

**The Right to Associate and the Rights of Associations:
Civil-Society Organizations in Prussia, 1794-1908**

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Abstract

Civil-society organizations are thought to form an important “third sector” of society, one that plays a central role in both democratic and non-democratic regimes. Today one mark of a repressive government is its effort to suppress or limit civil-society organizations. These limitations have a long history, and existed even in relatively democratic societies. We outline a simple framework for thinking about the right to associate and the rights of associations, and illustrate it using examples from U.S. history. Then we focus on Prussia, tracing the history of limitations on association and civil-society organizations in Prussia from the late eighteenth century to the outbreak of World War I. Prussian governments restricted the right to associate, but, just as importantly, they denied to most civil-society organizations corporative legal rights such as the ability to contract in their own right. We argue that the latter rights are crucial to effective civil-society organizations, and trace the process by which Prussia (later Germany) liberalized its treatment of such groups. In a brief overview we show that similar limitations operated in France in the nineteenth century, even though France after the Revolution had a very different constitutional order. The rights demanded by civil-society groups were virtually identical to those offered to business organizations. We document the close association between the rights of business organizations and those of civil-society groups.

Was der Mensch ist, verdankt er der Vereinigung von Mensch und Mensch.¹

Efforts to limit civil-society groups feature heavily in some regimes' efforts to control their citizens and to limit the potential for organized opposition. In many countries today the freedom to associate seen as a fundamental right on a par with the right of free speech. These and other countries also offer civil-society groups additional civil and political rights that make it easier for these groups to cohere and to advance an agenda. Such has not always been the case. Historically, freedom of association was not the norm in the United States or most of Europe; not even in the regimes pledged to respect the rule of law, and not even in regimes that viewed themselves as leading the charge for human liberty and the democratization of political rights. In this paper we focus on Prussia, to examine the logic of limitations on the right of association and how these limitations evolved and weakened in the latter part of the nineteenth century. Close study of particular cases is an ideal way to make progress on a question such as this, but we acknowledge the danger of implicitly generalizing from a single country's experience. To add context we offer a general framework of associational rights, illustrated by reference to American associational expansion over a similar period as our Prussian study. We also briefly consider the French experience, both on its own and for the influence it exerted over the other

¹ "People are what they are because of the ties among people." This is the first line of Gierke (1868)'s famous history of associations in German law. Gierke's title raises a problem of vocabulary and translation. In using the term *Genossenschaft*, Gierke was emphasizing the commonality of diverse institutions: cities, universities, business enterprises, mutual-aid societies, etc. German cooperatives use *Genossenschaft* as the label for their bodies, and this is probably the way most Germans understand the word today. The German usage of the terms pertaining to associations has changed since the period we discuss. *Verein* was a more general term translated variously as "association," "club," or "society." Nipperdey (1976, Note 1) stresses that in our period actors did not attach much meaning to differences in terms for these groups. Schmalz (1955), who Nipperdey cites, argues that in the early nineteenth century the word *Verein* became the neutral and general term for associations of the type we stress here, supplanting other terms such as *Bund*.

German states that in some cases prodded Prussian developments.² We conclude by drawing out the connections between business law and development of associational rights.

To start we distinguish two basic kinds of association rights. First is the right *to* associate, that is the right of persons to come together or create relations with each other. Second is the rights *of* associations: rights granted directly to associations rather than indirectly through their members, agents, promoters or other proxies. While the right to associate is arguably fundamental, even familiar when framed as peaceful assembly, to a well-functioning civil society, we argue that its assurance is far from inevitable. As an initial matter, association is distinct from assembly, itself a historically contested right. To be associated with another person is not the same as assembling with that person. The right to associate is separate and superior to the right of assembly.³ Moreover, the right to associate, properly understood, is often incidental to other higher-order constitutional guarantees. In contemporary U.S. constitutional jurisprudence, for instance, courts have granted persons a derivative right to associate in order to secure primary rights of expression, political or religious, and privacy. None of these “primary” rights, however, are necessary for civil and political order; their existence and contemporary connection to association reveals the historically serendipitous character of the right *to* associate. Modern rights *of* associations, which are granted to groups currently engaged in civil and political (as opposed to commercial) activities, would be even harder for nineteenth-century observers to envision. We illustrate the contingency of both kinds of associational rights as they evolved in Prussia, from the eighteenth-century to the second half of the nineteenth century.

² Prussia was the core and dominant state in the German “Empire” formed in 1871. Legal restrictions on association shifted to the Confederation level after 1815, so from that point on most of the relevant legal regime is common across Germany. The constitution adopted in 1871 allocated responsibility for different spheres between the states and the national government. Most of the law at issue here was and remained Prussian until 1908, when the Empire adopted a common statute on association. We use “Prussia” as opposed to “Germany” advisedly. For a different Germany state, see Meyer (1970), who studies associational life in the city of Nürnberg, which became part of Bavaria in 1806.

³ Assembly is but a single means—albeit an important one—through which persons associate.

Conveniently, German sources tend to distinguish the right to associate (*Versammlungsrecht*) from the rights that attach to associations (*Vereinsrecht*). Thus the distinction we draw is embedded in the context we study.

Although our primary concern is civil-society associations, these associations cannot be considered in isolation from commercial associations. To be sure, associating to earn a return on labor or invested capital is clearly different, in important ways, from associating to discuss philosophical ideas or political trends, but the two gatherings raise similar issues in the eyes of the law. As we will elaborate, early restrictions on civil-society associations in Prussia presumed, in essence, that all such meetings were forbidden and a police presence was required, if not actually carried out, in any tolerated meeting. Commercial associations were spared these burdensome prohibitions and required surveillance, as that undoubtedly would have discouraged the formation of multi-owner enterprises and generally undermined business activity. Hence business organizations were often granted explicit or implicit carve-outs, and were regarded as entirely distinct from civil-society groups in many, if not most, contexts. In other contexts, however, the distinctions between civil-society associations and business organization were obscure and, we argue, this opacity helped to advance the cause of civil society. In both Prussia and France, the first civil-society groups given expanded privileges were cooperatives, no doubt due to their economic character. In still other contexts, civil-society groups pursued a strategy of legal innovation by assimilating rights first granted to business organizations. Businessmen, familiar with and accustomed to privileges and conveniences of their business forms, were particularly effective agents of their civil-society groups.

Acquisition of *corporate* rights was key to the growth and success of civil society associations. We use “corporate” here to refer to rights belonging to the ‘body’ of a group or

society, as opposed to its members or other associates. The right simply to gather in a room, i.e., to privately assemble, is the pre-requisite for any civil society. But even granting that, a government could effectively hinder civil-society development by denying such groups additional legal rights, from restricting their public assembly to withholding a variety of conventional legal means that allow citizens to operate large, long-lived organizations. These additional rights have been fundamental to the expansion of associations that characterize American civil society.⁴ Imagine the American Civil Liberties Union (ACLU) if it could not sue in its own right, or own property, or contract with staff or others. This ACLU would be little more than a debating society.⁵ We stress the developments of these additional “corporate” rights because they are crucial to development of associations and their ability to play a meaningful role in civil society.⁶ Prussia’s historical context is particularly instructive here.

Until the early twentieth century, Prussian law explicitly restricted its citizens’ right to associate. The rules changed several times, but the common thread was that authorities who deemed an assembly or association threatening could forbid it, and possibly apply criminal sanctions against those responsible for organizing it. Governments today, of course, continue to outlaw associations deemed dangerous to the public good or the constitutional order. Presently, the U.S. federal law allows authorities to pursue and prohibit certain domestic Islamic groups

⁴ As Skocpol observes, “[t]he vast majority of locally present voluntary groups in the industrializing United States were parts of national or regional voluntary federations.” These federations are largely chartered bodies having entity status and rights. According to Skocpol, a mere 58 large voluntary associations—i.e., associations “that ever enrolled 1% percent of more of U.S. adults as ‘members’ (according to whatever definition of membership each group used)” —have been the organizing force behind local associational life in the U.S. (Skocpol, 2003; p. 29). It is clear that without “corporate” rights, the ability to expand and effectiveness of these associations would be greatly reduced.

⁵ By “could not” we mean “could not without adopting cumbersome and expensive devices that are unnecessary to a business firm.” Section four provides detailed examples.

⁶ The collective rights that organizations can exercise are central to the creation of civil-society organizations that can play their “third sector” role.

with a vigor once reserved for communist groups.⁷ The difference with the Prussian regime in the nineteenth century was its usage of law to prevent a wide range of associations that did not so much threaten the government as seemingly annoy it.⁸ Like Prussia, most European states restricted associations in the nineteenth century, which is not to suggest that associations were in and of themselves disagreeable to the state.

Every political order relies on associations. Prussia, in fact, compelled participation in certain associations. Prussian political order rested on differences among the King's subjects, differences that were often expressed through status-based organizations. Some, but not all, of these groups were based on birth, such as the nobility. Membership was determined and mandated by the state, not chosen voluntarily by individuals. The law sought to limit *voluntary* organizations, groups that were not themselves directly or indirectly creations of the state. As Nipperdey (1976, p.174) puts it, a person could join or leave these voluntary associations, and the association's members could decide to dissolve it. They were independent of the membership; participation was not limited to a particular class, nor could one's membership in a class be threatened by participation in an association. They exist only to meet the ends decided on by their members. Again, most European states took a similar approach. An important and informative comparison is France. Prior to the French Revolution, France looked much like Prussia (in this respect). After, France restricted the right to associate at least as strictly as Prussia. This seems puzzling at first, since even after the Bourbon restoration France remained a political order very different from that which continued in Prussia. The ideals underlying the

⁷[Add cites to PATRIOT Act; and cites for discussion of associational law under Red Scare]. The German government today has the explicit power to outlaw organizations that it views as threats to the constitutional order. The government has only used it against groups that *declare their goal* to be the government's overthrow. In the nineteenth century a group did not have to declare itself hostile to the constitutional order to be unable to meet.

⁸ Prussia was in good company in restricting corporate rights to most bodies (including business firms) until the 1870s; the few business corporations the government did charter had to agree both to oversight (which could amount to micro-managing) and often to transfer some of the benefits of association to the government.

French discomfort with societies were different from those expressed in Prussia; the divergence turns largely on differing conceptions of the state and the citizen's role in that state. We elaborate on this comparison below, briefly,⁹ but first we present a basic framework of associations followed by our discussion of Prussia.

1. Associating and association: a framework with reference to the U.S. context

To be precise in our treatment of associations, we briefly lay out a typology based on four terms, labeled R1 through R4 for future reference:

R1) Associate (a verb). Two or more persons engaged in some joint activity or relation (e.g., they might assemble for a rally, or meet to have coffee, discuss a book, undertake some longer-term activity, or they may be associated by virtue of a marital relation, a fraternal organization, or a political affiliation). We use the abbreviation *R1* or *associate* hereafter.

R2) Mere Association (a noun): An aggregate or group consisting of two or more associated persons (e.g., an unincorporated church or school or a group of persons running a going concern while sharing profits and losses, which may create an association called 'partnership'). A mere association can have its own internal organization and rules, to which its members consent, and that may be enforced by and against

⁹ A caveat: We are not political theorists and do not intend to wrestle with deeper questions of political formation and its interpretation. For both Prussia and France, the question of association carries considerable ideological freight. The referent for Germany is Gierke and his conception of the "*Genossenschaft*." Maitland's tendentious interpretation of Gierke creates its own problems, since there is no English translation of Gierke's (massive) work. Maitland pulled Gierke out of his intellectual and historical context; related debates on the theory of corporate personalities also tend to miss Gierke's ideological intent. It is also worth noting that none of the business- or cooperative-law discussions most relevant here even mention Gierke. The French context is even more complicated, because the right of association invokes central themes from the Revolution and the restoration, and also draws on de Tocqueville and his enthusiasm for his vision of American society. We cannot do justice to the deeper roots of these debates in this chapter.

members, but the association itself can neither legally bind or be bound by others. We use the abbreviation *R2* or “aggregate” hereafter.

R3 Associational entity: an association recognized by law as a distinct legal entity, separate from the persons who comprise it (e.g., a club or concern that can own property, sue and be sued in its own name). We use the abbreviation *R3* or “entity” hereafter.

R4) A legal person: a legal entity, associational or otherwise, that is treated as a person in law (i.e., incorporated associations are recognized as persons for some purposes). For most purposes legal personality and entity status are equivalent, but occasional differences in treatment may result from the fact that an association is considered a ‘legal person’ as opposed to an ‘entity’. We use the abbreviation *R4* or ‘legal person’ hereafter.

We do not suggest any general, one-to-one mapping between these four definitions and any particular organization or application of legal rules. Although *R1* through *R4* may be characterized in terms of specific rights, powers, privileges and immunities, we do not mean to suggest that a state would grant these entitlements in any consistent manner. States could and did restrict associational entitlements according to the number of people involved, and whether meetings took place indoors or outdoors. Controls deployed by the state were highly variable. Restrictions sometimes turned on the identity of those involved. Specific prerequisites, such as mandating use of the German language, were required of certain associations. Though today the law often requires that formal associations hold annual meetings and maintain minutes of meetings and such, one must resist casual ascription of familiar mandates and entitlements to associations in different times and places. American business partnerships, for example, possess

or lack entity status depending on the time and the state in which the association is formed or considered. Relatedly, today we think of limited liability as a cornerstone of business associations, but in the nineteenth century it was an uncommon aspect of firms. Even an association taking R3 and R4 may not have limited liability extended to its members and managers depending on the time, place and other considerations.¹⁰ These and other qualifications threaten to leave our simple framework without any traction. But when applied to a specific time and place the typology above can clarify certain aspects of the civil-society landscape.

The U.S. Context

We illustrate the typology above by considering the American associational context from the late-eighteenth century through the mid-nineteenth century. It is important to emphasize that our aim is not to present a comprehensive historical account of associational custom and regulation in America. Civil associations in America is a much-studied topic, from Alexis de Tocqueville's depiction of their prevalence in the early republic to Robert Putnam's portrayal of their demise and the literature spurred on by his claims of peril facing contemporary civil society. A decent review of the historical texts alone would consume the rest of these pages. Additionally, the law and practice of associations in the U.S. is far from settled. Casual observers are often surprised to learn that the U.S. Supreme Court did not recognize a distinct right of association until 1958;¹¹ even federal judges speak as if that right has existed since the founding. But great portions of domestic associational law were forged through battles waged during the Civil Rights movement and its immediate aftermath. Moreover, in the very recent past, doctrines concerning rights of associations have experienced extraordinary shifts, not to mention the practical innovations in

¹⁰ Mention evolution of veil and veil piercing...

¹¹ The Court did so in the case NAACP v. Alabama, 357 U.S. 449 (1958).

the media, forms and memberships of associations. From ‘virtual’ (and real) associations on the Internet to newly integrated membership rolls (by race, gender, sexuality and so on), the American associational landscape today is radically different than it was in 1958 and would be unfathomable to someone in 1858 or in 1776.

What the first Americans understood of their rights and limits of associations may be gleaned from the nation’s founding documents. Our original citizens belonged to various associations that predated the United States of America, of course, and numerous other associations grew out of its battle for independence from Britain.¹² From the beginning, the newly formed nation looked askance on some of these associations and sought to regulate, discourage or prohibit them. For example, the original constitutional debates critically scrutinized the Society of the Cincinnati, a hereditary association of Revolutionary War officers and their male descendants. George Washington was the association’s first president. Its illustrious membership included numerous war heroes and founding fathers of the country. Yet notwithstanding the high regard in which the framers held Washington and other officers of the Continental Army, they passed Article I, sections 9 and 10 of the 1787 federal constitution (along with sections in many state constitutions) to express their disapproval of hereditary associations and to explicitly ban the state’s participation and support of such groups. But while the federal constitution discouraged and prohibited some associations, it also encouraged and enabled others.

In 1791 associations in the U.S. received their chief enabling law. The First Amendment of the federal Constitution (1791) implicitly recognized a right of association for the purposes of

¹² From the earliest colonial settlements churches and religious groups formed the basis of civil society in America, but they were not the only associations; take, for example, the Ancient and Accepted Free Masons, founded in Boston in 1733. Skocpol observes, “In colonial America, [Arthur Schlesinger] asserts, voluntarily established associations were few and far between and typically tied to local church congregations. But the struggles of the colonists for independence from Britain taught ‘men from different sections valuable lessons in practical cooperation,’ and ‘the adoption of the Constitution stimulated still further application of the collective principle.’” [Theda Skocpol, *Diminished Democracy*, 22]

political and religious expression and expressly provided a right of assembly.¹³ Some state constitutions, such as Massachusetts's (1780) and New Hampshire's (1784), preceded the federal guaranties of political and religious expression and also assured their citizens a right to assembly "in an orderly and peaceable manner" for "the common good."¹⁴ Other state constitutions granted more liberal associational rights. Delaware's 1792 Constitution, for example, simply confers upon its citizens a right "to meet," without the restriction for "the common good,"¹⁵ while still other states explicitly allowed their citizens to assemble for *their* own good, which apparently was the intended (but not included) language of the federal assembly clause.¹⁶ Permissive constitutional language aside, the practice of assembly and association did not proceed unfettered in the country's first years. As early as 1792, the primordial Congress and

¹³ The First Amendment to the United States Constitution states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." 1791 (emphasis added).

¹⁴ Massachusetts's 1780 Constitution (sec. XIX) states, "The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instruction to their representatives, and to request of the legislative body, by way of addresses, petitions or remonstrances, redress of the wrongs done them, and the grievances they suffer." New Hampshire's 1784 Constitution (Part I, Bill of Rights Art. XXXII) similarly observes that "The people have a right, in an orderly and peaceable manner, to assemble and consult upon the common good, give instruction to their representatives, and to request of the legislative body, by way of petition or remonstrance, redress of the wrong done them and the grievances they suffer."

¹⁵ "Although disobedience to laws by a part of the people, upon suggestions of impolicy or injustice in them, tends by immediate effect and the influence of example, not only to engender the public welfare and safety, but also in governments of a republican form, contravenes the social principles of such governments founded on common consent for common good, yet the citizens have a right, in an orderly manner, to meet together, and to apply to persons intrusted with the powers of government for redress of grievances or other proper purposes, by remonstrance or address." Constitution of Delaware (1792) Article I, Sec. 16.

¹⁶ See e.g., Constitution of Kentucky (1792) Article XII, Sec. 22: "That the citizens have a right in a peaceable manner to assemble together for *their* common good, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by petition, address, or remonstrance." (emphasis added); Constitution of Mississippi (1817) Article I, Sec. 22: "That the citizens have a right, in a peaceable manner, to assemble together, for *their* common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by petition, address, or remonstrance." (emphasis added); Constitution of Alabama (1819) Article I, Sec. 22: "The citizens have a right, in a peaceable manner, to assemble together for *their* common good, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by petition, address, or remonstrance." (emphasis added); Constitution of Arkansas (1836) Article II, Sec. 20: "That the citizens have a right in a peaceable manner to assemble together for *their* common good, to instruct their representatives, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by address or remonstrance." (emphasis added).

President began a campaign against so-called democratic-republican societies.¹⁷ These societies were local political associations that convened regular meetings critical of the federal administration. Their growing numbers and criticisms throughout 1793 inspired George Washington charge, in the annual presidential address to Congress in 1794, “that ‘associations of men’ and ‘certain self-created societies’ had fostered violent rebellion.”¹⁸ By linking the democratic-republic societies to the widely unpopular Whiskey Rebellion, Washington, with support from the Congress, effectively assured the demise of these ‘self-created societies’ within a couple years. A few years later, in 1798, Congress would pass the Sedition Act, allowing it to sanction citizens and associations it deemed too critical of the federal government. All told, American political associations faced significant state scrutiny in the last ten years of the eighteenth century.

Nineteenth century restrictions on race-based groupings marked the most prominent prohibitions on voluntary associations in the U.S., particularly in the south. Southern states restricted the number of blacks who could gather outside of the company of white observers.¹⁹ Free blacks associating with slaves was strictly prohibited by statute.²⁰ Intimate association between blacks and whites was also de jure proscribed, although de facto prevalent. These restrictions on intraracial and interracial associations fall under the associating (R1) category and were applicable to public (‘outdoor’) and private (‘behind doors’) gatherings of natural persons,

¹⁷ The growth of these associations was spurred on by the critical press. “The Republican-leaning National Gazette began calling for the creation of voluntary ‘constitutional’ and ‘political’ societies to critique the Washington administration.” Inazu [577]

¹⁸ John D. Inazu, *The Forgotten Freedom of Assembly*, 84 *Tul. L. Rev.* 565, 580 (2010). “Robert Chesney suggests that ‘[t]he speech was widely understood at the time not as ordinary political criticism, but instead as a denial of the legality of organized and sustained political dissent.’”

¹⁹ [Add cites].

²⁰ For example, South Carolina’s Negro-Seamen Act of 1822 required that black sailors stay on vessels docked at local ports or else face arrest and possible enslavement. The law passed in significant part out of fear that free black sailors would stir unrest among slaves if the two groups associated. Alabama, Georgia, Louisiana, Maryland, North Carolina and Tennessee also restricted the association of free blacks and slaves. [add cites].

especially at nighttime. Restrictions on mere aggregations, R2 in our typology, included labor-based associations of blacks and whites too. Such association was presumptively forbidden under the English common law doctrine of criminal conspiracy. It remained illegal *per se* for laborers to associate for common purposes into the 1840s, and even then the state maintained a robust managerial position over these associations.²¹

Southern states also outlawed, limited or maintained surveillance of church-based gatherings of blacks, particularly following the 1831 Nat Turner slave rebellion. These (R2) black churches maintained a continuity beyond the one-shot assembly of multiple individuals, but they generally did not acquire legal entity status. Exceptions to this pattern include an African Methodist Episcopal (AME) Church, incorporated in Louisiana by free persons of color in 1848, and Berea College, a private college incorporated in Kentucky in 1855 for the purposes of interracial educational association. As legal entities (R3), both the AME Church and Berea College appreciated advantages of the corporate form. But as creatures of the state, they were also subject to heightened regulation by the state. Both associational entities were effectively banned by subsequent legislative amendments.²² The AME Church and Berea College were also legal

²¹ The key case is Chief Justice (of Mass) Lemuel Shaw's decision in *Commonwealth v. Hunt*, 45 Mass. 111 (1842), which held explicitly that workingmen's merely associating for common purposes, such as to raise wages by agreeing to quit work in a body if their demands were not granted, was not *per se* illegal. *De facto* this was close to being the actual law in force in most of the American states, though Shaw's was the first really explicit opinion departing from the English common law of criminal conspiracy. This did not of course mean that everything that workers agreed together to do was thought to be legal -- as the robust later history of labor injunctions shows -- *Hunt* was hardly the great charter of labor liberty that some people claimed at the time. Cite: Christopher Tomlins, *Law Labor and Ideology in the Early Republic*.

²² Berea College presents an especially interesting case. Fifty years after its founding, Kentucky passed a segregation law (the Day Law) aimed specifically at the college, disallowing "any [public or private] college, school or institution where persons of the white and negro races are both received as pupils." The U.S. Supreme Court denied Berea's claimed right to continue its integrationist policy by invoking the state's reserved discretion, which allowed it to amend charters through legislation. The Court suggested a different conclusion may have been reached if Berea College was not incorporated, but it limited its inquiry to "the power of a State over its own corporate creatures." Perhaps if Berea was not incorporated, the natural persons associated with the College would have had a stronger constitutional claim to voluntary interracial association. On the other hand, , Kentucky prevented voluntary association through its antimiscegenation laws, and the state would certainly have argued that application of the Day Law to natural persons "was a reasonable exercise of its police power. . . to prevent miscegenation." On the AME Church, see *African Methodist Episcopal Church v. City of New Orleans* and discussion by Inazu at 32.

persons (R4) and as such may have avoided disabilities faced by associating blacks (R1) or mere aggregations involving blacks (R2). For example, the extent to which blacks acting as individuals or as a group were constrained in their legal capacity to sue, to contract or to acquire property for their associational ends, acting as a legal person without a race could granted some advantages.²³ On the other hand, had courts ruled that corporate legal persons (R4) have racial identities, odd as that may sound, then the entity status (R3) could have been more advantageous.²⁴

In any event, it is doubtful that the R3 and R4 associational forms played a significant role in civil society before the American Civil War, although eventually these forms would soon enough define and dominate associational practice. Antebellum associational custom, as appraised by its greatest champion, was pervasive but not necessarily formal. As Tocqueville famously observed:

Americans of all ages, all conditions, and all dispositions constantly form associations. They have not only commercial and manufacturing companies, in which all take part, but associations of a thousand other kinds, religious, moral, serious, futile, general or restricted, enormous or diminutive. The Americans make associations to give entertainments, to found seminaries, to build inns, to construct churches, to diffuse books, to send missionaries to the antipodes; in this manner they found hospitals, prisons, and schools.²⁵

The ‘thousand other kinds’ of associations that Tocqueville observed were likely not legally recognized entities, R3 and R4. A sample 22,419 U.S. corporate charters from 1790 to 1860 indicate that most state recognized entities were involved in building basic infrastructure and other commercial activities during the early republic.²⁶ There were, for instance, 4,884 charters that described their principal activity as relating to roads, tunnels & turnpikes (21.79% of the sample), another 3,331 listing some sort of manufacturing purpose (14.86%), 3,286 involved in

²³ Discuss the Fourteenth Amendment with talks in terms of “persons”, not entities.

²⁴ [discuss the risk of entity piercing]. See R. Brooks, *Incorporating Race*.

²⁵ *Democracy in America*, Chapter V, Of the Use Which the Americans Make of Public Associations in Civil Life.

²⁶ The data were derived from published volumes of state session laws that contain copies of all statutes enacted by the state.

building canals, bridges, ferries, waterway & waterfront improvements (14.66%), 2,581 railroads (11.51%) and 2,430 banks (10.84%).²⁷ There are only 6 schools and 2 hospitals in the sample and a similarly limited number of charters for libraries (6), parks (6), museums (3) and scientific ventures (2). Hence, even if the sample underrepresents civil society groups by a magnitude of 10 or more—and there is reason to suspect underrepresentation, though not to that extent—these those numbers would not sum up to the figures suggested by Tocqueville, which is not to say that Tocqueville necessarily exaggerated in his claim regarding American associational life.

Assuming he did not, then the extent to which civil-society associations flourished during the early period of the United States, we can only infer that a limited number of these associations were expressly authorized by legislative act. Observers limiting their view of civil associations to chartered organizations, R3 and R4, would overlook the scores of R1 and R2 associations that pervaded in this period.

2. Associations in Prussian history

From at least the last decades of the eighteenth century, Germany witnessed the rise and spread of associations of many types: patriotic associations, gymnastic associations, associations to advocate literacy and education, other types of “social welfare” associations, and associations simply for fellowship. At the end of the century there were some 270 “reading societies” alone, this in a poor country with low literacy. This may puzzle, given this paper’s focus on the limits placed on associations. The law (at least in Prussia) never sought to prevent all associations in all

²⁷ Activities described in less than 10 percent of the sample charters but still occurring in substantial numbers included 2,129 insurance (9.46%), 1,405 mining (6.27%), 898 utilities (4.01%), 732 navigation & transportation (3.27%), 634 construction, mills & lumber (2.82%), 414 hotel, spa & bathhouse (1.85%), 153 telegraph (0.60%), 116 quarry (0.52%). There were less than a hundred of the following in the sample period: 77 cemeteries (0.34%), 63 exchanges and markets (0.28), 47 breweries, distilleries, entertainment (0.21%), 40 fisheries (0.18%), 38 agriculture (0.17%), 36 newspapers & printing (0.16%), 20 warehouses (0.09%), 16 fire protection (0.07%), 8 colonization & slavery (0.04%), 7 salvage (0.03%), 7 winery (0.03%) and 3 stagecoach & livery (0.01%).

forms. Rather, the authorities explicitly focused on certain types of associations (secret, or clearly political) and certain practices (such as using the wrong language). The groups that flourished under this regime either avoided political issues, or carefully disguised the political content of their activities. Enforcement depended considerably on time and place, with particular groups meeting official favor at first and then facing banishment. The overarching theme here is not universal prohibition, but the development of association only on the sufferance of the government.

Why would Prussia or any other state view civil-society organizations as a threat? Few of the organizations at issue advocated direct action such as overthrow of the State. One reason lies in Nipperdey's definition discussed above: the associations in question crossed status boundaries, and implicitly threatened the idea of organizing citizens into separate status-based groups. Sheehan (1995) adds a slightly different stress: these groups created a life outside the control of either State or Church and, as Nipperdey (1976, p.195) puts it, "challenged the State and Church's monopoly on interpretation, questioning matters that previously could not be questioned." Indirectly, they questioned the State's monopoly on the expectation of obedience, care for the common good, and more generally, for public matters (p.196). In much of our period, conflict over associational rights reflected conflict between the State and the only meaningful opposition, the Liberals. Authors such as Langewiesche (2000) and Sheehan struggle to provide cogent definitions of Liberals in this context, but one can see a core set of ideas stressing the rule of law, formal legal equality, representative institutions, and freedom of religion, expression, and association. Many of the associations to first spread across Germany in the eighteenth century bore some relationship to this set of ideas, and when conflict intensified in the first half of the nineteenth century, it usually (but not always) centered on the increasingly

coherent Liberal organizations. Until the end of the nineteenth century, Prussians had almost no R1 or R2 rights, and anything related to R3 or R4 required a grant of privilege to a specific organization. At the end of the nineteenth century, the legal situation changed considerably. Germans (as Prussians were by then) had some R1 and R2 rights, and could establish organizations with some of the R3 and R4 rights afforded to the most sophisticated business firms. Changes in the right to associate took place throughout the nineteenth century, and the final major legislation of our period (in 1908) was still fairly restrictive. Extension of R3 and R4 rights, on the other hand, did not come until the end of the nineteenth century. Only with the Weimar Constitution (1919) did Germans acquire as fundamental rights the ability to associate and to create associations.²⁸

For purposes of the right to associate, Hueber (1984, p.132) divides the years 1794-1908 into four periods. (1) The period 1794-1819 was characterized by a relatively liberal general code undermined by more repressive edicts. (2) That legal environment did not change much in the second period (1819-1847), but a broad flowering of associational life reflected the complicated relationship between law and the outcomes. Many political thinkers stressed free expression as a fundamental right, and included association as part of expression. In the more liberal German states (such as Baden), these ideas led to brief periods of liberal rules on association. (3) Associational rights played an important role in the struggles of the revolutionary period (1848-9). Had the Frankfurt constitution survived, Germans would have enjoyed freedom of association rivaling the U.S. or the U.K at the time. (4) The post-revolutionary period began

²⁸ The Weimar Constitution's provisions reflect a reaction to the way associational rights had been limited and controlled in the nineteenth century. Article 123 states that Germans have the right to assemble without permission or registration; open-air meetings can require registration or be forbidden only for public security. Article 124 establishes the right to create associations for any purpose that is not forbidden in the criminal law. The law cannot limit these Article 124 by prior restrictions (*Vorbeugungsmaßnahmen*), nor can it limit the ability to exercise R3 and R4 rights on account of political or religious grounds.

with a severe reaction that ignored some of the constitutional guarantees agreed upon during the 1848-49, but for the rest of the nineteenth century the legal framework slowly liberalized. The 1908 Reich Act on association extended Prussia's by-then relatively liberal treatment of association to the entire country.

Before 1819

Until the late eighteenth century, most German states (like most "old regime" states) severely restricted both R1 and R2 rights. Tillman (1976, p. 5) refers to these regimes as "police states;" associations by general default were forbidden. The first important change came with Frederick the Great's 1794 Law code for Prussia (*Das Allgemeine Landrecht für die Preußischen Staaten*, hereafter ALR).²⁹ The ALR explicitly grants R1 and R2 rights, although still allowing the authorities to suspend or restrict these rights if they thought order demanded it. Thus the ALR represents in principle a great liberalization in the right to association. The ALR also provides a basic framework for associations. The code defines an association (*Gesellschaft*) as the combination of several members of the State for a common end (II(6), §1). Such associations are either "permitted" (*erlaubt*) or "not permitted." An association was permitted so long as its purpose was consistent with the common good (*gemeinen Wohl*) (II(6), §2). The code does not precisely define the common good or its opposite; it just says that groups whose purpose or activities violate the "calm, security, and order" are not tolerated. The government also had the right to forbid associations that were in principle allowed, if such groups disguised their intentions or took a form that was dangerous.

²⁹ Frederick died in 1786, but the Code was his project. The ALR deals with matters that were later treated separately in civil, commercial, and criminal codes. Parts of Prussia used French civil law in the period 1815-1900. While different in important respects, the French code was similar to the ALR for the issues discussed here, and in any case, the relevant Prussian law was increasingly outside the code.

The AL II(6) §11-21 also defines the rights of permitted associations (*erlaubte Privatgesellschaften*). Permitted associations could write rules that bound on the members of the association, but these agreements had no effect on third parties. Although the code does not put it this way, these provisions amount to saying that the organization's rules operate as binding contracts among its members, but as far as third parties are concerned, the group was identical to its membership. In our terms, permitted associations had only R1 and R2 rights.

The ALR's liberality did not long survive in practice. Prussia's involvement in war with revolutionary France led to occupation of considerable Prussia territory, and even before occupation, Prussian authorities had good reason to fear French influence, especially in its western territories. A Prussian Royal edict issued 20 October 1798 forbade all secret and political organizations that aimed to change either the constitutional order or the administration. This edict reflected fear of disloyalty and French influence. But it competed with another instinct: that toleration of associations might foster German patriotism and a stronger allegiance to the state. This general view reached as high as the upper reaches of the Prussian ministry, where Freiherr von Stein and others promoted greater participation in public affairs as a way of cementing the relationship between the King's subjects and his state.³⁰ Stein succeeded in establishing representative bodies in cities. (He failed to extend those bodies to the national level.) The idea behind promoting representative bodies was to promote stronger allegiance to the state, but Stein's critics saw representative bodies as threatening the King's absolutist legitimacy.

Prussia's resurgence and ultimate victory over French forces in the "War of Liberation" (1813) rested in some measure on widespread patriotic feelings, fostered in part by the type of associations viewed with considerable suspicion just a few years earlier. For a while, Prussian

³⁰ This is the "Stein" of the Stein-Hardenberg reforms, a series of political and economic reforms initiated in Prussia during the first decades of the nineteenth century. See Duchhard (2007).

reformers held sway, and they thought freedom of association could help them achieve the political reforms they wanted. Hueber (1984, p.117) notes that Prussian officials learned not to apply their restrictive law, particularly against patriotic associations that held out the Prussian King as their ideal monarch. Another edict issued 6 January 1816 repealed the 1798 edicts' provisions (Tillmann 1976, pp.5-6), in effect restoring the limited right to associate found in the ALR. In lifting earlier restrictions, the edict referred explicitly to the role such associations had played in liberating Prussia from Napoleon.

1819-1848

This liberality did not last. Most German states, Prussia included, renewed or strengthened their limits on association starting in 1819. The German *Bund's* 1819 Carlsbad Decrees also renewed press censorship and suppressed several types of organization. The new stance reflected the defeat of Prussia's most important reformers, along with continued fear that revolutionary ideas would spread from France. "The participatory energies which had once been seen as a necessary source of state power were now condemned as the source of unrest and revolution." (Sheehan 1995, p.9). The Prussia state's urgency in repressing many of these groups illustrates the threat it perceived in such organizations; many of them were patriotic, anti-French associations that viewed themselves as bulwarks of the State. A notable example is the *Burschenschaften* first formed in 1815. Composed entirely of male university students, many of whom were veterans of the campaign against Napoleon, the *Burschenschaften* saw themselves as enthusiastic German patriots. Their meetings and festivals honored key moments in German history in general and the struggle against Napoleon in particular, but the Carlsbad decrees outlawed them. Various permutations of the group continued to work in secret, but they were

ruthlessly suppressed as part of the reaction following the 1848-49 revolution. This history seems a little odd for a group whose motto was “honor, freedom, and fatherland” (*Ehre, Freiheit, Vaterland*). Some aspects of the *Burschenschaft* movement directly threatened the Prussian crown; for example, they wanted Germany to be a single, constitutional monarchy, and even though that monarch would most likely be a Hollenzollern, the Prussian royal house had no interest in national unification that reflected popular movements.³¹ But the deeper reason concerned not what the *Burschenschaften* wanted for Germany so much as the fact that they expressed an organized view.

Other groups survived longer because politics was less central to their purpose. But they still served as a focal point for political discussion. The “circle” (*Kreis*), was a type of informal group of like-minded people who would meet to discuss politics and related issues. Sperber (1991, p.94) emphasizes the *Kreis*’s limitations; inherently local, these groups recruited based on prior connections, and so had little capacity to become the basis of anything very important. One well-known example consisted of Prussian Army officers; because the group was secret, and recruited members via family and other connections, it could never form the basis for opposition to the State or even a rethinking of the issues that bothered these officers. The first gymnastic societies (*Turnvereine*) were patriotic, paramilitary groups that arose as part of the patriotic movement opposed to Napoleon. Although loudly committed to the Prussian monarchy, they were suppressed at the time of the Carlsbad Decrees as being “too active and threatening” as Sperber (1991, p.94) puts it. The gymnasts re-emerged in the 1840s, adopting a more explicitly political coloring, with both left- and right-wing associations of gymnasts. When the revolution broke out, gymnasts were to be found on both sides of the conflict. This later history might

³¹ *Burschenschaften* exist today as student groups whose political leanings are if anything conservative. The connection between the modern organization and the associations discussed in the text is tenuous.

validate the Prussian authorities' suspicion that the gymnasts were more interested in politics than exercise, but it also illustrates that the nature of a group's views was not the problem.

The offense ascribed to the *Burschenschaften*, some “circles,” and some gymnasts was simply presuming to discuss affair of State, even if only to support the King. The underlying idea was that subjects had no right to play any role in the State's affairs, whether alone or in groups. Nipperdey (1976, p. 199) quotes Nassau's minister Ibell as expressing the idea in brutal form: “It is both unreasonable and illegal to convince or persuade private persons that they, alone or in combination with others, can participate in Germany's great national affairs.”³² Not all agreed; Baden legalized political associations in 1829, only to be overruled on July 5 of 1832, when the German *Bund* issued wide-reaching rules concerning censorship and associations. §2 forbade all organizations with political goals and organizations whose goals could be used for political purposes. §3 regulated festivals and in particular forbade political addresses at festivals.³³

Yet once again even the most draconian implementation of these restrictions on association did not rule out all organizations. Sperber (1984, pp.30-35) discusses two with wide appeal: lay brotherhoods and “sharpshooter's” clubs (*Schützenvereine*). The lay organizations, usually named for a saint, had a variety of roles, including praying for the deceased and some mutual aid. These organizations were very old by the early nineteenth century. A variant had emerged during the late eighteenth century, one that served similar goals but was more secular, sometimes even mixing Catholics and Protestants in the same group. The sharpshooters also

³² „Es ist eine ebenso unvernünftige als gesetzwidrige Idee, wenn Privatpersonen glauben mögen berufen oder ermächt zu sein, einzeln oder auch in Verbindung mit anderen selbständig oder unmittelbar so jetzt als künftig zu den großen Nationalangelegenheiten Deutschlands mitzuwirken.“

³³ § 2 “Alle Vereine, welche politische Zwecke haben, oder unter anderm Namen zu politischen Zwecken benutzt werden, sind in sämtlichen Bundestaaten zu verbieten und ist gegen deren Urheber und die Theilnehmer an denselben mit angemessener Strafe vorzuschreiten.” 3 refers to irregular festivals (“Außerordentliche Volksversammlungen und Volksfeste”), that is, those not associated with particular days of the year. Source: Zweiter Bundesbeschluß “über Maßregeln zur Aufrechthaltung der gesetzlichen Ruhe und Ordnung im Deutschen Bunde.”

claim a very old lineage, but the many such clubs that existed in the early nineteenth century reflected the transformation of older, confessional organizations into a secular body that existed primarily to organize festivals and, as the name suggests, shooting contests.

Opposition to such organizations seems hard to fathom; what is the harm in praying for the dead or, for the sharpshooters, marching around in odd uniforms? (Today one could imagine a government fearing groups organized around guns and marksmanship, but this was not, at least overtly, the concern about the sharpshooters.) Part of the answer lies in the danger that even these harmless-sounding groups could erupt into political discussion or expression. Sperber notes that two lay brotherhoods took the name of local Masonic Lodges, suggesting openness to sinister ideological influences. In 1847, the invitation to a Düsseldorf sharpshooter's context contained veiled political commentary that most contemporaries would understand. More generally, a wide variety of ostensibly apolitical groups increasingly took on a political coloring. Organizations such as singing clubs and other recreational associations sometimes concealed what was really a political association. Robert Blum (later executed for his role in the 1848/49 revolution) used the Leipzig *Schillerfest* of 1841 as cover for a Liberal agenda. Even the Chambers of Commerce (which in Germany have a quasi-official status) could become forums for political discussion.

Concern about a different type of association may be easier to understand, and often formed a pretext for harassing the harmless groups. The most overtly revolutionary individuals in pre-revolutionary Germany had largely emigrated, and if they continued their activities they did so from abroad. The groups they formed in exile became famous after Marx and Engels transformed one of them into the Communist league, but there were many such groups operating secret cells all over Prussia. On more than one occasion the police would infiltrate and break up a

cell operating in Prussia, using the group's (forbidden) existence to suggest broader international conspiracies. France's 1830 July revolution gave those claims some credibility; the violent introduction of a constitutional monarchy in France terrified more than one German ruling house. Sperber and others, however, doubt the claim of conspiracies involving ties between German Liberals and radicals, and the 1848/49 Revolution in Germany provides little evidence of radical influence on those leading the opposition to the current order.

The 1840s began with an economic upswing, one that corresponded with the creation of a large number of new corporations (chartered individually by the Prussian government under the ALR's provisions for granting special privileges). At the same time a sharpening of social problems and a relatively lax enforcement of laws on association also led to a boom in new associations: some were new versions of old groups, like the gymnasts, while others reflected the variety of concerns the developing economy provoked. There were associations to promote education for poor children, to build hospitals, and for a broad array of efforts to help the working classes. It was a "period of associations" (Nipperdey 1976, p.176).

Revolution

A combination of economic crisis and political opposition led to the revolution of 1848/49. Freedom from censorship and associational rights were high on the list of goals for many at the Frankfurt Parliament. The Constituent National Assembly's constitution drafted in 1849 (the so-called "Pauls Church" constitution) never came into force because it was rejected by the Prussian and other governments. But its "Bill of Rights" (Section VI) indicates what Liberals of the era wanted. Article VIII (§161 - §163) gave all Germans the right to assemble without permission of the authorities, and decreed that public meetings could only be forbidden

if a cause of immediate danger (*dringender Gefahr*) to public order and security. It goes on to say that all Germans have the right to create associations. Both provisions even apply to military, so long as the associations do not interfere with military discipline.³⁴

Reaction and slow liberalization

The Prussian constitution promulgated on 31 January 1850 promised a return to the associational freedom guaranteed by the ALR.³⁵ §29 declared that Prussians have the right to meet without permission of the authorities, so long as such meetings were indoors and the participants were unarmed. Outdoor meetings still required prior permission. This amounts to a partial R1 right. The constitution further granted Prussians the right to create organizations (*Verein*) (§30), so long as their purposes were not forbidden by the criminal law. In our terms, these would be organizations with at most R2 rights. R3 and R4 rights still required specific government charters. But the R2 guarantee was not absolute; the same clause gave the government the right to forbid or limit political organizations. The government also reserved the right to regulate, via legislation, how these rights would work. The government could decide itself whether to withhold or extend corporative rights (§31).

In any case, even these provisions meant little in the reaction that followed the revolutions. The 1850 constitution was granted under pressure. Royal edicts and legislation (passed by an assembly elected with a reactionary three-class voting system) quickly backtracked on the relatively liberal guarantees of freedom of expression and association. Legislation enacted on 11 March 1850 so restricted the rights of association as to make the constitutional guarantee meaningless. The law described a class of rules that applied only to

³⁴ Reichs-Gesetz-Blatt 1849.

³⁵ Hardtwig and Hinze (1997, pp. 347-357) reprints the relevant clauses.

groups that intended to discuss public affairs (*öffentliche Angelegenheiten*). Such groups needed to inform the police at least twenty-four hours in advance of any meeting. The group's leaders had to provide its articles of association and a list of members to the police at least three days before coming into being. The police had the right to send to these meetings up to two police officers or other persons (§4).³⁶ And the authorities could immediately end any meeting that had not been properly registered, where speakers called for illegal actions, or where attendees were armed. Groups that deal with public affairs could not have as members women, school-aged children, or apprentices.³⁷ The restrictions on public meetings were even more detailed and punitive.

The 1850 law also forbade “associations of associations.” These provisions were common to repressive acts in Germany at the time, and warrant some discussion. The law sought to restrict association to those who could physically meet, which, given incomes and the transportation technology of the day, meant that associations would be small and necessarily parochial. If an association could become part of a larger, umbrella organization, then the regime risked the possibility of mass movements. Even worse, if a Prussian association could be part of a larger, international association, then radical émigrés might find a back door into Prussian life. Later these restrictions would be used against the labor movement, but in the 1850s the fear was far more a resurgence of the pan-German, liberal ideas that informed the Frankfurt parliament.

To appreciate how limited these rights really were, we need to consider the broad language the law uses. Some topics clearly do not qualify as “public affairs,” and these would presumably include the affairs of a business firm. But it is easy to see why Prussian authorities

³⁶ Such observers had to wear their uniforms if police officers, or other identifying signs if not police. So the intention was not to send spies.

³⁷ (This is all from Christian Friedrich Koch on MPI site; http://dlib-pr.mpiet.mpg.de/m/kleioc/0010/exec/bigpage/%22129324_00000535.gif%22)

felt they had the right to interfere with virtually any other organization. The ALR's references to "common good" and the like open even more doors, as we shall see. Knowing the statutes of course does not tell us much about practice on the ground, and only practice on the ground led to civil-society institutions. This observation cuts two ways. The notions of order and common good left room for officials to suppress bodies they found simply inconvenient. Yet long before it was any kind of democracy, Prussia had clear, professional administrative hierarchies, and generally adhered to the rule of law. The authorities who restricted or forbade associations might eventually have to justify their actions to a superior.

The Reich's 1871 constitution gave it the right to regulate association, but for the first few decades of its existence the Reich left the matter to the states. The final development in R1 and R2 rights prior to World War I came with a Reich Act (19 April 1908) on the right to meet and to form associations. This Act over-rode both earlier edicts and all State law. The 1908 Act marked a significant liberalization in some ways. Most notably, women could now participate in meetings and associations devoted to public affairs. The government's justification for this innovation stressed changes in the economic and social role of women; many women held positions formerly held only by men, the government stressed, and many women were economically independent and so had a right to participate in the affairs that affected their lives. Women could still not vote, but the government's defense of the law did not make that connection.³⁸ By extending the relatively liberal Prussian approach to some more conservative states, the 1908 Act also brought new associational freedom to some areas. But the law's major effect was to make the statutes governing association uniform across Germany, which made it easier for those working in different German states to stay out of trouble. The 1908 Act retains many features of the 1850 legislation discussed above, including the requirement for police

³⁸ "Begründung," especially pp. 22-23.

notice of meetings. These limitations would not pass from German law until the Weimer Republic.

Even after the right to associate (R1 and R2) was enacted and made a firm part of practice, undercutting political opposition through attacks on associational rights remained part of the political repertoire. Bismarck's conflict with the Catholic Church (the "*Kulturkampf*") that intensified starting in 1871 relied heavily on the association laws. In 1872 a group of leading Catholics had formed what they hoped would become a national organization capable of defending the freedom to practice their religion. Formally called the "Association of German Catholics" (*Verein der deutschen Katholiken*), the group came to be called the Mainz Association because it was founded in that Hessen city, in part to avoid Prussian laws on association (Sperber 1984, p.211). Soon after its creation the Mainz Association came under attack from the state, and in 1876 the Prussian Supreme Court ruled it had violated the association laws and ordered it disbanded (p. 214). Bismarck's later "anti-Socialist" laws (1878-1890) worked partly by denying R1 and R2 rights to groups associated with the Social Democratic Party. Efforts to combat Polish national aspirations in Prussia's eastern provinces also drew on these tactics. Even the 1908 Act (§7) required that public meetings be conducted in German. The authorities could issue a waiver if they wanted, but the law gave the authorities the right to force Poles to hold meetings in a language many could not understand.

Corporative rights for civil-society organizations

Developments in the R3 and R4 rights of associations came relatively late, and cannot be discussed separately from developments in company law. The 1861 *Allgemeine Deutsche Handelsgesetzbuch* (hereafter ADHGB) created a distinct business code that extended to (nearly)

all the German states. While it did not require general incorporation, the ADHGB allowed states to choose that option (although only a few of the Hanseatic cities did so). Most German states retained the concession system for establishing business corporations. The ALR treats business firms (*Handlungsgesellschaften*) differently from the permitted associations discussed above. But they have something in common with the permitted association: in II(6) §22-24, the code reserves the right for the Government to extend additional rights to associations, whether business or “privileged association.” The “privilege” in this phrase refers to additional rights beyond R2. The Prussian State could and did charter special business corporations, for example, and extend them R3 and R4 rights. But the practice was rare. Similarly, the Crown sometimes chartered a body for a specific charitable or cultural end, endowing it with R3 and R4 rights. For our purpose, the important feature of this aspect of the legal regime is the idiosyncratic nature of such charters. Clearly the organizations involved, whether business or civil-society, had to be advancing the government’s goals and had to share some of the benefits of their organization with the government. Corporate grants for business firms, for example, usually involved implicit or explicit transfers to the State. And it is hard to imagine business people on bad terms with the government being granted a special charter. An important liberalization in company law took place in 1870, when Prussia, along with most other German states, allowed general incorporation for business firms for the first time.

The ADHGB introduced another innovation that was more immediately important. A partnership that conformed to certain rules, including reporting information to a business registry, acquired important R3 rights. A partnership could own property, sue and be sued, and in other ways deal with third parties as an entity rather than as a collection of owners.³⁹ A next,

³⁹ The ADHGB implicitly creates two types of business organizations: those covered by the ADHGB, which are the firms discussed in the text, and those that remain under the ALR or other civil law in regions that did not use the

important step came with the creation of the *Gesellschaft mit beschränkter Haftung* (GmbH) in 1892. The government intended the GmbH as a business form, and the vast majority of GmbHs were in fact for-profit ventures. But the law explicitly stated that the GmbH could be used for any legal purpose, and from the start, a small number of civil-society organizations took advantage of the GmbH form. The GmbH is a full legal person, with limited liability for its owners, and so afforded groups all the R4 rights of a corporation.⁴⁰

The final development in our period came with the introduction of the first all-German civil code (*Bürgerliches Gesetzbuch*, BGB) in 1900. The BGB created a new “registered association” that comes into being by entry in a new association registry and adhering to certain norms. The registered association gave to any civil-society group organized in that way full R3 rights.⁴¹ The system worked similarly to the registration system for business firms. An *eingetragene Verein* registered in a special public registry of such bodies, listing its officers and some other information. Most civil-society groups today take the form of a registered association. But the form is elastic, and many professional and even industry groups organize this way. For-profit firms can organize an association to represent their interests politically, and so long as that lobbying group does not earn profits, it can be organized as an *eingetragene Verein*.

ALR. The ADHGB rules applied to both ordinary and limited partnerships. The implicit contrast is to the situation obtaining before 1861 in Germany, or in the United States or Britain at the time. The ADHGB did not make partnerships full legal persons; for example, a partnership’s existence was tied to specific individual members.

⁴⁰ The GmbH differs from a corporation in important ways; see Guinnane, Harris, Lamoreaux and Rosenthal (2007) for discussion. For civil-society groups, an important feature of the GmbH is the rule that requires a notarial act for transfer of ownership shares. If the group made ownership in the GmbH synonymous with membership in the organization, a changing membership could be quite expensive. The 1884 Corporations Act also allows the corporation for any legal purpose. Few civil-society organizations took advantage of the 1884 Act for this purpose, presumably because the 1884 Act also required large minimum shareholdings and expensive governance and oversight provisions.

⁴¹ The entity is called *eingetragene Verein* in German and abbreviated e.V. Some English texts refer to it as an “incorporated association,” which conveys the impression that it is more like a US not-for-profit corporation than it really is. We use the clumsy “registered association” because it seems more accurate.

3. Germany's cooperatives

We now turn to a single, important example that illustrates the issues we have in mind here. The first modern German cooperatives were formed starting in the 1840s, with a second, more rural branch taking off in the 1860s. By 1914 there were some twenty thousand cooperatives across Germany. Estimates put cooperative membership in the millions, and since many non-members dealt with cooperatives, the cooperatives featured as important enterprises in the lives of many more. Most cooperatives were eventually organized under the Reich law of 1889, which we discuss below. This law allowed a cooperative to take form for any purpose related to advancing member economic interests. The most numerous cooperatives were credit cooperatives, but there were also consumer cooperatives, cooperatives for purchasing inputs and marketing products (especially in rural areas), and a few production cooperatives. The (itself often ideological) historiography has often focused on the political motivations of the consumer cooperatives, which often had strong ties to Social Democratic and other labor organizations. This focus downplays the size and diversity of German cooperation. Fairbairn has stressed that German cooperatives had far more members than did the Social Democratic Party; as mass movements go, cooperation might have been less revolutionary in intent but it involved far more Germans.

The most famous early cooperative leader, Hermann Schulze-Delitzsch, was also a leading Liberal figure. As a member of the first elected Prussian parliament, he was among those prosecuted for voting to refuse the taxes the government wished (the literature calls this incident the 1849 *Steuerverweigerungsprozess*). Prussian officials at first viewed his cooperatives as extensions of his political agenda, and used the association law to frustrate their development. By the time the rural cooperatives started to develop in the 1860s, the State was less hostile.

Friedrich Raiffeisen, the man most associated with the rural cooperatives, received modest government support for his organizational activities. By the end of the nineteenth century the Prussian government had set up a new banking institution intended to foster further growth in the cooperative movement.⁴² In the early years, however, officials used the association laws to harass the cooperatives. Under the ALR, a cooperative was at best a permitted association, which left the groups vulnerable to officials who might construe the cooperative's leaders, or goals, as a threat to order. A cooperative, like any other group, could always apply for special corporate rights, but Schulze-Delitzsch rejected this approach. He recognized that corporate rights would give the government legal grounds for extensive "oversight and interference."⁴³ He usually stressed such oversight as contrary to the cooperative's purpose, which was to develop a class of experienced, self-reliant small businesspeople, farmers, and others. But in other statements he noted that corporate rights, even if granted, would open the door to the cooperative's political enemies.

Several cooperative histories recount the problems Schulze-Delitzsch and his colleagues faced because of the association laws. The two original credit cooperatives, in Delitzsch and Eilenburger, both in Prussian Saxony, at first enjoyed the good fortune to have as the local county commissioner (*Landrat*) the sympathetic von Pfannenber. But Pfannenber was soon replaced by von Rauchhaupt, whom Ruhmer (1937, p.227) calls "a fanatical opponent of German credit cooperatives." The cooperative leaders thought that von Rauchhaupt's opposition to the

⁴² For more than you ever wanted to know about German cooperatives, see Guinnane's publications listed in the reference list.

⁴³ „Sodann ist aber auch die Aufsicht und Einmischung eines Regierungsbeamten in die Vereinsgeschäfte überaus hemmend und lästig, wie sie von Erteilung der Korporationsrechte untrennbar ist“ From Schulze-Delitzsch's address to the Congress of Economists, quoted in Thorwart (1909, p.369).

credit cooperatives was really just opposition to Schulze-Delitzsch and other Liberals.⁴⁴ Other officials used their power and the cooperatives' legal status to pursue similar ends, although we know less of those incidents.

Von Rauchhaupt attacked the cooperatives as both illegal and dangerous to the public. His legal argument relies on two different features of the ALR and later legislation on association. He denied the cooperatives' status as "permitted associations." The cooperatives had been approved as associations of artisans, he argued, but they also included wage-laborers, farmers, and others. Thus the cooperatives had violated the terms on which they are formed and approved as "permitted." When one cooperative leader applied for corporate status for his group, the county commission denied the request. This led von Rauchhaupt to demand that the regional government in Merseburg dissolve the cooperative entirely. The regional government rejected von Rauchhaupt's demand as without legal basis. Von Rauchhaupt then appealed to the governor (*Oberpräsident*) of the Prussian province of Saxony. This time Rauchhaupt stressed the ALR's criterion for tolerating private bodies: he argued that because the cooperative harmed the public good, the government could forbid it. In March of 1857 the provincial government rejected that claim, which in effect gave the Eilenburg cooperative the status of a permitted association.

Von Rauchhaupt's argument that the cooperatives did actual harm might have been a pretext, but it illustrates the fragility of groups that can be suppressed on the grounds that they harm the public good. His claim rested on two undeniable facts. The credit cooperatives charged interest rates that Rauchhaupt estimated as 11-12 percent per annum. The local *Sparkasse* (a state-back savings bank) was charging 5 percent. The "harm" the cooperatives were doing was

⁴⁴ Ruhmer (1937, pp.227-8) quotes von Rauchhaupt as claiming that the two cooperatives were led by the politically most dangerous persons ("*politisch gefährlichsten Persönlichkeiten*"). He also claimed the cooperatives were just a vehicle for the two political leaders to assemble funds for their political activities.

charging apparently exorbitant interest rates. These rates were typical of the early days of the Schulze-Delitzsch credit cooperatives, and apparently much lower than the costs of credit from moneylenders. (We do not know enough about *Sparkassen* lending practices, but the literature suggests that most cooperative borrowers would be turned away from the *Sparkasse*.) Von Rauchhaupt's second argument concerned the unlimited liability then required for cooperative members, which was a consequence of the ALR's rules and the lack of a corporate charter. He noted that this set-up meant very poor people risked losing all of their assets should the cooperative be unable to satisfy its debts. He also seemed to think unlimited liability was a form of communism, an odd claim given that most businesses at the time had unlimited liability.⁴⁵

Setting aside its role in organizational myth, this struggle illustrates the problems facing civil-society organizations in the period. Von Rauchhaupt's complaints that the organization had tricked the government about its membership might have been easy to overcome by re-stating cooperative membership. But the claim about harm raises a different issue; the ALR allowed the government to ban any organizations that were harmful. Close attention to subsequent history might convince us that an eleven percent interest rate is better than the only alternative, which was a moneylender charging 50 percent or more, and that unlimited liability posed little risk for poor people with nothing to lose and little hope of economic improvement without the cooperative. But von Rauchhaupt's stated position is not ludicrous. Consider the following thought experiment: if we described a lender charging 12 percent to academics today, how many would sympathize with von Rauchhaupt's view that they are dangerous?

⁴⁵ This account of von Rauchhaupt and his opposition to the Delitzsch and Eilenburg cooperatives is based on Ruhmer's account (1937, pp. 227-239). The basic outlines here agree with references in the writings of Schulze-Delitzsch and his allies, and Ruhmer bases much of his version on von Rauchhaupt's own reports from the official archives.

The authorities' power to use the police power to forbid, harass, or control cooperatives is a constant theme in the cooperative accounts of the 1850s. Some German states were worse than Prussia, with Saxony apparently winning the dubious distinction of being most hostile to cooperatives. In some cases the authorities did not try to shut down the cooperative, they just wanted to micro-manage it. Schulze-Delitzsch complained that in another case of protracted conflict (involving the Eisleben cooperative), the authorities asserted the right to approve every single loan!⁴⁶

This government harassment ceased only when a changing political environment made the Liberals part of the government's coalition. This change in the political atmosphere meant that by the early 1860s, the cooperatives had effective R1 and R2 rights. But Schulze-Delitzsch and his colleagues had long thought that cooperatives suffered as well from a lack of R3 rights. They began to use their new political positions (as members of the Prussian *Landtag*) to push for a special enabling law for cooperatives. The effort yielded fruit in 1867. The historiography of cooperative law has stressed the issue of limited liability, which was indeed contentious at a later point. But in the 1860s all stressed the cooperative's lack of entity status. Under the ALR, a group a cooperative was just a collection of individuals. As the ALR puts it, "Such associations do not constitute legal persons in relation to others, and as such cannot contract in the society's name for land or capital."⁴⁷ This status forced the cooperative to use expensive and imperfect work-arounds to achieve what would be easy for a group with R3 rights. Consider the specific example of a member taking a loan from a credit cooperative. After 1867, the cooperative could

⁴⁶ This is part of his defense of his first draft of a cooperative law. Quoted in Thorwart (1909, pp.369-370).

⁴⁷ Quoting more extensively: „§12 Bei Handlungen, woraus Rechte und Verbindlichkeiten gegen Andere entstehen, werden sie nur als Theilnehmer eines gemeinsamen Rechts, oder einer gemeinsamen Verbindlichkeit betrachtet. §13 Dergleichen Gesellschaften stellen im Verhältnisse gegen Andere, außer ihnen, keine moralische Person vor, und können daher auch, als solche, weder Grundstücke, noch Capitalien auf den Namen der Gesellschaft erwerben. § Unter sich aber haben dergleichen Gesellschaften, so lange sie bestehen, die inneren Rechte der Corporationen und Gemeinen“ (Band III, Titel 6).

(through its officers) contract with the borrower *as the cooperative*. Before 1867, the cooperative lacked any status with respect to third parties (including a borrower). Cooperatives operating before 1867 had to adopt one or more stratagems to deal with this impediment. All entailed significant costs. A cooperative could have all members sign a particular contract. Contracts set up this way were really between the third party and each member (signatory) and not with the cooperative *per se*. This cumbersome mechanism was apparently rarely used. The sources stress other methods. Sometimes the cooperative's treasurer contracted in his own name (Crüger 1894, p. 395). The approach worked well if the treasurer's position did not turn over frequently, but clearly put a burden on the treasurer and required trust in his probity. More commonly, it appears that cooperative members gave their power of attorney (*Bevollmächtigung*) for relevant business to the cooperative's leadership (Crüger 1894, p.394). Establishing the power of attorney required either a notarized document or personal appearance in front of an official, both of which could be costly.⁴⁸

These legal and practical disabilities were not limited to cooperatives; it attached to any association or enterprise that did not acquire a special charter. Many small businesses were viewed by the ALR in the same way as the cooperatives. But two features of the cooperatives made this legal problem more serious than for most businesses. Business partnerships rarely had more than three or four members. Cooperatives, on the other hand, often had more than 100 members, and some had several hundred as early as the mid-1860s. With these numbers it was easy for a single power of attorney to be invalid, and a single invalid power of attorney could force a cooperative to re-initiate a legal action to, for example, recover a debt. In addition, by their nature cooperatives had a constantly-changing membership. Every time someone joined or

⁴⁸ The distinction we make warrants stress. The cooperatives found ways to operate without R3 rights. But this does not amount to saying those methods did not entail significant costs.

left a cooperative, the institution had to incur the legal costs mentioned above, and every change in membership raised the possibility of defective documents.

The ADHGB had introduced a new principle into German law, recognizing the legal rights of entities that were not full legal persons (Joël (1890, p.420)). The code calls corporations legal persons, and by omission makes clear that partnerships were not legal persons. Because partnerships had limited by important rights to act collectively, they were clearly R3 groups in our terms. Schulze-Delitzsch's contribution was to apply this principle to cooperatives. According to the ADHGB's partnership rules, "The firm can, under its own name, acquire rights and contract responsibilities, acquire ownership and other rights in land, sue and be sued in court."⁴⁹ To have these R3 rights, a business partnership had to register in the firm registry (*Handelsregister*) maintained at the local court. The 1867 cooperatives Act simply extended that approach to cooperatives. The Act created a public registry of cooperatives (*Genossenschaftsregister*) that paralleled the register of firms used to track partnerships and corporations. Cooperatives that took advantage of the 1867 law had to register and to keep their membership lists up-to-date. In return, they acquired the R3 rights that applied to business partnerships under the ADHGB.

The 1867 Act initially applied only to Prussia, but was extended to the North German Confederation in 1868. Most other federal states also accepted the Prussia law after 1871, with Bavaria delaying acceptance to 1873 and Saxony to 1874 (Joël 1890, p.421). The 1867 Act gave cooperatives most of the R3 rights they had sought. The Act also settled the question of whether cooperatives could be harassed under the law related to association: bodies that had their own special Act were doubtless "permitted." The interesting feature of the 1867 Act is its connection

⁴⁹ §111 of the ADHGB: "Die Handelsgesellschaft kann unter ihrer Firma Rechte erwerben und Verbindlichkeiten eingehen, Eigentum und andere dingliche Rechte and Grundstücken erwerben, vor Gericht klagen und verklagt werden."

to the business code. Schulze-Delitzsch never raised the idea of making cooperatives part of the code. This would not have been absurd; while cooperatives in some countries (such as the United Kingdom) have their own distinctive enabling statutes, in most countries the law treats cooperatives as a special kind of corporation. Such had been the case in Saxony and Bavaria. Schulze-Delitzsch's reliance on the AHDGB for the provisions on partnerships illustrates two important points. First, the R3 and R4 rights civil-society groups need are virtually the same as those business firms need. Second, Schulze-Delitzsch could not have been unaware that by anchoring his cooperatives in the business law, he was making them more secure from ideological enemies.

Within a few years efforts were underway to pass a new law at the Reich level. Much of the debate over new proposals took place *within* the cooperative movement; even those seeking to introduce features most resisted by cooperatives did so in the spirit of what they thought would enhance the movement's viability. The 1889 Reich cooperatives Act introduced three changes. First, it allowed cooperatives to be members of each other, thus legalizing the practices of regional cooperative "Centrals." Note how similar this organization is to what is common in the business world, where business firms own other firms. Second, the Act required external auditing for all cooperatives. This requirement preceded mandatory external auditing for banks or business firms, and thus is striking on its own for going beyond any such provision for business firms. Finally, and most notably, the 1889 Act allows cooperatives to organize with either unlimited or limited liability. Subsequent discussions of the 1889 Act have focused heavily on this feature, probably exaggerating its immediate impact. Few cooperatives took advantage of the limited-liability form at first. But it means that cooperatives could acquire one feature of an R4 association, limited liability, that was at the time strictly limited for business firms.

4. France: a brief comparison

Freedom of association was equally contentious in France for most of the nineteenth century. We briefly review the French historical account to demonstrate that comparable restrictions on civil-society institutions existed in regimes other than absolute monarchies (as Prussia was until the 1850s) or limitedly democratic states (a fair description of Germany until the Weimar Republic). Under the *ancien régime* the French authorities limited association in ways similar to those we described above for Prussia. These limitations were part of a broad strategy of controlling speech and potential political opposition, just as in Prussia. The two histories diverge with the Revolution.

The Revolutionary government enacted strong, systematic restrictions on association. The *loi Le Chapelier* of Jun 14, 1791 declared “n’est permis à personne d’inspirer aux citoyens un intérêt intermédiaire, de les séparer de la chose publique par un esprit de coopération.” This act followed soon after the “Allarde decree” of March 1791. Together they intended to outlaw guilds and other occupational associations and other “coalitions.” This legislation has two, related roots. One was in one of the Revolution’s fundamental criticisms of the old regime, that was riddled with various institutions whose only purpose was to provide economic privileges to one group or another. Thus Allard, in declaring freedom of occupation, aimed to create a labor market free of the sort of restrictions common across continental Europe at the time. The other root concerns Rousseau’s notion of the “general will.” Rousseau argued that associations between the citizen and the state (which he called “sociétés partielles”) could only frustrate the

development of the general will; they could advance their member's interests, but not assist their members in shaping the general will.⁵⁰

Prussia and France ended up with similar legislation on associations, but for dramatically different reasons. At some level Revolutionary France distrusted all associations; it abolished the old compulsory bodies at the same time as it forbade new, voluntary groups. Prussian society was *based* on the older associations France outlawed. The particular critique that drove much French opposition to associations, the feeling that they were part of a system of conferring benefits on specific people, had little resonance in Prussia; with the exception of the Liberals, few Prussians in the early nineteenth century saw much wrong with giving special privileges to those of a particular background or connection to the Crown. In the early nineteenth century French effort to control associations tended to focus on groups that attempted to represent the interests of workers. This theme is present in the Prussian situation but muted until at least the 1840s.

The monarchy's return did not lead to change in the association law. Even the more liberal regime brought in by the 1830 Revolution made no difference. The 1832 penal code's provision was not new, and remained in effect for several more decades:

No association of more than twenty persons, whose object is to meet every day, or on certain set days, to deal with religious, literary, political, or other matters, may form without the agreement of the Government, and under the conditions the public authority chooses to impose on the society.⁵¹

§292 states that any group that meets in defiance of this restriction, or that fails to adhere to the conditions imposed on it by the authorities, will be dissolved and its leaders fined. §294 requires that individuals cannot host a meeting of such an association without permission of the municipal authorities, *even if the group in question is authorized*. And §293 gets to the heart of the matter.

⁵⁰ See Rousseau p.45

⁵¹ §291. "Nulle association de plus de vingt personnes, dont le but sera de se réunir tous les jours, ou à certains jours marqués, pour s'occuper d'objets religieux, littéraires, politiques ou autres, ne pourra se former qu'avec l'agrément du Gouvernement, et sous les conditions qu'il plaira à l'autorité publique d'imposer à la société."

“If by addresses, exhortations, invocations or prayers, in any language, or by reading, signs, publication or distribution of any writings...” there are crimes or offenses,⁵² then the leaders of this group will be punished both for the crimes of the groups’ members, and face additional punishment as leaders. The members will also be punished for their individual conduct.

These provisions limit R1 and R2 rights. And they are remarkably similar to the Prussian law quoted above, with the exception that France was willing to tolerate small groups, while the Prussian law did not care about how large a group was, so long as it could meet indoors. The July monarchy (1830) was France’s first constitutional government and usually considered liberal by the standards of earlier governments as well as the day. But it still made it a crime to meet in groups of any size. The 1848 constitution guaranteed freedom of association but this was withdrawn a year later.

France relaxed these restrictions in several steps. The *loi Ollivier* (25 May 1864) made it possible for workers to organize and to strike under certain conditions. The more important *loi Waldeck-Rousseau* (21 March 1884) abrogated the *le Chapelier* and permitted the creation of groups that existed to advance the economic conditions of people following similar occupations. The first fruit of this change was the beginning of a lively cooperative movement, and the law had been intended to achieve this aim. The only government role for these groups was a publicity requirement (they had to deposit their articles of association with the local authority, and keep the authorities apprised of their leadership.) §2 says explicitly “even if more than 20 persons” so it is written with the §291-4 of the penal code in mind. §3 stresses that the 1884 act only applies to groups whose purpose is to “defend the economic interests” of members who come from a narrowly-defined occupational group.

⁵² The French text refers to both crimes and “délits,” less serious offenses.

The 1884 law was written to apply to economic bodies such as cooperatives, and not to relax restrictions of groups of a possibly political nature. Restrictions on association were gradually relaxed in the last decades of the nineteenth century. The association law of 1901 regulates not-for-profit associations and is similar in many ways to the parallel provisions of the German 1900 BGB. It guarantees freedom of association to all, but limits legal capacity to those that publicly declare their existence to the local authorities.

Throughout the nineteenth century France and Prussia/Germany had distinctive political orders, yet each retained restrictions on association. These seem more surprising in France, which had a constitution long before Prussia and which had experienced revolution aimed at the introduction of democratic rights. The relaxing of restrictions in the two countries contains striking parallels. The 1884 Waldeck-Rousseau law was both more and less comprehensive than the 1867 Prussian Cooperatives Act, but each first advanced associational rights to groups that were not covered by the business code, but which were nonetheless essentially economic organizations. And the 1901 French law on association parallels important features of the German 1900 BGB's relevant section. At some level these parallels should not surprise, as French and German law owe much to each other in many ways. And the French law of association went further, under the Third Republic, than the German law did until the later Weimar Republic. But the parallels do suggest a logic to the restrictions on association and the kinds of groups that these two governments found threatening.

5. Conclusion: Business firms as an exception

We conclude not with a summary, but with an observation concerning a theme running through our accounts. The theme, present in the U.S. story and even more so in Prussia and in France, concerns both the exceptional treatment of business associations during the most

restrictive periods, and the way developments of R3 and R4 rights first extended to cooperatives and other civil-society groups with economic purposes. This should surprise. Seven people meeting to discuss business were seven people meeting. Why would anxious government authorities automatically assume the seven conveners were not a threat? Why not insist they provide prior notice of their meetings and enforce other provisions of the laws discussed above? The exceptions granted to business associations are all the more surprising when we consider that some of the leading opposition figures were business people: a standard “Manchester” liberal in the 1840s was no less offensive to official thought than a radical bent on workers’ rights. Granting business firms automatic waivers on the laws of association seems like offering a license to some committed opponents of the regime.

We can think of several reasons for the exception, but none work as a general proposition, and this part of our discussion requires work. First, the exception to business associations was viewed as a necessary evil to avoid encumbering commercial activity. Even States hostile to free enterprise and bolstered by elites whose economic interests were threatened by the development of modern industry (and Prussia in 1800 surely counts as such) recognized the importance of tax revenue and employment for citizens. Second, as worrisome as business-oriented Liberals may have been to the regime, they were less of a threat than the real or imagined revolutionaries seeking to overthrow the government. Take, for example, David Hansemann (1790-1864), a leading Rheinland businessman and Liberal politician. On occasion Hansemann deeply annoyed Prussian officials, but they also recognized that he had little interest in the State’s undoing. Official attention was better focused on those more radical.⁵³ Third, the

⁵³ While an explicit focus on left-wing and labor groups did not develop until after the 1848/49 revolutions, a subtext in much concern about groups earlier in the nineteenth century centered on the allegedly wild character of large public gatherings of working-class people. This fear can be seen in the distinction between indoor and outdoor meetings, and has something to do with the suppression of the gymnasts. Even the *Burschenschaften*, whose

interests of the state and businesses were largely aligned. Following the post-revolutionary reactions of the early 1850s, the business community (and the Liberals) had been brought into a larger consensus about the future of the Prussian and then German state, and there was little danger of conflict in which the business community would oppose the State. The cooperatives benefitted indirectly from this political realignment. More generally, by the 1860s many Germans were concerned about the effects of industrialization in creating a class of people uprooted from rural life and suffering from poverty, illness, and lack of education. This “social question” in Germany sometimes evoked genuine sympathy for those left behind by economic development, but in many cases the social question reflected a concern working-class movements could coalesce and grow powerful if Germany’s leaders did not find some way to reform the harshest features of the new society. Here cooperatives and other economic bodies could be seen (and quite clearly *were* seen) as part of a bulwark against revolution. There is more than a thread of truth in each of these three explanations of the special dispensations given to business associations. Yet, none seem to hit the mark as a general matter. We look forward to discussing this and other questions you may have at the conference.

members hardly counted as working-class, promoted displays with an enthusiasm that could seem excessive, even if just expressions of respect for the King.

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