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The Teaching and Practice of Jurisprudence in 18th Century East Prussia: Königsberg's First Chancellor, R. F. von Sahme (1682–1753)¹

The career and writings of a provincial academic such as Reinhold Friedrich von Sahme – the first ordinarius for law at the Universität Königsberg between 1736 and 1751, and member of the Upper Appeals Court – have either been overlooked by historical scholarship, or else interpreted simply as an index of the derivative or isolated nature of cultural life and politics in the province in the first half of the 18th century. If older surveys of German legal history had accorded Sahme a modest place as reflecting the “Germanist and antiquarian” tradition of learned jurisprudence of the late 17th and 18th centuries², subsequent scholarship, focusing its attention on issues of territorial-state development, or broad cultural movements such as the Enlightenment, historicism or pre-romantic cultural nationalism has judged such figures more critically and one-sidedly. Thus Götz von Selle, in his history of the Universität Königsberg, could refer to Sahme’s reputation as a “capable jurist”, but then proceed to emphasize the way in which his concern with transmitting a tradition of learned Roman law or provincial jurisprudence bore little imprint of the more active political issues alive in the work of jurists and historians at Halle and elsewhere, of the progressive methods of university instruction being developed at Göttingen, or of the subsequent deepening of historical and national concerns that set in after the Seven Years War in Germany. Sahme’s appointment to be the first “Chancellor and Director” of the university in 1743 might therefore be adequately interpreted as little more than a retrospective honor meted out to a loyal, but second-rate servant of the Brandenburg-Prussian monarchy³. In such a context, Sahme’s Latin and German writings,

¹ I would like to thank the Stiftung Luftbrückendank and the Freie Universität Berlin for a fellowship during 1986–87 which made possible the research and writing of this manuscript. The Geheime Staatsarchiv Preussischer Kulturbesitz, Berlin (West) kindly gave permission to use material on Sahme housed there.

² RODERICH VON STINTZING, *Geschichte der deutschen Rechtswissenschaft*, 3 vols. 3rd ed., ERNST LANDSBERG ed. (Munich and Leipzig: Oldenbourg, 1880–1910) 3: p. 266.

³ GÖTZ VON SELLE, *Geschichte der Albertus-Universität zu Königsberg in Preussen*, 2nd ed. rev. (Würzburg: Holzner Verlag, 1956), pp. 153–56.

rarely to be found in present-day German libraries in any event, might readily be passed over as meriting no historical attention in themselves.

The purpose of this article is to suggest a set of interrelated perspectives and historical contexts which may serve to reopen questions of the significance of a regional cultural figure and administrative official such as Reinhold Sahme, and of the cultural and civic outlook through which he articulated his activities and gained his self-understanding and professional identity.

A first line of interpretation, I would argue, would begin from recent scholarly efforts to develop a broadly-comparative cultural, social and political history of German universities and other educational institutions (such as nobles' academies) between the late 16th and early 19th centuries. The older histories which had focused either on narrowly regional developments, or else on overly-broad narratives of the strife of "warring sects" or changing intellectual paradigms (e. g. scholastic Aristotelians versus "realists" and "empiricists", Wolffians versus anti-Wolffians) alone, have now begun to be supplemented by more empirically-exacting discussions of the social and political functions performed by university-educated elites in different regions and in different times, of trends in student enrollments and recruitment patterns, and of the interaction between reform initiatives undertaken on the local and on the central-state levels⁴. For the purposes of this essay, it will be argued that analyses of the changes which gradually took place in the study and teaching of law, history, philosophy and other subjects at German universities in the 1670's through 1740's, and of their relationships to altering interests and expectations on the part of students, governing officials or the "educated public,"⁵ offer a fruitful new approach to an

⁴ RAINER C. SCHWINGES, *Immatrikulationsfrequenz und Einzugsbereich der Universität Giessen 1650-1800: Zur Grundlegung einer Sozialgeschichte Giessener Studenten*, in PETER MORAW and VOLKER PRESS, eds., *Academia Gissensis: Beiträge zur älteren Giessener Universitätsgeschichte* (Marburg: N. G. Elwert Verlag, 1982), pp. 247-96; and his *Universitätsbesuch im Reich vom 14. zum 16. Jahrhundert: Wachstum und Konjunkturen, Geschichte und Gesellschaft* 10 (1984): p. 5 ff.; CHARLES E. MCCLELLAND, *State, Society, and University in Germany 1700-1914* (London and NY: Cambridge University Press, 1980); FILIPPO RANIERI, *Vom Stand zum Beruf: Die Professionalisierung des Juristenstandes als Forschungsaufgabe der europäischen Rechtsgeschichte der Neuzeit, Ius Commune XIII* (1985): pp. 83-105 and *Juristische Literatur aus dem Ancien Régime und historische Literatursoziologie: Einige methodologische Vorüberlegungen* in C. BERGFELD, ed., *Aspekte europäischer Rechtsgeschichte: Festgabe für H. Coing zum 70. Geburtstag* (Frankfurt: Klostermann, 1982), pp. 293-320.

⁵ NOTHKER HAMMERSTEIN, *Jus und Historie: Ein Beitrag zur Geschichte des historischen Denkens an deutschen Universitäten im späten 17. und im 18. Jahrhundert* (Göttingen: Vandenhoeck & Ruprecht, 1972); JOACHIM DYCK, *Zum Funktionswandel der Universitäten vom 17. bis zum 18. Jahrhundert: Am Beispiel Halle*, in ALBRECHT SCHÖNE, ed.,

understanding of the teaching, publications and social outlook of a figure such as Reinhold Sahme. Such an approach may also derive useful comparative insights from studies of the intellectual outlook and socio-political support for the "regional Enlightenment" or "academy movement" developing in the provinces of France, Great Britain, Italy and elsewhere in that period as well⁶.

A second line of interpretation supplements the first while pointing in the direction of a third, complementary set of investigations and questions. Historians of political and social thought such as J. G. A. Pocock, Q. Skinner and, following them, M. Thompson and H. Höpfl, have recently spoken of a continental "juristic civic consciousness" that continued to develop on through the 18th century apart from the tradition of "civic republicanism" which increasingly became central to west European discussions⁷. This, in my view, provides a helpful methodological starting point for a reassessment of a figure such as Reinhold Sahme. The study of 17th and 18th century German jurisprudence – like the study of German universities in that period – has had difficulty in developing

Stadt-Schule-Universität-Buchwesen und die deutsche Literatur im 17. Jahrhundert (Munich: Beck, 1976), pp. 371–82; NORBERT CONRADS, *Ritterakademien der frühen Neuzeit: Bildung als Standesprivileg im 16. und 17. Jahrhundert*. Schriftenreihe der historischen Kommission bei der Bayerischen Akademie der Wissenschaften, no. 21 (Göttingen: Vandenhoeck & Ruprecht, 1982); OTTMAR FEYL, *Deutsche und europäische Bildungskräfte der Universität Jena von Weigel bis Wolff*, *Wissenschaftliche Zeitschrift der Friedrich Schiller-Universität Jena* 6 (1956–57): p. 22 ff. and his *Jena als Avant-Universität der Frühaufklärung und Geschichtswissenschaft in der zweiten Hälfte des 17. Jahrhunderts*, *Wissenschaftliche Annalen* 6: 2 (1957): pp. 83–92; GERTRUD SCHUBERT-FIKENTSCHER, *Studienreform: Fragen von Leibniz bis Goethe*. Sitzungsberichte der sächsischen Akademie der Wissenschaften zu Leipzig, Phil.-Historische Klassen no. 116: 4 (Berlin: Akademie-Verlag, 1973).

⁶ DANIEL ROCHE, *Le Siècle des lumières en province: Académies et académiciens provinciaux 1680–1789*, 2 vols. (Paris and the Hague: Ecole des hautes Etudes en Sciences Sociales; Mouton Editeur, 1978); NICHOLAS PHILLIPSON, *Culture and Society in the Eighteenth-Century Province: The Case of Scotland and the Scottish Enlightenment* in LAWRENCE STONE, ed., *The University in Society: Studies in the History of Higher Education*, 2 vols. (Princeton: Princeton University Press, 1974), 2: pp. 407–48; FRANCO VENTURI, *Italy and the Enlightenment* (London: Longman New York University Press, 1972); KEITH MICHAEL BAKER, *Enlightenment and Revolution in France: Old Problems, Renewed Approaches*, *Journal of Modern History* 53: 2 (June 1981): pp. 281–303; N. HAMMERSTEIN, *Jus u. Historie*, makes the interesting suggestion that German universities performed a function similar to the academies in west European lands.

⁷ J. G. A. POCKOCK, *Politics, Language and Time: Essays on Political Thought and History*, (N.Y.: Atheneum, 1973) and *The Machiavellian Moment* (Princeton: Princeton University Press, 1975); QUENTIN SKINNER, *Foundations of Modern Political Thought*, 2 vols. (London and N.Y.: Cambridge University Press, 1978); MARTYN P. THOMPSON, *The History of Fundamental Law in Political Thought from the French Wars of Religion to the American Revolution*, *American Historical Review* 91: 5 (Dec. 1986): pp. 1103–28; HARRO HÖPFL and MARTYN P. THOMPSON, *The History of Contract as a Motif in Political Thought*, *American Historical Review* 84 (1979): pp. 919–27.

heuristic concepts or typologies which might serve to relate German jurists' and academics' adherence to German intellectual traditions with their selective openness to European-wide developments, and the practical adaptation or involvement they maintained with diverse regional conditions and cultural functions. The term "juristic civic consciousness" will be understood to refer to the way in which important elements of the educated and governing classes of 17th and 18th century Germany were able to derive a highly developed intellectual orientation, professional or corporate identity, and set of norms for their social and political behavior, self-representation and self-understanding from their training or work as learned "jurisconsults." Such an approach, I would argue, ought not to prejudge, but rather seek to open up, questions of the precise relationship which such a cultural tradition and social identity could have to the processes making for stability or change in German society and politics during the century and a half following the Thirty Years War.

A third set of historical perspectives, which complements the foregoing ones, emerges from the continued effort of historians over the past fifty years to explore the endurance of traditional corporatist (*ständisch*) or regionally-centered patterns of political, social and economic life within or even counter to the practices of princely absolutism and the institutions of the centralized territorial state⁸. In the case of Brandenburg-Prussia, G. Heinrich and others have emphasized the importance of exploring the actual scope or effectiveness of the new institutions and policy initiatives of the Hohenzollern princes and state officials, and of contrasting them with a new understanding of the potential range of regional and local practices and institutions which endured alongside them, or of the modification introduced by virtue of the regional leadership groups who helped to implement or articulate those state policies. The narratives which might therefore be told would include not simply those of the successful progress, or temporary obstruction, of central-state reform programs, of "institutional solutions" to old problems or new leaderships tasks, but equally as much of the longer-term interaction and adjustment which took place between

⁸ In addition to the older works of Fritz Hartung, Dietrich Gerhard and Gerhard Oestreich, one may mention the recent collection ed. by PETER BAUMGART, *Ständetum und Staatsbildung in Brandenburg-Preussen, Veröffentlichungen der Historischen Kommission zu Berlin*, no. 55 (Berlin: De Gruyter, 1983).

succeeding groups of primary and secondary leaders, between center and region⁹.

In his studies of the extension of central-state supervision over the institutions and populace of Brandenburg-Prussian towns, and of the characteristics and outlooks of the primary and secondary leadership groups developing in the regions of the monarchy in the 16th through 18th centuries, Heinrich developed a series of insights and research perspectives which are of importance for a new understanding of the role of jurists and juristic knowledge in the social and political culture of a province such as East Prussia.¹⁰ While cautioning that the history of developments in a residence and regional administrative center like Königsberg might have taken a special course, Heinrich has nonetheless suggested that in general central-state control or interference was both more restricted and more specifically focused than has largely been assumed or proven in traditional historical discussions. Equally important is the notion that regional leadership groups were both molded by the ethos of the Prussian state as well as able to develop practices and outlooks which differed from a system of "monarchical absolutism" simply understood, and which pointed "backward" toward corporatist and regional patterns of social and political life as well as "forward" toward conceptions of a limited or constitutional monarchy. The research task, in such a view, would be to understand the multifaceted, often ambiguous nature of the exercise and distribution of political and social power which took place under the different stages of rule represented by Friedrich III (I), Friedrich Wilhelm I and Friedrich II.

For the early phase of Reinhold Sahme's career, the 1710's-30's, for example, Heinrich has suggested that there occurred within regional centers such as Königsberg (and elsewhere in the monarchy) a shift toward the renewal of corporatist and "professional" self-consciousness on the part of noble and Bürger office holders. This was perhaps due to a variety of factors, such as Friedrich Wilhelm's willingness to neglect his predecessors' strictures against allowing regional noble families to

⁹ GERD HEINRICH, *Staatsaufsicht und Stadtfreiheit in Brandenburg-Preussen unter dem Absolutismus (1660-1806)* in WILHELM RAUSCH, ed., *Die Städte Mitteleuropas im 17. und 18. Jahrhundert* (Linz: Oesterreichischen Arbeitskreis für Stadtgeschichtsforschung; Ludwig-Boltzmann-Institut für Stadtgeschichtsforschung, 1981), pp. 155-172 and *Amtsträgerschaft und Geistlichkeit: Zur Problematik der sekundären Führungsschichten in Brandenburg-Preussen 1450-1786* in GÜNTHER FRANZ, ed., *Beamtentum und Pfarrerstand 1400-1800: Büdinger Vorträge 1967* (Limburg/Lahn: C. A. Starke Verlag, 1972), pp. 179-238.

¹⁰ Ibid.

obtain multiple state-posts and his need, in the absence of a numerous bureaucracy, to rely upon a core of capable provincial leaders to help implement new royal policies. But a special formative role was also played, he proposed, by the tacit forms of "legality" (*Rechtsstaatlichkeit*) through which such policies were articulated and implemented. An additional research desideratum would therefore be to explore the extent to which academically-trained office holders and administrators began to use their posts to represent what they viewed as the separate or legitimate interests of portions of the community against encroachments on the part of other institutions or state officials.

In the case of towns like Königsberg, the actions of *Bürgermeisters* or town magistrates, of courts or private-practice lawyers, might obstruct or appeal the actions of institutions like the War and Domains chambers or tax-officials in a way that helped to create what Heinrich termed an "area for free activity", a space within which older as well as newer practices and patterns of selfunderstanding of regional groups could then develop in new ways.

In such a context, the "juristic civic consciousness" of a figure such as Reinhold Sahme might have gained a particularly important meaning for regional social, political and cultural leadership groups.

I

Reinhold Sahme's career and scholarly activities may conveniently be viewed as falling into two major phases: the first, from the 1680's to the 1720's, was that of his early education, travels abroad, and initial academic and professional activities upon his return to East Prussia; and the second, from the 1730's through the early 1750's, represented the period of his mature scholarly contributions and expressions of a developed civic self-understanding.

Reinhold Sahme's background, upbringing and early professional career reflect the way in which the socio-political and cultural experiences of the "secondary leadership groups" – and particularly those from the *Bürgertum* – of East Prussia in the late 17th and early 18th centuries are not so readily to be viewed as "provincially isolated", but as standing in important relationships to cultural and institutional developments taking place on the territorial and Imperial levels¹¹.

¹¹ The primary source is *Nachricht von dem Königsberger Herrn D. R. F. von Sahme*, in M. C. HANOV, ed., *Preussische Lieferung* 1: 6 (1755): pp. 715–22, which takes most of its material word for word from J. C. STRODTMANN, ed., *Geschichte jetztlebender Gelehrten*

Reinhold's grandfather, Jakob Sahme (1579–1641) had been the one to move from the provincial town of Rastenburg to become a member of the Königsberg Bürgertum and subsequently a Ratsherr and judge in the Altstadt magistracy. The next generation, Reinhard's uncle Jakob (1629–1680) and father Heinrich (1636–1700), maintained the family's position in the Königsberg Bürgertum during a period which saw some of the most important changes in the political life of the province, under the rule of the Elector Friedrich Wilhelm. Jakob obtained his magister from the Universität Königsberg in 1655 and, like other members of the educated and ruling elites of his generation, undertook an extensive Bildungsreise through western Germany, Holland and England (1655–58). Upon returning to Königsberg, he initially taught Greek and eloquence at the university before taking clerical posts in the countryside (Arch-pastor) and in Königsberg (first as Dompastor, 1673, and then professor of theology). His own sons, Reinhold's cousins Christian (1663–1732) and Jakob Friedrich (1669–1724) took up academic and juristic careers respectively: the former as professor of philosophy, math and theology at the university; the latter, as advocate before the newly reorganized Hofgericht of the province, and as member of the Altstadt town council. Reinhold's father, Heinrich, had himself also acquired legal training, had married the daughter of a prominent Bremen and Königsberg merchant family – the Bredelos – and then followed his own father's precedent to become head official of the Altstadt judicial magistracy (first Beisitzer on the Schoppenstuhl).

Reinhold and his older brother, Arnold Heinrich (1676–1734), inclined toward the academic side of the family tradition, although both took advantage of the possibilities of added income through professional or administrative service. Arnold obtained a magister's degree in philosophy at Königsberg in 1700 and, after teaching some years as an extraordinarius, became an archdeacon (1708); later, perhaps with the aid of Reinhold and their cousin Christian – who had begun in 1721–25 working with the orthodox Lutheran pastor J. Quandt on a royal commission set up to inspect and reform schools and churches in the "Lithuanian area" of the province – Arnold was appointed to serve on the Samland Consistory (from 1721 to his death in 1734). The Sahmes were thus members of the sorts of "secondary leadership groups" developing on regional and local levels in Germany and elsewhere in Europe

during the transition from what has been termed the "princely finance-state" to the centralized territorial state of the late 17th and 18th centuries¹². But the specific way in which the different generations of such a Bürger family would have experienced the socio-political and cultural changes taking place in the province under the reigns of the Electors Friedrich Wilhelm and Friedrich III (I) may only be discussed briefly below, in connection with the career of Reinhold Sahme himself.

The education and cultural experiences which Reinhold Sahme acquired early in his career reflected a combination of provincial as well as territorial-state orientations, of a systematic Baroque rationalism together with an older tradition of universalistic humanism and older and newer forms of a German and even Imperial historical consciousness. As such, the outlook of educated and ruling elites in even so seemingly far-removed a province as East Prussia bore close parallels to that contained in the early phase of the "regional Enlightenment" and "academy-movement" in the French provinces in that same period. It was only gradually, in the course of the half century after 1690, that the mercantilistically- and religiously-inspired restrictions against travel and study abroad promulgated by Brandenburg-Prussia rulers began to have their effect¹³.

As befitted a member of his social group, Reinhold Sahme was first tutored at home before being sent to the orthodox Lutheran schools of the Altstadt and matriculating at the Universität Königsberg at the relatively early age of 16¹⁴. At the university, he gained his general

¹² PETER BAUMGART, Einleitung in BAUMGART, ed., *Ständetum u. Staatsbildung*, pp. 6-7.

¹³ Examples of the cultural outlooks and travels of the educated and ruling elites in late 17th century Königsberg are contained in FRITZ GAUSE, *Die Geschichte der Stadt Königsberg in Preussen*, 2 vols. (Cologne and Graz: Böhlau Verlag, 1965-68), 1: pp. 429-42. The parallels to the "regional Enlightenment" and "academy movement" are to be seen in the works of Roche, Phillipson and Venturi mentioned above (n. 6) An insightful history of princely policies toward travel and study abroad is sketched by NORBERT CONRADS, *Politische und staatsrechtliche Probleme der Kavalierstour*, in ANTONI MACZAK and HANS J. TEUTBERG, eds., *Reiseberichte als Quellen europäischer Kulturgeschichte: Aufgaben und Möglichkeiten historischer Reiseforschung*, Wolfenbütteler Forschungen, no. 21 (1982): pp. 45-64. Conrads emphasizes the absence of systematic studies of the extent to which such policies were or were not evaded in the 18th century. Some of the documents in the Geheime Staatsarchiv Preussischer Kulturbesitz, Berlin (West) (hereafter cited as GStAPK) suggest that implicit evasion was continuing as late as the 1780's: see GStAPK, XX. HA StA Königsberg, Rep. 110.

¹⁴ This may be compared with Sahme's younger contemporary, T. C. Pauli, the son of the law professor and Upper Appeals Court counselor Theodor Pauli, who is listed as having been enrolled at the university at age 6, and having taken part in a juristic disputation at age 12 or 13 (1698). He subsequently obtained his doctorate in law at Leiden in 1707-08 and returned to assume a post as counselor on the Upper Appeals Court in 1716 (upon his father's death). He was reported to have been a particular favorite of Friedrich Wilhelm I

humanistic preparation partly under his brother Arnold's direction – with whose “sponsorship” he defended an academic piece “On Images of the Prince” (*De Imaginibus Principum*) in 1702 – and partly through studies with the professors of natural philosophy and politics¹⁵. Soon, however, he shifted to the study of law, beginning with several of the younger *extraordinarii* at the university: Z. Hesse, the son of an Upper-Appeals Court counselor, trained at Frankfurt an der Oder, Wittenberg, Jena and Halle, and already in those years working as an advocate before the *Hofgericht*;¹⁶ and with one P. Schwenner, who himself held a minor post in the town government. Being introduced through them to recent scholarly literature on the tradition of Roman civil law and natural law, Sahme took part in the expected pattern of learned “disputations”: first under the supervision of Schwenner (1703), with an essay “On the Marriage of Older People”, and then (1705) under the guidance of the older *extraordinarii* for law, J. C. Boltz and J. Stein (themselves counselors on the Königsberg court and consistory respectively). Two things may initially be noted about such educational practices. First, the system of disputations served the function of initiating or “socializing” young students into the learned and professional world of provincial jurists, while also facilitating the acquisition of what had become a highly developed, and often abstruse system of juristic learning. Side effects were likely to be the inculcation of a willingness to defer to authorities or to seek authoritative models for one's thought and practices. But secondly, the form and content of those exercises indicate that if the Königsberg juristic faculty in those years was not particularly progressive by German standards, it was not by any means regressive either. The disputation in which Sahme took part – on topics such as the contemporary usage and significance of specific parts of the Roman law *Pandects*, or on the Tübingen jurist W. Lauterbach's new effort to devise a rationalistic system for interpreting the Roman civil law – reflected some of the initiatives and issues which were precisely at the center of juristic controversies in the first decades of the 18th century. They were in part the basis on which the young jurist of the 18th century. They

because of his Dutch training, and received a life-long appointment on the court in 1739. See GEORG CONRAD, *Geschichte der Königsberger Obergerichte* (Leipzig: Duncker & Humblot, 1907), p. 178 and the entry in the *Altpreussische Biographie*.

¹⁵ The latter was Georg Thegen, about whose method or choice of texts for the teaching of *Staatslehre* nothing is known.

¹⁶ The only sources for Zacharia Hesse are the *Altpreussische Biographie* and GAUSE, *Geschichte Königsberg*, 2: pp. 69–73.

were in part the basis on which the young jurist Samuel Cocceji, for example, obtained his initial appointment as *ordinarius* at Frankfurt a. O. and subsequently as privy counselor in Berlin (1714)¹⁷.

The years 1700–01 brought for Reinhold Sahme not simply the spectacle of Friedrich I's self-elevation to be "King in Prussia," but several decades' struggle with the financial difficulties resulting from his father's early death and his own uncertain professional future. Formally tested and accepted as a "juristic candidate" in 1705, Sahme spent a short period as tutor in the household of the recently-ennobled Upper Appeals Court counselor, J. P. Lau (v. Lauwitz)¹⁸. Rather than completing his "dissertation for promotion", Sahme chose to embark upon a 3–4 year *Bildungsreise*. In Sahme's own later explanation, an important factor was simply his curiosity to see other lands – and thus the elements of social prestige and cultural standing in the community as a "man who had travelled". But other factors may have played a part as well: family business or inheritance matters, or the testing out of other career options. By the time of his return to East Prussia in December 1709, Sahme had acquired a variety of insights and experiences in different regions and traditions which gave a breadth of perspective to his teaching and publications, and supported a sense of participating in German and European-wide cultural developments.

Commencing with a somewhat hazardous sea journey to Lübeck in the winter of 1706, Sahme made stops in Hamburg and Kiel, where he began informal teaching of law at the university there. After completing the family and business matters entrusted to him, he chose in the following year (1707) to promote at Giessen, which was then celebrating the centennial festival of its founding as the Lutherans' response to the conversion of Marburg to a Calvinist university. Apart from participating in

¹⁷ ADOLF STÖLZEL, *Brandenburg-Preussens Rechtsverwaltung und Rechtsverfassung*, dargestellt im Wirken seiner Landesfürsten und obersten Justizbeamten, 2 vols. (Berlin: Vahlen, 1888) 1: pp. 414–18, 2: pp. 50–56 notes the way that it was the 1699 dissertation of the young (20-year-old) Cocceji, on the controversy between his father (Heinrich C.) and the Frankfurt jurist H. Ludovici over the natural-law theories of Grotius, which first brought him to the attention of Leibniz and the scholarly community. In his 1710 *Jus civile controversum* he adopted Lauterbach's systematic ordering of the Pandects, together with an interpretation of precedents in German law and princely territorial-state legislation, to attempt to at last "resolve the uncertainties" in current German uses of the civil law tradition and to help make possible a codification of "clear and certain" laws, as the slogan went. These publications and his experience with the Halberstadt Regierung and with a visiting delegation to the Imperial Court at Wetzlar led to Friedrich Wilhelm's calling him to Berlin in 1714 as a "Privy Counselor" for judicial matters.

¹⁸ GAUSE, *Geschichte Königsberg*. 1: p. 563 for Lau's successful career and marriage to a Calvinist merchant family of the Kneiphof.

a promotion ceremony held in the presence of the Landgrave Ludwig of Hessen-Darmstadt, a practical set of considerations may also have entered into such a choice: Giessen was becoming a preferred locale for quick promotion in those years, in part because of its proximity to the recently re-established Imperial Hofgericht at Wetzlar. Sahme, to be sure, made no mention of wishing to acquire training at the court and, given the special political and territorial considerations influencing the Hohenzollerns' choice of their court and trainee appointments in those years, it is unlikely that Sahme entertained serious expectations of entering into a career at Wetzlar¹⁹.

Sahme's juristic experience at Giessen would not have brought anything unexpected: the faculty had a solid, although uninnovative and pro-Imperial, reputation in those years. His dissertation for promotion, "On the Law of the Figure Seven" (in Latin), was itself a rather narrow exercise in the exhibition of juristic and humanistic learning: he traced, for example, the Prussian practice of requiring seven witnesses for a will back to its presumed origins in the mythically-religiously inspired fascination of the Romans with the number seven, and in its subsequent adoption in a number of Roman law practices²⁰.

Perhaps due to frustrations in an attempt to gain a quick appointment as juristic extraordinarius at Königsberg²¹, Sahme continued his journeys for another two years. Visiting Frankfurt a. M., Wetzlar, and travelling down the Rhine via Cologne to Amsterdam, Rotterdam,

¹⁹ SIGRID JAHNS, *Die Universität Giessen und das Reichskammergericht*, in PETER MORAW and VOLKER PRESS, eds., *Academia Gissensis*, pp. 189–219, and *Brandenburg-Preussen im System der Reichskammergerichts-Präsentation 1648–1806* in HERMANN WEBER, ed., *Politische Ordnungen und soziale Kräfte im Alten Reich*, Veröffentlichungen des Instituts für Europäische Geschichte, Universalgeschichtliche Beihefte, no. 8 (1980), pp. 171 ff. For the Giessen juristic faculty, KARL ALFRED HALL, *Die juristische Fakultät der Universität Giessen im 17. Jahrhundert*, in *Ludwigs-Universität, Justus Liebig-Hochschule 1607–1957. Festschrift zur 350-Jahrfeier* (N.p.: N.p., 1957), pp. 1–16; for the Kiel jurists, ERICH DÖHRING, *Geschichte der juristischen Fakultät 1665–1965. Geschichte der Christian-Albrechts-Universität Kiel*, vol. 3: 1 (Neumünster: Karl Wachholtz Verlag, 1965).

²⁰ The earlier work is cited for this point in REINHOLD FRIEDRICH VON SAHME, *Gründliche Einleitung zur preussischen Rechts-Gelahrtheit worinnen das Land-Recht des Königreichs Preussen, durch deutliche Lehr-Sätze in einem richtigen Zusammenhang vorgestellt und erläutert wird* (Königsberg: Christoph Gottfried Eckart, 1741), pp. 170–71.

²¹ GStAPK, XX. HA StA Königsberg, Rep. 139cII, n. 69 contains Friedrich I's response, dated Charlottenburg 20. September 1707, to what had apparently been Sahme's recent request for appointment as extraordinarius. The King requested the East Prussian Regierung to report on whether they had any reservations about such an appointment; and they, in turn, forwarded the inquiry to the Decan of the juristic faculty (Stein). Due to delays and misplaced reports, Sahme's brother Arnold was finally enlisted to intervene with the Kanzler and Obermarschall von Kreytzen in 1709 to get the request acted upon.

Sahme emphasized the way he visited the jurists at Leiden and Utrecht, and the governmental center at the Hague. (This self-representation coincided with the Hohenzollerns' own positive views of the educational and governmental institutions of the Netherlands.) Finally returning to Kiel in the spring of 1708, Sahme was able to take up work as an approved *extraordinarius*, due to the notorious neglect of teaching by the established *ordinarii* who were too busy with their more lucrative "consulting" and administrative posts. He published there in 1708 a first set of substantial juristic pieces ("*Streitschriften*") on "Trusts in Immoveable Property" and "On the Wardship over Women" (*De Deposito rerum immobilium* and *De Femina tutrice*). Already, patterns of his later juristic and historical approaches were in evidence, as well as his use of the recent scholarship of jurists at Halle, Frankfurt a. O., Giessen and elsewhere. Whatever may have been the attraction or possibilities for an academic career at Kiel, Sahme noted that a disincentive were the political disturbances arising in those years between the Holstein dukes and Danish crown (against the background of the "Northern War" in the Baltic region). Therefore, on his return journey to Königsberg (then beginning to suffer from the plague), Sahme chose to make an extensive circuit through the educational centers of central Germany. Beginning with a visit with a maternal relative, the Königsberg-born instructor for "state-law and politics" at the Wolfenbüttel Ritterakademie, Heinrich Bredelo, he travelled via Helmstedt, Magdeburg, Jena, Halle, Leipzig and Wittenberg (claiming to have audiences with the most famous jurists of his time: Stryk, Thomasius, Gundling, Ludovici and Böhmer) to the growing new court and residence center of the monarchy, Berlin (in July 1709).

The first decade of Reinhold Sahme's academic and professional activities in the province – from 1710 through the early 1720's – may be seen as a slow, but ultimately successful, utilization of and accommodation to the career possibilities open to educated *Bürger*s in the province. In January 1710 he gained his appointment as *extraordinarius* for law, and in 1713 – with the likely aim of additional income, and contacts and advancement within the community – his "patent" as an advocate able to practice before the various intermediate and higher courts of Königsberg. He then followed his cousin Christian and other university jurists by obtaining, in 1715, the additional post of counselor on the Samland Consistory. In retrospect one may suggest – although it is striking that Sahme or his biographers did not do so – that a genuine turning point for his career came in the years 1719–21, when he worked on the com-

mission which assisted the Brandenburg-Prussian privy counselor, Samuel Cocceji, on his judicial reforms in the province. It was apparently at that time that Cocceji developed the opinion that, as he said, Sahme was "the best and most learned advocate in the whole of Prussia."²² Five years later (1726), when Sahme's former teacher, Z. Hesse, resigned his academic post to devote full time to being the Directing Bürgermeister of the newly reorganized and unified town government of Königsberg²³, Sahme gained the appointment (ahead of some other jurists) as fourth ordinarius for law. His successive promotions in following years probably rested as much upon the success of his teaching, his administrative skills and professional connections, as upon reputation for juristic knowledge and the small number of publications he had produced until then. Moving from third ordinarius in 1730, to second ordinarius in 1733, and to first ordinarius in 1736, he obtained from the hand of Friedrich Wilhelm I a pair of crowning graces to his career in 1734 and 1739: first, appointment as a counselor (Rath) on the Upper Appeals Court of the province, and then the conferral of the noble estate on himself and his family (followed, in 1740, by the conferral of the Prussian Indignats-Recht by the provincial noble estates)²⁴.

What then was the nature and significance of Sahme's teaching, publication and juristic-scholarly outlook during the initial period of his career? To what extent does an understanding of the changes underway in instruction patterns – both in the Brandenburg-Prussian territories and elsewhere in Germany – and in the expectations of students, supervisory officials and educated elites help to elucidate developments at Königsberg? And when the outlook and activities of jurists such as Sahme are set within the longer-term patterns of social and political change in those years, what light is shed on the questions of G. Heinrich and others concerning the potential limitations of "absolutist state-supervision" over town and provincial life, or its modification or control

²² CONRAD, *Geschichte der Königsberger Obergerichte*, p. 143, citing documents in the Merseburg archive (DDR): Rep. 7, 78b.

²³ GAUSE, *Geschichte Königsberg*, 2: pp. 66–76 for the reorganization of the town government.

²⁴ GStAPK, XX. HA StA Königsberg, Rep. 139cII contains the formal notification of Sahme's successive appointments, with no evidence or explanation of their basis. The document appointing him to be "Director and Chancellor" of the university in October 1743, Rep. 139b, n. 12, appears to have a "formulaic" character, perhaps indicating that it was copied from the documents appointing the Director and Chancellor at Halle; that is the explanation which is suggested by KONRAD BORNHAK, *Geschichte der preussischen Universitätsverwaltung bis 1810* (Berlin: G. Reimer, 1900). The documents of Sahme's ennoblement are in GStAPK, XX. HA StA Königsberg, Rep. 2c, n. 457.

via older or newer forms of regional, corporatist or "proto-bureaucratic" and "proto-professional" self-consciousness?

Recent historians of Brandenburg-Prussian judicial institutions such as G. Birtsch have well-emphasized the special problems with which such analyses must contend: namely, the strong tension, and often discrepancy, between juristic norms and existing ("constitutive") practices and power realities²⁵. I would here suggest that a similar set of tensions and discrepancies has stood in the way of an historical understanding of the relationship of academic teaching practices and scholarly concerns to the issues and developments at the center of provincial and territorial-state socio-political and cultural life. One important set of issues centered around the effort of provincial Lutheran church leaders to "keep their house in order": that is, (1) to come to terms with a half-century of the Hohenzollern princes' "politics of toleration" (of Calvinists, Catholics and most recently, Pietists) with all the consequences that had for an internal weakening and loss of focus for the orthodox Lutheran spokesmen; (2) to gauge the gains and losses, in terms of power, prestige and social standing, of the Hohenzollerns' assumption of the "supreme powers of bishop" and the early transformation of the church and school consistories into royal administrative-bureaucratic bodies; and (3) to respond to new leadership opportunities and functional roles opening up in the context of Friedrich Wilhelm I's *rétablissement* and colonization projects in the province²⁶. A second major set of issues related to how the educated and ruling elites of the town and province would choose to respond to the opportunities as well as problems raised by the specific political and socio-economic policies of the electors and kings toward the province over the previous seventy years, to the internal social and economic differentiation continuing to take place within the town community (due in large part to immigration and the prince's "protection" of foreigners), and to changing opportunities or constraints posed by international power realignments in the Baltic region. The spectrum of stances adopted by members of the

²⁵ GÜNTHER BIRTSCH, *Gesetzgebung und Repräsentation im späten Absolutismus: Die Mitwirkung der preussischen Provinzialstände bei der Entstehung des Allgemeinen Landrechts*, *Historische Zeitschrift* 208 (1969): pp. 265-94; and *Zum konstitutionellen Charakter des preussischen Allgemeinen Landrechts von 1794*, in KURT KLUXEN and WOLFGANG J. MOMMSEN, eds., *Politische Ideologien und nationalstaatliche Ordnung: Festschrift für Theodor Schieder* (Munich and Vienna: R. Oldenbourg, 1968), pp. 97-115.

²⁶ WALTHER HUBATSCH, *Geschichte der evangelischen Kirche Ostpreussens*, 3 vols. (Göttingen: Vandenhoeck & Ruprecht, 1968), 1: pp. 134-87; FRITZ TERVEEN, *Gesamtstaat und Rétablissement* (Göttingen: Musterschmidt, 1954), *passim*.

regional leadership groups, it should be noted (by contrast to one-sided emphases on the immediate effectiveness of territorial-state initiatives or institutions), did in fact include a by-passing of, or implicit resistance to, state-institutions and policies in the name of more traditional patterns of allocating political and socio-economic power, alongside the established patterns of service with the older or newer institutions of the princely state, or simple accomodation to its benefits and burdens²⁷.

Juristic teaching and scholarship at the university in the first decades of the 18th century reflected the different stages of scholars' involvement in the institutional and cultural life of the town, region and princely-territorial state, from the periods of ducal patronage and provincial-estate dominance down through the epoch of royal sovereignty and a new openness to west European influences.

Then, beginning under Friedrich III (I) and even more emphatically under Friedrich Wilhelm I, the patterns of juristic, theological and humanistic studies at the Universität Halle were increasingly held up to the Königsberg faculty as the model for their own activity and self-understanding²⁸. The major features of that new form of university education, itself reflecting developments underway at innovative universities such as Jena as well as the various new Ritterakademien of the late 17th and early 18th centuries, may be summarized as follows: (1) the incorporation of more historical and nationally- (or territorially-) oriented perspectives in the teaching of Roman civil law jurisprudence itself; (2) employing courses in ethics, natural law and forms of "German state-law" (Staatsrecht) as propaedeutic studies designed to make the tradition of Roman civil law easier to grasp or to apply to "present-day situations and practices"; (3) the broadening of students' practical preparation for careers in princely or regional state-service (such as administration or diplomacy) through a study of modern foreign languages, geography, history, the natural sciences and mathematics, and various "auxiliary sciences" (heraldry, numismatics, diplomatics, and the "knowledge of current events" through newspapers); and (4) the introduction of more rationalistic or tolerant – although not fully secularist or indifferentist – perspectives in religious-theological matters, with the aim of avoiding the sectarian or merely "scholastic strifes"

²⁷ GAUSE, *Geschichte Königsberg*, gives examples of each of these options and groupings.

²⁸ The book of Hammerstein and the article of Dyck, cited in note 5 above, outline the model set by Halle.

which were seen to have continued to dominate orthodox Lutheran faculties in the preceding fifty years.

Friedrich III (I) and Friedrich Wilhelm I, despite periodic expressions of dissatisfaction with aspects of developments at the Universität Königsberg, did not take the step – as they had in effect done at Halle – of reducing the proportion of theological ordinarii relative to the juristic. This may have reflected the special role of the university as the training ground for clergy intended to promote the Christianization and educational efforts directed toward the Lithuanian areas and to counteract the danger of conversions to Catholicism (fostered by the syncretist tradition within the province, and by the influence of contacts with neighboring Catholic lands and their ruling and educated elites). But one index that a shift of emphasis had begun on a certain level was that the Hohenzollerns permitted the number of juristic extraordinarii to rise to as many as eleven, by comparison with the mere three they approved for the theology and philosophy faculties respectively²⁹.

What has largely been overlooked by modern scholarship is the extent to which the work of the jurists at Königsberg reflected processes of change analogous to those underway at Halle, Jena and elsewhere in those years. This may be observed in relation to the courses taught, textbooks employed and the form of juristic thought being developed in disputations and publications³⁰.

During the initial years of Sahme's teaching at the university, a number of the older and younger jurists were employing texts such as Grotius's *De Jure Belli ac Pacis* or Pufendorf's *De Officiis de Homini et Civilis* to teach introductory courses on natural law thinking. Course listings for the winter semester of 1717–18 also show an extraordinarius for philosophy, J. A. Gregorovius (later to be the ordinarius for practical philosophy), teaching what he labelled a "History of Natural and International Law, together with its Foundations," according to a text of Thomasius (presumably his *Fundamentum Juris Naturae et Gentium* of

²⁹ GStAPK, XX. HA StA Königsberg, Rep. 139eIV, n. 1 contains reports and published course-listings for the winter semester 1717–18, Rep. 139b, n. 25 course listings and reports for 1733, 1740–41 and 1752 and after. For the general considerations behind such royal policies, see HUBATSCH, *Geschichte evangelische Kirche Ostpr.*, 178–79, who also notes a second mark of shifting emphasis: Friedrich I's instructions of 1699 and after to avoid criticism of Pietists from the pulpit, to take the private Latin school founded by the Pietist T. Gehr under royal patronage (as the "Collegium Fridericianum"), and to appoint the Pietist Heinrich Rogall to the theological faculty (1703) and later to major posts (Hofprediger 1715, head of a church and school commission 1717).

³⁰ It is indicative that there exists no separate study of the history of the Königsberg juristic faculty, such as exists for most other major German universities.

1705 or its 1709 German-language translation)³¹. Although no sources appear to exist which might permit a more specific insight into how such courses were taught, one may perhaps suggest – by analogy with practices at Halle and elsewhere – that the meanings which might be appropriated from such texts included: (1) an exercise in a form of philosophical and juristic thinking which proposed that the forms of modern territorial law, the relations between states (alliances, compacts, de facto practices) should now be included alongside traditional discussions of Greco-Roman theories of the origins of states and societies, or Christian-humanist theories of the relationship of natural law to God's "divine legislation" and providential ordering of history, as an independent form of man's sociable and rational nature. (2) To the extent that divine-right arguments for the sanctity of law and social-political authorities entered in as only one argument among many, the result was to encourage students (and political actors and state-officials) to break free of "tutelage" by "scholastic" modes of thinking and above all to grasp the way in which the power of princely, territorial-state institutions would end the heritage of religious strife and sectarianism. (3) By incorporating such reflections into a differentiated hierarchy of statuses, functions and levels of political and social power culminating in the supreme sovereign powers of territorial princes, Grotius's and other texts might function both as a traditional "mirror for the prince" and as the renewal of juristic modes of thought encouraging self-disciplining and a functional subordination to diverse roles on various levels below the prince³².

A second feature of the juristic courses taught at Königsberg in the 1710's was the simultaneous combination of relatively more empirical, historical and application-oriented approaches side by side with new rationalistic and systematizing approaches. The first of these tendencies, reflected in the work of the Prussian jurist S. Stryk and the Jena and Magdeburg jurists G. A. and B. G. Struve, might take the form of either more elementary or historically oriented presentations of juristic material, or the use of devices like "question and answer" formats and extensive systems of cross-referencing and indexing (designed to facili-

³¹ Grotius was taught by the first ordinarius, J. Stein, and Pufendorf by the third ordinarius, D. Stavinski. In addition, two of the extraordinarii for law, Z. Hesse and B. Tilesius, and an extraordinarius for philosophy, H. Oelmann, offered similar courses.

³² This view is laid out in the "Prolegomena" to GROTIUS's *De Jure Belli et Pacis*. See also the argument in REINHARDT KOSELLECK, *Kritik und Krise: Eine Studie zur Pathogenese der bürgerlichen Welt* (Frankfurt a. M.: Suhrkamp, 1973).

tate their use in practice). It is thus noteworthy that in 1717–18 six of the Königsberg juristic faculty employed the relatively simple, introductory “question and answer” handbook composed by J. Hoppe, *Examen Institutionum Imperialium* (Frankfurt a. O., 1684)³³. Two others used B. C. Struve’s *Jurisprudentia Romano-Germanum Forensis*, while a younger *extraordinarius* taught a course whose aim, as he said, was to specify the actual relevance of the Roman law *Institutes* for the understanding of Prussian provincial law-codes (dating from 1620 and 1685)³⁴. The second tendency, toward systematizing and rationalizing, was represented in the three courses which employed the handbook of the Tübingen jurist W. Lauterbach (of 1690–1711). By contrast with the former tendency, Lauterbach sought for a more precise logical definition of principles and concepts within the Roman civil law tradition as well as a new, thorough-going reordering of its overall structure and parts. Another course in those years employed the commentary and “supplementation” of Lauterbach’s textbook by the theologian-turned-jurist at Halle, H. Ludovici. As noted above in connection with Sahme’s own education, leading *ordinarii* of the faculty had arranged a whole series of student “disputations”, beginning in the 1700’s, on a range of specific points in Lauterbach’s interpretation of the *Pandects*. In sum, both of the above approaches might be viewed as what were being termed “improvements” in the teaching of jurisprudence, and aids in its “application to present-day conditions.”

The significance of the teaching practices and juristic outlook which Reinhold Sahme developed during the initial decade of his academic and professional career (as advocate and consistory official) was the way in which, without neglecting the theoretical and systematic aspects of legal scholarship, he contributed strongly to a shift of emphasis toward the practical and the historical. It is revealing that, as early as 1717, his primary course offering was on “Commercial Notes of Exchange” (*Materiam de Cambiis*); although parallel to that he was also

³³ FRIEDRICH DEBITSCH, *Die staatsbürgerliche Erziehung an den deutschen Ritterakademien* (Dissertation, U. Halle, 1927), *Hallische Pädagogische Studien*, no. 4, pp. 37–40 gives a discussion of the style and method of this and other juristic textbooks. He notes that Hoppe was a nephew of S. Stryk who, after promoting at Frankfurt a. O., was an instructor at a Danzig gymnasium. His text was also used, for example, by H. Bredelo at the Wolfenbüttel Ritterakademie in 1691.

³⁴ Much essential preparatory work for such a course had been provided by the commentary on the Prussian *Landrecht* of 1685 published by the Hofgericht counselor, GEORG GRUBE, in 1708 and his collection of “Prussian constitutional ordinances” (begun in 1713, on the model of Mylius’s collection for the Mark provinces, and published in 1721).

offering a “private-course” on topics in the Roman law Pandects, treated according to Lauterbach’s handbook. It is impossible to judge whether Sahme was unique in offering the former. In the winter of 1717–18, he was the sole professor (out of 14) to do so, and among the others only the second ordinarius offered a “private course” on what he termed “legal praxis.” Sahme apparently continued to offer courses on commercial law regularly during the coming decade for, in 1731, upon his appointment to be third ordinarius, he applied for and received permission to substitute such a course for the normal public teaching required of that post, the Institutes of Justinian. In his announcement for the course, Sahme referred to his some 20 – odd years of experience in the teaching and practice of commercial law³⁵.

One of the hardest questions to answer, and one that is rarely posed, is of the potential interest and use which such a course, and such juristic expertise, would have found on the part of students and members of the regional community in East Prussia. A brief reference to the history of recent legal and institutional developments in the province relating to commercial relations may serve to indicate some of its potential significance. The major locus of judicial power in such matters had long been, and continued to be, the three separate “commercial courts” (*Wettgerichte*) of the towns of Königsberg. Their members, until the reorganization of the town government in 1723, were elected by the privileged guild-Bürgers of the towns; thereafter, they were selected by the town magistrates, themselves local Bürgers, or often jurists appointed by the king. It is significant, however, that as early as the 1580’s–90’s (under the Hohenzollern dukes), and then again in new forms in the second half of the 17th century, different groups of the town community – the native guild-merchants, foreign merchants, town craftsmen and shopkeepers, and state or princely officials – initiated attempts to create new unified judicial competencies, or legal precedents, in relation to commercial matters. For their part, the dukes and kings developed the precedent of being the instance which might settle disputes between heterogeneous segments of the commercial community; but in 1598, 1642 and in the 1680’s–90’s, there had been renewed efforts of the town Bürgers to create a unitary “commercial court” (*Generalwette*) even without the prince’s approval. Each time, the latter initiative had failed, due either

³⁵ GStAPK, XX. HA StA Königsberg, Rep. 139e IV, n. 1 and 139b, n. 25, vol. 1, and Sahme’s own description in REINHOLD FRIEDRICH VON SAHME, *Kleine deutsche Schriften*, ed. by G(OTTLOB) S(AHME) (Königsberg: M. E. Dorn, 1744), pp. 11–13

to disputes and rival interests of groups in the town and commercial community, or to the Elector's concern (as Friedrich Wilhelm put it) that the town not be allowed "to become a public body (*res publica*) which would ultimately be something formidable in relation to ourselves and the whole land" ³⁶ In the process, the Elector Friedrich Wilhelm did issue a new *Wettordnung* (1669) and a combined *Lieger- und Wettordnung* (1670); King Friedrich Wilhelm then followed with a "renewed" *Lieger- und Wettordnung* of his own in 1715.

On the institutional level, similar patterns of interaction took place in the 1680's–1710's between princely power-prerogatives (and territorial-state authority) on the one hand, and regional interest groups on the other. Having gained control of the commercial toll (*Pfundzoll*) levied during the period of the 30 Years War, the Elector Friedrich Wilhelm established first a "Commerce and Licensing Board" in 1684 – but it was a body which consisted of representatives "co-opted" from the native and foreign merchant community, presided over by the electoral *Oberzolldirektor*. The board itself was abolished in 1689, in part under local pressures, but not without having given the impetus for the issuance of a first "Prussian Sea Law" (1684). After institutional control and initiative passed back into the hands of traditional institutions such as the town courts and magistrates under Friedrich III (I), a new constellation of interest-groups was brought together under King Friedrich Wilhelm I to establish a Royal Commerce Board (*Kommerzkollegium*) (shortly to be restructured, 1720, as an "Admiralty Board"). The traditional town elites were represented, for example, by the *Altstadt* *Bürgermeister* and merchant, C. A. Negelein, the *Kneiphof* town secretary M. Lübeck, and the guild-merchant V. Polikein; the foreign merchants and "protected citizenry", by the Huguenot Lafargue; and the interests of state officials by three royal counselors. It was perhaps not until 1729 or after that power shifted directly to royal, non-native bureaucrats. ³⁷ It was in the context of such institutional changes that Friedrich Wilhelm first renewed the older *Wechsel-Recht* (1721) and then fully revised it (1722–24). The new commercial court set up at that point was presided over by the *extraordinarius* for law, D. Nicolai (a year younger than Sahme), and consisted of a mixed body of merchants, brewers, craftsmen and court-assistants ³⁸.

³⁶ GAUSE, *Geschichte Königsberg*, 1: p. 376, pp. 386–87, 516–17.

³⁷ GAUSE, *Geschichte Königsberg*, 2: pp. 50–2; *GStAPK*, XX. HA StA Königsberg, Rep. 140 for the dates of the *Wechsel-Recht* ordinances.

³⁸ *Ibid.*, 2: pp. 72–4.

What above all needs to be stressed, against interpretations emphasizing only the aspects of "territorial-state building" and "bureaucratization" in such developments, was that these institutions were still largely staffed, controlled or simply restricted by the practices and views of the region's socio-economic and leadership groups; and, in the case of East Prussia in this period, the latter included some of the major supervisory authorities of the province, since the East Prussian nobles v. Lesgewang and v. Ostau headed the War and Domains Chamber and Upper Appeals Court (Regierung Chancellry) respectively. When one turns from institutional structures, to the actual judicial practices revealed by cases brought before the new "commercial court" under these lawcodes, it becomes clear that a very large role was performed by the skill, initiative and even influence of the lawyers and advocates commissioned to handle the cases, or the regional personnel who were responsible for issuing and executing the decision³⁹. In sum, the practical utility of Sahme's courses on commercial law in this period would have been very large indeed.

If commercial law was one early focus of Sahme's juristic expertise, then issues of canon law and the relationship of church to secular authorities was another. Such issues would clearly have come to his attention through work on the Samland Consistory (which he began in 1713 and continued to the 1740's, succeeding von Gröben as first counselor of that institution). An additional incentive might easily have been the involvement of his brother and cousin as members of the orthodox Lutheran clergy who opposed Pietist influence in the province⁴⁰. Sahme's first legal publications on his return to Königsberg in 1709 had been on the theme of "The Refusal of Burial" (two parts), and he followed in 1713 with an essay on "Judging Simony among Candidates for the Ministry Presented to the Consistory in the Kingdom of Prussia." In 1721 he supervised a Latin disputation by a student which he judged significant enough (or representing enough of his views and work) to

³⁹ Examples are to be found in GStAPK, XX. HA StA Königsberg, Rep. 61h, n. 13 (the work of Sahme's cousin Jakob in the bankruptcy case of von Kreytzen, 1713), Rep. 140b, n. 40-43 (on commercial dealings of the counsellor von Lauwitz), and Rep. 140b, n. 52 (the series of complaints, 1715-29, of G. F. von Oelsen against E. S. Graf von Schlieben for non-payment of debts).

⁴⁰ HUBATSCH, *Geschichte evangel. Kirche Ostpreussen*, 1: pp. 179-86 and ADOLF ROGGE, *Schattenrisse aus dem kirchlichen Leben der Provinz Preussen am Anfang des philosophischen Jahrhunderts*, *Altpreussische Monatsschrift* 15 (1878): pp. 513-77; 16 (1879): pp. 79-125, 193-241 both mention the role of Christian Sahme in opposing the Pietists.

republish in German translation in his own volume of *Kleine deutsche Schriften* in 1744⁴¹. The method, argument and socio-political implications of the essay, "On the Legality of Marriage without Clerical Blessing," may be briefly considered here: not simply because it is one of the few of his early works still readily available, but also because it clearly exhibits the linkage of his juristic thought to patterns of development underway at innovative juristic centers like Halle and Jena.

The legal issue Sahme treated in the essay was that of the power of secular authorities and secular law to decree marriages legally binding, even if they had taken place without the benefit of clerical sanction. Through a reliance upon an historical interpretation of the development of Christian institutions and doctrines, and through the assumed cogency of certain modern secular values and perspectives, the effect of Sahme's approach was to set aside clerical or theological claims for exclusive competence in deciding such issues. It was equally significant, however, that the essay was not fundamentally anti-clerical in its tone: Sahme adopted a largely conciliatory and accomodating approach toward the role of the church in regulating the customs and morals of the community. In intellectual and scholarly terms, this view was mediated through Sahme's consciousness of participating in an ongoing, empire-wide tradition of juristic discussions that also maintained a linkage to a European Christian-humanist past. Sahme could thus view his own stance as seeking a middle-ground between that of the Kiel jurist (Amthor) who had declared, in a publication of 1708, that all such modern Protestant church regulations were wholesale concessions to "superstition," and that of orthodox Lutherans (such as the eminent Carpzov at Leipzig) who contended quite simply that such clerical regulations had "good reasons and grounds."⁴² But Sahme was also traditionally-minded enough, or cautious enough, to avoid the sorts of fully secularizing positions which had shortly before (1713-16) gotten Thomasius into trouble with the Halle theological faculty and with Fried-

⁴¹ GERTRUD SCHUBERT-FIKENTSCHER, *Untersuchungen zur Autorschaft von Dissertationen im Zeitalter der Aufklärung*, Sitzungsberichte der sächsischen Akademie der Wissenschaften zu Leipzig, Phil.-Historische Klasse, no. 114: 5 (Berlin: Akademie-Verlag, 1970) notes the way in which such dissertations functioned as equivalents of "professional journals" and collections of "legal precedents" to be cited in later judicial opinions and briefs – and were thus collected by jurists for that purpose. In the disputation, Sahme cited two Prussian cases coming before the consistory as examples of how those issues were relevant to the Prussian situation.

⁴² SAHME, *Kleine dt. Schriften*, pp. 230-31.

rich Wilhelm himself⁴³. If Sahme argued that it was just to recognize the validity of marriages between non-Christians whom one tolerated to live in one's community, and if he made a series of exceptions for emergency cases, or situations of external compulsion which prevented the final execution of a clerical ceremony, he nonetheless judged it appropriate to forbid "marriages of conscience" (common law marriages) as being really only concubinage, even if some scholars asserted that, logically, they could be said to take place "according to natural law."

What was also historically significant in this text, when taken as documenting views developing within a portion of the provincial East Prussian Lutheran community, were the sorts of social and political implications which Sahme drew from his juristic perspective, and his implicit concessions to secular values. In parts of the essay, Sahme was critical enough of what he termed the clergy's "inborn desire for rule" (*der ihnen angeborenen Regiersucht*) to point out to them that pretensions to raise the clerical blessing to the level of a full-fledged sacrament were best viewed as throwbacks to practices developed when the early church was initially under the sway of the new power and secular status it had acquired through the first Christian emperors. And, as such, Sahme reminded them, such a view had explicitly been rejected by Luther as an outright theological error. In this essay, and in a later announcement for a course on canon law (which he taught in 1741), Sahme developed the argument that there was in fact no single, authoritative tradition of ecclesiastical law. What emerged from an historical understanding of its development was rather the fact that secular authorities had had constantly to intervene to settle the internal disputes, or to limit the excessive claims, to which clerics seemed inevitably prone. It was in such a context that Sahme offered an observation that was revealing of his own political and historical self-understanding as a modern German Protestant and princely-state subject. The Protestant tradition, he argued, had precisely succeeded in avoiding one of the "greatest conditions of disorder and confusion" in men's lives: namely, when "rule over men's consciences" was combined with "rule over their wordly goods." The legitimizing and rationalizing force of such a self-understanding ought not to be underestimated. By implying that modern Protestant princely regimes were, by contrast with Catholic

⁴³ CARL HINRICHS, *Preussentum und Pietismus* (Göttingen: Vandenhoeck & Ruprecht, 1971), pp. 382–86. The controversy began in 1713 and ended with the findings of a special commission in 1716 in favor of Thomasius's opponents.

regimes or earlier Protestant princely regimes, more “balanced” and “moderate” forms of governing, and that the absolutist form of princely-state power was perhaps necessary to continue to uphold religious peace (on regional as well as inter-territorial levels), it offered the subjects of such states compensation for what might otherwise appear the loss of portions of active participation in political life in the previous half-century. As such, in a province such as East Prussia, it was a way of finding a “usable past”, or of constructing implicit historical narratives that would come to terms with the otherwise less-satisfying story of the political and religious conflicts of the preceding century⁴⁴.

As noted above, it was likely that Sahme's contribution as a member of the provincial professional and leadership groups who advised and assisted S. Cocceji in his reform visits of 1718–19 and 1721 marked a genuine turning point in his career as well as, one may suggest, in the specific focus of his scholarly interests. The nature and significance of such interactions between provincial and central-state leadership groups have, however, largely been overlooked due to the perspectives under which much previous research has been conducted. If viewed simply as processes of successful or unsuccessful “reform from above,” or of “constructing the central territorial-state”, then the questions raised by G. Oestreich and G. Heinrich and others concerning the limits to the scope or the effectiveness of territorial-state initiatives, or the modifying influence exerted by town or provincial institutions, elites or traditional practices, simply remain unexplored. In the case of Cocceji's reform work in East Prussia, such biases have been accentuated by the loss or unavailability of the sorts of primary-source documentation which would serve to help reconstruct such processes and interactions in detail. I would argue, however, that when placed in the context of the history of political and institutional developments in the province since the late 16th century, the events of Cocceji's and Friedrich Wilhelm's “absolutist reforms” may equally be viewed as part of a longer-term process: of an interaction between changing provincial conditions and the expectations and interests of regional leadership groups on the one hand, and a highly-focused, but restricted, set of initiatives on the part of Hohenzollern rulers and their central-state advisers and officials on the other.

⁴⁴ SAHME, *Kleine dt. Schriften*, pp. 229, 174–75, 177–78. KOSELLECK, *Kritik und Krise*, makes a convincing argument for the legitimizing function of the appeal to end religious conflict.

The period of the 1650's through about 1710 had seen a reorganization and relative elevation of the status of the judicial institutions of the province as a consequence of the assumption of full princely sovereignty by the Elector Friedrich Wilhelm, and the assumption of the kingship by Friedrich I. Nevertheless, the provincial noble and Bürger elites who had earlier experienced alternating periods of the relative increase or decrease of access to leading positions in those institutions still combined to control the interpretation and execution of the provincial laws through the personnel which staffed the regional institutions and professions. The establishment of a collegial form of judicial investigation and decision-making in the 1650's, the creation of "expectancies" for counselor's posts in the 1650's–80's, and the requiring of examinations for prospective appointees in the 1660's contributed even further to fostering a heightened sense of "corporatist" and even "professional" identity on the part of such judicial officials – and in a way that began to set a model for other princely state bodies as well⁴⁵. The reorganization of the jurisdictions of the intermediate judicial bodies for the province – the Hofgericht and the Hofhalsgericht, now both made subordinate to the new Upper Appeals Court (1657) – continued the processes whereby new focal points for regional (as well as royal and territorial/state) identities were being created. Contrary to these processes, however, there were in fact changes underway at the territorial center around 1700 which also meant the relative loss of power for provincial judicial institutions and officials: that is, Friedrich III (I)'s action of returning the power of sovereign judicial appeal back to his own person (and privy council) in individual decisions of 1699 and after; and his acquisition in 1702 of the "right of non-appeal" to the Holy Roman Emperor for his territories of Magdeburg, Halberstadt, Kleve, Mark, Ravensburg-Minden, Hinterpommern and Kammen, signaling that the construction of a new "sovereign appeals instance" at Berlin would not be far off⁴⁶.

The events leading up to Cocceji's visits of 1718–19 and 1721 also reveal that the reform process was itself the product of a longer-term series of interactions, or even "consultations" between provincial and

⁴⁵ WILHELM BLEEK, *Von der Kameralausbildung zum Juristenprivileg*, Historische und pädagogische Studien, no. 3 (Berlin: Colloquium Verlag, 1972), pp. 74–77 emphasizes this development in the 1750's–70's, at the central-state level, but ignores its potential background in developments at the provincial level in previous decades.

⁴⁶ CONRAD, *Geschichte der Kbg. Obergerichte*, pp. 74–5 for the "collegial" method of researching and reporting on cases and judging; pp. 89–93 on the central appeals instance; and pp. 110–19 on changes in the intermediary courts and testing for posts.

central-state governing elites. Thus the six-point set of proposals with “constitutional force” which Friedrich III (I) had issued in 1694 were an initial attempt to resolve some of the complaints that were periodically reaching him from the province concerning the operation of the Upper Appeals Court. In 1706–09, and then again in 1711, he appointed special local commissions – headed, for example, by the East Prussian Chancellor and including noble and non-noble counselors of the courts, and academically-trained jurists (Grube, Lau, Zetzke) – to begin to draw up revisions of the provincial lawcode and of the operating procedures of the Appeals Court. One may see in many of these responses to provincial complaints, in the instructions given to commissions, and in the assessment by various parties of the effectiveness or consequences of different policies, the gradual coalescence of many of the issues which would subsequently be tackled by Cocceji’s reform work: problems of the delaying tactics used in courts to encourage out-of-court settlements, of the special control exercised by various officials (such as secretaries) over the priority in which cases were considered, etc. What began to emerge from such interactions during the reign of Friedrich Wilhelm I was the experience of new forms of what may be termed “politics under an absolutist prince”, or even an “institutional politics”⁴⁷: that is, the attempt to have an influence over royal policies via participation in special commissions, via petitions and complaints which might reach the King’s attention, and via the King’s express intent not to be bound by the supposed constitutive decrees of his predecessors, but to override them when necessary in the name of the ongoing “welfare of state and society.” It was perhaps particularly through the experience of Friedrich Wilhelms’s consistent personal involvement in decision-making at all levels – and governed over several decades by a relatively consistent set of priorities and principles – which began to give a reality to the ideology of an absolutist prince as combining the functions of “reason, judgement and will” (or, legislation, judicial decision, and executive force) in a personal form of rule⁴⁸. However, the counterside to these forms of “absolutist supervision” may be stressed as well: the way in which juristically-trained provincial officials began to “represent” the interests of their

⁴⁷ HEINRICH, *Staatsaufsicht und Stadtfreiheit*, suggests this idea of a new type of politicking emerging under Friedrich I and Friedrich Wilhelm I.

⁴⁸ KEITH MICHAEL BAKER, Condorcet: From Natural Philosophy to Social Mathematics (Chicago: University of Chicago Press, 1975), pp. 202–16 and French Political Thought at the Accession of Louis XIV, *Journal of Modern History* 50 (June 1978): pp. 279–303 define this outlook as the core of the “rational administration” of a figur like Turgot.

community or their institutions over against the actions of other state or local bodies (thus making unforeseen use of, and problems for, the judicial-appeals structures being created in those years); or the directing of deceptive or false reports back to higher supervisory authorities while avoiding real attempts to intervene in ongoing provincial practices⁴⁹. The constant issuance of sovereign decrees, instructions and rescripts directed at provincial officials and institutions may be read not simply as indexes of political and social realities, but as the development of new “pedagogical” and “disciplinary” tactics designed to inculcate forms of thought and behavior in contexts where they were recognized as still being absent.

Immediate precursors to Cocceji's judicial reforms in the province included suggestions arising from local sources which gained the attention of the king and his privy counselor (and thus came to be preserved in central-state records). One, an anonymous memo of 1711, criticized the “decline of justice” occurring in East Prussia, and proposed an extensive set of points for a new investigatory commission to consider: e. g. creating “perpetual office holders” on the Upper Appeals Court; increasing the Bürger members to establish a parity with the noble members; tackling the nepotism problem existing among the officials of various provincial courts and institutions; restricting the accessory business or professional undertakings allowed for court counselors; cutting back on the proliferating number of advocates, and requiring a higher level of competence for them (because of the practice of “unlearned individuals” presuming to undertake such roles); and finally separating out problems of “feudal tenure relations” (Lehnssachen) – then being investigated by a special commission – as well as of commerce and Polizei from the judicial competence of the Upper Appeals Court⁵⁰. A second set of suggestions came from the Calvinist noble von Waldburg in 1714. Stressing the connection between inadequate judicial institutions and the economic and financial problems of noble and royal landholdings in the province, Waldburg argued that a “reform of justice” needed to precede the king's plan to reform the rural tax system (the Generalhubenschoss).

It appears impossible to ascertain the personal contacts or impressions which Friedrich Wilhelm or his advisers may have gained when

⁴⁹ HEINRICH, Staatsaufsicht und Stadtfreiheit, proposes these points as the potential “constitutional reality” existing apart from state supervision.

⁵⁰ CONRAD, Geschichte der Kbg. Obergerichte, pp. 97–99.

they consulted with local officials and nobles in Königsberg on the occasion of the fealty ceremonies for the new king in September 1714. Shortly thereafter, however, the Berlin privy counselor v. Plotho wrote requesting suggestions (*Monita*) from all the courts of the province concerning ways of improving and accelerating justice. In April 1715, Walburg was nominated to head the new “Kommissariat” in Königsberg and to implement the new tax system as a pilot project in the Amt Brandenburg. It was on Walburg’s impetus, and over the objections of another provincial adviser, v. Dohna, that the king commissioned two Bürger counselors of the Appeals Court to draw up a “project” for the reform of judicial institutions (in 1717).

Such, then were the range of provincial contributions which prepared for Cocceji’s first visit, August 1718 to January 1719, during which time he sketched a revised “Tribunal Constitution” and regulations for the appeals relationship to Berlin. It was during this visit that Cocceji obtained from Friedrich Wilhelm a reversal of the earlier royal decisions (1713–15) forbidding university ordinarii to practice as advocates, and proposed as well extending the examination and testing procedures developed in the province over the previous half-century to include the advocates themselves⁵¹.

The final stage of the reforms came two years later with the royal “permission” (*Erlaß*) given to Cocceji to “emend everything that will promote the administration of justice and the acceleration of procedures” in the province, and to link that to the completion of a new *Landrecht* there. Cocceji was to be assisted in this not only by v. Walburg – recently raised to the East Prussian Regierung and made a “privy counselor” (i. e. ranking equal to Berlin court advisers) – but also by yet another special commission. Headed by the new Prussian Chancellor and head of the Upper Appeals Court, Ludwig v. Ostau, it included two other counselors, four university jurists – among them now Reinhold Sahme – the judge of the Königsberg criminal court, and his academic-jurist assistant. The reform work was brought to a conclusion and promulgated by Friedrich Wilhelm in person during a special session of his “Privy Council” held in the Königsberg Schloss in June 1721⁵².

⁵¹ *Ibid.*, pp. 127–31, 137–40.

⁵² *Ibid.*, pp. 141–44, Cocceji also took on as his special assistant Christoph Boltz (c. 1680–1757), an official in the royal fiscal office and assessor on the new “Licensing and Admiralty Board” – and son of a Königsberg law professor and appeals court counselor.

The structural changes in the central Königsberg courts which resulted from Cocceji's reforms were not as dramatic as those contained, for example, in Friedrich Wilhelm's creation of a unified "War and Domains Kammer" in 1722–23⁵³. In retrospect, their significance appears to be threefold: (1) They confirmed and implemented many of the reform suggestions emerging from the interaction between provincial and central-state leaders in the course of the preceding two decades. (2) They resulted in the promulgation of a new *Landrecht* for East Prussia (1721), modifying and updating that of 1620/1685. And (3) the reforms confirmed the earlier transfer of the final instance of judicial appeal back to the royal person and royal counselors in Berlin, even as they gave a decisive impetus to renewed development of a "corporatist" spirit and regionally-centered "civic identity" in the province which in part worked to modify or even to resist the exercise of central-state authority in subsequent decades. They continued to enable regional educated and socio-political elites – in particular, juristically-educated nobles, state-officials and university jurists – to control the major judicial institutions, and exercise of the administrative offices and judicial professions in the province. These, then, were the causes of the paradoxical situation that East Prussia's early achievement of "reformed judicial institutions", and a relatively independent legal tradition (centering around the interpretation of its hundred-year-old lawcode), meant that by the 1740's and 50's it could be seen by Friedrich II and central-state leaders like Cocceji (now Arch-Chancellor) as being precisely in need of restructuring and reform to again bring them into line with institutional changes and codification efforts being undertaken on the central-state level⁵⁴.

II

Further important changes in the political and social life of the province accompanied the mature phase of Reinhold Sahme's scholarly and professional career in the 1730's and 40's. The newly reorganized town government became the focus of Friedrich Wilhelm's and then Friedrich II's efforts to implement the core of a new central-state supervi-

⁵³ *Ibid.*, pp. 144–66 for this summary of the judicial changes.

⁵⁴ This may have been the potential basis for Friedrich II's strong ill-will toward the province and its ruling elites; cf. the complaints of an outsider working as a state official in the province in 1762 concerning the strong caste-spirit of the noble and Bürger elites there: Acta Boussica: Denkmäler der preussischen Staatsverwaltung im 18. Jahrhundert, ed. by the Preussischen Akademie der Wissenschaften, Die Behördenorganisation, 12: pp. 563–4.

sion. But, as G. Heinrich has emphasized, this was a limited, or specifically focused, set of policies which might also enlist support from a diversity of regional leadership groups: e. g. the prevention of "fiscal corruption" or "mismanagement", establishing clearer lines of fiscal accountability and longer-term financial stability, reducing or consolidating offices to promote efficiency or clearer lines of authority and responsibility on the local level and in relation to central-state bodies. These developments, however, did not alter the fact that, until the early 1750's, town offices were still staffed and controlled by the Bürger and noble elites of the province. In this period, questions of where ultimate fiscal and Polizei controls would come to reside – whether in the hands of town or of central-state administrators – might still be seen as perhaps open, with Friedrich Wilhelm and Friedrich II being willing, or being compelled, to shift back and forth between different approaches⁵⁵. In the countryside the major developments, by contrast, had been the consolidation of the War and Domains chambers in 1723, the accompanying allodification of noble lands, the regularization of noble tax-contributions to the state treasuries, and Friedrich Wilhelm's leadership and funding for the "re-establishment" and colonization projects in the war- and plague-devastated areas of the province. After 1727, the implementation of the latter project had been shifted once again back into the hands of the Pietists (Rogall, Wolf, and Schultz) and their supporters. But with the accession of Friedrich II the relative ascendancy of that group declined; one accessory outcome of Cocceji's second reform visit in 1751 would be the shift of control over church and school affairs from the consistories to the secular courts and administrative bodies of the province⁵⁶.

As much as the province benefited greatly from Friedrich Wilhelm's "re-establishment" efforts, there was nonetheless much dissatisfaction with the centralizing and absolutist policies, which by-passed traditional corporatist institutions and officeholders: for example, his continued refusal to call Landtage, his willingness to leave posts such as the Obermarschall of the East Prussian Regierung unfilled (1725 and after),

⁵⁵ HEINRICH, *Staatsaufsicht und Stadtfreiheit*, for the core of the state-supervision imposed in these years; GAUSE, *Geschichte Königsberg* and KURT FALCKE, *Die Bürgermeister von Königsberg, Preussenland 1: 4* (1963): pp. 49–68 for the personnel filling these town posts; and Gause for the shifting strategies on tax, licensing and police issues.

⁵⁶ HUBATSCH, *Geschichte evangel. Kirche*, pp. 179–87 offers a good summary of the "re-establishment" efforts; CONRAD, *Geschichte der Kbg. Obergerichte* pp. 180–81 for the shifting of control away from the consistories in 1751.

and his effort to block the influence of Regierung officials over fiscal and administrative bodies and their policies. The mixed attitudes within regional leadership groups, and their tensions with crown policies became clearly evident during the fealty ceremonies held for Friedrich II in July 1740. After the Chancellor and Upper Appeals Court president A. E. Graf v. Schlieben read a speech to the assembled estates in the name of the king, the provincial "Landesdirektor" (and counselor on the Upper Appeals Court, and president of the Samland Consistory), W. L. v. d. Gröben, replied in the name of the estates with a sharp criticism of the "erroneous state-craft", as he put it, of the previous reign. Focusing on what he viewed as Friedrich Wilhelm's search for "unlimited power and a sovereign form of rule," and on the evidence of unpermitted Landtage and the vacant post of the Obermarschall, v. d. Gröben argued that such rule neglected the "proven and tested means" which might cure the "pressing ills" of the province, and meet the "desires, unrequited needs and pressing grievances" of the various estates (he referred to them as the Lehr-, Wehr- und Nährstand). An optimistic or conciliatory point came in v. d. Gröben's speech when he praised Friedrich II's positive steps of exhibiting an initial "paternal favor, graciousness and maintenance of the rights and laws of the land" (Huld, Gnade und Beibehaltung der Landesrechte) in the actions he had taken on assuming the throne⁵⁷. Initially these issues, as well as the nature of Friedrich II's intentions toward the institutions and traditions of the province, were left unclarified due to Brandenburg-Prussia's immersion shortly thereafter in the Silesian Wars. But both v. Schlieben and v. d. Gröben remained in their offices after the wars, and came to play important roles in Cocceji's and Friedrich's reform initiatives of the period 1746 – 51.

The political, social and even cultural developments in East Prussia in the 1730's and 40's thus offered a favorable context in which an academic jurist and administrator such as Reinhold Sahme could continue the lines of a career successfully begun in the 1720's. Sahme's pedagogical undertakings, scholarly and popularly-oriented publications and practical professional activities may best be evaluated in such a context. G. v. Selle's judgment that Sahme, and the generation or two of Königsberg

⁵⁷ FRIEDRICH WADZECK and WILHELM WIPPEL, eds., *Geschichte der Erbhuldigungen der Preussisch-Brandenburgischen Regenten aus dem Hohenzollern Hause* (Berlin: Ernst Felisch, 1798). part. 2, pp. 10–12; together with the evaluation of G. Birtsch in *Gesetzgebung*, p. 278.

jurists of the middle third of the century were isolated from developments leading toward more practically-oriented, historically-informed or publicistically-engaged forms of scholarship and teaching is thus both overdrawn and one-sided. While perhaps accurate when measured on a general European or German-wide scale, it is largely only a negative characterization which fails to grasp the practical and historically-informed engagement of such figures on provincial and local levels. It is here that the perspective of D. Roche and others offers a more fruitful way of understanding the characteristics as well as the limitations of the activities and achievements of such "secondary leadership groups" and provincial educated elites. Stressing that the cultural outlooks and forms of sociability developed by such groups in the course of the late 17th and 18th centuries served in part social and political functions of "self-representation" and "self-legitimation" (vis à vis the local community as well as central state leadership groups), Roche has described the way that they claimed to master as well as to update and apply a comprehensive humanistic, or also natural-scientific, learning for the sake of what was termed a greater "utility" and "rationality". Such outlooks may therefore be seen as representing a socio-political and cultural "conservatism open to change", and as contributing an educated audience or support for later more consistent or radical phases of Enlightenment thought and practice⁵⁸.

Sahme's academic and professional advancement in the 1730's and early 1740's were perhaps in large part a reflection of the practical importance and success of his teaching, together with his general reputation for learnedness; his massive, 1000-page handbook and commentary on the Prussian Landrecht of 1721, although closely tied to his teaching and the student dissertations he supervised in these years⁵⁹, would not be published until 1741. To be sure, one must also add that family and professional connections, developed through his work as an advocate and consistory counselor – and, from 1734 to 1753, as counselor on the Upper Appeals Court – played an important role in his advancement. Sahme's teaching innovations in the 1730's and 40's continued to

⁵⁸ That is the formulation of KEITH MICHAEL BAKER of some of the implications of D. Roche's analysis in *Siècle des lumières en province: Enlightenment and Revolution in France: Old Problems, Renewed Approaches*, *Journal of Modern History* 53: 2 (June 1981); pp. 281–303.

⁵⁹ For example, in 1729 he supervised a dissertation by one VON HOHENDORFF, On the Right of a Noble Widower in the Kingdom of Prussia; in 1731 on The Wardship over Prussian Women; in 1737 on Forbiddance of Hunting in Sowing and Harvest-Times; and in 1738 on The Rights of Female Prussian Widows.

carry out the implications of the historical, practical and rational-systematic reorientation begun decades before at universities such as Halle and Jena, and then given an added cogency by developments at the Universität Göttingen, founded in 1734. As previously noted, Sahme, upon his appointment as third ordinarius in 1730, had sought for and gained permission to substitute the course he had taught for the past decade on "Prussian Commercial Law" (Preussisches Wechselrecht) in place of the requirement to teach Justinian's Institutes⁶⁰. The decisive confirmation of this shift of emphasis, though, came in 1733 with his appointment as second ordinarius. In place of the normal teaching duties for that post, the Roman law Pandects, Sahme now offered a new course devoted to "Prussian State Law" (Preussisches Staatsrecht), together with supplementary courses on its use in courts of law and in private law matters. In taking such a step, Königsberg jurists were perhaps a decade or two behind those at Rostock, Greifswald, Leipzig, Giessen and Kiel, where professors had begun offering courses on the Jus patrum (or, "Saxon," "Schleswig-Holstein law," etc.) in the 1700's-20's, even though those initiatives often proved only temporary and really began to take permanent root in the 1730's and 40's⁶¹.

In subsequent years, Sahme introduced some additional specialized offerings: in 1737, a course (otherwise seemingly rarely taught at Königsberg) on "The State Law of the Holy Roman Empire." His brief explanation to students was that it might prove useful for those who wished to take up service with the Brandenburg-Prussian monarchy outside the province to have an introduction to the legal structure and historical development of the Imperial realm as well. In 1738, he added a specific course on "Sea Law" (which then later became a specialty of his pupil, and successor as first ordinarius, J. L. L' Estocq); and in 1741, a course on "Ecclesiastical Law," with a special emphasis on its influence or applicability within Protestant lands. And in 1748 and 1749, perhaps because of the interest aroused by Prussia's role in the Wars of the Austrian Succession, he offered the relatively specialized courses on "The Instruments (Instrumenta) of the Peace of Westphalia" and on "The Election and Fealty (Wahlkapitulation) of Francis I as Holy Roman Emperor." But the most significant of these later additions was

⁶⁰ See n. 35 above. I make no mention here of what may have been SAHME's Inaugural Dissertation in 1727, *De Judicio militum statario, oder Vom Standrecht*, a copy of which was not accessible to me.

⁶¹ DÖHRING, *Geschichte der jurist. Fakultät-Kiel*, pp. 33-47; HALL, *Juristische Fakultät d. U. Giessen*, p. 12.

his course in 1742 on "The Special Sciences and Laws which Are Necessary for the Organization and Maintenance of a State." As a juristic counterpart to the teaching of cameralism and *Polizeiwissenschaft* which Friedrich Wilhelm had instituted at Halle and Frankfurt a. O. in 1727, Sahme offered students, and the provincial community, a juristic overview of the diversity of princely and administrative rights and practices which had begun to develop under the Hohenzollern dukes and kings in the course of the previous century. Sahme's own stance, in the "introductory announcement" he published for the course, was both cautious and deferential toward the "sovereign rights" (*Regalia*) which the kings and their officials had acquired. But the effect of this and the other sorts of juristic learning Sahme had begun to offer in these two decades must not be too quickly prejudged, but examined in terms of longer-term processes and their consequences: for example, the use which noble or *Bürger* elites could make of the judicial institutions and lawcodes in private law practices (such as conflicts between noble landowners and their subjects over *Scharwerk*, land-tenure issues, etc.); the way in which secondary leadership groups of the province contributed to, or helped to resolve, the jurisdictional conflicts arising between institutions such as the new War and Domains chambers and the various levels of provincial and central-state judicial bodies; and the standpoints which local leaders and jurists would adopt toward the institutional changes which came about through Cocceji's second reform visit (in 1751), and then the codification of an *Allgemeines Gesetzbuch* and *Allgemeines Landrecht* for the monarchy in the 1780's and 1790's⁶².

Existing evidence suggests that Sahme's teaching innovations very early on gained a positive response from students, and presumably from supervisory officials as well. In a report submitted by professors in 1733, on Friedrich Wilhelm's orders, concerning "diligence in the fulfillment of teaching responsibilities," Sahme stood out among all the jurists in terms of the numbers of his auditors. In an apparent effort to give a

⁶² The potential significance of the first of these issues, the use of provincial law in strifes between local landowners and their subjects, is indicated by the recent article of WILLIAM HAGEN, *The Junkers' Faithless Servants: Peasant Insubordination and the Breakdown of Serfdom in Brandenburg-Prussia, 1763–1811*, in RICHARD J. EVANS and W. R. LEE, eds., *The German Peasantry: Conflict and Community in Rural Society from the Eighteenth to the Twentieth Centuries* (London and Sydney: Croom Helm, 1986), pp. 71–101. It has never been systematically investigated for the case of East Prussia in the late 17th and early 18th centuries. The other issues are raised by the work of CONRAD, *Geschichte der Kbg. Obergerichte*, by the articles of G. Birtsch cited above, and by HERMANN WEIL, *Frederick the Great and Samuel Cocceji* (Madison, Wisc.: The State Historical Society of Wisconsin, 1961).

modest description, Sahme noted that he had 30, 40 and at times even 50 students in his course on "Prussian state law." (This contrasted with the approximately 13 auditors listed by the first ordinarius for his public course on the Roman law Institutes, or the 7 students mentioned by the third ordinarius.) Two of the extraordinarii – the older F. Rabe, an Upper Appeals Court counselor, and the younger S. Waga – had similar experiences with their courses on "Practice in Court Procedures" and on "Military Law" respectively: they obtained groups of 20 or more students, including considerable numbers of nobles⁶³. It should be noted, however, that apart from such courses, the bulk of juristic teaching continued to fall in the areas of Roman civil law, German "feudal-tenure law" (Lehnsrecht) and various approaches to modern natural law (using the texts of Grotius, Pufendorf and, by the 1750's Christian Wolff). Sahme's success, however, appears to have established a precedent that encouraged other instructors, and eventually some of his own pupils, to continue the process he had begun of supplementing traditional forms of juristic teaching⁶⁴.

When one turns from Reinhold Sahme's teaching to his scholarly and more popular writings of the 1730's and 40's, it becomes evident his self-consciousness and self-understanding as a learned jurist, far from exerting an isolating and narrowing influence, gave him the self-confidence, impetus and comprehensive intellectual and cultural framework through which to articulate views on a broad range of social and political issues. His standpoint in the 1730's and 40's represented no sharp break from the combination of elements which were already at work in the early development of his thought: aspects of corporatist or regionally-centered traditions of thought combined with Imperial or territorial-state centered ones; historicizing or German-nationalistic perspectives combined with a universalism and rationalism deriving from

⁶³ GStAPK, XX. HA StA Königsberg, Rep. 139b, n. 25, vol. 1. After 1733 the records, unfortunately, were no longer submitted regularly, or in detail (belying assumptions about the effectiveness of "state-supervision"). They were only really established as a regular procedure by Friedrich II in 1741 and after.

⁶⁴ Ibid., The afore mentioned S. Waga offered a course on the new "Fredericean Code" for the central Mark provinces in the Wintersemester 1748–49; Sahme's pupil, J.H. Kurella, on Commercial Notes of Exchange in the Wintersemester 1753–54. J. L. L'Estocq began specializing in the teaching of "Prussian Sea Law" in 1748–49, but then added courses on the "History of Roman Law" and "Prussian Law", on C. Wolff's and other's theories of natural law. He culminated his career with the attainment of the Director and Chancellorship of the university (together with the post as first ordinarius) and judge of the French Court; in 1766 he published his own 400-page text, *Grundlegung einer pragmatischen Rechts-Historie* (Königsberg: J. H. Hartungs Erben und J. D. Zeise).

traditions of Protestant-Aristotelianism, Roman civil law jurisprudence and natural law philosophy. Two aspects of Sahme's mature outlook assume a particular historical significance in the context of the developments I have been tracing: the way in which a mastery and representation of the learned juristic tradition served to bridge over, or compensate for (1) the implicit tensions or contradictions emerging within that intellectual and scholarly outlook, and (2) the limitations or inadequacies perceived or not perceived within the political and social power exercised by regional educated elites. An understanding of Sahme's "juristic civic consciousness", while not a substitute for investigations of political and social development based on other types of sources, can indicate some of the ways in which events and longer-term changes were perceived and made the subsequent basis for political and social action.

Sahme's methodological self-understanding, as expressed in the various "introductory announcements" he published for his lecture courses of the 1730's and 40's revealed that the situation of the East Prussian jurist – standing at the crossing point of multiple systems of law, or diverse possible methodological emphases, each of which had a potential relevance for his juristic understanding and practice – was a complex and at times contradictory one. Particular in the announcements for his new courses on Prussian commercial law and Prussian state law, Sahme stressed to students that the simple study of Roman civil law was, for example, no longer adequate to attain what might be termed a full and genuine "learnedness in the law," or the competence to practice before various contemporary judicial bodies. He noted that an important study which could not now be neglected was the tradition of modern "natural and international law" (*Natur- und Völkerrecht*). Having been brought into a "good order" and given clear, fundamental concepts by figures like Grotius and Pufendorf, it was perhaps now validly viewed as the "ground of all other rights and laws." He noted that it was indispensable for the juristic effort to give a "true interpretation" of laws, or to investigate the interactions and conflicts between peoples and governments in wartimes or peacetimes. Yet, at the same time he also pointed to ways in which the very systematization and clarification of such principles had led to a clearer understanding of their *de facto* limitations. Basing himself on an appreciation of the sovereign power of modern territorial-state princes, he noted the way in which, since there

was no single "potentate" in the world, there was necessarily also a diversity of historically-given rights and laws as well⁶⁵.

A second category of new legal studies needed to supplement the tradition of Roman law jurisprudence were those in which Sahme himself had specialized: the various "special laws" which had come into use in different times and for different purposes, such as commercial and sea laws, administrative and *Polizei* laws, the laws of German territorial states and of the Holy Roman Empire itself⁶⁶. But along with the confidence he and other jurists at Königsberg developed in the importance of their shift toward practical and territorial-state oriented studies of the law, Sahme was also forced to recognize the limits posed by the very legal traditions and political practices which had developed within the province itself. The *Landrecht* of 1620 – composed during the period of the relative dominance of provincial-estates' power over that of the dukes and towns – as well as the *Landrecht* of 1721 – reflecting the new sovereign power claims of the Brandenburg-Prussian kings – had each included, although for opposing purposes, an express stipulation that, in cases where the provincial lawcode did not clearly decide an issue, judges were to have recourse not to "traditional laws" and "customary practices", but rather to the model of Roman civil law, or else to principles of "the just and the good" (*ex aequo et bono*; *das ist nach der Billigkeit abgethan*)⁶⁷. What had begun as the estates' attempt to break free from the power of town courts, and to center judicial control in the hands of noble counselors and learned jurists, had, with the attainment of sovereign authority by the Electors and kings, helped to create an ongoing break with the common-law tradition, and to create a century-long tradition of "judicial legislating." Thus, in an effort to give regional leadership groups and educated elites a means of access to that exercise of judicial power, Königsberg jurists continued to devote a significant portion of their teaching efforts to the tradition of Roman law jurisprudence – with an express emphasis on those elements which were "still of use" or "applicable to present-day situations" – down through the mid-

⁶⁵ SAHME, *Kleine dt. Schriften*, pp. 9–14, 30–42.

⁶⁶ *Ibid.*, pp. 62–76, 101–17, 208–21, 261–70.

⁶⁷ The stipulation of the 1721 *Landrecht* is cited by SAHME in his *Gründliche Einleitung*, p. 10. This break with common-law practice in 1620 and after is noted by CONRAD, *Geschichte der Kbg. Obergerichte* and by the recent study of WIESŁAW LITEWSKI, *Landrecht des Herzogtums Preussen von 1620*, 3 vols., *Zeszyty Naukowe Uniwersytetu Jagiellońskiego*, no. 665, 705, 734; *Prace prawne*, *Zeszyt* no. 104, 107, 111 (Warsaw and Cracow: Nakładem Uniwersytetu Jagiellońskiego, 1982–84), 1: pp. 9–10.

18th century, when such emphases were already being criticized as outmoded and impractical⁶⁸.

Sahme's handbook on the Prussian Landrecht, published in 1741, contained – in addition to some 900 pages of commentary – a dedication and preface addressed to Friedrich II, a reprint of Sahme's 1733 announcement of his lecture course on Prussian state law, a "Short History of Prussian Law," and an appendix of royal "Constitutiones und Edicta" issued since the last collection (made by Grube in 1721). Composed at the outbreak of the Silesian Wars, Sahme's dedication and preface stressed the way in which Friedrich's father had conformed to the Romans' admonition to shield and defend one's sovereign power and rulership through laws as well as by force of arms. Praising Friedrich Wilhelm's introduction of a "salutary order" into the various estates of his lands – in a way that had set a model for other European lands to imitate – Sahme also noted that the kingdom of Prussia might be judged to be especially fortunate precisely in respect to the "implementation and possession of justice" (in *Handhabung der Gerechtigkeit*)⁶⁹. Apart from the learned and professional self-confidence which emerged from the rhetoric of such passages, Sahme's text is also significant for indicating the way in which his methods and self-understanding could still continued to combine together what was becoming an ambiguous set of relationships: to provincial and corporatist traditions and practices, to German-wide juristic and historical perspectives, and to the institutions and sovereign princely power of the Brandenburg-Prussian state.

Sahme's "Short History of Prussian Law," like many of his juristic and popular writings of the preceding decades, reflected in the first instance his own interest in the different phases of the historical development of Prussian institutions and cultural values – but ultimately the cumulative contribution made by Königsberg jurists during the preceding century to such an understanding as well⁷⁰. Sahme might

⁶⁸ The nature of juristic teaching at Königsberg in the 1740's–70's becomes clear from the reports contained in *GStAPK*, XX. HA StA Königsberg, Rep. 139b, n. 25, vols. 1 and 2. Johann Ludwig L'Estocq, in the preface to his *Grundlegung einer prag. Rechts-Historie*, pp. v–vii, notes the particular significance of the Roman-law tradition for the non-Prussian students at Königsberg (i. e. Polish, Russian, Lithuanian, Swedish). G. v. SELLE, *Gesch. d. Albertus-Univ.*, p. 199, notes the way those criticisms were levelled at the juristic faculty by the new professor T. Schmaltz in 1788. However, documents in Rep. 139b, n. 25 show that Berlin supervisory officials had already begun challenging the faculty to defend such teaching practices as early as 1764, but that the faculty were able successfully defend their practices as relevant to the province.

⁶⁹ SAHME, *Gründliche Einleitung*, pp. vi–ix.

⁷⁰ *Ibid.*, nn. xv–xxii, 1–10.

therefore view his own work as bringing aspects of that phase of scholarship to a completion and as ordering it in a way that made it accessible and useful to students and practicing jurists in the province. It is striking that the methodological perspective which he employed to achieve that end was that developed by the Saxon jurist G. A. Struve, in his 1696 text *Juris-Prudenz, oder Verfassung der landüblichen Rechte*. Sahme could thus view himself as continuing to work within an ongoing tradition, and systematic framework, of German legal scholarship in a way that contributed to, but was not limited by, regional and territorial-state needs and perspectives.

Three further aspects of Sahme's text are significant in such a connection. First, his "History of Prussian law" revealed that the lawcode of 1721, and the legal practices and institutions it reflected, were not the products of any single epoch, or the work of any single prince or learned legislator. They were as much to be seen as the products of a longer-term series of interactions: between Hohenzollern dukes and their Polish overlords and the Prussian estates; and, in the 17th and 18th centuries, between provincial estates seeking a "revision and improvement" of their lawcodes, supported by local judicial bodies, and various state officials or learned jurists with their own perspectives and contributions. Sahme thus implicitly downplayed the roles of the Great Elector, Friedrich I or Friedrich Wilhelm I by describing them as adjusting a legal order and set of institutions that had a long and coherent history of their own to the "changed conditions" brought about by their assumption of sovereign princely power in the land. Sahme was vague – whether out of optimism or caution – about the significance of Friedrich I's and Friedrich Wilhelms I's shift of the final instance of judicial appeal back to their own persons: he simply noted that the preface to the 1721 *Landrecht* stated that judicial bodies in the province could, when they found it necessary, send a "doubtful case" on to the king for his personal decision. In general, by praising the "marvellous order" which had been introduced into the laws of the kingdom by Friedrich Wilhelm I and Cocceji, he implied that the reform work two decades earlier had been a success, and that the initiatives soon to be undertaken by Friedrich II and Cocceji in 1746–51 were, in principle, unnecessary⁷¹.

A second point would relate to the potential theoretical and practical significance of some of the structural changes Sahme introduced, fol-

⁷¹ Ibid., pp. 9–10.

lowing Struve, into his understanding and interpretation of the Prussian legal tradition. Sahme did not follow the structure of the 1721 lawcode – which, like that of 1620, still essentially adhered to the format of a “manual of court procedure” – but ordered the four books of his commentary according to what Struve had argued were the essential parts of Justinian’s Institutes: (1) law relating to persons; (2) law relating to property and possessions (*Jus in rem*); (3) laws and rights, including criminal laws, relating to property and possessions arising from personal status *per se* (*Jus ad rem*); and (4) court procedures in civil as well as criminal matters. As already noted, this mode of juristic thinking implied that Prussian legal developments were still essentially comparable to, and able to be understood in terms of, a long tradition of Roman and German civil law jurisprudence. At the same time that such a view might be seen as traditionalistic, and as offering juristic categories (such as the *Jus ad rem*) which legitimized rights and possessions flowing from socially- and historically-fixed personal statuses, it also contained an inherent emphasis on rational and “natural law” concepts such as that of the individual “juristic person”, and the “natural acquisition” of property and possessions by any individual⁷². Such combinations, reflecting in part the endurance of traditional corporatist and estate-centered practices alongside newer notions of “territorial-state citizenship” or the functional role of individuals in the economy and society, were not untypical for the new juristic systems which began to be published in the mid-18th century and after⁷³.

A final point would concern the implications of Sahme’s methodological standpoint and substantive findings for the development, or non-development, of what might be termed “proto-constitutional” modes of thought or practice which might serve to limit or to modify the otherwise all-encompassing legislative, executive and judicial powers being claimed by the absolutist Brandenburg-Prussian rulers. Here, as in his popular essays and course announcements, Sahme made a claim

⁷² LITEWSKI, *Landrecht d. Herzogtums Pr.*, 1: pp. 1–10 provides a good discussion of the practice-oriented, untheoretical nature of the 1620 lawcode. Sahme’s own explanation of his method is contained in his preface, *Gründliche Einleitung*, pp. xv–xxii. A further discussion of the concept of the *Jus ad rem* is to be found in WILHELM VON BRÜNNECK, *Über den Ursprung des sogenannten jus ad rem*, *Ein Beitrag zur Geschichte dieses Dogma* (Berlin: Gärtner, 1869) and BARRY NICHOLAS, *An Introduction to Roman Law* (London and N.Y.: Oxford University Press, 1962).

⁷³ This is one of the central points of MICHAEL STOLLEIS, *Unterthan – Bürger – Staatsbürger*, in RUDOLF VIERHAUS, ed., *Bürger und Bürgerlichkeit im Zeitalter der Aufklärung*, *Wolfenbütteler Studien zur Aufklärung*, no. 7 (Heidelberg: Lambert Schneider, 1981), pp. 65–84.

for the independent contribution and civic importance of learned interpreters and executors of the law. The core of his claim rested in a self-consciousness that arose from an immersion in a tradition of learned interpretation of the law. To the extent that jurists were capable of, and responsible for, making the "rational principles of justice" – contained in diverse legal sources and national traditions – effective and present again in practice, they were performing a unique and irreplaceable service for their community, fatherland and prince⁷⁴. It was this self-consciousness which informed Sahme's continual reiteration, at various places in his handbook and essays, of the commonplaces of the Roman civil law and natural law traditions. Thus, in explaining why learned jurists and a tradition of scholarly jurisprudence were necessary for modern states and societies, Sahme observed (following Struve and other such texts) that, in "well-ordered republics" (*eine wohlbestellte Republik*), wise rulers and their societies had seen fit to have learned men bring the study (*Wissenschaft*) of law "into a good order", and to show how it was to be "justly and properly applied." The advantages, in comparison with previous merely customary practices or traditions, were multiple: men could no longer cite ignorance of the law an excuse for misdeeds; and self-serving or arbitrary interpretations of the law were no longer seen as acceptable (as, by implication, they might once have been.) Still, as modern historians such as G. Birtsch have argued, the strict separation of a "private law sphere" from a "public law" or genuinely "political" sphere may be judged to have conceded too much power to, and placed too few limits or controlling influences over, absolutist princes and their officials. Sahme's own statements, however, simply placed newer emphases on "social disciplining" and "policing" side by side with a traditional conception of the "preservation of rights and laws" (as the central task of judicial institutions): paraphrasing the Roman law commonplace, he noted that the task of the learned study of law was to "give each inhabitant and subject (*jeden Einwohner und*

⁷⁴ Examples of the logic of this "Roman law thinking" are to be found in ERNST LEVY, *Natural Law in Roman Thought*, in ERNST LEVY, *Gesammelte Schriften*, 2 vols. (Cologne and Graz: Böhlau, 1963), 1: pp. 3–19; MALTE DIESSELHORST, *Die Gerechtigkeitsdefinition Ulpian's in D. 1,1,10 pr. und die Praecepta iuris nach D. 1,1,10,1 sowie ihre Rezeption bei Leibnitz und Kant*, in OKKO BEHREND'S, MALTE DIESSELHORST and WOLF ECKART VOSS, eds., *Römisches Recht in der europäischen Tradition: Symposium aus Anlaß des 75. Geburtstags von Fritz Wieacker* (Ebelsbach: Verlag Rolf Gremer, 1985), pp. 185–212; and B. NICHOLAS, *Introd. to Roman Law*.

Untertanen) a guideline for his actions," and to see that "justice be done to everyone, and that no one get too much or too little"⁷⁵.

In the 1730's and 40's, Sahme contributed six relatively popularly-oriented essays for the new Königsberg "Intelligenz-Blätter" which had been started at Friedrich Wilhelm's encouragement. As in other aspects of the king's policies toward the universities, the aim was to find substitutes for what he viewed as older, more expensive or conflict-producing practices of the late 17th and 18th centuries (in this instance, holding numerous "disputations" or publishing excessive numbers of dissertations). The intent to have the faculty contribute in some fashion to "educating the public" or upholding the university's reputation for learning conformed with the self-image and interests of the faculty – the jurists not the least among them – in presenting and legitimizing their learning before the local community. For Sahme, an additional impetus for contributions was the fact that, as the first ordinarius for law beginning in 1736, he was also given responsibility (after the model of Halle) for supervising and censoring the journal.

The essays which Sahme published in the journal between 1736 and 1741 are thus of significance in several different respects. Each of them – with the exception of his 1741 essay on atheists – had a question of Prussian or German law as their central focus and starting point. Sahme thus thought it possible, on the basis of the historical and practical approach to jurisprudence which had gradually developed in East Prussia as elsewhere in Germany in the previous half-century, to appeal to or to stimulate further educated public curiosity about provincial (as well as Imperial and European) cultural and institutional history. At the same time, these essays were also intended to articulate and give public representation to a sense that learned jurists, and juristic knowledge, performed a variety of highly important functions within state and society. The audiences Sahme sought to address were, on the one hand, the regional community which could now expect to have a broad range of contacts with jurists and judicial institutions and, on the other, jurists, Hohenzollern princes and supervisory state-officials themselves.

A first group of essays – "The Old Prussian Ordinance, that He Who Is Arrested for the Possession of Crooked Dice Should be Drowned" (1736), on the custom of giving so-called "holiday gifts" (1737), on "Whether Women Can Hold a Judge's Post?" (1737), and "Concerning

⁷⁵ SAHME *Kleine dt. Schriften*, pp. 30–31, 121–25, and *Gründliche Einleitung*, pp. 12–13; G. BIRTSCH, *Zum konstitutional Charakter*.

law upon human thoughts and actions. Based on the sorts of experiences he had apparently gained working in the courts and administrative bodies of East Prussia, Sahme noted that men simply did not act justly in their social, political and economic relationships with one another. He argued – although indirectly, and by the citation of natural law arguments concerning the everpresent danger of men regressing to the levels of behavior found in the “state-of-nature” – that it was more realistic to expect that men’s “fickle imaginations” and capacities for deceit, dissimulation and self-serving would ever and again gain the upper hand in their actual social behavior. A simple passive, external obedience to laws, reinforced by mild admonitions that men practice loyalty and submission toward their superiors, provided, in his view, no effective corrective to this tendency. In such a context, Sahme again returned to the ambiguous situation of his own learned juristic profession. If it was ultimately impossible for courts, working within the prescriptions of lawcodes, and from what was provable or not provable about human actions, consistently to enforce just forms of behavior upon men externally, then only an updated version of traditional religious and social-political practices could suffice. Sahme’s conclusions linked together the multifarious strands of his cultural and socio-political tradition. To the extent that one wished to adhere to the ancient model of the relationship of men in a genuine community – namely, that it was in fact intended to further the attainment of the “highest good” possible for human nature through the exercise of the complete range of virtues of rational men – then, Sahme noted, one could simply not dispense with the additional motivating and shaping force which religion contributed alongside merely secular laws, or the restricted power of human authorities and institutions⁸².

In several of his writings of the late 1730’s and early 1740’s, Sahme gave expression to a political and historical self-understanding as a learned jurist that reflected an ambiguous or open-ended set of expectations and assessments. In his announcement for his course in 1737 on the “State Law of the Holy Roman Empire,” Sahme had been explicit that he would not presume to offer students an abstract theory of “political life in general.” His own brief overview of the work of theorists like

⁸² Ibid., pp. 185–207. In addition to the article by M. Stolleis, mentioned in n. 73 above, the article by MANFRED RIEDEL, *Bürgerlichkeit und Humanität*, in the same volume (pp. 13–31) contains a further useful discussion of the implicit meaning preserved in the term “Bürger” in the late 17th and 18th century German context.

Grotius, Hobbes and Machiavelli – and his subsequent recommendation of the “sound assessments” of such figures by German jurists such as N. Hert (of Giessen), J. H. Boehmer (of Halle) and H. Cocceji (of Frankfurt a. O.) – apart from certifying Sahme’s learnedness, was intended to provide a prophylactic warning against entering too quickly into complex questions which even the most learned political philosophers and jurists had been unable to settle. However, when he came to discuss examples of recent juristic contributions to the study of German-Imperial “state law” – such as J. H. Boehmer’s 1710 text, *Jus Publicum Universale* – he proposed that their achievement was to have set aside outworn “philosophical props” and scholastic-theological methods and to have exhibited the “general laws” of political life, and the “grounds” on which “monarchs and free peoples” had come to discuss and to resolve their strifes in war- and peacetimes. Works such as Boehmer’s were therefore to be recommended not just for their useful scholarly apparatus, but for giving advice on how one supposedly created state institutions by reference to “fundamental rules” (*Grundregeln*) of a “universal law of states.” Sahme noted that it was, to be sure, dangerous, and in effect forbidden, to study and write about the “state laws” in regimes such as those of Portugal, Spain, France, Denmark and Russia. In part the concentration of political power in the “will and pleasure of the prince” was such that it was difficult to maintain that aspects of those regimes were in fact “certain and fixed.” It was indicative of Sahme’s political and social outlook, and self-understanding as an East Prussian jurist, that, first of all, he chose to place the Holy Roman Empire alongside England, Poland, Venice, and Holland as being among those “republics” where the estates (*Stände*) participated in governmental power by virtue of “fundamental laws” and certain “conventions and compacts”, and where the study of state laws was possible and meaningful. Subsequently, in the “History of Prussian law” which he published in his 1741 handbook, he viewed his own work as standing in the tradition of those who had undertaken to study the state laws of their regimes: Grotius in Holland, J. Loccenius in Sweden, J. Cowell(us) in England, H. J. Leu in Switzerland, and G. A. Struve for the “general fatherland” of Germany (*die Rechte des allgemeinen Vaterlandes*)⁸³. Yet Sahme simply let such generalized perspectives stand side by side with the recognition – as in his 1742 course on “The Special Sciences and

⁸³ SAHME, *Kleine dt. Schriften*, pp. 62–76; *Gründliche Einleitung*, pp. xvii–xviii.

Laws Which Are Necessary for the Organization and Maintenance of a State" – that within the Brandenburg-Prussian monarchy, a genuine "art of politics" or "state-craft" (*Staats-Kunst*), although it could be said to necessarily include a "good grounding" in academic studies of politics, general jurisprudence and auxiliary sciences such as history, could not be learned at academies, but was gained via long experience at court, and through access to documents and sources contained in privy archives and the like⁸⁴. The tensions between provincial, estate-centered conceptions and traditions, and the power-realities and institutional relationships developing between territorial-state center and regions, were simply unbridged in such views.

III

Aspects of Sahme's scholarly and professional contributions were given an altered significance by developments which took place during the first decade of Friedrich II's reign. But at the same time, patterns of interaction and compromise between central-state initiatives and the practices and perspectives of provincial secondary elites continued, in a way that also served to reinforce the civic standing and responsibilities of the juristic profession.

Sahme's effort to develop a learned mastery of the Prussian *Landrecht* stood between conflicting processes: (1) the ability of various groups in the provincial community to put such knowledge to use in continuing traditional practices, or in devising methods of defending their interests within altered sets of provincial institutions; and (2) the decision of Friedrich II and Cocceji to undertake a renewed approach to streamlining judicial processes in various Brandenburg-Prussian provinces, and then to bring those changes together in a unitary lawcode for the intermediary and lower courts of the monarchy as a whole⁸⁵.

It may have perhaps been with his broader project already in mind that Friedrich II chose to apparently not respond to Sahme's request (of January 1742) that he issue a royal rescript ordering East Prussian upper and lower courts, *Ämter* and town officials to purchase Sahme's new handbook-commentary for use in their ongoing judicial work⁸⁶. Sahme's request was made even more untimely and unacceptable by

⁸⁴ SAHME, *Kleine dt. Schriften*, pp. 261–64.

⁸⁵ CONRAD, *Geschichte d. Kbg. Obergerichte*, pp. 168–93.

⁸⁶ Sahme's request of 29 January 1742 is contained in *GStAPK*, XX. HA StA Königsberg, 139k, n. 181.

Friedrich II's instruction to Cocceji in May 1746 to begin preparing new plans to ensure "speedy and firm justice" in the realm, and to restructure judicial procedures and principles to attain the so often sought goals of "reason, right and fairness" (*Vernunft, Recht und Billigkeit*). The way in which Friedrich envisioned that undertaking, however, was not markedly different from the way in which his father and Cocceji had approached it: (1) trying to fill the courts with presidents, counselors and secretaries "experienced in theory and practice"; (2) appointing only learned and practically-experienced individuals as advocates, and testing them prior to admission to practice; (3) creating clearer, more readily-supervisable patterns of financial compensation for judicial officials; and (4) avoiding the practice whereby multiple and overlapping offices could be placed in a single individual's hands. The important change from his father was that Friedrich now sought to crown this procedural reform with a new monarchy-wide German-language lawcode that would attempt to assess the elements common to the laws and institutions of the various Brandenburg-Prussian territories⁸⁷.

Having begun his "model reforms" in Pomerania in the fall of 1746, copies of Cocceji's work were sent on to the East Prussian Regierung, courts and existing Landrecht commission (headed by the Kanzler v. Schlieben, and including the Hofrichter W. L. v. d. Gröben and jurists such as v. Sahme, Pauli and Boltz); the latter was ordered to report on their view of the reform ideas. Initially their recommendations (in the spring of 1747) were negative: in their view, Cocceji's reforms two decades earlier had worked well, and they foresaw potential resistance to any new set of procedures and "constitutive decrees" from the local provincial courts⁸⁸. The process once begun, however, proceeded to gain support – or pragmatic or self-serving acceptance – from important local leaders, such as the previously critical v. d. Gröben. Due to the lack of documentary sources and local studies, it is impossible to ascertain the specific sort of input made by the individuals and committee which finally came to assist Cocceji and v. Fürst on their visit to the province in June 1751. One may suggest, however, that Friedrich II did obtain an accomodation to many of his reformist viewpoints: forbidding of judicial officials to hold "accessory posts" (including professorships);⁸⁹ a re-allo-

⁸⁷ CONRAD, *Geschichte d. Kbg., Obergerichte*, pp. 186–93.

⁸⁸ *Acta Borussica*, 7: p. 224.

⁸⁹ Sahme himself was forced to choose between retaining his professorship or his post as counselor on the Upper Appeals Court; and he choose the latter (1751).

cating of existing personnel among the new courts in order to avoid the problems of nepotism; a centralization of control over court fees and officials' salaries; clarifying the process of appeal to the Berlin Tribunal and Kammergericht; and implementing the new Codex Fridericianum Marchiorum at the level of the lower courts of the province. However, what is less clear is once again who were the beneficiaries within the province from those and other changes which emerged. If the Code Frédéric had been initially opposed by the War and Domains officials and the East Prussian Regierung, it is possible that v. d. Gröben's willingness to push for its implementation was part of his pragmatic choice about which side to choose in the "jurisdictional controversies" which had been developing over decades with the traditional courts. One result of the reforms was that the East Prussian Regierung itself came close to being abolished, but was finally preserved as a collegiate body which dealt with "public matters" (*Publica*) and "feudal-tenure issues" (*Lehnssachen*), but no longer with judicial matters per se. One may suggest that the restructuring of the rural Ämter courts – into collegial bodies whose members now were tested and approved by the intermediary provincial (Königsberg) courts – and the shifting of matrimonial and clerical cases from the consistories to the Hofgericht both followed a similar pattern: that of centralizing more power and functions in the now traditional intermediary and upper courts of the province⁹⁰.

One of the important results of these reforms was thus a heightening of the prestige of the judicial and court personnel of the province. The members of the upper courts were now appointed to lifelong terms. If the provincial elites now lost some of their independent control over appointments, they gained by Friedrich's adopting of their own earlier testing and on-the-job training procedures (including "expectancies" and "assistantships", which they still managed to staff largely with their own choice of appointees); and the lines of their relationship to the Berlin court and central institutions were made clear, and equal to that of other territories. By the 1760's and 70's, the prestige of judicial careers and practices was such that Friedrich's later reforming ministers chose to model the testing and appointment of cameral and other bureaucratic officials on the patterns which had been long-established within the provincial courts themselves⁹¹.

⁹⁰ CONRAD, *Geschichte d. Kbg. Obergerichte*, pp. 150–166.

⁹¹ *Ibid.*, pp. 192–93; and BLEEK, *Kameralausbildung*, pp. 74–78 for the significance of the judicial model for the War and Domains chambers themselves.

Conclusions

The three historical perspectives outlined at the beginning of the essay have the benefit, I have argued, of illuminating some of the meanings and intentions present in the scholarly and professional activities, and self-understanding and self-representation, of a figure such as Reinhold Friedrich von Sahme.

Historians' suggestions that the juristic or other faculties at the Universität Königsberg in the first two-thirds of the century were seriously in decline, or out of touch with changing student needs or interests, or with developments at some of the more progressive universities, have not sufficiently taken into account the work of jurists such as Sahme. It is significant that when the Berlin officials responsible for supervision of the universities ordered the jurists at Königsberg, in 1764, to justify the courses they were offering and the textbooks they were using – and to speak to the specific charge now levelled that too little “civil law” (*bürgerliches Recht*) or practical application of the law was taught, and too much Roman civil law – the result was that the faculty successfully vindicated their practices, and received the promotions made possible by the recent death of one of the *ordinarii* there⁹². One may thus suggest that Sahme's teaching and scholarly activities contributed to the jurists' establishing a pragmatic mixture of emphases in their instruction and scholarship: on newer, practical courses such as commercial law, sea law, or the application of law in provincial courts and private law practice; courses on regional or state law codes (which came to include, apart from Sahme's, courses on the Code Frédéric and Prussian military law); and ongoing scholarly research into the historical interrelationships of the development of Roman civil law, German and Imperial law, and the Prussian law codes. Explanations for the rise or decline in student enrollments, in the geographical or socio-economic composition of the student body at Königsberg have too readily been sought in the supposed adequacy or inadequacy of the course offerings, or the scholarly reputation of the various faculties, with too little attention being paid to the potential impact of other possible “external factors” – such as demographic patterns resulting from wars or plagues, and changing territorial or international power relationships⁹³.

⁹² GStAPK, XX. HA StA Königsberg, Rep. 139b, n. 25, vol. 2.

⁹³ See, for example, G. v. SELLE, *Geschichte d. Albertus-Univ.*, pp. 153–99. Some useful counter-suggestions are made by HEINZ ISCHREY, although only for the later period of the

The notion of a highly-developed intellectual, professional and social identity on the part of German jurists, which then had important consequences for their "civic" or political self-understanding and behavior, seems well exemplified by the case of Reinhold Sahme. It appears above all important to observe the way in which a learned mastery of the Roman civil law, modern natural law, and Germanic state law provided a comprehensive and formative intellectual and methodological orientation for jurists, which could then be put to use in a variety of different contexts, and for different ends. It was perhaps its very ambiguity on issues such as the nature and extent of princely as opposed to bureaucratic-official, or corporative-estate power which made it at once so functional and integrative an outlook for late 17th and 18th century provincial educated elites. Yet, at the same time, one must understand the ways in which it could be potentially inconsistent, if not deceptive, and thus capable of undermining in the long-term their political and social power or privileges relative to other groups or institutions forming within the territorial-state framework⁹⁴.

One benefit of the foregoing line of interpretation is precisely to point to the need to reopen questions of the degree of effective absolutist or centralized state control over the institutions, practices and secondary leadership groups of the regions and towns of the Brandenburg-Prussian monarchy. The options opened up by G. Heinrich's suggestion of a potential "area for free development", or a professional and cultural ethos influenced by the absolutist territorial state but also pointing beyond it, and G. Birtsch's emphasis on the ultimately very limited modifying impact of the tradition of "Roman civil law jurisprudence" – with all its inconsistencies and compromises – need to be tested by studies of the diverse uses to which judicial institutions and juristic knowledge were actually put at the provincial and local levels, and how

1750's and after, in *Material zur Charakteristik des kulturellen Einzugsgebiets von Königsberg i. Pr. in der zweiten Hälfte des XVIII. Jahrhunderts*, in HEINZ ISCHREY, ed., *Zentren der Aufklärung II: Königsberg und Riga*, Wolfenbütteler Studien zur Aufklärung, no. 16 (Heidelberg: Verlag Lambert Schneider, forthcoming). Cf. n. 4. above.

⁹⁴ A further exploration of the ambiguous political and intellectual role of the juristic mode of thought and practice may help to clarify the contrasting interpretations of HANS ROSENBERG, in *Bureaucracy, Aristocracy, and Autocracy: The Prussian Experience 1660–1815* (Boston: Beacon Press, 1958) and that of C. B. A. BEHRENS, *Society, Government, and the Enlightenment: The Experiences of Eighteenth-Century France and Prussia* (N.Y.: Harper & Row, 1985).

that may have changed over time from the mid-17th to the late 18th centuries⁹⁵.

On the level of intellectual and cultural developments, the theoretical and practical contributions of East Prussian jurists may be said to have gained a new German and European-wide significance when, indirectly, they became a part of Immanuel Kant's effort – to take but one East Prussian example – to develop an encompassing philosophy of law, and of the place of “pragmatic” social and political behavior in the progress of human society, and in man's self-understanding of his own nature. Instead of remaining in a “provincial isolation,” the regional traditions and institutional developments in Königsberg and East Prussia became pre-conditions for, or contributory factors to, a new and highly creative effort to be at once a theoretical and practical participant in European cultural and political life⁹⁶.

⁹⁵ One can once again cite the work of Willian Hagen to indicate the potential fruitfulness of this approach to practices on the provincial and local levels.

⁹⁶ The significance of the concepts of “pragmatic” action and law in Kant's philosophic and pedagogical work have been discussed by NORBERT HINSKE, *Kant als Herausforderung an die Gegenwart* (Freiburg: Karl Alber, 1980); WOLFGANG KERSTING, *Kann die Kritik der praktischen Vernunft populär sein?*, *Studia Leibnitia* 15 (1983): pp. 82–93; and STEVEN O. LESTITION, *Kant's Philosophical Anthropology: Texts and Historical Contexts, Continuity and Change* (Unpublished Dissertation, University of Chicago, 1985).