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Foreign bonds, territorial change and repudiation: The Silesian Bonds saga

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Foreign Bonds, Territorial Change and Repudiation: The Silesian Bonds Saga

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Abstract:

Once a famous tale of conquest, law and foreign bond markets, the saga of the Silesian Bonds of 1734–37 is missing from the literature on sovereign debt. The Silesian Bonds were among the earliest foreign currency sovereign bonds issued. They go into the market 84 years prior to the 1818 Prussian issue by the Rothschilds sometimes described as the first Eurobond. The bonds were issued by Charles VI, Holy Roman Emperor of the House of Habsburg, to investors in London and Amsterdam. They were tradable, denominated in foreign currency, and secured by a pledge of revenues from the estates of Silesia. Although bondholders seemed well-protected by a variety of covenants promising that the sovereign would refrain from raising defenses, there was reluctance to pay, delay, and ultimately partial repudiation. The story we tell centers around what happened to the debts after Frederick II of Prussia seized much of Silesia in 1740–42, agreed in the 1742 Peace of Berlin to take over from Austria the liability of the Silesian bonds, but then decided that he did not wish to pay. From the story, we draw clues about the state of international law, contracting practices, and the operation of the sovereign debt market in the mid 18th and early 19th centuries in Europe.

Keywords: International Capital Markets, Evolution of Capital Markets, Sovereign Default, Repudiation, Austrian War of Succession.

JEL-Classification: N23, F34, K12

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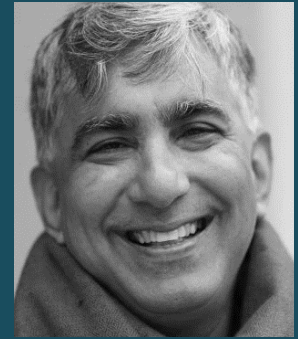
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1. Introduction¹

The international law governing sovereign debt is clear on what happens when one government replaces another. The debts of the nation remain on the books regardless of the nature of the regime. That is the law of governmental succession. Things get more complicated when the shape and size of a nation changes - for example, because of an invasion. Is the invader responsible for a portion of the nation it has seized? This matter falls under the law of state succession that is less settled than that of governmental succession. (Buchheit, Gulati and Thompson 2007). Hypothetically, and hopefully not, what if Putin's Russia takes a part of what is currently Ukraine? If Ukraine were ultimately to agree that Putin takes a part of Ukraine, would Russia need to take responsibility for at least a proportional part of Ukraine's current debts? If so, what would be the terms of the debt? The ones that the Ukrainians originally agreed to?

Then, there is the question of expenditures. What if the borrowing was for military expenditures to defend the country against an invader? Does the invader, assuming it succeeds, have to pay the debts incurred to buy military supplies to fight off its invasion? And what if the invaded nation had issued debt that was secured by revenues from the territory that has now been occupied by the invader?

The foregoing are questions that one might have thought were irrelevant historic relics in the post-World War II era. In theory, absent self-defense, armed warfare against another country is illegal. However, developments in Ukraine, Syria and Venezuela, along with erosions of international law constraints on armed warfare, have put these old unanswered questions back on the table. (Hathaway 2026).

We do not purport to answer these big questions. But we can, through the tale of an 18th century bond issuance, gain clues as to what the law and practice were regarding these questions in that period. In what follows, we tell the tale of a series of loans issued by the Habsburg emperor, Charles VI, to international investors in 1734-37. The loans were secured by revenues from the estates of Silesia, so we call them the "Silesian bonds".

Charles died in 1740, and perceiving Charles' successor, Maria Theresa, to be weak, Frederick of Prussia seized much of Silesia. Frederick did not believe he was obliged to take on Charles' debts secured by the Silesian revenues; but made a deal (Peace of Berlin of 1742) where Prussia took responsibility for

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the Silesian bonds by treaty. As we will see, he did not see himself as bound by the promises that the Habsburg empire had made to bondholders in the original agreements.

Ultimately, Prussia repaid English creditors out of some combination of tactical necessity and legal obligation. But it did not repay most of the Amsterdam-issued bonds. Non-payment was not a given thought, as reflected by the immense 86 years effort exerted by bondholders (they gave up in 1830).

The saga that played out involves investors chasing both Prussia (the invader) and Austria (the initial borrower) to repay the debts over almost a century. Some investors (the British) got paid and others (the Dutch) did not. There were military threats, break ups of empires, diplomatic compromises, and legal arguments. Along the way, some of the foundation stones of today's law and practice of sovereign debt got put in place.

The Silesian bonds saga has been written about, although not in the literature on sovereign debt (*E.g.*, Satow 1915; Manning 1916; Edwards 1928; Musa 2018). The saga tells us about an aspect of sovereign debt law and economics that is understudied; the question of what happens to the sovereign debts of a nation when it is invaded by another nation and a portion of its territory is taken.² To add to that, the debts here were secured by revenues from the seized territory. The one other similar such instance we are aware of is from a century and a half later, when the U.S. took Cuba from Spain after the Spanish American war of 1898, but refused to take on Spanish debts secured by Cuban revenues (Buchheit, Gulati and Thompson 2007; Collet 2013).

The legal question is: Does responsibility for debts transfer to the invader sovereign? And, if so, how much responsibility gets transferred? And does it matter for this responsibility transfer what the reasons for the borrowing/lending were and who the lenders are? Standard theory says that sovereigns repay their debts because they will have to borrow again in the future (Oosterlinck 2013). But what about the debts of an invaded nation? If reputation is the primary driver of sovereign repayment, will the invader perceive less of a reputational hit if it refuses to pay to debts of the invaded territory?

As context, there is no comparable case of repudiation of debt issued from one major European power into an international capital market in the 18th or 19th century. As noted by Tomz (2007, p. 47), the Napoleonic wars led to a halt of the Amsterdam capital market in 1795 and a "pandemic of defaults across Europe". But all the major borrowers settled their arrears and resumed payment after the hostilities ceased. The quasi-exclusion of ultimate default or repudiation in the eyes of creditors of international loans in Amsterdam is also illustrated by the moderate yields at which sovereign bonds traded at that time, namely at 4–5% (Tomz, 2007, pp. 40–46, Riley, 1980, p. 47).

² A related question is what happens to debts when an empire breaks up into a set of nations (Oosterlinck and Ureche-Rangau 2008).

As a matter of contract law, through the foregoing events, and still today, Austria should have remained on the hook for paying the original debts. Creditors were not parties to the Peace of Berlin of 1742, where Frederick took on the obligation to redeem the Silesian bonds. Creditors, therefore, could not have been bound. But creditors, although recalling that Austria was in principle still liable, did not seriously pursue Austria as a debtor until the early 19th century, more than 75 years after the default began. Austria, for its part, ignored the bondholders and, best we can tell, suffered no market penalty.

The Silesian loan affair is also remarkable as the German Federal Assembly considered it three times in the 80 years after issuance (in 1819, 1828, and 1830). The Assembly dismissed the bondholder claims for lack of jurisdiction and never addressed their substance. That said, detailed petitions were made, and the Assembly gave explanations for the rejection of the claims.

For the British holders, law played a role in their recovery - although the extent to which it did is debatable. Frederick, after initially taking on the obligation to pay the debts, then wshed. He argued that British privateers had illegally seized goods on Prussian vessels and so he was justified in setting off liabilities to the British bondholders. What followed was the Prussian and English governments producing legal opinions supporting their positions. The Prussians argued that their repudiation was justified, citing claims against the British Crown, while the British contended that Prussia could not invoke this self-help technique since the claims against Prussia were held by bondholders, whereas Prussia's claims were directed against the Crown. The British report was written by three of the most eminent legal voices in England at the time. (Satow 1915).

The British "Law Officers report" was authoritative enough that it influenced Emer de Vattel's 1758 treatise *The Law of Nations*. That treatise was influential in shaping the international law of the day (Bindseil, Gulati and Ward 2025; Domingo 2011).³ Vattel, citing the Silesian loan saga, wrote in the *Law of Nations* (1797 [1758], Vol. II, §203) that "the debts of a nation ... are not cancelled by conquest," and that the conqueror must assume the obligations tied to the conquered territory:

The king of Prussia, on acquiring Silesia by conquest and by the treaty of Breslau, took upon himself the debts for which that province stood mortgaged to some English merchants. In fact, his conquest extended no further than the acquisition of those rights which the house of Austria had possessed over the country; and he could only take possession of Silesia, such as he found it at the time of the conquest, with all its rights and all its burdens. For a conqueror to refuse to pay the debts of a country he has subdued, would be robbing the creditors, with whom he is not at war...

³ Montesquieu (1753), another legal giant of the 18th century, referred to the English loans and praised the English argumentation transmitted to Prussia as "réponse sans réplique" ("answer without a rejoinder"). We are skeptical that law was the sole driver in making Frederick pay, since there were other pressures at work. But relevant actors thought law was important enough to invest resources in as a way of inducing (of refusing) payment.

As noted above, some combination of law, political pressure and opportunistic considerations led Frederick to repay British creditors in 1756. But he and his successors kept refusing to pay the Dutch debt until the creditors gave up their efforts in 1830.

The article proceeds as follows: Section 2 reviews the English loan affair until repayment in 1756. Section 3 covers the case of the Amsterdam-issued debt, the battle of the bond holders and the ultimate repudiation, benefitting in particular from the detailed documentation provided in Klueber (1827), as well as in a contemporary collection of sources (Actenstücke 1830) and the protocols of the German Federal Assembly, Deutscher Bund (1819, 1828, 1830). Section 3 also provides an analysis of price developments of the Amsterdam-issued bonds in the period 1798–1824, which allows us to understand the perceived likelihood of repayment and to what extent Prussia was able to isolate the repudiation of its loans from its own credit standing. Section 4 reviews the implications of the Silesian bonds saga for modern sovereign debt law and finance.

2. The English Bonds

In this section we draw from Satow's (1915) book length treatment of the British involvement in the Silesian bond saga.⁴ As was the case with much of the sovereign debt of the era, the loans were to support military expenditure (Ventura and Voth 2016). Charles VI required capital to finance ongoing military expenditures. Owing to the decentralized fiscal structure of the Habsburg Monarchy, the limited capacity of domestic investors, and the empire's precarious financial position, he could not readily raise funds at home. A new option for sovereign financing had, however, recently emerged - the international capital markets in Amsterdam and London. Charles and the Austrian empire, therefore, turned to the capital markets in Amsterdam first, and then London.

British sovereign borrowing in the 18th and 19th centuries, and particularly in the London market, has been extensively studied (Sussman and Yafeh 2006; North and Weingast 1989; Meyer, Reinhart and Trebesch 2022). Less known, is foreign sovereigns accessing the London market as early as the 1730s. One finds references to loans to foreign sovereigns in the London markets in, for example, Kindleberger (1984). But the first international sovereign bond issuance is sometimes described to be the 1818 Prussian issuance through the House of Rothschilds. Three key characteristics of the supposed "first Eurobonds" were that they were issued in a currency other than that of the debtor, in tradable form, with

⁴ Sir Ernest Mason Satow was a British diplomat and Japanologist who was British Minister to Japan 1895–1900. Little is known as to why he was interested in the Silesian Loan saga. We know that, having retired from the foreign service, he was in correspondence with Lassa Oppenheimer, one of the leading international law scholars of the time, about writing a section of his treatise. (Ruxton, 2007). It is also possible that Satow, writing around the time of World War I, was interested in the Silesian loan saga because of its relevance to the law of reprisals in war time.

payments to be made in the creditors' jurisdiction. (Ferguson 1998, Ferguson 2005, Mosselaar 2018, Rothschild Archive 2026). Those three characteristics are in the 1734–37 Silesian Loans issued almost a century prior. As reviewed in Riley (1980) for Amsterdam, such international sovereign bond issuance had its beginnings around 1700 and took off around 1740.⁵

To do his £250,000 issuance in London, Charles had to obtain permission from the British Crown. There had been prior loans issued by foreign sovereigns in the London markets. But the amount of funding sought by Charles caused concern among British parliamentarians, since the financings of the time were generally to support military endeavors and even though Britain was an ally of Austria, alliances during that period were constantly shifting. A bill had thus been passed requiring that foreign sovereigns obtain a license before they could raise funds on the London market (Edwards 1928; Satow 1915). The license requirement was opposed by the London merchants, who argued that such a bill would disadvantage the London market in favor of the Amsterdam market (Cobbett 1811). The bill passed, but the London merchants succeeded in limiting the operation of the bill to a two-year period, after which it was not renewed. Charles, for his part, was able to obtain the necessary license and raise funding.

2.1 Frederick Agrees to Pay

Charles VI died October 20, 1740, a few months before the first instalment of principal on the British debt came due. His heir, Maria Theresia, inherited the throne. Charles had attempted to ensure her succession to the throne with alliances, including with Britain and Prussia. But the alliances fell apart promptly after Charles' death: Frederick the Great of Prussia, invaded Silesia – one of the richest parts of the Hapsburg empire – and seized most of the province in the first War of the Austrian Succession.

In the modern era, sovereigns generally do not see themselves as responsible for assisting their citizens in recovering on defaulted bonds of foreign sovereigns. In May 1741 though, the British crown took a different tack.⁶ Alarmed by Frederick's seizure of Silesian territory, the British government, dispatched its emissary, Lord Hyndford to Prussia to negotiate with Frederick.

⁵ We know about the currency of payment and location for payment from what Satow reports of the terms of the contracts, where he reports that payments were to be made to the Trustees such that creditors would receive payments at the "Bank of England" in the "lawful Money of Great Britain". (Satow 1915, p. 202). Satow does not tell us directly that the bonds were tradable, but we can infer this. Satow reproduces a passage, *The Continuation of the Complete History of England* by T. Smollett (1765, Vol. 1–or possibly Vol. 12; Satow's citation is ambiguous). There, Smollett suggests that Frederick had taken advantage of the fall in the price of the bonds caused by the attachment he had laid on the last £45,000 of principal. Satow notes that Frederick had purchased 500,000 thalers' worth of these obligations in 1743 and adds that "it would have been nobler on his part to pay them off in full rather than make a profit by buying them in."

⁶ The paradigmatic example of the unwillingness of sovereigns to intervene to help domestic holders of foreign debts is Britain, via the "Palmerston circular" from 1848, where the British government took the position "When people choose to lend to a foreign country, they [do] so at their own risk" (Oosterlinck 2013; Zendejas and Cole 2021). This position was not a hard and

During their initial meeting Frederick “promised to provide for the capital and interest” on the Silesian loan, if Austria were to share the burden “in proportion to the portion of Silesia which Austria retained.” (Satow 1915, p. 4). This promise was formalized in an agreement signed at Klein-Schnellendorf on October 9, 1741 by Lord Hyndford.⁷ Frederick also alluded to the idea that he would accept the whole amount of the debt if he acquired all of Silesia, otherwise the debt would be “divided pro rata” (Id., p. 5).

The foregoing then represents an early instance of thinking about how to allocate the debts after an invasion. In the Peace of Berlin of 1740, Prussia took responsibility for the entire English loan and the proportionality seemed implicitly addressed by Austria keeping responsibility for repaying the Silesian debt to creditors from Brabant (not much is known about the size of the latter, but Austria claimed that it fulfilled its related obligations).

Satow quotes Article VII of the preliminaries of Breslau to the Peace of Berlin in which the King of Prussia undertook the “whole payment of the sum hypothecated on Silesia to the English merchants, in accordance with the contract signed in London January 7, 1734/5” (Id., p. 3). Frederick, however, does not appear to have taken on responsibility for the Silesian debts because of the dictates of international law. Satow cites a letter between Prussian and British ministers that reports Frederick’s beliefs on his responsibility to pay: “Frederick will faithfully (*sancte*) fulfil what he has undertaken with regard to the English debt; but that he has undertaken it *solely out of gratitude* for the mediation undertaken by the English ministry and for the trouble they had had” (Id. p. 6).⁸

Frederick delayed and made payments sporadically, eventually citing excuses to avoid paying.

2.2 The Excuse for Non-Payment

After several half-hearted remittances, Frederick adopted a more aggressive strategy. In the years preceding the Seven Years’ War, Britain imposed maritime restrictions on French commerce. Prussia, as a neutral power, continued to trade with French ports under what it claimed was the customary law of nations (the international law of the time). That law, according to Prussia, permitted neutral states to trade with belligerents so long as the trade did not involve contraband of war. Prussian officials asserted

fast rule. Imperial powers such as Britain (and later the United States) continued to intervene on behalf of their citizen investors, sometimes with force (Buchheit 2005).

⁷ This agreement was formalized in the Treaty of Berlin (July 28, 1742). Article IX provides for the payment of the “sums hypothecated on Silesia to English and Dutch subjects, with a proviso that from the latter should be deducted what was due to Frederick by Holland. Frederick’s ratification of the treaty also expressly ratified this Article” (Satow 1915, p. 7).

⁸ We find confirmation in the Law Officers report, where the Officers say that Frederick was obligated to repay the British holders because of the treaty he entered into and do not mention any general international law obligation backing the treaty agreement (Id. p. 98).

that this practice was lawful and claimed to have received informal assurances from British representatives to that effect.

Nevertheless, British privateers seized numerous Prussian merchant vessels. These ships were brought into British ports, condemned in British prize courts, and their cargoes confiscated (Id., pp. 13–19). Britain denied that any minister had given binding assurances to Prussia and refused to reopen the prize-court judgments, emphasizing the independence of its admiralty courts (Id., p. 22). At the same time, there was at least some private acknowledgment within Britain that its privateers had acted with excessive zeal.

Prussian merchants protested the seizures and claimed compensation for lost cargoes and detention. They petitioned Frederick, who, in turn, demanded that Britain reconsider the prize-court judgments. When Britain refused, Frederick established Prussian admiralty commissions to reassess the claims. Britain denied that these bodies had jurisdiction under the law of nations.

Prussia then issued a formal memorandum declaring that, in light of Britain's refusal to provide redress, Prussia was entitled to withhold a portion of the Silesian loan payments as indemnification for the losses suffered by its subjects. Britain responded with the Law Officers' Report. The Report maintained that the seizures were lawful and further asserted that a sovereign could not lawfully appropriate debts owed to private foreign creditors in order to compensate its subjects for alleged injuries inflicted by another sovereign. Sovereign-to-sovereign debts were different, according to the Report, than sovereign-to-private investor debts (Id. pp. 97–98). Further, Frederick had taken on the responsibility to pay the debts under the same contractual conditions that Charles had agreed to. Those conditions did not allow for defenses of the type that were being asserted (Id. p. 99). As per the contract, there was to be "no Delay, Demurr, Deduction, or Abatement whatsoever." (Id.).

Satow describes the international reaction to the Law Officers' Report as follows (Id., p. iv):

The affair aroused widespread interest at the time. The British Government communicated the documents to friendly Powers and invited their intervention or assistance. France declined to put pressure on Frederick, and affected to take his side of the argument, although French prize-law was antagonistic to his pretensions. Holland tried to get something for herself out of the dispute. Austria replied that she was not on terms with Frederick and wandered off into recriminations about the Barrier Treaty. Russia was willing to lend troops against Frederick, if the necessity arose, but demanded an exorbitant price for her services. The Russian Vice-Chancellor hoped incidentally to fill his pockets. Spain declared herself in sympathy with England but expressed no opinion as to the merits of the controversy.

2.3 Prussia Pays Despite Reluctance

Ultimately, some combination of legal argument and political necessity got Prussia to pay. Specifically, in the immediate lead-up to the Seven Years' War, Britain and Prussia found themselves in need of each

other's support. (Id, p. iii–iv). Britain sought to protect Hanover (then a British possession) from French invasion, while Prussia needed an ally against Austria, Russia, and France.

The Treaty of Westminster of January 1756 inaugurated a new period of Anglo–Prussian cooperation. In parallel negotiations, Britain and Prussia agreed to settle both the Silesian loan dispute and the indemnification claims of Prussian merchants (Id, p. 191–199). Britain agreed to pay Frederick £20,000—approximately two-thirds of the sums he claimed on behalf of Prussian merchants—on the condition that Frederick lift the sequestration of funds owed to the British bondholders. This concession was made as a way of preemptively removing any potential barriers to military alliance.

2.4 What Did Prussia Pay?

Following these arrangements, Prussia resumed payment of the British portion of the Silesian loans. The English Ministry agreed to Frederick's proposal that £20,000 be deducted from the amount to be remitted of the remaining principal and interest. The English Treasury then paid this sum to the trustees to make up for the shortfall. After this deduction was approved, the remaining balance on the bonds appears to have been £40,887. This figure included a claim of £2,500 representing the Trustees' one-percent commission, payable on the complete extinction of the debt.

The British bondholders made a few concessions to ensure that the settlement proceeded quickly (likely before the political conditions changed). Accordingly, the trustees did not insist on interest payments accruing between July 1735 and 1740, which Frederick never paid. They also allowed the account to be made up to March 21 (1756), instead of through the end of June, but on the condition that payment be completed no later than six weeks from April 6.

Frederick, for his part, showed eagerness to appease the British and to create more goodwill for the Anglo–Prussian alliance. He covered both the £2,500 commission and the interest up to June 21 (£787), which the bondholders had been willing to forego. Frederick also distributed the £20,000 indemnity to Prussian merchant claimants in proportion to their claims, with each receiving roughly two-thirds of what they had demanded.

2.5 The Settlement

Both Prussia and Britain appear to have gotten value out of the settlement. Frederick was able to distribute the equivalent of 120,000 thalers to the Prussian merchants, when he would have accepted as little as 80,000. (Id. p. 199). The British on the other hand characterized the payments as a “trifling sum,” which must have seemed a modest price for a military alliance capable of protecting the British dominions in Hannover from invasion. The alternative was to pay Russia nearly £500,000 per year for an auxiliary force (Id.).

Britain, according to Satow, “sacrificed no principle of internal law as they conceived it, and their reply [in the Law Officers Report] to the Prussian arguments had been left without a rejoinder.” (Id.) The decision to allow Frederick to deduct part of the Silesian debt was therefore not a retreat from Britain’s stated legal position but perhaps reflected the recognition that at least one British minister had given assurances to Prussian officials inconsistent with that position. Satow views this not as legal backtracking, but as an acknowledgement of the principle that “the word of a minister for foreign affairs given to the diplomatic agent of a friendly power is binding in honor on the government and the nation which he represents.” (Id.).

Interesting is how it is not what happened in the ultimate resolution of the British debts (a compromise), but the principles that were articulated in a legal brief (and not all of them) that then get articulated as general principles of international law. For example, the idea that public debts “run with the land” was subsequently expressed in Vattel’s writings, even though Frederick’s assumption of the debt resulted from pragmatic political negotiation rather than from any settled rule of the law of nations at the time.

A similar pattern appears with respect to the principle that the property of foreign nationals seized in the context of a conflict between countries may not be used to indemnify the seizing sovereign. That proposition was articulated in the Law Officers’ Report and then influenced understandings of international law obligations in the United States, making its way into Alexander Hamilton’s writings on public credit and a US Supreme Court case.⁹ The legal principle that comes out of the dispute is that “public debts are immune from confiscation under the laws of war” (Hulsebosch 2018, p. 1263). And then Vattel modifies the position to be the public debts owed to an enemy could never be confiscated, but private debts could be (Hulsebosch 2018; Vattel 1797 [1758], Vol. 2, p. 28). Today, customary international law is understood as being created through state practice as engaged in because of legal imperatives, not the views of some eminent legal scholars as to what the law should be (Bradley and Gulati 2010). But Vattel wasn’t drawing on any real state practice - Frederick had in fact confiscated public debts owed to private parties and ultimately offset them. However, Vattel, and later Alexander Hamilton and others, drew on the principles articulated in the Law Officers report as public international law (even though that was a report commissioned by the British crown to support the British position - basically, a lawyer’s brief¹⁰ - and even though the Law Officers report itself emphasized the importance of contract terms to the conclusion it reached).

⁹ Hamilton (1795) drew on ideas from Vattel and the Law Officers Report to argue against seizing of debts held by foreigners from nations the US might be in conflict with.

¹⁰ Hamilton (1795, text accompanying note 31) notes this fact, but glosses over it on the grounds that the Law Officers Report was acclaimed by eminent voices such as Vattel.

3. The Amsterdam–Issued Bonds

The story of the Amsterdam–issued bonds went on a lot longer than that of the British bonds. While Prussia ultimately settled with the English creditors in 1756, Dutch bondholders received neither interest nor principal after January 1741. They pursued repayment through diplomatic, financial, and legal avenues for almost ninety years, but ultimately had to give up for most of the due amount.

This section reconstructs the chronology of events from the issuance of the loans in 1734–37 to the final failure of bondholder petitions in 1830. We rely in particular on the documentation brought together in Klueber (1827) and Actenstücke (1830), as well as the protocols of the German Federal Assembly (Deutscher Bund 1818, 1828, 1830), and a few other original texts reported in the Annex. The section concludes with an analysis of market prices for Silesian bonds in the Amsterdam market in the late eighteenth and early nineteenth centuries, which sheds light on creditors' expectations of repayment and on Prussia's ability to isolate the repudiation of these obligations from its credit standing. Ultimately, bonds with a nominal value of around 3 million Dutch Guilders were repudiated. Out of the total nominal amount of 6.5 million, 1.7 million had been repaid by Austria according to the foreseen installments before principal repayment stopped in January 1741 (still covering payments scheduled for 1740), and another up to 2 million were likely redeemed at the occasion of Prussia's 1810 Amsterdam debt operation. Accrued interest in 1830, i.e. after 88 years, was enormous. In total 3 million guilders were issued at a 6% interest and 3.5 million at 5%. Assuming the lower of the two rates and an outstanding amount of 3 million guilders between 1741 and 1830 would imply: $3 \cdot (1.05)^{88} = 219$ million Dutch Guilders.

3.1 Issuance of the bonds in the Amsterdam international bond market (1734–1737)

Between 1734 and 1737, Charles VI contracted three loans in Amsterdam for a total nominal amount of 6.5 million guilders, structured in separate tranches and intermediated by Amsterdam banking houses (Deutz and Clifford). Three bonds were to be distinguished (Klueber 1827, pp. 9–11), as summarized in table 1. The bonds were issued in different sub–tranches. For example, the copy of the bond transcribed in Annex 0 belongs to bond 1 in Table 1, but is part of a sub–tranche of 0.5 million guilders issued in early 1734 (the 0.5 million are explicitly mentioned on page 1, see Annex 0), while further sub–tranches of this bond were issued until 1735 to reach the total cumulated amount of bond 1 of 2.5 million guilders.

Table 1: Amsterdam-issued Austrian bonds backed by Silesian income of 1734–1737

	Issuing House	Amount (million guilder)	Interest rate	Issued in the years	Redemption (20% per annum)
1	Wilhelm Gideon Deutz	2.5	6%	1734–35	1738–1742
2	Georg Clifford	0.5	6%	1734–35	1738–1742
3	Wilhelm Gideon Deutz	3.5	5%	1736–37	1747–1751

The bonds were medium- to long-term, interest-bearing instruments with contractual safeguards. The text of the 1734 issue of bond 1 (Annex A.0) illustrates the structure common to all three loans¹¹, including the three layers of protection:

- First, the payment of interest and the repayment of the principal are committed by the Habsburg crown, i.e. the Austrian monarchy, through the promise of Charles VI (“we, for ourselves, our heirs, and successors, fully aware and in good faith, after proper negotiation ..., have agreed, promised, and by this document do promise and bind ourselves: That we will pay...”). The debt is thus primarily Austrian “central government” debt that is binding on both the current government and on successor governments.
- Second, the princes of Silesia guarantee the debt (“We, the Princes and Estates of Upper and Lower Silesia, ... also bind ourselves publicly for this sum, so that we shall be responsible, together with His Majesty, for its payment...”).
- Third, the repayment is protected by a general mortgage over all sovereign revenues and possessions of Upper and Lower Silesia (“as an additional and secondary security, all revenues, rents, and possessions of every kind and description that are located within the said Duchies of Upper and Lower Silesia and belong to us. Thus, if at any time there should occur an unforeseen failure in the payments required by the obligation of the Estates, whether concerning the principal or the interest, then in such a case the satisfaction of those payments shall be made from these pledged revenues, rents, and possessions”). That begs the question of whether the pledge of revenues in the Silesian bonds was a credible collateralization or cheap talk. Contemporary sovereign issuers sometimes pledge their “full faith and credit”, which is mostly cheap talk. For foreign bonds, enforceability of collateral is by nature challenging.

Moreover, all legal privileges, defenses, or exceptions were expressly waived: “And by this we fully and deliberately renounce all legal privileges or defenses, whether in law or equity, as well as all customs, ordinances, legal constitutions, actions, or exceptions such as the defense of fraud, misrepresentation,

¹¹ The texts of Bonds 2 and 3 are reproduced as annex II and III in Klueber (1827, 111–119). Bond 1 is also provided there as annex 1 (pp. 105–111)

misunderstanding, unfair dealing, or the *actio residui* under the *Lex Anastasiana*. We renounce all such claims entirely, without deception or reservation, by virtue of these letters which are signed by our own hand and sealed with the Imperial Secret Seal.”

The foregoing waiver of “all legal privileges and defenses” is as a forerunner of the broad waivers of sovereign immunity common in international sovereign bonds today. (Choi, Gulati, and Posner 2012). In addition, there is the renouncing of “customs, ordinances, legal constitutions, actions, or exceptions such as the defense of fraud, misrepresentation...”. That foregoing sounds to us like the sovereign promising that it will not use its sovereign control of the law to negate its responsibilities to repay creditors. Such promises where the sovereign borrower agrees to be treated like a private commercial borrower are common today - but it was news to us that there were bonds in the early 18th century that had such contractual commitments.

Finally, there is the exclusion of the *Lex Anastasiana*. This Roman legal rule limits the amount of interest that can be claimed when enforcing a debt in court. Accrued interest could be claimed only up to an amount equal to the principal. The fact that the Amsterdam-issued bonds explicitly waived the protections of the *Lex Anastasiana* implied that there was no cap on the amount of interest that could be accumulated or demanded from the debtor in case of deferred payments. The importance of this waiver made in 1734 was likely not anticipated at that time, since no one would have imagined that, as of 1830, 3 million Guilders nominal amount would be outstanding, implied a cumulation of interest over 88 years (since the last interest rate payment was in January 1741 for Q4, 1740). In 1830, the accrued interest on the principal amount was 73 times the unpaid principal amount (assuming the lower of the two interest rates, i.e. 5%). Understandably, bondholders reminded the debtors in their petitions of the explicit waiver of the *Lex Anastasiana* in the documentations, while Prussia must have feared that recognizing their liability could be very costly and go far beyond the 3 million Guilders outstanding principal. With the caveat that creditor legal remedies against sovereigns have always been difficult to utilize, investors in these bonds had a high degree of protection.

Interest payments and redemptions were made according to schedule until January 1741 (covering the end of 1740) implying that for the first two bonds (totaling 3 million guilders), 60% of the principal was redeemed, while for the third bond, redemptions had not started. This means that in 1741, when redemptions ended, $0.4 \cdot 3 + 3.5 = 4.8$ million should have remained outstanding, which is indeed the number mentioned in all documents (e.g. Klueber 1827, p. 17).

Amsterdam was the dominant market for sovereign issuances in the 18th century (Riley 1980). Austria was an important early foreign borrower and had issued its first debt in Amsterdam in 1695 through

Deutz & Co (Id. p. 84)¹². Riley (Id. p. 87) notes that “Austrian finance retained a hand-to-mouth quality” through the period 1695–1740, whereby foreign credit would not have played a dominant role overall. In six issues between 1695 and 1704, Austria borrowed a total of 7.275 million Guilders, and in total 13 million in the 1730s, which would have only accounted for a small share of overall spending (Id. p. 88).

Mortgaging revenues to provide extra protection to Dutch investors was common. Bérenger (2019) reports about Austrian debt secured with copper revenue of Hungary (1,050,000 guilders in 1700, 2 million in 1703) and mercury revenue of Idria/Slovenia (625,000 Dutch guilders in 1704). In fact, Riley (1980, p. 88) goes so far as to say that Austria had so extensively mortgaged revenues from Silesia that losing that province was not much of a loss:

Austrian mortgage practices had shifted from commodity anticipations (mercury and copper) to a combination of mineral and revenue anticipations. Revenues from Silesia were used until 1737 when, having mortgaged them to exhaustion, the empire offered income from Bohemia. When Prussia seized Silesia in the War of the Austrian Succession, Austria proclaimed that its liabilities had changed hands with the territory. But Prussia refused for more than fifty years to acknowledge any logic in that stance, and payments were suspended on those loans. Because imperial income from Silesia had been mortgaged so extensively, the loss of that province was, in the short run, less damaging than has sometimes been supposed. Austria abrogated part of its foreign debt and sacrificed revenues that would, at least in the immediate future, have been claimed by the Dutch in any case.

The fact that the loss of the province would be “less damaging” for Austria because of the “mortgaging to exhaustion” also meant that it was less valuable for Prussia to have taken over Silesia.

3.2 War, Suspension of Payments, and the Peace of Berlin (1741-1742)

The first Silesian war was a war of aggression by Prussia under the young Frederick the Great (1712–1786) to secure its status as European power by adding to its territory with the relatively well developed and densely populated Silesia (e.g. Schoeps 1966, pp. 62–68; Oster 2010, pp. 98–105; Clark 2006). Frederick admitted the opportunistic nature of the attack and accepted that it would earn him the titles “prince without loyalty and faith” (King George II of England) and “evil man of Berlin” (Maria Theresia). The British Historian G. P. Gooch (1947) noted that the “rape of Silesia ranks with the partition of Poland among the sensational crimes of modern history.” The official justifications of the attack were flimsy succession claims of the Hohenzollern dynasty. The death of Charles VI in October 1740 was seen by Frederick as an occasion to affirm himself as ambitious, history-making new Prussian King. On 6 December he declared to the Austrian ambassador in Berlin his request to obtain parts of Silesia. Queen Maria Theresia officially rejected this claim on December 17. Frederick though, did not wait for her

¹² Brandenburg/Prussia had also accessed the Dutch market in 1616 (Riley 1980, p. 85).

response, and invaded Silesia on December 13. Ill-prepared, Austrian defense was poor and within weeks, Frederick had conquered most of Silesia. The Peace of Berlin between Austria and Prussia ended this first Silesian war on 28 July 1742 and gave to Prussia all of Silesia except the principalities of Troppau and Jägersdorf.

At the time of the Peace of Berlin, of the original 6.5 million guilders, 4.8 million remained outstanding (according to Actenstücke 1830, p. 5). Article 9 of the Peace of Berlin – the precise wording of which became the core of Prussia’s argumentation for almost a century – assigned responsibility for the Dutch and English debts as follows (see Annex A.1):

Prussia assumes payment of the sums of money mortgaged to English and Dutch subjects on Silesia, but as far as the latter are concerned, with the reservation that Prussia will assume, in liquidation and compensation, what the Republic of Holland owes it in respect of these debts. Likewise, Her Majesty the Queen of Hungary and Bohemia (Austria) assumes the sums of money mortgaged to Brabant on Silesia.

In later treaties between Prussia and Silesia during the 18th century, the content of Article 9 of the Peace of Berlin of 1742 was reconfirmed (Dresdner Peace of 1745; Hubertsburger Peace of 1763, Teschener Peace of 1779, See Klueber 1827, p. 21). Prussia then relied on the compensation clause for the next 88 years to build a strategy of delay and, ultimately, repudiation of the debt. In the months following the Peace of Berlin, Dutch officials began inquiring in Berlin about the renewed servicing of the bonds. These early contacts elicited a reply from Frederick II that established Prussia’s core argument for non-payment. A letter of the King to its foreign minister Count Podewils (Annex A.2, reproduced in Preussen 1819b), dated 9 October 1742, asserted that Prussia possessed “considerable and just claims” against the Republic of Holland, and these claims offset any amounts owed to Dutch bondholders, and Prussia’s promise to pay had always been conditional on Dutch neutrality—allegedly violated by clandestine Dutch support for Vienna in 1741. Importantly, Frederick argued that his assumption of the Silesian debts derived not from any obligation to enforce the mortgages that bound the province of Silesia, but solely from the Peace of Berlin, and that without the treaty “no claim whatsoever could be asserted” against him. The letter offered no evidence of the supposed Dutch arrears. Archival research summarized in Actenstücke (1830, Document 1) and in later historiography indicates that these “claims” were largely dormant seventeenth-century subsidy disputes, irrelevant to Silesia and never advanced in specific form nor made public, probably due to their legal weakness.

3.3 Diplomatic Attempts (1749-1785)

Like the British government, the Dutch government also made significant efforts to get its citizen holders of the Silesian loans repaid. The Dutch government raised the matter of resuming repayments as early as 1749, requesting restitution of the arrears and pressing Prussia on its obligations under Article 9.

From the Prussian side, no payments were forthcoming. In parallel, British-Prussian negotiations for the English loans moved forward and, as we discussed earlier, culminated in settlement and substantial payment in 1756. Prussia argued, however, that the Dutch matter was different - it did not have to pay because its counterclaims against Holland had not yet been settled. In the Prussian rejoinder to Austrian accusations in 1756, Berlin stated that “the debt to English bondholders has been repaid” while the Dutch portion remained open because “the sums owed by Holland to Prussia” had not been liquidated.

Seeing Prussia's continued reluctance to pay, the Dutch appealed to Austria, arguing that Prussia assuming responsibility for the debts did not absolve Austria. As the original issuer, Austria remained liable, the bondholders argued (Klueber 1827, pp. 25-27). *Deutscher Bund* (1828, p. 349) refers to initiatives of the Dutch government towards Prussia and Austria in 1749, 1753, 1774, 1781 and 1785.

The Dutch position rested on two propositions, namely that a peace treaty between sovereigns cannot extinguish the rights of private creditors who were not party to the agreement and second, that at most, the Treaty of Berlin gave Austria a claim for reimbursement from Prussia. Austria never answered the legal arguments, instead responding diplomatically by promising to “exert influence” on Prussia. A proposed Austro-Dutch commission in the 1785 Treaty of Fontainebleau never materialized.

3.4 A Quarter Century of Silence (1785–1810)

Through the late 18th century, bondholders continued submitting requests to Prussia (Klueber 1827, p. 28), but without success. During this period, the Dutch government did little to help the bondholders. The volatile decline of the Dutch Republic after 1780 and its incorporation into the Napoleonic system after 1795 likely further diverted attention. According to *Deutscher Bund* (1828, p. 349), there is no evidence that any public initiatives were taken on the matter during the period 1785–1810.

In addition, after the Napoleonic wars, many European nations delayed payments on their foreign, Amsterdam-issued debt. Holders of the Silesian bonds, we suspect, had particularly low hopes to recover their claims at that time of generalized sovereign financial distress. Prussia had its worst moments in 1806 and 1807: following the defeat on 14 October 1806 in the battle of Jena and Auerstedt against France. Napoleon entered Berlin on 27 October 1806. The Prussian Government fled to Königsberg and in the Peace of Tilsit, Prussia had to accept the loss of large parts of its territory with around one half of its population, to make indemnity payments to France of 120 million Francs, and to cover French troop occupation costs which were likely even higher (a French Franc had a fine silver content of 4.5 gram in 1807, a Dutch guilder 9.6 grams). The Prussian financial situation had never been as precarious and the very existence of Prussia was endangered during the years between 1806 and 1813 (Schoeps 1966, 111–114, Prietzel 2020).

3.5 The 1810 Prussian-Dutch Loan Operation

Ironically, the terrible situation of Prussia brought good news for the Silesian bondholders. In its desperation, Prussia saw no alternative but to turn to the Amsterdam markets to borrow again. Here, in 1810, the Dutch government reminded Prussia of its outstanding Silesian debt and granted permission to the issuance of a loan only on the condition that old Silesian bonds be accepted as partial payment for the new Prussian issue. Krug (1864, Chapter 6) summarizes the episode:

At a time when the Prussian state was under great pressure due to the obligations it had assumed towards France in order to finally secure the evacuation of its remaining provinces by French troops, and when the country's revenues were just as insufficient as domestic loans to raise the necessary sums of money by the promised deadlines, the government was forced to seek a loan in Holland, which had previously been inclined to grant Prussian loans. However, since the state's situation had changed greatly to its disadvantage compared with its former political and economic circumstances, and since Holland's political situation had also become precarious, the conditions under which money was to be obtained there had to be harsher than those of the loans previously made there. Finally, in 1809, an agreement was reached with the trading house Serrurier and Ueberfeld that it would accept a certain proportion of the old Silesian-Dutch debt, which had not been recognized as liquid and had not been paid by the Prussian government, in this new loan. These securities had fallen to a very low value in Holland, so that around 1800 they were sold at 10 percent of their face value, as there were increasing doubts about their actual validity and payment.

The loan plan, published on 1 March 1810, reproduced in Annex A.3 (excerpted from Klueber 1827, Appendix IV), stipulated a new loan of 32 million guilders, to be subscribed at least with $\frac{5}{8}$ in cash and with maximum $\frac{3}{8}$ in old Silesian bonds, with Silesian bonds accepted at par plus 150% of face value as accrued interest (far less than the theoretically accrued amount), thus valuing 4.8 million of outstanding capital at 12 million, exactly matching the $\frac{3}{8}$ proportion of the 32 million total new issue. As Krug (1864, Chapter 6) and Klueber (1827) observe, the calibration can be interpreted in the sense that Prussia accepted under Dutch pressure that it would redeem once and for all the entire stock of Silesian bonds through this mechanism. However, bids fell short of the intended amount. According to Krug (1864, Chapter 6):

Despite the seemingly favorable conditions, this loan proceeded very slowly, and the French ambassador in Amsterdam endeavored to secure more credit for the Prussian government there by announcing in the Dutch newspapers that the rumors circulating in Holland about the future of Prussia were deterring many local capitalists from lending money to the Prussian loan; However, he had been authorized by his emperor to contradict these reports and to assure that the emperor had a sincere interest in the preservation and restoration of Prussia. But even this announcement had little effect, and the bond raised only 4,965,000 thalers in total, so that only a portion of the old Silesian bonds could be redeemed.

Contrary to Krug (1864), Klueber (1827) claims that "only 13 million out of the planned 32 million were placed in the market". Since the fine silver content of a Taler in 1810 was 16.7 grams, while a Dutch guilder had 9.6 grams, the 4.956 million Taler mentioned by Krug would correspond to around

7.7 guilders. Also *Deutscher Bund* (1828, p. 351) mentions the 13 million guilders, and it therefore seems relatively likely that Krug mentions a wrong number. If the bond raised 13 million guilders in total, indeed only a fraction of Silesian bonds was redeemed - a theoretical maximum of $13 * (3/8) * (1/2.5) = 1.95$ million guilders (*Actenstücke* 1830, p. 5 mention "around 2 million guilder). If 4.8 million Guilders were still outstanding beforehand (*Id.*), this would imply that around 3 million guilders would have remained outstanding after 1810. It seems plausible that most of the bids received for the new Prussian bond of 1810 contained old Silesian bonds at the ratio of 3/8: the bond was undersubscribed, meaning that it was not particularly attractive, even if one would submit 3/8 of old Silesian bonds, implying that it was certainly unattractive if one would have paid in cash only. Silesian bonds were still trading far below par (see below) implying that there was little point not using them to the maximum in the auction of new Prussian bonds.

Prussia, for its part, thought it important to make clear that its willingness to take old bonds as payment for new ones in 1810 did not imply any fresh recognition of liability. In Annex A.4, State Chancellor Hardenberg's letter (15 August 1818) states that the 1810 acceptance of old bonds was "solely for the purpose of facilitating the new loan" and "in no way in recognition of any liability." We see then that interest on the new Prussian Amsterdam-issued bonds was paid regularly until July 1813 (nothing was paid on the Silesian loans, consistent with the refusal to acknowledge liability on them). In 1813, there was a standstill in interest payments on all Prussian debts. However, the arrears were already paid in the first half of 1814 and from there on the interest was paid regularly (Krug 1864).¹³

3.6 Renewed Bondholder Action (1818-1830)

Probably encouraged by the 1810 operation, the resurrection of Prussia after the defeats of Napoleon in 1813/1815, and the beginning of its gradual financial normalization, holders of the Silesian bonds, despite having had their bonds in default for more than a half century, revived their efforts to secure their claim in 1818.

3.6.1 First Petition (1818/1819)

Sovereign immunity meant that directly bringing suit against Prussia for the unpaid debts was not an option. Bondholders, therefore, innovated and asserting a conflict of responsibility between states. This

¹³ Krug (1864), reports that as early as 1812, the new Prussian Amsterdam-issued bonds were exchanged for domain mortgage bonds, which had been issued for this purpose with an interest rate of 5 percent and were originally intended to serve as collateral. The exchange rate for the Dutch guilder was set at 150 thalers for 250 guilders, and each holder of such a bond was free to exchange it for a mortgage bond at this rate, so that for a bond of 1,000 Dutch guilders, he received a mortgage bond worth 600 thalers. From 1818 onwards, the name of the (new) Dutch bonds disappeared from the Prussian stock exchange lists and was replaced by the price of the various types of 5 percent domain mortgage bonds.

claim was one, they argued, the newly created (1815) German Confederacy, an alliance of countries that included among its members Austria and Prussia, was obliged to hear. The Confederation, importantly for the Silesian bondholders, had binding authority over its members.

On December 24, 1818, bondholders petitioned the German Federal Assembly in Frankfurt. The session date was April 22, 1819. (see Annex A.5). The bondholders asked for mediation between Austria and Prussia to determine which country was responsible for repaying their debt.

The Federal Assembly took the petition. The protocol restates the bondholders' four main arguments: (i) that Austria as well as Prussia are liable for the whole amount, because the indivisibility of the pledged assets gives rise to joint and several liability; (ii) that although Prussia has assumed the debt in place of Austria in the Peace of Berlin of 1742, this does not mean that creditors, as third parties who did not agree to the transfer of liabilities, should suffer disadvantage from this agreement; (iii) that the holders retain a direct claim against Austria as the original debtor; (iv) that a claim against Prussia is confirmed by the debt operation of the year 1810 in which Prussia accepted a scheme under which the old Silesian bonds would have been fully redeemed.

To resolve the matter, the Assembly turned to an expert. The expert's opinion made four arguments, all pointing towards a dismissal of the bondholder petition on the grounds that there was no jurisdiction (pp. 172–174):

- There was no dispute between Prussia and Austria for the Assembly to resolve. Prussia had taken on the debts and Austria did not dispute Prussia's rights to settle the debts by setting off claims it had against the Republic of Holland. Whether the bondholders needed to accept this deal between the countries was not for the Federal Assembly to decide. Petitioners needed to take that matter up with the Dutch government.
- The question of whether Austria or Prussia was responsible for satisfying the Silesian creditors was non justiciable for the German Assembly because it was based on a state treaty concluded before the establishment of the German Confederation, and at a time when Silesia was not part of Germany.
- The claimants were foreigners and not entitled to address the German Federal Assembly. And the fact that the nine claimants were German-born (albeit living in Amsterdam) did not change this (implicitly, this point seems to insinuate that because the petition comes from foreign residents, it may not have been legitimate to address the German Federal Assembly).
- It was not clear what rights those who had purchased their bonds on the secondary market "for only a few percent" had and, in any event, it was "not be for the Federal Assembly to judge this."

In sum, the expert opinion proposed “that the submitted complaint be dismissed as unsuitable for involvement or intervention by the Federal Diet.” The recommendation was unanimously endorsed by the Federal Assembly.

For its part, the Prussian government also tried to crush any hopes of repayment the bondholders might have had. In the *Allgemeine Preussische Staatszeitung* (Preussen 1819a, No. 34; Annex A.6), Prussia asserted that its counterclaims against Holland “far exceeded” the Dutch loan obligations, that the reservation in Article 9 remained fully operative, and that Dutch creditors should therefore direct their ire toward their own government. In the same year, Preussen (1819c) also denied that the English settlement of 1756 implied any obligation toward Dutch holders and mocked the idea that Prussia’s acceptance of old bonds in 1810 could be interpreted as acknowledgment of legal debt (“Prussia might just as well have accepted French assignats”).

3.6.2 Second Petition (1828)

In 1828, the bondholders tried again. The petition was supported this time by added documentation (Klueber 1827) and relied on the new Article 30 (“Disputed Obligation Between Multiple Federal States”) of the Vienna Final Accord of 15 May 1820. In the subsequent 1830 petition (see below), bondholders would also refer to the new Article 29 (denial of justice). The two provisions are reproduced below:

Article 29: If a case of denial of justice occurs in a federal state and sufficient assistance cannot be obtained through legal channels, it shall be incumbent upon the Federal Assembly to accept complaints about denied or obstructed justice, which shall be judged in accordance with the constitution and existing laws of each country, and to effect judicial assistance from the federal government that gave rise to the complaint.

Article 30: If claims by private individuals cannot be satisfied because the obligation to satisfy them is doubtful or disputed between several federal members, the Federal Assembly shall, at the request of the parties involved, first attempt to reach an amicable settlement, but if this attempt is unsuccessful and the federal members concerned fail to agree on a compromise within a specified period, the legal decision on the disputed preliminary question shall be referred to an arbitration body.

Here are the primary arguments that the bondholders presented, based on Article 30 (Deutscher Bund, 1828; reproduced as Annex A.7):

- There was no question as to the validity of the debt claims. Austria was initially responsible and then Prussia had assumed responsibility through various treaties and the Amsterdam debt operation of 1810.
- The entire debt was guaranteed by the revenues from the Silesian estates.
- The treaties allocating responsibility for payment to Prussia were not binding on the creditors who had not been party to those agreements.

- The right of set off that Prussia had against the Dutch government was not a valid defense against bondholder claims (especially given that some bondholders were not even Dutch).
- The purpose of the petition was to obtain a determination as to which government, and in what proportion, was responsible to pay still-outstanding debts from the Silesian loans.
- This question was under the jurisdiction of the Federal Assembly because the debt was secured upon Silesia (a federal territory).
- The parties involved (Prussia and Austria) were in dispute over the payment of these Silesian state debts.
- This dispute over the party liable for payment does not take place between Austria and Prussia as rulers of German federal states; and since the entire debt claim is a state debt of Silesia, the provisions of the German Confederation applied.
- The declared purpose of the Federation was to provide legal certainty within Germany and to ensure no one be left without rights and that every kind of legal deprivation be eliminated.
- The holders of the Silesian bonds whose claims had been left unaddressed because of uncertainty as to which of the federation members was responsible to pay was, therefore, a matter squarely for the Federal Diet.¹⁴

Despite Article 30, the claims got rejected again (Deutscher Bund 1828). Prussia and Austria stuck to their original positions; and the Assembly decided that the conditions for intervening were not met. The Assembly concluded:

Since, according to the resolution of the Prussian Ministry of 21 May 1826 submitted to the Federal Diet by the Prussian legation, Prussia does not claim any payment obligation on the part of Austria for the treasury or state debts referred to in the present complaint, the complainants are hereby rejected with their request-based on Article 30 of the Final Act of Vienna—for intervention by the Federal Diet.

3.6.3 Memorial submitted to Prussian government in October 1828

The bondholders submitted a further petition to the Prussian government, which also was part of the basis for the 1828 petition to the German Federal Assembly. This one relied on Article 29 of the Vienna Final Accord - denial of Justice by Prussia. Drawing from the bondholder M.J. Herz on October 19, 1828 (Annex A.8; from Actenstücke 1830), we get the following arguments:

- The debts were private-law mortgage obligations.
- The Peace of Berlin could not impair creditor rights.
- The general mortgage over all Silesian revenues bound any sovereign owning Silesian territory.
- Austria remained liable as the original debtor.

¹⁴ For details, see Protocol of the Assembly held on 27 July 1828.

- Prussia was liable as successor to most of the mortgaged territory.
- That Prussian counterclaims against Holland were not pursued in any treaty for eighty years, that their exact nature was also never communicated officially to the Dutch authorities, nor were bondholders ever informed about any such Prussian initiative.
- Prussia had repeatedly engaged in financial dealings with the Netherlands (notably in 1822-23 regarding the Luxembourg garrison) without invoking any right of set-off.

The bondholder plea to the Assembly concluded with the following question:

Therefore, with the deepest trust and reverence, they humbly request His Royal Majesty's most gracious decision:

Whether they would graciously deign to immediately, after hearing the opinion of the Royal State Ministry, in particular that of the Minister of Justice, order the payment of the capital and interest arrears from the Silesian partial bonds in the possession of the claimants,

or

To refer this private legal matter, which is based on simple questions of law, to the courts for proper hearing and decision, in order to allow the law to take its course in any disputes that may arise there.

Prussia rejected all the bondholder claims (see Annex A-9). The key argument was that they had a right set-off against Holland. Prussia's rejoinder said:

The Prussian crown did not fail to negotiate with the Dutch Republic regarding the claims, ... However, since the Dutch side was unwilling to concede payment of the Prussian claims, the Prussian side had no choice but to uphold the provision contained in the peace treaty in its original form.

One element in the Prussian response though formed the basis for the bondholders' last and final submission to the Federal Assembly. That was that Prussia had denied justice to the plaintiff by asserting:

Any legal action [the bondholders] may take is inadmissible because there is no dispute to be decided ... the courts cannot rise above the law in internal matters ... they have no authority to challenge the validity of a political provision agreed upon by the sovereign, who is the source of legislation, in foreign affairs.

3.6.4 Third and Final Petition (1830)

In 1830, the bondholders approached again, referring to both Articles 29 (Denial of Justice) and 30 (Disputed Obligations Between Multiple Federal States) of the Vienna Final Act of 1820 (see Annex A-10). The bondholders requested a statement from the Imperial Austrian Government regarding its position on the Silesian debt, subject to the bondholders' rights against the said government. They moreover lodged a complaint against the Prussian government for denial of justice and requested the mediation of the Federal Assembly, based on Article 29 of the Vienna Final Act, so that legal proceedings could be initiated.

The Federal Assembly rejected the petition again. Regarding the first point, the legal opinion (Deutscher Bund 1830) concluded that

since there is no dispute between Austria and Prussia regarding the payment obligation, as is well known, and since the complainants have not even attempted to accuse Austria of denying justice, there is no federal legal basis that would entitle the Federal Assembly to request Austria to make a statement on its relationship to the debt claim in question, and the Federal Assembly will therefore only be able to reject the complainants' request for such a statement.

Regarding the second claim, the Assembly explained that

the Royal Prussian Government... does not consider the plaintiffs' claim to be one that can be pursued by way of litigation against the state treasury, and that therefore there is no denial of justice within the meaning of the 29th article of the Vienna Final Accord.

Thus ended a nearly century-long struggle by bondholders to get paid on what, at first, appeared to be highly secured debt obligations issued by one sovereign that were and later assumed by another major European power. No further initiatives by bondholders or the Dutch government are reported after 1830. Prussia relied on the vague and dubious compensation clause, Austria pretended to have no longer have any liabilities on the theory that Prussia had assumed the Dutch debt in 1742, and the Silesian Estates and the pledge of all revenues of Silesia were ignored.

3.7 Prices and Repudiation Risk (1798-1824)

We now review what bond prices tell us about the perceived probability of repayment and how it fluctuated over time with the various efforts of bondholders to recover their funds. We also examine the extent to which Prussia was able to detach investors' perceptions of the repudiation of Silesian bonds from Prussia's own credit standing. As shown by Cruces and Trebesch (2013, p. 85), normally "restructurings involving higher haircuts are associated with significantly higher subsequent bond yield spreads and longer periods of capital market exclusion."

For around a quarter of a century, from 1798 to 1824, price data for the 1734–37 Amsterdam-issued Silesian bonds is available from the Amsterdam *Prijs-courant der effecten*¹⁵. The first quotation of the

¹⁵ The *Prijs-courant* is electronically available here: <https://www.prijscouranten-capitalamsterdam.nl/cgi-bin/page?register=1&pgid=1>. No pricing data for foreign bonds issued in Amsterdam is generally available for before 1796. Van Dillen (1931) provides security prices for the 18th century but not covering any foreign sovereign bonds. He explains (1931, p. 2) that pricing information covering earlier periods only covered prices of securities for which futures trading existed and that little pre-1796 information is available regarding the price movements of other securities (see also Riley, 1980, 38–39). Only when the *Prijs-courant der effecten* appeared as of 2 August 1796 a broad range of prices of actively traded securities became available, including government bonds. De Jong, Jonker and Johan Poukens (2022, p. 381) explain that "on 2 August 1796, following a reorganization of the city printing office and the commodity price current, the printer Nicolaas Cotray launched his *Prijs-Courant der effecten*, an oblong leaflet with Amsterdam securities prices on the front and on the back a handful of prices from London and New York, Amsterdam interest rates, exchange rates, coin prices and

Silesian bonds in the Prijs–Courant data set is in March 1798 and the last one in March 1824, although, no Prijs–Courant is available for the period May 1810 to October 1813 as French occupation authorities likely suppressed normal capital market activities during this period in Amsterdam¹⁶. The Prijs–Courant lists the Silesian bonds between March and August 1798 under the country headline of “Silesia”, between September 1798 and December 1809 under “De Keyzer” (“the emperor”, together with all other Austrian securities), between January 1810 and April 1810 as “Oostenryk” (Austria, again with all other Austrian securities), and as of 1813 under “Pruyssen” (Prussia).

Figure 1 shows beginning–of–month Silesian bond price data from the Amsterdam Prijs–Courant for the period for which data is available. In addition, the figure shows the monthly price of a 4% Preussische Seehandlung bond from 1807. Founded in 1772, the Seehandlung was a Prussian State bank used by the Prussian State as debt issuance agent. This bond is identified by the Global Financial Database (GFD) as the German benchmark bond issuer for the period from 1807 to 1853¹⁷. The GFD contains monthly yields, which we transformed back into prices by using the simple formula for a perpetual 4% bond (“Price = 4% / Yield”). The relevance of the Seehandlung, and why its debt is suitable to be used as German benchmark bond issuer for the period covered in Figure 1, is explained further in Murau (2023). We use the monthly GFD data of the 4% Preussische Seehandlung bond as a benchmark to understand to what extent the general Prussian credit may have impacted on the price developments of the Silesian bonds, and vice versa. Both bonds were subject to a common ultimate default risk of the Prussian state, but the Silesian bond was subject to a high repudiation risk in addition. Both were also impacted by general market factors (e.g. the European silver and bond market factors of the time).¹⁸ Unsurprisingly, Seehandlung bond prices experienced some large discounts during Prussia’s struggles during 1807–1813 with market prices reaching levels close to 30% of nominal value in 1811/1812. Between 1807 and 1812, the average price of the Seehandlung bond was below 50%, while it recovered to 70–

advertisements. Appearing twice a week, the paper could be ordered from booksellers all over the country and was probably financed, like the commodity price current, by the city council. Cotray’s Prijs–Courant listed a broad selection of securities at the exchange without specifying criteria or how prices had been collected. Each quote consisted of a pair of prices, the lower price separated from the higher price by the letter à, accurate to 0.25 per cent. The difference between the lower and the higher price was always at least 0.5% per cent.”. Krug (1864, pp. 140–142) provides quotes from the Frankfurt stock exchange for the Amsterdam–issued Silesian bonds from 29 April 1819 to end December 1824. The quotes are similar to the ones in Amsterdam. For example, the quotation for 1 March 1824 in Amsterdam is 17.00%–18:00%, while the ask price is 19% in Frankfurt (no bid price provided). For the rest of 1824 (when the bonds are no longer priced in Amsterdam), the prices remain at 19–20% in Frankfurt.

¹⁶ One finds single editions of the Prijs–courant in other digitalized archives for additional days, such as for 1 May 1793 (price: 10%) or for 6 July 1813 (10.5 - 11%) and it can’t be excluded that the price sheets for the period of 1810–1813 actually existed or still exist in some archive.

¹⁷ <https://www.lib.sfu.ca/help/research-assistance/subject/business/buec-buzz/gfdatabase-announcement-2021>.

¹⁸ Wandschneider (2013) compares prices of Prussian covered bonds with the ones of another Prussian sovereign bonds, relying on an annual time series of minimum and maximum prices.

80% in the period 1813 to 1822 and afterwards reached 90%. By contrast, during 1798–1809, the Silesian bonds traded mostly around 10%. There was a period closer to 20% around 1804, with a low of 5% in 1808. In 1810, when investors had the opportunity to pay for new Prussian bonds with the Silesian bonds (which, in the context of the offer, were worth an additional 150% of their nominal value, so as to compensate for accrued interest), prices spiked for a short period to above 35%.

In principle, news increasing the perceived probability of a repayment of the Silesian loans could have had two potential effects on Prussian bonds going in opposite directions:

- Reputation effect: repudiation of the Silesian loans would shed an unfavourable light on Prussia as debtor, i.e. it would signal its general disrespect for fulfilling promises (Cruces and Trebesch, 2013).
- Debt level effect: repudiation of Silesian loans would save money for Prussia and thereby would be positive for the Prussian total debt and its ability to repay its core debt.

While the reputation effect supports a positive correlation between Silesian and Seehandlung bonds, the debt level effect supports a negative one. To unpack what happened in terms of these two effects, we zoom into three episodes within the period 1798–1824 and analyze for each the co-movements of Silesian and Prussian Seehandlung bond prices.

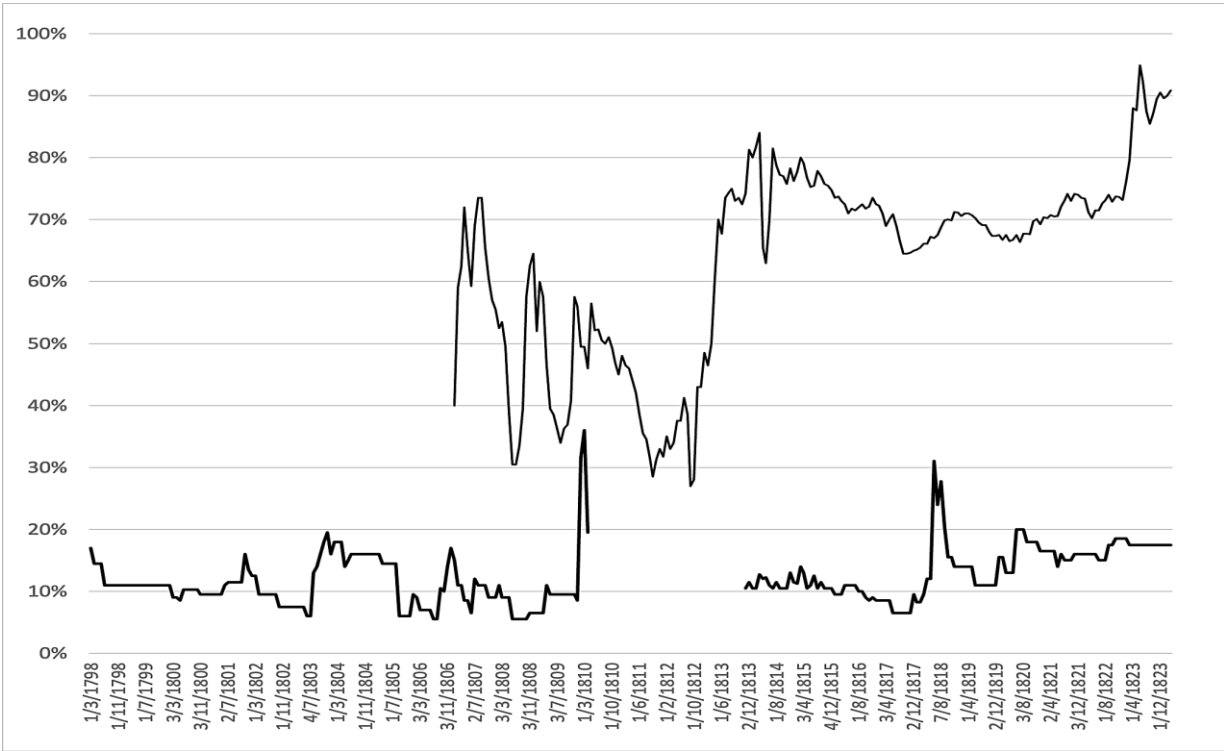


Figure 1: Monthly Silesian bond prices according to *Amsterdam Prijs-Courant*, March 1798 to March 1824 (thick line); Seehandlung 4 % bond as proxy for general Prussian government bond yield (thin line). Source: Global Financial Database; yields transformed into prices.

1810: Silesian Bonds as Payment for New Prussian Issuance

After decades in default, Silesian bonds gained temporary value when Prussia allowed holders to exchange them as partial payment for new bonds to regain access to the Amsterdam market. For two weeks, Silesian bond prices surged above 35%, but remained heavily discounted compared to Prussian bonds, which traded near 60%. Factoring in all accrued interest, the true discount on Silesian bonds was even greater. Importantly, Figure 1 shows no meaningful increase (or decrease) in the value of the Prussian debts when the offer is made to pay something on the Silesian loans. First, during the spring 1810 episode in which Silesian bonds could be used to pay new Prussian bonds, prices exceeded 35% only for two weeks, which indicates that this 1810 auction of Prussian government bonds may have had limited credibility from the beginning. The recognition of accrued interest (equal to 150% of the nominal value) could otherwise have implied Silesian prices even above 100%. The auction for new Prussian bonds took place when Prussia's credit rating was particularly poor. This likely made investors hesitant to invest additional funds into Prussia. Expectations of an unsuccessful auction may also have prevented Silesian bond prices from rising beforehand. According to the data of Wandschneider (2013) and the Seehandlung bond prices shown in Figure 1, Prussian bonds would have traded between 40% and 50% in 1810, which means that the fresh Prussian bonds would have required issuance at a very high yield, which in the eyes of the investors would have been incompatible with Prussian debt sustainability. The printed plan of the new bond issuance reproduced in Annex A3 is dated 1 March. While no exact dates regarding the planning are available, work on the operation must have started much earlier (Actenstücke 1830, p. 15, refer to planning in 1809). Rumors about the auction were likely going around in markets and explain the movement of prices in January and February. In March 1810, prices seem to fall again - maybe when it got clear that the auction would not be going well and would be undersubscribed.

1818: First Bondholder Petition

We next see a spike in the Silesian bond prices when the first petition to the German federal assembly is made on 24 December 1818 (Klueber 1827, p. 34). Prices peak at close to 30% in August 1818 but then decline towards 20%. When on 22 April 1819, the Federal Assembly rejected the proposal, prices were already back to around 14% and soon fell further to 12%. This could suggest that the substance of the negative opinion being prepared had leaked before the assembly took place. The reason for the decline starting after August 1818 was likely the statement of Chancellor von Hardenberg of 15 August 1818 in which he strongly dismisses the fresh initiative of bondholders (see Annex A.4). Once more, we see no meaningful co movement with the prices of Prussian bonds. The market did not seem to relate the likelihood of payment on the Silesian bonds to that on the Prussian bonds, even though the obligor was the same. We do not go into the question of whether there were any co movements with the prices of

Austrian sovereign debt in 1818, since no one at the time seemed to give Austrian liability much consideration.

As a formal matter, two major European issuers were in default on their obligations on the Silesian bonds. But the market did not seem to see the non-payment on these bonds as impacting the prospects for repayment on the other sovereign bonds of these same issuers. There were two contemporary structural upwards shifts of Prussian bond prices; one in 1813 associated with the Napoleonic defeats, and one in the early 1820s associated with the success of the Edict on State Finances of 17 January 1820 (Hardenbergsches Staatsschuldenedikt; e.g. Schoeps 1966, pp. 115–187 and Murau 2023, pp. 12–13). Neither was accompanied by new information as to Silesian bonds, and no significant changes of Silesian bond price occur around these episodes. Silesian bondholders did not seem to believe that the ability of the Prussian state to repay its debt generally would also improve its willingness to repay the Silesian loans. Therefore, the probability of the repayment of the Silesian loans was perceived as being dominated by the *willingness* of Prussia to pay, and not its *ability*.

In sum, none of the episodes of significant changes in bond prices – either Silesian or Seehandlung – demonstrate obvious co-movement. The perceived likelihood of repayment likely always remained so low that the debt level effect remained small, while Prussia had already long time ago succeeded in minimizing the reputation effect of repudiation. Therefore, both the reputation and the debt level effects were small (and perhaps had neutralizing effects on each other). Changes in bond prices were instead dominated by other factors.

4. Conclusions

As we've pulled the thread on the Silesian bonds story, it slowly emerged that there was an immense amount of sovereign debt legal and financial history buried in it. Undoubtedly, there are aspects of the story that remain to be investigated. For now, here are the takeaways we discerned from the saga, organized in categories.

4.1 International Law

State Succession: Through the saga of the Silesian bonds, we find clues as to the 18th century law on state succession to sovereign debts. First, we see that investors require Charles to promise in the bonds that not only will his government be obliged to pay the debts, but so will successor governments. This is interesting to the extent it suggests that investors were concerned that successor governments might

try to disclaim a prior regime's debts and they wanted a contractual commitment.¹⁹ In addition, the Silesian bond saga provides us with Vattel's articulation of the principle that sovereign debts run with the land. Invaders – in our case, Frederick of Prussia – take on the debts that come attached to the territory seized.²⁰

War Debts: We also learn from what is not in the story. At no point does Frederick raise the defense of "war debts". That is, he does not argue that he does not have to pay the portions of the debts that were used for military expenditures that helped resist his invasion (as some surely were). We know that this war debts defense or exception to the law of state succession shows up in 19th century international law treatises. (Buchheit, Gulati and Thompson 2007; King 2016). But, while Frederick comes up with a litany of excuses to not pay the debt, the war debts defense is absent. Maybe it did not exist then?

Reprisals: In the 18th century, the Silesian debt saga was famous for what it said about the law and practice on reprisals as set offs. (Wampach 2020). And the principle that can be drawn from Vattel (who in turn was drawing from the Law Officers Report) is that debts of the sovereign owed to private lenders (investments in the public faith) should be inviolate.²¹ What Vattel said was then the subject of much discussion, including, Alexander Hamilton's writing, and US Supreme Court and Privy Council opinions.²² But all that is moot today. The tradability of bonds means that sovereigns cannot meaningfully impose haircuts based on the national identities of the holders (plus, in the modern era, sovereigns almost never know who the real owners of their bonds are).²³

Sources of Law: In addition to these early articulations of legal principles, we get a window into how some customary international law got created in the eighteenth century. State practice, then, as now, was a source of customary law. That is, the actions taken by states because they believed them to be legally dictated. But, in the Silesian bonds saga, Vattel derives a legal principle out Britain's government commission legal brief, which does not get put into practice. The actions taken by Frederick of Prussia, where he imposed a haircut on bondholder claims on the grounds that Prussian merchants had lost assets to British privateers, were the opposite of the legal doctrine asserted by Vattel in his treatise. Yet, out of non-practice, law got created.

¹⁹ Today, sovereign bonds do not contain such promises - it is implicit as a function of the background law of state succession.

²⁰ As noted earlier, one gets a legal principle here only if one ignores the fact that Frederick agreed to the liability in a negotiated treaty rather than out of legal obligation.

²¹ The Law Officers Report cites to prior practice of the French, Spanish and English where they do not engage in reprisals against private lenders to those sovereigns. (Satow 1915, p. 97). That said, the Law Officers report also is clear that, in this case, liability for Prussia arises out of it having agreed, by treaty, to step into the shoes of the Austrian emperor, subject to all of the conditions the emperor had agreed to - including that he would not raise defenses such as reprisals. (Satow 1915, pp. 97-99).

²² *Brown v. U.S.*, 12 U.S. 110, 141-143 (1814); *The Zamora* [Privy Council] 1916 2 A.C. 77.

²³ This point was raised even back in 1753 in the Law Officers Report (Satow 1915, p. 93).

International Law as a Default: One conception of customary international law today is that it constitutes mandatory law. That is, once state practice has crystallized into law, it cannot be deviated from (Bradley and Gulati 2010). We see in the contracts for the Silesian bonds and how the Law Officers Report understands them that some portions of the international law of the time were viewed as setting up default rules. That is, rules that could be contracted around by the sovereign.²⁴

4.2 Sovereign Debt Practices

Government Intervention: Government intervention to help bondholders happens to this day. But it is not common, in part because, when it happens, it raises howls of outrage about moral hazard and the government bail outs of the rich. In the Silesian saga, governments were actively involved in helping bondholders. The British government was involved first in deciding whether Charles VI should be allowed to issue bonds in London and then intervened to assist bondholders in getting paid. Indeed, the Crown bailed out the British bondholders for the amounts that Frederick deducted from their payments. The Dutch government was also involved in helping its citizen holders, although overall less successful. When Prussia needed to tap the markets in 1810, a condition of them being allowed to access financing was to allow for the prior defaulted bonds to be used as partial payment for the new bonds.

4.3 Contract Provisions and Law

Waiver of Defenses: The Silesian bonds have one of the broadest waivers of a sovereign's defenses that we've seen in contracts from the 18th and 19th centuries. Today, broad waivers of sovereign immunity from suit and execution are standard, but they were not then. And, indeed, given the bondholders' struggles to get the German Confederation to hear their complaints, we suspect that there were no other forums at the time where they could bring claims against defaulting sovereigns.

Enemy Investors: The broad waiver of the sovereign defenses, the Law Officer's report tells us, amounted to a promise by the sovereign that investors would be paid regardless of the location or citizenship of the investor. The Law Officers Report also tells us that such clauses were used in other bonds of the time.

Transfer of Liability Without Permission of the Creditors: A bizarre aspect of the saga is that Austria was able to shift liability to Prussia via a treaty to which creditors did not consent. This is noted by the Law Officers report in 1752 and by the bondholders in their submissions to the German Confederation. Yet, no serious attempt was made by either the British bondholders or the Dutch ones to pursue Austria. Austria's responsibility is largely ignored even though it seems, today, legally clear.

²⁴ An obvious modern example of this is sovereign immunity. States have broad immunities from suit and asset seizure as a matter of international law. But they contract around them all the time in bond issues - just as Charles VI did in the Silesian bonds.

4.4 Reputational Pressures

The standard story in sovereign debt economics is that sovereigns repay because they fear the reputational consequences of default. (Panizza, Sturzenegger and Zettelmeyer 2009; Weidemaier and Gulati 2015). To the extent sovereigns pay - and empirical evidence tells us that sovereigns, through history, mostly pay - it is because they value their reputations as entities that are good to transact with. So, what does the Silesian saga tell us about the standard story?

Neither Prussia nor Austria seemed to feel much pressure to pay to maintain their reputations as good contract counterparties. They were both in breach of contract vis-à-vis the bondholders. But Austria never lifted a finger in the direction of payment and the only times that Prussia did pay was when there were other pressures imposed on it by either the British or the Dutch governments.

Why then did the standard reputational story fail here? One explanation might be the unusual context. Liability arose, but it shifted after an invasion. The market perhaps did not view either Prussia or Austria failing to pay the bondholders as indicative of whether they would breach their other contracts. Austria had, after all, in good faith, transferred responsibility to Prussia to pay the debt. Prussia, for its part, had not done the borrowing originally and its ruler, Frederick II, had consistently shown a reckless attitude when it came to financial matters²⁵. Maybe, understanding that the markets would see obligations on the Silesian bonds as separate from the more direct obligations of the Prussian and Austrian sovereigns, neither sovereign felt sufficient pressure to pay. In other words, the reputational pressure to pay is perhaps not as strong - or was not in the 18th and early 19th centuries - as is often assumed in the literature. (Bolton, Gulati and Panizza 2023). Remarkably, the dissociation of the repudiation of the Silesian bonds from the history of public debt of Austria and Prussia remains until our days. In their seminal work, "This Time is Different", Reinhart and Rogoff (2008) do not regard Austria and Prussia's failure to fully redeem the Silesian bonds as constituting a case of sovereign default.

The Silesian saga might teach us that to ensure a conqueror assumes its share in the conquered state's debt (and in the absence of future leverage over the conqueror), might be that the peace treaty should impose a debt swap transforming the transferred debt into fungible state debt of the conqueror.²⁶ The new debt's indistinguishability from the conqueror's general debt would then prevent any attempt to develop and spread unfounded narratives (like Prussia did) towards a detachment of the new debt from "true" debt of the conqueror, and subsequent repudiation without harming the conqueror's creditworthiness and future market access.

²⁵ Noteworthy is the large-scale currency debasement by Prussia to finance the Seven Years War (Quinn and Roberds 2023), and his attempts to establish a first Prussian central bank in the 1750s and 1760s which however failed also because of his bad reputation on financial matters and the lack of independence of the planned bank (Bindseil 2019, pp. 259-263).

²⁶ In the entirely hypothetical world where there is an invasion and seizure of one sovereign's territory by another.

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Annex

A.O Text of W.G Deutz 6% bond, 9 February 1734

Page 1 and 4 (first and last page) of a 1734 bond, Nr. 131, 6%, 1000 Guilders²⁷

(1)

WY KAREL de Zesde, door Gods genade verkooren Rooms Keyfer, ten allen tyde Vermeerderaar des Ryks, Koning van Germanien en Spanje, Hungaryen en Boheemen, Aarts-Hertog van Oostenryk, Hertog van Bourgouen, Stirien, Carinthien, Crain, en Württemberg, in Opper- en Neder-Silezien, Markgraaf tot Maren, in Opper- en Neder-Lausitz, Graaf tot Habsburg, Tyrol, en Gorz &c., bekennen voor ons onze Erven en Nakomelingen tegelyk, dat op onze genadigte bewilliging en goedkuringe, door middel en directie van Willem Gideon Deutz, tot Amsteldam, van verhefde Personen en Particulieren, ten deelen onder het gebied van de Heer en Staaten der Vereenigde Nederlanden, ten deelen ook op andere plaatsen woenagtig, ten dienste van ons en van het gemeene weelen genegotieert, en by forme van beleeninge opgebracht, gelyk meede in handen van onze Keyzerlyke Schatkamer in contant geld, tegens de daar voor ontfangene behooryke quitantien voldaan is zekere fumme contant geld, bedragende vyfmaal honderd duyzend guldens Hollands Courant, en wy dierhalven de gemelde fumme van vyfmaal honderd duyzend guldens Hollands Courant aan hem Willem Gideon Deutz, en overige mede Geinteresseerden, dewelcke de bovenstaande leeninge te zamen hebben ontfeghooren, verchuldigt zyn geworden; en wy daar en tegens voor ons, onze Erven, en Nakomelingen, voor weeten en wel bedagteylyk na voorgaande onderhandeling daar over met de twee Gevolmagtigten van haar zyde alhier daar toe benoemd, toegezeigt hebben, en by deezzen beloven, toezeeggen, en verpreekken, dat wy voor het gemelde ter leen opgenoomene Kapitaal jaarlyks aan Interesten, na rato des tyds, betaalen zullen zes per cent, en ook de voornoemde opgenoomene en verterekte fumme van vyfmaal honderd duyzend guldens Hollands Courant, binnen den tyd van negen Jaaren binnen Amsteldam, in gelyke Hollandse Courante Munt, weder eerft naalkomende Jaaren, zynde Anno 1734, 1735, 1736 en 1737, alleenelyk de in voegen voorz. bedongene zes per cent aan Interesten, dog in de andere naalkomende vyf Jaaren, als namentlyk Anno 1738, 1739, 1740, 1741 en 1742, het Kapitaal zelfs, telkens voor een vyfdepart, ofte twintigt per cento, benevens de Interesten, pro rato daar op staande te verloopen, zal betaald werden, en zo wel het Kapitaal als Interesten, telkens van viendeel Jaar tot viendeel Jaar te zullen afleggen, en wel in Specie uyt de middelen van onze Hertogdommen Opper- en Neder-Silezien bewilligt, gelyk ook ten dien eynde onze Trouwe en gehoorfaame Vorsten en Standen door haarlieder afzonderlyke en eyge Obligatie, zig in de beste forme van regten verbonden hebben, om de gemelde door haar bewilligde en op te brengen's Lands Inkomsten, ten dien eynde met zodanige punctueelheyt en zekerheyt te zullen voldoen, dat uyt dezelve ter bestemde tyd, en op de hier voorengestelde termynen, zo wel de gepulverde Interesten, als het Kapitaal zelfs, van de voorz. vyfmaal honderd duyzend guldens Hollands Courant, tot billyk en volkomen genoegen van hem Willem Gideon Deutz, en der overige meede Geinteresseerden, zonder eenig manquement atgel of, en weder voldaan werden zal. Wyl wy nu het zelve Obligatoire Instrument door onze Vorsten en Standen deswe-

(4)

ten van het hier voorengemelde Fundus, voor 'k geheel of ten deele, zonder het minste bezwaaren geachtelyk zal, gelyk wy ook by deezzen van alle Beneficien Juris vel facti, Costumen, Ordonnantien, Rechts Constitutien, Actien, of Excocepten doll mall, franchaltes, actions, indulgencien, Lesions remonstres, et aliter gethe, vel intellectes, actions residu ex lege Amstelsana, ten volken en voorbedachtelyk attaan, alles zonder erg of list, in gesicht van deezze Brieven, die met onze eyge hande onteerkekening, en het daar voor gedrukte Keyzerlyk Secret Zegel toegegeven zyn. Binnen onzeszied Weezen den twee en twintigsten December van den jaare een duysend seven honderd drie en dertig. En in het Jaar van onze Koninging in het Koonike Ryk het drie en twintigste Boheemse Ryk het drie en twintigste jaar: (was geteekend) CARL, tynde daar nevens in Rood Welsch, overdecht met een Papier Ruyte, gedruckt het gemelde Keyzerlyk Secret Zegel, en geteekend W. GRAVE van Drenthe-ontstets. (Lagerfond) op speciaal bevel van zyn Geheyligde Keyzerlyke en Catholique Majesteten, (en was geteekend)

CHRISTOP. HEER VAN WIDENBURG VORST FRANS FERD. GHESELYZER.
Getrouwelyk uyt het Hoogduyts vertaald, Amsteldam den 9. February 1734.
J. BARRELS
Notaris Publicus.

N^o 131
Cap^e 1000
Guldenen
De bovenstaande Obligatien vermeld, uyt handen van de Heer
Jerónimo Lopez Cuervo
in Grof Zilver Gelt, ontfangen te hebben, belovende mits dezen in qualiteit voorichreven. de Interesten te betalen, als meede de Kapitalen af te loffen, alles in die manieren als in de voorengestelde Obligatien breeder is vermeld.
Dus geteekent in Amsteldam den 9. february 1734

Willem Gideon Deutz
Voorz. part. van 1000.000
6. Oct 1740 3/4 7.10.1697 100
6. Jan 1741 3/4 6.15.1700

1734 Julij 1734 1/2 100	50
1735 Julij 1735 1/2 100	50
1736 Julij 1736 1/2 100	50
1737 Julij 1737 1/2 100	50
1738 Julij 1738 1/2 100	50
1739 Julij 1739 1/2 100	50
1740 Julij 1740 1/2 100	50
1741 Julij 1741 1/2 100	50
1742 Julij 1742 1/2 100	50

Text, translated into English

Page 1

We, Charles the Sixth, by the grace of God elected Roman Emperor, at all times the Strengtheners of the Empire, King of Germany and Spain, Hungary and Bohemia, Archduke of Austria, Duke of Burgundy, Styria, Carinthia, Carniola, and Württemberg, in Upper and Lower Silesia, Margrave of Moravia, in Upper and Lower Lusatia, Count of Habsburg, Tyrol, and Görz, etc., make known for ourselves, our heirs, and our successors by this public bond letter: That, with our gracious consent and approval, and by the direction of Willem Gideon Deutz of Amsterdam, a certain sum of money has been raised on our behalf from various persons and private individuals, some residing under the jurisdiction of the States-General of the United Netherlands and others in different places, and that this sum has been negotiated and provided in the form of a loan. This sum, amounting to five hundred thousand guilders in Dutch currency, has been delivered in ready money into our Imperial Treasury, and proper receipts have been

²⁷ Photographic reproduction kindly provided by the European Central Bank.

issued for it. Therefore, we acknowledge that we are indebted to **Willem Gideon Deutz** and the other interested parties who contributed to this loan, for the said sum of five hundred thousand guilders Holland currency. And we, for ourselves, our heirs, and successors, fully aware and in good faith, after proper negotiation held here with the representatives appointed on their behalf, have agreed, promised, and by this document do promise and bind ourselves: That we will pay **interest at the rate of six percent per year** on the borrowed principal, calculated according to the time elapsed. And that the said principal sum of five hundred thousand guilders Holland currency shall be repaid in Amsterdam within a period of nine years, in the same currency. Furthermore, it is agreed that in the first four years, namely the years 1734, 1735, 1736, and 1737, only the interest of six percent, as previously stipulated, shall be paid each time when due. But in the five years following—namely in the years 1738, 1739, 1740, 1741, and 1742—the principal sum itself shall also be repaid, each year one-fifth part, or twenty percent, together with the interest that applies to that portion for that year. Both the principal and interest shall be paid quarterly (every three months). These payments shall be made in actual coin from the revenues of our Duchies of Upper and Lower Silesia, which have been pledged for this purpose. And to that end, our loyal and obedient Princes and Estates have, by their own separate and formal obligation, bound themselves in the strongest legal manner, to ensure that the said pledged revenues of those lands shall be collected and paid with such accuracy and certainty, that at the appointed times and on the terms set out above, both the agreed interest and the repayment of the principal sum of five hundred thousand guilders Holland currency shall be fully and satisfactorily paid to Willem Gideon Deutz and the other interested parties, without any default or deficiency. Since the said bond instrument has been drawn up by our Princes and Estates, providing that both the repayment of the principal loaned and of the interest, calculated proportionally, shall be made in the manner and within the fixed terms stated above, without any exception or delay, we declare that we accept and approve all of this fully and with our gracious consent.

Side box:

A statement is hereby made that this sum of **five hundred thousand guilders** is only **one part** of the loan. In addition to this bond issued by His Imperial Majesty, there have also been shown to me, the Notary, and are in the possession of the said Mr. Willem Gideon Deutz, **four other original bonds**, each likewise for **five hundred thousand guilders**, and each of them having the same wording and content as this present bond. Together, these **five separate bonds** amount to a total loan of **two million five hundred thousand guilders**. This division into five separate bonds has been made so that, at each repayment of **one-fifth of the principal**, one of the said bonds may be redeemed and canceled.

Signed:

J. BARELS, Notary

...

We, the Princes and Estates of Upper and Lower Silesia, also acknowledge, declare, and make known to all, that His Imperial and Royal Catholic Majesty, our most gracious Emperor, King, and Sovereign Lord, has informed us that he has been compelled, due to urgent and pressing expenses, to negotiate and raise in Amsterdam a loan of **five hundred thousand guilders Holland currency** at an annual interest rate of **six percent**, which is to be fully repaid within nine years. The repayment is to be made as follows: In the first four years, namely 1734, 1735, 1736, and 1737, **only the interest** shall be paid. In the following five years, namely 1738, 1739, 1740, 1741, and 1742, **one-fifth of the principal** (that is, twenty percent) of the said loan will be repaid each year together with the interest owed for that year.

These payments are to be made **from the revenues granted and collected in Silesia** during the meetings of the Estates. For this reason, His Imperial and Royal Majesty has most graciously required that **we also bind ourselves publicly** for this sum, so that we shall be responsible, together with His Majesty, for its payment. And since, out of loyal obedience and duty to His Majesty and the illustrious House to which we are bound, we recognize this request as rightful, we have willingly agreed to fulfill it faithfully and respectfully. Therefore, by this present instrument, we bind **ourselves and our successors** in the strongest legal manner, and with full knowledge and deliberate intention, to pay the said amount of **five hundred thousand guilders Holland currency**, together with the interest promised for it, to those who have loaned it to His Imperial and Royal Catholic Majesty, or to their rightful successors, without any deduction or reduction. This shall be done from the revenues granted annually by the Estates, namely: During the first four years, the **interest only** at six percent During the following five years, the **principal itself** shall be repaid (and at that time this bond shall be returned and cancelled). All of this shall have the same force and effect as if every legal formality had been formally executed. And since the said funds have been raised at the most gracious will and command of His Imperial Majesty **in Amsterdam**, through the direction and under the name of **Willem Gideon Deutz**, residing there...

And since these payments are to be made in Amsterdam by the gracious will and command of His Imperial Majesty, through the direction and under the name of Willem Gideon Deutz, who resides there, the original bond shall remain in his possession until the full and complete repayment of the principal and the interest has been made. The amounts owed for the principal and interest shall be transferred to him each year in four equal quarterly installments, every three months, promptly and without delay.

Side box:

Besides this original bond for five hundred thousand guilders, there have also been shown to me, the Notary, **four other original bonds of the same wording**, each for the same sum. Together, these five bonds amount to a total of **two million five hundred thousand guilders**.

Signed:

J. Barels, Notary

Page 3:

...

Thus done and executed without any reservation. And for the greater force and validity of this instrument, we have drawn it up and sealed it with our hereditary princely and noble seal.

Issued at **Breslau**, during the General Assembly of the Estates, on the **11th day of January**, in the year **1734**.

Below are attached **twenty-nine** seals, covered in red wax with paper over them. Therefore, in addition to confirming and sealing this instrument, and in order that the promises of payment and the assurances contained within it shall be fulfilled without any default whatsoever, **we bind ourselves, our heirs, and our successors**, fully aware and with deliberate intent. We also **renounce and give up** all exceptions and legal defenses that might in any way weaken, diminish, or delay the obligations contained in this bond, however such defenses might be conceived or argued now or in the future. Furthermore, we grant and empower **Willem Gideon Deutz**, as well as all others who are interested in this loan, together with their heirs and lawful successors, **the full right and authority** to make use of all legal means, rights, claims, and procedures necessary to obtain everything that is due to them regarding the repayment of the principal and interest, without any opposition from us or from our successors, and this shall remain so until they have been fully paid in full. And just as the repayment and performance shall be carried out at the appointed times promptly and precisely to the aforementioned Willem Gideon Deutz and the other interested parties, or to their heirs, so shall it be held firm and enforced. Furthermore, for the greater security of Willem Gideon Deutz and the other interested parties, we also pledge and mortgage to him, in addition to the revenues and public income granted and obligated by our loyal and obedient Princes and Estates of Silesia (who, as stated above, are specifically bound to the repayment of the principal and the agreed interest), as an **additional and secondary security, all revenues, rents, and possessions of every kind and description** that are located within the said Duchies of Upper and Lower Silesia and belong to us. Thus, if at any time there should occur an unforeseen failure in the payments required by the obligation of the Estates, whether concerning the principal or the interest, then in such a case the satisfaction of those payments shall be made **from these pledged revenues, rents, and possessions**.

Page 4

Payment shall, if necessary, be made from the revenues of the said pledged fund, in whole or in part, without the slightest objection. And by this we fully and deliberately renounce all legal privileges or defenses, whether in law or equity, as well as all customs, ordinances, legal constitutions, actions, or exceptions such as the defense of fraud, misrepresentation, misunderstanding, unfair dealing, or the actio residui under the Lex Anastasiana. We renounce all such claims entirely, without deception or reservation, by virtue of these letters which are signed by our own hand and sealed with the Imperial Secret Seal.

This document is issued with **our own hand–signature** and sealed with our **Imperial Secret Seal**.

Issued in our City of **Vienna**, on the **22nd day of December**, in the year **1733**, being the **23rd year of our reign** in the Holy Roman Empire, the **31st** of Spain, and the **23rd** of Hungary and Bohemia.

Signed: **CAROLUS** (Charles VI)

Next to this signature is affixed in red wax, covered with a paper shield, the **Imperial Secret Seal**, and countersigned:

W. Count von Diederichstein

Below, on special command of His Imperial and Catholic Majesty:

Christoph, Lord von Widenburg, Chancellor

Franz Ferdinand Geislitzer

Faithfully translated from the High German.

Amsterdam, February 9th, 1734.

J. Barels, Public Notary.

I, the undersigned **Willem Gideon Deutz**, being duly authorized in this matter by His Imperial Majesty, acknowledge that I have received the sum of **one thousand guilders**, as specified in the above bond, from **Mr. Jeronimo Lopez Suasso**, in good silver coin.

I hereby promise, in the said capacity, to pay the interest and to redeem the principal in the manner and under the conditions that are more fully set out in the preceding bonds.

Signed at **Amsterdam**, the **6th of January, 1734**.

Willem Gideon Deutz

*The hand-written payments indicate the following: From July 1734 to January 1738, interest is paid semi-annually: $6\% * 1000 / 2 = 30$ Guilder per date. Afterwards, quarterly repayments of 50 Guilders take place (5% of nominal, as indicated). And a final one covering two past quarters in January 1741. Therefore 60% of this bond had been redeemed before redemption stopped because of the loss of Silesia to Prussia. Only the redemptions for two out of five years – 1741 and 1742 – were missing. Once the principal repayments kick in (as of April 1738), the interest rate payments decline from an original quarterly payment of 15 Guilders in April 1738. The indicated interest payments are: July 1838: 14.5; October 1838: 13.10; January 1739: 12.15; April 1739: 12.0; July 1739: 11.5; January 1740: 9.15; April 1740: 9; July 1840: 8.5; October 1740: 7.10; January 1741: 6.15.*

A.1 Provisions in Peace of Berlin regarding Silesian loans, 28 July 1742

Article 9 of the Peace of Berlin of July 28, 1742 states that (Klueber 1827, 18–19) that Prussia "assumes payment of the sums of money mortgaged to English and Dutch subjects on Silesia, but as far as the latter are concerned, with the reservation that Prussia will assume, in liquidation and compensation, what the Republic of Holland owes it in respect of these debts. Likewise, Her Majesty the Queen of Hungary and Bohemia (Austria) assumes the sums of money mortgaged to Brabant on Silesia."

A separate article states: "And the other two contracting parties will mutually agree, within a suitable time, regarding the payment of debts owed to Her Majesty the Queen and to foreign individuals who are mortgaged on the Steueramt, the quality bank and the Silesian estates..."

In further peace treaties between Prussia and Silesia during the 18th century, the content of the Berliner Peace Treaty of 1742 is reconfirmed (Dresdner Peace of 1745 ; Hubertsburger Peace of 1763, Teschener Peace of 1779, See Klueber 1827, p. 21).

A.2 Letter of King Frederik II to Count of Podewils, 9 October 1742

Remar: Heinrich Count von Podewils ("the Prudent"; 1696–1760) was a State, War, and Cabinet Minister of Frederik II. The letter is reproduced in Preußen (1819b) to provide evidence against the claims of bondholders as formulated in that year. The letter is not referred to in any of the comprehensive collections of political correspondence of Frederik II (<https://www.friedrich.uni-trier.de/de/>). The article in the Allgemeine Preussische Staatszeitung (Volume 1, No. 40, May 18, 1819) introduces briefly the subject and then reproduces the letter. While the letter claims that obviously Prussian would have significant claims against Holland that could be offset, neither in the letter, not in any of the other related official statements of Prussia, the nature and value of these claims is ever explained. Bondholders (Actenstücke 1830, Document 1) indeed argue that: "However, if such a claim had actually existed in the past, there would be good reason to assume that it, as well as the

alleged reservation of compensation, had long since been abandoned and tacitly waived. For not only: 1) has, as already mentioned, no attempt been made to settle this matter with the Dutch government in the long period since the Peace of Berlin, but also 2) In seven publicly known state treaties (listed on page 62 of the aforementioned publication) concluded between the Netherlands and the Prussian crown since 1742 concerning matters of interest in the years 1788, 1790, 1794, 1816, and 1817, the Royal Prussian side never mentioned a debt claim of the kind in question against the Dutch government, let alone stipulated compensation or made a reservation. Similar acts of waiver were undoubtedly expressed in two other recent cases.”

From internal correspondence and Prussian, Dutch and Austrian archives, it can be reconstructed that the “claims” Prussia invoked were old and dormant, going back to the 17th century, and only served the purpose to not pay back the Silesian loans. They were probably never explicitly mentioned in public statements by Prussia as their weak basis was too obvious. The claims were mainly based on the following two points: First, the Dutch would owe compensation to Brandenburg–Prussia for damage or unpaid subsidies arising from earlier military and diplomatic engagements in the 17th century (particularly around the Dutch–Brandenburg alliance and conflicts such as the Franco–Dutch War and the Swedish–Brandenburg campaigns). Second, the Dutch would have failed to pay subsidies or restitution promised under certain treaties or conventions with Brandenburg – notably around the Treaty of Kleve (1666) and subsequent dealings in the Franco–Dutch War (1672–1679) and the Treaty of Nijmegen.

These old alleged arrears were “revived” by Frederick II to serve as a pretext for refusing payment on the Silesian debt held by Dutch investors.

The letter of the King is reproduced in Preußen (1819b):

“On the History of the Silesian State Bonds.

After the conclusion of the Treaty of Berlin on July 22, 1742, news soon reached Holland of the measures taken by Frederick the Great—who had arranged a compilation of the claims of the Prussian state and of Prussian subjects against the Republic of Holland—in order to fulfill the payment obligations he had assumed. The matter was soon discussed in Holland with the King’s envoy, Count von Podewils, where it was admitted that Prussia had considerable and just claims upon Holland, and that nothing could be more reasonable than to set these off against the sums which Dutch subjects had to claim from the Estates of Silesia. To this the King replied on October 9, 1742:

‘I have heard with pleasure the remarks of Mr. van Randwijck, showing that in Holland it is acknowledged that I possess well–founded claims against the Republic, and that it is deemed just if, in settling my debt to Dutch subjects for the monies lent upon the Silesian revenues, I bring my claims against the Republic into account. From this principle it follows, as it seems to me, quite naturally, that the claims of my subjects upon the Republic or upon private persons in Holland should be treated on the same footing;

that is to say, when I satisfy the subjects of the Republic, I may with justice deduct what my own subjects have a rightful claim to receive. In Holland, this will appear the less surprising, since it is known that in the peace treaty I expressly stipulated for liquidation and compensation; and without the contents of that treaty, no claim whatsoever could be asserted against me in respect of the Silesian debts.

I possess Silesia under an entirely different title than that of succession, and nothing could oblige me to acknowledge or pay the debts with which the former sovereign power had burdened the province. It is true that at the beginning of the war I caused it to be declared that I would acknowledge and discharge them; but it will be well remembered under what conditions—namely, that the Republic should maintain perfect neutrality, take no part in favor of the Queen of Hungary, and render her no assistance, of whatever kind it might be. It cannot, however, be denied that these conditions were violated—partly through the resolution of April 24, 1741, and the steps that followed it, partly through monetary advances made to the Court of Vienna, at first secretly, and later quite openly. I am therefore entirely released from my promise; and if, nevertheless, I have renewed and acknowledged it as binding upon me, this must be regarded as an act of magnanimity, not of obligation.’”

A.3. Offer to use Silesian bonds to pay for new Prussian bonds, 1 March 1810

Klueber (1827), Document Appendix IV provides an excerpt from the printed plan for the Royal Prussian loan of 32 million guilders negotiated by the trading house Witwe Ueberfeld und Serrurier, Amsterdam, dated March 1, 1810 (original language: French).

“His Majesty the King of Prussia, constantly occupied with alleviating the calamities and restoring as soon as possible the damage caused to his Kingdom and his subjects by the last war; considering that the first means of achieving this would be to settle the debts incurred as a result of that same war, has informed His Majesty the King of Holland of his desire to raise a loan in his states for this purpose. His Majesty our King graciously consented to this proposal on condition that the old bonds charged to and specially mortgaged by the States of Silesia, negotiated at the time in Holland, would be accepted in payment of the said loan, together with the interest due on these same securities, if not for their full amount, then at least for a fair sum. As a result of the aforementioned royal decision, Madame Ueberfeld, widow, and Serrurier find themselves in a position (by virtue of the approval of His Majesty the King of Holland and the express authorization of His Majesty the King of Prussia) to offer the public the following opportunity to participate in the Negotiation 32 million Dutch guilders, on behalf of His Majesty the King of Prussia.

Art I. The debt arising from the loans made in Holland on behalf of Silesia, as stated above, still amounts to:

- A. from the loan opened in 1734 at the office of Willem Gédéon Deutz: 1,000,000 guilders
 - B. From the loan taken out in 1735 at the office of Georges Clifford and Sons: 300,000 guilders
 - C. From the loan taken out in 1736 at the office of Willem Gédéon Deutz: 3,500,000 guilders
- Total: 4,800,000

Article II. The aforementioned debt shall be received in the present negotiation in cash for the entire capital mentioned above, and for one and a half times the capital, or 150%, as accrued interest, and consequently for the sum of 12 million florins, in proportion to 20 million in cash.

Article III. Consequently, all Silesian bonds, regardless of date or old annuities, shall be accepted according to the table below. (all numbers in Dutch guilders)

Ancient capital	Accepted for a value of	Cash to be added	Making up together the new capital
150	375	625	1000
300	750	1250	2000
...			
1500	3750	6250	10000

and so on for other sums or fractions of old capital sums in the same proportion.

Article IV. In consideration of the fact that, of the three aforementioned Loans, there are very large sums involved, which it may not be desirable or appropriate to provide in full, at the aforementioned rate, in the present Loan, on the basis of three–eighths in paper, with a supplement of five–eighths in cash; and that the holders of such bonds would therefore be obliged to sell them on the market at the current very low rate of said notes, it has been deemed appropriate, in their favor, that all Holders of Silesian Bonds, regardless of the amount of their respective sums, shall have the option, for a period of one month from the date of this Prospectus, to subscribe for such part of their Securities as they see fit, in accordance with the proportion indicated above in the Table in Article III; which shall be noted on the said Bonds themselves; provided, however, that the Holders of these Securities, and all others, may participate in the said Loan during the following two months, in the proportion established above, for those parts of the former Capital which have not been partially registered during the first month.”

A.4 Declaration by State Chancellor Fürst von Hardenberg, 15 August 1818.

Source: Appendix V of Klueber (1827).

“Your Worship,

In your petition to His Majesty the King of the 18th of April, and in your renewed representation addressed to me on the 4th of August of this year, you have submitted applications for the realization of the so-called old Silesian bonds arising from the loans contracted by Emperor Charles VI in Holland in the year 1736. To these applications no assent whatsoever can be given. For although, after the Peace of Tilsit, during the flotation of the then-opened Dutch loan, one may have found it advisable to accept a portion of the proceeds in those bonds, this was done by no means in recognition of any liability, but, just as the possible acceptance of any foreign paper in payment, solely for the purpose of facilitating at any cost the conduct of the new loan which was then indispensable. In this way, the amount of such Silesian bonds received as valuta up to the close of the Dutch loan was reckoned purely as part of the expenses of that loan itself. The holders of other, still existing bonds of the same kind would be wholly mistaken if they were to infer from that measure that Prussia thereby intended to acknowledge a special obligation in respect of a debt it had not contracted, or to assume any self-binding liability which it had not done up to that time. The status of the debt remains, rather, unchanged from what it was before the year 1806. Since, throughout the long period from the union of Silesia with the Prussian state up to the moment when the great changes in European affairs occurred, no Prussian ruler ever recognized any obligation toward the individual creditors of the Dutch loans, this likewise cannot be done now. The holders of those bonds, therefore, must expect that all applications aiming at the realization of such obligations can receive no other reply than one of refusal.

Spa, 15 August 1818

(signed) F. v. Hardenberg“

A.5 Protocol of German Federal Assembly (§62), 22 April 1819

Source: Deutsche Bundesversammlung (1819), Reklamation der Inhaber älterer schlesischer Schuldverschreibungen“, Protokolle der Deutschen Bundesversammlung, §62, 14. Sitzung, 22 April 1819, S. 163–173.

The protocol (p. 163) explains that:

“Under number 191 of the submission protocol of the year 1818, Councillor of the Court and Notary Cordier submitted, on behalf of Court Councillor Reuling of Darmstadt, who acted on the basis of a power of attorney issued to him in Amsterdam by nine merchants residing there who were born in Germany, a petition in the name of the older Silesian state creditors to the Federal Assembly. In it, he requested that

the Assembly take the appropriate steps and measures to bring about an agreement between the two high members of the Confederation—namely Austria and Prussia—consistent with the spirit and intent of the German Federal Act, concerning the question of which of the two states, and in what proportion, should be assigned the Silesian debt, and which of them should therefore be regarded by the Silesian bondholders as the debtor.”

After summarizing once more the history of the bonds as explained in the petition of the bondholders, the protocol also restates the four main arguments provided by the bondholders:

- 1) “That for the obligations in question, Austria as well as Prussia are liable for the whole amount, because the indivisibility of the pledged debt gives rise to joint and several liability.
- 2) That although Prussia, according to the terms of the peace settlement, has assumed the debt in place of Austria, this does not mean that the creditors, as third parties, may suffer any disadvantage as a result.
- 3) That, in addition to the pledged security, the holders also retain a personal claim against Austria as the original debtor.
- 4) That such a claim against Prussia is confirmed by the debt operation of the year 1810.”

The Expert opinion of the legal services of the Federal Assembly provides its main arguments in the form of rejecting the analogy to another bond (“Kurpfälzische Gläubiger aus den Obligationen Lit D). With regards to the Silesian bonds, it provides four key considerations (pp. 170–173):

“1) ... Not only do Prussia and Austria appear in this matter not as German federal princes, but as European powers; it is also evident that no dispute exists between Prussia and Austria regarding it, since Prussia does not deny having assumed these debts, nor does Austria dispute Prussia’s right to settle this debt with the Republic of Holland and to offset it against its claims on Holland. However, the question of whether the bondholders must accept this compensation is one that is absolutely not to be handled by the Federal Diet, but rather one that the petitioners must resolve with their own government—and, insofar as their government represents them, that government must resolve it with Prussia.

2) ... The question of whether Austria or Prussia is responsible for satisfying the Silesian creditors is based on a state treaty concluded not only long before the establishment of the Confederation, but also at a time when Silesia was not considered part of Germany, and which is in no way connected to the Final Recess of the Imperial Deputation.

3)... Not only were the great majority of the original creditors of the Silesian bonds foreigners, but it is also undisputed that most of those to whom these Silesian papers have passed (who knows through how many hands) are Dutch. It appears that a few individual creditors born in Germany were deliberately

selected as issuers of the power of attorney, even though they present themselves as merchants residing in Amsterdam, and they have not further legitimized themselves to bring a lawsuit in the name of all the older Silesian state creditors.

4) ... The question of whether—and what—rights the new purchasers of obligations possess, obligations that for half a century and up until the renewed speculation of 1810 could be bought for only a few percent, raises doubts about the legitimacy of the claims. However, the decision on these doubts cannot in any case be made by the Federal Assembly.”

On that basis, it concludes (p. 174):

“As desirable as it may be that the rightful holders of such obligations—whether Dutch, English, or German—receive appropriate compensation, they cannot demand that the Confederation take up their cause by advocating to Prussia or Austria. The holders must turn to their own governments and expect those governments to represent them to the powers involved, as was done previously. And as long as these governments do not approach the Confederation and request its intervention, it must seem highly questionable for the latter to involve itself, at the appeal of a few private individuals, in such a matter. Through the negotiations that have taken place on various sides among several powers, this issue has long since acquired the character of a European matter. I therefore propose that the submitted complaint be dismissed as unsuitable for involvement or intervention by the Federal Diet. Thereupon it was unanimously decided that the complaint of the holders of older Silesian debt securities be dismissed as unsuitable for intervention or resolution by the Federal Assembly.”

A.6 Articles from Allgemeine Preußische Staatszeitung 27 April and 18 May 1819

Note: The Allgemeine Preußische Staatszeitung was the official paper of the Prussian government, intended to inform the subjects about the views and policies of the state. It was first published on January 2, 1819. On July 1, 1851, it became the Königlich Preußischer Staats-Anzeiger (Royal Prussian State Gazette).

Source: Preußen (1819a), (1819c)

No. 34 Untitled (Berlin, 27. April 1819):

“Various German papers—most recently the Neue Rheinische Merkur—have raised the issue of the claims made by certain Dutch holders of the so-called old Silesian bonds against Prussia. The Merkur even reprints an article by the Vrai Libéralin German, in order to demonstrate how foreign countries, namely Holland, view this matter. Had the editors of the Merkur taken up the Treaty of Berlin of July 28, 1742, they would have found the following passage: Article 9: “His Majesty the King of Prussia undertakes the payment of the sums mortgaged upon Silesia to English and Dutch subjects; however, His Majesty

remains free and reserved, as far as the latter are concerned, to enter into account and compensation for what the Republic of Holland owes." The claim of Prussia against Holland is by far greater than the debt owed to the Dutch holders of the Silesian bonds. It is not our intention here to enter into a historical or constitutional discussion; we merely wish to point out that the debt of the Dutch Republic to Prussia was already determined and transferred to the holders of the Silesian bonds by way of compensation through Frederick the Great at the conclusion of peace. The author of that article has, however, entirely lost sight of this aspect of the matter. It is, moreover, quite strange that a claim by Dutch subjects against the Prussian treasury should be discussed before the German Federal Assembly. It would be just as if Prussia were to attempt to assert the surplus of its claim against Holland before the English Parliament."

No. 40, May 18, 1819, On the History of the Old Silesian Bonds

"The Federal Assembly has, upon the report submitted to it concerning the claims of the holders of the so-called old Silesian bonds, declared itself incompetent and, as was to be expected, dismissed the petitioners. In the historical presentation of the reporting member, however, there has crept in a circumstance that requires closer elucidation, since it appears to have motivated the wish expressed at the end of the report—that the petitioners should be represented through diplomatic channels. It is assumed as a fact that Frederick the Great, on the occasion of his disputes with Great Britain arising in 1752 over the seizure of Prussian ships, attached the monies now in question, and that both powers reached a settlement on this matter when concluding their alliance treaty in 1756—Great Britain having stipulated the payment of a compensatory sum to Prussia under the condition that Prussia would lift the attachment upon the Silesian funds and satisfy the English creditors thereof. This, however, is a misunderstanding. Article IX of the peace treaty of July 28, 1742, states that Emperor Charles VI had negotiated a loan, pledging Silesian revenues, with English, Dutch, and Brabantine houses. The first two—namely, the English and Dutch houses—were to be satisfied by Frederick the Great, and only as regards the Dutch creditors did he reserve to himself the right of compensation and accounting against his own claims upon the Republic of Holland. The disputes that arose with Great Britain concerned solely the funds which the English houses were entitled to claim from Silesia, and these disputes have been settled. But the claims of the Dutch houses had nothing whatever in common with this, and it is only these that Councilor of Justice Reuling is now endeavoring to assert. As to the further clarifications that a letter from Mainz, published in the Frankfurter Ober-Postamts-Zeitung of the fifth of this month, has requested, we are very willing to provide them: That this debt to the Dutch houses is mentioned also in the Peace Treaties of Hubertusburg and Teschen—in the latter at least by reference to the former—is entirely consistent with the relations among the powers. Prussia, by acquiring possession of Silesia through the Treaty of Berlin, had assumed the debt; Austria, since that time, has been completely freed from payment. There is no doubt about this, and this alone is expressed in the peace treaties. But the

relations between Prussia and Holland are not touched upon in these treaties and have in no way been altered. However often Prussia acknowledged its obligation toward Austria, this never deprived it of its right of compensation against Holland. The terms upon which Prussia assumed the debt were never changed.

That the petitioners seek to derive from the acceptance of Silesian bonds a claim based on the capital of the loan which Prussia negotiated in Holland in 1810 – as if it would have been an acknowledgment of debt – proves only that they have not entrusted themselves to a competent legal adviser. Prussia might just as well have accepted French assignats as payment for the capital of the 1810 loan; but who would infer from that that Prussia had thereby assumed responsibility for the entire mass of assignats?

As for the original holders of the Silesian bonds (not for the clients of Mr. Reuling, who might have concerned themselves with the legal relations), it is indeed to be regretted that the former Republic of Holland did not defend the interests of its own citizens with the seriousness and steadfast sense of justice with which Frederick the Great upheld the rights of his subjects. That representation ought to have begun by Holland fulfilling its undeniable obligations toward Prussia. That was the fund out of which the Silesian debt had to be discharged. But because none wished to pay, the individuals were abandoned; and it is solely to themselves and to their compatriots that the Dutch houses must ascribe the fact that they were not satisfied.

That the principles of private law cannot be applied here is easily understood. Had Frederick the Great, fully aware of the just claims of his state against the Republic of Holland, nonetheless paid the Dutch houses, and thereafter, in a spirit of diplomatic forbearance, negotiated once again–vainly as before–for satisfaction so long unjustly withheld from his state, what would the world and posterity have called it? Not justice, but weakness. And such folly could not be expected of a king of whom it was said (with Shakespeare): ‘ Each inch a king.’ ”

A.7 Protocol of German Federal Assembly (§125), 17 July 1828

Source: Deutscher Bund (1828). “Bitte verschiedener Eigenthümer von Partialobligationen aus drei in den Jahren 1734 bis 1737 durch Holländische Handelshäuser negociierten Schlesischen Staatsanlehen, um Verwendung bei den allerhöchsten beteiligten Regierungen wegen Feststellung und Regulierung dieser Schuldangelegenheiten”, Protokolle der Deutschen Bundesversammlung, §125, 19. Sitzung, 17 Juli 1828, S. 345–358.

After summarizing once more the history of the Silesian bonds, (pp. 345–353), the protocol restates the key arguments of the plaintiffs:

“a) The validity of the debt claims themselves has never been called into question. Austria, up to the year 1741, made contractually required payments of principal and interest, while upon the subsequent cession of Silesia to Prussia, that government assumed the debt through the peace treaties and, by its actions, acknowledged this obligation during the new Dutch loan of 1810.

b) The entire debt claim is a state debt undertaken with the consent of the Silesian estates (Landstände) and with a special pledge upon Silesia itself. The mortgage right of the unsatisfied creditors, by virtue of its real (in rem) nature, still encumbers all of Silesia today.

c) The negotiations that took place between Austria and Prussia concerning payment of this loan are, as a *res inter alios acta*, not binding on the creditors. Therefore, the continued existence of a claim for the whole of the Old Silesian debt against Austria, the original debtor, is justified...

d) The reservation of compensation made unilaterally by the Prussian government in the Treaty of Berlin regarding settlement of this debt can serve neither as a suspensive nor as a destructive objection against the creditors, because it has no legal effect either for the government of the United Netherlands or for the holders of such obligations. For the government, this is because compensation presupposes mutual indebtedness between the same parties—something lacking here. For the holders, it is because no creditor is obliged to accept, against his will, that a foreign debt be set off against his own claim. Least of all can the reservation of compensation be applied to bondholders who are not Dutch, which could generally be the case, since law and contract allow these obligations to pass into the hands of any foreigner...

e) The purpose of the petition is to obtain, through constitutionally valid federal means, an answer to the question of whether the Austrian or the Prussian government—or whether both, in a defined proportion—are obliged to pay the still-outstanding debts from the Silesian loans. That this question falls under the competence of the Federal Diet cannot be doubtful, because the debt is secured upon Silesia, and all of Silesia is now federal territory. Whether Silesia had formerly been part of the German Empire is just as irrelevant as it is nonetheless entirely demonstrable that this had indeed been the case.

f) If, on the Prussian side, the satisfaction of these claims was outright refused by the declaration of State Chancellor von Hardenberg of 15 August 1818, and the creditors were thus implicitly referred to Austria; whereas the latter, invoking the stipulations of the Treaty of Berlin... clearly adopts the opposite view and maintains that the Crown of Prussia alone must pay these debts—then it is evident that the creditors cannot obtain contractual satisfaction of a claim whose validity is nowhere doubted or denied, solely because the supreme parties involved are evidently in dispute over the payment of these Silesian state debts.

g) This dispute over the party liable for payment does not take place between Austria and Prussia as independent sovereigns outside the Confederation, but as rulers of German federal states; and since the entire debt claim is a state debt of Silesia... the provisions of the German Confederation must also be recognized as applicable to the present dispute.

h) The declared purpose of federal territory requires legal certainty within Germany and demands that no one be left without rights and that every kind of legal deprivation be eliminated. If, therefore, the holders of these Old Silesian debt claims could not obtain their rights solely because its enforcement is uncertain between two federal members, then the competence of the Federal Diet in this case is clearly established by Article 30 of the Final Act of Vienna.”

The subsequent legal opinion (pp. 356–357) concludes with three key arguments to reject the petition (p. 357):

“From the foregoing, three facts emerge:

1) That Austria does not recognize any separate debt obligation for these Old Silesian loans, but instead declares Prussia to be their sole debtor.

2) That on the Prussian side this assertion is not contradicted, insofar as no claim is made anywhere for Austria to share liability.

3) That the Prussian government acknowledges its own debt obligation for these Old Silesian loans, but makes their actual fulfillment dependent upon an accounting and counterclaim against the former Republic of Holland.

Accordingly, the obligation to satisfy the Old Silesian loans is neither uncertain nor disputed between Austria and Prussia; rather, fulfillment has only failed to occur because Prussia does not wish to proceed with liquidation until the Netherlands show themselves willing to enter into a settlement of counterclaims. Thus, the situation in which an intervention by the Federal Diet may take place under Article 30 of the Final Act of Vienna is clearly not present here. The commission has therefore agreed to the proposal that, since Prussia does not demand from Austria any obligation to share in satisfying the present claim, the petitioners must be rejected with their request—based on Article 30 of the Final Act of Vienna—for intervention by the Federal Diet.”

Resolution.

Since, according to the resolution of the Prussian Ministry of 21 May 1826 submitted to the Federal Diet by the Prussian legation, Prussia does not claim any payment obligation on the part of Austria for the

treasury or state debts referred to in the present complaint, the complainants are hereby rejected with their request—based on Article 30 of the Final Act of Vienna—for intervention by the Federal Diet.”

A.8 Bondholders petition to King of Prussia, 29 October 1828

Source: Actenstücke (1830, 3–18)

**“Most humble petition to His Majesty the King of Prussia
From the banker M. J. Herz in Frankfurt am Main, on his own behalf and as representative of other
owners of Silesian government bonds, dated Frankfurt am Main, October 19, 1828 (Document 1 of
Actenstücke 1830)**

Most Serene, Most Powerful King, Most Gracious King and Lord!
During Austria's sole possession of Silesia, Emperor Charles VI had three loans totaling 6.5 million Dutch guilders negotiated by Amsterdam trading houses between 1734 and 1737 with Dutch and non–Dutch parties, for which the loan agreements expressly allowed the choice, namely

2,500,000 guilders at 6% interest, through W.G. Deutz	
500,000	Ge Clifford and Sons
3,500,000	5% W.G. Deutz

In all partial bonds issued for each of these loans, His Imperial Majesty promised that both the quarterly interest payments and the stipulated capital repayment “in specie” would be made from the revenues of the Duchy of Upper and Lower Silesia. Not only did the estates of the duchy solemnly give their consent to the acceptance of each of the three loans, but they also undertook, as did the emperor, that the interest payments and the repayment of the capital should be made promptly and without deduction from the approved and available state revenues. The provincial insurance certificates were incorporated verbatim into the bonds.

At the same time, all three loans were declared to be Silesian mortgage debts. In the bonds, not only were the reported funds and state revenues approved by the provincial estates specifically pledged for capital and interest, but also, subsidiarily, all and every sovereign income, annuity, and possession in Upper and Lower Silesia was prescribed as a special mortgage, with waiver of all and every objection, legal benefits, and legal remedies.

A very sad fate befell the owners of Silesian mortgage bonds, some of whom were very distressed and pitiful, in this very simple and clear debt relationship. In the Prussian–Austrian War, interest and capital repayments had been suspended since January 1, 1741. In the Peace of Berlin in 1742, the division of the country also had to be accompanied by a division of the debts.

With the acquisition of the greater part of Silesia, the Prussian crown assumed responsibility for the payment of the debts contracted by Austria in question here, albeit with the unilateral reservation that the liquidation and compensation would be limited to what the Republic of Holland owed it (without any relation to Silesia or the debts rooted in that country). However, the capital and interest payments interrupted by the war did not resume, no matter how often, how much, and how urgently they were pursued by the creditors, as well as by the governments of Austria and the United Netherlands, at the Berlin court during the long period from 1742 to 1810.

It was not until 1810 that the Royal Prussian government decided to repay the entire remainder of the capital and interest by means of a loan of 32 million guilders opened in Amsterdam with the widow Überfeld and Serrurier. For the deposits on this loan, Silesian partial bonds were to be accepted as payment alongside cash in such a way that for every 100 guilders of capital, 150 guilders of interest would also be taken into account.

If the planned bond issue of 32 million had been fully realized, the entire remaining capital of 4,800,000 guilders at that time, plus interest amounting to one and a half times the capital, would have been repaid at that time. However, the loan was not even half completed; the portion that was completed only repaid approximately 2 million gulden of Silesian capital claims. Since then, no further capital and interest payments have been obtained. Referred by Austria to the Royal Prussian Supreme Government and by Your Royal Majesty to the State Chancellor Prince von Hardenberg, the latter, on August 15, 1818, unconditionally denied the claiming creditors any right to claim against the Crown of Prussia. "The holders of the aforementioned bonds," according to the resolution, "should expect nothing but a rejection from the Prussian side if they pursue their latest intended claims."

Further respectful representations and requests were also fruitless; seven times to the Imperial Austrian Government, six times to the Royal Prussian Government. A resolution of the Imperial Austrian Lord Chamberlain, Prince Metternich, dated August 29, 1821, postponed the resumption of negotiations with Prussia on the basis of the Treaty of Berlin for the purpose of reaching an agreement on the means and ways "by which the said state creditors could be satisfied and the recognized liabilities distributed between the two courts."

According to the official statements received from both sides, it was to be assumed that the satisfaction of the creditors depended on a forthcoming agreement between the two supreme courts, and that the payment or distribution of these debts between them was therefore still in dispute. Since such an agreement had been awaited in vain for six years, the complainants believed that they were entitled to invoke the German Federal Assembly, as stipulated in Article 30 of the Vienna Final Act of May 15, 1820, for disputes of this kind.

At the Federal Assembly, the Royal Prussian Legation declared that the Crown of Prussia would not hold Austria liable for payment of the debts in question. It referred to the royal ministerial resolution of May 21, 1826, to the court lawyer von Leistner in Munich, which stated that in the case of the claims in question:

"Austria is not involved at all, only Prussia and Holland, now the Kingdom of the Netherlands, but the obligations arising from those loans (negotiated in Holland) cannot be liquidated until the Netherlands shows itself willing to settle the counterclaims, with the proviso that all debts have been transferred to Prussia in the relevant peace treaties. "

Since it was now beyond doubt that there was no dispute between Austria and Prussia over the payment of debts stipulated in the Berlin Peace Treaty, but that the Royal Prussian Government had declared itself liable for payment, and therefore the case of the said Article 30 did not exist, the Federal Assembly passed the following resolution on July 17 of this year: "that, since according to the resolution of the Royal Prussian Ministry of May 21, 1826, brought to the attention of the Bundestag by the Royal Prussian Bundestag delegation, Prussia, in order to satisfy the state debts mentioned in the present complaint, does not claim any payment obligation on the part of Austria, the complainants' requests for intervention by the Federal Assembly based on Article 30 of the Vienna Final Act are rejected." Thus, the Federal Assembly tacitly and without objection accepted the resolution of the Royal Prussian Supreme Government.

The factual and legal relationship of the debt claims according to the content of the obligations, including both their accuracy and the fact that, with the consent and cooperation of the Silesian estates, they were contracted by Austria during its sole possession of the whole of Silesia, and that all and every sovereign income, annuities, and possessions in Upper and Lower Silesia are liable for them by way of mortgage.

Since the present obligatory relationship arose from a simple loan and pledge agreement concluded with private individuals and under private law, it is neither of a constitutional nor of a public law nature, but rather of a private law nature. According to this, the agreement in the Berlin Peace Treaty, as a *re inter alios acta*, cannot revoke, frustrate, restrict, or alter the rights of pledge creditors in general, and in particular their contractual real rights, which have legal validity. Nor is there the slightest indication in the peace agreement that any such interference with the rights of the creditors was intended. Therefore, as before, the parties involved are entitled to pursue any disputed rights through the private courts.

Both under Roman law, under whose jurisdiction this debt arose and according to which it must therefore be assessed, and under the more recent law books of Prussia and Austria, there is no legal basis for the obligation to pay these debts, which are secured by a lien on all state revenues and the entire territory of the former Duchy of Upper and Lower Silesia, due to the nature of the lien as a right in rem. there is a

legal basis for the obligation to pay these debts, which are secured by mortgage on all state revenues and the entire territory of the former Duchy of Upper and Lower Silesia, jointly and severally, for the entire amount thereof, with every owner of Silesian territories, and thus, since the division of the country brought about by the Peace of Berlin, with the Crown of Prussia no less than with Austria, with both at the same time, at the creditors' discretion.

It is therefore indisputable that these claims find a decisive representative in the unity in which both supreme governments must be considered here with regard to the legal purpose and the general rule of law. They have recently joined forces with all other states of civilized Europe in an express, solemn, and public alliance and have made mutual commitments to this end. And if the creditors can be indifferent as to from whom they receive contractual payment, then after nearly 90 years of waiting, their just and respectful demand that such payment be finally made without referral to a third party, who has neither the will nor any obligation to satisfy them, certainly all the more understandable since the Austrian Crown paid off the Silesian debts it had assumed in the Treaty of Berlin many years ago, thereby freeing the Royal Prussian Government from the creditors' mortgage claim on Prussian Silesia.

In relation to the Austrian Crown in particular, which holds the smaller part of the mortgage that still far exceeds the amount of the debt in financial terms, the creditors' rights in rem are supplemented by a personal right arising from the loan agreement concluded with it. This dual obligation could prompt the complainants to seek legal recourse from it, were it not for the fact that the Royal Prussian Government had recently declared at the Federal Assembly and at the Silesian Debt Division in the Berlin Peace Treaty its firm intention to relieve the Austrian Empire of the burden of payment.

In this declaration, and since the highest royal authority deems it permissible to make payment dependent on a foreign claim against the Dutch, the complaining creditors humbly trust that they will find gracious forgiveness for their present humble petition before the sacred throne of His Royal Majesty. The undersigned submits this request with the deepest respect, as the long-standing owner of a significant number of Silesian partial bonds and as the authorized representative of others who are also long-standing owners of considerable portions of such bonds, as evidenced by the certified copy of the power of attorney attached under III.

The real claim of the creditors against the Crown of Prussia for joint and several payment of the outstanding capital and interest from the Silesian bonds is independent of the stipulations of the Treaty of Berlin and unrelated to it. It exists in its own right and does not require the support of an agreement between the debtor and a mortgage holder in order to be legally valid. It is based on the contractual lien stipulated in the bonds on all state revenues and state possessions in all parts of the former Duchy of Upper and Lower Silesia, the greater part of which has been in royal Prussian ownership since the aforementioned peace.

This real claim is neither revoked nor diminished nor postponed by the Austrian–Prussian agreement in the Berlin Peace Treaty, in which the Royal –Prussian supreme government promised the Austrian government to pay these Silesian debts, but reserved the right to offset them against what (not the creditors, but a third party not involved in any way) the Republic of Holland owed it (not the Austrian crown, which promised to make the payment in its place).

According to natural and all positive rights, namely Prussian and Austrian rights, compensation necessarily presupposes a reciprocal debt on the part of the same entitled parties, and since there is clearly no such debt in this case, then the reservation made was undoubtedly without legal effect from the outset in relation to the owners of Silesian bonds, both non–Dutch and Dutch, as is explained in detail in the aforementioned publication (Articles 24 and 25). The aforementioned reservation against the creditors could therefore serve neither as a suspensive nor as a destructive defense.

As far as the Austrian government is concerned, its intention in stipulating the Berlin Peace Treaty was undoubtedly to ensure that the creditors would be paid contractually, i.e. in full and within the set deadlines, indirectly by the Prussian crown on its behalf, so that it, as the debtor and continuing owner of part of the mortgage, would be released from its claim. However, it will not be able to consider itself released from its payment obligation until the capital and interest payments it intends to make have actually been made and until it has been proven that the original debt and mortgage certificates it has issued are no longer in foreign hands but have been delivered to it.

For without the consent of the creditors through a unilateral agreement with Prussia, a delegation could not take place, those from Silesia could not be converted into Dutch state creditors, and Austria could not have transferred to the Prussian crown a right that it did not itself possess; a right to compensation for its liquid debt with the debt of a third party to a third party, even an illiquid one, to compensation for a private claim with a state claim. However, if the stipulation of the Berlin Peace Treaty had intended to give the creditors an order to pay Prussia, then, according to known rights, a mere order is not payment. Given the Austrian government's significant prevailing interest, it should therefore be considered uninvolved in this matter, and its direct influence should be regarded as futile or unwarranted.

It is beyond doubt that neither of the two supreme governments, in their revered love of justice, had even remotely intended to contradict the clear right of creditors, established by the most concise treaties, to delay or jeopardize the satisfaction of those creditors. For it would be morally impossible, indeed criminally presumptuous, to assume that the fulfillment of the promise to pay the debts was made conditional on a legal impossibility, on an assertion that could not be enforced against any of the parties involved. From whatever legal point of view one may consider the aforementioned reservation of compensation, it will everywhere appear to the creditors as inadmissible.

If the Crown of Prussia were to be regarded as the agent or assignee of Austria with regard to the payment of Silesian state debts it had assumed, then, if compensation could be legally imposed on the creditors, the claim to be compensated would have to be one that the principal or assignor, the Crown of Austria, had against the creditor states. Neither the Austrian nor the Royal Prussian side claims that such a claim exists.

If the issue of the national debt of the former Duchy of Upper and Lower Silesia is taken into account, and the Crown of Prussia is claimed as the owner of the greater part thereof, compensation would be equally unjustifiable, because there is no counterclaim by that duchy against the creditors, nor is one asserted by the Royal Prussian side.

However, if the Crown of Prussia, neither as mandatary or assignee of Austria, nor as owner of former parts of the aforementioned duchy, but in another capacity, as sovereign owner of entirely different states, claimed a monetary bonus pension not against the creditors, but again against a third party, the former Republic of the United Netherlands, the objection of compensation would not be legally valid even if the existence of such a claim were proven and the same were liquid in quali et quanto, neither of which is the case at present. The legal requirement of a claim and counterclaim by the same entitled party and obligated party is missing. If the Crown of Prussia finally did not want to grant the effectiveness of its promise to pay the debts made to the Crown of Austria in the Peace of Berlin otherwise than on the condition of the reservation of compensation made, whether expressly or by the act itself, any promise made by it would hereby be declared invalid, and thus as good as not made, if the creditors refuse to accept the compensation. However, they refuse to do so, and in their opinion not without good reason. For without their consent, that reservation made solely against Austria involves a legal impossibility with regard to them, namely the assumption that one is entitled to impose on a creditor the compensation of a claim, even an illiquid one and one whose existence is disputed, from a third party to a third party.

Such insistence on the reservation would effectively declare that the Crown of Prussia did not intend to fulfill the debt payment mandate received and assumed by Austria in the Treaty of Berlin, thereby rejecting the debt relationship to its primitive state prior to the Treaty of Berlin. A declaration of intent of this kind would be incompatible not only with the highly probable intention of the two supreme parties to the peace, but also with the Royal Prussian declaration to the Federal Assembly that "Austria was not involved at all" in the claims in question. This declaration would, which was certainly not the intention, appear in the aforementioned hypothesis as a *protestatio facto contraria*.

The question of the obligation to pay would then apparently be disputed between Austria and Prussia. The conditions expressed in the Federal Assembly's dismissive decision would then no longer apply, namely that the Prussian crown not only acknowledge its payment obligation in words but also fulfill it

through actual payment. However, since the decision expressly made the instruction conditional on such a prerequisite, the high federal authority would then again be competent to intervene constitutionally; whether from the point of view of a debt payment to private individuals disputed between two supreme federal members, or from the unworrisome point of view of a denial of justice, on the basis of Article 30 or Article 29 of the Vienna Final Act of May 15, 1820. For the appeal to the Federal Assembly on such grounds remained, in the absence of the prerequisite of the decision, reserved ipso facto et jure to the creditors.

Given this factual and legal situation, the complaining creditors are respectfully convinced that it is irrelevant to their legal claim to ask whether a royal Prussian monetary claim against the former Republic of Holland, now the Kingdom of the Netherlands, existed or still exists, or to ask more specifically what its legal basis and origin are and how high its amount is. In any case, in all the negotiations known to them throughout the 86 years that have elapsed since the Peace of Berlin, the Royal Prussian side has never made the slightest disclosure, let alone disputed a liquidation. Moreover, the Royal Dutch Government has recently given assurances that the investigations it ordered into the existence of such a claim have been unsuccessful.

However, if such a claim had actually existed in the past, there would be good reason to assume that it, as well as the alleged reservation of compensation, had long since been abandoned and tacitly waived. For not only:

- 1) has, as already mentioned, no attempt been made to settle this matter with the Dutch government in the long period since the Peace of Berlin, but also

- 2) In seven publicly known state treaties (listed on page 62 of the aforementioned publication) concluded between the Netherlands and the Prussian crown since 1742 concerning matters of interest in the years 1788, 1790, 1794, 1816, and 1817, the Royal Prussian side never mentioned a debt claim of the kind in question against the Dutch government, let alone stipulated compensation or made a reservation. Similar acts of waiver were undoubtedly expressed in two other recent cases. Namely,

- 3) When, in 1809, the Royal Prussian Government intended to negotiate a loan of 32 million guilders in Holland, it received permission from the Royal Dutch government only granted permission on the condition that it would accept the Old Silesian capital and interest in question as a certain amount instead of cash for the deposits for this loan, without even considering a monetary prevention for Holland. The condition was accepted, and the deposits were set at $\frac{5}{8}$ in cash and $\frac{3}{8}$ in old Silesian capital at par and in arrears interest, the latter set at one and a half times the amount of the capital. In this way, all Silesian bonds would have been redeemed at that time if the loan had been made in the desired full amount, which did not happen even halfway.

4) Nor was a more recent and very suitable opportunity taken to raise or compensate for any older Prussian monetary claim against Holland, at least to lodge a legal reservation. In 1822 and 1823, the Royal Prussian Government, without invoking compensation for a counterclaim to which it was entitled, had the King of the Netherlands pay the considerable sum of 1,488,000 guilders in cash in five installments for deliveries made between 1815 and 1818 to the Prussian garrison in the federal fortress of Luxembourg.

It has also been heard that the holders of Silesian government bonds from the three Dutch loans have been reproached for having obtained them at a relatively low price. As if—assuming this remark to be correct—the purchase price of an item could alter the law. Especially in this case, where the Anastasian Law is expressly waived in the promissory notes and all claims of the former owners of such bonds have been transferred to their legal successors.

But even from a financial point of view, when weighing up the calculation, compensation, and risk, the weight of the alleged accusation amounts to nothing, or less than nothing. Some creditors and their ancestors have owned their bonds since the beginning, for 90 years or more. Others have owned theirs for 50, 40, or 30 years. None of the current complainants have had them for more than a few years. Some have found themselves in the predicament of having to accept their entirely legitimate claims, whose fate had become uncertain or doubtful, at full face value or slightly less, or even to sell part of them at well below the purchase price and with the loss of all interest. None of the owners since 1740 has ever received interest on their capital. All of them have been under constant threat of having to forfeit their rightfully acquired property and its lawful enjoyment for an indefinite period of time.

For every 100 guilders of the five percent bond, the simple interest owed for the past 86 years amounts to 430 guilders; for the two six percent bonds, it amounts to 516 guilders; and for both of these, it is much higher if the interim interest is also taken into account. If Winer or the other person, rightly trusting in the state credit, had acquired such bonds even only about 10 years ago at a moderate price on speculation, how often would he have regretted not having used his money for other speculations! And if monetary gains were weighed against monetary gains on both sides, it would become apparent that even the most successful speculators in Silesian bonds are far from being equal, either in size or in security, to those who can boast of 86 years of free use of the capital interest and interim interest on the debt.

Speculative trading in government securities is, by its very nature, not considered unlawful or improper anywhere. Rather, it is partly encouraged and partly initiated by governments themselves in a number of ways, namely by issuing bonds below their face value. Anyone who once (in 1813) traded Prussian treasury notes at 25 for 100, or accepted them in payment, probably felt compelled to do so; anyone who, shortly after the Congress of Vienna, acquired certain debt certificates attached to the provinces

that had reverted to Prussia at relatively low prices; who, in 1818, received the bonds from the state itself at 73 for 100 in England for the Prussian 5% bond of 30 million talers, immediately entering into full interest enjoyment, and who, a few years later, were able to realize all these Prussian government securities at full face value, saw their trust in the government's legality and its faithful care for them justly rewarded thanks to the indispensable state money loan. Would the peculiar holders of Silesian government bonds, after a much longer and harder trial, be less worthy of finally sharing in the fruits of justice and the reward for similar, but far more persevering, reverent trust?

After careful consideration of all these historical, legal, financial, and political factors, His Royal Majesty's most revered wisdom, justice, love, and mercy grant the claiming owners of Silesian government bonds a secure guarantee for the protection of their rights and the fulfillment of their hopes. Therefore, with the deepest trust and reverence, they humbly request His Royal Majesty's most gracious decision:

whether they would graciously deign to immediately, after hearing the opinion of the Royal State Ministry, in particular that of the Minister of Justice, order the payment of the capital and interest arrears from the Silesian partial bonds in the possession of the claimants,

or

to refer this private legal matter, which is based on simple questions of law, to the courts for proper hearing and decision, in order to allow the law to take its course in any disputes that may arise there.

Awaiting Your Gracious Decision, the undersigned remains, with deepest respect and humility, Most humbly, M. J. Hertz, banker"

A.9 Prussian response to bondholder petition of 29 October 1828, 3 January 1829

Source: Actenstücke (1830, 19–21)

"Decree of the Ministry of Foreign Affairs to the banker Herz in Frankfurt am Main, January 3 1829

His Majesty the King has referred the petition submitted by you on October 29 of last year on behalf of yourself and other claimants as holders of Old Silesian bonds to the undersigned ministry for a decision based on the facts of the case.

In accordance with this highest instruction, the undersigned Ministry has no objection to the requests made in your petition, that payment of the principal and interest arrears from the Silesian bonds in the possession of the claimants be ordered, or, that this matter be referred to the competent court for proper hearing and decision, and hereby informs you of the following.

When provinces are ceded from one state to another as a result of war, the peace treaty by which the cession takes place is the legal source from which the judgment on the rights and obligations transferred

to the new acquirer is likely to be derived. A common provision of such peace treaties concerns the debts contracted by the previous owner of the land. With regard to Silesia and the debts incurred abroad by Austria as the owner of this province, Article 9 of the Treaty of Berlin of July 28, 1742, contains the following provision:

His Majesty the King of Prussia shall be responsible for the payment of the sums mortgaged on Silesia in respect of England and Holland, except that His Majesty may enter into liquidation of the latter debts owed to him by the Republic of Holland. Similarly, Her Majesty the Queen of Hungary and Bohemia shall be responsible for the sums mortgaged on the countries of Silesia in Brabant.

According to this agreement, Prussia assumed payment of the English debt and Austria assumed payment of the Brabant debt, both unconditionally; both types of debt have long since been repaid. With regard to the so-called Dutch debt, Prussia declared itself bound by the agreement and Austria was accordingly released from it entirely. However, by adding the reservation to its declaration that Prussian claims against the Republic of Holland would be offset against this debt, Prussia did not make the assumption of the liability conditional per se, but laid down a provision in the peace treaty itself regarding the time and manner of its fulfillment, which cannot be separated from that assumption.

The refusal of the Prussian crown to pay the debt contracted in Holland, unless the Dutch side was prepared to liquidate and settle Prussian claims, was originally a form of reprisal, as applied under the principles of international law to persuade another state to recognize and grant a right that it had disputed without reason. Now, however, the special circumstance arose that this was not decided unilaterally by His Majesty Frederick II against the Dutch Republic only after the conclusion of peace, but was expressed in the peace treaty itself as an essential provision of the regulation of the entire situation in Silesia established thereby.

From then on, the only thing that mattered was that the Dutch Republic showed itself willing to agree to a settlement of Prussia's claims in order to nullify the effect of the reprisals based on the peace treaty between Prussia and Austria.

The Prussian crown did not fail to negotiate with the Dutch Republic regarding the claims, which were partly owed to Prussian subjects and municipalities and partly to the Prussian crown itself. However, since the Dutch side was unwilling to concede payment of the Prussian claims, the Prussian side had no choice but to uphold the provision contained in the peace treaty in its original form.

In the same context in which the debt contracted for Silesia in Holland was transferred to Prussia in accordance with the peace treaty, it still exists, and Prussia will never agree to settle it unless the reservations it made at the time of the transfer are fully satisfied.

The demands made on the Republic of Holland in this regard were never renounced. If no special mention was made of them in later treaties between Prussia and Holland, the reason was that both contracting

parties, as is often the case, did not consider it appropriate in the prevailing circumstances to extend the treaties in question to conditions other than those which had just been settled, and to completely settle all previous differences.

It is a mistake to claim that in 1810 Prussia decided to repay the entire remainder of the capital and interest on the old Silesian bonds by means of a loan opened in Amsterdam. It was decided to use this loan to cover the state's needs at that time. If Silesian bonds were accepted for a certain proportion of the deposits for this loan, this was done in the same way as would have been the case with any other similar securities whose acceptance had been made a condition by the lender.

Any legal action they may take is inadmissible because there is no dispute to be decided either about the original nature of the debt when it was first contracted by Austria or about its assumption by Prussia, but because it concerns solely the effect of the reservation made at the time of the assumption and the reprisals ordered therein. Just as the courts cannot rise above the law in internal matters but must rule in accordance with the law, so too do they have no authority to challenge the validity of a political provision agreed upon by the sovereign, who is the source of legislation, in foreign affairs, contrary to their examination and decision.

The obstacles preventing the correction of the old Silesian debt incurred in Holland had been widely known since the Treaty of Berlin in 1742 and remained so until recently. When complaints were renewed, these were recalled by official decrees. If you and other complainants, despite this knowledge of the obstacles involved, have made the documents relating to this debt an object of speculation and now find yourselves disappointed in your expectation that Prussia could be persuaded in some way to settle the debt before the reservation made in the Treaty of Berlin has been completely fulfilled, they have only themselves to blame for the failure of their misguided speculation.

Royal Prussian Ministry of Foreign Affairs
(signed) Schönberg"

A.10 Protocol of German Federal Assembly (§293), 18 November 1830

Source: Deutscher Bund (1830). "Bitte verschiedener Eigenthümer von Partialobligationen aus drei in den Jahren 1734 bis 1737 durch Holländische Handelshäuser negociierten Schlesischen Staatsanlehen, um Verwendung bei den allerhöchsten beteiligten Regierungen wegen Feststellung und Regulierung dieser Schuldangelegenheiten", Protokolle der Deutschen Bundesversammlung. §293, 38. Sitzung, 18. November 1830, Protokoll, P. 1238–1252.

We provide below a translation of an excerpt covering the expert opinion and the proposal.

"As can be seen from the above account, the complainants

1) requested a statement from the Imperial Austrian Government regarding its position on the Silesian debt, subject to its alleged rights against the said government, and therefore sought the mediation of the Federal Assembly;

2) lodged a complaint against the Royal Prussian Government for denial of justice and requested the mediation of the High Federal Assembly, on the basis of Article 29 of the Vienna Final Act, so that legal proceedings could be initiated.

With regard to the first request, the Complaints Commission is of the opinion that the High Federal Assembly can only consider itself justified in requesting the Imperial Austrian Government to make any statement regarding its position on the Silesian debt claim if Austria had invoked either Article 30 or Article 29 of the Vienna Final Act, i.e. if the complainants had claimed that either the debt claim between Austria and Prussia was disputed or that Austria had therefore renounced its right to claim the debt. of the Vienna Final Act, i.e., if the complainants had claimed either that the debt claim between Austria and Prussia was disputed or that Austria was therefore guilty of a denial of justice.

However, since there is no dispute between Austria and Prussia regarding the payment obligation, as is well known, and since the complainants have not even attempted to accuse Austria of denying justice, there is no federal legal basis that would entitle the Federal Assembly to request Austria to make a statement on its relationship to the debt claim in question, and the Federal Assembly will therefore only be able to reject the complainants' request for such a statement.

As regards the complainants' further assertion that their direct claim against Austria still exists and that it is the duty of the Austrian government to make the matter of its subjects involved in the Silesian bonds its own, and to this end to seek the initiation of arbitration proceedings against Prussia, the Federal Assembly will be able to leave these assertions alone, if only because the complainants themselves have not made any request in this regard.

Incidentally, it is also self-evident that these claims could in no way give rise to intervention by the Federal Assembly with regard to the alleged continuing claim against Austria, in which case the complainants would in any event have to be referred by the Federal Assembly to Austria for the time being. Furthermore, as regards the alleged Austrian obligation to represent its subjects against Prussia, this should be a matter left to the discretion of the Austrian government.

As to Article 29 of the Vienna Final Act, on which the complainants base their claim against Prussia, states: If a case of denial of justice occurs in a federal state and sufficient assistance cannot be obtained through legal channels, it shall be incumbent upon the Federal Assembly to accept complaints about denied or obstructed justice, which shall be judged in accordance with the constitution and existing laws of each country, and to effect judicial assistance from the federal government that gave rise to the complaint.

If a case of denial of justice occurs in a federal state, and sufficient assistance cannot be obtained through legal channels, it is incumbent upon the Federal Assembly to accept complaints about denied or obstructed justice, which shall be judged in accordance with the constitution and existing laws of each state, and to effect judicial assistance from the federal government that gave rise to the complaint. In order to prove a denial of justice within the meaning of the article in question, it is therefore necessary that there be a proven denial or obstruction of justice, that this be not justified by the existing laws of the country concerned, and that no legal remedy has been obtained.

In the decision issued by the Royal Ministry of Foreign Affairs on 3 January 1829, the Royal Prussian Government laid down the following principle: As little as the courts can rise above the law in internal circumstances, but only have to speak according to the law, just as little do they have the power to make the validity of a political provision agreed by the sovereign, which is the source of legislation, in foreign circumstances the antithesis of their examination and decision. The Royal Prussian Minister of Justice also stated in the decision of 14 May 1829 that legal recourse in this matter was not permissible under the state laws and the state constitution, as the case in question was not a private claim subject to judicial cognition. If, therefore, the intention was to bring the claim in question into the area of private law, it had to be stated that the sovereign was not subject to any jurisdiction in relation to his sovereign rights. Although these certificates clearly indicate the view of the Royal Prussian Government that it does not consider the claimants' claim to be one that can be pursued by way of litigation against the state treasury, and that therefore there is no denial of justice within the meaning of the 29th article of the Vienna Final Act, no actual denial of justice has yet been provided.

Only if the claimants had already proved that the prosecution of their claim by way of legal action had been refused by the judicial authority concerned would the question of the application of the provision of Article 29 of the Vienna Final Act have had to be brought before the Royal Prussian Government. The opinion therefore seems justified that the claimants have not yet fulfilled the first and most important condition that could authorise the Federal Assembly to further examine the alleged denial of justice. Under these circumstances, the Complaints Commission must submit its motion to the effect that the High Federal Assembly may reject the Complainants with their motion directed against both the Imperial Austrian and the Royal Prussian Governments as currently unsuitable for intervention by the High Federal Assembly.

With general approval of the Commission's motion, it was then decided: that, as a formal denial of justice had not been proven, the complainants' petition be dismissed."