt, Andreas. "Unmittelbarkeit." In *Historisches Wörterbuch der Philosophie*, edited by Joachim Ritter, Karlfried Gründer, and Gottfried Gabriel, 11:236–41. Darmstadt: Wissenschaftliche Buchgesellschaft, 2001. See also the introduction to: Arndt, Andreas. *Unmittelbarkeit*. Berlin: Owl of Minerva Press, 2013.

procedure and physical, spatial, and temporal immediacy. It implies a state of 'unmediated' interaction between parties and judges in contrast to a process mediated entirely through *Akten*. According to the 19th century legal reformers Feuerbach and Carl Mittermaier, it is possible to implement *Unmittelbarkeit* in practice.[14] In today's trial law, the principle of immediacy, or the *Grundstaz der Unmittelbarkeit*, is a given. However, this idea only came about seriously in legal reform discourse in Germany during the late 18th and early 19th centuries—a time of transition which has informed many of Germany's current laws and legal principles.[15]

In current scholarship on German law and legal history, *Unmittelbarkeit* is accepted as a central term.[16] Its beginnings can be traced back to the aftermath of the dissolution of the Holy Roman Empire in 1806 by Napoleon, as the *Code civil* of 1804, the *Code pénal* of 1806, and the *Code d'instruction criminelle* of 1808 were introduced in German lands. In this period, the term *unmittelbar* appeared almost always in conjunction with two other important legal reform

[14] In the first half of the 19th century in Germany, the two most important titles concerning *Mündlichkeit* und *Öffentlichkeit* are Paul Johann Anselm Feuerbach's *Betrachtungen über die Oeffentlichkeit und Mündlichkeit der Gerechtigkeitspflege* (1821), which more than any other work cemented the popularization of the terms, and Carl Mittermaier's *Die Mündlichkeit* (1845). Mittermaier, Carl Joseph Anton. *Die Mündlichkeit, das Anklageprinzip, die Öffentlichkeit und das Geschwornengericht in ihrer Durchführung in den verschiedenen Gesetzgebungen dargestellt und nach den Forderungen des Rechts und der Zweckmäßigkeit mit Rücksicht auf die Erfahrungen der verschiedenen Länder*. Stuttgart: J.G. Cotta'scher Verlag, 1845.

[15] For a bibliographic list of contemporary works on the topic of the *Unmittelbarkeitsgrundsatz* in the Federal Republic of Germany's *Zivilprozessordnung* (ZPO) and *Strafprozessordnung* (StPO), see the section "Der Grundsatz der Unmittelbarkeit" of: Schilken, Eberhard. *Zivilprozessrecht*. 7th ed. Academia Iuris: Lehrbücher Der Rechtswissenschaft. München: Verlag Franz Vahlen, 2014. Examples of sections in the StPO and ZPO that comprise the *Unmittelbarkeitsgrundsatz* are StPO §250 and ZPO §309. In the StPO, §250 "Grundsatz der persönlichen Vernehmung" states that: "Beruht der Beweis einer Tatsache auf der Wahrnehmung einer Person, so ist diese in der Hauptverhandlung zu vernehmen. Die Vernehmung darf nicht durch Verlesung des über eine frühere Vernehmung aufgenommenen Protokolls oder einer Erklärung ersetzt werden." In the ZPO, §309 "Erkennende Richter" states that: "Das Urteil kann nur von denjenigen Richtern gefällt werden, welche der dem Urteil zugrunde liegenden Verhandlung beigewohnt haben." From: *Gesetze im Internet*. Bundesamt für Justiz / Bundesministerium der Justiz und für Verbraucherschutz. https://www.gesetze-im-internet.de/.

[16] For example, Michael Stüber's historical overview of 'Unmittelbarkeit' in *Die Entwicklung des Prinzips der Unmittelbarkeit im Deutschen Strafverfahren* (2005); Hans-Gerhard Kip's "Das sogenannte Mündlichkeitsprinzip, seine Wurzeln und sein Verhältnis zur Unmittelbarkeit" in: *Das Sogenannte Mündlichkeitsprinzip: Geschichte einer Episode des Deutschen Zivilprozesses*. Prozessrechtliche Abhandlungen 19. Cologne, Berlin: Carl Heymanns Verlag, 1952; Klaus Geppert's detailed historical summary of 19th century 'Unmittelbarkeit' in *Der Grundsatz der Unmittelbarkeit im Deutschen Strafverfahren* (1979); and Cornelia Vismann's discussion of *Unmittelbarkeit* in the "Stimme vor Gericht" section of *Medien der Rechtsprechung* (2011).

buzzwords of the day: *Mündlichkeit* (as opposed to *Schriftlichkeit*) und *Öffentlichkeit* (as opposed to secrecy, or "hinter geschlossenen Türen"). Within this historical context, *unmittelbar* was the opposite of *mittelbar* or *vermittelt*, and usually connoted physical presence, or *Gegenwart*. Treatises with the word combination *Mündlichkeit* and *Öffentlichkeit* are numerous, all participating in the debate of immediacy in the legal system that began in the late 18th century.[17] It should also be noted that inquisitional trial procedure was not completely and officially abandoned in all German territories until February 1877 with the *Strafprozessordnung* (penal code) of the Second German Empire.[18] Despite the major legal reform projects, it persisted in lawbooks throughout the 19th century in the individual German states.

With the central concept of *Unmittelbarkeit* in mind, I now engage three literary texts: Friedrich Schiller's *Der Verbrecher aus verlorener Ehre: eine wahre Geschichte* (1786), August Wilhelm Iffland's *Die Jäger: ein ländliches Sittengemälde* (1785), and Johann Wolfgang von Goethe's *Wilhelm Meister's Lehrjahre* (1795/1796). All three texts express criticism that the highly bureaucratic, overly rational, and fragmented nature of justice in the German territories, caused by the structural dictates of the *Inquisitionsverfahren* and *Aktenversendung*, has come to

[17] Donsbach, Christian. *Die Verfassung und das Proceßverfahren der Untergerichte im Großherzogthum Baden : Mit Vorschlägen zu Verbesserungen durch Trennung der Justiz von der Administration, und Oeffentlichkeit und Mündlichkeit des Verfahrens*. Karlsruhe: Braun, 1822; Steiner, Johann Wilhelm Christian. *Über das Altteutsche und Insbesondere Altbaierische Gerichtswesen, in Bezug auf Öffentlichkeit und Mündlichkeit des Verfahrens in Bürgerlichen und Peinlichen Rechtsvorfallenheiten*. Aschaffenburg: M.J. Wailandt's Wittib, 1824; Miller, Joseph. *Kritische Beleuchtung der von Feuerbach'schen Grundsätze über Öffentlichkeit und Mündlichkeit, und Gleiche Gerichts-Verfassung, nebst Anhang über die Mittel zur Vereinfachung und Beförderung der Rechtspflege in Baiern*. Munich: J.A. Finsterlin, 1825; Zentner, Joseph. *Das Geschwornengericht mit Oeffentlichkeit und Mündlichkeit im Gerichtsverfahren : In Besonderer Rücksicht auf den Strafprozeß*. Freiburg: Groos, 1830; Buttel, Christian Diedrich von, and H.W. Hayen. *Der Richter als Geschworner? : Oder Geschwornengerichte mit Mündlichkeit, Oeffentlichkeit und Anklage?* Oldenburg: Schulze, 1843; Essig, Carl. *Untersuchung der Frage: Ob durch Oeffentlichkeit und Mündlichkeit des Verfahrens in Criminalsachen den Seitherigen Mängeln der Strafrechtspflege Abgeholfen Werde?* Ulm: Ebner, 1843; Foelix, Jean Jacques Gaspard. *Über Mündlichkeit und Öffentlichkeit des Gerichtsverfahrens, dann über das Geschwornengericht*. Karlsruhe, 1843; Daniels, Alexander von. *Grundsätze des Rheinischen und Französischen Strafverfahrens : Mit Vergleichender Berücksichtigung der auf Mündlichkeit, Öffentlichkeit und Schwurgericht Gegründeten Neuesten Gesetze und Gesetzesentwürfe*. Berlin: Mylius, 1849.

[18] Stüber 38-40; Geppert 24.

disregard the human individual as the central element of its reason for existence. In their literary treatment, all three authors attempt to re-center the human within the framework of justice. The remedy, they propose, is directness or immediacy between the law, specifically represented by judges, and the involved parties. All three authors turn to fiction to promote models of immediacy, though their concerns differ slightly. Schiller, in his novella *Verbrecher*, argues for overcoming the reader-subject or audience-subject gap. This is an inherent problem or feature of any enterprise based in *Schriftlichkeit*, though he places special emphasis on judges and legal judgment. Iffland, in his play *Die Jäger*, questions the assumed emotional or psychological distance between a judge and the accused in a rational justice system. His play appeals for the allowance of judges who feel and acknowledge emotion within the process of justice. Lastly, Goethe, in his novel *Wilhelm Meister*, criticizes the lack of presentness in a justice system that relies entirely on *Schriftlichkeit* and articulates skepticism about the accuracy and truthfulness of this practice.

2.3 Closing the Reader-Subject Gap: Narrative Strategies of Psychological Immediacy in Friedrich Schiller's *Verbrecher aus verlorener Ehre* (1786/1792)

Schiller's novella, *Der Verbrecher aus verlorener Ehre. Eine wahre Geschichte*, is the story of Christian Wolf, a figure based loosely on the executed robber Johann Friedrich Schwan (1729-1760) in Schiller's home state of Württemberg. Originally published as "Verbrecher aus Infamie. Eine wahre Geschichte" in the *Thalia* in 1786,[19] the main figure suffers several instances of loss of honor, or instances of infamy. As we learn over the course of the story, the main figure has multiple run-ins with the law and becomes completely impoverished. In the end, he becomes a notorious criminal and a murderer. As a novella, Wolf's story is framed by a third-person narrator,

[19] *NA* 16,405. Appendix. The title *Verbrecher aus verlorener Ehre* was first used in Schiller's *Kleinere prosaische Schriften* from 1792. (Vol. 1, Part 2).

who provides an introduction to the story and establishes it as an instructive text. It also includes narration in the first person by the executed criminal himself, Christian Wolff.

In Schiller's *Verbrecher*, the narrator is critical of the justice system both directly and indirectly.[20] If Enlightenment legal reformers were concerned with putting the law itself on trial before the court of reason, as Eberhardt Schmidt suggests,[21] then Enlightenment authors were very concerned with a further criterium: bringing the law before the court of humanity.[22] Specifically it was the budding field of anthropology—"der Konnex von Leib und Seele"—which drove this movement.[23] The young Schiller was especially keen to integrate the human sciences into his writings. This approach appears explicity in his *Verbrecher* story, the Forward to *Die Räuber*

[20] To illustrate a direct criticism of the legal system, we can turn to the most obvious way to approach the story's treatment of the justice system, which is to look at the title: injury or loss of honor has at least in part created a criminal. Jutta Limbach argues that the social consequences of justice, his suffered *Ehrverlust*, is wound that drives Wolf to his criminal extremes as he tries to regain his *Menschenwürde.* As he is thrown through courts and prisons, Wolf's individual path, social position, and worth as a human being are never considered by the law, and yet the law directly affects these things, for example, his exclusion from his hometown community upon returning from prison. From this angle, Limbach argues, the justice portrayed in Schiller's story is entirely inaccessible, cold, and inhuman. Limbach's analysis of the social consequences of the punishments Wolf suffered are interesting because *Ehrenstrafen* were a normal part of the legal system at this time. Social involvement and consequence are within the sphere of legal practice. A person's social standing in a community would determine long before the trial itself whether they would even be denounced in the first place, and what sort of *Leumund* (a testimonial of a person's character given by an authority, such as a pastor) would be included in their case file. The social and community aspect of law is integrated into the trial itself, so it would be almost impossible to have a trial and legal punishment in the 18th century under the legal system of Württemberg without far-reaching social consequences. What is condemned in the story, then, if we take Limbach's reading a bit further, is that the social and legal are so officially intertwined as to be intolerable. We could read the story as an oppositional piece to the practice of *Ehrenstrafen* and to legal punishments that rely on or intentionally cause a person social harm. (Limbach 222-225)

[21] Schmidt 212.

[22] As Klaus Oettinger argues, Schiller's strategy of Enlightenment is to frame the story of Christian Wolf as a fictional appeals case in which the reader becomes the criminal's defense lawyer. Oettinger 266–77.

[23] "Der Konnex von Leib und Seele war das Königsthema zeitgenössischer Anthropologie". Nilges appraises Schiller's innovations as belonging to "die anthropologischen Bestrebungen der Zeit" (Nilges 60). Or, as Wolfgang Riedel defines it anthropology: "Wissenschaft vom Menschen, seiner physischen Natur und seinen durch die bestimmten Möglichkeiten, to be differentiated from ethnology, the social-scientific study of human culture." Riedel, Wolfgang. "Die Anthropologische Wende: Schillers Modernität." In *Friedrich Schiller und der Weg in die Moderne*, edited by Walter Hinderer, 143–64. Würzburg: Königshausen & Neumann, 2006, 144. According to Riedel, in the last third of the 18th century, the emergence of new sciences like anthropology "indiziert einen tiefgreifenden Umbau des Menschenbildes" (Riedel 144). He also argues that Schiller was directly involved in "die Entstehung einer neuen Anthropologie und 'modernen' Psychologie," and that this involvement "prägte sein Denken bis zuletzt" (Riedel 145). For an interpretation of *Verbrecher* as a psychological study, see: Sharpe, Lesley. "Der Verbrecher aus Verlorener Ehre: An Early Exercise in Schillerian Pychology." *German Life and Letters* 33 (1979): 102–10.

(1781/1782),[24] his essay "Was kann eine gut stehende Schaubühne eigentlich wirken?" (1784),[25] and his numerous academic papers, such as his dissertations from 1779 and 1780.[26] Schiller's writings advocate for the understanding of the complex workings of the human mind and body in all aspects of life, including in governance. His *Verbrecher*, which shifts focus from exteriority to interiority, follows this program closely.[27]

Schiller's novella features many outright criticisms of apathy and mistreatment by judicial and prison authorities. Central to this project, however, is the criticism of official judicial procedure and its literary style. Contending with the "Darstellungsproblem" of legal writing,[28] the narrator integrates this criticism into his own considerations of how best to present the story of a criminal individual.[29] Alexander Košenina proposes that Schiller's narrative strategies in *Der*

[24] Although *Die Räuber, Ein Schauspiel* was published anonymously in 1781, Schiller first added the forward to the second printed edition from 1782. It begins immediately with references to scientific understanding of human psychology: "Man nehme dieses Schauspiel für nichts Anderes, als eine dramatische Geschichte, die die Vortheile der dramatischen Methode, die Seele gleichsam bei ihren geheimsten Operationen zu ertappen, benutzt, ohne sich übrigens in die Schranken eines Theaterstücks einzuzäunen, oder nach dem so zweifelhaften Gewinn bei theatralischer Verkörperung zu geizen. Man wird mir einräumen, daß es eine widersinnige Zumuthung ist, binnen drei Stunden drei außerordentliche Menschen zu erschöpfen, deren Thätigkeit von vielleicht tausend Räderchen abhängt, so wie es in der Natur der Dinge unmöglich kann gegründet sein, daß sich drei außerordentliche Menschen auch dem durchdringendsten Geisterkenner innerhalb vierundzwanzig Stunden entblößen. Hier war Fülle in einander gedrungener Realitäten vorhanden, die ich unmöglich in die allzu engen Pallisaden des Aristoteles und Batteux einkeilen konnte" (*NA* 3, 5).

[25] "Sind *sie* [the theater stages of Germany] es nicht, die den Menschen mit dem Menschen bekannt machten, und das geheime Räderwerk aufdeckten, nach welchem er handelt?" (*NA* 20, 97).

[26] *Philosophie der Physiologie* in 1779 and *Versuch über den Zusammenhang der thierischen Natur des Menschen mit seiner geistigen* in 1780.

[27] Der Verbrecher text is probably one of the most revelatory and instructive texts in German Law and Literature analyses of the 18th century, and a central text in the interpretation of Friedrich Schiller as a literary anthropologist. Yvonne Nilges credits Schiller's juridical preparatory training at the Karlsschule, his medical training at the military academy, and the criminal ordinances of the *Württembergischen Landesordnung* as meaningful components of understanding his *Verbrecher* story (Nilges, 38, 47). Additionally, Schiller read Christian Wolff's *Jus Naturae* (1740-1748), which argues for the perfectibility of humans, the categorical suppression of all destructive behavior, and the *Talionsprinzip* in the *Karlsschule*, she demonstrates that Schiller wrote against his *Karlsschule* readings in favor or a more humane and modern understanding of law (Nilges 50). Nilges concludes: "In dem Maße, die Philosophie und Medizin einander in der Lehre an der Militärakademie bedingten, standen an der Karlsschule auch Philosophie und Jurisprudenz in enger Wechselwirkung zueinander" (Nilges 74).

[28] As Oettinger points out, trial procedure was interested only in the crime as a punishable action, while "[d]ie Geschichte des Verbrechers spielt beim Prozeß kaum eine Rolle" (Oettinger 266-267).

[29] It is not my intention to pursue the specific legal-historical conditions of the Friedrich Schwan story, as this had been well-documented, for example, by Jacob Friedrich Abel in his "Geschichte eines Räubers," or the possible legal bases for Schiller's story in the context of Württemberg laws, as has already been investigated by Yvonne Nilges in *Schiller und das Recht* (2007). Rather, it is to introduce Schiller's work as a literary conversation partner

Verbrecher are part of a larger development of 18th century literary practice called the "poetics of crime."[30] It is a new aesthetic of representation which aims to depict the "innere Geschichte des Menschen" (Blanckenburg).[31] According to Košenina:

> 'Dramatic method', 'self-representation', 'vivid imagination in contrast to historical understanding' – the concept of the aesthetics of representation could hardly be outlined more succinctly. […] In this way characters are given their own authentic voice and we can become witnesses to the gradual taking shape of their thoughts and actions.[32]

For Košenina, this new aesthetics of portraying the criminal finds its highpoint in Schiller's prose. In concert with the Enlightenment push for legal reform, secularization, and the emerging science of anthropology, a new "Seelendramen auf der Bühne des modernen Kriminaltheaters" emerged.[33] On it, the criminal tells and performs his own story. The *Kriminaltheater* constructs rather than deconstructs the subject of the criminal. Košenina goes on to argue that this was not a simple one-way case of jurisprudence being drawn into the literary sphere. Rather, art also contributed to the "humanitären Reform im Prozess der rechtsgeschichtlichen Ausdifferenzierung."[34] Following Košenina's line of argumentation, I propose that the narrative strategies in Schiller's text are strategies of directness, or *Unmittelbarkeit*. They were specifically directed against the spatial,

---

in legal philosophical and legal reform discourse. On the topic of Schiller's story in comparison to the actual biography of Friedrich Schwan or Abel's later study, Nilges writes: "Schillers Erzählung schildert also keineswegs einen historisch-faktischen, sondern weit mehr einen prototypischen, als 'Kunstwahrheit' für den juristisch ungeschulten Leser leichter nachvollziehbaren, entwirrteren und doch strafrechtlich repräsentativen Lebenslauf eines Verbrechers "aus verlorener Ehre," (Nilges 42). See also: Abel, Jacob Friedrich. "Geschichte eines Räubers." In *Sammlung und Erklärung merkwürdiger Erscheinungen aus dem menschlichen Leben*, vol. 2. Stuttgart: 1787, 1-86.

[30] Similarly, John McCarthy notes that in criminal literature of the late 18th century, there was, as part of an intentional reform, a "neu geforderte natürliche Stil und das Selbstverständnis der Literatur als 'Gemälde des Lebens'" (McCarthy 102).

[31] Košenina, "Schiller's Poetics of Crime," 210. For a more in-depth analysis of the change in perspective from "external" and "internal" proposed by Košenina, see also Košenina's article "Recht – Gefällig," from 2005. Additionally, in situating Schiller among his contemporaries, he cites a "trend of internal expression" that emerged in 18th century prose (Schiller, Goethe, Johann Jakob Engels, and Friedrich von Blanckenburg), modern techniques of personal narration, interior monologue/free indirect speech, dialog passages, changes in perspective, and witness accounts. Košenina, "Schiller und die Tradition," 122-123, 135.

[32] Košenina, "Schiller's Poetics of Crime," 211.

[33] Košenina, "Recht – gefällig," 30.

[34] Košenina, "Recht – gefällig," 30.

temporal, and psychological fragmentation of judicial procedure of many 18th century German states that were based on the *Schriftlichkeit* of the inquisition system and *Aktenversendung*.

The claim that art can instruct, improve, or augment institutions of the state is one that Schiller returns to often in his early writing.[35] At the same time, with his *Verbrecher*, Schiller was taking part in the European trend of publishing criminal stories and collections of crime stories. Foremost in this genre was the *Causes célèbres et intéressantes* by François Gayot de Pitaval, for which Schiller wrote the forward in a translation published in 1792.[36] These collections usually included a line about the didactic and public usefulness of the texts, where their authors emphasized that they were more than stories of mere entertainment or human curiosity.[37] This type of "seelenkundlichen Beleuchtung der menschlichen Natur," as John McCarthy puts it, hit upon a positive resonance among writers and jurists around 1800.[38] In the forward to the 1793 catalog of vice, *Abriss Des Jauner Und Bettelwesens in Schwaben*, Georg Jacob Schäffer promises that the exhaustive description and close investigation of crooks, beggars, and public nuisances are

[35] This includes his 1784 speech "Was kann eine gute stehende Schaubühne eigentlich wirken?"*NA* 20, 87-100.

[36] Schiller, Friedrich. "Vorrede: Pitaval." In *Merkwürdige Rechtsfälle als Beitrag zur Gechichte der Menschheit. Nach dem Französischen Werk des Pitaval*. Jena: Cuno, 1792.

[37] "Mere entertainment" usually comes in a defensive context, in which the author of a text or genre justifies the value of it by differentiating it from more trivial forms without educational value. A dialogue titled "Mimer und seine jungen Freunde" published anonymously in the Thalia in 1791 provides a good example. In it, the characters Balder and Heimdal enter a discussion in which Heimdal laments the intellectual poverty of their age while Balder tries to both cheer up his friend and defend art and intellect. Balder says: "Allerdings, wenn es mit dieser so schlimm steht, als du glaubst; aber ich habe Hoffnung, daß es besser ist und besser wird. Der Luxus selbst hat seinen Vortheil, die schönen Künste blühen wieder auf, man macht von ihnen für die Erziehung Gebrauch. Das Theater ist nicht mehr bloße Unterhaltung, es wird auch zur Bildung angewendet." In: Anonymous. "Mimer und seine jungen Freunde: Heimdal, oder unser Zeitalter. Erstes Gespräch." in: *Thalia* (1785–1791), ed. Friedrich Schiller, Vol. 3, Issue 12. Lepzig: G.J. Göschen'cshe Verlag, 1791. 98–143, 127. The formulation "bloße Unterhaltung" does not seem to appear anywhere in Schiller's writing, but it is a formulation that is often used in conjunction with his name in writings from 1800 onward or in the context of 18th century drama theory in scholarship. Auguste Crelinger, a German actress who played main roles in many Goethe, Schiller, Lessing, and Shakespeare stagings, wrote a letter from 1828 that was included in the fourth volume of the collection, *Denkschriften und Briefe zur Charakteristik der Welt und Litteratur*, published in Berlin in 1840 at the Verlag von Alexander Duncker, and in reference to the "Schiller-Göthesche Periode" writes: "Ich halte nocht immer die Ueberzeugung fest, dass das Theater nicht ausschliesslich eine Sache der blossen Unterhaltung, sondern auch eine Bildungsanstalt für das Volk sein soll" (page 207).

[38] McCarthy 101.

necessary in order to make them "bekannt" to the public for the "bürgerliche Wohl."[39] The volume's usefulness to the public extends to bureaucrats, statesmen, common folk, scholars, and "aufgeklärte Menschen-beobachter."[40] Schiller makes similar claims in his forward to the *Pitaval*. He praises its "Brauchbarkeit" and calls its contents a "wichtige Gewinn für Menschenkenntniß"[41] The same is true in the introductory paragraphs to *Der Verbrecher* (1792), where the narrator states: "[…] die Leichenöffnung seines Lasters unterrichtet vielleicht die Menschheit und – es ist möglich, auch die Gerechtigkeit," and in the version from 1786 that reads: "Die Seelenlehre, die Moral, die gesetzgebende Gewalt sollten billig diesem Beispiel folgen, und ähnlicherweise aus Gefängnissen, Gerichtshöfen und Kriminalakten –den Sektionsberichten des Lasters– sich Belehrungen holen."[42]

Der Verbrecher can be read as an instructive text. Through contrasting "types" of government officials, Schiller uses the characters in his novella to create exemplary models for desirable and undesirable actions and attitudes in the justice system. On the negative side are the judges who sentence Wolf with harsher and harsher sentences for his initial poaching crimes without consideration of the individual committing them. On the positive side stands the *Oberamtmann* at the end of the story. According to Wolf, he shows the criminal humility and respect, and Wolf ultimately believes the *Oberamtmann* to be a humane, noble person.[43] *Der Verbrecher* is likewise instructive on the level of narrative strategy. We can say that the text is itself a prototype for writing in judicial practice. It models the narrative form and strategies for

[39] Schäffer, *Vorrede*.
[40] Schäffer, *Vorrede*.
[41] Schiller, "Vorrede: Pitaval," 3-4.
[42] *NA* 16, 9; *NA* 16, 405.
[43] Wolf to the Oberamtmann: "Ihr gestriges Betragen, Herr Oberamtmann, hätte mich nimmermehr zu einem Geständnis gebracht, denn ich trotze der Gewalt. Die Bescheidenheit, womit Sie mich heute behandeln, hat mir Vertrauen und Achtung gegen Sie gegeben. Ich glaube, daß Sie ein edler Mann sind." and "Dieser Kopf ist grau und ehrwürdig. Sie sind lang' in der Welt gewesen – haben der Leiden wohl viele gehabt – Nicht wahr? und sind menschlicher geworden?" (*NA* 16, 29)

approaching and judging individuals in a way that best serves justice and truth. In order to understand how Schiller accomplishes this, we will analyze parts of the novella more closely.

The narrator of *Der Verbrecher* describes Wolf's repeated poaching offenses, done out of his wish to court a young woman in his town, and the response of the officials of justice to his crimes:

> Der doppelte Rückfall [poaching] hat seine Verschuldung erschwert. Die Richter sahen in das Buch der Gesetze, aber nicht *einer* in die Gemütsverfassung des Beklagten. Das Mandat gegen die Wilddiebe bedurfte einer solennen und exemplarischen Genugtuung, und Wolf ward verurteilt, das Zeichen des Galgens auf den Rücken gebrannt, drei Jahre auf der Festung zu arbeiten.[44]

To contextualize the seriousness of the "Mandat," Württemberg during the 18th century published numerous *General-Reskripte* and edicts concerning poaching. At least eight were passed between 1709 and 1742 alone.[45] Their purpose was usually to remind the courts of the ongoing problem of poaching and to intensify punishment thereof in order to deter future criminals.[46] But given the increasing exasperation in the wording of these communications, and their frequency, it seems these measures were not entirely effective. From the formulation of the text as "exemplarischen Genugtuung," it is likely that Wolf's offense, poaching multiple times, was not proportional to the punishment of branding and three years of hard labor in the prison fortress. According to the narrator, Wolf was a victim of circumstance in an uncaring justice system. Had the mandate not required such an extreme and politically motivated example, and had the judges spent more time considering his individual case, the narrator implies that Wolf should not have suffered the punishment he did. Returning to the line "Die Richter sahen in das Buch der Gesetze, aber nicht *einer* in die Gemütsverfassung des Beklagten," as illustrated in Kaulbach's etching, the

---

[44] *NA* 16, 11-12.

[45] Reyscher, August Ludwig, ed. *Sammlung der württembergischen Gerichts-Gesetze*, Vol. 6, part 3: year 1654 to 1805. In commission by Ludw. Friedr. Fues. Tübingen: 1835.

[46] See especially *Wilderei-Edikt* of 22. August 1694 (Nr. 214) and *Patent, das Verbot und die Bestrafung des Wilderns btr.* of 1. June 1709 (Nr. 233). In: Reyscher, *Sammlung der württembergischen Gerichts-Gesetze,* 1835.

narrator produces his critique. According to the narrator, Wolf's judges failed in that they judged only from an academic or legal standpoint (*Buch der Gesetze*) without considering the accused individual as such. That would have required an investigation into his state of mind and heart (*Gemütsverfassung des Beklagten*). However, the narrator does not simply criticize. He also presents, through his retelling of Christian Wolf's story, an example of *how* Wolf's judges ought to have acted. Central to this substantial model proposed by the narrator is the idea that legal judgment must become more human-centric.

The narrator's first concern in this project is the problem of mediating a third party's story and overcoming the distance between subject and reader. This is a topic relevant to inquisitional procedure because legal decisions were based on summary reports, or *Relationen*, prepared from the contents of case files.[47] The judges who wrote the *Relationen* and made judgments based on them were never in the physical presence of the accused. Like the reader, judges, too, are distant from their subject, the accused. The narrator explains the difficulty and the possible strategies for bringing the story of Wolf to his audience of readers:

> Zwischen der heftigen Gemütsbewegung des handelnden Menschen und der ruhigen Stimmung des Lesers, welchem diese Handlung vorgelegt wird, herrscht ein so widriger Kontrast, liegt ein so breiter Zwischenraum, daß es dem letztern schwer, ja unmöglich wird, einen Zusammenhang nur zu ahnden. Es bleibt eine Lücke zwischen dem historischen Subjekt und dem Leser, die alle Möglichkeit einer Vergleichung oder Anwendung abschneidet und statt jenes heilsamen Schreckens, der die stolze Gesundheit warnet, ein Kopfschütteln der Befremdung erweckt. […] Soll sie uns mehr sein und ihren großen Endzweck erreichen, so muß sie notwendig unter diesen beiden Methoden wählen – Entweder der Leser muß warm werden wie der Held, oder der Held wie der Leser erkalten.[48]

[47] *Relationen* were technically lectures, but they took the form of written reports since it would be difficult to memorize an entire lecture. Claproth defintes *Relationen* in their most general sense as "ein Vortrag au seiner vorgegangenen Sache" and specifically as "der Vortrag aus gerichtlichen Acten, welchen der Referent denen Mitgliedern eines Gerichts deutlich und vollständig von demjenigen, was bishero in der Sache vorgegangen, thut, und seine Meynung, wie darin nunmehre verfahren oder gesprochen warden müsse, mit Gründen hinzufüget" (Claproth, *Relationen*, 1-2).

[48] *NA* 16, 8.

The "groß[e] Endzweck" of art, being catharsis ("heilsam[es] Schrecken") runs aground in the face of a basic discontinuity. There is a chasm between the historical subject who experiences the events in a story or history's plot, whose mind and temper are in flux, and yet whose actions are fixed on paper, and the contemplative reader, who is in danger of becoming alienated by the historical subject's actions. The passage laments the seemingly unbridgeable gap between the two. How can a reader possibly understand the historical subject, Wolf? One method would be to manipulate the reader into thinking and feeling with the hero as he acts, or "warm werden wie der Held." The other method would be to cool the active hero down ("der Held wie der Leser erkalten"). The hero could then communicate with the reader in a matching intellectual state. The warm and cold dichotomy identifies the conflict experienced by readers of third-party accounts versus experiencing it firsthand.[49] In a third-party account, the motivations of the acting subject appear confusing or illogical to the reader.

On making a reader "warm," the narrator admits that even the best *Geschichtschreiber* of his time and of antiquity have used this method. In doing so, however, they have injured the reader's free judgment, or "republikanische Freiheit."[50] This "Ursurpation" committed by poets and orators works by corrupting "das Herz ihres Lesers durch hinreißenden Vortrag." [51] The narrator claims that he will not manipulate the reader, and belongs rather to the true *Geschichtschreiber*, who uses the second method: the cooling of the protagonist. The *Geschichtschreiber* must respect the borders between what he does and what the orator and the

[49] Thomas Weitin's takes a media and communication theory approach to Schiller's *Verbrecher*, delineating the narrator's narrative categories between 'hot' and 'cold' media à la Marshall McLuhan. He then applies the 'hot' and 'cold' categories to Schiller's *Schaubühnenrede*, in which he reads Schiller's theater, as promoted in the lecture, as the beginnings of a 'Polizei' project of crime prevention (Weitin, "Literatur des Kriminellen," 367–80).
[50] *NA* 16, 9.
[51] *NA* 16, 9.

poet do. To this end, the narrator explains in scientific and aristic terms what it means for the historical subject to become cold:[52]

> Der Held muß kalt werden wie der Leser, oder, was hier ebensoviel sagt, wir müssen mit ihm bekannt werden, *eh'* er handelt; wir müssen ihn seine Handlung nicht bloß *vollbringen* sondern auch wollen sehen. An seinen Gedanken liegt uns unendlich mehr als an seinen Taten, und noch weit mehr an den Quellen seiner Gedanken als an den Folgen jener Taten. Man hat das Erdreich des Vesuvs untersucht, sich die Entstehung seines Brandes zu erklären; warum schenkt man einer moralischen Erscheinung weniger Aufmerksamkeit als einer physischen? Warum achtet man nicht in eben dem Grade auf die Beschaffenheit und Stellung der Dinge, welche einen solchen Menschen umgaben, bis der gesammelte Zunder in seinem Inwendigen Feuer fing? Den Träumer, der das Wunderbare liebt, reizt eben das Seltsame und Abenteuerliche einer solchen Erscheinung; der Freund der Wahrheit sucht eine Mutter zu diesen verlorenen Kindern. Er sucht sie in der *unveränderlichen* Struktur der menschlichen Seele und in den *veränderlichen* Bedingungen, welche sie von außen bestimmten, und in diesen beiden findet er sie gewiß.[53]

More important than the deed itself are the criminal's thoughts surrounding the deed. The deed, however horrific it might be, will spring unsurprisingly from the unraveling of the plot. Likewise, more important than the aftermath of the crime are the sources of the criminal's thoughts, which brought him to act in the first place. The narrator compares the source/plot dualism to the work of a scientist, who investigates not only the destructiveness of volcanoes but also the reasons for their coming to be, their "Entstehung." In the case of a criminal, if the source is well-illustrated, then the reader will *want* to see its full consequence in the criminal's plot. The *Geschichtschreiber* must portray the protagonist in a deeply psychological light in order to satisfy the demands of this method. It is a method that claims to assist the friends of truth ("Freund der Wahrheit"). The focus

[52] Schiller sets up a similar problem in the to introduction to his play *Die Verschwörung des Fiesko zu Genua* (1783), in which he explicitly lays out his literary goals and methods. He claims that a particular medium (the stage) is not the most advantageous place for his particular subject (the political hero), but proposes how he will proceed and not proceed in pursuit of his project: "Aber so merkwürdig sich auch das unglückliche Project des Fiesco in der Geschichte gemacht hat, so leicht kann es doch diese Wirkung auf dem Schauplatz verfehlen. Wenn es wahr ist, daß nur Empfindung Empfindung weckt, so müßte, däucht mich, der *politische Held* in eben dem Grade kein Subject für die Bühne sein, in welchem er den Menschen hintenansetzen muß, um der politische Held zu sein. Es stand daher nicht bei mir, meiner Fabel jene lebendige Gluth einzuhauchen, welche durch das lautere Product der Begeisterung herrscht; aber die kalte, unfruchtbare Staatsaction aus dem menschlichen Herzen herauszuspinnen und eben dadurch an das menschliche Herz wieder anzuknüpfen – den *Mann* durch den *staatsklugen Kopf* zu verwickeln – und von der erfindrischen Intrigue Situationen für die Menschheit zu entlehnen – *das* stand bei mir" (*NA* 4, 9-10).

[53] *NA* 16, 8-9.

of *Der Verbrecher* is the individual within humankind as a whole, as well as the material forces that affect him. It is an anthropological approach to both literary prose and justice.

With the full story and with the correct method of psychological representation, the narrator reiterates the reader's right and preparedness to judge:

> Ob der Verbrecher, von dem ich jetzt sprechen werde, auch noch ein Recht gehabt hätte, an jenen Geist der Duldung zu appellieren? ob er wirklich ohne Rettung für den Körper des Staats verloren war? – Ich will dem Ausspruch des Lesers nicht vorgreifen. Unsre Gelindigkeit fruchtet ihm nichts mehr, denn er starb durch des Henkers Hand – aber die Leichenöffnung seines Lasters unterrichtet vielleicht die Menschheit und – es ist möglich, auch die Gerechtigkeit.[54]

What the narrator is explicitly staging in his introduction is a fictional exercise in judgment. The questions are whether the criminal deserved sympathy and tolerance, and "ob er wirklich ohne Rettung für den Körper des Staats verloren war?" The reader, who "sitzt selbst zu Gericht,"[55] will have an "Ausspruch," which the narrator does not want to influence in respect to the reader's "republikanische Freiheit." The narrator is responsible for mediating the story of the historical subject in a way that serves truth and understanding. He claims he will do considerable work in order to maintain the free judgment of the reader and in order to reduce psychological distance between reader and criminal.

Of the instances of justice in the story, the narrator observes that judicial practice in the case of Wolf was the opposite of what needed to be done in order to execute this new anthropologically human-centric justice. Their legal protocols and reports center around deeds and utterances, not necessarily motivations, feelings, and thoughts. The "groß[e] Endzweck" (catharsis) of a literary venture is not the same as the goal of a legal practitioner. However, the greater criticism here is *precisely* because legal writing and procedure is so contemptuous to human subjectivity—that human subjectivity has been eradicated by design—that a radical change

[54] *NA* 16, 9.
[55] Ibid.

in the mode of writing is necessary. According to the narrator, the "Leicheneröffnung" he is about to present using the narrative methods he has just discussed has the potential to correct current practices. Thus, this story is instructive to justice.

2.3.1 Strategies of *Unmittelbarkeit* in *Der Verbrecher*: The Cold Protagonist

How does the narrator of Schiller's *Verbrecher* actually implement his narrative strategy? One way to provide a sense of immediacy between subject and reader would be a first-person narration, which would be something akin to Košenina's proposed theater of self-representation. Indeed, Schiller's text switches to the first person for one large section of the story.[56] In it, Wolf explains the effect of his three-year sentence in the prison fortress on his character and further development. Wolf also narrates his thoughts while committing his first murder and subsequently joining a robber band. Otherwise, the story is narrated in the third person by the author of the introduction, who provides commentary and insights into Wolf's thoughts.

The narrator's strategy of attaining eventual directness is a winding psychological investigation that begins with the proposed sources of Wolf's later criminal activity. It then transitions to his psychological reactions to events in his life. The narrator commences with early psychological factors in Wolf's life rather than beginning with the immediate material reasons for his criminal activity. The desire for and loss of honor are central themes. The content of the third person narration, including the framing introduction, primes the reader to be receptive to bridging the historical gap. As the narrator describes it: the reader should *want* to see Wolf do what he does on an intellectual level. What the narrator proposes is not empathy, but more a social-moral and scientific interest in the human mind.

[56] Eleven pages of a 21-page story in the *Nationalausgabe*.

The narrator's first biographical topic is Wolf's impoverished childhood and his personality. He pays special attention to the criminal's unattractive appearance, which seems to have deeply affected his relationship with others even from a young age. A kick to the face by a horse "gab seinem Anblick eine Widrigkeit, welche alle Weiber von ihm zurückscheuchte und dem Witz seiner Kameraden eine reichliche Nahrung darbot."[57] This first injury to his self-image, over which he has no control, affects him in a deep and psychological way in regards to his interpersonal relationships. Then as a young man, he experiences a direct blow to his pride: the loss of a young woman to a rival. In order to impress her during courting, Wolf turns to poaching so that he can buy her gifts. After all, the girl is poor, and Wolf theorizes: "Ein Herz, daß seinen Beteurungen verschlossen blieb, öffnete sich vielleicht seinen Geschenken."[58] The narrator, citing laziness and pride, faults Wolf's personality for his initial missteps. However, he also implies that Wolf's first experiences of social ridicule and estrangement were the main emotional drives behind his willingness to flout the law. He lashes out at what he perceives to be unfairness: "Er wollte ertrotzen, was ihm verweigert war".[59] Wolf is eventually caught poaching by his rival, Robert. A heavy monetary fine leads him to material and psychological ruin: "Drückendes Gefühl des Mangels gesellte sich zu beleidigtem Stolze, Not und Eifersucht stürmen vereinigt auf seine Empfindlichkeit ein, der Hunger treibt ihn hinaus in die weite Welt, Rache und Leidenschaft halten ihn fest."[60] In this description of Wolf's turmoil, the narrator wants the reader to acknowledge not only the material effects of Wolf's punishment, but also the psychological effects which grow exponentially but remain undocumented and hidden.

[57] *NA* 16, 10.
[58] Ibid.
[59] Ibid.
[60] *NA* 16, 11.

These feelings, the narrator claims, are the psychological precursors that prepare the reader to understand the depths of Wolf's injury when he does actually fall into dishonor. They also suggest that Wolf's actions generally stem from the desire to be a part of social norms and to possess social standing within his community. This perhaps explains his eagerness to participate in the social rituals of love and courtship. The line, "Er war sinnlich und beredete sich, daß er liebe," illuminates Wolf's particular understanding of his own body and emotions. It also reveals the social values he initially holds, that is, he feels he must interpret his sensuality as love. This line is also indicative of the narrator's scientific anthropological approach to his subject, Wolf. What this approach tells the reader is that Wolf's behavior and actions are very much rooted in fundamental human emotions, biology, and education. If we are to believe the narrator that part of the strategy of *Unmittelbarkeit* is that "wir [the readers] müssen mit ihm bekannt werden, *eh'* er handelt," then the first part of the story, Wolf's life before his becoming a criminal, is a model for this approach.

The winding path through Wolf's biography comes finally to the events that will drive him to willingly commit severe crimes. Is it at this point that the narration switches from the third person omniscience narrator to the first-person. It allows Wolf, the protagonist, to become the 'cold' hero mentioned in the story's introduction. In order to make this switch, the narrator announces that he will turn to what was actually said in court: "[…] man höre ihn selbst, wie er nachher gegen seinen geistlichen Beistand und vor Gerichte bekannt hat." Although the narrator does not actually provide an explanation of what constitutes a 'cold' protagonist in his introduction, I propose that examples from the story are ones in which the criminal engages in self-reflexive storytelling.

In the following quote, Wolf has just been released from his three-year sentence in a fortress prison for repeated poaching arrests. He reflects upon the impact of social estrangement on his path to becoming a robber and murderer:

> »Die Glocken läuteten zur Vesper, als ich mitten auf dem Markte stand. Die Gemeinde wimmelte zur Kirche. Man erkannte mich schnell, jedermann, der mir aufstieß, trat scheu zurück. Ich hatte von jeher die kleinen Kinder sehr lieb gehabt, und auch jetzt übermannte mich's unwillkürlich, daß ich einem Knaben, der neben mir vorbeihüpfte, einen Groschen bot. Der Knabe sah mich einen Augenblick starr an und warf mir den Groschen ins Gesicht. Wäre mein Blut nur etwas ruhiger gewesen, so hätte ich mich erinnert, daß der Bart, den ich noch von der Festung mitbrachte, meine Gesichtszüge bis zum Gräßlichen entstellte – aber mein böses Herz hatte meine Vernunft angesteckt. Tränen, wie ich sie nie geweint hatte, liefen über meine Backen.
> »›Der Knabe weiß nicht, wer ich bin, noch woher ich komme,‹ sagte ich halblaut zu mir selbst, ›und doch meidet er mich wie ein schändliches Tier. Bin ich denn irgendwo auf der Stirne gezeichnet, oder habe ich aufgehört, einem Menschen ähnlich zu sehen, weil ich fühle, daß ich keinen mehr lieben kann?‹ – Die Verachtung dieses Knaben schmerzte mich bitterer als dreijähriger Galliotendienst, denn ich hatte ihm Gutes getan und konnte *ihn* keines persönlichen Hasses beschuldigen.[61]

Wolf describes the setting of his return to his hometown as a social, communal one. The first thing that he encounters is a communal building: "Die Gemeinde wimmelte zur Kirche." Looking back at the narrator's initial recouting of Wolf's early life, the community is something that Wolf desires to be a part of. The motif of familiar people recoiling from Wolf, as he experienced in his youth ("alle Weiber von ihm zurückscheuchte"), is repeated here: "Man […] trat scheu zurück." Worse, a young boy rejects a penny that Wolf wishes to gift him by throwing it back in Wolf's face. Wolf then inserts a retrospective thought into his narration of events in the subjunctive case: "Wäre mein Blut nur etwas ruhiger gewesen, so hätte ich mich erinnert, daß der Bart, den ich noch von der Festung mitbrachte, meine Gesichtszüge bis zum Gräßlichen entstellte […]." Followed by a cause-and-effect explanation of his internal processes of this intensely emotional situation: "aber mein böses Herz hatte meine Vernunft angesteckt." He describes how the pain of social rejection brings him to tears and compares the damage done by this rejection to his previous material, legal punishment: "Die Verachtung dieses Knaben schmerzte mich bitterer als

[61] *NA* 16, 13.

dreijähriger Galliotendienst." Of course, the reasons for the boy's reaction to Wolf stem from this very time in prison. In addition to his repulsive physical appearance, the community's collective avoidance of Wolf has to do with him being a known criminal.

During this event, Wolf has an internal monolog that sheds light on the effect of this event on his psychology. Asking himself, and consequently also the reader, why the young boy rejected him, Wolf offers a pitiful answer: "habe ich aufgehört, einem Menschen ähnlich zu sehen, weil ich fühle, daß ich keinen mehr lieben kann?" He wonders whether his internal state, his heart, and his ability to love can affect his physical self and appearance.[62] The thought expresses self-doubt. It also uncovers a system of social values from which he feels cast out: the ability to love is a pre-requisite to being human.[63] At this point, he begins to doubt whether he belongs to the rest of humanity, which—in Schillerian terms—is an absolute disaster of inner feeling. Through self-description in the first person, Wolf grants the reader direct access into his perception of events. The reflexivity of the narrative should engage the quiet reader's reason. Wolf's rhetorical question acknowledges them as judge of his deeds, but not first without having a thorough understanding for his situation and state of mind.

[62] This is a question of Enlightenment psychology and anthropology, the connection of body and mind, material and thought, that Schiller pursued throughout his career as an author, but especially in very concrete ways in the 1780s. It is perhaps also a subtle jab at the popular science of physiognomy and the works of Johann Kaspar Lavater, which claim that a person's character can be assessed by their physical appearance, namely, the silhouette. Instead of asking whether his individual physical appearance makes him a criminal, as physiognomy might analyze, Wolf asks whether his physical appearance even qualifies him to be human. Lavater, Johann Kaspar. *Physiognomische Fragmente, zur Beförderung der Menschenkenntniß und Menschenliebe*. 4 vols. Weidemann und Reich, Steiner: Winterthur, Leipzig, 1775-1778.

[63] This idea finds a similar expression in Schiller's "An die Freude" (1785), in which the ability to call just one other person a friend is the pre-requisite to joining the realm of joy. "Wem der große Wurf gelungen, / Eines Freundes Freund zu sein; / Wer ein holdes Weib errungen, / Mische seinen Jubel ein! / Ja – wer auch nur eine Seele / Sein nennt auf dem Erdenrund! / Und wers nie gekonnt, der stehle / Weinend sich aus diesem Bund!" (*NA* 1, 169)

After the experience that establishes him as a social outcast, Wolf then moves on to describe his dire material conditions. The confluence of his financial misfortune with his loss of honor set him on a path of *wanting* to break the law:

> »Meine Mutter war tot. Mit meinem kleinen Hause hatten sich meine Kreditoren bezahlt gemacht. Ich hatte niemand und nichts mehr. Alle Welt floh mich wie einen Giftigen, aber ich hatte endlich verlernt, mich zu schämen. Vorher hatte ich mich dem Anblick der Menschen entzogen, weil Verachtung mir unerträglich war. Jetzt drang ich mich auf und ergötzte mich, sie zu verscheuchen. Es war mir wohl, weil ich nichts mehr zu verlieren und nichts mehr zu hüten hatte. Ich brauchte keine gute Eigenschaft mehr, weil man keine mehr bei mir vermutete.
> »Die ganze Welt stand mir offen, ich hätte vielleicht in einer fremden Provinz für einen ehrlichen Mann gegolten, aber ich hatte den Mut verloren, es auch nur zu scheinen. Verzweiflung und Schande hatten mir endlich diese Sinnesart aufgezwungen. Es war die letzte Ausflucht, die mir übrig war, die *Ehre* entbehren zu lernen, weil ich an keine mehr Anspruch machen durfte. Hätten meine Eitelkeit und mein Stolz meine Erniedrigung erlebt, so hätte ich mich selber entleiben müssen.
> »Was ich nunmehr eigentlich beschlossen hatte, war mir selber noch unbekannt. Ich wollte Böses tun, soviel erinnere ich mich noch dunkel. Ich wollte mein Schicksal verdienen. Die Gesetze, meinte ich, wären Wohltaten für die Welt, also faßte ich den Vorsatz, sie zu verletzen; ehemals hatte ich aus *Notwendigkeit* und *Leichtsinn* gesündigt, jetzt tat ich's aus freier Wahl zu meinem Vergnügen.[64]

Again, this passage is a detailed account of his loss of honor told in retrospect and with numerous cause-and-effect phrases, such as "Ich brauchte keine gute Eigenschaft mehr, weil man keine mehr bei mir vermutete." The main point of the passage is to illustrate how Wolf's financial and social degredation became psychologically intolerable. He necessarily gave up honor, as one might give up a luxury in a tight financial situation, in order to persist as himself. Living with honor was no longer possible for him. It is telling that this section comes immediately after the description of his financial losses. There is a parallel between financial means and social/personal values, in that Wolf has been so degredated that he cannot 'afford' to retain honor as a part of his life. When put in these terms, in which psychological states are explained silimarly to more concrete, material things such as money or physical property, the story makes the psychological more tangible, and perhaps also more understandable and admissible as evidence to the reader-judge.[65]

---

[64] *NA* 16, 14-15.

[65] In considering this comparison of psychological injurty to finances, it should be noted that, in Schiller's lifetime, psychology or *Seelenkunde* was a new and rapidly growing field. This rhetorical move legitimizes the psychological as a serious element of legal consideration. The point being, complex physchological injury and violence can be as equally damaging as material, physical injury and violence. What this means is that when Wolf's judges looked into

Wolf admits that he did not know at the time of his decision to become a criminal that he had even made that decision: "Was ich nunmehr eigentlich beschlossen hatte, war mir selber noch unbekannt." However, once he does, he feels a need to earn his criminal reputation: ("Ich wollte mein Schicksal verdienen." This introspective *Erzählweise* in the first person is very explicit about attributing numerous logical reasons and psychological causes to the outcome, becoming a criminal. Simultaneously, it is Wolf's interpretation of his own actions. The phrase "man höre ihn selbst" indicates that Wolf uttered the words in the text and that they were mediated reliably by the narrator. I propose that Wolf himself, then, is using the narrative strategy of the 'cold' hero in order to tell his story. In other words, the criminal, too, has a strategy of self-representation. The third-person narration primes the reader to eventually bridge the gap between themselves and the historical subject, Wolf. The transition from the first person to third person should arrive as a point in the story where there should be a degree of directness between reader and subject.

2.3.2 Strategies of *Unmittelbarkeit* in *Der Verbrecher*: The Warm Reader

The narrator's strategy of investigating the roots of Christian Wolf's vice and crimes in a scientific manner dominates the story's beginning. He claims that he does not wish to injure the republican freedom of the reader, thus employing the first method of immediacy of overcoming the reader-subject gap. However, by the end of the story, he does actually use both strategies, the *Geschichtsschreiber*'s cold hero and the poet's warm reader, in order to achieve a directness between the reader and the subject. The story transforms in many instances into a more gripping, first-person narrative. It then fully converts at the end of the story from 'cold' prose written in the

the books of law and not into the accused's heart, they considered only the material in this case, namely poaching, but not the psychological state. Nor did they consider or calculate the emotional and moral damage that comes with Wolf's prison sentence. They calculated only the material retribution, three years of labor and loss of freedom—not unlike prisons today.

past tense in dense paragraph form to an exchange of dialogue written in the present tense that begins to resemble the visual form of a written play. This transition brings with it many of the features of a play, especially the sense of presentness inherent to dramatic style. There are three main instances in which the reader is made to be "warmed" up to the drama of the story: the first occurs during Wolf's retelling of how he murdered his rival, Robert, the second happens when Wolf is welcomed into the social order of robbers and murderers, and the third instance occurs in the last few pages at the end of the story when Wolf is finally arrested and admits to his crimes.

In the passage in which Wolf recounts Robert's murder, Schiller switches from past tense prose to the present tense (italicized below). The tone changes dramatically from reflection to action, as Wolf moves from giving a documentarian description of his life to narrating his in-the-moment thoughts and actions. The effect magnifies a single occurrence:

> Eines Morgens hatte ich nach meiner Gewohnheit das Holz durchstrichen, die Fährte eines Hirsches zu verfolgen. Zwei Stunden hatte ich mich vergeblich ermüdet, und schon fing ich an, meine Beute verloren zu geben, als ich sie auf einmal in schußgerechter Entfernung entdecke. *Ich will anschlagen und abdrücken – aber plötzlich erschreckt mich der Anblick eines Hutes, der wenige Schritte vor mir auf der Erde liegt. Ich forsche genauer und erkenne den Jäger Robert, der hinter dem dicken Stamm einer Eiche auf eben das Wild anschlägt, dem ich den Schuß bestimmt hatte. Eine tödliche Kälte fährt bei diesem Anblick durch meine Gebeine.* Just das war der Mensch, den ich unter allen lebendigen Dingen am gräßlichsten haßte, und dieser Mensch war in die Gewalt meiner Kugel gegeben. In diesem Augenblick dünkte mich's, als ob die ganze Welt in meinem Flintenschuß läge und der Haß meines ganzen Lebens in die einzige Fingerspitze sich zusammendrängte, womit ich den mörderischen Druck tun sollte. Eine unsichtbare fürchterliche Hand schwebte über mir, der Stundenweiser meines Schicksals zeigte unwiderruflich auf diese schwarze Minute. Der Arm zitterte mir, da ich meiner Flinte die schreckliche Wahl erlaubte – meine Zähne schlugen zusammen wie im Fieberfrost, und der Odem sperrte sich erstickend in meiner Lunge. Eine Minute lang blieb der Lauf meiner Flinte ungewiß zwischen dem Menschen und dem Hirsch mitten inne schwanken – eine Minute – und noch eine – und wieder eine. Rache und Gewissen rangen hartnäckig und zweifelhaft, aber die Rache gewann's, und der Jäger lag tot am Boden.[66] [italicization mine]

The use of the present tense here is not as extensive as it will become later, but the function of change in tense is to make the passage literally present (*gegenwärtig*) to the reader. It also signals a narrative and emotional high point: the unexpected discovery of Wolf's rival and nemesis, Robert. If we compare this passage to the passages already discussed, we notice other new

[66] *NA* 16, 15-16.

narrative elements. Foremost is Wolf's focus on his body: numerous descriptions of physical-emotional sensations and physical affect, such as: "plötzlich erschreckt mich der Anblick eines Hutes", "Eine tödliche Kälte", "der Haß meines ganzen Lebens in die einzige Fingerspitze sich zusammendrängte", "Der Arm zitterte mir", "meine Zähne schlugen zusammen", "der Odem sperrte sich erstickend in meiner Lunge". Furthermore, Wolf introduces uncertainy in this passage, which was avoided prior in the narrative. Phrases such as "da ich meiner Flinte die schreckliche Wahl erlaubte" and "Eine Minute lang blieb der Lauf meiner Flinte ungewiß zwischen dem Menschen und dem Hirsch mitten inne schwanken" remove Wolf's intention from the decision process. The moment-to-moment description of his physical and emotional reactions to Robert and the ultimate uncertainy of whether he will pull the trigger draw out the moment and create palpable tension. This is true despite the reader already knowing that Wolf is a criminal and murderer. The strategy of directness here is to draw the reader into the moment through the text's presentness and uncertainty, "warming" the reader up to the moment when Robert is dead.

There are a few other passages that also rely on "warm" tension in the prose, such as the moment Wolf decides to follow a group of robbers into their lair, thus sealing his fate as one of their members. Then, in the end section of the story, Schiller again switches from past tense prose to the present tense.[67] This time, however, he also adds a hitherto unutilitzed narrative format: a dialogue exchange. Below is a verbal exchange between Wolf and the *Oberamtmann* of a town in which Wolf is arrested by a mob of townspeople:

> »Wer seid Ihr?« frägt der Richter mit ziemlich brutalem Ton.
> »Ein Mann, der entschlossen ist, auf keine Frage zu antworten, bis man sie höflicher einrichtet.«
> »Wer sind Sie?«
> »Für was ich mich ausgab. Ich habe ganz Deutschland durchreist und die Unverschämtheit nirgends als hier zu Hause gefunden.«
> »Ihre schnelle Flucht macht Sie sehr verdächtig. Warum flohen Sie?«
> »Weil ich's müde war, der Spott Ihres Pöbels zu sein.«[68]

[67] *NA* 16, 26-29.
[68] *NA* 16, 27.

In contrast to the heavy, long paragraphs of prose that has thus far characterized the visual style of the story on the page, these exchanges mimic the dialogue of a printed play. In his *Schaubühnenrede*, Schiller praises the advantages of the stage over written stories, namely that the stage is a place of "Anschauung und lebendige Gegenwart."[69] It is direct, present, and in the moment. He writes that "sichtbare Darstellung wirkt [mächtiger]" as "toder Buchstabe und kalte Erzählung."[70] The last few pages of *Verbrecher* almost completely abandon prose and begin to resemble a *Lesedrama* with only the dialogue between the *Oberamtmann* and Wolf. The author of *Der Verbrecher* makes use of these narrative tactics to "warm" the reader in order to overcome the gap between the psychological state of the reader and subject, despite the *narrator's* claim that he will not do so. At this point, the narrative moves beyond the field of the narrator's initial intention. It is important that the story ends with the *Lesedrama*-like format because it illustrates that the "warm reader" strategy is also valid. If not injurious to the "republican freedom" of the reader, it is perhaps even necessary for overcoming the reader-subject gap.

Wolf's last lines in the story, in which he identifies himself to the authorities, are spoken to the *Oberamtmann*. They expose Wolf's hope that the *Oberamtmann*'s age and experience of the world will make him more humane: "Dieser Kopf ist grau und ehrwürdig. Sie sind lang' in der Welt gewesen – haben der Leiden wohl viele gehabt – Nicht wahr? und sind menschlicher geworden?" Though the question is directed at the *Oberamtmann*, it is hypothetically asked also of the reader, who, too, should be "menschlicher." Wolf then instructs the *Oberamtmann* to do the following: "Schreiben Sie es Ihrem Fürsten, wie Sie mich fanden und daß ich selbst aus freier

[69] *NA* 20, 91. Schiller was not the first to examine the advantages of the stage over other media. The philosopher Christian Wolff and pedagogue Johann Georg Sulzer also theorized on this point. See chapter 3 for a summary of their arguments.
[70] *NA* 20, 93.

Wahl mein Verräter war […] bitten Sie für mich, alter Mann, und lassen Sie dann auf Ihren Bericht eine Träne fallen: Ich bin der Sonnenwirt."

The story finishes quite dramatically with this admission, "I am the Inkeeper of the Sun." It is the last line of the story, an emotionally charged revelation which condemns Wolf to death. What happened to the narrator's "cold protagonist" and his claims about the scientific investigation of a moral phenomenon? Where is the connection to the case file and the practical work of a judge? Wolf's instructions include two unlikely things that reveal the story's deep involvement and concern with trial procedure: that the *Oberamtmann* should "write to [his] prince," and that he should then "shed a tear on [his] report." First, the protagonist emphasizes the written nature of trial procedure with these two references to writing. He knows that his story will be mediated in writing to those who will ultimately judge him. Secondly, he asks for the magistrate to become emotionally involved in his case. The magistrate should leave physical evidence of his emotions, a tear, in a way that disrupts the rational, anonymous approach to legal writing. The tear is central because the only thing that Wolf's judges are going to know of him, of what he has done, and of what he has been through, is his case file with the magistrate's report on top. The tear is an appeal to subjective human understanding that necessarily goes missing in the multiple instances of legal mediation. The intentional insertion of subjective emotions into the legal proess would not be in line with the rational, scientific nature of compiling or evaluating the contents of a *Gerichtsakte*.

Yet the tear is more than just a symbol, it is also the magistrate's emotion there on the report, now part of the paper and the ink. In Schiller's story, it is not just the narrator who comments on the written form of judgment in the German territorial states. The criminal, too, is reflecting on and trying to influence the strict procedure of justice. The tear acknowledges that the writer of a legal report is also an emotional, psychological being. Just as the narrator admonishes

Wolf's judges for not looking into "die Gemütsverfassung des Beklagten," Wolf himself requests a further criterium for good judgment: that his judge make a display of human emotion. This ending line is perhaps the strongest stance that the narrative of the *Verbrecher* takes against the narrator's theory that the "warm reader" approach necessarily infringes upon the "republican freedom" of the reader. The ending suggests that the theatrical, emotional present is also a valid strategy of creating directness between reader and subject.

In *Der Verbrecher*, Schiller identifies literary problems: the gap between subject and reader and the fact that the subject's story is mediated. He then proposes narrative strategic solutions. Judicial procedure faces the same challenges: namely, the fragmentation in the *Inquisitionsverfahren*, or the gap judge and the accused. The narrator of the story simultaneously admonishes judges, appeals to them in rational terms to change their behavior and bureaucratic practices, i.e. their writing practices, and gives them a literary model to work with. With his *Verbrecher* text, Schiller provides justice with a literary model. Two different strategies for *Unmittelbarkeit* emerge: the 'cold protagonist' or the 'warm reader'. The narrator's preferred strategy of immedaicy for the working legal official is that of the 'cold protagonist,' which is the close study and description of a whole individual, his motivations, and state of mind. Yet the play-like dialogue at the end of the story and Wolf's insistence that the magistrate shed a tear suggests what is ultimately missing from the entire trial process: actual immediacy. Wolf's judges should hear, see, and interact with the subject that they will judge, and Wolf himself should be able to see and hear the person who will pass judgment upon him. While the narrator privileges a "cold" form of storytelling in the introduction, the *Lesedrama* form of the last pages of *Der Verbrecher* indicates that if the gap between reader and subject is to be overcome, a "warm" style may also be necessary.

2.3.3 Schiller and Practices of 18th Century Justice

Eighteenth century justice in the German states that relied on inquisitional trial procedure and *Aktenversendung* was rational and scientific. There were clear guidelines and methods on the collection of information by local authorities and on the procedures of preparing documents by trained jurists at higher courts. One type of legal writing, the *Relation*, was of particular importance. *Relationen* were summaries of the contents of case files that were written by trained jurists, who then presented these summaries orally to their colleagues as a lecture. The authors of the *Relationen* would also suggest an opinion on the case. This opinion was usually ratified by their colleagues without much further deliberation and sent back to the lower courts as judgments. Ultimately, this meant that there was often a double mediation between the accused and their judges. There was mediation through the case file and another instance of mediation when the case file was sent to another court and summarized by a single jurist.

When the narrator of *Verbrecher* accuses the judges of neglecting to look into the *Gemütsverfassung* of the accused, it is possible that the system of justice, actual trial procedure, makes this impossible.[71] A member of the Tübinger Law Faculty reading a protocol or presenting a *Relation* is not the same thing as Schiller's audience sitting down to read a work of prose. However, the theoretical problem that Schiller identifies as being a massive hurdle for writers, the

[71] Although accounts of crimes can be heart-wrentching even in the 'cold' prose of legal writing, it is curious to note that many "Dichterjuristen" of the time, for example, Johann Wolfgang Goethe and Gottfried August Bürger, still revisit legal cases they presided over and re-tell them through more creative avenues, usually heightening the pathos. For example, Goethe based his figure of Gretchen in *Faust* on his experiences in a high-profile infanticide case. Gottfried August Bürger did the same in his ballad "Des Pfarrers Tochter von Taubenhain" (1781), possibly inspired by the case of Catharina Elisabeth Erdmann, which he presided over when he was Amtmann of Altengleichen. This could be a simple case of utilizing tragedeis from real life as poetic material—an exploitative transformation. But in at least these cases, they were written in times when Territorial governments were in the midst of grappling with the question of how to prevent and also how to justly punish in cases of infanticide. For Gottfried August Bürger, see page 50 of: Fronius, Helen. "'[I]n einem erleuchteten Jahrhundert': Enlightenment Self-Consciousness in the Infanticide Debate of the 1780s." *In Jahrhundert(w)Ende(n): Ästhetische und Epochale Transformationen und Kontinuitäten 1800/1900*, edited by Julia S. Happ, 49–72. Münster: LIT Verlag, 2010.

contrast between the acting subject and the reader, is one that also applies to the justice system's heavy reliance on *Schriftlichkeit*. In decades after *Der Verbrecher*, *Schriftlichkeit* is heavily thematized in legal literature and criticized by law reformers.[72] In his story, Schiller is not only criticizing the abuse of law by powerful individuals, states, or tyrants, as he often does in his other works. He is equally critical of the everyday practice of law in the German states.

However, as detailed and thick as case files in the German states could become over the course of a trial, filled with witness interrogations, reports, defense writings, expert opinions, they certainly did not take the form that Schiller presents in *Der Verbrecher*. Neither did the *Relationen*, whose main virtue was brevity.[73] On this point, Yvonne Nilges asserts that "[d]er 'Verbrecher auf Infamie' setzt das Lesepublikum der 'Historischen Relationen' geradezu voraus—und destruiert dessen Erwartungen, indem buchstäblich alle Elemente des gewohnten Genres ausbleiben."[74] The narrative strategies proposed by Schiller takes the opposite stance of the narrative strategy in legal writing, which does not have the patience nor inclination to take the winding road through the psychological development of a criminal. This is where Schiller's critique that trial procedure favors fragmentation between judge and accused over immediacy emerges.

[72] Both Mittermaier and Feuerbach were skeptical that current judicial methods were effective in providing citizens with good and true justice.

[73] In his textbook *Kurze Vorstellung des Civil-Processes*, Justus Claproth outlines clearly the standards of juridical writing. In a section titled "In Ansehung des Styli" he recommends: "Zwischen der Geschichts-Erzählung müssen keine *conclusiones*, Muthmassungen, Urtheile usw. gemacht oder gefället werden, sondern das *factum* ist historisch in einer ununterbrochenen Reyhe, mit möglichster Kürze und Deutlichkeit vorzutragen. Die *fundamenta petiti* müssen folgen, und hierauf das *petitum*, ohne fernere Einmischung der Gründe oder der Umstände des *facti*." Claproth, *Kurze Vorstellung*, 4.On the opposite side of the question of stylistic transfer between professions, Alexander Košenina cites the juridical training of authors such as E.T.A. Hoffmann and Heinrich von Kleist as having influence on their writing, specicially the "standardisierten Erfassung eines Tatbestandes (*Species facti* oder *Relatio facti*). Bei dem sogenannten Relationalstil kommt es auf die möglichst knappe und präsize Sicherung aller relevanten Fakten an" (Košenina, "Schiller Und Die Tradition," 120).

[74] Nilges 62-63.

As a literary model, the first-person narration in *Der Verbrecher* presents the reader with more information than the facts of the case, or *species facti*.[75] It also provides the reader with Wolf's own interpretation of events, his inner state, and the motives for his actions. The narrator's third-person account of Wolf's childhood supplements these interpretations with deeper, long-term motivations. The narrator theorizes that the reader needs these details in order to see the the person as a whole.[76] The idea that the right literary style and narrative strategy can change the functioning of justice was something that 18th century legal practitioners were already convinced of. They did believe, as documented in legal textbooks that set style standards for students of law, that proper style and technique did indeed affect the outcome of justice. Legal writing was a creative endeavor. Wolfgang Schild, among others, has argued for understanding the writing of *Relationen* as a legal craft or artwork.[77] Eckhardt Meyer-Krentler even describes legal writing, specifically legal reports, as having its own style, goals, and poetics.[78] Additionally, legal practitioners themselves published

[75] In the 18th century, *species fact* is not just the nature of the crime, but also the "facts" of the case that have been established in writing. Hruschka, Joachim. "On the Logic of Imputation in the Vigilantius Lecture Notes." In *Kant's Lectures on Ethics: A Critical Guide*, edited by Lara Denis and Oliver Sensen, 170–84. Cambridge Critical Guides. Cambridge: Cambridge University Press, 2015, 176.

[76] Accordingly, Oettinger concludes: "Schiller kritisiert also in Übereinstimmung mit den progressiven Rechtstheoretikern der Zeit eine Justizpraxis, die sich ausschließlich an den strafbaren Tatbestand, nicht aber an die 'Moralität' des Verbrechers hält" (Oettinger 270). To this point, Nilges comes to a similar interpretation as Oettinger, who sees the reader's role become transformed into that of a lawyer: "[Schiller nobilitiert] den Leser, der am Ende der Erzählung [...] gleichsam in einer 'Revisionsverhandlung' des urpsrünglichen Gerichtsverfahren das Amt des autonomen Richters übernehmen soll" (Nilges 63). Moreover, she considers Schiller's *Verbrecher* to be a work that anticipates "moderne Rechtspflege" through "den Aufbau deiner Narration und die spezifische Erzählweise," citing the criminologist Stephan Quensel: "Dass 'sich die Kriminologie mehr als bisher dem normalen Menschen zu[wendet]. [... Sie sollte versuchen,] auch das Verbrechen aus gesellschaftlicher wie aus individueller Sicht heraus als ein normales Phänomen zu begreifen" (Nilges 85).

[77] *Relationen* were a type of time-saving strategy for the courts. Judges did not have time to read all the case files any one court was responsible for, so they split up the work. Wolfgang Schild describes how the *Relation* would be understood as its own craft by jurists: *Relationen* were a "Perle konkreter Wissenschaft" but they were also "ein Meisterstuck i.S. eines Handwerks […], dessen Anfertigung auch geprüft werden kann. [...] Die muß Gefallen finden vor den Augen der wissenschaftlich ausgebildeten und ausbildenden Juristen. [....] Die Rede von der Relation als einem juristischen Kunstwerk bedeutet immer schon die Möglichkeit, von einer 'Poetik' zu sprechen, wie es Eckhardt Meyer-Krentler vorschlägt. [...] es it eine juristische Poetik, die den juristischen Regeln von Nüchternheit, Sachlichkeit, Kürze, Klarheit, Disziplin folgt." Schild 170.

[78] See: Meyer-Krentler's article "'Geschichtserzählungen'. Zur Poetik des Sachverhaltens im Juristischen Schrifttums des 18. Jahrhunderts" from 1991.

collections of crime stories based on actual case files for public consumption. They, too, were very concerned with style and narrative, both for the genre of legal writing and for their literary pursuits.[79] For example, *Ober-Amtmann* Schäffer, author of the story collection: *Abriss Des Jauner Und Bettelwesens in Schwaben*, assures his readers of the truth he has produced from his labors among the stacks of *Akten*: "Ich glaube also die Zuverlässigkeit meiner Nachrichten völlig und um so mehr verbürgen zu können, weil ich mir Mühe gab, die angeführten verschiedenen Quellen sorgfältig zu vergleichen , um reine Wahrheit aus ihnen zu schöpfen."[80] And this is precisely where authors such as Schiller could insert their literary works into the discourse on legal practice and reform. The rhetorical qualities of *Akten* are in fact a thematic issue in Schiller's story. Schiller simply proposes new parameters for writing in the legal sphere which match the requirements of a more humane, psychologically oriented justice. True justice must go beyond presenting the *species facti* and also attend to internal human psychological truth.

Der Verbrecher is a plea from the *Menschenforscher,* Schiller, to those appointed to the law for a more merciful, enlightened approach to jurisprudence. It is through the application of recent trends in the human sciences to legal writing that he hoped to educate the public as well as the judiciary. The legal critical concerns of Schiller's *Verbrecher* make clear that, in the face of new anthropology and psychology, current judicial practices are inadequate. The writing style of the legal system, their narrative strategies and preferred writing methods are insufficient for justice in the late 18th century. The problems of distance and fragmentation in the inquisition system pushed legal officials and servants into certain practices, such as the double-mediation of

[79] In addition, Thomas Weitin argues that the "publikumsorientierte Methodologie für das Schreiben" in Schiller's *Verbrecher* decisively influenced the development of the genre of juridical crime story collections, specifically the editors Anselm Feuerbach, Eduard Hitzig, and Willibald Alexis. (Weitin, "Literatur des Kriminellen," 367)
[80] Schäffer, *Vorrede*.

Relationen,[81] that made them so far removed from the involved parties that they could not possibly make just decisions. Through its particular subjective storytelling, Schiller offer *Der Verbrecher* as a literary model which should ultimately lead to better judgments and better justice.[82]

2.4 Overcoming emotional distance: feeling and unfeeling judges in August Wilhelm Iffland's *Die Jäger* (1785)

As pointed out in the discussion of Schiller's *Verbrecher*, late Enlightenment reformers put justice not only before the court of reason, but also before the court of humanity. In Act 5 Scene 8 of Iffland's *Die Jäger: ein ländliches Sittengemälde in Fünf Aufzügen*, a dialogue unfolds that adapts this very sentiment to the stage. Pastor Seebach confronts the *Amtmann von Zeck* about a criminal investigation (*Ermittlungsinstanz*) he is conducting against Anton, the son of the local head forester. Anton is being investigated for a murder in which even the Pastor admits that "Es ist viel, fast aller Anschein gegen den jungen Menschen."[83] This conversation is critical because Pastor Seebach knows that Anton's father has had a conflict with the *Amtmann von Zeck*, thus complicating the *Amtmann*'s position of authority over the investigation. Earlier in the play, the Pastor establishes himself as the enlightenend arbiter of bourgeois morality, while the *Amtmann* is characterized as a corrupt and scheming bureaucrat. Their dialogue transforms into a type of interrogation instance. Rather than any legal criteria, bourgeois virtues such as tolerance, sympathy, humanity, and honesty are the criteria of judgment. The Pastor warns the *Amtmann*

[81] Michael Stüber calls this 'doppelte Subjektivität' and 'doppelte Mittelbarkeit' for the judges. He concludes that, on account of the double subjectivity and double mediation within trial procedure during the highpoint of absolutism in the German states, "[…] waren Inquisitionsverfahren und Unmittelbarkeit endgültig zu Gegensätze geworden." (Stüber 34)

[82] This idea of the criminal telling their own story (Košenina) has some similarities to the 'narrative' or 'legal storytelling' movement of feminist legal theory in the 1980s and 1990s, in which the idea of the 'centrality of narrative' offered a space for oppositional narratives, such as marginalized or 'other' narratives in the face of overwhelmingly normative sources of morality or ethics to form. See: Stone Peters, Julie. "Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion." *PMLA* 20, no. 2 (March 2005): 442–53.

[83] Iffland, *Die Jäger*, 103.

against moving too hastily against the accused, who, according to overwhelming witness accounts, is guilty for mortally wounding another man. The Pastor's initial appeal on behalf of fairness for the accused follows:

> Hören Sie mich. – Die ganze Menschheit steht gegen den Unglücklichen auf. "Rache, Strafe!" – ist die allgemeine Empfindung. Der Richter ist Mensch – Diese Stimmung teilt sich ihm mit, läßt Handlungen beschließen, gegen welche das spätere Mitleid kraftlos ist! – In diesem Fall waren Sie, als Sie den Bericht gegen den Unglücklichen machten. – Hier, wo Sie stehen – an diesem Tische, wo Sie vor wenigen Minuten von der liebenswürdigen Familie umgeben waren – hier müssen gewisse Erinnerungen eine sanftere Stimmung bewirken. – – Hier – hier lesen Sie Ihren Bericht noch einmal, und sagt Ihr Herz Ihnen hier nichts – – so schicken Sie ihn fort und beten für die Unglücklichen um Trost![84]

Here, the premise of the Pastor's appeal is that the *Amtmann*, *der Richter*, is human, and therefore reacts to events and situations in a human way. The Pastor then surmises that, as a human, the *Amtmann* could not have helped but share the angry excitement of the mob that brought Anton in. As a result, this mood and impression would have influenced him as he wrote his report. The Pastor asks the *Amtmann* to do something that is contradictory to the typical image of a judge in this time period: he should listen to his heart. The Pastor works to combat the heated mood of the mob, as well as the *Amtmann*'s own negative feelings against Anton's father. However, the Pastor does not ask the *Amtmann* to regain a sense of impartiality or non-partisanship. In order to combat the human susceptibility to being swept up in emotions in one particular way, the Pastor asks the *Amtmann* to allow himself to be pulled by feeling in the opposite direction. He asks the *Amtmann*, in the name of *Menschlichkeit*, to not be emotionally removed from the accused. Rather, he must allow himself to be personally and emotionally affected by the sentimental image of Anton's happy family sitting down for lunch. The judge should not believe that he is above feeling. This openness

[84] Iffland, *Die Jäger*, 102-103. That the Pastor uses the word "Unglücklicher" to describe Anton reveals his enlightened reform position on criminal politics. As Oettinger describes in his article on Schiller's Verbrecher, it was "symptomatisch für die humane Grundtendenz" in enlightened thinking to use the term "Unglücklicher," with was a morally neutral term, rather than the usual "Bösewicht" or "Scheusal" (Oettinger 269).

to all feeling should be the antidote to his inherited bias against Anton and the clamoring of public opinion.

The *Amtmann* immediately rejects the Pastor's appeal to mercy and human feeling. He replies: "Sie irren sich, mein Herr, Sie irren sich. Dies empfindsam ausgesonnene Stückchen darf den Richter nicht beugen."[85] The word "Stückchen" refers to the lunch the *Amtmann* attended earlier in the day with the family of the head forrester. The Pastor also evokes this image in his initial appeal: "Hier, wo Sie stehen – an diesem Tische, wo Sie vor wenigen Minuten von der liebenswürdigen Familie umgeben waren." That the *Amtmann* calls this scene a "Stückchen," a little play, is significant. The *Amtmann* is aware and suspicious of the effects that theater, especially sentimental theater pieces (*Rührstücke*, *bürgerliche Trauerspiele*), are meant to have on audiences. They are crafted specifically to manipulate the emotions of the public. He denies the acknowledgement and assent to emotion and the intentional sentimentality that accompanies theater, citing that judges must remain unaffected by displays of sentimentality ("darf den Richter nicht beugen"). The Pastor argues that the judge is human; the *Amtmann*'s position is that the judge must distance himself from his humanity in order to practice law. The judge must remain unfeeling. However, the *Amtmann* does not indicate that he is concerned about his being influenced by the emotional frenzy of the mob who have declared Anton guilty ("'Rache, Strafe!' – ist die allgemeine Empfindung"). In a show of spite, he guards himself only against the Pastor's appeal to mercy, feelings of sympathy, and the "empfindsam ausgesonnene Stückchen." What Pastor Seebach and the *Amtmann* both know is that legal impartiality is a sham. This is especially true in the case of Anton. As the Pastor states above: "Der Richter ist Mensch."

[85] Iffland, *Die Jäger*, 103.

One year later in his *Verbrecher aus Infamie* (1786), Friedrich Schiller advocates for human subjectivity having a place in the work of a legal practitioner, since it is otherwise absent in the law. This is most evident at the ending of the story when Wolf asks if his arresting judge, the *Oberamtmann*, has become "menschlicher" in his old age, and instructs the *Oberamtmann* to shed a tear upon his report. In *Die Jäger*, the *Amtmann* is all too hasty in his wish to have Anton judged on the basis of his report and protocols. From his perspective, the inquisitional trial coupled with *Aktenversendung* is the perfect embodiment, when executed correctly, of impartial justice. Under this system, judges who are not present in Weißenberg will decide Anton's fate without speaking to Anton, the witnesses, the accused's family, or the Pastor, who provides the *Leumund* or *Gutachtung* for the accused's character. Because of this distance, they will judge based on rational, objective and standard-formulaic reports and documents with 'untainted' feelings. In theory, they will come to an impartial and just opinion. However, Pastor Seebach, the voice of Enlightnment values and religious morality, takes a position against the prevailing system of judicial practice. According to his position, distancing oneself from emotions, especially from ones such as sympathy and mercy, is wrong. In this case, it is actually important for judges to acknowledge their own subjectivity and to acknowledge that they are swayed by the feelings of a present moment.

In sharpt contrast to the *Amtmann's* ideal of justice as rational and scientific, Pastor Seebach's ideal *menschlicher Richter* demands emotional and subjective directness. Later in scene 8, the *Amtmann* reveals that he is requesting the use of torture in order to get Anton to confess to murder. In response, the Pastor delivers his final and most stinging insult against the *Amtmann*: "*Unmensch!*"[86] The Pastor's vision of justice is an outright rejection of the characteristically

[86] Iffland, *Die Jäger*, 104.

rational and formulized practices of the justice system in the 18th century. This is a similar criticism to the one in Schiller's *Verbrecher*, in which Christian Wolf's judges are faulted for being overly scholarly and strict, rather than humane. Iffland's solution is also similar to Schiller's: the allowance and acceptance of immediacy between accused and judge. In the case of Christian Wolf, physical and psychological directness that would perhaps illicit understanding from his judges before they sentenced him to three years in a prison fortress. In the case of Anton, an allowance for human feeling at the level of the initial investigation would cause the *Amtmann* to revisit the *Stückchen* after all. This extra step, borrowing the intended emotional immediacy of the theater, will result in a more just, more human-centric justice.

Iffland's preface to *Die Jäger* promotes emotional immediacy as an aspect of the theater that could be integrated into judgment. There are structural parallels between Iffland's preface and the dialogue between the Amtmann and Pastor Seebach. Iffland was well-versed in contemporary theater discourse and formulates the usual justifications for theater that rely on its usefulness, for example: "die Bühne sei dann dem Staat von wesentliche Nutzen […]".[87] He begins his preface with a declaration that defines the genre of his play: "Es ist mein Vorsatz, bürgerliche Verhältnisse dramatisch zu behandeln."[88] Iffland then outlines a more specific goal: "Darstellung des *richtigen* Ganges *bürgerlicher* Begebenheiten, Berührung *der* Punkte, wo sich die *besten* Menschen trennen, war mein Zweck."[89] His hope for his audience and readers is that they will leave the performance or reading with "gutmütigem Gefühle, mit dem Drange, etwas Nützliches zu tun."[90] At the end of his preface, Iffland anticipates would-be critics and takes a defensive posture. His work should only be judged according to its usefulness by the people who have seen or read it and have been

[87] Iffland, *Die Jäger*, 5.
[88] Iffland, *Die Jäger*, 5.
[89] Ibid.
[90] Ibid.

moved by it: "Nach *diesem* Zweck muß ich von *solchen* Leute beurteilt werden."[91] The contents of Iffland's preface might at first appear to be no more than rhetorical flourish common in his day. However, Iffland took the importance of the theater as an institution of the state very seriously. He was a theater reformer and leader, as well as a staunch ally and servant of the absolutist state and their heads. As such, Iffland was deeply invested in propagating enlightened bourgeois morality within an elightened absolutist monarchy in his works. Part of this political and aesthetic outlook was also the idea of a bureaucracy populated with enlightened servants of the state.[92]

This preface resonates strongly with act 5 scene 8. When the Pastor asks the *Amtmann* to imagine himself amongst the happy family, he is asking the *Amtmann* to reflect upon an earlier scene he has witnessed ("von der liebenswürdigen Familie umgeben"). If the *Amtmann* were to take the place of the audience in Iffland's play, the preface promises a similar subject matter: "bürgerliche Verhältnisse / Begebenheiten." The *Amtmann* should then be moved to the point of sympathy and goodwill ("eine sanftere Stimmung"). In the preface, the audience is asked to watch "mit gutmütigem Gefühle". This goodwill will then inform his further thoughts and actions ("hier lesen Sie ihren Bericht noch einmal"). The audience will leave the theater "mit dem Drange, etwas Nützliches zu tun." Only then should the *Amtmann* act as judge ("schicken Sie ihn fort"), and only

[91] Ibid.

[92] Iffland presents an impression of his dedication to the absolutist monarchy in his play *Liebe um Liebe: ein ländliches Schaupiel* (1785) and in his autobiography *Meine theatralische Laufbahn* (1798). In scholarhips, Wilhelm Hermann argues strongly in favor of this view: "Eine Besonderheit im Leben des Schauspielers, Dramatikers und Theaterleiters August Wilhelm Iffland (1759 bis 1814) ist seine Beziehung zu deutschen Fürstenhöfen gewesen, und zwar zu solchen, die nicht – wie etwa Gotha, Mannheim (auf dem Umweg uber München) und Berlin – als seine direkten Brotgeber anzusprechen sind. Dieser Hang kann nicht mit materiellen Erwägungen allein erklärt werden, obwohl die Chance von Nebeneinnahmen bei einem so chronisch verschuldeten Künstler sicher einen festen Punkt in seinen Spekulationen gebildet hat. Wesentlich und bestimmend für die magnetische Wirkung der Höfe auf ihn war nicht zuletzt sein politisches Credo: der konservative Glaube an die gottgewollte Sendung der Herrscher, an den ständischen Aufbau der Gesellschaft als das einig mögliche Ordnungsprinzip oder, umgekehrt, sein unverhohlener Abscheu vor den demokratischen Tendenzen, wie sie sich in der Französischen Revolution entluden." Herrmann 208.

then should the play be "beurteilt." In other words, the Pastor is asking the *Amtmann* to imagine that he has just seen a play.

In the figure of the *Amtmann*, two competing problems are negotiated. First is the *Amtmann*'s willingness succumb to bias, both personal and external, against the accused. Second is his unwillingness, in the name of impartiality, to open himself emotionally to the side of the accused. This leads to another difficulty: the physical absence of Anton's actual judges, whose feelings will be directed by what is mediated in a report. Their impressions of the case will lack direct contact with the accused, victim, and witnesses. These levels of mediation compound the antipathy, bias, and negative emotions against Anton in their delivery of so-called "justice". We then arrive at the play's proposed strategy for directness. Unlike in Schiller, whose narrator models a literary strategy of directness in order to overcome the reader-subject gap in the re-telling of Christian Wolf's story, the figure of Pastor Seebach in Iffland's play advocates for a new type of judge for actual judges to emulate: the judge who feels. A judge who acknowledges his own humanity and emotions in the decision-making process, who allows for introspection and the possibility for sympathy, is the best judge. Iffland presents this blueprint of the ideal judge as a solution to the actual and possibly ongoing legal problems of corruption and interpersonal conflicts between involved parties and the authorities. In his play, he makes the case that this ideal judge will act correctly even when he has a personal conflict of interest.

2.5 The presentness of the stage: Johann Wolfgang von Goethe's *Wilhelm Meisters theatralische Sendung* (1777-1785) / *Wilhelm Meisters Lehrjahre* (1795/1796)

Goethe's *Wilhelm Meisters theatralische Sendung*, written between 1777-1785, served as the basis for the *Bildungsroman*, *Wilhelm Meisters Lehrjahre* (1795/1796).[93] A courtroom scene involving the eloped pair, Melina and the eventual Madame Melina (the *Bauerntochter*), and witnessed by Wilhelm, the novel's titular protagonist, is the focus of this analysis. The scene takes place in Book 2, Chapter 6 of the *Theatralische Sendung* and in Book 1, Chapter 13 of the *Lehrjahre*.[94] It features a courtroom or "Gerichtsstube" that is transformed into a stage, as well as judicial proceedings that become a *bürgerliches Trauerspiel*.

The scene begins when Wilhelm witnesses the arrest of an actor and a *Bauerntochter* who have run away together. Wilhelm, sympathetic to the forbidden lovers' plight and feeling invested in their fates, inserts himself into the matter in order to gain access to their trial. The local authorities bring the two lovers to a courtroom, where they are questioned individually. The young woman, who is the first to be questioned, does not cooperate with the Amtmann's questioning:

> Der alte Amtmann kam hierüber doppelt und dreifach in Verlegenheit. Die gnädigsten Ausputzer summten ihm schon um den Kopf, und die geläufige Rede des Mädchens hatte ihm den Entwurf des Protokolls gänzlich zerrüttet. Das Übel wurde noch größer, als sie bei wiederholten ordentlichen Fragen sich nicht weiter einlassen wollte, sondern sich auf das, was sie eben gesagt, standhaft berief. "Ich bin keine Verbrecherin," sagte sie. "Man hat mich auf Strohbündeln zur Schande hierhergeführt; es ist eine höhere Gerechtigkeit, die uns wieder zu Ehren bringen soll." Der Aktuarius hatte indessen immer ihre Worte nachgeschrieben und flüsterte dem Amtmanne zu: er solle nur weitergehen; ein förmliches Protokoll würde sich nachher schon verfassen lassen. Der Alte nahm wieder Mut und fing nun an, nach den süßen Geheimnissen der Liebe mit dürren Worten und in hergebrachten, trockenen Formeln sich zu erkundigen.[95]

The passage describes a conflict between the form of a legal questioning or interrogation, which must be recorded in writing in order to have legal validity, and the 'live performance' and individual assertiveness of the young woman. From the point of view of the *Amtmann* and the

[93] Also known as the *Urmeister* and first printed in 1911.
[94] The introduction and conclusion of Chapter 6 of Book 2 of the *Theatralische Sendung* underwent heavy editing in its transformation into Chapter 13 of Book 1 of the *Lehrjahre*, but the core of the chapter, the courtroom scene itself, remained largely unchanged. I will quote from the *Lehrjahre* and note any relevant differences between the two versions directly in the text or in footnotes.
[95] *SW* 9, 402.

Aktuarius, the purpose of the questioning is to formulate a clear narrative of the event in question. They must put her utterances onto paper in a way that is legally useable. Thus, they insist on "wiederholten ordentlichen Fragen" and are concerned solely with the "Entwurf des Protokolls" that has been "gänzlich zerrüttet." Ideally, the end goal of this entire legal instance is to produce a "förmliches Protokoll." What the *Amtmann* and the *Aktuarius* are hoping to produce is a document similar to the protocols, figures 4 and 5, featured in chapter 1. As discussed earlier, clarity and structure were paramount characteristics for any document produced for case files in order to ensure the good functioning of the justice system. When the young woman speaks out of turn or utters things that are not useful to the case file (*Akte*), such as "es ist eine höhere Gerechtigkeit, die uns wieder zu Ehren bringen soll", the *Aktuarius* suggests to the frustrated *Amtmann* a solution to their difficulties: "ein förmliches Protokoll würde sich nachher schon verfassen lassen." According to their legal training, the protocol is the means to solicit justice. From the point of view of the young woman, however, the point of the questioning is not to produce a "förmliches Protokoll," but rather to defend her actions, innocence, and honor. Her goal is to convince the men before her through her performance that she has done nothing wrong. She does not see the procedure of establishing facts on paper as a means to justice, nor as necessary in the defense of her honor. What becomes clear in this scene are the disparate priorities of the involved parties: one is bureaucratic, the other is moral and abstract.

Returning briefly to Cornelia Vismann's work on the history of legal speech and writing, there is a split in the early modern era to the 18th century when written *Akten* and the voice became separate media.[96] By the time Goethe wrote *theatralische Sendung* between 1777 and 1785, the text provides a very definite case of a literary judgment on the status of *Akten*: they are not speech.

[96] Vismann, *Medien*, 113.

The protocol cannot replicate the speech act, and the fact that the *Aktuarius* assures the *Amtmann* that a "förmliches" protocol of the interrogation that complies with bureaucratic needs can be fabricated later is proof that it has claim to neither the speech act nor justice. This rebellion against the protocol reveals a deep skepticism from Wilhelm's perspective of the nature of the written word and of bureaucracy, specifically the *Schriftlichkeit* of judicial practice. The reason being, there is a noticeable schism between what transpires in the "scene" and what bureaucratic judicial procedure requires. The standard, orderly form of the protocol cannot contain the speech act of the young woman, who is not willing to abide by the court's normal procedures or linguistic specificity. And her violation of procedure, as Wilhelm witnesses it, upsets the judicial form ("[…] die geläufige Rede des Mädchens hatte ihm den Entwurf des Protokolls gänzlich zerrüttet."). Likewise, the *Amtmann*'s linguistic register, which is informed by his profession, destroys the poetry and liveliness of the present moment and the young woman's speech act ("Der Alte nahm wieder Mut und fing nun an, nach den süßen Geheimnissen der Liebe mit dürren Worten und in hergebrachten, trockenen Formeln sich zu erkundigen."). The written protocol is the antipode of presence or the present moment, or *Gegenwart*, and of the spoken word.

After the *Amtmann* asks about the "süßen Geheimnissen der Liebe," the young woman admits to having sexual contact with the actor, Melina, in a defiant speech that begins thus: "'Seien Sie versichert', rief sie aus, 'daß ich stark genug seien würde, die Wahrheit zu bekennen […]'."[97] Wilhelm, who has already made negative assessments of the bureaucratic nature of the the court ("dürren Worten," "in hergebrachten, trockenen Formeln") is inspired. He has a transformational experience as he witnesses her speech and a scene involving both lovers when they are reunited in the courtroom:

[97] *SW* 9, 403.

> Wilhelm faßte, als er ihr Geständnis hörte, einen hohen Begriff von den Gesinnungen des Mädchens, indes sie die Gerichtspersonen für eine freche Dirne erkannten und die gegenwärtigen Bürger Gott dankten, daß dergleichen Fälle in ihren Familien entweder nicht vorgekommen oder nicht bekannt geworden waren.
>
> Wilhelm versetzte seine Mariane in diesem Augenblicke vor den Richterstuhl, legte ihr noch schönere Worte in den Mund, ließ ihre Aufrichtigkeit noch herzlicher und ihr Bekenntnis noch edler werden. Die heftigste Leidenschaft, beiden Liebenden zu helfen, bemächtigte sich seiner. Er verbarg sie nicht und bat den zaudernden Amtmann heimlich, er möchte doch der Sache ein Ende machen, es sei ja alles so klar als möglich und bedürfe keiner weitern Untersuchung. […]
>
> Da auch dieses [Melinas] Verhör geendiget war, welches mit dem vorigen in allem übereinstimmte, nur daß er, um das Mädchen zu schonen, hartnäckig leugnete, was sie selbst schon bekannt hatte, ließ man auch sie endlich wieder vortreten, und es entstand zwischen beiden eine Szene, welche ihnen das Herz unsers Freundes gänzlich zu eigen machte.
>
> Was nur in Romanen und Komödien vorzugehen pflegt, sah er hier in einer unangenehmen Gerichtsstube vor seinen Augen: den Streit wechselseitiger Großmut, die Stärke der Liebe im Unglück.[98]

What Wilhelm witnesses, he interprets either as a novel or as theater. The lovers' predicament and their subsequent actions ("den Streit wechselseitiger Großmut, die Stärke der Liebe im Unglück") is the ideal material for a bourgeois melodrama. While the men assembled in the court only see a fallen young woman, Wilhelm sees a touching, fictional scene from a comedy. Being in the presence of the two accused and hearing their words and seeing their performance directly cause this experience. For Wilhelm, it is especially the performance of the young *Bauerntochter*, later, Madame Melina, that transforms the courtroom into the stage.

The narrator presents this courtroom scene foremost from Wilhelm's point of view: the lovers are the heroes and the work of the court bureaucrats is apathetic and dry. At this point in the story, Wilhelm's obsession with the theater is presented as suspect and somewhat ridiculous, but the criticism of the representatives of justice and the transformation, perhaps even elevation, of the *Gerichtsstube* through the performances of the lovers into a stage are not. The court bureaucrats are so focused on upholding the rational form of a legal interrogation for the purpose of protocolling it, that they seem to be missing completely the other elements of the scene unfolding in their courtroom. They are the only ones that Wilhelm is interested in: the human drama, human

[98] *SW* 9, 403-404.

emotion, and the individual situations of the two accused. What will be missing from the "förmliches Protokoll" will be any sense of presentness, directness, or familiarity with the individuals being protocolled. The metaphor of transforming the courtroom into a stage makes a very concrete point: that the courtroom is in fact a stage and that a stage requires the presence of its actors. The interrogation of the accused should only be understood by being present. A written protocol is not a substitute.

In Schiller's *Verbrecher,* the narrator models the type of detailed and psychologically reflexive account required in order to overcome the fragmentation inherent in *Aktenversendung*, or, in literary terms, overcome the gap between the quiet reader and the heated moment of the subject. The narrator also theorizes a second approach to immediacy, which is manipulating the reader into a heated state similar to that of the subject. In the story, this happens most prominently at the end, when the prose begins to mimic a *Lesedrama* and becomes dramatic in tone rather than "cold" and reflexive. There is a shift to the theater as model. After this, the reader of *Der Verbrecher* should be equipped to judge Christian Wolf. Although the narrator of *Der Verbrecher* is seemingly suspicious of forms of story mediation that manipulate the quiet, reflective state of the reader, both Goethe's *Wilhelm Meister* and Iffland's *Jäger* provide arguments in favor of this possible path of directness.

In Iffland's *Jäger*, judges who feel are preferable to impossibly "impartial" ones, since judges are human after all. They should be open to the *Stückchen* of sentimentality and emotion. Just as the *Amtmann* in Iffland's play held biases against Anton, so, too, do the officials in *Wilhelm Meister* hold deep prejudices against the two lovers. According to Wilhelm, the officials see the *Bauernmädchen* as a "freche Dirne". However, their radical dedication to the *form* of legal practice, based on *Schriftlichkeit*, seems to have lulled them into thinking that this bureaucratic

form is equivalent to justice. That being said, the criticisms of Schiller, Goethe, and Iffland are not that law itself is cold, without emotion, or detached from humanity. Rather, they argue that current legal practice and trial procedure had made it that way: its written form, the stylistic creeds of this written form, as well as the physical and psychological separation between parties and judges. This, in addition to the philosophical and cultural outdatedness of many of its laws and procedures, leads to a presentation of justice as hostile to the individual. As a reponse, what is suggested here is that a fairer and more just approach would be Wilhelm's enthusiastic sentimentality as well as the embrace of the courtroom that has become a stage.

2.6 Closing the Distance between Stage and Courtroom

In her analysis of Heinrich von Kleist's *Der Zerbrochne Krug* (1808/1811), Vismann writes: "It is reserved for the theater to exhibit on its stage the fact that the court is a theater."[99] Though not referring to Wilhelm's experience, Vismann describes the tenuous connection between court and theater: the ability to differentiate between the two stages and their actors oscillates. According to Visman, what happens in the courtroom is theater, and to try to differentiate between entertainment theater and court theater is hard and might actually not be possible, despite the fact that the theater of justice is a 'not-play' (i.e. it is entirely serious).[100]

A reliance on *Schriftlichkeit* suppresses the theatrical nature of the courtroom. We see in Schiller's *Verbrecher*, Goethe's *Wilhelm Meister*, and Iffland's *Jäger* an evocation of one of the theater's main characteristics: its presentness, or its directness. All three works demonstrate a desire for that which is *unmittelbar* in the face of fragmentation. On the topic of the stage versus prose, the philospher Christian Wolff argues in favor of the theater in his 1736 work, *Vernünfftige*

[99] Vismann, *Medien*, 38.
[100] Vismann, 36-37.

Gedancken von dem Gesellschaftlichen Leben der Menschen und Insonderheit dem Gemeinen Wesen:[101]

> Es haben aber Comödien und Tragödien darinnen einen Vorzug für geschriebenen Historien, daß sie einen grössern Eindruck in das Gemüthe des Menschen machen. Denn was man selber mit Augen siehet und mit Ohren höret, bewefet einen mehr und bleibet besser, als was man bloß erzehlen höret. Nehmlich die Geberden und Minen der Menschen, ingleichen die Veränderung der Stimme, damit die Worte vorgebracht werden, nachdem man von diesem order einem anderen Affect getrieben wird, lassen sich zur Zeit nicht völlig beschreiben. Ja wenn es auch angienge, so müste doch derselbe, so das Buch lieset, darinnen eine Geschichte beschrieben wird, selbst alles, was er lieset, nachthun, oder einen andern sich alles vormachen lassen, woferne es einer Comödie und Tragödie gleichgültig werden solte.[102]

In witnessing a play, the public sees gestures and expressions and hear changes in the actors' voices and words. These are things that cannot be described. The stage is *unmittelbar*, and therefore the stage has a greater impression on the minds of people than books. If we return to Iffland's *Die Jäger*, this description of theater by Wolff ([es macht] "einen grössern Eindruck in das Gemüthe des Menschen") is exactly how the *Stückchen* is supposed to affect the *Amtmann*. Turning to Goethe's *Lehrjahre*, it is clear that what transpires in the *Gerichtsstube* cannot be adequately described in a protocol, or as Wolf expresses it: "nicht völlig beschreiben," nor adequately understood by the reader. The position taken by both texts, by the Pastor and by Wilhelm, is that the theatrical aspect of justice is not some unwanted byproduct. Rather, it is desirable for human justice. In Schiller's *Verbrecher*, though he does not actually mention the theater, the narrator theorizes a similar problem for prose: the initial distance between subject and reader. In prose, as Wolff points out, one does not see "selber mit Augen" or hear "mit Ohren." Theater would fall closer to the strategy of the "warm reader," which has an immediate "Eindruck in das Gemüthe des Menschen."

[101] Wolff, Christian. *Gesammelte Werke.* 1. Abt. Vernünftige Gedanken (4). Politik. Edited by Hans Werner Arndt. Vol. 5. Hildesheim, New York: Georg Olms, 1975. [Re-print of the 1736 edition]. Subsequent citations as "Wolff" with volume and page numbers.
[102] From Paragraph 238 of Wolff 5, 275-278.

Wolff's description of the advantages of the stage over written stories is a surprisingly consice account of what constitutes *unmittelbar* almost a century later when legal reformers were pushing for *Mündlichkeit* and *Öffentlichkeit* in trial procedure. In a direct rejection of the *Inquisitionsverfahren*, *Aktenversendung* and resulting *Relationen*, Feuerbach writes in 1821: "[...] es darf einem Rechtsuchenden nicht benommen seyn, als Parthei vor dem Richter selbst aufzutreten, und von eben denselben Richtern, welche über ihn urtheilen, unmittelbar selbst gehört zu werden."[103] This is not to say that court servants did not attempt to relay some sort of directness in their protocols. The "Geberden und Minen" of witnesses were something that *Gerichtsschreiber* attempted to include in their protocols through "Gebärdenprotokolle," but with dubious results.[104] Klaus Geppert notes on inquisitional trial procedure that "[d]er fehlende unmittelbare Eindruck von den Beweismitteln sollte durch die schon aus der *Carolina* bekannten Gebärdenprotokolle ersetzt werden. Hier versuchte der Inquirent, möglichst genau Haltung, Ton, Miene, Gesten, Erröten, Erbleichen, Stammeln, Widersprüche u. ä. der Zeugen bzw. des Beschuldigten festzuhalten."[105] Indeed, Mittermaier notes in 1817 that a common criticism of the inquisitional trial procedure is that "eine l e b e n d i g e Beweisführung gänzlich fehle."[106] At one time, the

[103] Feuerbach, *Gerechtigkeitspflege*, 296. Alexander Ignor notes that while there were supporters of orality and publicness in trial procedure in the late 18th century, including Ernst Ferdinand Klein, Hans Ernst von Globig, and Johann Georg Huster, the streams of literature on these topics is really a 19th century phenomenon (Ignor 180). For a summary of late 18th century reform ideas, see Ignor 179-184.

[104] On the Gebärdenprotokoll, Stüber notes: "Somit war der Schwerpunkt der Verfahren eindeutig zugunsten des 'Vorverfahrens' verschoben und ein wirklich 'unmittelbarer' Eindruck in der Hauptverhandlung nicht mehr vorhanden. Diese fehlende Authentizität wurde zwar erkannt, aber die Versuche, die auszugleichen, waren unzureichend. Dazu waren sog. 'Gebärdenprotokolle' angefertigt, in denen Gesten, Mimik und anderes Verhalten der Beteiligten genau aufgezeichnet wurden, doch waren diese subjektiv geprägt, so daß es naturgemäß zu einer vorgefaßten Meinung seitens der Richter kommen mußte" (Stüber 33-34). According to Harald Neumeyer, the practice was the protocoling of paralinguistic signs in the interrogation. In other words, the observation of the body and its actions were tools of determining truth as well as a the believability of the utterances fo the interrogated person. Neumeyer, Harald. "Unkalkulierbar Unbewußt. Zur Seele des Verbrechers um 1800." In *Romantische Wissenspoetik: Künste und die Wissenschaft um 1800*, edited by Gabriele Brandstetter and Gerhard Neumann, 151–78. Würzburg: Königshausen & Neumann, 2004, 169-170.

[105] Geppert 20.

[106] Mittermaier, Carl Joseph Anton. "Bemerkungen über Geberdenprotocolle in Criminalprozesse." Edited by Gallus Aloys Kaspar Kleinschrod, Christian Gottlieb Konopak, and Carl Joseph Anton Mittermaier. *Neues Archiv des Criminalrechts* 1, no. Heft 3 (1817): 327–52, 327.

protocol would have been speech, but by the time of calls for Enlightenment judicial reform and calls for public trials, the protocol was perceived as dead words. [107]

In nineteenth century legal reform discourse, *Mündlichkeit* and *Öffentlichkeit* seem to offer a solution to this problem in what Cornelia Vismann calls "Mündlichkeitsschwärmerei."[108] This is not chronolocigally where Iffland, Schiller, and Goethe's texts belong, which were published between twenty and thirty years earlier, but the concerns about fragmentation and loss of immediacy in the law are already present. Feuerbach writes:

> Vor öffentlichen Gerichten wird immer mündlich verhandelt; schreibende und nach Schrift urtheilende Richter finden wir überal hinter verschlossenen Thüren. Und ganz natürlich. Nur wo freie Kräfte gegen einander in Kampf gestellt sind, wo Geister mit Geistern ringen, nicht da, wo ein pflichtmässig kalter Berichterstatter von dem trocknen Papier einen trockenen Bericht über einen trockenen Gegenstand abliest, mag einige Theilnahme des Volks an gerichtlichen Verhandlungen vernünftiger Weise gehofft werden.[109]

Feuerbach's repeated use of "trocken" recalls Goethe's *Wilhelm Meister*, specifically to Wilhelm's impression of the *Amtmann*'s questioning of the Bauerntochter "mit dürren Worten und in hergebrachten, trockenen Formeln."[110] Looking back to Goethe's *Theatralische Sendung* (1777-1785), there is already an argument there for immediacy or *Unmittelbarkeit* over *Schriftlichkeit*. Goethe connects *Unmittelbarkeit* with the stage, because it does not fully exist in the justice system under current trial procedures.[111] Eventually, Feuerbach comes to the conclusion that "nur durch

---

[107] Vismann, *Medien*, 129. Vismann argues that the difference between *Stimme und Schrift* only emerged during the Enlightenment.

[108] Vismann, *Medien*, 111. Additionally, Vismann notes: "Akten werden zur Chiffre für eine überkommene Kabinettsjustiz. Ihr gegenüber steht die Mundlichkeit -- die Mündlichkeit als Prinzip, und nicht etwa bloß als praktizierte Verhandlung unter Anwesenden. Zusammen mit 'Unmittelbarkeit' und 'Öffentlichkeit' wurde sie [Mündlichkeit] auf dem Feld der Justiz das, was Freiheit, Gleichheit und Brüderlichkeit für die Revolution waren: Aufklärungsideale. Mit dem Traum von einem unmittelbaren Gericht und von Versammlungen um eine Thingsstätte stieg die Stimme zum Zentralmedium des Rechtsprechens auf" (Vismann, *Medien*, 112-113). See also: Kip, *Das sogenannte Mündlichkeitsprinzip*, 1952.

[109] Feuerbach, *Gerechtigkeitspflege*, 295.

[110] *SW* 9, 402.

[111] Beginning in the last decade of the eighteenth century, a strong suspicion of the courtroom as a stage emerged. This suspicion generally coincided with the Terror of the French Revolution, which featured oral public trials by jury. As Yann Robert argues in his monograph, *Dramatic Justice: Trial by Theater in the Age of the French Revolution*, those involved in French Revolutionary trials both considered and utilized the the courtroom space as a stage. Although German legal reformers still supported the principles of *Mündlichkeit* and *Öffentlichkeit*, and

geschickte K o m b i n a t i o n d e s M ü n d l i c h e n m i t d e m S c h r i f t l i c h e n, dergestalt daß jedes dem andern zur Ergänzung dient, die große Aufgabe vollständig gelöst werden könne."[112] Immediacy (*Unmittelbarkeit*), orality (*Mündlichkeit*) and presentness (*Gegenwart*) are critical concepts for the later legal reformers Mittermaier and Feuerbach, as well as in the works of Goethe, Schiller, and Iffland. The solutions that the three authors find to overcome fragmentation in order to achieve this directness—namely, the theater as a model—is a striving to imagine a more humane justice. With an eye to the existing legal system, Goethe, Schiller, and Iffland advocate for the spatial, emotional, and psychological immediacy that the stage can provide.

subsequently also *Unmittelbarkeit*, many of them, including Feuerbach, became averse to the idea of the justice succumbing to performance and emotional appeal. See also: Feuerbach, Paul Johann Anselm (Ritter von). "Erklärung des Präsidenten von Feuerbach über Seine, Angeblich Geänderte Ueberzeugung in Ansehung der Geschwornen-Gerichte". Erlangen: 1819, J.J. Palm und Ernst Enke.

[112] Feuerbach, *Gerechtigkeitspflege*, 300-301.

CHAPTER 3

"Die richtende Bühne": *Theaterstreit* and New Jurisdictions of the Stage

3.1 Introduction

By questioning and secularizing long-standing, codified legal practices (such as torture and the *Kirchenbüße*), the Enlightenment as a movement left tears in traditional sources of legal and moral authority and knowledge.[1] There was a definite legal logic to practices such as the use of torture to extract confessions. In other words, it was not conceptualized as a sadistic practice; it was a rational, functional, and often integral component of inquisitional trial procedure. However, these leftovers from early modern law codes could not persist in a Europe where new understandings of subjectivity and human rights had been developing and continued to develop. Torture no longer produced Heaven's truth; likewise, a confession to a crime itself was no longer necessarily true. Moreover, church authority over legal matters declined, and it was no longer seen as a legitimate legal body. The church remained a religious, moral, and social body of leadership, but it was no longer a leading institution in the legal sphere. At the same time, the state began to acknowledge different boundaries between personal, communal, and state responsibilities regarding moral and civil order. As Erika Schnabel-Schüle summarizes the situation in 18th century Württemberg and neighboring German states:

> Zur guten Polizei zählte die Sorge für Ruhe und Ordnung im Gemeinwesen. Nach der älteren Definition des Polizeibegriffs gehörte dazu unbestreitbar die moralisch-sittliche Erziehung der Untertanen, während im Zuge der Aufklärung dieser Aspekt zunehmend in die Verantwortungssphäre des einzelnen Individuums verlegt und dem Staat lediglich eine

[1] In *Schiller und das Recht*, Yvonne Nilges demonstrates through the example of *ius talionis* the close relationship between crime, punishment, and religion that formed the basis of criminal legal codes, such as the *Württembergischen Landesordnung* (1567), that was beginning to break apart by the 18th century (Nilges 40).

> Sicherungsfunktion, nicht mehr aber die Verantwortung für die Sittlichkeit der Untertanen zugewiesen wurde.[2]

As state governments slowly gave up their interventions in the 'moral lives' of their subjects, which included the restriction of the legal powers of the church, there was an opening left behind for other institutions to fill.

Major shifts during this period were also reflected in the discourse around art. These shifts include the largely utilitarian response within theater to external existential and internal reformist pressure, new ideas about the autonomy and value of art, the emergence of new human sciences (psychology, physiognomy), and Enlightenment-influenced ideas about the possible roles of the state in regard to the humans who lived in it. Theater advocates expanded the theoretical role of the stage into areas of life and government that it had not occupied before. In this chapter, I argue that a 'courtroom stage' emerges as a supporting extension of, and then guiding image for, state institutions which uphold justice in society.

In the following, I explore one of the defenses of the theater: its exceptional usefulness in presenting moral knowledge to the public. The stage repairs an alarming problem with reality: temporal and spatial fragmentation, both of which obscure the truth about virtue and vice. Philosophers, most prominently, Christian Wolff (1679-1754) and Johann Georg Sulzer (1720-1779) make a case for the stage as a better site of knowledge about the world than the world itself. They also argue that what a person learns about virtue and vice via the stage is a more preferable source of knowledge, than what a person experiences in real life. According to their understanding, moral truth must be mediated, because the world does not show truth; it hides truth. In matters of truth, the illusion of the stage is paradoxically more reliable than reality. Thus, drama theory becomes a theory of moral knowledge. It is the special quality of immediacy or presence of a

[2] Schnabel-Schüle 161-162.

performance that makes the stage effective in not only presenting, but also integrating moral truth into the minds of audience members. For Wolff and Sulzer, the stage was of particular interest to the state in its role as a supplementary institution of education.

However, in the latter half of the 18th century, writers such as Lessing, Schiller, and Goethe begin to break away from the pure "usefulness" discourse on theater. They argue that the stage not only supplements already established institutions within the state, such as the legal system or the church, but is also a place of independent judgment, virtue, and taste. Building on and responding to the ideas of Wolff, Sulzer, and the theater reformer Johann Christoph Gottsched (1700-1766), they promote the stage as having its own set of knowledge: it creates, it is autonomous, and it does not merely serve an educational or useful end.

During this period of transition, where there is a push for reform in both the legal and dramatic spheres, Lessing and Schiller examine the shortcomings of law in direct comparison to the possibilities of the stage. Additionally, whereas law is a bureaucratic process that is limited to punishment, these authors claimed that the theater concerns itself with truth and justice. The purpose of the legal system is to maintain order and peace and to settle disputes. In this regard, the legal system of any state has less to do with justice or truth than art does. In the 1780s, Friedrich Schiller makes even stronger claims on the jurisdiction of the stage. By expanding it into the realm of justice, he proposes the 'courtroom stage' as a model for justice. Although these two movements in theater reform may seem opposed, I will also argue here that it was the philosophers Christian Wolff and Johann Georg Sulzer who laid the groundwork for these later arguments made by Schiller, Goethe, and Lessing.

3.2 Theater reform of the early to mid-18th century and the international *Theaterstreit*

While criminal law and inquisitional trial procedure came under the intense scrutiny of enlightened advocates of reform, the institution of theater was embroiled in a debate about its effects on the public.[3] The question being, were they good or harmful? The so-called *Theaterstreit* (theater debate) describes the discussion in the 18th century surrounding the usefulness or harmfulness of the theater on society. As a result, these debates led to the short-lived designation of the theater as a site of moral education. At the same time, the *Theaterstreit* coincides with the decline of the *Wandertruppen* (wandering theater troupes), the rise of permanent court and national theaters across the German territories, as well as a thematic emphasis in plays on the bourgeois milieu and the primacy of the *Illusionstheater*. The debate itself referred back to the criticisms put forward by Plato against the theater, for example, that poetry and other imitative arts are the enemies of a just community insofar as the arts deal in pleasure and pain, but not in truth.[4] Instead, the reformers took the position of Aristotle that art and the theater had a positive effect on the public through the process of catharsis. Catharsis was interpreted most commonly as a cleansing of passions and emotions. If not the main purpose of theater, it was considered a positive aspect of theater.

As a skeptic of the theater's place in society, Jean-Jacques Rousseau (1712-1778) expressed doubt regarding the possible positive effects of the theater in his *Letter to d'Alembert* (1758). [5] In this letter, he rejects arguments in favor of the theater, claiming that the theater is incapable of changing morals (Rousseau 19). To this end, he offers a list of dangers posed by the

[3] Summaries of the *Theaterstreit*: Zelle, Carsten. "'Querelle du théâtre': literatische Legitimationsdiskurse (Gottsched – Schiller – Sulzer)." In: *German Life and Letters*, vol. 62, no. 1, January 2009, 21-38; and: Thomas Koebner. "Zum Streit für und wider die Schaubühne im 18. Jahrhundert." *Festschrift für Rainer Gruenter*, ed. Bernhard Fabian. Heidelberg: Winter, 1978, 26-57.

[4] See the dialogue between Socrates and Glaucon in Book 10. Bloom, Allan, trans. *The Republic of Plato*. 2nd ed. New York: Basic Books, 1968, 290-291.

[5] Rousseau, Jean-Jacques. "Letter to M. d'Alembert on the Theatre." In *Politics and the Arts*, translated by Allan Bloom, 3–137. Glencoe: The Free Press, 1960. Occasion for the letter is Jean le Rond d'Alembert's entry on 'Geneva' in the *Encyclopédie, ou dictionnaire raisonné des sciences, des arts et des métiers*, which he co-edited with Denis Diderot, in which he writes that Geneva does not tolerate the theater and then goes on to provide a lengthy excursus on how the theater would actually be advantageous for Geneva.

theater on a rural population. He accuses the theater of wanton pleasure and moral corruption especially concerning its liminal figures of entertainment such as actors, dancers, singers. The reputed moral laxness of actors themselves (76) and the fact that actors were professional liars (79) make them a threat to virtue.[6] Also featured in his letter is a fear of villains being interesting and sympathetic figures (29-33), bad moral examples (34), and the theater as a distraction from the virtue of hard work (58, 64). Moreover, Rousseau betrays a deep skepticism of catharsis, concluding that the idea that theater somehow 'cleanses the passions' is unclear and unfounded (20).

The increasing focus of the arts on the bourgeois milieu, exemplified by the popularity of the *bürgerliche Trauerspiel*, and the opening of court theaters to the general public are indicators of the rise in support for the theater by the bourgeoisie in the mid 18th century.[7] At the same time, the theater became a site of sharp attacks that necessitated a response. This response, in short, was reform. It was an endeavor that had already been spearheaded by the actress Friederike Caroline Neubur (1697-1760), the reformer and professor at the University of Leipzig Johann Christoph Gottsched (1700-1766), and the actor Conrad Ekhof (1720-1778). All three, prominent in their time, defended the theater as a serious artistic and professional enterprise that could be a stable,

[6] Supporters of the theater did not argue that the stage was always beneficial to the public. In fact, they freely admit that an ill-kept theater could be detrimental to the public wellbeing, and thus the necessity of theater reform to raise the standards of the plays being staged, of acting, and of public taste. In his 1721 work, *Vernünfftige Gedancken von dem gesellschaftlichen Leben der Menschen und insonderheit dem gemeinen Wesen*, Christian Wolff, though he argues for the benefits of the stage, also warns against plays that could lead the public away from virtue and stir in them evil desires: "[...] warum nicht alle Comödien und Tragödien ohne Unterscheid billigen [...] kan. [...] Nehmlich wenn sie so beschaffen sind, daß sie den Zuschauern zu den Lastern Anlaß geben, sie von der Tugend abführen und die bösen Begierden in ihnen rege machen [...]" (paragraph 329, page 278). Wolff 5, 278.

[7] Ficher-Lichte emphasizes the importance of the new bourgeois audience in her study of the transition from adherence to French Classicism to a new *Illusionstheater* on the German stage when she states that the goal of German theaters during the 18th century became "die Illusion der bürgerlichen Wirklichkeit" (Fischer-Lichte, *Semiotik*, 132). She concludes: "Gegenstand der Schauspielkunst sind psychische Zustände und seelische Prozesse beim bürgerlichen Individuum" (Fischer-Lichte, *Semiotik*, 183). See: Fischer Lichte, Erika. *Semiotik des Theaters: Vom "künstlichen" zum "natürlichen" Zeichen Theater des Barock und der Aufklärung*. Vol. 2. Tübingen: Gunter Narr Verlag, 1983. Subsequent citations as "Fischer-Lichte, *Semiotik*" with page numbers.

non-transient institution capable of reform.[8] Theater reformers not only refuted the accusations of moral laxity and corruption, they argued the opposite: that the stage was a place of moral example and moral education. In additional theoretical arguments about the theater, reform also included practical changes. Theater directors and intendants like Goethe in Weimar, Dalberg in Mannheim, and Schröder in Hamburg made a concerted effort to raise standards in acting, repertoire, as well as the reputation and behavior of actors and actresses.[9] In response to criticisms attacking the moral worth of the stage, such as Rousseau's, its defenders placed on the theater the duty and challenge to be useful to the state and to the public.

In addition to its cathartic effects, reformers linked the stage to even higher concepts such as virtue, truth, and morality that served humanistic ideals. Citing the beneficial aspects of the

[8] See a summary of these reform efforts in: Heßelmann's *Gereinigtes Theater?* from 2002. Gottsched worked with the Dresden *Hofkomödiant* Johann Neuber and his wife, Friederike Caroline Neuber. Friederike Neuber worked diligently to clean-up ("reinigen") German Theater and give it "eine vernünftige Formn" (Heßelmann 160). French theater was her model for the project: its classic style, its disciplined players who actually memorized lines, its rhymed Alexandrian verses. Friederike Neuber required the "betterment" of the players' personal lives in order to make them more reputable (Heßelmann 161). See also: Daniel, Ute. *Hoftheater: Zur Geschichte des Theaters und der Höfe im 18. und 19. Jahrhundert*. Stuttgart: Klett-Cotta, 1995, 143-148. Subsequent citations as "Daniel" with page numbers. Neubur famously banned the harlequin or *Hanswurst* from her company (Daniel 136), while Neubur's theoretical conversation partner, Gottsched, outlined clear artistic goals and rules for the stage using the French stage as a model in his *Versuch einer critischen Dichtkunst vor die Deutschen* (1730). Gottsched, Johann Christoph. *Ausgewählte Werke. Versuch einer Critischen Dichtkunst: anderer besonderer Theil*. Edited by Joachim Birke and Brigitte Birke. Vol. 6, 1. Ausgaben Deutscher Literatur des XV. bis XVIII. Jahrhunderts. Berlin, New York: de Gruyter, 1973.

[9] For example, in *Hoftheater*, Ute Daniel describes the difficulty of standardizing acting (Daniel 136). Lesley Sharpe mentions the specific example of Wolfgang Heribert von Dalberg at the Mannheim National Theater in the 1770s and 1780s. With his lead actors, he had regular meetings to discuss the repertoire of the company, discuss and critique performances, and pose theoretical questions about theater, art, and acting technique. Sharpe also emphasizes that stationing theater troupes in stable homes created the possibility of higher standards, a more varied repertoire, and a rise in the status on the acting profession. See: Sharpe, Lesley. "A National Repertoire: Schiller and the Theatre of His Day." In *Schiller: National Poet, Poet of Nations*, edited by Nicholas Martin, 35–52. Amsterdamer Beiträge Zur Neueren Germanistik 61. Amsteram, New York: Rodopi, 2006, 37. Subsequent citations as "Sharpe, "A National Repertoire," with page numbers. Also: Sharpe, *A National Repertoire*, 22. For a record of Dalberg's meetings with the theater committee, see also: Dalberg, Wolfgang Heribert. *Die Protokolle Des Mannheimer Nationaltheaters Unter Dalberg Aus Den Jahren 1781 Bis 1789*. Edited by Max Martersteig. Mannheim: J. Bensheimer, 1890. Additionally, Ferdinand Ludwig Schröder's *Theatergesetze* at the Hamburg Nationaltheater eventually began to regulate acting technique and the everyday behavior of actors. See: Malchow, Jacqueline. "'Niemand Darf in Seiner Rolle [...] Etwas Thun, Das Die Täuschung Aufhebt.' Friedrich Lugwig Schröder, Die Hamburger Theatergesetze Und Das Illusionstheater." In *Friedrich Ludwig Schröders Hamburgische Dramaturgie*, edited by Bernhard Jahn and Alexander Košenina, 159–76. Publikationen Zur Zeitschrift Für Germanistik. Neue Folge. 31. Bern, et al.: Peter Lang, 2017. Subsequent citations as "Malchow" with page numbers.

theater, Christian Wolff wrote in 1721: "So sind Comödien und Tragödien sehr dienlich zur Besserung des Menschen, wenn die Tugenden und Laster nach ihrer wahren Beschaffenheit vorgestellt werden."[10] Many reformers emphasized exactly this point: that to instruct the public about different types of vice and evil encountered in real life was a valuable contribution to the education of the subjects of the state. Furthermore, that their exposure to vice in a harmless situation, such as at the theater, would prepare them to identify and avoid evils later on. A public educated in this way would be resistant to the temptations and tricks of evildoers. According to Wolff, the theater did not depict 'real life' as it actually happened. Rather, it presented true examples of life condensed into a form that was easier to understand and more instructive.[11] Johann Christian Gottsched, Wolff's contemporary, defined the theater as a "lehrreiches moralisches Gedichte."[12] In his 1729 lecture on "Die Schauspiele und besonders die Tragödien sind aus einer wohlbestellten Republik nicht zu verbannen," he asks the rhetorical question: "Warum soll ich mich, um so weit gesuchter Ursachen halber, eines Vergnügens berauben, das so nützlich ist? Das menschliche Leben hat ohnedem nicht viele Belüstigungen, die so rein, so untadelig und der Tugend selbst so beförderlich sind als die Trauerspiele."[13] The idea promoted in this lecture, that theater, especially tragedy, advanced virtue was at the time a common line of argument. Lessing, in his *Hamburgische Dramaturgie* (1767-1769), referred to art and the stage as "Die Sittenbilderin, die jede Tugend lehrt".[14] Refering back to Horace's *Ars Poetica* (*Aut prodesse volunt aut delectare poetae*), literature in Enlightenment understanding was to be

[10] Wolff 5, 275.
[11] Wolff 5, 276-277.
[12] Gottsched, Johann Christian. "Die Schauspiele und besonders die Tragödien sind aus seiner wohlbestellten Republik nicht zu verbannen." [lecture 1729, published 1739] *Schriften zur Literatur*. Ed. by Horst Steinmetz. Stuttgart: Reclam, 1972. (Universal Bibliothek No. 9361). 3-11. 11. Subsequent citations as "Gottsched, *Schriften zur Literatur*" with page numbers.
[13] Gottsched, *Schriften zur Literatur*, 5.
[14] *LW* 6, 213.

enjoyable and useful. Where Plato and Rousseau saw distraction and corruption, the defenders of the stage saw pleasure combined with instruction.

3.3 The Power of Art

3.3.1 Drama Theory as a Theory of Knowing and Knowledge I: Wolff

The defenders of theater emphasized the practical usefulness of the theater. In addition to the cleansing of the passions, the upholding of virtue, and the cultivation of sympathy, the theater was considered a site of knowledge production. The question that defenders focused on was how people came to know about virtue, vice, and the world. They argued that experience in a non-virtuous world, the one in which we live, was an unreliable source of this knowledge. Philosopher Christian Wolff (1679-1754)[15] expresses this sentiment in his *Vernünfftige Gedancken von dem Gesellschaftlichen Leben der Menschen und Insonderheit dem Gemeinen Wesen* (1721). In his third chapter titled "Von der Einrichtung des gemeinen Wesens," Wolff lays out his observations on virtue in paragraph 316 under the heading, "Daß man für die Aufnahme der Tugend sorgen soll." Asking the question of how to bring the population "zu einer lebendigen Erkänntniß des Guten",[16] Wolff establishes that knowledge of good is gained primarily through example, such as through teachers and leaders. This happened foremost in life as children in school, where this acquisition was supported also by knowledge of God. The same is true with the knowledge of vice, which was also gained through example, namely, that of bad company ("böse Gesellschaft").[17]

[15] A student of Leibniz, Wolff worked further on his teacher's project of human perfection. According to Wolff, morality obliged humans to perfection, however, they cannot achieve this alone. Therefore, the state and its laws should foster the improvement of its citizens through the allocation of sufficient conditions of living, freedom from fear and injustice, and protection from external violence. Kaufmann, Arthur, and Dietmar von der Pfordten. "Historische Grundlagen: Problemgeschichte der Rechtsphilosophie." In *Einführung in die Rechtsphilosophie und Rechtstheorie der Gegenwart*, edited by Winfried Hassemer, Ulfrid Neumann, and Frank Saliger, 9th ed., 23–142. Schwerpunktbereich. Heidelberg: C.F. Müller, 2016, 50.

[16] Wolff 5, 260.

[17] Wolff 5, 264.

Wolff states that the instruction of a whole community on good, evil, and God requires, in fact, permanent public buildings, such as churches. The churches determine set times for this instruction: worship days and special holidays.[18] The aesthetic splendor of churches and religious ceremonies are both justified and necessary in promoting knowledge of moral truths, because "allezeit der Anfang unserer Gedancken von einer Empfindung geschiehet."[19] Not only do thoughts begin situated in feeling, the aesthetic and emotional quality of important services imprints itself in the minds of the public, or, as he phrases it: "sich in die Sinnen tief einprägen".[20] He further explains that aesthetics thus further aids the memory retention and vibrancy of the ceremony and, consequently also, its moral instruction.

Wolff's discussion of the importance of church exteriors and the aesthetic of religious rituals and their effect on the church-going community is followed by a lengthy paragraph on the role of tragedies and comedies (328, pages 275-278). In his argument for theater, tragedies and comedies are at the center of the production of knowledge and mediation of moral truths. This distinction between school, church and theater, draws a parallel between the impact of religion on the mind and art on the mind. On the role of theater in the instruction of morality and virtue, he argues for the advantages of the theater in providing examples over examples from real life:

> Uber dieses haben auch Comödien und Tragödien einen Vorzug für den wahren Exempeln, die in der Welt paßiren und darauf man acht hat. Nehmlich da die Exempel uns hauptsächlich den Erfolg der guten und bösen Handlungen zeigen sollen; so hat man für allen Dingen zu erkennen, daß dieses oder jenes, was uns entweder Vergnügen oder Verdruß verursachet, aus den Handlungen herkommet, denen wir es zuschreiben, damit wir die Schein-Güter von den wahren unterscheiden und uns dieselben nicht mehr blenden lassen. Da nun im menschlichen Leben alles nach und nach geschiehet, auch öffters lange Zeit hingehet, ehe da Unglück kommet, welche man sich durch lasterhafftes Leben auf den Hals ziehet; oder man auch im Gegentheile das Glücke erwartet, damit die Tugend belohnet wird: so erkennet man öffters nicht, daß dieser oder jener Zufall aus diesen oder jenen Handlungen erfolget, oder auch aus unserem Vergnügen das gegenwärtige Mißvergnügen erwachen sey. Hingegen in Comödien und Tragödien folget alles, was zusammen gehöret, in einer kurzen Reihe auf einander, und lässet sich daraus der Erfolg der Handlungen viel besser und leichter begreiffen, als wenn man im menschlichen Leben darauf acht hat.[21]

[18] Wolff 5, 271-274.
[19] Wolff 5, 272.
[20] Wolff 5, 273.
[21] Wolff 5, 276-277.

Wolff's concern for the "wahren Exempel" is based in a temporal and logical problem with human experience in the actual world. As it turns out, reality—or the experience of everyday life—is somewhat unreliable in the presentation of the moral knowledge that is required to improve humanity: the knowledge that virtue is rewarded and vice is punished. Temporality is at the core of the problem with reality, namely, that the passage of real time disrupts the appearance of this clear association. If it is true that virtue is rewarded with happiness and vice with misfortune, then lived human experience and an individual's interpretation of their experiences are rather obstacles to these moral truths. After all, life obscures the cause-and-effect logic of moral truths. The individual, then, through no real fault of their own, will make erroneous logical connections when interpreting examples of real life. In the case of the "wahren Exempel," the stage has the advantage of 1) a controlled narrative and 2) a condensed timeline, which makes moral truths more easily recognizable and understandable. The stage can therefore be a valuable source of this knowledge.

According to Wolff, individuals obtain knowledge about moral truths through logical associations they make of observed examples in the actual world. Wolff's proposed acquisition of knowledge is mainly an intellectual exercise, relying on seeing and recognizing examples and coming to inductive theoretical conclusions about the world. The cognitive processes that govern both observations in daily life and observations on stage are the same. However, the fear is that these logic-based conclusions could be false depending on what ones observes. Thus, Wolff sees the stage as a good place to both establish correct propositions about good and evil and to reinforce previous true knowledge. Yet the question remains: why it is the stage particular among the arts in making this possible?

Written works such as novels, fables, or short stories can, according to Wolff, also claim the same advantages as the stage does in regard to temporality and condensation of a moral plot.

However, what makes the stage more effective than written works is the sensory presence of the stage:

> Es haben aber Comödien und Tragödien darinnen einen Vorzug für geschriebenen Historien, daß sie einen grössern Eindruck in das Gemüthe des Menschen machen. Denn was man selber mit Augen siehet und mit Ohren höret, beweget einen mehr und bleibet besser, als was man bloß erzehlen höret. Nehmlich die Geberden und Minen der Menschen, ingleichen die Veränderung der Stimme, damit die Worte vorgebracht werden, nachdem man von diesem order einem anderen Affect getrieben wird, lassen sich zur Zeit nicht völlig beschreiben.[22]

What Wolff argues here is that narrative prose cannot achieve the same impact of witnessing actual actions and events. On stage, the audience sees movement and action; they hear actual voices within the context of those actions and observe gestures, coded human expressions, and emotion. Furthermore, Wolff argues that there is not a writerly technique that can provide a written equivalent to the stage with the same influence on the human mind and disposition. Here, the art of acting which makes the presence of an artificial scenario seem believable is a crucial part of Wolff's theory of moral knowledge via the stage. Thoughts, as he writes in the section on religion, begin with a sensation or feeling, despite the process of moral knowledge being an intellectual one. Thus, in his theory, there is a place for aesthetic and sensory experience similar to that of the impact of elaborate church services.

3.3.2 Drama Theory as a Theory of Knowing and Knowledge II: Sulzer

Wolff's arguments in paragraph 316 of his *Vernünfftige Gedanken* about the acquisition of moral knowledge were later expanded by the Swiss philosopher Johann Georg Sulzer. In his "Philosophische Betrachtungen über die Nutzlichkeit der dramatischen Dichtkunst" from 1760, he responds directly to Rousseau's objections to the stage in his essay.[23] In addition, in his entries on

[22] Wolff 5, 276.

[23] Sulzer, Johann Georg. "Philosophische Betrachtungen über die Nützlichkeit der Dramatischen Dichtkunst." In *Johann George Sulzers Vermischte Philosophische Schriften*, 1:146–65. Leipzig: Weidmanns Erben und Reich, 1773 [1760]. Subsequent citations as "Sulzer, "Philosophische Betrachtungen"" with page numbers.

drama and the arts in his encyclopedic work, *Allgemeine Theorie der Schönen Künste* (1771-1774),[24] he further develops the theory of knowledge on stage. In Wolff's account from 1721, in which thoughts begin with emotion, and in which live presence and aesthetic impression are important for memory retention, the actual process of acquiring this knowledge is an intellectual exercise. The simple presentation of examples in which evil ends in misfortune and good or virtue with reward should be enough for the public to make the correct logical associations that remain in their minds as knowledge of these things. Whereas for Sulzer, these sensory qualities also affect a person's imagination, and it is, as Sulzer emphasizes, the *imagination* that allows for deep integration of knowledge.

According to Sulzer, individuals have natural abilities such as judgment and taste that are influenced by the world and the people around them, including negative influences.[25] Like Wolff, Sulzer observes that the world around us can be deceptive, leading individuals to make false logical connections concerning what is good and evil:

> In der Welt stellen sich uns die Gegenstände, an deren gründlichen Erkenntniß uns am meisten gelegen ist, selten so dar, wie die wirklich sind. Tausend Dinge kommen da zusammen, um den Menschen zu verstellen, und uns in Ansehung dessen, was gut und böse, was Verdienst und Verbrechen ist, zu hintergehen.[26]

And as in Wolff, in addition to experience of the world, the theater can also offer examples that instruct us about virtue.[27] Sulzer argues that experience often falls short of what the theater

---

[24] Sulzer, Johann Georg. "Drama. Dramatische Dichtkunst." In *Allgemeine Theorie der Schönen Künste in Einzeln, nach Alphabetischer Ordnung der Kunstwörter auf Einander Folgenden, Artikeln Abgehandelt*, 1:274–78. Leipzig: M.G. Weidemanns Erben und Reich, 1771. Subsequent citations as "Sulzer, "Drama"" with page numbers; Sulzer, Johann Georg. "Künste. Schöne Künste." In *Allgemeine Theorie der Schönen Künste in Einzeln, nach Alphabetischer Ordnung der Kunstwörter auf Einander Folgenden, Artikeln Abgehandelt*, 2:609–25. Leipzig: M.G. Weidmanns Erben und Reich, 1774. Subsequent citations as "Sulzer, "Künste"" with page numbers.

[25] "Der Mensch, der von Natur eine rightige Beurtheilungskraft und gute Gesinnungen hat, wird nicht viel Nutzen davon haben, wenn er das Unglück hat, unter verderbten Menschen zu leben" (Sulzer, "Philosophische Betrachtungen," 155).

[26] Sulzer, "Philosophische Betrachtungen," 151.

[27] "Das größte Verdienst des Dichters entsteht daher, daß er uns Menschen von hoher Sinnesart und ungewöhnlicher Grösse der Seele bewundern macht; daß er uns die traurigen oder schreklichen Würkungen des Lasters oder der hinreissenden Leidenschaften zu empfinden giebt; daß er uns für alles, was an Menschen und Sitten liebenswürdig oder verächtlich ist, fühlbar macht. Er muß sowol unsern Geist, als unser Herz ohne Aufhören in einer vortheilhaften

presents, and this is especially true in the case of people: "Man kann sogar, ohne die Sache im geringsten zu übertreiben, behaupten, daß uns die dramatische Poesie weit besser als die Erfahrung unterrichtet, weil uns diese in den meisten Fällen nichts als das Aeußerliche der Personen zeiget."[28] The difference between Wolff and Sulzer is that Wolff's concern with reality is its temporal confusion, while Sulzer shifts his focus onto the discrepancy between the possibly deceptive appearance of reality and the inner life or truth of a person or situation. Here, there is the added interest in the new human science of psychology, which examines not just appearances, but the interior of a person.

Since the world is full of depravity and deception, it is the poet who can, on stage, expose what experience of the world conceals: "Der Dichter sammelt die Züge, welche diese verschiedenen Verhältnisse kennbar machen, er rücket die Facta näher zusammen, und entdeckt uns selbst das, was uns die Erfahrung verbirgt."[29] Thus, it is through artistic mediation, which includes the collapsing of time and distance, that truth is adequately presented to the public. But not just any truth: Sulzer claims that what is presented on stage is not historical truth, but rather "moralisch wahr."[30] On what makes the poet able to discern what is morally valuable, Sulzer writes:

> Der Dichter bringt den besten Theil seines Lebens damit zu, die verschiedenen Charaktere der Menschen zu erforschen, die Leidenschaften gründlich kennen zu lernen, die Tugenden und Laster

Beschäftigung unterhalten, und alle Nerven der Seele zur Würksamkeit reizen. Dieses alles aber muß auf eine vortheilhafte Wendung unsrer Seelenkräfte abzielen. Der Schreken, den der Dichter in uns erwekt, muß dienen uns vom Bösen zurük zu halten; das Lachen muß uns selbst vor dem lächerlichen bewahren; jede Empfindung der Menschlichkeit muß in uns rege gemacht werden; alles aber muß dahin abzielen, die Seele zu der schönen Harmonie der Empfindungen zu stimmen, darin sie für jedes Gute und Böse, in dem Maaße wie es solches verdienet, empfindsam wird" (Sulzer, "Drama," 277).

[28] Sulzer, "Philosophische Betrachtungen," 150.

[29] Sulzer, "Philosophische Betrachtungen," 151.

[30] "Freylich bleibt der Dichter nicht bey der historischen Wahrheit. Aber selbst seine Erdichtungen sind moralisch wahr; sie sind falsch in Absicht auf die Zeiten, auf die Oerter, und auf die Namen der Personen, aber sehr wahr in Absicht auf die Situationen, und die Charaktere. Die dramatische Handlung liefert das Factum nicht so, wie es ein Augenzeuge würde gesehen haben, sondern so, wie es ein höheres verständiges Wesen sehen würde, das in dem Herzen liest, in das Innere der Dinge bringt, und alles, was nicht wesentlich dabey ist, davon absondert, um eine desto richtigere und rührendere Idee davon zu haben" (Sulzer, "Philosophische Betrachtungen," 150).

> in ihrem wahren Lichte zu beobachten, das mit den verschiedenen Ständen und Lebensarten der Menschen verknüpfte Gute und Böse abzuwiegen, und die zur richtigen Beurtheiling jeder wichtigen Situation dienlichsten Gesichtspunkte zu bemerken: und dann breitet er seine kostbaren Kenntnisse in der dramatischen Poesie vor uns aus, und thut es so, daß er uns in kurzer Zeit und auf die kräftigste Art dasjenige mittheilet, was er selbst durch langes Nachdenken und sehr viele Beobachtungen gelernt hat.[31]

The poet is a scientist, a *Menschenkenner*. But like a philosopher or priest, he also reveals "precious" knowledge and truth about humanity. His medium is dramatic poetry, which has the ability to transform the fruits of his "langes Nachdenken" into something that can be presented in "kurzer Zeit" on the setting of the stage. Here, the figure of the poet is a genius, who has a special scientific and instinctive relationship to the truth.[32]

In the passage above, Sulzer identifies the temporal advantages of theater. In his entry on "Drama" in his *Allgemeine Theorie*, he also discusses the run-time of a play, which should be no more than a few hours in order to avoid boredom.[33] According to Wolff, the stage presents an opportunity to solve the problem of fragmentation in everyday life and its temporal logic. This is the quality which makes it suited to disseminate moral truth through "wahr[e] Exempel." Sulzer, on the other hand, focuses on the practical applications of collapsing time, citing the example of a messenger on stage who is sent miles away to get news of something, but who comes back in mere minutes, and yet does not disrupt our understanding of the passage of time "weil der Zuschauer das Unmögliche dieser Schnelligkeit zwar erkennet, aber nicht fühlt."[34] It is one way in which the

---

[31] Sulzer, "Philosophische Betrachtungen," 152.

[32] Peter-André Alt discusses the transition in the 1770s on what it meant to be a poet and how a poet was supposed to work. The idea of the poet proposed by Gottsched, that the poet acquired mastery of technical processes and adherence to genre rules, gave way to the idea of the cult of genius, in which an author was talented by nature and worked with enthusiasm and inspiration (Alt 259). The move away from early 18th century "Regelpoetik" can be seen especially clearly in the deeply psychological character dramas of Lenz (Alt 262).

[33] "Natürlicher Weise ist die Handlung auf eine gewisse Kürze der Zeit eingeschränkt, weil Niemand Tagelang auf einer Stelle stehen und einer Handlung mit unverwandten Augen zusehen kann. Ein paar Stunden hält man dieses aus; währet es länger, so müssen viele davon gehen, ohne das Ende der Handlung abwarten zu können. Daher ist die Einrichtung des Drama gekommen, die überall beobachtet wird, daß ein paar Stunden hinlänglich sind, die ganze Handlung zu sehen […]" (Sulzer, "Drama," 274).

[34] Sulzer, "Drama," 274.

poet "rücket die Facta näher zusammen" and imparts to us his "precious" knowledge "auf die kräftigste Art" and "in kurzer Zeit."

Sulzer is further concerned with the acquisition of knowledge that Wolff begins to answer in his treatment of the theater in the instruction of virtue. Wolff describes the importance of emotional and aesthetic impressions in regard to memory retention, but his acquisition of knowledge through theater remains a largely intellectual act. Sulzer, as he lays it out on his entry on the arts in his *Allgemeine Theorie* in 1774, finds that reason and knowledge is not enough to educate a population: "[…] der Verstand würkt nichts als Kenntniß, und in dieser liegt keine Kraft zu handeln. Soll die Wahrheit würksam werden, so muß sie in Gestalt des Guten nicht erkannt, sondern empfunden werden, denn nur dieses reizt die Begehrungskräfte."[35] Here, Sulzer recognizes that knowledge per se remains intellectual and does not necessarily lead to action in the world. Truth must be felt, not just known. Therefore, acknowledging that truth is abstract, he sees art as an instrument in a strategy to make truth easier for individuals to internalize. These conclusions lead him to articulating a theory of knowledge in his "Philosophische Betrachtungen":

> Das Wahre, das bloß den obern Theil der Seele, oder den Verstand beschäfftiget, hat nicht die geringste Kraft auf uns; es ist bloß speculativisch, wie die Wahrheiten der Geometrie sind: wird es aber mit der Einbildungskraft und dem Herzen verbunden, so wird es ein wirksames Principium, das unsere Gesinnungen und Handlungen regiert.[36]

This is the power of drama among all the arts: is the most sensual, the liveliest, and the most present. It presents truth as such, thus making truths "sinnlich" and aiding in the embedding of truth in the heart and imagination.[37] The public is moved on an emotional level, not just on an

[35] Sulzer, "Künste," 614.
[36] Sulzer, "Philosophische Betrachtungen," 156-157.
[37] "Dergleichen Gedanken sind diejenigen, welche mit gewissen, unsrer Einbildungskraft gegenwärtigen Gemälden oder Auftritten zusammenhängen, und welche uns diese Wahrheiten sinnlich machen. Es verhält sich damit eben so, wie mit denen Wahrheiten, welche die Moral der Fabel ausmachen; für sich allein machen sie sehr wenig Eindruck; ist aber die Einbildungskraft durch das Gemälde, welches ihr die Fabel vorhält, lebhaft gerührt worden, so bekömmt dadurch die Moral eine vorzügliche Kraft, und bleibt dem Gemüthe unauslöschlich eingegraben" (Sulzer, "Philosophische Betrachtungen," 157).

intellectual level. In other words, moral knowledge that enters the minds of the public through the heart and the imagination will be received "mit der größten Lebhaftigkeit, und mit einer Ueberzeugung, die nichts zu schwächen vermag."[38]

For any of this to work, however, the audience in Sulzer's argument must be able to believe what is happening on stage and to have an emotional stake in the action. This is achieved through "theatralische Täuschung," in which the presentation of good and evil is no longer "eine bloße Speculation," but rather set in "wichtige Situationen" in which the audience is "erhitzt" and feels gripped by the fate of a participating party.[39] Sulzer prompts the reader with the rhetorical question: "Kann man wohl daran zweifeln, daß man in welchen Umständen weit stärker gerührt werde, als wenn eben dieselbe Materie auf dem Lehrstuhle eines Professors angehandelt würde?"[40] By asking this question, he makes the case that theatrical presentation has a more powerful effect on the mind than a lecture or reading because of its ability to keep the audience's attention with activity and emotional response. In his writings, Sulzer is not referring to just any theater, but specifically to the *Illusionstheater*, which he considers a prerequisite for the theater to function as a site of knowledge production. On the stage of the *Illusionstheater* are "würklich handelnde Menschen vors Gesicht."[41] In fact, they require some resemblance to reality. Furthermore, in his entry on the "Comödie," Sulzer states that the stage presents true models of good, evil, reasonable and unreasonable events in life "genau mit allen Umständen bestimmt," and that the stage "giebt ihm [the viewer] nicht blos das spekulative, sondern das zum Leben allein nützliche praktische Urtheil."[42] The theater is effective for the same reasons that reality is so good at deceiving

[38] Sulzer, "Philosophische Betrachtungen," 157.
[39] Sulzer, "Philosophische Betrachtungen," 160.
[40] Ibid.
[41] Sulzer, "Drama," 274.
[42] Sulzer, Johann Georg. "Comödie." In *Allgemeine Theorie der Schönen Künste in Einzeln, nach Alphabetischer Ordnung der Kunstwörter auf Einander Folgenden, Artikeln Abgehandelt*, 1:213–24. Leipzig: M.G. Weidemanns Erben und Reich, 1771. 219. Subsequent citations as "Sulzer, "Comödie,"" with page numbers.

individuals and shaping them with false examples and judgment: it is immediate, it is emotional, and it sparks the imagination.

3.3.3 Theater Reform and the *Illustionstheater*

Before moving on, we should consider acting style and the dominant theories of acting and theater presentation during the 18th century, specifically the move toward *Natürlichkeit* and the *Illusionstheater* (theater of illusion). After all, this development allowed Sulzer and other defenders of the stage to make the arguments they do. In his *Letter to d'Alembert*, Rousseau responds negatively to moral truth claims by the stage by arguing that the morals presented on stage belong to a stage-world separate from our own. It is a world that is necessarily disconnected from everyday life, and its moral would be ridiculous if the attempt were made to apply them to everyday life (Rousseau 25-26). Rousseau also cites Swiss author Béat Louis de Muralt as an ally: "It is an error, said the grave Muralt, to hope that the true relation of things will be faithfully presented in the theatre" (27). Yet I would argue this is only a partial response to theater reformers who promote the morality of the stage. Wolff and Sulzer's claims are based primarily on the narrative structures of theoretical examples about morality or virtue and our cognitive interpretation of those examples, regardless whether they happen in everyday life or on stage. Rousseau, on the other hand, is actually concerned with the many practical discrepancies between reality and the stage of French theater in terms of things such as speech (speaking in verse versus colloquial speech), costuming (dressing like a Roman versus contemporary fashion), and situations (heroic situations versus everyday ones). Thus, according to Rousseau, to assume that the morality presented on stage is directly applicable to contemporary society is an error, since nothing else in the play is. His position does not even admit for virtue or morality on stage to transfer into

contemporary society as analogy (as Wolff's position might also admit); it is relegated "forever to the stage" (26). Rousseau is of course not responding directly to Wolff, but rather to d'Alembert and other French supporters of the stage. Wolff, for example, does not account for specific content, style, or staging like Rousseau does. On the other hand, Rousseau claims that virtue and truth are easily recognizable in nature, yet does not seem to share Wolff's concern for the problem of temporal discrepancy with regards to knowledge of moral truths.

Nevertheless, this brings up an interesting point about the bourgeoning popularity of the idea of *Natürlichkeit* at the time among prominent actors and the rise of the *bürgerliche Trauerspiel*. [43] Rousseau's complaints in 1758 about the ridiculousness of hoping for moral analogy between the French stage and real life are complaints that theater companies and drama theorists in the German territories had also to grapple with.[44] If theater would be the site of moral knowledge—indeed, this is the pitch that some theater proponents and theorists employ—and if

[43] On the rise of the idea of mimesis and an attentiveness to nature in acting in the early to mid-18th century, Fischer-Lichte cites the leading actor of the time, Conrad Ekhof: "Denn der überlieferte kinesische Code ist nicht in der Lage, der neuen Definition der Schauspielkunst, wie sie Conrad Ekhof exemplarisch in einer der Sitzungen der Schauspielerakademie vorgenommen hat, gerecht zu werden: 'Die Schauspielkunst ist: durch Kunst der Natur nachahmen, und ihr so nahe kommen, daß Wahrscheinlichkeiten für Wahrheiten angenommen werden müssen oder geschehene Dinge so natürlich wieder vorstellen, als wenn sie jetzt erst geschehen'" (Ficher-Lichte, *Semiotik*, 133).

[44] Peter-André Alt points out that Gottsched's *Versuch einer Critischen Dichtkunst* from 1730 put German drama of the Enlightenment on the path of French classicism (Alt 257). Although this is the case, Gottsched also writes in his *Critischen Dichtkunst* from 1730 that: "Die beste allgemeine Regel, die man hier geben kann, ist, die Natur eines jeden Affects im gemeinen Leben zu beobachten, und dieselbe auf genaueste nachzuahmen" (Gottsched, *Versuch*, 327). This aligns with Ekhof's rule for the theater that "Die Schauspielkunst ist: durch Kunst der Natur nachahmen" (quoted from Fischer-Lichte, *Semiotik*, 133). And Gottsched warns against artifice as a category to avoid on stage: "Eben dahin gehören auch die Zaubereyen, welche man die Maschinen der neuern Zeiten nennen könnte. Sie schicken sich für unsre aufgeklärte Zeiten nicht mehr, weil sie fast niemand mehr glaubt [...]" (Gottsched, *Versuch*, 331). This emphasis on mimesis culminates in the conflation of 'nature / Natur' and 'truth / Wahrheit' in the late 18th century, when both terms become colloquialisms for the same thing: a generalized, all-encompassing praise for good acting. Gottsched did support French theater as a model for German theater. By the late 18th century, however, it is clear that German dramatists no longer consider French classical theater to be "wahr" or "natürlich." Iffland declares in his essay "Können fransözische Trauerspiele auf der deutschen Bühne gefallen, und wie müssen sie vorgestellt warden, wenn die allgemein Beyfall erhalten sollen?"—a question originally posed by Dalberg in the Theaterausschuss in Mannheim: Der deutsche Schauspieler darf nichts von der Art des französischen haben, dieser, nichts von jenem. / Die Fransozen geben V o r s t e l l u n g e n. / Die Deutschen, D a r s t e l l u n g e n. / Ihre Gemälde der Leidenschaften, sind prächtig. / Unsere, wahr" (Iffland, *Beiträge*, 59). In: Iffland, August Wilhelm. *Beiträge Zur Schauspielkunst*. Edited by Alexander Košenina. Theatertexte 20. Hannover: Wehrhahn, 2009.

the mediation of moral knowledge depends on the plot of the play, on acting and performance, as well as on the audience taking the theater seriously in this role, then, as Fischer-Lichte argues, theater as an art form had to transition to the *Illusionstheater*:

> Will das Theater unter den veränderten Bedingungen weiterhin seinem Zweck - die moralische Vervollkommung des Zuschauers - zu erfüllen fähig sein, wird daher wie in Frankreich die Forderung zu stellen sein, daß es auf der Bühne die Illusion jener Wirklichkeit entstehen lassen müsse, die der Zuschauer allein als seine eigene zu akzeptieren bereit und in der Lage sein wird: die Illusion der bürgerlichen Wirklichkeit.[45]

If the audience is to leave the theater with the experience of Wolff's "wahre Exempel," they need to believe that the action that transpires on stage could possibly be true in the first place.

The rise of the *bürgerliche Trauerspiel* and *Rührkomödie* or *Rührstück* with their middle class heroes and culture of feeling and tears, the *Sturm und Drang* rejection against Gottsched's *Regelpoetik*, as well as the enthusiastic reception of Shakespeare and the cult of genius in the 1770s, shook the established French Classicist order in the dramatic arts.[46] One sign of this shift was the great emphasis placed on mirroring the inner life and emotion of a character through expression and movements of the body. In a similar vein of thought that prompted authors of criminal stories to focus on the human motivations and psychology of their protagonists, knowing humanity, or having "Menschenkenntnis," was crucial to acting.[47] According to Alt, this transition in dramatic portrayal took the form of heightened realism: "Die kühle Dramaturgie der

[45] Ficher-Lichte, *Semiotik*, 132.

[46] Alt 257. See also: Osborne, John. "Drama, after 1740." In *The Cambridge History of Literary Criticism: Volume 4, The Eighteenth Century*, edited by H.B. Nisbet and Claude Rawson, 4:184–209. Cambridge: Cambridge University Press, 1997. 203-205. According to Osborne, the late 18th-century focus on *Natürlichkeit* in the German territories can also be linked to a reception of Shakespeare in the reaction against French neo-classicism. He cites specifically: Lessing's seventeenth *Literaturbrief* (1760), J.M.R. Lenz' *Anmerkungen übers Theater* (1774), Goethe's "Zum Shäkespeares Tag" (1771), Herder's Shakespeare essay (1771-1773).

[47] Košenina, Alexander. "Entstehung einer neuen Theaterhermeneutik aus Rollenanalysen und Schauspielerporträts im 18. Jahrhundert." In *Aufführungsdiskurse im 18. Jahrhundert: Bühnenästhetik, Theaterkritik und Öffentlichkeit*, edited by Yoshio Tomishige and Soichiro Itoda, 41–74. Schriftenreihe Der Meiji-University Institute of Human Studies. Munich: Iudicium, 2011. On the topic of the move 'inward' in acting, in what is inside being brought to the surface through "Mimik und Gestik," see also: Malchow 161 and 172.

Bewunderung, zu deren Selbstverständnis die Präsentation moralisch vorbildlicher, zumeist aber blutleerer Heroengestalten gehörte, wurde durch einen bisher ungekannten Realismus abgelöst."[48]

3.3.4 The Utility of Spectacle: the *Schandbühne*

Just as the stage of Gottsched, Wolff, and Sulzer relied on the presentation of examples in order to fulfill its pedagogical function, so, too, did a particular institution of punishment in the Duchy of Württemberg in the 18th century: the *Schandbühne*. I turn briefly to this punishment in order to read its official justification against the theoretical defenses of the theater by Enlightenment philosophers and authors. If to Evans and van Dülmen public punishment is a spectacle and theatrical ritual, then the *Schandbühne*, or stage of shame, is an institution which deserves its name. In a *General-Rescript* from the 15th of October, 1734, Carl Alexander, the Duke of Württemberg, ordered the erection of a *Schandbühne* next to the pillory (*Pranger*) in all places in the Duchy.[49]

> Nachdeme es die leidige Land-kündige Erfahrung bezeuget, daß zerschiedene Mißhandlungen, welche zwar nicht wohl anderst als *civiliter* abgestrafft werden können, dabey aber dem gemeinen Wesen zu grosser Beschwerde gereichen, dergestalten einzureissen beginnen, daß durch die biß daher üblich geweßte Arten der *Civil*-Straffen mit Geld, Gefängnus [sic] und Arbeiten in Herschafftl. Geschäfften oder *opere publico etc*. der eigentliche Endzweck dererselben, nemlich die Besserung der Leute öffters nicht mehr erreichet werden kan; so haben Wir aus Landes-Vätterlicher Sorgfalt für die Erhaltung der gemeinen Ruhe, Sicherheit und Erbarkeit gnädigst für gut befunden, hiedurch (wie bereits in Unserem Fürstl. *General-Rescript* d. d. 12. Jun. 1730. wegen der Feld-Diebstähle *in specie* geschehen) überhaupt gerechtest zu verordnen, daß aller Orten neben dem Pranger eine Schand-Bühne aufgerichtet, und bey vorfallenden solchen Verbrechen, welche gar zu gemein zu werden anfangen, an deren Verhütung hingegen dem gemeinen Wesen besonders gelegen ist, doch aber nur eine *Civil*-Straffe Plaz greiffet, die *Delinquenten* durch den Stadtknecht an Wochen-Märckten, nach Beschaffenheit derer Umstände, ein- zwey- biß dreymal, andern zum Abscheu, darauf gestellt, und das Verbrechen durch einen auf die Brust zu hefftenden Zettel männiglich bekannt gemacht werden solle.

This unique approach to justifying the *Schandbühne* addresses practical punishment, crime prevention, pedagogical aims, and controlled aesthetic consideration. The Enlightenment push for

[48] Alt 258.

[49] "General-Reskript, die Errichtung von Schandbühnen betreffend. Vom 15. Oktober 1734." in: Reyscher, *Württembergischen Gerichts-Gesetze,*1835, 402-403.

justice as an opportunity for the "Besserung der Leute," as the text revels, is not considered to be enough. However, the *Schandbühne* should still be read as a product of "gute Polizei" ("Erhaltung der gemeinen Ruhe, Sicherheit und Erbarkeit") and "Landes-Vätterlicher Sorgfalt." More importantly, it was thought of as "gerecht"—just. The *Schandbühne* was meant only for delinquents of minor offenses who will be made known to the community via a public display with a sign attached to their chests. The sign introduces the delinquents to the public, who will be known to neighbors and strangers alike entirely through their officially determined criminal offense. The delinquents are not brought to the *Schandbühne* to be corrected, rather they are an exhibition in service of the old *Abschreckungsgedanke* ("andern zum Abscheu"), an exhibition which should reach the largest possible audience ("an Wochen-Märckten"). This particular method of acquisition of knowledge of vice should, according to the *Reskript*, work through a powerful emotional reaction ("Abscheu") that is then logically connected with linguistic information ("einen auf die Brust zu hefftenden Zettel").

Similar to the *Schandbühne*, was the pillory (*Pranger*). On the waning of the pillory punishment (*Prangerstrafe*) in the late 18th century, Helga Schnabel-Schüle writes:

> In der konkreten Strafpraxis in Württemberg hielt sich diese Strafe bis zum Ende des 18. Jahrhunderts, obwohl sie dem zu diesem Zeitpunkt schon geläufigen Besserungszweck des Strafsytems zuwiderlief. Entscheidender als der mit der Prangerstrafe wie mit jeder öffentlichen Ehrenstrafe verbundene Abschreckungseffekt war der Sicherungsgedanke. Durch die Prangerstrafe wurden die Deliquenten der Öffentlichkeit bekanntgemacht.[50]

As Schnabel-Schüle points out, the *Pranger* might have been erected for a two-fold purpose, the first being to humiliate and shame the offender in a public presentation. The concept hinged upon the idea of punishing a person's honor and preventing another such offence out of fear of being shamed or shamed again. However, to make an offender known became the pillory's primary

[50] Schnabel-Schüle 144.

purpose. In this way, the public was aware of the offender's criminal nature, thus preparing them for any future encounters with this person. There is a logic to the purpose of both the *Pranger* and the *Schandbühne* as instruments of the state, though not necessarily one of serving justice, that is reminiscent of 18th century thought on the theater. Already in the *Reskript* from 1734, the idea that the *Schandbühne* is going to contribute to human betterment is out of the question. It can, however, be useful for public security for the aim of minor crime prevention, but more importantly: to make the delinquent known to the public.

In his speech "Was kann eine gut stehende Schaubühne eigentlich wirken?" from 1784, to which I will return later, Schiller positions the theater stage in a similar pedagogical role to the *Schandbühne*, granted to it by its official justification. In addition to his grander claims of human betterment and nation building that a National Stage could possibly effect, he, like Gottsched, Wolff, and Sulzer, highlights the practical usefulness of the theater as a school of practical wisdom, or "Schule der praktischen Weißheit."[51] The stage can make the public aware, or "aufmerksam," of "Menschen und Menschenkarakter [sic]."[52] Even if a play like his *Räuber* does not actually make country roads safer, the stage can still prepare the public for the vices and villains of everyday life:

> Wenn sie [die Schaubühne] die Summe der Laster weder tilgt noch vermindert, hat sie uns nicht mit denselben bekannt gemacht? – Mit diesen Lasterhaften, diesen Thoren müssen wir leben. Wir müßen ihnen ausweichen oder begegnen; wie müßen sie untergraben, oder ihnen unterliegen. Jezt aber überraschen sie uns nicht mehr. Wir sind auf ihre Anschläge vorbereitet. Die Schaubühne hat uns das Geheimniß verrathen, sie ausfündig und unschädlich zu machen. *Sie* zog dem Heuchler die künstliche Maske ab, und entdeckte das Nez, womit uns List und Kabale umstrickten. Betrug und Falschheit riß sie aus krummen Labirinthen hervor, und zeigte ihr schreckliches Angesicht dem Tag.[53]

[51] *NA* 20, 95.
[52] *NA* 20, 96.
[53] *NA* 20, 95-96.

The key phrase here is “bekannt gemacht.” Schiller uses this phrase in different contexts, often more complex than its use here, but in this case, it is the simple act of recognition, of making known. If vice is presented on the stage, if a character who does villainous things is shown on stage, the public should ideally take note of it and be able to recognize it again in the course of their actual lives. It is pedagogical in that it should encourage learning from a manufactured experience. Thus, hidden dangers of public life with which the public must live, are exposed to the light of day for everyone to see. In this particular passage, Schiller’s stage and the *Schandbühne* employ similar assumptions in their justifications. Of course, the main difference between the *Schandbühne* and the theater stage is that, on stage, no real person is actually being injured or dishonored. Moreover, the *Schandbühne* is essentially reactionary. It is only the punishment of an actual individual *after the fact*. With Schiller, Sulzer, and Wolff, the idea of knowledge acquisition via the stage rests upon the audience witnessing the transgression or vice committed by a representative but believable fictional figure in real time, which will prepare them for the future. They aspire for the stage to be plausible and also to be preventative of vice and crime.

3.3.5 Censorship and the Autonomy of Art

If the resemblance of the *Schandbühne* with the enlightened theater stage arises mainly from the superficial linguistic similarity of their names, they do share at least one substantial characteristic: utility as justification. Utility was simultaneously an essential and ambivalent category within theater reform in the mid to late 18th century. Commenting on Gottsched and Friederike Neubur’s joint reform project of “cleaning up” German theater in the early 18th century, Peter Heßelmann concludes that: “Denn aus dem Theater des Pöbels sollte eine Bildungsinstitution und Sittenschule für den Bürger werden, die ‘Reinigung’—so der Wille der Reformer—diente nicht zuletzt

obrigkeitlich-staatlichen Interessen."[54] Following Sulzer's and Wolff's project of making the stage an integral part of moral education is a strong sense of investment in its control. For, if the stage is as effective in its ability to shape public morality as Sulzer claims it to be, then it will surely be of interest to those who govern. He writes that the arts "verdienen die Aufmerksamkeit des Weisen und die Pflege des Regenten. Durch die Vorsorge einer weisen Politik, werden sie die vornehmsten Werkzeuge zur Glükseligkeit der Menschen."[55] Binding art to the state not only requires that art be of use to the state, but also that art, especially theater, will be a financially and culturally stable institution. In this case, legitimacy won through the claim of being useful to the state, however, also goes hand-in-hand with a need for censorship:

> Fast alle Künste vereinigen ihre Würkung in den Schauspielen, daraus allein könnte das fürtreflichste aller Mittel, den Menschen zu erhöhen, gemacht werden, und doch ist es an den meisten Orten gerade das, was Geschmak und Sitten am meisten verderbt. Sollten nicht gegen die Verfälschung der Kunst Strafgesetze gemacht seyn, wie gegen die Verfälschung des Geldes? Wie können die schönen Künste ihre wahre Nutzbarkeit erreichen, wenn jedem Thoren erlaubt ist, sie zu mißbrauchen.[56]

For Sulzer, as much as art can be used for good, it also has the potential to harm the public by corrupting them. He pleads for the regulation of art in order to ensure quality and to avoid exploitation. This position, which detracts from the concept of the autonomy of art, is the ambivalent meeting of the pedagogical-utilitarian view of the theater with the view of the genius poet as a scientist-philosopher. In Sulzer's treatment, it is the special place of the poet and the artistic powers of the stage in regard to truth, virtue, and morality which make them pedagogically and morally valuable to society in the first place. Yet, if the justification of having the stage be an expanded institution supported by the state is grounded in specific instructive goals, then anything that challenges those goals can be justifiably censored. Since the theater is considered a site of

[54] Heßelmann 161.
[55] Sulzer, "Künste," 612.
[56] Sulzer, "Künste," 615.

knowledge, according to the argument, the public should not leave it with the wrong knowledge. However, this strong emphasis on the state's right to have control over the arts, especially drama, and the general assumption that the goals of the state and art are necessarily aligned (happiness of the people through the cultivation of virtue), lead to the possibility of art becoming a tool for state politics. Of course, this was a role art inhabited anyway due to commissions, patronage, and existing censorship laws. The striving for autonomy was a more recent debate, especially in the second half of the 18th century, at a point when art was assigned many of these new theoretical advantages and roles by critics and authors. As Theodore Ziolkowski notes, "it was only around the mid-eighteenth century that art and religion were 'functionally differentiated' into independent social partial-systems."[57]

According to Sulzer, art and especially drama is fully entrenched in the instruction of the public in virtue, good, and evil. From here, it is only a short step to the idea that art should be integrated into and utilized by the state. For this reason, art's claim to autonomy is not fully realized. At the same time, there is a notion surrounding the poet as a figure who combines insights of the sciences, like psychology and anthropology, with the role of a philosophic priest. Core to the argument of art's utility is a suspicion of how human beings experience reality and how they learn about good, evil, and other people. This view directly contradicts Rousseau who argues that observation of nature will reveal virtue and morality.[58] Sulzer's promotion of the stage over the other arts (and forms of knowledge production) hinges upon the stage's presence (*Gegenwart*), effect on human emotion and imagination, illusion of reality, as well as the ability to collapse time, space, and events in the pursuit of presenting moral truths and instruction. These qualities of the

[57] Ziolkowski, Theodore. *Scandal on Stage: European Theater as Moral Trial*. Cambridge: Cambridge University Press, 2009, 10. Subsequent citations as "Ziolkowski" with page numbers.
[58] Rousseau 22.

stage make it the perfect place for moral instruction, and they make the stage a valuable tool for the 'enlightened' state that not only governs through negative means (laws), but is also invested in fostering a virtuous population.

However, as Erika Fischer-Lichte has argued, these ideas about the theater as a state moral institution, touted especially in the mid- to late-18th century, waned after 1800.[59] Hand-in-hand with this decline is a strong rejection among poets of censorship as proposed by, for example, Sulzer. Starting in the 1790s, writers like Goethe, Schiller, and others pleaded for the understanding of art as an autonomous force. Autonomy, they argued, was necessary if art was ever to be more than a tool of the state. In the Prolog to *Wallenstein* (1798), Goethe raises the philosophical stakes of Wolff's observations on truth seventy years earlier. Art becomes more autonomous in that it becomes more playful:

> […] Und wenn die Muse heut,
> Des Tanzes freie Göttin und Gesangs,
> Ihr altes deutsches Recht, des Reimes Spiel,
> Bescheiden wieder fordert – tadelt's nicht!
> Ja danket ihr's, daß sie das düstre Bild
> Der Wahrheit in das heitre Reich der Kunst
> Hinüberspielt, die Täuschung, die sie schafft,
> Aufrichtig selbst zerstört und ihren Schein
> Der Wahrheit nicht betrüglich unterschiebt;
> Ernst ist das Leben, heiter ist die Kunst.[60]

As Wolff and Sulzer already argued, life and truth are transformed when they enter the stage. However, to the younger generation, there was no particular end to it. Goethe draws a clear line between reality and art, but the line does not have to do with a suspicion surrounding moral knowledge and the truth. What Goethe promotes is its freedom from strict ideas about reality in favor of playfulness. Though the stage plays with truth, it does not injure or violate truth. Everything becomes less concrete, less determined and restricted than in the pedagogically minded

[59] Fischer-Lichte, *Semiotik*, 182.
[60] *SW* 18, 525.

writings from the 1760s to 1780s. Art in this understanding, in fact, rejects an educational function concerning the outside world. Art is an end unto itself. As Jutta Linder describes Goethe's theater project in Weimar: theater's sole task was to cultivate "das ästhetische Empfinden des Publikums."[61] The theater does not exist solely to educate the population about the world; rather, part of education is learning about art itself. Late eighteenth century thinkers, and here, Goethe, establish art as an independent sphere,[62] worthy of standing on its own apart from any moral or political usefulness, but still with the power to benefit the state.

The importance of Goethe's argument is reflected in the telling parallel between the "düstre Bild" and "Ernst" of his *Wallenstein* Prolog with his description of the courtroom scene in Book 1 of Chapter 13 in his *Wilhelm Meisters Lehrjahre*. There, the young protagonist, Wilhelm, perceives the *Amtmann* and his court employees to be transforming the "süßen Geheimnisse[n] der Liebe" experienced by the runaway farmer's daughter into "dürre[n] Worte[n]" for their protocol.[63] From Wilhelm's perspective, the *Amtmann* wants to convert her poetic emotional experience into 'useable' legalese for a bureaucratic end. It is just one example that illustrates how authors in the late 18th century began to reject the idea that art should be bound to the "düstre" world of 'reality,' 'utility,' and 'moral instruction,' and that they instead understood art as belonging to a freer, more playful, and lofty realm.

---

[61] Linder, Jutta. *Ästhetische Erziehung: Goethe und das Weimarer Hoftheater*. Vol. 390. Abhandlungen zur Kunst-, Musik- und Literaturwissenschaft. Bonn: Bouvier Verlag, 1990, 49.

[62] Both Nilges and Zelle cite the *Autonomiegedanke* and *Autonomie Ästhetik* of the German Classicism of Schiller and Goethe as a trajectory of theater away from the discourse of usefulness (Nilges, 25). See also: Zelle, Carsten. "Was Kann Eine Gute Stehende Schaubühne Eigentlich Wirken? (1785)." In *Schiller-Handbuch: Leben-Werk-Wirkung*, edited by Matthias Luserke-Jaqui, 343–58. Stuttgart, Weimar: J.B. Metzler, 2005, 356. Subsequent citations as "Zelle, *Handbuch*" with page numbers. See also: Lessing's *Ankündigung* in the next section, 3.4.

[63] *SW* 9, 402.

3.4 "Weh dem gedrückten Staat, der, statt der Tugend, nichts als ein Gesetzbuch hat": Lessing's *Hamburgische Dramaturgie* (1767-1769)

In the 1760s Lessing oversaw the administration of the newly founded *Nationaltheater* in Hamburg.[64] As an attempt to institutionalize a national theater in Germany and to advance the education of the public in matters of taste, he wrote critical reviews of plays staged in Hamburg and published them in a series titled the *Hamburgische Dramaturgie*. In an announcement of its publication from April 1767 on the day of the theater's opening, Lessing outlines his project: "Diese Dramaturgie soll ein kritisches Register von allen aufzuführenden Stücken halten, und jeden Schritt begleiten, den die Kunst, sowohl des Dichters, als des Schauspielers, hier tun wird."[65] On Lessing's account, this "critical register" will document the development of the theater (*jeden Schritt*) and instruct its readers on the topic of judging and taste. Commenting on the "mittelmäßige" quality of plays,[66] Lessing argues that all types of art have a place in the grand scheme of education, insofar as "der unbefriedigte Zuschauer wenigstens daran urteilen lernt."[67] Lessing's proposed pedagogical strategy is to explicate to the reader of his comments why a particular play did or did not appeal to them: "Einem Menschen von gesundem Verstande, wenn man ihm Geschmack beibringen will, braucht man es nur auseinander zu setzen, warum ihm etwas nicht gefallen hat."[68] Every play is an exercise in judgment, and every judgement, correctly explained, leads to new knowledge about art as well as the cultivation of taste. The idea that the stage is a place of judgment is of course not unusual. The common term for a critic in the 18th century was *Kunstrichter*. In fact, Lessing adapts the term to "dramatischen Richter" in his

[64] The theater was founded not on royal patronage but on the sponsorship of private individuals (Sharpe, *A National Repertoire*, 24).
[65] *LW* 6, 185.
[66] Ibid.
[67] Ibid.
[68] Ibid.

announcement of the *Dramaturgie*.[69]

Following the announcement of April 1767, Lessing includes a prolog of unverified authorship in his sixth piece of the *Hamburgische Dramaturgie*, dated from 19 May 1767. This prolog, a "*Theaterrede*,"[70] which was read aloud to the live audience, outlines an ideological program for the institution of theater.[71] As with Sulzer, the prolog makes the case that the stage is useful to the state. It reaches the public through passion, enjoyment, and sympathy, and is named a "Sittenbilderin."[72] It does not go into detail about *how* the stage, specifically, is a teacher of virtue, but it associates this role with the cultivation of sympathy. Then, like Sulzer, the prolog's argument continues with the claim that the stage is useful to the state:

> Wohltätig für den Staat, den Wütenden, den Wilden
> Zum Menschen, Bürger, Freund und Patrioten bilden.[73]

---

[69] In that same announcement, he states that the public will judge, using the words "Urteil" and "richten" (Lessing 184). And judgment scenes, in which the audience judges a character or in which there is an actual trial on stage, were nothing new to theater repertoire. Thomas Weitin demonstrates that those involved in art discourse had already taken this step toward aligning art semantically with the legal field for legitimacy. He uses the example of the term *Kunstrichter* from the first half of the eighteenth century. He also argues the the courtroom scene of judgment is a "zentrale Denkfigur der aufklärerische Wirkungsästhetik." Weitin, Thomas. *Zeugenschaft: Das Recht der Literatur*. Munich: Wilhelm Fink Verlag, 2009, 8. Subsequent citations as "Weitin, *Zeugenschaft*" with page numbers. Additionally, the idea of poetic justice was prevalent on the 18th century stage in bourgeois plays, as Cornelia Mönch argues, usually in the form of punishing vice (even more so than rewarding virtue). Mönch, Cornelia. *Abschrecken oder Mitleiden: Das Deutsche Bürgerliche Trauerspiel im 18. Jahrhundert. Versuch einer Typologie*. Augsburger Forschungen zur Europäischen Kulturgeschichte 5. Tübingen: Max Niemeyer, 1993.

[70] On *Theaterreden*, Hermann Korte argues that this ubiquitous genre was used to participate in contemporary theater debates. Thus, the debate on the principles and purpose of theater was actually quite expansive and included the participation of the public. He notes further that, even in the late 18th century, there was not yet an established 'fourth wall' between stage and public. Korte, Hermann. "Das Mannheimer Theaterpublikum im 18. Jahrhundert." In *Manheimer Anfänge: Beiträge zu den Gründungsjahren des Nationaltheaters Mannheim 1777-1820*, edited by Thomas Wortmann, 75–113. Göttingen: Wallstein Verlag, 2017, 95, 103-112. Subsequent citations as "Korte" with page numbers.

[71] Gabriele Brandstetter attributes it to either Johann Jakob Dusch or Johann Friedrich Löwen. See: Brandstetter, Gabriele. "Die andere Bühne der Theatralität: *movere* als Figur der Darstellung in Schillers Schriften zur Ästethik." In *Friedrich Schiller Und Die Weg in Der Moderne*, edited by Walter Hinderer, 287–304. Würzburg: Königshausen & Neumann, 2006. 287. Christiane Brown cites four possible authors: Schmidt, Schütze, Dusch, and Löwen. See: Brown, Christiane. "'Der Widerwärtige Mißbrauch der Macht' or 'Die Verwandlung der Leidenschaften in Tugendhafte Fertigkeiten' in Lessings *Emilia Galotti*." Edited by Richard E. Schade. *Lessing Yearbook* 17 (1985): 21–43. 43.

[72] *LW* 6, 213.

[73] Ibid.

Here, the ideas expressed in the prolog are referring to more Enlightenment concepts about possible roles of the state in regard to the people who live in it. The prolog's assumption is that the state is interested in educating citizens, not just subjects. The prolog further introduces the institution of laws within that same state, but departs from both Wolff and Sulzer:

> Gesetze stärken zwar der Staaten Sicherheit
> Als Ketten an der Hand der Ungerechtigkeit;
> Doch deckt noch immer List den Bösen vor dem Richter,
> Und Macht wird oft der Schutz erhabner Bösewichter.[74]

In the first two lines, the role of law is described negatively: it is not generative. Its purpose is to maintain security through the punishment of already committed crimes or injustices. The second two lines then highlight the legal system's shortcomings: first, that judges (and the law) can be tricked, and second, that the law is often subject to corruption and abuse (i.e. the law will unequally favor those who have power). The prolog introduces the law, which already begins with a qualifying "zwar," in order to subvert it and eventually make space for another institution.

> Wer rächt die Unschuld dann? Weh dem gedrückten Staat,
> Der, statt der Tugend, nichts als ein Gesetzbuch hat!
> Gesetze, nur ein Zaum der offenen Verbrechen,
> Gesetze, die man lehrt des Hasses Urteil sprechen,
> Wenn ihnen Eigennutz, Stolz und Parteilichkeit
> Für eines Solons Geist den Geist der Drückung leiht!
> Da lernt Bestechung bald, um Strafen zu entgehen,
> Das Schwert der Majestät aus ihren Händen drehen:[75]
> […]

The prolog characterizes the state that has only laws (negative concept) and no virtue (generative positive concept) as an unfortunate and failing one. "Tugend" functions as a codeword for the stage. The stage is a place for an education informed by the ideas of the Enlightenment that develops the whole virtuous person and member of civil society ("Menschen, Bürger, Freund und Patrioten") beyond a mere animal-subject ("den Wütenden, den Wilden") who has to be controlled

[74] *LW* 6, 214.
[75] Ibid.

or “bridled” (“Zaum”) by punishing laws (“des Hasses Urteil sprechen“). The law is the brute-force minimum to keep order within a state. If the state neglects the education of the whole person, if the state instead chooses oppression (“Drückung”) over the spirit of Solon, the Athenian statesman who introduced a new law code to the city and ended its aristocratic rule, for its own purposes, the laws cannot do much to curb the vice and deceit (e.g. “Bestechung”) that will spring from this situation. With these lines, the prolog widens the space left open by having “nichts als ein Gesetzbuch,” pushing aside the importance of law in favor of the virtue-building stage.

> Wenn der, den kein Gesetz straft oder strafen kann,
> Der schlaue Bösewicht, der blutige Tyrann,
> Wenn der die Unschuld drückt, wer wagt es, sie zu decken?
> Den sichert tiefe List, und diesen waffnet Schrecken.
> Wer ist ihr Genius, der sich entgegenlegt? –
> Wer? Sie, die itzt den Dolch, und itzt die Geißel trägt,
> Die unerschrockne Kunst, die allen Mißgestalten
> Strafloser Torheit wagt den Spiegel vorzuhalten;
> Die das Geweb' enthüllt, worin sich List verspinnt,
> Und den Tyrannen sagt, daß sie Tyrannen sind […][76]

This passage introduces the long-awaited mention of art as a site of justice. The apparent deficiency of law in the realm of regulating a virtuous population signals an expansion in the jurisdiction of art’s role as a public institution. By invoking the vocabulary of the law, the prolog borrows the authority that law had over public life and uses it to legitimize its claims of the public benefits of the stage.

The advantage of the stage is simple: the stage can go where law cannot. Like in the works of Wolff and Sulzer, the stage can expose truth in an otherwise deceptive world (“Die das Geweb’ enthüllt, worin sich List verspinnt,” „Der schlaue Bösewicht”). The stage also has the ability to speak the truth in the face of great power (“Und den Tyrannen sagt, daß sie Tyrannen sind”) and to speak up for justice in situations where the law fails (“den kein Gesetz straft oder strafen kann”).

[76] Ibid.

According to the argument made in the prolog, the law can punish injustice, but it is not itself a site that can present justice to the public as a consistent concept. As Thomas Weitin argues, the "Theater der Aufklärung" is an outright competitor to the law precisely because it *can* present its trials in public, whereas the law cannot.[77] It is at this point that the theater debate turns to legal discourse. The prolog continues the tradition of Wolff and Sulzer of proposing the theater as a way of knowing about the world, but also knowing about justice itself and the discrepancy between justice on a philosophical level and justice as a reality.

On a legal-philosophical level, the essence of the prolog questions the very purpose and effectiveness of laws; it also questions their robustness and the systems within which they function. In the *Siebentes Stück* from 22 May 1767, Lessing provides an interpretation of the prolog:

> Der Prolog zeiget das Schauspiel in seiner höchsten Würde, indem er es als das Supplement der Gesetze betrachten läßt. Es gibt Dinge in dem sittlichen Betragen des Menschen, welche, in Ansehung ihres unmittelbaren Einflusses auf das Wohl der Gesellschaft, zu unbeträchtlich, und in sich selbst zu veränderlich sind, als daß sie wert oder fähig wären, unter der eigentlichen Aufsicht des Gesetzes zu stehen. Es gibt wiederum andere, gegen die alle Kraft der Legislation zu kurz fällt; die in ihren Triebfedern so unbegreiflich, in sich selbst so ungeheuer, in ihren Folgen so unermeßlich sind, daß sie entweder der Ahndung der Gesetze ganz entgehen, oder doch unmöglich nach Verdienst geahndet werden können.[78]

The "highest worth" of the stage is its role as a supplement to the law, which is necessary since there are many things in life that have to do with the moral behavior of people over which the laws can have no practical jurisdiction. There are also things so large in scope that the law cannot possibly hope to address (perhaps telling tyrants that they are tyrants). Still, Lessing's description of the stage as a "supplement" puts the stage in a subordinate position vis-à-vis the law within the realm of justice, even while rhetorically weakening the position of the institution of law. The prolog and Lessing's interpretation introduces the idea that the stage might have a foothold within the realm of concrete, worldly justice alongside the law, as well as a focus on the deficiencies of

[77] Weitin, *Zeugenschaft*, 8-9.
[78] *LW* 6, 217.

law in a wider imagining of the scope of worldly justice that includes morality. Yet, it excludes the realm of the spiritual, i.e. the law is secular and focused on human society but not on metaphysical justice in the sense of judgment by a deity after death. In terms of autonomy in Lessing's *Hamburgische Dramaturgie*, art itself is worthy of its own study and consideration, as argued in the "Ankündigung." Moreover, its worth does not spring from its usefulness, nor should it necessarily be tied to the state. It can aid the state, and it can serve the public interest, but it goes beyond Sulzer's claims of needing to be controlled by the state. The stage exercises a form of justice (not legal justice) when the law or legal system fails.

3.5 Schillers *Schaubühnenrede* (1784): Justice not without Theater

By the 1760s, theater had made the jump from moral institution to law, where the stage supplements the laws by doing what the law cannot: cultivating virtue, building citizens, and administering those moral and political realms of justice beyond the reach of the law. In his theoretical writings on theater in the 1780s, Friedrich Schiller makes even grander claims of the stage's jurisdiction in public life and justice. He proposes the 'courtroom stage,' an outright competitor to the state's justice system. This courtroom stage is simultaneously an expansion of the definition of the theater and a criticism of legal justice.[79]

[79] For two varied interpretations and applications of Schiller's *Schaubühnenrede* in book-length studies on the stage and literature as a courtroom or site of law, see Yvonne Nilges' *Schiller und das Recht* (2012) and Theodore Ziolkowski's *Scandal on Stage* (2009). In her interpretation of the lecture, Nilges focuses on the apocalyptic or eschatological quality of Schiller's rhetorical imagery: "Was hier verteidigt wird – durchaus im Sinne einer metaphorischen Advokatur –, ist das Theater: Als moralische, ausdrücklich richtende Anstalt betrachtet. Das Theater avanciert hier zum Gerichtsverfahren, dem der junge Schiller Attribute des Jüngsten Gerichts verleiht: Die Szene wird – schon hier – zum Tribunal" (Nilges 18). She notes that Schiller's eschatological language of the court applies *only* to the powerful who misuse their power, not the common folk, and characterizes Schiller's religiously-inflected use of Judgment Day imagery in his speech as an intentional "Fremdkörper" in his otherwise 'enlightened' rhetoric (Nilges 19-20). She concludes: "Und genau das ist Schillers 'unaufgeklärter', scheinbar aus dem Rahmen des Vorlesungsbildes fallender Fürstenschrecken des furchtbaren Endgerichts: eine Satire, die zur Besserung anhält, und ebenso 'systematisch', 'mit Methode'-einer so ausgefeilten freilich, dass der Schock bei ihrem Adressaten tief sitzt und peinliche Selbstreflexion voraussetzt, ehe die Satire auch als solche aufgenommen werden kann" (Nilges 30).

In his essay "Ueber das Gegenwärtige teutsche Theater," written in 1782, Schiller sets out, like he does in many of his literary and theoretical works, with anthropological concerns and a deep scientific interest in the interior life and mechanisms of the human being, its body, mind, morality, and reason. A human life, he claims, however complex and mysterious, can be understood and presented through art.[80] The same can be said of the larger workings of the world, which, with its outward appearance, often hides more than it reveals. The problem with the world is that an individual's perspective is too narrow to perceive the whole picture. It is the task of the poet, who for unknown reasons has a better vantage point, to reduce the world in terms understandable to the general public:

> Wir Menschen stehen vor dem Universum wie die Ameise vor einem großen majestätischen Palast. Es ist ein ungeheures Gebäude, unser Insektenblick verweilt auf diesem Flügel und findet vielleicht diese Säulen, diese Statuten übel angebracht; das Auge eines bessern Wesens umfaßt auch den gegenüberstehenden Flügel und nimmt dort Statuen und Säulen gewahr, die ihren Kamerädinnen hier symmetrisch entsprechen. Aber der Dichter male für Ameisenaugen, und bringe auch die andere Hälfte in unsern Gesichtskreis verkleinert herüber; er bereite uns von der Symmetrie des Teils auf die Symmetrie des Ganzen, und lasse uns letztere in der ersteren bewundern. Ein Versehen in diesem Punkt ist eine Ungerechtigkeit gegen das ewige Wesen, das nach dem unendlichen Umriß der Welt, nicht nach einzelnen herausgehobenen Fragmenten beurtheilt seyn will.[81]

The metaphor of the ant before a majestic palace as opposed to a "better" being corresponds to the relationship between poet and public. The ant can only see one wing of the structure and finds it objectionable, while the "better" being is able to see more of the structure and finds it to be a symmetrical whole. Somewhat similar to the role of Sulzer's priest-poet, Schiller's poet mediates

---

Nilges then contrasts the law of the *Schaubühnenrede* (terrible, based on *ius talionis* or 'right of retaliation') with that of *Der Verbrecher aus verlorener Ehre* (Enlightenment, humanity) (Nilges 32). She considers Schiller's *Verbrecher* to be the better and more mature expression of Schiller's literary writings on justice and the law than his *Schaubühnenrede*. Theodore Ziolkowski's project *Scandal on Stage: European Theater as Moral Trial* (2009), on the other hand, seeks to apply "Schiller's conception of the theater as a moral institution" to cases of public theater scandal in order to regard them "as a symptoms of ethical concern" (Ziolkowski 17). He understands Schiller's use of the word "moralisch" in "a spiritual and intellectual dimension transcending both law and religion" (Ziolkowski 17). Summarizing the literary reception of Schiller's *Schaubühnenrede* in later centuries, Ziolkowski observes: "Repeatedly dramatists and critics of the twentieth century pick up Schiller's notion regarding higher and independent 'jurisdiction' of the stage and his view of the theater as a site of moral trial where those in power [...] are confronted with uncomfortable realities and truths" (Ziolkowski 17).

[80] *NA* 20, 81.

[81] *NA* 20, 82-83.

unseen truths to his audiences. However, Schiller's poet has a more arduous task: just as the palace is unfairly judged by the ant because the ant can only see a part of the whole, the "whole" of the universe is in danger of being unfairly understood and judged by human beings because they only see a fragment. It is on the shoulders of the poet to bring artificial symmetry to the part, which falls within human perspective, in order to suggest the symmetry of the whole. He rejects the idea that simply singling out a "fragment" of the world and mirroring it on the stage will do; the "symmetrical" part that the poet delivers to his audience must in fact be a reduction of the whole into the scope of a part. Even with narrow human perspective, the poet can present on stage a microcosm of the greater whole.

Compared to how other thinkers conceptualized the stage in terms of presenting reality and truth, it seems that Wolff's idea of "Wirklichkeit" is somewhat comparable to Schiller's "fragment" of human perspective, in that "Wirklichkeit" muddles the story of moral cause-and-effect. This happens on account of human experience being a confused chain of events whose logical consequences rarely follow in a recognizable temporal order. Again, the stage can repair the shortcomings of our experience of morality on stage by reducing space and time between events, thus ensuring that moral truth is presented correctly to the audience. For Wolff, human experience of reality leads us to make flawed moral conclusions about the world. For Schiller, human perspective only allows us to perceive fragments of the world, which is also a flawed perspective. Human perspective and subjectivity lead to a necessarily fragmented view of the world, but it is art, Schiller contends, that can repair this fragmentation.

Though not directly applicable to legal discourse and the problem of legal fragmentation, there is an analogy here between legal and literary discourse. Especially in the case of Schiller, "fragmentation" itself is a running theme. It is not only a problem in his early work of drama

theory; the problem of fragmentation in human existence appears also in Schiller's most important work on aesthetics, *Über die ästhetische Erziehung des Menschen in einer Reihe von Briefen* written in 1795. In the sixth letter, he addresses modern humans who themselves exist in a state of fragmentation through divisions of culture, political organization, religion, laws, class, morals and tradition, and separation of labor and the sciences, i.e. specialization.[82] In Schiller's prose work *Der Verbrecher aus verlorener Ehre* (1786), we have seen that one of the problems of justice that the story focuses on is that of judges who had an asymmetrical perspective and an asymmetrical approach to judging the criminal. In other words, their judgments were made without considering Christian Wolf as a person and with regards to his state of mind. One of the reasons that they did not do this is because they were judging him only by matching his crime to the latest arbitrary criminal ordinance concerning poaching. Thus, they sutured the two together in their judgment and sentencing without further thought. Their academic training provided them with a narrow legal perspective when approaching criminal cases, i.e. looking into the books of law but not the heart and mind of the accused. Accordingly, Schiller's criticism is precisely on account of this specialization that necessarily resulted in fragmentation, and it proceeds from the very nature of disciplinary training. The reason that art (Schiller's story) might prove to be a good model for law is because it addresses and has means of repairing fragmentation. In the terms of his 1782 essay on theater, it is not possible to put the macrocosm on the stage, just as the world cannot fit into a case file, but the stage *does* look at microcosms that suggest the whole and that avoid fragmentary representation. What could this mean for the working judge? Ultimately, as I argue of Schiller's writings, that the judge should become a legal poet. He has before him the contents (fragments) of a case file and his knowledge of the law. But he is now expected to synthesize the criminal event

[82] *NA* 20, 322-324.

and the accused not according to the guidelines of his academic training, which has been proven to be hostile to the human subject, but rather according to the higher principles of truth and the 'whole' that bind his literary counterpart, the poet.[83]

Schiller's actual step from art to the law is most concrete in his 1784 lecture "Was kann eine gute stehende Schaubühne eigentlich wirken?", commonly referred to as the *Schaubühnenrede*.[84] This lecture covers four main topics: the benefits of art, the education of the populace, good governance, and building a nation through art.[85] It is generally understood as a comprehensive articulation of many of the defenses of theater that had come before him, including Sulzer, Lessing, and Louis-Sébastien Mercier.[86] In fact, Schiller cites Sulzer by name in the first line of the second section of the lecture, which becomes the very first line of the essay as it was printed in the *Kleinere*

[83] The practicality of this vision or model is not entirely in question since such a change in mentality and approach to legal work would also eventually have to effect larger structural changes and reform of the entire legal system, or likewise, be a result of this change. This reform of legal procedure was already an ongoing project and aspiration as discussed in Chapter 1 at all levels of government.

[84] The original title of the lecture given before the Kürpfälzische Deutsche Gesellschaft was "Vom Wirken der Schaubühne auf das Volk." The titled used here was the title printed in the *Rheinische Thalia* from March 1785 (Zelle, *Handbuch*, 345). Peter-André Alt describes the context of the lecture's production as Schiller's strategic public self-portrayal for the Mannheim *Deutsche Gesellschaft* and for his patrons, but he notes that not much of Schiller's "wirkungspoetischer Optimismus" is an expression of his practical experience at the Mannheim Theater (Alt 383). Nor was the lecture particularly well-received by his then audience. Alt notes that Schiller's next project, *Fiesko*, does not include the "gesteigerten Moralismus" of the *Schaubühnenrede*, and comes to a verdict: "Die moralische Anstalt ist in diese handfeste Wirkungslehre, bezeichend genug, nicht eingeschlossen" (Alt 184). Whereas Lesley Sharpe sees the *Schaubühnenrede* as more a positive response to Dalberg's - the Mannheim Theater's intendant - theater politics. (Sharpe, *A National Repertoire*, 88-89) Though she cautions: "Though this speech is frequently referred to in criticism as a statement of Schiller's conviction of the educative function of theatre, it is doubtful how far he himself believed its enthusiastic claims" (Sharpe, *A National Repertoire*, 88).

[85] Apart from nation-building, the three other topics of "die Vorzüge der Künste, die rechte Art der Erziehung und die rechte Art zu regieren" correspond, according Alice Stašková, to the subjects that the students of the *Hohen Karlsschule* integrated in their *Festreden* for the Duke. She points out that, in a "produktiven Rückgriff" to his argumentation strategies from his student days, Schiller turns to these same topics in his *Über die ästhetische Erziehung des Menschen* in the 1790s, whilst retaining a strict philosophical method. Stašková, Alice. "Schillers Philosophische Prosa und die Sprachen der Karlsschule." In *Schillers Europa*, edited by Peter-André Alt and Marcel Lepper, 74–87. Perspektiven der Schiller-Forschung 1. Berlin, Boston: De Gruyter, 2017, 74, 81.

[86] Zelle, *Handbuch*, 345. Note that Mercier, like Lessing, also uses courtroom imagery in his treatise on the theater: "Theater [...] der oberste Gerichtshof, vor welchem der Feind des Vaterlandes citirt, under öffentlichen Schande blos gestellt würde" (Louis Sébastien Mercier: *Neuer Versuch über die Schauspielkunst* [frz. 1773]. Aus dem Französischen [v. Heinrich Leopold Wagner]. Leipzig 1776, S. 81). Mercier quoted from: Zelle, *Handbuch,* 352. On this point, Yvonne Nilges points out that Schiller's use of courtroom imagery is different from Lessing and Mercier in that Schiller's imagery is apocalyptic (Nilges 23).

prosaische Schriften (1804).[87] From this short summary, Schiller then reaches new conclusions about the stage's place within a well-governed society. Over the course of the essay, he outlines a special characteristic of the theater that makes it advantageous to the state: the theater educates both reason and the heart. This is necessary for individuals, who, according to Schiller, have both an animal state and a state of reason. On account of its direct influence on the wellbeing of society, the theater becomes an institution of morals and taste that can support the state in ways that neither religion nor law can. It then expands its jurisdiction into matters of justice and the law. However, as outlined earlier, the groundwork for the stage to expand its jurisdiction into the realm of law was laid much earlier by philosophers such as Wolff and Sulzer, who linked the stage with moral knowledge production and a theory of knowing. By locating truth and virtue on the stage, they position the stage as an institution worthy of social legitimacy and function. It is characterized as the institution that actually upholds justice, thus demoting the legal system with its bureaucratic, fragmented trial procedure from this role. The legal system is not a site of truth. Rather, it is a site of order and punishment where the population is judged according to often arbitrary laws, not truth or virtue.

A careful analysis of the *Schaubühnenrede* reveals how Schiller shifts the role of the stage from one of many state-supporting institutions to *the* institution which promotes and sustains justice and morality, thus eclipsing both religion and law. Schiller's preoccupation with the discourse of "usefulness" of theater begins in the second half of the lecture, where, like many other before him, he aligns the theater in the same category of influence as religion vis-à-vis the law:

> Derjenige, welcher zuerst die Bemerkung machte, daß eines Staats festeste Säule *Religion* sei – daß ohne sie die Gesetze selbst ihre Kraft verlieren, hat vielleicht, ohne es zu wollen oder zu wissen, die Schaubühne von ihrer edelsten Seite vertheidigt. Eben diese Unzulänglichkeit, diese schwankende Eigenschaft der politischen Geseze, welche dem Staat die Religion unentbehrlich macht, bestimmt auch den ganzen Einfluß der Bühne.[88]

[87] Schiller, Friedrich. *Kleinere prosaische Schriften*. Vol. 4. Karlsruhe: Schmieder, 1804. 3.
[88] *NA* 20, 91.

Schiller promotes an understanding of the theater as a pillar of the state, comparable to religion in its political significance. Already, the law is characterized as inadequate, not able to stand alone, and a pillar that requires the support of others.

Schiller then provides a list of binaries highlighting the shortcomings of the law versus the advantages of religion, with one particular example that focuses on the interior-exterior divide of each institution's concerns: "Jene [Gesetze] herrschen nur über die offenbaren Aeußerungen des Willens, nur Thaten sind ihnen unterthan – diese [Religion] setzt ihre Gerichtsbarkeit bis in die verborgensten Winkel des Herzens fort und verfolgt den Gedanken bis an die innerste Quelle."[89] As in the prolog in the sixth piece of the *Hamburgische Dramaturgie*, the law is a restrictive institution that has jurisdiction only over actions, not over morality or any other offenses or evils. Religion's reach into the interior of a person, into both their heart and mind, makes it a more potent institution of education if the state is looking, as Schiller suggests earlier in the essay, to advance "menschliche Glückseligkeit."[90]

We could also look at this comparison between the 'pillars' of stage, religion, and law in a slightly different constellation: instead of the stage being more on the side of religion on a scale between religion and the law, religion is perhaps a member of a category that includes art. In other words, religion is definitely *not* in the same category as law but rather as law's opposite (material punishment vs. moral instruction or metaphysical justice). This is significant since in previous centuries, state legal systems, churches, and the Christian religion were very much intertwined, for example, in the form of the *Kirchenbuße*, the existence of *Kirchenkonventen*, and morality laws. The church, both Catholic and Protestant, was fully integrated into judicial procedure and

[89] *NA* 20, 91.
[90] *NA* 20, 88.

punishment, especially in cases of breaches of morality, and they therefore had official and traditional control over moral education and standards. During the course of the 18th century, however, the state—although it was still concerned with crimes like *Ehebruch* and oftentimes still had a *Sittenpolizei*—began removing itself from the role of moral regulator, as well as removing official church jurisdiction and powers of punishment in cases of morality. Indeed, Schiller was writing during a time when the church was losing or had lost much of its legal power and its perceived legal legitimacy, where it was no longer a site of law as it once had actually been.

After establishing the binary of law and religion and the connection between religion and art, Schiller reaches a point where religion also fails:

> Religion (ich trenne hier ihre politische Seite von ihrer göttlichen), Religion wirkt im Ganzen mehr auf den sinnlichen Theil des Volks – sie wirkt vielleicht durch das Sinnliche allein so unfehlbar. Ihre Kraft ist dahin, wenn wir ihr dieses nehmen […] Religion ist dem größern Theile der Menschen nichts mehr, wenn wir ihre Bilder, ihre Probleme vertilgen, wenn wir ihre Gemählde von Himmel und Hölle zernichten – und doch sind es nur Gemählde der Phantasie, Räzel ohne Auflösung, Schreckbilder und Lockungen aus der Ferne. Welche Verstärkung für Religion und Geseze, wenn sie mit der Schaubühne in Bund treten, wo Anschauung und lebendige Gegenwart ist, wo Laster und Tugend, Glückseligkeit und Elend, Thorheit und Weisheit in tausend Gemählden faßlich und wahr an dem Menschen vorübergehen, […], alle Larven fallen, alle Schminke verfliegt und die Wahrheit unbestechlich wie Rhadamanthus Gericht hält.[91]

Sensuality, Schiller points out, is the realm of religion. To a certain degree, this insight echoes Wolf when he describes in the *Vernünfftige Gedanken* the impact of the aesthetic religion on the mind, as well as art on the mind. However, Schiller draws a limit of religion's efficacy: for all its sensuality, religion is actually quite distant from the individual human being. Its pictures are abstract and have little to do with lived experience. Religion relies on symbols and myth. In other words, what is depicted in religious artifact is of another world. Here, let us be reminded of Rousseau, who criticized French classical theater because the audience could not possibly identify with the morality on stage. The world on stage, though language, gestures, costumes, settings,

[91] *NA* 20, 91.

situations, was too distant and alien to the viewer (Rousseau 25-27). Schiller is pointing to a similar problem with religion when he describes it as "only pictures of fantasy" and "images of horror and allurements from afar." In the very end, the pictures of religion remain metaphysical and indefinite ("Gemählde von Himmel und Hölle;" "Räzel ohne Auflösung"). The stage, on the other hand, is a place of "Anschauung und lebendige Gegenwart." Like religion, it also works most effectively through sensuality, but it is *present*, and its pictures are comprehensible, or "faßlich," meaning they are immediately recognizable for the public. Here, we return to Schiller's *teutsche Theater* essay which defines the role of the poet as someone who makes the whole intelligible through the part. In the passage above, it is truth ("Wahrheit") that the stage reveals, but it reveals what is true in a way that is also "faßlich" through lively presence, or "lebendige Gegenwart." Religion's symbolic paintings that represent ultimate truth and the cosmos, Schiller argues, have perhaps lost their impact on a modern Age of Enlightenment public.

In a bold move, Schiller claims the role of moral educator for the stage. Already in the *Hamburgische Dramaturgie*, Lessing argued that it is in the interest of the state to foster a happy, virtuous population, which can be done through art. According to Schiller, this role was once the realm of religion, but the stage happens to be just as good, even better. This move is somewhat reminiscent of Sulzer's priest-poet who delivers moral knowledge from on high through theater. Though in the theater debates, the stage had already been established as a site of moral truth, Schiller takes a more assertive stance: the stage is the site where truth can "hold court." And more importantly, it is at the same time legible and present to the audience.

After promoting the key quality of the stage that separates it from religion, Schiller moves back to the realm of law:

> Die Gerichtsbarkeit der Bühne fängt an, wo das Gebiet der weltlichen Gerichte sich endigt. Wenn die Gerechtigkeit für Gold verblindet und im Solde der Laster schwelgt, wenn die Frevel der Mächtigen ihrer Ohnmacht spotten und Menschenfurcht den Arm der Obrigkeit bindet, übernimmt

> die Schaubühne Schwert und Wage und reißt die Laster vor einen schrecklichen Richterstuhl. Das ganze Reich der Phantasie und Geschichte, Vergangenheit und Zukunft stehen ihrem Wink zu Gebot.[92]

The imagery in the passage above is the concrete manifestation of the stage as a courtroom at which Lessing already hinted in the *Hamburgische Dramaturgie*. Schiller's vengeful stage wears the attributes (sword and scale) of justice normally reserved for Justitia and drags hidden or unpunished vice before the seat of judgment. In other words, out in the open and before the public. Inspired by this passage, Gabriele Brandstetter calls Schiller's theater an "Anstalt für die Schauprozesse der Seele."[93] But the courtroom on the stage is not just for the soul; the "ganze Reich der Phantasie" is indeed available to the stage as are actual injustices from "Geschichte" and "Vergangenheit." According to Schiller, it begins where worldly justice has failed to go ("Wenn die Gerechtigkeit für Gold verblindet;" "wenn die Frevel der Mächtigen ihrer Ohnmacht spotten"). It publicly performs on stage the justice that was not performed by the legal system. It is through the exposition of injustice to the public that 'moral' but 'politically powerless' judgment and critique take place.[94] Nevertheless, Schiller argues that the stage has its own domain of judgment

[92] *NA* 20, 92.
[93] Brandstetter 288.
[94] In an interpretation of this passage and the above-noted dualism of morality/religion and politics, Reinhart Kosellek summarizes the problem of the current state of justice articulated by Schiller: "Es treten sich nicht nur gegenüber ein moralisches Recht und ein politisches Recht, sondern das politische Gesetz ist zugleich unmoralisch wie das moralische Gesetz politisch 'machtlos' ist und als solches mit der herrschenden Politik nichts zu tun hat. Die Gerichtsbarkeit der weltlichen Gesetze herrscht für Schiller tatsächlich, aber zu unrecht, während die Gerichtsbarkeit der Bühne zwar nicht herrscht, aber recht hat." In: Koselleck, Reinhart. *Kritik und Krise: Eine Studie zur Pathogenese der Bürgerlichen Welt*. Suhrkamp Taschenbuch Wissenschaft 36. Freiburg/Munich: Verlag Karl Alber, Suhrkamp, 1973. 83-84. Kosellek then goes on to develop his main argument about the essence of the separation of morality and politics, namely, that Schiller's political critique lies in this very separation: "Die dualistische Aufspannung der Welt in einem Bereich der Moral und einen Bereich der Politik ist in ihrer Geschichtlichkeit Voraussetzung und Folge der politischen Kritik. Die Kritik tritt also nicht nur da auf, wo sie explizit zum Ausdruck gebracht wird, sondern sie liegt bereits dem dualitischen Weltbild zugrunde, das diese Zeit geprägt hat" (Kosellek 85-86). Kosellek's point brings into sharp relief the lamentation of fragmentation that characterizes much of Schiller's work. The thesis that the simple dualism of morality and politics being itself a critique can apply to most of the texts discussed in this dissertation. In Iffland's *Die Jäger*, for example, the fact that there is a moral stance (Pastor) and a political stance (the political maneuvers of the Amtmann) that stand in opposition to one another is inherently a critique of justice.

separate from that of the real courtroom, and furthermore, its own domain of presenting truth separate from the real church.

Through its service to the state and general happiness, and through its special jurisdiction as art, the stage does not merely supplement law in the moral realm of justice. Rather, Schiller argues, it is on equal footing as law, perhaps even superior to it. Whereas law generally only works through punishment and functions not on higher principles of justice but rather state bureaucratic rules, the theater works both positively and negatively and functions according to moral principles, as Schiller put it: "[…] tausend Tugenden, wovon jene schweigt, werden von der Bühne empfohlen. Hier begleitet sie die Weisheit und die Religion. Aus dieser reinen Quelle schöpft sie ihre Lehren und Muster und kleidet die strenge Pflicht in ein reizendes, lockendes Gewand."[95] Additionally, in terms of effectiveness, Schiller appraises the influence of each institution (law, religion, stage) on its public: "So gewiß sichtbare Darstellung mächtiger wirkt, als toder Buchstabe und kalte Erzählung, so gewiß wirkt die Schaubühne tiefer und dauernder als Moral und Geseze."[96] Here, we are again reminded of the discussions on the acquisition of knowledge put forth by Wolff and Sulzer who identified the presence ("Gegenwart") of the theater stage as its greatest advantage in the dissemination of moral knowledge. The stage's advantage, in this case, is the moment upon which it eclipses the influence of both religion and law. Ultimately, though, the most valuable accomplishment of the theater in terms of cultivating the audience is its ability to facilitate one feeling: "ein *Mensch* zu seyn."[97]

3.6 The "Courtroom Stage"

[95] *NA* 20, 93.
[96] *NA* 20, 93.
[97] *NA* 20, 100.

When we consider the theater debate with an eye on legal discourse, Schiller's *Schaubühnenrede* succinctly points out many of the shortcomings of the contemporary legal systems: the lack of immediacy or presence (*Gegenwart*), the distance from human feeling and subjectivity, corruption, the abuse of power by the nobility, the arbitrariness of laws, and a lack of focus on prevention of vice and crime through moral education. Yet Schiller moves beyond critique: the stage, that functions at first as a 'supplemental' courtroom to the law and then as the primary moral courtroom that upholds justice in society, becomes a model for reform. The stage becomes a courtroom stage, providing aesthetic solutions to judicial problems. As shown in chapter 2, the literary works of authors such as Iffland, Goethe, and Schiller attempted to do the work of justice in light of shortcomings in the legal system, however, by means of literature rather than state bureaucracy. Likewise, the concept of a courtroom stage provides artists with a platform to be part of the legal discourse. Their works and plays presented legal reformers with dramatic models which offered solutions to practical, structural, and philosophical legal problems, such as the tension between *Schriftlichkeit* and *Unmittelbarkeit*, as well as its resulting problems of legal fragmentation.

In Schiller's *Schaubühnenrede*, one might say, the stage pivots from a supporting to a leading role with regards to its ability to uphold and promote justice and moral education in the state. In light of that, I would argue that Schiller's last line of the *Schaubühnenrede*, "ein Mensch zu seyn," is key to how he approaches the model-function of the stage.[98] He provides a projection of a society that has a strong, state-supported stage: "Menschlichkeit und Duldung fangen an, der

[98] In her study *Schiller und das Recht*, Yvonne Nilges maintains a strict separation between the educational judging stage aimed at the general public, and the 'unenlightened' apocalyptic courtroom stage aimed at the nobility. And while this separation is very apparent, within the context of Schiller's philosophical and other works, I think the reconciliatory stance proposed here is feasible, as it resembles many of the 'middle states' or binding concepts in Schiller's thinking. Examples include: the "mittelerer Zustand" and "Spieltrieb" in his *Ästhetische Briefe* (1793-1795); "Tugend ist das harmonische Band von Liebe und Weißheit!" in Schiller's speech "Gehört allzuviel Güte, Leutseligkeit und grosse Freigiebigkeit im engsten Verstande zur Tugend?" (10. Jan. 1779; *NA* 20, 4); the concept of the "Mittelkraft" of his dissertation *Philosophie der Physiologie* (1779); "Liebe das grose Band des Zusammenhangs aller denkenden Naturen" in "Die Tugend in ihren Folgen Betrachtet" (1780, *NA* 20, 32).

herrschende Geist unsrer Zeit zu werden; ihre Strahlen sind bis in die Gerichtssäle und noch weiter – in das Herz unsrer Fürsten gedrungen."[99] The pedagogy of the stage, which cultivates "Menschlichkeit und Duldung" in the new age of Enlightenment ("userer Zeit"), eventually makes its way into the courts of law. Schiller is commenting on the spirit of enlightened reforms, not only by way of its presence on stage (think of the message of tolerance in Lessing's *Nathan der Weise*). More specifically, he points out, this positive presentation of enlightened values affects the process of justice in concrete ways. In this respect, the stage is a role model: it leads judicial reform in that it could presumably affect the behavior and thoughts of judges in courtrooms, and thereby influence the law itself. Ultimately, as Schiller is well aware, enlightened thought has to reach the absolutist princes if things were really to change, because their governments determine the laws and their governments are the bodies that can effect legal reform on paper.

This wish to educate princes in enlightened thinking in order to act upon their education through reform and modernization is perhaps best represented through the figure of Friedrich the Great of Prussia, who oversaw numerous reforms in Prussia's legal system. This aside, Schiller's statement about humanity and tolerance shining into courtrooms and the hearts of princes begs the question: how does the stage actually contribute to the reform projects or sentiments of those in power? For them, the stage's pedagogy should merely do what it already does for everyone in the audience: "Sind *sie* es nicht, die den Menschen mit dem Menschen bekannt machten und das geheime Räderwerk aufdeckten, nach welchem er handelt?"[100] The ultimate model for justice is the stage, which re-centers the human and human subjectivity. Let me point out that this is the issue at the core of Schiller's *Verbrecher*. The narrator's task is to re-center the criminal and his subjectivity within the law. It is also Iffland's concern in *Die Jäger* as represented in the figure of

[99] *NA* 20, 97.
[100] *NA* 20, 97.

the Pastor. The same is true for Goethe as well in the critique he makes in the courtroom scene in *Wilhelm Meister*. Schiller, however, provides an answer: "Hier nur hören die Großen der Welt, was sie nie oder selten hören – Wahrheit; was sie nie oder selten sehen, sehen sie hier – den Menschen."[101]

At the center of Schiller's concept of the courtroom stage is the focus on humanity in two different ways: it allows each member of an audience to become fully human ("Mensch seyn"). And, it allows them to recognize the breadth of expressions of humanity and human fates in their vice and virtue ("Mensch sehen"). The first aspect reminds the audience, including judges and princes, of their own humanity. Judges and princes are challenged to accept the feeling of being human as a part of their official function. They are challenged to not separate that from their official roles as judges in either the courtroom or the palace. The second aspect of human recognition presents audiences, which includes judges and princes, with the variety of what it means to be human in order to evoke sympathy for the plight of the individual. Thus, on the more principled level of legal reform, it reminds those who judge that the judged are subjective human beings. While the audience judges the figures presented on stage, they are also reminded of human sympathy. This exercise in judgement should be applicable to legal reform as well. Those working within law should aspire to treat judgment in this same spirit of humanity. If we think back to Sulzer's priest-poet or the idea that judges should become legal poets, it becomes clear that judges must study humanity while also seeking to overcome fragmentation. Likewise, the legal system should not only function as a bureaucracy to uphold the state; its *raison d'etre* should center around the individual. Schiller's concept of a courtroom stage recommends new ways of judging which is

[101] *NA* 20, 97.

centered not merely on the letter but on humans. In what follows, I will present case studies on the range of possibilities of this stage.

CHAPTER 4

The Courtroom Stage: Images of Reform

4.1 Introduction: The Bureaucrat and the Absolutist

The courtroom stage, as promoted by Schiller in his *Schaubühnenrede*, leads legal reform by challenging the judicial status quo, imagining alternatives on the public stage, and centering the individual as the *raison d'être* of the justice system. In works by Schiller, Iffland, and Goethe, it becomes apparent that these authors were addressing their criticisms of the legal system to those working in the legal sphere. In order to be part of legal reform discourse, authors used the stage to communicate directly with those who influenced law. Art was their mode of communication. For this reason, in what follows, I focus on a particular selection of plays that, in addition to the general public, speak to an audience connected to the legal field.

In respect to the bureaucrats, lawyers, and sovereigns in plays with legal themes, a split in genre can be observed. According to these genre boundaries, bourgeois plays focus largely on the figures of bureaucrats and lawyers, while tragedies and historical dramas feature the legal responsibilities of sovereigns. It becomes obvious that disparate genres offer certain possibilities in the portrayal of the work of justice while also facing limitations in other areas. This being the case, we look first at plays that feature the legal profession or bureaucracy, including Johann Rautenstrauch's *Der Jurist und der Bauer* (1773), Iffland's *Verbrechen aus Ehrsucht* (1784), and Gottfried Immanuel Wenzel's *Verbrechen aus Infamie* (1788). Whether they focus on the individual or assume the more practical task of providing role models on stage, all three have

varying commitments to reform. Through their presentations of the 'good apples' and the 'bad apples' of bureaucracy, these plays tend to promote the idea that improvements to justice can be realized from within the system. Their suggestions take the form of positive role models for everyday practices and, in more general terms, the cultivation of more humane attitudes of legal personnel. This model essentially argues for change from 'the bottom up,' where simple adjustments in individual behavior will result in good justice. It is at this point that themes of individual responsibility versus collective social responsibility versus the responsibility of the state, regarding enlightened pushes for change, lead to the questions: Where should reform actually come from? How should it ideally come about? Historically, legal reform discourse in the late 18th century and early 19th century hinged upon trial procedure and the very foundations of how the legal system functioned, mainly the issues of *Schriftlichkeit* and justice's non-public nature. This approach ultimately relies upon action 'from above,' i.e. from the government of the absolutist. Nonetheless, responses to these questions are integrated into the representation of the bureaucrat figures on stage, who might experience radical *personal* change, but ultimately uphold the status quo.

Moving from the figure of the legal bureaucrat to the figure of the sovereign, we see varied responses from authors. In the plays considered, they delve into the image of the sovereign as the representative head of all justice in the land, whose function on stage is to lead the process of judgement. Such a sovereign, who is the focus of legal reform, stands at the center of Lessing's *Nathan der Weise* (1779), August von Kotzebue's *Hugo Grotius* (1803), and Schiller's *Maria Stuart* (1800). Challenging the absoluteness with which the sovereign acts as judge and their presumed authority, these three plays explore the right and certainty of sovereign judgment on the enlightened stage.

4.2 Change from within, or: The Hero Lawyer and Bureaucrat

4.2.1 Rautenstrauch's *Der Jurist und der Bauer* (1773)[1]

Johann Rautenstrauch (1746-1801 or 1808) was an Austrian playwright whose bourgeois comedy, *Der Jurist und der Bauer: Ein Lustspiel in zween Aufzügen*, enjoyed success on German-speaking stages well into the mid-19th century.[2] Having studied law in Vienna, the author, like many *Dichterjuristen*, incorporated current legal topics into his work. In this play, Rautenstrauch contends with the poor reputation and distrust of lawyers among the general population. The plot revolves around a civil legal dispute between two neighboring farmers, Kunz and Knebel, in a rural area, while a secondary plot involves Rosine, the daughter of Kunz the farmer, and Lanze, a lawyer who represents Knebel. As in Iffland's *Die Jäger* and Schröder's *Amtmann Graumann*, the play highlights the tension between the virtue of rural life versus the corruption of the city, where, for example, lawyers work.

Der Jurist und der Bauer performs a critique of justice and, in an almost methodical manner, attempts to identify the roots of perceived problems of the current system. It also explicitly sets up the 'good apple' and 'bad apple' dichotomy on individual action. Characteristic of enlightened theater, Rautenstrauch's play seeks to practically educate the public on virtue and vice and to thereby influence collective behavior. To this end, the play addresses the topic of the "Überflut," or overflow, of (mostly) civil cases that overwhelmed local justice systems, as well as the topic of what caused this problem. At the very beginning of the play, Fettig, the legal clerk employed by the lawyer Lanze, exclaims to himself: "Einen Proceß über den andern! So lang es

[1] Rautenstrauch, Johann. *Der Jurist und der Bauer: Ein Lustspiel in zween Aufzügen*. Edited by Matthias Mansky. Theatertexte 62. Hannover: Wehrhahn Verlag, 2018. Subsequent citations as "Rautenstrauch" with page numbers.

[2] Schlossar, Anton, "Rautenstrauch, Johann" in: *Allgemeine Deutsche Biographie* 27 (1888), 460-461: https://www.deutsche-biographie.de/pnd10024503X.html#adbcontent; See also Matthias Manksy's afterword to the play in Rautenstrauch, especially pages 61-62.

noch einfältige Leute giebt, die gern streiten – und die wirds immer geben – so lang verdirbt gewiß kein Advokat und kein Schreiber. Schon wieder zwo neue Partheyen! das geht gut. *(blättert in den Schriften.)* Wunderlich Klagen!"[3] As I have pointed out earlier, legal professionals blamed the litigious public, or "Proceß-Lust," for the overburdened justice systems.[4] Fettig presupposes a social fault in the public; a moral failing within the population driven by "einfältige Leute, die gern streiten," which, inevitably, benefits his financial position. Here, the 'harmless shaming' aspect of the pedagogical stage that holds a mirror before "der großen Klasse von Thoren" is apparent.[5]

However, the general public is only the first target of Rautenstrauch's play. In Scene 2 of Act 1, Lanze asks Fettig about how his writing tasks are coming along. To Fettig's response that the document he has just completed is "Vierzehn Bögen und ein Blatt," Lanze replies, "Er hat sehr weitläufig geschrieben." Fettig then reasons that he has written so extensively because "[e]s betrifft ja reiche Bauern." Lanze quickly admonishes his employee's conduct, which privileges wealthy clients over others: "Was geht das Ihn an? Schreib Er für einen, wie für den andern, allzeit gleich, wenn ich es Ihm nicht ausdrücklich anderst befehle." Cheekily, Fettig replies, "Ich thats, um Ihres Nutzen willen."[6] What this scene depicts is the moral divide between one legal professional, Fettig, who is prone to favors and unfairness, and another legal professional, Lanze, who is the apparent model of good conduct. Lanze, for example, with his command "Schreib Er für einen, wie für den

[3] Rautenstrauch 9.

[4] We are reminded of the complaint of the government of the Duchy of Württemberg about "Proceß-Lust" from Chapter 1. From the December 31, 1781 *General-Reskript* "möglichste Verminderung und Beschleunigung der Civil-Prozesse btr." In: Reyscher, *Württembergischen Gerichts-Gesetze,* 1835, 657-661. On the related topic of the reputation of a contemporary American "litigious society," see the argument made against this position in a study by University of Buffalo School of Law professor, David M. Engel. Engel, David M. *The Myth of the Litigious Society: Why We Don't Sue*. Chicago: U of Chicago Press, 2016.

[5] From Schiller's *Schaubühnenrede*: "Sie [die Schaubühne] ist es, die der großen Klasse von Thoren den Spiegel vorhält, und die tausendfachen Formen derselben mit heilsamen Spott beschämt. […] Die Schaubühne allein kann unsre Schwächen belachen, weil sie usrer Empfindlichkeit schont, und den schuldigen Thoren nicht wissen will – Ohne roth zu werden sehen wir unsre Larve aus ihrem Spiegel fallen, und danken ingeheim für die sanfte Ermahnung" (*NA* 20, 94-95).

[6] Rautenstrauch 9.

andern, allzeit gleich," embodies the rejection of greed, the triumph of fairness over individual gain and aristocratic privilege. According to the play, failure within the justice system springs also from professional corruption, often of individual actors such as Fettig.

Rautenstrauch continues his legal-pedagogical plotline with a conversation between Lanze and another lawyer Geyer, who, like Fettig, personifies moral failing, as suggested by his name: a "Geier" or vulture. The two lawyers discuss a particular legal case involving a blacksmith from Rothheim who is pursuing a claim against the local town judge, or *Dorfrichter*, who has erred in a decision.

> Geyer. Ihr Client [the blacksmith] muß verlieren.
> Lanze. Er wird nicht verlieren. Der Richter hat sehr gefehlt; er verdienet, bestraft zu werden.
> Geyer. Die Unwissenheit schützt ihn–er ist kein Rechtskündiger. [...]
> Lanze. Die Unwißenheit in den Gesezen schüzt Niemand für der Strafe. Die Pflicht eines jeden ist, nach den Gesezen zu leben, und nach den Gesezen zu forschen, um nicht zu fehlen. Dem Dorfrichter kommt gar nichts zu statten – Man wird ihm gewiß bey Antrettung seines Amts gesagt haben, wie weit sich seine Gewalt erstreckt – wenigstens hätte er darnach fragen sollen.[7]

Here, we have two further causes of legal failure: corruption and incompetency. The corruption is Geyer's suggestion that Lanze should conspire to pre-determine the outcome of his client's case against the *Dorfrichter*, thus protecting the *Dorfrichter* from punishment. Again, Lanze rejects involvement in a legal sham. Lanze's foil, Geyer, is the stand-in for the 'bad apple' lawyer, while Lanze is the principled role model of moral integrity. Though, it seems in this case that the *Dorfrichter*'s predicament is not one that came about through malice or greed, but rather through incompetence. Lanze's strict belief that "Die Pflicht eines jeden ist, nach den Gesezen zu leben, und nach den Gesezen zu forschen, um nicht zu fehlen" seems out of reach for most of the general public, including the unfortunate but guilty *Dorfrichter*.[8] Lanze and Geyer's discussion of presumed legal incompetency is revealing, because it brings to the fore the challenges that faced

[7] Rautenstrauch 11
[8] Alternately, this scene could also be read as an admonishment of the poor education of local officials.

local courts that did not employ legally trained judges—or could not afford to.[9] It is clear that the *Dorfrichter* did not have a formal legal education, thus the need for local courts to solicit opinions and guidance from higher courts through *Aktenversendung*.[10] As Rautenstrauch presents it, this scene illustrates an estimation of how divided educated legal professionals actually were from the rest of the population in terms of access to and knowledge of the law. This is a barrier highlighted again in the play when the farmer Kunz, upon receiving a receipt containing the amount of money he owes for legal services, complains to a friend: "Ich möchte mich tod ärgern, über den Advokaten. Ich muß ihm lauter deutsches Geld zahlen, und er macht mir die Rechnung lateinisch."[11] German might be the language of the local farming community of which Kunz is a member, but the legal world, which is tied to a broader network of aristocratic courts and universities, runs in the scholarly language of Latin. Kunz' complaint illuminates divisions of profession and feudal class.

In the passages above, the individual actions of bureaucrats determine the effectiveness and fairness of the justice system, yet individual actions from the public also contributes to its success. The play then produces a critique and defense of the legal profession in Scene 17 of Act 1, when Kunz the farmer learns that he has lost his civil case against his neighbor, Knebel. As we learn, Knebel had taken advantage of Kunz' trusting personality in their dispute over a cabbage field, giving him an unfair legal advantage. In the presence of Lanze, Knebel's legal representative, Kunz laments the injustice of the laws that favor unscrupulous lawyers:

> Kunz. […] Du lieber Himmel! was ist schon alles durch die Juristen angestellt worden. Wieviel Unglückliche seufzen über sie.

[9] While Rautenstrauch's play is presumably set somewhere in the Archduchy of Austria, Angela Kriebisch points out that in territories such as Sachsen-Weimar-Eisenach, for example, trained jurists simply costed too much for smaller towns to employ, thus the turn to the laity. Kriebisch 13.

[10] A bureaucrat is not necessarily trained in law, he simply works in a local or central bureaucracy in any particular territorial state. The *Dorfrichter*, for example, is a bureaucratic position with a legal function, but does not require a law degree. Not all localities could afford trained jurists.

[11] Rautenstrauch 36.

> Lanze. Sein Eifer geht zu weit, lieber Kunz. Die Juristen sind deswegen entstanden, um das Faustrecht abzustellen, wo jeder mit dem Prügel oder mit Gewehr sich Recht verschaffte. Jede Sache hat auch ihre gute Seite. Wenn viele durch Unwißenheit oder Bosheit ihrer Rechtsfreunde ins Unglück gekommen sind, so sind auch viele durch den Fleiß geschickter Männer bey ihrem Recht und Vermögen erhalten worden, die auserdem hätten darben müßen. Ein redlicher Advokat ist dem Staat nötig, als ein anderer rechtschaffener Bürger.[12]

Lanze's defense is based on the idea of living within a state of law rather than a state where might makes right. He contextualizes his profession within an earlier historical moment of reform—that of the transition of the Holy Roman Empire from local legal traditions, especially feuding ("das Faustrecht") —to a loosely unified rule of the law and courts. This transition began with the *Mainzer Reichslandfrieden* of 1235 and culminated in the *Ewiger Landfriede* (Perpetual Peace) of 1495, the establishment of the *Reichskammergericht* in Frankfurt, along with the *Reichshofrat* in 1497. Lanze justifies himself and his profession as part of the legacy of this pivotal turn in legal, political, and social history. Lanze's defense returns us to the first line of the play spoken by Fettig: his accusation that the people are litigious. In the context of Lanze's defense, however, this behavior seems to be an extension of the transition from *Faustrecht* to legal arbitration, because disputes are now settled in the courts rather than settled through feuding. Lanze's conclusion is that this transition has both positive and negatives outcomes but is still preferable to what came before. Here, the audience might understand lawyers either as a necessary evil or as the vanguard of progressive, civilizing justice. However, with the line, "Ein redlicher Advokat ist dem Staat nötig, als ein anderer rechtschaffener Bürger," Lanze both redeems the lawyer and calls for the moral betterment of his profession. Again, the moral education of bureaucrats and their personal responsibility within the justice system is seen as the solution to the legal criticisms presented in the play. Honesty is at the center of a working state: honest citizens and fair lawyers. This message of enlightened civic duty is consistent, as Mattias Mansky argues, with broader reform goals in the

[12] Rautenstrauch 25-26.

Archduchy of Austria, including the advancement of literature as a means of education. The historical context Mansky refers to is the far-reaching "Josephine Enlightenment," an "Enlightenment from above" spearheaded by the Holy Roman Empress Maria Theresia and her son Joseph II.[13]

Rautenstrauch then addresses the second component of what is "dem Staat nötig": the individual citizen. In Scene 11 of Act 2, in hopes of winning Kunz' favor so that he can marry Kunz' daughter, Lanze speaks with his client, Knebel, who has won the legal case against Kunz.

> Lanze. Euer Gut hat sich vermehrt, und Eure Ehrlichkeit hat sich vermindert.
> Knebel. Wenn mein Proceß gewonnen ist, so hab ich ihn ja ehrlich gewonnen.
> Lanze. Kunzens Nachsicht und allzugroße Ehrlichkeit hat ihn verlohren, und Eure Bosheit hat ihn gewonnen.
> Knebel. Warum hat mir der Richter die Sache zugesprochen?
> Lanze. Hätte Kunz seinen Anspruch früher gemacht, er hätte nicht verlohren. Ein Gesetz, das nicht für Leute wie ihr seyd, sondern auf andere Fälle abgefaßt worden, ist auch Euch zu statten gekommen.
> Knebel. Warum haben Sie mich denn gewinnen lassen?
> Lanze. Ich handelte, wie ich mußte – aber Ihr hättet nicht so handeln müßen. Es giebt Gesetze, die auch den Dieben zu statten kommen, deswegen sind sie doch Diebe.[14]

The farmer Knebel assumes that, because he has won the case against Kunz, he is in the right. Lanze pins the victory on Knebel's "Bosheit" and alleges that he did not have to behave in the way that he did. Thus, his individual actions are at fault. Just as bad lawyers are put on the trial in Rautenstrauch's play, so too are bad clients. The audience should learn from Knebel's vice, just as they learn from Lanze's relative, somewhat strict virtue. Rautenstrauch presents the arguments that in both groups, legal bureaucrats and the people, there are representatives of good and bad individuals and behaviors that can be easily categorized as such. We are familiar with this idea from Iffland's *Die Jäger*, in which the corrupt *Amtmann* is another bureaucratic 'bad apple', and from Schröder's *Amtmann Graumann*, in which the *Amtmann* is the embodiment of the loyal and

[13] Rautenstrauch, 55-56. "Nachwort." Mansky also quotes Wynfried Kriegleder's "Die deutschsprachige Literatur des Josephinismus im Europäischen Kontext." In: *Österreich in Geschichte und Literatur*, 39.5b/6 (1995), 374-384.
[14] Rautenstrauch 49.

honest judge who is rewarded for his justness by the absolutist king. Lanze, too, assumes the role of representing just lawyers and acting as a moral role model for legal professionals, while the clerk Fettig and the lawyer Geyer are the negative models to be judged and shamed on stage. Overall, *Der Jurist und der Bauer* is a play that moralizes, but ultimately does not pursue the further claims of Iffland, Schiller, and Goethe that current justice is in need of fundamental changes that center the individual. The play's suggested method of legal improvement and combating inefficiencies and corruption is to push lawyers and bureaucrats toward enlightened behaviors and attitudes and to remind the public that they share a moral and personal responsibility for the proper execution of justice as well. As for actual reform at the level of laws and procedure, those are left to a higher office.

4.2.2 Iffland's *Verbrechen aus Ehrsucht* (1784)[15]

As argued previously, the plea for the focus on humanity within the law is voiced most prominently through the figure of Pastor Seebach in Iffland's *Die Jäger* (1785). The Pastor's judgment of the *Amtmann von Zeck*'s rejection of both emotion and mercy in his role as judge is encapsulated in his final words of damnation: "Unmensch!"[16] However, *Die Jäger* was not Iffland's first dramatic undertaking to thematize the law. In his early dramas, he often looked to local justice systems, current legal topics, and trial procedure as inspiration and background for his works. His first staged play, the tragedy *Albert von Thurneisen* (1782), is about a military tribunal which ends in

[15] Iffland, August Wilhelm. *Verbrechen aus Ehrsucht: Ein Ernsthaftes Familiengemälde in Fünf Aufzügen*. Edited by Alexander Košenina. Theatertexte 45. Hannover: Werthahn, 2014. Subsequent citations as "Iffland, *Ehrsucht*" with page numbers. The similarity in title to Schiller's later *Verbrecher aus Infamie / Der Verbrecher aus verlorener Ehre* (1786) is no coincidence. Schiller suggested the title to Iffland while they were both working at the Mannheim Nationaltheater. Iffland also suggested to Schiller that he change the title of his bourgeois tragedy *Louise Millerin* to *Kabale und Liebe*. See Košenina's "Nachwort," page 105.

[16] Iffland, *Die Jäger*, 104.

the execution of the titular protagonist. Two years later, his *Verbrechen aus Ehrsucht:Ein ernsthaftes Familiengemälde in fünf Aufzügen* (1784) is again concerned with the work of legal professionals. This play became his first stage success as a dramatist,[17] so popular, in fact, that it spawned two sequels—*Bewußtseyn* (1787) and *Reue versöhnt* (1789)—and even received a direct mention in Schiller's *Schaubühnenrede*.[18] Iffland, more than almost any other playwright of his era, had his 'finger on the pulse' of his audiences, interweaving popular tropes with enlightened lessons.[19]

The play begins with Eduard Ruhberg, a young man from the bourgeoisie, who wants to court a noblewoman above his status and his means. He attempts to impress her by buying things he cannot afford, and in doing so, begins to gamble. He soon accumulates debt, which he realizes will ruin his family, but declares that he was driven to his mistakes through ambition and pursuit of honor. In order to pay back the debt, he steals 5000 *Reichsthaler* from the public *Rentkasse* that his father, the *Rentmeister*, keeps. He therefore puts his father in great trouble when it comes time to turn in the money. The punishment for such a hefty theft from the state, due to tightened laws on this matter, can be as severe as death. Yet the crime never actually leads to a legal case within

[17] Both Lesley Sharpe and Annette Antoine trace the reasons for the plays particular success to Iffland's fine feeling for the tastes of the public and the Mannheim stage, upon which bourgeois plays were more popular than other genres (Sharpe, *A National Repertoire*, 9; Antoine, 235-238). Antoine, Annette. "Verbrechen aus Ehrsucht (1784)." In *Ifflands Dramen: Ein Lexikon*, edited by Alexander Košenina and Mark-Georg Dehrmann, 234–39. Hannover: Wehrhahn Verlag, 2009. Conversely, Sigrid Salehi attributes the play's initial success to the popularity of the actors who starred in the play rather than its literary qualities. She also notes that the play was adapted from the story of Lillo's *London Merchant*, which was also popular in Germany as *Der Kaufmann von London* starting in 1754. Salehi, Sigrid. *August Wilhelm Ifflands Dramatisches Werk*. Vol. 1213. Europäische Hochschulschriften 1. Frankfurt am Main: Peter Lang, 1990, 138. Subsequent citations as "Salehi" with page numbers.

[18] "Kein Verbrechen ist schändender, als das Verbrechen des Diebs – aber mischen wir nicht alle eine Thräne des Mitleids in unsern Verdammungsspruch, wenn wir uns in den schrecklichen Drang verlieren, worinn *Eduard Ruhberg* die That vollbringt?" (*NA* 20, 97). Eduard Ruhberg is one of the main figures and source of conflict in *Verbrechen aus Ehrsucht*.

[19] As Lesley Sharpe puts it: "The playwright who was the logical endpoint of the Enlightenment debate on the theatre was arguably August Wilhelm Iffland. His plays combined a successful depiction of characters in recognisable milieux with a moralising streak that provided instant audience satisfaction and the triumph of the solid bourgeois, often over an effete aristocracy" (Sharpe, "A National Repertoire," 41).

the course of the play. In order to save the Ruhberg family, *Obercommissair Ahlden*, whose son, *Secretair Ahlden*, is in love with the *Rentmeister*'s daughter, takes out loans in order to replace the money. The "half catastrophe," as Sigrid Salehi characterizes it, is thus resolved extralegally before a case is opened against the *Rentmeister*.[20]

The figure in Iffland's *Verbrechen aus Ehrsucht* who concerns us in particular is the young *Secretair Ahlden*. He is given two conversations by the author on the topic of law and legal practice with his father, the *Obercommisair*, and his university friend, Eduard Ruhberg, the fallen gambler. In Scene 2 of Act 1, the *Obercommisair Ahlden* and his son, the *Secretair*, discuss a legal document that the latter had written:

> Obercommissair […] – Apropos – ehe ich eins in's andere rede – da bringe ich dir deine Defension zurück. – Ist dir mit Gottes Hilfe recht brav gerathen. Recht brav! – Es ist Leben darin. Keine Kniffe, kein Geschwätz – Herz und Leben! Das heißt seiner Partei dienen: dafür wird dich auch Gott segnen, mein Karl!
> Secretair. Wenn Sie wüßten, wie Ihr Lob auf mich wirkt, mich bestimmt! Es gibt mir Unternehmungsgeist, Ausdauer –
> Obercommissair. Hm! – Soll mir lieb sein! Aber höre – laß doch die neumodischen Wörter aus deiner Arbeit weg. Zeig' einmal her, Suchend. hr – brr – hm – hn – – Ja! da – Bestimmung – Drang der Verhältnisse – Leidenschaft – he! was haben die Leidenschaften in einer Defension zu thun?
> Secretair. Die Leidenschaften aber doch so vieles mit den Menschen.
> Obercommissair. Alle gut – alle gut – aber du weißt, die hohen Herren lassen es nicht passiren.
> Secretair. Sollte nicht jeder thun was an ihm ist, daß der Mensch nach der Sache gerichtet würde, nicht nach dem todten Buchstaben?
> Obercommissair. Nun, ich kann es nicht geradezu tadeln, daß du dir einen eigenen Stylum gewählt hast, mein Sohn.[21]

The old *Obercommisair* first gives his son a positive critique of his judicial writing: he praises its no-nonsense approach as well as its "heart and life." However, he is critical of the new vocabulary and understanding of the human individual that the *Secretair* brings to his work. The *Obercomissair* singles out the *Sturm und Drang* and anthropological key words and concepts that his son has adopted in his writing: "Bestimmung – Drang der Verhältnisse – Leidenschaft." He

[20] Salehi 141.
[21] Iffland, *Ehrsucht*, 12.

warns that "die hohen Herren" will not tolerate it, though he does not specify who that might be. The *Obercommisair* praises the defense's "Leben," yet it is the *Secretair* who insists on pushing his craft further by bringing in "die Menschen." He points out that people must be judged by the "Sache"—the actual event and matter—not the "todten Buchstaben" that hardly represent those things. He must therefore do what he can as an individual lawyer to ensure this. His solution is a change in writing style ("einen eigenen Stylum") and to focus on the human psyche in order to overcome the "todten Buchstaben" that remain a hurdle to his task.[22] The idea of "dead letters" on the page recurs as an intertextual moment in later works by Schiller, in his *Schaubühnenrede* (1784) when he summarizes the power of theater over prose,[23] and by Goethe, in his *Wilhelm Meisters Lehrjahre* (1777, 1795-1796) when describing the act of transcribing speech into written words for a legal protocol.[24] The works of all three authors bring into focus the problem that writing is not a replacement for actual presence and witnessing. This is a particular concern of Wilhelm

[22] John McCarthy argues that it is in legal defenses that literature has the most influence on legal writing (McCarthy 109): "Da Verhörverfahren und Gerichtsverhandlung geheim waren und ein Verteidiger erst nach den offiziellen Ermittlungen ernannt wurde, war die einzige Möglichkeit, öffentlich auf einen Deliktfall kritisch zu reagieren, stets post facto. Da schaltete sich die Literatur ein und konnte versuchen, auf die Juristen, die zum Verteidiger, Syndikus oder Mitglied des Rats bestimmt waren, Einfluß zu nehmen." Similarly: "Allerdings war der Defensor in einem Gerichtsfall für ein Plädoyer neuer Wertnormen bestens bestellt" (McCarthy 110). Marcus Christof Schaaf's defense of Susanne Margarete Brandt in Frankfurt in November 1771, for example, is "ein Muster der neuen juristischen Schreibregeln der Zeit," (113) in which there is a "gelegentlichen Appell an menschliche Sympathie" (110) and a thorough story of her pitiable material and psychological situation and circumstances that should both weaken the arguments against her and mitigate her punishment (111-112). At the worst, according to McCarthy, Schaaf portrays her as a "criminal of lost honor" (112).

[23] From Schiller's *Schaubühnenrede*: "Der Mensch ist ein Franz Moor. Diese Eindrücke sind unauslöslich, und bei der leisesten Berührung steht das ganze abschröckende Kunstgemählde im Herzen des Menschen wie aus dem Grabe auf. So gewiß sichtbare Darstellung mächtiger wirkt, als toder Buchstabe und kalte Erzählung, so gewiß wirkt die Schaubühne tiefer und daurender als Moral und Geseze" (*NA* 20, 92-93). In fact, the parallels between some of the ideas and arguments in Iffland's *Verbrechen aus Ehrsucht* (1784) and works by Schiller, such as his *Schaubühnenrede* (1784) and his later story *Verbrecher aus Infamie* (1786), should hardly be considered coincidence, since the two dramatists worked as colleagues at the Mannheim National Theater starting in 1782/1783. See: Sharpe, *A National Repertoire*, 74.

[24] Goethe offers similar images of writing in his *Wilhelm Meisters Lehrjahre*: "Der Alte nahm wieder Mut und fing nun an, nach den süßen Geheimnissen der Liebe mit dürren Worten und in hergebrachten, trockenen Formeln sich zu erkundigen" (*SW* 9, 402).

Meister and the *Secretair*, who are dealing specifically with judicial writing style which is often insufficient in bringing a whole person or situation to life.

Returning now to the dialog between the *Secretair* and the *Obercommisair*, we see that their conversation pivots around the written bureaucratic procedure of justice and the place of human subjectivity and emotion within it. Whereas *Der Jurist und der Bauer* finds fault in the moral character of lawyers and clients, *Verbrechen aus Ehrsucht* focuses on *Schriftlichkeit*. Accordingly, what transpires is a generational conflict between the younger and older lawyer with the *Obercommissair* warning against experimentation. The *Secretair*, on the other hand, with his dedication to re-thinking the needs of the people in *written* trial procedure, becomes the figure of reform in the play. We might imagine that what the *Secretair* is doing in his *Defension* is in the same spirit as the work of Schiller's narrator in *Verbrecher aus verlorener Ehre* (1786): devising an antidote to fragmentation within the legal system, in which the presence of the accused before his judges is not likely, as well as trying to work within the constraints of that system in order to effect change through practice.[25] The *Secretair Ahlden* not only practices individual change, Iffland places him within a younger generation of lawyers who want to bring about reform. In a conversation with Eduard Ruhberg, he reminisces about their days at university:

> Weißt du noch, wie wir auf der Universität uns freuten, nach und nach dem Aktenstyl aus dem Wege zu gehen – wie wir uns ärgerten, daß die Richter den Menschen nicht begriffen – wie wir uns beredeten, wenn es einst an uns kommen würde, in den Gerichten, ohne Schwärmerei, mit Ernst Gutes zu thun![26]

Here, two idealistic students of law reject the "Aktenstyl" and its "dead letters" in favor of their own methods of legal writing. Additionally, as the *Secretair* and Ruhberg resented "daß die Richter den Menschen nicht begriffen," their goal as students was to find a better way of understanding

[25] As Alexander Ignor notes, one of the topics of legal reform in the late 18th century were the questions of what it means to have a defense as well as the question of defining the purpose of a defense and status of the defender. (Ignor 188-190).
[26] Iffland, *Ehrsucht*, 55-56.

the human individual within trial procedure and law. Keeping the *Secretair*'s earlier conversation with his father in mind, the reader has reason to believe that the *Secretair* indeed continued his rebellion from his studies into his legal career.

Continuing their conversation, *Secretair Ahlden* tries to convince Eduard Ruhberg to move past his current class ambitions, which have led him to an ill reputation and vice, and to return to a life of being a good citizen and son. Upon this suggestion, Ruhberg responds:

> Ruhberg der Sohn. Und was soll ich thun? In das trockene Aktenleben tauge ich nun einmal nicht mehr!
> Ahlden. Trocken? das kann eine Arbeit nicht sein, die Menschen glücklich macht. Sieh – zum Beispiel – heute ist es entschieden, daß meine Defension einem Menschen das Leben gerettet hat. Sage dir es, wie ich mich dabei fühle.[27]

Ruhberg demeans legal work as "trocken," but the Secretair sees things differently. We learn that his *Defension* from earlier, with its reform strivings, was successful in court and has *saved* a human life. As the Pastor from *Die Jäger* reminds us of the high stakes of criminal court cases: "Es gilt ein Menschenleben!"[28] The *Secretair* sees his craft as a means to serve human happiness, again centering human subjectivity, including his own emotions: "Sage dir es, wie ich mich dabei fühle." Here, in the figure of the *Secretair*, is a legal professional working toward reform, who admits to and accepts emotion as an inevitable part of the legal process. Moreover, he has brought to the surface what he believes the law is actually about: the person, the actual story, the human. In his vision of getting to the emotion and humanity in law, he defies the stereotype of the "dry" world of legal work, the world of the *Amtmann von Zeck*'s "Schlendrian," the world of Wilhelm Meister's "dürren Worte" and Goethe's "ungeheuer Wust von Akten", or, as Georg Jacob Schäffer,

[27] Iffland, *Ehrsucht*, 57. The switch in designation from "Secretair" to "Ahlden" is in the printed text. Both refer to *Secretair Ahlden*.
[28] Iffland, *Die Jäger*, 102.

Oberamtmann in Sulz, puts it, "es ist wahrlich kein angenehmes Geschäfte im Staub von Akten zu wühlen."[29] Quickly, however, things turn against the *Secretair* in his dialogue with Ruhberg:

> Ruhberg der Sohn. […] Wen hast du defendirt?
> Ahlden. Den alten Einnehmer Sieveet von Grünhayn, du mußt dich erinnern – der berüchtigte Kassenangriff –
> Ruhberg der Sohn. Kassenangriff! So? so!
> Ahlden. Kennst du den Mann?
> Ruhberg der Sohn. Ja, der Fall ist mir bekannt.
> Ahlden. Die Defension war nicht leicht. Die Kassendefekte sind seit einiger Zeit so häufig – die geschärften Gesetze hatten den Galgen auf geringe Summen gesetzt.
> Ruhberg der Sohn. Es ist Unsinn, Todesstrafe darauf zu setzen.
> Ahlden. Ja die Wiederholung –
> Ruhberg der Sohn. Es ist Raserei, sage ich dir.
> Ahlden. Kann aber mit irgend einer Ordnung ein solcher Diebstahl –
> Ruhberg der Sohn. *rasend.* Ein Mensch, der eine Kasse angreift, ist kein Dieb!
> Ahlden. Was denn anders?
> Ruhberg der Sohn. Die mehrsten wollen es wieder ersetzen.
> Ahlden. Wollen!
> Ruhberg der Sohn. Und würden – wenn man nicht –
> Ahlden. Auf diese Art könnte jeder liederliche Bursche zur Befriedigung seiner Ausschweifungen stehlen – und –
> Ruhberg der Sohn. Untersucht ihr denn aber – w i e der Mensch dahin gekommen ist? Gibt es nicht Fälle, wo der Richter gerade so gehandelt haben würde, als der Verbrecher, den er verdammt?
> Ahlden. Wohl. Tausche die Personen, und es wird –
> Ruhberg der Sohn. Ha, du bist kalt – kalt – wie sie alle sind. Eure Pflicht heißt Blutgier, eure Gerechtigkeit ist Morden.[30]

This dialog between the two university friends resonates with several concerns about the justice system discussed earlier. Recalling the crime of poaching in Schiller's *Verbrecher*, we notice here, too, there is an escalation in punishment concerning the crime of theft, specifically *Kassenangriff*. The punishments have become entirely disproportionate to the committed crime for reasons of prevention through deterrence: "die geschärften Gesetze hatten den Galgen auf geringe Summen gesetzt." The frequency of the crime and the "Wiederholung" have spurred this escalation, which

[29] From the *Vorrede* to his 1793 *Abriss des jauner und bettelwesens in Schwaben*: "Ich kan es nickt läugnen, daß ich sehr wünsche, meine Schrift möchte einige furs Publikum heilsame Sensation machen. Nur in dieser Hinsicht habe ich sie verfertiget , und der vielen Unlust und Mühe mich unterzogen, welche mit einem Unternehmen dieser Art unvermeidlich verbunden ist. Denn es ist wahrlich kein angenehmes Geschäfte im Staub von Akten zu wühlen, mehrere Bande davon durchzulesen, um einen Fund zu machen, der sich. auf Eine oder etliche Seiten schreiben laßt, und aus hundert Urkunden mitten unter äusserst uninteressanten Dingen Materialien herauszuholen und zu sammen zu tragen. — Ob aber mein Wunsch erfüllt, mein abgezielter Zwek erreicht, in seinem ganzen Umfang erreicht werden wird."

[30] Iffland, *Ehrsucht*, 57-58.

the *Secretair* freely admits is a matter of "Ordnung" and not justice. This was precisely the case in Schiller's *Verbrecher*, where the severe punishments for poaching had more to do with maintaining the sovereign's forest than a concern for what was actually a just consequence for the offender. Through the depiction of these criminal situations, both works by Schiller and Iffland portray current justice as having little to do with self-determining individuals with natural rights. Instead, current justice treats those under it as feudal subjects—which they in reality were. In these works, the law has not yet caught up with the new enlightened understanding of the individual. To this state of affairs, Ruhberg accuses the state of "Unsinn" and "Raserei." Remember that Ruhberg himself is in debt and, in desperation, has stolen from his father's *Rentkasse.* However, Ahlden's position on the punishment of death for theft remains unclear since Ruhberg does not allow him to articulate it. From the dialog, Ahlden argues that *Kassenangriff* is a crime of theft that should be met with punishment. To presume that "Die mehrsten wollen es wieder ersetzen" would open the door to "jeder liederliche Bursche" going free without consequence after an act of theft.

With the stage direction that he is "rasend," or raging, Ruhberg exclaims that "[e]in Mensch, der eine Kasse angreift, ist kein Dieb!" He presses on in a further parallel to Schiller's *Verbrecher* with the line: "Untersucht ihr denn aber – w i e der Mensch dahin gekommen ist?" This line is reminiscent of Schiller's narrator who suggests the *Geschichtsschreiber*, the friend of truth, investigates his subject's psychological constitution as a scientist investigates the cause of a natural phenomenon such as a volcano. This is a plea from Ruhberg to extend the considerations of justice beyond the 'facts' (*species facti*) of the immediate deed and its legal categorization, and to take into account the larger circumstances and situations surrounding the involved parties. Although Ruhberg's position is made suspect due to his actual guilt for an act of *Kassenangriff*, the play *is* in fact interested in uncovering the answer to his question. Iffland's intention for the

play to unravel the human mind is implied in its title, *Verbrechen aus Ehrsucht*, for moral-pedagogical reasons. Iffland does not provide the reader with the *Secretair*'s full response to Ruhberg, who is positioned as the "*rasend*" and unreasonable party, as he is interrupted again. On account of the heatedness of Ruhberg's responses, his insults to the *Secretair* of being cold and bloodthirsty, as well as having a sense of justice that is equal to murder, are called into question. However, it is this very passion that Ruhberg exhibits that the *Secretair* had earlier defended as necessary to include in legal writing: "Bestimmung – Drang der Verhältnisse – Leidenschaft."[31] Ruhberg might have fallen to the level of a "liederlicher Bursche," but as the *Secretair* says himself, he resents judges who cannot understand the human individual ("den Menschen nicht [begreifen]").[32]

Ruhberg's case of theft in this play, as pointed out earlier, does not result in a legal resolution. Rather, it is the romantic connection between the *Secretair* and Louise Ruhberg, as well as the familial connection between the *Secretair* and his father, who wants to ensure his son's happiness, that sweeps the very serious legal stakes of the play to the side. The audience does not see the *Secretair*'s legal principles played out against his father's in a larger criminal court case. After all, the conceit of Iffland's bourgeois dramas is the propagation of the figure of the *Hausvater* as the safekeeper of family morality and order. *Verbrechen aus Ehrsucht* remains, as Annette Antoine puts it, "hübsch in der Familie,"[33] by reducing the public offense of theft to a "Familienangelegenheit."[34] Despite the fact that the legal drama is cut short, this does not undermine the figure of the *Secretair* as a legal role model and figure of identification. As Iffland positions him, he is an idealistic son of the bourgeoisie who has saved the life of a man through

[31] Iffland, *Ehrsucht*, 11.
[32] Iffland, *Ehrsucht*, 55-56.
[33] Antoine 238.
[34] Salehi 141.

his legal work, who has adopted new ways of understanding human individuals, and who has given thought to how to represent them in legal writing. Unlike in Rautenstrauch, where there are practical models of 'good' and 'bad' behaviors, *Secretair Ahlden* is a model not necessarily of practice, but of mindset. It is his fervor for humanity on stage that will ideally be taken on by the audience, including lawyers and absolutist rulers in attendance.[35] Moreover, Ahlden represents on stage the possibility of the 'bottom up' model of reform that suggests that the local legal practice of individual professionals might push through change. Some scholars such as Schnabel-Schüle have argued that, in the absence of successful legal reform efforts by sovereigns at the level of the territorial state governments, incremental changes in legal practice were more-or-less the only 'reform' to take place in certain areas.[36] Of course, this meant that legal change was necessarily slow and uneven. However, Iffland has chosen to present the efforts of a younger generation of aspirational bureaucrats on stage as a guide for change.

4.2.3 Wenzel's *Verbrechen aus Infamie* (1788)[37]

Gottfried Immanuel Wenzel (1754–1809) was an Austrian writer, philosopher, and pedagogue and later Professor of Philosophy in Linz.[38] In his *Verbrechen aus Infamie: Eine theatralische Menschenschilderung für Richter und Psichologen in drei Akten*, published in 1788, he cites Schiller's *Verbrecher aus Infamie* from 1786 as the source material for his dramatic adaptation.

[35] Košenina describes Iffland's vision of a theater of emotion as moral institution as one that "bedarf einer guten Sache und Handlung, die zur Identifikation und Übertragung in die eigene bürgerliche Lebenswirklichkeit einlädt" (Iffland, *Ehrsucht*, 107). From Košenina's "Nachwort."

[36] Schnabel-Schüle 60. She refers specifically to the Duchy of Württemberg in this case.

[37] Wenzel, Gottfried Immanuel. *Verbrechen aus Infamie: Eine Theatralische Menschenschilderung für Richter und Psichologen in Drei Akten*. Edited by Alexander Košenina. Theatertexte 43. Hannover: Werhahn, 2014. Subsequent citations as "Wenzel" with page numbers. The original was published in: Gottfried Immanuel Wenzel. *Dramatische Werke*, Vol. 2. Prag 1788. The play was never staged and in his "Nachwort," Košenina notes that the Wenzel's entire 2-volume collection of dramas received a negative review in the *Allgemeine Literaturzeitung* (Wenzel 55).

[38] Wurzbach, Constantin von, ed. "Wenzel, Gottfried Immanuel." In *Biographisches Lexikon des Kaiserthums Oesterreich*, 55:13–16, 1887.

Indeed, in his play, Wenzel includes direct quotes and entire passages from Schiller's story.[39] Generally, as in the source, the play is characterized by a focus on the individual within the law. It also promotes judges who acknowledge their own emotions and the emotions of the accused in their legal practice. More similar to Rautenstrauch and Iffland than Schiller, however, is the fixation on the legal bureaucracy as the motor for positive legal change through practice, as well as the individual actions of bureaucrats as a source of legal progress. Moreover, Wenzel's image of bureaucracy, as presented in the play, also distinguishes clearly between 'good' and 'bad'. Good bureaucrats pursue enlightened ideas about serving humanity while the bad ones are responsible for general disfunction in the legal system. As we will see, perhaps inspired by figures such as Rautenstrauch's Lanze, Iffland's *Secretair Ahlden*, or even Iffland's Pastor Seebach, Wenzel pushes the split between good and bad to even further extremes in order to introduce a new character to the stage: the hero bureaucrat.

The action of the play begins as the criminal protagonist, Christian Wolf, is returning from his three-year sentence at a prison fortress. The play ends during his final arrest with a dialogue between him and the play's other protagonist, the *Bürgermeister*, who is a re-casting of the *Oberamtmann* figure in Schiller's story. Due to the absent narrator, the meta-narrative discussion of strategies for best representing the criminal is voiced directly by these two figures, Wolf and the *Bürgermeister*. Likewise, Wolf's entire back story comes directly from the criminal himself in a very literal case of the concept of the "modernen Kriminaltheater" put forward by Alexander

[39] Though this is the case, there are notable deviations. For example, Wenzel completely misinterprets Schiller's focus on Wolf's appearance, which Schiller includes to illustrate prejudice against Wolf's appearance that causes him psychological distress as a child and young man, leading to destructive behaviors that then reinforce those original prejudices. Instead, Wenzel uses these details in his play to promote the popular pseudo-science of physiognomy. The *Bürgermeister* tells his two *Geschwornen*: "Wie jeder Verbrecher, der Laster auf Laster thürmt. Es ist eine Grundwahrheit, meine Freunde: Der Dollmetscher der herrschenden Neigungen ist das Gesicht der Menschen" (Wenzel 47).

Košenina, in which the criminal constructs his own story in a sort of "Seelendrama" on stage.[40] Wolf's highly metatextual manner of representing himself is exemplified in his conversation with the *Bürgermeister* in the last act of the play. The last line in Schiller's story, "Ich bin der Sonnenwirt" is transformed into an opportunity for self-expression by the criminal in Wenzel's drama:[41]

> Wolf. Ahnden Sie noch nichts? –Ich bin,– der Sonnenwirth.
> Bürgermeister. Unglücklicher! Deine Geschichte ist mir bekannt.
> Wolf. Meine Strafe wollen Sie sagen, aber nicht der Zustand meiner Seele. Hören Sie: Ich betrat die Festung als ein Verwirrter, und verließ sie, als ein Lotterbube. Ich hatte noch etwas in die Welt gehabt, und mein Stolz krümmte sich unter der Schande. […][42]

The *Bürgermeister* claims that he knows Wolf's story, but Wolf corrects him, pointing out that he probably knows more about the punishments that were executed than the actual story of the criminal. As though anticipating the inquisitional interrogation to come, which is present in Schiller's story but not in Wenzel's adaptation, Wolf plunges into his lengthy backstory in a 2-page monolog after the play's action has already come to a close. Somehow, Wolf must deliver an explanation of his past in order to account for his present. This leads to Wolf's insistence that the *Bürgermeister* know about the "Zustand [seiner] Seele," followed by the command "Hören Sie" and then the rushed start of his story without set-up or context: "Ich betrat die Festung […]". This brief exchange nonetheless emphasizes human subjectivity by turning inward beyond the mere facts, or "Strafe," as an important aspect of Wolf's criminal case.

The *Bürgermeister* listens to Wolf's story in rapt attention. His earlier appearances in the play, in which he is characterized as an honest and enlightened servant of the people, assure the reader that he is truly interested in Wolf's background and fate. His dedication to justice and his legal responsibilities are clear, for example, when he says to his two *Geschworne* upon calling

[40] Košenina, "Recht – gefällig," 30.
[41] *NA* 16, 29.
[42] Wenzel 51-52.

them in to work at a very early hour: "Es ist wahr, die Geschäfte sind gehäuft; fordern gänzlich Aufopferung. Da, wo der Bürger noch ruhig schlummert, arbeiten wir für ihn, und müssen oft, leider, Fälle entscheiden, bei denen das Menschenherz blutet."[43] Using language of self-sacrifice, the *Bürgermeister* gives his office, including his legal work, a positive self-presentation of service. In addition, Wenzel further suggests that the *Bürgermeister* has a developed sense of the meaning of his work, evidenced by the strong positions he takes on certain legal practices. On the topic of *Landesverweisung*, the *Bürgermeister* states that he will never resort to this punishment, "weil ich überzeugt bin, daß es ungerecht ist, um seinen Garten von Steinen zu reinigen, die Steine über die Mauer in den Garten des Nachbars zu werfen; und dies ist das Bild der Landesverweisung."[44] As we see here, the *Bürgermeister* is willing to change local legal practice, over which he has jurisdiction, on account of principle.

There are a few things we can say about Wenzel's presentation of the *Bürgermeister* at this point: he takes moral positions on legal and political matters, he makes legal choices based on principles informed by those moral positions, and most importantly to this study, he feels personal responsibility for what he believes to be the preservation of good justice. Justice is literally a burden on the shoulders of his office (or an "Aufopferung") that he can offer his community as an individual actor and representative of his profession on stage. Yet not all bureaucrats in Wenzel's play can compare to this role model. His dramatic foil, the *Gerichtsschreiber*, is the necessary bad bureaucrat who is shown to act on the rule of personal gain, and who is willing to influence legal matters in order to win bribes from the public.[45] Far removed from this mindset is Wenzel's *Bürgermeister*: when a message comes to his office informing him that a band of robbers led by

[43] Wenzel 42.
[44] Wenzel 43.
[45] Wenzel 23.

the infamous *Sonnenwirt* is now roaming the countryside and creating havoc, the *Bürgermeister* exclaims to his sleepy employees before rushing off the scene:

> "Kommen Sie meine Freunde! Wir dienen der Menschheit."[46]

Thus, the hero bureaucrat is born. The *Bürgermeister*'s declaration is similar in tone to that of *Secretair Ahlden* when he says that his legal work has saved "einem Menschen das Leben,"[47] or when Pastor Seebach appeals repeatedly to the *Amtmann* in *Die Jäger* with the phrase, "es gilt ein Menschenleben!"[48] as well as Lanze's more reserved reasoning about how the legal profession protects humanity from arbitrary violence and death: "Die Juristen sind deswegen entstanden, um das Faustrecht abzustellen." The idea common to all these plays is that those who work in law are serving humanity. Accordingly, it is the calling of their enlightened profession. However, if they are not, if they have a different understanding of their profession, such as using their positions as an opportunity for personal gain, they fall into the category of the 'bad bureaucrat'. They fall into the company of the *Amtmann* in *Die Jäger*, of the clerk Fettig in *Der Jurist und der Bauer*, of the *Gerichtsschreiber* in *Verbrechen aus Infamie*.

The hero bureaucrat's foremost concern is that the individual is the focus of legal practice. Speaking to his two *Geschwornen*, the *Bürgermeister* laments the news that the *Sonnenwirt*, Christian Wolf, has become a murdering robber:

> Wie tief der Mensch fallen kann, meine Freunde! Ich kannte Wolfen noch als Jüngling. Fähigkeiten und Talente versprachen einen brauchbaren Bürger in ihm. [...] Zu bedauern ist sein Schicksal, […] zu bedauern der Mann, den Richter unglücklich gemacht haben; Richter, die zwar in das Buch der Gesetze, nicht aber in das Herz des Menschen sahen.[49]

Here, the words of the narrator in Schiller's story are transferred to the *Bürgermeister*, originally: "Der doppelte Rückfall hatte seine Verschuldung erschwert. Die Richter sahen in das Buch der

[46] Wenzel 43.
[47] Iffland, *Ehrsucht*, 57.
[48] Iffland, *Die Jäger*, 102, 103.
[49] Wenzel 47.

Gesetze, aber nicht einer in die Gemütsverfassung des Beklagten,"[50] in which judges sentence Wolf to three years of hard labor in the prison fortress. Let us also recall that the narrator in Schiller's story provided commentary such as this because he had an overarching project: the autopsy of the criminal's vice for the education of humanity. His guiding questions were whether or not the criminal "noch ein Recht gehabt hätte, an jenen Geist der Duldung zu appellieren? ob er wirklich ohne Rettung für den Körper des Staats verloren war?"[51] To this end, the narrator introduced his narrative strategy of representing a criminal's story. His introduction appeals to those who study the human mind, in other words, psychologists, or ever better: judges who are also "Menschenforscher."[52] In Wenzel's play, because the *Bürgermeister* partly assumes the role of the narrator, it appears that he, too, is one who hopes to instruct humanity. Nearing the end of the play, as Wolf tells the story of becoming a hardened criminal, the *Bürgermeister* utters the following interjections at various points of the monolog:

> Bürgermeister. (*für sich*) Wie lehrreich die Geschichte dieses Menschen für den Richter! – Fahre fort. –
> Bürgermeister. Entsetzlich!
> Bürgermeister. (*für sich*) Des Mannes Verhängniß rührt mich.[53]

The *Bürgermeister*'s first utterance brings us back to the play's subtitle: "Eine theatralische Menschschilderung für Richter und Psichologen." This is an odd title for a play since subtitles usually reveal the genre of the play, such as "Lustspiel," "Schauspiel," or "Trauerspiel." Iffland sometimes used designations like "Sittengemälde" or "Familiengemälde," but Wenzel's subtitle has more in common with crime story collections than dramatic works.[54] Additionally, the *Bürgermeister*'s assertion that Wolf's story is "lehrreich" for judges is usually the kind of claim

[50] *NA* 16, 11-12.
[51] *NA* 16, 9.
[52] *NA* 16, 7.
[53] Wenzel 52-53.
[54] The subtitle is more inspired by Schiller's theoretical introduction in *Verbrecher aus Infamie* as published in the *Thalia* in 1786, a version that has a slightly different introduction as in *Verbrecher aus verlorener Ehre* from 1792.

that one finds in the foreword or introduction to plays, in which authors subsequently express their hopes that their plays will be educational. What is also unusual is that Wenzel does not even bother to include language about the usefulness of his play to the general public; he targets two groups directly: judges and psychologists. In the words of the *Bürgermeister*, Wolf's story should be "educational" specifically to judges. This idea is again adapted loosely from his source text, in which Schiller's narrator hopes that his efforts will instruct justice. Indeed, Wenzel's *Bürgermeister* does believe that Wolf's story is "educational" for justice. Not only that, with the exclamation "Entsetzlich!" he allows himself to be drawn into the criminal's story emotionally. He then admits that this story, or "des Mannes Verhängniß," moves him. Unlike Iffland's *Amtmann*, this *Bürgermeister* is willing, as Pastor Seebach pleads, to allow a "sanftere Stimmung" to affect him.[55] He admits that he, as a judge, can be swayed by emotion while carrying out his legal work. Finally, in the last lines of the play, the criminal Wolf makes a request of his judge:

> Wolf. Ich bin in Ihren Händen. Schreiben Sie Ihrem Fürsten, wie Sie mich fanden. Schreiben Sie ihm, daß ich selbst aus freier Wahl mein Verräther ward, daß ihm Gott einmal gnädig sein werde, wie er jetzt mit es sein wird. Bitten Sie für mich, alter Mann, und lassen Sie dann auf Ihren Bericht eine Thräne fallen.
> Bürgermeister. Dieser Händedruck entdeckt Dir den Zustand meines Herzens.[56]

Note that in Wenzel's play, the reader does not know whether Wolf will ultimately be executed or not, since the fate of his trial, though very likely to result in a death sentence, is left open. For the sake of comparison, here is the dialog between Wolf and the *Oberamtmann* in Schiller's text, in which the reader has already been informed at the beginning of the story that Wolf was executed:

> "[…] Ahnden Sie nichts? Mit wem glauben Sie, daß Sie reden?"
> "Was ist das? Sie erschrecken mich."
> "Ahnden Sie noch nicht? –Schreiben Sie es Ihrem Fürsten, wie Sie mich fanden und daß ich selbst aus freier Wahl mein Verräter war –daß ihm Gott einmal gnädig sein werde, wie er jetzt mir es sein wird –bitten Sie für mich, alter Mann, und lassen Sie dann auf Ihren Bericht eine Träne fallen: Ich bin der Sonnenwirt."[57]

[55] Iffland, *Die Jäger*, 103.
[56] Wenzel 54.
[57] *NA* 16, 29.

In Schiller's text, the *Oberamtmann* is surprised and horrified as Christian Wolf has the last word, and the criminal ends the story. But in Wenzel's drama, the last word is given to the hero bureaucrat, who makes a magnanimous gesture: he comforts the criminal. The highlight of the last line of the drama is therefore not the "Zustand" of the criminal's soul or the study of his mind, but rather the "Zustand" of the *Bürgermeister*'s heart, who will ostensibly work for mercy on behalf of the criminal. Moreover, the tear as a symbol of emotion that the criminal wishes his judge to shed receives a companion gesture: a "Händedruck" from the judge. Not just psychological immediacy but physical contact is presented as another, more extreme gesture of connection between the criminal and judge. Ultimately, the criminal in *Verbrechen aus Infamie* shares the stage with the *Bürgermeister*, who is a role model for judges. Though Wenzel's handling of the character is at times clumsy, the *Bürgermeister* expresses through his compassionate behavior and words an explicit desire to bring about change in the legal system and to educate more humane judges.

Before moving on, there is one last figure from Wenzel's play to discuss briefly: the *Fürst*. Though the *Fürst* is not present in the play, his presence is evoked, just as in Schiller's story, through the mention of a letter. Wolf tells one of his robbers, Giftling, that he is writing to the *Fürst* with plans to plead for his life in exchange for military service. Giftling's response is somewhat surprising for a murderous outlaw:

> Verzweifle nicht, Bruder! Auf dem höchsten Gipfel der Verschlimmerung, sind wir dem Guten näher, als wir vielleicht vor dem ersten Fehltritte gewesen waren. Großmüthig ist Deines Vaterlandes Fürst; der Krieg im Ausbruche; man bedarf wackere Männer;– Du schreibst?[58]

First is Giftling's philosophical musing that, after having committed many atrocious crimes, the band of robbers might well be on their way back around to recognizing goodness. Then there is

[58] Wenzel 45.

his encouraging command to Wolf, "Verzweifle nicht, Bruder!" with the reassurance that "[g]roßmüthig ist Deines Vaterlandes Fürst." This endorsement is perplexing coming from a criminal, since it is against the sovereign's laws that he had transgressed. Giftling does not offer further explanation. Within the play, the reader never finds out if the *Fürst* replied to Wolf or not, but Wolf does mention that he is going into a city in order to await the *Fürst*'s public answer. In Schiller's text, the narrator reveals that "[d]iese Bittschrift blieb ohne Antwort,"[59] thus condemning the sovereign's refusal to acknowledge the legal plea of a subject, even a fallen one. In Wenzel's play, on the other hand, the bureaucrat is not the only figure to emerge with a positive image. This representation is extended to the territorial sovereign as well in his role as highest judge in the land, with one main characteristic: that he is magnanimous.

4.3 Certainty and Doubt: The Sovereign-as-Judge

Magnanimity, mercy, and justness are often qualities attributed to sovereign figures in plays set in the bourgeois milieu. It is difficult to overlook the fact that the German territorial rulers were also patrons of the arts, especially the institution of theater, and that in the Archduchy of Austria and beyond, under Maria Theresia and under Joseph II in particular, there was a very intentional project of Enlightenment and modernization through literature and theater.[60] Indeed, the seat of the sovereign or absolutist was the single most influential office that could bring about legal change—in fiction and reality. We only have to think of the words of Marquis Posa to King Philipp in Schiller's *Don Karlos* (1785/1787), speaking to the power possessed by the Spanish monarch:

[59] *NA* 16, 25.

[60] Mansky refers to the practical support of literature as "zweckorientiert[er] Reformabsolutismus" (Rautenstrauch 56). Authors were often employed in the government's administration, which allowed some amount of 'rebellion' on the part of the authors even under censorship, so long as their works followed the government's official program of Enlightenment.

"Niemals – niemals / besaß ein Sterblicher so viel, so göttlich / es zu gebrauchen. […] Ein Federzug von dieser Hand, und neu / erschaffen wird die Erde."[61] In Schröder's *Amtmann Graumann*, the king is presented as a special individual within and above the justice system who participates though decision-making in legal matters directly affecting his subjects. In the cases of the *Hauptmann* von Stern, who kidnapped the *Amtmann*'s daughter, and the case of Karl, the *Amtmann*'s son, who drew his sword against his superior officer. Both their files are sent straight to the king. Schröder presents a particular image of the sovereign which confirms his intimate involvement in his legal bureaucracy, as well as the perceived absoluteness, right, and correctness of his judgment:

> Graumann. (*in dem Protokoll lesend*.) Gut, recht so – jezt mag der König selbst urtheilen, ob ich recht gehandelt hab' oder nicht. – – (*Macht das Paquet zu, schreibt die Adresse*.) Ja, er mag urtheilen – – Heinrich! Heinrich![62]

On Schröder's stage, the *Amtmann* assumes that the king will, without hesitation, read through the case file his servant has sent him and either confirm or alter his servant's recommendation according to his kingly judgment. He is an invisible force who nonetheless guides the legal drama to a close through messengers and written orders. His name is used to evoke fair judgment. On account of genre traditions, it would be very unlikely if not impossible for a *Fürst* to appear as a main figure in a bourgeois plays, the genre that so prominently features the bureaucrat. Instead, the sovereign is usually a benign and invisible presence, and the image of the sovereign is generally that of the merciful *Landesherr*. Some authors do, however, pose exceptions to this general absence of *Fürsten* in bourgeois plays or their benign representation, such as Lessing in his *Emilia Galotti* (1772) and, unsurprisingly, Schiller in his play *Kabale und Liebe* (1784). Indeed, the latter lampoons an uncaring sovereign who sells his subjects into war for money and whose court is

[61] *NA* 6, 191.
[62] Schröder 230.

apparently full of unjust and scheming abusers of power like President von Walter. If we look to Schröder's example above, in contrast, the king's presence in the play is meant to confirm his role as the guarantor of the good functioning of the legal system, not to challenge it or suggest improvements. Even Iffland's *Die Jäger*, in which legal corruption and the practice of torture is criticized, the *Fürst* is mentioned at various points of the play in a way that confirms the existence of a higher level of dependable justice and governance from which the corrupt local bureaucrat, the *Amtmann von Zeck*, has deviated. The fact of torture is not blamed on the sovereign or his government for keeping it in the lawbooks, it is blamed on the bad judge, the *Amtmann*, who resorts to it. In other words, the sovereign stands in for stability, peace, and order, not change.

While authors represent on stage models of reform for individual bureaucratic practice, which might encourage change from "within," what is conspicuously missing is an analog for higher levels of justice: this same type of very practical working model for the sovereign. The reason for this is likely twofold, first, the limitations of genre, and second, the concern for a dramatic plot—considerations that go hand in hand. The scope of a bourgeois play might encompass, for example, two former law students reminiscing about their days at law school bucking the *Aktenstyl* system, but a tragedy or a historical drama featuring a king might not, for example, linger on the issue of the disruptiveness of *Aktenversendung*. In other words, a play of princely scope, such as a tragedy or historical drama, will tend toward equally lofty or far-reaching legal themes. This is evident in Schiller and Goethe's tragedies and historical dramas. In Schiller's *Maria Stuart*, Queen Elizabeth and her advisors have a battle of conscience over *Justizmord* and regicide and in his *Don Karlos*, the Marquis Posa commands King Philipp to give all his people "Gedankenfreiheit." In a similar manner, in Goethe's *Götz von Berlichingen*, Götz invokes the law of feuding in an attempt to protect the lives and rights of his legal subjects.

Looking at three plays, Lessing's *Nathan der Weise* (1779), August von Kotzebue's *Hugo Grotius* (1803), and Schiller's *Maria Stuart* (1800), I will now turn to exploring more broadly the sovereign on the courtroom stage. I focus on how the sovereign sees him or herself as well as the guiding image of their role as judge. As presented in these three works, the sovereigns have understandings of themselves as figures who will also be judged by the public or by history, or both. Contrary to the 'absoluteness' of mercy and justice attributed to the representation of absolutist rulers in bourgeois plays, doubt and self-consciousness now enter their realm of judgment.

4.3.1 Lessing's *Nathan der Weise* (1779), Kotzebue's *Hugo Grotius* (1803), and Schiller's *Maria Stuart* (1800)

Of the *Fragments Controversy*, a theological debate between Gotthold Emphraim Lessing and Hamburg pastor Johann Melchior Goeze, Friederike von Schwerin-High observes that "Lessing often devised analogies, parables, and extended allegories that illustrated his conceptualization instead of addressing [Goeze's] complaints directly."[63] Indeed, if we consider Lessing's play *Nathan der Weise* to be in part an extension of this debate, as many scholars do,[64] both the author and the titular protagonist of the play have turned to this strategy of argumentation toward their particular ends. Taking inspiration from Boccaccio's *Decameron*, specifically the third story of day one, Lessing re-stages the contest of wits between the cash-strapped ruler Saladin and the Jew,

[63] Schwerin-High 279.

[64] This is one of the positions of Schwerin-High's article on *Nathan the Wise* (Schwerin-High 280) as well as in Klaus Berghahn and Monika Fick. Berghahn, Klaus L. "Lessing the Critic: Polemics as Enlightenment." In *A Companion to the Works of Gotthold Emphraim Lessing*, edited by Barbara Fischer and Thomas C. Fox, 67–87. Studies in German Literature, Linguistics, and Culture. Rochester, New York: Camden House, 2005, 80. See also: Fick, Monika. *Lessing Handbuch: Leben - Werk - Wirkung*. 4th ed. Stuttgart: Metzler, 2016, 445. Alternately, Steve D. Martinson considers *Nathan der Weise* as a "practical, dramatic expression" of Lessing's *Die Erziehung des Menschengeschlechts*. See: Martinson 158.

Melchizedek, for an 18th century audience in order to make an argument about religion and tolerance.

As portrayed by Lessing, Saladin is an enlightened absolutist, a *Willkürherrscher*, and a nihilist. In Scene 5 Act 3, Saladin tests Nathan the Jew's wisdom with a question: from the three religions, only one can be the true one. What, then, are the reasons that Nathan would choose one religion over the other? Saladin indicates he wishes to make the true religion his religion. Thus, he forces Nathan to assume the position of judge over the three religions. Being too clever as to assume authority over this question, Nathan decides to tell the Sultan a story instead: the ring parable. In it, a father must choose which of his three sons is his favorite and heir by giving one of them a ring containing a stone with magical properties. He cannot decide between his three sons, so he secretly orders the ring to be replicated twice, leaving him with three identical rings that not even he can tell apart. Realizing they have all been given the supposed magical ring, the three sons go to a judge to arbitrate the matter. According to Nathan, "die Söhne / Verklagten sich; und jeder schwur dem Richter, / Unmittelbar aus seines Vaters Hand / Den Ring zu haben. – Wie auch wahr!" To which Saladin impatiently asks: "Und nun, der Richter? – Mich verlangt zu hören, / Was du den Richter sagen lässest. Sprich!"[65] Note here that Saladin does not want to know what the judge says, but rather, what *Nathan* is going to have the judge say. This is a curious formulation and reveals that Saladin considers the story to be Nathan's creation, not a legend or pre-existing oral history. He very much understands the story as being rooted in his original question about the three religions to see how Nathan negotiates his role as a forced judge.

Nathan reveals that the judge refuses to give a judgment, commanding instead "Geht nur!" but also leaves the three sons with counsel: "Und wenn sich dann der Steine Kräfte / Bei euern

[65] *LW* 9, 558.

Kindes-Kindeskindern äußern: / So lad ich über tausend tausend Jahre / Sie wiederum vor diesen Stuhl. Da wird / Ein weisrer Mann auf diesem Stuhle sitzen / Als ich; und sprechen."[66] The three sons must wait for a wiser judge who can confidently sit in the judge's seat and pass judgment, but this will not come to pass for thousands of years. Through analogy, the story's conclusion then is this: it is, thus far, impossible for anyone to judge which of the three religions in Jerusalem—Islam, Christianity, or Judaism—is the true religion with any degree of certainty, save for God, who deliberately obscured his intentions in the first place. Nathan transitions from the story to his present moment with the Sultan and challenges the other to be this judge:

> Nathan. Saladin,
> Wenn du dich fühlest, dieser weisere
> Versprochne Mann zu sein: ...
> Saladin *der auf ihn zustürzt, und seine Hand ergreift, die er bis zu Ende nicht wieder fahren läßt*:
> Ich Staub? Ich Nichts? O Gott!
> Nathan. Was ist dir, Sultan?
> Saladin. Nathan, lieber Nathan! –
> Die tausend tausend Jahre deines Richters
> Sind noch nicht um. – Sein Richterstuhl ist nicht
> Der meine. – Geh! – Geh! – Aber sei mein Freund.[67]

When Nathan asks Saladin to take the judge's seat in the case of the magical ring, Saladin again understands it to mean judgment over the three religions and admits to Nathan that his is not worthy: "Ich Staub? Ich Nichts?" Nathan, by reproducing the initial case of judgment, has turned the question right back at Saladin, who rejects the position of judge. While religion and tolerance are the focus of the play *Nathan der Weise*, Lessing's ring parable told by Nathan no doubt also speaks generally to themes of power and the certainty of judgment. Saladin is indeed a judge, and he has the power to decide who lives and who dies in his realm. Earlier in the play, the reader finds out that Saladin chose to spare the life of a young Templar knight on a whim while executing others: because the Templar reminded Saladin of his brother. Thus, his characterization as a

[66] *LW* 9, 559-560.
[67] *LW* 9, 560.

Willkürherrscher. This parable, however, doubts the right of any person to simply possess the power of judgment by virtue of their position in life. Nathan's ring parable introduces doubt into the very idea of judgment, and Saladin's reaction to it becomes a moment of self-reflection and also doubt, even at the level of the sovereign whose power and judgment are supposedly absolute.

Central to the representation of the justice systems in the 18th century is certainty: the certainty of truth, authority, and judgement. The display of authority is the function of external symbols such as the *Richterstab*, robes, and wigs, of symbolic rituals of punishment, and in writing, the symbolic forms of address. Certainty is also established through trial procedure, which revolves around 'facts': an interrogation is held in order to extract a confession, and bringing that confession to paper makes it true and legally valid. *Relationen* carry information on what is known about a crime, yet have little interest in why or how the criminal came to commit it. A well-organized case file with all the facts, neatly written and succinctly formulated, is a reliable source of truth and will result in correct legal judgment. Many plays, such as Schröder's *Amtmann Graumann*, reinforce this image of justice, if not in detail, then at least in concept. What some authors do in response, on the other hand, is to take up this very idea of certainty in the appearance of official judgment in order to illuminate on stage the other side of the coin: the uncertainty and doubt that also accompanies judgment.

Lessing was not the first nor the last to stage doubt within the legal system and present a sovereign who doubts. Two further approaches to representing certainty and doubt of sovereign judgement around 1800 are the historical dramas, *Hugo Grotius* (1803) by Kotzebue and Schiller's tragedy, *Maria Stuart* (1800). Both plays were written in a far different artistic contexts as Lessing's *Nathan der Weise*, however. The age of the theater as a moral institution judged by its usefulness, which reached its peak in the 1780s, had somewhat faded. Additionally, dramatic

political and legal events had also impacted legal discourse: the French Revolution, war with France, and subsequent occupation brought about the sudden realization of radical ideas in law in many German territories. In a parallel to the French Revolution and Reign of Terror, both *Maria Stuart* and *Hugo Grotius* take place in times of civil tumult. Moreover, the sovereign figures in both plays cite reasons of state for justifying *Justizmord*, most prominently, preserving the public peace. In one, the result is the upkeep of the status quo. In the other, the result is extreme doubt.

We turn first to the work of dramatist and politician, August von Kotzebue, who was by far the most successful dramatist in German-speaking theaters of the late 18th and early 19th centuries.[68] His *Hugo Grotius: Ein Schauspiel in vier Aufzügen* begins with the titular protagonist, Hugo Grotius, the Dutch philosopher, imprisoned in a tower on the Maas River by the Prince of Orange. The Prince has recently executed the Dutch hero and rebel Barnevelt, a friend of Grotius, who he describes as "den großen Stifter der Republik." As long as he breathes, "grünt die Hoffnung der vereinigten Provinzen."[69] As a result of this execution, the Prince now faces great hostility against him. Meanwhile, the family of Grotius plots to secure the philosopher's escape to nearby Gorcum, Barnevelt's former stronghold. Although Grotius is at first reluctant to escape, his family succeeds in smuggling him out in a chest of books. In Scene 1 of Act 4, after Grotius has fled to safety to Gorcum, where he possesses the influence to whip its citizens into a rebellious uproar, the Prince of Orange laments alone:

> Daß er auch g'rade j e t z t entfloh,
> Der Unbiegsame, j e t z t, da Barnevelts Blut
> Für Ruh' und Ordnung m u ß t e fließen! – Ja,
> Des Volkes Herzen sind von mir gewendet;

[68] That being said, despite Kotzebue's belief, as expressed in a letter to friend Carl August Böttiger that *Hugo Grotius* was one of his best plays, audience reception was barely lukewarm. See André Georgi's afterword in: Kotzebue, August von. *Hugo Grotius. Ein Schauspiel in Vier Aufzügen*. Edited by André Georgi. Theatertexte 63. Hannover: Wehrhahn Verlag, 2018, 129. Subsequent citations as "Kotzebue" with page numbers.See also: "Vorwort" to: Birgfeld, Johannes, Julia Bohnengel, and Alexander Košenina, eds. Kotzebues Dramen: Ein Lexikon. 1st ed. Hannover: Wehrhahn Verlag, 2011.

[69] Kotzebue 16.

> Denn der Verräther, der an Frankreich bald,
> Und bald an Spanien uns verhandeln wollte,
> Bestach das Mitleid durch sein graues Haupt. –
> Willkommen war mir die Gelegenheit,
> Verblendete Gemüther zu gewinnen
> Durch Gnade gegen Hugo Grotius […][70]

Here, the Prince exposes his plan to use his legal position as judge, which gives him the power to grant mercy, or *Gnade*, to Grotius, as a way to win the favor of the people. He does not feel unjustified about his means because, according to him, the minds of the people had been blinded, or "verblendet." In the case of the judicial murder of Barnevelt, the Prince cites first the need for order, and second, the prediction that Barnevelt was going to ally with France and Spain as adequate justification for his beheading. The Prince was compelled ("mußte") in the name of "Ruh' und Ordnung" to have Barnevelt executed, thus for political ends. With this utterance, he also excuses himself of true responsibility for his judgment. He places responsibility onto necessity, as though it were not in the end his decision, and as though that decision was not made to preserve his own power. As we will see, the general trajectory of the play supports this position.

Kotzebue's Prince of Orange is represented as having a pragmatic and utilitarian understanding of his powers as the highest judge in the land. To him, imprisonment, execution, and mercy are all tools at his disposal to use for reasons of state.[71] The Prince does express some doubt about the difficulty of his political situation, but the effect is to add dramatic tension to the piece, not necessarily to put him 'on trial' before the audience. Most suspicions of his good

[70] Kotzebue 100.

[71] In a further example, Grotius' stepson, Mortiz Helderbusch, a lieutenant in the Prince's army, confesses that he is guilty of aiding the prisoner's escape. The Hauptmann reports that Helderbusch had pleaded for only one last mercy ("einz'ge letzte Gnade") from the Prince: to be beheaded honorably rather than hanged dishonorably. The Prince replies that "Es kann nicht sein" (Kotzebue 112). His reasoning is as follows: "Es thut mir weh', die Bitt' Euch zu versagen, / Doch urtheilt selbst, die Zeiten sind bedenklich, / Ein Krebs im Busen ist der Aufruhr, nicht / Durch *milde* Arzenei hemmt Ihr das Gift, / Ein scharfes *Messer* nur setzt ihm die Grenze. / Wenn Hugos *unbedingte* Freiheit plötzlich / Den Bürgerkrieg auf's Neu' entflammt, wer trägt die / *Schuld*? / Nur dieser Jüngling, und *ihn* dürft' ich *schonen*?" (Kotzebue 112). Thought they have sympathy for Helderbusch, the figures around the Prince eventually agree with his judgment as necessary harshness, or the "sharfe Messer."

intentions, as presented by the play, are swept aside at the end and replaced with the confirmation that the judicial murder of Barnevelt was indeed forgivable, if not justified, in the name of seeking to keep public order and peace.[72] In a somewhat inconsistent development in the plot, Grotius returns to the Prince at the end of the play and reveals that he had fled to Gorcum not for himself, but in order to attempt to extinguish the "Zwietracht Fackel" of "Parteigeist" there.[73] He reassures the Prince, who offers Grotius his hand:

> Will diese Hand des Friedens Segnungen
> Dem Vaterlande schenken, o so will
> Ich gern vergessen, daß sie Freundes Blut
> Vergossen. (*Er greift des Prinzen Hand*.)[74]

Grotius is willing to overlook Barnevelt's execution, regardless of its motivations or justness, so long as armed conflict can be avoided and peace restored.[75] The Prince's utilization of both harshness and mercy concerning the law are validated by his pursuit of political concord and Dutch unity. Thus, *Hugo Grotius* advances the idea that public peace is the end which justifies all means, subsequently also advancing the idea that public order supersedes justice.[76] Grotius' handshake in the last scene works to smooth away all doubt about the Prince's judgment.

---

[72] André Georgi has argued that Kotzebue's politics made it difficult for him to craft a coherent or satisfying end which spoke to the contemporary historical moment. On the play's reluctance to embrace the Dutch uprising under Barnevelt against the Prince of Orange, Georgi turns to the political context within which Kotzebue was writing in 1803: "Kotzebues politisch-ideologisches Ziel war es nicht, einen Volksaufstand gegen den eigenen Herrscher auf die Bühne zu bringen - sein Ziel war die größtmögliche Einheit der deutschen Staaten im Kampf gegen Napoleon" (Kotzebue 141).

[73] Kotzebue 123.

[74] Kotzebue 125.

[75] Of the somewhat surprising ending, Bernd Zegowitz suggest that *Hugo Grotius* is a "Rührstück im Gewand eines historischen Dramas," as the interest of the play lies more in returning the threatened Grotius family in its "heilen Idealzustand," than in the historical political issues implied by the story's premise. Zegowitz, Bernd. "Hugo Grotius." In *Kotzebues Dramen. Ein Lexikon*, edited by Johannes Birgfeld, Julia Bohnengel, and Alexander Košenina, 109–10. Hannover: Wehrhahn, 2011, 110.

[76] Curiously, while Kotzebue's Grotius emphasizes the figure's dedication to the historical Grotius' view that a basic characteristic of human beings is that they strive for a quiet, orderly life amongst others, the play leaves out almost any other legal philosophical consideration that the historical Grotius is typically known for, namely, his role in the resurgence of Natural Law and secularization, which posits that authority and tradition no longer determine what is true law—only what is rational and reasonable should be valid. See: Kaufmann and Pfordten 44-45.

In contrast to the harmonious resolution of Kotzebue's play, in which all injustice is forgiven and the restoration of order is certain, Schiller's *Maria Stuart* interrogates the very conflict of state utility versus justice, as well as the conscience of the sovereign who is tempted to use the power of their office in matters of justice for political expediency.[77] In the first act of the play, Mary, Queen of Scots has been found guilty of conspiring against the throne of England by an English court. On the topic of her judges, she tells Lord Burleigh, the most vocal advocate for her execution, why she does not trust that those who judge are truly serving justice:

> […] Nicht der eigne Nutzen
> Regiert Euch, Euch regiert allein der Vorteil
> Des Souveräns, des Landes. Eben darum
> Mißtraut Euch, edler Lord, daß nicht der Nutzen
> Des Staats Euch als Gerechtigkeit erscheine.[78]

She introduces the conflict between "Nutzen des Staats" and "Gerechtigkeit" that arises as the central moral dilemma for her rival, Queen Elizabeth. In order to make Mary politically harmless, Elizabeth's government passed a law the previous year that made the act of conspiring for the throne punishable by death. Under the advisement of the court that had found Mary guilty of breaking this very law, Elizabeth now considers the penalty of death for her cousin. Leaving Mary alive, after all, could result in Elizabeth's ousting as Queen and subsequent civil war as the two

[77] In a study of the legal aspects of *Maria Stuart*, Maria Carolina Foi investigates the press around the execution of Louis VXI of France, in which the same issues of utility and justice are in question and find echoes in Schiller's play. She presents the play as an anachronism to the trial of the French king: "Zu Recht wurde behauptet, Maria Stuart sei der konequenteste Ausdruck der zeit- und geistesgeschichtlichen Wende ihres Autors angesichts der Enttäuschung über die Französische Revolution. Zur schönen Seele gewandelt, würde die schottische Königin auf eine versöhnte Menschheit anspielen, die aber utopisch bleibt, denn die erstrahlt nur an der Schwelle zum Tod." Foi, Maria Carolina. "Recht, Macht und Legimitation in Schillers Dramen. Am Beispiel von Maria Stuart." In *Friedrich Schiller und der Weg in die Moderne*, edited by Walter Hinderer, 227–42. Stiftung Für Romantikforschung 40. Würzburg: Königshausen & Neumann, 2006, 233. Subsequent citations as "Foi" with page numbers. Alternately, Yvonne Nilges provides a close study of the legal-philosophical and historical conditions of contemporary 18th century cases, including Louis XVI and Marie Antoinette, that are thematized in the play, with special emphasis on Schiller's play as a conversation partner of the writings of Hugo Grotius, with which Schiller was familiar (Nilges, 291-316). Nilges contends that "Es ist nicht das 'Tribunal der Geschichte,' das Schiller zwischen Recht und Unrecht abzuwägen angehalten wissen möchte, sonder – nun wieder im Sinne der Schaubühnen-Rede und der Ästhetischen Erziehung – das 'nachdenkende' und zeitgeschichtlich 'instruierte,' zu Mundigkeit und größerer Gerechtigkeit aufstrebende Publikum" (Nilges 316).

[78] *NA* 9, 31.

sides wrestle for power. As Burleigh presents the situation to his queen: "Ihr Leben ist dein Tod! Ihr Tod ist dein Leben!"[79] Elizabeth is the only judge in the kingdom with the authority to order the execution of Mary, even if Mary does not recognize Elizabeth or her tribunal of Englishmen as her rightful peers. Elizabeth is likewise the only person with the authority to grant Mary mercy. When considering this apparent conflict of interest, Talbot, a trusted advisor of Elizabeth and sole voice of advocacy for Mary, suggests urgently to the English Queen that she should "auf ein ander Mittel sinnen, / Dies Reich zu retten – – denn die Hinrichtung / Der Stuart ist ein ungerechtes Mittel."[80] She leaves the meeting to consider the counsel of her advisors, but shortly thereafter recruits Mortimer, a double agent working for Mary's uncle, a French Cardinal, to assassinate Mary in an extrajudicial operation to solve her political problems.

After a separate failed assassination attempt against Elizabeth's life, an English courtier reports that a "Schrecken geht durch London" that papists have invaded the city to depose Elizabeth and make Mary Queen. "Der Pöbel glaubts und wütet," he continues, then concludes "Nur das Haupt / Der Staurt, das noch heute fällt" can allay their fears.[81] Burleigh then commands Elizabeth, concluding that she has no choice in the matter: "Gehorche / Der Stimme des Volks, sie ist die Stimme Gottes."[82] As Elizabeth perceives it, at stake in her next judgment is the peace of the kingdom. The will of the people, according to Burleigh, stands ready as "the voice of God"—an excuse to unburden herself of responsibility for Mary's death. The voice of God is, after all, the voice of certainty in judgment. The Queen's physical reaction to the news of the public uproar, according to the stage directions, are telling: *unentschlossen mit sich selbst kämpfend*, as she laments that even if she does bend to the will of the raging people, public opinion could still turn

[79] *NA* 9, 49.
[80] *NA* 9, 50.
[81] *NA* 9, 122.
[82] Ibid.

against her later.[83] The stage direction "*unentschlossen*" contradicts the monolithic appearance of sovereign judgment as certain and absolute. As with many of his tragic figures, Schiller prefers to investigate the cracks of uncertainty in the powerful rather than their heroic resoluteness. Behind the veneer of the crown there is a war of morality and practicality in Elizabeth's decisions. But her concerns do not end there: Talbot cautioned her earlier that history and the world will judge her, casting doubt upon her right to execute the Scottish Queen and doubt upon her ability to judge.[84]

Seeing Elizabeth waver between two paths of action, Talbot then counsels that "Die Furcht, ein blinder Wahn bewegt das Volk, / Du selbst bist außer dir, bist schwer gereizt, / Du bist ein Mensch und jetzt kannst du nicht richten."[85] This is strikingly similar to the advice that Pastor Seebach gives to the *Amtmann* in Iffland's *Die Jäger*, when he says there, too, that "Der Richter ist Mensch" and can be swayed by the fury of the mob.[86] Elizabeth, like the *Amtmann*, rejects this characterization, perhaps in agreement with the *Amtmann*'s reply that sentiment and emotion "darf den Richter nicht beugen."[87] However, one of the tragedies of Elizabeth in her role as monarch is that she has come to believe that she must essentially avoid showing her humanity—especially her emotions and her sex—in order to rule effectively as a queen. After all, these views are reinforced by her courtiers who, like Leicester, believes he can manipulate Elizabeth because of their romantic connection, who, like Burleigh, wishes her to become the conscienceless puppet of an angry mob, and who, like Paulet, are suspicious of Mary, Elizabeth's foil, precisely because they perceive her as a sensual figure, one guilty of "Weiberlist".[88] Indeed, it is Mary who freely describes herself as

[83] *NA* 9, 123.
[84] "Nicht Stimmenmehrheit ist des Rechtes Probe, / England ist nicht die Welt, dein Parlament / Nicht der Verein der menschlichen Geschlechter" (*NA* 9, 50).
[85] *NA* 9, 124.
[86] Iffland, *Die Jäger*, 102.
[87] Iffland, *Die Jäger*, 103.
[88] *NA* 9, 3.

a "Mensch" and her actions as "menschlich" before Elizabeth and her court.[89] Even Talbot, referring to the grave mistakes of Mary's youth, angers Elizabeth when he says that "das Weib" is "ein gebrechlich Wesen."[90] On the other hand, he is also the only voice in Elizabeth's court who makes the connection between acting as a queen and judge while also remaining a subjective human being who does indeed have emotions, prejudices, and moments of weakness. These are all things that Talbot believes must be consciously accounted for in Elizabeth's understanding of her official roles.[91]

The English Queen, perhaps not unlike Kotzebue's Prince of Orange, feels compelled by the situation, and she requests that an order of execution be drawn up. Alone, after asking rhetorically why she ever tried to practice justice rather than simple despotism,[92] she signs the order "*mit einem raschen, festen Federzug, läßt dann die Feder fallen, und tritt mit einem Ausdruck des Schreckens zurück*."[93] As Elizabeth validates the order with her name, her affect is that of horror, cementing the idea that even the highest judgment by the highest judge does not guarantee righteousness. She then calls Davidson, her secretary, and hands him the signed order with the words: "Und dieses Blatt – –Nehmt es zurück – –Ich legs / In Eure Hände."[94] When Davidson realizes that he is holding Mary's execution order, he becomes fearful. The Queen says curtly: "Ich

[89] *NA* 9, 92. "Ich habe menschlich, jugendlich gefehlt […]" and "Ich habe / Ertragen, was ein Mensch ertragen kann." Schiller considered Mary's character to be that of a "physisches Wesen" who sparks heavy passion rather than tenderness (*NA* 30, 61).

[90] *NA* 9, 52. We get a sense of the pressure Elizabeth perceives on account of being a woman monarch, when she responds: "Das Weib ist nicht schwach. Es gibt starke Seelen / In dem Geschlecht – –Ich will in meinem Beisein / Nichts von der Schwäche des Geschlechtes hören."

[91] Thomas Diecks concludes that the actuality of Schiller's *Maria Stuart* comes from psychological treatment of his figures, in that he attributes their motivation not only to rational sources, such as *Staatseifer* or *Staatsräson*, but rather to individual human psychology within a political situation. Diecks, Thomas. "'Schuldige Unschuld': Schillers Maria Stuart Vor Dem Hintergrund Barocker Dramatisierungen Des Stoffes." In *Schiller Und Die Höfische Welt*, edited by Achim Aurnhammer, Klaus Manger, and Friedrich Strack, 233–46. Tübingen: Max Niemeyer, 1990, 245..

[92] *NA* 9, 128. "Warum hab ich Gerechtigkeit geübt, / Willkür gehaßt mein Leben lang, daß ich / Für diese erste unvermeidliche / Gewalttat selbst die Hände mir gefesselt! / Das Muster, das ich selber gab, verdammt mich!"

[93] *NA* 9, 129.

[94] *NA* 9, 130.

geh und überlaß Euch Eurer Pflicht." To which Davidson, out of abject dread, "*tritt ihr in den Weg*" and defies her in a plea to receive a direct order: "Nein, meine Königin! Verlaß mich nicht, / Eh du mir deinen Willen kund getan." After berating him, the Queen leaves Davidson without clarifying her wishes, and alone, he cries to himself:

> Sie geht! Sie läßt mich ratlos, zweifelnd stehn
> Mit diesem fürchterlichen Blatt – –Was tu ich?
> Soll ichs bewahren? Soll ichs übergeben?[95]

The "fürchterlichen Blatt" is a document and symbol of certainty, but its order of execution still relies on the human individuals around it, who are filled with doubt. In the end, Elizabeth wishes to transfer the responsibility of regicide and *Justizmord* on to another person, or simply to happenstance. Indeed, Burleigh finds Davidson with the signed order and executes it immediately. Later, Elizabeth denies that she ordered the execution to take place, but rather had merely signed the document; as she justifies it to herself: "Ein Blatt Papier entscheidet / Noch nicht, ein Name tötet nicht."[96] By the close of the play, Elizabeth is represented as entirely unable to make judgments in her role as sovereign. She wants Mary dead in order to restore public order and to secure the future of her own rule, but she does not want to face the repercussions of public opinion and perhaps also her own conscience.[97] She is obsessed with her image, because the image that a sovereign must present is one of certainty—whether she granted mercy to Mary, and was thus merciful, or whether she ordered her execution, and was thus justified in the name of keeping

[95] *NA* 9, 132.

[96] *NA* 9, 130. Note that this line is the opposite of what Marquis Posa, who claims that a "Federzug" can change the world, says to King Philipp in *Don Karlos* (*NA* 6, 191). In this same scene, he also mentions that many of the Dutch have already fled to Elizabeth, and the British are reaping the benefits of the contributions of their new residents (*NA* 6, 190).

[97] Elizabeth's tormented soliloquy is a quintessential self-staging of a trial before a theater audience, in which her attempts to justify an unethical action only result in deepening her guilt. However, on the stage's judgment of the abuse of power presented in the play, Foi further concludes that: "Die radikale Infragestellung einer politisch motivierten Hinrichtung, die Kritik an einer Verurteilung zum Tode zu staatspolitischen Zwecken, wird eher dargestellt als argumentiert. Die brutale Reduktion Marias auf ein physisches Wesen in der Hinrichtungsszene verweist auf die brutale Reduktion des juristischen Diskurses im Dienst der Macht" (Foi 238).

order. There is nothing, as the play *Maria Stuart* shows, more damning for a monarch than to make a judgment with the appearance of uncertainty. Despite the fact that, as Talbot states, the monarch is indeed human, the maintenance of the law by the sovereign relies on the appearance of infallibility. Doubt cannot play into their self-presentation, and yet doubt is what is presented on stage.

4.4 Conclusion

Far from these representations of Sultan Saladin and Queen Elizabeth is the image of the biblical King Solomon who wisely uses his royal seat to reveal truth through judgment. Even further away is the image of Jesus Enthroned on Judgment Day. And so is the appearance of certainty presented in official documents in the German territorial state. This is perhaps the moment where enlightened thought and stage coalesce: in their close examination of doubt. To have a monarch waver over a political and moral question on stage over the course of four acts in such psychological detail, as Schiller does—even in the shortened form of a stage manuscript—and to have in the very end that monarch fail, is an exceptional presentation of uncertainty and moral chaos at the highest level of authority. The stage presents the 'heat' of the moment of its audience. While the audience is made aware of Elizabeth's panic and internal struggle through observation of the action and dialogue on stage. Moreover, the audience stands as judge, but the stage guides the onlooker also to intimately familiarity with the queen's heightened emotions and state of duress. Something that does not transpire in written law. *Maria Stuart* is not just a humanization—in the most neutral sense of the word—of the two queens, Mary and Elizabeth; it is a humanization of judgment in general, including that of absolutist heads of state and governments.

In a further act of centering humanity, the courtroom stage argues that the legal system should not function as a mere bureaucracy to uphold the state. Condemning the disregard for justice in favor of utility, especially by those who sit in the highest seats of judicial power, the courtroom stage presents the individual as the *raison d'être* of the legal system. In a more practical but limited scope, the stage presents role models to judges and bureaucrats, including examples of moral failures, in the effort to guide public opinion. There is the potential for reform in figures like Wenzel's *Bürgermeister* and Iffland's *Secretair Ahlden*, who are supposed to be figures of identification and emulation for the audience. Indeed, the *Secretair* functions explicitly as the representative figure of reform on stage. However, this effort is located overwhelmingly on the level of the individual bureaucrat, who, in the end, cannot effect sweeping changes, even though plays like *Verbrechen aus Infamie* address legal problems that require a broad response. To some extent, Schiller's *Verbrecher aus verlorener Ehre* begins with this same assumption. The narrator's emphasis is initially on writing style and representation within existing trial procedure, then moves on to suggest that judges themselves need to change their understanding of their work. By its end, however, the story concludes that trial procedure itself in Württemberg is flawed because it makes emotion impossible and removes human elements from judgment. The plays of Rautenstrauch, Iffland, and Wenzel do not necessarily arrive at the same conclusions as, for example, Schiller does in *Verbrecher* or as Goethe does in *Wilhelm Meisters Lehrjahre*, in which, from Wilhelm's perspective, the courtroom scene becomes a stage. However, what speaks for these bourgeois plays is the great detail and depth of their literary engagement with contemporary legal issues and procedures. Perhaps, this is a side effect of the audience's expectations of "dem

Wirklichen" in portrayal of characters and selection of subject matter, usually deriving from 'everyday' experience.[98]

To conclude, let me return one more time to the scene in Rautenstrauch's *Der Jurist und der Bauer* in which Lanze and Geyer discuss the *Dorfrichter* who made a judgment in a state of legal "Unwissenheit." Lanze, who might count himself a colleague of the *Dorfrichter*, does not extend the beleaguered man any benefit of the doubt or leniency. From his perspective, the *Dorfrichter*'s incompetence constitutes not just a legal misstep, but a moral failing as well. Having failed morally in his profession for not having consulted with an expert in one of his judgments results in a fellow man, the blacksmith, bearing the legal consequences. To insert enlightened bourgeois morality into areas of life that did not have them is typical of the courtroom stage in general. But in addition to inserting this morality into the realms of nobility, the courtroom stage also infuses bureaucracy with higher moral stakes. There is moral consideration in paperwork, which is not so far off from the spirit of Justus Claproth's insistence that jurist not color written legal reports with their own interjections and opinions. Mundane as it is, many authors worked in these bureaucratic roles themselves, and their plays recognize the piecemeal power that little bits of paper and writing, especially legal writing, had over the lives of the people. In courthouse art of the early modern period, for example, biblical scenes of judgment adorned the walls, not just as a religious warning of eternal damnation directed at those being accused, but also—and perhaps especially—at the judges, lest they contribute to the miscarriage of justice. In a more practical capacity, absolutist rulers often policed their bureaucracies with fines and other punishments because transgressions like bribery undermined the authority of the absolutist and his government.

[98] Salehi 175. Annette Antoine argues that this very point is why the somewhat 'mainstream' bourgeois dramas of Iffland, such as *Verbrechen aus Ehrsucht*, were in general more successful *as* a representation of the genre on stage than the bourgeois plays of Schiller, most notably *Kabale und Liebe*, which features court conspiracy, a mistress, poisonings, and suicide (Antoine 238).

In the late 18th century, it is the stage that presents bureaucratic failures as immoral—as offenses against humanity. Notice that most of the 'bad' bureaucrats in the selected plays like Fettig, Geyer, the *Gerichtsschreiber* in Wenzel's *Verbrechen*, and the *Amtmann von Zeck* are not punished as part of the stories. They are, however, punished on stage through the exposition of their vice and their moral failings to the audience who judges them. In addition to public shaming, these plays argued for the betterment of those working within the legal bureaucracy or those sitting in the judges' seat with the hope that the execution of justice might be made more humane. Even more importantly, they advocated for putting human subjectivity center stage. By encouraging its audience members to feel fully human—or in the words of Schiller, "Mensch seyn"—the courtroom stage challenged judges not to separate their humanity from their official roles as judges either in the courtroom or in the palace.

CONCLUSION

From the practical concerns of a "förmliches Protokoll" in Goethe's *Wilhelm Meisters Lehrjahre* to the more conceptual questioning of a sovereign's fitness to judge in Lessing's *Nathan der Weise*, literature of the late 18th century engaged with contemporary issues in law. This study considers questions of legal reform in the German territorial states and the ways in which authors inserted themselves in those legal debates. By reading literary, dramatic, and theoretical works by Goethe, Schiller, Lessing, Iffland, and others, along with criminal trial protocols, legal philosophical essays, law books, and other legal historical materials, I argue that writers actively contributed to public discussions about reform. Not only were they thematizing the justice system on stage, they were also imagining new legal possibilities and proposing models for reforming the legal system.

Authors and legal reformers alike perceived serious inadequacies in contemporary trial procedure. Fragmentations, be it spatial, temporal, or psychological, that kept the accused and the judges distant from one another, were at the center of these. Spatially, there was almost always a great distance between judge and the accused. Making judgments under Roman Law required a highly specialized legal education which many local judges did not have. As a result, many trials could only be resolved by sending case files to distant cities, courts, and law faculties in order to solicit expert opinions. The fact that many absolutist rulers were centralizing their governments and therefore transferring the power of judgment away from local courts to higher courts contributed to the need for these multi-instanced trials, resulting in further delays in trial procedure. On top of these spatial and temporal disruptions was the problem of writing and representation. The gulf between the facts of the case as described in the case file and the lived,

subjective, and emotional conditions of life were intentionally excluded from the record. Taken all together, these forms of perceived fragmentation led authors in literature to depict the contemporary justice system as detached, uncaring, and disinterested in humanity.

If the justice system was considered to be fragmentary, immediacy was the goal for both authors and reformers. Reform-oriented plays like Iffland's *Die Jäger* and Wenzel's *Verbrechen aus Infamie* forefronted the concept of immediacy as an antidote to the coldness and distance of the law. Even works that defer to the status quo, such as Schröder's *Amtmann Graumann*, still insisted on depicting some sort of directness in trial procedure. In the case of *Amtmann Graumann*, it is the swift and direct participation of the King in the play's criminal trial that made the so-called *Aktenversendung* appear seamless. What these plays offer to the public is the image of the stage as a model to repairing fragmentation, creating immediacy in the legal process, and centering human subjectivity. More generally speaking, the theater, with its live performances in front of an audience, was to serve as a corrective to a justice system dominated by writing. That is not to say that writing must always be ineffective in the pursuit of justice. As authors like Schiller pointed out, there are narrative techniques that can bring about the feeling of directness. His own story of Christian Wolf explores several ways of doing this, including an ending that mimics the form of dramatic writing. As advocated for in his *Verbrecher aus verlorener Ehre* and Iffland's *Verbrechen aus Ehrsucht*, legal writing should tend toward the same qualities of theater in its execution. While reformers emphasized the corruption in judgment that could take place behind closed doors, writers rather emphasized the perceived injustice of a person being judged only on the basis of reports. Hence, the turn to interiority. They advocate for a practice of judgment which is free to consider the person as a whole rather than bound to an automatic process of matching offenses with pre-designated punishments.

In addition to promoting the immediacy of the stage as something trial procedure should emulate, authors also worked toward centering human subjectivity through exemplary figures in their plays who served as role models of these principles in practice. In Iffland's *Die Jäger*, Pastor Seebach wants the *Amtmann von Zeck* to imagine he has witnessed a sentimental play, while in his *Verbrechen aus Ehrsucht*, *Secretair Ahlden* uses narrative strategies of immediacy to represent his client in court. In Wenzel's *Verbrechen aus Infamie*, the *Bürgermeister* overcomes the distance between judge and accused with a "Händedruck." The advantage of the stage is that it is not bound to any particular trial procedure, as the judges and jurists of the legal system are, but rather to the higher principles of justice and moral truth. By presenting a new kind of justice, these authors drew attention to the current conditions of legal procedure and the need for reform. And by putting these ideas on stage, they also served an important role in making the conversations about the law and legal reform public. Not only did authors understand literature and theater as helping to shape legal reform, they saw their works—at that time *Leitmedien*, or key media—as shaping civil society and state politics.

By contextualizing literature that thematized law in their legal historical contexts, I have argued that writers were concerned with issues in legal reform discourse. Looking at the 19th century, the concepts of orality, publicness, and immediacy rise further in importance in this discourse as well as in plays. With an eye on later development, I see an opportunity to trace how the debate on legal reform changes during the tumultuous and revolutionary period between the late 18th century and the early 19th century. Indeed, the legal historical conditions in the German territorial states around 1800 shift radically in the wake of the French Revolution in 1789. This event, followed by war with France, the subsequent occupations, the dissolution of the Holy Roman Empire in 1806, and the introduction of French laws under Napoleon changed the

landscape of legal reform considerably. Additionally, the excitement surrounding the role of the enlightened stage as site of moral education and judgment waned, giving way to an emphasis on the autonomy of art over its pedagogical usefulness to the state. For legal reformers, this was a time of opportunity as well as grave difficulty. For example, public trial-by-jury in France and the occupied Rhineland was a radical break away from the writing-based procedures of the early modern era. Yet this new procedure of justice was also met with extreme suspicion. Specifically, critics were suspicious that the court of law would actually become theater. Here, the influential jurists Paul Johann Anselm von Feuerbach and Carl Mittermaier take center stage as they navigated the opportunity for reform within existing traditions.

Exploring these tensions would be the natural next step for my project on the relationship between justice and the stage. This further investigation would allow me to ask questions like: what happens to concepts of legal reform in art? With their plays about justice, to whom were authors of this time speaking? And what were their goals? To answer these questions, Heinrich von Kleist's novellas and dramas open new paths to engage to those core issues in contemporary and past justice, especially his stories *Der Zweikampf* (1811) and *Michael Kohlhaas* (1808-1810) as well as his plays *Der zerbrochne Krug* (1808) and *Der Prinz von Homburg* (1811). Also, Georg Büchner's *Dantons Tod* (1835) could serve as an important play for thinking through 19th century representations of justice, insofar as his play investigates the anxieties surrounding the topic of trial by jury in the context of the horrors of the Reign of Terror. By including an in-depth investigation into the legal discourses surrounding the French Revolution, the major projects of law codification in the German territories in the early 19th century, and the transformation of the theater's political and social role from 1800 onward, I could further explore the dynamic historical relationship between law and literature during moments of revolution and reform.

Ultimately, the goal of my research of 18th century law and literature is to consider the broader significance that literature has for law, insofar as literature and theater were important cultural media that were the site of many debates. As a contribution to the fields of law and literature, the findings of my study highlight the idea that there was a substantial exchange of ideas between reformers who wrote about the law and authors who wrote for the stage. Furthermore, this study illuminates the importance of considering legal reform debates when interpreting and understanding literature about justice. Because literary authors were free to imagine forms of justice beyond the confines of actually existing legal systems, their works served as concrete and often powerful critiques, suggestions, and models for legal reformers who wanted to infuse the law with enlightened justice and humanity.

REFERENCES

Manuscripts

"Barbara Veil von Schlaitdorf wird wegen Kindestötung enthauptet." 1741. A 209 Bü 1967. Oberrat: Kriminalakten. Hauptstaatsarchiv Stuttgart. Manuscript.

"Johann Friedrich Hezel von Sulz wegen Betrug durch Geisterbeschwörerei / 1792," 1792. Bestand A 309 / Bestell. Nr. Bü 342. Hauptstaatsarchiv Stuttgart. Manuscript.

"Supplik des Constablers Johann Georg Becker und seiner Ehefrau Anna Margarethe aus Weimar um Erlass der ihrer Tochter bzw. Stieftochter Dorothea Susanne Groß auferlegten Pranger- und Zuchthausstrafe wegen unehrenhafter Schwängerung." 1771. B 2717. 6-12-3007 Rechtspflege. Landesarchiv Thüringen - Hauptstaatsarchiv Weimar. Manuscript.

"Susanna Barbara Stattmüllerin von Tailfingen wird wegen Kindestötung zum Tode verurteilt." 1740. A 209 Bü 2047. Oberrat: Kriminalakten. Hauptstaatsarchiv Stuttgart. Manuscript.

"Untersuchung gegen den im Zuchthaus zu Weimar befindlichen Goldmacher Christian Friedrich Tausch aus Schönau," 1737-1742. B 2655. 6-12-3007 Rechtspflege. Landesarchiv Thüringen - Hauptstaatsarchiv Weimar. Manuscript.

"Waldburga Groß aus Hegnach wird wegen Kindestötung zu lebenslänglichen Zuchthaus verurteilt. 1742." A 209 Bü 2060. Oberrat: Kriminalakten. Hauptstaatsarchiv Stuttgart. Manuscript.

"Weisung an den Amtman zu Allstedt, Gottlieb Wilhelm Voigt, die Streitsache zwischen Christian Vollmann und Christian Liebold ohne Anstand der Justiz gemäß ab zutun und den Leuten nicht vergebliche Kosten zu machen." 1744. B 2441. 6-12-3007 Rechtspflege. Landesarchiv Thüringen - Hauptstaatsarchiv Weimar. Manuscript.

Primary Sources

Goethe, Johann Wolfgang. *Sämtliche Werke, Briefe, Tagebücher und Gespräche*. Edited by Friedmar Apel. 40 vols. Bibliothek Deutscher Klassiker 82. Frankfurt am Main: Deutscher Klassiker Verlag, 1992.

– – – – –. *Aus Meinem Leben. Dichtung und Wahrheit.* Edited by Walter Hettche. Vol. 1. 2 vols. Universal-Bibliothek 8718. Stuttgart: Reclam, 1991.

Iffland, August Wilhelm. *Die Jäger: Ein ländliches Sittengemälde in Fünf Aufzügen*. Edited by Jürg Mathes. Stuttgart: Reclam, 1976.

– – – – –. *Verbrechen aus Ehrsucht: Ein Ernsthaftes Familiengemälde in Fünf Aufzügen*. Edited by Alexander Košenina. Theatertexte 45. Hannover: Werthahn, 2014.

Kotzebue, August von. *Hugo Grotius. Ein Schauspiel in Vier Aufzügen*. Edited by André Georgi. Theatertexte 63. Hannover: Wehrhahn Verlag, 2018.

Lessing, Gotthold Ephraim. *Werke Und Briefe*. Edited by Wilfried Barner. 12 vols. Bibliothek Deutscher Klassiker. Frankfurt am Main: Deutscher Klassiker Verlag, 1985.

Rautenstrauch, Johann. *Der Jurist und der Bauer: Ein Lustspiel in Zween Aufzügen*. Edited by Matthias Mansky. Theatertexte 62. Hannover: Wehrhahn Verlag, 2018.

Rousseau, Jean-Jacques. "Letter to M. d'Alembert on the Theatre." In *Politics and the Arts*, translated by Allan Bloom, 3–137. Glencoe: The Free Press, 1960.

Schiller, Friedrich. *Schillers Werke Nationalausgabe*. Im Auftrag des Goethe- und Schiller-Archivs und des Schiller Nationalmuseums. Julius Peterson and Hermann Schneider, eds. Weimar: Hermann Böhlaus Nachfolger, 1953.

Schröder, Friedrich Ludwig. *Amtmann Graumann, oder die Begebenheiten auf dem Marsch. Ein Schauspiel in Vier Aufzügen*. In *Dramatische Werke*, edited by Eduard von Bülow, 1. Berlin: G. Reimer, 1831, 199-244.

Sulzer, Johann Georg. *Allgemeine Theorie der Schönen Künste in Einzeln, nach Alphabetischer Ordnung der Kunstwörter auf Einander Folgenden, Artikeln Abgehandelt*. 2 vols. Leipzig: M.G. Weidmanns Erben und Reich, 1774.

– – – – –. "Philosophische Betrachtungen über die Nützlichkeit der Dramatischen Dichtkunst." In *Johann George Sulzers Vermischte Philosophische Schriften*, 1:146–65. Leipzig: Weidmanns Erben und Reich, 1773 [1760].

Wenzel, Gottfried Immanuel. *Verbrechen aus Infamie: Eine Theatralische Menschenschilderung für Richter und Psichologen in Drei Akten*. Edited by Alexander Košenina. Theatertexte 43. Hannover: Werhahn, 2014.

Wolff, Christian. *Gesammelte Werke.* 1. Abt. Vernünftige Gedanken (4). Politik. Edited by Hans Werner Arndt. Vol. 5. Hildesheim, New York: Georg Olms, 1975. [Re-print of the 1736 edition].

Works Cited

"Gesetz, betreffend die Grundrechte des deutschen Volkes" In: *Reichs-Gesetz-Blatt*. 27 December 1848. Part 8. Frankfurt am Main: Naumann's Druckerei.

Gesetze im Internet. Bundesamt für Justiz / Bundesministerium der Justiz und für Verbraucherschutz. https://www.gesetze-im-internet.de/

Anonymous. "Mimer und seine jungen Freunde: Heimdal, oder unser Zeitalter. Erstes Gespräch." in: *Thalia* (1785–1791), ed. Friedrich Schiller, Vol. 3, Issue 12. Lepzig: G.J. Göschen'cshe Verlag, 1791. 98–143.

Alt, Peter-André. *Schiller: Leben - Werk - Wirkung*. 2 vols. Munich: C.H. Beck, 2000.

Antoine, Annette. "Verbrechen aus Ehrsucht (1784)." In *Ifflands Dramen: Ein Lexikon*, edited by Alexander Košenina and Mark-Georg Dehrmann, 234–39. Hannover: Wehrhahn Verlag, 2009.

Arendt, Hannah. *Eichmann in Jerusalem: A Report on the Banality of Evil.* New York: Viking Press, 1963

Arndt, Andreas. "Unmittelbarkeit." In *Historisches Wörterbuch der Philosophie*, edited by Joachim Ritter, Karlfried Gründer, and Gottfried Gabriel, 11:236–41. Darmstadt: Wissenschaftliche Buchgesellschaft, 2001.

Baldauf, Dieter. *Die Folter: Eine Deutsche Rechtsgeschichte*. Köln, Weimar, Wien: Böhlau Verlag, 2004.

Beccaria, Cesare, marchese di. *An Essay on Crimes and Punishments, Translated from the Italian; with a Commentary, Attributed to Mons. de Voltaire, Translated from the French*. Translated by Anonymous. 2nd ed. London: F. Newbery, 1769.

Berghahn, Klaus L. "Lessing the Critic: Polemics as Enlightenment." In *A Companion to the Works of Gotthold Emphraim Lessing*, edited by Barbara Fischer and Thomas C. Fox, 67–87. Studies in German Literature, Linguistics, and Culture. Rochester, New York: Camden House, 2005.

Bloom, Allan, trans. *The Republic of Plato*. 2nd ed. New York: Basic Books, 1968.

Bollen, Magelone. *"Urtheil und ein schönes Lied": Das Armesünderblatt (1750-1820) in der Sammlung "German Criminology Collection" der Michigan State University*. Dissertation. Michigan State University, 2013, 55-64.

Brandstätter, Horst, ed. *Asperg - Ein Deutsches Gefängnis. Der Schwäbische Demokratenbuckel und Seine Insassen: Pfarrer, Schreiber, Kaufleute, Lehrer, Gemeines Volk und Andere Republikanische Brut.* Haus der Geschichte Baden-Württemberg. Ubstadt-Weiher: verlag regionalkultur, 2015.

Brandstetter, Gabriele. "Die andere Bühne der Theatralität: *movere* als Figur der Darstellung in Schillers Schriften zur Ästethik." In *Friedrich Schiller Und Die Weg in Der Moderne*, edited by Walter Hinderer, 287–304. Würzburg: Königshausen & Neumann, 2006.

Brown, Christiane. "'Der Widerwärtige Mißbrauch der Macht' or 'Die Verwandlung der Leidenschaften in Tugendhafte Fertigkeiten' in Lessings *Emilia Galotti*." Edited by Richard E. Schade. *Lessing Yearbook* 17 (1985): 21–43.

Claproth, Justus C. *Grundsätze von Verfertigung der Relationen aus Gerichtsacten*. 3rd ed. Göttingen: Wittwe Vandenhoeck, 1778.

– – – – –. *Kurze Vorstellung des Civil-Processes*. Göttingen: Wittwe Vandenhorck, 1766.

Diecks, Thomas. "'Schuldige Unschuld': Schillers Maria Stuart Vor Dem Hintergrund Barocker Dramatisierungen Des Stoffes." In *Schiller Und Die Höfische Welt*, edited by Achim Aurnhammer, Klaus Manger, and Friedrich Strack, 233–46. Tübingen: Max Niemeyer, 1990.

Daniel, Ute. *Hoftheater: Zur Geschichte des Theaters und der Höfe im 18. und 19. Jahrhundert*. Stuttgart: Klett-Cotta, 1995.

Evans, Richard J. *Rituals of Retribution: Capital Punishment in Germany, 1600-1987*. Oxford: Oxford University Press, 1996.

Feuerbach, Paul Johann Anselm (Ritter von). *Betrachtungen über die Oeffentlichkeit und Mündlichkeit der Gerechtigkeitspflege*. Gießen: Georg Friedrich Heyer, 1821.

Fick, Monika. *Lessing Handbuch: Leben - Werk - Wirkung*. 4th ed. Stuttgart: Metzler, 2016.

Fischer Lichte, Erika. *Semiotik des Theaters: Vom "künstlichen" zum "natürlichen" Zeichen Theater des Barock und der Aufklärung*. Vol. 2. Tübingen: Gunter Narr Verlag, 1983.

Fleig, Anne. "Die Jäger (1785)." In *Ifflands Dramen: Ein Lexikon*, edited by Alexander Košenina and Mark-Georg Dehrmann, 136–41. Hannover: Wehrhahn Verlag, 2009.

Foi, Maria Carolina. "Recht, Macht und Legimitation in Schillers Dramen. Am Beispiel von Maria Stuart." In *Friedrich Schiller und der Weg in die Moderne*, edited by Walter Hinderer, 227–42. Stiftung Für Romantikforschung 40. Würzburg: Königshausen & Neumann, 2006.

Foucault, Michel. *Discipline and Punish: The Birth of the Prison*. Translated by Alan Sheridan. London, New York: Penguin Books, 1991.

Fronius, Helen. "'[I]n einem erleuchteten Jahrhundert': Enlightenment Self-Consciousness in the Infanticide Debate of the 1780s." *In Jahrhundert(w)Ende(n): Ästhetische und Epochale Transformationen und Kontinuitäten 1800/1900*, edited by Julia S. Happ, 49–72. Münster: LIT Verlag, 2010.

Geppert, Klaus. *Der Grundsatz der Unmittelbarkeit im Deutschen Strafverfahren*. Berlin, Boston: de Gruyter, 1979.

Gottsched, Johann Christoph. *Ausgewählte Werke. Versuch einer Critischen Dichtkunst: anderer besonderer Theil*. Edited by Joachim Birke and Brigitte Birke. Vol. 6, 1. Ausgaben Deutscher Literatur des XV. bis XVIII. Jahrhunderts. Berlin, New York: de Gruyter, 1973.

– – – – –. "Die Schauspiele und besonders die Tragödien sind aus seiner wohlbestellten Republik nicht zu verbannen." [lecture 1729, published 1739] *Schriften zur Literatur*. Ed. by Horst Steinmetz. Stuttgart: Reclam, 1972. (Universal Bibliothek No. 9361). 3-11.

Greiner, Bernhard. "Das Forschungsfeld 'Recht und Literatur.'" In *Recht und Literatur: Interdiziplinäre Bezüge*, edited by Bernhard Greiner, Barbara Thums, and Wolfgang Graf Vitzthum. Heidelberg: Universitätsverlag Winter, 2010.

Grimm, Jacob. "Von Der Poesie Im Recht." In *Kleinere Schriften*, edited by Eduard Ippel, Vol. 6. Berlin: Ferdinand Dümmler, 1882.

Grunwald, Henning. *Courtroom to Revolutionary Stage: Performance and Ideology in Weimar Political Trials*. Oxford: Oxford University Press, 2012.

Habermas, Rebekka. "Rechts- und Kriminalitätsgeschichte revisited – ein Plädoyer." In *Verbrechen im Blick: Perspektiven Neuzeitlicher Kriminalitätsgeschichte*, edited by Rebekka Habermas and Gerd Schwerhoff, Frankfurt/New York: Campus Verlag, 2009.

Härter, Karl. "The Influence of the Napoleonic Penal Code on the Development of Criminal Law in Germany: Juridical Discourses, Legal Transfer and Codification." In *The Western Codification of Criminal Law: A Revision of the Myth of Its Predominant French Influence*, edited by Aniceto Masferrer, 53–75. Studies in the History of Law and Justice 11. Cham, Swizterland: Springer, 2018.

Heinz, Andrea and Irmgard Schweikle. "Welttheater." In: *Metzler Lexikon: Literatur*, edited by Günther and Irmgard Schweikle. 3rd edition. Stuttgart, Weimar: Metzler, 2007, 826.

Herrmann, Wilhelm. "August Wilhelm Iffland und die Leininger Fürsten. Sonderdruck." In *Mitteilungen des Historischen Vereins der Pfalz*, 65:208–29. Speyer: Verlag des Historischen Vereins der Pfalz E.V., 1967.

Heßelmann, Peter. *Gereinigtes Theater? Dramaturgie und Schaubühne im Spiegel Deutschsprachiger Theaterperiodika des 18. Jahrhunderts (1750-1800)*. Das Abendland: Forschung zur Geschichte Europäischen Geisteslebens., Neue Folge 31. Frankfurt am Main: Vittorio Klostermann, 2002.

Hinderer, Walter. *Schiller und kein Ende: Metamorphosen und Kreative Aneignungen*. Würzburg: Königshausen & Neumann, 2009.

Hruschka, Joachim. “On the Logic of Imputation in the Vigilantius Lecture Notes.” In *Kant’s Lectures on Ethics: A Critical Guide*, edited by Lara Denis and Oliver Sensen, 170–84. Cambridge Critical Guides. Cambridge: Cambridge University Press, 2015.

Iffland, August Wilhelm. *Beiträge Zur Schauspielkunst*. Edited by Alexander Košenina. Theatertexte 20. Hannover: Wehrhahn, 2009.

Ignor, Alexander. *Geschichte des Strafprozesses in Deutschland 1532-1846. Von der Carolina Karls V. bis zu den Reformen des Vormärz*. Rechts- und Staatswissenschftliche Veröffentlichungen der Görres-Gesellschaft 97. Paderborn, et al.: Ferdinand Schöningh, 2002.

Kaufmann, Arthur, and Dietmar von der Pfordten. “Historische Grundlagen: Problemgeschichte der Rechtsphilosophie.” In *Einführung in die Rechtsphilosophie und Rechtstheorie der Gegenwart*, edited by Winfried Hassemer, Ulfrid Neumann, and Frank Saliger, 9th ed., 23–142. Schwerpunktbereich. Heidelberg: C.F. Müller, 2016.

Kern, Bernd-Rüdiger. *Die Gerichtsordnungen des Kurpfälzer Landrechts von 1582*. Quellen und Forschungen zur Höchsten Gerichtsbarkeit im Alten Reich 23. Köln, Wien: Böhlau Verlag, 1991.

Kittsteiner, Heinz D. *Die Entstehung des Modernen Gewissens*. Suhrkamp-Taschenbuch Wissenschaft 1192. Frankfurt am Main: Suhrkamp, 1995.

Thomas Koebner. “Zum Streit für und wider die Schaubühne im 18. Jahrhundert.” *Festschrift für Rainer Gruenter*, ed. Bernhard Fabian. Heidelberg: Winter, 1978, 26-57.

Körner, Christian Gottfried. “Ueber die Verbesserung des Civil-Prozesses.” In *Gesammelte Schriften*, edited by Adolf Stern, 254–75. Leipzig: F.W. Grunow, 1881.

Košenina, Alexander. “Entstehung einer neuen Theaterhermeneutik aus Rollenanalysen und Schauspielerporträts im 18. Jahrhundert.” In *Aufführungsdiskurse im 18. Jahrhundert: Bühnenästhetik, Theaterkritik und Öffentlichkeit*, edited by Yoshio Tomishige and Soichiro Itoda, 41–74. Schriftenreihe Der Meiji-University Institute of Human Studies. Munich: Iudicium, 2011.

– – – – –. “Recht - gefällig. Frühneuzeitliche Verbrechensdarstellung zwischen Dokumentation und Unterhaltung.” *Zeitschrift für Germanistik. Neue Folge.* 15, no. 1 (2005): 28–47.

– – – – –. “Schiller und die Tradition der (Kriminal)Psychologischen Fallgeschichte bei Goethe, Meißner, Moritz und Spieß.” In *Friedrich Schiller und Europa: Ästhetik, Politik, Geschichte*, edited by Alice Stašková, 119–40. Beiträge zur Neueren Literaturgeschichte 238. Heidelberg: Universitätsverlag Winter, 2007.

– – – – –. “Schiller’s Poetics of Crime.” In *Schiller: National Poet, Poet of Nations*, edited by Nicholas Martin, 201–17. Amsterdamer Beiträge zur Neueren Germanistik 61. Amsterdam, New York: Rodopi, 2006.

Korte, Hermann. “Das Mannheimer Theaterpublikum im 18. Jahrhundert.” In *Manheimer Anfänge: Beiträge zu den Gründungsjahren des Nationaltheaters Mannheim 1777-1820*, edited by Thomas Wortmann, 75–113. Göttingen: Wallstein Verlag, 2017.

Koselleck, Reinhart. *Kritik und Krise: Eine Studie zur Pathogenese der Bürgerlichen Welt*. Suhrkamp Taschenbuch Wissenschaft 36. Freiburg/Munich: Verlag Karl Alber, Suhrkamp, 1973.

Koss, Thea. *Kindesmord im Dorf: Ein Kriminalfall des 18. Jahrhunderts und Seine Gesellschaftlichen Hintergründe*. Tübingen: tb-verlag, 1994.

Kriebisch, Angela. *Die Spruchkörper Juristenfakultät und Schöppenstuhl zu Jena: Strukturen, Tätigkeit, Bedeutung und eine Analyse Ausgewählter Spruchakten*. Rechtshistorische Reihe 381. Frankfurt am Main, et al.: Peter Lang, 2008.

Krone-Balcke, Ulrike. “Schröder, Friedrich Ludwig.” In: *Neue Deutsche Biographie* 23 (2007), 555-556. [Online-Version] https://www.deutsche-biographie.de/pnd118610813.html#ndbcontent

Limbach, Jutta. “Friedrich Schillers Seelenkunde vom Verbrechen.” In *Friedrich Schiller und der Weg in die Moderne*, edited by Walter Hinderer, 221–26. Stiftung Für Romantikforschung 40. Würzburg: Königshausen & Neumann, 2006.

Linder, Jutta. *Ästhetische Erziehung: Goethe und das Weimarer Hoftheater*. Vol. 390. Abhandlungen zur Kunst-, Musik- und Literaturwissenschaft. Bonn: Bouvier Verlag, 1990.

Malchow, Jacqueline. “‘Niemand Darf in Seiner Rolle [...] Etwas Thun, Das Die Täuschung Aufhebt.’ Friedrich Lugwig Schröder, Die Hamburger Theatergesetze Und Das Illusionstheater.” In *Friedrich Ludwig Schröders Hamburgische Dramaturgie*, edited by Bernhard Jahn and Alexander Košenina, 159–76. Publikationen Zur Zeitschrift Für Germanistik. Neue Folge. 31. Bern, et al.: Peter Lang, 2017.

Martinson, Steven D. *Projects of Enlightenment. The Work of Gotthold Ephraim Lessing: Cultural, Intercultural, and Transcultural Perspectives*. Vol. 11. Hermeia: Crossing Boundaries in Literary and Cultural Studies. Heidelberg: Synchron, 2013.

Matt, Peter von. *Recht, Gerechtigkeit und Sympathie: Über die Gerichtsbarkeit der Literatur und ihre Strategien*. Zürich, St. Gallen: Dike Verlag, 2013.

McCarthy, John. A. “Abermals »Sektionsberichte des Lasters« Bilaterale Reformvorstellungen in Literatur und Recht um 1800.” *Internationales Archiv für Sozialgeschichte der Deutschen Literatur* 31, no. 2 (2006): 100–130.

Meyer-Krentler, Eckhardt. "'Geschichtserzählungen'. Zur Poetik des Sachverhaltens im Juristischen Schrifttums des 18. Jahrhunderts." In *Erzählte Kriminalität: Zur Typologie und Funktion von Narrativen Darstellung in Strafrechtspflege, Publizistik und Literatur Zwischen 1770 und 1920*, edited by Jörg Schönert, 117–58. Studien und Texte uur Sozialgeschichte der Literatur 27. Tübingen: Max Niemeyer, 1991.

Mittermaier, Carl Joseph Anton. "Bemerkungen über Geberdenprotocolle in Criminalprozesse." Edited by Gallus Aloys Kaspar Kleinschrod, Christian Gottlieb Konopak, and Carl Joseph Anton Mittermaier. *Neues Archiv des Criminalrechts* 1, no. Heft 3 (1817): 327–52.

Mönch, Cornelia. *Abschrecken oder Mitleiden: Das Deutsche Bürgerliche Trauerspiel im 18. Jahrhundert. Versuch einer Typologie*. Augsburger Forschungen zur Europäischen Kulturgeschichte 5. Tübingen: Max Niemeyer, 1993.

Neumeyer, Harald. "Unkalkulierbar Unbewußt. Zur Seele des Verbrechers um 1800." In *Romantische Wissenspoetik: Künste und die Wissenschaft um 1800*, edited by Gabriele Brandstetter and Gerhard Neumann, 151–78. Würzburg: Königshausen & Neumann, 2004.

Nilges, Yvonne. *Schiller und das Recht*. Göttingen: Wallstein Verlag, 2012.

Oettinger, Klaus. "Schillers Erzählung 'Der Verbrecher aus Infamie': Ein Beitrag zur Rechtsaufklärung der Zeit." *Jahrbuch der Deutschen Schillergesellschaft* 16 (January 1972): 266–77.

Osborne, John. "Drama, after 1740." In *The Cambridge History of Literary Criticism: Volume 4, The Eighteenth Century*, edited by H.B. Nisbet and Claude Rawson, 4:184–209. Cambridge: Cambridge University Press, 1997. 203-205.

Pieroth, Bodo. *Recht und Literatur: Von Friedrich Schiller bis Martin Walser*. Munich: C.H. Beck, 2015.

Reinalter, Helmut, "Sonnenfels, Joseph Freiherr von" in: *Neue Deutsche Biographie* 24 (2010), 576-578: https://www.deutsche-biographie.de/pnd118615610.html#ndbcontent

Reyscher, Dr. A.L. *Vollständige, Historisch und Kritisch Bearbeitete Sammlung der Württembergischen Gerichts-Gesetze, Sechster Band. Enthaltend den dritten Theil der Sammlung der Gerichts-Gesetze. Dritter Theil. Enthaltend die Dritte Reihe der Gerichts-Gesetze Vom Jahr 1654 Bis Zum Jahr 1805.* Tübingen: Ludw. Friedr. Fues., 1835.

Reyscher, Dr. A.L., and G. Zeller, eds. *Vollständige, Historisch und Kritisch Bearbeitete Sammlung der Württembergischen Gesetze, Dreizehenter Band. Enthaltend den Zweiten Theil der Samml. der Regierungs-Gesetze. Zweiter Theil. Enthaltend die Regierungs-Gesetze vom Jahre 1638 bis zum Jahre 1726.* Tübingen: Ludw. Friedr. Fues., 1842.

– – – – –. *Vollständige, Historisch und Kritisch Bearbeitete Sammlung der Württembergischen Gesetze, Vierzehenter Band. Enthaltend den Dritten Theil der Samml. der Regierungs-Gesetze. Dritter Theil. Enthaltend die Regierungs-Gesetze vom Jahre 1727 bis zum Jahre 1805.* Tübingen: Ludw. Friedr. Fues., 1843.

Riedel, Wolfgang. "Die Anthropologische Wende: Schillers Modernität." In *Friedrich Schiller und der Weg in die Moderne*, edited by Walter Hinderer, 143–64. Würzburg: Königshausen & Neumann, 2006.

Robert, Yann. *Dramatic Justice: Trial by Theater in the Age of the French Revolution*. Philadelphia: University of Pennsylvania Press, 2019.

Salehi, Sigrid. *August Wilhelm Ifflands Dramatisches Werk*. Vol. 1213. Europäische Hochschulschriften 1. Frankfurt am Main: Peter Lang, 1990.

Schäffer, Georg Jacob. *Abriss des Jauner und Bettelwesens in Schwaben*. Stuttgart: Erhard und Löflund, 1793.

– – – – –. *Sulz am Neccar. Beschreibung derjenigen Jauner, Zigeuner, Mörder, Straßen-Räuber, Kirchen- Markt- Tag- und Nacht-Diebe, Falschen Geld-Münzer, Wechsler, Briefträger, Spieler und Andern Herum Vagirenden Liederlichen Gesindels*. Stuttgart: Cotta, 1784.

Scherner, Karl Otto. *Advokaten - Revolutionäre - Anwälte: Die Geschichte der Mannheimer Anwaltschaft*. Quellen und Darstellungen zur Mannheimer Stadtgeschichte, Herausgegeben vom Stadtarchiv Mannheim 5. Sigmaringen: Thorbecke, 1997.

Schild, Wolfgang. "Relationen und Referierkunst. Zur Juristenausbildung und zum Strafverfahren um 1790." In *Erzählte Kriminalität: Zur Typologie und Funktion von Narrativen Darstellung in Strafrechtspflege, Publizistik und Literatur Zwischen 1770 und 1920*, edited by

Schiller, Friedrich. *Kleinere prosaische Schriften*. Vol. 4. Karlsruhe: Schmieder, 1804.

– – – – –. "Vorrede: Pitaval." In *Merkwürdige Rechtsfälle als Beitrag zur Gechichte der Menschheit. Nach dem Französischen Werk des Pitaval*. Jena: Cuno, 1792.

Schlossar, Anton, "Rautenstrauch, Johann" in: *Allgemeine Deutsche Biographie* 27 (1888), 460-461: https://www.deutsche-biographie.de/pnd10024503X.html#adbcontent

Schmidt, Eberhardt. *Einführung in die Geschichte der Deutschen Strafrechtspflege*. Göttingen: Vandenhoeck & Ruprecht, 1983.

Schmoeckel, Matthias. *Humanität Und Staatsraison: Die Abschaffung der Folter in Europa und die Entwicklung des Gemeinen Strafprozeß- und Beweisrechts seit dem Hohen*

Mittelalter. Norm Und Struktur: Studien Zum Sozialen Wandel in Mittelalter Und Früher Neuzeit 14. Köln, Weimar, Wien: Böhlau Verlag, 2000.

Schott, Theodor. "Schwan, Johann Friedrich" in: *Allgemeine Deutsche Biographie* 33 (1891), 177-181: https://www.deutsche-biographie.de/pnd119032112.html#adbcontent

Schmidt-von Rhein, Georg. "Das Reichskammergericht in Wetzlar." In *Das Reichskammergerichtsmuseum Wetzlar. Katalog.*, 24–34. Wetzlar: Gesellschaft für Reichskammergerichtsforschung e. V., 1997.

Schnabel-Schüle, Helga. *Überwachen und Strafen im Territorialstaat: Bedingungen und Auswirkungen des Systems Strafrechtlicher Sanktionen im Frühneuzeitlichen Württemberg*. Forschungen zur Deutschen Rechtsgeschichte 16. Köln, Weimar, Wien: Böhlau Verlag, 1997.

Schwerin-High, Friederike von. "Gotthold Ephraim Lessing's Religious Pluralism in Nathan the Wise and The Fragments Controversy." In *Enlightenment and Secularism: Essays on the Mobilization of Reason*, edited by Christopher Nadon, 273–88. Lanham, et al.: Lexington Books, 2013.

Sharpe, Lesley. *A National Repertoire: Schiller, Iffland and the German Stage*. British and Irish Studies in German Language and Literature 42. Bern: Peter Lang, 2007.

– – – – –. "A National Repertoire: Schiller and the Theatre of His Day." In *Schiller: National Poet, Poet of Nations*, edited by Nicholas Martin, 35–52. Amsterdamer Beiträge Zur Neueren Germanistik 61. Amsteram, New York: Rodopi, 2006.

– – – – –. "Der Verbrecher aus Verlorener Ehre: An Early Exercise in Schillerian Pychology." *German Life and Letters* 33 (1979): 102–10.

Stašková, Alice. "Schillers Philosophische Prosa und die Sprachen der Karlsschule." In *Schillers Europa*, edited by Peter-André Alt and Marcel Lepper, 74–87. Perspektiven der Schiller-Forschung 1. Berlin, Boston: De Gruyter, 2017.

Stone Peters, Julie. "Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion." *PMLA* 20, no. 2 (March 2005): 442–53.

Stüber, Michael. *Die Entwicklung des Prinzips der Unmittelbarkeit im Deutschen Strafverfahren*. Schriften zum Strafrecht und Strafprozeßrecht 83. Frankfurt am Main, et al.: Peter Lang, 2005.

Sutter, Berthold. *Der Hexenprozeß gegen Katharina Kepler*, Kepler-Gesellschaft Weil der Stadt and Heimatverein Weil der Stadt, Weil der Stadt: Kepler-Gesellschaft, 1979.

van Dülmen, Richard. *Kultur und Alltag in der Frühen Neuzeit*. 3rd ed. Vol. 2, Dorf und Stadt. München: C.H. Beck, 2005.

–––––. *Theatre of Horror: Crime and Punishment in Early Modern Germany*. Translated by Elisabeth Neu. Cambridge: Polity Press, 1990.

Ventzke, Markus. *Das Herzogtum Sachsen-Weimar-Eisenach 1775-1783*. Veröffentlichungen der Historischen Kommission für Thüringen, Kleine Reihe 10. Köln: Böhlau Verlag, 2004.

Vismann, Cornelia. *Akten: Medientechnik und Recht*. 3rd ed. Frankfurt am Main: Fischer Taschenbuch Verlag, 2000.

–––––. *Medien der Rechtsprechung*. Edited by Alexandra Kemmerer and Markus Krajewski. Frankfurt am Main: S. Fischer, 2011.

Wahl, Volker, ed. *"Das Kind in Meinem Leib." Sittlichkeitsdelikte und Kindsmord in Sachsen-Weimar-Eisenach unter Carl August. Eine Quellenedition 1777-1786.* Veröffentlichungen aus Thüringischen Staatsarchiven 10. Weimar: Verlag Hermann Böhlaus Nachfolger, 2004.

Weitin, Thomas. "Literatur des Kriminellen." In *Verbrechen im Blick: Perspektiven der neuzeitlichen Kriminalitätsgeschichte*, edited by Rebekka Habermas and Gerd Schwerhoff, 367–80. Frankfurt, New York: Campus-Verlag, 2009.

–––––. *Zeugenschaft: Das Recht der Literatur*. Munich: Wilhelm Fink Verlag, 2009.

Wirtz, Thomas. *Gerichtsverfahren: ein dramaturgisches Modell in Trauerspielen der Frühaufklärung*. Würzburg: Königshausen & Neumann, 1996.

Wurzbach, Constantin von, ed. "Wenzel, Gottfried Immanuel." In *Biographisches Lexikon des Kaiserthums Oesterreich*, 55:13–16, 1887.

Zedler, Johann Heinrich, ed. "Unmittelbar." In *Grosses Vollständiges Universal-Lexikon aller Wissenschaften und Künste*, 49:1880. Halle, Leipzig, 1754—1731. 831. www.zedler-lexikon.de

Zegowitz, Bernd. "Hugo Grotius." In *Kotzebues Dramen. Ein Lexikon*, edited by Johannes Birgfeld, Julia Bohnengel, and Alexander Košenina, 109–10. Hannover: Wehrhahn, 2011.

Zelle, Carsten. "'Querelle du théâtre': literatische Legitimationsdiskurse (Gottsched – Schiller – Sulzer)." In: *German Life and Letters*, vol. 62, no. 1, January 2009, 21-38

Zelle, Carsten. "Was Kann Eine Gute Stehende Schaubühne Eigentlich Wirken? (1785)." In *Schiller-Handbuch: Leben-Werk-Wirkung*, edited by Matthias Luserke-Jaqui, 343–58. Stuttgart, Weimar: J.B. Metzler, 2005.

Zeuch, Ulrike. “Einleitung. Recht und Literatur um 1800 im Kontext des Law and Literature Movement.” Edited by Ulrike Zeuch and Ulrich Kronauer. *Schwerpunkt: Recht und Literatur um 1800*, Internationales Archiv für Sozialgeschichte der deutschen Literatur, 31, no. 1 (2006): 77–84.

Zink, Manuel. “‘Wer spielt denn sonst noch mit?’ Schröders ‘Privatkomödie’ als Exempel für Naturwahres Schauspiel.” In *Friedrich Ludwig Schröders Hamburgische Dramaturgie*, edited by Alexander Košenina and Bernhard Jahn, 177–90. Publikationen Zur Zeitschrift Für Germanistik. Neue Folge. 31. Bern, Berlin, et al.: Peter Lang, 2017.

Ziolkowski, Theodore. *Scandal on Stage: European Theater as Moral Trial*. Cambridge: Cambridge University Press, 2009.

Works Referenced

Abel, Jacob Friedrich. “Geschichte eines Räubers.” In *Sammlung und Erklärung merkwürdiger Erscheinungen aus dem menschlichen Leben*, vol. 2. Stuttgart: 1787, 1-86.

Arndt, Andreas. *Unmittelbarkeit*. Berlin: Owl of Minerva Press, 2013.

Becker, Theophil Christian. *Sammlung Merkwürdiger Rechtsfälle aus Verschiedenen Theilen der Rechtsgelehrsamkeit mit ihren Entscheidungsgründen nebst einigen Schutzschriften*. Vol. 1. Eisenach: Verlag M.G. Griesbachs Söhne, 1772.

Buttel, Christian Diedrich von, and H.W. Hayen. *Der Richter als Geschworner? : Oder Geschwornengerichte mit Mündlichkeit, Oeffentlichkeit und Anklage?* Oldenburg: Schulze, 1843.

Dalberg, Wolfgang Heribert. *Die Protokolle Des Mannheimer Nationaltheaters Unter Dalberg Aus Den Jahren 1781 Bis 1789*. Edited by Max Martersteig. Mannheim: J. Bensheimer, 1890.

Daniels, Alexander von. *Grundsätze des Rheinischen und Französischen Strafverfahrens : Mit Vergleichender Berücksichtigung der auf Mündlichkeit, Öffentlichkeit und Schwurgericht Gegründeten Neuesten Gesetze und Gesetzesentwürfe*. Berlin: Mylius, 1849.

Donsbach, Christian. *Die Verfassung und das Proceßverfahren der Untergerichte im Großherzogthum Baden : Mit Vorschlägen zu Verbesserungen durch Trennung der Justiz von der Administration, und Oeffentlichkeit und Mündlichkeit des Verfahrens*. Karlsruhe: Braun, 1822

Ebert, Udo, and Hans-Joachim Bauer. *Das Gerechte und das Schöne – Gerechtigkeit und Recht in Schillers Denken und Dichten*. Berlin: Berliner Wissenschafts-Verlag, 2006.

Eisenhart, Johann Friedrich. *Erzählungen von Besonderen Rechtshändeln*. Vol. 1. 10 vols. Halle, Helmstedt: Hemmerde, 1767.

Engel, David M. *The Myth of the Litigious Society: Why We Don't Sue*. Chicago: U of Chicago Press, 2016.

Essig, Carl. *Untersuchung der Frage: Ob durch Oeffentlichkeit und Mündlichkeit des Verfahrens in Criminalsachen den Seitherigen Mängeln der Strafrechtspflege Abgeholfen Werde?* Ulm: Ebner, 1843.

Feuerbach, Paul Johann Anselm (Ritter von). "Erklärung des Präsidenten von Feuerbach über Seine, Angeblich Geänderte Ueberzeugung in Ansehung der Geschwornen-Gerichte". Erlangen: 1819, J.J. Palm und Ernst Enke.

Foelix, Jean Jacques Gaspard. *Über Mündlichkeit und Öffentlichkeit des Gerichtsverfahrens, dann über das Geschwornengericht*. Karlsruhe, 1843.

Hässler, Frank, and Günther Hässler. *Eine Greuliche That: Zehn Kapitel über Kindstötungen in Mecklenburg-Vorpommern aus Vier Jahrhunderten*. Berlin: Medizinisch Wissenschaftliche Verlagsgesellschaft, 2009.

Goethe, Götz und die Gerechtigkeit. Edited by Hartmut Schmidt and Gisela Sachse. Exhibition Catalog published by the Magistrate of the City of Wetzlar and the Society of Reichskammergerichtsforschung. Wetzlar 1999.

Kip, Hans-Gerhard. "Das sogenannte Mündlichkeitsprinzip, seine Wurzeln und sein Verhältnis zur Unmittelbarkei" in: *Das Sogenannte Mündlichkeitsprinzip: Geschichte einer Episode des Deutschen Zivilprozesses*. Prozessrechtliche Abhandlungen 19. Cologne, Berlin: Carl Heymanns Verlag, 1952

Košenina, Alexander. "Fallgeschichten. Von der Dokumentation zur Fiktion. Vorwort." *Zeitschrift für Germanistik, Neue Folge* 19, no. 2 (n.d.): 282–87.

– – – – –. "Die Europäische Tradition Juristischer Pitavalgeschichten für Schillers Fragmentarische Kriminaldramen." In *Schillers Europa*, edited by Peter-André Alt and Marcel Lepper, 88–101. Perspektiven der Schiller-Forschung 1. Berlin, Boston: de Gruyter, 2017.

Krautscheid, Christiane. *Gesetze der Kunst und der Menschheit: Christian Gottfried Körners Beitrag zur Ästhetik der Goethe-Zeit*. 2 vols. Berlin: Technischen Universität Berlin, 1998.

Kriegleder, Wynfried. "Die deutschsprachige Literatur des Josephinismus im Europäischen Kontext." In: *Österreich in Geschichte und Literatur*, 39.5b/6 (1995), 374-384.

Lavater, Johann Kaspar. *Physiognomische Fragmente, zur Beförderung der Menschenkenntniß und Menschenliebe*. 4 vols. Weidemann und Reich, Steiner: Winterthur, Leipzig, 1775-1778.

Lendfers, Miriam. *Zum Verbrechen des Kindsmords im 18. Jahrhundert: Die Kindsmörderin aus Schiersch*. Rechtsgeschichtliche Studien 9. Hamburg: Verlag Dr. Kovač, 2005.

Lewis, Margaret Brannan. *Infanticide and Abortion in Early Modern Germany*. The Body, Gender and Culture 19. London, New York: Routledge, 2016.

Lüderssen, Klaus. *"Daß nicht der Nutzen des Staates Euch als Gerechtigkeit erscheine": Schiller und das Recht*. Frankfurt am Main, Leipzig: Insel, 2005.

– – – – –. *Produktive Spiegelungen: Recht in Literatur, Theater und Film*. Vol. 1. Baden-Baden: Nomos, 2002.

– – – – –. *Produktive Spiegelungen: Recht in Literatur, Theater und Film*. Vol. 2. Berlin, Boston: Berliner Wissenchafts-Verlag, 2007.

– – – – –. *Produktive Spiegelungen III: Recht im Künstlerischen Kontext*. Juristische Zeitgeschichte, Abteilung 6, Band 43. Berlin, Boston: de Gruyter, 2014.

Michalik, Kerstin. *Kindsmord: Sozial- Und Rechtsgeschichte Der Kindstötung Im 18. Und Beginnenden 19. Jahrhundert Am Beispiel Preußen.* Pfaffenweiler: Centaurus Verlagsgesellschaft, 1997.

Miller, Joseph. *Kritische Beleuchtung der von Feuerbach'schen Grundsätze über Öffentlichkeit und Mündlichkeit, und Gleiche Gerichts-Verfassung, nebst Anhang über die Mittel zur Vereinfachung und Beförderung der Rechtspflege in Baiern*. Munich: J.A. Finsterlin, 1825.

Mittermaier, Carl Joseph Anton. *Die Mündlichkeit, das Anklageprinzip, die Öffentlichkeit und das Geschwornengericht in ihrer Durchführung in den verschiedenen Gesetzgebungen dargestellt und nach den Forderungen des Rechts und der Zweckmäßigkeit mit Rücksicht auf die Erfahrungen der verschiedenen Länder*. Stuttgart: J.G. Cotta'scher Verlag, 1845.

Müller-Dietz, Heinz. *Recht Und Kriminalität in Literarischen Spiegelungen*. Juristische Zeitgeschichte, Abteilung 6: Recht in Der Kunst - Kunst Im Recht 28. Berlin: Berliner Wissenchafts-Verlag, 2007.

Peters, Kirsten. *Der Kindsmord als Schöne Kunst Betrachtet: Eine Motivgeschichtliche Untersuchung der Literatur des 18. Jahrhunderts*. Würzburg: Königshausen & Neumann, 2001.

Schilken, Eberhard. *Zivilprozessrecht*. 7th ed. Academia Iuris: Lehrbücher Der Rechtswissenschaft. München: Verlag Franz Vahlen, 2014.

Scholz, Rüdiger, ed. *Das Kurze Leben der Johanna Catharina Höhn. Kindesmorde und Kindesmörderinnen im Weimar Carl Augusts und Goethes. Die Akten zu den Fällen Johanna Catharina Höhn, Maria Sophia Rost und Margaretha Dorothea Altwein*. Würzburg: Königshausen & Neumann, 2004.

– – – – –. "Goethes Schuld an der Hinrichtung von Johanna Catharina Höhn." *Neue Juristische Wochenschrift*, March 7, 2008.

Schönert, Jörg ed. *Erzählte Kriminalität: Zur Typologie und Funktion von narrativen Darstellungen in Strafrechtspflege, Publizistik und Literatur zwischen 1770 und 1920*. Studien und Texte zur Sozialgeschichte der Literatur, vol. 27. Tübingen: Max Niemeyer Verlag, 1991.

Schrader, Katharina. *Vorehelich, Ausserehelich, Unehelich - Wegen der Grossen Schande: Kindstötung im 17. und 18. Jahrhundert in den Hildesheimer Ämtern Marienburg, Ruthe, Steinbrück und Steuerwald*. Hildesheim: Gerstenberg, 2006.

Sonnenfels, Joseph von. *Ueber die Abschaffung der Tortur*. Zürich: Orell, Geßner, Füeßlin, 1775.

Steiner, Johann Wilhelm Christian. *Über das Altteutsche und Insbesondere Altbaierische Gerichtswesen, in Bezug auf Öffentlichkeit und Mündlichkeit des Verfahrens in Bürgerlichen und Peinlichen Rechtsvorfallenheiten*. Aschaffenburg: M.J. Wailandt's Wittib, 1824.

Ulbricht, Otto. *Kindsmord und Aufklärung in Deutschland*. Munich: Oldenbourg, 1990.

Vormbaum, Thomas. *Diagonale - Beiträge zum Verhältnis von Rechtswissenschaft und Literatur*. Münster: LIT Verlag, 2011.

Wilson, W. Daniel. "Goethe, His Duke and Infanticide: New Documents and Reflections on a Controversial Execution." *German Life and Letters* 61, no. 1 (January 2008): 7–32.

Wittich, Christian Friedrich. *Hannikel, oder die Räuber- und Mörderbande […]: Ein Wahrhafter Zigeuner-Roman Ganz aus den Kriminal-Akten Gezogen*. Tübingen: Heerbrandt, 1787.

Wohlhaupter, Eugen. *Dichterjuristen*. H. G. Seifert, ed. 3 vols. Tübingen: Mohr, 1953–1957.

Zentner, Joseph. *Das Geschwornengericht mit Oeffentlichkeit und Mündlichkeit im Gerichtsverfahren : In Besonderer Rücksicht auf den Strafprozeß*. Freiburg: Groos, 1830.

Ziolkowski, Theodore. *The Mirror of Justice: Literary Reflections of Legal Crises*. Princeton: Princeton University Press, 1997.