

Studies in Social History

Society and Politics in Germany 1500–1750

G. Benecke



STUDIES IN SOCIAL HISTORY

SOCIETY AND POLITICS IN
GERMANY 1500–1750

**SOCIETY AND POLITICS IN
GERMANY 1500–1750**

G. BENECKE

 **Routledge**
Taylor & Francis Group
LONDON AND NEW YORK

First published in 1974

This edition published in 2007 by
Routledge
2 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN

Routledge is an imprint of Taylor & Francis Group, an informa business

Transferred to Digital Printing 2010

© 1974 G. Benecke

All rights reserved. No part of this book may be reprinted or reproduced or utilized in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

The publishers have made every effort to contact authors and copyright holders of the works reprinted in the *Studies in Social History* series. This has not been possible in every case, however, and we would welcome correspondence from those individuals or organisations we have been unable to trace.

These reprints are taken from original copies of each book. In many cases the condition of these originals is not perfect. The publisher has gone to great lengths to ensure the quality of these reprints, but wishes to point out that certain characteristics of the original copies will, of necessity, be apparent in reprints thereof.

British Library Cataloguing in Publication Data
A CIP catalogue record for this book
is available from the British Library

Society and Politics in Germany 1500–1750
ISBN10: 0-415-41308-7 (volume)
ISBN10: 0-415-40266-2 (set)

ISBN13: 978-0-415-41308-4 (volume)
ISBN13: 978-0-415-40266-8 (set)

Routledge Library Editions: Studies in Social History

SOCIETY AND POLITICS
IN GERMANY 1500–1750

G. Benecke

Department of History, University of Kent

LONDON: Routledge & Kegan Paul
TORONTO: University of Toronto Press

*First published in 1974
in Great Britain
by Routledge & Kegan Paul Ltd
and in Canada and the United States of America by
University of Toronto Press
Toronto and Buffalo
Set in Monotype Bell
and printed in Great Britain by
Western Printing Services Ltd, Bristol*

© G. Benecke 1974

*No part of this book may be reproduced in
any form without permission from the
publisher, except for the quotation of brief
passages in criticism*

RKP ISBN 0 7100 7842 0

UTP ISBN 0 8020 2174 3

Contents

Preface	<i>page</i> xi
---------	----------------

PART ONE INTRODUCTION

I	Early Modern Germany	3
II	Early Modern German Society	10
III	The Problem of German Federalism	23

PART TWO TERRITORIAL STATES IN NORTH-WEST GERMANY

IV	The Region around Lippe	41
V	Rule by Election: the Ecclesiastical Territories	51
	(i) Münster	51
	(ii) Paderborn	64
	(iii) Osnabrück	81
	(iv) Minden	95
	(v) Corvey	102
	(vi) Herford	104
VI	Rule by Inheritance: the Lay Territories	109
	(i) Brunswick-Lüneburg	109
	(ii) Brunswick-Calenberg	113
	(iii) Brunswick-Wolfenbüttel	119
	(iv) Schaumburg	123
	(v) Rietberg	133

CONTENTS

(vi) Ravensberg	136
(vii) Tecklenburg	153
Conclusion	157

PART THREE SOCIETY AND POLITICS IN ONE STATE:
THE COUNTY OF LIPPE

VII Lippe Society	161
VIII Rulers' Finances and Estates' Taxation	181
IX Lippe during the Thirty Years' War	226

PART FOUR RELATIONS BETWEEN STATE AND
FEDERATION: LIPPE AND THE EMPIRE

X Lippe and the Emperors	245
XI Lippe, <i>Kammerzieler</i> and <i>Reichskammergericht</i>	263
XII Lippe, <i>Römermonate</i> and <i>Türkensteuer</i>	288
XIII Lippe at Imperial Court, Assembly and Circle	332

PART FIVE CONCLUSION

XIV The Federal Bond of Empire	373
Appendices	
I Emperors, and Ruling Lords and Counts of Lippe, Fifteenth to Eighteenth Centuries	380
II The Worms <i>Reichsmatrikel</i> , May 1521	382
III German States and Families in the Imperial Assembly, 1792	394
Bibliography	405
Index	423

Maps

1	The county of Lippe in 1600	<i>page</i>	400
2	The region around Lippe in the seventeenth century		401
3	The Westphalian Circle, 1512–1806		402
4	The Imperial Circles of 1512		403

Preface

THIS book attempts a new interpretation of the Holy Roman Empire in Germany from the fifteenth to the eighteenth century. It makes use of regional printed materials and of unpublished state archives from north-west Germany, a large and important region of which no thorough study has yet been published in English. These materials tell us how the early modern Holy Roman Empire actually worked. The book shows how politics were conducted on a loose basis, wherein the federal Empire could only ever be as strong as its component territorial states wished. This strength was not dependent on any national myth or propaganda which would show the origins of a nineteenth-century *kleindeutsch*-Prussian or *grossdeutsch*-Austrian cause. Nor is the Empire an example of a chaotic system of society and politics, which it would be the destiny of nineteenth-century German national liberals to overcome by rationalization and centralization. Instead, the strength of the early modern German system of society and politics lay in the way in which the mass of small states co-operated in mundane day-to-day affairs, and the way in which matters were co-ordinated in bodies set up for that specific purpose at federal/*Reich*/imperial level.

The way in which the records survive dictates that, in order to arrive at a true assessment of the whole, the parts have first and foremost to be studied in their own right. This technical difficulty goes a long way towards explaining why historians have not yet made their long-overdue revision of the real nature of early modern German society and politics. This book is a first study in depth from those specific state archives that

PREFACE

show how essential were federal bodies—such as the *Reichstag* and its committees, the *Reichskammergericht* and *Reichshofrat*, *Kreisdirektorien* and *Kreistage*, plus their system of *Römermonate*, *Türkensteuer* and *Kammerzieler*—to German society and politics at state and federal level. The question that this mass of new material above all poses is, how effective and mature was this early modern German system of government?

Part I provides a general introduction to early modern Germany and to its social groups, going on to outline the existing printed sources and monographs for the study of early modern German federalism, pointing to the difficulties of obtaining a coherent general picture of its society and politics. Part II shows in depth that in order to study the Empire as a whole, its component states have first and foremost to be studied in their own right. This has been done by taking thirteen north-west German states which are new material to the English-speaking world, and to the German-speaking world in so far as they have been studied here not as states of interest only to local history, but as states showing in detail the fullness and complexity of early modern German history. These states co-operated in federal affairs in their own internal interest, in order to gain support collectively from each other to build up each of their own administrations, judicatures and assemblies. This is shown in detail in Part III as regards one specific small state, the county of Lippe in eastern Westphalia, by exhaustive analysis of its archives. German society is here atomized. The relations between rulers and their officials, the Estates of nobles and burghers, and the needs of peasants-plebeians are worked out in terms of taxation and finance during the whole early modern era, and then tested specifically in the worst crisis of that era, in the Thirty Years' War period. Part IV relates state affairs to the federal institutions of the Empire from the archive materials that remain for the county of Lippe. The nature of a loose federal system is thus laid bare for the first time from the point of view of its effect on one state, providing, it is hoped, a foundation upon which future study and research into early modern German history can be based. Part V concludes by summarizing these findings and seeks to point the way to further studies in order to verify the picture obtained from one set of state archives, namely that the Holy Roman Empire

PREFACE

provided an effective and mature system of government for early modern Germany that was attuned both to its own needs and to the wider needs of early modern Europe.

I wish to thank Staatsarchivdirektor a.D. Dr Kittel, Staatsarchivdirektor Dr Engelbert, their staff at Staatsarchiv Detmold, and Stadtarchivar Dr Hoppe in Lemgo for their interest and generous help, and especially to thank Staatsarchivrat Dr Sagebiel for introducing me to the palaeography, and for his willingness to discuss my work at all times. The views and any remaining errors in the work are my own responsibility.

I acknowledge research grants from St Andrews University and from the Carnegie Trust for the Universities of Scotland in the years 1966–9. The work presented here is a revised and extended 1970 Ph.D. thesis of St Andrews University, completed under the supervision of Mr. A. F. Upton, to whose guidance and friendship this study owes its existence. Original quotations in German are in the thesis, along with much more expansive footnotes to which attention is drawn.

The thesis also includes a volume in German of selected documents, most of them transcribed from archive originals for the first time. These documents have not been published, but they can be consulted in my thesis, 'Northwest Germany, Lippe, and the Empire in Early Modern Times', in St Andrews University Library, Scotland.

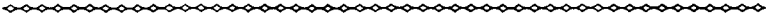
I also acknowledge with gratitude private assistance from Mrs W. L. H. Butchard, Detmold; Professor Åke Nilzén and Fru Britta Nilzén, Stockholm; Fräulein Rosa Steinbuch, Berlin; Herr K.-G. Brackemann, Detmold; the Misses Butchard, Cobham, Kent; and encouragement from my contemporaries, Dr Göran Nilzén, Stockholm; Dr Kurt Schuster, Wolfsburg; jur. kand. Anders Lindqvist, Uppsala. Dr David Turley generously saved me from many a pitfall with the text.

I am also indebted to my students at Kent, Jayne Elsmore, Laraine Rynham and Harry Robins, whose critical approach to a 'crisis' in early modern Germany has helped my work immeasurably.

My wife Karin checked, improved and cross-checked several drafts of this work. The final version is dedicated to her.

G.B.

Part One



Introduction



I

Early Modern Germany

THERE is no good textbook on early modern Germany. Perhaps the subject is unimportant and thus of little interest. The mass of work on Luther and the Reformation would seem to suggest otherwise. Is it because historians are lazy? To unravel the history of all the German states from the scattered and voluminous archives that survive in such a way that the parts do indeed effectively explain the whole is a superhuman task. Yet this is what a good textbook must finally be shown to have accomplished. No one is anywhere remotely near to being able to do this. The subject is wide open to the research worker. The groundwork has simply not been done.

At present what can be done is to provide a new framework to interpret sources in such a way that early modern Germany can be understood for what it was—not for what it had been in the medieval past, nor for what it was to become in the nineteenth and twentieth centuries. Whether or not even this turns out to be a philosophical and ideological impossibility, such a framework would enable us to look at specific states within their own regions, and also to say something significant about the inter-relationship of each specific state and early modern Germany as a whole.

This study seeks to do that by showing the federal importance of the regional and local sources that have been examined. So this is not a textbook. The work was originally a doctoral dissertation. It assumed prior knowledge of background, structure and events in early modern Germany, which Part I of this book now briefly seeks to outline. What was early modern Germany?

INTRODUCTION

What was the structure of its society? How did its politics function?

By 'early modern' we mean a period of time. This is not precise: yet it is not insignificant notation, if it is used to indicate new trends, movements, crises, real or abortive changes as well as any underlying or superficial continuities. It is insignificant only if we use it too literally as chronology. The dates for the beginning and end of 'early modern' must fluctuate according to theme and subject. For Germany 'early modern' could be thought to begin to apply from 1450 to 1550, although this could be pushed back earlier, and to end at about 1750 to 1850.

By the fifteenth century German territories were developing an identity of their own. They built up their own territorial assemblies, administrations, law courts, procedures and tax systems. State structures emerged, exercising internal power in new ways. New systems came into conflict with older beliefs about politics. This caused much of the tension that can be noted as the beginning of an 'early modern' period. Whilst German peasants and artisans increasingly rebelled in the name of the good old justice (*Das Gute Alte Recht*) of God and King, state officials were pioneering new forms of law (*Gesetz*) to bypass the old, unworkable ideal of justice (*Recht*). The official established his ruler's rights (*Gerechtsame*) and enforced legislation by prerogative (*Gesetz und Gebot*).

In theory feudal ties had been contractual, freely and voluntarily made. In practice they were subordinated increasingly to a new obedience and loyalty of subject (*Untertan*) to ruler (*Landesherr*). Although feudal law was retained in early modern Germany, it was employed to deal with fewer and fewer privileged families and their privileged properties, whilst state officials worked out greater and greater numbers of duties for the mass of the subject population (see Chapter VII).

Existing beliefs and systems were modified or allowed to linger on. Old was not replaced by new in any revolutionary or rational way. The early modern method of change was to claim to return to the true old way, as with Luther's appeal to the Bible and primitive church, or to exploit an existing institution in a new, harsher way, as demonstrated in the increase in serfdom and latifundia in regions such as those east of the lower Elbe.

In the fifteenth century the German territories already formed a loose federal unit. A fixed procedure for electing the German king was operating by the fourteenth century. The rulers of Mainz, Cologne, Trier, the Palatinate, Saxony and Brandenburg became the body of Electors and formed the first chamber of an imperial assembly which itself was fully operational as a federal body of arbitration and included most of the territorial rulers of Germany as members by the time of King Wenceslas in the later fourteenth century. The reign of his father, the Emperor Charles IV, marks the real beginning of this new federal system in Germany. By the fifteenth century all the territorial rulers, whether ecclesiastical and elected or lay and dynastic, who were below the rank of Elector, had become one body at the imperial assembly called the Council of Ruling Princes (*Fürstenrat*). The third and last group to form as a distinct body at the imperial assembly were those town councils from the chief centres of population, finance and taxation in fifteenth-century Germany called the imperial towns because they owed allegiance directly to the king or emperor.

These three groups of Electors, ruling princes and imperial towns discussed reform in royal administration, defence and taxation, internal security and law and order, ecclesiastical affairs and foreign war with the kings and emperors of Germany and the Holy Roman Empire. A better system of procedure and record was developing by the end of the fifteenth century and politics had become two-tiered. There were territorial assemblies within the German states, and imperial assemblies at national level where the heads of the German states themselves were the actual members, thus producing an overall federal discussion, direction and control of German politics.

This system was shaped by brilliant and far-reaching plans of reform in the 1490s, especially by arrangements over law and order and taxation made at the imperial assembly of Worms in 1495, influenced by the genius of the Arch-Chancellor of Germany, Count Berthold of Henneberg, Archbishop-Elector of Mainz. This is not to say that Berthold's federal system was fully successful. The federal system faced the crisis of early 'monopoly capitalism', the knights', peasants' and artisans' revolts defeated at the hands of the ruling princes in the 1520s and 1530s, and finally the reforms and civil wars of religion in the

INTRODUCTION

mid-sixteenth century and the first half of the seventeenth. But a federal system of some form or other always reasserted itself. 'Early modern' thus includes the concept of some kind of native German grass-roots federalism which developed in the fifteenth century and continued until the eighteenth century.

What of the term 'Germany' at that same period of time? According to a rather generous contemporary estimate for the first decade of the eighteenth century made by the Austrian Habsburg War Council, the German Empire, including Bohemia and the Spanish Netherlands, had a population of nearly 28 million, comprising:

65 ecclesiastical states with 14 per cent of the total land area and 12 per cent of the total population;

45 dynastic principalities with 80 per cent of the land and 80 per cent of the population;

60 dynastic counties and lordships with 3 per cent of the land and 3½ per cent of the population;

60 imperial towns with 1 per cent of the land but 3½ per cent of the population. The imperial knights (well over a thousand of them) finally managed to control 2 per cent of the land but only 1 per cent of the population of Germany.¹

The kingdom of Germany was part of a religious and pseudo-classical myth, the Holy Roman Empire. The Holy Roman Empire was a piece of medieval ideology, a claim for universal rule and Christian concord. This myth was not abolished. It was cherished by early modern Germans. In the early sixteenth century, as the links with Rome became harder to uphold, the concept was elaborated as 'the Holy Roman Empire of the German Nation'. This was formally retained until the impact of Napoleon and his armies on Germany, and the title was finally surrendered by the Habsburgs in 1806. Yet this grand ideology never played any real part in the internal affairs of the kingdom of Germany. The Holy Roman Empire was an anomaly, useful as an appeal to encourage support for foreign war, wherever general defence was necessary, and for crusading whenever the European diplomatic situation allowed. The Holy Roman Empire was the residual medieval ingredient in the early modern concept of Germany and it contrasts with modern elements such

¹ See Chapter VII, note 2 and the Appendices.

as frontiers and sovereign nation states. Early modern Germany thus stands between the two concepts—medieval universalism and modern nationalism—containing elements of both but subject to neither.

Early modern Germany never had clearly defined frontiers. Too many feudal jurisdictions made such modern rationalization impossible. To that extent historical atlases oversimplify and mislead. Historical maps give useful impressions of where any German state was situated at any one point of time but cannot, except in a very detailed, piecemeal way, explain the whole overlapping complexity of feudal jurisdictions, overlordships, inheritances, partitions and alienations, which shifted the lines with such rapidity that no frontier could ever be fixed. Equally there was no clearly defined concept of state sovereignty for Germany as a whole. Loyalty was to a specific state within Germany. To the Hessian, 'fatherland' was Hesse, and 'abroad' was Bavaria. Similar views were held in all German states in early modern times. Thus early modern Germany was not a nation state. It was not a political unit like England. That does not mean to say it was not a political unit. It was just different: it fitted into no clear category of Aristotelian forms which states might assume, a fact which annoyed early modern German lawyers, publicists and political thinkers as much as nineteenth- and twentieth-century nationalist historians. Yet the reality remained: early modern Germany was not a nation state, and yet it was still a working political reality. Thus, to repeat, 'Germany' includes the concept of some kind of native grass-roots federalism synonymous with the German term, *Reich*, at this time, which developed in the fifteenth century and remained into the eighteenth century.

Where within the regions of Germany did power over the federal whole really reside, and how did this power shift? By the eighteenth and nineteenth centuries this power was the rivalry between Austrian Habsburg and Brandenburg-Prussian Hohenzollern administrations. But this was not the case in the fifteenth, sixteenth and seventeenth centuries. The Austrian Habsburgs were certainly at the centre of early modern German power politics; not so the Brandenburg-Prussian Hohenzollerns who were the holders of the poorest of the six German Electorates. The Habsburgs held power on the geographical fringes of

INTRODUCTION

Germany, hence their continued need to keep the universalist ideology of the Holy Roman Empire alive.

How had this situation come about? Where were the German heartlands? The geographical boundaries of Germany have never for long been static. The early medieval stem-duchies produced internal regional expressions which were used in the sixteenth century independently of the German states that already existed as the Circles (*Reichskreise*) of a federal system of peace-keeping. Such were, above all, the regions between the Rhine and the Elbe, Lower Saxony, Westphalia, the Rhinelands, Swabia, Bavaria, Franconia, Hesse and Thuringia. With the eastward expansion of the twelfth century new marches were driven into Slav Europe. The Teuton took over in Mecklenburg, Pomerania, Brandenburg, Saxony and Austria.

The centre of German politics was originally the Rhineland and the south-west. It had an ecclesiastical-electoral basis. It was centred on the archbishoprics of Mainz, Cologne and Trier, and had the co-operation of the dynasties of the north-west and south-west, the Saxons and Swabians. The Saxons colonized eastwards and built up a state within a state. In the later twelfth century the greatest power contest between Saxon Henry the Lion and Swabian Frederick Barbarossa was resolved in favour of the latter's universalist ideals, which were in turn destroyed in the turmoil of Italian politics in the thirteenth century. With the help of the papacy the German ruling princes both ecclesiastical and lay had re-established in German internal affairs the equilibrium which had been threatened by Barbarossa's overmighty imperial dynasty of Hohenstaufen. When the Hohenstaufens disappeared in the 1260s the centre of German politics did not move back to the ecclesiastical principalities of the Rhineland. The Rhineland states indeed remained one of the most important factors in German politics, but they were joined increasingly by the new dynasties of the east—the Luxemburgers in Prague with their heirs the Habsburgs of Austria and to a much lesser extent the Hohenzollerns in Brandenburg, and finally the Wettiners in Saxony. These dynasts were rulers of the German colonial Slav east. It was from here that new economic power built upon extensive new farming and methods of colonial taxation could flourish unrestricted by the older allodial and feudal traditions of the west.

Added to this in the east was a development in the mining of precious and bulk metals for which fifteenth- and sixteenth-century Europe showed an insatiable appetite. The balance between old and new, between the ecclesiastical Rhineland of West Germany and dynastic Elbian-Danubian East Germany, was held by the dynasties of the centre—the Palatine and Bavarian Wittelsbachs, the Brunswick Guelphs, the Hessians, Württembergers and Franconian Hohenzollerns, each with their own regional sphere of influence. Quite independent of these and often in direct economic competition to them, came the imperial towns of the south-west as well as the Hansards, urban economic units of the north. In the fifteenth century, therefore, power was diffused regionally throughout the kingdom of Germany. It was balanced between the old elective ecclesiastical west, the new colonial east, the traditional dynastic centre and the important municipalities of south and north. This meant that there was no dominant centre of power from which strong policies could emanate in a European world which was getting more national, more aggressive, more bureaucratic, more centralized and more expensive to run. Against this fifteenth-century Germany offered an alternative, a loose federal co-operation of internally independent territorial courts and administrations. In that respect fifteenth-century federal Germany successfully went against above all the west European trend towards nation states. To survive with a weaker system of power politics meant, however, that a compromise had to be reached within federal Germany. The Habsburgs, a territorially strong dynasty, were repeatedly chosen as German kings and Holy Roman Emperors to take on the overall direction of German foreign policy, defence, and law and order—but they were never given full power. The German ruling princes, whether they inherited or were elected or were ecclesiastical or lay, or even urban town councillors, always retained their own freedom of action and yet remained within an overall framework of allegiance to Habsburg kings and emperors. This was because they as the ruling princes of the German states collectively determined what federal politics would be. They formed the early modern *Reich*, an untranslatable federal whole, that had little to do with the Hohenstaufen past, and certainly nothing whatsoever to do with the German *Reichs* of Bismarck and Hitler.

II

Early Modern German Society

BEFORE the birth of human rights in the eighteenth century, European society recognized as self-evident that there were basic inequalities at law between different groups of people and their dependants, according to wealth, birth and profession. Even so, early modern social structures were not rigid and caste-like, but movement within them was individual and erratic: one can talk of cumulative effects but not of rational changes. This applies above all to the sociology of the 1520s in Germany. The 1520s appeared as the great divide for large sections of the west German lower nobility with the abortive knights' revolt of Sickingen and Hutten. It was the end of the road for sections of the common people in market town and village with the abortive peasants' revolt, especially for the adherents of Thomas Müntzer. Only in the Austrian and Alpine lands did the tradition of peasant revolt for better conditions continue unabated until well into the nineteenth century. In the rest of the German lands 1525 was the end of a century and more of rural violence against the law and order of ruling princes and municipalities. For the clergy also it formed a great divide. Where it went Protestant, the clerical profession changed its social status: the way was opened for commoners with university degrees. The nobility moved out of the best clerical jobs because a Protestant church system made them the lackeys of ruler or town council, rather than granting them the status and freedom enjoyed by clerics in the old medieval and Catholic German system. Thus the Protestant clergy of the German states became a government department of trained commoners in the service of the prince or municipality. In the Catholic

German states the situation remained more complicated and more favourable to the nobility. The ecclesiastical states retained their aristocratic government, with cathedral chapters and bishops drawn from the German high and low nobility still in charge of their own politics. In the Catholic dynastic territories the papal hierarchy was still available to arbitrate for the clergy with the ruling prince. In practice, the clergy increasingly had the worst of the arrangement, as for example in counter-reformation Bavaria. But such dynastic control of the Catholic clergy was only one aspect of the early modern German Catholic system. The links with Rome remained: the freedoms of many of the German ecclesiastical states such as Cologne, Münster, Würzburg and Fulda remained to tempt Catholic nobles into the Catholic church because of the power and wealth they would enjoy. All this was closed to the Protestant noble: in the seventeenth century increasingly he had to turn to military, diplomatic and general administrative service with ruling princes. The Protestant church generally remained beneath his dignity.

For the burghers the 1520s also meant a split in their ranks. A few of the large, old, independent municipalities especially of the south-west like Augsburg, Frankfurt and Nuremberg made common cause with the ruling princes and helped to finance them in destroying rebellious market towns and villages. There was thus a wealth of difference between one burgher and another. The great monopoly capitalist Jacob Fugger of Augsburg started as a burgher but it would be meaningless to classify him with an Augsburg master cobbler because they had both taken the burgher oath of the city. The same distinctions apply to all the other ranks and orders of early modern German society. Status could be modified beyond all point of similarity by wealth and opportunity within each order of society. Thus where each individual stands within his order of society is extremely important, despite the fact that without the corporate law and protection of his overall social group, be it as noble, burgher or peasant-plebeian, he would have been very vulnerable indeed. This proviso modifies all attempts to class early modern Germans in social groups. But before turning to a detailed examination of the varieties within each social group, the general groups themselves must be differentiated.

Basically, early modern German society was made up of

INTRODUCTION

clergy, nobles, burghers, and peasants-plebeians. The first three groups were more noted for the privileges they could exercise, and the last group more for the duties it had to perform. The last group always made up the vast majority of the population. But the first three groups also contained the decisive professions, the doctors of law, theology and medicine, the preachers and teachers, the financiers and administrators, both military and civil. Theirs was the monopoly of education, ideology, and propaganda; the Christians who ran affairs. They also owned most of the property and pre-industrial plant in such a way that they could organize and gain the profits from the work and life of the last group, the peasants-plebeians, the masses, the common people, the early modern mob. The complexities of job, training and conditions of tenure and family made the last group, the peasants-plebeians, undoubtedly the most complex and interesting group of early modern German men, women and children. This group of people survives as an endless pattern of inheritance, endeavour and merit, and frustration. It provided the motor that kept agrarian and mercantile early modern society going. Thus it should be the focal point of any analysis of early modern German society. Yet a real analysis of the records that remain of peasant-plebeian early modern Germany has hardly started. This last group can by no means be analysed lucidly as can the records of the first three groups, of the clergy, nobles and burghers. For the first three groups have always dictated their own terms. They controlled the records; they monopolized education, economy, law and politics. Thus the records that survive are the records of their own activities. The records that survive of peasants-plebeians have been made by clergy, nobles and burghers, hardly ever by the peasants-plebeians themselves.

Despite this basic weakness in the records of early modern German history some statistical generalizations have been compiled from the later part of the period. By the later seventeenth and eighteenth centuries social statistics became extremely important above all for the more efficient taxation of the common people, allowing the following speculations to be made about East Prussia, the Austrian provinces and the county of Lippe (Westphalia).¹

¹ See Chapter IV, note 24.

From statistics produced in 1805 as part of the Stein reforms, rural East Prussia contained:

1,400 estate managers; with dependants, 7,000 people; $1\frac{1}{2}$ per cent of the population.

109,500 domestics and serfs without land; with dependants, 115,000 people; 21 per cent of the population.

58,800 tenant-farmers and serfs with land; with dependants, 294,000 people; $53\frac{1}{2}$ per cent of the population.

8,000 cottars; with dependants, 40,000 people; 7 per cent of the population.

8,000 village craftsmen; with dependants, 32,000 people; 6 per cent of the population.

60,200 others; 11 per cent of the population.

Total rural population 548,200, representing three-quarters of the whole population of East Prussia; the rest lived in townships.

The population of seventeenth-century Lower Austria (the two provinces Ob der Enns and Nieder der Enns) was about 600,000 of whom 100,000 may have lived in the towns, including 75,000 in Vienna and its New Town alone. Town dwellers were here some 17 per cent of the total estimated population.

In a simplified form the 1788 census in Lippe gave the Establishment (court, nobles, officials, clergy, army, estate managers, protected Jews and all their dependants) 5,200 people = 8 per cent of the total population; town dwellers (burghers and plebeians) 10,600 = 17 per cent, and country dwellers (peasants, serfs, servants and farm labourers) 46,000 = 75 per cent—total 61,800. The first census in Lippe in 1776 had given a total population of about 50,000 which represents a massive increase of 24 per cent over a period of twelve years. In the decade 1779–88 a staggeringly high death-rate was outpaced by an even higher birth-rate when Lippe recorded 5,860 weddings, 24,189 births, and 18,509 deaths.

Such general statistics tell us something about the way populations were divided between the social groups and how they grew. Those given here are only a brief indication of the work that has been done and of the work that still has to be done to clarify the picture of early modern German society from the records that remain. To give one result from the above survey:

INTRODUCTION

the Lower Austrian group of town dwellers was already as large a percentage of the population as a whole by the seventeenth century as was the equivalent percentage in Lippe in the later eighteenth century. This shows how early modern German social history is still wide open to new research.

Early modern Germans believed in status, in *Standtschaft*. What did they mean by it? What did it mean to be of the first Estate, clergy; the second Estate, nobility; third Estate, burgher; and the rest, peasant-plebeian?

The clergy were a professional group. No one was born a cleric, unlike the majority of nobles and burghers who were born as nobles and burghers. So here is a fundamental distinction between the three ruling groups. Nobility and burgher status were more fundamental than clergy status. Clergy status was an extra. The greater number of clergy that really counted for anything were born nobles or burghers before they became clergy. Even Luther's father gained burgher status and a stone-built town house, so young Martin was about as much of a peasant as Colbert was a bourgeois. Although clergy status was a less fundamental grouping than noble or burgher status, the clergy officially remained the leading social group, the first Estate, in the continued Catholic constitution of early modern Germany. The cathedral chapters of the ecclesiastical states of Münster and Paderborn were drawn from the Catholic nobility. They continued to elect their bishops also from the Catholic nobility as if the Protestant Reformation had hardly happened. The medieval tradition in West Germany, where the clergy had been a mainstay of local government and royal administration, was continued in the very considerable number of ecclesiastical states that survived the Reformation, right down to the time of Napoleon. These states were the truly conservative element in early modern German public life, which would be well brought out by a study of the bishops of Augsburg or Salzburg. No comprehensive study of the ecclesiastical states exists. It can only very partially be provided here, because much more preliminary work has yet to be done on the subject. However, six such ecclesiastical territories have been examined for the Westphalian region, and the complex pattern that comes to light for the north-west is an indication of the nature of ecclesiastical state-life for the other regions of Germany. All these six

ecclesiastical territories were socially and economically backward, even perhaps stagnant territories. Each tried to cope in its own way with the problem of elective-aristocratic political survival with greatly varying degrees of success against the ever-present threats of Protestantism, mediatization and dynastic take-over.

The early modern German nobility were the most powerful group of all. Nobility was above all a distinction by birth, but it was also open to merit and wealth. Thus the riches of the Augsburg banking Fuggers allowed them to move out of burgher status into not only noble status but territorial ruler, high noble status as imperial counts and ruling princes with an actual state of their own during the course of the sixteenth and early seventeenth centuries. Such a development was highly unusual, but it did happen, showing that German nobility was not caste-like but open to incentive. Thousands of burgher families purchased titles of low nobility (*Briefadel*) all through the early modern period and beyond. Although most nobles were born with their title, there were very great differences between one title and the next, differences of law and custom as well as of wealth and property.

The basic distinction was between 'immediate' and 'mediate' status (*Reichsunmittelbarkeit und Reichsmittelbarkeit*). Immediate status meant high nobility, the top rung of the social ladder. It implied having no overlord except for the supreme overlord himself, the elected German king or Holy Roman Emperor. High nobles were those who had *Reichstandschaft*, federal status under the king or emperor. This group included all the electors, dukes, margraves, ruling princes, counts, lords, bishops, abbots, abbesses, priors, prioresses, who were the rulers of the German states, as well as all their legitimate families. It also included the burghers and town council families of the imperial towns, but no other burghers. Finally, it included the imperial knights, those that survived the rebellion of 1522 without being pressed down into the ranks of the low nobility. By the fifteenth century the imperial knights had formed local cantons within their own specific regions in the Rhinelands, Swabia and Franconia. Imperial knights operated under the protection of the kings and emperors, but their cantons were never joined to the federal institutions of the German Empire, and they had neither seat nor vote in the imperial assembly.

INTRODUCTION

The low nobility were not of federal, *Reich* status. They were privileged only at territorial, state level. They were of mediate status and said to have *Landstandschaft*. Such nobles had no direct appeal to institutions or courts of the federal *Reich*, and took part in federal *Reich* activities only if they happened to be the representatives and servants of high nobles or territorial rulers—hence the great importance of formal protocol, a potent form of power politics in its own right. The greater number of all German noble families were of low noble status. They were the real descendants of feudal and allodial patterns of landholding, and also of families advancing to ennoblement through investment in, and service to, territorial rulers' courts. Many could be traced back to the unfree *ministeriales* of the high noble dynasties and ecclesiastical rulers of the high Middle Ages. The low nobility were the most important social group within the German states themselves. They provided the membership of the leading Estate in territorial politics, and were the major link in a chain of command that stretched down from the federal high nobility (the territorial rulers over the German states) to the commoners (the mass of burghers and peasants—plebeians within those states).

Where did the burghers stand in this complex system? Although they were classed as commoners *vis-à-vis* the high and low nobility, the burghers were a complex group, distinct at law from the peasants—plebeians. Burgher status was achieved by a conscious act, an oath of loyalty to a specific town council. This gave the burgher protection under the town's specific code of law (*Bürgerrecht*) which was usually an inherited privilege and renewed *pro forma* in each generation of the family concerned, or it could be purchased by outsiders. Purchase was especially welcomed when town finances were low. Thus the sale of burgher status was a considerable item of town income in the fiscal records that survive of late sixteenth-century Lemgo in Lippe (Westphalia) and could similarly be traced in the records of all the German towns, for Lemgo was no unusual specimen of pre-industrial German urban development. But most burghers inherited their status from their burgher parents. They were born burghers, and burghers of one town only. Those who moved to other towns had to purchase, marry or otherwise recommend their way into the burgher status of their

new town. Most towns had rules for this, usually residence for a number of years plus a fee for the oath.

The value of any burgher oath depended upon the political and economic standing of the town that issued it. Thus there was great variation between the federal *Reich* status of imperial town burghers, like that of Frankfurt-am-Main or Augsburg, at the one end, and small-state, market-town burghers like those of Brakel or Lügde (Westphalia) at the other end. The latter were even *Ackerbürger*, burghers with ploughed fields. They were small farmers with fields just outside the town and farmyards behind the town wall. They were little more than inhabitants of fortified villages, but with enough political and legal autonomy to be accepted as burghers in the German system. They had their own civic institutions, however crude these were when compared with those of great towns like Nuremberg. Thus there were great differences between one burgher and the next.

External differences were of two basic forms. Either the town had federal *Reich* status as an imperial town under the Emperor, or it had territorial *Land* status as a town under a ruling prince. The imperial towns were scattered over the west and south-west of Germany. Most towns had only territorial status. Some imperial towns were small and insignificant such as Isny, and some territorial towns were large and important, such as Leipzig. Thus legal and constitutional distinctions were not always necessarily in accord with economic reality. Whether a town was rich or not did not depend upon whether it was an imperial town by early modern times. Yet formally at law by federal *Reich* constitutions and customs, distinctions were kept by established tradition. Early modern Germany believed in tradition and custom.

Internal differences in the burgher group within any one town were very great. Burghers were of course only the smaller, privileged section of a town's permanent population. Numbers varied according to the rules of citizenship in each town. Generally the poorer the town, the cheaper its burgher oath, and the less privilege that it bought. Market towns had a majority of small farmers, tradesmen and craftsmen as burghers, as for example in the small Westphalian towns. But however modest burgher status may have been, it divided those of any standing from the plebs. To the common man achieving burgher

INTRODUCTION

status could be his greatest aim in life. Such achievement, for example, crowned Luther's father's successful mining career.

At the top of the burgher scale were the town council families (*Ratsverwandte*). They were an oligarchy of the most economically significant burgher families who asserted themselves politically whilst tolerating minor adjustments to their membership from generation to generation, against the majority of the burghers all through the early modern period and beyond. Thus, the burgher system seemed to ape that of the nobility. There were high and low burghers, like high and low nobles. There was a further distinction between town council relatives and the rest of the burghers in every imperial town and territorial town. Yet the standing of an individual town and of an individual burgher within it varied so greatly that the overall distinction of 'burgher' would seem to be little more than meaningless upon closer analysis. A double standard resolves this dilemma. The status of burgher meant a great amount to those who were looking in on it from below and outside. Burgher status was a uniform object of desire for the plebs. Once inside, of course, the individual differences took precedence over the uniformity with which the group faced the outside world.

Burghers were generally the lowest social group to have political power and privilege within the federal and state systems of early modern Germany. Burghers were the rearguard of the political nation. Those that were burghers of imperial towns provided representatives at imperial assemblies (*Reichstage*). Those that were burghers of territorial towns provided representatives to territorial state assemblies (*Landtage*). Burgher representatives to both types of assembly were chosen by, and came from, the group of town council relatives within each town. In this way, burghers were part of the élite that exercised political, legal, social and economic power, alongside the clergy and the nobles. Burghers were the butt-end of the ruling élite. What, then, about the peasants-plebeians, the ruled, the mass of the real people of early modern Germany?

In Lippe (Westphalia) the second census of 1788 showed that three-quarters of the population lived in the countryside. They were the peasants, serfs, servants and farm labourers of ruler, clergy, nobles and burghers. Only one-sixth of the population lived in the towns. What proportion of this one-sixth were the

privileged burghers and what proportion made up the rest, the plebs, smaller artisans, craftsmen, street venders, day-labourers, servants and the poor is not yet clear. What is clear, is that rural and urban plebs made up the mass of the population in every German state, but that the countryside produced by far the greatest number of people.

The most common representative of this group was the peasant. Variations in legal and economic status of the peasantry are so extensive that they would fill hundreds of volumes. It can only be the task here to give a very brief sketch. Once again a double standard applies to the peasantry also. To those looking in from below and outside, a peasant was a manager, a man in business with responsibility over land and livestock. To labourers, living-in servants and farmhands, to become a peasant was a grand desire. Once inside the peasantry, the differences between tenure, rents and taxes plus all the natural uncertainties of farming took precedence for each individual. Peasant differences stemmed from a great variety of economic pressures, first, concerning size and quality of land. This was often a question of medieval tradition stemming from the breakdown of the high medieval *villicationes*, *Meierhöfe*. Generally speaking, the richest peasants with the best conditions of tenure were those serf families living in the *Esch* of the older villages. The *Esch* was the heart of the village and with a farmyard in the *Esch* there went the best pieces of land. The poorest peasants were generally those who had arrived the most recently as free families living in the forests, scrub, marshes or wasteland on the edge of the villages with small-holdings as cottars. Thus, at least for West Germany, the best lands and tenures went to un-free, serf families. The common countryman who was a freeman was not an enviable person. The rich serf-peasant in the village *Esch* was, however, enviable indeed.

Second, conditions of the tenancy (*Meierbrief*) varied greatly. Tenants' contracts generally ran for any period from three to twelve years and thus could be revised to protect the landlord against inflation. In return they gave the peasant certain rights of tenure: he could not be evicted or sold unless he had failed to satisfy the conditions of his contract after a certain time, usually after one to three harvests, and then only under legal procedures presided over by a territorial ruler's judicial officials.

INTRODUCTION

Where these officials were of course the same persons as the landlords, as in Paderborn for example, the peasant was in a very bad position.² But this was unusual for West Germany. In the colonized east, the position had been initially much better for the peasantry. From the twelfth to the fifteenth century peasant colonists had been enticed east of the Elbe by farming contractors, *sculteti*, who offered tax- and rent-free years of farming. But once these were over the peasant had no residual customary rights whatsoever. When large-scale farming increasingly became economically viable in the sixteenth century, the once privileged peasant became a rural wage-slave or *Robot*. However, there were exceptions in the German east. The rulers of Saxony above all protected their peasants against such economic degradation because they had no wish to see the bulk of their main rural taxpayers disappear. Equally, around the towns and market towns a local, peasant-run agriculture could still preserve itself, but the latifundia of the noble landlords who were also the ruler's local officials were the prevalent form of rural economic organization in early modern East Germany, once again quite unlike the West.

The peasants had no political representation in territorial state assemblies (*Landtage*), except in a very few quite untypical regions in the south and north-west, Tirol, Frisia and the Dithmarschen. Peasants provided the bulk tax revenues that were granted at territorial state assemblies which they did not attend. Their landlords, the clergy, nobles and burghers, attended (in fatherly fashion) on their tenants' behalf. Thus peasants had to pay traditional tithes as well as landlord rents as worked out in regularly revised *Meierbriefe*, and on top of this taxes granted at assemblies of clergy, nobles and burghers to their territorial rulers, which were assessed according to the quality and size of the peasant's land, called *Landschatz*. The records of this land tax form the bulk of what we can ever re-discover about the ordinary peasant in any region on his own farmstead in early modern Germany. The *Landschatz* was unwieldy and soon became out of date, but it gave rise to a bureaucratic interest in peasant life, peasant settlement and movement, patterns of production and consumption, regulation and exhortation to, rather than actual, improvement in the

² See below, Chapter V (ii).

science and literature of husbandry (*Hausvaterliteratur*), encouraged by improving landlords.

Peasants themselves were bosses. They employed their own nuclear families and wherever possible servants and labourers, usually poor, unmarried boys and girls who lived on the farm without any privileges of their own, called *Gesinde*. The same applied to the young urban poor in the houses of the burghers, craftsmen and shopkeepers of the towns. They received food, lodging and clothing plus annual or biannual pay, which was extremely low, perhaps paid in debased small-coin. In the sixteenth and seventeenth centuries it was felt that *Gesinde* were worth poll-taxing and thus bureaucracy began to fix their wages in *Polizeiordnungen* and to obtain their names and addresses for tax purposes. These policy-decrees also fixed the wage maximums of the traditional day-labourers, from the ploughman to the joiner.

The rest was charity. The Catholic concept of 'good works' maintained its force during the early modern period. A middle course was steered between Christian welfare and the 'Protestant ethic'. Early modern Catholic and Protestant attitudes to alms and begging were indeed different, but the difference was really only whether poverty should be open or hidden, a public spectacle or a private misery. The Protestants certainly tried to distinguish between the deserving poor and sturdy beggars. Healthy drop-outs were intolerable, and as the economic system was only a part of God-given law and order, those that were only common people, but healthy and different, be it by design or accident, had little or no place in the early modern order of things. At best, perhaps, they swelled the ranks and camp-followings of ever-increasing armies, first mercenary, then territorial. Of course many also *chose* a military career, war gave honour, glory, a fatherland, a leader and the chance of loot and betterment, plus a lot of excitement before death claimed the field; and that death would do, anyway. The early modern war industry was considered exciting and approved by society: of course those who were in it were warned to obey its rules, a warning popularized by Jacques Callot's eighteen prints of the miseries and bad times of war first published in Paris, 1633. Callot's message was not that war was horrible, but that marauding by soldiers who broke their military code was

INTRODUCTION

horrible and he shows that soldiers who became marauders suffered most horribly of all when the authorities caught up with them. Callot was not anti-war, he was against its lack of discipline, that is the popular Thirty Years' War form of it.

We have briefly moved through early modern German society from the top downwards. A minority of the population, the clergy, nobles and burghers, controlled affairs, but how? We have now to outline the political and constitutional system of early modern Germany.

III

The Problem of German Federalism

FEDERALISM is the main theme of German political history. An integral part of everyday politics and government has been the relationship of the territories to the Empire or Federation since later medieval times until the present day. Until very recently it seems to have been in the nature of federalism that at most times more decisions should have been taken at territorial, state level than at imperial, federal level.

German federal development itself has been twofold, as expressed in the terms *Kaiser* and *Reich*. What was *kaiserlich* pertained to the elected head of the Empire and his court, almost invariably a Habsburg ruler with his capital in Innsbruck, Prague or Vienna. What was prefixed *Reichs-* generally, but not invariably, pertained to the territorial rulers as peers of the Empire, as *Reichsunmittelbare Stände*, with west and south-west German towns, notably Frankfurt-am-Main, Nuremberg, Regensburg, Augsburg, Speyer and Wetzlar as its administrative centres. Here the Emperor was admittedly *primus inter pares* by virtue of his election and coronation, but his power was also thereby and by previous law and custom strictly limited. Thus at this federal level the peers of the Empire preserved their own liberties, privileges, rights and customs, which neither Charles V nor Ferdinand II was able to destroy or even permanently modify.

For the earlier period of federalism the *Reichstagsakten* (1956ff.), which cover at present parts of the late fourteenth, earlier fifteenth, and earlier sixteenth centuries, are of fundamental importance. Chronologically incomplete, they leave too

INTRODUCTION

many gaps to present an overall picture of early federal development. They are unfortunately also difficult to use because of the complex editorial rules which they follow. This is perhaps an inevitable weakness of federalism, where the relevant documents are necessarily collected together from a considerable number of territorial archives, and not from a central archive in one capital city, although head of them all is undoubtedly now the Haus-, Hof-, und Staatsarchiv in Vienna.

It is thus necessary to use early modern legal compendia in order to understand this federal development, above all the *Neue und vollständigere Sammlung der Reichsabschiede* (1747), J. J. Moser, *Teutsches Staatsrecht* (50 vols plus additions and register, 1737-54), and the same author's *Neues Teutsches Staatsrecht* (20 vols plus additional parts and register, 1766-75).

Many constitutional histories of Germany have been written since the end of the eighteenth century. One of the earliest, J. S. Pütter, *Historische Entwicklung der heutigen Staatsverfassung des deutschen Reichs* (3 parts, 2nd ed., 1788), and one of the most recent, H. Conrad, *Deutsche Rechtsgeschichte*, 2, 1495-1806 (1966), are of particular importance. Conrad gives a fuller coverage of the federal institutions of the early modern empire than has been customary in works of this nature in the more recent past. A notable survey of the imperial constitution at the beginning of the eighteenth century is still H. v. Zwiedineck-Südenhorst, *Deutsche Geschichte im Zeitraum der Gründung des Preussischen Königtums*, 2 (1894, pp. 185-328). Although some of his interpretations are now revised, Zwiedineck-Südenhorst based his account on contemporary sources and literature. Notable also is the account in C. Bornhak, *Deutsche Verfassungsgeschichte* (1934, pp. 91-126). The basic handbook is still R. Schröder and E. v. Künssberg, *Lehrbuch der deutschen Rechtsgeschichte* (6th ed., 1919-22), which is the German equivalent of Taswell-Langmead for the medieval and early modern period.

A reflection on the crucial rôle that legal history plays in the overall study of German history is that federalism led to a complicated system of politics and government by continually creating constitutional courts and countless other boards of arbitration as the means of compromise in the keeping of law and order. This is well brought out in the articles of M. Heckel,

'Staat und Kirche', 'Autonomia und pacis compositio', and 'Parität', in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* (1956-7, 1959 and 1963). Constitutional conflict was a speciality of German lawyers between the Peace of Augsburg and the Treaties of Westphalia, 1555-1648, as W. Schlesinger, *Die Herrschaft der Herren von Schönburg* (1954, p. 5), put it: 'as also in past centuries, the science of law was pressed into service to motivate political decisions'. But naturally pride of place in the direction of such a loose federal system of politics went to the peers of the Empire, who were the territorial rulers, the *sine qua non* of the federal Empire. 'The German State stems from the territorial principality. It is not by nature a monarchic state, as are the states of West Europe' (Schlesinger, 1954, preface).

Territories developed out of a complex of jurisdictions and lands controlled primarily by those members of the high nobility who achieved a position of autonomy under the Emperors with a responsibility for keeping peace, law and order, especially from the thirteenth century onwards. H. Angermeier, *Königtum und Landfriede im deutschen Spätmittelalter* (1966), examines the federal and imperial aspects of this development until 1555. V. L. v. Seckendorff, *Teutscher Fürsten-Staat* (1656, 5th ed., with additions, 1678), examined the state of the smaller territories. It became the standard handbook of politics at the courts of the post-1648 era. It was used as a textbook in the education of future territorial rulers. Its importance is well brought out by H. Kraemer, 'Der deutsche Kleinstaat des 17. Jahrhunderts im Spiegel von Seckendorffs "Teutschem Fürstenstaat"', in *Zeitschrift für thüringische Geschichte und Altertumskunde*, 25 (1922-4, pp. 1-16, 48-60, 84-97).

The standard collection of documents is P. Sander and H. Spangenberg, *Urkunden zur Geschichte der Territorialverfassung* (1922-6; reprinted 1965), although only four of the planned seven parts were published. K. Zeumer, *Quellensammlung zur Geschichte der deutschen Reichsverfassung in Mittelalter und Neuzeit* (2nd ed., 2 parts, 1913), is the standard collection of constitutional documents for university use. A new edition is badly needed. W. Ebel, *Geschichte der Gesetzgebung in Deutschland* (2nd ed., 1958, pp. 57-77), summarizes the growth of legislative power in the territories: see also F. Lütge, *Geschichte der deutschen Agrarverfassung* (2nd ed., 1967, pp. 116-18).

INTRODUCTION

H. Thieme, 'Die Funktion der Regalien im Mittelalter', in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* (1942, p. 84), called territories: 'states constructed from areas of land taken over by princely administrations and built up economically as well as politically'.

O. Brunner, *Land und Herrschaft* (1939) is still the standard secondary work on the development of the medieval territories but it is now best read with Angermeier, as Brunner was doing pioneer work at a time before historians generally began to appreciate that the weaker federalism of the Empire between 1250 and 1806 was a vital constitutional development of its own, providing the essential framework outside of which the politically more powerful territorial development towards statehood could not, and indeed did not take place. See the fourth edition of *Land und Herrschaft* (1959, pp. vii–viii, 440), and compare O. Brunner, 'Deutsches Reich und Deutsche Lande', in *Zeitschrift für deutsche Geisteswissenschaften*, 3 (1940, pp. 241, 248–9); also Angermeier, 1966, p. 3, and K. S. Bader, *Der deutsche Südwesten* (1950, p. 17). Bader's book is a regional study which never loses sight of the importance of the Empire to territorial development in Swabia.

In contrast, G. Tellenbach, 'Vom karolingischen Reichsadel zum deutschen Reichsfürstenstand', in T. Mayer (ed.), *Adel und Bauern* (1943, pp. 72–3), gives the traditional view that the early modern Empire was a Hohenstaufen failure in power politics and nothing much else. This is a view which in no way detracts from the importance of the main body of his essay, but it well expresses what Bader has called the *kleindeutsche* (Prussian or *Machtpolitische*) view of the early modern Empire and territories, exemplified in the essay of F. Hartung, *Volk und Staat in der deutschen Geschichte* (1940, pp. 4–27).

Any attempt to derive the origins of the modern sovereign state from only one of the two basic forms of constitutional life, namely the federal Empire or territorial state, must fail, for each is dependent on the other. Federal Empire and territorial state produced all those peculiarities which later sealed the fate of the German Federal Empire and its members, namely the territorial states. For the constitutional historian that myth of the Federal Empire which has been magnified until it has become hysteria, and for which there is then supposed to be only one form of unification for the Germans, leads to as distorted

a picture as the view that tries to trace the development towards statehood solely from the territories or even from one or other specific leading territory.¹

That confusion still exists as a result of the *kleindeutsche* view of German history coming into conflict with a *grossdeutsche* view that the early modern Empire was a vital federal unit which enabled a myriad of territorial political systems to operate in concord under Habsburg emperors, and to establish a tradition of *teutsche Libertät*, of co-operation between Emperor and peers, rulers and Estates, can be seen in a work like E. v. Puttkamer, *Föderative Elemente im deutschen Staatsrecht seit 1648* (1955). This collection of extracts from documents and texts devotes three pages (27-9) to the 1648 Peace of Osnabrück and *Jüngster Reichsabschied* of 1654, but ten pages (39-48) to extracts from Pufendorf and Leibnitz, neither of whom was a statesman, and whose political writings were of no practical importance in Germany outside Brandenburg and the Guelph lands, unlike those of Chancellor Seckendorff, who is not included in the selection. In the history of political thought some clarification has recently been given by O. Hauser, 'Deutsch-englische Missverständnisse', in *Geschichte in Wissenschaft und Unterricht*, 18 (1967, pp. 275-88).

The problem of empire has been acute again since 1949 when Germany has had two territories struggling against each other for reunification (*Wiedervereinigung*, not just *Einigung*), with which both in their own way keep a yearning for political and territorial continuity with Weimar and the second and third empires very much alive. This situation has some marked similarities with the divided Germany of the Reformation period, where Wittenberg and Ingolstadt were the centres of ideological conflict as in another way Bonn for the West and Pankow for the East are in our day.

Within its own territorial boundaries, however, West Germany has settled down to a federal system of parliamentary government. Hence there is great yearning to find federal, parliamentary roots in the German past:²

¹ K. S. Bader, 'Territorienbildung und Landeshoheit', *Blätter für deutsche Landesgeschichte*, 90, 1953, p. 110.

² O. Brunner, *Land und Herrschaft*, 4th ed., p. 443.

INTRODUCTION

The States of the Federal Republic of Germany have been created according to the model of the individual states that united to form the North German Confederation in 1867. They go back to the territories, territorial states of the original pre-1806 Federal Empire, in which framework, one knows, the modern concepts of state organisation and state administration were developed. These territories at least became formally sovereign when this original Federal Empire disappeared in 1806.

In the Napoleonic era the traditional federal bond of empire which had given the territories a common ground for negotiation was broken. Since 1806 there has been a striving for federal continuity and solutions have come only in temporary fashion by *force majeure*. It is in this light that the post-war solution of German Democratic Republic–West Berlin–German Federal Republic, of division in reality and a clinging to reunification in theory, can perhaps be understood. This is enshrined in the preamble to the 1949 Constitution of the Federal Republic, which goes by the name of a *Grundgesetz*, or basic law, as if to stress the transitional quality of the state which it has called into being:

The German People in the States of Baden, Bavaria, Bremen, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Schleswig-Holstein, Württemberg-Baden and Württemberg-Hohenzollern, conscious of their responsibility before God and men, animated by the resolve to preserve their national and political unity and to serve the peace of the world as an equal partner in a united Europe, desiring to give a new order to political life for a transitional period, have enacted, by virtue of their constituent power, this Basic Law of the Federal Republic of Germany. They have also acted on behalf of those Germans to whom participation was denied. The entire German people are called upon to achieve in free self-determination the unity and freedom of Germany.

This preamble serves more as a link with the Prussian and Nazi past than as a contribution towards a solution of present German problems in the light of Germany's political heritage and tradition, for the Prussian and Nazi past is not the only tradition that modern Germany has.

A comment on the political tension that a clinging to the idea of reunification caused is the lecture of F. Luset, 'Die Wiedervereinigung Deutschlands von den Nachbarländern aus gesehen', and the accompanying letter of K. D. Erdmann, in

Geschichte in Wissenschaft und Unterricht, 16 (1965, pp. 157–68). See also W. Hubatsch *et al.*, *Die Deutsche Frage (1949–61)* (1961), which prints the 1949 constitutions of both the Federal and the Democratic Republics (pp. 185–249). Hubatsch's preface begins:

The 'German question' is as follows: how can the numerically strongest people of Europe reach a common political goal in becoming one nation, as has happened in France, England, Russia, Poland, Italy, the Iberian and Scandinavian states, without necessarily endangering the peace and freedom of the remaining European nations?

The myth of reunification, which has only in the last few years begun to be overshadowed by Chancellor Brandt's ambitious *Ostpolitik*, is thus in some ways similar to the myth of the Hohenstaufen failure and the myth of the stagnant empire, after Reformation, Counter-Reformation and warfare had ended their first, more violent, phase in 1648. However, the internal structure of West Germany today brings out federal traditions which in the past bound together territories both large and small, although the recent past still looms threateningly over this new development.

Following F. Dickmann, *Der Westfälische Friede* (1959), the peace treaties of 1648 have been subjected to intensive archive studies and found to have been very statesmanlike arrangements, creating a political stability which Germany had never before and seldom afterwards experienced. Equally F. L. Carsten, *Princes and Parliaments in Germany* (1959), has uncovered a territorial political tradition as more than just of piecemeal, antiquarian and local interest. The *kleindeutsche* and *macht-politische* view of history which saw early modern German history as the struggle between Prussia and Austria for political supremacy is thus being put into a better perspective in the light of German federal history as a whole. See the lecture of C. Haase, *Das ständische Wesen im nördlichen Deutschland* (1964).

A reappraisal of the role of the early modern empire and of the smaller territories in the federal and territorial development of Germany is thus taking place.

For a reappraisal of the rôle of the permanent conference at the imperial assembly, 1663–1806, see W. Fürnrohr, *Der immerwährende Reichstag zu Regensburg* (1963, pp. 64, 74):

INTRODUCTION

The historical value of the Permanent Conference at the Imperial Assembly lies in the fact that it contributed substantially to upholding the religious peace of the Federal Empire by hindering stronger forces of destruction working against the multi-lateral balance of religion. This assembly safeguarded and furthered the internal security of the Empire and it prevented to the end its break-up into innumerable individual parts. Wherever inner conflicts occurred, the Assembly localised them, and played them down. Against foreign enemies the Assembly on the whole was capable of upholding the existing political order, and if it did this in a merely peaceful way, then that is no thorn in our flesh, as it seems to have been for some historians of the German past . . . Hartung, Meinecke and many others, including Haller.

If one recognises a German assembly of states in the Permanent Conference at the Imperial Assembly (from the 1660s), which one is fully entitled to do, even if thereby its nature is not fully perceived, then one can say that Germany has always had such an institution, even in those times when there was no German *Reich*. The constitution of the (Napoleonic) *Rheinbund* included a federal assembly, the *Deutsche Bund* and the Second Empire depended upon a Federal Council functioning opposite a *Reichstag* which was a House of Representatives, and the Weimar Republic, which depended on the *Reichstag*, had its own Federal Council as a body for its component States. Only Hitler negated federal as equally as democratic principles.³

The Holy Roman Empire was a federal unit whose politicians may have criticized its weakness, especially in foreign policy and defence, but overwhelmingly they did not say that they wanted to do away with it before the Napoleonic era: not even the Hohenzollern despots of the seventeenth and eighteenth centuries said that they wanted to do that. The territories were powerful and the Empire weak, whereby the dictum of Pufendorf that the Empire was a monstrosity and a degeneration of the classical forms which states could take, was used to save the bother of delving into a mass of especially legal records in order to discover what really was the basic form in which imperial and federal politics were conducted. Hence the fundamental importance was not often recognized of the *Reichskammergericht* and the *Reichshofrat* in German history as courts of arbitration

³ W. Fürnrohr, reviewing in *Geschichte in Wissenschaft und Unterricht*, 15, 1964, p. 688n.

and negotiation in the early modern period, as well as of the circles, imperial assemblies and a myriad *ad hoc* committees and commissions and other expedients from the earliest *Reichsregiment* to the *Corpus Evangelicorum* and *Reichsdeputations-tage*.⁴

The drastic changes of the 20th century have turned the aged problem of justice and power in history into an urgent question for today. Thus the jurisdiction of the pre-1806 Federal Empire becomes interesting once more. The significance of the highest Federal Imperial Courts and struggles to influence them, especially the *Reichskammergericht*, the way they varied in importance and were called into question according to the changing circumstances of Federal Imperial reform, religious differences, confessional and power-political conflict, needs to be more accentuated nowadays than formerly was the case when *Realpolitik* predominated.

With imperial and federal institutions and procedures, the security and further internal political development of the territories was assured. What the *weak* Empire really means is that the territories took over the powers of executive government, of *Gebot und Verbot*, whilst the Empire remained a general court of legal complaint, constitutional arbitration and political appeal, a forum where territorial rulers could negotiate with each other and where even territorial subjects could at times take their own worst grievances, if they dared to do so and provided they could afford it. Equally, new ways and means of legislation and taxation were very largely first worked out at imperial and federal level before they were developed in the territories. This applies to taxes raised for military expenditure from the fifteenth to the eighteenth centuries, the *Römermonate* and *Türkensteuern*, which actually made 3,300,000 fl. in 1594–8 and 1,600,000 fl. in 1713 (Conrad, p. 135), as well as to the *Kammerzieler* to pay for the staffing of the *Reichskammergericht*.

Bader outlined these developments more specifically for south-west Germany (pp. 14–15), and generally for the Empire (p. 196).

The German southwest is after all only a part of a larger whole. The development of state organisations in the whole region took place

⁴ R. Smend in an introduction to a reprint (Aalen, 1965) of his still incomplete monograph, *Das Reichskammergericht, Geschichte und Verfassung* (1911).