

**The Law of the City:  
The Reichshofrat in Hamburg, 1670-1700**

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“In [the jurisdiction of] Our Imperial Aulic Council shall be each and every matter [of] the Holy Roman Empire; thus sovereignty, law, glory, equality, the common good, resolutions, regalia, high and low fiefs, privileges, indults, confirmations and else as such that may be named, and in summary, what shall be directed and decided according to infallible Justice...”<sup>1</sup>

-*Die Reichshofratordnung vom 16. März 1654*, Titulus II, Section 1, “Zuständigkeit des Reichshofrates.”

The Holy Roman Empire of the German Nation was, by the beginning of the 18<sup>th</sup> century, a venerable institution. Ostensibly tracing its lineage back to the empire of Charlemagne, it had survived centuries of strain and misfortune. With the troubles of the Thirty Years War behind it and the Treaty of Westphalia essentially acting as an Imperial constitution, the Empire was undergoing something of a political renaissance under the reign of Leopold I.<sup>2</sup> It was a hoary old structure, certainly, but it still had life in it.

One of the most active elements of the Holy Roman Empire in this timeframe was the *Reichshofrat*, or Imperial Aulic Council. This body – a curious mix of legislative and executive powers beholden directly to the Emperor – had sweeping competencies, and covered everything from burghers' redress petitions to intricate problems of foreign affairs. Through its edicts, Imperial will was publically expressed and the Emperor exercised his feudal prerogative of the fount of justice. The Aulic Council also represented the juridification of conflict management within the Empire; irreconcilable frictions between Imperial parties were expected to be resolved through legal process

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1 “In Unserem Reichshofrat sollen alle und jede Sachen, das Heilige Römische Reich, desselben Hochheit, Recht, Herrlichkeit, Gerechtigkeit, Pfandschaft, Lösung, Regalien, hohe und niedere Lehen, Privilegien, Indult, Confirmation und anders, wie solches Namen haben mag, und in Summa, was nach der unfehlbaren Justitien dirigirt und decidirt werden solle...” Arno Buschmann, *Kaiser und Reich: Verfassungsgeschichte des Heiligen Römischen Reiches Deutscher Nation vom Beginn des 12. Jahrhunderts bis zum Jahre 1806 in Dokumenten* (Baden Baden: Nomos, 1994), 140.

2 Peter H. Wilson, “The Thirty Years War as the Empire's Constitutional Crisis,” in R.J.W. Evans, Michael Schaich, Peter H. Wilson, eds., *The Holy Roman Empire, 1495-1806* (Toronto: Oxford University Press, 2011), 113-114.

rather than force of arms.<sup>3</sup>

The broad competencies of the Aulic Council in attempting to resolve complaints – both internal and external – can be seen clearly in the circumstances of Hamburg from 1670 until the early 1700s. Hamburg, as an Imperial Free City, was directly responsible to the Empire and the Emperor for legal appeal. The proceedings of the Aulic Council show a considerable body of cases involving Hamburg that were brought before the Council during this time frame. The mid-1680s saw Hamburg's political factionalism between the plutocracy and the citizenry worsen to the point of virtual civil war. Meanwhile, Hamburg's Europe-spanning mercantile network frequently found itself caught between warring European states, and the Kingdom of Denmark aggressively pressed claims of sovereignty on the city. In the midst of all these tensions laboured the Imperial Aulic Council, constantly endeavouring to maintain the Imperial peace through a combination of representatives, inquiries, commissions, injunctions, and edicts.

Thus we arrive at the main thrust of this paper: using the “Antiqua” series of *Die Akten des Kaiserlichen Reichshofrates*,<sup>4</sup> the Aulic Council's intercessions in Hamburg's troubles during the late 17<sup>th</sup> century will be used to analyze the role of the Aulic Council in the enforcement of Imperial prerogative, maintenance of peace, and general coordination of Imperial entities through the mechanism of the Imperial Circles. The “Antiqua” as available represent a late 18<sup>th</sup>-century itemization and reorganization of the Aulic Council's *Acta* summaries as stored within Vienna's *Haus-, Hof- und Staatsarchiv*; to date, partly on account of archival disorganization and partly due to of sheer scale of

3 Peter H. Wilson, *The Holy Roman Empire 1495-1806* (New York: St. Martin's Press, 1999), 46.

4 As maintained at <http://www.rhrdigital.de>.

material, only H through Z of the “Antiqua” have been transcribed.

This analysis will be divided into two major sections: the Aulic Council's handling of Hamburg's internal affairs alongside its border frictions with Celle, and Imperial intercession in Hamburg's often-hostile relationship with Denmark. Preceding this analysis are overviews of the history of both the Aulic Council and Hamburg so that subsequent events and decisions can be contextualized more effectively. The ultimate aim of the paper is to show that the Aulic Council was relatively vigorous and successful in implementing Imperial policies that ensured the continuity of Imperial prerogative while also maintaining the security of the Empire's member polities against both internal and external pressures. In carrying out these actions, the Aulic Council showed the Empire and the rest of Europe – and indeed, us historians who have been raised on Prussian-Napoleonic “power-state” narratives<sup>5</sup> – that the post-Westphalian Holy Roman Empire was not yet a “sick man of Europe”, but rather a functional institution still laden with potential and operating according to its own highly-developed federative character.

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5 “Without firm monarchical authority to provide a clear centre of power, the Empire was bound to fall short of the nineteenth-century ideal of the state defined as a monopoly of legitimate power within well-defined borders.” Peter H. Wilson and Michael Schaich, “Introduction,” in Evans, Schaich, Wilson, eds., *Holy Roman Empire*, 3.

### Origins and Competencies of the Imperial Aulic Council

“On the contrary, whoever has quarrel with another, he shall take his case to the courts and tribunals that have settled such cases in the past, and such matters now belong and will in the future continue to belong under the law establishing the Imperial Supreme Court.”<sup>6</sup>

-The Perpetual Public Peace (*der Ewiger Landfrieden*), 1495, Section 1.

The Imperial Aulic Council's origins lay in Emperor Maximilian I's 1495

*Reichsreform* program. As part of these efforts, Maximilian established the Imperial Chamber Court, or *Reichskammergericht*. The original purpose of the Chamber Court was to enforce the terms of the Perpetual Public Peace, which banned feuding between members of the Empire. While the Emperor selected the chief justice, presiding deputies, and associate justices of the Chamber Court, the majority of the remaining judges were nominated by the Electors and the Reichstag.<sup>7</sup> As this primarily made the Chamber Court an implement of princely interests, Maximilian found it beneficial to establish a second supreme judicial body in 1497 that served the Emperor directly and was staffed by his personal appointees: the Imperial Aulic Council.<sup>8</sup> Whether the Aulic Council was founded as an attempt by Maximilian to retain his prerogatives as Emperor or because members of the Empire wished to retain the right to appeal to the Emperor directly in matters of justice is currently a matter of some debate.<sup>9</sup>

6 David Luebke, “Documents on the Reform of the Empire.” *Sixteenth-Century European Reformations*. <http://pages.uoregon.edu/dluebke/Reformations441/441ImperialReformDocuments.html> (accessed March 4, 2012).

7 Luebke, “Reforming the Holy Roman Empire”, *Sixteenth Century Reformations*. <http://pages.uoregon.edu/dluebke/Reformations441/441ImperialReform.htm> (accessed March 4, 2012).

8 The requirements for appointment to the Aulic Council were residence in the Empire, a sound grasp of the German language, an “upright character”, and some grasp of Imperial jurisprudence. Class considerations were very much secondary, with nobility, clergy, and non-aristocratic legal experts alike all serving in turn. Originally the Council consisted of eighteen individuals; this figure would expand in later years. “Reichshofratordnung vom 16. März 1654” in Buschmann, *Kaiser und Reich*, 131-133.

9 Leopold Auer, “The Role of the Imperial Aulic Council in the Constitutional Structure of the Holy Roman Empire,” in Evans, Schaich, Wilson, eds., *Holy Roman Empire*, 65.

The Aulic Council acquired a reputation for being a tool of Imperial – read Catholic – policy during the Reformation, and some Protestants asserted that the Chamber Court “was the only competent law court of the Empire,”<sup>10</sup> thus rejecting the Aulic Council's legitimacy to judge on sensitive matters of territory and faith. The 1648 Treaties of Westphalia saw the Aulic Council formally established as having equal competencies to the Chamber Court and required it to contain some degree of Protestant representation. Protestant attempts at Westphalia to see the Aulic Council defanged as a weapon of Catholic interests thus had the unintended side effect of strengthening the Aulic Council as a weapon of Imperial interests by making it more reflective of religious differences within the Empire. This enhanced religious pluralism gave the Aulic Council an increased reputation for religious neutrality, which in turn made it more appealing to Protestant plaintiffs.<sup>11</sup>

To minimize competition between the courts, it was established that a case was to be handled by whichever body it was brought before. This gave petitioners the option of approaching either the Aulic Council or the Chamber Court. By the post-Westphalia era the Chamber Court had established a reputation for extreme slowness; in one case brought before the Aulic Council in 1671, the Chamber Court was still processing an

<sup>10</sup> Hans Gross, *Empire and Sovereignty: A History of the Public Law Literature in the Holy Roman Empire, 1599-1804* (Chicago: University of Chicago Press, 1975), 39. As for the Aulic Council's reputation for being a tool of Imperial-Catholic interests, its 1598 ruling on the ejection of Aachen's Protestant community and subsequent re-Catholicization may be seen as emblematic. See Hajo Holborn, *A History of Modern Germany: The Reformation* (Princeton: Princeton University Press, 1982), 295. Somewhat ironically, Holborn asserts out that it was precisely the self-imposed withdrawal of Protestant representation from the Chamber Court that denied it the legitimacy necessary to handle these kinds of cases. In such a vacuum, it should come as no surprise that the Aulic Council asserted itself with a vengeance.

<sup>11</sup> Article 5, Section 55 of the Treaty of Osnabrück, “Acta Pacis Westphalicae. Supplementa electronica, 1.” <http://www.pax-westphalica.de> (accessed March 3, 2012). Also Auer, “Role of the Imperial Aulic Council”, 71, and Johann Stephan Pütter, *An Historical Development of the Present Political Constitution of the Germanic Empire, Volume 2* (London: 1790), 106-107.

appeal from 1618.<sup>12</sup> Unsurprisingly, then, more and more cases were brought before the Aulic Council. Even if it took several years to reach a decision – the cases of Mecklenburg and East Frisia studied by Michael Hughes both spanned decades – the Aulic Council was still generally regarded as the faster and more efficient of the two courts.<sup>13</sup>

Despite its broad competencies, the Council was certainly not an all-powerful institution. The Emperor always retained the final right of decision, as officially the Aulic Council submitted recommendations to the Emperor which he then considered as he saw fit. It appears that at least in the case of Leopold I, the Emperor acted upon these recommendations more often than not; in the “Antiqua” documents analyzed for this paper, there were only a handful of incidents in which the Emperor suggested amendments to Council proposals, and none in which formal Council proposals were openly rejected. Beyond this, it deferred completely to the Emperor in matters of foreign policy. In one 1675 incident involving suspicious activities by Swedish merchants, the Aulic Council submitted the statement that it could not suggest a course of action unless the Emperor clarified his intentions vis-a-vis Sweden.<sup>14</sup> Even its established ability to remove princes deemed negligent in their rule – a very powerful tool indeed – could only

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12 *Die Akten des Kaiserlichen Reichshofrates* (henceforth “AdRHR”), “Antiqua”, Group 1, Akte 196, 12/5c, para. 9.

13 Michael Hughes, *Law and Politics in 18th-Century Germany: The Imperial Aulic Council in the Reign of Charles VI* (New Hampshire: Boydell Press, 1988), 39. An excellent, comprehensive coverage of the workings of the Aulic Council. Probably the best available in English, if its popularity within citations and bibliographies is any indication. See also Auer, “Role of the Imperial Aulic Council”, 70, and Charles Ingrao, *The Hapsburg Monarchy: 1618-1815, Second Edition* (New York: Cambridge University Press, 2003), 17, for this jewel: “[The] Imperial Chamber Court was so hopelessly underfunded and paralyzed by princely rivalries that it could take over a century to decide some cases. By contrast, the relative efficiency of the emperor's own Imperial Aulic Council afforded him more than a measure of power through its ability to adjudicate a wide range of legal matters.”

14 *AdRHR*, “Antiqua” 1, Akte 243, 17/5, para. 11.



be utilized with the utmost care and after exhausting all other options, and in practice saw little use.<sup>15</sup>

Beyond that, certain segments of the Empire, such as all inhabitants of Bohemia and the Electors themselves, enjoyed the *privilegium de non appellando* which stated that they could not be tried by anything other than their own local courts. This meant that, legally, they could not be called before the Aulic Council.<sup>16</sup> It has been suggested that these gaps in coverage were, somewhat counter-intuitively, actually beneficial to the smooth operation of the Council; Hughes notes that parties subject to *de non appellando* had to be provided with their own courts of appeal in lieu of the Council, thus effectively keeping many “petty” cases in the territorial courts and away from the Aulic Council.<sup>17</sup>

The Aulic Council's lack of internal capacity to enforce its own edicts was a far more troublesome issue. While the Aulic Council could certainly issue proclamations, and it could even suggest that the Emperor formally endorse its decisions, it had no organic mechanism in place for enforcing compliance beyond the levying of fines and threats of censure. If these proved inadequate – and it appears that in major cases, they often did – it fell upon the ten Imperial Circles, mostly geographically-defined groupings of Imperial polities responsible for raising their own bodies of troops, to act as the “strong arm” of the Aulic Council. While Austrian troops could and did on occasion fulfill this purpose, it was usually considered more geographically efficient and less

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15 Werner Trossbach, “Power and Good Governance: The Removal of Ruling Princes in the Holy Roman Empire, 1680-1794”, in Jason Philip Coy, Benjamin Marschke, and David Warren Sabean, eds. *The Holy Roman Empire, Reconsidered* (New York: Berghahn Books, 2010) covers this process in Vaduz.

16 Ernest F. Henderson, “The Golden Bull of the Emperor Charles IV 1356 A.D”, sections 8, 11. *The Avalon Project: Documents in Law, History, and Diplomacy*.  
<http://avalon.law.yale.edu/medieval/golden.asp> (accessed March 3, 2012).

17 Hughes, *Law and Politics*, 38.

politically problematic for regional forces to carry out these aims. Austrian troops could be construed as absolutist crackdowns by the Emperor on the liberties of Imperial subjects; Circle forces, being clearly integrated into the structure of the Empire, tended to avoid this stigma. Furthermore, the commitment of the Emperor's own Austrian forces to a particular case invested his reputation in the matter. Failure to achieve stated aims would then reflect directly upon the Emperor's prestige. By placing degrees of separation between ruling and execution, such risks were mitigated.

Full coverage of the nuances of the Imperial Circles is beyond the scope of this paper, but it worth noting that the Circles proved to be exceptionally willful and inconsistent institutions. Some, such as the Swabian Circle, were relatively effective tools for the maintenance of regional interests and collective security. Others, such as the Upper Saxon Circle, were deeply dysfunctional, if not basically nonexistent. As a general rule of thumb, Circles whose membership included strong states capable of autonomous action tended to be less functional.<sup>18</sup>

Even when one did enjoy the benefit of a well-organized Circle, there was no guaranteeing that it would adhere strictly to the wishes of the Aulic Council and the Emperor when it came to matters of internal affairs. The Lower Saxon Circle, led by the Duchy of Celle, was called upon several times in the 1680s and 1690s to ensure the security of Hamburg. However, as we will see, the Duke of Celle's compliance with the spirit of these requests was often spotty at best. Celle had several long-running grievances with Hamburg involving the placement of fortifications, and one must wonder if Celle's

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<sup>18</sup> Roger Wines, "The Imperial Circles, Princely Diplomacy and Imperial Reform, 1681-1714." *Journal of Modern History* 39, no. 1 (March, 1967): 3-4. For a more intimate look at the Swabian Kreis and Kreis mechanics in general, see James Allen Vann, *The Swabian Kreis: Institutional Growth in the Holy Roman Empire, 1648-1715* (Brussels: Editions de la Librairie Encyclopédique, 1975).

subsequent sloppy handling – and indeed, considerable complication – of its Council-mandated responsibilities might have been influenced by this acrimonious history.<sup>19</sup> With such unreliable tools the Aulic Council attempted to see its proclamations carried out.

By 1670, the Aulic Council was a well-established and extensively-utilized cornerstone of Imperial authority. A variety of matters crossed its table, from boundary disputes to loan repayments; from restitution claims on foreign actors to widows wishing for the good names of their deceased husbands to be re-established. It had developed a reputation for championing the smaller polities over the greater powers of the Empire, and was commonly used by such entities in their dealings with their more powerful neighbours as a compensation for their material inequalities.<sup>20</sup> Small wonder, then, that some historians have been inclined to claim that the Imperial Aulic Council was the closest thing to a central government the Holy Roman Empire had.<sup>21</sup> While that may be hyperbole, it stands that the Aulic Council was certainly one of the more efficient tools for member polities of the Empire to bring their cases to the attention of the highest levels of Imperial power, and it was no doubt for this reason that the City of Hamburg, from 1670 onward, decided to bring so many of its troubles before the Aulic Council in search of amelioration.

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19 *AdRHR*, “Antiqua” 1, Akte 263, 18/1, para. 9. contains an example of said “complications.” The matter is discussed in much more detail later in this paper.

20 Siegrid Westphal, “Does The Holy Roman Empire Need a New Institutional History?” in Evans, Schaich, Wilson, eds., *Holy Roman Empire*, 90-91. See also Auer, “Role of the Aulic Council”, 69.

21 Auer, “Role of the Aulic Council”, 72.

### Hamburg, Pride of the Elbe

“Hamburg, situate [sic] upon the Elbe, where the reflux of the Sea make [sic] a good Port, is one of the richest Cities in Germany, the greatest in Vandalia, and the best fortified in Europe. It doth ordinarily maintain a thousand Soldiers; and for a time of necessity it hath 15,000 Burgers listed in fifty Companies. Trade is exceedingly quick there, by reason of the river which joins it to the Sea, and a multitude of Portuguese Jews who have liberty of conscience there.”

-Louis Dumay, *The Estate of the Empire*.<sup>22</sup>

The Free and Hanseatic Imperial City of Hamburg was one of the greatest mercantile centres in Europe by the end of the 17<sup>th</sup> century.<sup>23</sup> Even as the Hanseatic League withered away in the mid-century, Hamburg's merchants ensured that the city maintained close links with the Atlantic trade and served as a major distribution channel for English goods on the Continent. It had also escaped the Thirty Years' War relatively unscathed, and was by this time one of the largest cities in Germany, with approximately 60,000 residents in 1680.<sup>24</sup> This impressive growth was fueled in no small part by Hamburg's rather liberal citizenship laws; as wars and religious persecution blazed across Europe, Hamburg's population had taken in many refugees and effectively integrated them into the social, economic, and cultural life of the city.<sup>25</sup> Indeed, Whaley unabashedly states that “[b]y 1700, Hamburg had become an economic and cultural centre of unrivalled importance in Germany and comparable only with such great cities as London and Amsterdam.”<sup>26</sup> Yet for all this, it remained a deeply troubled city.

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22 Louis Dumay, *The Estate of the Empire: or, an Abridgment of the Laws and Government of Germany*. (London: J. Macock, 1676), 263-264.

23 This exalted position only makes the considerable shortage of accessible modern academic works on the history of Hamburg in English all the more curious. A strange oversight, and one that forces the English-language scholar to pick scraps out of other works or fall back on old sources of questionable scholarly rigour.

24 Joachim Whaley, *Religious Toleration and Social Change in Hamburg 1529-1819* (New York: Cambridge University Press, 1985), 10. “Flemings, Walloons, Portuguese, Jews, Huguenots” are just some of those mentioned.

25 Ibid, 30-31.

26 Ibid, 10.

Hamburg during this time frame faced major problems from without and within. While there were the previously-mentioned border tensions with Celle, the real external peril was Denmark. The Danish monarchy entertained designs of bringing Hamburg under its suzerainty during the Thirty Years' War, and continued its plotting throughout the closing decades of the century.<sup>27</sup> In response to this, Hamburg struck a careful policy of neutrality: while a Free Imperial City and thus a member of the Holy Roman Empire, Hamburg exercised enormous latitude in its foreign affairs and strove for an amenable balance between Swedish, Dutch, English, Danish, and Imperial interests in a fashion that ensured the security of Hamburg's territorial and mercantile concerns alike. However, as we shall see, it was the Empire which took upon itself the primary burden of being Hamburg's guarantor of safety.

Hamburg's internal troubles were perhaps even more perilous than its foreign affairs. Despite the many religious minorities within the city – Jews, Catholics, Calvinists, and Anabaptists being the most notable – only Lutherans were legally allowed to hold office, and frictions between Lutheran factions and all other parties were always under the surface. On top of the religious troubles, the city's political life had become deeply polarized by this period. Broadly speaking, Hamburg was ruled by two bodies: the *Bürgerschaft* representing the formal landed citizenry of the city, and the Senate which was selected from amongst the merchants and skilled academics. High levels of debt and general stresses on trade brought about by the Thirty Years' War and Westphalian reparations payments brought the two bodies into conflict over their exact positions and

<sup>27</sup> *AdRHR*, "Antiqua" 1, Akte 196, 12/5c, para. 9. The aforementioned case dating back to 1618 in front of the Chamber Court was an appeal by Denmark regarding its claims to the city of Hamburg. One wonders if there was more than mere bureaucracy behind the considerable sloth which which the appeal was handled. Might political concerns also have ground the process to a halt?

authorities vis-a-vis one another.<sup>28</sup> Ultimately this was a battle that the *Bürgerschaft* won, and the end result would be the establishment of a virtual popular dictatorship from 1684 to 1686. Combined with a handful of guild riots, Hamburg's civic life during the twilight of the 17<sup>th</sup> century looked very troubled indeed.

How did the city cope with these extreme stresses? Hamburg's position as a Free Imperial City placed it in an interesting position within the Holy Roman Empire. As a Free City, it was subject to neither feudal Prince nor secularized Archbishop; rather, in all matters beyond the city's competence, it appealed directly to the Emperor without having to first meander through regional courts and nobles. As most Imperial petitions for redress went through the Aulic Council, it is perhaps inevitable that the Council became deeply involved in attempts to restore some semblance of security and stability to Hamburg. In these efforts, the Aulic Council would utilize every resource available to it, and ultimately prove successful in achieving its goals of bringing a measure of tranquility to the city despite some initial difficulties.

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28 Whaley, *Religious Toleration*, 16. One of the terms of the Treaty of Westphalia was that Sweden would receive reparations from the Empire, ostensibly to pay for the upkeep of Swedish troops stationed in Imperial territory to enforce the terms of the peace. Whaley implies – it is not stated clearly – that the burden of these indemnities was spread out across the polities of the Empire. These were not the only reparations and indemnities contained in the Treaty; certain other payments to Imperial polities were including. See Art. 21 of the Treaty of Westphalia for payments to the Palatinate for one example.

**Celle and Civil Strife: The Aulic Council and Hamburg's Imperial Affairs**

“After 1650 they erupted into a virtual civil war; a hopeless and violent deadlock ensued...”<sup>29</sup>

In the available “Antiqua”, Hamburg appears to have major ongoing complaints with only one other member polity in the Empire: Celle. Unfortunately for Hamburg, Celle was also their Circle leader in the Lower Saxon Circle. The frictions dated back to 1645, when Friedrich V, Duke of Celle, began constructing fortifications roughly a mile from Hamburg. While this would probably have been sufficient cause for any Imperial polity to grow somewhat nervous, Hamburg's major complaint was that this was an infringement of an Imperial prerogative granted to them by Ferdinand I: no “foreign” fortifications could be built within two miles of the city. Hamburg's initial attempts to negotiate with Friedrich V were fruitless, and so the matter was brought before the Aulic Council. The Emperor, Leopold I, dispatched an order to the Duke of Celle ordering the cessation of construction.<sup>30</sup> This appeared a clear-cut case: one polity infringed upon the prerogatives of another; the Aulic Council ruled in favour of the aggrieved party; notices were sent out and compliance was acknowledged.

The only hiccup was that twenty years later, the new Duke of Celle – Christian Ludwig – resumed construction. The Aulic Council's frustration with the situation is almost palpable in the ensuing *Akte*. Not only was Christian Ludwig attempting to build fortifications that were clearly banned in 1645, but his response to a separate Chamber Court proceeding on the matter was to accelerate his construction program.<sup>31</sup>

<sup>29</sup> Whaley, *Religious Toleration*, 13.

<sup>30</sup> *AdRHR*, “Antiqua” 1, Akte 229, 15/9.

<sup>31</sup> *Ibid.* The *Antiqua* do not discuss any other details regarding the Chamber Court case on Celle's fortification program; only that such a case existed and was investigating the matter separately. As mentioned previously, technically such duplication of cases between the Aulic Council and the Chamber

Furthermore, there was talk that these emplacements were firing shells at a nearby Hamburg shipyard. Hamburg sought a *mandata sine clausula* for the destruction of the fortifications, restitution for the infringements upon its trade, and payment of a penalty for violating the city's prerogatives on multiple occasions; a *mandata sine clausula* was a legal mandate “without condition”, meaning that the accused had no right of disputation or appeal. The Aulic Council agreed with Hamburg's recommendations and, acting on the Council's suggestions, the Emperor reaffirmed the 1645 injunction on fortification construction.<sup>32</sup>

Both of these cases are, comparatively speaking, relatively straightforward. We have no record of disputations or contradiction from Celle, and Hamburg is found “in the right” with minimal contemplation. Despite that, these cases took some amount of time to come to completion: *Akte* 231, dealing with Christian Ludwig's resumption of abuses, is timestamped “1661-1671”, and even if the upper end of that case duration is simply waiting for the final execution of the edict (namely tearing down of fortifications and payment of reparations), dated notes within the case file suggest that the matter was being discussed before the Council from 1663 to 1665 at the very least.<sup>33</sup>

More seriously, we have no record of whether Christian Ludwig actually did comply with the *mandata sine clausula*, but considering the lack of subsequent cases on the topic and the appointment of Celle to act as one of the Emperor's primary agents in

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Court was discouraged, but it happened anyway.

<sup>32</sup> *AdRHR*, “Antiqua” 1, *Akte* 231, 15/11.

<sup>33</sup> *Ibid*, paras. 7 and 11. Paragraph 7 points out that as of 1665 one of the Hamburg supplicants in the case, Tobias Sebastian, had died and any legal correspondence on the matter was now being handled by a Persius Ferdinand who held power of attorney for Sebastian's estate. Paragraph 11 mentions a February 16, 1663 discussion within the Aulic Council that was discussing a one-month extension to the compliance time frame on account of some attestations from Count von Thurn-und-Taxis, who was entrusted with the handling of all Imperial correspondence.



the subsequent “Nicholas Krull Affair”, we may infer that the Aulic Council and the Emperor felt that at that point, Celle could fulfill its role as leader of the Lower Saxon Circle, and could be trusted to handle sensitive affairs regarding Hamburg. It seems unlikely that such a decision would be made if there were outstanding *mandata* against Christian Ludwig. This trust proved to be somewhat misplaced; Celle handled aspects of the “Krull Affair” very poorly indeed. Whether this was incompetence, poor judgement, or willful sabotage is something that cannot be discerned from the available archival material alone, but it shows one of the very human limitations of the Aulic Council, and indeed, of any judicial system: compliance could be enforced, but feelings of aggrievement were not so easily set aside.

The tale of Nicholas Krull serves as an excellent introduction to the civil strife plaguing Hamburg in the latter half of the 17<sup>th</sup> century. As mentioned earlier, the Hamburg constitution of the era divided the city into two rough bodies: the *Bürgerschaft* representing the citizenry, and the Senate elected from the upper ranks of the merchants and legal-scholarly professionals. The “directing body” of the *Bürgerschaft* was a group called the *Oberalten*, which was originally comprised of the city's senior parish deaconry, but ultimately was primarily represented by merchants.<sup>34</sup> In 1663 the *Oberalten* and the *Bürgerschaft* jointly used accusations of corruption in recent Senate elections to enforce new electoral requirements upon that political body. These new rules for the Senate imposed maximum durations for unfilled Senate seats and required that no fewer than twelve Senators had to have formally studied law, amongst other things. However, “[t]he

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34 Whaley, *Religious Toleration*, 14 provides a competent brief summary of the evolution of Hamburg's political system. Also Mary Lindemann, *Patriots and Paupers: Hamburg, 1712-1830* (New York: Oxford University Press, 1990), 21.

satisfaction caused by the Senate's assenting to this regulation was but transitory."<sup>35</sup>

In 1666 tensions reached a new high as Hamburg's *Bürgerschaft* insisted upon its right to investigate, purge, and try corrupt magistrates and judges. The Senate resisted this attack upon its prerogatives, but this defiance crumbled in the face of continued pressure. The *Bürgerschaft* appointed 52 deputies to investigate irregularities.<sup>36</sup> Amongst the victims of these trials was one of Hamburg's three mayors, Peter Lütcken.<sup>37</sup> He petitioned both the Chamber Court and the Aulic Council for redress, and Leopold I responded by repealing the charges against Lütcken and dispatching a personal representative, Johann Gabriel von Selb, to Hamburg in order to investigate the matter and bring about a resolution. Von Selb's mandate was to convince the 52 deputies to cease their detailed investigations and drop any outstanding charges in exchange for promises of an independent judiciary, even if this meant waiving Lütcken's claims for restitution.<sup>38</sup> However, these negotiations failed: the "Antiqua" give no reason for the failure, but Dathe claims that negotiations broke down because von Selb's intervention was interpreted as Lütcken attempting to undermine the right of Hamburg's citizenry to carry out justice as it deemed necessary.<sup>39</sup>

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35 M.A. Dathe, *An Essay on the History of Hamburg from the Foundation of that City to the Convention between the Senate and Burghers in the Year One Thousand Seven Hundred and Twelve* (London, 1766), 327-328, 330 for quotation. See also Whaley, *Religious Toleration*, 17.

A note on the usage of Dathe: as is common for 18<sup>th</sup> century works, his *Essay* lacks any sort of academic citations. Furthermore, more information on the life and background of M.A. Dathe has not been forthcoming. This makes his testimony, in and of itself, suspect; we cannot contextualize it. What makes Dathe usable with some confidence is this: on any point that is also covered by Whaley and the *Antiqua*, both of which are far more "academically reliable", there is no serious discrepancy. As Dathe proves consistently accurate on the major points, it stands to reason that we may also trust his handling of the details enough to consider his coverage reliable.

36 Dathe, *History of Hamburg*, 330-331.

37 Hamburg's constitution called for the mayorship to be held jointly by three individuals.

38 *AdRHR*, "Antiqua" 1, Akte 239, 17/1, paras. 9 and 11.

39 Dathe, *History of Hamburg*, 332-333.

Not willing to let the matter rest there, the Emperor directed the Aulic Council to issue a new mandate for the resolution of Hamburg's judiciary crisis. In late 1666 the Council dispatched Baron von Lützow to act as its commissioner. Lützow was instructed to attempt to negotiate the same deal as von Selb: guarantees of a reformed independent judiciary in exchange for an end to the *Bürgerschaft's* ongoing inquiries. In the case of the accusations against Lütcken, a compromise settlement was to be brokered. *Akte 239* tells us no more about the success of von Lützow's mission, although it is stated that in 1668, he was recalled. In his stead, deputations from Celle and Brandenburg-Prussia were instructed to take over the execution of the Imperial commission.<sup>40</sup> Dathe states only that in 1667 "the imperial commissary returned without success" and that "tranquillity seemed to be restored" to Hamburg in spite of this. The matter could, for the moment, be considered settled.<sup>41</sup>

Sadly, the peace would not last. New factional politics in Hamburg forced the Senate to issue proclamations in 1672 banning the "exciting of any tumult in the assembly of the people" and guaranteeing that any complaints regarding the conduct of the *Oberalten* would be investigated so long as they were presented in an appropriate fashion.<sup>42</sup> Whaley states that the *Oberalten* had been seeking to consolidate its position and powers since 1650, which brought it into conflict with the *Bürgerschaft* that it ostensibly represented. The 1672 flaring of tempers was an expression of popular distrust for these "representatives gone rogue".<sup>43</sup>

The Aulic Council decided in 1674 that a new intervention was necessary,

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40 *AdRHR*, "Antiqua" 1, *Akte 239*, 17/1, paras. 9 and 11.

41 Dathe, *History of Hamburg*, 333.

42 *Ibid*, 334-335.

43 Whaley, *Religious Toleration*, 17.

dispatching Count Gottlieb von Windischgrätz with a commission to do everything in his power to resolve whatever outstanding issues he could within the city. He negotiated revised payment schedules for Hamburg's Imperial financial contributions, sought to bring rioters to justice that had infringed upon Imperial sovereignty within the city, attempted to resolve a conflict with the city's brewers, and most importantly, strove to resolve the ongoing disputes between the *Bürgerschaft* and the Senate.<sup>44</sup> He proposed to curb the power of "the mob" in the city's proceedings by strengthening the Senate's hold over various magistracies and by breaking up guild monopolies. These proposed reforms proved extremely unpopular, and it was only after the *Oberalten*, of their own volition, took the new constitution before the Emperor for confirmation that the matter was deemed resolved from an Imperial perspective.<sup>45</sup>

At this point in time it is worth questioning why the Aulic Council opted to side with the Senate rather than the *Bürgerschaft*. None of the directly available sources give clear reasons for this, but Hughes and Auer give us some insight into why this may be so. Their works suggest that what the Aulic Council sought in the majority of its cases was balance – a negotiated settlement between claimants that restored equilibrium to their relationships. Auer states that "[t]here is nothing to suggest a biased policy which, on principle, favoured the power of princes, or the existing rights of Estates and subjects," while Hughes' coverage of the 18<sup>th</sup> century East Frisia and Mecklenburg cases show that the Aulic Council was prepared to defend the peasantry and provincial estates of Mecklenburg against their ruler's abuses, while in East Frisia it sought to curb the power

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44 *AdRHR*, "Antiqua" 1, Akte 241, 17/3.

45 Dathe, *History of Hamburg*, 336-337.

of the East Frisian Estates against their territorial prince.<sup>46</sup> To reiterate, the Aulic Council generally sought neither to destroy nor to exalt any particular faction in its territorial cases, but rather to restore upset equilibria. Whether this was out of reactionary sentiments (“the established order must be upheld”) or realpolitik calculations which postulated that polities trammled by their own internal checks and balances were less likely to oppose Imperial power is something that we cannot know for certain from the available sources, and indeed, probably changed over time depending on the Emperor and his appointees to the Aulic Council.

Regardless of the Council's rationale for choosing to support Hamburg's Senate versus its *Bürgerschaft*, the political fallout within the city was dramatic. The Senate shifted blame onto the *Oberalten*, claiming that it was their bringing of the revised constitution before the Emperor that saw the implementation of the much-reviled changes. Despite the *Oberalten*'s protestations, its entire twelve-man membership was subsequently suspended in 1777, which the Aulic Council felt was worthy of discussion but not intervention.<sup>47</sup> Heinrich Meurer, one of the new mayors of Hamburg, attempted to relax tensions by waiving criminal charges and seeing that “the people was prevailed upon to put up with their resignation, and grant them a general amnesty.”<sup>48</sup> Unfortunately, one of the deposed *Oberalten* felt that simple amnesty was not enough – a man named

46 Auer, “Role of the Imperial Aulic Council”, 72. See also Hughes, *Law and Politics* in general. Rudolf Vierhaus, *Germany in the Age of Absolutism* (New York: Cambridge University Press, 1988), 98-99 has a contrary opinion to Auer, suggesting that the Aulic Council maintained a rough policy of “siding with the underdog”. He believes that the Council's most successful endeavours were those where they protected territorial estates against their rulers. I would argue that the Aulic Council most frequently came down on the side of the estates because territorial rulers were often the stronger party by the 17<sup>th</sup> century and thus the ones most likely to disturb the status quo; the East Frisia case shows that the Council had no problems with cracking down on over-mighty estates when necessary.

47 Dathe, *History of Hamburg*, 338. See also Whaley, *Religious Toleration*, 17 and *AdRHR*, “Antiqua” 1, *Akte* 245, 17/7.

48 Dathe, *History of Hamburg*, 339. See also Whaley, *Religious Toleration*, 17.

Nicholas Krull.

We know very little of Krull's background, but what we do know is that he served as a Senator – the only artisan ever to do so<sup>49</sup> – after the purge of the *Oberalten*, and that in 1680 he approached the Aulic Council seeking restitution for “injuries”. The Aulic Council agreed that he had been wronged by his dismissal and the Emperor subsequently issued the city of Hamburg an injunction that Krull warranted restitution of his position and compensation for damages.<sup>50</sup> Hamburg's government refused to acknowledge these claims, and so began the standoff.

Despite the fact that Krull possessed mandates from the Emperor guaranteeing his reinstatement to the *Oberalten*, both Hamburg and the Aulic Council's representative in Hamburg, one John-Dietrich von Rondeck, shifted tactics in 1682 and attempted to reach a negotiated settlement that would see Krull compensated but not reinstated. However, this proved unacceptable to Krull, and he refused to accept such a compromise. It appears that Hamburg placed blame for this failure on the Emperor and his mandates, while the Aulic Council preferred to find fault with Krull's stubborn refusal to shift on the matter of restitution.<sup>51</sup>

During this time Krull attempted to appeal what he felt was a slander and defamation campaign against him by a man named Karsten Steckler, who spoke on behalf of the Hamburg *Bürgerschaft*. It was Krull's belief that Steckler's belittling during the ongoing negotiations was a major cause for the failure of Krull's case to make any

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49 Lindemann, *Patriots and Paupers*, 21. Krull was a brewer before he entered politics.

50 *AdRHR*, “Antiqua” 1, Akte 263, 18/1 and 19/1, para. 9. For Hamburg's take, Dathe, *History of Hamburg*, 339-340.

51 *AdRHR*, “Antiqua” 1, Akte 263, 18/1 and 19/1, para. 9.

headway, and sought a ruling on the matter.<sup>52</sup> The Aulic Council's response was to defer the matter to von Rondeck: if it proved impossible for him to reach a settlement between the two men, he was to determine the appropriate course of action.<sup>53</sup> We have no record of von Rondeck's conclusions, but this somewhat amusing sideshow to the broader dispute shows just what a range of topics the Aulic Council found itself dealing with: charges of petty slander alongside investigations into corrupt judiciaries and breaches of privilege.

At this point, one cannot help but notice a certain disconnect between events in Hamburg and the conduct of the Aulic Council. It must have been obvious to all parties that the city was unlikely to budge on the matter of reinstating Krull, and it appears that von Rondeck was fully conscious of that by his continued participation in negotiations with the city. Indeed, *Akte 263's* implication of blame regarding Krull's refusal to accept anything less than reinstatement suggests that even the Aulic Council had few illusions regarding the situation.<sup>54</sup> Despite this, the Aulic Council responded to the continued failure of negotiation by issuing further injunctions and mandates demanding Hamburg's compliance on the matter. It is difficult to discern what, exactly, the Council and the Emperor hoped to achieve with this two-faced approach to the situation: negotiating one moment, dictating the next. It should come as no surprise that all this resulted in a hardening of Hamburger opinion.

The city dispatched its own party to Vienna in order to represent their case before the Aulic Council, hoping to clarify the reasons behind its positions. The Hamburg

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<sup>52</sup> *AdRHR*, "Antiqua" 1, Akte 256, 17/18, para. 9.

<sup>53</sup> *Ibid*, para. 11.

<sup>54</sup> *AdRHR*, "Antiqua" 1, Akte 263, 18/1 and 19/1, para. 9.

commission was met with an Imperial order to leave and return to their city. The *Akte* states only that the Emperor had forbidden their delegation and would not listen to them; furthermore, the Hamburg magistrate behind the commission was issued with an Imperial decree demanding his resignation from office, as he was considered one of the leading reasons why negotiations had failed to date.<sup>55</sup> Dathe says only that “the Emperor did not think it proper to receive the solicitor of a divided city.”<sup>56</sup> The Hamburg *Bürgerschaft* responded by re-electing the magistrate, Heinrich Pohlmann, to office in 1683; this inspired the Emperor to threaten the city with a hefty fine for disobedience. Meanwhile, the Aulic Council decided that the current situation was untenable and requested the involvement of deputations from the neighbouring polities of Bremen and Celle in seeking closure to the ongoing dispute.<sup>57</sup>

Here we have a minor divergence of narrative. Dathe claims that for many Hamburgers, this was apparently the last straw and calls were made by the *Bürgerschaft* that Krull face immediate criminal prosecution. The Senate presumably realized the disastrous implications this would have for the ongoing negotiations and Hamburg's relationship with the Emperor in general, and called for the matter to be dropped. The *Bürgerschaft* conceded to the reinstatement of Krull, but first he would have to appear in person and be confined. Krull responded by fleeing to Celle. The latest deputation from the Aulic Council then arrived in the city and stated that the criminal proceedings against Krull must be ceased, but these claims were rejected by the *Bürgerschaft* and the Imperial commission refused. The Senate agreed to the *Bürgerschaft's* decision, and the Emperor

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55 *AdRHR*, “Antiqua” 1, Akte 256, 17/18, para. 9.

56 Dathe, *History of Hamburg*, 340.

57 *AdRHR*, “Antiqua” 1, Akte 256, 17/18, para. 9. Also mentioned in Dathe, *History of Hamburg*, 340-341.



responded with further threats of heavy fines.<sup>58</sup>

The Aulic Council's story is that after the dispatching of the Bremen and Celle delegations to Hamburg, the city's parishes conceded to the reinstatement of Krull. However, Pohlmann – that old nemesis of the Council – edited the terms of the restitution to include an appendix requiring that while Krull could be reinstated, he would have to face immediate prosecution for fiscal malfeasance. Understandably, Krull had reservations about this particular requirement, and requested that the Emperor overturn it. Hamburg's response was to claim that Krull had received his much-requested reinstatement and further negotiations were pointless, and subsequently rejected any further negotiation with the Imperial commission.<sup>59</sup>

While these two narratives have some minor frictions – what came first, the concession of reinstatement or the criminal charges? Did the deputations from the neighbouring polities assist or hinder negotiations? – they are hardly irreconcilable on the key point: Krull had won his “reinstatement”, but with strings attached that he considered unacceptable. In other words, the settlement was no victory at all. Even worse, even this backhanded concession resulted in considerable anger against Mayor Heinrich Meurer in Hamburg, who was forced to resign his position and placed under house arrest by a mob led by the populist “demagogues” Kurt Jastram, Jerome Snitger, and Pohlmann.<sup>60</sup> They also managed to acquire copies of some correspondence between the Aulic Council and

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58 Dathe, *History of Hamburg*, 339-340.

59 *AdRHR*, “Antiqua” 1, Akte 256, 17/18, para. 9.

60 Dathe, *History of Hamburg*, 340-341, also *AdRHR*, “Antiqua” 1, Akte 256, 17/18, para. 9. Jastram (an artisan) and Snitger (a merchant), “who had acquired a great reputation as zealous defenders of the people's liberties”, drew authority from their extremely strong popularity within the *Bürgerschaft*. “Populist demagogues” is perhaps too strong a phrase, but it is chosen on the grounds that Jastram and Snitger based their power and reputation on popular support and aimed it against the more socially circumscribed, “elite” elements of Hamburg's government. “Demagogues” is Dathe's word for them.

some of its representatives of the city, which was subsequently published throughout the city and used to fan anti-Imperial sentiment. Meurer fled his house arrest to neighbouring Celle and petitioned both the Emperor and the Duke of Celle for protection, assistance, and restitution.<sup>61</sup> Somewhat ironically, Meurer now found himself in a position comparable to Krull.

At this point, Celle took matters into its own hands. Its duke, George William, decided that negotiations could not continue so long as troublemakers like Jastram and Snitger were involved in the deliberations, and began plotting to kidnap them so that they could not influence further decision-making. At first Rondeck, still serving as a representative of Imperial interests in the city, was involved in the planning of this abduction, but George William wished to handle affairs himself and Rondeck subsequently withdrew his involvement. However, by this point, it was too late: several officers that Rondeck had been in contact with went ahead with the plan in early 1685. The kidnapping attempt failed, the responsible officers were put to death by Jastram and Snitger's confederates, and the populist faction within Hamburg used the disturbance to justify what amounted to a coup.<sup>62</sup>

61 *AdRHR*, "Antiqua" 1, Akte 256, 17/18, para. 9. Interestingly, Dathe makes no mention whatsoever of the leaked Aulic Council documents. Presumably such a development would have been considered a fairly major affair. Did the Aulic Council assign more weight to this leak in the development of subsequent events than the residents of Hamburg did? Without access to further sources – personal correspondence and the like – it is impossible to tell.

62 *AdRHR*, "Antiqua" 1, Akte 256, 17/18, para. 9. Also Dathe, *History of Hamburg*, 343-344 and Whaley, *Religious Toleration*, 17-18. Whaley mentions two kidnapping attempts – one in 1684 and another in 1685 – but there is no mention in either Dathe or Akte 256 of the 1684 attempt, only the March 1685 one. As a related aside, several subsequent *Akten* that came before the Aulic Council involved the settling of claims from the wives and parents of the executed officers who had failed to capture Jastram and Snitger. All claimed that they had paid extra fees to ensure that their kin would receive decent burials, but these promises were not made good on. The Aulic Council was requested to absolve the dead officers of any dishonour that may have befallen their names as well as the settlement of any questions involving burial fees and compensation for lost support revenues. These are yet more examples of the range of topics brought before the Aulic Council, and also a tragic reminder of the potential human cost of power politics. *AdRHR*, "Antiqua" 1, Akten 257-259, 17/19 through 17/21.

The situation could now rightfully be considered an unmitigated disaster. What had begun as a dispute over one member of the *Oberalter's* dismissal had now become a populist putsch within Hamburg. Celle only degraded the situation – already brought to this point by George William's heavy-handed conspiring – by invading and occupying some of Hamburg's outlying territories as punishment for the executions. Even worse, these occupations were made without Celle receiving an Imperial ordinance to do so. Such bald-faced military intervention caused the last, desperate round of Rondeck's negotiations with the city to fall through.<sup>63</sup> Even worse, it caused Jastram and Snitger to seek outside assistance against Celle's troops, and a devil's deal with Denmark was struck: submission of the city to the Danish crown in exchange for protection from Imperial forces. With this, an internal affair of the Holy Roman Empire promptly became an international affair that threatened war between European powers.

In terms of handling Hamburg's internal affairs, the Aulic Council's track record during the latter half of the 17<sup>th</sup> century was, ultimately, less than stellar. While it was certainly able to deal with frictions between Celle and Hamburg on the siting of fortifications with some degree of efficiency, it proved consistently unable to reconcile the disparate factions within Hamburg with one another for any length of time. This was certainly not for lack of trying: multiple deputations were sent and considerable effort was expended to resolve Hamburg's internal contradictions, but the end result was insurrection and collaboration with foreign powers. It would be several more decades before the Aulic Council found lasting success.

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<sup>63</sup> *AdRHR*, "Antiqua" 1, *Akte* 256, 17/18, para. 9. The Emperor and the Aulic Council were understandably outraged by what they felt were the unlawful executions of the attempted kidnappers, but were willing to grant amnesty if the city accepted the Imperial commission into the city once more and agreed to abide by its rulings. Suffice to say, this offer was rejected.

**The King in the North: Denmark, the Imperial Aulic Council, and Hamburg**

“The way was open to a new assertiveness in Danish foreign policy...”<sup>64</sup>

Describing Hamburg's relationship with Denmark as “rocky” would be an understatement. As recently as 1603 the city had been forced into accepting Danish suzerainty; in 1618 the Imperial Cameral Court ruled that Hamburg was rather a Free Imperial City and thus could not be subject to the Danes.<sup>65</sup> Thus began decades of Danish plotting to reassert authority over the wealthy trade city. While much of the plotting was unsubtle – clearly-stated demands for Hamburg's submission – other aspects of it revolved around attempting to undermine Hamburg's authority and prosperity. The Aulic Council dealt with both kinds of cases.

An example of this “undermining” was Hamburg's relationship with the neighbouring Danish town of Altona. In 1664, King Frederick III of Denmark issued Altona with a town charter that Hamburg felt granted Altona new rights that violated both the privileges of the Empire (in that an ostensibly Imperial town was being granted rights and freedoms by a foreign monarch) and Hamburg's own commercial prosperity (in that it enabled Altona to compete with Hamburg in matters of trade).<sup>66</sup> Hamburg's response was to petition the Aulic Council in hopes of a cessation mandate. Denmark responded by claiming that the new town charter only confirmed extant rights and practices, and that as

64 Robert L. Frost, *The Northern Wars, 1558-1721* (Toronto: Pearson Education, 2000), 198.

65 Ibid, 136.

66 Altona's position was complicated. It was in Schleswig-Holstein, which was simultaneously a Danish and Imperial territory. The amalgamation of Schleswig and Holstein into one unified territory by the 1460 Treaty of Ribe established the King of Denmark as both the Duke of Schleswig and the Count of Holstein. Prior to this, Schleswig had been a Danish territory; Holstein, an Imperial one. The joint province of Schleswig-Holstein maintained the nominal memberships and allegiances of its components. This also gave the King of Denmark some say in northern Imperial affairs; a situation comparable to the English monarchy's relationship with the Imperial polity of Hanover in the 18<sup>th</sup> century.

it did not in any way change Altona's position vis-a-vis the Empire, there was no breach of Imperial privilege. Rather, Hamburg's actions were a breach of established agreements between the city and the Danish crown, and that the Emperor should respond by rejecting Hamburg's claim.<sup>67</sup> However, this Danish petition was ruled inadmissible on what appears to be some bureaucratic grounds: it was not submitted in a timely fashion, or it failed to comply with established standards of communication with the Aulic Council.<sup>68</sup> As has been suggested earlier, this is perhaps not the first time that the Holy Roman Empire utilized bureaucracy to stall and undermine Danish claims in the area.<sup>69</sup>

The Aulic Council ruled in favour of Hamburg and, on behalf of the Emperor, issued a mandate to Denmark requesting that it satisfy Hamburg's concerns within two months. The Danish crown apparently did not respond kindly to this infringement upon what it considered its rightful authority, and Frederick III apparently disseminated some letters that the Aulic Council considered potentially libelous towards Imperial authority and prerogative. The Council discussed the matter at some length, and came to the conclusion in 1667 that while the letters were without legitimate grounds and that the Danish representative in Hamburg that was serving as the Aulic Council's liaison should be forced to receive the Council's demands, Danish conduct would not be considered directly insulting to the Imperial majesty. However, it would not submit another complaint to Denmark without the Emperor confirming the appropriate course of action, as matters of foreign affairs lay solely within the Emperor's prerogative.<sup>70</sup>

The Aulic Council reiterated in 1668 its demands that Denmark comply with

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67 *AdRHR*, "Antiqua" 1, Akte 235, 16/2, para. 9.

68 *Ibid*, para. 11.

69 *AdRHR*, "Antiqua" 1, Akte 196, 12/5c, para. 9.

70 *AdRHR*, "Antiqua" 1, Akte 235, 16/2, para. 11.

Hamburg's complaints within a three-month period, and proceeded in 1669 to arrange an Imperial commission to handle the Altonan matter as well as border disputes and questions of Imperial immediacy in Hamburg. Brandenburg-Prussia (later Bremen, as Brandenburg had many outstanding disputes with Hamburg over Elbe trade that the city felt made Brandenburg an unreliable party in these negotiations), Celle, Nordhausen, and Sweden were all represented in this commission, the latter by Hamburg's specific request and no doubt indicative of the city's aforementioned careful diplomacy with many of its neighbours.<sup>71</sup>

As a result of this commission it was decided to drop the Altonan charges against Denmark, although, as usual, the final decision rested with the Emperor. Hamburg protested this decision and refused to accept it. However, the Danish representative in the case also refused to accept any judgements or rulings being passed down by the Aulic Council – presumably on grounds of infringing upon Danish royal prerogative and privilege – and thus the case remained an open question. The matter was deferred to the Emperor as to whether the proceedings should continue or a new commission should be assembled; here the Akte ends and we are not told what Leopold's final decision was.<sup>72</sup>

In this turn of events we see one of the real weaknesses of the Aulic Council in any negotiations with foreign powers: while it was one thing for a king like Frederick III to agree to a brokered treaty with the Holy Roman Emperor, it was quite another to subject oneself to Imperial justice. Such a course of action could be construed as submission to the Empire, and thus wholly out of step with their own perceived

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71 Ibid.

72 Ibid.

prerogatives. These reservations, however, did not keep Denmark from submitting its own requests and complaints to the Aulic Council; a hypocritical stance, to be certain, but also one that implicitly acknowledges that going through the Aulic Council was a practical way to negotiate certain outstanding issues.

The next decade saw Hamburg repeatedly petition the Aulic Council and the Emperor for guarantees of security. In 1671 Hamburg and Lübeck submitted a joint request to the Aulic Council claiming that “some parties” – none explicitly mentioned – intended to use force of arms to resolve outstanding disputes rather than submit to Westphalian arbitration.<sup>73</sup> While the Aulic Council found the lack of clearly-stated “aggressors” problematic and prejudicial to forming a well-reasoned response to the petition, it was decided that the Aulic Council and the Emperor would appeal to the Lower Saxon Circle, Sweden, Bremen, Brandenburg-Prussia, Hildersheim, and Magdeburg for guarantees of Hamburg's security against any possible aggressor. The Emperor also promised his direct intervention in matters if the situation required, and demanded that under no circumstance should Hamburg swear any oaths of fealty or submission to Denmark upon pain of a fine. The Aulic Council recommended that Rondeck draw up a summary of Danish breaches of Imperial privilege in ongoing disputes with Hamburg in order to enable more comprehensive legislation against the Danish crown; Leopold I agreed to this suggestion.<sup>74</sup>

In 1672, 1679, and again in 1683 Hamburg submitted requests to the Aulic Council seeking further confirmation of Hamburg's security against Danish aggression.

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<sup>73</sup> *AdRHR*, “Antiqua” 1, Akte 197, 12/5d, para. 9.

<sup>74</sup> *Ibid*, para. 11.

One of the 1672 submissions involved Danish fortifications being built on the Elbe, while the 1679 request revolved around Hamburg's concerns regarding a buildup of Danish and Prussian forces on its borders as a result of the ongoing Scanian War.<sup>75</sup> The 1683 petition was simply that Hamburg felt threatened by ongoing war threats from neighbouring parties and that the city wished for the Emperor to guarantee the safety and security of the city.<sup>76</sup> Taken together, this group of *Akten* show that the city of Hamburg had deep concerns about its security from Danish aggression during the 1670s and 1680s, and that it sought Imperial protection as a matter of course.

Hamburg was right to nurse such concerns. As the intense civil strife surrounding the "Krull Affair" consumed Hamburg, Danish representatives made both threats and overtures to the city. In 1685 a report came before the Aulic Council from one Franz-Heinrich von Fridag that there were rumours flying around Hamburg that certain elements in the city were actively courting Danish protection and seeking the installation of an 800-strong Danish garrison in the city as security, presumably against the threat of Celle's aggression. Furthermore, it was suggested in the report that the Danish chancellor in Hamburg was openly offering substantial "inducements" to those politicians who would support Danish aims.<sup>77</sup> As these were just unconfirmed rumours, there was nothing the Aulic Council could act upon. Denmark's intentions became clear soon enough.

In 1686, during the height of the Jastram-Snitger pseudo-dictatorship in Hamburg,

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75 Hamburg's dispute with Denmark's fortification of certain Elbe islands: *AdRHR*, "Antiqua" 1, Akte 250, 17/12. Concerns about intentions of Scanian War forces: *AdRHR*, "Antiqua" 1, Akte 254, 17/16. An interesting note regarding the Elbe fortification matter is that Denmark defended its efforts on the grounds that Hamburg was a hereditary holding of Denmark, and territorial rulers had the right to fortify their own lands as they deemed appropriate, thus bypassing the Imperial ban on fortifications in the vicinity of Hamburg.

76 *AdRHR*, "Antiqua" 1, Akte 255, 17/17.

77 *AdRHR*, "Antiqua" 1, Akte 260, 17/22.



the Danish ambassador to the Imperial court protested Hamburg's continued failure to swear an oath of fealty to Denmark, which the Danish crown felt was owed to it on grounds of the 1603 "agreement". The ambassador then requested that either the Emperor issue a mandate against the city, or that he utilize the Aulic Council representatives in the city to induce its residents to comply with Danish demands. Shortly afterward – before such claims could be weighed before the Aulic Council – Denmark openly invaded Hamburg's hinterlands, seizing trade ships upon the Elbe and placing Hamburg itself under threat of siege.<sup>78</sup>

The Emperor was outraged by the Danish aggression, and immediately sent out a call to the Lower Saxon Circle and Brandenburg-Prussia to relieve the city. Danish forces withdrew before any fighting could ensue, but the affair caused the utter collapse of Jastram and Snitger's position within Hamburg: according to Dathe, the Danish bid for dominion over the city galvanized the residents of Hamburg to "sacrifice everything for the preservation of their liberty." Heinrich Meurer, still in Celle, was reinstated in his mayorship and began a reconciliation process, offering a general amnesty with a few important exceptions. Jastram and Snitger were imprisoned, tried as traitors to the city, and executed in October 1686.<sup>79</sup> Henrich Pohlmann, who was amongst the conspirators, fled to Glückstadt in Holstein and refused to answer the Aulic Council's court summons. Despite admonitions to King Christian V for harbouring a fugitive and the issuing of orders to the members of the Lower Saxon Circle to detain Pohlmann if the opportunity presented itself, Pohlmann was never brought to Imperial justice.<sup>80</sup> An uneasy peace

78 *AdRHR*, "Antiqua" 1, Akte 265, 19/3, paras. 9, 11.

79 Dathe, *Essay on the History of Hamburg*, 344-345, also Whaley, *Religious Toleration*, 18 and *AdRHR*, "Antiqua" 1, Akte 263, 18/1 and 19/1, para. 9.

80 *AdRHR*, "Antiqua" 1, Akte 277, 19/15.

settled over the region.

Although Denmark made various threatening gestures over the coming years, it never again attempted a *coup de main* like in August 1686. A war scare in 1688 that saw Imperial orders issued to the Lower Saxon Circle to raise a force of infantrymen and dragoons came to nought, and Hamburg enjoyed several years of relative internal tranquility.<sup>81</sup> While the Danish threat remained, which informed the Aulic Council's handling of subsequent affairs in Hamburg, it was not until 1801 would Denmark make another direct move on Hamburg. War with the Holy Roman Empire and its allies was simply an untenable proposition for the modestly-endowed kingdom.

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<sup>81</sup> Denmark had begun massively expanding and fortifying an arsenal in the Holstein town of Oldesloe. Hamburg and Lübeck were so intimidated that they did not seek Imperial assistance; the Aulic Council and the Emperor opted to impose upon the situation. Saxony, Brandenburg-Prussia, and the Lower Saxon Circle were all called upon to defend Hamburg and Lübeck if necessary. *AdRHR*, "Antiqua" 1, Akte 250, 17/12.

### Peace at Last

“It shall be a fundamental and irrevocable law, that the senate and the people in a body, jointly possess the sovereign power, so that the resolutions of the one shall not bind the other, before the unanimous and voluntary consent of both. Whoever shall presume to attack this law by word of mouth or in writing, to be prosecuted as guilty of high treason.”

-1712 Constitution of Hamburg.<sup>82</sup>

Hamburg was wracked by one last major round of civil dissent after the Danish siege of 1686: clashes between orthodox and pietist Lutherans turned into popular violence in 1693. A full investigation into this affair, while certainly very instructive and valuable for the understanding of Hamburg's inner politics, is beyond the scale and scope of this paper.<sup>83</sup> Suffice to say that the new round of tensions brought about a near-total collapse of authority in Hamburg, much as the “Krull Affair” had done. The Aulic Council feared that Denmark would attempt to take advantage of this situation as well, and forcefully intervened by ordering the deployment of Imperial and allied troops to the city in order to keep the peace while a new constitution was negotiated between the factions in Hamburg and Imperial representatives.

In 1712 the new constitution was finally promulgated, and it was generally considered to be a good constitution by the standards of the time: powers and responsibilities were clearly delegated between the Senate and the *Bürgerschaft*, the *Oberalten* was established as permanent guarantors of the constitution in a fashion not unlike the Roman Tribunes of the Plebs, and new property qualifications for the *Bürgerschaft* curtailed the power of the mob.<sup>84</sup> Hamburg enjoyed considerable civic

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82 As presented in Dathe, *History of Hamburg*, 393.

83 Whaley covers the matter adequately in *Religious Toleration*.

84 Chapter 16 of Dathe's *History of Hamburg* reprints the 1712 constitution in its entirety, while Whaley quickly and concisely summarizes the major innovations in *Religious Toleration*, 19-21.

stability after 1712; even in the face of a 1728 attempted coup and guild riots in 1753 and 1791, the body politic respected the rule of the constitution and put down all attempts to upset the established order. It was not until the French occupation of Hamburg in 1806 that the 1712 constitution was overturned.<sup>85</sup>

So how does the Aulic Council ultimately rate in the handling of Hamburg's "time of troubles"? Certainly, its handling of the "Krull Affair" was decidedly suboptimal. Presiding over a dispute regarding the dismissal of a politician escalating into a coup by populists and the subsequent attempted invasion of the city by Denmark cannot be considered a success by any stretch of the imagination. With that said, no small portion of the blame for that can be placed upon the shoulders of Celle for deciding, of its own volition, to escalate the situation with kidnappings and occupations without clear Imperial orders to do so. Whether Celle chose to mismanage the situation as "punishment" for previous disputes with Hamburg, or if the Duke of Celle was simply that impetuous, cannot be discerned from the available sources. It stands however that Celle's conduct led to the most troublesome developments in the affair and that the Aulic Council cannot be wholly blamed for them.

When we look at the Aulic Council's role in acting as guarantors of Hamburg's security against outside influences, its track record is much better. The city's many concerns regarding its security were always treated with the utmost seriousness, Hamburg's neighbours and the Lower Saxon Circle were frequently involved by the Council in the maintenance of the city's peace, and the Aulic Council was tireless in

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<sup>85</sup> Whaley, *Religious Toleration*, 21-22. He suggests that the general popularity of the 1712 constitution rested upon the fact that it contained enough checks and balances that any faction could effectively thwart the others if it was deemed necessary. This did not make for swift or responsive legislation, but it made for a stable government.

arguing against Denmark's claims on Hamburg. While the latter point may be seen as simple territorial aggrandizement on the part of the Holy Roman Empire, it stands to fact that in August 1686, when the citizenry of Hamburg was faced with the very clear choice between submission to Denmark or continuing to be a part of the Empire, it declared overwhelmingly for the Imperial cause and spared no time in petitioning the Emperor and the Aulic Council for aid.<sup>86</sup> Hamburg wanted to be part of the Empire – at least more than it wished to be a subject of Denmark – and the Aulic Council was unflinching in its determination to ensure that in this matter, its wishes were fulfilled.

Ultimately, one must consider the role of the Holy Roman Empire relative to its member polities. By the 17<sup>th</sup> century, the Empire had well and truly given up on any designs of being a centralized, unitary German state. Rather it acted as a supra-state, a federation: in the spirit of the Perpetual Public Peace, guaranteeing peace and tranquility between polities.<sup>87</sup> If we weigh the Holy Roman Empire as a nascent post-1870 German Empire – an entity measured by its ability to mobilize national resources to leverage power against internal and external foes – then this embracing of decentralization must be considered a failure.<sup>88</sup> However, this is simply one definition of the role of the state. If we instead see the state as an entity which enables disparate peoples to cooperate and coexist within a relatively peaceful framework, then the conduct of the Aulic Council and the Empire as a whole appears far more positive. If we consider the Aulic Council's job in Hamburg to act as a government for the member polities of the Empire, then it was a

86 *AdRHR*, "Antiqua" 1, Akte 255, 17/17.

87 Luebke, "Documents on the Reform of the Empire." See also Friedrich Heer, *The Holy Roman Empire* (London: Phoenix Press, 2002), 213: "The Empire was not a monarchical state but a league of states formed from the Estates."

88 This is the traditional, "power state" interpretation of the Empire's failure. Hughes, *Law and Politics*, 11-19 is a reasonably comprehensive list of complaints against the Empire from this perspective.

failure. If we believe that its purpose was to act as a guarantor of member polities, then it was a success: Hamburg's continued existence as a sovereign entity was protected in the face of Danish aggression. It is Wilson's opinion that the ability of the Empire to protect its member polities against infringement by foreign powers was a direct result of the Empire's resurgent stability and strength in the late 17<sup>th</sup> century.<sup>89</sup>

It is also worth noting that in all of the Hamburg cases, the Aulic Council preferred negotiation to imposition. Even as the indictments were flying during the early stages of the "Krull Affair", the Aulic Council continued to seek a negotiated settlement with Hamburg's government rather than simply dictating terms, imposing fines, and utilizing force to enforce compliance. Even in the 1712 settlement where Hamburg was occupied by Imperial troops, this was more to ensure public order and discourage Danish opportunism than to override the city's will on the matter. The Aulic Council recognized that the polities of the Empire each had their own specific institutions, and that these needed to be respected if any truly binding settlements were to be reached. Whether such respect for particularism is to be considered a weakness or a strength is a question of personal belief, not absolute fact.

In this respect for difference and focus on reconciliation between factions within one larger body, the Aulic Council paved the way for entities such as the European Union and the United Nations and their ideals that disparate groups can work together to fulfill greater achievements without fully sacrificing their autonomy or independence. As

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<sup>89</sup> Peter H. Wilson, *German Armies: War and German Politics, 1648-1806* (New York: Routledge, 1998), 59. "Significantly, these encroachments stopped as the *Reich* revived, first, in respect to internal juridification in the 1670s, and later, more fully with the reforms of the early 1680s." Under this interpretation, Denmark's attempt in 1686 on the city has to be considered in the context of the Empire's concurrent wars against the Ottomans in the southeast and France in the west. Perhaps Denmark was hoping that the Emperor's attention would be elsewhere?

historians the temptation is always there to “read back” on history: to interpret past events as the inevitable predecessors of subsequent occurrences. Just because the Empire was dissolved in 1806 does not mean that this dissolution was a necessary or inescapable event, just as it does not mean that all merit in a contest rests with the victor; *vae victis*. The strength of the Holy Roman Empire – the strength of the Aulic Council – rested not in dictatorship but in coexistence. This put it out of step with the Age of Absolutism, but perhaps in our modern era we can find new respect for such beliefs and the institutions that upheld them.

Was the Empire moribund? As stated above, this depends on your definition of “moribund”. It possessed active institutions capable of resolving problems, and constituent polities actively sought the benefits of membership. It commanded loyalty from polities and a degree of respect on the international stage. As argued by many modern scholars – Wilson most notably – it was undergoing something of a political revival in the late 17<sup>th</sup> century. If it could enjoy a renewal of power and vigour then, why not at other times, assuming favourable circumstances? The “Borussian myth”, which posits German history as one long lead-up to unification under Prussia, is a teleological piece of pro-Unification propaganda, guilty of decontextualizing and misrepresenting the past.

Was the Empire perfect? No, it certainly had its range of shortcomings. Imperial resources were not adequate to fulfill ambitions, and the politically pluralistic structure made rapid reaction difficult. However, it also allowed hundreds of polities to coexist with a surprising degree of peace and stability, and it enabled minor entities to enjoy

independent existences on their own terms. "It is worth recalling a complementary Empire-State characterized not by power and expansion, but rather by legal freedom, legal security, and the capacity for non-aggression."<sup>90</sup> Every other political entity in Europe had its own trade-offs. France was certainly an impressive example of a unitary power-state, but its 1685 Revocation of the Edict of Nantes showed that it was, at the time, markedly inferior to the Empire in regards to religious toleration.

Decrying the Empire for failing to achieve things it never sought to do is a questionable pursuit. It is no less ridiculous than denigrating a cat for not being a dog, or declaring that apples are worthless because they are not oranges. After Westphalia, it did not seek to be a single, consolidated state. What it sought to be was an overarching unity between many disparate polities; a common ground of collaboration and exchange in which the territorial sovereignty of all parties could be ensured and respected. We must regard the Holy Roman Empire on its own terms; it must be judged on its ability to achieve what it set out to do rather than what we, in retrospect, think it ought to have been doing. In Hamburg, it sought to bring peace to a troubled city and protect it from Danish predations. It took decades, yes, but the Imperial Aulic Council was ultimately successful in this task. For at least one sliver of North Germany at the end of the 17<sup>th</sup> century, the Holy Roman Empire was functional, alive, and well.

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90 Georg Schmidt, "The Old Reich: The State and Nation of the Germans," in Evans, Schaich, and Wilson, eds., *Holy Roman Empire*, 62.



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