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## The Well-Ordered Police State: Social and Institutional Change Through Law in the Germanies and Russia, 1600-1800

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THE WELL-ORDERED POLICE STATE: SOCIAL AND INSTITUTIONAL CHANGE THROUGH LAW IN THE GERMANIES AND RUSSIA, 1600-1800. By *Marc Raeff*. New Haven, Conn.: Yale University Press. 1983. Pp. ix, 283. \$23.50.

Current notions of how societies should be governed are comparatively new, having developed, for the most part, in the period between the Reformation and the Enlightenment. During this span of roughly two centuries, Europe was transformed from an amalgam of isolated but religiously unified, backward-looking cultures into a collection of expanding, secular, production-oriented states. These changes were both promoted by and reflected in the laws of the polities involved. Professor Marc Raeff<sup>1</sup> examines the role of legislation in this transformation of Europe in *The Well-Ordered Police State*, a collection of three essays discussing the intellectual underpinnings of the legislative

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1. Bakhmeteff Professor of Russian Studies at Columbia University. His previous works include M.M. SPERANSKY — STATESMAN OF IMPERIAL RUSSIA (1957), SIBERIA AND THE REFORMS OF 1822 (1956), ORIGINS OF THE RUSSIAN INTELLIGENTSIA (1966), and IMPERIAL RUSSIA — THE COMING OF AGE OF MODERN RUSSIA, 1682-1825 (1971).

evolution of Germany and Russia from the late sixteenth through the eighteenth centuries.

These three essays, each distinct and independent, find unity in the concept of the "well-ordered police state." Not to be confused with the dark connotations assigned to the phrase in the twentieth century, Raeff's "police state" refers merely to a government which was inherently activist — guiding, supervising and prescribing both the broad outlines and the specific mechanisms for changing society in light of the goals of a new administrative class. This role for the government was unprecedented — as late as the sixteenth century, the role of the state had primarily been to ensure the continuity of the existing social order, to preserve orthodoxy in religion, and to guard the frontiers. The government had served as the protector of an existing, static order against threats from outside. The vast upheavals of the sixteenth century, beginning with the destruction of the authority of the Catholic Church in much of Germany and the ruinous wars which ensued, forever destroyed this philosophy of legislation. The well-ordered police state was to replace it.

Raeff examines the general climate of European thought during this time of disruption in his first essay, "Intellectual Background To Change." The declining power of the Church produced an increasing secularization of life in the West. This, Raeff argues, proved to be of crucial significance (pp. 16-17). Before the Reformation it had been the Church's role to provide welfare for the poor and education for the young as well as to handle the tasks of spiritual salvation. Afterwards, the state began to fill these roles. The rise of humanism and its view of the perfectability of mankind helped rationality to replace piety as a basis for legislation (p. 18). The European expansion overseas provided stimuli for both economic and intellectual growth, as well as a chance for practical experimentation in the modes of government (pp. 15-16). At the same time, scientific advances — the discoveries of Kepler, Galileo and their contemporaries — produced another revolution in man's way of looking at the universe and himself (pp. 25-26). These simultaneous revolutions created a whole range of new opportunities for activity by the state in spheres beyond its medieval ken.

New governmental structures arose to meet these challenges, highlighted for the first time by effective centralization of authority, instead of the mere form of centralism which had previously existed. These new types of governments were staffed by administrators — lawyers prominent among them — who came to form a class of their own, with its own outlook and codes of behavior (pp. 20-23).<sup>2</sup> Most important of the beliefs of these new elites was the assumption that nature and society could be understood and acted upon through laws, in or-

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2. See generally Bouwsma, *Lawyers and Early Modern Culture*, 78 AM. HIST. REV. 303 (1973).

der to bring about the creation of more desirable conditions (p. 40). This new attitude was a *sine qua non* of the well-ordered police state.

The other essential element of the modern state in Raeff's view was the set of goals it actually pursued. Beginning in the seventeenth century, these centered on man's economic, cultural, and intellectual life on earth.<sup>3</sup> The common denominator among all these fields was the drive "to increase the potential resources of society, to make the fallow productive and the hidden accessible" (p. 41). While the conflict between the end of maximized individual production and the means of legislative prescription eventually came to be appreciated, so that by the nineteenth century the state was increasingly withdrawing to the role of "night watchman" (pp. 252-54), the tenure of the well-ordered police state had changed forever the conditions and nature of European life.

Raeff's last two essays examine more closely the role of legislation in bringing about this transformation to modernism in Germany and Russia respectively. These two nations present a striking historical contrast. Germany was a hodge-podge of states ranging from regional powers to private fiefdoms, nominally united in an Empire and effectively united by a nexus of shared cultural and institutional ties such as the guilds, trading patterns and religion. Russia, in stark contrast, formed a vast empire governed ineffectually by a tiny elite cut off from the bulk of the people by enormous distances, both physical and cultural. Raeff treats the German case topically, demonstrating the invasion of modernism by illustrations from the plethora of available ordinances. For Russia he paints with a broader brush, depicting the efforts of two sovereigns, Peter I and Catherine II, to bring their nation into the modern, *i.e.*, Western, world.

The ordinances Raeff examines in his essay on the Germanies run the gamut from the very general, organized logically and supported by extensive justifications, to the highly specific, enacted with only the briefest explanation. With regard to religion, for example, the Protestant states sought to fulfill their duty to maintain the moral climate not only by legal establishment of the ruler's religion, but also by prescribing decorum during church services, supervising the acquisition and transmission of pews, and prescribing the procedure for receiving communion (p. 59). Ordinances literally regulated life from birth to death, promulgating rules for baptisms (p. 77), weddings (p. 79), and funerals.<sup>4</sup> By the late eighteenth century, though, these regulations

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3. Previously, religion had been seen as the root of all morality, and freely cited in legislation, with the implicit or explicit threat of God's wrath for disobedience. As late as the eighteenth century epidemics and natural disasters were still considered to be the "scourge of God," and prayers were enjoined to seek God's mercy. Pp. 57-58.

4. As an example of a funeral ordinance, Raeff quotes from POLICEY ORDNUNG NÜRNBERG 37 (1672):

And since it has previously been the custom that relatives commissioned burial shrouds and

had changed with the times, becoming less detailed and their prohibitions less severe (p. 81). The effectiveness of these ordinances varied greatly in all areas of legislation, largely according to their success in reaching subordinate institutions. It was partly to reach these institutions that ordinances were frequently reiterated by reenactment (pp. 52-53).

In each category of legislation, the pedagogic role of the state was emphasized. In the religious area, the ordinances provided a guide to the subject's own moral and spiritual welfare. Laws declared feast days, and provided for the recruitment, training and maintenance of the clergy, while at the same time proscribing heretical conduct (pp. 56-69). In the economic realm, the new spirits of mercantilism and cameralism (focusing primarily on revenue maximization) dictated the goals of encouraging exports while pursuing autarky; increasing the reliability of trade patterns through the creation of markets and the scientific construction of roads, bridges, and canals; and encouraging the development of communications (via new postal services) and the insurance industry (pp. 95-107). The state tended to treat its subjects as children, who required guidance as to how best to conduct their daily activities (p. 113).

Nevertheless, over the course of the period he describes, Raeff notes a trend toward reduced regulation of truly private matters as the separation between public and private spheres of action was more clearly delineated. Consonant with this trend was the increasing respect for the citizenry as individuals — producing the codification of judicial rules to ensure fairness (pp. 136-37), a reduction in the imposition of torture and cruel punishments (p. 136), and an increasing concern for literacy and education among the populace (pp. 115-16). All of these changes reflect the new attitude toward human life that began to pervade Germany in the seventeenth century, slowly replacing the old view of the state as a disciplinarian.

Instead, the legislator now actively pursued the ideal of the *gemeine Beste*, or common good. Positive prescriptive law replaced the earlier and much more limiting proscriptive tone in legislation. In order to carry out its new function, the government required both dependable data and effective instruments to carry out its decisions. These needs were met largely by co-opting preexisting institutions: the feudal elites, the towns, the guilds. Thus, while the governmental structure was slowly transformed in the direction of a meritocracy, it was not initially democratized; old elites were, in essence, bought off.

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expensive wreaths and crosses, henceforth this shall be abolished. Churches and Houses of God are ordered that from now on burial shrouds will be lent out for a nominal fee and a perpetual supply of various wreaths and crosses made of flowers in three variations shall be kept on hand, and these shall also be provided, according to the rank and status of the deceased, for a fixed nominal fee.

P. 77 n.73 (translation by the reviewer).

By the eighteenth century, ordinances originally created to ensure stability during chaotic times 200 years earlier had wrought a vast transformation. The goal of increased production had succeeded that of husbanding scarce resources; an expanding network of interconnections had been woven between formerly self-contained units; and a faith in individual action had replaced strict direction and control from the center. In short, the value of dynamic progress had supplanted the dogmatic insistence on stability. The ordinances, having successfully instilled these values in the very fabric of society, had made themselves superfluous in Germany.

The situation in Russia was crucially different. There, too, the elites had been persuaded by the dominant ideas of the day to undertake a conscious reordering of society. In Russia, however, society was lacking in structure, with no strong corporate ties like the guilds, classes and local governments of Germany. Since the days of Muscovy, local autonomy had been the rule, with the isolated central government exacting taxes and religious orthodoxy in return for enforced social stability and the defense (and expansion) of the borders. As in Germany, the potential for change developed with the subordination of the Church to the State, a subordination marked by the schism of the Old Believers and the government's nascent turn westward stemming from the annexation (in 1654) of the comparatively occidental Ukraine. Nonetheless, the lack of strong social structures was to prove a decisive difference.

Peter the Great (r. 1689-1725) imposed changes on his empire reflective of his own personality — impatient, energetic, ruthless. In a conscious effort to duplicate the changes then taking place further west, he introduced active, development-oriented policies. In part, this course was dictated by the growing need for revenue to finance his wars with Sweden. However, Peter went far beyond taxation, injecting his state into economic, commercial, educational and scientific realms. Because of the lack of existing intermediate classes, Peter was forced to create *ex nihilo* a corps of bureaucrats to administer his new policies. The still tradition-bound populace reacted to these rapid changes as serious threats. Unlike the German case, the modernization of the Russian state only deepened the rift between the mass of the people and the governing elite, and created a small administrative class alienated from both. By himself, Peter was able to do little to strengthen Russia, and little further progress was made for fifty years after his death.

Catherine II (r. 1762-96), even more than Peter, was deeply familiar with Western ideas and had far clearer models of success from which to draw. While her rhetoric always seems to have exceeded her actions, Raefl sees Catherine as having shared the basic values of the well-ordered police state. Unlike Peter she was both willing and able

to implement her ideas through a positive approach, encouraging private actions as well as making rules. She promoted settlement, trading, manufacturing (including providing greater scope for individual initiative), cultural development, education, scholarship, and science. Through the Statute on the Provinces (1775), she also divided Russia into rational administrative units, finally permitting effective penetration of imperial decrees to the local level. According to Raeff, Catherine hoped to reform society through the creation of social classes by fiat, and eventually even to end serfdom (pp. 240, 244-45). Such action, she felt, would increase creative activity and production and ease the pressure on the overworked officialdom. In these last, ambitious goals she was never successful.

Raeff argues that this failure proved to be vital, for unlike other European countries, the lack of strong independent corporate entities and middle classes in Russia precluded any reduction in government power with the coming of laissez-faire economics (p. 250). In Russia alone the state remained fully in command, with only the intelligentsia created by Catherine to challenge it. Thus, when change finally became inevitable, it was the radical intelligentsia that rushed to fill the leadership vacuum. Raeff generalizes broadly from this difference between the Russian and German experiences, concluding that "modern political revolutions are the consequence of the incapacity of traditional forms of thought and behavior to integrate the values of a production-oriented society and the glorification of individual selfish interests" (p. 257).

Raeff's essays are exhaustively researched, well reasoned, and thoughtful. Especially in his essay on Russia, his understanding of the culture he describes is penetrating.<sup>5</sup> Given the dearth of recent historiography in English on the topic,<sup>6</sup> Raeff's contribution to the literature of the development of the early modern state deserves to be read and studied. He presents a convincing synthesis of the philosophical values of the elites of the seventeenth and eighteenth centuries with the specific legislation they enacted, and their ultimate consequences in the creation of the world as we see it today.<sup>7</sup>

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5. If the Russian essay flows more smoothly than the longer one on Germany, this is due in part to the vast difference in quantity of available materials, though it also seems to derive from Raeff's more complete comprehension of Russian history and culture. Still, the German essay offers a comprehensive snapshot of the role of law in a society in flux, and a strong case for the bulk of Raeff's conclusions.

6. See, e.g., the works cited in Raeff's first essay, pp. 13-40. See also Greenberger, *Lawyers Confront Centralized Government: Political Thought of Lawyers During the Reign of Louis XIV*, 23 AM. J. LEGAL HIST. 144 (1979), and Mann, *Rationality, Legal Change, and Community in Connecticut, 1690-1760*, 14 LAW & SOC. REV. 187 (1980), for analogous cases.

7. Raeff's conclusions in his Epilogue are somewhat broader than are strictly justified by his comparative analysis. He applies his findings to the experiences of England and France with only the slightest analysis (albeit persuasive, as far as it goes). Similarly, Raeff suggests that the well-ordered police state is the direct antecedent of the modern welfare state without thoroughly

Be forewarned, however, *The Well-Ordered Police State* does not make for easy reading. Raeff freely uses phrases and even passages from Latin, French, Russian, and especially German (notably in the footnotes), and draws heavily on the ideas of social science and philosophy, often without stopping to explain his terms. The book is, however, easily worth the effort required. The transformation that brought about the birth of the modern state is so important an event in European and world history, and Raeff's analysis of it sufficiently compelling, that the experience of reading *The Well-Ordered Police State* should be a stimulating and largely enjoyable one.