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# THE STRUGGLE FOR THE RE-PUBLICATION OF *MEIN KAMPF* – INTELLECTUAL PROPERTY, AGENCY, ENLIGHTENMENT

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## 1. Introduction

Adolf Hitler's *Mein Kampf* is commonly conceived as a forbidden book in Germany. This perception is most likely based on the fact that it is illegal to re-publish the book in Germany. However, contrary to popular belief *Mein Kampf* is not censored by the German state. Instead it is subject to a much more complex regulation: author's rights regulation, which prohibits any re-publication of the book without the consent of the author, or, in case of a deceased author, his beneficiaries. This difference may not seem important at first. But at closer inspection the case reveals that the difference between state censorship and author's right regulation entails significantly different outcomes on several levels: territorial as well as intellectual

When Hitler died in 1945 the Allies assigned all his belongings, including Hitler's author's rights, to the Bavarian Ministry of Finance. By transferring Hitler's author's rights to the Bavarian Ministry, they allocated *Mein Kampf* to an existence in a grey area between private and public law. Since then, the book has been the centre of attention in a rift between, on the one hand, the Ministry of Finance who has rigorously defended its position as the formal rights holder, and, on the other hand, historians and intellectuals who, supported the Bavarian science minister Wolfgang Heubisch, have argued that an academic annotated version of *Mein Kampf* should be made publicly accessible in the name of Enlightenment.

In the present paper, I argue that the case of *Mein Kampf*'s author's right highlights three pertinent issues regarding censorship in today's globalizing society: first it illuminates the legal differences between state censorship and author's right, second it emphasises the problematic possible outcomes of the application of actant-network theory in freedom of expression cases, and third it reminds us of the radically different political outcomes between those states that put their trust in the individual's capability and will to reason and the consequent responsibilities these freedoms are accompanied by, and those states who believe that public restrictions of freedom of expression in some cases remain a necessary prerequisite for maintaining public order.

## 2. Theoretical remarks on author's rights, agency and Enlightenment

To begin with the legal issue, it is common knowledge that a censorship discourse on author's rights is almost as old as the concept of author's rights itself. Scholars have thus often emphasised that what on the one hand was formally conceived as a concession to creators in the 18<sup>th</sup> century, was on the other hand also an invention

made to control the public sphere after the communication explosion that occurred after the invention of the printing press (REF). Since then we have seen an exponential horizontal and vertical expansion of the author's rights realm, making the resemblance between author's rights and censorship seem even more alike, and causing scholars to enforce a censorship discourse in their analysis of the expansion of the copyright regime.

Nonetheless, I contend that it is important to emphasise that there are great differences between the two concepts. In legal terms the first and foremost difference is that whereas author's rights is a private law issue, censorship is carried out in the name of the state and thus belongs to public law. Second, author's rights' timeframe is limited to 70 years by the internationally binding Berne Convention, as opposed to state censorship, which can be, but rarely is, subject to a set time limit. Last, within the continental European legal tradition author's rights are based on an almost metaphysical link between creator and creation. Whether it be the German 'Urheberrecht', the French 'droit d'auteur' or intellectual property rights as they are expressed in the international Berne Convention (which is heavily influenced by the prior two national legal traditions), continental author's right rests on a notion of the 'act of creation', which ties creator and creation inextricably together. His 'will' exists in the work hence extending his 'moral rights' to encompass the work.

In other words continental author's right formalises the supposed bond connecting creator and his/her creation. State censorship has so far been void of any such considerations. Rather state censorship determines a work or its creator in relation to society. Does the work, or its creator, pose a danger to the public order? And should it consequently be banned even before it has been published?

An issue that follows from these questions is how we ascribe power to things, and the way this ontological prescription affects our view on things that are deemed harmful and therefore in need of restrictions in society. This is the case of *Mein Kampf*. In fact, it is not even the object, which is subject to a censorship discourse, but rather the concept of the object, due to its fetishization, which has in effect granted it almost autonomous agency.

The notion of a work's autonomy is not novel. Indeed it has caused great controversy throughout art history, where one of the main questions up to this day has been whether or not one should consider a work in its context or as an autonomous object. Along these lines the artistic sphere has throughout modern art history been perceived by art movements as a place of refuge from, or indeed even a sphere of resistance to, oppressive public forces such as capitalism or politics. Examples of intellectuals who have perceived art as an autonomous expression informs are for instance Kandinsky's religious cubistic form (INDSÆT CUBISM REF)s, Adorno's adoration of 12 tone compositions (INDSÆT ADORNO REF) and XXXXXX's decree 'l'art pour l'art' (INDSÆT REF).

The autonomy discourse has grown partly out of earlier views of art as an expression of the sublime, and partly out of later secular urges to extricate the human from the market, the political sphere and other oppressive societal powers. The predominant power of art however, lies in its inexplicable transcendent appeal, which also supports the notion of an autonomous artwork that extends beyond its creator (INDSÆT ELIAS REF).

Yet, in recent years the notion of autonomy has mutated into a notion of autonomous agency on par with human agency. In other words, the phenomenological realm has been extended to encompass an actual theory of action. Furthermore the notion of autonomy has expanded beyond the aesthetic space into social sciences. Thus a number of sociologists and political theorists have abandoned ‘actor-network theories’ in favour of ‘actant-network theories’ and the related concept of ‘thing power’ (INDSÆT LATOUR; BENNETT ETC REF). As I will argue below, this ontological leap is of key importance to researchers concerned with censorship, because its logic shifts accountability from *actor* to *actant*, which in makes it possible to talk about ‘harmful works’ and not just harmful human action.

Finally, the re-publication of *Mein Kampf* raises the issue of the continued importance of Enlightenment ideals in a globalizing age. The issue surrounding re-publication of the volume has caused a fundamental political disagreement between the Bavarian minister of finance and the Bavarian minister of science, the former an indirect critic of Enlightenment ideals and the latter a stern believer in the reasoned power of education.

Based on the above, the present paper seeks to make three overall points:

1. *Mein Kampf* has been attributed with an aura, which attributes the work with agency
2. In the case of *Mein Kampf* intellectual property has been a cover for state censorship on grounds of this aura
3. Recognizing that humans, not things, possess agency, and that state censorship is harmful for a democratic society, *Mein Kampf* should be released into the public domain in 2015 when the author’s right expires

For these three claims, three theoretical realms must be invoked: law, sociology and philosophy

Law: Intellectual property theory and its various aspects. Intellectual property law was developed in the 18<sup>th</sup> century as a concession to artists based on the belief in a transcendence of the creator into the work. In addition to the acknowledgement of the creator’s natural rights inherent in the work, and the creator’s right to make a living from his creations, author’s rights were also a means to control information in the

public sphere. However, control of public information by means of introducing author's rights does entail a different legal scope because it means a shift of legal rights from the state to the individual. The logic of author's rights is consequently running along three parallel but ultimately different strands: economic incentives, individual moral rights and information control. These three strands also intertwine in the case of *Mein Kampf*. Firstly, the economic incentive of republishing Hitler's hateful rants is taboo, but the potential profit margin is nevertheless a reality. This field of tension between profit and morality has existed since the inception of the book. Thus profits from the book have gone to as diverse goodwill purposes as the Red Cross in Britain and Refugees in the US. Secondly, the author's right to *Mein Kampf* is inherently Hitler's right proper. According to the intellectual foundation of Continental author's right, the right exists solely on grounds of the inextricable link between Hitler and his work. The transferral of Hitler's private rights to the public entity of the Bavarian state was thus an artful, yet legally dubious, decision enacted by the Allied Powers in the immediate and somewhat chaotic aftermath of WWII. Thirdly, the Bavarian state's rejection of any attempts to re-publish the book, enforced by the Bavarian state minister and opposed by the Bavarian education minister, should essentially be seen as a way of using author's right as a means to control of public information, yet it cannot be likened to censorship. Rather, it is a curious example of a federal state entering into the realm of private law, trying to limit distribution of the volume until the Bavarian state loses all rights to control in 2015 due to the 70 years time limit on author's rights.

Sociology: Prominent proponents of actor-network theory claim that things possess agency in the same way as humans do (INDSÆT BRUNO LATOUR; JANE BENNETT ET AL REF) thus reverting actor-network theory into actant-network theory. These theories base themselves on the assumption that things can have effects in society, which are severed from human control. Influenced by phenomenology and biology, actant-network theorists interrogate the traditional notions of 'object' and 'agency' invoking the possibility that attentiveness to (non-human) things and their powers can have a laudable effect on individuals. The power of a work of art has always been acknowledged in aesthetic theory. Yet, it was precisely the romantic idea of the sublime artist and consequently the work's embodiment of this sublime being, which formed the foundation for a theory of the 'being' of a work of art. In other words, traditional art theory acknowledged the metaphysical link between creator and work. Actant-network theory has cut the creator out of the equation focusing solely on the work. Further, and more importantly, it has transferred the theories from the aesthetic to the political realm, building logical framework in which drone missiles possess the same autonomous uncontrollable agency as Mona Lisa.

Philosophy: Enlightenment thinkers of the 19<sup>th</sup> century saw education as a path to reason, which in turn would lead to a free society. Distinguishing between 'Verstand' and 'Vernunft' Kant thus claimed that 'Vernunft' is different from the 'Verstand' in that it cannot be directed by others and as a consequence hereof he emphasised the

individual responsibility to 'Sapera Aude' and not just rely on the meanings of others claiming that: "Unmündigkeit ist das Unvermögen, sich seines Verstandes ohne Leitung eines anderen zu bedienen" (INDSÆT REF). Kant thus broke with previous Enlightenment thinkers such as Bacon by shifting the responsibility of coming to reason from the state to the individual with education as the primary means to reach this aim. Habermas's work supports the enlightenment vision in his theories of reasoned communicative action, arguing that that education and dialogue are main components in a democratic society (INDSÆT HABERMAS REF). Criticisms of the enlightenment ideals have mainly revolved around the fallacy of a 'myth free' ideology of reason (INDSÆT ADORNO REF) and the questionable capability of the individual to actually form individual reasoned thinking (INDSÆT FOUCAULT REF). This rift between a trust in educative potential and the distrust of the individual will to good is expressed directly in the current disagreement between Bavaria's Ministry of Education and Bavaria's Ministry of Finance, the former proposing a republication of *Mein Kampf* in a scientifically annotated version and the latter rejecting this proposal on grounds of the harmful content of the book.

### 3. Historical context of *Mein Kamps* seen through the lens of the author's rights paradigm

*Mein Kampf* had inauspicious beginnings. Hitler dictated it to Rudolph Hess and Emil Maurice in the Bavarian prison of Landsberg am Lech, where they spent 1923-24 after the failure of the Beer Hall Putsch. Hitler originally intended to title the work *A Four and One-Half Year Struggle Against Lies, Stupidity, and Cowardice: Settling Accounts with the Destroyers of the National Socialist Movement*. Under the concentrated title *Mein Kampf*, the two-volume political rant sold 9.000 copies in 1925. When Hitler's political career catapulted, the sales correspondingly soared (Caspar 1958).

Hitler made a good profit from these sales. By 1945, a total of 8 million copies had been sold; at their peak, his royalties reached an estimated US\$1 million per year. Until 1939, Hitler also earned royalties on *Mein Kampf's* numerous foreign editions – by the beginning of the war, it had been translated into 16 languages. These publications did provoke some conflict. When Houghton Mifflin published an abridged edition in 1933 under the title *My Battle* in the United States, it met widespread public criticism and spurred a petition to the New York City Board of Education that Houghton Mifflin be barred from selling textbooks to the city. The petition was refused, with an explanation by the Board: "The greatest service one can render humanity in general and Germany in particular is to place *My Battle* within the reach of all, that each, for himself, may see whether the book is worthy or is an exhibition of ignorance, stupidity, and dullness." (Worthington 2003: PXX). The Board thus invoked the Enlightenment ideal arguing that reasoned individuals should be trusted to make the right decisions independent of state decrees.

With the outbreak of WWII, the Allies stopped worrying about Hitler's author's rights. In England, Hutchinson released an 18-part serialized edition to benefit the British Red Cross. The book jacket prominently, and without permission, advertised its relationship to the Red Cross. The British Red Cross protested the unauthorized use of its name and expressed doubts in a letter to Hutchinson about the propriety of accepting "tainted money," but it ultimately decided to receive the edition's £500 in royalties. In the United States, matters were handled more directly. The US government, invoking the Trading With the Enemy Act, seized all royalties due Hitler and dedicated them to the War Claims Fund, which assisted war refugees and American prisoners of war. By 1945, more than US\$20.000 in royalties had been collected (INDSÆT REF).

When the war ended, publication of *Mein Kampf* in Germany became illegal. Yet contrary to common belief, this was not done through an act of federal censorship. Rather, the Allied Powers transferred the non-English rights to the German state of Bavaria in 1951. Since then, Bavaria has thus used author's rights to prevent any further publication of the volume in Germany.

Because the publication ban was based on the private law concept of author's rights as opposed to state censorship, the Bavarian state has equally been able to prevent any foreign editions from appearing in countries that had not already secured foreign rights prior to 1951. When the Swedish publisher Kalle Haeggglund attempted to publish *Mein Kampf* in 1992, Bavaria thus filed a private law suit in Sweden. A lower Swedish court agreed that Bavaria's author's rights had been violated and ordered that the publication be halted. In 1998, however, the Swedish Supreme Court refused to recognize Bavaria's author's rights, but it ruled that someone's author's rights had been violated, and the court upheld the authority of the Swedish public prosecutor's office (which had joined the case) to enforce that unknown copyright holder's interests. The edition did not return to bookstores. In rare cases, Bavaria has refrained from intervening, such as a 1995 critical edition published by the Hebrew University of Jerusalem, and in those instances it has refused to collect any royalties (INDSÆT REF).

The upcoming expiration date of the author's rights for *Mein Kampf* further raises a discussion on the intellectual history of author's right and its links to the current case. When Hitler wrote *Mein Kampf*, he created a work, and this very act entitled him to intellectual property rights. In the continental author's rights regime, these rights are instantly recognized, and this sets them apart from the Anglo-American copyright regime, which only recognizes the economic dimension of copyright and thus not the Continental moral right.

Broadly speaking, four intellectual arguments have been invoked in discussions on intellectual property rights: arguments rooted in respectively natural right, idealism, culture and economy (INDSÆT STINA TEILMANN REF). These four arguments

have resulted in two predominant types of author's rights in the Western World: the continental Droit d'Auteur and the Anglo-American copyright.

The notion of Droit d'Auteur is rooted in French and German philosophy and it is distinguished from copyright in its acknowledgment of a creation as something that is entitled to 'more' than economic rights. The key difference is the sub-right called 'droit moral', in English translated into 'moral rights'. This doctrine, the outgrowth of centuries of literary and artistic creativeness, is indigenous to continental jurisprudence. With the globalizing author's rights regime, the differences have become more pertinent. But already in 1939 the American law professor Martin A. Roeder lamented the American lack of acknowledgment of the inseparable link between creator and work claiming that: "... When an artist creates, be he an author, a painter, a sculptor, an architect or a musician, he does more than bring into the world a unique object having only exploitive possibilities; he projects into the world part of his personality". This statement echoes the perception of the creation process. It is a mixture of natural rights, famously promoted John Locke's *Two Treatises on Civil Government* in 1690 (INDSÆT REF) and personality theories promoted by German thinkers such as Herder, Goethe, Hegel, Fichte and Kant and later adapted by French thinkers such as Diderot and Viktor Hugo (INDSÆT REF). Both strands see a work as an extension of the creator.

Distinctions were thus made between 'das Buch', which referred to the material copy, and 'das Rede' which designated the expression pronounced by the 'Kraftgenie' (INDSÆT HESSE REF). Where as the singular copy belonged to the person who had bought it, 'das Rede' could never be purchased or sold, and as Kant argued in his influential book 'Vom der Unrechtmässigkeit der Büchernachdrucks' from 1785, piracy violated the moral rights of 'das Rede. For Kant and his associates it was therefore predominantly a question of moral rights rather than economic rights (INDSÆT KANT REF). In addition to the acknowledgment of the moral right between creator and work, an economic right acknowledging the creator's right to make a living out of his profession and emphasising the creative incentive inherent in the promise of economic compensation is further recognised. In our contemporary secular and globalized society lawyers and theorists often downplay moral right in favour of the inciting economic rights, yet in reality moral rights have often played a decisive role in jurisprudence (INDSÆT REF: HUSTON; CHAPLIN; DISNEY) and they have had a decisive impact on differences in industrial formations. For instance it would be very difficult to make Disney economically viable in Europe because each drawer would be entitled to economic and moral rights as soon as they laid down a line, whereas in the United States the rights rests with the producer, thus removing all moral ties between creator and work and transferring them to the producer's economic entitlements.

It is therefore arbitrary that continental author's rights, originally conceived as a formalised legal acknowledgment between individual creator and his/her work,



should be transferred to the Bavarian State. And we can thus safely conclude that the case of *Mein Kampf* is not a case of defending Hitler's moral rights but rather a case of the Bavarian state using Hitler's author's right proper as a means of controlling information in the public sphere. In the following paragraph I will explore some arguments for the ban on a re-publication of *Mein Kampf*.

#### 4. *Mein Kampf* and its aural trajectory

The Bavarian state's reluctance to allow a republication of *Mein Kampf* is most likely a lopsided iconoclastic reaction to today's fetishization of the concept of *Mein Kampf* encompassing both the original and its copies.

In their article *The migration of the aura or how to explore the original through its facsimiles*, Bruno Latour and Adam Lowe suggest that instead of upholding the stern distinction between the original and the copy, we should instead consider a work's 'trajectory' in order to assess its potential and power stating that:

*"The real phenomenon to be accounted for is not the punctual delineation of one version divorced from the rest of its copies, but the whole assemblage made up of one—or several—original(s) together with the retinue of its continually re-written biography ... A given work of art should be compared not to any isolated locus but to a river's catchment, complete with its estuaries, its many tributaries, its dramatic rapids, its many meandering turns and, of course, also, its several hidden sources."* (Latour and Lowe 2010)

Lowe and Latour's analysis revolve around agreed-upon masterpieces, and they therefore move in what we could call the 'positive terrain' of the art world. They talk of rich cornucopias and emphasize the positive facets of copies by seeing them as expressions of creative abundance.

Yet, in a reversal of Lowe and Latour's positive setting, one could equally apply the notion of trajectory meaningfully to the case of *Mein Kampf*. Thus the real phenomenon to be accounted for is not the punctual delineation of the original dictated version of *Mein Kampf* divorced from the rest of its copies, but rather the sum of its impact. *Mein Kampf* in itself would probably not be such a controversial book had it not been associated with the atrocities that were later carried out by the hand of the book's creator, Adolf Hitler. It should here be noted that the actual impact of the book was one of key conflicting cornerstones of the notorious 'Historikerstreit' that was waged between German intellectuals from the 1950s and onwards, with one flank, intentionalists, arguing that genealogy of WWII atrocities runs right back to *Mein Kampf*, and another flank, the functionalists, holding that WWII should be read as a structural incident and therefore not traceable to one individual or a particular book volume. A full account of the Historikerstreit is beyond the scope of this paper. Yet, it must be assumed to play a continuing role in the way that the Bavarian finance minister regards the book today. My intent, however, lies elsewhere, namely in the

logic that multiplications of *Mein Kampf* should have the same promoting effect for the Nazi ideology, as Bruno Latour would argue that the multiplication of the Iliad has had for the original thoughts of that work.

### **5. Mein Kampf seen through the lens of relation ontology**

The Bavarian Ministry of Finance invokes the possible harmful consequences of distribution of Nazi ideology and on these grounds argue that a re-publication of *Mein Kampf* involved an ideological responsibility and possible risks to the public order (Smith 2007). This argument could be countered with what human rights lawyer Christopher Badse calls ‘the test of necessity’ of restrictions on freedom of expression (Badse). Article 10 of the ECHR protects the substantive freedom of expression. Restrictions may be applied if *prescribed by law*, and *necessary in a democratic society* for one of the reasons mentioned in article 10, subsection 2, such as e.g. national security or morality or for the protection of the rights of others. Yet, article 10 is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb.

This test of necessity in relation to *Mein Kampf* would thus be a way of discussing whether or not a re-publication of *Mein Kampf* would entail harmful consequences for the general public and/or the targets of the book’s wrath.

This discussion may further be linked to recent year’s discussion on the agency of things, expressed for instance in actant-network theories (Vandenberghe 2002). Latour has promoted the word actant because it, unlike the term "actor," can designate both human and non-human entities: it is that which does something, has sufficient coherence to perform actions, produce effects, and alter situations (Latour 1999: XXX).

Actant-network theorists promote what political scientist Jane Bennett has referred to as ‘thing power’. In her book *Vibrant Matter: A Political Ecology of Things* (2010) Bennett outlines an agency-based philosophy of new materialism by posing the question: Can people have exclusive agency or do they share agency with non-human objects? Along these lines she sets off to theorize agency as assemblages that do not privilege humans as the decisive agents and she addresses what she calls “familiar fetishizations; the fetishization of the subject, the image, the word.” (Bennett 2010).

Following this logic *Mein Kampf* could easily be regarded as one of the most agency potent objects in modern history. And it might then be considered entirely legitimate to uphold a ban on further publication.

Yet, there is a great ontological leap from acknowledging that a fetish is a fact and vice versa (Ricoeur 1986) to contributing agency to this fact. As Vandenberghe notes in his article on the ontology of the non-human actant-network systems, the task of

the analyst lies in deciphering artefacts as formed content, rather than construct stories about the agency of things, a task he calls 'sociology of translation' (Vandenberghe 2002). Basically this view entails a return to human agency which still, however, accounts for phenomenological affects, structural realities etc. INDSÆT EPICET CITAT; MARX CITAT ETC.

I tend to agree with Vandenberghe's view on the matter of human agency for two reasons, one theoretical and one practical. First, the attribution of agency to things provides a slippery slope in terms to establishing accountability in legal cases. Secondly *Mein Kampf* provides a great example of the fallacy it is to attribute any kind of agency to the book.

*Mein Kampf* is already in wide circulation all over the world in both legal and illegal prints. In some countries, such as Austria, the book is subject to a complete ban based on state censorship, while in other countries, such as the United States and Turkey, it is perfectly legal to sell, buy and publish the book. It is even freely available in public libraries all over Germany. Furthermore the Internet has complicated matters even more by making online copies accessible across national jurisdictions. In practice, it has consequently been difficult to maintain a German ban on the book when Germans are able to buy the book via Amazon who is selling the American versions<sup>1</sup>. It therefore seems highly unlikely that a German legally endorsed re-publication of *Mein Kampf* will result in a corresponding rise in nazi-related crime and/or political activity. Yet, the present author sees at least two political interpretations of Bavaria's stance. First Bavaria's unwillingness to discuss any re-publication of *Mein Kampf* could be interpreted as a case of symbolic politics and a preventive precaution. By denying publication the state ensures that it does not hold any stake in any potential rise of *Mein Kampf*-related rise in neo-Nazism. Second, Bavaria's political disagreement reflects the question of individual Enlightenment versus a paternal state, which is becoming more and more pertinent in a globalizing World.

## 6. *Mein Kampf* and Enlightenment

Having illustrated the legal and sociological issues related to Bavaria's author's right over *Mein Kampf* and their refusal to allow any re-publication, I will now include a third perspective, namely the philosophical Enlightenment ideal, to show how the classic question of Enlightenment still divides politics today, and consequently how this affects issues of political censorship.

In an official statement to the German newspaper Spiegel from 2007 the Bavarian Ministry of Finance wrote: "*In terms of managing the (Eher-Verlag) rights, the state of Bavaria has taken a restrictive position over the last decades ... Permission is not*

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<sup>1</sup> For a similar case read about Yahoo and Nazi paraphernalia in (Wu and Goldsmith 2006)

*granted for complete works to be published, neither in Germany nor abroad, with the intention of preventing the distribution of Nazi ideology." (Smith 2007)*

This stance could be interpreted as a Bavarian decision in regard to two audiences: a domestic and an international. Within the domestic realm, it sends a political message recognizing the continued interests of certain groups and communities that the volume remains politically offensive both in its content and for historical reasons. Externally, the ban on re-publication may further act as diplomatic signal, sending a signal that Germany continues to reject its Nazi past. Bavaria's aggressive protection of the volume's publication not only in Germany but also abroad supports this assumption (Kruecken 2005).

The strategy could however, end up resembling the stance adopted by one flank of historians in the famous German 'Historikerstreit'. The 'Historikerstreit' was a controversy between two flanks of German intellectuals who disagreed upon whether WWII should be interpreted and communicated in a universal or a German context. One side claimed that Germany was in need of a new positive historical consciousness while the other position, in particular Habermas, countered this revisionist recasting of German history and identity, which they saw a sort of settlement of the claim ("Eine Art Schadensabwicklung") (INDSÆT HABERMAS REF).

The Bavarian Finance Minister's strategy could thus, perhaps unwillingly, end up supporting the revisionist flank, by denying historians the right to provide future scholars with nuanced details of the book. And the Ministry of Finance has indeed also been met with widespread criticism from the formation of German historians, who argue that the book should be released for republishing before 2015 in a heavily annotated academic edition. One exponent from this formation is the Institut für Zeitgeschichte (IfZ) who have attempted to obtain legal rights to publish an annotated version for several years. The institute's director, professor Horst Möller, emphasizes that the book is key for any historical interpretations of National Socialism, the WWII and Hitler himself (REF). And several scholars, intellectuals and politicians, most notably the Bavarian Science minister, Wolfgang Heubisch, back his position in contrast to his colleague from the Bavarian Ministry of Finance:

*"Es besteht die Gefahr, dass Scharlatane und Neonazis sich dieses Schandwerks bemächtigen, wenn das Urheberrecht des Freistaats Bayern abgelaufen ist. Deshalb bin ich der Meinung, wir brauchen eine wissenschaftlich fundierte, hervorragend ausgearbeitete kritische Edition. So können wir kraftvoll eintreten für eine politische Bildung nach freiheitlich-demokratischen Grundwerten - gerade für unsere jungen Menschen." INDSÆT REF*

Heubisch thus ascribes to a classic enlightenment position, emphasizing the power of education over the weakness of the human mind. In Heubisch's view critical research

provides an enlightened platform from which young people can internalize reasoned universal democratic values. Hence the science minister and the finance minister take two different positions on the democratic potential of enlightenment, the latter emphasizing the power that Nazi propaganda can exert on a weak mind, the former relying on the individual will to democratic reason. Consequently, the finance minister employs a limitation of the public sphere by means of author's rights as way of conveying normative top-down values, while the science minister promotes education as a way of infusing society bottom-up with democratic values.

### Conclusion

The case of *Mein Kampf*, author's rights and the Bavarian state crystallizes three current issues concerning general discussions on censorship:

1. A legal issue revolving around author's right as a way of controlling public information which is nonetheless distinct from regular state censorship
2. An ontological issue revolving around agency and the power of things, emphasizing a problematic contemporary tendency to leave human agency out of the equation and in effect also rendering human accountability obsolete
3. A political issue of democratic values and how they are best furthered: through individual Enlightenment or state decrees.

All three issues will be put to the test in 2015 when the author's rights for *Mein Kampf* expire, leaving the work in the hand of the public domain. The following three outcomes might follow from *Mein Kampf*'s release into to the public sphere:

First, the expiry of author's rights in 2015 could be argued to provide a substantial argument for a clear discursive distinction between state censorship and author's rights. The Bavarian state's usage of a private law regime to maintain a re-publication ban up until now represents a legal anachronism where the horizontally and vertically expanding author's rights regime has been employed to cloak what remains an essentially political act of public censorship. 2015 will bring this issue back to its proper turf and force the German government to argue any future censorship within a public law framework, in the very least allowing for a proper discussion of the work's continued offensiveness and risk to the public order from re-publication.

Second, on the more theoretical level one could hope that 2015 will mark a decisive moment in reinstating and reinforcing the primacy of human agency in the otherwise insightful actor-network theory. To the mind of the present author, it is both erroneous and normatively dangerous to shift accountability for the atrocities of WWII from the human perpetrators to the inanimate object of *Mein Kampf*. A society where human accountability can be denounced in the name of 'thing power' not only has a number of problematic societal consequences but also threatens to fundamentally undermine the effectiveness of human rights protection and the concept of individual legal accountability.

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Third, 2015 might be the year where Enlightenment values will be put to the test. Whether they will prevail over some states' distrust in the potential of the individual with censorship as a result remains an open question. Yet, in a broader perspective the solution to this conflict is likely to be a pivotal issue in a globalizing world, which increasingly has to respond and relate to diplomatic situations that will increasingly test the necessity of the freedom of expression.

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