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# STATE-BUILDING, CONQUEST, AND ROYAL SOVEREIGNTY IN PRUSSIA, 1815–1871\*

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**ABSTRACT.** *Since Bodin, scholars have been debating whether sovereignty is indivisible or rather decentred, multiple, and shared. This article adds to practice-oriented conceptualizations of sovereignty, which acknowledge the existence of jurisdictional pluralism in nineteenth-century state-building. Borrowing from imperial history, it contrasts the nominal supremacy of the Prussian crown—as embodied by the monarchical principle—with the residual sovereign rights of potentates that had lost their lands in Germany’s successive wars of unification. The possession of ‘bare sovereignty’ allowed such mediatized princes and exiled rulers to maintain a presence in the lives of their former subjects. They did so by exercising privileges and functions of royalty which left vague in whose name was being governed. The Hohenzollerns for their part struggled (and to a certain extent proved unwilling) to assert exclusive dominion because right of conquest-based justifications had no firm standing in international law, alienated segments of domestic public opinion, and did not necessarily serve the interests of the state. The article argues, ultimately, that the resulting negotiation and contestation of monarchical sovereignty in Prussia speaks to global themes of state-building through state destruction in the Age of Empire.*

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Five years before his death in 1881, the Swiss-German pioneer of international law Johann Kaspar Bluntschli published his thoughts on the genesis of the modern state. Summarizing the intellectual yields of a fifty-year career, he posited in *Lehre vom modernen Staat* that sovereignty had become an exclusive good in the era of the nation-state. Unlike the middle ages, when monarchs had supposedly been the supreme proprietors of the whole land and subjects held their estates as fiefs, public law now adhered to the principle that the territory

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of a state was inalienable and indivisible. Consequently, it was ‘no longer possible to do as the mediaeval princes did, who sold, or pawned, or partitioned their domains as pieces of private property’.<sup>1</sup> This bold claim about the attainments of Western civilization seemed to be confirmed by the proliferation of international conventions like the 1856 Paris Declaration Respecting Maritime Law that recognized the sovereign character of signatory and acceding states.<sup>2</sup> Yet what Bluntschli left unsaid was that the emerging frameworks of international law reinforced another mainstay of nineteenth-century political history: conquest. In an era of imperial expansion, treaties hid asymmetries of power by affirming the equality of victors and vanquished on a symbolic plane. European powers established protectorates around the globe, which left suzerainty nominally in the hands of the weaker party, because they appreciated the benefits of jurisdictional grey-zones. Partnering up with local rulers reduced the need for expensive garrisons of occupation, obviated international resistance to outright annexation, and shored up the tenuous loyalties of new subjects.<sup>3</sup>

The contrast between the theory and practice of governance in the nineteenth century lends weight to recent efforts across different disciplines to rethink the plural and divisible applications of sovereignty as activity in relation to the unified and inseparable character of sovereignty as doctrine. The exercise of jurisdiction, James J. Sheehan usefully suggests in this context, ‘is best understood as a set of claims made by those seeking or wielding power, claims about the superiority and autonomy of their authority. State making, therefore, is the ongoing process of making, unmaking, and revising sovereign claims.’<sup>4</sup> This injunction usefully highlights that even the most asymmetric transfers of sovereignty through conquest are ultimately incomplete. Consider in this context Lauren Benton’s claim that in relegating indigenous leaders

<sup>1</sup> Johann Kaspar Bluntschli, *The theory of the state [Lehre vom modernen Staat]*, trans. Batoche Books (Kitchener, ON, 2000), pp. 202–3.

<sup>2</sup> See Jan Martin Lemnitzer’s insightful analysis of the Paris Declaration in *Power, law and the end of privateering* (Basingstoke, 2014).

<sup>3</sup> Jörn Leonhard, ‘Kommentar und Ausblick: Protektion und Protektorate im langen 19. Jahrhundert’, in Tilman Haug, Nadir Weber, and Christian Windler, eds., *Asymmetrische politische Beziehungen zwischen Partnerschaft und Dominanz (16. bis frühes 20. Jahrhundert)* (Cologne, 2016), pp. 445–50; Wolfgang Egner, *Protektion und Souveränität: Die Entwicklung imperialer Herrschaftsformen und Legitimationsfiguren im 19. Jahrhundert* (Berlin, 2018); Andrew Fitzmaurice, *Sovereignty, property and empire, 1500–2000* (Cambridge, 2014); Tanja Bühner, Flavio Eichmann, Stig Förster, and Benedikt Stuchtey, eds., *Cooperation and empire: local realities of global processes* (New York, NY, and Oxford, 2017); E. C. S. Wade, ‘Habeas Corpus – is a protectorate foreign territory?’, *Cambridge Law Journal*, 18 (1960), pp. 1–3.

<sup>4</sup> James J. Sheehan, ‘The problem of sovereignty in European history’, *American Historical Review*, 111 (2006), p. 3. See also Jens Bartelson, ‘On the indivisibility of sovereignty’, *Republics of Letters*, 2 (1 June 2011): <http://rofl.stanford.edu/node/g1>; Gregor Feindt, Bernhard Gißibl, and Johannes Paulmann, eds., *Kulturelle Souveränität: Politische Deutungs- und Handlungsmacht jenseits des Staates im 20. Jahrhundert* (Göttingen, 2017); and Wencke Meteling’s summary of the conference ‘The politics of sovereignty and globalism in modern Germany’ held at the German Historical Institute in Washington DC on 22–3 March 2019, *GHI Bulletin*, 65 (2019), pp. 139–45.

to a place of liminality in the edifice of European empires, '[i]ndeterminacy was being articulated as policy – even as a core principle of an imperial law based on divisible sovereignty' in the case of British India.<sup>5</sup> In the words of one British government official from 1875, defining where a ruling prince merged into a British subject at times seemed 'beyond the power of language'. Benton notes that in such a fluid environment paramountcy resided in the prerogative of the imperial power to decide when to let politics rather than the law speak. By the same token, the colonial state could also decide not to intervene in the affairs of conquered grandes, thus ensuring that they retained a minimalist or nominal modicum of 'bare sovereignty'.<sup>6</sup> The choice to leave Indian princes with trappings of bare sovereignty coincided with a path-breaking transition in international law away from universal natural law towards a positivist concern with custom. Thus, whereas the older rhetoric of universalism presumed the existence of a higher morality in all civilizations and states, positivist legal frameworks required more culture-specific forms of consent.<sup>7</sup>

Benton insists that European polities also preserved 'anomalous enclaves and loosely configured corridors of imperial control', yet this insight remains incidental to her work. Building on the historiographical convergence of German and global history in the last decade, this essay argues that Prussia, much like the maritime empires of Britain or France, experimented with sovereignty in the wake of conquest.<sup>8</sup> Twice the Hohenzollerns made territorial gains by force in the period under investigation, first in 1815 when they absorbed the lands of mediatized princes and again in 1866 when they annexed several of Austria's north German allies. Learning from Prussia's own experience of defeat and occupation at the hands of Napoleonic France in 1806, reform-minded statesmen such as Reichsfreiherr Karl vom Stein and Prince Karl August von Hardenberg promoted an ideology of 'enlightened nationalism' that aimed to 'reconcile a sovereign monarch with a politically active citizenry',

<sup>5</sup> Lauren Benton, *A search for sovereignty: law and geography in European empires, 1400–1900* (Cambridge, 2010), p. 258.

<sup>6</sup> *Ibid.*, pp. 256–60. See also Tanja Bühner, 'Cooperation and cultural adaptation: British diplomats at the court of the Nizam of Hyderabad, c. 1779–1815', in Bühner, Eichmann, Förster, and Stuchey, eds., *Cooperation and empire*, pp. 90–114; Saliha Belmessous, ed., *Empire by treaty: negotiating European expansion, 1600–1900* (Oxford, 2015).

<sup>7</sup> Antony Anghie, *Imperialism: sovereignty and the making of international law* (Cambridge, 2004), pp. 41–3. See also Martti Koskenniemi, *The gentle civilizer of nations: the rise and fall of international law, 1870–1960* (Cambridge, 2001), ch. 2.

<sup>8</sup> Benton, *A search for sovereignty*, pp. 279–80; Wolfgang Neugebauer, *Wozu preußische Geschichte im 21. Jahrhundert?* (Berlin, 2012), p. 58; Mark Hewitson, *Germany and the modern world, 1880–1914* (Cambridge, 2018); Jasper Heinzen, *Making Prussians, raising Germans: a cultural history of Prussian state-building after civil war, 1866–1935* (Cambridge, 2017); Christopher Clark, 'After 1848: the European revolution in government', *Transactions of the Royal Historical Society*, 22 (2012), pp. 171–97; Mark Tilsen, *Transnationalism in the Prussian east* (Basingstoke, 2011); Sebastian Conrad, *Globalisation and the nation in Imperial Germany* (Cambridge, 2010); H. Glenn Penny, 'German polycentrism and the writing of history', *German History*, 30 (2012), pp. 265–82.

as Matthew Levinger has put it.<sup>9</sup> Their proposed remedy for Prussia's heterogeneity was the development of a normative sphere where subjects could express concerns locally through consultative bodies in the expectation that the king would act as final arbiter. In this scenario, the right to rule derived from an implicit social contract between the monarchy and the people.<sup>10</sup> The revolutionary turmoil of 1848 broke down the last barriers to the establishment of a state parliament and even the promulgation of a constitution. While the granting of these concessions at the king's pleasure was hardly exceptional (Louis XVIII had done the same when he issued the *Charte constitutionnelle* upon his ascension to the French throne in 1814), historians have long debated whether the continuing affirmation of royal supremacy tempered by 'self-imposed' restrictions made Prussia's constitutional monarchy a distinctive, self-contained expression of sovereignty, or rather represented an intermediary stage on the road to parliamentary rule.<sup>11</sup> Recent scholarship attests to overlapping sources of metajudicial authority that defy a clear-cut answer.<sup>12</sup> Some historians, notably Frank-Lothar Kroll, see the expanding consultative role of parliament moving in step with other Western European countries, even though outright appeals to 'popular sovereignty' (*Volkssouveränität*) remained limited in German texts at the time.<sup>13</sup> Alternative explanations that emphasize the persistence of royal hegemony meanwhile fall short where they measure the decisions of the crown by the standards of twenty-first-century democracy, and naturally find them wanting.<sup>14</sup>

The present article proposes to re-examine the Hohenzollern dynasty's claim to leadership from a fresh angle. It does so by arguing that challenges to the monarchical principle before national unification in 1871 did not only come from liberal demands for greater parliamentary agency but also the residual

<sup>9</sup> Matthew Levinger, *Enlightened nationalism: the transformation of Prussian political culture* (Oxford, 2000), p. 261.

<sup>10</sup> Christopher Clark, *Time and power: visions of history in German politics, from the Thirty Years' War to the Third Reich* (Princeton, NJ, 2019), pp. 138–43.

<sup>11</sup> The literature on constitutionalism and Prusso-German parliamentary politics is extensive, but for a representative sample of the latest scholarship, see Hans-Christof Kraus, 'Die politische Neuordnung Deutschlands nach der Wende von 1866', in Winfried Heinemann, Lothar Höbelt, and Ulrich Lappenküper, eds., *Der preußisch-österreichische Krieg 1866* (Paderborn, 2018), pp. 331–2; Philipp Erbenraut, *Theorie und Soziologie der politischen Parteien im deutschen Vormärz, 1815–1848* (Tübingen, 2016). On the Huber–Böckenförde debate, which kick-started the original controversy, see Martin Kirsch, *Monarch und Parlament im 19. Jahrhundert: Der monarchische Konstitutionalismus als europäischer Verfassungstyp – Frankreich im Vergleich* (Göttingen, 1999), pp. 57–65.

<sup>12</sup> See Matthew Fitzpatrick, 'A state of exception? Mass expulsions and the German constitutional state, 1871–1914', *Journal of Modern History*, 85 (2013), pp. 772–800.

<sup>13</sup> Frank-Lothar Kroll, *Geburt der Moderne: Politik, Gesellschaft und Kultur vor dem Ersten Weltkrieg* (Berlin, 2013), pp. 11–22; Duncan Kelly, 'Popular sovereignty as state theory in the nineteenth century', in Richard Bourke and Quentin Skinner, eds., *Popular sovereignty in historical perspective* (Cambridge, 2016), p. 271.

<sup>14</sup> See, for instance, Hartwin Spenkuch, *Preußen – eine besondere Geschichte: Staat, Wirtschaft, Gesellschaft und Kultur, 1648–1947* (Göttingen, 2019), pp. 199–201.

rights of mediatised and dethroned princes. The German Confederation was home to no fewer than 14 reigning dynasties as well as about 100 lesser *standesherrlich* families.<sup>15</sup> Many minor sovereigns had been unable to defend their autonomy against the shifting political tides of the Napoleonic Wars, a fate several of the remaining princes – among them the king of Hanover, the elector of Hesse-Kassel, and the duke of Nassau – were destined to share after picking the wrong side in the German civil war of 1866. Thomas Biskup and Martin Kohlrausch have therefore gone so far as to suggest that ‘for German dynasts...the greatest threat emanated not from revolution but other German monarchs that wished to depose them by force’.<sup>16</sup> Yet, paradoxically, the losers of this power struggle were slow to lose their sovereign attributes. Amongst other privileges, Article 14 of the 1815 German Federal Act confirmed mediatised houses’ dynastic equality with reigning monarchs and permitted them to dispense various forms of local justice. Perhaps most tellingly, the Prussian crown agreed to conclude a treaty with exiled King Georg V of Hanover in 1867 which provided for his material comfort without requiring him to renounce his sovereignty.<sup>17</sup>

The suspended state of animation of vanquished dynasts raises intriguing questions about the exercise of royal dominion. For example, it invites us to reconsider continuities in Prussian state-building. Contemporary legal scholars and modern historians have so far stressed the fundamentally different politico-legal position of *Standesherrn* and dethroned monarchs. They point to the fact that the two groups formed no common legal estate. Mediatised princes, writes Jonathan Spangler, were ‘neither typically noble nor strictly speaking royal’.<sup>18</sup> The majority of these semi-royal grandees were prepared to recognize Hohenzollern overlordship in return for material compensation and social distinction, whereas fully royal exiles such as Georg V and Friedrich Wilhelm I of Hessen-Kassel steadfastly refused to enter into agreements that compromised their sovereign standing. Similarly, although European courts had no qualms about affirming the mediatisation of *Standesherrn* at the Congress of Vienna

<sup>15</sup> Dorothee Gottwald, *Fürstenrecht und Staatsrecht im 19. Jahrhundert: Eine wissenschaftliche Studie* (Frankfurt a. M., 2009), p. 32. For slightly diverging estimates, see Heinz Gollwitzer, *Die Standesherrn: Die politische und gesellschaftliche Stellung der Mediatisierten, 1815–1918: Ein Beitrag zur deutschen Sozialgeschichte* (2nd edn, Göttingen, 1964), p. 10; and Vahlteich, *Die deutschen Standesherrn: Ein Überblick über ihre Lage und Verhältnisse* (Jena, 1844), pp. 12–15.

<sup>16</sup> Thomas Biskup and Martin Kohlrausch, ‘Das Erbe der Monarchie: Nachwirkungen einer deutschen Institution’, in Thomas Biskup and Martin Kohlrausch, eds., *Das Erbe der Monarchie: Nachwirkungen einer deutschen Institution seit 1918* (Frankfurt a. M., 2008), p. 25.

<sup>17</sup> Torsten Riotte, *Der Monarch im Exil: Eine andere Geschichte von Staatswerdung und Legitimität im 19. Jahrhundert* (Göttingen, 2018), p. 24.

<sup>18</sup> Jonathan Spangler, ‘Those in between: princely families on the margins of the Great Powers: the Franco-German frontier’, in Christopher H. Johnson, David W. Sabean, and Simon Teuscher, eds., *Transregional and transnational families in Europe and beyond: experiences since the middle ages* (New York, NY, and Oxford, 2011), p. 133. See also Willibald Steinmetz, *Europa im 19. Jahrhundert* (Frankfurt a. M., 2019), pp. 122–3; Heinrich Bernhard Oppenheim, *System des Völkerrechts* (Frankfurt a. M., 1845), p. 108.

in 1815, they felt conflicted about the dethronement of close relatives at the end of the Austro-Prussian War.<sup>19</sup> Heinz Gollwitzer therefore concludes that instead of being natural allies, the losers of 1806 and 1866 remained too divided by history, international politics, and even economic circumstances to find much common ground.<sup>20</sup>

The prevailing concern with difference occludes important connections between the two dynastic communities, however. Chief among them are their common origin. Prior to 1806, every prince belonged in principle to the high nobility (*hohe Adel*) that had a seat in the Imperial Diet and ruled over a territory that was only immediate unto the Holy Roman Empire.<sup>21</sup> Power was dispersed in such a setting. ‘Unlike nations and states’, James J. Sheehan has observed, ‘the Reich did not insist upon pre-eminent authority and unquestioning allegiance. Its goal was not to clarify and dominate but rather to order and balance fragmented institutions and multiple loyalties.’<sup>22</sup> Despite the reformatory impulses of the French Revolutionary and Napoleonic period, composite statehood remained an attractive model throughout central Europe, which both satisfied nostalgic longings for a return to pre-modern systems of order and responded to the eclecticism of new administrative structures.<sup>23</sup> The ambitious Hohenzollerns were no less alive to these advantages than their Austrian competitors. For instance, when Prussia proceeded to digest the spoils of the Third Partition of Poland (1795), the authorities left the old municipal elites in post for a while because their continued presence made the rupture of regime change less apparent.<sup>24</sup> That the illusion of an unbroken chain of monarchical dominion continued to preoccupy statesmen pointed to the universal utility of invented traditions but also meant – to paraphrase the

<sup>19</sup> See Jasper Heinzen, ‘Monarchical state-building through state destruction: Hohenzollern self-legitimization at the expense of deposed dynasties in the Kaiserreich’, *German History*, 35 (2017), pp. 525–50.

<sup>20</sup> Gollwitzer, *Die Standesherrn*, pp. 44, 147. One of the few group portraits of mediatised and deposed princely houses comes from the pen of the popular 1860s writer Louise Otto-Peters, but due to its mass appeal this publication contains little analysis or indeed comparison. Louise Otto-Peters, *Geschichte mediatisirter deutscher Fürstenhäuser Hannover, Kurhessen, Nassau, Thurn und Taxis, Hohenzollern-Sigmaringen, Hohenzollern-Hechingen, Ansbach, Baireuth und Arenberg* (Leipzig, 1868).

<sup>21</sup> Gottwald, *Fürstenrecht und Staatsrecht*, p. 34.

<sup>22</sup> James J. Sheehan, *German history, 1770–1866* (Oxford, 1989), p. 14. See also Peter H. Wilson, *The Holy Roman Empire: a thousand years of Europe’s history* (London, 2016); Joachim Whaley, *Germany and the Holy Roman Empire* (2 vols., Oxford, 2012); Andreas Osiander, ‘Sovereignty, international relations, and the Westphalian myth’, *International Organization*, 55 (2001), pp. 251–87.

<sup>23</sup> On the relevance of early modern composite statehood traditions for nineteenth-century state-building, see part 3 in Michael Broers and Ambrogio A. Caiani, eds., *A history of the European restorations*, 1 (London, 2020); William D. Godsey, *The sinews of Habsburg power: Lower Austria in a fiscal-military state, 1650–1820* (Oxford, 2018).

<sup>24</sup> Helga Schnabel-Schüle, ‘Herrschaftswechsel – zum Potential einer Forschungskategorie’, in Helga Schnabel-Schüle and Andreas Gestrich, eds., *Fremde Herrscher – fremdes Volk: Inklusions- und Exklusionsfiguren bei Herrschaftswechseln in Europa* (Frankfurt a. M., 2006), p. 16.

philosopher Robert Pogue Harrison – that former rulers were fated to remain undead as long as their image survived.<sup>25</sup> Put another way, where monarchs drew on the symbolic capital of their predecessors to navigate the fragmented legacy of conquest, sovereignty functioned as a shared resource.

This article contends that the Prussian ‘monarchical principle’ masked fundamental insecurities about how to deal with holders of residual sovereignty. Constitutional theorists following in the footsteps of Jean Bodin argued that if sovereignty was indivisible, as they believed, it should be vested exclusively in the executive branch of government headed by the crown. But how was the case for a strong monarchy to be made by princes who sought to extend their power at the expense of peers? The fact that many states had secured territory through conquest during the Napoleonic Wars and at the Congress of Vienna only steeled the determination of the surviving monarchs to defend their possessions. The Final Act of the Vienna Congress proclaimed Germany’s crowned heads the carriers of ‘all state authority’ (*gesamte Staatsgewalt*) in their domains in 1815.<sup>26</sup> At the same time, mediatised princes retained pretensions to independent authority in certain areas, and legitimists warned that any unilateral dispossession of rulers’ patrimony fragmented the very idea of sovereignty, since each side was left in possession of some attributes. The ambiguity which was thus introduced into the legal idea and exercise of the monarchical principle took decades to resolve. Indeed, the Prussian crown’s negotiations with the *Standesherrn* lasted long enough to still be in progress by the time the government proceeded to absorb the thrones conquered in 1866, which offers a final reason for why the two groups of toppled sovereigns merit study not apart but together.

Although Germany’s federal heritage invested the question of where sovereignty resided with unrivalled complexity vis-à-vis more centrally governed nations, the issues that the Hohenzollerns and their detractors grappled with tapped into wider currents of political transformation and realignment since the French Revolution. Just as aristocrats at large shifted their ethos from seigniorialism to an emphasis on service to the state, so, too,

<sup>25</sup> Robert Pogue Harrison, *The dominion of the dead* (Chicago, IL, 2003), pp. 147–8.

<sup>26</sup> Hartwin Spenkuch, ‘Vergleichsweise besonders? Politisches System und Strukturen Preußens als Kern des “deutschen Sonderwegs”’, *Geschichte und Gesellschaft*, 29 (2003), pp. 272–4; Otto Brunner, ‘Vom Gottesgnadentum zum monarchischen Prinzip: Der Weg der europäischen Monarchie seit dem hohen Mittelalter’, in *Das Königtum: Seine geistigen und rechtlichen Grundlagen* (Lindau and Constance, 1956), pp. 279–305; Otto Hintze, ‘Das monarchische Prinzip und die konstitutionelle Verfassung’, *Preußische Jahrbücher*, 144 (1911), pp. 381–412; Eduard Hubrich, ‘Das monarchische Prinzip in Preußen’, *Zeitschrift für Politik*, 1 (1908), pp. 193–218. On Bodin’s long-term impact on German political philosophy, see the last three chapters in Michael Philipp, ed., *Debatten um die Souveränität: Jean Bodins Staatsverständnis und seine Rezeption seit dem 17. Jahrhundert* (Baden-Baden, 2016). On the monarchocentric set-up of the German Confederation, see Christopher Clark, ‘Germany 1815–1848: restoration or Pre-March?’, in Mary Fulbrook, ed., *German history since 1800* (New York, NY, 1997), pp. 39–44.



monarchs – reigning or otherwise – had to justify their leadership in novel ways that took account of society’s needs in an era of burgeoning nationalism and proliferating constitutions.<sup>27</sup> How these objectives were to be met remained a bone of contention. In exploring the competition of the Hohenzollerns and rival sovereigns for power, money, and legitimacy, the article foregrounds the disorientation wrought by the nineteenth century’s territorial changes and reconfiguration of loyalties. Within the short space of seventy years, the region that would become the German empire evolved from a porous conglomerate of semi-autonomous bodies, specially defined communities, and *Länder* peculiar unto themselves into a nation-state with relatively uniform boundaries, law codes, and political institutions.<sup>28</sup>

The nineteenth century’s betwixt-and-between condition is elegantly captured by the Marxist phrase of the ‘simultaneity of the non-simultaneous’.<sup>29</sup> Uneven socio-political reforms and fractures in lived experience produced time lags in contemporaries’ adjustment to the social, political, and technological transformations unfolding around them. Read one way, the insistence of *Standesherrn* and exiled monarchs on entitlements and exemptions outside the constitutional rights granted to ordinary subjects marked these individuals as *ancien régime* hold-outs destined to succumb to the twin pressures of bureaucratic rationalization and national integration.<sup>30</sup> Measured by their own standards, however, the dispossessed and their Hohenzollern competitors negotiated discrete visions of modernity in putting forward claims to sovereign status. For all their innate conservatism, King Georg V and Elector Friedrich Wilhelm I had no qualms about appealing to public opinion for quasi-plebiscitary support. Conversely, the Prussian government blended pre-1789 understandings of sovereignty as disposable crown property with ‘progressive’ pronouncements on national interest and the right of the German nation to be unified.

<sup>27</sup> See William D. Godsey, *Nobles and nation in central Europe: free imperial knights in the Age of Revolution, 1750–1850* (Cambridge, 2004); Pierangelo Schiera, ‘Europäisches Verfassungsdenken, 1815–1847: Die Zentralität der Legislativgewalt zwischen monarchischem Prinzip und Legitimität’, in Werner Daum, ed., *Handbuch der europäischen Verfassungsgeschichte im 19. Jahrhundert: Institutionen und Rechtspraxis im gesellschaftlichen Wandel*, II (Bonn, 2012), pp. 165–208, esp. pp. 168–75.

<sup>28</sup> On these changes, see Sheehan, *German history*, pp. 24–5; William W. Hagen, *German history in modern times: four lives of the nation* (Cambridge, 2012), parts 1 and 2; John Breuilly, ed., *Nineteenth-century Germany: politics, culture and society* (London and New York, NY, 2001); Helmuth W. Smith, ed., *The Oxford handbook of modern German history* (Oxford, 2011).

<sup>29</sup> Ernst Bloch, ‘Nonsynchronism and the obligation to its dialectics’, *New German Critique*, 11 (1977), pp. 22–38; Johannes Rohrbeck, ‘Rehabilitating the philosophy of history’, in Peter Koslowski, ed., *The discovery of historicity in German Idealism and Historism* (Berlin, 2005), pp. 187–211, esp. pp. 196–9; Hanns-Georg Brose, ‘Introduction: towards a culture of non-simultaneity?’, *Time and Society*, 13 (2004), pp. 5–26.

<sup>30</sup> See Ambrogio A. Caiani’s stimulating take on the limits and possibilities of the conservative imaginary in ‘Revisiting the *ancien régime* in post-Napoleonic Europe’, *European History Quarterly*, 47 (2017), pp. 437–60.

To capture the protean character of sovereignty, the first part of this article sets out the constitutional significance of the monarchical principle and the risks emanating from enforced transfers of sovereign power. In a second step, the Prussian government's efforts to reach independent settlements with the *Standesherrn* and deposed monarchs will be discussed before concluding with some broader reflections on monarchical state-building in Prussia. This undertaking will centre primarily on the first half of the nineteenth century prior to Germany's transformation from a federation of states into a Prussian-dominated federal state in 1871, which curtailed – though not eliminated – opportunities for the display of alternative forms of sovereignty.<sup>31</sup>

## I

An early point of orientation for debates about royal sovereignty in Prussia was the monarchical principle. This legal fiction gained popularity in response to the violence unleashed by the French Revolution, which pitted new visions of popular sovereignty against older models of enlightened absolutism. The persisting tension between these two sources of legitimacy made conservatives and moderate liberals eager to eliminate all potential for further instability. Adopting a term coined by Friedrich Schlegel in 1804/6, they agreed to recognize in the king the sovereign representative of the state but concomitantly avoided explicit statements on whether his authority derived from the will of God or a social contract with his subjects.<sup>32</sup> Even when King Friedrich Wilhelm IV issued a constitution, the question remained subject to different interpretations. In Michael Stolleis's estimation, the 'legal genius' of the monarchical principle lay precisely in its ambiguity, which solved certain conflicts and shrouded others.<sup>33</sup> Indeed, from early on the pre-eminent philosopher G. W. F. Hegel propagated the creed that Prussia's hereditary rulers were arbiters of a free, rationally ordered society.<sup>34</sup> The conservative politician Friedrich Julius Stahl would further expand on the purpose of the monarchical principle with a famous treatise some three decades later. Like some members of King Friedrich Wilhelm IV's court, the author of *Das monarchische Prinzip* (1845) recognized that the heyday of 'absolute monarchy' had passed. He nevertheless

<sup>31</sup> Frank Lorenz Müller, 'The German monarchies', in Matthew Jefferies, ed., *The Ashgate companion to Imperial Germany* (Farnham, 2015), p. 57; Richard Dietrich, 'Foederalismus, Unitarismus oder Hegemonialstaat?', in Oswald Spengler, ed., *Zur Problematik 'Preußen und das Reich'* (Cologne and Vienna, 1984), pp. 49–81.

<sup>32</sup> Brunner, 'Vom Gottesgnadentum zum monarchischen Prinzip', p. 302.

<sup>33</sup> Michael Stolleis, *Geschichte des öffentlichen Rechts in Deutschland*, II (Munich, 1992), p. 104.

<sup>34</sup> See Bernard Yack, 'The rationality of Hegel's concept of monarchy', *American Political Science Review*, 74 (1980), pp. 709–20, esp. p. 717; Wolfgang Reinhard, *Geschichte der Staatsgewalt: Eine vergleichende Verfassungsgeschichte Europas von den Anfängen bis zur Gegenwart* (Munich, 1999), pp. 426–7; Markus J. Prutsch, "'Monarchical constitutionalism'" in post-Napoleonic Europe: concept and practice', in Kelly L. Grotke and Markus J. Prutsch, eds., *Constitutionalism, legitimacy, and power* (Oxford, 2014), pp. 69–83.

wished to preserve the unitary character of sovereignty lest other branches of government hold the executive to ransom and thereby force the monarchy to abandon its balancing role in society.<sup>35</sup> Stahl's functionalist argument in favour of monarchical rule went hand in hand with a desire for a symbiotic union of church and state. Stahl's ideal of the 'Christian state' played straight to the mystical bent of Friedrich Wilhelm IV, Georg V of Hanover, and many fellow rulers, who, to varying degrees, maintained a belief in the divine origins of their office.<sup>36</sup> Later in the century, Kaiser Wilhelm II would take the eschatological legitimization of kingship to new extremes by styling himself God's medium on earth and *ex officio* blessed with the gift of clairvoyance.<sup>37</sup>

To be sure, the practical implementation of the monarchical principle ran into a number of difficulties. For a start, the fear of revolution and the very real upheavals of 1848 deterred conservatives from insisting too hard on the supreme will of the monarch. For all its pandering to the executive powers of the king, for instance, the Prussian constitution of 1850 (which remained in force with modifications until 1918) broke with precedent because it did *not* explicitly identify the crown as the holder of all public authority. Moreover, Articles 62, 64, and 99 vested in parliament a joint right with the crown to initiate and pass legislation and to approve the governmental budget. From this moment at the latest, it became difficult to argue that the Prussian monarch ruled alone.<sup>38</sup> Finally, the monarchical principle clashed with the burgeoning drive for national unification. The fact that the sovereignty of the thirty-nine members of the German Confederation was theoretically absolute excluded the possibility of a nation-state to whom citizens owed primary allegiance. A commentary published in 1853 by the Göttingen historian and politician Georg Waitz, *Das Wesen des Bundesstaates*, went so far as to suggest that nationalists' bid to bring about German unification during the 1848 revolution had

<sup>35</sup> Friedrich Julius Stahl, *Das monarchische Princip: Eine staatsrechtlich-politische Abhandlung* (Heidelberg, 1845); Thomas Nipperdey, *Germany from Napoleon to Bismarck, 1800–1866*, trans. Daniel Nolan (Dublin, 1996), pp. 335–6; Mark Hewitson, "'The old forms are breaking up...our new Germany is rebuilding itself': constitutionalism, nationalism and the creation of a German polity during the revolutions of 1848–1849", *English Historical Review*, 125 (2010), p. 1188.

<sup>36</sup> David E. Barclay, *Frederick William IV and the Prussian monarchy, 1840–1861* (Oxford, 1995); Dieter Brosius, 'Georg V. von Hannover – der König des "monarchischen Prinzips"', *Niedersächsisches Jahrbuch*, 51 (1979), pp. 253–91; Christiane Wolf, 'Representing constitutional monarchy in late nineteenth- and early twentieth-century Britain, Germany, and Austria', in Laurence Cole and Daniel L. Unowsky, eds., *The limits of loyalty: imperial symbolism, popular allegiances, and state patriotism in the late Habsburg monarchy* (New York, NY, and Oxford, 2007), p. 213.

<sup>37</sup> John C. G. Röhl, *Wilhelm II* (Munich, 2013), pp. 31–2.

<sup>38</sup> Hans Boldt, 'Die preußische Verfassung vom 31. Januar 1850: Probleme ihrer Interpretation', *Geschichte und Gesellschaft, Sonderheft*, 6 (1980), p. 225.

been doomed to failure because monarchical and national sovereignty cancelled each other out.<sup>39</sup>

Despite these concerns, however, the monarchical principle's emphasis on the sovereign individuality of the king remained topical. Hermann Wagener, the editor of the conservative flagship newspaper *Die Kreuzzeitung* and the *Neue Conversations-Lexikon*, admonished his readers that the state was akin to a family with a royal patriarch at its head. To remain impartial and decisive in his actions, the father-monarch could not submit to anyone above or recognize co-sovereign institutions beside him. By the same token, Wagener felt that popular sovereignty, as embodied by parliament, introduced divisions into political life, which benefited certain groups but not society in its entirety. Worse, infighting laid a country open to foreign meddling and fuelled widespread discontent for would-be dictators to feed off. He therefore opined that 'hereditary monarchies' were the best form of government

because everything is set up like in bourgeois familial patriarchates; the son follows the profession of the father and takes over his dominion (*Herrschaft*) without giving anyone cause to feel envy. By keeping others' lofty ambitions in check on account of the unattainability of the highest office for them, the hereditary monarchy alone can fulfil the mandate of monarchy...and bring about peace for the state, in which people will not compete with each other for power and dominion but wrestle with opposing natural forces for happiness and moral satisfaction.<sup>40</sup>

There can be no doubt that Wagener's pronouncements reflected a particular brand of conservatism that was fashionable at court and certain aristocratic circles at the time, but some of his ideas tapped into wider intellectual currents. Carl von Rotteck, an influential liberal activist in the Pre-March period, concurred with his political opponent that a constitutional king had the necessary clout to offset 'scheming courtiers' and 'power-hungry ministers'.<sup>41</sup> In fact, it is telling that repeated attempts between 1848 and 1863 to introduce legal ministerial responsibility in the second chamber of the Prussian *Landtag* failed in part because parliamentarians accepted that impeachment would have infringed on the king's right to choose (and dismiss) his ministers.<sup>42</sup>

<sup>39</sup> Dieter Grimm, 'Was the German empire a sovereign state?', in Sven Oliver Müller and Cornelius Torp, eds., *Imperial Germany revisited: continuing debates and new perspectives* (New York, NY, 2011), pp. 56–7.

<sup>40</sup> Hermann Wagener, *Neues Conversations-Lexikon: Staats- und Gesellschafts-Lexikon*, xiii (Berlin, 1863), p. 538. On the function and uses of political lexicons in this period, see Hans-Christof Kraus, 'Parlamente und Parteien in liberalen und konservativen deutschen Staatslexika des 19. Jahrhunderts', *Zeitschrift für Neuere Rechtsgeschichte*, 40 (2018), pp. 16–26. On Wagener's career with the *Kreuzzeitung*, see Dagmar Bussiek, 'Mit Gott für König und Vaterland!': *Die Neue Preussische Zeitung (Kreuzzeitung), 1848–1892* (Münster, 2000), pp. 58–74.

<sup>41</sup> Karl von Rotteck, 'Monarchie', in Karl von Rotteck and Carl Theodor Welcker, eds., *Staats-Lexikon oder Enzyklopädie der Staatswissenschaften*, x (Altona, 1840), pp. 676–7.

<sup>42</sup> Erich Hahn, 'Ministerial responsibility and impeachment in Prussia 1848–1863', *Central European History*, 10 (1977), pp. 25–6; Marita Krauss, *Herrschaftspraxis in Bayern und Preußen im 19. Jahrhundert* (Frankfurt a. M., 1997), pp. 101–2.

Wegener's ruminations are pertinent for two reasons. First, they bear testament to the challenge contemporaries faced in conceptualizing *Herrschaft* as plural and contested. The existence of multiple claimants, Wegener counselled, merely exacerbated political strife. Secondly, to function effectively, a dynasty's hold on the throne had to be secure lest the monarchy become what it was meant to forestall, a source of instability and factionalism. But what perhaps stood out most about the monarchical principle was the blatant discrepancy between its legitimism (which is to say the belief that heredity invested dynasties with the right to rule over a particular territory in perpetuity) and the vagaries of *raison d'état*, war, and great power politics. Conquest was very much part of this matrix, as were the complex ethical and legal issues it raised.

One scholar who was not afraid to probe the contradictions of 'state-building through state destruction' in the 1860s was Friedrich Brockhaus, a young lecturer at the University of Jena who also happened to be the grandson of the eponymous publisher and a nephew of Richard Wagner.<sup>43</sup> In an illuminating 330-page study on the pitfalls of non-consensual power grabs, he courageously pointed out that nearly all ruling dynasties had despoiled fellow princes during their rise to the top. He therefore asked: was the legitimacy of German monarchs since 1815 inviolable, as Article 54 of the Final Act of the Congress of Vienna seemed to imply, or could might be made right if victims accepted material compensation, other states recognized the *fait accompli*, or subjects approved of the regime change? Even the warlike dissolution of the German Confederation in 1866 and the attendant annulment of the Final Act did not settle the issue for Brockhaus. He refused to condone the proposition that dynastic ownership could be terminated by a quick flick of the pen. To his mind, monarchical sovereignty was neither dependent on popular acclamation, since the legitimate officer-holder could veto any decision inimical to his interests, nor could it be taken away from the crown through an act of enforced self-destruction.<sup>44</sup> To give regime change a maximum degree of legitimacy, the cooperation of the dethroned ruler was necessary, either in the shape of voluntary abdication or 'tacit relinquishment'.<sup>45</sup> He finished on a reassuring note for the Prussian government, however, by insisting that subjects owed their sovereign obedience so as not to jeopardize the integrity of the state itself. Without an army, pretenders were simply 'irrelevant in international law' (*völkerrechtlich indifferent*).<sup>46</sup>

<sup>43</sup> On the phenomenon of dynastic 'state-building through state destruction', see Dieter Langewiesche, *Die Monarchie im Jahrhundert Europas: Selbstbehauptung durch Wandel im 19. Jahrhundert* (Heidelberg, 2013), p. 7.

<sup>44</sup> Friedrich Brockhaus, *Das Legitimitätsprinzip: Eine staatsrechtliche Abhandlung* (Leipzig, 1868), pp. 270–83. Note that Brockhaus based some of his arguments on Heinrich Zoepfl and H. A. Zachariae, who defended the interests of the *Standesherrn* and Georg V of Hanover.

<sup>45</sup> *Ibid.*, p. 277.

<sup>46</sup> *Ibid.*, p. 323. On this issue, see also the book review by 'Fricker' in the *Zeitschrift für die gesamte Staatswissenschaft*, 25 (1869), pp. 184–5.

To put Brockhaus's findings in perspective, better known constitutional theorists than him have grappled with conquest or the transfer of sovereignty in their models of the state. Thomas Hobbes tried and arguably failed with his theorem of 'despotic dominion' based on enforced consent, whose contradictions have made at least one critic fear for the coherence of *Leviathan*.<sup>47</sup> Carl Schmitt would still concede three hundred years later in a nod to the 'state of exception': 'The methods of empty normative generalizations are indicative in their deceptive abstractness, because they fundamentally disregard all concrete spatial viewpoints when considering a typical spatial problem such as territorial change.'<sup>48</sup> The next section will delve into how the Prussian crown responded to these 'concrete spatial viewpoints' in their dealings with mediatized princes.

## II

The territorial reorganization of the former Holy Roman Empire in 1803/6 affected a sizeable number of families with varying pretensions to sovereign status. In addition to the 100 or so imperial princes and counts that would become *Standesherrn*, 350 clans belonging to the lesser estate of free imperial knights were absorbed by larger neighbouring states against their will.<sup>49</sup> In Prussia alone, the former lands of the *Standesherrn* amounted to 100 square miles and were home to 400,000 inhabitants by the 1850s.<sup>50</sup> Although their prestige was premised on only having owed fealty to the Holy Roman Empire prior to mediatization, the liberties, financial circumstances, and political clout of individual *standesherrlich* families varied greatly across the German Confederation. Debts resulting from diminished resources had forced some of the minor potentates to give up their independence in all but name long before the dissolution of the Holy Roman Empire, whereas others could boast enormous wealth – such as the princes of Thurn and Taxis – and ties to Europe's premier royal dynasties like the princes of Leiningen.<sup>51</sup>

<sup>47</sup> Thomas Hobbes, 'Of dominion paternal, and despotic', in J. C. A. Gaskin, ed., *Leviathan* (Oxford, 1996), pp. 132–9; Charles D. Tarlton, "'To avoid the present stroke of death": despotic dominion, force, and legitimacy in Hobbes's *Leviathan*', *Philosophy*, 74 (1999), p. 225.

<sup>48</sup> Carl Schmitt, *The nomos of the earth in the international law of the jus publicum europaeum*, trans. G. L. Ulmen (New York, NY, 2003), p. 193.

<sup>49</sup> For slightly lower estimates, see Gollwitzer, *Die Standesherrn*, p. 10; and Vahlteich, *Die deutschen Standesherrn*, pp. 12–15.

<sup>50</sup> Carl Heiner Beusch, 'Westfälische Standesherrn: Die Fürsten von Bentheim-Tecklenburg im 19. Jahrhundert', *Westfälische Zeitschrift*, 145 (1995), p. 267.

<sup>51</sup> Frank Kleinehagenbrock, 'Alte Rechte in neuen Staaten? Reichsrecht, Bundesrecht und die Standesherrn im Süden und Nordwesten Deutschlands', in Matthias Asche, Thomas Nicklas, and Matthias Stickler, eds., *Was vom Alten Reiche blieb...Deutungen, Institutionen und Bilder des frühneuzeitlichen Heiligen Römischen Reiches Deutscher Nation im 19. und 20. Jahrhundert* (Munich, 2011), p. 308; Eva-Carolina Doll, *Handlungsstrukturen: Die Standesherrschaft Thurn und Taxis in der Epochenwelle zum 19. Jahrhundert unter Fürst Maximilian Karl* (Regensburg,

*Standesherren* may have constituted a heterogeneous group, but they nevertheless exhibited common traits which delineated them from the lower nobility. For one, their continuing dynastic equality with ruling families held out the possibility – at least in theory – of their return to power either through marriage or election to foreign thrones. The British government’s brief nomination of Prince Ernst Leopold von Leiningen for the Greek crown in 1863 demonstrated the potential of their privileged position.<sup>52</sup> Another similarity in lifestyle mediated shared with ruling princes were their cosmopolitan family networks. They often possessed estates in several states and made a habit of cultivating loyalties to more than one nation, as the example of the Anglo-Dutch-German Bentincks and the ancient Franco-Belgian-German House of Croÿ bears out.<sup>53</sup> Some *Standesherren* like the princes of Hohenlohe and Wied even became part of the rarefied social circles that connected European royalty.<sup>54</sup> The Federal Act of 1815 was responsive enough to these unique circumstances to permit *Standesherren* to choose their abode freely within the German Confederation and to enter the service of foreign nations.<sup>55</sup> Other privileges included exemption from direct taxation and military service, and the right to be judged by a jury of their own peers in criminal legal proceedings. Provisions for the management of their family estates carried the force of law and hereditary seats in state parliaments offered them the opportunity to influence law-making at state level. In Prussia, mediatised princes furthermore retained their church advowson, supervision over schools, and the right to appoint legal magistrates. True, the land-owning lower aristocracy, the *Junkers*, held on to many of the same patrimonial powers into the 1880s, making each estate a formidable ‘private law state’.<sup>56</sup> Yet the superior status

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2017); Monika Wienfort, ‘Adlige Handlungsspielräume und neue Adelstypen in der “klassischen Moderne” (1880–1930)’, *Geschichte und Gesellschaft*, 33 (2007), pp. 421–2.

<sup>52</sup> Queen Victoria to Lord Russell, 8 Feb. 1863, in George Earle Buckle, ed., *The letters of Queen Victoria*, second series, 1 (London, 1926), p. 63.

<sup>53</sup> On these cosmopolitan dynastic connections, see Spangler, ‘Those in between’; William D. Godsey and Veronika Hyden-Hanscho, eds., *Das Haus Arenberg und die Habsburgermonarchie: Eine transterritoriale Adelsfamilie zwischen Fürstendienst und Eigenständigkeit (16.–20. Jahrhundert)* (Regensburg, 2019); Marie zu Erbach-Schönberg, *Aus stiller und bewegter Zeit: Erinnerungen aus meinem Leben* (Darmstadt, 1923), pp. 13–16.

<sup>54</sup> James Pope-Hennessy, *Queen Mary: the official biography* (London, 2019; orig. edn 1959), pp. 80–1.

<sup>55</sup> Gollwitzer, *Die Standesherren*, p. 63.

<sup>56</sup> Note that the powers of the *Junkers* were tied to ownership of a particular type of estate, the *Rittergut*, rather than inherited family privileges like mediatised princes. By 1855, only 55 per cent of the *Rittergüter* in Prussia’s eastern provinces remained in noble hands, with the result that a growing number of commoners were assuming patrimonial lordship. Shearer Davis Bowman, ‘Antebellum planters and Vormärz Junkers in comparative perspective’, *American Historical Review*, 84 (1980), pp. 782, 787; John R. Gillis, ‘Aristocracy and bureaucracy in nineteenth-century Prussia’, *Past & Present*, 41 (1968), p. 113. See also Robert M. Berdahl, *The politics of the Prussian nobility: the development of a conservative ideology, 1770–1848* (Princeton, NJ, 1988); Heinz Reif, *Adel, Aristokratie, Elite: Sozialgeschichte von Oben* (Berlin, 2016), pp. 78–85;

of the *Standesherrn* was underlined by royal decrees issued in 1815 and 1820, which entitled them to be included alongside the king in church prayers, to be addressed by their former titles, and to employ guards of honour, if they so wished. In light of these wide-ranging privileges, legal historians have suggested that until the 1848 revolution mediatised princes performed the functions of *Unterlandesherrn*. The term resembles the mechanisms of ‘quasi-sovereignty’ that Benton sees at work in European empires, where the erasure of local ruler’s effective sovereignty did not clear away conflict at the grassroots over the actual exercise of jurisdiction.<sup>57</sup>

Many mediatised princes were determined to defend their quasi-sovereign position. In 1813, they formed their own pressure group, the Association of the Mediatised, and during the deliberations about their future at the Congress of Vienna two years later, Count Friedrich zu Solms-Laubach wrote to his clansman Prince Friedrich zu Solms-Braunfels: ‘We do not want to become subjects but rather peers-cum-clients (*Schutzverwandte*) [of the larger monarchies]; we would feel discomfited if our subjects were simply treated as numbers and the principle was thereby established that we and our people could be put on scales like bones and butchers’ meat.’<sup>58</sup> *Schutzverwandter* was a telling choice of word, for it resurrected an early modern descriptor for individuals who enjoyed the protection of a polity without fully belonging to it.<sup>59</sup> Although mediatised princes in Prussia had no choice but to accept the suzerainty of the Hohenzollerns after 1815, they continued to display ‘quasi-sovereign’ leadership in philanthropy for decades to come. Prince Otto zu Salm-Horstmar made a name for himself as founder-patron of the University of Münster, and on a more modest scale, his peers founded schools and supported causes ranging from art to historical associations. They also assumed the protectorate over various charities and patriotic organizations, while female members of mediatised families were known to provide resources for nursing and poor relief.<sup>60</sup> In short, ‘the [former] high nobility of the Holy Roman Empire saw itself in a very Hobbesian sense as the representatives of their subjects’ rights and general well-being’, as one historian has put it.<sup>61</sup>

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Jens Neumann, ‘Der Adel im 19. Jahrhundert in Deutschland und England im Vergleich’, *Geschichte und Gesellschaft*, 30 (2004), pp. 173–5.

<sup>57</sup> Benton, *A search for sovereignty*, p. 256; Gottwald, *Fürsten und Staatsrecht*, pp. 40–1.

<sup>58</sup> Count Solm-Laubach cited by Arthur Kleinschmidt, *Geschichte von Arenberg, Salm und Leyen, 1789–1815* (Gotha, 1912), pp. 101–2.

<sup>59</sup> See the entry for ‘Schutz-Verwandte, Schutz-Genosse, Schirm-Verwandte oder Schirm-Genosse, Schutzleute’, in Johann Heinrich Zedler, *Grosses vollständiges Universal-Lexicon aller Wissenschaften und Künste*, xxxv (Leipzig, 1743), columns 1724–6.

<sup>60</sup> Hansjoachim Henning, ‘“Noblesse oblige?” Fragen zum ehrenamtlichen Engagement des deutschen Adels, 1870–1914’, *Vierteljahresschrift für Sozial- und Wirtschaftsgeschichte*, 79 (1992), pp. 309–12.

<sup>61</sup> Frank Jung, ‘Mediatisierung, Konstitutionalisierung und Parlamentarisierung: Die Selbstintegration hessischer Standesherrn zwischen Alten Reich und Norddeutschem Reichstag’, *Hessisches Jahrbuch für Landesgeschichte*, 58 (2008), pp. 99–100.



Small wonder, then, that decision-makers in Berlin were not opposed to a modicum of *standesherrlich* autonomy. The digestion of Prussia's territorial gains from the Napoleonic Wars (above all on the Rhine, where most of the mediatised princes' estates lay) was a cumbersome task, and rather than impose laws and institutions from the East Elbian provinces, the central government preferred to leave decisions about local matters in the hands of those most directly affected. To that end, consultative bodies for each province (*Provinziallandtage*) were established in 1823. The state ministry hoped that it could rely on the *Standesherrn* to aid the bureaucratic penetration of society, if properly co-opted. The crown prince, the future Friedrich Wilhelm IV, showed particular respect for an institution with deep historical roots in the community. At a meeting of the state ministry in February 1838, he rejected a proposal to curb subjects' oath of allegiance to their *Standesherrn* because he considered this estate a valuable pillar of 'Germany's feudal constitution'.<sup>62</sup> He thus took it badly when the Frankfurt parliament abolished the majority of mediatised princes' seigniorial rights ten years later. Once the dust of the 1848/9 revolution had settled, he lobbied for restitution by reminding his ministers that he was a 'monarch who, thanks to a series of unfortunate events, has come to enjoy the fruits of an egregious theft from his [former] peers in the Holy Roman Empire'.<sup>63</sup> Previously, the victims of the 'egregious theft' had submitted a petition to the new national parliament in Frankfurt on 4 July 1848, in which they pilloried this injustice before going on to claim that even though financial settlements had remedied some of their grievances, the autonomy to govern their entailed estates and adopt binding constitutions for their dynasties could never be taken away from them. These rights were beyond the reach of 'state sovereignty'.<sup>64</sup> Although the petitioners were implicitly conflating the legal person of the monarch and the state, which even royal ministers rejected, their spirited defence of the dynastic equality of mediatised and ruling houses naturally struck a chord with Friedrich Wilhelm IV.<sup>65</sup> The upshot of the king's sympathy was once again the perpetuation of jurisdictional pluralism: on the one hand Prime Minister Otto von Manteuffel enacted reforms to replace the manorial courts of large landowners with regular ones throughout the 1850s,

<sup>62</sup> Protocol of the Ministry of State meeting on 20 Feb. 1838, in Christina Rathgeber, ed., *Die Protokolle des Preußischen Staatsministeriums* (Hildesheim, 2004), p. 274.

<sup>63</sup> Friedrich Wilhelm IV cited in Rolf Schier, *Standesherrn: Zur Auflösung der Adelherrschaft in Deutschland, 1815–1918* (Heidelberg and Karlsruhe, 1978), p. 103.

<sup>64</sup> Wolfram Siemann, *1848/1849 in Deutschland und Europa: Ereignis–Bewältigung–Erinnerung* (Paderborn, 2006), pp. 88–94.

<sup>65</sup> As Bismarck would go on to acknowledge when he became Prussian prime minister, the individuality of the state 'interpose[d] itself between the prince and the people'. Winfried Ranke, 'Preußen – ein Kunststück', in Gottfried Korff, ed., *Preußen: Versuch einer Bilanz* (Reinbek, 1981), p. 38.

but at the same time, the king restored mediatized princes to their privileged legal status and exemption from personal and property taxes.<sup>66</sup>

Incongruous as the existence of parallel jurisdictions may have seemed from a legal standpoint, Friedrich Wilhelm IV's solidarity with the *Standesherrn* did serve a higher political purpose. Since Europe's crowned heads sought to reconsolidate their hold on power after the territorial reorganizations of the Napoleonic Wars less by resurrecting rights that had supposedly been lost and more by convincing the public of their unbroken historic entitlements, as Volker Sellin notes, it would have undermined Friedrich Wilhelm IV's credibility in his own eyes to deny the same courtesies to mediatized princes.<sup>67</sup> He was committed to what David Barclay has called his 'monarchical project', which endeavoured to forge a sacral cult of monarchy supported by corporations like the *Standesherrn*.<sup>68</sup> This return to a 'new *ancien régime*' chimed with the time-honoured identification of sovereignty with local jurisdiction in German politico-legal thought. For example, Friedrich Carl von Savigny, a leading representative of the Historical School in the Pre-March era, believed that gradual change based on indigenous common law was preferable to the uncertainties of rapid reform in the French Revolutionary style.<sup>69</sup> Any attempt to assert a 'higher power randomly and capriciously in disregard of the rights of others – be they chieftains, aristocrats or the masses' ran the risk of being considered despotic, Savigny's former pupil, Bluntschli, warned. Fears about French-style 'monocracy' were well established in the German lands since the period of French occupation.<sup>70</sup> Even defenders of Roman Law could agree that a system premised on custom and the ancient corporate estates was more in tune with central Europe's rich heritage of self-governing traditions.<sup>71</sup>

Of course, the integration of mediatized princes into the bureaucratic structure of the Prussian state was not free from friction. A notable bone of contention were the expectations of each party. The hope of some mediatized princes to retain their own administrations sat awkwardly with the role Berlin envisaged for them, which approximated the minor *merum imperium* of the Bodinian constitutional tradition as holders of limited executive powers delegated by the

<sup>66</sup> Anna Ross, *Beyond the barricades: government and state-building in post-revolutionary Prussia, 1848–1858* (Oxford, 2019), p. 84; Beusch, 'Westfälische Standesherrn', p. 277.

<sup>67</sup> Volker Sellin, *Das Jahrhundert der Restaurationen: 1814 bis 1906* (Munich, 2014), introduction.

<sup>68</sup> Barclay, *Frederick William IV and the Prussian monarchy*, p. viii.

<sup>69</sup> Margaret Barber Crosby, *The making of a German constitution: a slow revolution* (Oxford, 2008), p. 83. The term 'new *ancien régime*' has been borrowed from Caiani, 'Revisiting the *ancien régime* in post-Napoleonic Europe', p. 442.

<sup>70</sup> Johann Kaspar Bluntschli, *Deutsches Staats-Wörterbuch*, II (Stuttgart, 1857), p. 718; Robert Bernsee, *Moralische Erneuerung: Korruption und bürokratische Reformen in Bayern und Preußen, 1780–1820* (Göttingen, 2017), p. 381.

<sup>71</sup> Crosby, *The making of a German constitution*, pp. 36–8; James Q. Whitman, *The legacy of Roman Law in the German Romantic Era: historical vision and legal change* (Princeton, NJ, 1990).

supreme sovereign, the king of Prussia.<sup>72</sup> The ensuing negotiations often lasted for decades and necessitated compromises on both sides. Take the princes of Bentheim-Tecklenburg. In 1831, the crown and the Westphalian *standesherrlich* family reached an accord (*Rezeß*) whereby Prince Emil Friedrich recognized Prussian suzerainty and agreed to renounce all sovereign rights above and beyond the privileges granted in 1815 and 1820. By way of compensation, he received an annual pension of 12,000 thalers on top of authorization to collect direct taxes for the upkeep of local magistrates and his own ‘governing council’. In a second accord signed three years later, the prince gave up his right to collect taxes and his exemption from property tax in exchange for a further pension, yet the courts in Rheda and Limburg continued to dispense justice in his name. What is more, his successors clung to their dormant right to collect taxes.<sup>73</sup> The Bentheim-Tecklenburgs were no exception. In the mid-1820s, the princes of Wied and Solms-Braunfels concluded treaties of their own to set up *standesherrlich* administrations, which likewise exercised jurisdiction in local affairs without reference to Prussia, even if *de facto* they did so on behalf of the crown. It was only due to the significant expense of maintaining their own governments that mediatized princes – including the houses of Wied and Solms-Braunfels – could in subsequent years be persuaded to ‘sell’ their extant sovereign rights.<sup>74</sup>

Once again it pays to emphasize, though, that the quest for sovereignty was not a zero-sum game. On the contrary, the expansion of the Prussian state in successive waves of reform and conquest created opportunities for enterprising *Standesherrn* to promote their dynastic interests while also serving the Hohenzollern monarchy. The remarkably similar career trajectories of the aforementioned Count Friedrich zu Solms-Laubach (1769–1822) and Count Otto zu Stolberg-Wernigerode (1837–96) showcase these hybrid allegiances well. Both grandees first rose to prominence as advocates for the rights of their estate. Hailing from a large clan that claimed consanguinity with the house of Nassau and the Salic kings of the middle ages, Solms-Laubach succeeded to the presidency of the Association of the Mediatized in 1814 as a firm opponent of the ‘Rheinbund usurpations’ that had cost him and his peers their independence.<sup>75</sup> Thanks to his friendship with fellow Rhinelander, imperial baron and Prussian statesman Karl vom Stein, he

<sup>72</sup> Julian H. Franklin, ‘Introduction’, in Jean Bodin, *On sovereignty*, ed. Julian H. Franklin (Cambridge, 1992), pp. xiv–xv.

<sup>73</sup> Beusch, ‘Westfälische Standesherrn’, pp. 309–25.

<sup>74</sup> Frank Jung, ‘Landesherrn und Standesherrn: Adel und Staat im 18. und 19. Jahrhundert’, in Eckart Conze, Alexander Jendorff, and Heide Wunder, eds., *Adel in Hessen: Herrschaft, Selbstverständnis und Lebensführung* (Marburg, 2010), pp. 104–6.

<sup>75</sup> Barbara C. Anderson, ‘State-building and bureaucracy in early nineteenth-century Nassau’, *Central European History*, 24 (1991), p. 245; J. C. Schaum, *Das Grafen- und Fürstenhaus Solms ist gleichzeitig mit dem Hause Nassau aus Salischem Königs-Stamme erbliht und dessen ältester Stammsitz Braunfels* (Frankfurt a. M., 1828).

managed to secure a seat on the Allied Central Administrative Department (1813/14), in which capacity he was responsible for assessing the debt the duchy of Nassau owed the Allied war effort against Napoleon. Not one to miss a chance for revenge on a monarch involved in the despoilment of his family earlier, Solms-Laubach returned with a figure the Nassowian government considered crippling, and vowed to 'hound' the minor German princes until their 'hairs will stand on end'.<sup>76</sup> Although he was ultimately unsuccessful at reversing the subjection of mediatised prerogatives to the regulatory power of the Nassowian state, he became a trusted adviser to Prussian chancellor Prince Karl August von Hardenberg at the Congress of Vienna. Due to these connections but equally his *standesherrlich* pedigree, the former imperial count had himself appointed the first governor (*Oberpräsident*) of the new province of Jülich-Cleve-Berg in 1815.<sup>77</sup> Since Solms-Laubach shared Stein's belief in the need for political reform at the local level, he consistently supported greater autonomy for the Rhineland, favoured the recruitment of locals for civil service positions, and lobbied for the consultation of the population to keep Berlin abreast of regional issues.<sup>78</sup>

Although Stolberg-Wernigerode's family had ceded most of their sovereignty to the Prussian crown long before Napoleonic Wars, he, too, took great pride in the obligations of his heritage. The lowest courts (*Friedensgerichte*) and Protestant consistory in the county of Wernigerode acted on his behalf. Despite being subordinate to the Supreme Church Council in Berlin from 1850 onwards, it was understood that the superintendent of the consistory was a comital rather than Prussian office holder. Royal decrees relating to spiritual matters only took effect in the county once the consistory had announced them separately to the population.<sup>79</sup> Hence, the exercise of sub-sovereignty in Wernigerode was no sinecure. The later Prussian culture minister Robert Bosse, who started out in the service of another branch of the family, recorded his master's high esteem for young Count Otto, 'from whom the entire house of Stolberg expects great things for the defence of their rights and reputation'.<sup>80</sup>

<sup>76</sup> Anderson, 'State-building and bureaucracy', p. 242; Wolfgang Merger, 'Das Problem der landständischen Verfassungen auf dem Wiener Kongress, 1814/1815', *Historische Zeitschrift*, 217 (1973), pp. 303–4.

<sup>77</sup> August Klein, *Friedrich Graf zu Solms-Laubach: Preußischer Oberpräsident in Köln (1815–1822)* (Cologne, 1936), p. 66.

<sup>78</sup> Michael Rowe, *From Reich to state: the Rhineland in the Revolutionary Age, 1780–1830* (Cambridge, 2003), pp. 257–61; Jeffrey M. Diefendorf, *Businessmen and politics in the Rhineland, 1789–1834* (Princeton, NJ, 1980), p. 267; Horst Lademacher, 'Die nördlichen Rheinlande von der Rheinprovinz bis zur Bildung des Landschaftsverbandes Rheinland (1815–1953)', in Franz Petri and Georg Droege, eds., *Rheinische Geschichte*, II (Düsseldorf, 1976), pp. 593–4.

<sup>79</sup> Hans Seehase, 'Die Eingliederung von Standesherrschaften in das Königreich Preußen: Die Stolberger Grafschaften Stolberg-Stolberg, Stolberg-Roßla und Stolberg Wernigerode', in Manfred Wilde and Manfred Seehase, eds., *Unter neuer Herrschaft: Konsequenzen des Wiener Kongresses* (Leipzig, 2016), pp. 94–6.

<sup>80</sup> Robert Bosse, 'Fürst Otto zu Stolberg-Wernigerode', *Deutsche Revue*, 18 (1903), p. 129.

Following the completion of a law degree and a two-year stint in the Prussian *Gardes du corps*, the count returned home to manage the family estates until the Austro-Prussian War, which saw him assume senior roles in wartime philanthropy for the care of the wounded and sick. Despite his relative lack of experience in public administration, Bismarck next chose him to be the first Prussian governor of the annexed kingdom of Hanover (1867–73). A great uncle, Count Anton zu Stolberg-Wernigerode, had served the Prussian state in the same role at the helm of the province of Saxony thirty years before, and a cousin would become governor of Silesia shortly after Otto's appointment. Mindful of this family background, the minister-president calculated that the new Hanoverian governor's lineage and the fact that he owned extensive property in the province would endear him to local aristocrats mourning the loss of the royal court.<sup>81</sup> Although Guelph aristocrats proved rather harder to please than anticipated and formed the backbone of the anti-Prussian German Hanoverian Party into the twentieth century, Stolberg-Wernigerode pleased middle-class liberals by championing what Heide Barmeyer has called a 'liberal reform of the administration of state', which coincided with Bismarck's overall plan to devolve responsibility for certain social welfare and public works projects to the provinces.<sup>82</sup>

Solms-Laubach's and Stolberg-Wernigerode's self-assured mediation between the interests of the state and the provinces made them a particular type of proconsul. Neither man owed his position to meritocratic advancement through the Prussian civil service and they both poured scorn on the myopia of bureaucrats that came to the western provinces with notions of East Elbian superiority. Their primary legitimation came from their close relationship with Prussia's leading statesmen, with whom they corresponded directly and whose policy directives they were expected to implement against local hostility. In that sense, they conformed to the prototype of the colonial viceroy described by Jürgen Osterhammel: 'a specifically empowered personal envoy of the ruler, communicating with the monarch on a more intimate footing than the ordinary governor', whose vice-regal mandate is tied to 'special tasks of imperial crisis management' rather than authority 'delegated on a regular and institutional basis'.<sup>83</sup> In 1817, Solms-Laubach led a *fronde* of governors who refused to submit to the 'censorship' of ministerial civil servants because they insisted

<sup>81</sup> Stewart A. Stehlin, *Bismarck and the Guelph problem, 1866–1890: a study in particularist opposition to national unity* (The Hague, 1973), p. 177.

<sup>82</sup> Heide Barmeyer, 'Liberale Verwaltungsreform als Mittel zur Eingliederung Hannovers in Preußen, 1866–1884/1885', in Peter Baumgart, ed., *Expansion und Integration: Zur Eingliederung neugewonnener Gebiete in den preußischen Staat* (Cologne and Vienna, 1984), pp. 357–402. See also Stehlin, *Bismarck and the Guelph problem*, pp. 176–84.

<sup>83</sup> Jürgen Osterhammel, 'The imperial viceroy: reflections on a historical type', in Jeroen Duidam and Sabine Dabringhaus, eds., *The dynastic centre and the provinces: agents and interactions* (Leiden, 2014), p. 23.

they were ‘envoys of the crown’ in the provinces.<sup>84</sup> According to Rüdiger Schütz, governors’ emergence as a ‘constitutional opposition’ within the Prussian civil service reflected an ambition to regulate, administer, and decide provincial matters locally in consultation with the highest authorities in the land, the king and his ministers. Prussia’s successive territorial gains in the nineteenth century helped consolidate the autonomy of the governors, since growing diversity of the Hohenzollern state incentivized solutions that responded to Germany’s federal heritage.<sup>85</sup> This trend reached its apogee in Stolberg-Wernigerode’s time with the County Ordinance (*Kreisordnung*) of 1872, the Provincial Ordinance (*Provinzialordnung*) of 1875 and the Law on General State Administration (*Gesetz über die allgemeine Landesverwaltung*) of 1883.<sup>86</sup>

Solms-Laubach and Stolberg-Wernigerode participated prominently in the devolution of power out of a belief that their *standesherrlich* origins made them well suited for the role of broker. The latter was quick to clarify in his memoirs that even though Prussia was his fatherland, he was no ‘Prussian bigot or particularist’ because of his family’s wider roots in the history of the Holy Roman Empire.<sup>87</sup> His biographer, Bosse, implied in a similar vein that the count’s amicable treaty agreements with the Hohenzollern crown about the extant rights of his clan stemmed from a voluntary choice to serve Prussia.<sup>88</sup> This co-operation was conditional, and Stolberg-Wernigerode therefore did not hesitate to fight back when he perceived his dynastic interests to be under threat. Two years after the Austro-Prussian War and in the middle of treaty negotiations with Prussia, a senior official in his comital government, Rudolph Elvers, published a philippic against the ‘smothering’ of political, legal, and cultural diversity by ‘ruthless centralization and uniformity’ in the name of state-building.<sup>89</sup> Stolberg-Wernigerode’s schizophrenic relations with Prussia are perhaps best summed up by the fact that while he held the governorship of Hanover, he also litigated against his employer to determine ownership of the Hanoverian county (*Amt*) of Elbingerode, which he laid claim to in his capacity as mediatised prince.<sup>90</sup> The revision of the Prussian county structure

<sup>84</sup> Rüdiger Schütz, ‘Die preußischen Oberpräsidenten, 1815–1866’, in *Die preußischen Oberpräsidenten, 1815–1945* (Boppard a. R., 1985), p. 69.

<sup>85</sup> *Ibid.*, p. 71.

<sup>86</sup> Georg-Christoph von Unruh, ‘Der preußische Oberpräsident – Entstehung, Stellung und Wandel’, in *ibid.*, pp. 25–7; Julian Wright and Christopher Clark, ‘Regionalism and the state in France and Prussia’, *European Review of History – Revue européenne d’histoire*, 15 (2008), pp. 277–93.

<sup>87</sup> Otto zu Stolberg Wernigerode, *Die Lebenserinnerungen des Fürsten Otto zu Stolberg-Wernigerode (1837–1896)*, ed. Konrad Breitenborn (Wernigerode, 1996), p. 88.

<sup>88</sup> Bosse, ‘Fürst Otto zu Stolberg-Wernigerode’, p. 129.

<sup>89</sup> Rudolph Elvers, *Die Stellung der deutschen Standesherrn seit 1866: Nach den Forderungen des Rechts und der Politik* (Berlin, 1868), pp. 4, 7. On the authorship of this anonymously published work, see Heinrich Heffter, *Otto Fürst zu Stolberg-Wernigerode* (Husum, 1980), p. 301.

<sup>90</sup> *Ibid.*, p. 366.

precipitated the absorption of his comital government into the Prussian state in 1876, but Stolberg-Wernigerode's career was far from over, for he was appointed vice-chancellor of Germany and vice-premier of Prussia only two years later.

The complex and drawn-out negotiations with mediatized princes taught the Prussian crown lessons it could apply to the second category of dynasts under consideration, the monarchs deposed in 1866. Ironically, some of the same families that had profited from the *Standesherrn's* fall from power earlier would now find themselves on the receiving end.

### III

The post-Napoleonic era was a period of intense state-building across the German Confederation. Governments aimed to mould the disparate populations that constituted the newly minted kingdoms of Bavaria or Hanover into integrated political communities. Their measure of success became the degree to which these semi-artificial entities managed to reinvent themselves as homelands of 'nations' or 'tribes' flourishing under the benign rule of 'ancestral' dynasties.<sup>91</sup> Although the sprawling Hohenzollern monarchy lent itself less easily to the propagation of a tribal identities, here, too, Edmund Burke's reflections on the negative lessons of the French Revolution inspired Romantic intellectuals like the political economist Adam Müller to initiate a shift away from instrumental towards organic interpretations of the state, which found its guardian and spiritual embodiment in the monarch.<sup>92</sup> The fusion of patriotism and dynasticism in such narratives of mutual attachment between the sovereign and his subjects bears testament to the growing importance of 'soft power' in the projection of royal authority. In addition to traditional pillars of the monarchical principle like the ability to wield command over the army or the state bureaucracy, the rise of the mass media, the steady expansion of railway networks and consumer culture enabled monarchs to communicate with subjects more directly than ever before in pursuit of *Untertanenliebe* (love of subjects for their sovereign).<sup>93</sup>

<sup>91</sup> Frank Lorenz Müller, *Royal heirs in Imperial Germany: the future of monarchy in nineteenth-century Bavaria, Saxony and Württemberg* (Basingstoke, 2017), ch. 4; Abigail Green, *Fatherlands: state-building and nationhood in nineteenth-century Germany* (Cambridge, 2001); Simone Mergen, *Monarchiejubiläen im 19. Jahrhundert: Die Entdeckung des historischen Jubiläums für den monarchischen Kult in Sachsen und Bayern* (Leipzig, 2005), p. 288.

<sup>92</sup> Duncan Kelly, 'Revisiting the rights of man: Georg Jellinek on rights and the state', *Law and History Review*, 22 (2004), p. 512; Adam Müller, *Die Elemente der Staatskunst*, ed. Jakob Baxa, II (Jena, 1922; orig. edn 1809), esp. pp. 233–5.

<sup>93</sup> See Frank Lorenz Müller, "'Winning their trust and affection": royal heirs and the uses of soft power in nineteenth-century Europe', in Frank Lorenz Müller and Heidi Mehrkens, eds., *Royal heirs and the uses of soft power in nineteenth-century Europe* (Basingstoke, 2016), p. 5. On the meaning of *Untertanenliebe* and the material culture of monarchy, see also Hubertus Büschel, *Untertanenliebe: Der Kult um deutsche Monarchen, 1770–1830* (Göttingen, 2006), and Eva Giloi,

After five decades of particularist state-building, Prussia's annexation of Hanover, Hessen-Kassel, and Nassau made it all the harder to settle the old debate whether and, if so, how allegiances could be transferred in the aftermath of regime change by force. Since the Final Act of the Vienna Congress guaranteed the territorial integrity of the German Confederation's member states, Berlin faced the risk of foreign intervention on behalf of the wronged monarchs. Banking on this possibility, King Georg V of Hanover issued a protest note to all powers 'who have recognized the sovereignty and independence of our kingdom, convinced that they will never let might prevail over right'. The missive asserted the king's continued sovereignty and declared all orders issued by the Hohenzollern 'usurper' void.<sup>94</sup> The Prussian authorities were well aware of the moral predicament Georg V's obstinacy placed his subjects in. In a revealing letter – one of many received in the first year of Prussian rule – the mayor of Norden in East Frisia defended himself to a superior thus:

Your Excellency knows better than me that loyalty and love of country are not to be found where people change kings like coats. Those Hanoverians that remained faithful to King Georg V when his star began to wane will on the grounds of the same ethical necessity be hailed as the best Prussians one day.<sup>95</sup>

Mayor Johann Hillern Taaks of Norden was one of the many civil servants and officers in the occupied territories that were waiting to be released from the oath of allegiance to their former sovereigns. Friedrich Wilhelm I of Hessen-Kassel and Adolph of Nassau issued the necessary instructions soon after the annexations became formalized, as did Georg V with some delay in December 1866. Defiance would have achieved little except to endanger the careers of their subordinates and to jeopardize the return of family assets seized by Prussia. They were handsomely compensated for their sacrifice, however. The Treaty of Stettin guaranteed the elector the continued payment of his civil list to the value of 300,000 thalers annually (minus deductions for administrative expenses) while Duke Adolph and Georg V received the dividends of 8.9 and 16 million thalers respectively invested in Prussian 4.5 per cent stocks and securities. In addition, the three former rulers had estates and palaces returned to them. These generous terms provided for a comfortable existence in exile, which permitted Duke Adolph, hitherto the

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*Monarchy, myth, and material culture in Germany, 1750–1950* (Cambridge, 2011). For a critical examination of the methodological pitfalls that historians encounter when measuring the impact of *Untertanenliebe* from the bottom up, see Torsten Rlotte, 'Nach "Pomp und Politik": Neue Ansätze in der Historiographie zum regierenden Hochadel im 19. Jahrhundert', *Neue Politische Literatur*, 59 (2014), pp. 219–20.

<sup>94</sup> Georg V, *Der Protest des Königs von Hannover gerichtet an die europäischen Mächte gegen die Einverleibung seines Landes durch den König von Preußen* (n.p., 1866), pp. 13–14.

<sup>95</sup> Mayor Taaks to Civil Commissioner Freiherr Hans von Hardenberg, 19 Aug. 1866, Niedersächsisches Hauptstaatsarchiv Hannover (hereafter NHStAH) Hann. 116 Nr 14/I.



ruler over less than half a million subjects, to maintain a household of 140 court officials and servants.<sup>96</sup>

At first glance, the deposed monarchs' trade of sovereign rights for money conformed to the path chosen by many *Standesherrn*. Indeed, this is how Queen Victoria, who had initiated the negotiations with the Prussian government on Georg V's behalf, interpreted the agreement when she assured Bismarck that the king's acceptance of money from Berlin would make him honour-bound not to interfere in Hanover.<sup>97</sup> Wilhelm of Prussia's senior advisers made much the same point in their recommendation to approve the treaty. The fact that the exchange of subjects for cash flew in the face of the supposedly unique congruity between dynastic, ethno-tribal, and territorial identities so cherished by state-builders raised few hackles because the reduction of sovereignty to an alienable commodity allowed for easier transfer. Hence, no sooner had Elector Friedrich Wilhelm I put his name to the Stettin Treaty than Wilhelm 'gifted' the forest of Schmalkalden – until then an exclave of Hessen-Kassel – to the duke of Saxe-Coburg-Gotha for his military assistance during the war of 1866.<sup>98</sup> Friedrich Wilhelm I and Georg V were not too perturbed, though, since they considered the release of their subjects from the oath of allegiance merely a temporary setback. Without the hard power of the state behind them, they counted on the conscience of their subjects to leave the door open for a comeback. In a public statement, the elector lectured the population of Hessen-Kassel that although oath-takers were henceforth free to follow the Prussian king's command, the 'special relationship' that bound them to their former sovereign was permanent. Every servant of the state therefore had to decide for himself whether to commit an act of 'disloyalty' (*Treuverletzung*).<sup>99</sup> Georg V adopted a similar logic by asking his officers to request their release from the oath of allegiance individually. He hoped their personal bond could be reactivated once popular acclamation or foreign intervention had put him back on the ancestral throne.<sup>100</sup>

<sup>96</sup> Pierre Even, 'Adolph, Herzog zu Nassau, Großherzog von Luxemburg: Ein Lebensbild', in Hessische Landesbibliothek Wiesbaden, ed., *Adolph Herzog zu Nassau Großherzog von Luxemburg, 1817–1905* (Wiesbaden, 1992), p. 49.

<sup>97</sup> Stehlin, *Bismarck and the Guelph problem*, p. 52.

<sup>98</sup> Donation reprinted in Wilhelm Hopf, ed., *Die deutsche Krisis des Jahres 1866* (Hanover, 1906), p. 387; Max Endres, *Handbuch der Forstpolitik mit besonderer Berücksichtigung der Gesetzgebung und Statistik* (2nd edn, Berlin, 1922), pp. 415–16. On the idea of sovereignty as royal property (which fell into increasing abeyance in the course of the nineteenth century), see Herbert H. Rowen, *The king's state: proprietary dynasticism in early modern France* (New Brunswick, 1980); Rafe Blaufarb, *The great demarcation: the French Revolution and the invention of modern property* (Oxford, 2016); Karl Möckl, 'Der deutsche Adel und die fürstlich-monarchischen Höfe, 1750–1918', *Geschichte und Gesellschaft, Sonderheft*, 13 (1990), p. 101.

<sup>99</sup> Friedrich Wilhelm I von Hessen-Kassel, *Denkschrift Sr. Königlichen Hoheit des Kurfürsten Friedrich Wilhelm I. Von Hessen, betreffend die Auflösung des Deutschen Bundes und die Usurpation des Kurfürstenthums durch die Krone Preußens im Jahre 1866* (Prague, 1868), pp. 60–1.

<sup>100</sup> Georg V's adjutant general, Colonel Georg Dammers, describes in his memoirs how officers dealt with this challenge: 'When the time came to take my leave I was naturally very

There existed international precedents for such conceptions of loyalty. The Hanoverian and Hessian monarchs' voluntarist interpretation of the subject-sovereign dyad converged in some important respects with the discourse of subjecthood in the British empire prior to the American Revolution. Growing out of the Bodinian credo that citizenship entailed the 'submission and obedience of a free subject to his prince', it established a deeply personal relationship to the monarch as individuals across Britain's far-flung colonies proclaimed their allegiance to the crown and laid claim to a corresponding set of protections.<sup>101</sup> A not entirely dissimilar process of claims-making underlay subjecthood in mid-nineteenth-century Germany. Although monarchs in exile no longer had the wherewithal to intervene on behalf of subjects openly, their informal influence with loyal followers, donations to charities in the 'homeland', and, in the case of Georg V, patronage of anti-Prussian organizations such as the infamous Guelph Legion in France or the German Hanoverian party were designed to convince legitimists that they were fighting the good fight for the independence of their people. The Hohenzollerns therefore remained concerned for a long time about individuals like the *Standesherr* Prince Ludwig Wilhelm zu Bentheim, who outwardly accepted the new regime to continue their military or civil service careers but secretly professed a personal attachment to Georg V, the 'king of his heart'.<sup>102</sup> Put another way, the annexations of 1866 made the absent sovereign not only a political point of orientation for critics of the Prussian state but also forced supporters of Hohenzollern rule to adjust their way of thinking, even if only to discredit the former.<sup>103</sup>

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moved and assured [the king] of my lasting loyalty. I told him I was saying goodbye with the deepest sorrow but understood entirely that he did not need my services at present. Should they be required again in future, I would be at his disposal.' Georg F. Dammers, *Erinnerungen und Erlebnisse des königlich hannoverschen General-Major Georg Friedrich Ferdinand Dammers, letztem General-Adjutanten des Königs Georg V. von Hannover* (Hanover, 1890), p. 177. On the oath of allegiance and the political instrumentalization of loyalty more generally, see Bernsee, *Moralische Erneuerung*, pp. 176–83; Nikolaus Buschmann and Karl Borromäus Murr, eds., *Treue: Politische Loyalität und militärische Gefolgschaft in der Moderne* (Göttingen, 2007); Sven Lange, *Der Fahneid: Die Geschichte der Schwurverpflichtung im deutschen Militär* (Bremen, 2002).

<sup>101</sup> Hannah Weiss Muller, *Subjects and sovereign: bonds of belonging in the eighteenth-century British empire* (Oxford, 2017), pp. 9, 212–19.

<sup>102</sup> Ludwig Prince von Bentheim to King George V, 13 Mar. 1867, NHStAH, Dep. 103, V, 455.

<sup>103</sup> Riotte, *Der Monarch im Exil*. See also Frank Bösch, 'A margin at the center: the conservatives in Lower Saxony between Kaiserreich and Federal Republic', in Neil Gregor, Nils Roemer, and Mark Roseman, eds., *German history from the margins* (Bloomington, IN, 2006), pp. 127–45; Ernst Schubert, 'Verdeckte Opposition in der Provinz Hannover: Der Kampf der "Welfen" um die regionale Identität während des Kaiserreichs', *Blätter für deutsche Landesgeschichte*, 134 (1998), pp. 211–72; Hans-Georg Aschoff, *Welfische Bewegung und politischer Katholizismus, 1866–1918* (Düsseldorf, 1987).

The debates which ensued in the Prussian parliament, the *Landtag*, are a case in point. Despite the confident assertion by Ernst Rudolf Huber, one of the doyens of modern German constitutional history, that *debellatio* offered sufficient cause for the incorporation of Hanover, Hesse-Kassel, Nassau, and the city of Frankfurt into Prussia, the sub-committee tasked with the preparation of the bill apparently felt less sure because it advised the government to ‘find another legal justification than [the right of] conquest. It amounts to naked coercion, which does no longer suffice for law- and state-building in the present time’.<sup>104</sup> At least Bluntschli was prepared to countenance ‘despotic acts’ if public necessity called for it, though such a case was difficult to make for straight-up conquest because Prussia did not even adopt a law for the expropriation of private property in the common interest until 1874.<sup>105</sup> The Heidelberg professor therefore resorted to a higher justification, namely the will of the nation to be united, and warned that since the ‘free course of Germany [had been] hemmed in and led down the garden path by dynastic legitimacy’ for too long, Prussia should abandon her own ‘superstitious infatuation with legitimacy’.<sup>106</sup> Prussia’s minister president, Otto von Bismarck, readily adopted Bluntschli’s line of reasoning to defend the annexations.<sup>107</sup> In so doing, he could rely on the emerging popularity of *Realpolitik*, a new system of thought inspired by Charles Darwin’s evolutionary theory, which held that assertiveness rather than morals, rights, or respect for historical precedent was the key to national survival.<sup>108</sup>

To lend weight to the claim that conquest was in the national interest, Bismarck had to make the people, as represented by the *Landtag*, the arbiter of the settlements between the Prussian crown and the deposed princes. However, historians have often marvelled why Bismarck had parliament vote on the agreements in February 1868, only to sequester Georg V’s and Friedrich Wilhelm I’s assets one month later. The two most prominent explanations are that he either acted out of genuine disappointment about the two monarchs’ unabated enmity towards Prussia or that he wanted to secure a slush fund free from parliamentary control. However, both answers miss an important detail: Bismarck sought parliamentary confirmation for all major

<sup>104</sup> Ernst Rudolf Huber, *Deutsche Verfassungsgeschichte seit 1789*, III (2nd edn, Stuttgart, 1978), pp. 580–1; Stephan Verosta, ‘Die Völkerrechtswidrigkeit der Annexion Hannovers durch 1866’, in Dieter Blumenwitz and Albrecht Randelzhofer, eds., *Festschrift für Friedrich Berber zum 75. Geburtstag* (Munich, 1973), p. 530.

<sup>105</sup> Bluntschli, *Deutsches Staats-Wörterbuch*, p. 718; Lars Menninger, *Die Inanspruchnahme Privater durch den Staat: Das Recht der Aufopferung und Enteignung im 18. und 19. Jahrhundert* (Baden-Baden, 2014), p. 142.

<sup>106</sup> Johann Kaspar Bluntschli, *Denkwürdiges aus meinem Leben*, III (Nordlingen, 1884), p. 32.

<sup>107</sup> Otto von Bismarck, *Bismarck, the man and the statesman*, trans. Arthur John Butler, II (New York, NY, 1898), pp. 79–80.

<sup>108</sup> Johannes Paulmann, *Globale Vorherrschaft und Fortschritt: Europa, 1850–1914* (Munich, 2019), pp. 368–78; Karl-Georg Faber, ‘Realpolitik als Ideologie: Die Bedeutung des Jahres 1866 für das politische Denken in Deutschland’, *Historische Zeitschrift*, 203 (1966), pp. 1–45.

measures regarding the exiled dynasties and did the same for treaties concluded with *Standesherrn* since 1869.<sup>109</sup> Although this move strengthened the Prussian legislature, the legal counsel of Duke Engelbert-August von Arenberg was probably right to suspect that Bismarck considered this an acceptable price to pay for the opportunity to hide behind the *Landtag* as he dispossessed his sovereign's peers.<sup>110</sup> Attentive to the legitimacy force of public opinion, the conservative jurist Carl Ludwig von Haller had warned as early as 1820 that only treaties which could count on broad backing guaranteed the 'completion' of conquest.<sup>111</sup>

The common front of the Prussian crown and parliament against rival claimants of sovereignty gathered further momentum as the unified *Kaiserreich* took shape after 1871. With the dissolution of the German Confederation, the mediatised princes had lost the protection of their vestigial sovereign rights under international law, and the *Reichstag* took full advantage of this to pass legislation which gradually standardized German citizenship over the next four decades, culminating in the Civil Code of 1900. The Prussian crown also scored a victory when Elector Friedrich Wilhelm I's heir acknowledged the incorporation of his patrimony into the Hohenzollern monarchy as an 'irrevocable constitutional act' in return for an increase of the dividends payable to the beneficiaries of the Brabant dynasty's entailed estate (since the sequestration had in the meantime been lifted).<sup>112</sup> Eventually, even relations with the Prussian royal family's most steadfast critics, the Guelphs, mellowed. In 1892, their sequestered property was returned to them, clearing the path for the betrothal of the Guelph heir to Kaiser Wilhelm II's only daughter and the couple's accession to the ducal throne of Brunswick in 1913.<sup>113</sup> Intriguingly, however, the decline of Germany's dethroned sovereigns as a political threat to Hohenzollern legitimacy coincided with an upgrading of their symbolic prestige through titles and ceremonial privileges. Wilhelm II courted the indifferent Hanoverian *Standesherr* Duke Engelbert-Maria von Arenberg with some success and elevated several princely families to higher peerages (including the Stolberg-Wernigerodes).<sup>114</sup> After 1900, the Kaiser similarly assumed the co-protectorate of various commemorative projects alongside the Hanoverian and Nassowian royal families to burnish his image as a defender of the annexed provinces' heritage.<sup>115</sup> The elaborateness of this pageantry bore

<sup>109</sup> Beusch, 'Westfälische Standesherrn', pp. 280–1.

<sup>110</sup> Heinrich Zoepfl, *Rechtsgutachten über die von der Königlich-Preussischen Staatsregierung beabsichtigte neue gesetzliche Regulierung des standesherrlichen Rechtszustandes des Herzogs von Arenberg wegen des Herzogthums Arenberg-Meppen* (Hanover, 1872), p. 15.

<sup>111</sup> Carl Ludwig von Haller, *Restauration der Staats-Wissenschaft oder Theorie des natürlich-geselligen Zustands der Chimäre des künstlich-bürgerlichen entgegengesetzt*, II (Winterthur, 1820), p. 543.

<sup>112</sup> Treaty reprinted in Hopf, ed., *Die deutsche Krisis*, pp. 391–2.

<sup>113</sup> See Ute Daniel and Christian K. Frey, eds., *Die preussisch-welfische Hochzeit, 1913* (Brunswick, 2016).

<sup>114</sup> Gollwitzer, *Die Standesherrn*, pp. 50–1.

<sup>115</sup> Heinzen, 'Monarchical state-building through state destruction', pp. 525, 540–8.

witness to the monarchy-centred nature of German politics between 1815 and the First World War, but at the same time the involvement of multiple dynasties offers one final reminder that the symbolic capital of deposed princes could be useful where overt markers of sovereignty like the exercise of physical control over a given territory, the ability to make laws, or the acquiescence of the international community were insufficient on their own to ensure people's identification with the official head of state.

#### IV

Conquest and subjugation are potent drivers of history. The French philosopher Grégoire Chamayou has called this will to dominate 'cynegetic energy' because it 'gathers together what is scattered, centralizes and accumulates in a limitless logic of annexation'.<sup>116</sup> The phenomenon Chamayou describes is a common trope in the literature on the birth of the modern state: the creation of standing armies and the expansion of bureaucratic infrastructures put governments in a position to bring rival bearers of jurisdiction under their control and, where possible, to eliminate them. Legal codes became standardized and, in time, the state gained legal personality distinct from the sovereignty of the ruler.<sup>117</sup> The late nineteenth-century German sociologist Max Weber famously coined the phrase 'the disenchantment of the world' to describe this relentless onslaught of rationalization and standardization.<sup>118</sup> As the melancholic undertone of Weber's words suggests, however, he felt that something important was being lost in the process, for the disappearance of ancient institutions and customs raised uncomfortable questions about the direction of the future.

This article has explored Prussian state-building from the rather less familiar angle of the vanquished 'victims'. It has argued that for much of the nineteenth century sovereignty remained a contested resource due to the difficult political, legal, and ethical implications of conquest, the reluctance of former elites to

<sup>116</sup> Grégoire Chamayou, *Manhunts: a philosophical history* (Princeton, NJ, 2012), p. 16.

<sup>117</sup> See Jeroen Duindam, *Dynasties: a global history of power, 1300–1800* (Cambridge, 2016), pp. 308–14; Dieter Grimm, *Constitutionalism: past, present, and future* (Oxford, 2016), p. 45; Wolfgang Reinhard, 'Das Wachstum der Staatsgewalt: Historische Reflexionen', *Der Staat*, 31 (1992), p. 65; Andreas Pečar, 'Dynastien – Träger der Staatsbildung? Überlegungen zu Herrschaft und Staatsbildung in kulturvergleichender Perspektive anlässlich einer prominenten Neuerscheinung', *Zeitschrift für Historische Forschung*, 44 (2017), pp. 51–67. As Bridget Coggins's succinct summary of the quantitative evidence gathered by the Correlates of War Project highlights, '[s]tate births were rare in the nineteenth century and state deaths, or violent conquests, were more frequent than they are today'. Bridget Coggins, 'Friends in high places: international politics and the emergence of states from secession', *International Organization*, 65 (2011), p. 436.

<sup>118</sup> Max Weber, 'The profession and vocation of politics', in Max Weber, *Political writings*, ed. Peter Lassman and trans. Ronald Speirs (Cambridge, 1994), p. 311; Peter Lassman, 'The rule of man over man: politics, power and legitimation', in Stephen Turner, ed., *The Cambridge companion to Weber* (Cambridge, 2000), pp. 96–7.

part with their sovereignty, and the services that *Unterlandesherrn* could render the state. To be more precise, the dispossession of fellow dynasts threatened to undermine the fiction of historical continuity that lay at the heart of the monarchical principle and accounts for the eagerness of successive generations of Prussian monarchs to win the acquiescence of their defeated peers through treaties and symbolic acts of reconciliation. Conquest moreover evoked negative memories of the Napoleonic Wars, which is why pro-Prussian legal minds like Brockhaus and Bluntschli had to go to considerable lengths to justify it. Finally, while it may have been true in a very broad sense, as Richard J. Evans writes, that after 1815 the ‘prince or ruler became, in effect, the executor of national or state sovereignty guaranteed by international agreement with the virtual force of law’, the destruction and territorial changes caused by the Napoleonic Wars meant that the Prussian monarchy for a long time lacked the means to carry its will into effect locally.<sup>119</sup> Dynasties with deep roots in the community were better placed to transmit a ‘personalized and intimate idea of sovereignty’ (to borrow Frank Mort’s expression), which created an opening for them to stay relevant in a century of dramatic sea-changes.<sup>120</sup> The interplay of all the above strands makes clear that in practice sovereignty was never a unitary concept, even in a system like Prussia’s where the defenders of the monarchical principle held fast to the Bodinian tradition. As a result, Prussian state-building was replete with jurisdictional ambiguities and reversals of fortune, thanks to which fallen potentates managed to preserve and sometimes even to claw back attributes of sovereignty. As late as October 1870, King Wilhelm I and his ministers postponed a decision on whether Count Otto zu Stolberg-Wernigerode should be permitted to keep his comital government (*Regierung*) and approve charitable donations in his domains in lieu of the king.<sup>121</sup>

This dynamic relationship between Prussia’s kings, quasi-sovereigns, and absent monarchs tells a global story. Politics – and in the nineteenth century most were still presided over by monarchs of some description – competed with each other for people, land, influence, and resources. In a twist on the Hobbesian state of nature, this made kings each other’s wolf (*rex regi lupus*). ‘African Bonapartes’ like the Nyamwezi chief Mbula Mtyela or the famed Zulu king Shaka participated in this game of mutual elimination just as much as European monarchs that inflicted a slow death of dismemberment on the once mighty Ottoman Empire.<sup>122</sup> Yet superior strength did not automatically confer full sovereignty on the new occupant of a conquered territory. Among

<sup>119</sup> Richard J. Evans, *The pursuit of power: Europe, 1815–1914* (London, 2016), p. 28.

<sup>120</sup> Frank Mort, ‘Safe for democracy: constitutional politics, popular spectacle, and the British monarchy, 1910–1914’, *Journal of British Studies*, 58 (2019), p. 115.

<sup>121</sup> Protocol of the Ministry of State meeting, 12 Oct. 1870, in Rainer Paetau and Hartwin Spenkuch, eds., *Die Protokolle des Preußischen Staatsministeriums*, VI/1 (Hildesheim, 2004), p. 164.

<sup>122</sup> Dieter Langewiesche, ‘Monarchy – global: monarchical self-assertion in a republican world’, *Journal of Modern European History*, 15 (2017), pp. 288–9.

‘civilized nations’, customary law, international conventions, the clout of ‘indigenous intermediaries’, the political will of the international community, and public opinion came together in a spectrum of possible outcomes, which stretched from outright annexation to the establishment of protectorates and the sharing of jurisdiction within condominiums. The brutality unleashed by wars of conquest in and outside Europe make it easy to overlook those subtle in-between solutions. Some historians rightly stress that while conquerors have come and gone, political experiments with divided sovereignty have proved remarkably durable, if not to say successful. Condominiums have been an attractive model of political organization for at least two-and-a-half millennia because of their ability to make rivals work with rather than against each other.<sup>123</sup> In an undisguised nod to the travails of Brexit, Beatrice Heuser comes to similar conclusions about federal unions:

one power’s absolute sovereignty is another’s absolute insecurity, and one power’s sovereign right to use war as an instrument of its policy is another’s sovereign right to attack it. Neither furthers stability. Sovereignty, and that is the lesson of the Holy Roman Empire, can instead be shared at several levels. Subsidiarity – the principle that decisions should be made at the lowest level possible – was widely practised even there.<sup>124</sup>

The contestation and negotiation of the monarchical principle in Prussia between 1815 and 1866 has relevance for Heuser’s poignant statement. The world German kings and statesmen inhabited after Napoleon’s fall still relied on the multilateral frameworks of the Holy Roman Empire for orientation, but at the same time these actors were not immune to new notions of national sovereignty, which served to centralize power in the hands of a few. Like governments today, they faced a political crossroads at which the future could turn either way.

<sup>123</sup> Alexander Jendorff, ‘Gemeinsam Herrschen: Das alteuropäische Kondominat und das Herrschaftsverständnis der Moderne’, *Zeitschrift für Historische Forschung*, 34 (2007), p. 217.

<sup>124</sup> Beatrice Heuser, *Brexit in history: sovereignty or a European union?* (Oxford, 2019), p. 243.