First, most manifestly, the French monarchy retained a residual constitutional order because it was widely presupposed that, for all its growing power, the monarchy was bound by a number of basic laws and norms, which continuously defined the structure of the state. These laws were rather diminished variants on the fundamental laws acknowledged in the sixteenth century. However, the expectation of royal adherence to laws of succession, laws of religious obligation, laws of majority and laws regarding the inalienability of the French territory remained strong. Moreover, it was also assumed that certain positive laws constrained monarchical power, and that the monarch could not arbitrarily contravene time-honoured institutional conventions (see Lemaire 1907: 271; Saguez-Lovisi 1984: 25). Even those theorists who supported monarchical 'absolutism' clearly insisted that France possessed a constitution that ensured that the state was juridically distinct from the person of its monarch and placed limits on the exercise of power. Close to the origins of the absolutist state, Jean Bodin and, later, Cardin Le Bret, both of whom are seen as staunch advocates of absolutism, were emphatic that monarchical legislation remained subject to customary constraints (Bodin 1986 [1576]: 193; Le Bret 1635 [1632]: 14–15).

Second, limits were placed on the power of the absolutist state by virtue of the fact that the reinforcement of the state bureaucracy, itself reflecting the anti-privatistic policies of the French monarchy, also contained constitutional implications. The bureaucratic intensification of the state structure was marked, in fact, not only by an incipient deprivatization of the civil service, but also by a reduction of the private status of the monarchy itself. During the early period of 'absolutism', a clear distinction was made between the administrative order of the state and the natural/physical will of the monarch, and the French monarchy created an administrative system that, although enacting a royal chain of command, possessed a distinct and abstracted permanence against the monarch. Above all, the administrative reforms that formed the basis for governmental 'absolutism' saw the final transformation of the monarch from a personal bearer of high seigneurial privileges located within a mass of private societal agreements into a pivotal focus of public authority, and they redefined royal power as a constant political resource that was insensitive to, and able to prevail over, privileges and personal entitlements. The main architect of early French absolutism, Richelieu, was notably committed to the formation, not of a political order using power as a personal/monarchical property, but of an abstract rational state, in which the concentration of power around the king was intended

to simplify and confer symbolic cohesion on the bureaucratic apparatus in which power was factually distributed (Pagès 1946: 111; Church 1972: 16). In this respect, 'absolutism' drew its force from the precondition that the state was a positive actor, whose extensive reserves of power were of necessity constitutionally distinct from immediate factual bearers of office. The bureaucratic personality of the state, in fact, was the primary precondition of its emergent unitary and positive structure, and the unitary consistency of the state clearly presupposed that it contained a rudimentary organic constitution.

In addition to this, the French monarchy in the seventeenth century was also marked by a constitutional structure because, like the Spanish monarchy, it was incapable of suppressing private legal sources of obstruction, and a number of institutions formed potent correctives to the centralizing power of the monarchy. Primarily, as mentioned, under Louis XIII the *parlements* increasingly acted as irritants within the monarchical state, and the king repeatedly took measures to curtail their powers.[51] Indeed, the French monarchy was recurrently unsettled by unresolved conflicts over jurisdiction, noble privileges, prerogative power and preconditions of fiscal stability, and these were commonly articulated through the *parlements*. As a corps of high-ranking *officiers*, the members of the *parlements* were often motivated by the desire to push back the powers of the monarchy, to preserve their own (venal) judicial privileges against the uniform order of the central state, and to resist the centralistic authority of the various monarchical *commissaires*, especially the *intendants*, whose administrative commissions included judicial functions that diminished the powers of the sovereign courts and excluded members of the *parlements* from government (Bonney 1978: 135). These conflicts between the centralizing force of royal administration and the private claims of the judiciary found initial expression in the king's Édit de Saint Germain (1641). This statute made it illegal for *parlements* to intervene in business conducted by the *intendants*, and it sought to invest more judicial power in the state administration: it gave early expression to the notion of the *administrateur-juge*, which later became fundamental to French judicial structures (Burdeau 1994: 43). These conflicts then culminated in the Fronde, beginning in 1648–9; this was a deeply destabilizing elite revolt that led to a short civil war, caused by the fact that judges of the Parisian

[51] In the Code Michau of 1629 Louis XIII tried to reduce the period of time in which *parlements* could submit remonstrances (Ordonnance 1630: 38).

*parlement* demanded the suppression of the *intendants*, refused to register new tax laws and used their positions as *parlementaires* to defend both their own privileges and the privileges of those subject to new fiscal extraction. For a short time after the suppression of the Fronde, the courts became less politically vocal and more compliant instruments of the royal will, and, regardless of noble opposition, laws were often passed in prerogative style: through *lits de justice*. Louis XIV in fact withdrew the power of remonstrance from the *parlements* in 1673. However, after the death of Louis XIV the *parlements* again began to play a politically destabilizing role. From this time on, the friction between crown and *parlements* continued, and it at times assumed politically crippling intensity. Throughout the Ancien Régime, in short, the *parlements* operated as semi-constitutional bodies, which refracted the fiscal and judicial conflicts at the centre of the French monarchy. It was in the *parlements*, often through the use of prerogative means, that the monarchy's attempts to stabilize its unitary structure had to be fought out, and it was in the *parlements* that the primary sources of constitutional opposition to the crown were channelled. The *parlements* were the nodal point in the ongoing conflict between the monarchical state administration on one side and the semi-patrimonial judiciary on the other, which defined French institutional history up to 1789.

Of the greatest importance in this conflict was the fact that the composition of the *parlements* was such that the French state retained an element of constitutional privatism at its legislative and fiscal core. The fact that the members of the *parlements* assumed office venally and often came to preserve office as a hereditary patrimonial privilege meant that the persons responsible for the key public functions of approving legislation and taxation obtained these duties as members of a private corps of office holders, possessing particular corporate distinctions and privileges, which they naturally wished to defend. In particular, this meant that the office-holders in the *parlements*, although hostile to royal absolutism, were often committed to preserving local powers and seigneurial privileges and exemptions. As such, in fact, they simultaneously opposed both royal prerogatives and the establishment of general or national representative organs and general or national judicial forms, and they commonly obstructed state actors who sought to legislate in generalized fashion and to override the private interests of corporate society. The element in the state's structure (i.e. its legislative, judicial and – in corollary – fiscal dimensions) in which it had the greatest need for positive authority and autonomous flexibility, in short, remained a

dimension of its power in which it was forced to negotiate with highly particular vested interests, and in which its need for autonomy inevitably brought it into confrontation with a residual constitutional privatism. In giving judicial privileges to office-holders, the Bourbon state privileged exactly those social sectors which, especially in fiscal questions, had a strong interest in blocking general laws, and the result of this was that the state preserved within its vital organs certain private groups that had not been – and in fact could not be – fully integrated into the state and fully brought under the more general rule of law;[52] these groups, then, were the people with whom it was compelled to conduct its defining constitutional conflicts. The private rights and privileges of office holders thus retained determining power in the activities of the French monarchy, and the state struggled autonomously to fulfil its main objectives as a state – that is, to pass general laws and to raise general taxes – because of its judicial/legislative reliance on the *parlements* and their privately motivated members. Indeed, after the end of the suppression of the *parlements* enforced by Louis XIV, it has been widely (although not unanimously) claimed that the *parlementaires* assumed a position in the forefront of the 'feudal reaction' through the eighteenth century, by which the centralistic state-building functions of the absolutistic elites were partly undermined by the new feudal-bureaucratic class of the *noblesse de robe*, whose members owed their status to venally transacted offices (Ford 1953: 246; Gruder 1968: 205). As in Spain, in consequence, in France the 'absolutistic' state-building experiment did not succeed in eradicating private countervailing power through society, the actual degree to which the state possessed an abstracted monopoly of social power was always limited, and, for all its attempts at 'absolutistic' centralization, the state retained an informal constitution that was plagued by lateral semi-patrimonial counterweights.

The primary consequence of this aggregate of processes was that throughout the seventeenth century the French monarchy was unable to avoid constitutional restrictions, and it did not consolidate itself as an abstracted and quasi-autonomous bearer of political power in society. In fact, the French monarchy retained a quasi-privatistic constitution, in part determined by its obligations to external prerogatives. Above all, the fact that the French monarchy elected to transact its most vital business

[52] Egret notes that the *parlements* were perceived as opposing certain fiscal bills for reasons that were not fully 'disinterested', and they undermined the attempts of the monarchy to create a reliable fiscal order (1970: 107–9).

not through public institutions but through venal office holders, meant that the state was unable to extricate its power from private milieux or to consolidate itself as a distinctively public order. The proliferation of venal offices in the monarchical state meant that, like the Spanish monarchy, the state of French 'absolutism' existed in a societal constitution in which its exposure to internal privatistic resistance was high and the danger that its offices could be retranslated into private/patrimonial or *dualistically* constructed rights or benefices remained palpably destabilizing. In particular, this meant that the state was not able to generalize its power equally across society, it was forced to prioritize, preserve and placate seigneurial interests in its legislative processes, and – in the final analysis – it could only use power at a relatively low level of positive abstraction, uniformity and intensity. In this case, too, 'absolutism' comprised a constitutional structure in which the state could only evolve to a limited level of autonomy and unitary cohesion: the constitution of 'absolutism' ultimately impeded the formation of integral statehood and autonomously usable reserves of power in French society.

## Prussia and smaller states

After 1648, less representative and inclusionary techniques of government were also emulated throughout northern Europe. In many major Lutheran or Calvinist states, royal executives also began (at least sporadically) to limit the constitutional power of estates and to govern at a higher degree of societal independence than had previously been possible. In Denmark, for example, a new *lex regia* was passed in 1665, which substantially expanded the scope of royal power. This document, which remained secret, conferred on the king the 'sole authority' to pass and enforce law (Lockhart 2007: 249). By the later seventeenth century, even in Sweden, which (as discussed below) had previously possessed one of the strongest constitutional designs in Europe,[53] Karl XI was able to impose severe restrictions on the constitutional authority of his council, to remove other constraints on his political status and to set the stage for a short 'absolutist' experiment that lasted until 1719.

In the German territories, the longer aftermath of the Reformation raised legal and constitutional problems very different from those in consolidated monarchies, and the formation of unitary state executives was hardly feasible in the earlier seventeenth century; the developing

[53] See below, pages 134–7.

states in the German territories were necessarily marked, for long periods of time, by high levels of inner and outer constitutional dualism. The defining constitutional problem for most of the larger German states resided in the fact that supreme powers of jurisdiction in single states remained precariously divided and contested between territorial courts and imperial courts, and for long after the Reformation the relation between territorial states and Empire was shaped by a series of legal/constitutional arrangements that prevented the territorial states from assuming entirely sovereign or unitary political authority. Most distinctively, the legal powers of some territorial states were fragmented by the fact that their subjects possessed rights of appeal to the imperial courts, and only a small number of the territories possessed jurisdictional competences that could not, in some matters, be overruled in the appellate system of the Empire. In the longer wake of the Reformation, therefore, most German regents devoted much of their constitutional energy to securing (or, more normally, attempting to secure) the *privilegium de non appellando illimitatum* – that is, a legal immunity granted by the Empire, which authorized the effective (although still often incomplete) legal independence of the territories from imperial appellate courts.[54] In consequence, well after 1600 most German states were still partly obligated by originally feudal entitlements and immunities in the exercise of their jurisdictional authority, and their power was still balanced both by legal prerogatives of the Empire and legal prerogatives of their own subjects. As a result, the primary conflicts of German states in the seventeenth century remained determined, to a large degree, by an external constitutional relation between Empire and particular territories, and this outer dualism, more than any inner dualism, was the main focus of legal-constitutional weakness and controversy. Fully evolved foundations for statehood were not established in the German territories until well after 1648. In many cases, German territorial states did not become the sole centres of fiscal and jurisdictional power until the eighteenth century, or even as late as 1806.

After the end of the Thirty Years War in 1648, however, the tendency towards the expansion of princely authority and the curtailment of the traditional powers of the estates, which was already a feature of more integrally constructed monarchical states, began to shape the temporally retarded process of state formation in German territories, and in some

[54] For example, Bavaria did not finally receive this privilege until 1620. Prussia did not have the privilege for all its – admittedly highly composite – territories until 1746.

cases this generated a constitutional structure similar to that in other 'absolutistic' states. The emergence of an absolutist pattern of state organization was perhaps most obvious in Prussia: in fact, the birth of Brandenburg-Prussia as a major state is commonly traced to the fact that, in the aftermath of 1648, the ruling electoral house of the Hohenzollerns progressively diminished the political liberties and functions of regional noble estates. The first step in this process was the Recess of 1653, in which the political authority of the estates in Brandenburg was selectively restricted. This recess formed a semi-constitutional compact in which, on one hand, the estates granted money and approved standing taxes, substantially increased during the Thirty Years War, for the Great Elector, who later used this to support a permanent royal army. As a result, the estates lost the power to veto taxation and to convene full parliamentary assemblies, and they renounced a good part of their status as quasi-representative actors. However, in this compact, by way of recompense, the nobility also retained and strengthened important rights and indemnities: the noble estates received guarantees for their powers of patrimonial authority over their lands and peasants, the jurisdictional structure of serfdom was intensified in lands held by the nobility, and nobles were partly exempted from central taxation.[55] Subsequently, after the formal union of Brandenburg and Prussia, the Hohenzollerns began, between the 1660s and the 1680s, more consistently to suppress the power of the estates in East Prussia, which had previously been under feudal obligation to Poland and Sweden. In particular, the Elector suspended the right of the estates in East Prussia to approve taxation, and he integrated permanent revenue-raising mechanisms into the state. Other German states, similarly, took steps to weaken the role of the estates at this time. Indeed, in some states, in particular Bavaria, the influence of the estates had begun to decline as early as the later sixteenth century (Lanzinner 1980: 250).

In parallel to this, throughout the course of its emergence as a major political force the Prussian ruling dynasty strategically emulated administrative patterns established in Spain and France. This was apparent, first, in the fact that its agents sought to assimilate previously potent political actors – usually members of the noble estates, still possessing embedded feudal rights – into the state administration: that is, it offered to accommodate members of the nobility as high-ranking civil servants

[55] See the *Corpus Constitutionum Marchicarum* (1737–55: 438, 440).

or in senior military offices, and it transformed private noble privileges into tokens of state-controlled social distinction, status and qualification (Baumgart 1969: 134; Wyluda 1969: 42–126; Vierhaus 1990: 214). It has been repeatedly observed that the elite administrative actors in Prussia, as in France, were designed to curtail noble power: in Prussia administrative *Kommissarien*, modelled on French *commissaires* (Hintze 1962b [1910]: 245–9), were also appointed to absorb functions into the state that had previously been performed by bearers of local or seigneurial authority.[56] However, the strategy of the Prussian ruling family was not exclusively repressive: it was also keen to placate the nobility by preserving noble status and social privileges within the administrative departments of the state, so that many social positions, primarily in the army, were reserved for the nobility. The creation of permanent standing armies, which distinguished many monarchies at this time, played a particularly vital role in Prussia. The army served both to intensify the controlling power of the governmental regime and to provide professional compensation for members of the nobility whose ancient privileges had been hollowed out by the process of political centralization. The Prussian military system, in sum, at once absorbed and perpetuated the status of the Prussian nobility (Büsch 1962: 93); indeed, it preserved the status of the nobility in its original feudal function as a 'class of warriors' (Hofmann 1962: 116).

As in other 'absolutistic' states, in consequence, the Prussian state consolidated its unitary form through a process of half-coercive and half-compensatory political assimilation of privately privileged elites. Through this process, political power was at once centralized and applied more generally through society, variations of status under law were partly eradicated, and, in some respects, society began evenly to converge around the reserves of legal power cemented in the princely state.[57] Despite this, nonetheless, as in other societies with a seemingly 'absolutistic' socio-political structure, Prussia also retained a strong body of societal counterweights and lateral balances, which obviated the concentration of political power in the bureaucratic state. Indeed, Prussian absolutism also evolved on a constitutional pattern that permitted only a highly selective process of political centralization and ensured that state power remained exposed to pervasively privatistic centrifugal forces.

[56] For a view qualifying this classical argument see Sieg (2003: 97).
[57] For a brilliant account of this core process see Rachel (1905: 319).

In this respect, most notably, the Prussian ruling house was unable to dissolve either the corporate constitution or the locally pluralistic fabric of Prussian society, and it was forced to accept the continued potency of external private and seigneurial limits on its power. As discussed, for example, the Recess of 1653 guaranteed certain legally enshrined privileges for the estates in Brandenburg: the recess certified that princely power in fiscal matters was not to encroach on the jurisdictional authority of the aristocracy, and in their domains the nobility retained jurisdictional privileges as quasi-constitutional rights. The local powers of quasi-sovereign rule possessed by the nobility were endorsed and perpetuated as a precondition for their military co-operation, and the class status and privileges of the nobility were, in part, preserved from 1653 until the early nineteenth century. The state's assertion of political primacy over the estates, in consequence, was predicated on a complex set of compromises, in which the ruling house committed itself to uphold the traditional rights of the nobility in local affairs and to guarantee noble interests in the highest echelons of the state (Büsch 1962: 135; Wehler 1987: 246). Central to Prussian absolutism was an implicit bargain between nobility and monarch, which meant that the central control of state power was accepted in certain areas of social regulation (primarily in matters regarding military security), yet that powers of centralization had to be purchased through a reinforcement of local and seigneurial authority in other areas. The nobility emerged, in short, as a class whose formal political status was diminished through the system of territorial 'absolutism', but whose social and territorial privileges were, in some respects, enhanced. As in other 'absolutistic' societies, the abstracted public transmission of power depended on a residually privatistic constitution of the state and of society more widely, and the reserves of power condensed in the administrative executive could only be applied to a limited and clearly predetermined range of societal exchanges. Under Prussian 'absolutism', effectively, state power was only usable as a resource situated above a still diffusely and pluralistically structured political society, in which the state's monopoly of power in a select number of regulatory matters was secured by the formal recognition of its secondary status in many others.

There has been much criticism of the concept of absolutism as a term for categorizing patterns of early modern state construction. Most particularly, this term has been rejected both by historians who deny that early modern states were able to assume absolute power (Hartung and Mousnier 1955: 7; Willoweit 1975: 2; Collins 1995: 1) and by historians

who suggest that states never desired to legitimize themselves as uncurtailed centres of coercion.[58] In relation to these debates, two distinct views are proposed in the analysis provided above, both of which suggest that extreme caution must be exercised when the concept of absolutism is employed. The account given above seeks to add to scepticism about the historical reality of absolutism by claiming, first, that 'absolutist' states always possessed a de facto constitutional order, and they were inevitably checked by a manifest set of external countervailing powers. Second, it gives further emphasis to this point by arguing that societies distinguished by 'absolutistic' techniques for constructing and using power tended, owing to their externalistic constitutional apparatus, to develop very weakly unified states, which were endemically threatened by disaggregation into their constituent patrimonial parts, and they normally produced political power at a low level of intensity and generality and in a form marked by high degrees of regional and patrimonial unevenness. The constitution of 'absolutism', in other words, was an organizational response to the increased need for positive techniques for generating and circulating political power that uniformly cast the societal form of early modern Europe. As such, the constitution of 'absolutism' promoted the evolution of the state as an increasingly unitary and emergent modern political apparatus; to this degree, 'absolutism' marked a construction of political power as adapted to the processes of differentiation, abstraction and legal-political positivization that shaped early modern European societies more widely. However, the constitution of absolutism was an organizationally incohesive reaction to these processes: under 'absolutism' the state remained deeply enmeshed with originally dualistic or centrifugal centres of interest, and it struggled to distil power as an internally abstracted object or to apply political power as a flexible positive facility. The political constitution of 'absolutism' tended to reflect a wider societal conjuncture in which state and economy were only loosely differentiated, and in which states were compelled to resort to personalized regulation of the economy and erratic brokering with embedded economic groups in order to raise taxation and pass laws. As a result, state institutions lacked efficient techniques for economic control, and – for all these reasons – the state remained reliant on private and quasi-patrimonial sources of support through society in order to mobilize its basic monetary, military and jurisdictional resources. For these reasons, 'absolutist' states were

[58] See Dreitzel (1992: 139–40). For a resumé see Henshall (1996).

usually, over longer periods of history, ineffective as unitary political orders, and their basic positive functions of autonomous or abstracted statehood were habitually undermined by their half-coercive, half-privatistic structure. Indeed, in many instances the weakness of these states was the result of the fact that they did not evolve more generally inclusionary constitutions, they failed to disconnect public functions from private prerogatives and milieux, and they did not elaborate a formal and internalistic public-legal order in order autonomously to construct their power and systematically to conduct legislative processes. This private diffuseness of the political constitution created a vicious circle for 'absolutist' states: the weak constitution created a weak, privatistic state, and a revolutionary transformation of both the entire state and the entire society in which the state was located was required to create a strong, inclusionary state apparatus.

## *Early classical constitutionalism*

If some societies of early European modernity organized their expanding political functions by concentrating political power in the state administration and weakening consensual mechanisms for regulating legislation and public finance, some societies, at the same time, produced alternative institutional models to abstract their political power and to unify and order their political functions. Indeed, some early modern societies responded to the growing abstraction of power and to the societal demand for the unitary production of political power by widening their systems of political representation and by internally formalizing negotiated techniques for structuring their exchanges with societal agents subject to political power, especially in the economy. The emergence of early classical constitutionalism, thus, evolved as a line of state building forming a parallel to absolutism, and it marked a related yet distinct institutional reaction to the increased need for differentiated and positivized resources of political power that characterized European societies after the Reformation.

### Sweden

Through the sixteenth century, the Swedish monarchy had tended towards the formation of a moderately autocratic political regime, albeit one supported by a strong parliament. However, by the late sixteenth century it was expounded in constitutional doctrine, notably in the seminal works of Erik Sparre, that royal authority depended on the