

Chapter 4

Hesse-Cassel: Alleged Sedition and Law-Suits (1640s–1650s)



In 1647–1655, the displeased nobility in Hesse-Cassel used similar terms to the nobility of Jülich to express criticism regarding their government. Landgravine Amelie Elisabeth von Hanau-Münzenberg (1602–1651) ruled the Lower Principality of Hesse-Cassel from 1637 to 1650, as regent for her son Wilhelm VI (1629–1663).¹ Although the nobles had supported her in her role as a regent, Amelie Elisabeth proved unwilling to acknowledge their privileges, especially their required consent in tax matters. The nobility fiercely opposed Amelie Elisabeth's taxation because the prosperity of the principality, and the livelihood of its inhabitants had already suffered much from the Thirty Years' War. Nevertheless, she requisitioned payment from the commoners to pay her armies without obtaining the necessary consent. The nobility thus argued that she had neither listened to their pleas, nor honoured prior agreements, and thus she risked establishing an *absolutus Dominatus*.² Here they applied precisely the same term as the nobility in Jülich to indicate that they considered her actions illegal. Correspondence between the nobility and the landgravine shows that the nobility would take the matter to the Imperial court if Amelie Elisabeth were to proceed with such abuses. The nobles of Hesse-Cassel reflected upon themselves as being *patriots* acting for the common good of their fatherland.³

This above case illustrates how the Hessian nobility responded to what they perceived as threats to the welfare of the Lower Hessian principality of Hesse-Cassel. These covered three aspects: the requisitioned payment from the commoners; the denial of the vital role the Hessian nobility had played throughout

¹Though there are no general spelling-rules during the seventeenth century, nor were people very consistent over time, the spelling of the landgravine's name has been adopted in accordance with her own autograph in JL 40, 9 May 1645; 11 May 1645 and 31 May 1645.

²*Replicae der niederhessischen Ritterschafft contra dem Hern Landgraff Wilhelmen zu Hessen, etc. 1652*, in HStAM 73, documents from the year 1652.

³von Friedeburg (2010), p. 170; von Friedeburg (2005); von Friedeburg (2003).

history; and above all, the continuous damage to the lands that affected all means of existence of the inhabitants. The German Landgraviate of Hesse-Cassel was small, with an estimated population of 375,000, and again, with only a few nobles.⁴ Most people in Hesse-Cassel were Lutherans since the sixteenth century, which they practised in silence when their landgrave converted to Calvinism.

In 1646 Landgravine Amalie Elisabeth requisitioned taxes to free Hesse-Cassel from its enemy occupation. When the nobility met to discuss this, the landgravine interpreted their assembly as undermining her government. Hence, she had its two chairmen humiliatingly arrested. The Hessian nobility then brought their case before the Imperial Chamber Court to seek reparations and restore their privileges; the case continued until 1655.

All debates focussed primarily on two issues: the welfare and prosperity of the landgraviate, and taxation and the cost of war. The landgrave claimed to use taxation to cover the cost of warfare, aiming to restore the welfare and prosperity of the principality. Conversely, the nobility claimed that the cost of war—and the resulting taxes—damaged Hesse-Cassel even further. Therefore the landgrave and the nobility had different perspectives on cause and effect. This does not imply that the landgrave and the nobility held opposing positions—they did judge the weight of taxes and warfare differently. Arguably, the landgravine—in contrast to the nobility—considered the hardships caused by warfare and taxation to be acceptable in comparison with the effects of ignoring the threat of war. The nobility and the landgravine barely engaged in a discussion about the governing principles that informed their arguments, only because they were generally in agreement. They agreed, for instance, on the premise that the welfare and prosperity of the land and its inhabitants ought to be protected. In addition, when the nobility referred to the risks posed by either a tyrannical rule or the establishment of an *absolutus Dominatus*, the landgravine or landgrave did not dispute that such risks were indeed detrimental and must be avoided. They merely claimed that, in this particular case, these actions were not tyrannical, because this was a case of extreme necessity. Likewise, the nobility did not attack this statement by claiming that the category of necessity was invalid, but instead stated that the landgrave's claim of *necessitas* was not applicable in the case at hand. In order to discuss these differences in interpretation, the nobles had assembled without Landgravine Amalie Elisabeth or—later on—Landgrave Wilhelm VI, respectively. Their exclusion from these meetings prompted the landgrav(in)e to use the argument that the assemblies were illegal, and to accuse the nobles of illegal protests and of committing *lèse-majesté*. Following earlier debates, the nobility accepted the landgrav(in)e's general argument, and countered by stating that while the argument's premise was correct in theory, it did not apply in this case.

The words fatherland and patriot played a crucial role in discussing the welfare and prosperity of the land and its inhabitants. Despite their sporadic usage, they indicate the need to set the discussants apart, attempting to avoid the accusation of

⁴Boehncke and Sarkowicz (2010), pp. 64–65.

rebellion. In other words, they seemed to have followed Althusius' ideas about ephors. Not until the counterargument regarding *lèse-majesté* was developed did fatherland terminology enter the conversation in any significant way. When discussing taxation or assemblies, the nobility often referred to their immunities and privileges. They offered their loyalty as a counterargument against the accusation of *lèse-majesté* and illegal assemblies. In nearly all cases that such an argument was deployed, fatherland terminology was used as well, implying a commitment to the landgraviate.

Both the landgrave and the nobility accepted that being a patriot entailed loyalty to the fatherland. However, they differed with regards to *how* the duty to defend the fatherland should be carried out. From the nobility's reactions, it can be distilled that in their interpretation of the presupposed office of patriot and their asserted duty to protect the fatherland, they were empowered and in their rights to critique the landgrave's harmful policy. The landgravine, on the other hand, had lawyers consult historical examples. The examples they employed explained that being a patriot meant being loyal to the fatherland *and* the landgrave. In the past, nobles had set aside their privileges and immunities when the landgrave needed to defend the principality. The nobility countered this by stressing that they were both: liegemen *and* patriots.⁵ They underlined their loyalty to the landgrave as liegemen and their loyalty towards the landgraviate as patriots.

The word patriot is not found exclusively in texts written by the nobility: the landgravine and her lawyers employ it as well. For example, when they used historical evidence, the landgrave's documents stress that the ancestors of the nobility had acted as *patriots* precisely because they had accepted *necessitas*. This chapter shows that the argumentation in question was used from the start of the legal debate until the nobility and landgrave reached an agreement (*Vergleich*) in 1655. This lawsuit sets Hesse-Cassel apart from Jülich and Brittany, where no such formal situation occurred. Table 4.1 shows the number of times fatherland terminology was applied in six of the primary texts that will be discussed in this chapter. This amount may seem insignificant. However, it is necessary to take into account that it is the specific application of terminology in legal texts and debates that make it noteworthy. The surviving texts of the conflict between the *Landstände* (mainly the nobility) and the landgrav(in)e are the Imperial Chamber Court's (*Reichskammergericht*) lawsuit and its drafts. The fact that these interrelated texts show a recurrence in vocabulary signifies that the terminology was generally accepted. The most obvious proof of this can be found in the *Vergleich* (2 October 1655), an official text in which the word fatherland was used.

These legal texts showed that the use of words such as *Patria*, patriot, and fatherland had entered the judicial sphere (see Table 4.1). The words were not exclusive to the *Landstände* but were used by the landgrave as well.⁶ Although the landgrave and his lawyers mainly used this vocabulary when responding to the

⁵*Replicae*, p. 4.

⁶von Friedeburg (2003), p. 268; von Friedeburg (1999).

Table 4.1 Fatherland terminology in the sources of Hesse-Cassel

	Replica ^a	Duplica ^b	Über das Duplic ^c	Triplica ^d	Memorialien ^e	Vergleich ^f
<i>Natio</i>	0	0	2	0	0	0
Patriot	1	1	0	1	1	0
<i>Patria</i>	8	9	1	2	1	0
Fatherland	8	6	0	3	7	1
Total	17	16	3	6	9	1

This table is an adaptation of an earlier published table in: C.A. Romein (2014) *Fatherland Rhetoric and the “threat of absolutism”: Hesse-Cassel and the Reichskammergericht (1646–1655), The Seventeenth Century*, 29:3, 277–292. Adapted by the author/ reprinted by permission of Taylor & Francis Ltd, <http://www.tandfonline.com> on behalf of 2014 The Seventeenth Century

^aReplicae: Patriot, 4, *Patria*, 3 (twice), 21, 41, 70 and 91 (three times); Fatherland, 26, 42, 74, 79, 81, 84, 85 and 91

^bDuplicae: Patriot, 33, *Patria*, 11, 24 (twice), 37, 41, 42, 47, 52 and 55; Fatherland, 33, 41, 78, 83 and 94 (also as an adjective, used on page 32)

^cÜber das Duplic schrift: *Natio*, 2 (twice) and 12, *Patria*, 32

^dTriplicae: Patriot, 36, *Patria*, 3 and 7; Fatherland, 36 (also as an adjective, used on 5 and 7)

^eMemorialien: Patriot, 83, *Patria*, 56; Fatherland, 37, 57, 60, 64 (twice), 80 and 107. There is also a reference to the ‘Teutscher Nation’ on 14

^fVergleich: Fatherland, § 4

nobility’s arguments, it is nevertheless noteworthy that their terminology mirrored that of the nobility.

The use of fatherland terminology, and the issues these terms were applied to show that a new mode of political-legal argumentation had dawned. During the Middle Ages, it was considered a *virtue* of protecting the feudal benefice and its inhabitants. Failure to do so constituted a weak government. During the sixteenth and seventeenth centuries, the practice and protection of the true religion could become part of this interpretation. During the seventeenth century, virtue and the asserted duty to protect the fief were interpreted as one and the same duty. This *duty* entailed not only the protection of the fief and its inhabitants, but it also meant protecting its prosperity. In the Low Countries, this argument was taken to extremes, and led to the identification of Philip II (1527–1598) of Spain as a tyrant. It was a unique situation whereby the nobility identified a tyrant, then engaged in a Revolt, and ultimately gained independence via the Act of Abjuration (1581).⁷

In the formal and informal (draft) texts discussed in this chapter, the nobility argued that they were patriots whose love for the fatherland forced them to step in to protect their endangered fatherland. The most frequently used example of their duty to do so involved taxes levied without their consent. Such taxes endangered the prosperity of the principality, and so the nobility had to act. The danger was difficult to quantify; however, stubbornly the nobility persisted in their claim that taxes and the presence of soldiers had seriously threatened the prosperity of Hesse-Cassel. They concluded that the violation of their right of assembly in order to discuss this

⁷See for example: van Gelderen (1993).

situation could lead to *tyrannical rule*.⁸ This example indicates two essential duties of the landgravine. *Firstly*, that she should respect noble privileges. *Secondly*, she needed to respect the welfare and the well-being of the principality's inhabitants. Taken as a whole, these texts, therefore, outline the characteristics of good government.

The fraught relationship between the landgrave and the *Landstände* of Hesse-Cassel had commenced in 1605–1606 when Landgrave Maurice converted to Calvinism and joined the Protestant Union.⁹ The nobility objected to the landgrave's military plans, and eventually felt compelled to negotiate with the imperial army for support. When the landgravine Amalie Elisabeth requisitioned grain and banned their assemblies 40 years later, the nobility believed their rights were curtailed once again. From 1646 onwards they wrote explicitly about the well-being of the fatherland which—they felt—had deteriorated noticeably due to the landgravine's politics—and the underlying problem related apparently to religious changes and warfare. The nobility avoided mention of their problems in any official correspondence, and nor did they publish pamphlets, contrary to the published pamphlets present in Jülich-Berg.

It has long been assumed that conflicts like the one in Hesse-Cassel were gradually resolved in favour of princes.¹⁰ However, the scenario in Hesse-Cassel suggests that the alleged struggle of the landgrave to increase his power was not straightforward and certainly did not go unnoticed. The nobility did not agree with what they perceived as the landgrave's attempts to gain more power and circumvent the need to consult them. Eventually, they filed a complaint with the Imperial Chamber Court in 1647. Here, I provide a complete overview of the complaint, and as no scholar has provided an overview of them so far, the archival sources in this chapter are a unique exposé of the debate at the time.¹¹ The supplementary texts (unofficial drafts) that have never been analysed to the officially filed ones (see: Table 4.2) are included in this chapter.¹²

In this chapter, I examine the whole conflict and the lawsuit. These legal texts provide a context to the tense situation between the *Landstände* and the *landgravine*. I look into the entire lawsuit brought before the Imperial Chamber Court, which is unique because earlier Armand Maruhn and Robert von Friedeburg have only looked at parts of the case, while Tim Neu has looked at the lawsuit, but did not focus on the terminology of the conflict. He saw it as the starting point of the new relationship that commenced between the nobility and the landgrave. In order to understand historical references, I am first going to describe the dynastic lineage and

⁸*Replicae*, 12–13.

⁹Maruhn (2004a), pp. 24–32.

¹⁰Press (1991) and Maruhn (2004b).

¹¹See for instance: Neu, *Die Erschaffung der landständischen Verfassung* refers to the sources but did not use all of the additional, unofficial sources (drafts).

¹²Maruhn (2004a, b), Eßer (2001), von Friedeburg (2003) and von Friedeburg (2005).

Table 4.2 Text concerning the conflict in Hesse-Cassel (1647–1655)

Document Name	Written on Behalf of	Date	Informal	AARK ^a
Remonstratio	The nobility	12 August 1647		
<i>Mandatum inhibitorium et cassatorium sine clausula</i>	<i>Imperial Chamber Court</i>	<i>14 September 1647</i>		
Disposition/‘Gutachten’	The nobility	1648–1650 ^b		
<i>Mandatum (renewed)</i>	<i>Imperial Chamber Court</i>	<i>5 January 1650 (presented: 12 March 1650)</i>		
<i>Exceptiones sub- et obreptionis</i>	The landgrave	17 January 1651 ^c		√
<i>Mandatum sine clausula (renewed)</i>	<i>Imperial Chamber Court</i>	<i>23 September 1651</i>		
<i>Mandatum (poenale) sine clausula (renewed)</i>	<i>Imperial Chamber Court</i>	<i>19 February 1652</i>		
<i>Replica</i>	The nobility	30 March 1652		√
PP	The nobility	1652–1653		√
<i>Duplica</i>	The landgrave	22 April 1653		√
Über die Duplic Schriftt	The nobility	Between 1653 and 1655	√	√
<i>Triplica</i>	The nobility	25 June 1655		√
Ohn Vorgreifliche Memorialien	The nobility	1653–1655(?)	√	√
Quadruplica	The landgrave	1655 ^d		
Vertrag/ Vergleich	The landgrave and nobility	2 October 1655		

Texts in italics have been filed at or issued by the Imperial Chamber Court. C.A. Romein (2014) *Fatherland Rhetoric and the “threat of absolutism”*: Hesse-Cassel and the Reichskammergericht (1646–1655), *The Seventeenth Century*, 29:3, 277-292. Adapted by the author/ reprinted by permission of Taylor & Francis Ltd, <http://www.tandfonline.com> on behalf of 2014 The Seventeenth Century

^aStift Kaufungen / Archiv der Althessischen Ritterschaft Kaufungen (AARK)

^bvon Friedeburg, ‘Widerstandsrecht Und Landespatritismus’, 304; Maruhn, *Necessitäres Regiment*, 206 footnote 182; Neu, *Die Erschaffung der landständischen Verfassung*, 413; HStAM 73, 1816: ‘gutachten’ with modern handwriting 1648 has been added, on one of the two versions, though there is no indication to be found

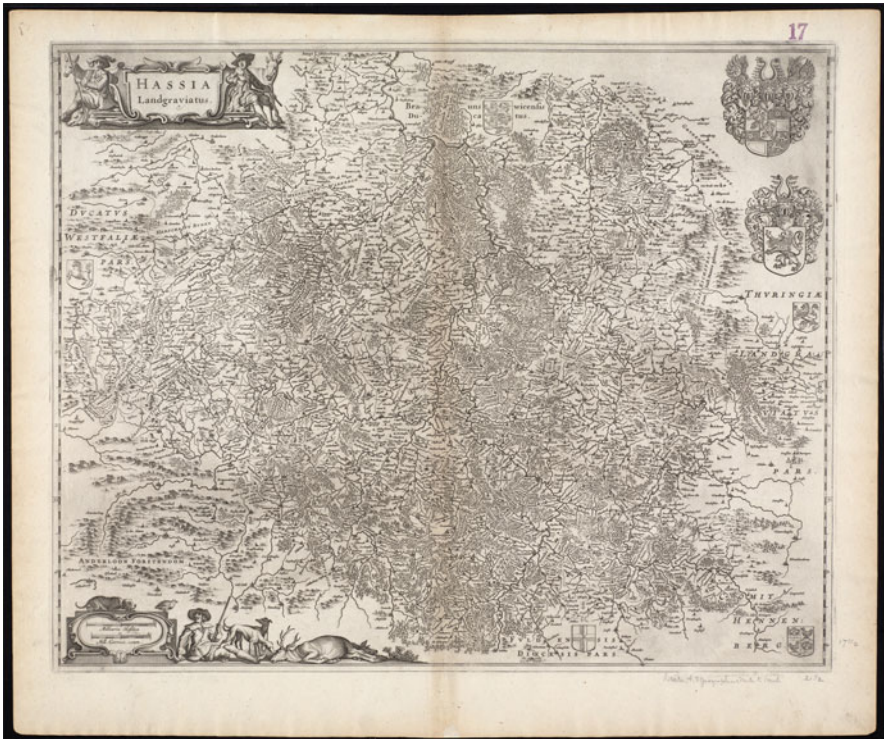
^cDate according to HStAM 5, Bestand 14660: *sub- et obreptiones* (fol. 25), as indicated with pencil (modern) on HStAM 5, 1816: *sub- et obreptiones*

^dThe *Quadruplica* is an unfinished document, as the conflict was resolved shortly after the *Triplica*: Neu (2013a), p. 413; Maruhn (2004a), p. 17

history of the principality from the sixteenth century until the end of the conflict. This overview is essential to understanding the undercurrents in the debate and references in the suit before the Imperial Chamber Court fully.

4.1 The Lineage of the Landgraviai Family: 1500–1600

Hesse-Cassel (Map 4.1) experienced considerable turmoil in the seventeenth century, but the sixteenth century had not been devoid of troubles either. Philipp of Hesse (1504–1567) lost his father at the age of five,¹³ which did not lead to any significant governmental changes because his mother Anne of Mecklenburg-Schwerin (1485–1525) had already been made regent after syphilis drove her husband insane.¹⁴ The nobility did not care for this state of affairs, as Anne no longer allowed them to assemble at will.¹⁵ The curtailment of their privileges led to



Map 4.1 Landgraviate of Hesse (seventeenth century). Map by Joan Blaeu, “Hassia Landgraviatus.” 1645. Norman B. Leventhal Map & Education Center. <https://collections.leventhalmap.org/search/commonwealth:cj82ks23k>. Accessed November 23, 2020. Map reproduction courtesy of the Norman B. Leventhal Map and Education Center at the Boston Public Library

¹³Press (1986), pp. 269–270.

¹⁴Demandt (1972), p. 222.

¹⁵Puppel (2004), pp. 158–189.

their request to Philipp to begin his reign at the age of 13½. The emperor eventually sanctioned this request.¹⁶

Philipp I of Hesse—later commonly referred to as the Magnanimous or ‘the Elder’¹⁷—attended the Imperial Diet of Worms (1521), where he met Luther (1483–1546).¹⁸ It was not until 3 years later when Phillip I met with Philipp Melancthon (1497–1560) and converted to Lutheranism. In 1526 Lutheranism became the official religion of the landgraviate.¹⁹ Fifty convents²⁰ throughout the area were closed over the following years, and Philipp I founded a Protestant university in Marburg (1527).²¹ The Imperial Diet responded by condemning Lutheranism, after which several Lutheran members of the Diet united to form the Schmalkaldic League (1531). Landgrave Philipp I of Hesse and John Frederick I, Elector of Saxony (1503–1554) headed this league.²² After their defeat at the Battle of Mühlberg (1547), the emperor forced both princes to plea for mercy. Philipp I of Hesse was then forced into captivity for 5 years.²³ The Augsburg Settlement (1555) finally ensured that Catholics and Protestants could coexist in the Holy Roman Empire, following the principle of ‘*cujus regio, ejus religio*’.²⁴

Philipp I wrote in his will that upon the event of his death—which befell him in 1567—his possessions were to be divided among the four sons born of his first marriage to Christine of Saxony (1505–1549) (see Fig. 4.1).²⁵ His second marriage had been a morganatic marriage to Margaret van der Saale (1522–1566), disqualifying heirs of that union from inheriting his lands. They were awarded the titles ‘Born in the House of Hesse, Counts of Dietz and Lords of Lißberg’ and controlled several towns and castles. In 1577, when this lineage died out, their possessions were redistributed among Philipp’s four legitimate sons.²⁶ Philipp had decided to divide Hesse into four principalities because he feared that his sons might not be able to cooperate. The welfare of the country, but more importantly, that of the

¹⁶Heinemeyer (1986), pp. 259–260; Demandt (1972).

¹⁷J. Feurborn, *Nothwendige außführliche Special-Widerlegung deren in Hessen-Casselischen publicirten also gen. Wechsel-Schriefften gerühmbten, gleichwohl aber gantz unbegründeten, Rettung eines, von Weiland herrn Landgraf Wilhelmen zu Hessen u., hochlöblichen Undenckens, sub data Cassel den 19. Aprilis Anno 1630 an herrn Georgen, herrn Philipfen und Herrn Friderichen, beede hochlöblicher gedächtniss alle Landgrafen zu Hessen u. abgegangenen Schreibens.* (Giessen, 1647) p. 3.

¹⁸Heinemeyer (1986), p. 235.

¹⁹J. Feurborn, *Nothwendige außführliche Special-Widerlegung*, 3; Neu (2013a), p. 137.

²⁰Two convents were handed to the Hessian nobility for their unmarried daughters. These were the convents of Wetter and Kaufungen. See: Demandt (1972), p. 226.

²¹Ibid., p. 226; Boehncke and Sarkowicz (2010), pp. 52–60.

²²Demandt (1972), pp. 228–229.

²³Press (1986).

²⁴Boehncke and Sarkowicz (2010), pp. 60–63.

²⁵Feurborn, *Nothwendige außführliche Special-Widerlegung*, 28–29; Ibid., pp. 63–64; Puppel (2004), p. 46; Wilson (2004), p. 45.

²⁶Demandt (1972), p. 236.

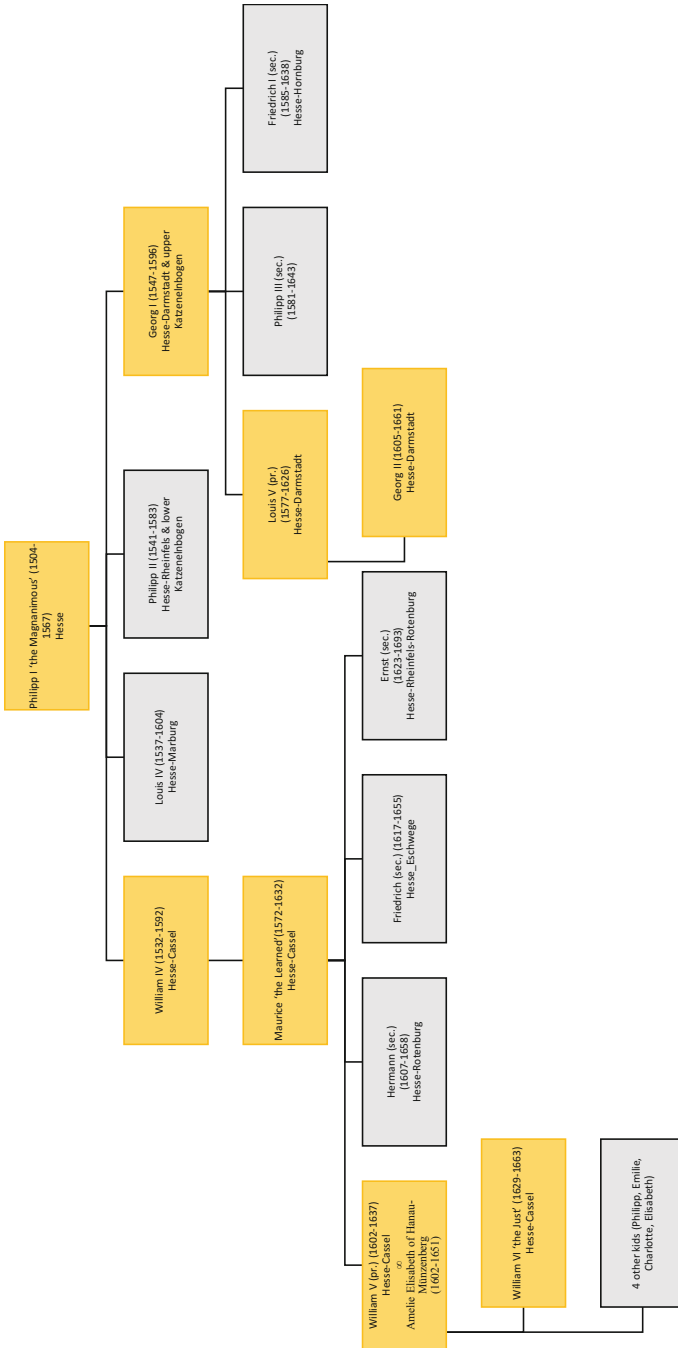


Fig. 4.1 Ancestral chart of the House of Hesse (sixteenth and seventeenth century). Created by the author

dynasty, was of paramount importance. Specific central institutions were upheld: for example the Marburg court of appeal, the university, hospitals, and church institutions.²⁷ The division resulted in four principalities. William IV (1532–1592) received Hesse-Cassel (*Niederhessen*). Louis IV (1537–1604)²⁸ ruled Hesse-Marburg (*Oberhessen*). Phillip II (1541–1583) became landgrave over Hesse-Rheinfels and the lower County of Katzenelnbogen. The youngest brother Georg I (1547–1596) obtained Hesse-Darmstadt and the upper County of Katzenelnbogen.²⁹ Hesse-Cassel was by far the largest principality with 6100 km² and 175,000 inhabitants. The Nassau family at the Dillenburg, who was conveniently close by, influenced the development of Calvinism in the region and offered marriage partners for local Protestant Houses. Hesse-Cassel also became an important centre for arts and science.³⁰

In various electorates of the Holy Roman Empire, only the eldest son could inherit the principality. In other principalities it was considered wise, on account of the need for appendages, to allow younger sons to own a small part of the fief.³¹ This line of reasoning shows that the fate of the dynasty as a whole was more important than holding the dynastic agglomerate together. The practice can perhaps best be illustrated by turning to the example of the death of Georg I of Hesse-Darmstadt, and the events that followed in its wake: his younger surviving sons each received a minor feudal benefice in 1596. The eldest son Louis V—received the most substantial part: Hesse-Darmstadt, due to his primogeniture.³² The younger sons gained, based on secondogeniture: Hesse-Butzbach (Philipp III)³³ and Hesse-Homburg (Friedrich I).³⁴

4.2 Maurice the Learned: Confessional Breakdown of Relations (1592–1627)

Maurice the Learned, who took an interest in arts and science, inherited the main parts of Hesse-Cassel upon the death of his father William IV in 1592.³⁵ When Maurice's two remaining uncles passed away, the close relationship between the

²⁷Heinemeyer (1986), p. 260; Maruhn (2004a), pp. 100–101.

²⁸The succession crisis concerning Marburg broke out in 1604; the House of Hesse-Cassel claimed the principality, but had converted to Calvinism and could therefore not inherit, according to the House of Hesse-Darmstadt: Neu (2013a), pp. 203–221.

²⁹Heinemeyer (1986), p. 238; Press (1986), pp. 269–270; Neu (2013a), pp. 159–164; Maruhn (2004a), pp. 100–104.

³⁰Boehncke and Sarkowicz (2010), pp. 64–65.

³¹Press (1986).

³²Boehncke and Sarkowicz (2010), p. 70; Press (1986).

³³It was not until 1609 that he became landgrave.

³⁴He became the principality's landgrave in 1622.

³⁵Boehncke and Sarkowicz (2010), pp. 70–72; Menk (2000a), p. 47; Neu (2013a), p. 278.

various successors of Philipp I became strained. The heir of Hesse-Darmstadt had inherited by far the smallest fief and proved to be devoted to Lutheranism, while Maurice had converted to Calvinism. Both landgraves were entitled to inherit a part of Hesse-Marburg, as their uncle had died without an heir. However, Lutheranism had to remain the official religion of this principality.³⁶ These religious differences proved detrimental to family relations and caused the Marburg Succession Crisis.³⁷

Maurice's conversion to Calvinism (1605) and joining the Protestant Union (1609) triggered the ultimate breakdown of relations.³⁸ Maurice was fascinated by theological developments and the Synod of Dordrecht (1618), in Holland. He became increasingly interested in defending the Calvinist case, and because he used military force to do so, his debts mounted massively.³⁹ Debts and taxes placed a heavy burden on Hesse-Cassel: the principality fell into decline, and the nobles were infuriated. In order to prevent any further destruction, the nobility sought mediation from the emperor. Maurice argued that he fought for his faith and the autonomy of his lands. Because Maurice was unwilling to negotiate, the emperor had General Tilly invade Hesse-Cassel.

In 1623, the Aulic Court in Vienna ruled against Landgrave Maurice in the Marburg Succession.⁴⁰ Maurice found it impossible to accept this verdict, and absented himself for 2 years in search for military alliances in the north, leaving his eldest son in charge.⁴¹ Meanwhile, the nobility turned against their landgrave, encouraging a condemnation of his behaviour by the emperor. The *Landstände* themselves received imperial protection, and Maurice's actions were marked as treasonous.⁴² In 1624 Wolfgang Günther, advisor to the landgrave, remarked that the nobility had betrayed the land through their negotiations with the emperor.⁴³ Albrecht von Wallenstein's (1583–1634) imperial armies entered Hesse-Cassel in 1625, forcing the principality to defend itself. Hesse-Cassel had neither the money nor the troops for a proper military defence, and its allies also proved too weak to assist. With the defeat of the Danish king Christian IV (1577–1648) in the battle of Lutter (1626),⁴⁴ Tilly was able to force Maurice to surrender and demilitarise.⁴⁵

Numbed by defeat and humiliation, Maurice convened a family meeting. He signed a dynastic treaty on 12 February 1627,⁴⁶ dividing his lands into Hesse-Cassel

³⁶Demandt (1972), pp. 244–245.

³⁷Boehncke and Sarkowicz (2010), pp. 73–75.

³⁸Maruhn (2004a), pp. 24–32; Eßer (2000).

³⁹Demandt (1972), p. 251.

⁴⁰Ibid., p. 252; Boehncke and Sarkowicz (2010), p. 74; Weiland (2009).

⁴¹Neu (2013a), p. 265.

⁴²Demandt (1972), p. 252.

⁴³von Friedeburg (2007), p. 181; Menk (2000a), p. 69.

⁴⁴Parker (1997), p. 139; von Friedeburg (2002), pp. 142–143.

⁴⁵Menk (2000a), p. 69; Neu (2013a), pp. 300, 308–312, 318.

⁴⁶Raingard Eßer remarks that some more research should be done with regard to this topic, as little research has been done into this document. See: Eßer (2000), pp. 199–201.

and Hesse-Rotenburg.⁴⁷ The former went to the son Maurice had had with Agnes von Solms-Laubach: Wilhelm V.⁴⁸ The latter went to his second wife Juliana of Nassau-Dillenburg and their surviving sons.⁴⁹ As he had three sons with Juliana of Nassau, the secundogeniture was divided into three parts: Hesse-Rotenburg went to Hermann; Hesse-Eschwege was given to Friedrich; the youngest son Ernst received Hesse-Rheinfels-Rotenburg.⁵⁰ On 17 March 1627, Maurice resigned from the office, leaving his lands with debts totalling close to two million *Reichsthaler*.⁵¹

4.3 Wilhelm V: The Enemy of the Emperor and Exile (1627–1636/7)

When Wilhelm V took over in Hesse-Cassel, he was already an experienced ruler after his father's absence in search of allies. He remained loyal to their Lutheran Swedish ally, despite the uncertainties this alliance brought.⁵² In November 1630, the Swedes offered to help Wilhelm V drive out the imperial forces, and in 1631 it came to an alliance.⁵³ On 28 June 1633, the armies of Hesse-Kassel won the siege of Oldendorf, creating an advantageous position in Westphalia.⁵⁴ Despite his military successes, Wilhelm V did not call a single meeting to confer with the *Landstände* until 1634.⁵⁵

In February 1634, France and Hesse-Cassel formed an alliance. In that year a French general, entrusted with the command of the Hessian army appeared on the Hessian payroll.⁵⁶ The next year France became actively engaged in the war, Sweden—which offered only military assistance—offered cooperation with France, and the possibility of receiving substantial financial contributions.⁵⁷ On 30 May 1635, the Peace of Prague was signed, whereby the Calvinists—and thus the Landgraviate of Hesse-Cassel—were left out. Calvinists did not receive any reassurances about their positions or possessions, and hence, Landgrave Wilhelm V found himself in the blind.⁵⁸ As a result of this situation, the Lutheran Landgrave of

⁴⁷Press (1986), pp. 302–307; Menk (2000a), pp. 26, 35; Lemberg (2000), p. 173.

⁴⁸Lemberg (2000), p. 174.

⁴⁹Ibid., p. 174; Menk (2000b), p. 108.

⁵⁰*Nothwendiger Bericht, darauß zu sehen, Daß nicht allein die, von Hessen-Cassel erlangte* (S.I. 1646) 34–35; Press (1986), pp. 303–305; Helbach (1977).

⁵¹Neu (2013a), p. 318; Demandt (1972), p. 253; Weiland (2009), pp. 33–34; Philippi (2007), p. 3.

⁵²Press (1986), p. 307.

⁵³Boehncke and Sarkowicz (2010), pp. 75–79; Menk (2000a), p. 16.

⁵⁴Press (1986), p. 308.

⁵⁵Ibid., p. 307.

⁵⁶Buckreus (2008), p. 65.

⁵⁷Ibid., p. 65; Medick and Marschke (2013), p. 13.

⁵⁸Buckreus (2008), p. 27.

Hesse-Darmstadt demanded the principality Hesse-Cassel from his Reformed cousin Landgrave Wilhelm V, but he met with silence.⁵⁹ Landgrave Wilhelm V felt compelled to continue the war to safeguard his assets, and freed Hanau from the imperial occupation in the process. The success was short-lived, as imperial forces soon conquered numerous cities in Westphalia. The landgrave needed strong military support, which he found when the French Cardinal de Richelieu, offered Wilhelm V a provisional treaty. This treaty was signed in Minden in early June. The final treaty,⁶⁰ signed in Wesel on 21 October 1636, entailed two important clauses, one being the instalment of an army comprising 10,000 soldiers, in support of Hesse-Cassel and paid for by France to the amount of 200,000 *Reichsthaler*; the other that no peace would be signed without France's consent.⁶¹

Wilhelm V overtly opposed the emperor through his military alliances with Sweden (22 August 1631)⁶² and France (1636),⁶³ and so the emperor banished him.⁶⁴ Landgrave Wilhelm V had become an 'enemy of the emperor'.⁶⁵ In the meantime, the Landgrave of Hesse-Darmstadt was appointed to deal with all administrative matters of Hesse-Cassel. Wilhelm V left for Eastern-Frisia with his family and the remainder of his troops. This banishment was short-lived, as Wilhelm V died on 21 September 1637.⁶⁶ His wife and two sons,⁶⁷ along with their entourage, remained in exile until 25 March 1640.⁶⁸

4.4 Politics in Exile (1637–1640)

The successor to the fief of Hesse-Cassel was the 8 year-old Wilhelm VI. As stated explicitly in his father's will, which was drawn up in 1633, Amelie Elisabeth became William's guardian.⁶⁹ Her role was first among equals of the regents.⁷⁰ Since enemy

⁵⁹Demandt (1972), pp. 256–257.

⁶⁰Buckreus (2008), p. 73.

⁶¹Ibid., p. 74; Demandt (1972), p. 257.

⁶²Weiland (2009), pp. 38, 42 a provisional treaty had already been signed on 11 November 1630; Helfferich (2013), p. 135.

⁶³Buckreus (2008), p. 65.

⁶⁴Ibid., p. 28; Asch (2005), p. 131.

⁶⁵Weiland (2009), pp. 39, 74; Helfferich (2013), p. 87.

⁶⁶Puppel (2007), p. 104.

⁶⁷The youngest son Philipp died in exile: Helfferich (2013), p. 140.

⁶⁸Buckreus (2008), pp. 26, 107–108; Three daughters—Emilie, Charlotte and Elisabeth—had remained in Cassel for the duration of the exile, another passed away—Louise; Helfferich (2013), p. 140.

⁶⁹Buckreus (2008), pp. 27, 35 Wilhelm V had married Amelie Elisabeth of Hanau-Münzenberg in 1619. They had fourteen children together, but only four survived. ; Puppel (2004), pp. 51, 193–194; Amalie Elisabeth (1994), pp. XII–XXI.

⁷⁰Buckreus (2008), p. 22.

forces occupied the entire principality, Landgravine Amelie Elisabeth was in charge of the army.⁷¹ The nobility had opposed the emperor's decision to drive out the landgrave. Wilhelm V may have been absent while governing his north-western lands, but his family had not been rejected. The nobility had been conciliatory upon Wilhelm V's death, despite two issues. *Firstly*, it was unclear who would be in charge of the defence of the occupied landgraviate.⁷² *Secondly*, two alternative claimants to Hesse-Cassel presented themselves. These were, (1) Landgravine Juliana of Hesse-Rotenburg, the second wife of the late Landgrave Maurice; and (2) Landgrave Georg II von Hesse-Darmstadt, who had already taken over the administrative matters in the interim period, and who intended to reunite Hesse.⁷³ Landgrave Georg wrote to the emperor to request help and ordered his armies to advance in order to pressure the subjects of Hesse-Cassel to accept him as their new ruler. He had a strong case since the emperor had previously forced Wilhelm V to turn the government of his fief over to him.⁷⁴ Negotiations in November and December of 1637 were designed to persuade the emperor to award the enfeoffment of Hesse-Cassel to the House of Hesse-Darmstadt. As the Landgravine Amelie Elisabeth had little contact with the principality, she was in no position to object. Eventually, she requested that Anselm Casimir Wambold von Umstadt, Archbishop-Elector of Mainz negotiate on her behalf.⁷⁵ When the *Landstände* were called to a *Landtag* on 1 November 1637, they proclaimed their loyalty to the 8 year-old Wilhelm VI.⁷⁶

This portrayal of nobility's loyalty to Wilhelm VI can be explained by the events which unfolded shortly after Wilhelm V's death. As per the late landgrave's wishes—wishes that were honoured by the *Landstände*—an inauguration for young Wilhelm VI had been arranged. In the presence of the army, Wilhelm VI had taken his oath on 27 September, and the nobility swore its allegiance in the city of Kassel.⁷⁷ As illustrated above, this had not been in vain. Both the nobility and the *Landschaft* remained loyal to the Hesse-Cassel dynasty, led by the minor Wilhelm VI and his mother, Amelie Elisabeth. This loyalty the nobility would stress in their texts later on. The *Landstände* were neither impressed by the attempts by the House of Hesse-Darmstadt to undermine their new landgrave's position by declaring his claims illegitimate, nor by the emperor's command to accept Landgrave Georg II as their new ruler.⁷⁸ On 29 October 1637, Georg II, Landgrave of Hesse-Darmstadt

⁷¹Puppel (2007), p. 104; Bechert (1946).

⁷²Bechert (1946), p. 5.

⁷³Ibid., p. 5; Puppel (2004), p. 192; Helfferich (2013), p. 111.

⁷⁴Bechert (1946), p. 5.

⁷⁵Helfferich (2013), pp. 106–107.

⁷⁶Puppel (2004), p. 195 The estates did not meet regularly, and only when there were financial measures to be taken. The *Landtag* consisted of the *Ritterschaft* and *Prälaten* combined, and the *Landschaft*, which consisted of representatives of certain privileged cities. ; Neu (2010), pp. 11–12.

⁷⁷Puppel (2004), p. 194.

⁷⁸Helfferich (2013), p. 104; Puppel (2007), p. 107.

issued a pamphlet in an attempt to convince the nobility to side with him, as he had the interests of the fatherland at heart, and felt that enough blood had been shed.⁷⁹

The regency had thus been established and accepted through the inauguration. Furthermore, thanks to her military successes and alliances, landgravine Amelie Elisabeth could negotiate a truce with the emperor. The emperor guaranteed that the Calvinist faith could be professed in the principality of Hesse-Cassel.⁸⁰ Shortly afterwards, Wilhelm V's testament was accepted, and the House of Hesse-Darmstadt had to withdraw its claims. Unfortunately, young Landgrave Wilhelm VI was not able to return to Hesse-Cassel until March 1640.⁸¹ Nevertheless, soon after the official acceptance of his rule, he wrote a letter to the *Landstände* to express his appreciation. Until he came of age, Amelie Elisabeth was to govern together with a council (*Landrät*) on Wilhelm VI's behalf. Any treaties had to be co-signed by the landgravine and a counsellor, of which there should be four. When one of the regents died, he had to be replaced within months. The council should also be called to assemble to discuss significant issues, something which Amelie Elisabeth did not always bother to do.⁸² Wilhelm V's testament stipulated who was to guide the widow-landgravine in the process of governing: one of the four *Obervorsteher*s, the Stadtholder of Kassel, Hermann von der Malsburg (1570–1636), Johann Bernhard von Dalwigk († 1638) and three citizens.⁸³ In critical matters, the regents had to consult other individuals as well. In November 1640, Amelie Elisabeth assembled her first *Landtag*, and the nobles requested another representative to be added to the council.⁸⁴ Philipp von Scholley was nominated to replace Hans Diede zum Fürstenstein (1610–1665), as the latter had little knowledge of the Latin language.⁸⁵

4.5 Amelie Elisabeth: Regent, Commander, and Negotiator (1637–1650)

Unfortunately, the landgravine's government was not off to a smooth start. *Firstly*, foreign forces occupied the principality. *Secondly*, other princes, e.g. the House of Hesse-Darmstadt, contested her regency. *Thirdly*, she was short on resources to supply her troops. Amelie Elisabeth's primary goal was to leave her son with a well-

⁷⁹HStAM, Bestand 255, H. 139: *Aufschreiben unser Gedebes von Gottes Gnaden, Landgrafen zu Hessen, u. An alle und jede Deß Nider-Furstenthums Hessen und darzu gehöriger Graf: und Herschafften, lande und Gebihte, getrew gehorsame Land-Stände, Sambt und Sonders.* (s.i. 1637).

⁸⁰Puppel (2007), p. 108; Buckreus (2008), p. 88.

⁸¹Buckreus (2008), pp. 67, 173; Philippi (2007), p. 1.

⁸²Puppel (2004, 2007) and Bechert (1946).

⁸³Puppel (2007), p. 109.

⁸⁴Helfferich (2013), p. 154.

⁸⁵Puppel (2007), p. 110.

ordered principality. To achieve this objective, she needed to recapture the dynasty's possessions, which meant regaining the entire principality of Hesse-Cassel. Since there were no directions in Wilhelm V's will as to how to proceed in this regard, the landgravine had no choice but to address this issue at her own discretion.⁸⁶ She needed to decide whether she would risk burdening her people with billeting and extra war-related taxes, in the hope of regaining the dynastic possessions, or not.

In the spring of 1638, Amelie Elisabeth and Emperor Ferdinand III (1608–1657) prolonged their cease-fire. Prince-Elector Johann Georg I. of Saxony also opened negotiations, proposing a truce. However, it proved to be an armed truce, as the 12,000 troops on either side counter-balanced one another.⁸⁷ Hesse-Cassel's military commander, Peter Melander (1589–1648), wished to include Duke Wolfgang Wilhelm of Jülich, Count of Neuburg, and Ferdinand of Bavaria, Archbishop-Elector of Cologne, and Georg II, Landgrave of Hesse-Darmstadt in any agreement. Together they would be able to submit a request for a modification of the Peace of Prague.⁸⁸ Melander succeeded in forging a new alliance, known as the Welfen or Guelph Allies, in early 1639. However, in months, the army suffered severe losses, and France approached Hesse-Cassel to join in a new alliance.⁸⁹ Amelie Elisabeth found strong allies in both France and Sweden once again, and—secretly—secured the deal. Secrecy was vital to the protection of her garrisons in Westphalia. The Dutch Republic played a vital role as well, as it occupied fortresses near the city of Meppen to prevent them from being conquered by imperial troops.

Two questions were raised during the early years of the landgravine's regency.⁹⁰ Should an independent peace be concluded between Hesse-Cassel and the emperor, or should they await a peace treaty applicable to all? Moreover, would it be preferable to wait and pursue negotiations, or engage in a military campaign? Amelie Elisabeth feared being used by other major players in the alliance, which complicated matters. Taking a neutral stand was risky, and an army had to be formed and maintained. At the same time, the armies of Ottavio Piccolomini (1599–1656) and the Count of Hatzfeldt were approaching from the west in the autumn of 1639. In early 1640, the imperial troops gathered in Bohemia and Westphalia. Amelie Elisabeth joined with Weimar, France, and Sweden, and within a few months, their forces occupied Jülich and Berg.⁹¹ At this point, Emperor Ferdinand III had hoped to win Amelie Elisabeth over, but he ultimately failed in this matter.⁹² The landgravine exerted some pressure on Duke Wolfgang Wilhelm, who agreed to pay monthly revenues to the Hessian troops totalling 60,000 *Reichsthaler* each year.⁹³

⁸⁶Buckreus (2008), p. 174.

⁸⁷Wilson (2010), p. 613.

⁸⁸Ibid., p. 613; Bechert (1946), p. 14.

⁸⁹Wilson (2010), pp. 616–618.

⁹⁰Bechert (1946).

⁹¹Parker (1997), p. 147.

⁹²Bechert (1946), pp. 11, 14; Wilson (2010), pp. 618–621.

⁹³Engelbert (1959), p. 69.

At the *Landtag* of 1643, the *Landstände* authorised Amelie Elisabeth to negotiate a peace in the cities of Munster and Osnabruck.⁹⁴ The Electors' College accepted her position in the Imperial Circle—effectively terminating the isolated position of the landgraviate.⁹⁵ Due to her recent military successes, the landgravine felt strong enough to fight the imperial ruling of 1623. She, thus, claimed the Hesse-Marburg principality, and her armies set forth to regain this principality in March 1645. Amelie Elisabeth expected the *Landstände* to endorse taxes to pay for her military expenses, but the nobility refused, hoping to force her into peace negotiations. Even without the extra funds, Amelie Elisabeth still successfully besieged Marburg and Butzbach and gained control over most parts of *Oberhessen*. Melander, who had defected⁹⁶ from Hesse-Cassel, withdrew from Marburg in 1648, and Hesse-Cassel officially gained control over part of Hesse-Marburg, ending the Hessian War.⁹⁷

4.6 The Nobility: Maintaining the Status Quo (1637–1646)

The *Landstände* had been very forthcoming in the case of Wilhelm VI's succession, even though they could have accepted Georg II of Hesse-Darmstadt as the emperor demanded.⁹⁸ Young Wilhelm VI was in Eastern-Frisia when he took the oath in front of the army accepting his rule over Hesse-Cassel. The possibility to accept the position of landgrave had entirely depended upon the loyalty of the nobility. It was not until 1640 that Amelie Elisabeth and her son returned to the principality. Between 1637 and 1644, the helpful nobility *de facto* supervised and ran affairs in the landgraviate. This, all amid the damaging atrocities of warfare.⁹⁹

Although the nobility had been loyal to Landgrave Wilhelm VI, they did object to his mother's military plans. They did so because they deemed these plans to be harmful to the unity of the lands, and the relationship with the other parts of Greater Hesse.¹⁰⁰ Landgravine Amalie Elisabeth argued that she was merely upholding the *status quo* until her son was old enough to reign. As such, the nobility had little to say in foreign affairs, even though military events had a severe impact on the domestic situation.

The nobility did not seem to have much influence at all during Amelie Elisabeth's regency. They were only called to meet in 1640, 1643, 1648, and 1650, which was

⁹⁴Helfferich (2013), pp. 159–161.

⁹⁵On behalf of Hesse-Cassel, five representatives were sent to Osnabruck. These were: Adolf Wilhelm von Krosigk; Johann Vultejus; Reinhard Scheffer; Dr. Nikolaus Christoph Muldener; Dr. Johann Antrecht. See: Langer (1994), p. 86; Buckreus (2008), p. 103.

⁹⁶In July 1640 Melander no longer commanded the armies of Hesse-Cassel.

⁹⁷Boehncke and Sarkowicz (2010), pp. 80–83; Helbach (1977).

⁹⁸Puppel (2004), pp. 194–199.

⁹⁹von Friedeburg (2005), pp. 905–906.

¹⁰⁰Puppel (2007), p. 96.

not nearly as often as they seem to have preferred.¹⁰¹ Not only did the limited number of meetings give cause for dismay, so did the terms of Amelie Elisabeth's guardianship. The nobility preferred the 1514-model of regency, in which they would actively advise the landgravine. However, Landgravine Amalie Elisabeth opposed this. In 1643, she requested the *Landstände* to agree to four matters: (1) a continuation of a tax on alcohol, (2) tightening the rules regarding Jews, (3) payment of interest, and (4) the opportunity to negotiate in Westphalia.¹⁰² In 1648 the *Landstände* were officially summoned to learn about the marriage of Landgrave Wilhelm VI and Hedwig Sophie of Brandenburg (1623–1683). In 1650 they were invited to approve and witness the young prince acceptance of government.

The opinions about Amelie Elisabeth among the Hessian population varied.¹⁰³ Some considered her the saviour of Hesse-Cassel, and attributed her with impressive political and military skills.¹⁰⁴ Some lauded her for her strategic and negotiation skills.¹⁰⁵ She may have largely governed authoritatively but did request advice at times. Others, including the nobility, saw her as a bringer of more warfare and despair. Hence, she was also seen as untrustworthy as she seemed to have a preference for war.¹⁰⁶

4.7 Final Negotiations: Peace of Westphalia (1648)

On 24 October 1648, the final details of a peace treaty were recorded and were to be signed by the Holy Roman Empire, Sweden, and France. Although people had already started to celebrate, France complained that the details relating to payments by Hesse-Cassel remained unclear. So, the French could, and indeed would not, sign the treaty. The awkward timing at which these concerns were raised led to suspicions that the French sabotaged the peace.¹⁰⁷ Their very late demand for financial compensation from Hesse-Cassel led to many misunderstandings, and the only negotiators in favour of this settlement were the French. The House of Hesse-Cassel sought compensation of the principality's war damages and the costs incurred by its army.¹⁰⁸ Any peace should end the war between the emperor and the princes, and resolve any remaining territorial and dynastic disputes. These disputes concerned issues with the *Reichsverfassung* (Imperial Legislation) and dealt with issues from

¹⁰¹Puppel (2004), p. 210.

¹⁰²Puppel (2007), p. 111.

¹⁰³Ibid., p. 101.

¹⁰⁴Buckreus (2008), p. 161.

¹⁰⁵Puppel (2007), p. 99.

¹⁰⁶Ibid., p. 101.

¹⁰⁷Helfferich (2013), p. 232; Wolff (1999), p. 112.

¹⁰⁸Wolff (1999), p. 113.

which the war had originated.¹⁰⁹ Landgravine Amelie Elisabeth genuinely believed that making war and peace was the right of every individual German Prince. As her armies held many fortresses and lands belonging to other rulers, she felt empowered to press these claims.¹¹⁰

Religious conflict also needed to be addressed, as the Peace of Augsburg (1555) no longer sufficed: Lutheranism, Calvinism and Roman-Catholicism needed to be accepted.¹¹¹ Religion formed an intrinsic part of the Hessian demands. The emperor's rights as head of the Holy Roman Empire had to be curtailed in order to prevent legal decisions from being influenced by his power.¹¹² This Hessian demand had Sweden's attention, as Sweden felt responsible for protecting the Protestant nobility, in particular, the Lutherans.¹¹³ The house of Hesse-Cassel sought the acceptance of Calvinism without alterations.¹¹⁴ Hesse-Cassel—as a military power—was positioned to make the other negotiators acquiesce to this demand and the *ius reformandi* and *ius emigrandi* were lifted.¹¹⁵

Negotiators for Hesse-Cassel pressed two demanded. *Firstly*, amnesty and restitution to the *Landstände* by the 1618-situation, meaning the retrocession of Hesse-Marburg. *Secondly*, compensations for damages—an unknown sum—caused by the Catholic armies. The Hessian troops would remain in the principalities they had occupied, for example in Jülich until they had received full payment.¹¹⁶ Hesse-Cassel required 200,000 *Reichsthaler* to disband its army, on which an agreement was reached in the end.¹¹⁷

4.8 Landgravine and Nobility: Problems Arising (1646–1650)

Amelie Elisabeth showed a growing interest in regaining the lost Marburg heirloom. Surprisingly the nobility objected to her warmongering. Their objection may have come as a surprise because Landgrave Philipp's declaration stated that the nobility should not meddle in disputes between his heirs.¹¹⁸ The declaration referred to their interest in fostering conflict hitherto. However, the policy of conquest focussed on a small principality, which collided with the nobility's interests. Most nobles had

¹⁰⁹Ibid., p. 113.

¹¹⁰Helfferrich (2013), pp. 161–196.

¹¹¹Wolff (1999), pp. 114–115; Maruhn (2004a), p. 179.

¹¹²Maruhn (2004a), p. 178.

¹¹³Parker (1997), pp. 151–152.

¹¹⁴Wolff (1999), p. 116.

¹¹⁵Ibid., p. 117; Maruhn (2004a), pp. 180–181.

¹¹⁶Wolff (1999), p. 118.

¹¹⁷Ibid., p. 122; Helfferrich (2013), p. 232.

¹¹⁸Engelbert (1959, 1960).

possessions in more than one Hessian principality, and they were wary of endangering their interest: stability.¹¹⁹ The nobility, therefore, preferred to foster an identity of ‘the Hessian nobles,’ indicating allegiance to Greater Hesse.¹²⁰ References to the wishes of Philipp I, the Magnanimous, guided the debate away from the nobles’ interests and towards a nostalgic emphasis on a more favourable period in history.¹²¹ The religious preferences of the Lutheran nobility were also important in the debate, as the landgrave was a Calvinist.¹²²

On 27 April 1646, Amelie Elisabeth called a meeting with the *Landstände* out of dire necessity: she needed grain for the troops.¹²³ She requested payment not only from cities and towns, but also from the nobility, as they would benefit from feeding the troops as well. The nobility opposed this and met in the convent (*stift*) of the town of Kaufungen in December.¹²⁴ Otto von der Malsburg, who had previously been a favourite of the landgravine, now devoted himself to the nobility’s cause. The nobles refused to allow the levy of 4000 *Malter* of grain but offered 1000 *Malter* in return for the landgravine’s acceptance to respect their rights.¹²⁵

The requested 4000 *Malter*, being 656,000 kilos of grain, were the equivalents of 113,280 grams of silver.¹²⁶ Per capita, this is such a low amount of silver that it does not explain the reaction of the nobility. However, if expressed in kilocalories (Kcal), it gives us a general idea of the amount of food that was taken away. The 656,000 kilos of grain comes to 1,102,080,000 kcal (1680 Kcal/kilo). Divided by the 2100 kcal that define food insecurity, it makes 524,800 insecure food days. With a population of 375,000, this would have resulted in 0.30 g of silver or 1.5 days of hunger per capita. These amounts do not seem to be extreme, but the promptness with which they had to be delivered was problematic, certainly on top of the relentless war damage.

Amelie Elisabeth was incensed and wanted the nobility to disband their assembly, threatening those acting contrary to her commands. The nobles turned to Landgrave Georg II of Hesse-Darmstadt, whose delegates had been invited to Kaufungen previously but who had not shown up.¹²⁷ The nobility cited their privileges, especially their right of assembly,¹²⁸ whereas Amelie Elisabeth claimed that the current state of *necessitas* entitled her to levy these taxes. The landgravine contested this right of assembly without her consent and described the actions as secret meetings of

¹¹⁹Maruhn (2004a), pp. 104–105.

¹²⁰Maruhn (2004b), pp. 71–94.

¹²¹Maruhn (2004a), pp. 112–113.

¹²²Ibid., pp. 1–2, 127; Maruhn (2004b).

¹²³Neu (2013a), p. 344; Maruhn (2004a), pp. 44–45.

¹²⁴Eßer (2001), p. 184.

¹²⁵Maruhn (2004a), pp. 40–52; Helfferich (2013), p. 207.

¹²⁶Calculations based upon Rahlf (1996). The price-average for the year 1647, was 28.32 g/ hectoliter.

¹²⁷Neu (2013a), pp. 346–347.

¹²⁸Ibid., p. 348.

private persons under suspicious circumstances.¹²⁹ Despite these objections, the nobility did assemble. Amelie Elisabeth was enraged and had Hans Diede and Otto von der Malsburg incarcerated, expecting the rest of the nobility to back down and cancel the meeting. Diede and Malsburg came up with means to deal with this government upon their release from prison in April 1647: a government that drew them in war; that disallowed the nobility to assemble; and withheld their consent in the matters of taxes.¹³⁰ Malsburg presented three options. *Firstly*, they could use force. *Secondly*, they could consider going to court. *Finally*, they could start petitioning and peaceful negotiations. The nobility opted for the latter two and decided to pay only part of the requested sum of money in order to make their point but also to keep negotiations open. Represented by Master in Laws and syndic of Gottingen, Heinrich Diederich, they appealed to the Imperial Chamber Court.

On 14 September 1647, the Imperial Chamber Court issued a *mandatum inhibitorium et cassatorium sine clausula*.¹³¹ It stated that the landgravine was indeed violating the rights and privileges of the nobility by demanding such amounts of food and taxes. Moreover, she was harming the welfare of her lands. A fine would be imposed should she continue her harmful behaviour.¹³² Significantly, the nobility did not present this *mandatum* to the landgravine, as they wished to continue negotiations. However, the document was re-issued in January 1650, accompanied by a more sharply worded formulation, when negotiations failed.¹³³ This verdict was eventually published after the *Remonstratio*¹³⁴ had been submitted. The *Remonstratio* was a document comprising a formal objection to the ban on the nobility's assembling.¹³⁵ The nobility emphasised that they must assemble, because they needed to discuss the troubles Hesse-Cassel was facing. It was their duty to defend their rights and honours.¹³⁶

¹²⁹Ibid., p. 350; Puppel (2007), pp. 114–115.

¹³⁰Maruhn (2004a), p. 47.

¹³¹HStAM Bestand 304 I, 504; Eßer (2001), p. 184; Maruhn (2004a), p. 51.

¹³²Eßer (2001), p. 184; Maruhn (2004a), pp. 40–52, 191; Puppel (2007), pp. 99–125.

¹³³von Friedeburg (2003), pp. 310–311.

¹³⁴HStAM 5, 19147: *Remonstratio*; HStAM 73, 1816: *Remonstratio*.

¹³⁵Section from: HStAM 73, 1816: *Remonstratio*: 'Durchleuchtige hochgeborne Fürstin, genedige Fraw, alß E.F.G. kurtz verwichener Zeit zweij unterschiedene Befehlschreiben ahn dero getrewe Ritterschafft des Niederfursthumbes Heßen abgehen laßen, worinnen demselben ein undt andere beschwerliche Ufflagen, zweifels ohne auß ungleichem Bericht, beygemeßen, dero jura und alles Herkommen, insonderheit aber der bishero zuweilen angestellten Zusammenkunfftten halber disputirlich gemacht werden wollen undt nachmahls den 9[.] Junii dieses lauffenden Jahrs solche hergebrachte wohlbefugte Zusammenkunffte gemeiner Ritterschafft ernstlich verboten worden [...] [quote continues in the next footnote].

¹³⁶Section from: HStAM 73, 1816: *Remonstratio*: '[...] so hat der Ritterschafft Notturfft erfordert, pro legitima et omnibus concessa defensione juris et honoris sui, vorbehaltlich alles unterthenigen Respects und Gehorsams, welchen sie E.F.G. zuerweisen schuldig, und durchaus nicht dero Intention undt Meinung, sich demselben inn einige ungebührliche Wege zu widersetzen, wovon hiermitt feyerlich bedingt wirdt, ihre Unschuld undt Befugnis an den tag zu legen undt mit wenigem zu remonstriren, daß nicht allein bißhero von der Ritterschafft nichts Unverantwortliches,

The nobility used two different arguments. *Firstly*, they debated whether the actions of Amelie Elisabeth were tyrannical. *Secondly*, they had acted in line with the traditions and privileges of their principality.¹³⁷ The nobility added that assemblies had been banned in other principalities such as Jülich and Berg.¹³⁸ In the principalities above, the emperor had ruled in favour of the claimants, that is the nobility. The Hessian Chronicle by Wilhelm Dillich was used to illustrate the history of Hesse, and to provide examples proving that the nobles had the right of assembly.¹³⁹ If the well-being of the principality was at stake, the nobility had to debate strategy and organise actions. They referred to the situation as ‘*nottrufft*’ (Eng: emergency).¹⁴⁰ Moreover, the landgrave—and in this case, the regent—had sworn to uphold these privileges.¹⁴¹

The nobility emphasised they had sworn allegiance to their young landgrave, who in turn had to fulfil the duties of his office correctly. They focussed on the principality’s customs and stated that the oath of the inauguration was a mutually binding contract concerning upholding these traditions.¹⁴² Their privileges were

noch unbefugtes in Anstellung vorangedeuteter Zusammenkunfften begangen, sondern auch dieselbe innkunfftig rechtswegen nicht behindert werden mögen, ihrer Angelegenheiten und daß gantze corpus oder collegium der Ritterschafft betreffender sachen halber zusammen zukommen undt darüber nach notturfft zu vernehmen, dero underthenigen Zuversicht, F.Gn. werden solches anderer Gestalt nicht, alß es gemeinet, in allen Gerraden aufnehmen undt vermercken.’

¹³⁷ von Friedeburg (2003), p. 304.

¹³⁸ Section from HStAM 73, 1816: *Remonstratio*. See page 80 for full quote from the source.

¹³⁹ Maruhn (2004a), pp. 105–111, 255. The full-text *Hessische Chronica* can be found at: <http://digitale.bibliothek.uni-halle.de/vd17/content/titleinfo/10083619>. Accessed 20 May 2020.

¹⁴⁰ HStAM Bestand 73 Nr. 1816, *Remonstratio* 1647, page 4 r^o.

¹⁴¹ Section from: HStAM Bestand 73, Nr. 1816, *Remonstratio* 1647, page 5 r^o: ‘*So ist bekandt, wie heutigen Tages secundum morem et consuetudinem Germaniæ, ein Regent bey den Erb- undt Landthuldigungen seinen Underthanen zuegesagt, er wolle sie bey ihrer Religion schützen, bey gleichmäßiger durchgehender Justitz, Friede, Ruhe, Wohlstand und Einigkeit, so wohl einen jeden bey seinen erlangten, undt wohlhergebrachten Rechten, Gerechtigkeiten, Privilegien undt Freyheiten erhalten, vertheidigen undt alles das jenige verrichten, befehlen undt anordnen, waß einem löblichen Regenten, der seine getrewen Underthanen von Hertzen lieb hatt Ambts, Standts undt Gewisens halber zuethuen eignet ut gebueret, darauf sich auch eine getrewe Landtschafft gewis verlassen soll, Neumeier etc. Wie dann auch bekandt, das bey der zue Naumburgk den 8t[en] Julii A [nn]o 1567 aufgerichteten Erbverbruederung zwischen den chur- undt fürstl[ichen] Häusern Sachsen undt Hessen austrücklich verabschiedet, ob ihre Mitt parthey ohne leibes lebens Erben todts halber abginge, also, das ihre Fürstenthümer undt Herrschafften ahn die andere Partheyen die noch im Leben wehren, nach Lautt ihrer Bruederschafft Auf- undt Übergebung kehme, das sie undt ihre Erben alsdann deß abgangen Fürstenthumbs Graffen, Herrn, Ritter undt Knechte, Burgmannen, Bürgern, Städten, Landt und Leuthe, geystlich undt weltlich, bey allen ihren Rechten, Ehren, Würden, alter gutter Gewonheit undt Herkommen lasen undt getrewlich darbey erhalten sollen undt wollen, insonderheit aber ist der Ritterschafft in Niederhessen noch newlicner Zeit, [. . .]’ (This quotation continues in the next footnote.)*

¹⁴² Section from: HStAM Bestand 73, Nr. 1816, *Remonstratio* 1647, page 5 r^o and v^o: ‘[. . .] in Anno 1624, als Landtgraff Georgens Fürstliche Gn[aden] die Pfandtämpter am Schwalmstrom angewiesen, versprochen worden, sie bey hergebrachter Freyh- undt Gerechtigkeitt zue manutieniren undt zue schützen, ingleichem ebenmäßsigk in A[nn]o 1627 von Landtgraff Wilhelms

bound to the well-being of the principality of Hesse-Cassel. However, this well-being seemed to collide with the attitude of the landgrave and his mother. This perception and struggle shows resemblances with the case of Jülich.

Amelie Elisabeth's advisors focussed on one argument in particular: in times of turmoil and unrest, a prince might have to act unilaterally, laying claim to exceptional duties and taxes.¹⁴³ The debate about who was responsible for the fatherland soon turned to the differences between princes and subjects. The nobles denied that they had acted rebelliously. They had acted from love for the fatherland,¹⁴⁴ and as its representatives, the nobility must be consulted. These claims addressed arguments about *necessitas* as well as the dialogue about public matters. Resorting to history and Althusius' work, the nobility claimed to safeguard the welfare of the people and the principality.¹⁴⁵

During the conflict, the nobility did not want separate assemblies in the different parts of Greater Hesse but preferred joint-*Landstände* assemblies. With that, the nobles tried to turn back the clock when it came to the division of land. Chairman (Germ.: *Obervorsteher*) Diede remarked, shortly after the signing of the Hessian Treaty (Germ.: *Hauptakkord*) of 1648,¹⁴⁶ that the House of Hesse had experienced many difficulties due to internal differences. The *Landstände* should encourage both landgraves to return to the situation before the troubles had commenced.¹⁴⁷ For instance, during the war, the Hessian troops had numbered 20,000 and were reduced to 500 by 1649. The income of the seigniorship paid them. These costs still displeased the nobility, despite the modest lifestyle of Amelie Elisabeth and her son, and so they sought a way to end them.¹⁴⁸

On 24 October 1649, an assembly in Kirchhain was organised to discuss matters concerning the requested troop payments.¹⁴⁹ Again, Amelie Elisabeth considered this meeting to challenge her rule. She fined Hereditary Marshal (Germ.: *Erbmarschall*) Curt Riedesel and imprisoned Otto von der Malsburg.¹⁵⁰ After

F[ürstlichen] Gn[aden], hochseeligen andenckens, bey Einnnehmung der Landtshuldigung, undt nicht weniger in A[nn]o 1637, wie S[einer] F[ürstlichen] Gn[aden] H[err] Sohn unserm itzigen g[nädigen]lieben Landtsfürsten undt H[errn] die Erbhuldigung von den Ständen gelaistet, wiederhohlet worden.

Wie nun die Landtstände undt Underthanen verpflichtet seyn, dem jenigen, worzue sie sich in dem Huldigungsaydt verbunden seyn, getrewlich nachzuleben, also ist ,der Landesfürst nicht weniger gehalten, dem Versprechen, so desen F[ürstliche] Gn[aden] den Ständen thut, fürstlich nachzuekommen. Mutuus enim hic contractus est [etc.] So hatt auch diese Zuesage die Krafft undt Würckung eines geschwornen Aydts. Verba enim stipulationis etc.'

¹⁴³ von Friedeburg (2005), p. 911; Maruhn (2004a), pp. 262–264.

¹⁴⁴ von Friedeburg (2005), p. 912; Maruhn (2004a), pp. 264–266.

¹⁴⁵ von Friedeburg (2005), p. 914.

¹⁴⁶ Philippi (2007), p. 2; Weiland (2009), p. 166.

¹⁴⁷ Maruhn (2004b), p. 86.

¹⁴⁸ Philippi (2007), p. 6.

¹⁴⁹ Hollenberg and Jäger (1989a); Maruhn (2004a), p. 59.

¹⁵⁰ Maruhn (2004a), pp. 57–58; von Friedeburg (2003), pp. 298–299.

more than 3 weeks, Malsburg was released on 22 January 1650. A rebellion was punishable by death; however, Malsburg received a fine of 400 gold guildens.¹⁵¹ He responded violently to this fine and addressed the landgrave sharply. He claimed that she had ignored his noble ancestry, and that he had been imprisoned like a mere commoner. To those in favour of the privileges of the *Landstände*, Malsburg became a martyr. At this point, the nobles requested support from the emperor, and the Imperial Chamber Court ruled in their favour in 1650. This verdict could force Amelie Elisabeth into hearing the noble cause.¹⁵²

During the *Großer Landkommunikationstag*, which lasted from 25 September until 17 October 1650, Wilhelm VI took over the government of Hesse-Cassel.¹⁵³ During this assembly, the nobility addressed the issue of their meetings as patriots: they had done nothing to upset the landgrave, or so they claimed. Their gathering was made solely out of their love for their land.¹⁵⁴ The landgrave had come of age and was now able to govern and make his own decisions.¹⁵⁵ During his mother's regency, Landgrave Wilhelm VI had visited and established warm relations with the

¹⁵¹Maruhn (2004a), p. 59.

¹⁵²Puppel (2007) and Maruhn (2004b).

¹⁵³Hollenberg and Jäger (1989b). For more information on the frequency of meetings, see: Neu (2012).

¹⁵⁴HStAM 73, 213: *Landtag zu Kassel Sept. 1650 nur: Gravamina der Landschaft*. First mentioned of the 29 grievances: '1. *Das im künftig vorkommen den Sachen, so daß Landes Wohlfarth und auch Gefahr und beschwaren concerniren Die soll genant Landtagen <und communicationes> ex in allereits inzo von unsern F.G.fürsten und herrn stracks im ersten Tage Ihren F. Gl. angetretenen Regierung <Casselisch theils> ein löblicher Anfang- gemacht Worch, wiederumb an landt genommen, undt darauf durch die sämptliche Landstände die nottrufft und remedia berahtschlagt, ihre Anliegen und Meinungen darbeij gehort, undt Fürstens durch die Praelaten undt Ritterschafft so wohl, als durch die Städte zusammen dem gemeinen woßen gebüerede sampt hält geschehe haben, hohen die Städte von Herzen gern, wünsche auch daß sich darin ein jeder an seinem Orth alß ein Patriot in den Wercken, undt nicht in Worten allein, bezeige, auch ein des andern Höhe Praesumption des befremdliche Intention nicht wuchs und zereijung [illigible] zu seiner großmarchung undt anderer standen und Unterthanen Unterdrückung suche, oder sonst einen dem Regierenden landeffürsten und anderen Landständen und Unterthanen nachtheiligen und unverdächtigen Anfang nach, sondern demselben beginnen vielmehr abrathe, undt die gesechte alte concorporation <der gesambte Platz Rittern- undt Lande-schafft> getreue landes-liebe, und einigkeit bestens Vermögens befordern solche, damit sich der Regierende Landesfürst sicherlich auf ein solch gesamptes getreues corpus undt deßen notwendigen beijstandt zu verlaßen, undt demselben hiergegen also landßväterliche gnade undt liebe wiederumb zuerweißen auch desselbe ins gesampte beij seines Standt undt herkommen zu conserviren ersach haben, zu welchem ander den von einer jeden in solchen corpore des landtstandes begriffener person, so eine noch nicht geschehe die gebuerende homogial – und huldigungs aydt der, alß die uhrälteste und beständigste bündniß gewischen einer Christlichen angeborenen regierung daß landes rattern <oder> Fürsten und dessen gesampten rathen landtständen, erfordert undt woherinnert <er des könnte, bevor ab weil dardurch ein jeder samt wesen Er sich zudem andere zu der solche mehr ders: ehrt, und ders rechts alte vertrauen ihr gantztes corporis unter sich selbes merklich stabilisiert wurde.'*

¹⁵⁵Philippi (2007), p. 3; Puppel (2007).

Dutch Republic, France, as well as with other principalities of the Holy Roman Empire. These contacts were maintained throughout his reign.¹⁵⁶ However, it was with some reluctance that Landgrave Wilhelm VI took over the government. Landgravine Amelie Elisabeth's influence was reduced to that of an unofficial councillor in military affairs.¹⁵⁷

The differences between the landgrave and the nobility seemed irreconcilable: the grain was not returned. Moreover, there was no indication that the landgrave would honour those privileges his mother had previously violated. The result of this uncertainty was that the nobility withdrew early from the *Landtag*.¹⁵⁸ On 17 January 1651, the nobility drafted a list of 84 points of view which they presented to the landgrave.¹⁵⁹ This list did not alleviate tensions, so the nobility had to alter their strategy. Begging and pleading did not work; now, the nobles were forced to try a more judicial path.

4.9 Preparing and Filing an Official Complaint (1647–1655)

In the case of the principality of Hesse-Cassel, I found six general themes illustrating the debate's development. The sources found in the private Archiv der Althessischen Ritterschaft Kaufungen show an on-going debate and not a linear progression.¹⁶⁰ These six themes are as follows. *Firstly*, the position of the *dominus terrae*, holding the *superioritas territorialis*—in both private and public law. The landgrave was the highest authority in the fief, a fact with which the nobility agreed. Despite that agreement, the nobles argued that the laws still applied to the *superioritas territorialis* (the highest authority within the territory). *Secondly*, the nobility and the landgrav(in)e held opposing views as to the position of patriots. The landgrave assumed that the patriots were loyal to both fatherland and landgrave, whereas the nobility stressed their exclusive loyalty to the fatherland. *Thirdly*, the issue of war. According to the landgravine, conducting war was necessary to defend the fatherland. The nobility maintained that warfare was detrimental to the country. *Fourthly*, taxation was a regular topic in the legal suit. The landgrave argued that it was a basic necessity used to protect the prosperity of the fief, but the nobility countered that it was a danger to the country. *Fifthly*, the issue whether or not the landgrave had to consult the nobility and whether she had obtained their consent

¹⁵⁶Philippi (2007), pp. 1–9.

¹⁵⁷Puppel (2007).

¹⁵⁸Eßer (2001), p. 185.

¹⁵⁹AARK, *P.P.* (Repositur 6, Gefach 15, Seite 54, Nummer 5); von Friedeburg (2003), p. 299.

¹⁶⁰Various versions of the Replica have been retrieved from two archives: Archiv der Althessischen Ritterschaft Kaufungen (AARK) and the Hessisches Staatsarchiv Marburg (HStAM). The latter holds multiple copies that seem to contain several individual persons' handwriting: HStAM 255, H 139; HStAM 73, 1816. One of these bears a signature on the title page that indicates that this is the version that was sent to the Imperial Chamber Court.

before levying taxes. Landgrave Wilhelm VI argued that the war had created a situation of *necessitas* and that there had been no time in which to request the consent of the nobility. The nobility retorted that not consulting them was a sign of tyranny. *Sixthly*, there was a question of whether or not the nobility were entitled to assemble and debate amongst themselves. The landgrave believed that such meetings undermined his government, whereas the nobility argued it was one of their ancient privileges.

4.9.1 *Remonstratio*

In 1647 the nobility objected to Landgravine Amelie Elisabeth's policy, and informed her of their objections by writing a letter—called the *Remonstratio*—containing their grievances. They stated that the fatherland was being damaged.¹⁶¹ As such, they had to voice their concerns by warning the landgravine about this grave situation, hoping to repair the strained relationship.¹⁶² Shortly after the Peace of Westphalia, the nobility re-presented their grievances. A prominent grievance concerned the conflict over the inheritance of Hesse-Marburg, as the nobles feared the landgravine's renewed interest in it would spark another war. Both the Landgravine of Hesse-Cassel and the Landgrave of Hesse-Darmstadt received these complaints in 1649.

4.9.2 *Mandatum Inhibitorium et Cassatorium Sine Clausula: 1647 and 1650, 1651*

On 14 September 1647 a *mandatum inhibitorium et cassatorium sine clausula*, was sent to the nobility containing the verdict that they need not suffer the consequences of the increased taxes unless the majority assented to said taxes.¹⁶³ If the landgravine were to continue her malpractice and keep ignoring her subjects' rights to meet and to vote on taxes, she would face a fine.¹⁶⁴ Despite the positive outcome, the nobility did not show their landgravine the document, as they interpreted her silence in the matter of the *Remonstratio* (12 August) as tacit consent of their right of assembly.¹⁶⁵ Therefore there was no need to bother her with the official verdict. The nobility could use the verdict as a benchmark to test the validity of their protests, even when the verdict was later on ignored by Landgravine Amelie Elisabeth and Landgrave

¹⁶¹Neu (2013a), p. 414.

¹⁶²Maruhn (2004a), p. 52.

¹⁶³Ibid., pp. 40–52.

¹⁶⁴Ibid., p. 191; Neu (2013a), pp. 381, 412.

¹⁶⁵Neu (2013a), p. 381.

Wilhelm VI in 1650.¹⁶⁶ The *mandatum* was renewed and re-issued on 23 September 1651 and was notably critical of the punishment of Riedesel and Von der Malsburg.¹⁶⁷

The verdict in the *mandatum sine clausula* had been reached relatively quickly, given the fact that the Thirty Years' War had severely delayed sentencing by the court.¹⁶⁸ However, only the complainant was heard in a *sine clausula*-case.¹⁶⁹ Had it been a *con clausula*-case, the landgrave would have been compelled to reply. The accuser would then be obliged to present the verdict to the defendant.¹⁷⁰ The *mandatum* encompassed legal protection for the complainants and their goods (*inhibitorium*) and guaranteed their right to be safeguarded from prosecution (*cassatorium*).¹⁷¹ The Landgrave of Hesse-Darmstadt criticised the 1650 *mandatum* in a letter to Landgravine Amelie Elisabeth, claiming that a *mandatum sine clausula* seemed arbitrary. He recommended that Amelie should respond to the Imperial Chamber Court forthwith.¹⁷²

4.9.3 Disposition or Gutachten 1648–1650

Between 1648 and 1651¹⁷³ a disposition (*Gutachten*) was written on behalf of the nobility. The author was likely David Berger, a lawyer from Speyer.¹⁷⁴ It contained three questions:

[C]ould a prince make laws or any ordinance without prior consultation of the *Landstände*?
 Could a prince ban assemblies on issues of the welfare of the fatherland (*de salute patriae*)?
 Did the *Landstände* of Hesse-Cassel possess the right to meet for such purposes whenever they saw fit?¹⁷⁵

The first question implied the acceptance of Amelie's power, but also that the landgravine's acts would be illegal when the privileges of the nobility were

¹⁶⁶HStAM Bestand 255, H 139: *mandatum sine clausula* [5 January 1650], according to the date and signature on the back it was presented to the landgravine on 12 March 1650; Maruhn, *Necessitäres Regiment*, p. 192.

¹⁶⁷*Mandatum sine clausula*, 61 and 201.

¹⁶⁸*Mandatum sine clausula*, 192.

¹⁶⁹*Mandatum sine clausula*, 193.

¹⁷⁰*Mandatum sine clausula*, 193–194.

¹⁷¹*Mandatum sine clausula*, 194.

¹⁷²*Mandatum sine clausula*, 195.

¹⁷³HStAM 73, 1816; Von Friedeburg dates this document as written in the year 1648, Maruhn and Neu indicate that it was written in 1651. Neu even suggests written prior to the *exceptiones*. See: von Friedeburg (2003), p. 304; Maruhn (2004a), p. 206 footnote 182; Neu (2013a), p. 413.

I position the *Gutachten* between 1648–1650, as it could well have functioned as a trigger for the *Exceptionis*.

¹⁷⁴*Gutachten*: Bestand 73, 1816; Maruhn (2004a), p. 201 footnote 148.

¹⁷⁵HStAM 73, 1816, r^o 1; von Friedeburg (2005), p. 909.

disrespected, (referring to the *regimen politicum*). The second issue raised, argued for the nobility's representation of the fatherland, and implied that their assembly was necessary. Amelie seemed to agree with most points, though the point of the necessity of meetings without consent remained a sensitive issue.¹⁷⁶

4.9.4 *Exceptiones sub- et obreptionis: 1651*

With the landgrave's permission, an *exceptiones sub- et obreptionis*—with 84 complaints¹⁷⁷—was sent to the Imperial Chamber Court on 17 January 1651.¹⁷⁸ A first draft of the text, drawn up by the landgrave's lawyer Georg Goll, had been written about 1 year before.¹⁷⁹ The document was a response to the *mandatum inhibitorium et cassatorium sine clausula* and challenged the jurisdiction and ruling of the Imperial Chamber Court. The reason for this was that the nobility had allegedly withheld vital information,¹⁸⁰ namely that they had plotted against the government and undermined it, thereby committing the offence of *lèse-majesté*. Strikingly, the *exceptiones* referred to some subjects and not to the *niederhessische Ritterschaft* (nobility).¹⁸¹ The landgrave had referred to all inhabitants of his principality as subjects irrespective of birth. This change in terminology is an indication that their positions changed during the seventeenth century.¹⁸² Privileges became less important, and a uniform, objective norm was developed for everyone. The use of the word *subiectus* or subject marked this development.¹⁸³

4.9.5 *Mandatum Poenale Sine Clausula: 1652*

On 19 February 1652 Imperial Chamber Court issued yet another Mandate: a *mandatum poenale sine clausula*, according to the text on the back.¹⁸⁴ It seems to be the second time the *mandatum* of 23 September 1651 was issued, although this does not become clear from any references. The nobility stated in their notes that

¹⁷⁶Ibid., pp. 910–911; Maruhn (2004a), p. 206.

¹⁷⁷The version in HStAM Bestand 255 (Reichskammergerichtssachen), H 140: *Exceptiones sub- et obreptionis*, counts a mere 64 points.

¹⁷⁸HStAM 5, 14660 fol. 25: *Exceptiones sub- et obreptionis*.

¹⁷⁹Maruhn (2004a), p. 203.

¹⁸⁰Ibid., p. 202.

¹⁸¹Ibid., p. 202.

¹⁸²AARK, *Duplicae*, Repositur 6, Gefach 15, Seite 54, Nummer 5, p. 75: '*Unde in bene constitutis rebus publicis principatibus ac Regnis ob subditorum malevolentiam mutationi facile obnoxijis sedulo praecavere solent imperantes, ne subditi praesertim nobiliores ipsi inscijs conventus aut congregaciones agant, veluti in Regno Neopolitano et Siciliae.*'; Stolleis (1988).

¹⁸³Ibid., pp. 276–277.

¹⁸⁴HStAM 255, H140: *mandatum poenale sine clausula* [19 February 1652].

their lawyer Konrad Blaufelder was to copy the document for them.¹⁸⁵ In this mandatum, the emperor criticises the imprisonment of Otto von der Malsburg and Curt Riedesel, as well as the penalties of 400 and 200 Goldgulden, respectively.¹⁸⁶ He emphasised that they were speaking on behalf of the nobility, and that they believed that much of the troubles would have been avoidable, had the nobles ever received proper replies. Moreover, the landgrave was ordered to return the fine, as well as the requisitioned resources.

4.9.6 *Replica: 30 March 1652*

The Imperial Chamber Court of Speyer received a lengthy complaint against Landgrave Wilhelm VI of Hesse-Cassel and his late mother's regency in 1652. Lawyer Blaufelder filed The *Replica*. He was a lawyer who worked in Speyer.¹⁸⁷ Before the publication of the *Replica*,¹⁸⁸ the nobility had been accused of three problematic acts. These were: (1) the crime of rebellion, (2) the crime of conspiring against the prince and the fatherland and of (3) *lèse-majesté*.¹⁸⁹ They, in turn,

¹⁸⁵HStAM 255, H140: *Ritterscha[fft] Samptliche Ritterschafft des Nider Fürstenthumbs Hessen-Cassels [etc]*.

¹⁸⁶HStAM 255, H140: *mandatum poenale sine clausula* [19 February 1652], in this respect it seems the same as the *mandatum* of 23 September 1651.

¹⁸⁷Eßer (2001), p. 186; Hollenberg and Jäger (1989c), p. 66 footnote 25.

¹⁸⁸AARK, *Replicae* [...] *Mandati Inhibitorii et cassatorii sine clausula* (Repositor 6, Gefach 15, Seite 54, Nummer 5).

¹⁸⁹Based upon *Replicae*, 3–4: ‘So will Anwaldt imperantium sowohl umb den Ungrundt und Ohnerhebligkeitt solcher Exceptionum destomehr an den tagh zu bringen, alß auch von den schweren Imputationen inepte applicati criminis rebellionis machinationis contra principem et patriam, itemq[ue] laesae majestatis, sie zu purgiren und ihre Unschuldt so viel clährer vor augen zustellen, diese seine schriftliche replicas undt ableimung dargegen übergeben haben, undt thuet neben gemeiner Widersprechung allem wiedrigen unerwießenen, unbegründten undt unerfindtlichen Inhalts, auch dienstlicher Acceptirung alles desjenigen, waß einiges wegen seines groß[ü]n[s]t[igen] hern Pr[incipa]ll[e]n in berürten exceptionibus nachgegeben undt eingestanden oder auch zum besten verstanden werden kann, hiemit undt in Crafft dießes vor Gott vor der Kayser [lichen] May[estät], vor E[wer] Chürffürstlicher Gn[aden] undt vor der gantzen Weltt fyerlich protestiren, daß das crimen Rebellionis machinationis contra principem et patriam, laesae majestatis undt waß dergleichen falschen imputationen mehr seinen Pr[incipa]ll[e]n niemahln in sein kommen, sondern Ihnen mit solcher Beschuldigung Gewalt undt Unrecht geschehe, dahero Ihnen dan solche aufflagen undt atrocissimae, welche sie sich billig ad animum revociret undt nochmahls revociren thunen, so viel tieffer ins Hertz schneiden, daß nach dem ihre weylant Vorfahren davon sie posteriren, deren Schildt undt Helm Sie führen, diejenigen gewesen, sowegen Ihrer gegen dero Landtsfürsten undt waß von deren geblüth endtsproßen erwießen großen Trew undt Tapferkeit, dardurch selbige zu dießem Fürstenthumb gebracht, auch in verschiedenen gefährlichen Zuständen darbey erhalten, einen solchen Rühm erlangt, dergleichen vom anderen adell beydes in geschriebenen undt sonst offenen Truck außgegangen Chronicis nicht leicht zu laßen, sie auch nach des herzens und gemüths sein, andermaßen dan auch sich jederzeit gegen Ihre Landfürsten undt das Vatterlandt dergestalt erzeigt, wie getrewen redtlichen Adels persohnen,

claimed to be harmed by this injustice and these grave falsehoods.¹⁹⁰ The nobility was convinced that their meetings had been legitimate.¹⁹¹ The *Replica* claimed that the nobility felt obliged to honour the customs of both the Holy Roman Empire and the fatherland. They needed to protest on behalf of their fatherland and to protect its prosperity.¹⁹² The 1648 peace treaties had terminated the Thirty Years' War, so the argument for *necessity* was no longer applicable.¹⁹³ Despite the protest above, they did recognise the landgrave as their superior.¹⁹⁴

The landgrave and his mother had claimed *necessity* to levy resources, but no situation had as yet been so pressing as to override the nobility's ancient privileges.¹⁹⁵ The nobility felt strengthened by the *mandatum sine clausula* of 14 September 1647 issued by the Imperial Chamber Court, which overtly stated that the 4000 *Malter* of grain were to be returned.¹⁹⁶ However, the *Replica* shows that little had changed, necessitating another complaint at court.¹⁹⁷

The nobility again stressed that their liberties had been violated when the landgrave forbade their meetings.¹⁹⁸ They suspected that the meetings were banned simply because Landgrave Wilhelm VI and his mother felt aggrieved because they had not been invited.¹⁹⁹ The emperor had ruled in favour of the nobility in similar cases—such as that of Jülich-Berg and Eastern-Frisia. Here, the nobility was allowed to gather despite their prince's restrictions.²⁰⁰ The nobility made a comparison with the Turks and the Muscovites, both of whom were ruled by an arbitrary ruler.²⁰¹ In a

Vasallen undt patrioten zu thun gebühret undt wollahnstehet, dainoch gantz unverschulter weiße, alß wan sie von Ihrer vor Eltern Redtligkeit gantz degeneriret wieder des Fürsten undt des Landes Wohlfahrt.'

¹⁹⁰ *Replicae*, 3, 5–6.

¹⁹¹ *Replicae*, 4.

¹⁹² *Replicae*, 20; see also: von Friedeburg (2005).

¹⁹³ *Replicae*, 65–68.

¹⁹⁴ *Replicae*, 81.

¹⁹⁵ *Replicae*, 6, 24–26.

¹⁹⁶ *Replicae*, 7, 51, 53.

¹⁹⁷ *Replicae*, 55–61.

¹⁹⁸ *Replicae*, 8, 10–11, 68–72.

¹⁹⁹ *Replicae*, 76–8.

²⁰⁰ *Replicae*, 79.

²⁰¹ CAR: Here the original references to sources have been removed from this quotation in order to keep it readable; the places of the quotes are indicated with the [...] -sign.

Replicae, 12–13: 'Gleichwohl wirdt Ihnen hirdurch kein dominatus absolutus, in quo Rex v[e]l Princeps pro arbitrio agit, ac neminem consulere obligatus est, sondern nurt allein principatus in spaecie, in quo graviora q[uaecum]q[ue] senatui communicantur [...] Et omnia communicanda sunt [...] Indignum [e]n[im] est christiano principe-absolutâ potestate operari velle. [...] behauptet werden können, derowegen dan beständig darher helt, daß diese forma in allen regnis et principatibus Europae (das Türckische undt Moscovitische Reich außgenommen) also observirt undt gehalten werde.'

Greek *polis*, the nobility had to be part of the policy—and decision-making—otherwise the landgrave risked becoming a tyrant.²⁰² Those were the only two forms of government mentioned: (1) monarchical rule with the consultation of the *Landstände*, as would have occurred in the polis consultation, and (2) tyrannical rule—or the rule by autocratic Greek monarchs—which was deemed illegal.²⁰³ Making the step to the meta-level of Aristotle’s theories could have helped to prevent a critique that would focus on a possible lack of any law explicitly covering this issue in Hesse-Cassel.

The corollary was that there were three requirements of a legal monarchical rule. These were: remain within the boundaries of the law, follow the customs of the land, and consult the *Landstände*.²⁰⁴ Arbitrary rule, which occurred when these requirements were not met, would endanger the welfare, wellbeing, and freedom of the inhabitants and the fatherland.²⁰⁵ The nobility stressed the importance of custom through references to the landgrave’s ancestors, especially Philipp I the Magnanimous and Maurice the Wise.²⁰⁶ These landgraves had developed laws and regulations, which Landgrave Wilhelm VI had promised to uphold when he accepted

²⁰²Section from: *Replicae*, 16: ‘*Neq[ue] [e]n[im] vera principis libertas consistit in hoc, ut faciet, quod velit, sed quod iuste possit [πολιτικώς, namq[ue] non δέσποδῖτικώς imperat, totoq[ue] genere Imperium à domino differt, plura pro hac sententia firmanda qui faciunt videndum est apud.*’

²⁰³von Friedeburg (2005), p. 909; von Friedeburg (2003), pp. 270–271; von Friedeburg (2010), p. 170.

²⁰⁴von Friedeburg (2005), p. 909.

²⁰⁵Section from: *Replicae*, 42–43: ‘*Bey welchen dan auch dießes zufalen daß nicht in der landtstände oder optimatum Wilkühr undt Gefallen stehe, der sämbtlichen Unterthanen Wohlfahrt, Notturfft undt wie die Stände beij ihren Privilegien erhalten undt beschützt werden möchten, zu gedenccken, sondern daß die Eltisten undt Vornembsten im Lande dahin verpflichtet undt verbunden sein, auff alles, darauß sowoll ihnen, als den anderen ein unwiederbringlicher Schade undt Nachtheil zuwachßen möchte, ein wachendes Auge zuhaben undt nichts vornehmen zulaßen, so des gantzen Landes Wollfahrt undt Heijl, wie auch deßelben Freyheiten zuwieder ist, undt wann sie auff daß gemeine Weßsen nicht acht haben, noch sich deß Vaterlandts Heijl undt Wohlfahrt annehmen, so handeln sie wieder die gegebene Trew, undt seindt sowoll, als wan sie daß Vatterlandt verkauffen oder verrathen hetten, zu bestraffen [etc], item de cap[ite] 6, Daß sie vor Feinde undt Verderben der armen Unterthanen zu achten undt zuhalten, wan sie dem Regenten einig undt allein zue gefallen, undt damit sie Gunst; Gnade erlangen, auff die stewer ohne noth ridderschaft undt schließen [etc], Optimates et officales singuli, inq[ui]t Althus[ius], sunt obligati ad salutem populi, ipsisq[ue] non minus cura Reipub[licae] commissa, quam si neglexerint, ipsi tenentur et meritò proditores Reipub[licae] esse dicantur etc d. loc. n. 54 et seqq[uentes]. Zu erwegung deßen sie die Ritterschafft: so viel weniger mit Fuge verdacht werden können, daß sie so woll vor der Unterthanen Notturfft undt Wollfahrth ins gemeine zu Zeiten reden müßen undt denselben zur Beschwerung undt Nachtheil, nicht jedesmal ja sagen können [etc], alß ihre undt der Ihrigen selbstn [etc]. So hat es auch wan schon obiges alles nicht wehre, mit den nobilibus vasallis, wie droben zum Theil schon erwenet, wegen ihrer Lehngüter, die sie mit ihrem Leibe zuverdienen pflichtig in, den Rechten dieße Bewandtnuß, daß sie selbige, so viel die Landstewren belanget, zu versteuren nicht schuldig, et ita indistinctè nisi consuetudine aliud receptum sit (wie in gegenwertigern fall gahr nicht, sondern vielmehr die contrar observantz undt consuedo notirtii ist) sentirt.*’

²⁰⁶*Replicae*, 25–26, 34–36.

government over his fief in 1637.²⁰⁷ The landgrave was expected to employ his reliable princely power in upholding these regulations, and not to evade laws.²⁰⁸ Similarly, in the Holy Roman Empire, an emperor could not levy taxes without the consent of the Diet.²⁰⁹ In order to rightfully and legally impose Imperial, Circle or Land tax, the approval of the imperial assembly would have to be sought. Moreover, the need for the taxation had to be unambiguous.²¹⁰

The *Landstände* represented the inhabitants, and they needed to be able to speak on their behalf. However, as they were neither allowed to assemble and hence could not learn what went on, they could not talk about the fatherland's peace, tranquillity, well-being, nor about the preservation of privileges, immunities, and justice.²¹¹ The nobility needed to be able to warn the landgrave, if necessary, of any threat to the fatherland. With the right of nobles to convene forbidden, this possibility had been taken away.²¹²

Forbidding assemblies was one characteristic of an *absolutus Dominatus*, as a *dominus* would harm immunities, privileges, freedom, and justice, and was therefore considered undesirable. The nobility explained that the landgrave had been dishonest when he stated that the nobility had agreed with the situation of *necessitas* and the consequent need to levy taxes. They had never agreed to call the situation one of *necessitas*: it was inconceivable that the nobility would ever have agreed to this because it would restrict their rights. They could have taken the argument one step further stating that even if they had agreed about there being any *necessitas*, this action would have been void because of its incongruity, mentioned above, with their legally inextricable rights. Because stressing the incompatibility of ancient rights and *necessitas* would be an attack on the principle of *necessitas* itself, they had demurred, as this was never their goal, nor in their interest. Instead, the nobility preferred to ridicule the mere suggestion that they had acknowledged *necessitas*.²¹³ The nobility could not be asked to contribute taxes because they were tax-exempt,

²⁰⁷ *Replicae*, 20, 28–29, 79–80, 86–89.

²⁰⁸ *Replicae*, 20, 28–29.

²⁰⁹ *Replicae*, 33.

²¹⁰ *Replicae*, 37–38, 50.

²¹¹ *Replicae*, 73–74: ‘*Certi Juris esse ait, quod universitas suo Juris ad onera universitatis sustinenda collectas, bellas, Schluß, stever, unguldt, mankgeldt, indicre et colligere queat q[ua] md[a]m exsat consilium Ferrarii Montani, quod et inter consil[iis] Marpurg[ensibus], vol[umen] l consil[ium] l. Undt solche Municipal verfassungen, Gesetz undt Ordnungen undt sonst der Städte undt Communen gemeinen Weßen undt Sachen ohne Zusammenkünfften undt gemeine Berathschlagungen nicht verhandelt gemacht oder angestellet werden können, so wirdt statui gradu superiori als der Ritterschafft, vielweniger den Landtständen, als dem gantzen corpori, in fällen so des gantzen Vatterlandts Friedt, Ruhe, Wollfahrt undt Bestes endtweeder zu erhalten, oder wieder einzuführen undt zuwege zubringen, oder auch Conservirung ihrer Privilegien, Immunitäten undt Gerechtigkeit betreffen, auch ohne zuvor darüber eingehohleten, Consens def superioris conventus anzustellen in Recht vergünnet sein, totum [e]n[im] quod totum habet idem juris, quod pars, quo ad partem.*’

²¹² *Replicae*, 81–85.

²¹³ *Replicae*, 39–40.

but they could offer advice or contribute voluntarily.²¹⁴ Temporary, war-related contributions could turn into permanent taxes—taxes which had not received the requisite consent. This would significantly reduce the influence of both the nobility and the general population.²¹⁵

The nobility claimed that they only dealt with matters of welfare during their assemblies, and had sought only to address the crisis. The nobles were irritated by the suggestion that they had plotted against the fatherland and their prince.²¹⁶ The landgrave had argued that he alone could issue invitations to meetings, but the nobility disagreed. If their opposition needed to be substantiated, the nobility could send proof to the landgrave's chancellor. Their liberties had been restricted despite the legitimacy of their privileges.²¹⁷ The nobility based their case on the *ius collectandi* and the *ius conventum*, as well as other imperial laws, which they claimed had been violated by the landgrave's proceedings.²¹⁸ Likewise, they used new scholarly sources.

In short, the nobility denied that they had committed *lèse-majesté* and that the *necessitas* argument used by the landgrave was invalid. Because the nobility was excluded from policy—and decision-making, the landgrave risked becoming a tyrant. When the nobility had claimed the right of assembly, their meetings were forbidden. As loyal patriots, they should be entitled to assemble in order to discuss the situation at hand. In doing so, they accepted an office of defending their fatherland, that is the principality of Hesse-Cassel. With this duty came the right to oppose the ruler. Like Althusius, they claimed this right came only when the ruler had overstepped the limits, and did not fulfil his obligations.²¹⁹

4.9.7 PP: 30 March 1652

The Archive of Marburg and the Archiv der Althessischen Ritterschaft Kaufungen have a short document attached to the *Replica*.²²⁰ This document was probably written by, or on behalf of, the nobility. It is called *PP*, and bears no other markings or signatures. It has 84 numbered remarks. It seems to be a draft of some sort, referring to the *Sub- et Obreptiones*. It is without much content, merely stating: this is not to be believed, or this is a falsehood. These notes seemed to have been used while the matter was being addressed in the *Replica*.

²¹⁴*Replicae*, 44–45.

²¹⁵*Replicae*, 47–48, 50.

²¹⁶*Replicae*, 87–91.

²¹⁷*Replicae*, 92–96.

²¹⁸*Replicae*, 45–46.

²¹⁹Neu (2010), p. 16.

²²⁰AARK, *PP* (Repositor 6, Gefach 15, Seite 54, Nummer 5); HStAM 73, 1816: 1 folio – written on all 4 sides

4.9.8 *Duplica: 22 April 1653*

Written by lawyer Georg Goll, the *Duplica* was issued on 22 April 1653 on behalf of Landgrave Wilhelm VI of Hesse-Cassel.²²¹ The landgrave seemed agitated at having to react to accusations while he was busy defending his fief.²²² Nevertheless, he acknowledged the value of the Imperial Chamber Court and stated his appreciation for the emperor's involvement in overseeing the trial.²²³

He stressed his position as *dominus terrae* by referring to his power as *superiorias territorialis*, which entailed his duty to uphold *Reichs Constitutionen* (imperial laws).²²⁴ The emperor was his feudal lord, a hierarchal reality that the landgrave emphasised and accepted. The nobility had appealed to the wrong authority, and should in fact have approached him²²⁵ as their immediate superior, rather than ignoring him in favour of the highest authority of the Holy Roman Empire. Nevertheless, Landgrave Wilhelm VI accepted the involvement of the emperor and the Imperial Chamber Court because he trusted the emperor would agree with him.²²⁶ A significant factor prompting the landgrave to acquiesce with the involvement of the Imperial Chamber Court was the ability of that court to restore his reputation.²²⁷ Since the emperor was superior to all princes, Landgrave Wilhelm VI trusted him to be impartial.²²⁸ The *salutem Patria pro suprema lege*²²⁹ had been upheld at all times, even when the landgrave was still a minor; his mother had upheld the law and had prevented abuses like pillaging under her governance.²³⁰

In the *Duplica* Tacitus was quoted. The Roman consul and historian (ca. 56–117), was staged for claiming that a sovereign has every right to ban meetings in which he

²²¹Eßer (2001), p. 186; Hollenberg and Jäger (1989c).

²²²AARK, *Duplicae*, Repositor 6, Gefach 15, Seite 54, Nummer 5.

²²³*Duplicae*, 2.

²²⁴*Duplicae*, 4, 106–109.

²²⁵*Duplicae*, 3–4, 37.

²²⁶*Duplicae*, 3–4, 8.

²²⁷*Duplicae*, 6–7, 16.

²²⁸*Duplicae*, 8.

²²⁹*Duplicae*, 37: 'Was nun ferner undt in specie die Ritterschafft abgeforderte 4000 malter Maga[t] zin frücht anlange wirdt von der Ritterschafft ein gewendet, es sie sich von das weg[en] zu deren herschießung nicht lasten verstehen komen, noch wollen, weil sie zu deren bewilligung nicht gefordert, kein landtag zu dem ende auß geschrieben, noch auch die nohtwendigkeit undt unsaghen berathschlaget undt bewilliget, dannen hero sie am Kaijß[er]l[ichen] Cammergericht darüber sich zu beklag[en] undt das Mandatum des Cammergerichtes ordnung gemäß auß zuwürcken verursacht worden, darbeij dan die Ritterschafft die höchtlöbliche undt hochfahlige verstorbene landesfürsten (welche beneben dehero geheimbten undt kriegesrähnten obahngezogener maßße, undt wie reichs- undt weldtkundig ist, salutem patria pro suprema lege gehalten, nicht allein die Conservation ihres damahls noch unmundigen Herr dieses anwalts herrn pricipalis, deren mit feuer undt schwerdt verfolgten landt undt lantgrafs außße sich Ahngelegen sein laße) mit hin dan Setzung alles schuldilig respects ansteht Underthts schuldige danckbahrkeit, atrocissimè ohnzugreifen undt zu injurijren sich nicht geschneit.'

²³⁰*Duplicae*, 37, 63, 111–112.

did not participate or represented.²³¹ This reference from Tacitus' *Annals* book III.40: *the Uprising of the Gauls*²³² may have signalled the Landgrave's doubts about the intentions of the Hessian nobility, and was perhaps an implicit comparison with the beggars and thieves Tacitus described.²³³ The landgrave felt compelled to inform the Imperial Chamber Court of the nobility's apparent intentions to plot against his government, even though it was his responsibility to prevent such a plot.

Tacitus neither lived in the Holy Roman Empire nor was he a jurist. The nobility of Hesse-Cassel, who mainly used sources written in the empire, apparently questioned the applicability of non-German authors to their situation.²³⁴ Yet, the landgrave allegedly often relied on non-German sources.²³⁵ This difference was vital in the on-going debate in Hesse-Cassel, where the nobility used the landgrave's approval of non-German sources to question his decisions. They added this denunciation to accusations that the landgrave had neither proven the nobility's malevolent intent, nor the *necessitas* of the demands of 4000 *Malter* of grain.²³⁶ The nobility's remark about the use of non-German texts may have been a bit hypocritical. Unlike Cleves,²³⁷ the nobility of Hesse-Cassel wrote no pamphlets with explicit inter-textual comparisons with a Machiavellian Prince, but they did refer to Machiavelli's work.²³⁸

The landgrave referred to earlier times when the nobles had still trusted the judgment of his predecessors. The nobility had then dealt with the situation as faithful, loyal patriots, who fully understood the gravity of the situation, and who thanked God for his excellent guidance in saving the fatherland.²³⁹ From fatherly precautions, he did need resources and troops for the defence of the fatherland, and his position allowed him to bypass the *Landstände*.²⁴⁰ The patriots and the

²³¹The date was not the 22 of April 1652 as seems to be the date on the document in Kaufungen which reads 1652. Since the *Triplicae* reflects back on the 1653 *Duplicae*, and this date is mentioned in HStAM 255, H139, according to Eßer, 'Landstände und Landesherrschaft', it can be assumed that 22 April 1653 is correct.

²³²The *Duplicae* wrongfully referred to book IV. The correct reference is book III, paragraph 40 which deals with the Uprising of the Gauls.

²³³Tacitus (2008), p. 116.

²³⁴*Überschicktes Bedencken Siner ebensoher Von Speijer. Uber die Duplic Schrift*, 1–2.

²³⁵*Uber die Duplic Schrift*, 1–2.

²³⁶*Überschicktes Bedencken Siner ebensoher Von Speijer. Uber die Duplic Schrift*, 24.

²³⁷*Ontdeckinge van den valschen Cleefschen patriot, of Korte weder-legginghe van seker fameus geschrift onlanghs tegen de Land-stenden uyt ridderschap ende steden van't hertoghdome Cleve, als waerachtige patriotten, uyt-ghegheven* (Knuttel 5542, 's-Gravenhage 1647), 10. This is a reference to a remark made in: *Cleefsche patriot. Verthoonende de intentie van de missive, gesonden aen de heeren Staten Generael van wegens de Cleefsche Landt-stenden, gepresenteert den 20 may deses jaers 1647* (Knuttel 5540, Wesel 20 May 1647).

²³⁸AARK, *Repliae* (Repositur 6, Gefach 15, Seite 54, Nummer 5), 16.

²³⁹*Duplicae*, 32–34.

²⁴⁰*Duplicae*, 32–33: 'Am 1sten Aug: Anno 1622 sub N undt S ahngezogen die Lehn undt Ritterdienste mit Ihrem Pferde williglich virrustet [illigible], undt wie solches auß ab angezogenen Hessischen Landtags Abschieds Clarlich zu zeigen, so ist es ahn dem wann ein Regirender Fürst zu

Landstände would have to accept this situation. Proof that the dynasty had accepted their responsibility could be traced back to the *Hessian Chroniek*.²⁴¹

The primary duty of Landgrave Wilhelm VI of Hesse-Cassel was the defence of ‘our Fatherland’ and its subjects.²⁴² However, to do so, he needed weapons—and an army.²⁴³ In order to justify his policy and taxes to pay for the army, he quoted Cicero and Tacitus.²⁴⁴ The landgrave stressed that the safety of his people and the common good had been considered of vital importance ever since 1532.²⁴⁵ During the violent Thirty Years’ War, the landgrave acted swiftly, based on the *ius Divino* (divine law), the exceptional *sub- et obreptiones*, and statutes found in Saxony law.²⁴⁶ With these legal limitations, he could use this extra latitude to arrange tributes, collections, and revenues.²⁴⁷ The landgrave also used his power to prevent assemblies, which would

Hessen in Krieges Zeitte auß trew eisterigen landes vatterlicher vorsorge vor seint von Goodt ahn befehlet landt und lantze zu deren defension einen heilste mitt gelt und volck benöthiget ist, das er in Crasst habender Landesfürste hoheit und regalien, macht und gewalt hatt, seine Landtstände, Praelaten, Riter, undt Landschafft, der sachen Zeiten undt gefahr, erheischden notturfft nach zu beschreiben, undt zur Abwendung der bevorstehenden gefahr, nicht allein eine nahmhafte undt Aln Jahrliche Summa geldes von Ihnen zufordern sondern auch nach des landes gelegenheit, eine ahnzahl weleks zubeijshren [illigible], worin dan nach auß weiß der hiebe vor gehaltenen Lantäg, undt sonderlich das zum 22ten Julij A[nn]o 1619, sub lit O afgeruheten Landtags Abschieds, Ritter undt Landschafft Fl Landtgraff Moritzen Underthänig Hag fleißige damit sage, das I. F. Gl. da die sachen dero Zeit in undt außser halb Reichs in einen gefährlichen Zustandt gerahten, das sie sich der gemeinen noth, dermaßen sorgfältig, fürst undt vatterlich ahngenommen, das dargegen die Landtstände ahn ihren ort nichts, was zur defension undt rechnung des Vatterlandes, undt zu wieder bringung friede, ruh undt einigkeit nöthig undt gefarig, an sich erweise zu laße, gefliße gewewen mitt underthänigen tag erbirthen, das sie ihres theils gegen Ihr f. gl. sich hin wiederumb alß getrewe ständen undt patriotten eignet undt gebühret vermittelst Göttlichen undt leihnung erweiß undt gehorsamb ahngelagte sein laßen wollten, undt ob wohl damahls gegenwertige undt sich noch ferner onregends nach undt gefahr also groß undt wichtig gewaße, das Praelaten, Ritter undt Landschafft, die mit ihren Vermögen, nicht genügsamb abzunemen undt zu verhüthen getrawert, damit aber doch Ifg. Mit undt neben andere Churfürsten undt ständen, die defension gleichwohl desto füglicher aber sich nehmen, undt also die stände beij Ihr F. Gl. undt damahlig gemeinen maße, auch das Ihrige getrewlich thun undt leisten möchten, so haben sie auß underthannig trewer lieb undt leist affection jegen Ihr F. Gl. undt das vatterlandt, mit einer stewart von dreijmahl hundert thaußent fl[orijn], zu stadten zu kommen, undt dieselbe nach den Treilichen in a[nn]o 1576 aust gewinsten landtags abschriedt, zu sammen zu tragen sich erbotten.’

²⁴¹Duplicae, 96–98.

²⁴²Duplicae, 5 and 11.

²⁴³Duplicae, 5-6.

²⁴⁴Duplicae, 9: ‘Atq[ue] hinc 14 obligalia pacis ormenta et belli subsique Cicero pro lege Manilia, vocabat et Tacitus neq[ue] quietem gentium neq[ue] arma sine stipendijs, neq[ue] stipendia sine tributis habere posse scribit, Prudentissime etiam Romanus Senatus Neroni Cuncta vectigala omitti jubenti demonstravit, dissolutionem Imperij fare, si fruct[us] quibus res publica sustineret diminuerentur Tacitus hist lib 4 et Annalium lib 14.’

²⁴⁵Duplicae, 66.

²⁴⁶Duplicae, 10, 14–15, 48, 52, 55.

²⁴⁷To collect taxes and crops: Duplicae, 10.

undermine his government during the temporary situation of *necessitas*.²⁴⁸ Disrespect and disobedience to this decision amounted to high treason.²⁴⁹ It was the nobility who acted suspiciously by assembling at a convent. Throughout the empire, regulations (e.g. *ius collectandi*) justified a *necessitas* policy for a limited time. Swift proceedings were considered to be the only workable option in some scenarios, and so there was no need to invite the nobles, nor was the landgrave under an obligation to ask their consent.²⁵⁰ To substantiate the claim of the acceptance of *necessitas*, he referred to the papal power and the Bible, for example, 1 Kings 2, and the Gospel of St. Matthew, on the acceptance of government.²⁵¹ Arguably, the situation in Hesse-Cassel in 1647 was one of *extrema necessitas*, as both Swedish and Imperial troops had swept through the principality.²⁵²

Funds were required at short notice in order to defend the Lower Principality of Hesse-Cassel against these foreign troops.²⁵³ Those with meagre resources had suffered significant damages; however, this had been inevitable in order to defend the fatherland.²⁵⁴ The landgrave had expected few objections as the property of the nobility needed to be defended as well. The situation was compared with the imperial request for imperial taxes and land taxes, as well as the tax to avert the Turkish threat.

As a consequence, based on the principality's history, the landgrave argued that he held the highest *regalia* to be able to avert dangers from the fatherland. He was authorised to defend his land with all means, resources and forces.²⁵⁵ The nobles were allowed to contribute and share in the costs of war voluntarily; or, contribute to the defence of the principality.²⁵⁶ Ideas about the welfare and defence of the principality were thus bound to collide. The nobility used exceptionally straightforward language regarding their immunities, privileges, and exceptions which the landgrave deemed counterproductive.²⁵⁷

The nobility wanted to be allowed to assemble where and when they considered this necessary, even without the landgrave. However, the landgrave claimed that even during the reign of Landgrave Philipp I, meetings had always been convened by the landgrave. In the years 1536, 1542, 1557, 1566, and 1576 *necessity* had been accepted as a valid argument by the landgrave and his successors.²⁵⁸

²⁴⁸ *Duplicae*, 10, 12, 53, 81–85.

²⁴⁹ *Duplicae*, 14–15, 90–92.

²⁵⁰ *Duplicae*, 12–13.

²⁵¹ *Duplicae*, 50–51.

²⁵² *Duplicae*, 51.

²⁵³ *Duplicae*, 53–54.

²⁵⁴ *Duplicae*, 18–24, 52–53, 87–88.

²⁵⁵ *Duplicae*, 32. See footnote 252 for the full text.

²⁵⁶ *Duplicae*, 56–68, 71.

²⁵⁷ *Duplicae*, 69–71.

²⁵⁸ *Duplicae*, 100–104.

The nobility portrayed the landgrave as wilfully seeking to diminish their immunities. He was alleged to do this in order to abolish the *Landstände* under the pretext of *necessitas*.²⁵⁹ Landgrave Wilhelm VI did not take kindly to this kind of defamation, remarking that such statements were unworthy of the nobility. Awaiting the nobility's consent would have cost valuable time, and caused even more destruction.²⁶⁰ In contrast, the landgrave and the nobility shared one common goal: the preservation of the Lower Principality of Hesse-Cassel.²⁶¹

4.9.9 Reaction to the *Duplica* (1653–1655?)

After the issuance of the landgrave's *Duplica*, a contemplation on it emerged. It bears no significant name or known date, which is understandable as it does not constitute an official reply. It was called *Duplica*: '*Uberschicktes Bedencken Siner ebensoher Von Speijer. Uber die Duplic Schrift*'. This text is only available in the Archiv der Althessischen Ritterschaft Kaufungen.²⁶² It seems to have been written for internal advisory purposes only: it left little room for diplomacy or tact. It differs from the nobility's *Replica*, as it is a factual page by page analysis of the perceived inconsistencies in the *Duplica*'s argumentation, summarising errors, and pointing out inaccurate interpretations.

One of the first responses to the landgrave's text was about his right to demand taxes without consent. The main critique voiced throughout this text was that the landgrave considered the nobles to be subjects rather than vassals. The landgrave had based his arguments on the wrong sources, and hence, he had offended the nobility's honour and endangered their welfare and possessions as a result. The nobility had been deprived of privileges by the landgrave's claims of *necessitas*. Hence, the nobility objected, even though the landgrave was not inclined to listen to their comments.

Furthermore, in the *Duplica*, a reference was made to the knights and those in salaried employment.²⁶³ The landgrave's lawyer had lumped the nobility together

²⁵⁹ *Duplicae*, 38, 45, 54.

²⁶⁰ *Duplicae*, 43–44, 56–57, 77.

²⁶¹ *Duplicae*, 44 and 46.

²⁶² AARK, *Uberschicktes Bedencken Siner ebensoher Von Speijer. Uber die Duplic Schrift* (Repositor 6, Gefach 15, Seite 54, Nummer 5).

²⁶³ *Uberschicktes Bedencken*, 8: '*Die weil über auß vielbesagter Duplicschriff scheinete daß darinnen allerhand fremde Dinge, welche nicht unter vorgedachten zwei puncten gehören, mit ein geflankten werden alß die bestellung deß Justitiae weißend das Hoffgericht, die untern außschluß genommene unterthanen, die Ritter undt Ilohendienste, die Policeij: und Landt ordnung und machung eines Landt rechtens etc: so ist nicht unzeitig dabei zur Bedencken, ob solches nicht mit gefließendem Vorsatz geschehen daß man entweder die Ritterschafft damit enlake daruff zue entwerthen, und also eo ipso die sache hieher vor das Cammergericht zue ziehen, und damit verursache, daß man am Kaißl Hoff eine repulsam bekomme.*'

with individuals in paid employment as subjects. This misrepresentation was one reason why the nobility had gone to the Imperial Chamber Court: they wanted to be heard.²⁶⁴ The nobility had been equated with ordinary subjects, whereas they still maintained an exceptional position, as no ratio was established for tax payments.²⁶⁵

Several arguments were made by the anonymous author to object to the contents of the *Duplica*. There was no evidence anywhere that the nobility had objected to the landgrave's claim of *necessitas*. This claim was substantiated by the remark that the nobility had neither objected to his superiority, nor the tokens of his *regalia*. Ultimately, it meant that he was the interpreter of a given situation and the law.²⁶⁶ It may be concluded that the nobility had not objected to the superiority of regal rule, thereby tacitly accepting the exceptional situation of war as a possible exception. The author of the commentary countered Landgrave Wilhelm VI's claims by pointing out that strict rules had been formulated in the Regensburg Diet agreements of 1630 on the use of the necessity argument.²⁶⁷ The landgrave had disregarded these.²⁶⁸ Consequently, the nobility's meetings *were* legitimate, and it was Wilhelm VI who had disrespected tradition.

This peer consultation had not been intended as preparation to undermine the landgrave's position, despite the possible claims that the assembly made concerning the welfare of the principality of Hesse-Cassel.²⁶⁹ Firstly, the nobility legitimately needed to discuss the curtailment of their right to assemble and discuss issues. Secondly, they needed to discuss the continuing costs of warfare, despite the 1648 peace treaties—costs that threatened the possessions of both the subjects and the nobility in the principality of Hesse-Cassel.²⁷⁰ Finally, but most importantly, the nobility wished to debate amongst themselves how to deal with the matter of the landgrave collecting taxes without first obtaining the nobility's consent.²⁷¹ This practice harmed not only the citizens and farmers but the nobility as well.²⁷² The emperor had ordered the 4000 *Malter* of grain to be returned; the nobles were still waiting for the landgrave to comply. Contrastingly, the landgrave attempted to levy a new land tax and tried to coerce the nobility to contribute illegally.²⁷³

²⁶⁴ *Überschicktes Bedencken*, 9.

²⁶⁵ *Überschicktes Bedencken*, 12, 23.

²⁶⁶ *Überschicktes Bedencken*, 20–21: 'Die Ritterschafft redet und führt nichts contra superioritatem et regalia principis, sondern sagt nur de modo exercendi superioritatem et regalia tam in causis ordinarijs quam extraordinarijs, alß necessitatis, belli et similium, welches das ubliche herkommen und observantz quae optimarum auch iuris et legum interpraes ist, erklären muß.'

²⁶⁷ *Überschicktes Bedencken*, 5.

²⁶⁸ *Überschicktes Bedencken*, 5–6.

²⁶⁹ *Überschicktes Bedencken*, 26–27 and 32–33.

²⁷⁰ *Überschicktes Bedencken*, 20 and 22.

²⁷¹ *Überschicktes Bedencken*, 18–19, 34. See also: von Friedeburg (2003), p. 304.

²⁷² *Über die Duplic Schrift*, 3, 13, 24–25.

²⁷³ *Über die Duplic Schrift*, 15, 22 and 4, 15, 19.

The landgrave seemed to have interpreted the nobility's silence in matters of taxation as tacit consent.²⁷⁴ According to the nobility, the landgrave bent and reinterpreted previous verdicts into a more desirable outcome.²⁷⁵ Landgrave Wilhelm VI's lawyers had read things into the *Replica* which were not there, such as the use of Saxony Law rather than Hessian laws, and the idea that the nobility used their rights to evade specific responsibilities.²⁷⁶ The nobility responded angrily to these allegations and improper references: it seemed to them to be a violation of their honour.²⁷⁷ Strikingly, the nobles did not flaunt their fidelity and loyalty, but instead complained instead that the landgrave had failed to mention their loyalty.²⁷⁸ Their responses should not be interpreted as disobedience, as they were merely trying to protect their privileges.²⁷⁹

That the landgrave's arguments had been primarily rooted in foreign sources was considered to be problematic. The views of Spanish, Italian, or other legal scholars did not apply to the *ius publicum*, the laws and the customs of the principality, or those of the Holy Roman Empire.²⁸⁰ According to the author of the commentary, using foreign sources meant that their references did not apply to the situation of either Hesse-Cassel or the Holy Roman Empire:²⁸¹ customs and laws differed substantially between the various parts of Europe.²⁸² The *Aurea Bullae* (XV) was instead used to substantiate the nobility's claims of the legitimacy of their actions.²⁸³

²⁷⁴ *Über die Duplic Schrift*, 3, 9.

²⁷⁵ *Über die Duplic Schrift*, 9.

²⁷⁶ *Über die Duplic Schrift*, 10–11.

²⁷⁷ *Über die Duplic Schrift*, 10.

²⁷⁸ *Über die Duplic Schrift*, 10.

²⁷⁹ *Über die Duplic Schrift*, 21.

²⁸⁰ *Über die Duplic Schrift*, 1–2: 'Waß ein die ingedüchten Duplic schriefft allegirte Jura belanget, seindt dieselben mehrenteils ex opinionibus Doctorum erstlichen hergenommen, welche Doctores mehrenteils Spannier, Italiäner, undt auß andern fremden nationen seindt, welche in materijs jus publicum concernib[us] geschrieben haben, de jure et consuetudine Ihrer herrschafften, undt das römischl[iche] Reichß undt die privilegia undt herkommens deßelbigen freijer leuthen nation gar nicht appliciren.'

²⁸¹ Interestingly, the anonymous 1646-document (which deals with—among others—the Marburg succession) refers to this exact argument. It states that using sources from outside the Empire is of little use as these sources do not show an understanding of the customs and practices within 'Teutschland': It is unknown who wrote this pamphlet, nor is the place of publication known. However, the arguments are in favour of the landgraviate's policy to have Hesse-Marburg returned to Hesse-Cassel, which may indicate the author's financier as being the landgravine of Hesse-Cassel. *Nothwendiger Bericht, darauß zu sehen, Daß nicht allein die, von Hessen-Cassel erlangte.* (S.I. 1646), 7.

²⁸² It is clear what standards should be met to be accepted as a non-foreign author. See for more information the analysis made by Hirschi (2011).

²⁸³ *Über die Duplic Schrift*, 31.

4.9.10 *Triplicae: 26 June 1655*

The conflict remained unresolved, despite an invitation issued on 1 May 1655 to assemble with the landgrave on the day before Ascension Day.²⁸⁴ The evidence for this comes from the *Triplicae*, presented on 26 June 1655 by Blaufelder's successor, Dr Paul Gambs.²⁸⁵ It constituted an official legal reply to the *Duplicae*. Though the same arguments were used as in the *Überschicktes Bedencken Siner ebensoher Von Speijer Uber die Duplic Schrift*, it should be dealt with as an individual text as the arguments were voiced more diplomatically. The *Triplicae*, as a supplement to the *Replicae*, was sent to the Imperial Chamber Court to elucidate specific issues, before a possible verdict.²⁸⁶

The nobility claimed they were harmed in the *Duplicae*. They had helped Landgrave Wilhelm VI by accepting his government and supported him on his return to Hesse-Cassel.²⁸⁷ However, they were repaid with an accusation of the crime of *lèse-majesté* and rebellion against the fatherland.²⁸⁸ The nobility wished to counter these accusations by referring to their deep love of the fatherland. Furthermore they made arguments based upon their respect for and obedience to their landgrave.²⁸⁹ These matters had been addressed in the *Replicae* and again in this *Triplicae*. The issue of the nobility as *subjects* was also addressed.²⁹⁰ The landgrave could not unilaterally change the various agreements made by his predecessors about the fief, or the position of individuals or the immunities of the nobility.²⁹¹ By accepting the government in 1637, Landgrave Wilhelm VI had agreed to acknowledge these laws, respect noble ancestry, and honour immunities.²⁹² The requisition of 4000 *Malter* of grain, under the pretext of *necessitas*, was seen as an attempt to evade the nobility's necessary consent.²⁹³ The nobility declared that the welfare of the principality had been seriously threatened both by warfare, and by the pressure created by the demand for grain.²⁹⁴

²⁸⁴The *Triplicae* in the Archiv der Althessischen Ritterschaft Kaufungen (AARK) does not bear a clear date. The date is, however, readable in HStAM Bestand 255, H140: *Triplicae*; HStAM 5, 14651 (microfiche) Nr. A4755: one-page pamphlet (invitation; print).

²⁸⁵Eßer (2001), p. 186; Hollenberg and Jäger (1989c).

²⁸⁶AARK, *Triplicae* (Repositur 6, Gefach 15, Seite 54, Nummer 5), 2 and 4; Maruhn (2004a), pp. 76, 82.

²⁸⁷*Triplicae*, 25.

²⁸⁸*Triplicae*, 3.

²⁸⁹*Triplicae*, 5 and 8.

²⁹⁰*Triplicae*, 11 and 23.

²⁹¹*Triplicae*, 31–33.

²⁹²*Triplicae*, 31–33, 37 ; *Triplicae*, 32: '*Justitiae enim et rationis ordo suadet, ut qui à Successoribus contractibus suos observari defiderat, praedecessoris sui contractus et voluntatem ipse custodiat ac exequatur.*'

²⁹³*Triplicae*, 22.

²⁹⁴*Triplicae*, 25.

Despite the imperial approval of such meetings, the landgrave had on various previous occasions objected to private meetings of the nobility and banned them once again in 1655.²⁹⁵ The nobility was therefore once more compelled to object to this injunction. To substantiate their case, they put forward examples the examples of the Duchies of Jülich and Berg and Eastern-Frisia. Here assemblies had also been forbidden, but imperial verdicts had eventually ensured that the nobility could meet again. As the nobility in Hesse-Cassel constituted a legitimate, loyal *collegium*, it was their firm opinion that they respected the landgrave's government, and they were keen to look out for the best interest of the fatherland and its prosperity.²⁹⁶

The nobility attached great value to the welfare of their subjects; moreover, they desired to remain within the boundaries of the law. They, therefore, needed to pursue this trial with great caution, to arrive at a peaceful solution.²⁹⁷ However, the nobility's lawyer still felt the urge to adopt a defensive tone, due to the growing rift between his clients and their opponent, the landgrave.²⁹⁸ Under the pretence of the emperor's consent, infringement of privileges, laws, and immunities had occurred.²⁹⁹ Even when levying land taxes was at stake, the *Landstände* should still have been consulted as to whether they were willing to give their consent because, by the 1536 Homburg consultation, nobles were exempt from taxes.³⁰⁰ The nobility, for their part, would bear the well-being of the landgrave's subjects and tenants in mind when assessing a tax request.³⁰¹ The problem was that the

²⁹⁵*Triplicae*, 36.

²⁹⁶Section from: *Triplicae*, 35–37: 'Es ist ja Reichskündig, daß in erbverbündeten Lands Sachen wie auch in Frijstift Magdeburg citra omnem veniae petitionem sich die Ritterschafft so offalß nötig, vor sich betraget; Ja kaum ein meil mags abgelegenen fürstenthum Braunschweig kammbt die Ritterschafft und Städte, oder auch jener allein auser geschehen erlaub[nis], so offte sie wollen, und es nötig achten, zusammen, Jemaßen noch von diesen 1655ten Jahre, warumb wohl und nicht landkündig wäre, wohe zu machen stände, daß nur biß an osterliche Zeit dieses jahrs die Ritter- und Landstände zum wenigsten 5 wo nicht 6 conventus propria autoritate serente Ill[ustriss]mo Domino gehabt und sich bald nach baden werden, bald nach Hirseck, bald nach Göttingen, bald gar nach Hannover begeben, vor des Landes Wohlfahrt oder auch Erschwehrungen, wie treue Patrioten wohl anstehet, fleißig communicieret, sonder mannigliches contradiction und befinderung zu geschweigen daß aus der Pfalz-Neuburgl[iche], wie auch Ostfriesländigschen Agenden bekannt, daß alß beijder seits Ständen freije conventus gefindert war den wollen, dieselbe beij Kayßerl. Mayl [iche] mandata poenalia impetriert und erlanget haben. Weilen nun die Heßl[iche] Ritterschafft und landschafft Reichskündiger weiße ein licitum collegium auch darneben dero oblingen und Treun-Sorgfalt ist, abgestatteten Pflichten ja Göttlicher und Weltlicher Rechten Befestigen und Unvordnung nach, auf uns Vatterlands conservation und Wohlfahrt zu gedancken, Und Ihres gnädigen landes fürsten Person und fürstlichen Respect unterthänigst zu beobachten, wie nach Ihre selbst einigen herbeachte freijheit und gerechtigkeit jure divino naturali gentuim ac positivo id permittente zu vertrethen, auch deswegen, wenn es die Untherfordert, Ihr anlingen dem gnädigen Landesfürsten in untertäniger Reverz und submissier vorzutragen.'

²⁹⁷*Triplicae*, 6–7.

²⁹⁸*Triplicae*, 7–8.

²⁹⁹*Triplicae*, 10.

³⁰⁰*Triplicae*, 17–18.

³⁰¹*Triplicae*, 18–19.

landgrave's policy seemed to be aimed at undermining their immunity and making the nobility pay taxes, by lumping them together with such commoners as farmers and citizens.³⁰²

The nobility claimed that they retained a positive attitude towards the landgrave despite all this. They were most willing to advise or participate in deliberations, especially when their consent was required.³⁰³ However, the *Triplicae* claimed that the landgrave had no longer attempted to engage in talks with the nobles.³⁰⁴ The *Duplicae* made it seem that the nobility had agreed to the 4,000 *Malter* of grain in 1648. In contrast, in the *Triplicae* the nobility once more claimed that had not been consulted.³⁰⁵

The landgrave had a different reading of the *Landtag Akten*—which endured in possession of the nobility, and of history in general. This difference frustrated the nobility.³⁰⁶ They were aware that the prince's clerk had wielded his pen often and aptly, whereas they needed to content themselves with less frequent aid due to a less favourable financial situation. However, the nobility was able to use new insights and information provided by their lawyers and the current teachings of jurisprudence.³⁰⁷ The landgrave referred to some imperial laws, such as the *ius privatum*, *Aurea Bulla*, *Recessus Imperii* as well as to a *Reichsabschied* from 1575. However, the nobility did not want to repeat themselves, as they had substantiated their point in the *Replica*.³⁰⁸

Once more, the nobles were deprived of their right of assembly: these meetings were deemed an act of *lèse-majesté*. They contested this assessment, and argued that they needed to give their permission before the levying of taxes. Even though the nobles were not required to pay tax, they were deeply committed to the well-being of the fatherland and wished to protect the citizens and farmers from extortion.

4.9.11 *Ohn Vorgreiffliche Memorialien (1653–1655)*

The collection of the Archiv der Althessischen Ritterschaft Kaufungen contains a text with the title '*Ohn Vorgreiffliche Memorialien. Deren man sich bei Vorstehender gütslicher handlung zugebrauchen.*' It concerns written minutes, which could be used during upcoming negotiations.³⁰⁹ The text consists of

³⁰²*Triplicae*, 23–25, 30.

³⁰³*Triplicae*, 13–14, 39–40.

³⁰⁴*Triplicae*, 11–13, 35.

³⁰⁵*Triplicae*, 35.

³⁰⁶*Triplicae*, 9 and 38.

³⁰⁷*Triplicae*, 15.

³⁰⁸*Triplicae*, 43.

³⁰⁹AARK, *Ohn Vorgreiffliche Memorialien. Deren man sich bei Vorstehender gütslicher handlung zugebrauchen* (Repositor 6, Gefach 15, Seite 54, Nummer 5).

Table 4.3 Fatherland terminology in the Memorialien (1653–1655)

Section	Total pages	Fatherland terminology
I. Taxation without consent	10	-
II. Religious argumentation on taxation and government	42	1
III. Assemblies to discuss the welfare of the <i>landgraviate</i>	16	5
IV. <i>Jure superioritatis</i> and the nobility's subjects	20	2
V. Taxation of the nobility's possessions	14	-
VI. The office of hereditary marshal and the two <i>curiae</i>	4	1

108 pages containing arguments drafted in favour of the nobility's view. The Imperial Chamber Court did not receive this document; therefore, it can be considered an informal draft. The text is not dated, but there are clues as to when it was drafted. For example, it must have been written after the death of Landgravine Amelie Elisabeth, to whom retrospective reference was made.³¹⁰ Furthermore, the title refers to negotiations (*Handlung*), which took place in either 1653 or 1655.

The *Memorialien* has six sections, marked by Roman numerals. Each contains a different focus and argument. The themes discussed are shown in Table 4.3.

Fatherland terminology is present in most of the sections, except the first and fifth part (see Table 4.3). Contrary to the previously discussed texts, religious arguments constituted a significant component of this text. I will discuss the argumentation used in this text next.

The first part of the *Memorialien*³¹¹ deals with the '*Contribution und Immunität dero Ritterschafft*'.³¹² This section suggests that privileges and previous agreements with Landgrave Wilhelm VI's predecessors obliged him to include the nobility in the decision-making process. The nobility referred to both the *exceptionibus sub- et obreptionis* and the *Mandatum inhibitorium et cassatorium sine clausula* to stress this point.³¹³ The nobles were obligated to concede to taxations. However, the nobility did not taxes, and they duly emphasised this noble privilege.

Turning to the Bible, a religious argument was brought to bear on the question of taxation and government. It was an entirely new line of argumentation that it should not be confused with the first part of the *Memorialien*. In that first section historical examples from the principality were used to substantiate the argumentation. This second section adds arguments from the Bible and literature to these local historical sources.³¹⁴ This section notes that the Jewish people requested a sovereign government successfully. The nobility refers to the book 1 Samuel 8: 11 and 12, and

³¹⁰ Ohn Vorgreiffliche Memorialien, 8.

³¹¹ Ohn Vorgreiffliche Memorialien, 3–12.

³¹² Ohn Vorgreiffliche Memorialien, 3.

³¹³ Ohn Vorgreiffliche Memorialien, 4.

³¹⁴ Ohn Vorgreiffliche Memorialien, 13–54.

subsequently follows the interpretation offered by Luther.³¹⁵ In his commentary, Luther claimed that it had been sinful to request a king in the first place—referring to Deuteronomy 15 and 16. Thus, the nobles inferred that there was a limit to princely power and to the codification of law and civil rights. *Necessitas and utilitas publica* must be kept in mind, as well as the well-being of the whole principality.³¹⁶ Only in cases of need and violence could a king act according to 1 Samuel 8: 11 and 12. Harming the subjects was not part of the king’s office, as the examples of king Achab and the wine-farmer Naboth showed.³¹⁷ God punished these two kings for their wrong-doings.

Deliberations about taxation were to be organised in conjunction with the *Landstände* of the principality. Even the emperor needed to consult the *Reichsständen* in cases of *necessitas* before he could levy taxes; and, according to the nobility, foreign kings were under the obligation to ask for consent as well.³¹⁸ It was common practice to organise a *Landtag* and ask the *Landstände* to agree with the taxes. Should this process not be followed, then the prince’s actions could and would be considered tyrannical.³¹⁹ In 1514 the landgrave, the nobility, the prelates and the *Landschaft* discussed how to rule Hesse while landgrave Philipp I was still underage. Propositions included grievances and the right to ratify taxation.³²⁰

The nobility acknowledged that the book of Romans, Chap. 13 discussed obedience to the government and the payment of taxes.³²¹ They argued, however, that this constituted no excuse to either levy taxes forcefully, or to violate noble privileges. The *Landstände* preferred to preserve peace while maintaining their privileges and freedoms. Therefore they had shown deference to the landgrave, despite the evidence they possessed in support of their position.³²² In times of crisis, their judgement had to be valued; the burden borne by ordinary subjects was an issue that the nobility was expected to monitor.³²³ They desired the ongoing collection of

³¹⁵King James Bible: 1 Samuel 8, verse 11: ‘And he said, ‘This will be the behavior of the king who will reign over you: He will take your sons and appoint them for his own chariots and to be his horsemen, and some will run before his chariots. Verse 12: He will appoint captains over his thousands and captains over his fifties, will set some to plow his ground and reap his harvest, and some to make his weapons of war and equipment for his chariots.’

³¹⁶*Ohn Vorgreiffliche Memorialien*, 18.

³¹⁷*Ohn Vorgreiffliche Memorialien*, 19.

³¹⁸*Ohn Vorgreiffliche Memorialien*, 22.

³¹⁹*Ohn Vorgreiffliche Memorialien*, 26.

³²⁰*Ohn Vorgreiffliche Memorialien*, 27–28.

³²¹King James Bible: Romans 13, verse 6: ‘For because of this you also pay taxes, for they are God’s ministers attending continually to this very thing. Verse 7 Render therefore to all their due: taxes to whom taxes are due, customs to whom customs, fear to whom fear, honour to whom honor.’

³²²*Ohn Vorgreiffliche Memorialien*, 35–36.

³²³*Ohn Vorgreiffliche Memorialien*, 36.

resources to be postponed in order to protect prosperity and safeguard the fatherland.³²⁴ In other words, the nobility would protect the well-being of the fatherland, thus protecting the citizens and peasants or tenants from harm and extortion.

Moreover, it would increase the authority of the landgrave if he received the required permission to levy taxes.³²⁵ The nobility went even further by acclaiming that it would behove a beloved father of the lands to take an active interest in his subjects in times of both need and prosperity.³²⁶ *Potestates* should be used to promote prosperity.³²⁷ Respecting the privileges of the nobles would be beneficial to the Landgrave's reputation, and would ensure their respect and loyalty.³²⁸

The third section contains the highest number of references to both fatherland and patriots. It deals with the nobility's right of assembly for the purpose of discussing the welfare of the landgraviate.³²⁹ As has been shown in the *Replica*, *Duplica*, and *Triplica*, there was a heated debate about this specific right. It is therefore not surprising that the issue is brought to the fore in this text as well. The nobility claimed they were unaware of any necessity to obtain the landgrave's permission for a meeting, even when the defence of the fatherland was the topic of discussion.³³⁰ That is when they wished to discuss the fatherland's peace, prosperity and wellbeing, and the preservation of their privileges, immunities, and justice.³³¹ The nobility distinguished legitimate and illegitimate assemblies concerning Charles IV's *Aurea Bulla*, stating that their meetings belonged to the former category. Moreover, the Imperial Chamber Court had previously ruled in favour of the *Landstände*.

The nobility described the situation in great detail, emphasising that the acceptance of privileges had been part of the arrangement upon Landgrave Wilhelm VI's ascension: he would be allowed to govern the principality, however it was the

³²⁴ *Ohn Vorgreiffliche Memorialien*, 36–37: 'Und die Nottrufft daß landeß erfordert, so muß man nicht alß bald mit gewald mit enträglichen beschwahrunges und außaugnung der armen unterthanen belah des [illigible], bestandes zuerst auf einem landtage bei Ihnen erkundigen waß zuthun und herzugesbes müeglich, und also Mitt Ihrer bewillung die collectis austelles, waß zu wollfarth und nutz deß Vaterlandeß dienlich ist.'

³²⁵ *Ohn Vorgreiffliche Memorialien*, 38.

³²⁶ *Ohn Vorgreiffliche Memorialien*, 39–40.

³²⁷ *Ohn Vorgreiffliche Memorialien*, 40.

³²⁸ *Ohn Vorgreiffliche Memorialien*, 42–43.

³²⁹ *Ohn Vorgreiffliche Memorialien*, 55–70.

³³⁰ *Ohn Vorgreiffliche Memorialien*, 56.

³³¹ *Ohn Vorgreiffliche Memorialien*, 56–57: 'Dahero dan dero Ritterschafft alß fürstentumbes landstand und vielmehr dem gantzes corpori universalis, in fälles, so deß gantzes vaterlandeß trangüllitet, friede, ruhe, wollfarth und bestes, oder auch die erhaltung Ihrer privilegien immunitet und gerechtigkeit betreftes, auch ohne zuuer darüber eingeholetes consens deß superioris, conventus anzustelles und außzuschweibes erlaubt und ohne verwehre ist.'

nobility's obligation to watch over the health and prosperity of the fatherland and warn their ruler when this was at jeopardy.³³² The nobility would not undermine the *superioritas* of the landgrave at any time.³³³ Nonetheless, in the case of grievances or a problematic situation, they would object on behalf of the fatherland to restore its prosperity.³³⁴ During their meetings they had only debated the prosperity of the land, implicitly stating they had never discussed ousting their landgrave.³³⁵ They were dedicated to the landgraviate and desired to be included in all communications that might influence its well-being.³³⁶

The fourth paragraph of the *Memorialien* concerns the '*Landesfürst ratione et jure superioritatis*' and the position of the noble subjects in the principality.³³⁷ In military matters, the landgrave needed to guide his subjects.³³⁸ The nobility recognised the landgrave as the *Dominus Terrae*, and consequently mentioned the *iure lustrationis* and the *iure superioritatis* in this context.³³⁹ However, a problem arose when the landgrave needed soldiers, and the nobility's tenants were asked to make themselves available.³⁴⁰ Defending the principality in hazardous situations (cases of *necessitas*)—which was acknowledged by the nobility—contravened the authority of the nobility who usually gave orders to their tenants. The Hessian knights and their subjects would undoubtedly help in defence of the Fatherland.³⁴¹ Although this could only occur in extreme cases of *necessitas*, and substantial tax burdens had to be taken into account, the loyal Patriots honoured the *ius*

³³² Ohn Vorgreiffliche Memorialien, 60–61: 'Und weils also die landstände des fürstendumbß Heßes einmahls Vermüge dero Rechte einmahls Vermüge dero Recht ein licitum collegium sein, Und deres oblieses und sorgfalt nicht allein nach erheischender inß gemein abgeschwornen huldigungen und respectivè erstattetes lehspflichtetes, sondern auch aller sowoll Gott und Geistlicher, alß weltlichen Rechtes auf daß vaterlandes conservation und wollfahrt und ihres gnediges landeß fürstes Persohns und hoheit zu verthediges, und für schades zu warnes, wie auch Ihre woll hergebrachte Freijheites und gerechtigkeits permittente sic jure naturali zuvertretes, auch daßweges, wenn eß die Noth erfordert Ihr anliegens dem landeß Fürstes mitt gebührender reverentz in Unterthanigkeit vorzutragens, und ein wachsambeß aug zu habes, Ihnes in allewege obliget, und gleichwol dero gleiches heilsame zu deß Vater landeß, deßes oberhaupts und gesambtes gleider ersprieffliche berathschlagunges für glicher und anders nicht, alß durch conventus und betagunges beschehes, und die consilia, durch welche deß landes fürstes superioritet (vos [illigible] welcher sie keine dependentz habes) nicht praejudiciret wirdt, zu sammengetrages werdes können.'

³³³ Ohn Vorgreiffliche Memorialien, 62.

³³⁴ Ohn Vorgreiffliche Memorialien, 64: fatherland is used in this context both to refer to the problematic situation of the fatherland and the prosperity of the fatherland.

³³⁵ Ohn Vorgreiffliche Memorialien, 67.

³³⁶ Ohn Vorgreiffliche Memorialien, 68.

³³⁷ Ohn Vorgreiffliche Memorialien, 71.

³³⁸ Ohn Vorgreiffliche Memorialien, 72.

³³⁹ Ohn Vorgreiffliche Memorialien, 73.

³⁴⁰ Ohn Vorgreiffliche Memorialien, 75.

³⁴¹ Ohn Vorgreiffliche Memorialien, 80.

superioritatis and held it in high esteem.³⁴² The loyal patriots would help to defend the landgraviate, and there could be no doubt about the nobility's loyalty towards the landgrave.

In the fifth part of the *Memorialien*, the question was raised whether the nobility's possessions were liable to taxations, similar to those of a commoner. The nobility expressed their concern about this proposal: it passed over ancestry and privileges. The noble liegeman had other services to offer than paying taxes. Quoting Joachim Mynsinger von Frundseck (1514–1588), they claimed that the exemption was not offered gratuitously, but as a result of these other services, and necessity.³⁴³ In the case of extreme need (*necessitas*), the nobility would help out, like commoners and cities; not only with money but also by providing the necessary military means. External pressure using taxation, however, was not appreciated.

The nobility, prelates and the *Landschaft*—which consisted of the 40 main cities in Hesse-Cassel—formed the principality's diet. Together, the nobility and the prelates formed the first chamber of the *Curia*; the *Landschaft* formed the second chamber. The joint meetings of the first chamber and the *Landschaft* were presided over by the hereditary marshal.³⁴⁴ The sixth section of the *Memorialien* dealt with two issues. *Firstly*, the position of the hereditary marshal, and *secondly*, the division of the individuals into two chambers.³⁴⁵ Though the nobles recognised that the chambers had the same goal—to work for the benefit of the fatherland—they stressed that the two chambers should not be merged. The *Landschaft* held an entirely different position, as they had fewer possessions than the nobility and the prelates and, consequently, felt that the *Landschaft* should be treated differently.

In short, throughout the *Memorialien*, the nobility's main argument was that they should be allowed to assemble and to protect the fatherland. They did accept the *superioritatis territorialis* and the Biblical duty to obey their government; however, this did not entitle the landgrave to impose an extra tax. That would be considered a form of extortion. The noble subjects explained that they held a unique position in

³⁴² *Ohn Vorgreifliche Memorialien*, 83–85: 'Eß ist Ihnen aber allezeit unterthänig abgeschlages, und die Uhalte observant remonstrirt wordes, darauf hochgedachte G. Fürstl. Gn. Auch gnadig acquiesart und deß halbes in die Ritterschafft weiter nicht getrunges, So könnte schließlich gebethes werdes, Sie beiß iezan [illigible] geregtis Freij: Vnd gerechtighettes zulaßes, und darin nicht zu betrübes oder mit Newerunges zu beschwehres, hingeges die Ritterschafft sich unterthäniglich erbiethes, könte vos Ihrer schuldiges devotion, Trew und gehorsam in ewigkeit nicht daß geringste sinckes zu lassen, Woltes auch ihre unterthanes in solcher bewehr: vndt verfaßung nach möglichkeit haltes, das Sie aufns [illigible] Nothfall und in casu in-optimate et extremae Necessitatis (welches Gott gnediglich verhütes wolle) und auf Ihrer fürstl. Gn. gnediges auffboth die allgemeine Landfolge mit verrichtes selffes, und darbeij, alß getrewes, redliches und auffrichtiges Patriots gebühret Leib, guet und blut nebes des Ihre ges more solito et consueto auffffsetzes woltes, dar durch das in Ihrer Fürstlicher Gnad. ius superioritatis welches die Ritterschafft iederzeit in hohen Respect gehalten vndt noch) nicht gegriffes sondern nurt allein des augen[mu]thetes Ugewöhnliches und natuerliches modum sequelae ab- und einzustelles gebethes würdte [etc].'

³⁴³ *Ohn Vorgreifliche Memorialien*, 97.

³⁴⁴ Neu (2013b), pp. 126–127.

³⁴⁵ *Ohn Vorgreifliche Memorialien*, 105–108.

society, which made them tax-exempt. This privilege meant that they could not be ignored. They were willing to help financially or militarily—in case of *necessity*—but attempts to apply pressure or avoid their council would not further the landgrave’s cause. They wished to do what they deemed best for their fatherland, regardless of other motivations, and it was their privileges that allowed them to fulfil this obligation.

4.9.12 (Draft Loco) *Quatruplika: 1655*

The *Quatruplika* is a draft (*entwurf*) written shortly after, and in response to, the *Triplica*. It mainly concerns the injustice caused by the nobility’s court case.³⁴⁶ In the *Quatruplika* the landgrave stated his obligations, but he felt hindered in complying with them, as he was still awaiting the verdict. This document refers to Landgrave Maurice, who had dealt with a similar case at his own discretion. Furthermore, the matter of taxation is addressed, based on the legal assumption that *necessitas non habet legem*.³⁴⁷ The *Quatruplika* stressed that the landgrave’s policy had focussed on *pro defensione Patria*.³⁴⁸

4.9.13 *The Agreement: The End of the Legal Conflict: 2 October 1655*

Although the ‘*Vergleich*’ or ‘*Vertrag*’³⁴⁹ is not a ruling of the Imperial Chamber Court, it did end the dispute between the nobility and the landgrave, which originated in 1605/6 and reignited in 1646. Despite our focus on fatherland vocabulary, which is more or less absent from this text, it is nevertheless essential to study this final document in the legal debate in order to provide context.

The landgrave, who lacked financial resources, chose to settle matters with the nobility of Hesse-Cassel without further imperial involvement.³⁵⁰ The nobility were also interested in reaching an agreement since the acceptance of the *Jüngster Reichsabschied* (Lat.: *recessus imperii novissimus*; 1653-54) significantly diminished their chances of success if they decided to continue to press their demands.³⁵¹ Because the imperial text had once more stressed the *superioritas territorialis*, the

³⁴⁶ ‘Entwurf loco Quadruplicarum’ [o.O., o.D.], in: StAD E2 Nr. 20/2, unfoliiert, 18 S.

³⁴⁷ ‘Entwurf loco Quadruplicarum’, 8.

³⁴⁸ ‘Entwurf loco Quadruplicarum’, 10.

³⁴⁹ *Vertrag* is the term used in HStAM, Bestand 5, 17066.

³⁵⁰ Maruhn (2004a), p. 209; von Friedeburg (2007), p. 189.

³⁵¹ Eßer (2001), p. 181; Philippi (2007), p. 4; Maruhn (2004b), pp. 88–89; Maruhn (2004a), pp. 81–83.

nobility understood that a verdict by the Imperial Chamber Court would no longer offer protection, and a compromise in the landgraviate was the best they could hope to achieve.³⁵² On 2 October 1655, the nobility and the landgrave reached a final agreement in their long-drawn-out conflict.³⁵³ This settlement was signed by Landgrave Wilhelm VI and the nobility's negotiators. Though in the case of Jülich no court was involved, the negotiations to come to an understanding shows a similar strategy.

The significance of the text has been characterised in two ways. *Firstly*, because it was meant to formulate a new relationship between the landgrave and his nobles as a *lex fundamentalis*, it has been called a consensual agreement.³⁵⁴ Such an agreement emphasises the active participation of both the landgrave and the nobility in reaching the agreement. *Secondly*, the official nature of the text can be acknowledged using the subscription of both sides.³⁵⁵ It can be seen as a 'key document' (*Schlüsseldokument*)³⁵⁶ or a 'constitutional text' (*Landesgrundgesetz*).³⁵⁷ This terminology demonstrates the official status of the document, and recognises the nobility's active involvement in politics. The principalities gained more of what is often called 'territorial sovereignty'.³⁵⁸ Additionally, the princes increased their sovereign power over that of the emperor, which led to a minimisation of competing rights.³⁵⁹ It was of little use for the nobility to continue the lawsuit, as they had few possibilities to intervene in the princely politics nor the internal politics.³⁶⁰ This lack of intervention did not open the door to arbitrary rule, but the *Vergleich* indeed offered a constitutional restraint upon the active participation of the nobility.³⁶¹

The *Vergleich* concerned eight different topics, all of which influenced the agreement.³⁶² These topics were: (1) *Landtag* meetings and consent in taxation issues, (2) justice and legal affairs, (3) the religious conviction of Lutheran nobles, (4) the military service of the nobility's tenants, (5) permission to levy taxes, (6) specifications of property, (7) the appointment of the nobility's highest financial

³⁵²Maruhn (2004a), pp. 207–208.

³⁵³Hollenberg and Jäger (1989c), p. 57.

³⁵⁴Maruhn (2004b), p. 73.

³⁵⁵Hollenberg and Jäger (1989c), p. 57. Hollenberg also shows that a century later the nobility did not recognise the text as legally important; between 1731 and 1759 the 1655-agreement was referred to as: 'Landtagsabschied', 'Abschied', and 'fürstliches Resolution'. See: footnote 2.

³⁵⁶Maruhn (2004b), p. 73.

³⁵⁷Ibid., p. 86.

³⁵⁸Puppel (2007), p. 124.

³⁵⁹Ibid., p. 124.

³⁶⁰Author's translation of: Eßer (2001), p. 185.

³⁶¹Demandt (1972), p. 266; Demandt (1969); Press (1986), pp. 323–324; Maruhn (2004b); von Friedeburg (2005); von Friedeburg (2010); von Friedeburg (2007), p. 189.

³⁶²'CCLXVI Fürstliche Resolutiones auf die Ritterschafftliche Gravamina. Vom 2ten October 1655', in: C.H. Kleinschmidt, (ed.), *Sammlung kurhessischer Landes-Ordnungen und Ausschreiben nebst dahin gehörigen Erläuterungs- und anderen Rescripten, Resolutionen, Abschieden, gemeinen Bescheiden und dergleichen. 2 Theil .1627/1670* (Kassel, 1767), 240-245.

representative and the landgrave's obligations, (8) stipulations concerning nobles' assemblies. These topics are discussed next.

The §1, which concerns the *Landtag* meetings, refers to a previous agreement with Hesse-Darmstadt (1648), regarding the jointly organised *Landtag* assemblies. Meetings of the *Landstände* of Hesse-Cassel were to take place frequently, with the landgrave as the sole instigator. As the *Landstände* had retained their right to be requested to consent to taxes, these meetings were of major significance.³⁶³ In any case, the nobility's to safeguard their legal privilege to be consulted in matters of taxation efforts from the previous decade had proved to be a success.

The nobility did not succeed in changing the principality's legal procedures, as §2 shows.³⁶⁴ The nobility wanted all legal cases to be directed to the landgrave's court (*Hofgericht*), rather than to the landgrave's chancellery. Unfortunately, difficulties arose, and the nobles returned empty-handed. An agreement (*Nebenrecess*; 1648) with Hesse-Darmstadt was used as a guideline in this matter.

Of the eight paragraphs, §3 (religious conviction) is by far the briefest.³⁶⁵ It merely states that the nobility, their spouses, and their children could be Lutheran. The nobility was now allowed to engage Lutheran preachers to hold sermons.³⁶⁶ Even though the issue of religious minorities had previously been addressed at an imperial level, it was explicitly mentioned in this agreement as well. Hence, it can be concluded that the nobility considered this matter to be of paramount importance, or they would not have included it in the negotiations. As the *Vergleich* was meant to bring closure to a 50-year-old conflict, it seemed sensible to address the issue that had caused the breakdown of relations in the first place.

The references made by the nobility to the fatherland in both the *Replica* and the *Triplica*, were repeated in §4 of the *Vergleich*. Addressing the topic of military service, the use of fatherland vocabulary seems consistent with the nobility's usage of these terms thus far. The text reads that the landgrave could—in times of need—do whatever he deemed necessary in order to ensure the fatherland's good order.³⁶⁷

If their tenants needed to assist in defence of the landgraviate—in case of necessity—the nobles had to be involved too. Their tenants fell under their

³⁶³Maruhn (2004a), pp. 86–90; Hollenberg and Jäger (1989c), pp. 58–59 § 1.

³⁶⁴Maruhn (2004a), p. 166.

³⁶⁵'CCLXVI Fürstliche Resolutiones auf die Ritterschafftliche Gravamina. Vom 2ten October 1655', in: C.L. Kleinschmidt, (ed.), *Sammlung kurhessischer Landes-Ordnungen und Ausschreiben nebst dahin gehörigen Erläuterungs- und anderen Rescripten, Resolutionen, Abschieden, gemeinen Bescheiden und dergleichen. 2 Theil. 1627/1670* (Kassel 1767), 242 §3; Hollenberg and Jäger (1989c), p. 62 §3.

³⁶⁶Maruhn (2004a), p. 87.

³⁶⁷Section from: Hollenberg and Jäger (1989c), p. 62. § 4: 'Viertens die Landfolge und Musterung betreffend behalten Ihre F.G., dieselbe vi juris superioritatis et regalium durchs ganze Land ohne Unterscheid sowohl Ihrer F.G. eigenen Unterthanen alß Ritterschafft Hintersaßen zu exerciren und darinnen sonderlich gestalten Zustand und erheischender Notturfft nach zu Versicherung des Vatterlands heilsame guete Ordnung zue stellen, sich einen Weg wie den andern nicht onbilllich frey und bevor.'

jurisdiction.³⁶⁸ However, the landgrave *could* bypass the nobility when he was in desperate need of resources. Consequently, taxes could be levied without prior consent, despite the nobility's right to endorse taxation (§1). Despite the exceptional provision, these taxes still required authorisation after the fact.³⁶⁹

On principle, the nobility would be requested to endorse the Imperial and Circle taxes (§5). However, when war broke out, and there was no time to consult them, *necessity* overruled this privilege, as quick decision-making was of the essence.³⁷⁰

The following two paragraphs, §6 and §7, deal with possessions and financial arrangements.³⁷¹ An administrator—of noble birth—would be appointed to deal with financial issues, including the details related to taxation. His assignment entailed the oversight of all taxes in the Lower Principality of Hesse-Cassel.

The role of nobility's assemblies was restricted solely to private matters (§8). Matters concerning the landgraviate, in general, could no longer be discussed. A draft (*Resolutionsentwurf*) compiled in 1653, had contained an additional restriction, stating that the landgrave was obligated to approve the order of affairs, even in private meetings.³⁷² The 1655 *Vergleich* was less restrictive than this 1653 draft, as this section was not included. However, it was agreed that the landgrave would be notified of the place and time of these private assemblies.

These eight paragraphs gave rise to a good deal of controversy among scholars upon how the document should be interpreted, but there are at least four general conclusions to be reached. *Firstly*, the landgrave had not acquired the right to levy taxes without consent, because the nobility's privilege had been restored. Conversely, in the case of *necessitas*, other rules apply, but the landgrave was still under the obligation to account for his actions after the event and in retrospect. *Secondly*, the issue of religion had been raised, though, in the light of imperial regulations, this seemed superfluous. *Thirdly*, the nobility had not gained the upper hand in issues relating to justice and financial arrangements. *Fourthly*, the nobility's right of assembly was restricted to a right of consultation on private matters only. The agreement was a real compromise; the landgrave had not gained limitless power, nor had all of the nobility's ancient privileges been honoured.

4.10 Conclusion

In this chapter, I argued that throughout the legal debate, the landgrave and the nobility both used the words fatherland and patriot. In the case of the nobility, calling themselves patriots meant accepting an office to defend the fatherland, that is, the

³⁶⁸Ibid., p. 63.

³⁶⁹von Friedeburg (2003), p. 284.

³⁷⁰Hollenberg and Jäger (1989c), p. 64.

³⁷¹Ibid., pp. 64–65§ 6 and § 7.

³⁷²Ibid., p. 65.

principality of Hesse-Cassel. This duty was accompanied by the right to oppose a ruler. This could only be the case when the prince had overstepped the limits of his office and did not fulfil his obligations. The self-acclaimed patriot depicted himself as most loyal, particularly to his fatherland, customs, and privileges. The nobility defended its obligations by reflecting upon themselves as patriots.³⁷³ This reference seemed to entail its own set of duties to protect the fatherland, and implied the landgrave's failure to do so. Based on the information provided in this chapter, it can be concluded that as early as the 1610s, fatherland terminology was used to criticise the landgrave, and this continued at least through the mid-fifties.³⁷⁴

The landgrave claimed to have received his power from the emperor. He, therefore, held the highest power in the principality: the *superioritas territorialis*. He should not, and could not, be passed over when the nobility had a complaint, and this fact nullified any imperial ruling. In perilous times, his duty was to protect the Lower Principality of Hesse, which could require immediate action. Thus, *necessitas* was of vital importance and meant that he could bypass the nobility in order to save the principality. Proof of his claims was to be found in the literature he quoted, for even though the sources may have been of foreign origin, his claim of holding the office of *superioritas territorialis* was universally accepted.

The nobility resorted to history, pointing to their ancestors from whom they had inherited their rights and privileges. They stressed their exclusive use of German scholars—scholars who had lived under the same laws, and not in some ancient or foreign land—plus the landgrave's duty to abide by existing customs, to which he had asserted when he accepted governance. More importantly, the nobility turned to the history of their principality, a feature which is not mentioned in Stolleis' synthesis regarding the *ius publicum universalis*. The nobles frequently referred to the government and deeds of Philipp I the Magnanimous (1504–1567), his grandson Maurice 'the Learned' of Hesse-Cassel (1572–1632), and the Hessian Chronicle. The nobility fully accepted the notion of a *superioritas territorialis* and the idea that their landgrave should protect his principality, its possessions, and its inhabitants. Likewise, they believed that situations of *necessitas* could occur, but that such situations had been strictly defined by the 1630 Regensburg assembly of the Imperial Diet. The nobility applied these standards, and concluded that the landgrave could not make such claims in the present case: the Treaties of Westphalia did not involve the need for an army. Looking back to their history, they concluded that they were entitled to assemble and debate the welfare and troubles of their fatherland, and that they could discuss this issue with the emperor.

The nobility and the landgrave debated how the structure of the Holy Roman Empire applied to their principality. In the meanwhile, each made arguments based on the historical setting of the principality of Hesse-Cassel or greater Hesse. This discussion seems at odds with the nobility's definition of *necessitas*, which had been established by the Imperial Diet. On the one hand, they appeared to be using

³⁷³ *Replicae*, 12–13.

³⁷⁴ Maruhn (2004a), pp. 24–32; von Friedeburg (2005, 2007).

arguments from *Reichs* legislation regarding the abuse of power as defined by imperial regulations. On the other hand, they insisted on the importance of a territorial setting of rules and privileges similar to Hesse-Cassel. Both sets of rules were considered to be of importance. With the best interests of the principality at heart, and with the overriding desire to force the landgrave into obeying customs, the nobility was obligated to disregard the landgrave's wishes in the matter of convening meetings, and in bringing the matter before the Imperial Chamber Court without the landgrave's prior consent. As loyal patriots, they were to act upon their principality's laws, customs, and honour, and to comply with the rulings of the Holy Roman Empire. Their *ius publicum territorium* was not seen as an isolated part of law-making, but as active interaction with the *ius publicum universale*.

Seven characteristics summarise the debate in Hesse-Cassel. *Firstly*, the trigger for using the terms fatherland and patriot was not solely the requisition of taxation without consent. Neither the impact of the ban on private assemblies nor the humiliating imprisonment of assembly chairmen Von der Malsburg and Riedesel should be overlooked.³⁷⁵

Secondly, when the landgravine avoided the nobility's counsel and consent, pursuing her agenda, the nobility worried that she might want to establish an *absolutus Dominatus*.³⁷⁶ The use of fatherland terminology can be attributed to the need to discuss the threat to the principality and to defend the welfare of the fatherland.

Thirdly, the nobility of Hesse-Cassel sought legal guidance and presented their case—punctuated with Latin phrases—before the Imperial Chamber Court. Not only was the emperor's judgement sought, but the nobility required it by using arguments about patriots, the fatherland, and *patria* in official documents. These documents explained the purpose of their assemblies and the need to protect their privileges. In itself, it may not have been extraordinary for the nobility to focus on concepts of loyalty, customs, and privileges, as those referred to specific, acquired rights. However, the emphasis on their great loyalty to the fatherland in the legal documents proves that the terminology could be used instrumentally. Moreover, it was loyalty to the fatherland, and not to the landgrave, a distinction leaning in favour of the relevance of the terminology.

Fourthly, the landgrave used the same terminology.³⁷⁷ The landgrave's lawyers essentially argued that the landgrave was the official caretaker of the fatherland. The office of a prince encompassed many duties, but the most critical duty was to protect peace and prosperity. Those disturbing the peace and tranquillity were to be judged and sentenced by the landgrave. The argumentation used in the *Duplica* emphasises this fact, even though it still incorporated references to patriots and the fatherland.

Fifthly, the ways in which the words fatherland and patriot were applied were significant. The landgrave did not apply them to himself. The nobility's usage of

³⁷⁵Maruhn (2004a), p. 47.

³⁷⁶*Replicae*, 12–13.

³⁷⁷*Duplicae*, 32–33.

these terms seemed to be conceived of as a warning signal. The patriots were considered vigilant guards of the common good and were now invoking this role. The landgrave recognised their commitment—by copying their use of words—and thanked them for their efforts. He then pointed out that they, like their ancestors, should now step back and let him deal with the situation. Thus, the landgrave's reasoning was in line with his asserted duty to protect the fatherland.³⁷⁸

Sixthly, and especially in the closing agreement (*Vergleich/ Vertrag*), it became clear that not only the nobility but also the landgrave favoured an earlier state of affairs. The *Vergleich* rebalances relations, and it seemed neither the landgrave nor the *Landstände* increased their power, which may be contributed to the use of fatherland terminology. The nobility claimed the office of a patriot in order to protect the fatherland and its welfare. The landgrave had to protect his principality as part of this office. As such, he accepted hearing and incorporating the warning signals of 'his' patriots. The genuflection Duke Wolfgang Wilhelm made to his *Landstände* shows a similar recognition of their role as patriots, and possibly as Althusius' ephors.

Finally, the absence of pamphlets in this conflict is noteworthy but logical, because the *Landstände* were able to appeal to the Imperial Chamber Court. It also shows that there was little chance of invoking the help of other principalities. The nobility did not air their issues with the landgrave to the rest of the world. This seclusion is contrary to the approach that the nobility from Jülich chose.

Fatherland terminology intended to describe the fatherland, and the patriots—the nobility—claimed loyalty to the fatherland rather than their landgrave. This fatherland was in danger because of the detrimental actions of its ruler. Admittedly, by emphasising the concept of the fatherland, the nobility developed a new role for themselves and excluded the landgrave. However, it was not necessarily their preconceived intention to undermine the position of the landgrave; the nobles merely sought to emphasise that the fulfilment of their duties towards the fatherland was their prime motivation. Fulfilling the office of a patriot was, at first sight, an altruistic action. The nobles professed that their higher goal was to protect the prosperity of the principality, the authority of the landgrave, and their privileges. It must not be overlooked though, that their ultimate goal was to have their privileges respected—which was not at all altruistic. Achieving this goal would ensure that their position remained unchanged and that the nobility retained a prominent position in the decision-making process in Hesse-Cassel, and in the levying of taxes. The nobility strengthened their claims to political involvement by representing themselves as one corporate, united body.³⁷⁹

The landgrave applied fatherland terminology as well, which cannot be explained by the same premise as above. In the *Duplica*, clear examples have been presented of the landgrave's usage of these terms. The landgrave's most basic argument comes down to two points: firstly, that he held the fief; and, secondly, that all persons within

³⁷⁸Simon (2004), pp. 22–23, 26–27, 93, 105, 166, 221.

³⁷⁹Harding (2013), pp. 119–120; von Friedeburg (2003), pp. 319–320.

that fief were subjects, and so under the obligation to obey his rule. In this respect, it is crucial to note that the landgrave's lawyers deemed this argument insufficient, and, consequently, the previously discussed lengthy legal text called the *Duplica* was drawn up. It is argued here, that if subjects were allowed to assemble at their initiative, this would be harmful for two reasons. First of all, the ambiguous nature of the meetings in the Hessian convents of Kaufungen and Wetter was problematic, in that they could either deal with private or political matters and might thus be used to undermine authority. Secondly, even the nobility must act within rules and regulations.³⁸⁰ It was consequently argued that if the nobility, as subjects, possessed the right of assembly, farmers and citizens might claim this right as well, which would be harmful to the entire Holy Roman Empire.³⁸¹ This argument seems to be in line with the landgrave's acclaimed *superioritas territorialis* and rule over all his subjects. This legal context shows that the landgrave's lawyers assumed that it was the landgrave who took care of the fatherland. However, it does not readily explain why words like fatherland and patriot were accepted vocabulary, as fief and subjects could easily have replaced them.

The answer may well lie in the seeming altruism of the office of a patriot. The landgrave seemed to accept that there was such an office. His lawyers even presented the Imperial Chamber Court with a historical case in which fatherland arguments were used. It seemed to have functioned as a wrecking ball that smashed the debate open. This example argued that the nobility claimed to be loyal to the landgrave in order to protect the fatherland. They set aside their privileges and immunities while the landgrave stepped up to defend the principality. In this particular example, the nobility as patriots had been loyal to the fatherland and the landgrave. The landgrave copied the vocabulary used by the nobles in order to refer to nobility's arguments, and so he accepted the use of fatherland, *patria*, and patriot in this context. However, he was also willing to go one step further by turning such arguments around.

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³⁸⁰ *Duplicae*, 81–82.

³⁸¹ *Duplicae*, 79–89.

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