Science in Context (2025), 1–21
doi:10.1017/S0269889725100690

RESEARCH ARTICLE

Conflicting minds: Immanuel Kant, Johann Daniel Metzger, and the debate about forensic psychiatry

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Argument
This article explores the dispute between the philosopher Immanuel Kant and the physician Johann Daniel Metzger over the moral autonomy of individuals with mental illness. Situating the debate within the broader context of the evolving philosophical and medical professions in eighteenth-century Germany, the article examines how a professional conflict emerged over who – the physician or the philosopher – should serve as the legal authority in cases where moral responsibility was in question. The analysis shows that this was not merely a theoretical issue for Kant, but a practical one, brought to the fore by the infanticide trial of Margarethe Kaveczynska, in which Kant's friend, Theodor Gottlieb Hippel, presided as judge. The article argues that while Kant's vision for the practical application of his anthropology influenced his conception of moral autonomy, he ultimately lost ground to the rising authority of the medical profession.

Key words: Immanuel Kant; Johann Daniel Metzger; Theodor Gottlieb Hippel; Königsberg; Prussia; forensic psychiatry; infanticide; legal history; history of philosophy; history of medicine

Introduction

Among the otherwise celebratory biographies appearing in the wake of Immanuel Kant's death in 1804, one was published anonymously. These *Comments on Kant* asserted that Kant had initiated a feud in forensic medicine by disputing physicians' right "to judge about the dubious state of mind of a criminal before the court," adding that the feud "was insignificant and remains undiscussed" (Metzger 1804, 44).[1] The anonymous author was none other than Kant's colleague, professor of medicine Johann Daniel Metzger, who had taken Kant's remark as a direct attack on his profession. Kant's critique was notable: For years Metzger had sought to challenge Kant's authority within the field of anthropology, yet Kant had managed to avoid any direct conflict, but now, in his twilight years, it was Kant who had initiated the attack. Given the timing, Metzger's response was hardly appropriate and his omission of his name as well as the further content of the feud was countered by a third omission: Metzger's *Comments* would not come to figure among the official biographies on Kant, making him little more than a footnote in the study of Kant's life.[2]

[1]Note that unless otherwise indicated, the translation has been conducted by the author. For longer quotes translated by the author the original is kept in the footnote.

[2]For the establishment of Kant's biographical legacy, see Kuehn 2001, 1–23 and Vorländer 1918.

These three omissions mean that the feud, its context, and its significance are today practically forgotten.[3]

The feud was more than a case of personal rivalry. Kant and Metzger were not simply representatives of already established disciplines; rather, both where working to establish their respective fields – medicine and philosophy – as distinct disciplines with their own canonized histories, their established methodological practices, their autonomous institutional place, their well-defined social function, and their clearly delineated subject matter.[4] Yet the two fields overlapped institutionally, and both laid claim to the same subject matter: the human being. This entanglement meant that the emerging disciplinary autonomy of the eighteenth-century sciences could not develop in parallel, but instead came to emerge as a multitude of conflicts over authority. As this article will demonstrate, the controversy between Kant and Metzger was both constituted by and constitutive of the increasing disciplinary distinction.[5] While the disciplinary conflict had a long prehistory, the specific controversy grew out of a particular context situated in the Criminal Court in Königsberg: Margarethe Kaveczynska, a Polish noblewoman, had been charged with causing the death of her illegitimate child by burying it alive.[6] Metzger functioned as a forensic expert in the case, and Kant's former student, Theodor Gottlieb von Hippel, was the presiding judge. Hippel, who had described the case as a moral and anthropological "observatory" ([1792] 1797, 4),[7] would, however, find himself on a battlefield between lawyers, physicians, and philosophers debating who had authority when it came to assessing the human mind. Kant had already addressed the long disciplinary conflict between lawyers and physicians in the abstract as a formal conflict between the laws of freedom and the laws of nature (see Wood 1984 and Allison 1990).[8] Yet the conflict was hardly a timeless abstract paradox but a historic conflict

[3]The case is briefly mentioned by Goldstein 1987, 274 and Wetzell 2000, 40. Antoine Mooij, who deals with Kant's criticism of forensic psychiatry (1998), does not investigate the historical context. For a treatment of Kant and Metzger in relation to the issue of imputation, see Kaufmann 1995, 315–316. For Kant on infanticide, see Baier 1993 and Uleman 2000.

[4]Kant, himself did address this matter in his *Conflict of the Faculties* (1798). For a general analysis of the process of disciplinary differentiation as part of the early modern state, see Stichweh 1991, and for the origin of the research university, its cultivation and rationalization, see Clark 2006. For specific investigations on the emergence of philosophy as an academic discipline, see Levi 1974, Tonelli 1975, and Bödeker 1990. For the professionalization of academic medicine, see Frevert 1984 and Broman 1996.

[5]Despite the overlap, it can be helpful not to equate the personal *controversy* with the disciplinary *conflict*. However, the focus on what Shapin and Schaffer have called "episodes of controversy" (1985, 7) shows a path to overcome the disciplinary dominance of one discipline over another without neglecting the clear importance when it comes to understanding the canonical power of disciplines. Stefan Collini has pointed to the danger of a historical "tunnel-vision" (1988, 391). When one confines oneself to the limits of a discipline, one easily discards writers, texts, or topics outside the pre-established canon. As an answer to this challenge in the field of natural law, Bödeker and Hont have argued that a way to overcome this "tunnel-vision" would be to shift the emphasis from the concept of *law* to the concept of *nature* in order to analyze it in comparison with, for example, natural history and natural theology as foundational discourses on the nature of man (1995, 81), an approach which has been taken up by Lorraine Daston (2004; Daston and Vidal 2004; Daston and Stolleis 2008). In its paring of law, philosophy, and medicine, this article follows the lead of Bödeker and Hont; however, by emphasizing controversy over comparison the article examines what Shapin and Schaffer have described as "the constructive and deconstructive strategies employed by both sides to the controversy" (1985, 7), i.e. by letting each of the antagonists take the role of a "pretended stranger," it becomes possible both to investigate how the "taken-for-granted" beliefs of disciplines like law, medicine, and philosophy are being constructed by their own members and deconstructed through the perspective of the so-called "pretended strangers" from other disciplines. In particular, when it comes to a figure like Kant, who has been canonized both within the discipline of philosophy as well as the discipline of law – a canonization that he himself worked to construct – the focus on controversy enables a deconstruction of Kant's anthropology as a merely philosophical endeavour.

[6]Although this article pays special attention to the classic infanticide it is not limited to this. As Kathy Stuart has pointed out, these types of murders also overlapped with other crimes such as suicide by proxy (2008, 414). The present article's interest is more focused on how these odd murder-cases formed a basis for the study of the human mind than an investigation of the specific homicidal topology itself.

[7]For accounts on Hippel's involvement in the case, see Kohnen 1983 and Beck 1988.

[8]For literature on Kant's anthropology, see especially Sturm 2009, as well as Zammito 2002, Frierson 2003, Jacobs and Kain 2003, Cohen 2009, and Louden 2014.

https://doi.org/10.1017/S0269889725100690 Published online by Cambridge University Press

between disciplines, a conflict that fed into the pan-European debates on penal reform. In Prussia these debates took place within the framework of the formulation of a general Prussian law code (1784–1794), which would eventually conceptualize the law as well as the legal subject through the notion of freedom.[9] Yet, with the emerging *practice* in the 1720s of what would become forensic psychiatry, the notion of the free and responsible person had already become a contested concept.[10]

The key architects behind the Prussian law code, Heinrich Kasimir von Carmer, Karl Gottlieb Svarez, and Ernst Ferdinand Klein, were all three rooted in a tradition of natural law (see Haakonsen 2006, 257). A dominant view among scholars today is that Kant broke radically with this canonized tradition (ibid., 283);[11] yet Klein, outlining a familiar canon from Hugo Grotius and Thomas Hobbes to Samuel Pufendorf and Christian Thomasius, placed Kant in the end of this tradition (Klein 1797, 344–368). In particular with regard to the notion of imputation, recent scholarship has pointed to Kant following "a pattern influentially advocated by Pufendorf" (Bacin 2015, 29; see also Hruschka 2015, 170). However, by examining the changing conception of the legally responsible person from Pufendorf to Thomasius – emerging with the use of forensic experts in Halle – this article identifies the applied practice of a medical skepticism that puts Pufendorf's notions of freedom and legal responsibility into question, resulting in an *eclectic* re-conceptualization of the human being. This article takes a distinctive stance by arguing that Kant's position can be seen as a response to this problem and hence as an engaged involvement in the natural law tradition – albeit one that radically breaks with it.[12]

As Doris Kaufmann has convincingly shown, the civic sense of self emerged in the German literary public as part of a wider discourse of self-examination in the second half of the eighteenth century. Journals like Karl Philipp Moritz's *Journal of Experiential Psychology* (*Magazin zur Erfahrungsseelenkunde*, 1783–1793) popularized a medical discourse of self-observation under the dictum *know thyself* (Kaufmann 1995, 42–43). By focusing on Königsberg, this article discerns the institutional infrastructure in Prussia underpinning this egalitarian republic. Giving priority to the local intellectual environment in Königsberg, the article aims to show the position of the periphery and the importance of space in the systematization and centralization of the Prussian state apparatus. This local outlook allows for the merging of two analytical strategies, namely genealogy and geography, by analyzing the transformation and contestation of a concept in both time and space. Viewed from the periphery, it becomes clear that the discourse of the *Prussian law code* did not unproblematically constitute Prussia as an idealized geographical unification; it needed to be formulated, enacted, and debated locally within a variety of institutional spaces, each of which had their own language and practice: the criminal courts, the newly established medical colleges, the

[9]The formulation of a general Prussian law code was a long-term project that involved several major publications: *Outline for a General Legal Code for the Prussian States* (*Entwurf eines allgemeinen Gesetzbuches für die Preußischen Staaten*, 1784–1788), *General Code for the Prussian States* (*Allgemeines Gesetzbuch für die Preußischen Staaten*, 1791/1792), and *The General State Laws for the Prussian States* (*Allgemeines Landrecht für die Preußischen Staaten* [ALR], 1794).

[10]For literature on the Prussian law code, see Koselleck 1989, Birtsch and Willoweit 1998, von Bitter 2013, and Schroth 2016. For Kant and the Prussian law code, see Langer 1986, 85–94, and for Kant and criminal law, see Hüning 2013a and 2013b.

[11]Especially Hunter (2001) has asserted the strict opposition between a metaphysical and a civil Enlightenment. See also Hochstrasser 2002.

[12]Hunter has claimed that "Kant's attack on prudential ethics should thus serve to remind us that it was the civil philosophers who had in fact sought to confine ethics to outwardly lawful actions, rejecting all concern with inner motives" (2001, 275). However, by contrasting the intellectual historian's focus on the foundational *discourse* of natural law with the forensic *practice*, the first part of this article documents how this concern had already changed within the natural law tradition from Pufendorf to Thomasius. Taking a distinctive stance, this article argues that Kant's position can be seen as a response to this problem, and as an engagement with the natural law tradition that nevertheless breaks with it radically. The argument that Kant's practical philosophy should be seen as an answer to problems in natural law has been proposed by Bödeker and Hont (1995, 88–89). Also, Haakonsen emphasizes the important changes in the perception of moral agency in Germany in the 1770s and 1780s (2006, 280).

https://doi.org/10.1017/S0269889725100690 Published online by Cambridge University Press

old universities, and the rising public sphere. Their institutional infrastructures, with their local bodies and national networks, united the Prussian lands with a certain degree of congruence. But their intersections and collaborations also clashed and conflicted – in the court, at the university, or in the literary public. The investigation of the controversy between Kant and Metzger brings to the forefront the ongoing establishment and solidification of the various state institutions that underpin the discourses of philosophy, medicine, and law. Therefore, it cannot be confined to the space of the university; rather the university must be analyzed as a political body deeply entangled with the institutional infrastructure of the Prussian state apparatus. This means that the crystallization of distinct disciplines throughout the eighteenth-century, attempting to disentangle the conflicting disciplinary languages of medicine, law, and philosophy in their common and competitive endeavour to determine human nature, echoed the development of a new social order.

This article traces the spatio-temporal development of this genealogy in four main parts, from its early beginning in the eighteenth-century to its aftermath in the nineteenth. The first part centers on the emerging collaboration between the criminal courts and the newly established medical colleges in early eighteenth-century Prussia as a significant source for Enlightenment anthropology. The three following parts each focus on a different spatial dimension: the public sphere, the criminal court, and the university, as they are located in Königsberg and generate an institutionalized linkage to the Prussian administrative center, Berlin.

I

At the beginning of the eighteenth-century, the Prussian territories were geographically and administratively scattered. They housed four universities, from the former capital Königsberg's *Albertina* (1544) by the River Pregel in the east to the old university in Duisburgh (1655) by the River Rhine in the west. Berlin, the new capital, did not yet have a university, but the centralization of power to the capital placed the university in Frankfurt an der Oder (1506) and the newly established university in Halle (1691) close to the government. Through the eighteenth-century, the Prussian state-building-process merged territorial annexation and unification, administrative centralization, and scientific standardization. Under the government of Frederick-Wilhelm I (1713–1740), several reforms were instituted centralizing power around the court in Berlin and the two adjacent universities in Halle and Frankfurt an der Oder. This had consequences for each of the three higher faculties at the university: theology, medicine, and law. Every student of theology was required to spend two years in Halle during their studies. The reorganization of the medical administration, culminating around 1725, was managed by Georg Ernst Stahl, the court physician from Halle. The creation of local medical colleges in university cities, such as Königsberg, facilitated an institutional hierarchy, with the Medical College in Berlin as the ultimate authority. To practice medicine in Prussia, a physician was required to complete a medical exam at the anatomical theater in Berlin. And when Frederick-Wilhelm I initiated attempts to reform the Prussian law code in 1738, the task was given to professor Samuel Coceji, a follower of Samuel Pufendorf's natural jurisprudence and professor at the University of Frankfurt an der Oder. This reform streamlined the court-system in a clear hierarchical structure, with the highest court based in Berlin. As a consequence, the regional universities lost autonomy, and the hierarchization of medical and legal institutions came to restructure the Prussian administration, providing it with a governmental center in Berlin. For the university faculties, these processes involved not only new collaborations but also conflict and contestation. In May 1739, one could read in the medical commentaries of *Halle's Weekly Review* how several wise jurists had started questioning the legal tradition when it was contradicted by medical discoveries and that members of the juridical college therefore would "confer with the medical college in dubious cases" (Anonymous 1739).[13] The Halle law professor Christian Thomasius had employed this

[13]For commentary, see Kaiser and Simon 1978, 13.

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collaboration, intending to criticize the witch-trials. As a strategy, Thomasius sought to employ medical experts rather than theologians for judging the sanity of a criminal in certain offenses. The physicians developed a critical practice that tended to interpret phenomena, which theologians had previously construed as demonic possession, as forms of insanity. Frederick II later described how Thomasius, outraged by the witch-processes, had given "public talks on the natural and physical causes of things, which had the great result that people became ashamed to continue such processes" (Frederick II [1748] 1913, 1:200).[14] Through his colleague at the medical faculty, Georg Ernst Stahl, Thomaius would employ a medical practice reinterpreting cases of witchcraft and demonic possession as instances of insanity. The self-narrative of the accused would be assessed against the backdrop of his or her physiological status, medical history, and dietary habits. This practice developed the basis for a forensic anthropology, or what later came to be psychiatry. Stahl's former student Michaelis Alberti assembled a collection of exemplary cases introduced by Thomasius, which came to form a significant reservoir for the study of human nature as well as influence the emerging genre of court cases appearing in the popular medical journals of the second half of the eighteenth century (Alberti 1725). Yet the collaboration was not without conflict. The medical conception of human nature would challenge and transform the notion of legal accountability.

In his great work *On the Law of Nature*, Pufendorf had distinguished between man as a physical entity and a moral entity. As a physical entity man had a natural disposition and aptitude, directing his affections, while as a moral entity man could use his or her understanding "chiefly for the guiding and tempering the Freedom of Voluntary Actions, and for the procuring of a decent Regularity in the Method of Life" (Pufendorf 1710, 2). For Pufendorf, the distinction meant that man could not "transfer the Care of his Soul, and the Exercise of Religious Worship from himself to another Man," while he could leave the care of his body to the "Management of others" (Pufendorf 1698, 4–5). Thomasius' collaboration with physicians as forensic experts meant that he came to disagree with Pufendorf on this central notion of man. Adopting Stahl's understanding of an embodied soul, Thomasius understood the soul to be determined by the state of the body. This on the one hand meant that cases of insanity could be investigated, explained, and treated by physicians as physical cases, but on the other hand, for lawyers, it meant that holding someone accountable for a crime would be difficult if everything could be ascribed to a physical and not a moral cause. Hence, Thomasius criticized Pufendorf on this very point and argued that one also had a duty to manage his or her own body (Thomasius 1713, 440–441). One could not be held accountable for crimes committed in a state of insanity, but should this state originate from a bad diet, heavy drinking, or any other form of mismanagement, one could be held legally accountable for the mismanagement of his or her life. Thomasius' answer was first and foremost *eclectic*; though it did not provide a principal solution to the nature of human agency, whether it was necessitated by physical causes or governed by laws of freedom, it did allow for a future productive collaboration between lawyers, philosophers, and physicians.

With Fredrick II's ascendance to the throne in 1740, Christian Wolff, who had been ousted from Prussia in 1723, returned to Halle. The systematic spirit of Wolff's mechanical philosophy merged with the eclecticism of Thomasius as well as Stahl's vitalist, psycho-physical conception of man. The prominent philosophers Alexander Gottlieb Baumgarten and Christoph Meiners collaborated with physicians like Johann Gottlob Krüger and Johann August Unzer, investigating man as a psycho-physical unity of body and soul (see Zelle 2001). The unification of body and soul established the collaboration between physicians and philosophers epitomized in the title of Ernst Platner's *Anthropology for Physicians and Philosophers* (1772). Yet, the *eclecticism* that allowed for this practical collaboration implied the principal conflict between two opposing languages: the physicians' language for examining natural causes regulating the human body, and the lawyers'

[14]"Er hielt öffentliche Vorträge über die natürlichen, physikalischen Ursachen der Dinge und hatte damit so großen Erfolg, daß man sich schämte, noch weiter solche Prozesse zu führen" (Frederick II [1748] 1913, 1:200).

https://doi.org/10.1017/S0269889725100690 Published online by Cambridge University Press

language presupposing human agency governed by free will. At the university, the problem was a matter of theory; in the courtroom, it was a matter of practice.

At a distance from the Berlin Court, Kant had similar aspirations. When Platner's *Anthropology* came out, Kant's former student, the physician Marcus Herz, authored a review. After reading it, Kant wrote to Herz late in 1773 explaining how he intended to turn his newly established lecture course on *Pragmatic Anthropology* into a proper academic discipline:

> I intend to use it to disclose the sources of all the [practical] sciences, the science of morality, of skill, of human intercourse, of the way to educate and govern human beings, and thus of everything that pertains to the practical. I shall seek to discuss phenomena and their laws rather than the foundations of the possibility of human thinking in general. Hence the subtle and, to my view, eternally futile inquiries as to the manner in which bodily organs are connected with thought I omit entirely. (Kant 1999, 141)

Kant considered practical philosophy to be his *actual calling*, and he distinguished his pragmatic anthropology from the physiological anthropology of Platner and his fellow physicians. Rather than basing it on a study of the human body, Kant took the study of man's practical, moral behaviour as his point of departure. Concurrent with the development of his course on anthropology, Kant initiated a critical investigation of human cognition – *Critique of Pure Reason* – which demonstrated the limits of physiological anthropology: Human freedom could not be deduced from the physiological description of man – freedom lies beyond observation (Kant [1781] 1998, 541–542).

Kant's negative assessment of physiological anthropology implicitly came to target professor of medicine Johann Daniel Metzger. Metzger had assumed a chair in medicine in Königsberg in 1777, and he soon became a source of controversy – according to himself this was due to his temper and strong sense of justice (Metzger 1786, 3–4). In a journal published by his friend, the Jena physician Christian Gottfried Gruner, Metzger had openly criticized the status of his own faculty, and as a member of the academic senate Kant had mediated in the matter (Euler and Stiening 1995, 58). Like Kant, Metzger also had academic aspirations to establish himself as an authority within the field of anthropology, and Kant's former student Johann Gottfried Herder had even praised his accomplishments in the field (Herder [1784] 1841, 233). By the mid-1780s, Metzger had directed several assaults at Kant's anthropology without Kant responding directly to the criticism. Around the same time, Metzger had sought to establish a journal on forensic medicine together with another of Kant's former students, the physician Christoph Friedrich Elsner. The journal *Medical Juridical Library* aimed to introduce and cultivate the field of forensic medicine and medical police, for the benefit of the state (Elsner 1785, 221–222). One review particularly praised the journal's contribution to forensic psychiatry for providing important material for distinguishing between reason and insanity, "an important matter for jurists, physicians, and philosophers" (Anonymous 1781, 287). In the field of forensic anthropology, Kant and Metzger came to be competitors, not least due to the development of Kant's own practical philosophy.

Leading up to the publication of his first mature work in practical philosophy, the *Groundwork of the Metaphysics of Morals* (1785), Kant had published a short review ([1783] 1996) of the first part of Johann Heinrich Shulz's *Attempt at an Introduction to a Doctrine of Morals for All Human Beings Regardless of Different Religions* (1783). Shulz' system was based on a physiological understanding of man that essentially prescribed a fatalistic system of human agency. Such a view, Kant noted, had severe consequences for the concept of moral and legal obligation for "since there is no freedom all retributive punishments are unjust, especially capital punishment; in place of them, only restitution and improvement, but by no means mere admonition, must constitute the purpose of penal laws" (Kant [1783] 1996, 9). Shulz' text would draw the consequences of a physiological anthropology, while Kant would maintain that "in the human being there is a faculty

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of determining oneself from oneself, independently of necessitation by sensible impulses" (Kant [1781] 1998, 533). As Kant had argued that the existence of such a faculty was beyond any kind of empirical proof, his task was not to verify its existence but to demonstrate the principles directing such a faculty – a *metaphysics of morals* "cleansed of everything empirical" (Kant [1785] 1996, 44). To achieve this Kant established a reciprocal relationship between law and freedom: Freedom of the will, if it was to be distinguished from the arbitrary choice of a beast or barbarian, should be understood as the capacity to commit to laws, while law, if it was to be justified as anything other than the arbitrary choice claiming sovereignty, should be formulated with equal respect for everybody's freedom. This meant that at least as a regulative ideal, moral and civil freedom were compatible, as they both implied freedom from arbitrary power. However, when confronted with the deeds of a criminal it is not simply sufficient to establish whether an action is contrary to law, but also whether it is committed intentionally, i.e. freely, contrary to law.

The criminal court came to constitute a space where the actual character of a specific human could be established, and for Kant pragmatic anthropology became the discipline that could determine this problem, *as he stated:* "morality cannot exist without anthropology" (Kant 1997, 42). Kant's repudiation of physical anthropology held that the concept of freedom could not be deduced from observations; however, as a pragmatic anthropologist he held that observations and experiments enlightened by a rational conception of freedom could help determine whether or not a given person is acting freely, writing: "we also make experiments with man. For example, we test a servant to find out if he is honest" (ibid., 42). This task for the pragmatic anthropologist was one of imputation:

> We can attribute a thing to someone, yet not impute it to him; the actions, for example, of a madman or a drunkard can be attributed, though not imputed to them. In imputation the action must spring from freedom. The drunkard cannot, indeed, be held accountable for his actions, but he certainly can, when sober, for the drunkenness itself. (ibid., 80–81)

Kant's moral freedom was moulded by a notion of civil freedom as a regulative ideal, that is, a rational conception of freedom from the arbitrary will of oneself or another. However, when it came to determining guilt in the courtroom, the regulative ideal did not suffice; an anthropological assessment about the actual ability to act freely was necessary to hold someone accountable. But for Kant this could not be done by physicians who mistakenly thought that they could deduce an empirical notion of freedom from observations of natural causality.

In the courtroom this was a question for experts to determine, but for the wider population a sense of autonomy became an aim for the reading public. Journals like the *Journal of Experiential Psychology*, the *Psychological Magazine* (*Psychologisches Magazin*), and the *Anthropological Journal* (*Anthropologisches Journal*) provided a form of medical enlightenment to the reading public giving the individual reader the tools and incentives for self-understanding and self-emancipation (Kaufmann 1995, 42–43). However, in Prussia, the German debates on medical enlightenment were entangled with legal reforms.

II

"Everywhere there are restrictions on freedom. But what sort of restrictions hinders enlightenment, and what sort does not hinder but instead promotes it?" (Kant [1784] 1996, 18). Kant's question fell in the wake of the German debate on the question: What is Enlightenment? The question had been posed in the setting of the Berlin *Wednesday Society* by pastor Johann Friedrich Zöllner, and it soon sparked a public debate outside the *Wednesday Society* (see Birtsch 2003). The society, which was constituted by "friends of the Enlightenment," counted central enlightenment reformers from the Prussian administration, such as Karl August Struensee, Karl Gottlieb Svarez, and Ernst Ferdinand Klein, among their members. The latter two, under the direction of Grand Chancellor Carmer, had since 1780 been entrusted with the

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reformulation of the *Prussian law code*. The two jurists had brought these discussions on legal reform into the heart of the *Wednesday Society* (Birtsch 1999, 345–346). The first draft of the Prussian law code published in 1784 by Carmer under the title *Outline for a General Legal Code for the Prussian States*, was made public for critique and revision followed by a series of prize-competitions.[15] When Kant defined Enlightenment in relation to "the public use of reason," he would praise Carmer's initiative as one of the clearest signs of Enlightenment: the public's participation in prescribing laws for themselves (Kant [1784] 1996, 21). In parallel to this new arrangement, a semantic distinction emerged between civil and political freedom, the latter designating participation in political matters (Bödeker 2002, 36–37).

Both Metzger and Hippel would exercise their political freedom by participating in the prize competition, and the latter would go on to win first prize. On 9 June 1788, Hippel would send in a treatise *On the Abolition of Execution by the Sword*,[16] addressing one of the principal questions of criminal law, a sovereign's right over life and death. The legal reformer Cesare Beccaria had questioned the legitimacy of capital punishment, arguing that no citizen would ever co-sign a social contract that could result in his own death. The question of capital punishment was, however, not simply a principal but also a specific matter, which directly involved the question of infanticide. Infanticide, which was punishable by death (Carmer 1784, 338), was a growing problem in Prussia – it was the reason for every second execution (Michalik 1997, 47). It constituted a problem for the formulation of the law not simply because of the extent of cases but also because the law itself incentivized infanticide by criminalizing illegitimate children. Should a woman become pregnant out of wedlock she would be faced with what Carmer's *Outline* described as a "terrible struggle between duties towards her child and her concerns for her honor as a citizen" (Carmer 1784, 338). Beccaria had described this "terrible struggle" as a choice between disgrace or "the death of a creature incapable of feeling pain" (Beccaria 1986, 60). Concurring, Frederick II had rhetorically asked: "Is it not the fault of the laws to place her in such a grave situation?" (Frederick II 1751, 66). The question of infanticide therefore not only raised a set of questions about the principles of justice and proportionality of punishment but simultaneously opened a set of practical problems about how to avoid confronting women bearing illegitimate children with such a terrible choice. Fear of shame and fear of a difficult future were incentives that echoed throughout the debates on infanticide, and the law fell short when it came to the protection of women in such matters. For Carmer, the lawgiver's task should be to avoid placing women in such a dilemma (Carmer 1784, 149–150).

Hippel, who was educated in practical philosophy by Kant (morals, natural law), and was the mayor of Königsberg, director of the criminal college, chief of police and a staunch defender of women's rights to education and to hold office, did not wish, however, to sacrifice honor and virtue in this pursuit.[17] Fearing an unwanted sexualization of society, he criticized Carmer's *Outline* for obliging mothers to teach their daughters about pregnancy by the age of fourteen. Despite winning the first prize, his objections on this matter were in vain, and the obliged sexual enlightenment was executed by law (see von Bitter 2013, 78).

It was, however, Metzger who, in 1788, would address the question of infanticide directly in his revisions of Carmer's *Outline* (Metzger 1792b). As a physician he was mostly interested in the practical problems of preventing infanticide, yet his interest in the psychological profile of the child-murderess would question the principal justification of capital punishment in such matters. Metzger argued that the medical colleges should be perceived with higher esteem and granted more power, that several new institutions for the education of midwives needed to be established

[15]This participation, however, should not be overstated. Hippel later praised Frederick II for his efforts but interjected that the participants did not have a decisive but only a consulting voice (Hippel 1804, 51).

[16]This treatise, as well as several other writings of Hippel, was never published, and all are today lost; see Kohnen 1987, 182–183. For Hippel's contribution to the Prussian Law Code, see von Bitter 2013.

[17]For Hippel's defence of women's rights see Hippel (1792).

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(Metzger 1792b, 151–152), and that in order to protect women's honor there ought to be established "An institution, where such persons can leave their fears behind and give birth under the seal of secrecy" (ibid., 159). In addition, he suggested that the state should have a legitimate claim to illegitimate children. This would mean that the state would be responsible for caring for children whom the parents could not care for, and it would justify "the state's right to punish infanticide" (ibid., 146–147). Legally speaking, illegitimate children were neither persons with individual rights nor protected as property of their parents. Despite reinstituting the legal status of an infant, Metzger would still argue that the capital punishment in cases of infanticide was too harsh. Based on his extensive experience with infanticidal mothers, Metzger wrote: "I have always been able to conclude a mind-numbness in the moment of the deed. With approved principles and proper use of the doctrine of imputation the death-penalty is therefore too harsh for a child-murderer" (ibid., 159).[18] Metzger acknowledged the severity of the deed but as a physician and forensic expert questioned the intention behind it and with it also the justification of a retributive punishment.

In the summer of 1789, the year after the final volume of Carmer's *Outline* had been published, the world would radically change, and the emerging revolution in France would cast a shadow over the project of formulating a new legal code. Carmer's *Outline* conceived of the common wellbeing as the foundation of the law, hence allowing the state to limit the natural freedom of its citizens when it was in the interest of common welfare (Carmer 1784, 24–25). Freedom was primarily perceived as the foundation for legal responsibility and accountability to the law (ibid., 25). However, on 23 April 1789, Klein, who was an ardent reader and self-proclaimed "follower" of Kant, wrote to the sage in Königsberg:

> A long time ago I adopted the following principle within natural law: Only he who disturbs the freedom of others, can be held back by force. This principle is based on the equality of rights and therefore on the value of human nature. My system of natural jurisprudence agrees with nothing better than your system. (Kant 1902–, XI:30)[19]

For Kant and Klein, wellbeing and happiness could no longer be regarded as principles of law in competition with the principle of freedom; rather they were relocated to the field of prudence (*Klugheit*) (Klein 1790). When Kant finally answered Klein publicly in 1793 in his essay *On the Common Saying: That May Be Correct in Theory, but It Is of No Use in Practice*, he found that the legitimacy of a law implied that a person could be both subject and co-legislator of the law (Kant [1793] 1996, 294). This implied that limitation of freedom could only be justified through a principle of freedom. As he wrote: "all right consists merely in the limitation of the freedom of every other to the condition that it can coexist with my freedom in accordance with a universal law" (Kant [1793] 1996, 294).

The reorientation of freedom as the single principle of morality, law, and punishment came to structure parallel oppositions between ethics and anthropology, justice and prudence, punishment and care, the former following the principle of freedom, the latter the principle of wellbeing. However, the opposition was not one of exclusion, but a hierarchical organization, where freedom took priority.

[18]"Ich [. . .] habe jederzeit aus ihren Bekenntnissen auf eine gänzliche Betäubung ihrer Besinnungskraft im Augenblick der That schliesen können. Nach billigen Grundsätzen und richtiger Anwendung der Lehre von der Imputation ist also die Todesstrafe zu hart für Kinder-Mörderinnen."

[19]"Längst hatte ich auch im Naturrechte den Grundsatz angenommen: Nur der, welcher die Freyheit anderer stört, kann durch Zwang davon zurückgehalten werden. Dieser Grundsatz gründet sich auf die Gleichheit der Rechte und also auf die Würde der menschlichen Natur. Mein System des Naturrechts verträgt sich also mit keinem besser, als dem Ihrigen."

https://doi.org/10.1017/S0269889725100690 Published online by Cambridge University Press

III

"To introduce shamelessness means to prescribe opium to the state," Hippel wrote in 1792, adding that "Antonio Guiliani ascribes the shamelessness and looseness of the Paris ladies as the cause of the French Revolution" (Hippel [1792] 1797, 97–98). The same year he had presided as judge in a case where a Polish noblewoman, Margarethe Kaveczynska, had been charged with murdering her newborn children. Hippel refrained from going as far in his judgment as Guiliani, yet he concurred with Guiliani's worries. Implicitly opposing the *prudent* advice Metzger had given, Hippel interjected that even if the rate of child murders had been brought down, it should not be done at the expense of honor: "Immorality is murder of the soul, and when child murderers are prevented by means of immorality and foundling hospitals (commonly known as privileged murder pits), so this crime would indeed be defeated," he wrote, adding that "There are victories in the civil and moral world over which one should shed tears of blood" (ibid.).[20] Due to several appeals the case lasted for years, testing the new law code as well as its institutions. Through the development of the case, Hippel had experienced a change in the public opinion towards the defendant. By 1792 Hippel noted "that she is closer to being praised than punished" (ibid., 101).[21]

Margarethe Kaveczynska, a Catholic, was born in western Prussia in the town of Skurgiens in 1761. In 1784, then aged twenty-three, she became pregnant out of wedlock; on 24 November, she experienced the first labor pains. With the help of her mother and two maids she gave birth to the child in secret and the next morning her mother asked that the child be brought into a cold room, where it died. As a consequence, Margarethe received six years and her mother eight years in a correctional facility. On 7 February 1786, both arrived at the barracks in Pillau, and the following year, on 9 July 1787, Kaveczynska's mother died. On 21 October, Margarethe appealed to the court in order to maximize the blame of the mother, but Frederick William II refused to grant her a pardon.

The story took a turn when Margarethe gave birth to another child on 27 February 1790. The father was Corporal von J- residing at the barracks in Pillau. Once again she had kept quiet about her pregnancy – even when von J- became suspicious – and buried the child in the garden. Once again Margarethe Kaveczynska had to defend herself in court, but this time she could neither claim to be ignorant nor share the blame with her mother. The question of guilt became a question of fact: Had the child been still-born or did she burry it alive, hence causing its death?

Her deed had already been discovered the night of the birth and the local battalion-surgeon F. C. Kessel had conducted an autopsy the same night. As district physician, Metzger had been assigned the job of examining the body by the royal East-Prussian criminal collegium, but due to illness he had to leave the task to Kessel and O. F. Schulz, the city-surgeon of Grüneberg. Yet the assignment was carried out in accordance with Metzger's instructions, and from a distance he could confirm that the job of Kessel and Schulz had been satisfactory (Metzger 1792a, 80).

The autopsy report asserted that the child had been well nourished and strong with smooth but pale skin, thick dark hair and fully developed nails. The umbilical cord was fresh, the chest had a complete arching, and there were no signs of external violence. The autopsy showed that the heart and vessels were strong and filled with blood and the head showed no sign of pressure against the skull. It was the lungs that showed the cause of death. After performing the so-called lung-test, the

[20]"Hebt man Schande und Schaam im Staat; so sind seine Grundpfeiler erschüttert; so sind seine Grundpfeiler erschüttert, sein Wesen und sein Nervensystem ist in Unordnung: Schamlosigkeit einführen, heißt dem Staate Opium verschreiben. Antonio Guiliani schreibt die Ursache der französischen Revolution der Schamlosigkeit und Liederlichkeit der Pariser Damen zu; ich möchte nicht die Revolution an scih, sondern jene Kleinigkeitskrämerey, jenen Pfenigsgewinst und Thalerverlust, und den Jacobinerorden auf jene Rechnung setzen – – Freylich mag es in Paris wenig Kindermorde gegeben haben, aber was gab es nicht sonst! Sittenlosigkeit ist Seelenmord, und wenn mittelst derselben und der Findelhäuser, (gemeinhin privilegirte Mördergruben) dort keine Kindermörderin ist; so wäre zwar dies Verbrechen besiegt, hat aber die Moralität hiebey Palmen gebrochen? Mit nichten. Es giebt Siege in der bürgerlichen und moralischen Welt, über die man Blut weinen sollte."

[21]"Können Sie denken, daß es mit der von Ka – – – so weit gekommen ist, daß Sie, statt bestraft zu werden, der Belohnung nahe ist."

https://doi.org/10.1017/S0269889725100690 Published online by Cambridge University Press

surgeons could describe how the lungs floated, when immersed in a container filled with clean cold water. The test demonstrated that the child had been able to breathe upon birth and had not been stillborn (ibid., 80–86). As the body did not show any other signs of violence or trauma apart from blisters and foaming blood on the lungs, the two surgeons concluded that the child had died from suffocation when buried alive.

During the process at the East Prussian Criminal Court in Königsberg, the defence sought to spare Kaveczynska from capital punishment or a long disciplinary punishment. The court in Königsberg sentenced her to be flogged and to spend the rest of her life in prison carrying out punitive labor. Due to the appeals the verdict was sent for revision by the Deputation of the Superior Court of Justice in Berlin, who asked the Higher Medical College to review the medical report on 17 April. The Higher Medical College confirmed the conclusions of the medical report (ibid., 93), and as a result, on 7 June the Deputation of the Superior Court of Justice reopened the case in order to demand capital punishment.

Kaveczynska's defence attorney followed her testimony, arguing that she had not seen any signs of vitality (Hippel [1792] 1797, 44–45). Yet what came to cause a larger commotion happened on 11 August, when the defence attempted to discredit the medical report, raising doubt about the reliability of the lung test, as well as presenting a probable alternative explanation (Metzger 1792a, 100). This meant that the defence lawyer ventured into the field of medicine. The first step the lawyer took was to argue that the surgeon, who initially discovered the child, was bound by duty to attempt to revive the child. Such a procedure, blowing air into the lungs of the child, could, according to Metzger's predecessor Christoph Gottlieb Büttner, influence the state of the lungs, making the lung test unreliable. The second step was to point to the internal disagreement among doctors about the general reliability of the lung test (ibid., 109). Hippel, the judge in Königsberg, noted in his later remarks that "complete certainty was not at hand" (Hippel [1792] 1797, 56) and that therefore a disciplinary punishment would be more appropriate. Yet, for Metzger, putting the conclusions of the report into question was both a contestation of fact and an attack on the authority of the medical profession – he felt compelled to respond (Metzger 1792a, 113). Acknowledging that the defence lawyer was versed in forensic medicine, he agreed with the first premise of the defence that giving mouth-to-mouth could influence the lung test (ibid., 115–116), but he rejected that a revival attempt had occurred. Precisely because this procedure was not mentioned in the report proved that the surgeon had not attempted it, pointing out that the defence had attempted to deduce from possibility to reality. Metzger's certainty in the matter reflected a standardized practice of medical reporting.

Answering the second step of the defence, Metzger pointed out that within all disciplines there are cranks who take pleasure in challenging evidence. He added: "Legal Scholars, however, are not authorized to judge about the lung-test, as it lies beyond the perspective of their science" (ibid., 117). He also noted that this is why a doctor, not a jurist, needs to be the one examining a body; to let a jurist do the work of a doctor would be to extinguish the torch of enlightenment (ibid., 117).

Metzger could refer to affirmation of the report from the Medical College in Berlin, but still he felt compelled to ask: "How could the defence want to make the higher-medical-college incompetent?" (Metzger 1792a, 121). Simply to win a case? In the end the attempt of the defence to undermine the authority of the Medical College failed, but the Higher Senate of Appeals of the Superior Court of Justice in Berlin overthrew the initial verdict from Königsberg and sentenced Kaveczynska to execution by the sword, a verdict that was affirmed by King Frederick-Wilhelm II on 28 November. As the presiding judge in Königsberg, Hippel was confronted with the question: "how on earth the opinions of the Criminal Court in Königsberg and the Deputation of the Superior Court of Justice in Berlin could turn out to be so inconsistent?" (Hippel [1792] 1797, 46–47).[22]

[22]"wie in aller Welt die Meynungen des Hofhalsgerichts in Königsberg, und der Criminaldeputation des Cammergerichts in Berlin so unübereinstimmend ausfallen können?".

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Despite what seems to have been the final sentence, the trial did not end. In his critique of the defence, Metzger had critically ended with a note to the defence attorney: a philosophical mind "should have based his defence on the entire life-story of the inquisit, her upbringing, mental capacity, her way of life, the character of her mind, the circumstances and determining causes of the deed" (Metzger 1792a, 120–121)[23] rather than the facts of the medical report. Metzger's suggestion came to herald the later defence as the case took an unforeseen turn.

On 6 January 1792, as the Criminal Court in Königsberg had already set the date of the execution, a Polish nobleman, von Sp-, appeared (Hippel [1792] 1797, 101). Prepared to marry Kaveczynska, von Sp- would provide Kaveczynska with a safe future and hereby remove any incentive for further crimes. The appeal for a pardon was denied by the Criminal Court in Königsberg, but determined to succeed von Sp- travelled to Berlin to plead his case. The determination of von Sp- raised public attention and excitement, as well as doubt about the competence of Hippel and the court in Königsberg (Hippel [1792] 1797, 116). Rejecting his request, Frederick-Wilhelm II suggested to the prime minister, Heinrich Julius von Goldbeck, that von Sp- was possibly insane (Hippel [1792] 1797, 117). Deciding to follow Metzger's suggestion, claiming insanity, he made one last attempt. The defence first objected that Kaveczynska was not sufficiently capable of understanding the judge and that the Polish interpreter lacked knowledge of the High Polish dialect. Second, the defence portrayed Kaveczynska as insane. Hippel found the defence self-contradicting when it claimed that the defendant both needed an interpreter to participate in the juridical reasoning and, as an insane person, was unable to reason. In order to critically assess such instances, Hippel noted that a criminal lawyer would need to know law and possess a common knowledge of man (Hippel [1792] 1797, 119–120). But he rejected that physicians should have a specialized knowledge of the criminal mind. "Do they see this through a different medium than other people? Do they have other means than experience and reason, to examine and correct what they saw? Or are there certain bodily symptoms from which certain mental illnesses can be deduced?" (Hippel [1792] 1797, 123–124),[24] Hippel asked, affirming that the Criminal College in Königsberg was more than able to distinguish between reason and insanity (Hippel [1792] 1797, 122). What had been at stake was not simply the authority of the involved, but the legitimacy of the institutions. The law code was being reformulated, and the establishment of forensic medicine was still a contested field. Kaveczynska's defence had initially sought to discredit the legitimacy of the Medical College only later to turn it against the decision of the Criminal Court. Institutions that in theory were supposed to assist each other in practice came to contest the legitimacy of the other. As a final plea Kaveczynska addressed the judge, Hippel, asking: "Is there no mercy for me?" Hippel answered that no judge could show her any mercy: "We are merely referred to the laws." But "The King is merciful." Kaveczynska interjected, "If he knew that the child had not lived –." But Hippel told her that "He knows your statement that it had not, as well as the assertion of the doctors that it had lived." Kaveczynska was surprised that her statements were known in Berlin, but Hippel confirmed: "Certainly – you have been defended twice, five reports and an extract have been written on your account." Realizing the hopelessness of her situation Kaveczynska said "I am ready to die; but what has my family done wrong? – Why do they have to suffer through me?" The honor of her family name that would have been tarnished had she given birth to an illegitimate child was now being tainted by the court's verdict, but Hippel refused that the court had played any part in this: "your family does not suffer because of the state – all that they suffer depends on the part they take in being your kinswoman." But

[23]"Anstatt nun sich dabey aufzuhalten, sollte der Defensor, wenn er – welches er leider allzuoft nicht ist – ein philosophischer Kopf wäre, die Gründe seiner Defension aus der ganzen Lebensgeschichte des Inquisiten, seiner Erziehung, seinen Geisteskräften, Lebenswandel, Gemüthscharacter, Unstanden und bestimmenden Ursachen der That schöpfen, den Physicum hingegen und sein Visum repertum ungehudelt lassen."

[24]"Sehen diese etwa durch ein anderes Medium als andere Menschen? haben sie andere Hülfsmittel, als Erfahrung und Vernunft, um das was sie sahen, prüfen und berichtigen zu können? oder giebts etwa gewisse körperliche Kennzeichen, aus welchen sich auf bestimmte Geisteskrankheiten schließen läßt."

https://doi.org/10.1017/S0269889725100690 Published online by Cambridge University Press

Kaveczynska was aware of the realities of her situation: "Oh! They are being shamed, when I am not secretly executed." But Hippel would have none of it: "No King can grand a pardon with an easy conscience." Whereto he added: "Not the judge but the law has denied you life." Kaveczynska then made her final plea: "Even after death, I pray, I hope – I will be buried in the churchyard?" But Hippel could not make such a promise to her final request, answering: "That will for the most part depend upon the clergy" (Hippel [1792] 1797, 11–15).

IV

1793, the year after the verdict, an anonymous piece appeared in the *Almanach für Aerzte und Nichtaerzte* (*Almanac for Doctors and Laymen*) posing the question: "Is it advisable to establish a chair in forensic medicine?" The editor was Metzger's old friend, Christian Gottfried Gruner. The text pointed out that: "Since the political revolution in France also has brought about a scientific revolution, one is eagerly competing to give these neglected parts of medicine their deserved place within the improved criminal justice system" (Anonymous 1793, 96).[25] Following the revolution in France, the university system had been undergoing significant changes and chairs in forensic medicine were being established in Paris, Strasbourg, and Montpellier, institutionalizing the medical lens within the domain of law.[26] In Prussia, in the shadow of this scientific revolution, Kant remained silent on the matter until Hippel's death in 1796. Having publicly distanced himself from any intellectual conflation with Hippel,[27] Kant published his *Metaphysics of Morals* in 1797, addressing the problem of capital punishment in cases of infanticide. For Kant the case of infanticide pointed to a breach in the law as "no decree can remove the mother's shame when it becomes known that she gave birth without being married." Yet unlike Beccaria, Kant did not emphasize a child's supposed incapacity to feel pain but instead pointed to its indeterminate legal status: "A child that comes into the world apart from marriage is born outside the law (for the law is marriage) and therefore outside the protection of the law." Illegitimate children accordingly are "like contraband merchandise," and the commonwealth can ignore not only their existence but also their annihilation. This indeterminate legal status of a child, which Metzger had tried to solve by claiming it a property of the state, meant that both mother and child legally would "find themselves in the state of nature" (Kant [1797] 1996, 476–477). In such a situation, the establishment of intent would prove even more important as well as challenging, not least due to the already high child mortality. Yet Kant did not initially address the questions Hippel had raised on the special competence of doctors. However, in 1798 Kant published his lectures on *Pragmatic Anthropology*, wherein he addressed the topic. Distinguishing between cases that can and cannot be ascribed to any physical cause, Kant noted:

> if someone has intentionally caused an accident, the question arises whether he is liable and to what extent; consequently, the first thing that must be determined is whether or not he was mad at the time. In this case the court cannot refer him to the medical faculty but must refer him to the philosophical faculty (on account of the incompetence of the court). For the question of whether the accused at the time of his act was in possession of his natural faculties of understanding and judgment is a wholly psychological question; and although a physical oddity of the soul's organs might indeed sometimes be the cause of an unnatural transgression of the law of duty (which is present in every human being), physicians and physiologists in general are still not advanced enough to see deeply into the mechanical

[25]"Seitdem in Frankreich die politische Revolution auch eine wissenschaftliche Revolution nach sich gezogen hat, beeifert man sich um die Wette, diesem bisher vernachläßigten Theile der Medicin mit der verbesserten Kriminaljustiz den verdienten Platz anzuweisen."

[26]See Becker and Wetzell 2006, especially Marc Reneville's chapter (2006).

[27]Kant publicly refuted a circulating rumour that he was the author of some of Hippel's anonymous writings (Kant 1797).

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> element in the human being so that they could explain, in terms of it, the attack that led to the atrocity, or forsee it (without dissecting the body). (Kant [1798] 2007, 319)

Surprisingly, Kant makes the claim that in dubious matters where the judge is unable to determine the mental state of the accused, he should be guided not by the medical but by the philosophical faculty (ibid.).[28] Already the initial *Outline* of the Prussian law code had determined that if someone committed murder out of enthusiasm (*Schwärmerey*) and with the intent to be executed but "with an otherwise undisturbed use of his or her understanding" (Carmer 1786, 333), he or she should evade execution. Klein himself addressed the issue in a case on arson committed by the young Catholic woman Eva Veronika Chillin. Facing a lifetime in the penitentiary, Chillin had set the institution on fire. Although no one had died, Chillin insisted on receiving the capital punishment. Upon investigation doctors found neither physical disturbances nor any troubles of the mind. Despite this Klein used the case to argue for exemption from the death penalty in such cases (Klein 1791, 7). With reference to part I, Division III, §§690–692 of the *Outline* (Carmer 1786, 333), Klein laid forth the argument that special considerations should be made when a murderer's intention was determined by a misunderstanding of religious concepts or erroneous conclusions drawn from true moral maxims. This created a space for distinguishing between a medical investigation of the physiology or pathology of mental illnesses and madness detected as a misplaced reasoning. With psychology being a central part of the philosophical faculty, Kant's claim may be less surprising, but for Kant, the conflict was an encounter between two different perspectives on the accused as either a patient or a person. Kant had therefore argued that if a judge simply were to discard anyone as insane who errors in his or her reasoning then "it might easily be possible to declare all criminals insane, people whom we should pity and cure, but not punish" (Kant [1798] 2007, 319).[29] The challenge for the pragmatic anthropologist therefore is to be able to distinguish between acts committed voluntarily or involuntarily. Acts motivated by honor, according to Kant, are voluntary acts manically "concerned with one's external reputation" (Kant [1798] 2007, 373). Klein noticed Kant's critique, and on 27 February 1800 he sent a letter to Kant. Here Klein presented Kant with a new article on the importance of imputability for judging criminals (Klein 1800). To Kant, Klein wrote that: "A new theory in criminal law has emerged according to which humans are treated as simple animals." Elaborating further, Klein wrote: "I know very well that the freedom of the will cannot be observed, but actual punishment presupposes the case where humans are not simply perceived as plants or animals" (Kant 1902–, XII:298–299).[30] Klein called the new theory one of animal disciplining. or the terroristic system, while he called the one based on Kant's conception of freedom the *humane* system. The physician, following the terroristic system, would be prejudiced to perceive the accused as conditioned by his or her physiology, and hence the physician would not be able to investigate criminal acts as acts of free will.

[28]The same year Kant had published his *The Conflict of the Faculties* (1798) – the third part, *On the Power of the Mind to Master its Morbid Feelings by Sheer Resolution* addressing the conflict between the medical and philosophical faculty.

[29]Kant did not refer explicitly to the case of Kaveczynska. In fact Kant used a different kind of infanticide as an example: suicide by proxy. The overlap between different kinds of infanticide has been demonstrated by Stuart (2008, 414). See also note 6 as well as von Weber 1937 and Krogh 2011 on suicide by proxy. There is nothing to suggest that Kant was interested in the specific outcome of the case; rather, his interest was the division of labor between medicine and philosophy. The case, of which it would have been practically impossible for Kant not to have been aware, underscored the actual tension between medicine, law, and philosophy. As von Weber has shown (1937, 172–173), Klein's treatment of suicide by proxy had been integrated in Carmer's *Outline* (Carmer 1786, 333). By not responding explicitly to either of the two, Kant managed to respond to both, or rather, both felt that he was responding to them.

[30]"Es fängt jetz an, eine neure Theorie im Criminalrechte Aufsehen zu erregen, nach welcher die Menschen bloß wie Thiere behandelt werden. [/] Ich weiß wohl, daß die Freyheit des Willens nicht sinnlich wahrgenommen werden kann; aber eigentliche Strafe setzt doch den Fall voraus, wo der Mensch nicht bloß als Pflanze oder Thiere wirksam gewesen ist."

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Meanwhile, following the disagreement with Hippel in the case of Kaveczynska, Metzger was not late to perceive Kant's remark as a direct attack on himself and his profession. Initially he responded by publishing a translation, from Latin to German, of Zaccharias Platner's "Proof that It Is the Task of the Physician to Judge in Cases of Insanity and Mental Illness" (Platner & Metzger 1800). The text was followed by Kant's criticism and a short comment by Metzger. Platner's argument was developed as a proof that insanity was seated in the body – even cases of mental illness that did not originate in the body were nourished and sustained by the body (ibid., 37). The text sought to demonstrate that the soul was influenced by the body. As the mental state was influenced by the body, Platner would, as Thomasius had previously done, suggest that physicians should assess the mental state of criminals (ibid., 64). Metzger noted that he would be happy to leave it to philosophers if they had the tools to penetrate the human soul (ibid., 66), but he found that doctors as empirical psychologists were better equipped to judge in these matters (ibid., 67).

The response by Metzger shows that the case was anything but "insignificant," to Metzger as well as to the growing field of forensic medicine. In 1803, the year before Kant's death, Metzger, in his own words, had become more daring (Metzger 1803, 72). In his supplement to forensic medicine, Metzger addressed Kant's objection, pointing out that in cases where a person seemed to be mentally unwell, medical assessment should be introduced. A Prussian decree had established that in cases of uncertainty of a criminal's mental condition, two physicians should consult the lawyers (ibid.). Metzger nuanced the argument of Platner, although he repeated the foundational assumption that mental illnesses are placed in the body. Empirical psychology is closer to medicine than metaphysics, Metzger argued (Metzger 1805, VII). Over the course of the eighteenth century, the task of philosophy had changed, and Kant's anthropology had become overshadowed by his transcendental philosophy. That Kant had intended the student of pragmatic anthropology, like Hippel, to be the forensic consultant had been lost.

The debate was picked up by the philosopher Johann-Christoph Hoffbauer in 1808 (Hoffbauer, 1808). Despite his profession, Hoffbauer sided with Metzger, and for more than a decade no one commented on the debate. By the mid 1820s, however, the debate opened up again, particularly fuelled by events that took place in Paris. In 1825, Henriette Cornier, a nursemaid, had been charged with the killing of a nineteen-month-old baby. The case had become a public spectacle, with several physicians taking an interest in the case. Cornier, the defence argued, was a victim of monomania homicide. One expert physician was Charles-Chrétien-Henri Marc, educated in Germany, who in his analysis drew on the work of Metzger. The case once again put into question the reliability of the physicians, both in the courtroom and in the literary public. Elias Regnault, a French lawyer, delivered a direct attack on the competence of physicians in court cases (Regnault 1828). The dispute became textbook material throughout Europe and with it also the dispute between Kant and Metzger.[31] Yet the conflict between philosophers and physicians had already faded. In Germany, the physician Samuel Gottlieb von Vogel found that the debate should be solved by a disciplinary division, writing that "We leave transcendental freedom to the transcendental philosophers, who cannot contribute or supply anything to our immanent empirical end" (von Vogel 1825, XXII).[32] The matter in itself had not been solved, but the disciplinary development had brought the two fields in different directions, solidifying distinct and unreconcilable notions of freedom. Kant's philosophy – reduced to transcendental philosophy – had been detached from his pragmatic anthropology, and the debate had been detached from its initial context.

[31]It was quickly accepted that Metzger had come out on top of the argument: Wildberg 1824, 148; von Vogel 1825. See also Friedreich 1834, 34–55; 1835, 200; Marc 1840, 1:2–3; Chauveau and Hélie 1845, 243; von Feuchterleben [1845] 1847, 369ff.; Lazzaretti 1857, 142; Dechambre 1865, 141–142; Ray 1871, 77.

[32]"Die transcendentale Freiheit überlassen wir den transcendentalen Philosophen, welche zu unserm immanenten empirischen Zweck nichts beitragen oder liefern können."

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Conclusion

In 1799, Karl August von Struensee, the Prussian Minister of Finance and a dedicated member of the *Wednesday Society*, explained to the French chargé d'affaires that "the salutary revolution you have made from below will come gradually from above in Prussia" (Bourel 1991, 56).[33] The formulation and implementation of the Prussian law code had been envisioned as a project of enlightenment, and the basic principles on which it was founded had been reevaluated. Following the revolution in France, the foundational principle was no longer the general wellbeing of the people; instead, it was written in *The General State Laws for the Prussian States* that: "The universal rights of humans are based on the natural freedom, to be able to pursue and promote one's own happiness without violating the rights of others" ([ALR] 1794, Einleitung §83).[34] The concept of freedom as legal accountability had been expanded to a principal concept of *civil freedom* and had come to play the founding role in constituting the law. When Klein wrote his *Principles of Natural Jurisprudence*, he ascribed this reassessment of natural jurisprudence to Kant's philosophy, listing him in the line of the tradition's great thinkers from Grotius and Hobbes to Pufendorf and Thomasius. It is true that Kant's formulation of freedom as a normative principle would radically change the perspective from where his predecessors would be perceived; yet Kant's own perspective grew out of an active engagement with and reflection on the problems arising within the discourse of natural jurisprudence, its collaboration with medicine, and the practical codification of the Prussian law code to such an extent that Klein would even ask rhetorically "whether this principle would not have been discovered without the help of Kantian philosophy" (Klein 1797, 365)? To Klein there was no doubt that Kant answered a pressing question within natural law regarding the nature of the legal subject and the foundation of law.

This conceptual reorientation was constituted within a matrix of territorial unification, institutional legitimation, and intellectual contestation. Within this matrix, the legal subject was put to the test in a variety of spaces: the criminal court, the university, and the public sphere. Court cases like Kaveczynska's brought conflicts to the foreground by contesting the legitimacy of institutions as well as the professional authority of the involved. Kaveczynska's defence came to instrumentalize the disciplinary conflicts embodied by the Criminal Court and the Medical College. At the same time, the cases came to be an arena where legitimacy and authority could be established or affirmed. The feud between Kant and Metzger had its pre-history in such an arena, and Kant found it the proper context for establishing a final defence for the legal subject conceived as a free, responsible person. However, as we have seen, the many questions arising from the spatialization of this genealogy of freedom were countered by disciplinary specialization: The initiated collaboration between medicine and law established by Thomasius had begun to fracture. Kant himself had envisioned this as a division of labor (Kant [1798] 1996, 247) with the higher faculties collaborating with the lower; however, von Vogel's proposition separating transcendental philosophy from empirical medicine expressed a fragmentation of knowledge. The principally opposing views on man as either determined by nature or destined by freedom slowly came to crystalize into distinct disciplinary discourses. Within this division Kant's persona came to embody his philosophy: a life governed by principles but abstracted from humanity. In Kant, his followers had found a principle for a transcendental philosophy,[35] while critics like Metzger saw an abstract philosophy with little practical application. Metzger seemingly came to have the last word in the matter when the debate was used as a textbook rivalry for the establishment of medical criminology in the nineteenth century. Yet, having won the argument, ironically, his name gradually disappeared from its disciplinary history, while Kant's name has remained as an odd

[33]Struensee: "La revolution très utile que vous avez Faite du bas en haut se fera lentement en Prusse du haut en bas." Ludwig Wilhelm Otto to Talleyrand, 13 August 1799.

[34]"Die allgemeinen Rechte des Menschen gründen sich auf die natürliche Freyheit, sein eignes Wohl, ohne Kränkung der Rechte eines Andern, suchen und befördern zu können."

[35]On the constitution and systematization of Kant's transcendental philosophy, see Henrich 2004.

https://doi.org/10.1017/S0269889725100690 Published online by Cambridge University Press

challenge to the medical authority of forensic psychiatry. Where the debate has resurfaced in the contemporary historical literature, the personal rivalry has been reduced to a disciplinary conflict, where Metzger, his influence, and his reception remain insignificant and undiscussed (see Wetzell 2000, 40; Becker 2006, 109).

The medical lens on the criminal mind came to give a new perspective on the legal subject, and in the cases of infanticide these subjects were mainly female. The debate therefore provides a new outlook not only on the anthropological difference of the sexes but simultaneously on the legal status of the genders. Metzger's prudent care for the women did omit them from guilt, but his solution did not provide any normative incentive to reform the law. As Hippel had noted in the case of Kaveczynska: "who begs for mercy when he can demand justice" (Hippel [1792] 1797, 122).[36] It is this stance that Kant's rigidly strict attitude is directed towards. Kant's insistence on legal accountability presupposes that the law is in principle accepted by free individuals, a presupposition which, in the cases on infanticide, proved highly problematic. It is in these dubious cases that one may find a motor for legal reforms. However, it would take a long time before women could not only hope for justice as free responsible individuals in the courtroom but also by exercising the political freedom by determining the laws that would judge them.

Acknowledgments. I am in particular grateful to Hans Erich Bödeker, Anthony La Vopa, Martin Gierl, and Laura Nicoli, as well as the two reviewers, Peter Becker and an anonymous reviewer, for their valuable comments on earlier versions of the text.

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[36]"wer erfleht Gnade, wenn er Gerechtigkeit fordern kann?".

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Cite this article: Gerlings, Jonas. 2025. "Conflicting minds: Immanuel Kant, Johann Daniel Metzger, and the debate about forensic psychiatry," *Science in Context*. doi:10.1017/S0269889725100690