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Searching for a “Golden Mean”: The Bavarian State’s Arrangements with the House of Wittelsbach during the Weimar Republic

1 Introduction

The struggle between capital and labour, between monarchy and republic, between Bavaria and the Reich, between democracy and dictatorship, between the nationalists and the “foreigners,” between the countless different nationalist currents among themselves and between the countless different semi- and wholly proletarian associations among themselves, the fight of all against all is breaking out. (Mühsam 2018: 308–309)¹

These are the words that imprisoned anarchist and author Erich Mühsam used to jot down his impression of the political situation in September of 1923, a year of crisis for Germany. He was summarizing a condition that the Bavarian government had explicitly tried to avoid after the collapse of the monarchy in November 1918. This is at least one possible interpretation when it comes to the disputes over property rights that took place from 1919 to 1923 between the newly founded Free State of Bavaria and Bavaria’s former royal dynasty, the House of Wittelsbach (Weiß 2023: 32–34). These negotiations were plainly at odds with the idea of possible expropriation and were characterized by the clear concessions made by the Free State. Processes of expropriating former ruling dynasties had indeed been realized after 1918, as the example of Austria’s royal and imperial dynasty shows (Kadgien 2005: 45, 57). In Germany, too, demands to expropriate the Wittelsbach family were being made early on, mainly by left-wing political forces. However, most of those groups were soon excluded from the negotiations (*Stenographischer Bericht, Bayerischer Landtag*, 7 May 1920: 153).

Bavaria was the first German monarchy to fall in 1918, in a process historian Heinz Gollwitzer has described as the “dying of the monarchies” (*Monarchiesterben*;

¹ Diary entry of 12 September 1923 in Niederschönenfeld, notebook 38: “Der Kampf zwischen Kapital und Arbeit, zwischen Monarchie und Republik, zwischen Bayern und Reich, zwischen Demokratie und Diktatur, zwischen Völkischen und ‚Landfremden‘, zwischen den zahllosen verschiedenen nationalistischen Strömungen untereinander und zwischen den zahllosen verschiedenen halb- und ganz proletarischen Verbänden untereinander, der Kampf von allen gegen alle ist im Ausbrechen.” Unless stated otherwise, all translations are my own.

Gollwitzer 2008: 527). A few days later, the German Emperor and Prussian King also abdicated. In total, all twenty-two German principalities had collapsed by the end of 1918 (Kroll 2022: 13, 25; Günther 1928: 26). The new state governments throughout the Republic generally found amicable solutions to dealing with former rulers: some of the expropriations that had been ordered in individual cases were soon called off (Jung 1990: 204). Many former rulers took it for granted that they would be compensated for the loss of assets and rights. Various politicians in the new Republic also shared this belief. This was one factor in the revolution being perceived as misguided (Langwiesche 2019: 243).

On the other hand, it can be argued that the governments of the constituent states of the Weimar Republic were anxious to prevent civil war from erupting and violence from escalating between the monarchy's supporters and opponents. The decision to take a moderate approach to the former Bavarian royal house was thus a conscious choice to avert more serious consequences. Although the Weimar Republic has already been well studied as a field of research, there is still much to be explored when it comes to the property law negotiations that took place with the former royal houses in the Republic. This also applies to many aspects of the Bavarian case. I am currently working on a study of the Bavarian case for the period 1919–1933. The findings presented here provide initial insight into this topic. From the perspective of property law and the question of distributive justice, such gaps in the research are notable. The significance of compromise, on the other hand, plays a decisive role here, as will be shown in the following.

The aim of this chapter is to reconstruct the negotiations that took place in Bavaria, to examine their protagonists, to clarify whether they resulted in compromise or consensus, and, last but not least, to reflect on how the decision was received and perceived in the Weimar Republic.

2 The Bavarian Decision of 1923

In the night of November 7–8, 1918, the Bavarian monarchy was overthrown. The royal couple and their closest family members left Munich that same night (März 2021: 63). Shortly afterward, Social Democrat Kurt Eisner proclaimed the Free State of Bavaria. From the very beginning, the Free State, like every other part of the Weimar Republic, was faced with the dilemma of having to integrate some of the people who had been loyal to the monarchy into the new political order. At the same time, it also had to satisfy the expectations of those parts of the population who felt an affinity with the revolution. Concerns about civil war dominated

the period following the coup and flared up repeatedly over the course of the Weimar Republic (Braune 2021: VIII). Moreover, for organizational reasons, it was necessary for members of the civil service, which had already been in place under the monarchy, to remain in their positions after the revolution (Kalmer 1969: 222; Grau 2017: 367). This step was considered essential in order to supply the population with basic goods, but also to safeguard public order. Moreover, it meant that crucial state structures that had traditionally been closely linked to the monarchy continued to exist even after its abolition. As a result, the revolutionary upheavals did not manifest as clearly as the revolutionists might have hoped. At the same time, in Bavaria in particular, there was a long line of tradition that was reflected in the state’s cultural prestige as well: some parts of the population recognized the former ruling Wittelsbach family as the only legitimate rulers of Bavaria. Against this backdrop, the Bavarian Royalist Party (*Bayerische Königspartei*) (Weiβ 2006a) was founded in 1919, and the Bavarian Homeland and Royal Society (*Bayerischer Heimat- und Königsbund*) in 1921 (Weiβ 2006b).

The tensions and initial situation between the supporters and opponents of the revolution brought about different courses of action, which can also be interpreted in different ways. First, the fears that the representatives of the new state held of escalating violence and civil war can be cited as one reason why they engaged with the demands of, and in negotiations with, the former royal house of the Wittelsbach dynasty. Philosopher Fabian Wendt provides a definition of peace that fits well into these considerations: “One proposal is to see peace as the condition of non-violent coexistence among individuals and groups divided on morality including justice” (2013: 567). This kind of peace, “ordinary peace” (Wendt 2013: 567), which must be of a certain stability and duration, is made possible by dealing with the problematic situation, which Wendt calls a “modus vivendi arrangement[. . .]” (2013: 567): “[A] modus vivendi is a compromise that has as its content some arrangements that are designed to create, and effectively lead to, stable, non-violent coexistence among all parties involved” (Wendt 2013: 577).

Second, such an agreement also offered the possibility of the former rulers legitimizing democracy (von Aretin 2008: 182). In 1923, constitutional law expert Hans Nawiasky emphasized in relation to the Bavarian case that the Republic would only be legitimized by the Wittelsbachs once they agreed to the final outcome of the property negotiations. Furthermore, Nawiasky interpreted this step as a renunciation of the throne (Nawiasky 1923: 484–485).

Third, affinities with the nobility and the monarchy in parts of the new government should not be underestimated, and they did not simply disappear with the end of the preceding political order. One example is the Minister of Interior

in Kurt Eisner's cabinet, Erhard Auer, who demonstrated clear loyalty to the monarchy even after the revolution (Bauer 1987: XX–XXIII). Bavarian Finance Minister Wilhelm Krausneck, who had been in office since mid-1920, also repeatedly called for a loyal relationship with the Wittelsbachs (*Stenographischer Bericht, Bayerischer Landtag*, 7 May 1920: 145).

A fourth reason why the new Bavarian government might have been accommodating toward the former ruling house can be postulated at this point. It concerns the preservation of fundamental rights, such as the right to property, which were strengthened not only by the Bavarian Constitution passed in 1919 but also by the Weimar State Constitution, which similarly came into force in 1919 (Kreuter-Kirchhof 2017: 31).² On this reading, basic rights were due to all citizens, including the Wittelsbach family. If the young democratic state was to be taken seriously, the new government in particular had to insist on maintaining and safeguarding the fundamental rights of its citizens (Schmitt 1926: 27). These are the four main reasons that can be given for the new state government's actions after 1918.

It remains to be seen why the former royal house entered into the negotiations because, as we have seen regarding the argument of legitimacy, the negotiations threatened to undermine the basis for the monarchy's possible restoration (Nawiasky 1923: 484–485). However, this question seems relatively simple to answer: the members of the Wittelsbach family found themselves in a poor financial position after 1918. The monarchical state's previous regular cash payments had already ceased by the end of 1918, and their cash reserves were being attacked by inflation (*Rechtsgrundlagen* 1928).

The question also arises as to the basis on which such an agreement could be reached and what the formal aspects of such rapprochement would be. The option of launching a lawsuit to clarify the legal background to the property issues points to the special constellation of constitutional law and property law in Bavaria, which did not exist in that form in any other German state. There were far-reaching, unresolved legal issues involved in amalgamating Bavaria's state assets and the Wittelsbach family's household assets in the early nineteenth century (Immler 2006a). The amalgamation of the two sets of assets posed no difficulty in the nineteenth century, as the monarch was seen to be closely associated with the state. But after the revolution, the new state and the former ruling house had to clarify what they were owed from a property law perspective. In this context, renowned constitutional lawyers, as well as representatives of the former royal house and the new government, made the accusation that the idea that the assets

2 On the protection of property in the negotiations, see Beyerle 1921: 13–14.

administered by the state after the revolution were in fact pure state assets amounted to theft of Wittelsbach family property.³ Many members of left-wing parties saw it differently, demanding that the assets be used to benefit the population, which was suffering after Germany’s World War I defeat (*Stenographischer Bericht, Bayerischer Landtag*, 7 May 1920: 149). These statements address the intentions of the various players to reach a mutual agreement.

3 From Convergence to a Conclusion on the Bavarian Property Issue

The first talks between what would later become the two negotiating parties took place as early as in late 1918.⁴ But the assassination of Bavarian Prime Minister Kurt Eisner in February 1919 triggered a wave of violence, especially in the Bavarian capital of Munich, where a soviet republic was proclaimed shortly afterward. The months that followed were accompanied by bloodshed, some of it considerable. The new government under Prime Minister Johannes Hoffmann had to leave the city and retreat to Bamberg, where it remained until fall (Bischel 2019). The soviet republic was put down with great brutality in mid-1919 (Jones 2017: 295–298). Only afterward did it become possible for the Bavarian property law negotiations to begin (Ehberger 2017: 27). The negotiators for the former royal house were old confidants of the Wittelsbach family. Acting as negotiators on the side of the state were officials who had also made their careers in the ministries of the monarchy, some of whom were closely acquainted with the Wittelsbach representatives.⁵ It was against this backdrop that the property law debates between the representatives of the former royal house and the representatives of the Free State ensued from 1919 to 1923. The negotiations discussed the ownership of castles, rural estates, real estate, art collections, and forests of particular economic relevance. In addition, they dealt with cash holdings and intangible rights such as residential rights in castles or rights to the use of theater loges (Immler 2006b).

³ “Die Zivilliste des Königs,” *Münchener Tagblatt*, no. 330, 27 November 1918, GHA, Vermögens- und Güteradministration König Ludwigs III., no. 24.

⁴ *Undated draft for the lecture in the Council of Ministers*, by Karl Neumaier [?], [1918?], BayHStA, Bayerisches Staatsministerium der Finanzen, no. 87296, doc. 8.

⁵ Karl Neumaier from the Ministry of Finance, who had already worked intensively with people who were now representing the former royal house, was appointed as chief negotiator for the Free State. On the person of Neumaier, see Das Bundesarchiv n.d.

Both sides wanted to avoid discussions about the political aspects of the property issue. The question of the degree to which the monarchs were responsible for the consequences of World War I was discussed repeatedly, particularly in left-wing circles (*Stenographischer Bericht, Bayerischer Landtag*, 7 May 1920: 152–153; Elsbach 2019: 165). One of the most serious consequences of the war for Germany was rampant inflation, which led to the considerable impoverishment of large parts of the population. But such accusations had no serious significance for the question of wealth distribution.

Constitutional law expert Konrad Beyerle, who had been commissioned by the Wittelsbachs to draft an expert opinion on the dispute, argued in favor of the family being compensated by the Republic, citing historical references (1921, 1922). His expert opinion had a great deal of impact on the negotiations. It was persistently pointed out, especially by the representatives of the former Bavarian royal house, that the negotiations were not of a political but of a legal nature (Beyerle 1921: 16). However, both the concessions made by the Free State and denials that there was any political aspect to the disputes were viewed critically, especially by the sections of society that had expected the revolution to lead to actual political and economic upheaval (*Stenographischer Bericht, Bayerischer Landtag*, 7 May 1920: 146).

The Bavarian Parliament was only provided with insights into the results of the negotiations in 1923. Both negotiating parties had kept Parliament and the public in the dark about the process that had taken place between 1919 and 1923 (*Stenographischer Bericht, Bayerischer Landtag*, 8 March 1923: 1079–1080). The Bavarian Parliament included numerous members of left-wing parties who had vehemently rallied against the state making any settlement with the Wittelsbachs in previous years. The Bavarian Parliament ultimately voted in favor of the secretly reached agreement, despite votes against it. But since the 1920 state elections, the Conservatives had dominated the Bavarian Parliament.

Although inflation had been evident since the beginning of World War I, the situation reached crisis point after Germany's defeat. From 1922 onward, hyperinflation developed, dwarfing any previous problems. The year that the Bavarian government reached its agreement on property assets with the former royal family is generally regarded as a year of crisis in the scholarly literature.⁶ Political crises and rumors of coups by conservatives and the political right contributed to the impression of a crisis-ridden Republic in 1923 (Jones 2022; Longerich 2022). Against this backdrop, the Wittelsbach Compensation Fund (German: *Wittelsbacher Ausgleichsfonds*, hereafter referred to as the WAF), a foundation that still

⁶ Numerous recent works refer to the crisis character of the year 1923; see, e.g., Conze 2022.

exists today, was established as the clearest manifestation of the property negotiations (Immler 2006b). Its primary task was to secure the Wittelsbachs’ livelihood (Müller 2023: 64). After the agreement took effect, the Bavarian state transferred castles, properties, cash assets, rights, and sections of forest to the newly established foundation and thus into the Wittelsbach family’s sphere of use (Immler 2006b).

The fund reflected the joint understanding between the Free State and the Wittelsbachs that expropriating the former ruling family would have constituted a fundamental violation of the law. The origin of this decision was the view of law shared by both sides, which was expressed to a large extent in Beyerle’s legal opinion. Moreover, fears of political violence and the hope of legitimizing the Republic contributed to the approval. Historian Winfried Klein interprets this Bavarian arrangement as an opportunity for both parties to hold on to their own particular views of the law (2010: 163). Neither side had to agree on a common denominator regarding this issue: the legal protection of property was never up for debate. The situation was different when it came to assessing the starting point for the asset negotiations: the Wittelsbachs argued that theirs was a purely legal problem that should be solved by applying the rule of law, while supporters of left-wing parties in particular emphasized the issue’s political significance.

The concept of law that Klein refers to here does not pertain to the form or alignment of government, but to the constitutional rights consolidated by the Weimar Constitution, which in this case explicitly referred to property rights. It is therefore possible to differentiate between two different legal conceptions, each of which were of great importance: on the one hand, a conception of law that focused on the political system and, on the other, a conception that focused on the fundamental right to property. The solution at issue was therefore first and foremost a decision relating to the consolidation of fundamental rights. By placing the concept of property at the center of the dispute, the debate would have less to do with the legitimacy of former royal claims in the Republic and more with the extent to which the Republic was able to protect fundamental rights.

The cooperation also gave the former royal family the financial resources to maintain a monarchical tradition within the Republic, while the Free State received recognition through the approval conferred on it by the former ruling dynasty. However, due to the complexity of the aspects that are relevant here, it is difficult to say whether this was actually a win-win situation for both sides, even in hindsight. At the very least, there were differences in how the two parties saw themselves (Sendtner 1954: 419). During the decision-making process, the political left denounced the dangers of a coup that could potentially be financed through the fund (*Stenographischer Bericht, Bayerischer Landtag*, 8 March 1923: 1087). In this context, it is worth mentioning that, even in the Weimar Republic, some sup-

porters of the former Bavarian royal family made no secret of the fact that they considered monarchy to be a better form of government (Hübscher and von Are-tin 1932: 5). Journalist and author Eva Menasse writes that the most difficult aspect of the idea of compromise is having to recognize a former “enemy” as a “counterpart” in order for compromise to become acceptable in the first place (2020: 9); however, this problem only existed in Bavaria to a certain extent. It is true that, in Bavaria too, the revolution had primarily been motivated by popular dissatisfaction with the consequences of the lost World War I, and even before the revolution, the Social Democrats were making energetic speeches against the Bavarian royal family (Schattenhofer 1968: 14). But immediately after the revolution, much of the unrest subsided. Instead, revolutionaries, especially in Bavaria, were occupied with their own problems and dealing with the balance of power among themselves (Grau 2017: 370–371, 446–447). The image of the former royal house as an enemy thus seems to have already diminished of its own accord in the initial post-revolutionary period, despite all the concerns of its political counterparts.

Although 1923 turned out to be an extremely difficult year for all parties involved, both sides exercised restraint, resulting in what Carl Schmitt defines as a “real decision” (1928: 31, 66)⁷ becoming possible. Bavaria thus managed to achieve a result that was still many years ahead of various other German states. Moreover, the other ways in which the *Reich* dealt with the question of how to treat the former ruling houses in Germany can, according to Schmitt, often be described as a “pseudo-compromise” (1928: 31–32),⁸ as any serious decision-making process was deliberately delayed. In the end, as Bavarian MP Paul Dissinger summed it up in 1926, the agreement was a “golden mean” (1926: 2).

4 Characterizing the Agreement of 1923 from a Historical Perspective

When it comes to assessing the outcome of the negotiations, the question of whether the agreement was a compromise cannot be answered unambiguously. The following analysis is based on a concept of compromise with specific criteria. Thus, it should be assumed that, in a compromise, there are at least two parties with different expectations, which are only able to find a solution to the problem

⁷ “[. . .] echte Entscheidung.”

⁸ “Scheinkompromiss.”

through mutual agreement and painful concessions being made on both sides (Ruser and Machin 2017: 1). This was also the case in Bavaria. The transfer of assets from the state to the foundation was no trivial matter in financially difficult times. The emphasis on painful concessions also distinguishes compromise from the term *consensus*, which does not have the same connotation of pain going hand in hand with decision-making. Following John Rawls, Wendt argues in this context that consensus is not a “second-best option” like compromise, but the best outcome that can be achieved by all participants (2013: 578). It was only possible to reach a consensus in Bavaria on the issue of protecting fundamental property rights because that point had been uncritically accepted by both sides. One crucial element of compromise is that it by no means ends in a consensus of opinion between the different parties on the subject of the conflict. Rather, concessions are made on both sides, though the different opinions remain. This is the painful element (Willems 2016: 249). Consensus and compromise were not mutually incompatible in the Bavarian case. As long as a distinction was made between the different aspects, both concepts could coexist.

The focus here is on actions that can lead to compromise and on the actors who make compromise possible. When talking about actors, this also means naming the positions that those actors take in the negotiation process. A compromise can be reached by at least two, but also several parties representing contrary positions (Wendt 2013: 577). In this context, political scientist Martin Greiffenhagen emphasizes that a compromise can also be reached between people or groups who are perceived as enemies; however, if the aim is to ensure that the decision lasts for as long as possible once reached, then it is clear that a relationship based on a certain amount of trust must be built, making it possible to see in the other side not an enemy, but a counterpart (1999: 198). This mental effort was required from both negotiating parties in Bavaria after 1918. Just before the revolution, Eisner had made no secret of his aversion to the royal house (Loewenfeld 2004: 175). But after the revolution, he still argued in defense of protecting the Wittelsbachs’ fundamental rights. Compromise is also associated with a voluntary decision to negotiate (Willems 2016: 248).

Jan-Hendryk de Boer and Manon Westphal speak of compromise as a “technique used to regulate conflicts by making concessions to opposing views and positions” (2023: 142). If we describe compromise as a technique and thereby emphasize that it is a cultural practice, we should not forget that this technique also includes the process of the (written) fixing and long-term preservation of what is being negotiated. Reinhard Hopfer understands these aspects as the “linguistic

manifestations of compromise" (1995: 123),⁹ differentiating between the three phases that a compromise passes through in the course of its implementation: first, the (written) recording of the different positions at the beginning of the negotiations; second, the (written) process of negotiation itself; and, third, the (written) presentation of the decision and its discussion (1995: 123). In the case of the Bavarian property law debates, these components can be found in the form of protocols and mutual correspondence, but above all in the written codified treaty and the law on the WAF. In the aftermath of the negotiations, the treaty in particular became a reference point for later controversies, while the specially ratified law gave the treaty additional legal significance (*Übereinkommen* 1923; *Ge-
setz* 1923).

Considering the reasons for the Free State's actions mentioned above – preventing violence and civil war, getting the old rulers to legitimize the new system, and integrating the sections of the population that were loyal to the monarchy into the democratic system of government – and the former Bavarian royal house's financial need to agree, the mutual concessions and the painful sacrifices involved in accepting the treaty suggest it should be interpreted as a compromise. However, as previously suggested, the decision to safeguard fundamental rights, particularly the right to property, can also be considered a consensus, as no significant concessions appear to have been necessary on either side.

But not everybody saw the allocation of large assets to the Wittelsbachs as a concession to legal security. Left-wing voices – like that of Communist parliamentarian Franz Aenderl in 1923 – repeatedly worried that the ceded assets could be used as a basis for political agitation against the Republic (*Stenographischer Bericht, Bayerischer Landtag*, 8 March 1923: 1087). It is difficult to say how realistic such fears were. As committed monarchists repeatedly emphasized, the restoration of the monarchy in Bavaria would only be achieved by democratic means, i.e., by referendum.¹⁰ Such a demand would not have formally contradicted the compromise, which at no point officially claimed that the Wittelsbachs would never again be allowed to ascend the throne. At the very least, there is no evidence that the WAF took an active political stance on this issue.

Both sides agreed with conviction to respect fundamental rights. And showing respect for fundamental rights was specifically interpreted by both parties to the negotiations as protecting the rights of the Wittelsbach dynasty. Thus, while it is apparent that this case was in fact a kind of compromise, the next question is

9 "[. . .] sprachliche Erscheinungsformen von Kompromissen."

10 Freiherr von Pechmann (n. d.) "König Ludwig III. von Bayern †."

what form that compromise actually took. After all, there are numerous subcategories of compromise in the scholarly literature.

The Bavarian example described above is compelling not least because of its seemingly genuine political character. It was a negotiated result achieved through the highest political offices of state. Moreover, the issue negotiated concerned both nineteenth- and twentieth-century questions of state law. So far, so good. But how should we then view the fact that both negotiating parties meticulously emphasized that the negotiations were of a purely legal nature and would have no notable political significance? Does it matter which linguistic term is used to describe a decision or during an ongoing process? At this point, the fact that both negotiating parties interpreted and simultaneously designated the negotiations that took place from 1919 to 1923 as genuinely legal negotiations leads to a problem that is ultimately reflected in the final decision that was made as well. In the case of the property law negotiations in Bavaria, however, the matter seems clear: if it quacks like a duck, swims like a duck, and looks like a duck, it is usually a duck. The negotiations were therefore of a dual nature, which, when juxtaposed, had an ambivalent character. At first glance, it does not seem worth mentioning that any dealings with the Wittelsbachs in the Republic were inherently a political matter, as such a statement appears obvious. After all, they were the former sovereigns, so it can hardly be disputed that there was a political aspect to any dealings with them. But representatives of the former royal house repeatedly used this interpretation in the Republic to emphasize the distinction between the Wittelsbachs on the one hand and the economic and political crises on the other. However, it is not always easy to clearly identify the political substance of every decision. Philosopher Anton Ford points out this problem when he stresses that the scope of what can be interpreted as a political decision is very broad: a matter can quickly be assumed to be political or ascribed a political character as soon as it touches upon a topic that is even remotely political (2018: 61).

At this point, the attempt to distinguish clearly between “principled and strategic compromises” seems just as unconvincing as differentiating between “compromising interests,” such as material goods, and “compromising principles” (Haldemann 2023: 161). Both approaches can be identified in the Bavarian property law negotiations and cannot be separated from each other.

The difficulty arising from such an interpretation is evident. The Bavarian negotiations offer different levels of analysis, encompassing both consensus- and compromise-based decisions and different forms of compromise. According to Ulrich Willems, compromise, unlike consensus, does not represent a unanimous, agreed opinion (2016: 252). A compromise thus hardly succeeds in building unified satisfaction.

5 Good, Bad, or Simply Comprehensible? An Initial Analysis of the Decision

The potential for different assessments has to do with the various reasons for which the negotiations were initiated and concluded. If the decision reached in Bavaria is to be judged on this basis, a distinction must be made between the consensus and compromises that existed simultaneously. Both interpretations refer to the actors and the options that were at their disposal. The focus here is on the representatives of the former royal house and the officials of the Free State who participated in the negotiations in the broadest sense. The chapter primarily focuses on the position of the Free State of Bavaria, as it had sovereignty to act after the revolution. The agreement of the former royal house merely played a subordinate role at that point, as the Wittelsbachs, due to their weaker position, were granted less authority to assert their demands. When we talk about a consensus or a compromise being reached, it is important to emphasize once again that it was negotiated by the two groups mentioned above and explicitly excluded the majority of the Bavarian population. Only under this premise do both interpretations of the situation make sense.

Drawing on the views of philosopher Avishai Margalit, restricting the implementation of revolutionary goals in favor of safeguarding the country politically and economically seems to be a legitimate measure. At this point, it is of secondary importance whether the revolution was abandoned or not. Rather, the aim is to illuminate the background to, and value of, the treaty. The goals of social pacification and legitimizing the new system of governance carried significant importance and bring to mind the considerations of Margalit, who sees a certain tension between the keywords “peace” and “justice” in the context of compromise (2010: 7–8). Margalit is explicitly interested in the question of the extent to which it is acceptable to compromise on demands for justice in order to secure peace (2010: 8–9). His answer to this question is clear: in order to secure peace, painful restrictions on justice are acceptable (Margalit 2010: 81). While there is a limit, namely the “rotten compromise,” which means supporting or encouraging an inhuman regime (Margalit 2010: 89), it makes sense for both parties to make broad concessions. A sustainable compromise requires the recognition of the opposing side (Margalit 2010: 40–41; Menasse 2020: 9). Recognition has the function of achieving a balance between the two positions, even if it is only the pretense of balance (Margalit 2010: 41, 48).

In order to speak of a “sanguine compromise” according to Margalit, it is also necessary for any kind of pressure to be renounced and for any absolute expectations on either side to be abandoned (2010: 53–54). All these points were imple-

mented, largely successfully, in Munich in 1923. The recognition given in the negotiations thus led to the emergence of a stable collaboration that lasted even after the agreement had been concluded.¹¹ However, the compromise was attacked by more radical political forces, such as the communists, as it was seen as a government betrayal of all revolutionary values and goals (*Stenographischer Bericht, Bayerischer Landtag*, 8 March 1923: 1087).

In order to secure the state and get the former rules to legitimize the new framework, it was necessary to integrate critical segments of the population into the new state system. This can also be understood as a form of precaution, leaving the consideration of the last point, the protection of fundamental rights. The fact that a consensus decision was reached on this of all things was the real problem in the dispute. For many, the revolution had been associated with expectations that were not met. One elementary expectation had been the realignment of property relations (Fischer 2013: 110–112). These expectations did not change just because the government and the royal house decided to adhere to traditional basic rights and their inherent safeguarding of property relations. The fact that a consensus could be reached here shows that, despite the power shift that took place after the revolution in Bavaria, there were strong continuities in the positioning of the elites. It is thus appropriate to ask what impact this had. The consensus can possibly be interpreted as the basis for all the decisions made during the negotiations. This consensus in turn became the basis for other aspects that had the character of a compromise.

If we assume that the consensus on the preservation of fundamental rights was the foundation of the negotiations, then it also had an influence on how we analyze the negotiation hierarchy. Although it can be argued that the representatives of the Free State were the stronger negotiating party due to the change of system and their new authority, the consensus meant that there was a certain balance between the two sides that was not called into question. Sociologist Ferdinand Tönnies pointed out as early as in 1908 that the appeal of political compromise for the stronger actor is that it affords an opportunity to achieve legitimization through the weaker actor (1908: 929). Former Bavarian Crown Prince Rupprecht's approval of the 1923 agreement was then frequently interpreted as legitimizing the Republic (Nawiasky 1923: 484–485). In this case, however, we cannot speak of a “culture of compromise” as understood by historian Wolfram Pyta, which, he says, should go in hand with a certain level of negotiat-

¹¹ This concerned, among other things, the collaborative partnership between the representatives of the former royal house and Karl Neumaier.

ing transparency (2021: 82). Neither the negotiations nor the state legal opinions¹² that formed the basis of the decision-making process were made public (Nawiasky 2023: 476). This may also have led to the skepticism with which the compromise implemented in Bavaria was viewed.

6 The Actors: Inclusion, Exclusion, and Consequences

Having structurally analyzed the negotiations and their outcome and after assessing their substantive aspects, it would be helpful to take a closer look at the actors. The media, most of the Bavarian Parliament, and, even more relevantly, almost the entire population of the Free State of Bavaria were unable to participate in the negotiations due to their exclusion and a lack of transparency (*Stenographische Berichte, Bayerischer Landtag* 8 March 1923: 1079–1080). Still, the decisions significantly affected them. This fits in with remarks made by Ford, who explains that the negotiation of compromises is generally based on a bipolar approach, i.e., with a decision being settled between two persons or groups (2018: 69). However, Ford also emphasizes that there is often a third party who is not involved in the negotiations, but who is still negatively affected by the consequences of the decisions made by the other two parties (2018: 54–55). If one party provides support to another to the detriment of the third party's position, the first party is also responsible for that negative outcome (Ford 2018: 60, 64). The motives of the supporting party do not matter in such a scenario, as harming a third party discredits the motivations behind the assistance (Ford 2018: 61). Nor does it matter whether the action is based on a democratic process (Ford 2018: 68–69). Ford emphasizes further that an argument that invokes the legitimacy of democratic processes in such a context ignores the position of the third party that is being harmed (2018: 69). The philosopher is even more critical of conduct that leads to compromises where none are necessary, which he describes as the “doctrine of principled compromise” (Ford 2018: 71). Making such concessions may appear virtuous, but they are perceived differently by those who are affected by the injustice they cause (Ford 2018: 72). Demands for a just decision are completely thwarted at this point: “Unforced concessions are unwelcome to those who are victims of injustice because

¹² Two expert reports were prepared by the Free State: one by the Ministry of Finance and one by the Ministry of Justice. See the expert reports by Alexander Gerber and Karl von Günder: BayHStA, Bayerisches Staatsministerium der Justiz, no. 13661 and Bayerisches Staatsministerium der Finanzen, no. 87296.

unforced concessions are an additional injustice against them” (Ford 2018: 72). Véronique Zanetti writes that good compromises do not have to be fair (2022: 50). While perceptions of fairness are relative, a lack of transparency and the participation of certain social groups could lead to the perception of pronounced injustice. Zanetti’s conclusion seems quite apt to describe the situation in Bavaria and in many other parts of the Weimar Republic. According to this reading, it might be argued that the Free State of Bavaria made major concessions to the former royal house to the detriment of the Bavarian population, provoking fierce opposition, and not just from the Communist Party – irrespective of the motives behind such decisions. It should be noted that some sections of the population were also in favor of compensating the Wittelsbachs.

But, in light of the economic hardship that followed World War I, the population would have benefited from the assets that were ultimately granted to the WAF. While both sides of the negotiations treated each other with mutual respect and trust, ensuring that an equitable decision was reached in the interests of both parties, the population and any critical political voices were excluded from the decision-making process. The inequality that can be identified here thus did not affect the Free State or the former royal house, but the excluded third party.¹³

This exclusion of large parts of the population from the negotiations and the related dissatisfaction did not fade in the following years, but flared up all the more violently at the next opportunity. In the mid-1920s, currency stabilization was introduced throughout the *Reich* in order to bring inflation under control and to make the German Mark viable as a currency once again. In the process, many savers, buyers of war bonds, and pensioners lost considerable savings (Kluck 1996: 241–255). Owners of land and material assets, however, were affected much less by such developments. These economic and political interventions also had an effect on the 1926 referendum on the expropriation of the assets of former sovereigns in Germany without compensation (Schüren 1978). Although this mechanism of direct democracy did not succeed in 1926, large segments of the German population were actually in favor of expropriating the former royals without compensation (Riotte 2019: 52). In the context of this process, it was repeatedly pointed out that some sections of the population expected the monarchs to assume greater responsibility for the consequences of World War I. In addition, it was often argued that the erstwhile royal houses should contribute their share to improving the social and economic situation in Germany, just as savers

13 On injustice in compromise, see Ruser and Machin 2017: 15, 23.

and pensioners had to.¹⁴ These demands came from the population, which here took on the role of a third party to a compromise as described above. The injustice being denounced had less to do with an actual imbalance in the distribution of wealth than it did with the perception that the princes were not sufficiently accommodating or showing solidarity with their people. In the context of the referendum, the question of the stability of the Bavarian compromise was raised in very clear terms.

7 Conclusion

Ultimately, the agreement between the former Bavarian royal house and the Free State of Bavaria can be seen as the result of many years of negotiations, which in the final instance did not prevent an actual decision. The difficulty in interpreting the Bavarian case lies in the complexity of the aspects that had to be considered in the negotiations. Remarkably, it was precisely the political intentions of the Free State – the objective of safeguarding the security of the Republic – that led to the negotiations' political significance being largely negated. It was only when both sides agreed to interpret the property issue as a purely legal problem that they were able to find a basis for the negotiations. This amounted to a consensus, at least as far as the two parties to the negotiations were concerned. Neither the representatives of the Wittelsbachs nor those of the Free State wanted to call any fundamental rights into question. However, the other objectives that brought the two sides together resulted in compromises. These were the legitimization and safeguarding of the Republic and the financial needs of the Wittelsbachs.

On this reading, I recognize two levels of analysis: first, the political level, which had a stronger external impact – despite the fact that the political substance of the negotiations was disputed – and, second, an internal legal level, which somewhat reflects the core of the negotiations, but also the worldview and legal understanding of the parties. It was a political decision because what was at stake, namely the handling of a political regime change, was political, even more so because the decision itself, its economic and political effects as well as the actors involved in the decision, were permeated by the political substance of the matter.

In the Weimar Republic, opinions on the Wittelsbach Compensation Fund were divided. Soon after the agreement was concluded, the fund saw itself at a

¹⁴ "Auf zum Kampf für Moral und Recht am 20. Juni!," printed flyer, Bundesarchiv Berlin-Lichterfelde (BArch), SGY 2/298.

disadvantage due to the form in which the assets had been transferred.¹⁵ Social Democrat members of the Bavarian Parliament, on the other hand, believed that the former royal house had come out on top in the matter (*Stenographischer Bericht, Bayerischer Landtag*, 8 March 1923: 1080–1081). Right-wing political forces in particular remained hostile to the fund until well into the 1930s and beyond (Immler 2023: 53). Thus, in the case at hand, it is not just Eva Menasse’s statement – “Compromises are born slowly and in pain” (Menasse 2020: 8)¹⁶ – that proves true. It was the birth of the compromise, but also and in particular its continued existence that was accompanied by “pain.” The financial (and political) concessions that the Bavarian Free State made in order to legitimize and secure the Republic came at a high price. This price included the disappointed expectations of large parts of the population in the aftermath of World War I, who had believed that the German dynasties would be held responsible for the consequences of the War and would have to share in the costs borne by the people. The fact that this did not happen to an adequate level in the eyes of many harmed how justice was perceived in the new Republic.

In order to interpret this compromise, however, it must be read it against the social and political backdrop of the time. The Bavarian government’s decision is understandable if we consider the threat of civil war or violent unrest. The government endeavored to integrate the former princes and their supporters into the Republic by making a clear concession, thereby bringing about acceptance for the new form of government and generating internal peace. Wendt finds suitable words for this: “[U]nder conditions of moral pluralism, the stability of a modus vivendi is the best we can get” (2013: 579). According to Wendt, uncompromising adherence to demands for justice can endanger peace and ultimately result in neither one nor the other being achieved.

Thus, the decision followed the idea of good compromise according to Margalit, who is also willing to accept great injustice for the purpose of peace-making. In this case, securing peace was considered more important than the consistent implementation of revolutionary goals. Understandable frustration can be observed in the research literature, which often talks of the “stalled revolution” (Kolb 1993: 220)¹⁷ of 1918. But going by Margalit’s theory, the objective of securing peace would have been a legitimate basis for compromise. The Bavarian case thus vividly illustrates one characteristic that distinguishes compromises in par-

¹⁵ Undated and unaddressed document in the folder “Königshaus,” BayHStA, Bayerisches Staatsministerium der Finanzen, no. 84019.

¹⁶ “Kompromisse werden langsam und unter Schmerzen geboren.”

¹⁷ “[. . .] steckengebliebene Revolution.”

ticular: the dissatisfaction that remains on the part of both contracting parties – the frustration of having made a decision that does not achieve one's own goals.

In the end, the compromise – and perhaps the consensus – of 1923 was successful because it actually seemed to stabilize the political situation. After 1918, justice was sacrificed in favor of peace, affecting both the distribution of assets among the population and the responsibility of the Wittelsbachs for the consequences of the war. At the same time, the consolidation of legal principles, such as the protection of property, meant denying the people's underlying claims, which were politically justified. The consequences of such an approach became apparent in 1926, with the referendum on the expropriation of the princes demanding greater responsibility from the former royal houses. Despite the referendum's failure, it highlighted the dissatisfaction of large segments of the population with the compromise of 1923. The (political) compromise here showed itself for what it often is: a struggle with a counterpart that not infrequently disregards the rights and demands of third parties.

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