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EFFECTS OF NAPOLEONIC LEGISLATION ON THE DEVELOPMENT OF THE 19TH-CENTURY EUROPE

Can historical reflection sometimes help to solve present day problems? History, of course, does not provide ready-made recipes, is not able to provide answers to questions arising in new situations, compelling a quest for new solutions. But it enables to apply in current considerations the rich stock of information on the effects of man's past activity. Although that activity took place in other conditions and situations, awareness of the effects of, for instance, application of legal instruments in shaping yesterday's social reality cannot be a matter of indifference to today's actors. We shall try to demonstrate this by the concrete example of an attempt to utilize legislation in introducing socio-economic reforms in a considerable part of Europe, as well by its results.

Involved here is the question of the reception by Europe of French legislation at the beginning of the 19th century and its social effects. This concerns the use of legal regulations on a broad scale to effect socio-structural changes, bearing in mind the French Revolution leaders' deep and naïve faith in the possibility of shaping the social reality and people's mentality by means of legislation. This faith was inherited by the Consulate and Empire.

The Napoleonic epoch was an important segment of the process of change. Precapitalist society was transformed into capitalist industrial society, the social order was converted from one of different estates into a bourgeois one and the institutions of the Ancien Régime were replaced by modern political structures. History textbooks have preserved Napoleon's image as a soldier of the Revolution who wherever his victorious army entered abolished the outworn social order and introduced new laws based on the principles conquered by the Revolution. Among the Revolution's basic attainments are primarily the principles of personal freedom, equality of all before the law and the abolition of feudalism. By the latter term is understood the feudal agrarian system and its associated privileges and rights of the land lord, on the one hand, and the duties, tithes, obligations and limits to disposal of the land for the peasants, on the other hand. Among the gains of the Revolution should also be reckoned: a constitutional order, representative system and laicisation of the state.

Napoleon declared many times that the introduction of those principles in the whole of Europe was one of his basic policy aims. When he proclaimed a constitution for the Kingdom of Westphalia, he wrote to his brother Jerome—whom he crowned king of that state—to observe it zealously, since it corresponds with the desires and aspirations of his subjects, therefore conforming with it will assure him their confidence and love. "The German people impatiently desire that talented individuals and not only nobles have equal rights to your esteem and to offices, that every kind of bondage and all intermediate degrees between the sovereign and the lowest class of people were completely eliminated. Let the benefits of the Napoleonic Code, open court procedure, institution of juries be distinguishing features of your Kingdom. I fully reveal my thought to you that I count more on their effects to expand and preserve your rule than on the results of the greatest victories. It is necessary that your people enjoy freedom, equality and affluence unknown to other Germans [. . .]. This way of ruling ensures you better against Prussia than the Elbe, than the fortifications and protection of France. What people would want to return under the arbitrary rule of Prussia, once it tasted

the blessings of a prudent and liberal administration? The peoples of Germany, France, Italy, Spain desire equality and crave liberalism.”¹

France's constitutional principles and its Civil Code were introduced in many European countries: Italy, Poland, Holland, Illyria and several German states. But the same legislation had very different effects in various countries. In some it was adopted permanently, in others it did not survive the fall of the Napoleonic Empire. It is hence worth while to examine the complicated web of conditions which caused identical legal norms, whose creators were convinced of their universal value, to far from uniformly shape social reality. We now attempt to formulate certain generalizing reflections on this phenomenon, with the reservation that this problem has not yet been conclusively investigated in historical science. Consequently the synthetic picture sketched below as well as the conclusions projected may require further verification.

Introduction of the French Civil Code, universally known as the Napoleonic Code exerted, on the whole, a greater influence on shaping modern societies of states within the orbit of Napoleonic France than did the new principles of the political structure and modernized administration. Napoleon's programmatic intentions—closely connected with introduction of the Code—was to abolish serfdom-bondage relations. Further considerations on peasant emancipation and their property rights will hence require special attention below.

Countries on the left bank of the Rhine came earliest under French domination. They were occupied by the army of revolutionary France already in the autumn of 1794. By the end of 1797 these territories were under French military administration. The populations received the French intruders in a friendly manner, counting on liberation from the hated feudal system. For these territories were previously carved up into about 150 dominions (*Herrschaften*), including Bishoprics (church states), Reich free cities and innumerable other dwarf state creations. Trade,

¹ Letter from November 15, 1807, in *Correspondance de Napoléon I^{er}*, 13361.

industry and the handicrafts could not develop under these conditions, while the peasant economy was burdened by a large number of charges and services to the feudal lords. Breaking the feudal power was also in the political interests of France which desired to assure its eastern borders. Thus shortly after occupying a country the French authorities abolished the privileges of nobles and the clergy. They suppressed the judicial prerogatives, police powers, the right to hunt of the nobles, abolished tithes and serfdom. They also put an end to the tax privileges of the nobles and clergy. Dispensation of justice was separated from government administration, Catholics and Protestants were granted equal rights. Ghettos were liquidated and Jews' freedom of settlement was granted. Emigrants' estates were confiscated.

The second stage of the reform began with the Government of Commissioners (1797—1801). The peasants were freed of rent payment to the land lords, thus becoming legal owners of their farms. Aristocratic titles were abolished. Monasteries started to be liquidated and their properties sequestrated. Marriage was given a civil form. Juries were instituted in courts.

The Luneville Treaty of 1801 sanctioned the cession by the Reich of the left bank of the Rhine to France. Four Departments were established on the ceded land, subject to French legislation, including a law on the sale of so-called national demesne in which were reckoned former church properties and confiscated emigrant estates. The obligatory nature of the Napoleonic Code, promulgated in 1804, was of course extended also to the Departments of the Rhine. True, the sale of national estates at first profited not the peasants but speculators who purchased them from the government and then broke them up into parcels. But it nevertheless in the long run led to the emergence of a fairly strong stratum of small and middle farm owners. It is calculated that the sale of the national estates created about 10,000 new land owners.² A good part of large landed properties fell into the hands of the bourgeoisie.

That policy caused deep changes in the social structure. After

² J. Streisand, *Deutschland von 1789 bis 1815*, Berlin 1961, VEB Deutscher Verlag der Wissenschaften, GDR, p. 78.

the fall of the Napoleonic Empire it turned out impossible to restore the former relations.³ Not only the bourgeoisie—not to speak of the peasantry—but even the former nobility opposed a return to the old system. The social élite, formed during the French domination, were of course after 1815 loyal subjects of the new monarchs. But that did not prevent them from fighting to retain in the new political structures the values of Napoleonic times, enriched by the principle of freedom of speech, which did not figure in the Napoleonic catalogue of constitutional principles.⁴ In the former Rhine Departments the Napoleonic Code remained the law in force.

Such deep-going structural transformations did not take place in any other German lands which directly or indirectly fell under Napoleon's domination. The Kingdom of Westphalia, created by the Tilsit Treaty of 1807 and turned over to Napoleon's brother Jerome, was to constitute a model of a Napoleonic satellite state. The constitution was prepared in consultation with a deputation of Westphalian notables summoned to Paris. The reservations made by that deputation, mostly composed of aristocrats, pertained primarily to social questions: they opposed the abolition of bondage (*servage*), demanded remuneration in case of suppression of feudal dues, deferment of application of the Napoleonic Code and retaining of entail. Napoleon rejected these reservations. The Westphalian constitution introduced the principle of equality before the law and freedom of belief. The French Civil Code was to be obligatory law and its introduction was to abolish feudal privileges, bondage and guild restrictions. But in practice introduction of the new institutions was in many cases of a half-way or only of a seeming character.

Reform of the agrarian structure was the most important question. As indicated above, the Constitution liquidated serfdom and abolished without remuneration the personal burdens borne by the peasants. The real burdens however, those connected with the

³ K. Oberman, *Deutschland von 1815 bis 1848*, in: *Deutsche Geschichte*, vol. II, Berlin 1975, VEB Deutscher Verlag der Wissenschaften, p. 156.

⁴ R. Dufrasse, *Les notables de la rive gauche du Rhin à l'époque napoléonienne*, "Revue d'Histoire Moderne et Contemporaine," vol. XVIII, 1970, p. 774 sqq.

soil, were to be redeemed. But it was not entirely certain which of the peasants' dues and obligations were of a personal nature and which were charges on the land. This delimitation became the subject of contradictory interpretations and conflicts. The corvée system was the most burdensome of feudal dues and charges. The authorities prohibited new corvée levies, changes and sale of existing labour charges and services. A tariff was adopted fixing their values and conditions of redeeming. But the peasants in many cases refused to meet corvée obligations and rarely agreed to buy themselves off. The courts defended the interests of the gentry. To assure the feudal charges and obligations due to the lords, they prohibited—in direct contradiction to the civil code—the parcellation of peasant farms.

But the greatest obstacle to true social reforms was the policy of Napoleon himself. In Westphalia, as in other conquered countries, he reserved for his own disposition a large part of the public real property which was joined to the so-called Extraordinary Demesne (*Domaine Extraordinaire*), to be conferred as gifts to persons vested by Napoleon with aristocratic titles or for deserving military men. Income from these properties consisted in great measure of feudal-type levies. Abolition of these levies without remuneration would hence encroach on the interests of the Extraordinary Demesne and of the imperial donatories. In this conflict between interests and ideology, the former were of course victorious. The progressing aristocratization of the empire and gradual departure of Napoleonic policy from the principles of the Revolution thus became a factor which checked bourgeois reforms in Westphalia.⁵ It was similar with other German lands under Napoleon's rule (such as the Grand Duchy of Berg or the so-called Hanseatic Departments).

In Italy the situation shaped up differently. The uneven levels of economic and social development of different parts of Italy

⁵ M. Senkowska Gluck, *Donacje napoleońskie w Księstwie Warszawskim* [The Napoleonic Donations in the Duchy of Warsaw], Wrocław 1968, pp. 66—77 (chapter on the donations in Germany); H. Berding, *Napoleonische Herrschafts- und Gesellschaftspolitik*, Göttingen 1973, Vandenhoeck and Ruprecht, FGR; E. Fehrenbach, *Traditionale Gesellschaft und revolutionäres Recht*, Göttingen 1974, FGR, G. Lefebvre, *Napoléon*, Paris 1969, B.U.F., pp. 461—462.

at the end of the 18th century was the source of various tensions which complicated and made difficult the reforms undertaken under Napoleon's domination. At no time was it decided to effect radical agrarian reforms as in France or the Departments of the Rhine. The French were satisfied with a compromise between the interests of the landed aristocracy and the bourgeoisie.⁶ Agrarian reform went relatively further in North Italy where the first break in the feudal agrarian system was made in the times of Maria Theresa and Joseph II. Shortly after the conquest of Lombardy by French troops in 1796 the new authorities established in the more important cities proclaimed the abolition of feudal charges, levies and tithes. The Cis-Alpine and Ligurian Republics ratified these provisions in their constitutions. But feudal survivals remained to the 60's of the 19th century, despite the introduction of the Napoleonic Code.

In Southern Italy the ephemeral existence of the Parthenpeian Republic did not allow any reforms. In the Kingdom of Naples they were initiated only in 1806, when the conservative evolution of Napoleonic rule commenced. Feudal ties were much stronger and more shackling there than in the North. A few aristocratic families concentrated in their hands income from feudal rents, controlled a number of feudal type monopolies and fiscal prerogatives enabling them to collect taxes and commercial surcharges. More than 3 millions of the total of 5 million inhabitants of the Kingdom were subject to patrimonial judicature.

A decree of September 2, 1806 deprived the feudal lords of judicial rights, but retained their landed property. Personal obligations were cancelled without remuneration, real property obligations could be bought off. But the peasants were too poor to do so. Thus, despite the apparent reforms, the peasants' situation changed very little; they did not become free, independent producers. Nor did the very modest attempts at agrarian reform undertaken the next year or the sale of state property bring any

⁶ A. Soboul, *L'Italie jacobine et napoléonienne ou la révolution agraire manquée*, "Annuario dell' Istituto Storico Italiano per l'Età Moderna e Contemporanea," vol. XXIII/XXIV, 1975, p. 49; P. Villani, *Le royaume de Naples pendant l'occupation française 1806—1815*, "Annales Historiques de la Révolution Française," vol. I, 1972, pp. 66—81.

changes in land redistribution in favour of the peasants. Only the wealthy bourgeoisie benefitted. While the phenomenon of the passing over of landed property from the aristocracy to the bourgeoisie was observable on a larger scale in Northern Italy, that was not associated with a change of the agrarian structure. For large property holdings invariably dominated, former production relations and the nature of the rent remained unchanged.

Despite the programmatic abolition of feudalism, strong feudal survivals hence remained in the Italian socio-economic system: domination of large scale real property of a regressive, semi-feudal character, dominance of rent in kind, no emergence of a stratum of independent peasant farm owners producing for the market. Even in Northern Italy, where a certain part of large land owners turned to capitalist-type farming and where there thus arose the category of "free" agricultural workers, the mass of the peasantry was still mainly composed of share croppers of the old type and agricultural day labourers, remaining within the traditional bonds of dependence.

Matters took an entirely different course in the Duchy of Warsaw. This little state, created by the Treaty of Tilsit from Polish territories annexed by Prussia in the second and third Polish partitions, and tied to Saxony by a personal union, was granted a constitution by Napoleon which respected the native institutional tradition to a somewhat greater degree than in other vassal states. A practical expression of this was the fact that the Polish gentry were assured a dominant political and social position. They were guaranteed supremacy in parliament and concentrated executive power in their hands. Remoteness of the King, who was much more often in Dresden than in Warsaw, effected that the Duchy ministers' sphere of power was greater than provided by the Constitution which accented the attributes of monarchical rule.

That Constitution abolished peasant serfdom. A royal decree issued several months later (December 21, 1807) proclaimed that this provision of the Constitution meant that the peasants were granted exclusively personal freedom, the land on which they lived was recognized as the hereditary property of their landlords.

A kind of corollary to the peasant's right to leave the village was the right of the landlord to evict the peasant from the farm. Introduction of the Napoleonic Code in the Duchy at first met with resistance and protest of the gentry, but after a short lapse of time the ruling class learnt to make use of the Code's property regulations to consolidate its position. The rights which the old Polish law, or Prussian law in force on these territories after the partitions and before the creation of the Duchy, granted the peasants to land tenure (*dominium utile*) and to common pastures and forests, which they usually utilized, were not protected by the Civil Code. On the other hand, the authorities did not go out of the way to inform the peasants of the Code provisions which enabled to buy off perpetual liabilities (*rentes perpétuelles*), thus making it possible for them to become farm owners.

Corvée continued to be peasants' chief burden. Since the Civil Code did not regulate this type of obligation, the whole great sphere of landlord-peasant legal relations remained outside the jurisdiction of the Code and was regulated administratively. And the landlords as a rule exercised administrative power on the community level. This enabled them to retain police and juridical functions in the village, despite the abolition of patrimonial judicature. Acting as government officials, they utilized the authority of the state to protect their own interests.

The new bourgeois legislation introduced in the Duchy hence brought paradoxical results. It strengthened feudal-type property and contributed to the consolidation of feudal relations in the country for many decades.⁷

Napoleonic legislation had the weakest impact in Dalmatia, Istria, Croatia, parts of Carniole and Carinthia, which as Illyrian Provinces were annexed into the Empire in 1809. Although these lands were directly administered by the French government, their legal status was long of a provisional character and French law was introduced gradually and inconsistently. The Civil Code was introduced as late as 1812. Because of fear of antagonizing the

⁷ W. Sobociński, *Historia ustroju i prawa Księstwa Warszawskiego [History of the Political and Legal Institutions in the Duchy of Warsaw]*, Toruń 1964, p. 62 sqq.

local aristocracy—as it was, averse to French rule—no essential reforms were undertaken in relation to the peasant question. They were limited to the abolition of patrimonial judicature, of less significant tributes and personal services as well as to the preparation of a draft decree on the right to buy off levies on land. In the opinion of the French administrators in these Provinces, the peasants' economic situation would in practice make it impossible for them to benefit from the right to buy themselves off. After the fall of the Napoleonic Empire and return of these lands to Austrian rule, the former institutions were restored, except for patrimonial judicature.⁸

It follows from the above historical sketch of the reception of French programmatic principles and legal institutions by some areas of Europe early in the 19th century that the actual—and so highly varied—results of the reforms, that the depth or illusionary nature of the social and political changes they effected were determined to the highest degree by two interrelated factors. These are :

— the factual changes of the goals and tasks of the French carriers and realizers of reforms (significant shift from egalitarian revolutionary values to imperial and dynastic ones) side by side with the unchangeable (at any rate, appearing invariability or continuity) phraseology of programmatic declarations ;

— the variegated conditions, particularly the different degrees of preparation and maturity for reform in the various areas where socio-political reforms were to be implemented according to a would-be universal French model.

The intervention of those two variables may to a considerable extent explain the above presented mosaic of solutions, the highly differing consequences of their realization, the depth and direction of compromises, the degree of stability of achievements.

What picture would emerge if the areas embraced by post-revolution reforms (considered above) were ranked according to the degree of effectiveness and stability of those reforms ? At one extreme would be the Departments of the Rhine where the reform

⁸ M. Senkowska Gluck, *Rządy francuskie w Ilirii [The French Government in Illyria]*, "Czasopismo Prawno-Historyczne," 1975, pp. 239—249.

programme was realized earliest, when the departure from the revolutionary slogans of freedom was not yet definite and where socio-economic conditions were closest to the French. Furthermore, as we saw above, the reforms were introduced consistently and completely. Lasting and essential changes were accomplished here which resulted in shaping modern social structures, based on property transfers, which lasted even after the fall of the Empire. At the opposite pole would be the Illyrian Provinces created—in the period when Napoleon's imperial ambitions were dominant and the conservative tendencies of the First Empire came to the fore—in areas characterized mainly by great socio-economic backwardness. The reforms introduced by the French administration were superficial here, did not encroach on the traditional social structure and did not last at all. The other areas occupied uneven positions between the two extremes.

For more general reflection we now turn primarily to questions associated with the two basic problems noted in the above considerations. Involved were the problems of a reform programme implemented by legal instruments and the variegated conditions in which the reforms are realized. Required here is consideration not only of verbal programmatic declarations and legal enactments, but also of the latent changes in the intentions, desires, tasks and aims of the reform programme's implementors. Account must be taken of changes as expressions of the shifts and transformations in the hierarchy of actually realized values.

The conclusions of such considerations may be formulated in the following generalized propositions (requiring of course further verification and comparison with other types of research on the techniques of social change):

- 1) One of the essential elements of the process of social changes is the formulation of a programme of postulated changes (a reform programme). Such a programme is at the same time the result of already accomplished transformations and an instrument of their consolidation and continuation. At the foundation of a reform programme are changes in the system and hierarchy of values—conscious or unconscious.

- 2) A reform programme is the product of given social forces

and expresses their interests and aspirations to change social and political relations.

3) The assertion may be risked, on the basis of previous experiences, that there is a clear inclination to attribute reform programmes a universal character. While this conviction was in earlier times expressed *expressis verbis*, as, for example, the reform programme deduced from the principles of the French Revolution, this tendency is mainly expressed today in a camouflaged form, even despite contrary declarations. This question is of great practical importance, for particularist or group interests discordant with the conditions and needs of areas subjected to such influences are sometimes realized under cover of the universal character of a reform programme proclaimed and imposed as the only correct one.

4) The most frequent form of concretization of a reform programme are legal enactments calculated to realize programmatic postulates and principles. Here appears another tendency (besides the illusion of universalism) characterized by immutable durability, namely, the conviction that it is possible to effect deep-going social transformations by means of legal enactments and institutions. This faith was typical of the men of the French Revolution, but has persisted to the present time. It finds its embodiments in some enterprises of modern technocrats.

5) Linking programmatic universalism with faith in the enormously efficient possibilities of legislation leads to the phenomenon of reception of the law. In the Napoleonic period it was a matter of reception of the law in its pure forms (as fully obligatory, e.g., the Napoleonic Code in the imperial satellite states). At present there is a more indirect form of reception by training students of developing countries in universities of developed countries, invitation of lecturers from highly developed to developing countries, the influence of advisers, adoption of other countries' institutional and organizational legal solutions (within the framework of so-called exchange of experience).

6) One of the problems to be analyzed in attempts to utilize legislative instruments in the process of optimizing the techniques of social change is the clash between the tendency to programmatic universalism and law reception and manifestations of un-

even socio-economic development as well as between the former and the exceedingly varied conditions in different cultural areas and countries. Involved here is proper consideration in programming reform of the conditions in which the reforms are to be implemented.

7) It also needs to be stressed that where the reform programme and legal enactments flowing from it do not reckon adequately with the specific conditions in which they are to be substantiated, disfunction symptoms can be expected to appear in the intended social changes. It may prove necessary to change the principles and regulations in the course of their execution. Their contact with the social reality often necessitates concessions, retreats and compromises. Unripeness for change, inadequate preparation and lack of consistency in action, caused by a growing awareness of discord between the programme and the real conditions of its realization, usually effect that instead of the indispensable change embracing the entire system, only some partial changes will be accomplished which do not lead to the postulated transformation.

8) As the history of the reforms deriving from the French Revolution teaches us, programmes may be subject to latent changes, not always and not fully manifested in their preserved formulations. In such cases it is a matter of the actual erosion of the programme's contents, while retaining its phraseology. The programmatic formulations then retain their propaganda value for some time and serve to camouflage programme realization policies (including legislative) different from or in discord with its declarations. A split thus appears, which is fraught with consequences, between public acceptance of the programme formulations and the actual—conscious or unconscious—intentions of the realizers of an essentially different programme who make instrumental use of the socially internalized original principles of the reform programme. A progressive programme of reform may thus be utilized as a cover for regressive change or for particularist or group interests. Such a programme then ceases to be a weapon of progressive social forces and becomes an instrument of manipulation. Today the most dangerous expression of this type of manipulation appears where the goals and values of technocratic

structures or bureaucratized apparatus of rule separated from the people have become autonomous.

9) A quest in past experience for proposals which may enrich the discussion on the problems of the optimal techniques of social change and the share of law in its associated processes suggests the following propositions :

a) It is necessary to check the tendencies to universalization by scrupulous consideration in programmes of development and legal enactments the specific conditions of time and place as well as the degree of preparedness for the postulated change, so that the reform programme could embrace the entire system and be consistently implemented.

b) The realization policy of structural reform cannot be limited to legal enactments but must embrace a much broader sphere of sociotechnical activity calculated to effect deep-going changes in the social consciousness, in the internalization of the new system of values, by altering attitudes and motivations.

c) Latent changes in the reform programme should be prevented primarily by means of effective public control of all manifestations of aims and tasks autonomization appearing in the structures of organizations and institutions realizing the postulated socio-political changes. It seems that the process of content erosion can be prevented only by the proper functioning of public control, which thus becomes one of the principal elements of optimization of the techniques of social change.

(Translated by Jerzy Syskind)